Bharatiya Sakshya Adhiniyam, 2023

भारतीय साक्ष्य अधिनियम, 2023

(Upon enforcement would repeal - Indian Evidence Act, 1872)
(Enforcement date - 1st July 2024)

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FOREWORD

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DETAILS OF THE ACT

Act Title (English):	Bharatiya Sakshya Adhiniyam, 2023
Act Title (Hindi):	भारतीय साक्ष्य अधिनियम, 2023
Enactment Date:	25th December, 2023
Act Number:	47 of 2023
Act Year:	2023
Preamble:	An Act to consolidate and to provide for general rules and principles of evidence for fair trial.
Enforcement Date:	1st July 2024
Act Repealed: **(from the date of enforcement)**	The Indian Evidence Act, 1872 (1 of 1872)

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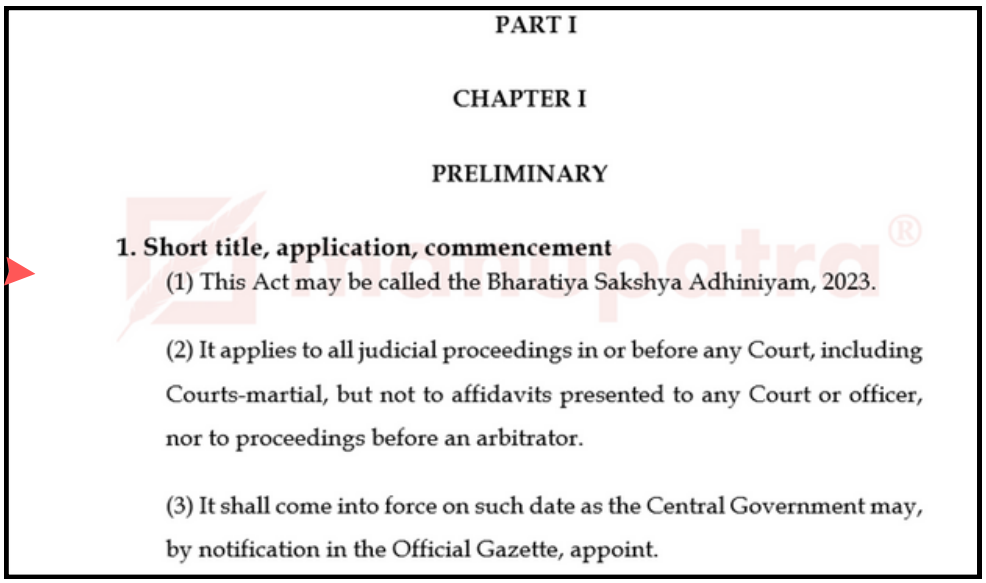
GUIDE ON HOW TO MAKE THE MOST OF THIS E-BOOK!

01

The e-book has the complete Bharatiya Sakshya Adhiniyam, 2023.



PART I

CHAPTER I

PRELIMINARY

1. Short title, application, commencement

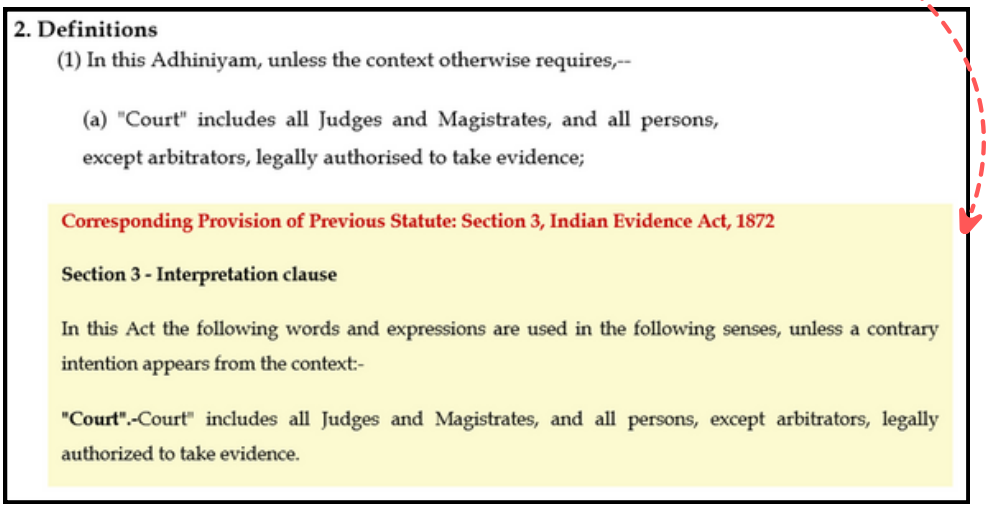
(1) This Act may be called the Bharatiya Sakshya Adhiniyam, 2023.

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

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

02

Below the provisions of the new statute, you will find yellow boxes.



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;

Corresponding Provision of Previous Statute: Section 3, Indian Evidence Act, 1872

Section 3 - Interpretation clause

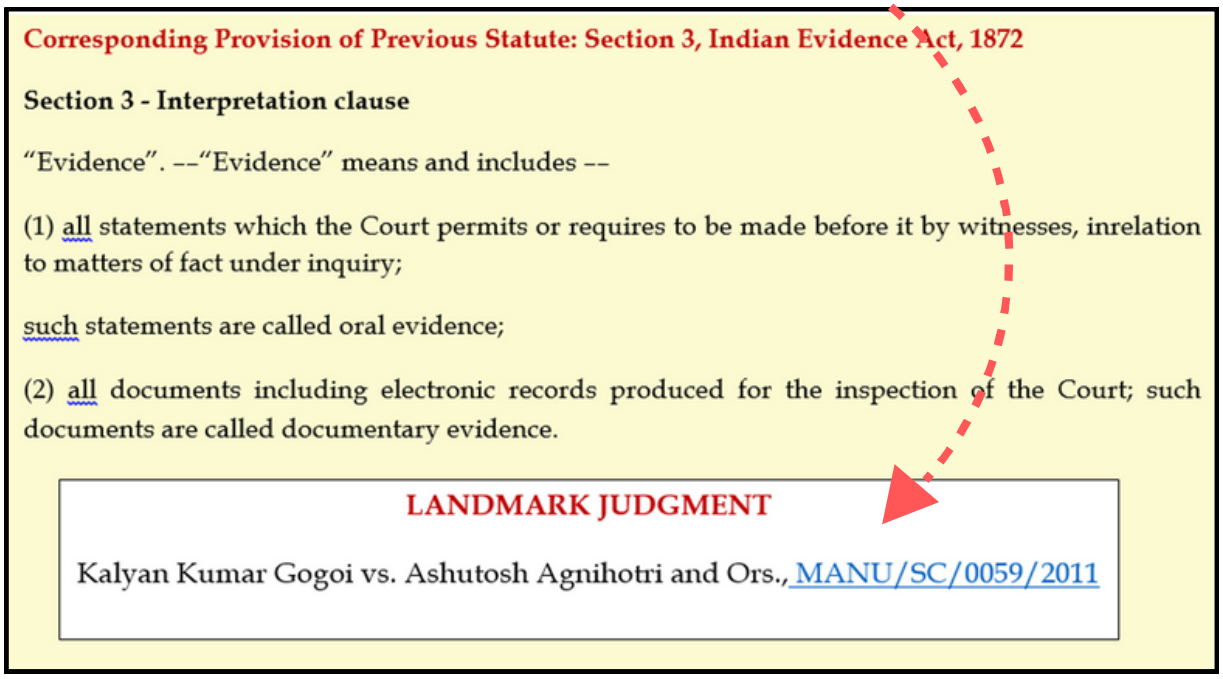
In this Act the following words and expressions are used in the following senses, unless a contrary intention appears from the context:-

"Court".-Court" includes all Judges and Magistrates, and all persons, except arbitrators, legally authorized to take evidence.

These yellow boxes contain the corresponding provision of the Indian Evidence Act, 1872. These provisions cater to the same/similar notion or topic as the new statute.

03

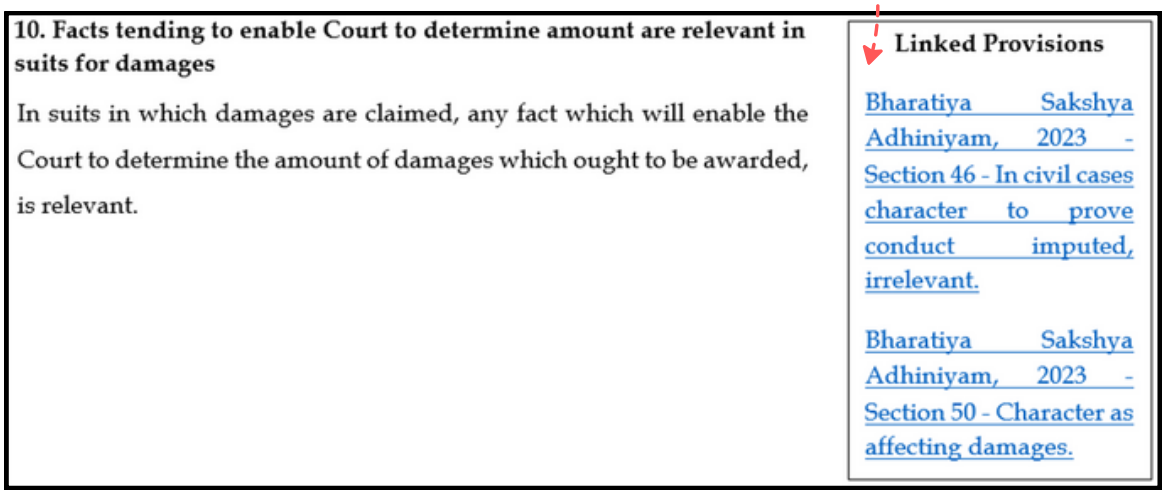
In some of these yellow boxes, landmark decisions of the corresponding provision from the Indian Evidence Act, 1872 are present.



Simply click on the link and read the entire judgment.

04

For a lot of the provisions, you will find a box of linked provisions on the side. These are the provisions that can be read as related or connected to the provision of the Bharatiya Sakshya Adhiniyam, 2023. You can read the entire provision by just clicking on the link!



THE BHARATIYA SAKSHYA ADHINIYAM, 2023

Chapter X - OF EXAMINATION OF WITNESSES

THE BHARATIYA SAKSHYA ADHINIYAM, 2023

[Act No. 47 of 2023]

[25th December, 2023]

PREAMBLE

An Act to consolidate and to provide for general rules and principles of evidence for fair trial.

BE it enacted by Parliament in the Seventy-fourth Year of the Republic of India as follows:-

PART I

CHAPTER I

PRELIMINARY

1. Short title, application, commencement

(1) This Act may be called the Bharatiya Sakshya Adhiniyam, 2023.

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

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Corresponding Provision of Previous Statute: Section 1, Indian Evidence Act, 1872

1. Short title, extent and Commencement

This Act may be called the Indian Evidence Act, 1872.

It extends to the whole of India and applies to all judicial proceedings in or before any Court, including Courts-martial, [other than Court-martial convened under the Army Act] (44 & 45 Vict., c. 58) [the Naval Discipline Act (29 & 30 Vict., c. 109) or the Indian Navy (Discipline) Act, 1934 (34 of 1934) [or the Air Force Act] (7 Geo. 5, c. 51) but not to affidavits presented to any Court or Officer, not to proceedings before an arbitrator; and it shall come into force on the first day of September, 1872.

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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;

Corresponding Provision of Previous Statute: Section 3, Indian Evidence Act, 1872

Section 3 - Interpretation clause

In this Act the following words and expressions are used in the following senses, unless a contrary intention appears from the context:-

"Court".-Court" includes all Judges and Magistrates, and all persons, except arbitrators, legally authorized 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;

Corresponding Provision of Previous Statute: Section 4, Indian Evidence Act, 1872

Section 4 - "Conclusive proof".--When one fact is declared by this Act 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;

Corresponding Provision of Previous Statute: Section 3, Indian Evidence Act, 1872

Section 3 - Interpretation clause "Disproved".--A fact is said to be disproved 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.

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(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

(i) A writing is a document.

(ii) Words printed, lithographed or photographed are documents.

(iii) A map or plan is a document.

(iv) An inscription on a metal plate or stone is a document.

(v) A caricature is a document.

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

Corresponding Provision of Previous Statute: Section 3, Indian Evidence Act, 1872

Section 3 - Interpretation clause

"Document". – "Document" means any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter.

Illustrations

A writing is a document;

Words printed lithographed or photographed are documents;

A map or plan is a document;

An inscription on a metal plate or stone is a document;

A caricature is a document.

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(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;

Corresponding Provision of Previous Statute: Section 3, Indian Evidence Act, 1872

Section 3 - Interpretation clause

"Evidence". ––"Evidence" means and includes ––

(1) all statements which the Court permits or requires to be made before it by witnesses, inrelation to matters of fact under inquiry;

such statements are called oral evidence;

(2) all documents including electronic records produced for the inspection of the Court; such documents are called documentary evidence.

LANDMARK JUDGMENT

Kalyan Kumar Gogoi vs. Ashutosh Agnihotri and Ors., MANU/SC/0059/2011

(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

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(i) That there are certain objects arranged in a certain order in a certain place, is a fact.

(ii) That a person heard or saw something, is a fact.

(iii) That a person said certain words, is a fact.

(iv) That a person holds a certain opinion, has a certain intention, acts in good faith, or fraudulently, or uses a particular word in a particular sense, or is or was at a specified time conscious of a particular sensation, is a fact;

Corresponding Provision of Previous Statute: Section 3, Indian Evidence Act, 1872

Section 3 - Interpretation clause

"Fact".--"Fact" means and includes--(1) anything, state of things, or relation of things, capable of being perceived by the senses;

(2) any mental condition of which any person is conscious.

Illustrations

(a) That there are certain objects arranged in a certain order in a certain place, is a fact.

(b) That a man heard or saw something, is a fact.

(c) That a man said certain words, is a fact.

(d) That a man holds a certain opinion, has a certain intention, acts in good faith or fraudulently, or uses aparticular word in a particular sense, or is or was at a specified time conscious of a particular sensation, is a fact.

(e) That a man has a certain reputation, is a fact.

(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.

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Explanation.--Whenever, under the provisions of the law for the time being in force relating to Civil Procedure, any Court records an issue of fact, the fact to be asserted or denied in the answer to such issue is a fact in issue.

Illustrations

A is accused of the murder of B. At his trial, the following facts may be in issue:--

(i) That A caused B's death.

(ii) That A intended to cause B's death.

(iii) That A had received grave and sudden provocation from B.

(iv) That A, at the time of doing the act which caused B's death, was, by reason of unsoundness of mind, incapable of knowing its nature;

(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;

Corresponding Provision of Previous Statute: Section 4, Indian Evidence Act, 1872

Section 4 - "May presume"–Whenever it is provided by this Act that the Court may presume a fact, it mayeither 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;

Corresponding Provision of Previous Statute: Section 3, Indian Evidence Act, 1872

Section 3 - Interpretation clause

"Facts in issue"– The expression "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.

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Explanation.––Whenever, under the provisions of the law for the time being in force relating to Civil Procedure, any Court records an issue of fact, the fact to be asserted or denied in the answer to such issue is a fact in issue.

Illustrations

A is accused of the murder of B.

At his trial the following facts may be in issue:––

That A caused B's death;

That A intended to cause B's death;

That A had received grave and sudden provocation from B;

That A, at the time of doing the act which caused B's death, was, by reason of unsoundness of mind, incapableof knowing its nature.

(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;

Corresponding Provision of Previous Statute: Section 3, Indian Evidence Act, 1872

Section 3 - Interpretation clause

"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;

Corresponding Provision of Previous Statute: Section 3, Indian Evidence Act, 1872

Section 3 - Interpretation clause

"Relevant". –– One fact is said to be relevant to another when the one is connected with the other in any of the ways referred to in the provisions of this Act relating to the relevancy of facts.

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(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.

Corresponding Provision of Previous Statute: Section 4, Indian Evidence Act, 1872

Section 4 - "Shall presume".––Whenever it is directed by this Act that the Court shall presume a fact, it shallregard 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 (21 of 2000), the Bharatiya Nagarik Suraksha Sanhita, 2023 and the Bharatiya Nyaya Sanhita, 2023 shall have the same meanings as assigned to them in the said Act and Sanhitas.

PART II

CHAPTER II

RELEVANCY OF FACTS

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.

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

Illustrations

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 2(g) - "facts in issue"

Bharatiya Sakshya Adhiniyam, 2023 - Section 5 - Facts which are occasion, cause or effect of facts in issue or relevant facts

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(a) A is tried for the murder of B by beating him with a club with the intention of causing his death.

At A's trial the following facts are in issue:--

A's beating B with the club;

A's causing B's death by such beating;

A's intention to cause B's death.

(b) A suitor does not bring with him, and have in readiness for production at the first hearing of the case, a bond on which he relies. This section does not enable him to produce the bond or prove its contents at a subsequent stage of the proceedings, otherwise than in accordance with the conditions prescribed by the Code of Civil Procedure, 1908 (5 of 1908) .

Corresponding Provision of Previous Statute: Section 5, Indian Evidence Act, 1872

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

Evidence may be given in any suitor proceeding of the existence of non-existence of every fact in issue and of such other facts as arehereinafter declared to be relevant, and of no others.

Explanation.––This section shall not enable any person to give evidence of a fact which he isdisentitled to prove by any provision of the law for the time being in force relating to Civil Procedure.

Illustrations

(a) A is tried for the murder of B by beating him with a club with the intention of causing his death.

At A's trial the following facts are in issue:––

A's beating B with the club;

A's causing B's death by such beating;

A's intention to cause B's death.

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(b) A suitor does not bring with him, and have in readiness for production at the first hearing of thecase, a bond on which he relies. This section does not enable him to produce the bond or prove itscontents at a subsequent stage of the proceedings, otherwise than in accordance with the conditionsprescribed by the Code of Civil Procedure.

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

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

(b) A is accused of waging war against the Government of India by taking part in an armed insurrection in which property is destroyed, troops are attacked and jails are broken open. The occurrence of these facts is relevant, as forming part of the general transaction, though A may not have been present at all of them.

(c) A sues B for a libel contained in a letter forming part of a correspondence. Letters between the parties relating to the subject out of which the libel arose, and forming part of the correspondence in which it is contained, are relevant facts, though they do not contain the libel itself.

(d) The question is, whether certain goods ordered from B were delivered to A. The goods were delivered to several intermediate persons successively. Each delivery is a relevant fact.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 2(f) - "fact"

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 243 - Trial for more than one offence.

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Corresponding Provision of Previous Statute: Section 6, Indian Evidence Act, 1872

Section 6 - Relevancy of facts forming part of same transaction

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

Illustrations

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

(b) A is accused of waging war against the Government of India by taking part in an armed insurrection in which property is destroyed, troops are attacked and goals are broken open. The occurrence of these facts is relevant, as forming part of the general transaction, thought A may not have been present at all of them.

(c) A sues B for a libel contained in a letter forming part of a correspondence. Letters between the parties relating to the subject out of which the libel arose, and forming part of the correspondence in which it is contained, are relevant facts, though they do not contain the libel itself.

(d) The question is, whether certain goods ordered from B were delivered to A. The goods were delivered to several intermediate persons successively. Each delivery is a relevant fact.

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

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

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 2(g) - "facts in issue"

Bharatiya Sakshya Adhiniyam, 2023 - Section 3 - Evidence may be given of facts in issue and relevant facts

Bharatiya Sakshya Adhiniyam, 2023 - Section 4 - Relevancy of facts forming part of same transaction

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(b) The question is, whether A murdered B. Marks on the ground, produced by a struggle at or near the place where the murder was committed, are relevant facts.

(c) The question is, whether A poisoned B. The state of B's health before the symptoms ascribed to poison, and habits of B, known to A, which afforded an opportunity for the administration of poison, are relevant facts.

Corresponding Provision of Previous Statute: Section 7, Indian Evidence Act, 1872

Section 7 -Facts which are the occasion, cause or effect of facts in issue. – Factswhich are the occasion, cause or effect of facts in issue. –– Facts which are the occasion, cause or effect, immediate or otherwise, of relevant facts, or facts in issue, or which constitute the state ofthings under which they happened, or which afforded an opportunity for their occurrence or transaction,are relevant.

Illustrations

(a) The question is, whether A robbed B.

The facts that, shortly before the robbery, B went to a fair with money in his possession, and that he showed it,or mentioned the fact that he had it, to third persons, are relevant.

(b) The question is, whether A murdered B.

Marks on the ground, produced by a struggle at or near the place where the murder was committed, are relevant facts.

(c) The question is, whether A poisoned B.

The state of B's health before the symptoms ascribed to poison, and habits of B, known to A, which afforded an opportunity for the administration of poison, are relevant facts.

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 of any agent to any party, to any suit or proceeding, in reference to such suit or proceeding, or in reference to any fact in issue therein or relevant thereto, and the conduct of any person, an offence against whom is the subject of any proceeding, is

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 46 - In civil cases character to prove conduct imputed, irrelevant

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relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto.

Bharatiya Sakshya Adhiniyam, 2023 - Section 48 - Evidence of character or previous sexual experience not relevant in certain cases

Explanation 1.--The word "conduct" in this section does not include statements, unless those statements accompany and explain acts other than statements; but this explanation is not to affect the relevancy of statements under any other section of this Adhiniyam.

Explanation 2.--When the conduct of any person is relevant, any statement made to him or in his presence and hearing, which affects such conduct, is relevant.

Illustrations

(a) A is tried for the murder of B. The facts that A murdered C, that B knew that A had murdered C, and that B had tried to extort money from A by threatening to make his knowledge public, are relevant.

(b) A sues B upon a bond for the payment of money. B denies the making of the bond. The fact that, at the time when the bond was alleged to be made, B required money for a particular purpose, is relevant.

(c) A is tried for the murder of B by poison. The fact that, before the death of B, A procured poison similar to that which was administered to B, is relevant.

(d) The question is, whether a certain document is the will of A. The facts that, not long before, the date of the alleged will, A made inquiry into matters to which the provisions of the alleged will relate; that he consulted advocates in reference to making the will, and that he caused drafts of other wills to be prepared, of which he did not approve, are relevant.

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(e) A is accused of a crime. The facts that, either before, or at the time of, or after the alleged crime, A provided evidence which would tend to give to the facts of the case an appearance favourable to himself, or that he destroyed or concealed evidence, or prevented the presence or procured the absence of persons who might have been witnesses, or suborned persons to give false evidence respecting it, are relevant.

(f) The question is, whether A robbed B. The facts that, after B was robbed, C said in A's presence-- "the police are coming to look for the person who robbed B", and that immediately afterwards A ran away, are relevant.

(g) The question is, whether A owes B ten thousand rupees. The facts that A asked C to lend him money, and that D said to C in A's presence and hearing-- "I advise you not to trust A, for he owes B ten thousand rupees", and that A went away without making any answer, are relevant facts.

(h) The question is, whether A committed a crime. The fact that A absconded, after receiving a letter, warning A that inquiry was being made for the criminal, and the contents of the letter, are relevant.

(i) A is accused of a crime. The facts that, after the commission of the alleged crime, A absconded, or was in possession of property or the proceeds of property acquired by the crime, or attempted to conceal things which were or might have been used in committing it, are relevant.

(j) The question is, whether A was raped. The fact that, shortly after the alleged rape, A made a complaint relating to the crime, the circumstances under which, and the terms in which, the complaint was made, are relevant. The fact that, without making a complaint, A said that A had been raped is not relevant as conduct under this

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section, though it may be relevant as a dying declaration under clause (a) of section 26, or as corroborative evidence under section 160.

(k) The question is, whether A was robbed. The fact that, soon after the alleged robbery, A made a complaint relating to the offence, the circumstances under which, and the terms in which, the complaint was made, are relevant. The fact that A said he had been robbed, without making any complaint, is not relevant, as conduct under this section, though it may be relevant as a dying declaration under clause (a) of section 26, or as corroborative evidence under section 160.

Corresponding Provision of Previous Statute: Section 8, Indian Evidence Act, 1872

Section 8 - Motive, preparation and previous or subsequent conduct.––Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact.

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

Explanation 1.––The word "conduct" in this section does not include statements, unless thosestatements accompany and explain acts other than statements; but this explanation is not to affect therelevancy of statements under any other section of this Act.

Explanation 2.––When the conduct of any person is relevant, any statement made to him or in hispresence and hearing, which affects such conduct, is relevant.

Illustrations

(a) A is tried for the murder of B.

The facts that A murdered C, that B knew that A had murdered C, and that B had tried to extort money

from A by threatening to make his knowledge public, are relevant.

(b) A sues B upon a bond for the payment of money, B denies the making of the bond.

The fact that, at the time when the bond was alleged to be made, B required money for a particularpurpose, is relevant.

(c) A is tried for the murder of B by poison.

The fact that, before the death of B, A procured poison similar to that which was administered to B, isrelevant.

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(d) The question is, whether a certain document is the will of A.

The facts that, not long before, the date of the alleged will, A made inquiry into matters to which theprovisions of the alleged will relate; that he consulted vakils in reference to making the will, and that hecaused drafts of other wills to be prepared, of which he did not approve, are relevant.

(e) A is accused of a crime.

The facts that, either before, or at the time of, or after the alleged crime, A provided evidence whichwould tend to give to the facts of the case an appearance favourable to himself, or that he destroyed orconcealed evidence, or prevented the presence or procured the absence of persons who might have beenwitnesses, or suborned persons to give false evidence respecting it, are relevant.

(f) The question is, whether A robbed B.

The facts that, after B was robbed, C said in A's presence –– "the police are coming to look for theman who robbed B," and that immediately afterwards A ran away, are relevant.

(g) The question is, whether A owes B rupees 10,000.

The facts that A asked C to lend him money, and that D said to C in A's presence and hearing–– "Iadvise you not to trust A, for he owes B 10,000 rupees," and that A went away without making anyanswer, are relevant facts.

(h) The question is, whether A committed a crime.

The fact that A absconded, after receiving a letter, warning him that inquiry was being made for thecriminal, and the contents of the letter, are relevant.

(i) A is accused of a crime.

The facts that, after the commission of the alleged crime, he absconded, or was in possession ofproperty or the proceeds of property acquired by the crime, or attempted to conceal things which were ormight have been used in committing it, are relevant.

(j) The question is, whether A was ravished.

The facts that, shortly after the alleged rape, she made a complaint relating to the crime, thecircumstances under which, and the terms in which, the complaint was made, are relevant.

The fact that, without making a complaint, she said that she had been ravished is not relevant asconduct under this section, though it may be relevant as a dying declaration under section 32, clause (1),or as corroborative evidence under section 157.

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(k) The question is, whether A was robbed.

The fact that, soon after the alleged robbery, he made a complaint relating to the offence, the circumstances under which, and the terms in which, the complaint was made, are relevant.

The fact that he said he had been robbed, without making any complaint, is not relevant, as conductunder this section, though it may be relevant as a dying declaration under section 32, clause (1), or ascorroborative evidence under section 157.

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

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

Illustrations

(a) The question is, whether a given document is the will of A. The state of A's property and of his family at the date of the alleged will may be relevant facts.

(b) A sues B for a libel imputing disgraceful conduct to A; B affirms that the matter alleged to be libellous is true. The position and relations of the parties at the time when the libel was published may be relevant facts as introductory to the facts in issue. The particulars of a dispute between A and B about a matter unconnected with the alleged libel are irrelevant, though the fact that there was a dispute may be relevant if it affected the relations between A and B.

(c) A is accused of a crime. The fact that, soon after the commission of the crime, A absconded from his house, is relevant under section 6, as conduct subsequent to and affected by facts in issue. The fact

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 2(g) - "facts in issue"

Bharatiya Sakshya Adhiniyam, 2023 - Section 2(f) - "fact"

Bharatiya Sakshya Adhiniyam, 2023 - Section 26 - Cases in which statement of facts in issue or relevant fact by person who is dead or cannot be found, etc., is relevant.

Bharatiya Sakshya Adhiniyam, 2023 - Section 44 - Opinion on relationship, when relevant

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that, at the time when he left home, A had sudden and urgent business at the place to which he went, is relevant, as tending to explain the fact that he left home suddenly. The details of the business on which he left are not relevant, except in so far as they are necessary to show that the business was sudden and urgent.

(d) A sues B for inducing C to break a contract of service made by him with A. C, on leaving A's service, says to A-- "I am leaving you because B has made me a better offer". This statement is a relevant fact as explanatory of C's conduct, which is relevant as a fact in issue.

(e) A, accused of theft, is seen to give the stolen property to B, who is seen to give it to A's wife. B says as he delivers it-- "A says you are to hide this". B's statement is relevant as explanatory of a fact which is part of the transaction.

(f) A is tried for a riot and is proved to have marched at the head of a mob. The cries of the mob are relevant as explanatory of the nature of the transaction.

Bharatiya Sakshya Adhiniyam, 2023 - Section 112 - Burden of proof as to relationship in the cases of partners, landlord and tenant, principal and agent

Corresponding Provision of Previous Statute: Section 9, Indian Evidence Act, 1872

Section 9 - 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 a fact in issue orrelevant fact, or which establish the identity of any thing or person whose identity is relevant, or fix thetime or place at which any fact in issue or relevant fact happened, or which show the relation of parties bywhom any such fact was transacted, are relevant in so far as they are necessary for that purpose.

Illustrations

(a) The question is, whether a given document is the will of A.

The state of A's property and of his family at the date of the alleged will may be relevant facts.

The fact that, at the time when he left home, he had sudden and urgent business at the place to which he went, isrelevant, as tending to explain the fact that he left home suddenly.

The details of the business on which he left are not relevant, except in so far as they are necessary to show that the business was sudden and urgent.

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(b) A sues B for a libel imputing disgraceful conduct to A; B affirms that the matter alleged to be libellous is true.

The position and relations of the parties at the time when the libel was published may be relevant facts as introductory to the facts in issue.

The particulars of a dispute between A and B about a matter unconnected with the alleged libel are irrelevant, though the fact that there was a dispute may be relevant if it affected the relationsbetween A and B.

(c) A is accused of a crime.

The fact that, soon after the commission of the crime, A absconded from his house, is relevant under section 8, as conduct subsequent to and affected by facts in issue.

(d) A sues B for inducing C to break a contract of service made by him with A. C, on leaving A's service, says to A –– "I am leaving you because B has made me a better offer." This statement is a relevant fact as explanatory of

C's conduct, which is relevant as a fact in issue.

(e) A, accused of theft, is seen to give the stolen property to B, who is seen to give it to A's wife. B says as he delivers it––"A says you are to hide this." B's statement is relevant as explanatory of a fact which is part of the transaction.

(f) A is tried for a riot and is proved to have marched at the head of a mob. The cries of the mob are relevant as explanatory of the nature of the transaction.

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 together to commit an offence or an actionable wrong, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it.

Illustration

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

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 3(5) - General Explanations and expressions

Bharatiya Nyaya Sanhita, 2023 - Section 61 - Criminal Conspiracy

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

Corresponding Provision of Previous Statute: Section 10, Indian Evidence Act, 1872

Section 10 - 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 together to commit an offence or an actionable wrong, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it.

Illustrations

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

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

9. When facts not otherwise relevant become relevant

Facts not otherwise relevant are relevant--

(1) if they are inconsistent with any fact in issue or relevant fact;

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 3 - Evidence may be given of facts in issue and relevant facts.

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(2) if by themselves or in connection with other facts they make the existence or non-existence of any fact in issue or relevant fact highly probable or improbable.

Illustrations

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

(b) The question is, whether A committed a crime. The circumstances are such that the crime must have been committed either by A, B, C or D. Every fact which shows that the crime could have been committed by no one else, and that it was not committed by either B, C or D, is relevant.

Bharatiya Sakshya Adhiniyam, 2023 - Section 7 - Facts necessary to explain or introduce fact in issue or relevant facts

Bharatiya Sakshya Adhiniyam, 2023 - Section 36 - Relevancy and effect of judgments, orders or decrees, other than those mentioned in section 35

Corresponding Provision of Previous Statute: Section 11, Indian Evidence Act, 1872

Section 11 - When facts not otherwise relevant become relevant - Facts not otherwise relevant are relevant -

(1) if they are inconsistent with any fact in issue or relevant fact;

(2) if by themselves or in connection with other facts they make the existence or non-existence of any fact in issue or relevant fact highly probable or improbable.

Illustrations

(a) The question is, whether A committed a crime at Calcutta on a certain day.

The fact that, on that day, A was at Lahore is relevant.

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

(b) The question is, whether A committed a crime.

The circumstances are such that the crime must have been committed either by A, B, C or D. Every fact which shows that the crime could have been committed by no one else, and that it was not committed by either B, C or D,is relevant.

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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.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 46 - In civil cases character to prove conduct imputed, irrelevant.

Bharatiya Sakshya Adhiniyam, 2023 - Section 50 - Character as affecting damages.

Corresponding Provision of Previous Statute: Section 12, Indian Evidence Act, 1872

Section 12 - In suits for damages, facts tending to enable Court to determine amount are relevant– In suits in which damages are claimed, any fact which will enable the Court to determine the amount ofdamages which ought to be awarded, is relevant.

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.

Illustration

The question is, whether A has a right to a fishery. A deed conferring the fishery on A's ancestors, a mortgage of the fishery by A's father, a

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 26 - Cases in which statement of facts in issue or relevant fact by person who is dead or cannot be found, etc., is relevant.

Bharatiya Sakshya Adhiniyam, 2023 - Section 42 - Opinion as to existence of general custom or right when relevant

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subsequent grant of the fishery by A's father, irreconcilable with the mortgage, particular instances in which A's father exercised the right, or in which the exercise of the right was stopped by A's neighbours, are relevant facts.

Corresponding Provision of Previous Statute: Section 13, Indian Evidence Act, 1872

Section 13 - Facts relevant when right or custom is in question - Where the question is as to the existenceof 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 inwhich its exercise was disputed, asserted or departed from.

Illustrations

The question is, whether A has a right to a fishery.

A deed conferring the fishery on A's ancestors, a mortgage of the fishery by A's father, a subsequent grant ofthe fishery by A's father, irreconcilable with the mortgage, particular instances in which A's father exercised theright, or in which the exercise of the right was stopped by A's neighbours, are relevant facts.

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

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

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

Explanation 2.--But where, upon the trial of a person accused of an offence, the previous commission by the accused of an offence is

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relevant within the meaning of this section, the previous conviction of such person shall also be a relevant fact.

Illustrations

(a) A is accused of receiving stolen goods knowing them to be stolen. It is proved that he was in possession of a particular stolen article. The fact that, at the same time, he was in possession of many other stolen articles is relevant, as tending to show that he knew each and all of the articles of which he was in possession to be stolen.

(b) A is accused of fraudulently delivering to another person a counterfeit currency which, at the time when he delivered it, he knew to be counterfeit. The fact that, at the time of its delivery, A was possessed of a number of other pieces of counterfeit currency is relevant. The fact that A had been previously convicted of delivering to another person as genuine a counterfeit currency knowing it to be counterfeit is relevant.

(c) A sues B for damage done by a dog of B's, which B knew to be ferocious. The fact that the dog had previously bitten X, Y and Z, and that they had made complaints to B, are relevant.

(d) The question is, whether A, the acceptor of a bill of exchange, knew that the name of the payee was fictitious. The fact that A had accepted other bills drawn in the same manner before they could have been transmitted to him by the payee if the payee had been a real person, is relevant, as showing that A knew that the payee was a fictitious person.

(e) A is accused of defaming B by publishing an imputation intended to harm the reputation of B. The fact of previous publications by A respecting B, showing ill-will on the part of A towards B is relevant, as proving A's intention to harm B's reputation by the particular

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publication in question. The facts that there was no previous quarrel between A and B, and that A repeated the matter complained of as he heard it, are relevant, as showing that A did not intend to harm the reputation of B.

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

(g) A is sued by B for the price of work done by B, upon a house of which A is owner, by the order of C, a contractor. A's defence is that B's contract was with C. The fact that A paid C for the work in question is relevant, as proving that A did, in good faith, make over to C the management of the work in question, so that C was in a position to contract with B on C's own account, and not as agent for A.

(h) A is accused of the dishonest misappropriation of property which he had found, and the question is whether, when he appropriated it, he believed in good faith that the real owner could not be found. The fact that public notice of the loss of the property had been given in the place where A was, is relevant, as showing that A did not in good faith believe that the real owner of the property could not be found. The fact that A knew, or had reason to believe, that the notice was given fraudulently by C, who had heard of the loss of the property and wished to set up a false claim to it, is relevant, as showing that the fact that A knew of the notice did not disprove A's good faith.

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(i) A is charged with shooting at B with intent to kill him. In order to show A's intent, the fact of A's having previously shot at B may be proved.

(j) A is charged with sending threatening letters to B. Threatening letters previously sent by A to B may be proved, as showing the intention of the letters.

(k) The question is, whether A has been guilty of cruelty towards B, his wife. Expressions of their feeling towards each other shortly before or after the alleged cruelty are relevant facts.

(l) The question is, whether A's death was caused by poison. Statements made by A during his illness as to his symptoms are relevant facts.

(m) The question is, what was the state of A's health at the time when an assurance on his life was effected. Statements made by A as to the state of his health at or near the time in question are relevant facts.

(n) A sues B for negligence in providing him with a car for hire not reasonably fit for use, whereby A was injured. The fact that B's attention was drawn on other occasions to the defect of that particular car is relevant. The fact that B was habitually negligent about the cars which he let to hire is irrelevant.

(o) A is tried for the murder of B by intentionally shooting him dead. The fact that A on other occasions shot at B is relevant as showing his intention to shoot B. The fact that A was in the habit of shooting at people with intent to murder them is irrelevant.

(p) A is tried for a crime. The fact that he said something indicating an intention to commit that particular crime is relevant. The fact that he said something indicating a general disposition to commit crimes of that class is irrelevant.

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Corresponding Provision of Previous Statute: Section 14, Indian Evidence Act, 1872

Section 14 - Facts showing existence of state of mind, or of body of bodily feeling - Facts showing theexistence of any state of mind such as intention, knowledge, good faith, negligence, rashness, ill-will orgood-will towards any particular person, or showing the existence of any state of body or bodily feeling,are relevant, when the existence of any such state of mind or body or bodily feeling is in issue or relevant.

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

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

Illustrations

(a) A is accused of receiving stolen goods knowing them to be stolen. It is proved that he was in possession of aparticular stolen article.

The fact that, at the same time, he was in possession of many other stolen articles is relevant, as tending to showthat he knew each and all of the articles of which he was in possession to be stolen.

(b) A is accused of fraudulently delivering to another person a counterfeit coin which, at the time when hedelivered it, he knew to be counterfeit.

The fact that, at the time of its delivery, A was possessed of a number of other pieces of counterfeit coin isrelevant.

The fact that A had been previously convicted of delivering to another person as genuine a counterfeit coinknowing it to be counterfeit is relevant.

(c) A sues B for damage done by a dog of B's, which B knew to be ferocious.

The fact that the dog had previously bitten X, Y and Z, and that they had made complaints to B, are relevant.

(d) The question is, whether A, the acceptor of a bill of exchange, knew that the name of the payee wasfictitious.

The fact that A had accepted other bills drawn in the same manner before they could have been transmitted to him by the payee if the payee had been a real person, is relevant, as showing that A knew that the payee was afictitious person.

(e) A is accused of defaming B by publishing an imputation intended to harm the reputation of B.

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The fact of previous publications by A respecting B, showing ill-will on the part of A towards B is relevant, as proving A's intention to harm B's reputation by the particular publication in question.

The facts that there was no previous quarrel between A and B, and that A repeated the matter complained of ashe heard it, are relevant, as showing that A did not intend to harm the reputation of B.

(f) A is sued by B for fraudulently representing to B that C was solvent, whereby B, being induced to trust C, who was insolvent, suffered loss.

The fact that, at the time when A represented C to be solvent, C was supposed to be solvent by his neighbours and by persons dealing with him, is relevant, as showing that A made the representation in good faith.

(g) A is sued by B for the price of work done by B, upon a house of which A is owner, by the order of C, a contractor.

A's defence is that B's contract was with C.

The fact that A paid C for the work in question is relevant, as proving that A did, in good faith, make over to Cthe management of the work in question, so that C was in a position to contract with B on C's own account, and notas agent for A.

(h) A is accused of the dishonest misappropriation of property which he had found, and the question is whether,when he appropriated it, he believed in good faith that the real owner could not be found.

The fact that public notice of the loss of the property had been given in the place where A was, is relevant, asshowing that A did not in good faith believe that the real owner of the property could not be found.

The fact that A knew, or had reason to believe, that the notice was given fraudulently by C, who had heard ofthe loss of the property and wished to set up a false claim to it, is relevant, as showing that the fact that A knew ofthe notice did not disprove A's good faith.

(i) A is charged with shooting at B with intent to kill him. In order to show A's intent the fact of A's havingpreviously shot at B may be proved.

(j) A is charged with sending threatening letters to B. Threatening letters previously sent by A to B may beproved, as showing the intention of the letters.

(k) The question is, whether A has been guilty of cruelty towards B, his wife.

Expressions of their feeling towards each other shortly before or after the alleged cruelty are relevant facts.

(l) The question is whether A's death was caused by poison.

Statements made by A during his illness as to his symptoms are relevant facts.

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(m) The question is, what was the state of A's health at the time when an assurance on his life was effected.

Statements made by A as to the state of his health at or near the time in question are relevant facts.

(n) A sues B for negligence in providing him with a carriage for hire not reasonably fit for use, whereby A wasinjured.

The fact that B's attention was drawn on other occasions to the defect of that particular carriage is relevant.

The fact that B was habitually negligent about the carriages which he let to hire is irrelevant.

(o) A is tried for the murder of B by intentionally shooting him dead.

The fact that A on other occasions shot at B is relevant as showing his intention to shoot B.

The fact that A was in the habit of shooting at people with intent to murder them is irrelevant.

(p) A is tried for a crime.

The fact that he said something indicating an intention to commit that particular crime is relevant.

The fact that he said something indicating a general disposition to commit crimes of that class isirrelevant.

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

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

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 18 - Accident in doing a lawful act

Illustrations

(a) A is accused of burning down his house in order to obtain money for which it is insured. The facts that A lived in several houses successively each of which he insured, in each of which a fire occurred, and after each of which fires A received payment from a different insurance company, are relevant, as tending to show that the fires were not accidental.

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(b) A is employed to receive money from the debtors of B. It is A's duty to make entries in a book showing the amounts received by him. He makes an entry showing that on a particular occasion he received less than he really did receive. The question is, whether this false entry was accidental or intentional. The facts that other entries made by A in the same book are false, and that the false entry is in each case in favour of A, are relevant.

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

Corresponding Provision of Previous Statute: Section 15, Indian Evidence Act, 1872

Section 15 - Facts bearing on question whether act was accidental or intentional - When there is aquestion whether an act was accidental or intentional, or done with a particular knowledge or intention,the fact that such act formed part of a series of similar occurrences, in each of which the person doing the act was concerned, is relevant.

Illustrations

(a) A is accused of burning down his house in order to obtain money for which it is insured.

The facts that A lived in several houses successively each of which he insured, in each of which a fire occurred, and after each of which fires A received payment from a different insurance office, are relevant, as tending to showthat the fires were not accidental.

(b) A is employed to receive money from the debtors of B. It is A's duty to make entries in a book showing the amounts received by him. He makes an entry showing that on a particular occasion he received less than he reallydid receive.

The question is, whether this false entry was accidental or intentional.

The facts that other entries made by A in the same book are false, and that the false entry is in each case in favour of A, are relevant.

(c) A is accused of fraudulently delivering to B a counterfeit rupee.

The question is, whether the delivery of the rupee was accidental.

The facts that, soon before or soon after the delivery to B, A delivered counterfeit rupees to C, D and E are relevant, as showing that the delivery to B was not accidental

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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

(a) The question is, whether a particular letter was dispatched. The facts that it was the ordinary course of business for all letters put in a certain place to be carried to the post, and that particular letter was put in that place are relevant.

(b) The question is, whether a particular letter reached A. The facts that it was posted in due course, and was not returned through the Return Letter Office, are relevant.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 26 - Cases in which statement of facts in issue or relevant fact by person who is dead or cannot be found, etc., is relevant.

Bharatiya Sakshya Adhiniyam, 2023 - Section 28 - Entries in books of account when relevant

Bharatiya Sakshya Adhiniyam, 2023 - Section 147 - Evidence as to matters in writing

Bharatiya Sakshya Adhiniyam, 2023 - Section 163 - Testimony to facts stated in document mentioned in section 162

Corresponding Provision of Previous Statute: Section 16, Indian Evidence Act, 1872

Section 16 - Existence of course of business when relevant - When there is a question whether a particularact was done, the existence of any course of business, according to which it naturally would have beendone, is a relevant fact.

Illustrations

(a) The question is, whether a particular letter was despatched.

The facts that it was the ordinary course of business for all letters put in a certain place to be carried to the post,and that particular letter was put in that place are relevant.

(b) The question is, whether a particular letter reached A. The facts that it was posted in due course, and was notreturned through the Dead Letter Office, are relevant.

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Admissions

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.

Linked Provisions

Partnership Act, 1932 - Section 23 - Effect of Admissions By A Partner

Bharatiya Sakshya Adhiniyam, 2023 - Section 16 - Admission by party to proceeding or his agent

Bharatiya Sakshya Adhiniyam, 2023 - Section 21 - Admissions in civil cases when relevant

Bharatiya Sakshya Adhiniyam, 2023 - Section 25 - Admissions not conclusive proof, but may estop

Bharatiya Sakshya Adhiniyam, 2023 - Section 17 - Admissions by persons whose position must be proved as against party to suit.

Bharatiya Sakshya Adhiniyam, 2023 - Section 18 - Admissions by persons expressly referred to by party to suit

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 266 - Evidence for defence

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Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 288 - Language of record and judgment

Corresponding Provision of Previous Statute: Section 17, Indian Evidence Act, 1872

Section 17 - 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.

16. Admission by party to proceeding or his agent

(1) Statements made by a party to the proceeding, or by an agent to any such party, whom the Court regards, under the circumstances of the case, as expressly or impliedly authorised by him to make them, are admissions.

(2) Statements made by--

(i) parties to suits suing or sued in a representative character, are not admissions, unless they were made while the party making them held that character; or

(ii) (a) persons who have any proprietary or pecuniary interest in the subject matter of the proceeding, and who make the statement in their character of persons so interested; or

(b) persons from whom the parties to the suit have derived their interest in the subject matter of the suit,

are admissions, if they are made during the continuance of the interest of the persons making the statements.

are admissions, if they are made during the continuance of the interest of the persons making the statements.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 15 - Admission defined

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Corresponding Provision of Previous Statute: Section 18, Indian Evidence Act, 1872

Section 18 - Admission by party to proceeding or his agent - Statements made by a party to theproceeding, or by an agent to any such party, whom the Court regards, under the circumstances of thecase, as expressly or impliedly authorised by him to make them, are admissions.

by suitor in representative character.––Statements made by parties to suits suing or sued in arepresentative character, are not admissions, unless they were made while the party making them held thatcharacter.

Statements made by -

(1) **by party interested in subject-matter**.––persons who have any proprietary or pecuniary interestin the subject-matter of the proceeding, and who make the statement in their character of persons sointerested, or

(2) **by person from whom interest derived**.––persons from whom the parties to the suit havederived their interest in the subject-matter of the suit,are admissions, if they are made during the continuance of the interest of the persons making thestatements.

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

Statements made by persons whose position or liability, it is necessary to prove as against any party to the suit, are admissions, if such statements would be relevant as against such persons in relation to such position or liability in a suit brought by or against them, and if they are made whilst the person making them occupies such position or is subject to such liability.

Illustration

A undertakes to collect rents for B. B sues A for not collecting rent due from C to B. A denies that rent was due from C to B. A statement by C that he owed B rent is an admission, and is a relevant fact as against A, if A denies that C did owe rent to B.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 15 - Admission defined

Bharatiya Sakshya Adhiniyam, 2023 - Section 18 - Admissions by persons expressly referred to by party to suit.

Bharatiya Sakshya Adhiniyam, 2023 - Section 19 - Proof of admissions against persons making them, and by or on their behalf

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Corresponding Provision of Previous Statute: Section 19, Indian Evidence Act, 1872

Section 19 - Admissions by persons whose position must be proved as against party to suit. –– Statementsmade by persons whose position or liability, it is necessary to prove as against any party to the suit, areadmissions, if such statements would be relevant as against such persons in relation to such position orliability in a suit brought by or against them, and if they are made whilst the person making themoccupies such position or is subject to such liability.

Illustration

A undertakes to collect rents for B.

B sues A for not collecting rent due from C to B.

A denies that rent was due from C to B.

A statement by C that he owed B rent is an admission, and is a relevant fact as against A, if A denies that C didowe rent to B.

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

Statements made by persons to whom a party to the suit has expressly referred for information in reference to a matter in dispute are admissions.

Illustration

The question is, whether a horse sold by A to B is sound.

A says to B-- "Go and ask C, C knows all about it". C's statement is an admission.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 15 - Admission defined

Bharatiya Sakshya Adhiniyam, 2023 - Section 17 - Admissions by persons whose position must be proved as against party to suit

Bharatiya Sakshya Adhiniyam, 2023 - Section 19 - Proof of admissions against persons making them, and sby or on their behalf

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Corresponding Provision of Previous Statute: Section 20, Indian Evidence Act, 1872

Section 20 - Admissions by persons expressly referred to by party to suit - Statements made by persons to whom a party to the suit has expressly referred for information in reference to a matter in dispute are admissions.

Illustration

The question is, whether a horse sold by A to B is sound.

A says to B –– "Go and ask C, C knows all about it." C's statement is an admission.

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

Admissions are relevant and may be proved as against the person who makes them, or his representative in interest; but they cannot be proved by or on behalf of the person who makes them or by his representative in interest, except in the following cases, namely:--

(1) an admission may be proved by or on behalf of the person making it, when it is of such a nature that, if the person making it were dead, it would be relevant as between third persons under section 26;

(2) an admission may be proved by or on behalf of the person making it, when it consists of a statement of the existence of any state of mind or body, relevant or in issue, made at or about the time when such state of mind or body existed, and is accompanied by conduct rendering its falsehood improbable;

(3) an admission may be proved by or on behalf of the person making it, if it is relevant otherwise than as an admission.

Illustrations

(a) The question between A and B is, whether a certain deed is or is not forged. A affirms that it is genuine, B that it is forged. A may prove a statement by B that the deed is genuine, and B may prove a

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 15 - Admission defined

Bharatiya Sakshya Adhiniyam, 2023 - Section 17 - Admissions by persons whose position must be proved as against party to suit.

Bharatiya Sakshya Adhiniyam, 2023 - Section 18 - Admissions by persons expressly referred to by party to suit

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statement by A that deed is forged; but A cannot prove a statement by himself that the deed is genuine, nor can B prove a statement by himself that the deed is forged.

(b) A, the captain of a ship, is tried for casting her away. Evidence is given to show that the ship was taken out of her proper course. A produces a book kept by him in the ordinary course of his business showing observations alleged to have been taken by him from day to day, and indicating that the ship was not taken out of her proper course. A may prove these statements, because they would be admissible between third parties, if he were dead, under clause (b) of section 26.

(c) A is accused of a crime committed by him at Kolkata. He produces a letter written by himself and dated at Chennai on that day, and bearing the Chennai post-mark of that day. The statement in the date of the letter is admissible, because, if A were dead, it would be admissible under clause (b) of section 26.

(d) A is accused of receiving stolen goods knowing them to be stolen. He offers to prove that he refused to sell them below their value. A may prove these statements, though they are admissions, because they are explanatory of conduct influenced by facts in issue.

(e) A is accused of fraudulently having in his possession counterfeit currency which he knew to be counterfeit. He offers to prove that he asked a skilful person to examine the currency as he doubted whether it was counterfeit or not, and that person did examine it and told him it was genuine. A may prove these facts.

Corresponding Provision of Previous Statute: Section 21, Indian Evidence Act, 1872

Section 21 - Proof of admissions against persons making them, and by or on their behalf.––Admissions are relevant and may be proved as against the person who makes them, or his representative in interest;but they cannot be proved by or on behalf of the person who makes them or by his representative ininterest, except in the following cases:––

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(1) An admission may be proved by or on behalf of the person making it, when it is of such a naturethat, if the person making it were dead, it would be relevant as between third persons under section 32.

(2) An admission may be proved by or on behalf of the person making it, when it consists of astatement of the existence of any state of mind or body, relevant or in issue, made at or about the timewhen such state of mind or body existed, and is accompanied by conduct rendering its falsehoodimprobable.

(3) An admission may be proved by or on behalf of the person making it, if it is relevant otherwisethan as an admission.

Illustrations

(a) The question between A and B is whether a certain deed is or is not forged. A affirms that it is genuine, Bthat it is forged.

A may prove a statement by B that the deed is genuine, and B may prove a statement by A that deed is forged; but A cannot prove a statement by himself that the deed is genuine, nor can B prove a statement by himself that thedeed is forged.

(b) A, the captain of a ship, is tried for casting her away.

Evidence is given to show that the ship was taken out of her proper course.

A produces a book kept by him in the ordinary course of his business showing observations alleged to havebeen taken by him from day to day, and indicating that the ship was not taken out of her proper course. A may provethese statements, because they would be admissible between third parties, if he were dead, under section 32, clause(2).

(c) A is accused of a crime committed by him at Calcutta.

He produces a letter written by himself and dated at Lahore on that day, and bearing the Lahore post-mark ofthat day.

The statement in the date of the letter is admissible, because, if A were dead, it would be admissible undersection 32, clause (2).

(d) A is accused of receiving stolen goods knowing them to be stolen.

He offers to prove that he refused to sell them below their value.

A may prove these statements, though they are admissions, because they are explanatory of conduct influencedby facts in issue.

(e) A is accused of fraudulently having in his possession counterfeit coin which he knew to be counterfeit.

He offers to prove that he asked a skilful person to examine the coin as he doubted whether it was counterfeit ornot, and that that person did examine it and told him it was genuine.

A may prove these facts for the reasons stated in the last preceding illustration.

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

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

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 15 - Admission defined

Bharatiya Sakshya Adhiniyam, 2023 - Section 54 -Proof of facts by oral evidence

Bharatiya Sakshya Adhiniyam, 2023 - Section 60 - Cases in which secondary evidence relating to documents may be given

Corresponding Provision of Previous Statute: Section 22, Indian Evidence Act, 1872

Section 22 - When oral admissions as to contents of documents are relevant - Oral admissions as to thecontents of a document are not relevant, unless and until the party proposing to prove them shows that heis entitled to give secondary evidence of the contents of such document under the rules hereinaftercontained, or unless the genuineness of a document produced is in question.

21. Admissions in civil cases when relevant

In civil cases no admission is relevant, if it is made either upon an express condition that evidence of it is not to be given, or under circumstances from which the Court can infer that the parties agreed together that evidence of it should not be given.

Explanation.--Nothing in this section shall be taken to exempt any advocate from giving evidence of any matter of which he may be compelled to give evidence under sub-sections (1) and (2) of section 132.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 15 - Admission defined

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Corresponding Provision of Previous Statute: Section 23, Indian Evidence Act, 1872

Section 23 - Admissions in civil cases when relevant - In civil cases no admission is relevant, if it is madeeither upon an express condition that evidence of it is not to be given, or under circumstances from whichthe Court can infer that the parties agreed together that evidence of it should not be given.

Explanation.––Nothing in this section shall be taken to exempt any barrister, pleader, attorney orvakil from giving evidence of any matter of which he may be compelled to give evidence undersection 126.

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

A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the Court to have been caused by any inducement, threat, coercion or promise having reference to the charge against the accused person, proceeding from a person in authority and sufficient, in the opinion of the Court, to give the accused person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him:

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

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

Linked Provisions

Prevention of Terrorism Act, 2002 - Section 32 - Certain Confessions Made To Police Officers To Be Taken Into Consideration

Bharatiya Sakshya Adhiniyam, 2023 - Section 21 - Admissions in civil cases when relevant

Bharatiya Sakshya Adhiniyam, 2023 - Section 23 - Confession to police officer

Bharatiya Sakshya Adhiniyam, 2023 - Section 20 - When oral admissions as to contents of documents are relevant

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 167 - Local inquiry

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 182 - No inducement to be offered

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Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 354 - No influence to be used to induce disclosure

Bharatiya Nyaya Sanhita, 2023 - Section 32 - Act to which a person is compelled by threats

Bharatiya Nyaya Sanhita, 2023 - Section 120 - Voluntarily causing hurt or grievous hurt to extort confession, or to compel restoration of property

Bharatiya Nyaya Sanhita, 2023 - Section 121(1) - Voluntarily causing hurt or grievous hurt to deter public servant from his duty

Corresponding Provision of Previous Statute: Section 24, Indian Evidence Act, 1872

Section 24 - Confession caused by inducement, threat or promise, when irrelevant in criminal proceeding - A confession made by an accused person is irrelevant in a criminal proceeding, if themaking of the confession appears to the Court to have been caused by any inducement, threat or promisehaving reference to the charge against the accused person, proceeding from a person in authority andsufficient, in the opinion of the Court, to give the accused person grounds which would appear to himreasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporalnature in reference to the proceedings against him.

Corresponding Provision of Previous Statute: Section 28, Indian Evidence Act, 1872

Section 28 - Confession made after removal of impression caused by inducement, threat or promise, relevant - Ifsuch a confession as is referred to in section 24 is made after the impression caused by anysuch inducement, threat or promise has, in the opinion of the Court, been fully removed, it is relevant.

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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 any person while he is in the custody of a police officer, unless it is made in the immediate presence of a Magistrate shall be proved against him:

Provided that when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact discovered, may be proved.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 22 - Confession caused by inducement, threat, coercion or promise, when irrelevant in criminal proceeding

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 167 - Local inquiry

Prevention of Terrorism Act, 2002 - Section 32 - Certain Confessions Made To Police Officers To Be Taken Into Consideration

Bharatiya Sakshya Adhiniyam, 2023 - Section 33 - What evidence to be given when statement forms part of a conversation, document, electronic record, book or series of letters or papers

Corresponding Provision of Previous Statute: Section 25, Indian Evidence Act, 1872

Section 25 - Confession to police-officer not to be proved - No confession made to a police-officer, shallbe proved as against a person accused of any offence.

Corresponding Provision of Previous Statute: Section 26, Indian Evidence Act, 1872

Section 26 - Confession by accused while in custody of police not to be proved against him – Noconfession made by any person whilst he is in the custody of a police-officer, unless it be made in theimmediate presence of a Magistrate, shall be proved as against such person.

Explanation - In this section "Magistrate" does not include the head of a village dischargingmagisterial functions in the Presidency of Fort St. George or elsewhere, unless such headman is aMagistrate exercising the powers of a Magistrate under the Code of Criminal Procedure,18827 (10 of 1882).

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Corresponding Provision of Previous Statute: Section 27, Indian Evidence Act, 1872

Section 27 - How much of information received from accused may be proved - Provided that, when any fact is deposed to as discovered inconsequence of information received from a person accused of any offence, in the custody of a police-officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.

Corresponding Provision of Previous Statute: Section 29, Indian Evidence Act, 1872

Section 29 - Confession otherwise relevant not to become irrelevant because of promise of secrecy,

Etc. - If such a confession is otherwise relevant, it does not become irrelevant merely because it wasmade under a promise of secrecy, or in consequence of a deception practiced on the accused person forthe purpose of obtaining it, or when he was drunk, or because it was made in answer to questions whichhe need not have answered, whatever may have been the form of those questions, or because he was notwarned that he was not bound to make such confession, and that evidence of it might be given againsthim.

LANDMARK JUDGMENT

Bodh Raj and Ors. vs. State of Jammu and Kashmir, MANU/SC/0723/2002

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

When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other person as well as against the person who makes such confession.

Explanation I -- "Offence", as used in this section, includes the abetment of, or attempt to commit, the offence.

Explanation II--A trial of more persons than one held in the absence of the accused who has absconded or who fails to comply with a proclamation issued under section 84 of the Bharatiya Nagarik Suraksha Sanhita, 2023 shall be deemed to be a joint trial for the purpose of this section.

Illustrations

(a) A and B are jointly tried for the murder of C. It is proved that A said-- "B and I murdered C". The Court may consider the effect of this confession as against B.

(b) A is on his trial for the murder of C. There is evidence to show that C was murdered by A and B, and that B said-- "A and I murdered C". This statement may not be taken into consideration by the Court against A, as B is not being jointly tried.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 8 - Things said or done by conspirator in reference to common design

Bharatiya Sakshya Adhiniyam, 2023 - Section19 - Proof of admissions against persons making them, and by or on their behalf

Bharatiya Sakshya Adhiniyam, 2023 - Section 138 - Accomplice

Corresponding Provision of Previous Statute: Section 30, Indian Evidence Act, 1872

Section 30 - Consideration of proved confession affecting person making it and others jointly under trial for same offence - When more persons than one are being tried jointly for the same offence, and aconfession made by one of such persons affecting himself and some other of such persons is proved, theCourt may take into consideration such confession as against such other person as well as against theperson who makes such confession.

Explanation–"Offence," as used in this section, includes the abetment of, or attempt to commit, the offence.

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Illustrations

(a) A and B are jointly tried for the murder of C. It is proved that A said––"B and I murdered C". TheCourt may consider the effect of this confession as against B.

(b) A is on his trial for the murder of C. There is evidence to show that C was murdered by A and B, and that B said ––"A and I murdered C".

This statement may not be taken into consideration by the Court against A, as B is not being jointlytried.

25. Admissions not conclusive proof, but may estop

Admissions are not conclusive proof of the matters admitted but they may operate as estoppels under the provisions hereinafter contained.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 121 - Estoppel

Corresponding Provision of Previous Statute: Section 31, Indian Evidence Act, 1872

Section 31- Admissions not conclusive proof, but may estop - Admissions are not conclusive proof of the matters admitted but they may operate as estoppels under the provisions hereinafter contained.

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, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which under the circumstances of the case appears to the Court unreasonable, are themselves relevant facts in the following cases, namely:--

(a) when the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question. Such statements are relevant whether the person who made them was or was not, at the time when they were

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 3 - Evidence may be given of facts in issue and relevant facts

Bharatiya Sakshya Adhiniyam, 2023 - Section 4 - Relevancy of facts forming part of same transaction

Bharatiya Sakshya Adhiniyam, 2023 - Section 7 - Facts necessary to explain or introduce fact in issue or relevant facts

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Bharatiya Sakshya Adhiniyam, 2023 - Section 16 - Admission by party to proceeding or his agent

made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question;

(b) when the statement was made by such person in the ordinary course of business, and in particular when it consists of any entry or memorandum made by him in books kept in the ordinary course of business, or in the discharge of professional duty; or of an acknowledgement written or signed by him of the receipt of money, goods, securities or property of any kind; or of a document used in commerce written or signed by him; or of the date of a letter or other document usually dated, written or signed by him;

(c) when the statement is against the pecuniary or proprietary interest of the person making it, or when, if true, it would expose him or would have exposed him to a criminal prosecution or to a suit for damages;

(d) when the statement gives the opinion of any such person, as to the existence of any public right or custom or matter of public or general interest, of the existence of which, if it existed, he would have been likely to be aware, and when such statement was made before any controversy as to such right, custom or matter had arisen;

(e) when the statement relates to the existence of any relationship by blood, marriage or adoption between persons as to whose relationship by blood, marriage or adoption the person making the statement had special means of knowledge, and when the statement was made before the question in dispute was raised;

(f) when the statement relates to the existence of any relationship by blood, marriage or adoption between persons deceased, and is made

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in any will or deed relating to the affairs of the family to which any such deceased person belonged, or in any family pedigree, or upon any tombstone, family portrait or other thing on which such statements are usually made, and when such statement was made before the question in dispute was raised;

(g) when the statement is contained in any deed, will or other document which relates to any such transaction as is specified in clause (a) of section 11;

(h) when the statement was made by a number of persons, and expressed feelings or impressions on their part relevant to the matter in question.

Illustrations

(a) The question is, whether A was murdered by B; or A dies of injuries received in a transaction in the course of which she was raped. The question is whether she was raped by B; or the question is, whether A was killed by B under such circumstances that a suit would lie against B by A's widow. Statements made by A as to the cause of his or her death, referring respectively to the murder, the rape and the actionable wrong under consideration, are relevant facts.

(b) The question is as to the date of A's birth. An entry in the diary of a deceased surgeon regularly kept in the course of business, stating that, on a given day he attended A's mother and delivered her of a son, is a relevant fact.

(c) The question is, whether A was in Nagpur on a given day. A statement in the diary of a deceased solicitor, regularly kept in the course of business, that on a given day the solicitor attended A at a

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place mentioned, in Nagpur, for the purpose of conferring with him upon specified business, is a relevant fact.

(d) The question is, whether a ship sailed from Mumbai harbour on a given day. A letter written by a deceased member of a merchant's firm by which she was chartered to their correspondents in Chennai, to whom the cargo was consigned, stating that the ship sailed on a given day from Mumbai port, is a relevant fact.

(e) The question is, whether rent was paid to A for certain land. A letter from A's deceased agent to A, saying that he had received the rent on A's account and held it at A's orders is a relevant fact.

(f) The question is, whether A and B were legally married. The statement of a deceased clergyman that he married them under such circumstances that the celebration would be a crime is relevant.

(g) The question is, whether A, a person who cannot be found, wrote a letter on a certain day. The fact that a letter written by him is dated on that day is relevant.

(h) The question is, what was the cause of the wreck of a ship. A protest made by the captain, whose attendance cannot be procured, is a relevant fact.

(i) The question is, whether a given road is a public way. A statement by A, a deceased headman of the village, that the road was public, is a relevant fact.

(j) The question is, what was the price of grain on a certain day in a particular market. A statement of the price, made by a deceased business person in the ordinary course of his business, is a relevant fact.

(k) The question is, whether A, who is dead, was the father of B. A statement by A that B was his son, is a relevant fact.

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(l) The question is, what was the date of the birth of A. A letter from A's deceased father to a friend, announcing the birth of A on a given day, is a relevant fact.

(m) The question is, whether, and when, A and B were married. An entry in a memorandum book by C, the deceased father of B, of his daughter's marriage with A on a given date, is a relevant fact.

(n) A sues B for a libel expressed in a painted caricature exposed in a shop window. The question is as to the similarity of the caricature and its libellous character. The remarks of a crowd of spectators on these points may be proved.

Corresponding Provision of Previous Statute: Section 32, Indian Evidence Act, 1872

Section 32- 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, or who cannot befound, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which under the circumstances of the case appears to the Court unreasonable, are themselves relevant facts in the following cases: ––

(1) **When it relates to cause of death**.––When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in whichthe cause of that person's death comes into question.

Such statements are relevant whether the person who made them was or was not, at the time whenthey were made, under expectation of death, and whatever may be the nature of the proceeding in whichthe cause of his death comes into question.

(2) **or is made in course of business**.––When the statement was made by such person in the ordinarycourse of business, and in particular when it consists of any entry or memorandum made by him in bookskept in the ordinary course of business, or in the discharge of professional duty; or of an acknowledgementwritten or signed by him of the receipt of money, goods, securities or property of any kind; or of adocument used in commerce written or signed by him; or of the date of a letter or other document usuallydated, written or signed by him.

(3) **or against interest of maker**.––When the statement is against the pecuniary or proprietary interestof the person making it, or when, if true, it would expose him or would have exposed him to a criminalprosecution or to a suit for damages.

(4) **or gives opinion as to public right or custom, or matters of general interest**.––When thestatement gives the opinion of any such person, as to the existence of any public right or custom or matterof public or general interest, of the existence of which, if it existed, he would have been likely to beaware, and when such statement was made before any controversy as to such right, custom or matterhad arisen.

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(5) **or relates to existence of relationship**.––When the statement relates to the existence of any relationship by blood, marriage or adoption between persons as to whose relationship by blood, marriage or adoption the person making the statement had special means of knowledge, and when thestatement was made before the question in dispute was raised.

(6) **or is made in will or deed relating to family affairs**.––When the statement relates to the existence of any relationship by blood, marriage or adoption] between persons deceased, and is made inany will or deed relating to the affairs of the family to which any such deceased person belonged, or inany family pedigree, or upon any tombstone, family portrait or other thing on which such statements areusually made, and when such statement was made before the question in dispute was raised.

(7) **or in document relating to transaction mentioned in section 13, clause (a)**.––When thestatement is contained in any deed, will or other document which relates to any such transaction as ismentioned in section 13, clause (a).

(8) **or is made by several persons and expresses feelings relevant to matter in question**.––Whenthe statement was made by a number of persons, and expressed feelings or impressions on their partrelevant to the matter in question.

Illustrations

(a) The question is, whether A was murdered by B; or

A dies of injuries received in a transaction in the course of which she was ravished. The question iswhether she was ravished by B; or

The question is, whether A was killed by B under such circumstances that a suit would lie against B by A'swidow.

Statements made by A as to the cause of his or her death, referring respectively to the murder, the rape andthe actionable wrong under consideration, are relevant facts.

(b) The question is as to the date of A's birth.

An entry in the diary of a deceased surgeon regularly kept in the course of business, stating that, on a given dayhe attended A's mother and delivered her of a son, is a relevant fact.

(c) The question is, whether A was in Calcutta on a given day.

A statement in the diary of a deceased solicitor, regularly kept in the course of business, that on a given daythe solicitor attended A at a place mentioned, in Calcutta, for the purpose of conferring with him upon specifiedbusiness, is a relevant fact.

(d) The question is, whether a ship sailed from Bombay harbour on a given day.

A letter written by a deceased member of a merchant's firm by which she was chartered to their correspondentsin London, to whom the cargo was consigned, stating that the ship sailed on a given day from Bombay harbour, is arelevant fact.

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(e) The question is, whether rent was paid to A for certain land.

A letter from A's deceased agent to A, saying that he had received the rent on A's account and held it at A'sorders is a relevant fact.

(f) The question is, whether A and B were legally married.

The statement of a deceased clergyman that he married them under such circumstances that the celebrationwould be a crime, is relevant.

(g) The question is, whether A, a person who cannot be found, wrote a letter on a certain day. The fact that aletter written by him is dated on that day is relevant.

(h) The question is, what was the cause of the wreck of a ship.

A protest made by the Captain, whose attendance cannot be procured, is a relevant fact.

(i) The question is, whether a given road is a public way.

A statement by A, a deceased headman of the village, that the road was public, is a relevant fact.

(j) The question is, what was the price of grain on a certain day in a particular market.

A statement of the price, made by a deceased banya in the ordinary course of his business, is a relevant fact.

(k) The question is, whether A, who is dead, was the father of B.

A statement by A that B was his son, is a relevant fact.

(l) The question is, what was the date of the birth of A.

A letter from A's deceased father to a friend, announcing the birth of A on a given day, is a relevant fact.

(m) The question is, whether, and when, A and B were married.

An entry in a memorandum book by C, the deceased father of B, of his daughter's marriage with A on a givendate, is a relevant fact.

(n) A sues B for a libel expressed in a painted caricature exposed in a shop window. The question is as to thesimilarity of the caricature and its libellous character. The remarks of a crowd of spectators on these points may beproved.

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 any person authorised by law to take it, is relevant for the purpose of proving, in a subsequent judicial proceeding, or in a later stage of the

Linked Provisions

Prevention of Terrorism Act, 2002 - Section 32 - Certain Confessions Made To Police Officers To Be Taken Into Consideration

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same judicial proceeding, the truth of the facts which it states, when the witness is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or if his presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable:

Provided that the proceeding was between the same parties or their representatives in interest; that the adverse party in the first proceeding had the right and opportunity to cross-examine and the questions in issue were substantially the same in the first as in the second proceeding.

Explanation.--A criminal trial or inquiry shall be deemed to be a proceeding between the prosecutor and the accused within the meaning of this section.

Bharatiya Sakshya Adhiniyam, 2023 - Section 3 - Evidence may be given of facts in issue and relevant facts

Bharatiya Sakshya Adhiniyam, 2023 - Section 4 - Relevancy of facts forming part of same transaction

Bharatiya Sakshya Adhiniyam, 2023 - Section29 - Relevancy of entry in public record or an electronic record made in performance of duty

Bharatiya Sakshya Adhiniyam, 2023 - Section 79 - Presumption as to documents produced as record of evidence, etc.

Corresponding Provision of Previous Statute: Section 33, Indian Evidence Act, 1872

Section 33- Relevancy of certain evidence for proving, in subsequent proceeding, the truth of factstherein stated. - Evidence given by a witness in a judicial proceeding, or before any person authorisedby law to take it, is relevant for the purpose of proving, in a subsequent judicial proceeding, or in a laterstage of the same judicial proceeding, the truth of the facts which it states, when the witness is dead orcannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or ifhis presence cannot be obtained without an amount of delay or expense which, under the circumstances ofthe case, the Court considers unreasonable:

Provided ––

that the proceeding was between the same parties or their representatives in interest; that the adverseparty in the first proceeding had the right and opportunity to cross-examine;

that the questions in issue were substantially the same in the first as in the second proceeding.Explanation.–– A criminal trial or inquiry shall be deemed to be a proceeding between the prosecutorand the accused within the meaning of this section.

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Statements made under special circumstances

28. Entries in books of account when relevant

Entries in the books of account, including those maintained in an electronic form, regularly kept in the course of business are relevant whenever they refer to a matter into which the Court has to inquire, but such statements shall not alone be sufficient evidence to charge any person with liability.

Illustration

A sues B for one thousand rupees, and shows entries in his account books showing B to be indebted to him to this amount. The entries are relevant, but are not sufficient, without other evidence, to prove the debt.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 29 - Relevancy of entry in public record or an electronic record made in performance of duty

Bharatiya Sakshya Adhiniyam, 2023 - Section 32 - Relevancy of statements as to any law contained in law books including electronic or digital form

Bharatiya Sakshya Adhiniyam, 2023 - Section 33 - What evidence to be given when statement forms part of a conversation, document, electronic record, book or series of letters or papers

Bharatiya Sakshya Adhiniyam, 2023 - Section 41 - Opinion as to hand-writing and signature, when relevant

Corresponding Provision of Previous Statute: Section 34, Indian Evidence Act, 1872

Section 34- Entries in books of account when relevant - Entries in the books of account, including thosemaintained in an electronic form], regularly kept in the course of business, are relevant whenever theyrefer to a matter into which the Court has to inquire, but such statements shall not alone be sufficientevidence to charge any person with liability.

Illustration

A sues B for Rs. 1,000, and shows entries in his account books showing B to be indebted to him to this amount.The entries are relevant, but are not sufficient, without other evidence, to prove the debt.

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

An entry in any public or other official book, register or record or an electronic record, stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register or record or an electronic record, is kept, is itself a relevant fact.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 28 - Entries in books of account when relevant

Bharatiya Sakshya Adhiniyam, 2023 - Section 33 - What evidence to be given when statement forms part of a conversation, document, electronic record, book or series of letters or papers

Bharatiya Sakshya Adhiniyam, 2023 - Section 63 - Admissibility of electronic records

Bharatiya Sakshya Adhiniyam, 2023 - Section 74 - Public and private documents

Corresponding Provision of Previous Statute: Section 35, Indian Evidence Act, 1872

Section 35- Relevancy of entry in public record made in performance of duty - An entry in any public or other official book, register or record or an electronic record, stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register or record or an electronic record, is kept, is itself a relevant fact.

30. Relevancy of statements in maps, charts and plans

Statements of facts in issue or relevant facts, made in published maps or charts generally offered for public sale, or in maps or plans made under the authority of the Central Government or any State Government, as to matters usually represented or stated in such maps, charts or plans, are themselves relevant facts.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 82 - Presumption as to maps or plans made by authority of Government

Bharatiya Sakshya Adhiniyam, 2023 - Section 89 - Presumption as to books, maps and charts

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Corresponding Provision of Previous Statute: Section 36, Indian Evidence Act, 1872

Section 36- Relevancy of statements in maps, charts and plans - Statements of facts in issue or relevant facts, made in published maps or charts generally offered for public sale, or in maps or plans made under the authority of the Central Government or any State Government, as to matters usually represented or stated in such maps, charts or plans, are themselves relevant facts.

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

When the Court has to form an opinion as to the existence of any fact of a public nature, any statement of it, made in a recital contained in any Central Act or State Act or in a Central Government or State Government notification appearing in the respective Official Gazette or in any printed paper or in electronic or digital form purporting to be such Gazette, is a relevant fact.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 80 - Presumption as to Gazettes, newspapers, and other documents

Bharatiya Sakshya Adhiniyam, 2023 - Section 32 - Relevancy of statements as to any law contained in law books including electronic or digital form

Bharatiya Sakshya Adhiniyam, 2023 - Section 33 - What evidence to be given when statement forms part of a conversation, document, electronic record, book or series of letters or papers

Corresponding Provision of Previous Statute: Section 37, Indian Evidence Act, 1872

Section 37- Relevancy of statement as to fact of public nature contained in certain Acts ornotifications - When the Court has to form an opinion as to the existence of any fact of a public nature,any statement of it, made in a recital contained in any Act of Parliament of the United Kingdom or in any Central Act, Provincial Act or a State Act or in a Government notification or notification by the Crown Representative appearing in the Official Gazette or in any printed paper purporting to be the London Gazette or the Government Gazette of any Dominion, colony or possession of his Majesty is a relevant fact.

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

When the Court has to form an opinion as to a law of any country, any statement of such law contained in a book purporting to be printed or published including in electronic or digital form under the authority of the Government of such country and to contain any such law, and any report of a ruling of the Courts of such country contained in a book including in electronic or digital form purporting to be a report of such rulings, is relevant.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 33 - What evidence to be given when statement forms part of a conversation, document, electronic record, book or series of letters or papers

Bharatiya Sakshya Adhiniyam, 2023 - Section 31 - Relevancy of statement as to fact of public nature contained in certain Acts or notifications

Bharatiya Sakshya Adhiniyam, 2023 – Section83 - Presumption as to collections of laws and reports of decisions

Corresponding Provision of Previous Statute: Section 38, Indian Evidence Act, 1872

Section 38- Relevancy of statements as to any law contained in law-books - When the Court has to form an opinion as to a law of any country, any statement of such law contained in a book purporting to be printed or published under the authority of the Government of such country and to contain any such law, and any report of a ruling of the Courts of such country contained in a book purporting to be a report of such rulings, is relevant.

How much of a statement is to be proved

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

When any statement of which evidence is given forms part of a longer statement, or of a conversation or part of an isolated document, or is contained in a document which forms part of a book, or is contained in part of electronic record or of a connected series of letters or papers,

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 29 - Relevancy of entry in public record or an electronic record made in performance of duty

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evidence shall be given of so much and no more of the statement, conversation, document, electronic record, book or series of letters or papers as the Court considers necessary in that particular case to the full understanding of the nature and effect of the statement, and of the circumstances under which it was made.

Bharatiya Sakshya Adhiniyam, 2023 - Section 32 - Relevancy of statements as to any law contained in law books including electronic or digital form

Bharatiya Sakshya Adhiniyam, 2023 - Section 31 - Relevancy of statement as to fact of public nature contained in certain Acts or notifications

Bharatiya Sakshya Adhiniyam, 2023 - Section 30 - Relevancy of statements in maps, charts and plans

Corresponding Provision of Previous Statute: Section 39, Indian Evidence Act, 1872

Section 39- What evidence to be given when statement forms part of a conversation, document,electronic record, book or series of letters or papers - When any statement of which evidence is givenforms part of a longer statement, or of a conversation or part of an isolated document, or is contained in adocument which forms part of a book, or is contained in part of electronic record or of a connected seriesof letters or papers, evidence shall be given of so much and no more of the statement, conversation,document, electronic record, book or series of letters or papers as the Court considers necessary in thatparticular case to the full understanding of the nature and effect of the statement, and of the circumstancesunder which it was made.

Judgments of Courts when relevant

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

The existence of any judgment, order or decree which by law prevents any Court from taking cognizance of a suit or holding a trial, is a relevant fact when the question is whether such Court ought to take cognizance of such suit or to hold such trial.

Linked Provisions

Code of Civil Procedure, 1908 - Section 11 - Res Judicata

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Corresponding Provision of Previous Statute: Section 40, Indian Evidence Act, 1872

Section 40- Previous judgments relevant to bar a second suit or trial - The existence of any judgment, order or decree which by law prevents any Court from taking cognizance of a suit or holding a trial, is a relevant fact when the question is whether such Court ought to take cognizance of such suit or to hold such trial.

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

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

(2) Such judgment, order or decree is conclusive proof that--

(i) any legal character, which it confers accrued at the time when such judgment, order or decree came into operation;

(ii) any legal character, to which it declares any such person to be entitled, accrued to that person at the time when such judgment, order or decree declares it to have accrued to that person;

(iii) any legal character which it takes away from any such person ceased at the time from which such judgment, order or decree declared that it had ceased or should cease; and

(iv) anything to which it declares any person to be so entitled was the property of that person at the time from which such judgment, order or decree declares that it had been or should be his property.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 46 - In civil cases character to prove conduct imputed, irrelevant

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Corresponding Provision of Previous Statute: Section 41, Indian Evidence Act, 1872

Section 41- 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, which confers upon or takes away from any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing, not as against any specified person but absolutely, is relevant when the existence of any such legal character, or the title of any such person to any such thing, is relevant.

Such judgment, order or decree is conclusive proof ––

that any legal character which it confers accrued at the time when such judgment, order or decree came into operation;

that any legal character, to which it declares any such person to be entitled, accrued to that person at the time when such judgment order or decree declares it to have accrued to that person;

that any legal character which it takes away from any such person ceased at the time from which such judgment, order or decree declared that it had ceased or should cease;

and that anything to which it declares any person to be so entitled was the property of that person at

the time from which such judgment, order or decree declares that it had been or should be his property.

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

Judgments, orders or decrees other than those mentioned in section 35 are relevant if they relate to matters of a public nature relevant to the enquiry; but such judgments, orders or decrees are not conclusive proof of that which they state.

Illustration

A sues B for trespass on his land. B alleges the existence of a public right of way over the land, which A denies. The existence of a decree in favour of the defendant, in a suit by A against C for a trespass on the same land, in which C alleged the existence of the same right of way, is relevant, but it is not conclusive proof that the right of way exists.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 35 - Relevancy of certain judgments in probate, etc. jurisdiction

Code of Civil Procedure, 1908 - Section 2(2) - "decree"

Code of Civil Procedure, 1908 - Section 2(9) - "judgment"

Code of Civil Procedure, 1908- Section 2(14) - "order"

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Corresponding Provision of Previous Statute: Section 42, Indian Evidence Act, 1872

Section 42- Relevancy and effect of judgments, orders or decrees, other than those mentioned in section 41 - Judgments, orders or decrees other than those mentioned in section 41 are relevant if they relate to matters of a public nature relevant to the enquiry; but such judgments, orders or decrees are not conclusive proof of that which they state.

Illustration

A sues B for trespass on his land. B alleges the existence of a public right of way over the land, which A denies.

The existence of a decree in favour of the defendant, in a suit by A against C for a trespass on the same land, in which C alleged the existence of the same right of way, is relevant, but it is not conclusive proof that the right of way exists.

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

Judgments or orders or decrees, other than those mentioned in sections 34, 35 and 36, are irrelevant, unless the existence of such judgment, order or decree is a fact in issue, or is relevant under some other provision of this Adhiniyam.

Linked Provisions

Code of Civil Procedure, 1908 - Section 2(9) - "judgment"

Illustrations

(a) A and B separately sue C for a libel which reflects upon each of them. C in each case says that the matter alleged to be libellous is true, and the circumstances are such that it is probably true in each case, or in neither. A obtains a decree against C for damages on the ground that C failed to make out his justification. The fact is irrelevant as between B and C.

(b) A prosecutes B for stealing a cow from him. B is convicted. A afterwards sues C for the cow, which B had sold to him before his conviction. As between A and C, the judgment against B is irrelevant.

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(c) A has obtained a decree for the possession of land against B. C, B's son, murders A in consequence. The existence of the judgment is relevant, as showing motive for a crime.

(d) A is charged with theft and with having been previously convicted of theft. The previous conviction is relevant as a fact in issue.

(e) A is tried for the murder of B. The fact that B prosecuted A for libel and that A was convicted and sentenced is relevant under section 6 as showing the motive for the fact in issue.

Corresponding Provision of Previous Statute: Section 43, Indian Evidence Act, 1872

Section 43- Judgments, etc., other than those mentioned in sections 40, 41 and 42, when relevant –Judgments, orders or decrees, other than those mentioned in sections 40, 41 and 42, are irrelevant, unless the existence of such judgment, order or decree is a fact in issue, or is relevant under some other provision of this Act.

Illustrations

(a) A and B separately sue C for a libel which reflects upon each of them. C in each case says that thematter alleged to be libellous is true, and the circumstances are such that it is probably true in each case,or in neither.

A obtains a decree against C for damages on the ground that C failed to make out his justification.The fact is irrelevant as between B and C.

(b) A prosecutes B for adultery with C, A's wife.

B denies that C is A's wife, but the Court convicts B of adultery.

Afterwards, C is prosecuted for bigamy in marrying B during A's lifetime.

C says that she never was A's wife.

The judgment against B is irrelevant as against C.

(c) A prosecutes B for stealing a cow from him. B is convicted.

A afterwards sues C for the cow, which B had sold to him before his conviction. As between A andC, the judgment against B is irrelevant.

(d) A has obtained a decree for the possession of land against B. C, B's son, murders A inconsequence.

The existence of the judgment is relevant, as showing motive for a crime.

(e) A is charged with theft and with having been previously convicted of theft. The previousconviction is

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relevant as a fact in issue.

(f) A is tried for the murder of B. The fact that B prosecuted A for libel and that A was convicted andsentenced is relevant under section 8 as showing the motive for the fact in issue.

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

Any party to a suit or other proceeding may show that any judgment, order or decree which is relevant under section 34, 35 or 36, and which has been proved by the adverse party, was delivered by a Court not competent to deliver it, or was obtained by fraud or collusion.

Linked Provisions

Indian Contract Act, 1872 – Section 17 - 'Fraud' Defined

Code of Civil Procedure, 1908 - Section 13 - When Foreign Judgment Not Conclusive

Arbitration and Conciliation Act, 1996 - Section 34 - Application For Setting Aside Arbitral Award

Corresponding Provision of Previous Statute: Section 44, Indian Evidence Act, 1872

Section 44- Fraud or collusion in obtaining judgment, or incompetency of Court, may be proved - Any party to a suit or other proceeding may show that any judgment, order or decree which is relevant under section 40, 41 or 42, and which has been proved by the adverse party, was delivered by a Court not competent to deliver it, or was obtained by fraud or collusion.

Opinions of third persons when relevant

39. Opinions of experts

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

Linked Provisions

POCSO Act - Section 39 - Guidelines For Child To Take Assistance Of Experts, Etc.

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Illustrations

Bharatiya Sakshya Adhiniyam, 2023 - Section 40 - Facts bearing upon opinions of experts

(a) The question is, whether the death of A was caused by poison. The opinions of experts as to the symptoms produced by the poison by which A is supposed to have died, are relevant.

(b) The question is, whether A, at the time of doing a certain act, was, by reason of unsoundness of mind, incapable of knowing the nature of the act, or that he was doing what was either wrong or contrary to law. The opinions of experts upon the question whether the symptoms exhibited by A commonly show unsoundness of mind, and whether such unsoundness of mind usually renders persons incapable of knowing the nature of the acts which they do, or of knowing that what they do is either wrong or contrary to law, are relevant.

(c) The question is, whether a certain document was written by A. Another document is produced which is proved or admitted to have been written by A. The opinions of experts on the question whether the two documents were written by the same person or by different persons, are relevant.

(2) When in a proceeding, the court has to form an opinion on any matter relating to any information transmitted or stored in any computer resource or any other electronic or digital form, the opinion of the Examiner of Electronic Evidence referred to in section 79A of the Information Technology Act, 2000 (21 of 2000), is a relevant fact.

Explanation.--For the purposes of this sub-section, an Examiner of Electronic Evidence shall be an expert.

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Corresponding Provision of Previous Statute: Section 45, Indian Evidence Act, 1872

Section 45- Opinions of experts - When the Court has to form an opinion upon a point of foreign law or of 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.

Illustrations

(a) The question is, whether the death of A was caused by poison.

The opinions of experts as to the symptoms produced by the poison by which A is supposed to have died, are relevant.

(b) The question is, whether A, at the time of doing a certain act, was, by reason of unsoundness of mind, incapable of knowing the nature of the act, or that he was doing what was either wrong or contrary to law.

The opinions of experts upon the question whether the symptoms exhibited by A commonly show unsoundness of mind, and whether such unsoundness of mind usually renders persons incapable of knowing the nature of the acts which they do, or of knowing that what they do is either wrong or contrary to law, are relevant.

(c) The question is, whether a certain document was written by A. Another document is produced which is proved or admitted to have been written by A. The opinions of experts on the question whether the two documents were written by the same person or by different persons, are relevant.

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

(a) The question is, whether A was poisoned by a certain poison. The fact that other persons, who were poisoned by that poison, exhibited certain symptoms which experts affirm or deny to be the symptoms of that poison, is relevant.

(b) The question is, whether an obstruction to a harbour is caused by a certain sea-wall. The fact that other harbours similarly situated in

Linked Provisions

POCSO Act - Section 39 - Guidelines For Child To Take Assistance Of Experts, Etc.

Bharatiya Sakshya Adhiniyam, 2023 - Section 65 - Proof of signature and handwriting of person alleged to have signed or written document produced

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other respects, but where there were no such sea-walls, began to be obstructed at about the same time, is relevant.

Bharatiya Sakshya Adhiniyam, 2023 - Section 72 - Comparison of signature, writing or seal with others admitted or proved

Corresponding Provision of Previous Statute: Section 46, Indian Evidence Act, 1872

Section 46- 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

(a) The question is, whether A was poisoned by a certain poison.

The fact that other persons, who were poisoned by that poison, exhibited certain symptoms which experts affirm or deny to be the symptoms of that poison, is relevant.

(b) The question is, whether an obstruction to a harbour is caused by a certain sea-wall.

The fact that other harbours similarly situated in other respects, but where there were no such sea-walls, began to be obstructed at about the same time, is relevant.

41. Opinion as to handwriting and signature, when relevant

(1) When the Court has to form an opinion as to the person by whom any document was written or signed, the opinion of any person acquainted with the handwriting of the person by whom it is supposed to be written or signed that it was or was not written or signed by that person, is a relevant fact.

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

Illustration

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 11 - Facts relevant when right or custom is in question

Bharatiya Sakshya Adhiniyam, 2023 - Section 26 - Cases in which statement of facts in issue or relevant fact by person who is dead or cannot be found, etc., is relevant

Bharatiya Sakshya Adhiniyam, 2023 - Section 39 - Opinions of experts

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The question is, whether a given letter is in the handwriting of A, a merchant in Itanagar. B is a merchant in Bengaluru, who has written letters addressed to A and received letters purporting to be written by him. C, is B's clerk whose duty it was to examine and file B's correspondence. D is B's broker, to whom B habitually submitted the letters purporting to be written by A for the purpose of advising him thereon. The opinions of B, C and D on the question whether the letter is in the handwriting of A are relevant, though neither B, C nor D ever saw A write.

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

Bharatiya Sakshya Adhiniyam, 2023 - Section 45 - Grounds of opinion, when relevant

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 349 - Power of Magistrate to order person to give specimen signatures or handwriting

Corresponding Provision of Previous Statute: Section 47, Indian Evidence Act, 1872

Section 47–Opinion as to hand-writing, when relevant –When the Court has to form an opinion as to theperson by whom any document was written or signed, the opinion of any person acquainted with thehandwriting of the person by whom it is supposed to be written or signed that it was or was not written orsigned by that person, is a relevant fact.

Explanation.––A person is said to be acquainted with the hand-writing of another person when he hasseen that person write, or when he has received documents purporting to be written by that person inanswer to documents written by himself or under his authority and addressed to that person, or when, inthe ordinary course of business, documents purporting to be written by that person have been habituallysubmitted to him.

Illustration

The question is, whether a given letter is in the hand-writing of A, a merchant in London.

B is a merchant in Calcutta, who has written letters addressed to A and received letters purporting tobe written by him. C, is B's clerk whose duty it was to examine and file B's correspondence. D is B'sbroker, to whom B habitually submitted the letters purporting to be written by A for the purpose ofadvising with him thereon.

The opinions of B, C and D on the question whether the letter is in the handwriting of A are relevant,though neither B, C nor D ever saw A write.

Corresponding Provision of Previous Statute: Section 47A, Indian Evidence Act, 1872

Section 47A - Opinion as to digital signature, when relevant.––When the Court has to form an opinion as to the electronic signature of any person, the opinion of the Certifying Authority which has issued the electronic Signature Certificate] is a relevant fact.

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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.

Explanation.--The expression "general custom or right" includes customs or rights common to any considerable class of persons.

Illustration

The right of the villagers of a particular village to use the water of a particular well is a general right within the meaning of this section.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 11 - Facts relevant when right or custom is in question

Bharatiya Sakshya Adhiniyam, 2023 - Section 26 - Cases in which statement of facts in issue or relevant fact by person who is dead or cannot be found, etc., is relevant

Bharatiya Sakshya Adhiniyam, 2023 - Section 39 - Opinions of experts

Bharatiya Sakshya Adhiniyam, 2023 - Section 45 - Grounds of opinion, when relevant

Corresponding Provision of Previous Statute: Section 48, Indian Evidence Act, 1872

Section 48–Opinion as to existence of right or custom, when relevant.––When the Court has to form anopinion as to the existence of any general custom or right, the opinions, as to the existence of such customor right, of persons who would be likely to know of its existence if it existed, are relevant.

Explanation.––The expression "general custom or right" includes customs or rights common to anyconsiderable class of persons.

Illustration

The right of the villagers of a particular village to use the water of a particular well is a general rightwithin the meaning of this section.

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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; or

(iii) the meaning of words or terms used in particular districts or by particular classes of people,

the opinions of persons having special means of knowledge thereon, are relevant facts.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 45 - Grounds of opinion, when relevant

Bharatiya Sakshya Adhiniyam, 2023 - Section 112 - Burden of proof as to relationship in the cases of partners, landlord and tenant, principal and agent

Corresponding Provision of Previous Statute: Section 49, Indian Evidence Act, 1872

Section 49–Opinion as to usages, tenets, etc., when relevant - When the Court has to form an opinion asto–

the usages and tenets of any body of men or family,

the constitution and government of any religious or charitable foundation, or

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.

44. Opinion on 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, as to the existence of such relationship, of any person who, as a member of the family or otherwise, has special means of knowledge on the subject, is a relevant fact:

Provided that such opinion shall not be sufficient to prove a marriage in proceedings under the Divorce Act, 1869 (4 of 1869), or in prosecution under sections 82 and 84 of the Bharatiya Nyaya Sanhita, 2023.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 39 - Opinions of experts

Bharatiya Sakshya Adhiniyam, 2023 - Section 41 - Opinion as to hand-writing and signature, when relevant

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Illustrations

(a) The question is, whether A and B were married. The fact that they were usually received and treated by their friends as husband and wife, is relevant.

(b) The question is, whether A was the legitimate son of B. The fact that A was always treated as such by members of the family, is relevant.

Corresponding Provision of Previous Statute: Section 50, Indian Evidence Act, 1872

Section 50–Opinion on relationship, when relevant - When the Court has to form an opinion as to therelationship of one person to another, the opinion, expressed by conduct, as to the existence of such relationship, of any person who, as a member of the family or otherwise, has special means of knowledge on the subject, is a relevant fact:

Provided that such opinion shall not be sufficient to prove a marriage in proceedings under the IndianDivorce Act, 1869 (4 of 1869), or in prosecutions under section 494, 495, 497 or 498 of the Indian PenalCode (45 of 1860).

Illustrations

(a) The question is, whether A and B, were married.

The fact that they were usually received and treated by their friends as husband and wife, is relevant.

(b) The question is, whether A was the legitimate son of B. The fact that A was always treated assuch by members of the family, is relevant.

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.

Illustration

An expert may give an account of experiments performed by him for the purpose of forming his opinion.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 6 - Motive, preparation and previous or subsequent conduct

Bharatiya Sakshya Adhiniyam, 2023 - Section 42 - Opinion as to existence of general custom or right when relevant

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Bharatiya Sakshya Adhiniyam, 2023 - Section 43 - Opinion as to usages, tenets, etc., when relevant

Bharatiya Sakshya Adhiniyam, 2023 - Section 50 - Character as affecting damages

Corresponding Provision of Previous Statute: Section 51, Indian Evidence Act, 1872

Section 51–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.

Illustration

An expert may give an account of experiments performed by him for the purpose of forming his opinion.

Character when relevant

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

In civil cases the fact that the character of any person concerned is such as to render probable or improbable any conduct imputed to him, is irrelevant, except in so far as such character appears from facts otherwise relevant.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 48 - Evidence of character or previous sexual experience not relevant in certain cases

Bharatiya Sakshya Adhiniyam, 2023 - Section 49 - Previous bad character not relevant, except in reply

Corresponding Provision of Previous Statute: Section 52, Indian Evidence Act, 1872

Section 52–In civil cases character to prove conduct imputed, irrelevant - In civil cases, the fact that the character of any person concerned is such as to render probable or improbable any conduct imputed to him, is irrelevant, except in so far as such character appears from facts otherwise relevant

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LANDMARK JUDGMENT

Raghu Nath Pandey and Ors. vs. Bobby Bedi and Ors., MANU/DE/1233/2006

47. In criminal cases previous good character relevant

In criminal proceedings the fact that the person accused is of a good character, is relevant.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 49 - Previous bad character not relevant, except in reply

Bharatiya Sakshya Adhiniyam, 2023 - Section 145 - Witnesses to character

Corresponding Provision of Previous Statute: Section 53, Indian Evidence Act, 1872

Section 53–In criminal cases previous good character relevant - In criminal proceedings, the fact that the person accused is of a good character, is relevant.

LANDMARK JUDGMENT

Habeeb Mohammad vs. The State of Hyderabad, MANU/SC/0034/1953

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

In a prosecution for an offence under section 64, section 65, section 66, section 67, section 68, section 69, section 70, section 71, section 74, section 75, section 76, section 77 or section 78 of the Bharatiya Nyaya Sanhita, 2023 or for attempt to commit any such offence, where the question of consent is in issue, evidence of the character of the victim or of such

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 145 - Witnesses to character

Bharatiya Sakshya Adhiniyam, 2023 - Section

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person's previous sexual experience with any person shall not be relevant on the issue of such consent or the quality of consent.

47 - In criminal cases previous good character relevant

Corresponding Provision of Previous Statute: Section 53A, Indian Evidence Act, 1872

Section 53A–Evidence of character or previous sexual experience not relevant in certain cases.–– In aprosecution for an offence under section 354, section 354A, section 354B, section 354C, section 354D, section 376, section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA,section 376DB or section 376E of the Indian Penal Code (45 of 1860) or for attempt to commit any suchoffence, where the question of consent is in issue, evidence of the character of the victim or of suchperson's previous sexual experience with any person shall not be relevant on the issue of such consent orthe quality of consent.

49. Previous bad character not relevant, except in reply

In criminal proceedings, the fact that the accused has a bad character, is irrelevant, unless evidence has been given that he has a good character, in which case it becomes relevant.

Explanation 1.--This section does not apply to cases in which the bad character of any person is itself a fact in issue.

Explanation 2.--A previous conviction is relevant as evidence of bad character.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 145 - Witnesses to character

Bharatiya Sakshya Adhiniyam, 2023 - Section 46 - In civil cases character to prove conduct imputed, irrelevant

Bharatiya Sakshya Adhiniyam, 2023 - Section 10 - Facts tending to enable Court to determine amount are relevant in suits for damages

Corresponding Provision of Previous Statute: Section 54, Indian Evidence Act, 1872

Section 54–Previous bad character not relevant, except in reply - In criminal proceedings, the fact thatthe accused person has a bad character, is irrelevant, unless evidence has been given that he has a goodcharacter, in which case it becomes relevant.

Explanation 1.––This section does not apply to cases in which the bad character of any person is itselfa fact in issue.

Explanation 2. ––A previous conviction is relevant as evidence of bad character.

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50. Character as affecting damages

In civil cases, the fact that the character of any person is such as to affect the amount of damages which he ought to receive, is relevant.

Explanation.--In this section and sections 46, 47 and 49, the word "character" includes both reputation and disposition; but, except as provided in section 49, evidence may be given only of general reputation and general disposition, and not of particular acts by which reputation or disposition has been shown.

Linked Provisions

Air Force Act, 1950 - Section 133 - Judicial Notice

Bharatiya Sakshya Adhiniyam, 2023 - Section 52 - Facts of which Court shall take judicial notice

Corresponding Provision of Previous Statute: Section 55, Indian Evidence Act, 1872

Section 55–Character as affecting damages. ––In civil cases, the fact that the character of any person issuch as to affect the amount of damages which he ought to receive, is relevant.

Explanation. ––In sections 52, 53, 54 and 55, the word "character" includes both reputation and disposition; but, except as provided in section 54, evidence may be given only of general reputation andgeneral disposition, and not of particular acts by which reputation or disposition were shown.

PART III

ON PROOFs

CHAPTER III

FACTS WHICH NEED NOT BE PROVED

51. Fact judicially noticeable need not be proved

No fact of which the Court will take judicial notice need be proved.

Linked Provisions

Air Force Act, 1950– Section 134 - Judicial Notice

Air Force Act, 1950 - Section 133 - Judicial Notice

Air Force Act, 1950 - Section 93 - Judicial Notice

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Indo-Tibetan Border Police Force Act, 1992 - Section 100 - Judicial Notice

National Security Guard Act, 1986 – Section 85 - Judicial Notice

Navy Act, 1957 - Section 132 - Judicial Notice

Sashastra Seema Bal Act, 2007 - Section 100 - Judicial Notice

Army Act, 1950 – Section 134 - Judicial Notice

Bharatiya Sakshya Adhiniyam, 2023 - Section 52 - Facts of which Court shall take judicial notice

Corresponding Provision of Previous Statute: Section 56, Indian Evidence Act, 1872

Section 56 – Fact judicially noticeable need not be proved - No fact of which the Court will take judicial notice need be proved.

52. Facts of which Court shall take judicial notice

(1) The Court shall take judicial notice of the following facts, namely:--

(a) all laws in force in the territory of India including laws having extra-territorial operation;

(b) international treaty, agreement or convention with country or countries by India, or decisions made by India at international associations or other bodies;

(c) the course of proceeding of the Constituent Assembly of India, of Parliament of India and of the State Legislatures;s

Linked Provisions

Border Security Force Act, 1968 – Section 88 - Judicial Notice

Air Force Act, 1950 - Section 93 - Judicial Notice

Indo-Tibetan Border Police Force Act. 1992 – Section 100 - Judicial Notice

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(d) the seals of all Courts and Tribunals;

(e) the seals of Courts of Admiralty and Maritime Jurisdiction, Notaries Public, and all seals which any person is authorised to use by the Constitution, or by an Act of Parliament or State Legislatures, or Regulations having the force of law in India;

(f) the accession to office, names, titles, functions, and signatures of the persons filling for the time being any public office in any State, if the fact of their appointment to such office is notified in any Official Gazette;

(g) the existence, title and national flag of every country or sovereign recognised by the Government of India;

(h) the divisions of time, the geographical divisions of the world, and public festivals, fasts and holidays notified in the Official Gazette;

(i) the territory of India;

(j) the commencement, continuance and termination of hostilities between the Government of India and any other country or body of persons;

(k) the names of the members and officers of the Court and of their deputies and subordinate officers and assistants, and also of all officers acting in execution of its process, and of advocates and other persons authorised by law to appear or act before it;

(l) the rule of the road on land or at sea.

(2) In the cases referred to in sub-section (1) and also on all matters of public history, literature, science or art, the Court may resort for its aid to appropriate books or documents of reference and if the Court is called upon by any person to take judicial notice of any fact, it may refuse to

National Security Guard Act, 1986 – Section 85 - Judicial Notice

Navy Act, 1957 - Section 132 - Judicial Notice

Sashastra Seema Bal Act, 2007 - Section 100 - Judicial Notice

Bharatiya Sakshya Adhiniyam, 2023 - Section 51 - Fact judicially noticeable need not be proved

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do so unless and until such person produces any such book or document as it may consider necessary to enable it to do so.

Corresponding Provision of Previous Statute: Section 57, Indian Evidence Act, 1872

Section 57 – Facts of which Court must take judicial notice - The Court shall take judicial notice of the following facts:

(1) All laws in force in the territory of India;

(2) All public Acts passed or hereafter to be passed by Parliament of the United Kingdom, and all local and personal Acts directed by Parliament of the United Kingdom to be judicially noticed;

(3) Articles of War for the Indian Army Navy or Air Force

(4) The course of proceeding of Parliament of the United Kingdom, of the Constituent Assembly of India, of Parliament and of the legislatures established under any laws for the time being in force in a Province or in the States

(5) The accession and the sign manual of the Sovereign for the time being of the United Kingdom of Great Britain and Ireland;

(6) All seals of which English Courts take judicial notice: the seals of all the Courts in India and of all Courts out of India established by the authority of the Central Government or the Crown Representative]; the seals of Courts of Admiralty and Maritime Jurisdiction and of Notaries Public, and all seals which any person is authorised to use by the Constitution or an Act of Parliament of the United Kingdom or an Act or Regulation having the force of law in India;

(7) The accession to office, names, titles, functions, and signatures of the persons filling for the time being any public office in any State, if the fact of their appointment to such office is notified in any Official Gazette;

(8) The existence, title and national flag of every State or Sovereign recognised by the Government of India;

(9) The divisions of time, the geographical divisions of the world, and public festivals, fasts and holidays notified in the Official Gazette;

(10) The territories under the dominion of the Government of India;

(11) The commencement, continuance and termination of hostilities between the Government of India and any other State or body of persons;

(12) The names of the members and officers of the Court, and of their deputies and subordinate officers and assistants, and also of all officers acting in execution of its process, and of all advocates, attorneys, proctors, vakils, pleaders and other persons authorised by law to appear or act before it;

(13) The rule of the road on land or at sea.

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In all these cases and also on all matters of public history, literature, science or art, the Court mayresort for its aid to appropriate books or documents of reference.

If the Court is called upon by any person to take judicial notice of any fact, it may refuse to do sounless and until such person produces any such book or document as it may consider necessary to enable it to do so.

53. Facts admitted need not be proved

No fact needs to be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings:

Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 15 - Admission defined

Corresponding Provision of Previous Statute: Section 58, Indian Evidence Act, 1872

Section 58 – Facts admitted need not be proved - No fact need be proved in any proceeding which theparties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree toadmit by any writing under their hands, or which by any rule of pleading in force at the time they aredeemed to have admitted by their pleadings:

Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise thanby such admissions.

CHAPTER IV

OF ORAL EVIDENCE

54. Proof of facts by oral evidence

All facts, except the contents of documents may be proved by oral evidence.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 20 - When oral admissions as to contents of documents are relevant

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Bharatiya Sakshya Adhiniyam, 2023 - Section 55 - Oral evidence to be direct

Bharatiya Sakshya Adhiniyam, 2023 - Section 125 - Witness unable to communicate verbally

Corresponding Provision of Previous Statute: Section 59, Indian Evidence Act, 1872

Section 59 – Proof of facts by oral evidence – All facts, except the contents of documents or electronic records, may be proved by oral evidence.

55. Oral evidence to be direct

Oral evidence shall, in all cases whatever, be direct; if it refers to,--

(i) a fact which could be seen, it must be the evidence of a witness who says he saw it;

(ii) a fact which could be heard, it must be the evidence of a witness who says he heard it;

(iii) a fact which could be perceived by any other sense or in any other manner, it must be the evidence of a witness who says he perceived it by that sense or in that manner;

(iv) an opinion or to the grounds on which that opinion is held, it must be the evidence of the person who holds that opinion on those grounds:

Provided that the opinions of experts expressed in any treatise commonly offered for sale, and the grounds on which such opinions are held, may be proved by the production of such treatises if the author is dead or cannot be found, or has become incapable of giving evidence, or cannot be called as a

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 125 - Witness unable to communicate verbally

Bharatiya Sakshya Adhiniyam, 2023 - Section 20 - When oral admissions as to contents of documents are relevant

Bharatiya Sakshya Adhiniyam, 2023 - Section 54 - Proof of facts by oral evidence

Bharatiya Sakshya Adhiniyam, 2023 - Section 168 - Judge's power to put questions or order production

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witness without an amount of delay or expense which the Court regards as unreasonable:

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

Corresponding Provision of Previous Statute: Section 60, Indian Evidence Act, 1872

Section 60 – Oral evidence must be direct - Oral evidence must, in all cases whatever, be direct; that is to say –

if it refers to a fact which could be seen, it must be the evidence of a witness who says he saw it;

if it refers to a fact which could be heard, it must be the evidence of a witness who says he heardit;

if it refers to a fact which could be perceived by any other sense or in any other manner, it mustbe the evidence of a witness who says he perceived it by that sense or in that manner;

if it refers to an opinion or to the grounds on which that opinion is held, it must be the evidence ofthe person who holds that opinion on those grounds:

Provided that the opinions of experts expressed in any treatise commonly offered for sale, and thegrounds on which such opinions are held, may be proved by the production of such treatises if theauthor is dead or cannot be found, or has become incapable of givingevidence, or cannot be calledasa witness without an amount of delay or expense which the Court regards as unreasonable:

Provided also that, if oral evidence refers to the existence or condition of any material thing otherthan a document, the Court may, if it thinks fit, require the production of such material thing for itsinspection.

CHAPTER V

OF DOCUMENTARY EVIDENCE

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56. Proof of contents of documents

The contents of documents may be proved either by primary or by secondary evidence.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 60 - Cases in which secondary evidence relating to documents may be given

Bharatiya Sakshya Adhiniyam, 2023 - Section 20 - When oral admissions as to contents of documents are relevant

Corresponding Provision of Previous Statute: Section 61, Indian Evidence Act, 1872

Section 61 – Proof of contents of documents - The contents of documents may be proved either by primary or by secondary evidence.

57. Primary evidence

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

Explanation 1.--Where a document is executed in several parts, each part is primary evidence of the document.

Explanation 2.--Where a document is executed in counterpart, each counterpart being executed by one or some of the parties only, each counterpart is primary evidence as against the parties executing it.

Explanation 3.--Where a number of documents are all made by one uniform process, as in the case of printing, lithography or photography, each is primary evidence of the contents of the rest; but, where they are all copies of a common original, they are not primary evidence of the contents of the original.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 59 - Proof of documents by primary evidence

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

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

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

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

Illustration

A person is shown to have been in possession of a number of placards, all printed at one time from one original. Any one of the placards is primary evidence of the contents of any other, but no one of them is primary evidence of the contents of the original.

Corresponding Provision of Previous Statute: Section 62, Indian Evidence Act, 1872

Section 62 – Primary evidence - Primary evidence means the document itself produced for the inspection ofthe Court.

Explanation 1. ––Where a document is executed in several parts, each part is primary evidence of thedocument.

Where a document is executed in counterpart, each counterpart being executed by one or some oftheparties only, each counterpart is primary evidence as against the parties executing it.

Explanation 2. –– Where a number of documents are all made by one uniform process, as in the caseof printing, lithography or photography, each is primary evidence of the contents of the rest; but, wherethey are all copies of a common original, they are not primary evidence of the contents of the original.

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Illustration

A person is shown to have been in possession of a number of placards, all printed at one time from one original. Any one of the placards is primary evidence of the contents of any other, but no one of themis primary evidence of the contents of the original.

58. Secondary evidence

Secondary evidence includes--

(i) certified copies given under the provisions hereinafter contained;

(ii) copies made from the original by mechanical processes which in themselves ensure the accuracy of the copy, and copies compared with such copies;

(iii) copies made from or compared with the original;

(iv) counterparts of documents as against the parties who did not execute them;

(v) oral accounts of the contents of a document given by some person who has himself seen it;

(vi) oral admissions;

(vii) written admissions;

(viii) evidence of a person who has examined a document, the original of which consists of numerous accounts or other documents which cannot conveniently be examined in Court, and who is skilled in the examination of such documents.

Illustrations

(a) A photograph of an original is secondary evidence of its contents, though the two have not been compared, if it is proved that the thing photographed was the original.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 60 - Cases in which secondary evidence relating to documents may be given

Bharatiya Sakshya Adhiniyam, 2023 - Section 64 - Rules as to notice to produce

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(b) A copy compared with a copy of a letter made by a copying machine is secondary evidence of the contents of the letter, if it is shown that the copy made by the copying machine was made from the original.

(c) A copy transcribed from a copy, but afterwards compared with the original, is secondary evidence; but the copy not so compared is not secondary evidence of the original, although the copy from which it was transcribed was compared with the original.

(d) Neither an oral account of a copy compared with the original, nor an oral account of a photograph or machine-copy of the original, is secondary evidence of the original.

Corresponding Provision of Previous Statute: Section 63, Indian Evidence Act, 1872

Section 63 – Secondary evidence. Secondary evidence means and includes ––

(1) certified copies given under the provisions hereinafter contained;

(2) copies made from the original by mechanical processes which in themselves insure the accuracy of the copy, and copies compared with such copies;

(3) copies made from or compared with the original;

(4) counterparts of documents as against the parties who did not execute them;

(5) oral accounts of the contents of a document given by some person who has himself seen it.

Illustrations

(a) A photograph of an original is secondary evidence of its contents, though the two have not been compared, if it is proved that the thing photographed was the original.

(b) A copy compared with a copy of a letter made by a copying machine is secondary evidence of the contents of the letter, if it is shown that the copy made by the copying machine was made from the original.

(c) A copy transcribed from a copy, but afterwards compared with the original, is secondary evidence; but the copy not so compared is not secondary evidence of the original, although the copy from which it was transcribed was compared with the original.

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(d) Neither an oral account of a copy compared with the original, nor an oral account of a photographor machine-copy of the original, is secondary evidence of the original.

59. Proof of documents by primary evidence

Documents shall be proved by primary evidence except in the cases hereinafter mentioned.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 8 - Things said or done by conspirator in reference to common design

Bharatiya Sakshya Adhiniyam, 2023 - Section 56 - Proof of contents of documents

Bharatiya Sakshya Adhiniyam, 2023 - Section 76 - Proof of documents by production of certified copies

Corresponding Provision of Previous Statute: Section 64, Indian Evidence Act, 1872

Section 64 – Proof of documents by primary evidence - Documents must be proved by primary evidenceexcept in the cases hereinafter mentioned.

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, namely:--

(a) when the original is shown or appears to be in the possession or power--

(i) of the person against whom the document is sought to be proved; or

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 58 - Secondary evidence

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(ii) of any person out of reach of, or not subject to, the process of the Court; or

(iii) of any person legally bound to produce it, and when, after the notice mentioned in section 64 such person does not produce it;

(b) when the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest;

(c) when the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time;

(d) when the original is of such a nature as not to be easily movable;

(e) when the original is a public document within the meaning of section 74;

(f) when the original is a document of which a certified copy is permitted by this Adhiniyam, or by any other law in force in India to be given in evidence;

(g) when the originals consist of numerous accounts or other documents which cannot conveniently be examined in Court, and the fact to be proved is the general result of the whole collection.

Explanation.--For the purposes of--

(i) clauses (a), (c) and (d), any secondary evidence of the contents of the document is admissible;

(ii) clause (b), the written admission is admissible;

(iii) clause (e) or (f), a certified copy of the document, but no other kind of secondary evidence, is admissible;

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(iv) clause (g), evidence may be given as to the general result of the documents by any person who has examined them, and who is skilled in the examination of such document.

Corresponding Provision of Previous Statute: Section 65, Indian Evidence Act, 1872

Section 65 – 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:–

(a) when the original is shown or appears to be in the possession or power ––

of the person against whom the document is sought to be proved, or

of any person out of reach of, or not subject to, the process of the Court, or

of any person legally bound to produce it,

and when, after the notice mentioned in section 66, such person does not produce it;

(b) when the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest;

(c) when the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time;

(d) when the original is of such a nature as not to be easily movable;

(e) when the original is a public document within the meaning of section 74;

(f) when the original is a document of which a certified copy is permitted by this Act, or by another law in force in India to be given in evidence;

(g) when the originals consist of numerous accounts or other documents which cannot conveniently be examined in Court, and the fact to be proved is the general result of the whole collection.

In cases (a), (c) and (d), any secondary evidence of the contents of the document is admissible.

In case (b), the written admission is admissible.

In case (e) or (f), a certified copy of the document, but no other kind of secondary evidence, is admissible.

In case (g), evidence may be given as to the general result of the documents by any person who has examined them, and who is skilled in the examination of such documents.

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61. Electronic or digital record

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

62. Special provisions as to evidence relating to electronic record

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

Linked Provisions

Information Technology Act, 2000 - Section 14 - Secure Electronic Record

Information Technology Act, 2000 - Section 13 - Time And Place Of Despatch And Receipt Of Electronic Record

Information Technology Act, 2000 - Section 11 - Attribution Of Electronic Records

Information Technology Act, 2000 - Section 7 - Retention Of Electronic Records

Information Technology Act, 2000 - Section 6 - Use Of Electronic Records And Electronic Signatures In Government And Its Agencies

Information Technology Act, 2000 - Section 3A - Electronic Signature

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Information Technology Act, 2000 - Section 3 - Authentication Of Electronic Records

Bharatiya Sakshya Adhiniyam, 2023 - Section 63 - Admissibility of electronic records

Bharatiya Sakshya Adhiniyam, 2023 - Section 29 - Relevancy of entry in public record or an electronic record made in performance of duty

Bharatiya Sakshya Adhiniyam, 2023 - Section 33 - What evidence to be given when statement forms part of a conversation, document, electronic record, book or series of letters or papers

Bharatiya Sakshya Adhiniyam, 2023 - Section 86 - Presumption as to electronic records and electronic signatures

Bharatiya Sakshya Adhiniyam, 2023 - Section 93 - Presumption as to electronic records five years old

Bharatiya Sakshya Adhiniyam, 2023 - Section 136 - Production of documents or electronic records which another person, having possession, would refuse to produce

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Bharatiya Nyaya Sanhita, 2023 - Section 210 - Omission to produce document or electronic record to public servant by person legally bound to produce it

Bharatiya Nyaya Sanhita, 2023 - Section 241 - Destruction of document or electronic record to prevent its production as evidence

Bharatiya Nyaya Sanhita, 2023 -Section 340 - Forged document or electronic record and using it as genuine

Corresponding Provision of Previous Statute: Section 65A, Indian Evidence Act, 1872

Section 65A – Special provisions as to evidence relating to electronic record - The contents of electronicrecords may be proved in accordance with the provisions of section 65B.

LANDMARK JUDGMENT

The State of Maharashtra and P.C. Singh vs. Praful B. Desai and Ors., MANU/SC/0268/2003.

63. Admissibility of electronic records

(1) Notwithstanding anything contained in this Adhiniyam, any information contained in an electronic record which is printed on paper, stored, recorded or copied in optical or magnetic media or semiconductor memory which is produced by a computer or any communication device or otherwise stored, recorded or copied in any electronic form (hereinafter referred to as the computer output) shall be

Linked Provisions

Information Technology Act, 2000 - Section 14 - Secure Electronic Record

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deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence or any contents of the original or of any fact stated therein of which direct evidence would be admissible.

(2) The conditions referred to in sub-section (1) in respect of a computer output shall be the following, namely:--

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

(b) during the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer or Communication device in the ordinary course of the said activities;

(c) throughout the material part of the said period, the computer or communication device was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents; and

(d) the information contained in the electronic record reproduces or is derived from such information fed into the computer or Communication device in the ordinary course of the said activities.

(3) Where over any period, the function of creating, storing or processing information for the purposes of any activity regularly carried on over that period as mentioned in clause (a) of sub-section (2) was

Information Technology Act, 2000 - Section 13 - Time And Place Of Despatch And Receipt Of Electronic Record

Information Technology Act, 2000 - Section 11 - Attribution Of Electronic Records

Information Technology Act, 2000 - Section 7 - Retention Of Electronic Records

Information Technology Act, 2000 - Section 6 - Use Of Electronic Records And Electronic Signatures In Government And Its Agencies

Information Technology Act, 2000 - Section 3A - Electronic Signature

Information Technology Act, 2000 - Section 3 - Authentication Of Electronic Records

Bharatiya Sakshya Adhiniyam, 2023 - Section 29 - Relevancy of entry in public record or an electronic record made in performance of duty

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regularly performed by means of one or more computers or communication device, whether--

(a) in standalone mode; or

(b) on a computer system; or

(c) on a computer network; or

(d) on a computer resource enabling information creation or providing information processing and storage; or

(e) through an intermediary,

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

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

(a) identifying the electronic record containing the statement and describing the manner in which it was produced;

(b) giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer or a communication device referred to in clauses (a) to (e) of sub-section (3);

(c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate,

Bharatiya Sakshya Adhiniyam, 2023 - Section 33 - What evidence to be given when statement forms part of a conversation, document, electronic record, book or series of letters or papers

Bharatiya Sakshya Adhiniyam, 2023 - Section 86 - Presumption as to electronic records and electronic signatures

Bharatiya Sakshya Adhiniyam, 2023 - Section 93 - Presumption as to electronic records five years old

Bharatiya Sakshya Adhiniyam, 2023 - Section 136 - Production of documents or electronic records which another person, having possession, would refuse to produce

Bharatiya Sakshya Adhiniyam, 2023 - Section 62 - Special provisions as to evidence relating to electronic record

Bharatiya Nyaya Sanhita, 2023 - Section 210 - Omission to produce document or electronic

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

(5) For the purposes of this section,--

(a) information shall be taken to be supplied to a computer or communication device if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;

(b) a computer output shall be taken to have been produced by a computer or communication device whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment or by other electronic means as referred to in clauses (a) to (e) of sub-section (3).

record to public servant by person legally bound to produce it

Bharatiya Nyaya Sanhita, 2023 - Section 241 - Destruction of document or electronic record to prevent its production as evidence

Bharatiya Nyaya Sanhita, 2023 -Section 340 - Forged document or electronic record and using it as genuine

Corresponding Provision of Previous Statute: Section 65B, Indian Evidence Act, 1872

Section 65B – Admissibility of electronic records - (1) Notwithstanding anything contained in this Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer (hereinafter referred to as the computer output)shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence or any contents of the original or of any fact stated therein of which direct evidence would be admissible.

(2) The conditions referred to in sub-section (1) in respect of a computer output shall be the following, namely: ––

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

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(b) during the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer in the ordinary course of the said activities;

(c) throughout the material part of the said period, the computer was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents; and

(d) the information contained in the electronic record reproduces or is derived from such information fed into the computer in the ordinary course of the said activities.

(3) Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in clause (a) of sub-section (2) was regularly performed by computers, whether––

(a) by a combination of computers operating over that period; or

(b) by different computers operating in succession over that period; or

(c) by different combinations of computers operating in succession over that period; or

(d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers,

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

(4) In any proceedings where it is desired to give a statement in evidence by virtue of this section,a certificate doing any of the following things, that is to say, ––

(a) identifying the electronic record containing the statement and describing the manner inwhich it was produced;

(b) giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer;

(c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate, and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this subsection it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

(5) For the purposes of this section, ––

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(a) information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) bymeans of any appropriate equipment;

(b) whether in the course of activities carried on by any official, information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;

(c) a computer output shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.

Explanation.––For the purposes of this section any reference to information being derived from other information shall be a reference to its being derived therefrom by calculation, comparison or any other process.

LANDMARK JUDGMENT

The State of Maharashtra and P.C. Singh vs. Praful B. Desai and Ors., MANU/SC/0268/2003

Arjun Panditrao Khotkar vs. Kailash Kushanrao Gorantyal and Ors., MANU/SC/0521/2020

Anvar P.V. vs. P.K. Basheer, MANU/SC/0834/2014

64. Rules as to notice to produce

Secondary evidence of the contents of the documents referred to in clause (a) of section 60, shall not be given unless the party proposing to give such secondary evidence has previously given to the party in whose possession or power the document is, or to his advocate or representative, such notice to produce it as is prescribed by law; and if no notice is prescribed by law, then such notice as the Court considers reasonable under the circumstances of the case:

Provided that such notice shall not be required in order to render secondary evidence admissible in any of the following cases, or in any other case in which the Court thinks fit to dispense with it:--

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 60 - Cases in which secondary evidence relating to documents may be given

Bharatiya Sakshya Adhiniyam, 2023 - Section 58 - Secondary evidence

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(a) when the document to be proved is itself a notice;

(b) when, from the nature of the case, the adverse party must know that he will be required to produce it;

(c) when it appears or is proved that the adverse party has obtained possession of the original by fraud or force;

(d) when the adverse party or his agent has the original in Court;

(e) when the adverse party or his agent has admitted the loss of the document;

(f) when the person in possession of the document is out of reach of, or not subject to, the process of the Court.

Corresponding Provision of Previous Statute: Section 66, Indian Evidence Act, 1872

Section 66 – Rules as to notice to produce — Secondary evidence of the contents of the documents referred to in section 65, clause (a), shall not be given unless the party proposing to give such secondary evidence has previously given to the party in whose possession or power the document is, or to his attorney or pleader, such notice to produce it as is prescribed by law; and if no notice is prescribed by law, then such notice as the Court considers reasonable under the circumstances of the case:

Provided that such notice shall not be required in order to render secondary evidence admissible in any of the following cases, or in any other case in which the Court thinks fit to dispense with it: – (1) when the document to be proved is itself a notice;

(2) when, from the nature of the case, the adverse party must know that he will be required to produce it;

(3) when it appears or is proved that the adverse party has obtained possession of the original by fraud or force;

(4) when the adverse party or his agent has the original in Court;

(5) when the adverse party or his agent has admitted the loss of the document;

(6) when the person in possession of the document is out of reach of, or not subject to, the process of the Court.

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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 to have been written wholly or in part by any person, the signature or the handwriting of so much of the document as is alleged to be in that person's handwriting must be proved to be in his handwriting.

Corresponding Provision of Previous Statute: Section 67, Indian Evidence Act, 1872

Section 67 - Proof of signature and handwriting of person alleged to have signed or written document produced –If a document is alleged to be signed or to have been written wholly or in part by any person, the signature or the handwriting of so much of the document as is alleged to be in that person's handwriting must be proved to be in his handwriting.

66. Proof as to electronic signature

Except in the case of a secure electronic signature, if the electronic signature of any subscriber is alleged to have been affixed to an electronic record, the fact that such electronic signature is the electronic signature of the subscriber must be proved.

Linked Provisions

Information Technology Act, 2000 - Section 5 - Legal Recognition Of Electronic Signatures

Information Technology Act, 2000 - Section 6 - Use Of Electronic Records And Electronic Signatures In Government And Its Agencies

Information Technology Act, 2000 - Section 10 - Power To Make Rules By Central Government In Respect Of Electronic Signature

Information Technology Act, 2000 - Section 15 - Secure Electronic Signature

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Information Technology Act, 2000 - Section 21 - Licence To Issue Electronic Signature Certificates

Information Technology Act, 2000 - Section 35 - Certifying Authority To Issue Electronic Signature Certificate

Information Technology Act, 2000 - Section 73 - Penalty For Publishing Electronic Signature Certificate False In Certain Particulars

Information Technology Act, 2000 - Section 3A - Electronic Signature

Information Technology Act, 2000 - Section 40A - Duties Of Subscriber Of Electronic Signature Certificate

Bharatiya Sakshya Adhiniyam, 2023 - Section 41 - Opinion as to hand-writing and signature, when relevant

Bharatiya Sakshya Adhiniyam, 2023 - Section 86 - Presumption as to electronic records and electronic signatures

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Bharatiya Sakshya Adhiniyam, 2023 - Section 87 - Presumption as to Electronic Signature Certificates

Corresponding Provision of Previous Statute: Section 67A, Indian Evidence Act, 1872

Section 67A - Proof as to electronic signature - Except in the case of a secure electronic signature, if the electronic signature of any subscriber is alleged to have been affixed to an electronic record the fact that such electronic signature is the electronic signature of the subscriber must be proved.

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

If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence:

Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908 (16 of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 68 - Proof where no attesting witness found

Bharatiya Sakshya Adhiniyam, 2023 - Section 70 - Proof when attesting witness denies the execution

Corresponding Provision of Previous Statute: Section 68, Indian Evidence Act, 1872

Section 68 - Proof of execution of document required by law to be attested - If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence:

Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908 (16 of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied.

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68. Proof where no attesting witness found

If no such attesting witness can be found, it must be proved that the attestation of one attesting witness at least is in his handwriting, and that the signature of the person executing the document is in the handwriting of that person.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 67 - Proof of execution of document required by law to be attested

Bharatiya Sakshya Adhiniyam, 2023 - Section 70 - Proof when attesting witness denies the execution

Corresponding Provision of Previous Statute: Section 69, Indian Evidence Act, 1872

Section 69 - Proof where no attesting witness found - If no such attesting witness can be found, or if the document purports to have been executed in the United Kingdom, it must be proved that the attestation of one attesting witness at least is in his handwriting, and that the signature of the person executing the document is in the hand writing of that person.

69. Admission of execution by party to attested document

The admission of a party to an attested document of its execution by himself shall be sufficient proof of its execution as against him, though it be a document required by law to be attested.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 67 - Proof of execution of document required by law to be attested

Corresponding Provision of Previous Statute: Section 70, Indian Evidence Act, 1872

Section 70 - Admission of execution by party to attested document - The admission of a party to an attested document of its execution by himself shall be sufficient proof of its execution as against him, though it be a document required by law to be attested.

70. Proof when attesting witness denies execution

If the attesting witness denies or does not recollect the execution of the document, its execution may be proved by other evidence.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 68 - Proof where

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no attesting witness found

Bharatiya Sakshya Adhiniyam, 2023 - Section 67 - Proof of execution of document required by law to be attested

Corresponding Provision of Previous Statute: Section 71, Indian Evidence Act, 1872

Section 71 - Proof when attesting witness denies the execution - If the attesting witness denies or does not recollect the execution of the document, its execution may be proved by other evidence.

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.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 67 - Proof of execution of document required by law to be attested

Corresponding Provision of Previous Statute: Section 72, Indian Evidence Act, 1872

Section 72 - 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.

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

(1) In order to ascertain whether a signature, writing or seal is that of the person by whom it purports to have been written or made, any signature, writing, or seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing or seal has not been produced or proved for any other purpose.

(2) The Court may direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words

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or figures so written with any words or figures alleged to have been written by such person.

(3) This section applies also, with any necessary modifications, to finger impressions.

Corresponding Provision of Previous Statute: Section 73, Indian Evidence Act, 1872

Section 73 - Comparison of signature, writing or seal with others admitted or proved - In order to ascertain whether a signature, writing, or seal is that of the person by whom it purports to have been written or made, any signature, writing, or seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing, or seal has not been produced or proved for any other purpose.

The Court may direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person.

This section applies also, with any necessary modifications, to finger-impressions.

73. Proof as to verification of digital signature

In order to ascertain whether a digital signature is that of the person by whom it purports to have been affixed, the Court may direct--

(a) that person or the Controller or the Certifying Authority to produce the Digital Signature Certificate;

(b) any other person to apply the public key listed in the Digital Signature Certificate and verify the digital signature purported to have been affixed by that person.

Linked Provisions

Information Technology Act, 2000 - Section 36 - Representations upon Issuance of Digital Signature Certificate

Information Technology Act, 2000 - Section 37 - Suspension of Digital Signature Certificate

Information Technology Act, 2000 - Section 38 - Revocation of Digital Signature Certificate

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Information Technology Act, 2000 - Section 41 - Acceptance of Digital Signature Certificate

Information Technology Act, 2000 - Section 3A - Electronic Signature

Information Technology Act, 2000 - Section 5 - Legal Recognition of Electronic Signatures

Information Technology Act, 2000 - Section 35 - Certifying Authority to Issue Electronic Signature Certificate

Bharatiya Sakshya Adhiniyam, 2023 - Section 41 - Opinion as to hand-writing and signature, when relevant

Bharatiya Sakshya Adhiniyam, 2023 - Section 86 -Presumption as to electronic records and electronic signatures

Bharatiya Sakshya Adhiniyam, 2023 - Section 87 -Presumption as to Electronic Signature Certificates

Corresponding Provision of Previous Statute: Section 73A, Indian Evidence Act, 1872

Section 73A - Proof as to verification of digital signature - In order to ascertain whether a digital signature is that of the person by whom it purports to have been affixed, the Court may direct -

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(a) that person or the Controller or the Certifying Authority to produce the Digital Signature Certificate;

(b) any other person to apply the public key listed in the Digital Signature Certificate and verify the digital signature purported to have been affixed by that person.

Explanation. -For the purposes of this section, "Controller" means the Controller appointed under sub-section (1) of section 17 of the Information Technology Act, 2000 (21 of 2000).]

Public documents

74. Public and private documents

(1) The following documents are public documents:--

(a) documents forming the acts, or records of the acts--

(i) of the sovereign authority;

(ii) of official bodies and tribunals; and

(iii) of public officers, legislative, judicial and executive of India or of a foreign country;

(b) public records kept in any State or Union territory of private documents.

(2) All other documents except the documents referred to in sub-section (1) are private.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 75 - Certified copies of public documents

Bharatiya Sakshya Adhiniyam, 2023 - Section 29 - Relevancy of entry in public record or an electronic record made in performance of duty

Corresponding Provision of Previous Statute: Section 74, Indian Evidence Act, 1872

Section 74 - Public documents - The following documents are public documents: –

(1) Documents forming the acts, or records of the acts –

(i) of the sovereign authority,

(ii) of official bodies and tribunals, and

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(iii) of public officers, legislative, judicial and executive, of any part of India or of the Commonwealth, or of a foreign country;

(2) Public records kept in any State of private documents.

Section 75 - Private documents - All other documents are private

75. Certified copies of public documents

Every public officer having the custody of a public document, which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees therefor, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title, and shall be sealed, whenever such officer is authorised by law to make use of a seal; and such copies so certified shall be called certified copies.

Explanation.--Any officer who, by the ordinary course of official duty, is authorised to deliver such copies, shall be deemed to have the custody of such documents within the meaning of this section.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 74 - Public and private documents

Bharatiya Sakshya Adhiniyam, 2023 - Section 29 - Relevancy of entry in public record or an electronic record made in performance of duty

Code of Civil Procedure, 1908 - Section 37 - Definition of Court Which Passed a Decree

Foreign Marriage Act, 1969 - Section 25 - Certified Copy of Entries to Be Evidences

Indian Christian Marriage Act, 1872 - Section 80 - Certified Copy of Entry In Marriage Register, Etc, To Be Evidence

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Indian Marriage Act, 1865 - Section 44 - Certified Copy of Entry in Marriage Register, &C. To Be Received As Evidence of Marriage

Land Acquisition Act, 1894 – Section 51A - Acceptance of Certified Copy as Evidence

Corresponding Provision of Previous Statute: Section 76, Indian Evidence Act, 1872

Section 76 - Certified copies of public documents - Every public officer having the custody of a public document, which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees there for, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title, and shall be sealed, whenever such officers authorized by law to make use of a seal; and such copies so certified shall be called certified copies.

Explanation.––Any officer who, by the ordinary course of official duty, is authorized to deliver such copies, shall be deemed to have the custody of such documents within the meaning of this section.

76. Proof of documents by production of certified copies

Such certified copies may be produced in proof of the contents of the public documents or parts of the public documents of which they purport to be copies.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 59- Proof of documents by primary evidence

Code of Civil Procedure, 1908 – Section 37 - Definition Of Court Which Passed A Decree

Foreign Marriage Act, 1969 - Section 25 - Certified Copy Of Entries To Be Evidences

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Indian Christian Marriage Act, 1872 - Section 80 - Certified Copy Of Entry In Marriage Register, Etc, To Be Evidence

Indian Marriage Act, 1865 - Section 44 - Certified Copy Of Entry In Marriage Register, &C. To Be Received As Evidence Of Marriage Without Further Proof

Land Acquisition Act, 1894 - Section 51A - Acceptance Of Certified Copy As Evidence

Manipur Municipalities Act - Section 223 - Mode Of Proof Of Municipal Record And Fee For Certified Copy

Patent Act, 1859 - Section 13 - Certified Copy To Be Prima Facie Evidence

Corresponding Provision of Previous Statute: Section 77, Indian Evidence Act, 1872

Section 77 - Proof of documents by production of certified copies - Such certified copies may be produced in proof of the contents of the public documents or parts of the public documents of which they purport to be copies.

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77. Proof of other official documents

The following public documents may be proved as follows:--

(a) Acts, orders or notifications of the Central Government in any of its Ministries and Departments or of any State Government or any Department of any State Government or Union territory Administration--

(i) by the records of the Departments, certified by the head of those Departments respectively; or

(ii) by any document purporting to be printed by order of any such Government;

(b) the proceedings of Parliament or a State Legislature, by the journals of those bodies respectively, or by published Acts or abstracts, or by copies purporting to be printed by order of the Government concerned;

(c) proclamations, orders or Regulations issued by the President of India or the Governor of a State or the Administrator or Lieutenant Governor of a Union territory, by copies or extracts contained in the Official Gazette;

(d) the Acts of the Executive or the proceedings of the Legislature of a foreign country, by journals published by their authority, or commonly received in that country as such, or by a copy certified under the seal of the country or sovereign, or by a recognition thereof in any Central Act;

(e) the proceedings of a municipal or local body in a State, by a copy of such proceedings, certified by the legal keeper thereof, or by a printed book purporting to be published by the authority of such body;

Linked Provisions

Air Force Central Excise Act, 1950 - Section 57 - Falsifying Official Documents And False Declaration

Army Act, 1950 – Section 57 - Falsifying Official Documents And False Declaration

Border Security Force Act, 1968 – Section 35 - Falsifying Official Documents And False Declarations

Coast Guard Act, 1978 - Section 33 - Falsifying Official Documents And False Declarations

The Indo-Tibetan Border Police Force Act. 1992 - Section 38 - Falsifying Official Documents And False Declarations

National Security Guard Act, 1986 - Section 34 - Falsifying Official Documents And False Declarations

Navy Act, 1957 - Section 60 - Falsifying Official Documents And False Declarations

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(f) public documents of any other class in a foreign country, by the original or by a copy certified by the legal keeper thereof, with a certificate under the seal of a Notary Public, or of an Indian Consul or diplomatic agent, that the copy is duly certified by the officer having the legal custody of the original, and upon proof of the character of the document according to the law of the foreign country.

Sashastra Seema Bal Act, 2007 - Section 38 - Falsifying Official Documents And False Declaration

Corresponding Provision of Previous Statute: Section 78, Indian Evidence Act, 1872

Section 78 - Proof of other official documents - The following public documents may be proved as follows:-

(1) Acts, orders or notifications of the Central Government in any of its departments, or of the Crown Representative or of any State Government or any department of any State Government, -

by the records of the departments, certified by the head of those departments respectively, or by any document purporting to be printed by order of any such Government or, as the case may be, of the Crown Representative;

(2) the proceedings of the Legislatures, -

by the journals of those bodies respectively, or by published Acts or abstracts, or by copies purporting to be printed by order of the Government concerned;

(3) proclamations, orders or regulations issued by Her Majesty or by the Privy Council, or by any department of Her Majesty's Government, -

by copies or extracts contained in the London Gazette, or purporting to be printed by the Queen's Printer;

(4) the Acts of the Executive or the proceedings of the Legislature of a foreign country, -

by journals published by their authority, or commonly received in that country as such, or by a copy certified under the seal of the country or sovereign, or by a recognition thereof in some

(5) the proceedings of a municipal body in a State, -

by a copy of such proceedings, certified by the legal keeper thereof, or by a printed book purporting to be published by the authority of such body;

(6) public documents of any other class in a foreign country, -

by the original, or by a copy certified by the legal keeper thereof, with a certificate under the seal of a Notary Public, or of an Indian Consul or diplomatic agent, that the copy is duly certified by the officer having the legal custody of the original, and upon proof of the character of the document according to the law of the foreign country.

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78. Presumption as to genuineness of certified copies

(1) The Court shall presume to be genuine every document purporting to be a certificate, certified copy or other document, which is by law declared to be admissible as evidence of any particular fact and which purports to be duly certified by any officer of the Central Government or of a State Government:

Provided that such document is substantially in the form and purports to be executed in the manner directed by law in that behalf.

(2) The Court shall also presume that any officer by whom any such document purports to be signed or certified, held, when he signed it, the official character which he claims in such paper.

Linked Provisions

Code of Civil Procedure, 1908 - Section 37 - Definition Of Court Which Passed A Decree

Foreign Marriage Act, 1969 - Section 25 - Certified Copy Of Entries To Be Evidences

Indian Christian Marriage Act, 1872 - Section 80 - Certified Copy Of Entry In Marriage Register, Etc, To Be Evidence

Indian Marriage Act, 1865 - Section 44 - Certified Copy Of Entry In Marriage Register, &C. To Be Received As Evidence Of Marriage Without Further Proof

Land Acquisition Act, 1894 - Section 51A - Acceptance Of Certified Copy As Evidence

Patent Act, 1859 - Section 13 - Certified Copy To Be Prima Facie Evidence

Corresponding Provision of Previous Statute: Section 79, Indian Evidence Act, 1872

Section 79 - Presumption as to genuineness of certified copies - The Court shall presume 8 to be genuine every document purporting to be a certificate, certified copy or other document, which is by Law declared to be admissible as evidence of any particular fact, and which purports to be duly

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certified by any officer of the Central Government or of a State Government, or by any officer 10[in the State of Jammu and Kashmir who is duly authorized thereto by the Central Government:

Provided that such document is substantially in the form and purports to be executed in the manner directed by law in that behalf.

The Court shall also presume that any officer by whom any such document purports to be signed or certified, held, when he signed it, the official character which he claims in such paper.

79. Presumption as to documents produced as record of evidence, etc

Whenever any document is produced before any Court, purporting to be a record or memorandum of the evidence, or of any part of the evidence, given by a witness in a judicial proceeding or before any officer authorised by law to take such evidence or to be a statement or confession by any prisoner or accused person, taken in accordance with law, and purporting to be signed by any Judge or Magistrate, or by any such officer as aforesaid, the Court shall presume that--

(i) the document is genuine;

(ii) any statements as to the circumstances under which it was taken, purporting to be made by the person signing it, are true; and

(iii) such evidence, statement or confession was duly taken.

Linked Provisions

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 395 - Order to pay compensation

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 403 - Court not to alter judgment

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 406 - Court of Session to send copy of finding and sentence to District Magistrate

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 403 - Court not to alter judgment

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 312 - Language of record of evidence

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Corresponding Provision of Previous Statute: Section 80, Indian Evidence Act, 1872

Section 80 - Presumption as to documents produced as record of evidence - Whenever any document is produced before any Court, purporting to be a record or memorandum of the evidence, or of any part of the evidence, given by a witness in a judicial proceeding or before any officer authorized by law to take such evidence or to be a statement or confession by any prisoner or accused person, taken in accordance with law, and purporting to be signed by any Judge or Magistrate, or by any such officer as aforesaid, the Court shall presume –

that the document is genuine; that any statements as to the circumstances under which it was taken, purporting to be made by the person signing it, are true, and that such evidence, statement or confession was duly taken.

80. Presumption as to Gazettes, newspapers, and other documents

The Court shall presume the genuineness of every document purporting to be the Official Gazette, or to be a newspaper or journal, and of every document purporting to be a document directed by any law to be kept by any person, if such document is kept substantially in the form required by law and is produced from proper custody.

Explanation.--For the purposes of this section and section 92, document is said to be in proper custody if it is in the place in which, and looked after by the person with whom such document is required to be kept; but no custody is improper if it is proved to have had a legitimate origin, or if the circumstances of the particular case are such as to render that origin probable.

Corresponding Provision of Previous Statute: Section 81, Indian Evidence Act, 1872

Section 81 - Presumption as to Gazettes, newspapers, private Acts of Parliament and other Documents - The Court shall presume the genuineness of every document purporting to be the London Gazette or any Official Gazette, or the Government Gazette of any colony, dependency or possession of the British Crown, or to be a newspaper or journal, or to be a copy of a private Act of Parliament of the United Kingdom printed by the Queen's Printer, and of every document purporting to be a document directed by any law to be kept by any person, if such document is kept substantially in the form required by law and is produced from proper custody.

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81. Presumption as to Gazettes in electronic or digital record

The Court shall presume the genuineness of every electronic or digital record purporting to be the Official Gazette, or purporting to be electronic or digital record directed by any law to be kept by any person, if such electronic or digital record is kept substantially in the form required by law and is produced from proper custody.

Explanation.--For the purposes of this section and section 93 electronic records are said to be in proper custody if they are in the place in which, and looked after by the person with whom such document is required to be kept; but no custody is improper if it is proved to have had a legitimate origin, or the circumstances of the particular case are such as to render that origin probable.

Linked Provisions

Information Technology Act, 2000 – Section 14 - Secure Electronic Record

Information Technology Act, 2000 – Section 13 - Time And Place Of Despatch And Receipt Of Electronic Record

Information Technology Act, 2000 – Section 11 - Attribution Of Electronic Records

Information Technology Act, 2000 – Section 7 - Retention Of Electronic Records

Information Technology Act, 2000 – Section 6 - Use Of Electronic Records And Electronic Signatures In Government And Its Agencies

Information Technology Act, 2000 - Section 3A - Electronic Signature

Information Technology Act, 2000 – Section 3 - Authentication Of Electronic Records

Bharatiya Sakshya Adhiniyam, 2023 - Section 29 - Relevancy of entry in public record or an electronic record made in performance of duty

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Bharatiya Sakshya Adhiniyam, 2023 - Section 33 - What evidence to be given when statement forms part of a conversation, document, electronic record, book or series of letters or papers

Bharatiya Sakshya Adhiniyam, 2023 - Section 86 - Presumption as to electronic records and electronic signatures

Bharatiya Sakshya Adhiniyam, 2023 - Section 93 - Presumption as to electronic records five years old

Bharatiya Sakshya Adhiniyam, 2023 - Section 136 - Production of documents or electronic records which another person, having possession, would refuse to produce

Bharatiya Sakshya Adhiniyam, 2023 - Section 63 - Admissibility of electronic records

Bharatiya Sakshya Adhiniyam, 2023 - Section 80 - Presumption as to Gazettes, newspapers, and other documents

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Bharatiya Nyaya Sanhita, 2023 - Section 210 - Omission to produce document or electronic record to public servant by person legally bound to produce it

Bharatiya Nyaya Sanhita, 2023 - Section 241 - Destruction of document or electronic record to prevent its production as evidence

Bharatiya Nyaya Sanhita, 2023 - Section 340 - Forged document or electronic record and using it as genuine

Information Technology Act, 2000 - Section 4 - Legal recognition of electronic records.

Corresponding Provision of Previous Statute: Section 81A, Indian Evidence Act, 1872

Section 81A - Presumption as to Gazettes in electronic forms - The Court shall presume the genuineness of every electronic record purporting to be the Official Gazette, or purporting to be electronic record directed by any law to be kept by any person, if such electronic record is kept substantially in the form required by law and is produced from proper custody.

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 the authority of the Central Government or any State Government were

Linked Provisions

Registration Act, 1908 - Section 21 - Description Of Property And Maps Or Plans

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so made, and are accurate; but maps or plans made for the purposes of any cause must be proved to be accurate.

Registration Act, 1908 - Section 22 - Description Of Houses And Land By Reference To Government Maps Or Surveys

Bharatiya Sakshya Adhiniyam, 2023 - Section 30 - Relevancy of statements in maps, charts and plans

Bharatiya Sakshya Adhiniyam, 2023 - Section 89 - Presumption as to books, maps and charts

Corresponding Provision of Previous Statute: Section 83, Indian Evidence Act, 1872

Section 83 - Presumption as to maps or plans made by authority of Government - The Court shall presume that maps or plans purporting to be made by the authority of the Central Government or any State Government were so made, and are accurate; but maps or plans made for the purposes of any cause must be proved to be accurate

83. Presumption as to collections of laws and reports of decisions

The Court shall presume the genuineness of, every book purporting to be printed or published under the authority of the Government of any country, and to contain any of the laws of that country, and of every book purporting to contain reports of decisions of the Courts of such country.

Corresponding Provision of Previous Statute: Section 84, Indian Evidence Act, 1872

Section 84 - Presumption as to collections of laws and reports of decisions - The Court shall presume the genuineness of every book purporting to be printed or published under the authority of the Government of any country, and to contain any of the laws of that country, and of every book purporting to contain reports of decisions of the Courts of such country

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84. Presumption as to powers-of-attorney

The Court shall presume that every document purporting to be a power-of-attorney, and to have been executed before, and authenticated by, a Notary Public, or any Court, Judge, Magistrate, Indian Consul or Vice-Consul, or representative of the Central Government, was so executed and authenticated.

Linked Provisions

Registration Act, 1908 - Section 33 - Power-Of-Attorney Recognizable For Purposes Of Section 32

Government of India Act, 1915 - Section 24 - Power Of Attorney For Sale Or Purchase Of Stock And Receipt Of Dividends

Corresponding Provision of Previous Statute: Section 85, Indian Evidence Act, 1872

Section 85 - Presumption as to powers-of-attorney - The Court shall presume that every document purporting to be a power-of-attorney, and to have been executed before, and authenticated by, a Notary Public, or any Court, Judge, Magistrate, Indian Consul or Vice-Consul, or representative *** of the Central Government, was so executed and authenticated

85. Presumption as to electronic agreements

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

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 29 - Relevancy of entry in public record or an electronic record made in performance of duty

Bharatiya Sakshya Adhiniyam, 2023 - Section 33 - What evidence to be given when statement forms part of a conversation, document, electronic record, book or series of letters or papers

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Bharatiya Sakshya Adhiniyam, 2023 - Section 86 - Presumption as to electronic records and electronic signatures

Bharatiya Sakshya Adhiniyam, 2023 - Section 93 - Presumption as to electronic records five years old

Bharatiya Sakshya Adhiniyam, 2023 - Section 136 - Production of documents or electronic records which another person, having possession, would refuse to produce

Information Technology Act, 2000 – Section 14 - Secure Electronic Record

Information Technology Act, 2000 – Section 13 - Time And Place Of Despatch And Receipt Of Electronic Record

Information Technology Act, 2000 – Section 11 - Attribution Of Electronic Records

Information Technology Act, 2000 – Section 7 - Retention Of Electronic Records

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Information Technology Act, 2000 – Section 6 - Use Of Electronic Records And Electronic Signatures In Government And Its Agencies

Information Technology Act, 2000 – Section 3A - Electronic Signature

Information Technology Act, 2000 – Section 3 - Authentication Of Electronic Records

Information Technology Act, 2000 – Section 13 - Time And Place Of Despatch And Receipt Of Electronic Record

Information Technology Act, 2000 – Section 14 - Secure Electronic Record

Bharatiya Sakshya Adhiniyam, 2023 - Section 87 - Presumption as to Electronic Signature Certificates

Bharatiya Sakshya Adhiniyam, 2023 - Section 63 - Admissibility of electronic records

Bharatiya Sakshya Adhiniyam, 2023 - Section 62 - Special provisions as to evidence relating to electronic record

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Bharatiya Sakshya Adhiniyam, 2023 - Section 90 - Presumption as to electronic messages

Bharatiya Nyaya Sanhita, 2023 - Section 210 - Omission to produce document or electronic record to public servant by person legally bound to produce it

Bharatiya Nyaya Sanhita, 2023 - Section 241 - Destruction of document or electronic record to prevent its production as evidence

Bharatiya Nyaya Sanhita, 2023 - Section 340 - Forged document or electronic record and using it as genuine

Corresponding Provision of Previous Statute: Section 85A, Indian Evidence Act, 1872

Section 85A - Presumption as to electronic agreements - The Court shall presume that every electronic record purporting to be an agreement containing the electronic signature of the parties was so concluded by affixing the electronic signature of the parties.

86. Presumption as to electronic records and electronic signatures

(1) In any proceeding involving a secure electronic record, the Court shall presume unless contrary is proved, that the secure electronic record has not been altered since the specific point of time to which the secure status relates.

Linked Provisions

Information Technology Act, 2000 – Section 14 - Secure Electronic Record

Information Technology Act, 2000 – Section 13 - Time And Place Of

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(2) In any proceeding, involving secure electronic signature, the Court shall presume unless the contrary is proved that--

(a) the secure electronic signature is affixed by subscriber with the intention of signing or approving the electronic record;

(b) except in the case of a secure electronic record or a secure electronic signature, nothing in this section shall create any presumption, relating to authenticity and integrity of the electronic record or any electronic signature.

Despatch And Receipt Of Electronic Record

Information Technology Act, 2000 – Section 11 - Attribution Of Electronic Records

Information Technology Act, 2000 – Section 7 - Retention Of Electronic Records

Information Technology Act, 2000 – Section 6 - Use Of Electronic Records And Electronic Signatures In Government And Its Agencies

Information Technology Act, 2000 – Section 3A – Electronic Signature

Information Technology Act, 2000 – Section 3 - Authentication Of Electronic Records

Bharatiya Sakshya Adhiniyam, 2023 - Section 29 - Relevancy of entry in public record or an electronic record made in performance of duty

Bharatiya Sakshya Adhiniyam, 2023 - Section 33 - What evidence to be given when statement forms part of a

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conversation, document, electronic record, book or series of letters or papers

Bharatiya Sakshya Adhiniyam, 2023 - Section 93 - Presumption as to electronic records five years old

Bharatiya Sakshya Adhiniyam, 2023 - Section 136 - Production of documents or electronic records which another person, having possession, would refuse to produce

Bharatiya Sakshya Adhiniyam, 2023 - Section 85 - Presumption as to electronic agreements

Bharatiya Sakshya Adhiniyam, 2023 - Section 62 - Special provisions as to evidence relating to electronic record

Bharatiya Sakshya Adhiniyam, 2023 - Section 87 - Presumption as to Electronic Signature Certificates

Bharatiya Sakshya Adhiniyam, 2023 - Section 90 - Presumption as to electronic messages

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Bharatiya Nyaya Sanhita, 2023 - Section 210 - Omission to produce document or electronic record to public servant by person legally bound to produce it

Bharatiya Nyaya Sanhita, 2023 - Section 241 - Destruction of document or electronic record to prevent its production as evidence

Bharatiya Nyaya Sanhita, 2023 - Section 340 - Forged document or electronic record and using it as genuine

Corresponding Provision of Previous Statute: Section 85B, Indian Evidence Act, 1872

Section 85B - Presumption as to electronic records and electronic signatures - (1) In any proceedings involving a secure electronic record, the Court shall presume unless contrary is proved, that the secure electronic record has not been altered since the specific point of time to which the secure status relates.

(2) In any proceedings, involving secure digital signature, the Court shall presume unless the contrary is proved that -

(a) the secure electronic signature is affixed by subscriber with the intention of signing or approving the electronic record;

(b) except in the case of a secure electronic record or a secure electronic signature, nothing in this section shall cerate any presumption, relating to authenticity and integrity of the electronic record or any electronic signature.

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87. Presumption as to Electronic Signature Certificates

The Court shall presume, unless contrary is proved, that the information listed in an Electronic Signature Certificate is correct, except for information specified as subscriber information which has not been verified, if the certificate was accepted by the subscriber.

Linked Provisions

Information Technology Act, 2000 – Section 14 - Secure Electronic Record

Information Technology Act, 2000 – Section 13 - Time And Place Of Despatch And Receipt Of Electronic Record

Information Technology Act, 2000 – Section 11 - Attribution Of Electronic Records

Information Technology Act, 2000 – Section 7 - Retention Of Electronic Records

Information Technology Act, 2000 – Section 6 - Use Of Electronic Records And Electronic Signatures In Government And Its Agencies

Information Technology Act, 2000 – Section 3A - Electronic Signature

Information Technology Act, 2000 – Section 3 - Authentication Of Electronic Records

Information Technology Act, 2000 – Section 36 - Representations Upon Issuance Of Digital Signature Certificate

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Information Technology Act, 2000 – Section 37 - Suspension Of Digital Signature Certificate

Information Technology Act, 2000 – Section 38 - Revocation Of Digital Signature Certificate

Information Technology Act, 2000 – Section 41 - Acceptance of Digital Signature Certificate

Bharatiya Sakshya Adhiniyam, 2023 - Section 90 - Presumption as to electronic messages

Bharatiya Sakshya Adhiniyam, 2023 - Section 86 - Presumption as to electronic records and electronic signatures

Bharatiya Sakshya Adhiniyam, 2023 - Section 29 - Relevancy of entry in public record or an electronic record made in performance of duty

Bharatiya Sakshya Adhiniyam, 2023 - Section 33 - What evidence to be given when statement forms part of a conversation, document, electronic record, book or series of letters or papers

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Bharatiya Sakshya Adhiniyam, 2023 - Section 136 - Production of documents or electronic records which another person, having possession, would refuse to produce

Bharatiya Sakshya Adhiniyam, 2023 - Section 93 - Presumption as to electronic records five years old

Bharatiya Sakshya Adhiniyam, 2023 - Section 62 - Special provisions as to evidence relating to electronic record

Bharatiya Nyaya Sanhita, 2023 - Section 210 - Omission to produce document or electronic record to public servant by person legally bound to produce it

Bharatiya Nyaya Sanhita, 2023 - Section 241 - Destruction of document or electronic record to prevent its production as evidence

Bharatiya Nyaya Sanhita, 2023 -Section 340 - Forged document or electronic record and using it as genuine

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Corresponding Provision of Previous Statute: Section 85C, Indian Evidence Act, 1872

Section 85C - Presumption as to Electronic Signature Certificates - The Court shall presume, unless contrary is proved, that the information listed in a Electronic Signature Certificate is correct, except for information specified as subscriber information which has not been verified, if the certificate was accepted by the subscribe**r.**

88. Presumption as to certified copies of foreign judicial records

(1) The Court may presume that any document purporting to be a certified copy of any judicial record of any country beyond India is genuine and accurate, if the document purports to be certified in any manner which is certified by any representative of the Central Government in or for such country to be the manner commonly in use in that country for the certification of copies of judicial records.

(2) An officer who, with respect to any territory or place outside India is a Political Agent therefor, as defined in clause (43) of section 3 of the General Clauses Act, 1897 (10 of 1897), shall, for the purposes of this section, be deemed to be a representative of the Central Government in and for the country comprising that territory or place.

Corresponding Provision of Previous Statute: Section 86, Indian Evidence Act, 1872

Section 86 - Presumption as to certified copies of foreign judicial records - The Court may presume that any document purporting to be a certified copy of any judicial record of * * * any country not forming part of India or of Her Majesty's Dominions is genuine and accurate, if the document purports to be certified in any manner which is certified by any representative of * * * the Central Government in or for such country to be the manner commonly in use in that country for the certification of copies of judicial records.

An officer who, with respect to *** any territory or place not forming part of India or Her Majesty's Dominions, is a Political Agent there for, as defined in section 3, clause (43), of the General Clauses Act, 1897 (10 of 1897), shall, for the purposes of this section, be deemed to be a representative of the Central Government in and for the country comprising that territory or place.

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89. Presumption as to books, maps and charts

The Court may presume that any book to which it may refer for information on matters of public or general interest, and that any published map or chart, the statements of which are relevant facts, and which is produced for its inspection, was written and published by the person, and at the time and place, by whom or at which it purports to have been written or published.

Linked Provisions

Registration Act, 1908 - Section 21 - Description Of Property And Maps Or Plans

Registration Act, 1908 - Section 22 - Description Of Houses And Land By Reference To Government Maps Or Surveys

Bharatiya Sakshya Adhiniyam, 2023 - Section 82 - Presumption as to maps or plans made by authority of Government

Bharatiya Sakshya Adhiniyam, 2023 - Section 30 -Relevancy of statements in maps, charts and plans

Corresponding Provision of Previous Statute: Section 87, Indian Evidence Act, 1872

Section 87 - Presumption as to books, maps and charts - The Court may presume that any book to which it may refer for information on matters of public or general interest, and that any published map or chart, the statements of which are relevant facts, and which is produced for its inspection, was written and published by the person, and at the time and place, by whom or at which it purports to have been written or published.

90. Presumption as to electronic messages

The Court may presume that an electronic message, forwarded by the originator through an electronic mail server to the addressee to whom the message purports to be addressed corresponds with the message as

Linked Provisions

Information Technology Act, 2000 - Section 14 - Secure Electronic Record

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fed into his computer for transmission; but the Court shall not make any presumption as to the person by whom such message was sent.

Information Technology Act, 2000 - Section 13 - Time And Place Of Despatch And Receipt Of Electronic Record

Information Technology Act, 2000 - Section 11 - Attribution Of Electronic Records

Information Technology Act, 2000 - Section 7 - Retention Of Electronic Records

Information Technology Act, 2000 - Section 6 - Use Of Electronic Records And Electronic Signatures In Government And Its Agencies

Information Technology Act, 2000 - Section 3A - Electronic Signature

Information Technology Act, 2000 - Section 3 - Authentication Of Electronic Records

Information Technology Act, 2000 - Section 36 - Representations Upon Issuance Of Digital Signature Certificate

Information Technology Act, 2000 - Section 37 - Suspension Of Digital Signature Certificate

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Information Technology Act, 2000 - Section 38 - Revocation Of Digital Signature Certificate

Information Technology Act, 2000 - Section 41 - Acceptance of Digital Signature Certificate

Bharatiya Sakshya Adhiniyam, 2023 - Section 29- Relevancy of entry in public record or an electronic record made in performance of duty

Bharatiya Sakshya Adhiniyam, 2023 - Section 33- What evidence to be given when statement forms part of a conversation, document, electronic record, book or series of letters or papers

Bharatiya Sakshya Adhiniyam, 2023 - Section 93 - Presumption as to electronic records five years old

Bharatiya Sakshya Adhiniyam, 2023 - Section 136 - Production of documents or electronic records which another person, having possession, would refuse to produce

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Bharatiya Sakshya Adhiniyam, 2023 - Section 62 - Special provisions as to evidence relating to electronic record

Bharatiya Sakshya Adhiniyam, 2023 - Section 85 - Presumption as to electronic agreements

Bharatiya Sakshya Adhiniyam, 2023 - Section 87 -Presumption as to Electronic Signature Certificates

Bharatiya Sakshya Adhiniyam, 2023 - Section 86 - Presumption as to electronic records and electronic signatures

Bharatiya Nyaya Sanhita, 2023 - Section 210 - Omission to produce document or electronic record to public servant by person legally bound to produce it

Bharatiya Nyaya Sanhita, 2023 - Section 241 - Destruction of document or electronic record to prevent its production as evidence

Bharatiya Nyaya Sanhita, 2023 - Section 340 - Forged document or electronic record and using it as genuine

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Corresponding Provision of Previous Statute: Section 88A, Indian Evidence Act, 1872

Section 88A - Presumption as to electronic messages - The Court may presume that an electronic message, forwarded by the originator through an electronic mail server to the addressee to whom the message purports to be addressed corresponds with the message as fed into his computer for transmission; but the Court shall not make any presumption as to the person by whom such message was sent.

Explanation. - For the purposes of this section, the expressions "addressee" and "originator" shall have the same meanings respectively assigned to them in clauses (b) and (za) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000).

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 to produce, was attested, stamped and executed in the manner required by law.

Corresponding Provision of Previous Statute: Section 89, Indian Evidence Act, 1872

Section 89 - Presumption as to due execution, etc., of documents not produced - The Court shall presume that every document, called for and not produced after notice to produce, was attested, stamped and executed in the manner required by law.

92. Presumption as to documents thirty years old

Where any document, purporting or proved to be thirty years old, is produced from any custody which the Court in the particular case considers proper, the Court may presume that the signature and every other part of such document, which purports to be in the handwriting of any particular person, is in that person's handwriting, and, in the case of a document executed or attested, that it was duly executed and attested by the persons by whom it purports to be executed and attested.

Explanation.--The Explanation to section 80 shall also apply to this section.

Linked Provisions

Central Excise Act, 1944 - Section 36A - Presumption As To Documents In Certain Cases

Central Goods and Services Tax Act, 2017- Section 144 - Presumption As To Documents In Certain Cases

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Illustrations

(a) A has been in possession of landed property for a long time. He produces from his custody deeds relating to the land showing his titles to it. The custody shall be proper.

(b) A produces deeds relating to landed property of which he is the mortgagee. The mortgagor is in possession. The custody shall be proper.

(c) A, a connection of B, produces deeds relating to lands in B's possession, which were deposited with him by B for safe custody. The custody shall be proper.

The Customs Act, 1962 - Section 139 - Presumption As To Documents In Certain Cases

The Foreign Exchange Management Act, 1999 - Section 39 - Presumption As To Documents In Certain Cases

Foreign Exchange Regulations Act, 1973 - Section 72 - Presumption As To Documents In Certain Cases

Gold (Control) Act, 1968 - Section 67 - Presumption As To Documents In Certain Cases

Narcotic-Drugs and Psychotropic Substances Act 1985 - Section 66 - Presumption As To Documents In Certain Cases

Bharatiya Sakshya Adhiniyam, 2023 - Section 79 - Presumption as to documents produced as record of evidence, etc.

Bharatiya Sakshya Adhiniyam, 2023 - Section 80 - Presumption as to Gazettes, newspapers, and other documents

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Corresponding Provision of Previous Statute: Section 90, Indian Evidence Act, 1872

Section 90 - Presumption as to documents thirty years old - Where any document, purporting or proved to be thirty years old, is produced from any custody which the Court in the particular case considers proper, the Court may presume that the signature and every other part of such document, which purports to be in the handwriting of any particular person, is in that person's handwriting, and, in the case of a document executed or attested, that it was duly executed and attested by the persons by whom it purports to be executed and attested.

Explanation.- Documents are said to be in proper custody if they are in the place in which, and under the care of the person with whom, they would naturally be; but no custody is improper if it is proved to have had a legitimate origin, or if the circumstances of the particular case are such as to render such an origin probable.

This explanation applies also to section 81.

Illustrations

(a) A has been in possession of landed property for a long time. He produces from his custody deeds relating to the land showing his titles to it. The custody is proper.

(b) A produces deeds relating to landed property of which he is the mortgagee. The mortgagor is in possession. The custody is proper.

(c) A, a connection of B, produces deeds relating to lands in B's possession, which were deposited with him by B for safe custody. The custody is proper.

LANDMARK JUDGMENT

Ram Jas and Ors. vs. Surendra Nath and Ors., MANU/UP/0260/1980

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 this behalf.

Linked Provisions

Information Technology Act, 2000 – Section 14 - Secure Electronic Record

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Explanation.--The Explanation to section 81 shall also apply to this section.

Information Technology Act, 2000 – Section 13 - Time And Place Of Despatch And Receipt Of Electronic Record

Information Technology Act, 2000 – Section 11 - Attribution Of Electronic Records

Information Technology Act, 2000 – Section 7 - Retention Of Electronic Records

Information Technology Act, 2000 – Section 6 - Use Of Electronic Records And Electronic Signatures In Government And Its Agencies

Information Technology Act, 2000 – Section 4 - Electronic Signature

Information Technology Act, 2000 – Section 3 - Authentication Of Electronic Records

Bharatiya Sakshya Adhiniyam, 2023 - Section 63 - Admissibility of electronic records

Bharatiya Sakshya Adhiniyam, 2023 - Section 29- Relevancy of entry in public record or an electronic record made in performance of duty

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Bharatiya Sakshya Adhiniyam, 2023 - Section 33 - What evidence to be given when statement forms part of a conversation, document, electronic record, book or series of letters or papers

Bharatiya Sakshya Adhiniyam, 2023 - Section 86 - Presumption as to electronic records and electronic signatures

Bharatiya Sakshya Adhiniyam, 2023 - Section 136 - Production of documents or electronic records which another person, having possession, would refuse to produce

Bharatiya Nyaya Sanhita, 2023 - Section 210 - Omission to produce document or electronic record to public servant by person legally bound to produce it

Bharatiya Nyaya Sanhita, 2023 - Section 241 - Destruction of document or electronic record to prevent its production as evidence

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Bharatiya Nyaya Sanhita, 2023 - Section 340 - Forged document or electronic record and using it as genuine

Corresponding Provision of Previous Statute: Section 90A, Indian Evidence Act, 1872

Section 90A - 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 this behalf.

Explanation. – Electronic records are said to be in proper custody if they are in the place in which,and under the care of the person with whom, they naturally be; but no custody is improper if it is proved to have had a legitimate origin, or the circumstances of the particular case are such as to render such an origin probable.

This *Explanation* applies also to section 81A.

LANDMARK JUDGMENT

Ram Jas and Ors. vs. Surendra Nath and Ors., MANU/UP/0260/1980

CHAPTER VI

OF THE EXCLUSION OF ORAL EVIDENCE BY DOCUMENTARY EVIDENCE

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

When the terms of a contract, or of a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form

Linked Provisions

Companies Act, 2013 - Section 27 - Variation In Terms Of Contract Or Objects In Prospectus

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of a document, no evidence shall be given in proof of the terms of such contract, grant or other disposition of property, or of such matter, except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained.

The Indian Contract Act, 1872 - Section 133 - Discharge Of Surety By Variance In Terms Of Contract

Exception 1.--When a public officer is required by law to be appointed in writing, and when it is shown that any particular person has acted as such officer, the writing by which he is appointed need not be proved.

Exception 2.--Wills admitted to probate in India may be proved by the probate.

Explanation 1.--This section applies equally to cases in which the contracts, grants or dispositions of property referred to are contained in one document, and to cases in which they are contained in more documents than one.

Explanation 2.--Where there are more originals than one, one original only need be proved.

Explanation 3.--The statement, in any document whatever, of a fact other than the facts referred to in this section, shall not preclude the admission of oral evidence as to the same fact.

Illustrations

(a) If a contract be contained in several letters, all the letters in which it is contained must be proved.

(b) If a contract is contained in a bill of exchange, the bill of exchange must be proved.

(c) If a bill of exchange is drawn in a set of three, one only need be proved.

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(d) A contracts, in writing, with B, for the delivery of indigo upon certain terms. The contract mentions the fact that B had paid A the price of other indigo contracted for verbally on another occasion. Oral evidence is offered that no payment was made for the other indigo. The evidence is admissible.

(e) A gives B a receipt for money paid by B. Oral evidence is offered of the payment. The evidence is admissible.

Corresponding Provision of Previous Statute: Section 91, Indian Evidence Act, 1872

Section 91 - Evidence of terms of contracts, grants and other dispositions of property reduced to form of Document - When the terms of a contract, or of a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant or other disposition of property, or of such matter, except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained.

Exception 1.–When a public officer is required by law to be appointed in writing, and when it is shown that any particular person has acted as such officer, the writing by which he is appointed need not be proved.

Exception 2.– Wills admitted to probate in India may be proved by the probate.

Explanation 1.– This section applies equally to cases in which the contracts, grants or dispositions of property referred to are contained in one document, and to cases in which they are contained in more documents than one.

Explanation 2.- Where there are more originals than one, one original only need be proved.

Explanation 3.- The statement, in any document whatever, of a fact other than the facts referred to in this section, shall not preclude the admission of oral evidence as to the same fact.

Illustrations

(a) If a contract be contained in several letters, all the letters in which it is contained must be proved.

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(d) A contracts, in writing, with B, for the delivery of indigo upon certain terms. The contract mentions the fact that B had paid A the price of other indigo contracted for verbally on another occasion..

Oral evidence is offered that no payment was made for the other indigo. The evidence is admissible.

(e) A gives B a receipt for money paid by B.

Oral evidence is offered of the payment.

The evidence is admissible.

LANDMARK JUDGMENT

Roop Kumar vs. Section Mohan Thedani, MANU/SC/0276/2003

95. Exclusion of evidence of oral agreement

When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to section 94, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms:

Provided that any fact may be proved which would invalidate any document, or which would entitle any person to any decree or order relating thereto; such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, want or failure of consideration, or mistake in fact or law:

Provided further that the existence of any separate oral agreement as to any matter on which a document is silent, and which is not inconsistent with its terms, may be proved. In considering whether or not this proviso applies, the Court shall have regard to the degree of formality of the document:

Linked Provisions

Registration Act, 1908 - Section 48 - Registered Documents Relating To Property When To Take Effect Against Oral Agreements

Bharatiya Sakshya Adhiniyam, 2023 - Section 156 - Exclusion of evidence to contradict answers to questions testing veracity

Bharatiya Sakshya Adhiniyam, 2023 - Section 96 - Exclusion of evidence to explain or amend ambiguous document

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Bharatiya Sakshya Adhiniyam, 2023 - Section 97 - Exclusion of evidence against application of document to existing facts

Provided also that the existence of any separate oral agreement, constituting a condition precedent to the attaching of any obligation under any such contract, grant or disposition of property, may be proved:

Provided also that the existence of any distinct subsequent oral agreement to rescind or modify any such contract, grant or disposition of property, may be proved, except in cases in which such contract, grant or disposition of property is by law required to be in writing, or has been registered according to the law in force for the time being as to the registration of documents:

Provided also that any usage or custom by which incidents not expressly mentioned in any contract are usually annexed to contracts of that description, may be proved:

Provided also that the annexing of such incident would not be repugnant to, or inconsistent with, the express terms of the contract:

Provided also that any fact may be proved which shows in what manner the language of a document is related to existing facts.

Illustrations

(a) A policy of insurance is effected on goods "in ships from Kolkata to Visakhapatnam". The goods are shipped in a particular ship which is lost. The fact that particular ship was orally excepted from the policy, cannot be proved.

(b) A agrees absolutely in writing to pay B one thousand rupees on the 1st March, 2023. The fact that, at the same time, an oral agreement was made that the money should not be paid till the 31st March, 2023, cannot be proved.

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(c) An estate called "the Rampur tea estate" is sold by a deed which contains a map of the property sold. The fact that land not included in the map had always been regarded as part of the estate and was meant to pass by the deed cannot be proved.

(d) A enters into a written contract with B to work certain mines, the property of B, upon certain terms. A was induced to do so by a misrepresentation of B's as to their value. This fact may be proved.

(e) A institutes a suit against B for the specific performance of a contract, and also prays that the contract may be reformed as to one of its provisions, as that provision was inserted in it by mistake. A may prove that such a mistake was made as would by law entitle him to have the contract reformed.

(f) A orders goods of B by a letter in which nothing is said as to the time of payment, and accepts the goods on delivery. B sues A for the price. A may show that the goods were supplied on credit for a term still unexpired.

(g) A sells B a horse and verbally warrants him sound. A gives B a paper in these words-- "Bought of A a horse for thirty thousand rupees". B may prove the verbal warranty.

(h) A hires lodgings of B, and gives B a card on which is written-- "Rooms, ten thousand rupees a month". A may prove a verbal agreement that these terms were to include partial board. A hires lodging of B for a year, and a regularly stamped agreement, drawn up by an advocate, is made between them. It is silent on the subject of board. A may not prove that board was included in the term verbally.

(i) A applies to B for a debt due to A by sending a receipt for the money. B keeps the receipt and does not send the money. In a suit for the amount, A may prove this.

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(j) A and B make a contract in writing to take effect upon the happening of a certain contingency. The writing is left with B who sues A upon it. A may show the circumstances under which it was delivered.

Corresponding Provision of Previous Statute: Section 92, Indian Evidence Act, 1872

Section 92 - Exclusion of evidence of oral agreement - When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms:

Proviso (1) - Any fact may be proved which would invalidate any document, or which would entitle any person to any decree or order relating thereto; such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, want or failure of consideration, or mistake in fact or law.

Proviso (2) - The existence of any separate oral agreement as to any matter on which a document is silent, and which is not inconsistent with its terms, may be proved. In considering whether or not this proviso applies, the Court shall have regard to the degree of formality of the document.

Proviso (3) - The existence of any separate oral agreement, constituting a condition precedent to the attaching of any obligation under any such contract, grant or disposition of property, may be proved.

Proviso (4) - The existence of any distinct subsequent oral agreement to rescind or modify any such contract, grant or disposition of property, may be proved, except in cases in which such contract, grant or disposition of property is by law required to be in writing, or has been registered according to the law in force for the time being as to the registration of documents.

Proviso (5) - Any usage or custom by which incidents not expressly mentioned in any contract are usually annexed to contracts of that description, may be proved:

Provided that the annexing of such incident would not be repugnant to, or inconsistent with, the express terms of the contract.

Proviso (6) - Any fact may be proved which shows in what manner the language of a document is related to existing facts.

Illustrations

(a) A policy of insurance is effected on goods "in ships from Calcutta to London". The goods are shipped in a particular ship which is lost. The fact that particular ship was orally excepted from the policy, cannot be proved.

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(b) A agrees absolutely in writing to pay B Rs. 1,000 on the first March 1873. The fact that, at the same time, an oral agreement was made that the money should not be paid till the thirty-first March, cannot be proved.

(c) An estate called "the Rampore tea estate" is sold by a deed which contains a map of the property sold. The fact that land not included in the map had always been regarded as part of the estate and was meant to pass by the deed cannot be proved.

(d) A enters into a written contract with B to work certain mines, the property of B, upon certain terms. A was induced to do so by a misrepresentation of B's as to their value. This fact may be proved.

(e) A institutes a suit against B for the specific performance of a contract, and also prays that the contract may be reformed as to one of its provisions, as that provision was inserted in it by mistake. A may prove that such a mistake was made as would by law entitle him to have the contract reformed.

(f) A orders goods of B by a letter in which nothing is said as to the time of payment, and accepts the goods on delivery. B sues A for the price. A may show that the goods were supplied on credit for a term still unexpired.

(g) A sells B a horse and verbally warrants him sound. A gives B a paper in these words: "Bought of A a horse of Rs. 500". B may prove the verbal warranty.

(h) A hires lodgings of B, and gives B a card on which is written ––"Rooms, Rs. 200 a month." A may prove a verbal agreement that these terms were to include partial board.

A hires lodgings of B for a year, and a regularly stamped agreement, drawn up by an attorney, is made between them. It is silent on the subject of board. A may not prove that board was included in the term verbally.

(i) A applies to B for a debt due to A by sending a receipt for the money. B keeps the receipt and does not send the money. In a suit for the amount, A may prove this.

(j) A and B make a contract in writing to take effect upon the happening of a certain contingency. The writing is left with B, who sues A upon it. A may show the circumstances under which it was delivered.

LANDMARK JUDGMENT

Roop Kumar vSection Mohan Thedani, MANU/SC/0276/2003.

Mangala Waman Karandikar (D) tr. L.RSection vSection Prakash Damodar Ranade, MANU/SC/0343/2021

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96. Exclusion of evidence to explain or amend ambiguous document

When the language used in a document is, on its face, ambiguous or defective, evidence may not be given of facts which would show its meaning or supply its defects.

Illustrations

(a) A agrees, in writing, to sell a horse to B for "one lakh rupees or one lakh fifty thousand rupees". Evidence cannot be given to show which price was to be given.

(b) A deed contains blanks. Evidence cannot be given of facts which would show how they were meant to be filled.

Linked Provisions

Registration Act, 1908 - Section 48 - Registered Documents Relating To Property When To Take Effect Against Oral Agreements

Bharatiya Sakshya Adhiniyam, 2023 - Section 156 - Exclusion of evidence to contradict answers to questions testing veracity

Bharatiya Sakshya Adhiniyam, 2023 - Section 96 - Exclusion of evidence to explain or amend ambiguous document

Corresponding Provision of Previous Statute: Section 93, Indian Evidence Act, 1872

Section 93 - Exclusion of evidence to explain or amend ambiguous document - When the language used in a document is, on its face, ambiguous or defective, evidence may not be given of facts which would show its meaning or supply its defects.

Illustrations

(a) A agrees, in writing, to sell a horse to B for “Rs. 1,000 or Rs. 1,500”. Evidence cannot be given to show which price was to be given.

(b) A deed contains blanks. Evidence cannot be given of facts which would show how they were meant to be filled.

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

When language used in a document is plain in itself, and when it applies accurately to existing facts, evidence may not be given to show that it was not meant to apply to such facts.

Illustration

A sells to B, by deed, "my estate at Rampur containing one hundred bighas". A has an estate at Rampur containing one hundred bighas. Evidence may not be given of the fact that the estate meant to be sold was one situated at a different place and of a different size.

Linked Provisions

Registration Act, 1908 - Section 48 - Registered Documents Relating To Property When To Take Effect Against Oral Agreements

Bharatiya Sakshya Adhiniyam, 2023 - Section 156 - Exclusion of evidence to contradict answers to questions testing veracity

Bharatiya Sakshya Adhiniyam, 2023 - Section 96 - Exclusion of evidence to explain or amend ambiguous document

Corresponding Provision of Previous Statute: Section 94, Indian Evidence Act, 1872

Section 94 - Exclusion of evidence against application of document to existing facts - When language used in a document is plain in itself, and when it applies accurately to existing facts, evidence may not be given to show that it was not meant to apply to such facts.

Illustration

A sells to B, by deed, “my estate at Rampur containing 100 bighas”. A has an estate at Rampur containing 100 bighas. Evidence may not be given of the fact that the estate meant to be sold was one situated at a different place and of a different size.

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

When language used in a document is plain in itself, but is unmeaning in reference to existing facts, evidence may be given to show that it was used in a peculiar sense.

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Illustration

A sells to B, by deed, "my house in Kolkata". A had no house in Kolkata, but it appears that he had a house at Howrah, of which B had been in possession since the execution of the deed. These facts may be proved to show that the deed related to the house at Howrah.

Corresponding Provision of Previous Statute: Section 95, Indian Evidence Act, 1872

Section 95 - Evidence as to document unmeaning reference to existing facts - When language used in a document is plain in itself, but is unmeaning in reference to existing facts, evidence may be given to show that it was used in a peculiar sense.

Illustration

A sells to B, by deed, "my house in Calcutta".

A had no house in Calcutta, but it appears that he had a house at Howrah, of which B had been in possession since the execution of the deed.

These facts may be proved to show that the deed related to the house at Howrah.

LANDMARK JUDGMENT

Mangala Waman Karandikar (D) tr. L.RSection vSection Prakash Damodar Ranade, MANU/SC/0343/2021

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

When the facts are such that the language used might have been meant to apply to any one, and could not have been meant to apply to more than one, of several persons or things, evidence may be given of facts which show which of those persons or things it was intended to apply to.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 100 - Evidence as to application of language to one of two sets of facts, to neither of which the whole correctly applies

Illustrations

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(a) A agrees to sell to B, for one thousand rupees, "my white horse". A has two white horses. Evidence may be given of facts which show which of them was meant.

(b) A agrees to accompany B to Ramgarh. Evidence may be given of facts showing whether Ramgarh in Rajasthan or Ramgarh in Uttarakhand was meant.

Corresponding Provision of Previous Statute: Section 96, Indian Evidence Act, 1872

Section 96 - Evidence as to application of language which can apply to one only of several Persons - When the facts are such that the language used might have been meant to apply to any one, and could not have been meant to apply to more than one, of several persons or things, evidence may be given of facts which show which of those persons or things it was intended to apply to.

Illustrations

(a) A agrees to sell to B, for Rs. 1,000, “my white horse”. A has two white horses. Evidence may be give of facts which show which of them was meant.

(b) A agrees to accompany B to Haidarabad. Evidence may be given of facts showing whether Haidarabad in the Dekkhan or Haiderabad in Sind was meant.

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 used applies partly to one set of existing facts, and partly to another set of existing facts, but the whole of it does not apply correctly to either, evidence may be given to show to which of the two it was meant to apply.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 99 - Evidence as to application of language which can apply to one only of several persons

Illustration

A agrees to sell to B "my land at X in the occupation of Y". A has land at X, but not in the occupation of Y, and he has land in the occupation of Y but it is not at X. Evidence may be given of facts showing which he meant to sell.

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Corresponding Provision of Previous Statute: Section 97, Indian Evidence Act, 1872

Section 97 - Evidence as to application of language to one of two sets of facts, to neither of which the whole correctly applies - When the language used applies partly to one set of existing facts, and partly to another set of existing facts, but the whole of it does not apply correctly to either, evidence may be given to show to which of the two it was meant to apply.

Illustration

A agrees to sell to B "my land at X in the occupation of Y". A has land at X, but not in the occupation of Y, and he has land in the occupation of Y but it is not at X. Evidence may be given of facts showing which he meant to sell.

101. Evidence as to meaning of illegible characters, etc

Evidence may be given to show the meaning of illegible or not commonly intelligible characters, of foreign, obsolete, technical, local and regional expressions, of abbreviations and of words used in a peculiar sense.

Illustration

A, sculptor, agrees to sell to B, "all my mods". A has both models and modelling tools. Evidence may be given to show which he meant to sell.

Corresponding Provision of Previous Statute: Section 98, Indian Evidence Act, 1872

Section 98 - Evidence as to meaning of illegible characters, etc. - Evidence may be given to show the meaning of illegible or not commonly intelligible characters, of foreign, obsolete, technical, local and provincial expressions, of abbreviations and of words used in a peculiar sense.

Illustration

A, sculptor, agrees to sell to B, "all my mods". A has both models and modelling tools. Evidence may be given to show which he meant to sell.

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

Persons who are not parties to a document, or their representatives in interest, may give evidence of any facts tending to show a contemporaneous agreement varying the terms of the document.

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Illustration

A and B make a contract in writing that B shall sell A certain cotton, to be paid for on delivery. At the same time, they make an oral agreement that three months' credit shall be given to A. This could not be shown as between A and B, but it might be shown by C, if it affected his interests.

Corresponding Provision of Previous Statute: Section 99, Indian Evidence Act, 1872

Section 99 - Who may give evidence of agreement varying terms of document - Persons who are not parties to a document, or their representatives in interest, may give evidence of any facts tending to show a contemporaneous agreement varying the terms of the document.

Illustration

A and B make a contract in writing that B shall sell A certain cotton, to be paid for on delivery. At the same time they make an oral agreement that three months credit shall be given to A. This could not be shown as between

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

Nothing in this Chapter shall be taken to affect any of the provisions of the Indian Succession Act, 1925 (39 of 1925) as to the construction of wills.

Corresponding Provision of Previous Statute: Section 100, Indian Evidence Act, 1872

Section 100 - Saving of provisions of Indian Succession Act relating to wills - Nothing in this Chapter contained shall be taken to affect any of the provisions of the Indian Succession Act, 1865 (10 of 1865) as to the construction of willsA and B, but it might be shown by C, if it affected his interests.

PART IV

PRODUCTION AND EFFECT OF EVIDENCE

CHAPTER VII

OF THE BURDEN OF PROOF

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104. Burden of proof

Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist, and when a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

Illustrations

(a) A desires a Court to give judgment that B shall be punished for a crime which A says B has committed. A must prove that B has committed the crime.

(b) A desires a Court to give judgment that he is entitled to certain land in the possession of B, by reason of facts which he asserts, and which B denies, to be true. A must prove the existence of those facts.

Linked Provisions

The Bonded Labour System (Abolition) Act, 1976 - Section 15 - Burden Of Proof

The Capital Issues (Control) Act, 1947 - Section 14 - Burden Of Proof In Certain Cases

Central Goods and Services Tax Act, 2017- Section 155 - Burden Of Proof

The Central Sales Tax Act, 1956 - Section 6A - Burden Of Proof, Etc., In Case Of Transfer Of Goods Claimed Otherwise Than By Way Of Sale

The Commission of Sati (Prevention) Act, 1987 - Section 16 - Burden Of Proof

The Customs Act, 1962 - Section 123 - Burden Of Proof In Certain Cases

Delhi Sales Tax Act, 1975 - Section 6 - Burden Of Proof

The Dowry Prohibition Act, 1961 - Section 8A - Burden Of Proof In Certain Cases

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Essential Commodities Act, 1955 - Section 14 - Burden Of Proof In Certain Cases

Foreign Exchange Regulations Act, 1973 - Section 71 - Burden Of Proof In Certain Cases

Foreigners Act, 1946 - Section 9 - Burden Of Proof

The Indian Factories Act, 1881 - Section 16 - Burden Of Proof As To Age

Indian Railways Act, 1890 - Section 76 - Burden Of Proof In Suits For Compensation

The Industries (Development and Regulation) Act, 1951 - Section 28 - Burden Of Proof In Certain Cases

Narcotic-Drugs and Psychotropic Substances Act 1985 - Section 68J - Burden Of Proof

Patents Act, 1970 - Section 104A - Burden Of Proof In Case Of Suits Concerning Infringement

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The Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 - Section 16A - Burden Of Proof In Certain Cases

Prevention of Money Laundering Act, 2002 - Section 24 - Burden Of Proof

Public Interest Disclosure (Protection of Informers) Act, 2002 - Section 14 - Burden Of Proof In Certain Cases

Railways Act - Section 41 - Burden Of Proof, Etc.

Railways Act- Section 110 - Burden Of Proof

Reciprocity Act, 1943 - Section 4 - Burden Of Proof On Person Claiming Exemption

Registration of Foreigners Act, 1939 - Section 4 - Burden Of Proof

Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 - Section 8 - Burden Of Proof

Wild Life (Protection) Act, 1972 - Section 58J - Burden Of Proof

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Bharatiya Sakshya Adhiniyam, 2023 - Section 105 - On whom burden of proof lies

Bharatiya Sakshya Adhiniyam, 2023 - Section 106 - Burden of proof as to particular fact

Bharatiya Sakshya Adhiniyam, 2023 - Section 112 - Burden of proof as to relationship in the cases of partners, landlord and tenant, principal and agent

Bharatiya Sakshya Adhiniyam, 2023 - Section 113 - Burden of proof as to ownership

Corresponding Provision of Previous Statute: Section 101, Indian Evidence Act, 1872

Section 101 - Burden of proof - Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

Illustrations

(a) A desires a Court to give judgment that B shall be punished for a crime which A says B has committed. A must prove that B has committed the crime.

(b) A desires a Court to give judgment that he is entitled to certain land in the possession of B, by reason of facts which he asserts, and which B denies, to be true. A must prove the existence of those facts.

LANDMRK JUDGMENT

State of U.P. vSection Deoman Upadhyaya, MANU/SC/0060/1960

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105. On whom burden of proof lies

The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

Illustrations

(a) A sues B for land of which B is in possession, and which, as A asserts, was left to A by the will of C, B's father. If no evidence were given on either side, B would be entitled to retain his possession. Therefore, the burden of proof is on A.

(b) A sues B for money due on a bond. The execution of the bond is admitted, but B says that it was obtained by fraud, which A denies. If no evidence were given on either side, A would succeed, as the bond is not disputed and the fraud is not proved. Therefore, the burden of proof is on B.

Linked Provisions

Reciprocity Act, 1943 - Section 4 - Burden Of Proof On Person Claiming Exemption

Bharatiya Sakshya Adhiniyam, 2023 - Section 104 - Burden of proof

Corresponding Provision of Previous Statute: Section 102, Indian Evidence Act, 1872

Section 102 - On whom burden of proof lies - The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

Illustrations

(a) A sues B for land of which B is in possession, and which, as A asserts, was left to A by the will of C, B's father.

If no evidence were given on either side, B would be entitled to retain his possession.

Therefore the burden of proof is on A.

(b) A sues B for money due on a bond.

The execution of the bond is admitted, but B says that it was obtained by fraud, which A denies.

If no evidence were given on either side, A would succeed, as the bond is not disputed and the fraud is not proved.

Therefore the burden of proof is on B.

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106. Burden of proof as to particular fact

The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

Illustration

A prosecutes B for theft, and wishes the Court to believe that B admitted the theft to C. A must prove the admission. B wishes the Court to believe that, at the time in question, he was elsewhere. He must prove it.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 104 - Burden of proof

Bharatiya Sakshya Adhiniyam, 2023 - Section 107 - Burden of proving fact to be proved to make evidence admissible

Bharatiya Sakshya Adhiniyam, 2023 - Section 109 - Burden of proving fact especially within knowledge

Corresponding Provision of Previous Statute: Section 103, Indian Evidence Act, 1872

Section 103 - Burden of proof as to particular fact - The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

Illustrations

(a) A prosecutes B for theft, and wishes the Court to believe that B admitted the theft to C. A must prove the admission.

(b) B wishes the Court to believe that, at the time in question, he was elsewhere. He must prove it.

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

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 109 - Burden of proving fact especially within knowledge

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(a) A wishes to prove a dying declaration by B. A must prove B's death.

(b) A wishes to prove, by secondary evidence, the contents of a lost document. A must prove that the document has been lost.

Bharatiya Sakshya Adhiniyam, 2023 - Section 106 - Burden of proof as to particular fact

Corresponding Provision of Previous Statute: Section 104, Indian Evidence Act, 1872

Section 104 - 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

(a) A wishes to prove a dying declaration by B. A must prove B's death.

(b) A wishes to prove, by secondary evidence, the contents of a lost document.

A must prove that the document has been lost.

108. Burden of proving that case of accused comes within exceptions

When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Bharatiya Nyaya Sanhita, 2023 or within any special exception or proviso contained in any other part of the said Sanhita, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 104 - Burden of proof

Illustrations

(a) A, accused of murder, alleges that, by reason of unsoundness of mind, he did not know the nature of the act. The burden of proof is on A.

(b) A, accused of murder, alleges that, by grave and sudden provocation, he was deprived of the power of self-control. The burden of proof is on A.

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(c) Section 117 of the Bharatiya Nyaya Sanhita, 2023 provides that whoever, except in the case provided for by sub-section (2) of section 122, voluntarily causes grievous hurt, shall be subject to certain punishments. A is charged with voluntarily causing grievous hurt under section 117. The burden of proving the circumstances bringing the case under sub-section (2) of section 122 lies on A.

Corresponding Provision of Previous Statute: Section 105, Indian Evidence Act, 1872

Section 105 - Burden of proving that case of accused comes within exceptions - When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Indian Penal Code (45 of 1860), or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances.

Illustrations

(a) A, accused of murder, alleges that, by reason of unsoundness of mind, he did not know the nature of the act.

The burden of proof is on A.

(b) A, accused of murder, alleges that, by grave and sudden provocation, he was deprived of the power of self-control.

The burden of proof is on A.

(c) Section 325 of the Indian Penal Code (45 of 1860) provides that whoever, except in the case provided for by section 335, voluntarily causes grievous hurt, shall be subject to certain punishments.

A is charged with voluntarily causing grievous hurt under section 325.

The burden of proving the circumstances bringing the case under section 335 lies on A.

LANDMARK JUDGMENT

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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 him.

Illustrations

(a) When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.

(b) A is charged with travelling on a railway without a ticket. The burden of proving that he had a ticket is on him.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 106 - Burden of proof as to particular fact

Bharatiya Sakshya Adhiniyam, 2023 - Section 107 - Burden of proving fact to be proved to make evidence admissible

Corresponding Provision of Previous Statute: Section 106, Indian Evidence Act, 1872

Section 106 - 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 him.

Illustrations

(a) When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.

(b) A is charged with travelling on a railway without a ticket. The burden of proving that he had a ticket is on him

110. Burden of proving death of person known to have been alive within thirty years

When the question is whether a man is alive or dead, and it is shown that he was alive within thirty years, the burden of proving that he is dead is on the person who affirms it.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 106 - Burden of proof as to particular fact

Bharatiya Sakshya Adhiniyam, 2023 - Section 107 - Burden of proving fact to be proved to make evidence admissible

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Corresponding Provision of Previous Statute: Section 107, Indian Evidence Act, 1872

Section 107 - Burden of proving death of person known to have been alive within thirty years - When the question is whether a man is alive or dead, and it is shown that he was alive within thirty years, the burden of proving that he is dead is on the person who affirms it.

111. Burden of proving that person is alive who has not been heard of for seven years

When the question is whether a man is alive or dead, and it is proved that he has not been heard of for seven years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is shifted to the person who affirms it.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 104 - Burden of proof

Corresponding Provision of Previous Statute: Section 108, Indian Evidence Act, 1872

Section 108 - Burden of proving that person is alive who has not been heard of for seven Years -

Provided that when the question is whether a man is alive or dead, and it is proved that he has not been heard of for seven years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is shifted to] the person who affirms it

112. Burden of proof as to relationship in the cases of partners, landlord and tenant, principal and agent

When the question is whether persons are partners, landlord and tenant, or principal and agent, and it has been shown that they have been acting as such, the burden of proving that they do not stand, or have ceased to stand, to each other in those relationships respectively, is on the person who affirms it.

Linked Provisions

Limited Liability Partnership Act, 2008 - Section 23 - Relationship Of Partners

Corresponding Provision of Previous Statute: Section 109, Indian Evidence Act, 1872

Section 109 - Burden of proof as to relationship in the cases of partners, landlord and tenant, principal and agent - When the question is whether persons are partners, landlord and tenant, or principal and agent, and it has been shown that they have been acting as such, the burden of proving that they do not stand, or have ceased to stand, to each other in those relationships respectively, is on the person who affirms it.

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113. Burden of proof as to ownership

When the question is whether any person is owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner.

Linked Provisions

Ajmer Tenancy and Land Records Act, 1950 - Section 193 - Dispute As Regards Ownership Of Land

Companies Act, 1956- Section 187D - Investigation Of Beneficial Ownership Of Shares In Certain Cases

Companies Act, 1956- Section 247 - Investigation Of Ownership Of Company

Companies Act, 2013 - Section 216 - Profit And Loss Account To Be Annexed And Auditors' Report To Be Attached To Balance-Sheet

Gold (Control) Act, 1968 - Section 99 - Presumption As To Ownership Of Gold

Indian Treasure-Trove Act, 1878 - Section 13 - In Case Of Dispute As To Ownership Of Place, Proceedings To Be Stayed

Merchant Shipping Act, 1958 - Section 29 - Declaration Of Ownership On Registry

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The Trade And Merchandise Marks Act, 1958 - Section 129 - Declaration As To Ownership Of Trade Mark Not Registrable Under The Indian Registration Act, 1908

The Trade And Merchandise Marks Act, 1958 - Section 152 - Declaration As To Ownership Of Trade Mark Not Registrable Under The Indian Registration Act, 1908, 1908

Corresponding Provision of Previous Statute: Section 110, Indian Evidence Act, 1872

Section 110 - Burden of proof as to ownership - When the question is whether any person is owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner.

114. Proof of good faith in transactions where one party is in relation of active confidence

Where there is a question as to the good faith of a transaction between parties, one of whom stands to the other in a position of active confidence, the burden of proving the good faith of the transaction is on the party who is in a position of active confidence.

Illustrations.

(a) The good faith of a sale by a client to an advocate is in question in a suit brought by the client. The burden of proving the good faith of the transaction is on the advocate.

Linked Provisions

Delhi Police Act - Section 138 - No Police Officer To Be Liable To Penalty Or Damage For Act Done In Good Faith In Pursuance Of Duty

Bharatiya Nyaya Sanhita, 2023 - Section 27 - Act done in good faith for benefit of child or person of unsound mind

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(b) The good faith of a sale by a son just come of age to a father is in question in a suit brought by the son. The burden of proving the good faith of the transaction is on the father.

Bharatiya Nyaya Sanhita, 2023 - Section 30 - Act done in good faith for benefit of person without consent

Corresponding Provision of Previous Statute: Section 111, Indian Evidence Act, 1872

Section 111 - Proof of good faith in transactions where one party is in relation of active confidence - Where there is a question as to the good faith of a transaction between parties, one of whom stands to the other in a position of active confidence, the burden of proving the good faith of the transaction is on the party who is in a position of active confidence.

Illustrations

(a) The good faith of a sale by a client to an attorney is in question in a suit brought by the client. The burden of proving the good faith of the transaction is on the attorney.

(b) The good faith of a sale by a son just come of age to a father is in question in a suit brought by the son. The burden of proving the good faith of the transaction is on the father.

115. Presumption as to certain offences

(1) Where a person is accused of having committed any offence specified in sub-section (2), in--

(a) any area declared to be a disturbed area under any enactment for the time being in force, making provision for the suppression of disorder and restoration and maintenance of public order; or

(b) any area in which there has been, over a period of more than one month, extensive disturbance of the public peace,

and it is shown that such person had been at a place in such area at a time when firearms or explosives were used at or from that place to attack or resist the members of any armed forces or the forces charged with the maintenance of public order acting in the discharge of their

Linked Provisions

Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 - Section 3 - Power To Declare Areas To Be Disturbed Areas

Armed Forces (Special Powers) Act, 1958 - Section 3 - Power To Declare Areas To Be Disturbed Areas

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duties, it shall be presumed, unless the contrary is shown, that such person had committed such offence.

(2) The offences referred to in sub-section (1) are the following, namely:-

-

(a) an offence under section 147, section 148, section 149 or section 150 of the Bharatiya Nyaya Sanhita, 2023;

(b) criminal conspiracy or attempt to commit, or abetment of, an offence under section 149 or section 150 of the Bharatiya Nyaya Sanhita, 2023.

The Arms Act, 1959 - Section 24A - Prohibition As To Possession Of Notified Arms In Disturbed Areas, Etc.

The Arms Act, 1959 - Section 24B - Prohibition As To Carrying Of Notified Arms In Or Through Public Places In Disturbed Areas, Etc.

Corresponding Provision of Previous Statute: Section 111A, Indian Evidence Act, 1872

Section 111A - Presumption as to certain offences - (1) Where a person is accused of having committed any offence specified in sub-section (2), in –

(a) any area declared to be a disturbed area under any enactment, for the time being in force, making provision for the suppression of disorder and restoration and maintenance of public order; or

(b) any area in which there has been, over a period of more than one month, extensive disturbance of the public peace,

and it is shown that such person had been at a place in such area at a time when firearms or explosives were used at or from that place to attack or resist the members of any armed forces or the forces charged with the maintenance of public order acting in the discharge of their duties, it shall be presumed, unless the contrary is shown, that such person had committed such offence.

(2) The offences referred to in sub-section (1) are the following, namely: –

(a) an offence under section 121, section 121A, section 122 or section 123 of the Indian Penal

Code (45 of 1860);

(b) criminal conspiracy or attempt to commit, or abetment of, an offence under section 122 or section 123 of the Indian Penal Code (45 of 1860).

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116. Birth during marriage, conclusive proof of legitimacy

The fact that any person was born during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the legitimate child of that man, unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten.

Corresponding Provision of Previous Statute: Section 112, Indian Evidence Act, 1872

Section 112 - Birth during marriage, conclusive proof of legitimacy - The fact that any person was born during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the legitimate son of that man, unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten.

117. Presumption as to abetment of suicide by a married woman

When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.

Explanation.--For the purposes of this section, "cruelty" shall have the same meaning as in section 86 of the Bharatiya Nyaya Sanhita, 2023.

Linked Provisions

The Commission of Sati (Prevention) Act, 1987 - Section 4 - Abetment Of Sati

Bharatiya Nyaya Sanhita, 2023 - Section 108 - Abetment of suicide

Bharatiya Nyaya Sanhita, 2023 - Section 85 - Husband or relative of husband of a woman subjecting her to cruelty

Corresponding Provision of Previous Statute: Section 113A, Indian Evidence Act, 1872

Section 113A - Presumption as to abetment of suicide by a married woman - When the question is

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whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.

Explanation. – For the purposes of this section, "cruelty" shall have the same meaning as in section 498A of the Indian Penal Code (45 of 1860).

118. Presumption as to dowry death

When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death, such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.

Explanation.--For the purposes of this section, "dowry death" shall have the same meaning as in section 80 of the Bharatiya Nyaya Sanhita, 2023.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 80 - Dowry Death

Corresponding Provision of Previous Statute: Section 113A, Indian Evidence Act, 1872

Section 113A - Presumption as to dowry death - When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the court shall presume that such person had caused the dowry death.

Explanation. - For the purposes of this section, "dowry death" shall have the same meaning as in section 304B of the Indian Penal Code (45 of 1860).

119. Court may presume existence of certain facts

(1) The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

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Illustrations.

The Court may presume that--

(a) a man who is in possession of stolen goods soon, after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession;

(b) an accomplice is unworthy of credit, unless he is corroborated in material particulars;

(c) a bill of exchange, accepted or endorsed, was accepted or endorsed for good consideration;

(d) a thing or state of things which has been shown to be in existence within a period shorter than that within which such things or state of things usually cease to exist, is still in existence;

(e) judicial and official acts have been regularly performed;

(f) the common course of business has been followed in particular cases;

(g) evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it;

(h) if a man refuses to answer a question which he is not compelled to answer by law, the answer, if given, would be unfavourable to him;

(i) when a document creating an obligation is in the hands of the obligor, the obligation has been discharged.

(2) The Court shall also have regard to such facts as the following, in considering whether such maxims do or do not apply to the particular case before it:--

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(i) as to Illustration (a)--a shop-keeper has in his bill a marked rupee soon after it was stolen, and cannot account for its possession specifically, but is continually receiving rupees in the course of his business;

(ii) as to Illustration (b)--A, a person of the highest character, is tried for causing a man's death by an act of negligence in arranging certain machinery. B, a person of equally good character, who also took part in the arrangement, describes precisely what was done, and admits and explains the common carelessness of A and himself;

(iii) as to Illustration (b)--a crime is committed by several persons. A, B and C, three of the criminals, are captured on the spot and kept apart from each other. Each gives an account of the crime implicating D, and the accounts corroborate each other in such a manner as to render previous concert highly improbable;

(iv) as to Illustration (c)--A, the drawer of a bill of exchange, was a man of business. B, the acceptor, was a young and ignorant person, completely under A's influence;

(v) as to Illustration (d)--it is proved that a river ran in a certain course five years ago, but it is known that there have been floods since that time which might change its course;

(vi) as to Illustration (e)--a judicial act, the regularity of which is in question, was performed under exceptional circumstances;

(vii) as to Illustration (f)--the question is, whether a letter was received. It is shown to have been posted, but the usual course of the post was interrupted by disturbances;

(viii) as to Illustration (g)--a man refuses to produce a document which would bear on a contract of small importance on which he is

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sued, but which might also injure the feelings and reputation of his family;

(ix) as to Illustration (h)--a man refuses to answer a question which he is not compelled by law to answer, but the answer to it might cause loss to him in matters unconnected with the matter in relation to which it is asked;

(x) as to Illustration (i)--a bond is in possession of the obligor, but the circumstances of the case are such that he may have stolen it.

Corresponding Provision of Previous Statute: Section 114, Indian Evidence Act, 1872

Section 114 - Court may presume existence of certain facts - The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case

Illustrations

The Court may presume -

(a) that a man who is in possession of stolen goods soon, after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession;

(b) that an accomplice is unworthy of credit, unless he is corroborated in material particulars;

(c) that a bill of exchange, accepted or endorsed, was accepted or endorsed for good consideration;

(d) that a thing or state of things which has been shown to be in existence within a period shorter than that within which such things or states of things usually cease to exist, is still in existence;

(e) that judicial and official acts have been regularly performed;

(f) that the common course of business has been followed in particular cases;

(g) that evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it;

(h) that if a man refuses to answer a question which he is not compelled to answer by law, the answer, if given, would be unfavourable to him;

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(i) that when a document creating an obligation is in the hands of the obligor, the obligation has been discharged.

But the Court shall also have regard to such facts as the following, in considering whether such maxims do or do not apply to the particular case before it: –

as to illustration (a) –– a shop-keeper has in his bill a marked rupee soon after it was stolen, and cannot account for its possession specifically, but is continually receiving rupees in the course of his business;

as to illustration (b) ––A, a person of the highest character, is tried for causing a man's death by an act of negligence in arranging certain machinery. B, a person of equally good character, who also took part in the arrangement, describes precisely what was done, and admits and explains the common carelessness of A and himself;

as to illustration (b) –– a crime is committed by several persons. A, B and C, three of the criminals, are captured on the spot and kept apart from each other. Each gives an account of the crime implicating D, and the accounts corroborate each other in such a manner as to render previous concert highly improbable;

as to illustration (c) –– A, the drawer of a bill of exchange, was a man of business. B, the acceptor, was a young and ignorant person, completely under A's influence;

as to illustration (d) –– it is proved that a river ran in a certain course five years ago, but it is known that there have been floods since that time which might change its course;

as to illustration (e) –– a judicial act, the regularity of which is in question, was performed under exceptional circumstances;

as to illustration (f) –– the question is, whether a letter was received. It is shown to have been posted, but the usual course of the post was interrupted by disturbances;

as to illustration (g) –– a man refuses to produce a document which would bear on a contract of small

importance on which he is sued, but which might also injure the feelings and reputation of his family;

as to illustration (h) –– a man refuses to answer a question which he is not compelled by law to answer, but the answer to it might cause loss to him in matters unconnected with the matter in relation to which it is asked;

as to illustration (i) –– a bond is in possession of the obligor, but the circumstances of the case are such that he may have stolen it.

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120. Presumption as to absence of consent in certain prosecution for rape

In a prosecution for rape under sub-section (2) of section 64 of the Bharatiya Nyaya Sanhita, 2023, where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and such woman states in her evidence before the Court that she did not consent, the Court shall presume that she did not consent.

Explanation.--In this section, "sexual intercourse" shall mean any of the acts mentioned in section 63 of the Bharatiya Nyaya Sanhita, 2023.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 64 - Punishment for rape

Bharatiya Nyaya Sanhita, 2023 - Section 65(1) - Rape on woman under 16 years of age

Bharatiya Nyaya Sanhita, 2023 - Section 63 - Rape

Corresponding Provision of Previous Statute: Section 114, Indian Evidence Act, 1872

Section 114 - Presumption as to absence of consent in certain prosecution for rape - In a prosecution for rape under clause (a), clause (b), clause (c), clause (d), clause (e), clause (f), clause (g), clause (h), clause (i), clause (j), clause (k), clause (l), clause (m) or clause (n) of sub-section (2) of section 376 of the Indian Penal Code (45 of 1860), where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and such woman states in her evidence before the court that she did not consent, the court shall presume that she did not consent.

Explanation.– In this section, "sexual intercourse" shall mean any of the acts mentioned in clauses (a) to (d) of section 375 of the Indian Penal Code (45 of 1860).

CHAPTER VIII

ESTOPPEL

121. Estoppel

When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing.

Linked Provisions

Negotiable Instruments Act, 1881 - Section 120 - Estoppel Against Denying Original Validity Of Instrument

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Illustration

A intentionally and falsely leads B to believe that certain land belongs to A, and thereby induces B to buy and pay for it. The land afterwards becomes the property of A, and A seeks to set aside the sale on the ground that, at the time of the sale, he had no title. He must not be allowed to prove his want of title.

Negotiable Instruments Act, 1881 - Section 121 - Estoppel Against Denying Capacity Of Payee To Indorse

Negotiable Instruments Act, 1881 - Section 122 - Estoppel Against Denying Signature Or Capacity Of Prior Party

Bharatiya Sakshya Adhiniyam, 2023 - Section 122 - Estoppel of tenants and of licensee of person in possession

Bharatiya Sakshya Adhiniyam, 2023 - Section 123 - Estoppel of acceptor of bill of exchange, bailee or licensee

Corresponding Provision of Previous Statute: Section 115, Indian Evidence Act, 1872

Section 115 - Estoppel - When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing.

Illustration

A intentionally and falsely leads B to believe that certain land belongs to A, and thereby induces B to buy and pay for it.

The land afterwards becomes the property of A, and A seeks to set aside the sale on the ground that, at the time of the sale, he had no title. He must not be allowed to prove his want of title.

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122. 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 or any time thereafter, be permitted to deny that the landlord of such tenant 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 a title to such possession at the time when such licence was given.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 121 - Estoppel

Bharatiya Sakshya Adhiniyam, 2023 - Section 123 - Estoppel of acceptor of bill of exchange, bailee or licensee

Corresponding Provision of Previous Statute: Section 116, Indian Evidence Act, 1872

Section 116 - Estoppel of tenants 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 of such tenant 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 there of shall be permitted to deny that such person had a title to such possession at the time when such licence was given.

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

No acceptor of a bill of exchange shall be permitted to deny that the drawer had authority to draw such bill or to endorse it; nor shall any bailee or licensee be permitted to deny that his bailor or licensor had, at the time when the bailment or licence commenced, authority to make such bailment or grant such licence.

Explanation 1.--The acceptor of a bill of exchange may deny that the bill was really drawn by the person by whom it purports to have been drawn.

Explanation 2.--If a bailee delivers the goods bailed to a person other than the bailor, he may prove that such person had a right to them as against the bailor.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 121 - Estoppel

Bharatiya Sakshya Adhiniyam, 2023 - Section 122 - Estoppel of tenants and of licensee of person in possession

Negotiable Instruments Act, 1881 - Section 5 - Bill Of Exchange

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The Indian Contract Act, 1872 - Section 148 - 'Bailment', `Bailor' And `Bailee' Defined

Corresponding Provision of Previous Statute: Section 117, Indian Evidence Act, 1872

Section 117 - Estoppel of acceptor of bill of exchange, bailee or licensee - No acceptor of a bill of exchange shall be permitted to deny that the drawer had authority to draw such bill or to endorse it; nor shall any bailee or licensee be permitted to deny that his bailor or licensor had, at the time when the bailment or licence commenced, authority to make such bailment or grant such licence.

Explanation (1). –– The acceptor of a bill of exchange may deny that the bill was really drawn by the person by whom it purports to have been drawn.

Explanation (2). –– If a bailee delivers the goods bailed to a person other than the bailor, he may prove that such person had a right to them as against the bailor

CHAPTER IX

OF WITNESSES

124. Who may testify

All persons shall be competent to testify unless the Court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind.

Explanation.--A person of unsound mind is not incompetent to testify, unless he is prevented by his unsoundness of mind from understanding the questions put to him and giving rational answers to them.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 121 - Estoppel

Bharatiya Sakshya Adhiniyam, 2023 - Section 122 - Estoppel of tenants and of licensee of person in possession

Negotiable Instruments Act, 1881 - Section 5 - Bill Of Exchange

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Corresponding Provision of Previous Statute: Section 118, Indian Evidence Act, 1872

Section 118 - Who may testify - All persons shall be competent to testify unless the Court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind.

Explanation - A lunatic is not incompetent to testify, unless he is prevented by his lunacy from understanding the questions put to him and giving rational answers to them.

125. Witness unable to communicate verbally

A witness who is unable to speak may give his evidence in any other manner in which he can make it intelligible, as by writing or by signs; but such writing must be written and the signs made in open Court and evidence so given shall be deemed to be oral evidence:

Provided that if the witness is unable to communicate verbally, the Court shall take the assistance of an interpreter or a special educator in recording the statement, and such statement shall be videographed.

Corresponding Provision of Previous Statute: Section 119, Indian Evidence Act, 1872

Section 119 - Witness unable to communicate verbally - A witness who is unable to speak may give his evidence in any other manner in which he can make it intelligible, as by writing or by signs; but such writing must be written and the signs made in open Court, evidence so given shall be deemed to be oral evidence:

Provided that if the witness is unable to communicate verbally, the Court shall take the assistance of an interpreter or a special educator in recording the statement, and such statement shall be video graphed.

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

(1) In all civil proceedings the parties to the suit, and the husband or wife of any party to the suit, shall be competent witnesses.

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(2) In criminal proceedings against any person, the husband or wife of such person, respectively, shall be a competent witness.

Corresponding Provision of Previous Statute: Section 120, Indian Evidence Act, 1872

Section 120 - Parties to civil suit, and their wives or husbands. Husband or wife of person under criminal trial - In all civil proceedings the parties to the suit, and the husband or wife of any party to the suit, shall be competent witnesses. In criminal proceedings against any person, the husband or wife of such person, respectively, shall be a competent witness.

127. Judges and Magistrates

No Judge or Magistrate shall, except upon the special order of some Court to which he is subordinate, be compelled to answer any question as to his own conduct in Court as such Judge or Magistrate, or as to anything which came to his knowledge in Court as such Judge or Magistrate; but he may be examined as to other matters which occurred in his presence whilst he was so acting.

Illustrations.

(a) A, on his trial before the Court of Session, says that a deposition was improperly taken by B, the Magistrate. B cannot be compelled to answer questions as to this, except upon the special order of a superior Court.

(b) A is accused before the Court of Session of having given false evidence before B, a Magistrate. B cannot be asked what A said, except upon the special order of the superior Court.

(c) A is accused before the Court of Session of attempting to murder a police officer whilst on his trial before B, a Sessions Judge. B may be examined as to what occurred.

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Corresponding Provision of Previous Statute: Section 120, Indian Evidence Act, 1872

Section 120 - Judges and Magistrates - No Judge or Magistrate shall, except upon the special order of some Court to which he is subordinate, be compelled to answer any questions as to his own conduct in Court as such Judge or Magistrate, or as to anything which came to his knowledge in Court as such Judge or Magistrate; but he may be examined as to other matters which occurred in his presence whilst he was so acting.

Illustrations

(a) A, on his trial before the Court of Session, says that a deposition was improperly taken by B, the Magistrate. B cannot be compelled to answer questions as to this, except upon the special order of a superior Court.

(b) A is accused before the Court of Session of having given false evidence before B, a Magistrate. B cannot be asked what A said, except upon the special order of the superior Court.

(c) A is accused before the Court of Session of attempting to murder a police-officer whilst on his trial before B, a Sessions Judge. B may be examined as to what occurred.

128. Communications during marriage

No person who is or has been married, shall be compelled to disclose any communication made to him during marriage by any person to whom he is or has been married; nor shall he be permitted to disclose any such communication, unless the person who made it, or his representative in interest, consents, except in suits between married persons, or proceedings in which one married person is prosecuted for any crime committed against the other.

Linked Provisions

Foreign Marriage Act, 1969 - S, 11 - Marriage Not To Be In Contravention Of Local Laws

Hindu Marriage Act, 1955 - Section 11 - Void Marriages Special

Marriage Act, 1954 - Section 24 - Void Marriages

Corresponding Provision of Previous Statute: Section 122, Indian Evidence Act, 1872

Section 122 - Communications during marriage - No person who is or has been married, shall becompelled to disclose any communication made to him during marriage by any person to whom

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he is or has been married; nor shall he be permitted to disclose any such communication, unless the person who made it, or his representative in interest, consents, except in suits between married persons, or proceedings in which one married person is prosecuted for any crime committed against the other.

129. Evidence as to affairs of State

No one shall be permitted to give any evidence derived from unpublished official records relating to any affairs of State, except with the permission of the officer at the head of the department concerned, who shall give or withhold such permission as he thinks fit.

Corresponding Provision of Previous Statute: Section 123, Indian Evidence Act, 1872

Section 123 - Evidence as to affairs of State - No one shall be permitted to give any evidence derived from unpublished official records relating to any affairs of State, except with the permission of the officer at the head of the department concerned, who shall give or withhold such permission as he thinks fit.

130. Official communications

No public officer shall be compelled to disclose communications made to him in official confidence, when he considers that the public interests would suffer by the disclosure.

Corresponding Provision of Previous Statute: Section 124, Indian Evidence Act, 1872

Section 124 - Official communications - No public officer shall be compelled to disclose communications made to him in official confidence, when he considers that the public interests would suffer by the disclosure.

131. Information as to commission of offences

No Magistrate or police officer shall be compelled to say when he got any information as to the commission of any offence, and no revenue

Linked Provisions

Chemical Weapons Convention Act, 2000 - Section 38 - Information

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officer shall be compelled to say when he got any information as to the commission of any offence against the public revenue.

Explanation. -- "revenue officer" means any officer employed in or about the business of any branch of the public revenue.

As To Commission Of Offences

Narcotic-Drugs and Psychotropic Substances Act 1985 - Section 68 - Information As To Commission Of Offences

Corresponding Provision of Previous Statute: Section 125, Indian Evidence Act, 1872

Section 125 - Information as to commission of offences - No Magistrate or police-officer shall be compelled to say whence he got any information as to the commission of any offence, and no revenueofficer shall be compelled to say whence he got any information as to the commission of any offence against the public revenue.

Explanation.– "Revenue-officer" in this section means any officer employed in or about the business of any branch of the public revenue.

132. Professional communications

(1) No advocate, shall at any time be permitted, unless with his client's express consent, to disclose any communication made to him in the course and for the purpose of his service as such advocate, by or on behalf of his client, or to state the contents or condition of any document with which he has become acquainted in the course and for the purpose of his professional service, or to disclose any advice given by him to his client in the course and for the purpose of such service:

Provided that nothing in this section shall protect from disclosure of-

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(a) any such communication made in furtherance of any illegal purpose;

Linked Provisions

Companies Act, 2013 - Section 227 - Legal Advisers And Bankers Not To Disclose Certain Information

Consumer Protection Act, 2019 - Section 77 - Duty Of Mediator To Disclose Certain Facts

Bharatiya Sakshya Adhiniyam, 2023 - Section 132 - Professional communications

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(b) any fact observed by any advocate, in the course of his service as such, showing that any crime or fraud has been committed since the commencement of his service.

(2) It is immaterial whether the attention of such advocate referred to in the proviso to sub-section (1), was or was not directed to such fact by or on behalf of his client.

Explanation.--The obligation stated in this section continues after the professional service has ceased.

Illustrations.

(a) A, a client, says to B, an advocate - "I have committed forgery, and I wish you to defend me". As the defence of a man known to be guilty is not a criminal purpose, this communication is protected from disclosure.

(b) A, a client, says to B, an advocate - "I wish to obtain possession of property by the use of a forged deed on which I request you to sue". This communication, being made in furtherance of a criminal purpose, is not protected from disclosure.

(c) A, being charged with embezzlement, retains B, an advocate, to defend him. In the course of the proceedings, B observes that an entry has been made in A's account book, charging A with the sum said to have been embezzled, which entry was not in the book at the commencement of his professional service. This being a fact observed by B in the course of his service, showing that a fraud has been committed since the commencement of the proceedings, it is not protected from disclosure.

(3) The provisions of this section shall apply to interpreters, and the clerks or employees of advocates.

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Corresponding Provision of Previous Statute: Section 126, Indian Evidence Act, 1872

Section 126 - Professional communications - No barrister, attorney, pleader or vakil, shall at any time be permitted, unless with his client's express consent, to disclose any communication made to him in the course and for the purpose of his employment as such barrister, pleader, attorney or vakil, by or on behalf of his client, or to state the contents or condition of any document with which he has become acquainted in the course and for the purpose of his professional employment, or to disclose any advice given by him to his client in the course and for the purpose of such employment:

Provided that nothing in this section shall protect from disclosure –

(1) any such communication made in furtherance of any illegal purpose,

(2) any fact observed by any barrister, pleader, attorney or vakil, in the course of his employment as such, showing that any crime or fraud has been committed since the commencement of his employment.

It is immaterial whether the attention of such barrister, pleader, attorney or vakil was or was not directed to such fact by or on behalf of his client.

Explanation. – The obligation stated in this section continues after the employment has ceased.

Illustrations

(a) A, a client, says to B, an attorney – "I have committed forgery, and I wish you to defend me."

As the defence of a man known to be guilty is not a criminal purpose, this communication is protected from disclosure.

(b) A, a client, says to B, an attorney – "I wish to obtain possession of property by the use of a forged deed on which I request you to sue."

This communication, being made in furtherance of a criminal purpose, is not protected from disclosure.

(c) A, being charged with embezzlement, retains B, an attorney, to defend him. In the course of the proceedings, B observes that an entry has been made in A's account book, charging A with the sum said to have been embezzled, which entry was not in the book at the commencement of his employment.

This being a fact observed by B in the course of his employment, showing that a fraud has been committed since the commencement of the proceedings, it is not protected from disclosure.

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Section 127 - Section 126 to apply to interpreters, etc. - The provisions of section 126 shall apply to interpreters, and the clerks or servants of barristers, pleaders, attorneys and vakils.

133. Privilege not waived by volunteering evidence

If any party to a suit gives evidence therein at his own instance or otherwise, he shall not be deemed to have consented thereby to such disclosure as is mentioned in section 132; and, if any party to a suit or proceeding calls any such advocate, as a witness, he shall be deemed to have consented to such disclosure only if he questions such advocate, on matters which, but for such question, he would not be at liberty to disclose.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 132 - Professional communications

Corresponding Provision of Previous Statute: Section 128, Indian Evidence Act, 1872

Section 128 - Privilege not waived by volunteering evidence - If any party to a suit gives evidence therein at his own instance or otherwise, he shall not be deemed to have consented thereby to such disclosure as is mentioned in section 126; and, if any party to a suit or proceeding calls any such barrister, pleader, attorney or vakil as a witness, he shall be deemed to have consented to such disclosure only if he questions such barrister, attorney or vakil on matters which, but for such question, he would not be at liberty to disclose.

134. Confidential communication with legal advisers

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

Corresponding Provision of Previous Statute: Section 129, Indian Evidence Act, 1872

Section 129 - Confidential communications with legal advisers - No one shall be compelled to disclose to the Court any confidential communication which has taken place between him and his

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legal professional adviser, unless he offers himself as a witness, in which case he may be compelled to disclose any such communications as may appear to the Court necessary to be known in order to explain any evidence which he has given, but no others.

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

No witness who is not a party to a suit shall be compelled to produce his title-deeds to any property, or any document in virtue of which he holds any property as pledgee or mortgagee or any document the production of which might tend to criminate him, unless he has agreed in writing to produce them with the person seeking the production of such deeds or some person through whom he claims.

Linked Provisions

Code of Civil Procedure, 1908 - Section 15 - Court In Which Suits To Be Instituted

Corresponding Provision of Previous Statute: Section 130, Indian Evidence Act, 1872

Section 130 - Production of title-deeds of witness not a party - No witness who is not a party to a suit shall be compelled to produce his title-deeds to any property, or any document in virtue of which he holds any property as pledge or mortgagee or any document the production of which might tend to criminate him, unless he has agreed in writing to produce them with the person seeking the production of such deeds or some person through whom he claims.

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

No one shall be compelled to produce documents in his possession or electronic records under his control, which any other person would be entitled to refuse to produce if they were in his possession or control, unless such last-mentioned person consents to their production.

Linked Provisions

Information Technology Act, 2000 – Section 4 - Legal Recognition Of Electronic Records

Corresponding Provision of Previous Statute: Section 131, Indian Evidence Act, 1872

Section 131 - Production of documents or electronic records which another person, having possession, could refuse to produce - No one shall be compelled to produce documents in his possession or electronic records under his control, which any other person would be entitled to refuse to produce if they were in his possession or control, unless such last-mentioned person consents to their production.

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

A witness shall not be excused from answering any question as to any matter relevant to the matter in issue in any suit or in any civil or criminal proceeding, upon the ground that the answer to such question will criminate, or may tend directly or indirectly to criminate, such witness, or that it will expose, or tend directly or indirectly to expose, such witness to a penalty or forfeiture of any kind:

Provided that no such answer, which a witness shall be compelled to give, shall subject him to any arrest or prosecution, or be proved against him in any criminal proceeding, except a prosecution forgiving false evidence by such answer.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 150 - When witness to be compelled to answer

Corresponding Provision of Previous Statute: Section 132, Indian Evidence Act, 1872

Section 132 - Witness not excused from answering on ground that answer will criminate - A witness shall not be excused from answering any question as to any matter relevant to the matter in issue in any suit or in any civil or criminal proceeding, upon the ground that the answer to such question will criminate, or may tend directly or indirectly to criminate, such witness, or that it will expose, or tend directly or indirectly to expose, such witness to a penalty or forfeiture of any kind:

Proviso.- Provided that no such answer, which a witness shall be compelled to give, shall subject him to any arrest or prosecution, or be proved against him in any criminal proceeding, except a prosecution for giving false evidence by such answer.

138. Accomplice

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

Linked Provisions

The Indo-Tibetan Border Police Force Act. 1992 - Section 119 - Tender Of Pardon To Accomplice (Accomplice)

Bharatiya Sakshya Adhiniyam, 2023 - Section 124 - Who may testify

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Corresponding Provision of Previous Statute: Section 133, Indian Evidence Act, 1872

Section 133 – Accomplice - An accomplice shall be a competent witness against an accused person; and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice.

139. Number of witnesses

No particular number of witnesses shall in any case be required for the proof of any fact.

Corresponding Provision of Previous Statute: Section 134, Indian Evidence Act, 1872

Section 134 – Number of witnesses - No particular number of witnesses shall in any case be required for the proof of any fact.

CHAPTER X

OF EXAMINATION OF WITNESSES

140. Order of production and examination of witnesses

The order in which witnesses are produced and examined shall be regulated by the law and practice for the time being relating to civil and criminal procedure respectively, and, in the absence of any such law, by the discretion of the Court.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 143 - Order of examinations

Corresponding Provision of Previous Statute: Section 135, Indian Evidence Act, 1872

Section 135 – Order of production and examination of witnesses - The order in which witnesses are produced and examined shall be regulated by the law and practice for the time being relating to civil and criminal procedure respectively, and, in the absence of any such law, by the discretion of the Court.

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141. Judge to decide as to admissibility of evidence

(1) When either party proposes to give evidence of any fact, the Judge may ask the party proposing to give the evidence in what manner the alleged fact, if proved, would be relevant; and the Judge shall admit the evidence if he thinks that the fact, if proved, would be relevant, and not otherwise.

(2) If the fact proposed to be proved is one of which evidence is admissible only upon proof of some other fact, such last mentioned fact must be proved before evidence is given of the fact first mentioned, unless the party undertakes to give proof of such fact, and the Court is satisfied with such undertaking.

(3) If the relevancy of one alleged fact depends upon another alleged fact being first proved, the Judge may, in his discretion, either permit evidence of the first fact to be given before the second fact is proved, or require evidence to be given of the second fact before evidence is given of the first fact.

Illustrations.

(a) It is proposed to prove a statement about a relevant fact by a person alleged to be dead, which statement is relevant under section 26. The fact that the person is dead must be proved by the person proposing to prove the statement, before evidence is given of the statement.

(b) It is proposed to prove, by a copy, the contents of a document said to be lost. The fact that the original is lost must be proved by the person proposing to produce the copy, before the copy is produced.

(c) A is accused of receiving stolen property knowing it to have been stolen. It is proposed to prove that he denied the possession of the property. The relevancy of the denial depends on the identity of the

Linked Provisions

Unlawful Activities (Prevention) Act, 1967- Section 46

Prevention of Terrorism Act, 2002 - Section 45 - Admissibility Of Evidence Collected Through The Interception Of Communications

Bharatiya Sakshya Adhiniyam, 2023 – Section 168 - Judge's power to put questions or order production

Bharatiya Sakshya Adhiniyam, 2023 - Section 7 - Facts necessary to explain or introduce fact in issue or relevant facts

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property. The Court may, in its discretion, either require the property to be identified before the denial of the possession is proved, or permit the denial of the possession to be proved before the property is identified.

(d) It is proposed to prove a fact A which is said to have been the cause or effect of a fact in issue. There are several intermediate facts B, C and D which must be shown to exist before the fact A can be regarded as the cause or effect of the fact in issue. The Court may either permit A to be proved before B, C or D is proved, or may require proof of B, C and D before permitting proof of A.

Corresponding Provision of Previous Statute: Section 136, Indian Evidence Act, 1872

Section 136 – Judge to decide as to admissibility of evidence - When either party proposes to give evidence of any fact, the Judge may ask the party proposing to give the evidence in what manner the alleged fact, if proved, would be relevant; and the Judge shall admit the evidence if he thinks that the fact, if proved, would be relevant, and not otherwise.

If the fact proposed to be proved is one of which evidence is admissible only upon proof of some other fact, such last-mentioned fact must be proved before evidence is given of the fact first-mentioned, unless the party undertakes to give proof of such fact, and the Court is satisfied with such undertaking.

If the relevancy of one alleged fact depends upon another alleged fact being first proved, the Judge may, in his discretion, either permit evidence of the first fact to be given before the second fact is proved, or require evidence to be given of the second fact before evidence is given of the first fact.

Illustrations

(a) It is proposed to prove a statement about a relevant fact by a person alleged to be dead, which statement is relevant under section 32.

The fact that the person is dead must be proved by the person proposing to prove the statement, before evidence is given of the statement.

(b) It is proposed to prove, by a copy, the contents of a document said to be lost.

The fact that the original is lost must be proved by the person proposing to produce the copy, before the copy is produced.

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(c) A is accused of receiving stolen property knowing it to have been stolen.

It is proposed to prove that he denied the possession of the property.

The relevancy of the denial depends on the identity of the property. The Court may, in its discretion, either require the property to be identified before the denial of the possession is proved, or permit the denial of the possession to be proved before the property is identified.

(d) It is proposed to prove a fact (A) which is said to have been the cause or effect of fact in issue. There are several intermediate facts (B, C and D) which must be shown to exist before the fact (A) can be regarded as the cause or effect of the fact in issue. The Court may either permit A to be proved before B, C or D is proved, or may require proof of B, C and D before permitting proof of A.

142. Examination of witnesses

(1) The examination of a witness by the party who calls him shall be called his examination-in-chief.

(2) The examination of a witness by the adverse party shall be called his cross-examination.

(3) The examination of a witness, subsequent to the cross-examination, by the party who called him, shall be called his re-examination.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 124 - Who may testify

Corresponding Provision of Previous Statute: Section 137, Indian Evidence Act, 1872

Section 137 – Examination-in-chief - The examination of witness by the party who calls him shall be called his examination-in-chief.

Cross-examination – The examination of a witness by the adverse party shall be called his cross-examination.

Re-examination - The examination of a witness, subsequent to the cross-examination by the party who called him, shall be called his re-examination.

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143. Order of examinations

(1) Witnesses shall be first examined-in-chief, then (if the adverse party so desires) cross-examined, then (if the party calling him so desires) re-examined.

(2) The examination-in-chief and cross-examination must relate to relevant facts, but the cross-examination need not be confined to the facts to which the witness testified on his examination-in-chief.

(3) The re-examination shall be directed to the explanation of matters referred to in cross-examination; and, if new matter is, by permission of the Court, introduced in re-examination, the adverse party may further cross-examine upon that matter.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 124 - Who may testify

Bharatiya Sakshya Adhiniyam, 2023 - Section 142 - Examination of witnesses

Corresponding Provision of Previous Statute: Section 138, Indian Evidence Act, 1872

Section 138 – Order of examinations - Witnesses shall be first examined-in-chief, then (if the adverse party so desires) cross-examined, then (if the party calling him so desires) re-examined.

The examination and cross-examination must relate to relevant facts, but the cross-examination need not be confined to the facts to which the witness testified on his examination-in-chief.

Direction of re-examination - The re-examination shall be directed to the explanation of matters referred to in cross-examination; and, if new matter is, by permission of the Court, introduced in re-examination, the adverse party may further cross-examine upon that matter.

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

A person summoned to produce a document does not become a witness by the mere fact that he produces it, and cannot be cross-examined unless and until he is called as a witness.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 142 - Examination of witnesses

Bharatiya Sakshya Adhiniyam, 2023 - Section 143 - Order of examinations

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Corresponding Provision of Previous Statute: Section 139, Indian Evidence Act, 1872

Section 139 – Cross-examination of person called to produce a document - A person summoned to produce a document does not become a witness by the mere fact that he produces it, and cannot be cross-examined unless and until he is called as a witness.

145. Witnesses to character

Witnesses to character may be cross-examined and re-examined.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 46 - In civil cases character to prove conduct imputed, irrelevant

Bharatiya Sakshya Adhiniyam, 2023 - Section 47 - In criminal cases previous good character relevant

Bharatiya Sakshya Adhiniyam, 2023 - Section 48 - Evidence of character or previous sexual experience not relevant in certain cases

Bharatiya Sakshya Adhiniyam, 2023 - Section 49 - Previous bad character not relevant, except in reply

Bharatiya Sakshya Adhiniyam, 2023 - Section 50 - Character as affecting damages

Corresponding Provision of Previous Statute: Section 140, Indian Evidence Act, 1872

Section 140 – Witnesses to character - Witnesses to character may be cross-examined and re-examined.

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146. Leading questions

(1) Any question suggesting the answer which the person putting it wishes or expects to receive, is called a leading question.

(2) Leading questions must not, if objected to by the adverse party, be asked in an examination-in-chief, or in a re-examination, except with the permission of the Court.

(3) The Court shall permit leading questions as to matters which are introductory or undisputed, or which have, in its opinion, been already sufficiently proved.

(4) Leading questions may be asked in cross-examination.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 146 - Leading questions

Bharatiya Sakshya Adhiniyam, 2023 - Section 142 - Examination of witnesses

Corresponding Provision of Previous Statute: Section 141, Indian Evidence Act, 1872

Section 141 – Leading questions - Any question suggesting the answer which the person putting it wishes or expects to receive, is called a leading question.

Section 142 - When they must not be asked - Leading questions must not, if objected to by the adverse party, be asked in an examination-in-chief, or in a re-examination, except with the permission of the Court.

The Court shall permit leading questions as to matters which are introductory or undisputed, or which have, in its opinion, been already sufficiently proved.

Section 143 - When they may be asked - Leading questions may be asked in cross-examination.

147. Evidence as to matters in writing

Any witness may be asked, while under examination, whether any contract, grant or other disposition of property, as to which he is giving evidence, was not contained in a document, and if he says that it was, or if he is about to make any statement as to the contents of any document, which, in the opinion of the Court, ought to be produced, the adverse party may object to such evidence being given until such

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 60 - Cases in which secondary evidence relating to documents may be given

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document is produced, or until facts have been proved which entitle the party who called the witness to give secondary evidence of it.

Explanation.- A witness may give oral evidence of statements made by other persons about the contents of documents if such statements are in themselves relevant facts.

Illustration.

The question is, whether A assaulted B. C deposes that he heard A say to D - "B wrote a letter accusing me of theft, and I will be revenged on him". This statement is relevant, as showing A's motive for the assault, and evidence may be given of it, though no other evidence is given about the letter.

Bharatiya Sakshya Adhiniyam, 2023 - Section 58 - Secondary evidence

Bharatiya Sakshya Adhiniyam, 2023 - Section 94 - Evidence of terms of contracts, grants and other dispositions of property reduced to form of document

Corresponding Provision of Previous Statute: Section 144, Indian Evidence Act, 1872

Section 144 – Evidence as to matters in writing - Any witness may be asked, whilst under examination, whether any contract, grant or other disposition of property, as to which he is giving evidence, was not contained in a document, and if he says that it was, or if he is about to make any statement as to the contents of any document, which, in the opinion of the Court, ought to be produced, the adverse party may object to such evidence being given until such document is produced, or until facts have been proved which entitle the party who called the witness to give secondary evidence of it.

Explanation - A witness may give oral evidence of statements made by other persons about the contents of documents if such statements are in themselves relevant facts.

Illustration

The question is, whether A assaulted B.

C deposes that he heard A say to D– "B wrote a letter accusing me of theft, and I will be revenged on him." This statement is relevant, as showing A's motive for the assault, and evidence may be given of it, though no other evidence is given about the letter.

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148. Cross-examination as to previous statements in writing

A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 142 - Examination of witnesses

Bharatiya Sakshya Adhiniyam, 2023 - Section 58 - Secondary evidence

Bharatiya Sakshya Adhiniyam, 2023 - Section 156 - Exclusion of evidence to contradict answers to questions testing veracity

Bharatiya Sakshya Adhiniyam, 2023 - Section 158 - Impeaching credit of witness

Corresponding Provision of Previous Statute: Section 145, Indian Evidence Act, 1872

Section 145 – Cross-examination as to previous statements in writing - A witness may be crossexamined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.

149. Questions lawful in cross-examination

When a witness is cross-examined, he may, in addition to the questions hereinbefore referred to, be asked any questions which tend--

(a) to test his veracity; or

(b) to discover who he is and what is his position in life; or

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 142 - Examination of witnesses

Bharatiya Nyaya Sanhita, 2023 - Section 64- Punishment for rape

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(c) to shake his credit, by injuring his character, although the answer to such questions might tend directly or indirectly to criminate him, or might expose or tend directly or indirectly to expose him to a penalty or forfeiture:

Provided that in a prosecution for an offence under section 64, section 65, section 66, section 67, section 68, section 69, section 70 or section 71 of the Bharatiya Nyaya Sanhita, 2023 or for attempt to commit any such offence, where the question of consent is an issue, it shall not be permissible to adduce evidence or to put questions in the cross-examination of the victim as to the general immoral character, or previous sexual experience, of such victim with any person for proving such consent or the quality of consent.

Bharatiya Nyaya Sanhita, 2023 - Section 65(1) - Rape on woman under 16 years of age

Bharatiya Nyaya Sanhita, 2023 - Section 65(2) - Rape on woman under 12 years of age

Bharatiya Nyaya Sanhita, 2023 - Section 66 - Rape causing death or persistent vegetative state

Bharatiya Nyaya Sanhita, 2023 - Section 70 (1) - Gang Rape

Bharatiya Nyaya Sanhita, 2023 - Section 67 - Sexual intercourse during separation

Bharatiya Nyaya Sanhita, 2023 - Section 68 - Sexual intercourse by person in authority

Bharatiya Nyaya Sanhita, 2023 - Section 71 - Repeat Offenders

Bharatiya Nyaya Sanhita, 2023 - Section 70 (2) - Gang rape on women under the age of 18

Bharatiya Nyaya Sanhita, 2023 - Section 69 - Sexual intercourse by deceitful means or false promise to marry

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Corresponding Provision of Previous Statute: Section 146, Indian Evidence Act, 1872

Section 146 – Questions lawful in cross-examination - When a witness is cross-examined, he may, in addition to the questions hereinbefore referred to, be asked any questions which tend––

(1) to test his veracity,

(2) to discover who he is and what is his position in life, or

(3) to shake his credit, by injuring his character, although the answer to such questions might tend directly or indirectly to criminate him, or might expose or tend directly or indirectly to expose him to a penalty or forfeiture:

Provided that in a prosecution for an offence under section 376, section 376A, section 376AB section 376B, section 376C, section 376D, section 376DA, section 376DB or section 376E of the Indian Penal Code (45 of 1860) or for attempt to commit any such offence, where the question of consent is an issue, it shall not be permissible to adduce evidence or to put questions in the cross-examination of the victim as to the general immoral character, or previous sexual experience, of such victim with any person for proving such consent or the quality of consent.

150. When witness to be compelled to answer

If any such question relates to a matter relevant to the suit or proceeding, the provisions of section 137 shall apply thereto.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 151 - Court to decide when question shall be asked and when witness compelled to answer

Corresponding Provision of Previous Statute: Section 147, Indian Evidence Act, 1872

Section 147 – When witness to be compelled to answer - If any such question relates to a matter relevant to the suit or proceeding, the provisions of section 132 shall apply thereto.

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

(1) If any such question relates to a matter not relevant to the suit or proceeding, except in so far as it affects the credit of the witness by injuring his character, the Court shall decide whether or not the witness

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 150 - When witness to be compelled to answer

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shall be compelled to answer it, and may, if it thinks fit, warn the witness that he is not obliged to answer it.

(2) In exercising its discretion, the Court shall have regard to the following considerations, namely:-

(a) such questions are proper if they are of such a nature that the truth of the imputation conveyed by them would seriously affect the opinion of the Court as to the credibility of the witness on the matter to which he testifies;

(b) such questions are improper if the imputation which they convey relates to matters so remote in time, or of such a character, that the truth of the imputation would not affect, or would affect in a slight degree, the opinion of the Court as to the credibility of the witness on the matter to which he testifies;

(c) such questions are improper if there is a great disproportion between the importance of the imputation made against the witness's character and the importance of his evidence;

(d) the Court may, if it sees fit, draw, from the witness's refusal to answer, the inference that the answer if given would be unfavourable.

Bharatiya Sakshya Adhiniyam, 2023 - Section 149 - Questions lawful in cross-examination

Corresponding Provision of Previous Statute: Section 148, Indian Evidence Act, 1872

Section 148 – Court to decide when question shall be asked and when witness compelled to answer – If any such question relates to a matter not relevant to the suit or proceeding, except in so far as it affects the credit of the witness by injuring his character, the Court shall decide whether or not the witness shall be compelled to answer it, and may, if it thinks fit, warn the witness that he is not obliged to answer it. In exercising its discretion, the Court shall have regard to the following considerations:–

(1) such questions are proper if they are of such a nature that the truth of the imputation conveyed by them would seriously affect the opinion of the Court as to the credibility of the witness on the matter to which he testifies;

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(2) such questions are improper if the imputation which they convey relates to matters so remote in time, or of such a character, that the truth of the imputation would not affect, or would affect in a slight degree, the opinion of the Court as to the credibility of the witness on the matter to which he testifies;

(3) such questions are improper if there is a great disproportion between the importance of the imputation made against the witness's character and the importance of his evidence;

(4) the Court may, if it sees fit, draw, from the witness's refusal to answer, the inference that the answer if given would be unfavourable.

152. Question not to be asked without reasonable grounds

No such question as is referred to in section 151 ought to be asked, unless the person asking it has reasonable grounds for thinking that the imputation which it conveys is well-founded.

Illustrations.

(a) An advocate is instructed by another advocate that an important witness is a dacoit. This is a reasonable ground for asking the witness whether he is a dacoit.

(b) An advocate is informed by a person in Court that an important witness is a dacoit. The informant, on being questioned by the advocate, gives satisfactory reasons for his statement. This is a reasonable ground for asking the witness whether he is a dacoit.

(c) A witness, of whom nothing whatever is known, is asked at random whether he is a dacoit. There are here no reasonable grounds for the question.

(d) A witness, of whom nothing whatever is known, being questioned as to his mode of life and means of living, gives unsatisfactory answers. This may be a reasonable ground for asking him if he is a dacoit.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 151 - Court to decide when question shall be asked and when witness compelled to answer

Bharatiya Sakshya Adhiniyam, 2023 - Section 153 - Procedure of Court in case of question being asked without reasonable grounds

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Corresponding Provision of Previous Statute: Section 149, Indian Evidence Act, 1872

Section 149 – Question not to be asked without reasonable grounds - No such question as is referred to in section 148 ought to be asked, unless the person asking it has reasonable grounds for thinking that the imputation which it conveys is well-founded.

Illustrations

(a) A barrister is instructed by an attorney or vakil that an important witness is a dakait. This is a reasonable ground for asking the witness whether he is a dakait.

(b) A pleader is informed by a person in Court that an important witness is a dakait. The informant, on being questioned by the pleader, gives satisfactory reasons for his statement. This is a reasonable ground for asking the witness whether he is a dakait.

(c) A witness, of whom nothing whatever is known is asked at random whether he is a dakait. There are here no reasonable ground for the question.

(d) A witness, of whom nothing whatever is known, being questioned as to his mode of life and means of living, gives unsatisfactory answers. This may be a reasonable ground for asking him if he is a dakait.

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

If the Court is of opinion that any such question was asked without reasonable grounds, it may, if it was asked by any advocate, report the circumstances of the case to the High Court or other authority to which such advocate is subject in the exercise of his profession.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 152 - Question not to be asked without reasonable grounds

Corresponding Provision of Previous Statute: Section 150, Indian Evidence Act, 1872

Section 150 – Procedure of Court in case of question being asked without reasonable grounds - If the Court is of opinion that any such question was asked without reasonable grounds, it may, if it was asked by any barrister, pleader, vakil or attorney, report the circumstances of the case to the High Court or other authority to which such barrister, pleader, vakil or attorney is subject in the exercise of his profession.

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154. Indecent and scandalous questions

The Court may forbid any questions or inquiries which it regards as indecent or scandalous, although such questions or inquiries may have some bearing on the questions before the Court, unless they relate to facts in issue, or to matters necessary to be known in order to determine whether or not the facts in issue existed.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 149 - Questions lawful in cross-examination

Bharatiya Sakshya Adhiniyam, 2023 - Section 150 - When witness to be compelled to answer

Bharatiya Sakshya Adhiniyam, 2023 - Section 152 - Question not to be asked without reasonable grounds

Bharatiya Sakshya Adhiniyam, 2023 - Section 155 - Questions intended to insult or annoy

Corresponding Provision of Previous Statute: Section 151, Indian Evidence Act, 1872

Section 151 – Indecent and scandalous questions - The Court may forbid any questions or inquiries which it regards as indecent or scandalous, although such questions or inquiries may have some bearing on the questions before the Court, unless they relate to facts in issue, or to matters necessary to be known in order to determine whether or not the facts in issue existed.

155. Questions intended to insult or annoy

The Court shall forbid any question which appears to it to be intended to insult or annoy, or which, though proper in itself, appears to the Court needlessly offensive in form.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 149 - Questions lawful in cross-examination

Bharatiya Sakshya Adhiniyam, 2023 - Section 150 - When witness to be compelled to answer

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Bharatiya Sakshya Adhiniyam, 2023 - Section 152 - Question not to be asked without reasonable grounds

Bharatiya Sakshya Adhiniyam, 2023 - Section 155 - Questions intended to insult or annoy

Corresponding Provision of Previous Statute: Section 152, Indian Evidence Act, 1872

Section 152 – Questions intended to insult or annoy - The Court shall forbid any question which appears to it to be intended to insult or annoy, or which, though proper in itself, appears to the Court needlessly offensive in form.

156. Exclusion of evidence to contradict answers to questions testing veracity

When a witness has been asked and has answered any question which is relevant to the inquiry only in so far as it tends to shake his credit by injuring his character, no evidence shall be given to contradict him; but, if he answers falsely, he may afterwards be charged with giving false evidence.

Exception 1 - If a witness is asked whether he has been previously convicted of any crime and denies it, evidence may be given of his previous conviction.

Exception 2 - If a witness is asked any question tending to impeach his impartiality, and answers it by denying the facts suggested, he may be contradicted.

Illustrations.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 212 - Furnishing False Information

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(a) A claim against an underwriter is resisted on the ground of fraud. The claimant is asked whether, in a former transaction, he had not made a fraudulent claim. He denies it. Evidence is offered to show that he did make such a claim. The evidence is inadmissible.

(b) A witness is asked whether he was not dismissed from a situation for dishonesty. He denies it. Evidence is offered to show that he was dismissed for dishonesty. The evidence is not admissible.

(c) A affirms that on a certain day he saw B at Goa. A is asked whether he himself was not on that day at Varanasi. He denies it. Evidence is offered to show that A was on that day at Varanasi. The evidence is admissible, not as contradicting A on a fact which affects his credit, but as contradicting the alleged fact that B was seen on the day in question in Goa. In each of these cases, the witness might, if his denial was false, be charged with giving false evidence.

(d) A is asked whether his family has not had a blood feud with the family of B against whom he gives evidence. He denies it. He may be contradicted on the ground that the question tends to impeach his impartiality.

Corresponding Provision of Previous Statute: Section 153, Indian Evidence Act, 1872

Section 153 – Exclusion of evidence to contradict answers to questions testing veracity - When a witness has been asked and has answered any question which is relevant to the inquiry only in so far as it tends to shake his credit by injuring his character, no evidence shall be given to contradict him; but, if he answers falsely, he may after wards be charged with giving false evidence.

Exception 1 - If a witness is asked whether he has been previously convicted of any crime and denies it, evidence may be given of his previous conviction.

Exception 2 - If a witness is asked any question tending to impeach his impartiality, and answers it by denying the facts suggested, he may be contradicted.

Illustrations

Back to Index

(a) A claim against an underwriter is resisted on the ground of fraud.

The claimant is asked whether, in a former transaction, he had not made a fraudulent claim. He denies it.

Evidence is offered to show that he did make such a claim.

The evidence is inadmissible.

(b) A witness is asked whether he was not dismissed from a situation for dishonesty.

He denies it.

Evidence is offered to show that he was dismissed for dishonesty.

The evidence is not admissible.

(c) A affirms that on a certain day he saw B at Lahore.

A is asked whether he himself was not on that day at Calcutta. He denies it.

Evidence is offered to show that A was on that day at Calcutta.

The evidence is admissible, not as contradicting A on a fact which affects his credit, but as contradicting the alleged fact that B was seen on the day in question in Lahore.

In each of these cases the witness might, if his denial was false, be charged with giving false evidence.

(d) A is asked whether his family has not had a bloodfeud with the family of B against whom he gives evidence.

He denies it. He may be contradicted on the ground that the question tends to impeach his impartiality.

157. Question by party to his own witness

(1) The Court may, in its discretion, permit the person who calls a witness to put any question to him which might be put in cross-examination by the adverse party.

(2) Nothing in this section shall disentitle the person so permitted under sub-section (1), to rely on any part of the evidence of such witness.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 149 - Questions lawful in cross-examination

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Corresponding Provision of Previous Statute: Section 154, Indian Evidence Act, 1872

Section 154 – Question by party to his own witness - (1) The Court may, in its discretion, permit the person who calls a witness to put any questions to him which might be put in cross-examination by the adverse party.

(2) Nothing in this section shall disentitle the person so permitted under sub-section (1), to rely on any part of the evidence of such witness.

158. Impeaching credit of witness

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 149 - Questions lawful in cross-examination

The credit of a witness may be impeached in the following ways by the adverse party, or, with the consent of the Court, by the party who calls him-

(a) by the evidence of persons who testify that they, from their knowledge of the witness, believe him to be unworthy of credit;

(b) by proof that the witness has been bribed, or has accepted the offer of a bribe, or has received any other corrupt inducement to give his evidence;

(c) by proof of former statements inconsistent with any part of his evidence which is liable to be contradicted.

Explanation - A witness declaring another witness to be unworthy of credit may not, upon his examination-in-chief, give reasons for his belief, but he may be asked his reasons in cross-examination, and the answers which he gives cannot be contradicted, though, if they are false, he may afterwards be charged with giving false evidence.

Illustrations.

(a) A sues B for the price of goods sold and delivered to B. C says that he delivered the goods to B. Evidence is offered to show that, on a

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previous occasion, he said that he had not delivered goods to B. The evidence is admissible.

(b) A is accused of the murder of B. C says that B, when dying, declared that A had given B the wound of which he died. Evidence is offered to show that, on a previous occasion, C said that B, when dying, did not declare that A had given B the wound of which he died. The evidence is admissible.

Corresponding Provision of Previous Statute: Section 155, Indian Evidence Act, 1872

Section 155 – Impeaching credit of witness - The credit of a witness may be impeached in the following ways by the adverse party, or, with the consent of the Court, by the party who calls him:-

(1) By the evidence of persons who testify that they, from their knowledge of the witness, believe him to be unworthy of credit;

(2) By proof that the witness has been bribed, or has accepted the offer of a bribe, or has received any other corrupt inducement to give his evidence;

(3) By proof of former statements inconsistent with any part of his evidence which is liable to be contradicted;

* * * * *

Explanation - A witness declaring another witness to be unworthy of credit may not, upon his examination-in-chief, give reasons for his belief, but he may be asked his reasons in cross-examination, and the answers which he gives cannot be contradicted, though, if they are false, he may afterwards be charged with giving false evidence.

Illustrations

(a) A sues B for the price of goods sold and delivered to B.

C says that he delivered the goods to B.

Evidence is offered to show that, on a previous occasion, he said that he had not delivered goods to B. The evidence is admissible.

(b) A is indicted for the murder of B.

C says that B, when dying, declared that A had given B the wound of which he died.

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Evidence is offered to show that, on a previous occasion, C said that the wound was not given by A or in his presence.

The evidence is admissible.

159. Questions tending to corroborate evidence of relevant fact, admissible

When a witness whom it is intended to corroborate gives evidence of any relevant fact, he may be questioned as to any other circumstances which he observed at or near to the time or place at which such relevant fact occurred, if the Court is of opinion that such circumstances, if proved, would corroborate the testimony of the witness as to the relevant fact which he testifies.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 138 - Accomplice

Illustration.

A, an accomplice, gives an account of a robbery in which he took part. He describes various incidents unconnected with the robbery which occurred on his way to and from the place where it was committed. Independent evidence of these facts may be given in order to corroborate his evidence as to the robbery itself.

Corresponding Provision of Previous Statute: Section 156, Indian Evidence Act, 1872

Section 156 – Questions tending to corroborate evidence of relevant fact, admissible - When a witness whom it is intended to corroborate gives evidence of any relevant fact, he may be questioned as to any other circumstances which he observed at or near to the time or place at which such relevant fact occurred, if the Court is of opinion that such circumstances, if proved, would corroborate the testimony of the witness as to the relevant fact which he testifies.

Illustration

A, an accomplice, gives an account of a robbery in which he took part. He describes various incidents unconnected with the robbery which occurred on his way to and from the place where it was committed.

Independent evidence of these facts may be given in order to corroborate his evidence as to the robbery itself.

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160. Former statements of witness may be proved to corroborate later testimony as to same fact

In order to corroborate the testimony of a witness, any former statement made by such witness relating to the same fact, at or about the time when the fact took place, or before any authority legally competent to investigate the fact, may be proved.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 138 - Accomplice

Bharatiya Sakshya Adhiniyam, 2023 - Section 124 - Who may testify

Corresponding Provision of Previous Statute: Section 157, Indian Evidence Act, 1872

Section 157 – Former statements of witness may be proved to corroborate later testimony as to same Fact – In order to corroborate the testimony of a witness, any former statement made by such witness relating to the same fact, at or about the time when the fact took place, or before any authority legally competent to investigate the fact, may be proved.

161. What matters may be proved in connection with proved statement relevant under section 26 or 27

Whenever any statement, relevant under section 26 or 27, is proved, all matters may be proved either in order to contradict or to corroborate it, or in order to impeach or confirm the credit of the person by whom it was made, which might have been proved if that person had been called as a witness and had denied upon cross-examination the truth of the matter suggested.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 26 - Cases in which statement of facts in issue or relevant fact by person who is dead or cannot be found, etc., is relevant

Bharatiya Sakshya Adhiniyam, 2023 - Section 27 - Relevancy of certain evidence for proving, in subsequent proceeding, the truth of facts therein stated

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Corresponding Provision of Previous Statute: Section 158, Indian Evidence Act, 1872

Section 158 – What matters may be proved in connection with proved statement relevant under section 32 or 33 - Whenever any statement, relevant under section 32 or 33, is proved, all matters may be proved either in order to contradict or to corroborate it, or in order to impeach or confirm the credit of the person by whom it was made, which might have been proved if that person had been called as a witness and had denied upon cross-examination the truth of the matter suggested.

162. Refreshing memory

(1) A witness may, while under examination, refresh his memory by referring to any writing made by himself at the time of the transaction concerning which he is questioned, or so soon afterwards that the Court considers it likely that the transaction was at that time fresh in his memory:

Provided that the witness may also refer to any such writing made by any other person, and read by the witness within the time aforesaid, if when he read it, he knew it to be correct.

(2) Whenever a witness may refresh his memory by reference to any document, he may, with the permission of the Court, refer to a copy of such document:

Provided that the Court be satisfied that there is sufficient reason for the non-production of the original:

Provided further that an expert may refresh his memory by reference to professional treatises.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 163 - Testimony to facts stated in document mentioned in section 162

Corresponding Provision of Previous Statute: Section 159, Indian Evidence Act, 1872

Section 159 – Refreshing memory - A witness may, while under examination, refresh his memory by referring to any writing made by himself at the time of the transaction concerning which he is questioned, or so soon afterwards that the Court considers it likely that the transaction was at that time fresh in his memory.

The witness may also refer to any such writing made by any other person, and read by the witness within the time aforesaid, if when he read it he knew it to be correct.

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When witness may use copy of document to refresh memory - Whenever a witness may refresh his memory by reference to any document, he may, with the permission of the Court, refer to a copy of such document:

Provided the Court be satisfied that there is sufficient reason for the non-production of the original. An expert may refresh his memory by reference to professional treatises.

163. Testimony to facts stated in document mentioned in section 162

A witness may also testify to facts mentioned in any such document as is mentioned in section 162, although he has no specific recollection of the facts themselves, if he is sure that the facts were correctly recorded in the document.

Illustration.

A book-keeper may testify to facts recorded by him in books regularly kept in the course of business, if he knows that the books were correctly kept, although he has forgotten the particular transactions entered.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 162 - Refreshing memory

Bharatiya Sakshya Adhiniyam, 2023 - Section 56 - Proof of contents of documents

Corresponding Provision of Previous Statute: Section 160, Indian Evidence Act, 1872

Section 160 – Testimony to facts stated in document mentioned in section 159 - A witness may also testify to facts mentioned in any such document as is mentioned in section 159, although he has no specific recollection of the facts themselves, if he is sure that the facts were correctly recorded in the document.

Illustration

A book-keeper may testify to facts recorded by him in books regularly kept in the course of business, if he knows that the books were correctly kept, although he has forgotten the particular transactions entered

164. Right of adverse party as to writing used to refresh memory

Any writing referred to under the provisions of the two last preceding sections shall be produced and shown to the adverse party if he requires it; such party may, if he pleases, cross-examine the witness thereupon.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 163 - Testimony to facts

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stated in document mentioned in section 162

Bharatiya Sakshya Adhiniyam, 2023 - Section 162 - Refreshing memory

Bharatiya Sakshya Adhiniyam, 2023 - Section 142 -Examination of witnesses

Corresponding Provision of Previous Statute: Section 161, Indian Evidence Act, 1872

Section 161 – Right of adverse party as to writing used to refresh memory - Any writing referred to under the provisions of the two last preceding sections must be produced and shown to the adverse party if he requires it; such party may, if he pleases, cross-examine the witness thereupon.

165. Production of documents

(1) A witness summoned to produce a document shall, if it is in his possession or power, bring it to Court, notwithstanding any objection which there may be to its production or to its admissibility:

Provided that the validity of any such objection shall be decided on by the Court.

(2) The Court, if it sees fit, may inspect the document, unless it refers to matters of State, or take other evidence to enable it to determine on its admissibility.

(3) If for such a purpose it is necessary to cause any document to be translated, the Court may, if it thinks fit, direct the translator to keep the contents secret, unless the document is to be given in evidence and, if the interpreter disobeys such direction, he shall be held to have

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 79 - Presumption as to documents produced as record of evidence, etc.

Bharatiya Sakshya Adhiniyam, 2023 - Section 94 - Evidence of terms of contracts, grants and other dispositions of property reduced to form of document

Bharatiya Sakshya Adhiniyam, 2023 - Section 144 - Cross-examination of person called to produce a document

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committed an offence under section 198 of the Bharatiya Nyaya Sanhita, 2023:

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

Bharatiya Sakshya Adhiniyam, 2023 - Section 166 - Giving, as evidence, of document called for and produced on notice

Bharatiya Sakshya Adhiniyam, 2023 - Section 167 - Using, as evidence, of document production of which was refused on notice

Bharatiya Nyaya Sanhita, 2023 - Section 198 - Public servant disobeying law, with intent to cause injury to any person

Corresponding Provision of Previous Statute: Section 162, Indian Evidence Act, 1872

Section 162 – Production of documents - A witness summoned to produce a document shall, if it is in his possession or power, bring it to Court, notwithstanding any objection which there may be to its production or to its admissibility. The validity of any such objection shall be decided on by the Court. The Court, if it sees fit, may inspect the document, unless it refers to matters of State, or take other evidence to enable it to determine on its admissibility.

Translation of documents - If for such a purpose it is necessary to cause any document to be translated, the Court may, if it thinks fit, direct the translator to keep the contents secret, unless the document is to be given in evidence and, if the interpreter disobeys such direction, he shall be held to have committed an offence under section 166 of the Indian Penal Code (45 of 1860).

166. Giving, as evidence, of document called for and produced on notice

When a party calls for a document which he has given the other party notice to produce, and such document is produced and inspected by the party calling for its production, he is bound to give it as evidence if the party producing it requires him to do so.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 165 - Production of documents

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Corresponding Provision of Previous Statute: Section 163, Indian Evidence Act, 1872

Section 163 – Giving, as evidence, of document called for and produced on notice - When a party calls for a document which he has given the other party notice to produce, and such document is produced and inspected by the party calling for its production, he is bound to give it as evidence if the party producing it requires him to do so.

167. Using, as evidence, of document production of which was refused on notice

When a party refuses to produce a document which he has had notice to produce, he cannot afterwards use the document as evidence without the consent of the other party or the order of the Court.

Illustration.

A sues B on an agreement and gives B notice to produce it. At the trial, A calls for the document and B refuses to produce it. A gives secondary evidence of its contents. B seeks to produce the document itself to contradict the secondary evidence given by A, or in order to show that the agreement is not stamped. He cannot do so.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 165 - Production of documents

Corresponding Provision of Previous Statute: Section 164, Indian Evidence Act, 1872

Section 164 – Using, as evidence, of document production of which was refused on notice - When a party refuses to produce a document which he has had notice to produce, he cannot afterwards use the document as evidence without the consent of the other party or the order of the Court.

Illustration

A sues B on an agreement and gives B notice to produce it. At the trial, A calls for the document and B refuses to produce it. A gives secondary evidence of its contents. B seeks to produce the document itself to contradict the secondary evidence given by A, or in order to show that the agreement is not stamped. He cannot do so.

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

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

Provided that the judgment must be based upon facts declared by this Adhiniyam to be relevant, and duly proved:

Provided further that this section shall not authorise any Judge to compel any witness to answer any question, or to produce any document which such witness would be entitled to refuse to answer or produce under sections 127 to 136, both inclusive, if the question were asked or the document were called for by the adverse party; nor shall the Judge ask any question which it would be improper for any other person to ask under section 151 or 152; nor shall he dispense with primary evidence of any document, except in the cases hereinbefore excepted.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 141 - Judge to decide as to admissibility of evidence

Bharatiya Sakshya Adhiniyam, 2023 - Section 142 - Examination of witnesses

Corresponding Provision of Previous Statute: Section 165, Indian Evidence Act, 1872

Section 165 – Judge's power to put questions or order production - The Judge may, in order to discover or to obtain proper proof of relevant facts, ask any question he pleases, in any form, at any time, of any witness, or of the parties about any fact relevant or irrelevant; and may order the production of any document or thing; and neither the parties nor their agents shall be entitled to make any objection to any such question or order, nor, without the leave of the Court, to cross-examine any witness upon any answer given in reply to any such question:

Provided that the judgment must be based upon facts declared by this Act to be relevant, and duly proved:

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Provided also that this section shall not authorize any Judge to compel any witness to answer any question, or to produce any document which such witness would be entitled to refuse to answer or produce under sections 121 to 131, both inclusive, if the question were asked or the document were called for by the adverse party; nor shall the Judge ask any question which it would be improper for any other person to ask under section 148 or 149; nor shall he dispense with primary evidence of any document, except in the cases hereinbefore excepted.

CHAPTER XI

OF IMPROPER ADMISSION AND REJECTION OF EVIDENCE

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

The improper admission or rejection of evidence shall not be ground of itself for a new trial or reversal of any decision in any case, if it shall appear to the Court before which such objection is raised that, independently of the evidence objected to and admitted, there was sufficient evidence to justify the decision, or that, if the rejected evidence had been received, it ought not to have varied the decision.

Linked Provisions

Code of Civil Procedure, 1908 - Section 99 - No Decree To Be Reversed Or Modified For Error Or Irregularity Not Affecting Merits Or Jurisdiction

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 506 - Irregularities which do not vitiate proceedings

Corresponding Provision of Previous Statute: Section 167, Indian Evidence Act, 1872

Section 167 – No new trial for improper admission or rejection of evidence - The improper admission or rejection of evidence shall not be ground of itself for a new trial or reversal of any decision in any case, if it shall appear to the Court before which such objection is raised that, independently of the evidence objected to and admitted, there was sufficient evidence to justify the decision, or that, if the rejected evidence had been received, it ought not to have varied the decision.

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CHAPTER XII

REPEAL AND SAVINGS

170. Repeal and savings

(1) The Indian Evidence Act, 1872 (1 of 1872) is hereby repealed.

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

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THE SCHEDULE

[See section 63(4)(c)]

CERTIFICATE

PART A

(To be filled by the Party)

I, _____ (Name), Son/daughter/spouse of _____ residing/employed at _____ do hereby solemnly affirm and sincerely state and submit as follows:--

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

Computer/Storage Media ☐ DVR ☐ Mobile ☐ Flash Drive ☐

CD/DVD ☐ Server ☐ Cloud ☐ Other ☐

Other: _____

Make & Model: _____ Color: _____

Serial Number: _____

IMEI/UIN/UID/MAC/Cloud ID _____ (as applicable)

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

The digital device or the digital record source was under the lawful control for regularly creating, storing or processing information for the purposes of carrying out regular activities and during this period, the

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computer or the communication device was working properly and the relevant information was regularly fed into the computer during the ordinary course of business. If the computer/digital device at any point of time was not working properly or out of operation, then it has not affected the electronic/digital record or its accuracy. The digital device or the source of the digital record is:--

Owned ☐ Maintained ☐ Managed ☐ Operated ☐

by me (select as applicable).

I state that the HASH value/s of the electronic/digital record/s is _____, obtained through the following algorithm:--

☐ SHA1:

☐ SHA256:

☐ MD5:

☐ Other _____ (Legally acceptable standard)

(Hash report to be enclosed with the certificate)

(Name and signature)

Date (DD/MM/YYYY): _____

Time (IST): _____ hours (In 24 hours format)

Place: _____

PART B

(To be filled by the Expert)

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I, _____ (Name), Son/daughter/spouse of _____ residing/employed at _____ do hereby solemnly affirm and sincerely state and submit as follows:--

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

Computer/Storage Media ☐ DVR ☐ Mobile ☐ Flash Drive ☐

CD/DVD ☐ Server ☐ Cloud ☐ Other ☐

Other: _____

Make & Model: _____ Color: _____

Serial Number: _____

IMEI/UIN/UID/MAC/Cloud ID _____ (as applicable)

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

I state that the HASH value/s of the electronic/digital record/s is _____, obtained through the following algorithm:--

☐ SHA1:

☐ SHA256:

☐ MD5:

☐ Other _____ (Legally acceptable standard)

(Hash report to be enclosed with the certificate)

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(Name, designation and signature)

Date (DD/MM/YYYY): _____

Time (IST): _____ hours (In 24 hours format)

Place: _____

STATEMENT OF OBJECTS AND REASONS

1. The Indian Evidence Act, 1872 was enacted in the year 1872 with a view to consolidate the law relating to evidence on which the Court could come to the conclusion about the facts of the case and then pronounce judgment thereupon and it came into force on 1st September, 1872.

2. The experience of seven decades of Indian democracy calls for comprehensive review of our criminal laws including the Indian Evidence Act, 1872 and adopt them in accordance with the contemporary needs and aspirations of the people. The law of evidence (not being substantive or procedural law), falls in the category of "adjective law", that defines the pleading and methodology by which the substantive or procedural laws are operationalised. The existing law does not address the technological advancement undergone in the country during the last few decades.

3. Accordingly, a Bill, namely, the Bharatiya Sakshya Bill, 2023 was introduced in Lok Sabha on 11th August, 2023. The Bill was referred to the Department-related Parliamentary Standing Committee on Home Affairs for its consideration and report. The Committee after deliberations made its recommendations in its report submitted on 10th November, 2023. The recommendations made by the Committee have been considered by the Government and it has been decided to withdraw the Bill pending in Lok Sabha and introduce a new Bill

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incorporating therein those recommendations made by the Committee that have been accepted by the Government.

4. The proposed legislation, inter alia, provides as under:-

(i) it provides that "evidence" includes any information given electronically, which would permit appearance of witnesses, accused, experts and victims through electronic means;

(ii) it provides for admissibility of an electronic or digital record as evidence having the same legal effect, validity and enforceability as any other document;

(iii) it seeks to expand the scope of secondary evidence to include copies made from original by mechanical processes, copies made from or compared with the original, counterparts of documents as against the parties who did not execute them and oral accounts of the contents of a document given by some person who has himself seen it and giving matching hash value of original record will be admissible as proof of evidence in the form of secondary evidence;

(iv) it seeks to put limits on the facts which are admissible and its certification as such in the courts. The proposed Bill introduces more precise and uniform rules of practice of courts in dealing with facts and circumstances of the case by means of evidence.

5. The Notes on Clauses explain the various provisions of the Bill.

6. The Bill seeks to achieve the above objectives.

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LINKED PROVISIONS

Linked Provisions of Section 4, Bharatiya Saskhya Adhiniyam, 2023:

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 243 - Trial for more than one offence:

(1) If, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence.

(2) When a person charged with one or more offences of criminal breach of trust or dishonest misappropriation of property as provided in sub-section (2) of section 235 or in sub-section (1) of section 242, is accused of committing, for the purpose of facilitating or concealing the commission of that offence or those offences, one or more offences of falsification of accounts, he may be charged with, and tried at one trial for, every such offence.

(3) If the acts alleged constitute an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, the person accused of them may be charged with, and tried at one trial for, each of such offences.

(4) If several acts, of which one or more than one would by itself or themselves constitute an offence, constitute when combined a different offence, the person accused of them may be charged with, and tried at one trial for the offence constituted by such acts when combined, and for any offence constituted by any one, or more, of such acts.

(5) Nothing contained in this section shall affect section 9 of the Bharatiya Nyaya Sanhita, 2023.

Illustrations to sub-section (1)

(a) A rescues B, a person in lawful custody, and in so doing causes grievous hurt to C, a constable in whose custody B was. A may be charged with, and convicted of, offences under sub-section (2) of section 121 and section 263 of the Bharatiya Nyaya Sanhita, 2023.

(b) A commits house-breaking by day with intent to commit rape, and commits, in the house so entered, rape with B's wife. A may be separately charged with, and convicted of, offences under section 64 and sub-section (3) of section 331 of the Bharatiya Nyaya Sanhita, 2023.

(c) A has in his possession several seals, knowing them to be counterfeit and intending to use them for the purpose of committing several forgeries punishable under section 337 of the Bharatiya Nyaya Sanhita, 2023. A may be separately charged with, and convicted of, the possession of each seal under sub-section (2) of section 341 of the Bharatiya Nyaya Sanhita, 2023.

(d) With intent to cause injury to B, A institutes a criminal proceeding against him, knowing that there is no just or lawful ground for such proceeding, and also falsely accuses B of having committed an offence, knowing that there is no just or lawful ground for such charge. A may be separately charged with, and convicted of, two offences under section 248 of the Bharatiya Nyaya Sanhita, 2023.

(e) A, with intent to cause injury to B, falsely accuses him of having committed an offence, knowing that there is no just or lawful ground for such charge. On the trial, A gives false evidence against B, intending thereby to cause B to be convicted of a capital offence. A may be separately charged with, and convicted of, offences under sections 230 and 248 of the Bharatiya Nyaya Sanhita, 2023.

(f) A, with six others, commits the offences of rioting, grievous hurt and assaulting a public servant endeavouring in the discharge of his duty as such to suppress the riot. A may be separately charged with, and convicted of, offences under sub-section (2) of section 117, sub-section (2) of section 191 and section 195 of the Bharatiya Nyaya Sanhita, 2023.

(g) A threatens B, C and D at the same time with injury to their persons with intent to cause alarm to them. A may be separately charged with, and convicted of, each of the three offences under sub-sections (2) and (3) of section 351 of the Bharatiya Nyaya Sanhita, 2023.

The separate charges referred to in illustrations (a) to (g), respectively, may be tried at the same time.

Illustrations to sub-section (3)

(h) A wrongfully strikes B with a cane. A may be separately charged with, and convicted of, offences under sub-section (2) of section 115 and section 131 of the Bharatiya Nyaya Sanhita, 2023.

(i) Several stolen sacks of corn are made over to A and B, who knew they are stolen property, for the purpose of concealing them. A and B thereupon voluntarily assist each other to conceal the sacks at the bottom of a grain-pit. A and B may be separately charged with, and convicted of, offences under sub-sections (2) and (5) of section 317 of the Bharatiya Nyaya Sanhita, 2023.

(j) A exposes her child with the knowledge that she is thereby likely to cause its death. The child dies in consequence of such exposure. A may be separately charged with, and convicted of, offences under sections 93 and 105 of the Bharatiya Nyaya Sanhita, 2023.

(k) A dishonestly uses a forged document as genuine evidence, in order to convict B, a public servant, of an offence under section 201 of the Bharatiya Nyaya Sanhita, 2023. A may be separately charged with, and convicted of, offences under section 233 and sub-section (2) of section 340 (read with section 337) of that Sanhita.

Illustration to sub-section (4)

(l) A commits robbery on B, and in doing so voluntarily causes hurt to him. A may be separately charged with, and convicted of, offences under sub-section (2) of section 115 and sub-sections (2) and (4) of section 309 of the Bharatiya Nyaya Sanhita, 2023.

Go Back to Section 4, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 8, Bharatiya Saskhya Adhiniyam, 2023:

Bharatiya Nyaya Sanhita, 2023 - Section 3 - General explanations:

(5)When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.

Go Back to Section 8, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 13, Bharatiya Saskhya Adhiniyam, 2023:

Bharatiya Nyaya Sanhita, 2023 - Section 18 - Accident in doing a lawful act:

Nothing is an offence which is done by accident or misfortune, and without any criminal intention or knowledge in the doing of a lawful act in a lawful manner by lawful means and with proper care and caution.

Illustration

A is at work with a hatchet; the head flies off and kills a man who is standing by. Here, if there was no want of proper caution on the part of A, his act is excusable and not an offence.

Go Back to Section 13, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 15, Bharatiya Saskhya Adhiniyam, 2023:

Partnership Act, 1932 - Section 23– Effect of Admission by a Partner:

An admission or representation made by a partner concerning the affairs of the firmis evidence against the firm, it is made in the ordinary course of business.

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 266 - Evidence for defence

(1) The accused shall then be called upon to enter upon his defence and produce his evidence; and if the accused puts in any written statement, the Magistrate shall file it with the record.

(2) If the accused, after he has entered upon his defence, applies to the Magistrate to issue any process for compelling the attendance of any witness for the purpose of examination or cross-examination, or the production of any document or other thing, the Magistrate shall issue such process unless he considers that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice and such ground shall be recorded by him in writing:

Provided that when the accused has cross-examined or had the opportunity of cross-examining any witness before entering on his defence, the attendance of such witness shall not be compelled under this section, unless the Magistrate is satisfied that it is necessary for the ends of justice:

Provided further that the examination of a witness under this sub-section may be done by audio-video electronic means at the designated place to be notified by the State Government.

(3) The Magistrate may, before summoning any witness on an application under sub-section (2), require that the reasonable expenses incurred by the witness in attending for the purposes of the trial be deposited in Court.

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 288 - Language of record and judgment:

(1) Every such record and judgment shall be written in the language of the Court.

(2) The High Court may authorise any Magistrate empowered to try offences summarily to prepare the aforesaid record or judgment or both by means of an officer appointed in this behalf by the Chief Judicial Magistrate, and the record or judgment so prepared shall be signed by such Magistrate.

Go Back to Section 15, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 22, Bharatiya Saskhya Adhiniyam, 2023:

Prevention of Terrorism Act, 2002 - Section 32 - Certain confessions made to police officers to be taken into consideration:

(1) Notwithstanding anything in the Code or in the Indian Evidence Act, 1872 (1 of 1872), but subjectto the provisions of this section, a confession made by a person before a police officer not lower inrank than a Superintendent of Police and recorded by such police officer either in writing or on anymechanical or electronic device like cassettes, tapes or sound tracks from out of which sound orimages can be reproduced, shall be admissible in the trial of such person for an offence under this Actor the rules made thereunder.

(2) A police officer shall, before recording any confession made by a person under sub-section (1),explain to such person in writing that he is not bound to make a confession and that if he does so, itmay be used against him:

Provided that where such person prefers to remain silent, the police officer shall not compel or inducehim to make any confession.

(3) The confession shall be recorded in an atmosphere free from threat or inducement and shall be inthe same language in which the person makes it.

(4) The person from whom a confession has been recorded under sub-section (1), shall be producedbefore the Court of a Chief Metropolitan Magistrate or the Court of a Chief Judicial Magistrate alongwith the original statement of confession, written or recorded on mechanical or electronic device withinforty-eight hours.

(5) The Chief Metropolitan Magistrate or the Chief Judicial Magistrate, shall, record the statement, ifany, made by the person so produced and get his signature or thumb impression and if there is anycomplaint of torture, such person shall be directed to be produced for medical examination before aMedical Officer not lower in rank than an Assistant Civil Surgeon and thereafter, he shall be sent tojudicial custody.

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 167 - Local inquiry:

(1) Whenever a local inquiry is necessary for the purposes of section 164, section 165 or section 166, a District Magistrate or Sub-divisional Magistrate may depute any Magistrate subordinate to him to make the inquiry, and may furnish him with such written instructions as may seem necessary for his guidance, and may declare by whom the whole or any part of the necessary expenses of the inquiry shall be paid.

(2) The report of the person so deputed may be read as evidence in the case.

(3) When any costs have been incurred by any party to a proceeding under section 164, section 165 or section 166, the Magistrate passing a decision may direct by whom such costs shall be paid, whether by such party or by any other party to the proceeding, and whether in whole or in part or proportion and such costs may include any expenses incurred in respect of witnesses and of advocates' fees, which the Court may consider reasonable.

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 182 - No inducement to be offered:

(1) No police officer or other person in authority shall offer or make, or cause to be offered or made, any such inducement, threat or promise as is mentioned in section 22 of the Bharatiya Sakshya Adhiniyam, 2023.

(2) But no police officer or other person shall prevent, by any caution or otherwise, any person from making in the course of any investigation under this Chapter any statement which he may be disposed to make of his own free will:

Provided that nothing in this sub-section shall affect the provisions of sub-section (4) of section 183.

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 354 - No influence to be used to induce disclosure:

Except as provided in sections 343 and 344, no influence, by means of any promise or threat or otherwise, shall be used to an accused person to induce him to disclose or withhold any matter within his knowledge.

Bharatiya Nyaya Sanhita, 2023 - Section 32 - Act to which a person is compelled by threats:

Except murder, and offences against the State punishable with death, nothing is an offence which is done by a person who is compelled to do it by threats, which, at the time of doing it, reasonably cause the apprehension that instant death to that person will otherwise be the consequence:

Provided that the person doing the act did not of his own accord, or from a reasonable apprehension of harm to himself short of instant death, place himself in the situation by which he became subject to such constraint.

Explanation 1.--A person who, of his own accord, or by reason of a threat of being beaten, joins a gang of dacoits, knowing their character, is not entitled to the benefit of this exception, on the ground of his having been compelled by his associates to do anything that is an offence by law.

Explanation 2.--A person seized by a gang of dacoits, and forced, by threat of instant death, to do a thing which is an offence by law; for example, a smith compelled to take his tools and to force the door of a house for the dacoits to enter and plunder it, is entitled to the benefit of this exception.

Bharatiya Nyaya Sanhita, 2023 - Section 120 - Voluntarily causing hurt or grievous hurt to extort confession, or to compel restoration of property:

(1) Whoever voluntarily causes hurt for the purpose of extorting from the sufferer or from any person interested in the sufferer, any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the sufferer or any person interested in the sufferer to restore or to cause the restoration of any property or valuable security or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Illustrations

(a) A, a police officer, tortures Z in order to induce Z to confess that he committed a crime. A is guilty of an offence under this section.

(b) A, a police officer, tortures B to induce him to point out where certain stolen property is deposited. A is guilty of an offence under this section.

(c) A, a revenue officer, tortures Z in order to compel him to pay certain arrears of revenue due from Z. A is guilty of an offence under this section.

(2) Whoever voluntarily causes grievous hurt for any purpose referred to in sub-section (1), shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Bharatiya Nyaya Sanhita, 2023 - Section 121 - Voluntarily causing hurt or grievous hurt to deter public servant from his duty:

(1) Whoever voluntarily causes hurt to any person being a public servant in the discharge of his duty as such public servant, or with intent to prevent or deter that person or any other public servant from discharging his duty as such public servant or in consequence of anything done or attempted to be done by that person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

Go Back to Section 22, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 23, Bharatiya Saskhya Adhiniyam, 2023:

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 167 - Local inquiry:

(1) Whenever a local inquiry is necessary for the purposes of section 164, section 165 or section 166, a District Magistrate or Sub-divisional Magistrate may depute any Magistrate subordinate to him to make the inquiry, and may furnish him with such written instructions as may seem necessary for his guidance, and may declare by whom the whole or any part of the necessary expenses of the inquiry shall be paid.

(2) The report of the person so deputed may be read as evidence in the case.

(3) When any costs have been incurred by any party to a proceeding under section 164, section 165 or section 166, the Magistrate passing a decision may direct by whom such costs shall be paid, whether by such party or by any other party to the proceeding, and whether in whole or in part or proportion and such costs may

include any expenses incurred in respect of witnesses and of advocates' fees, which the Court may consider reasonable.

Prevention of Terrorism Act, 2002 - Section 32 - Certain confessions made to police officers to be taken into consideration:

(1) Notwithstanding anything in the Code or in the Indian Evidence Act, 1872 (1 of 1872), but subjectto the provisions of this section, a confession made by a person before a police officer not lower inrank than a Superintendent of Police and recorded by such police officer either in writing or on anymechanical or electronic device like cassettes, tapes or sound tracks from out of which sound orimages can be reproduced, shall be admissible in the trial of such person for an offence under this Actor the rules made thereunder.

(2) A police officer shall, before recording any confession made by a person under sub-section (1), explain to such person in writing that he is not bound to make a confession and that if he does so, itmay be used against him:

Provided that where such person prefers to remain silent, the police officer shall not compel or inducehim to make any confession.

(3) The confession shall be recorded in an atmosphere free from threat or inducement and shall be inthe same language in which the person makes it.

(4) The person from whom a confession has been recorded under sub-section (1), shall be producedbefore the Court of a Chief Metropolitan Magistrate or the Court of a Chief Judicial Magistrate alongwith the original statement of confession, written or recorded on mechanical or electronic device withinforty-eight hours.

(5) The Chief Metropolitan Magistrate or the Chief Judicial Magistrate, shall, record the statement, ifany, made by the person so produced and get his signature or thumb impression and if there is anycomplaint of torture, such person shall be directed to be produced for medical examination before aMedical Officer not lower in rank than an Assistant Civil Surgeon and thereafter, he shall be sent tojudicial custody.

Go Back to Section 23, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 27, Bharatiya Saskhya Adhiniyam, 2023:

Prevention of Terrorism Act, 2002 - Section 32 - Certain confessions made to police officers to be taken into consideration:

(1) Notwithstanding anything in the Code or in the Indian Evidence Act, 1872 (1 of 1872), but subjectto the provisions of this section, a confession made by a person before a police officer not lower inrank than a Superintendent of Police and recorded by such police officer either in writing or on anymechanical or electronic device like cassettes, tapes or sound tracks from out of which sound orimages can be reproduced, shall be admissible in the trial of such person for an offence under this Actor the rules made thereunder.

(2) A police officer shall, before recording any confession made by a person under sub-section (1),explain to such person in writing that he is not bound to make a confession and that if he does so, itmay be used against him:

Provided that where such person prefers to remain silent, the police officer shall not compel or inducehim to make any confession.

(3) The confession shall be recorded in an atmosphere free from threat or inducement and shall be inthe same language in which the person makes it.

(4) The person from whom a confession has been recorded under sub-section (1), shall be producedbefore the Court of a Chief Metropolitan Magistrate or the Court of a Chief Judicial Magistrate alongwith the original statement of confession, written or recorded on mechanical or electronic device withinforty-eight hours.

(5) The Chief Metropolitan Magistrate or the Chief Judicial Magistrate, shall, record the statement, ifany, made by the person so produced and get his signature or thumb impression and if there is anycomplaint of torture, such person shall be directed to be produced for medical examination before aMedical Officer not lower in rank than an Assistant Civil Surgeon and thereafter, he shall be sent tojudicial custody.

Go Back to Section 27, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 34, Bharatiya Saskhya Adhiniyam, 2023:

Code of Civil Procedure, 1908 – Section 11 - Res judicata:

No Court shall try any suit or issue in which the matter directly and substantiallyin issue has been directly and substantially in issue in a former suit between the same parties, or betweenparties under whom they or any of them claim, litigating under the same title, in a Court competent to trysuch subsequent suit or the suit in which such issue has been subsequently raised, and has been heard andfinally decided by such Court.

Explanation I.—The expression "former suit" shall denote a suit which has been decided prior to a suitin question whether or not it was instituted prior thereto.

Explanation II.—For the purposes of this section, the competence of a Court shall be determinedirrespective of any provisions as to a right of appeal from the decision of such Court.

Explanation III.—The matter above referred to must in the former suit have been alleged by one partyand either denied or admitted, expressly or impliedly, by the other.

Explanation IV.—Any matter which might and ought to have been made ground of defence or attackin such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

Explanation V.—Any relief claimed in the plaint, which is not expressly granted by the decree, shallfor the purposes of this section, be deemed to have been refused.

Explanation VI.—Where persons litigate bona fide in respect of a public right or of a private rightclaimed in common for themselves and others, all persons interested in such right shall, for the purposesof this section, be deemed to claim under the persons so litigating.

Explanation VII.—The provisions of this section shall apply to a proceeding for the execution of a decreeand references in this section to any suit, issue or former suit shall be construed as references, respectively, to aproceeding for the execution of the decree, question arising in such proceeding and a former proceeding for theexecution of that decree.

Explanation VIII. —An issue heard and finally decided by a Court of limited jurisdiction, competent todecide such issue, shall operate as res judicata in a subsequent suit, notwithstanding that such Court oflimited jurisdiction was not

competent to try such subsequent suit or the suit in which such issue has been subsequently raised.

Go Back to Section 34, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 36, Bharatiya Saskhya Adhiniyam, 2023:

Code of Civil Procedure, 1908 – Section 2 (2):

"decree" means the formal expression of an adjudication which, so far as regards the Courtexpressing it, conclusively determines the rights of the parties with regard to all or any of the matters incontroversy in the suit and may be either preliminary or final. It shall be deemed to include the rejectionof a plaint and the determination of any question within section 144, but shall not include—

(a) any adjudication from which an appeal lies as an appeal from an order, or

(b) any order of dismissal for default.

Explanation.—A decree is preliminary when further proceedings have to be taken before the suitcan be completely disposed of. It is final when such adjudication completely disposes of the suit.It may be partly preliminary and partly final;

Code of Civil Procedure, 1908 – Section 2 (9):

"judgment" means the statement given by the Judge of the grounds of a decree or order;

Code of Civil Procedure, 1908 – Section 2 (14):

"order" means the formal expression of any decision of a Civil Court which is not a decree;

Go Back to Section 36, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 37, Bharatiya Saskhya Adhiniyam, 2023:

Code of Civil Procedure, 1908 – Section 2 (9):

"judgment" means the statement given by the Judge of the grounds of a decree or order;

Go Back to Section 37, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 38, Bharatiya Saskhya Adhiniyam, 2023:

Indian Contract Act, 1872 – Section 17 – "Fraud" defined:

"Fraud" means and includes any of the following acts committed by a partyto a contract, or with his connivance, or by his agent , with intent to deceive another party thereto of hisagent, or to induce him to enter into the contract:—

(1) the suggestion, as a fact, of that which is not true, by one who does not believe it to be true;

(2) the active concealment of a fact by one having knowledge or belief of the fact;

(3) a promise made without any intention of performing it;

(4) any other act fitted to deceive;

(5) any such act or omission as the law specially declares to be fraudulent.

Explanation.—Mere silence as to facts likely to affect the willingness of a person to enter into acontract is not fraud, unless the circumstances of the case are such that, regard being had to them, it is theduty of the person keeping silence to speak, or unless his silence is, in itself, equivalent to speech.

(a) A sells, by auction, to B, a horse which A knows to be unsound. A says nothing to B about the horse's unsoundness.This is not fraud in A.

(b) B is A's daughter and has just come of age. Here, the relation between the parties would make it A's duty to tell B if thehorse is unsound.

(c) B says to A—"If you do not deny it, I shall assume that the horse is sound." A says nothing. Here, A's silence isequivalent to speech.

(d) A and B, being traders, enter upon a contract. A has private information of a change in prices which would affect B'swillingness to proceed with the contract. A is not bound to inform B.

Code of Civil Procedure – Section 13 – When foreign judgment not conclusive:

A foreign judgment shall be conclusive as to anymatter thereby directly adjudicated upon between the same parties or between parties under whom they orany of them claim litigating under the same title except—

(a) where it has not been pronounced by a Court of competent jurisdiction;

(b) where it has not been given on the merits of the case;

(c) where it appears on the face of the proceedings to be founded on an incorrect view ofinternational law or a refusal to recognise the law of India in cases in which such law is applicable;

(d) where the proceedings in which the judgment was obtained are opposed to natural justice;

(e) where it has been obtained by fraud;

(f) where it sustains a claim founded on a breach of any law in force in India.

Arbitration and Conciliation Act, 1996 – Section 34 - Application for setting aside arbitral awards:

(1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).

(2) An arbitral award may be set aside by the Court only if—

(a) the party making the application establishes on the basis of the record of the arbitral tribunal that—

(i)a party was under some incapacity, or

(ii) the arbitration agreement is not valid under the law to which the parties have subjected itor, failing any indication thereon, under the law for the time being in force; or

(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iv) the arbitral award deals with a dispute not contemplated by or not falling within the termsof the submission to arbitration, or it contains decisions on matters beyond the scope of thesubmission to arbitration:

Provided that, if the decisions on matters submitted to arbitration can be separated from thosenot so submitted, only that part of the arbitral award which contains decisions on matters notsubmitted to arbitration may be set aside; or

(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordancewith the agreement of the parties, unless such agreement was in conflict with a provision of thisPart from which the parties cannot derogate, or, failing such agreement, was not in accordancewith this Part; or

(b) the Court finds that—

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the lawfor the time being in force, or

(ii) the arbitral award is in conflict with the public policy of India.

Explanation 1.—For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if,—

(i) the making of the award was induced or affected by fraud or corruption or was in violationof section 75 or section 81; or

(ii) it is in contravention with the fundamental policy of Indian law; or

(iii) it is in conflict with the most basic notions of morality or justice.

Explanation 2.—For the avoidance of doubt, the test as to whether there is a contravention with thefundamental policy of Indian law shall not entail a review on the merits of the dispute.

(2A) An arbitral award arising out of arbitrations other than international commercial arbitrations,may also be set aside by the Court, if the Court finds that the award is vitiated by patent illegalityappearing on the face of the award:

Provided that an award shall not be set aside merely on the ground of an erroneous application of thelaw or by reappreciation of evidence.

(3) An application for setting aside may not be made after three months have elapsed from the date onwhich the party making that application had received the arbitral award or, if a request had been madeunder section 33, from the date on which that request had been disposed of by the arbitral tribunal:

Provided that if the Court is satisfied that the applicant was prevented by sufficient cause frommaking the application within the said period of three months it may entertain the application within afurther period of thirty days, but not thereafter.

(4) On receipt of an application under sub-section (1), the Court may, where it is appropriate and it isso requested by a party, adjourn the proceedings for a period of time determined by it in order to give thearbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in theopinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award.

(5) An application under this section shall be filed by a party only after issuing a prior notice to theother party and such application shall be accompanied by an affidavit by the applicant endorsingcompliance with the said requirement.

(6) An application under this section shall be disposed of expeditiously, and in any event, within aperiod of one year from the date on which the notice referred to in sub-section (5) is served upon the other party.

Go Back to Section 38, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 39, Bharatiya Saskhya Adhiniyam, 2023:

Protection of Children from Sexual Offences Act, 2012 – Section 39 - Guidelines for child to take assistance of experts, etc.:

Subject to such rules as may be made in this behalf, the State Government shall prepare guidelines for use of non-governmental organisations, professionals and experts or persons having knowledge of psychology, social work, physical health, mental health and child development to be associated with the pre-trial and trial stage to assist the child.

Go Back to Section 39, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 40 Bharatiya Saskhya Adhiniyam, 2023:

Protection of Children from Sexual Offences Act, 2012 – Section 39 - Guidelines for child to take assistance of experts, etc.:

Subject to such rules as may be made in this behalf, the State Government shall prepare guidelines for use of non-governmental organisations, professionals and experts or persons having knowledge of psychology, social work, physical health, mental health and child development to be associated with the pre-trial and trial stage to assist the child.

Go Back to Section 40, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 41 Bharatiya Saskhya Adhiniyam, 2023:

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 349 - Power of Magistrate to order person to give specimen signatures or handwriting, etc.:

If a Magistrate of the first class is satisfied that, for the purposes of any investigation or proceeding under this Sanhita, it is expedient to direct any person, including an accused person, to give specimen signatures or finger impressions or handwriting or voice sample, he may make an order to that effect and in that case the person to whom the order relates shall be produced or shall attend at the time and place specified in such order and shall give his specimen signatures or finger impressions or handwriting or voice sample:

Provided that no order shall be made under this section unless the person has at some time been arrested in connection with such investigation or proceeding:

Provided further that the Magistrate may, for the reasons to be recorded in writing, order any person to give such specimen or sample without him being arrested.

Go Back to Section 41, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 50 Bharatiya Saskhya Adhiniyam, 2023:

Air Force Act, 1950 – Section 133 - Judicial notice:

A court-martial may take judicial notice of any matter within the general air force knowledge of the members.

Go Back to Section 50, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 51 Bharatiya Saskhya Adhiniyam, 2023:

Air Force Act, 1950 – Section 93 - Computation of time of absence of custody:

For the purposes of clauses (a) and (b) of section 92—

(a) no person shall be treated as absent or in custody for a day unless the absence or custody has lasted, whether wholly in one day, or partly in one day and partly in another, for six consecutive hours or upwards;

(b) any absence or custody for less than a day may be reckoned as absence or custody for a day if such absence or custody prevented the absence from fulfilling any air force duty which was thereby thrown upon some other person;

(c) absence or custody for twelve consecutive hours or upwards may be reckoned as absence or custody for the whole of each day during any portion of which the person was absent or in custody;

(d) a period of absence, or imprisonment, which commences before and ends after midnight may be reckoned as a day.

Air Force Act, 1950 – Section 133 - Judicial notice:

A court-martial may take judicial notice of any matter within the general air force knowledge of the members.

Air Force Act, 1950 – Section 134 - Summoning witnesses

(1) The convening officer, the presiding officer of a court-martial the Judge advocate or the commanding officer of the accused person, may, by summons under his hand, require the attendance at a time and place to be mentioned in the summons, of any person either to give evidence or to produce any document or other thing.

(2) In the case of a witness amenable to air force authority, the summons shall be sent to his commanding officer and such officer shall serve it upon him accordingly.

(3) In the case of any other witness, the summons shall be sent to the magistrate within whose jurisdiction he may be or reside, and such magistrate shall give effect to the summons as if the witness were required in the court of such magistrate.

(4) When a witness is required to produce any particular document or other thing in his possession or power, the summons shall describe it with reasonable precision.

Indo-Tibetan Border Police Force Act, 1992 – Section 100 - Judicial notice:

A Force Court may take judicial notice of any matter within thegeneral knowledge of the members as officers of the Force.

National Security Guard Act, 1986 – Section 85- Judicial notice:

A Security Guard Court may take judicial notice of any matter within thegeneral knowledge of the members as officers of the Security Guard.

Navy Act, 1957 – Section 132 - Judicial notice:

A court-martial may take judicial notice of any matter within the generalnaval, army or air force experience and knowledge of the members.

Sashastra Seema Bal Act, 2007 – Section 100 – Judicial Notice:

A Force Court may take judicial notice of any matter within the general knowledge of the members as officers of the Force.

Army Act, 1950 – Section 134 - Judicial notice:

A court-martial may take judicial notice of any matter within the general military knowledge of the members.

Go Back to Section 51, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 52 Bharatiya Saskhya Adhiniyam, 2023:

Sashastra Seema Bal Act, 2007 – Section 100 – Judicial Notice:

A Force Court may take judicial notice of any matter within the general knowledgeof the members as officers of the Force.

National Security Guard Act, 1986 – Section 85- Judicial notice:

A Security Guard Court may take judicial notice of any matter within thegeneral knowledge of the members as officers of the Security Guard.

Navy Act, 1957 – Section 132 - Judicial notice:

A court-martial may take judicial notice of any matter within the generalnaval, army or air force experience and knowledge of the members.

Indo-Tibetan Border Police Force Act, 1992 – Section 100 - Judicial notice:

A Force Court may take judicial notice of any matter within thegeneral knowledge of the members as officers of the Force.

Air Force Act, 1950 – Section 93 - Computation of time of absence of custody:

For the purposes of clauses (a) and (b) of section 92—

(a) no person shall be treated as absent or in custody for a day unless the absence or custody has lasted, whether wholly in one day, or partly in one day and partly in another, for six consecutive hours or upwards;

(b) any absence or custody for less than a day may be reckoned as absence or custody for a day if such absence or custody prevented the absence from fulfilling any air force duty which was thereby thrown upon some other person;

(c) absence or custody for twelve consecutive hours or upwards may be reckoned as absence or custody for the whole of each day during any portion of which the person was absent or in custody;

(d) a period of absence, or imprisonment, which commences before and ends after midnight may be reckoned as a day.

Border Security Force Act, 1968 - Section 88 - Judicial notice:

A Security Force Court may take judicial notice of any matter within the general knowledge of the members as officers of the Force.

Go Back to Section 52, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 62 Bharatiya Saskhya Adhiniyam, 2023:

Information Technology Act, 2000 - Section 3 - Authentication of electronic records:

(1) Subject to the provisions of this section, any subscriber may authenticate an electronic record by affixing his digital signature.

(2) The authentication of the electronic record shall be effected by the use of asymmetric crypto system and hash function which envelop and transform the initial electronic record into another electronic record.

Explanation.--For the purposes of this sub-section, "hash function" means an algorithm mapping or translation of one sequence of bits into another, generally smaller, set known as "hash result" such that an electronic record yields the same hash result every time the algorithm is executed with the same electronic record as its input making it computationally infeasible--

(a) to derive or reconstruct the original electronic record from the hash result produced by the algorithm;

(b) that two electronic records can produce the same hash result using the algorithm.

(3) Any person by the use of a public key of the subscriber can verify the electronic record.

(4) The private key and the public key are unique to the subscriber and constitute a functioning key pair.

Information Technology Act, 2000 – Section - 4 - Legal recognition of electronic records:

Where any law provides that information or any other matter shall be in writing or in the typewritten or printed form, then, notwithstanding anything contained in such

law, such requirement shall be deemed to have been satisfied if such information or matter is--

(a) rendered or made available in an electronic form; and

(b) accessible so as to be usable for a subsequent reference.

Information Technology Act, 2000 - Section 6 - Use of electronic records and electronic signatures in Government and its agencies:

(1) Where any law provides for--

(a) the filing of any form, application or any other document with any office, authority, body or agency owned or controlled by the appropriate Government in a particular manner;

(b) the issue or grant of any licence, permit, sanction or approval by whatever name called in a particular manner;

(c) the receipt or payment of money in a particular manner,

then, notwithstanding anything contained in any other law for the time being in force, such requirement shall be deemed to have been satisfied if such filing, issue, grant, receipt or payment, as the case may be, is effected by means of such electronic form as may be prescribed by the appropriate Government.

(2) The appropriate Government may, for the purposes of sub-section (1), by rules, prescribe--

(a) the manner and format in which such electronic records shall be filed, created or issued;

(b) the manner or method of payment of any fee or charges for filing, creation or issue any electronic record under clause (a).

Information Technology Act, 2000 - Section 7 - Retention of electronic records:

(1) Where any law provides that documents, records or information shall be retained for any specific period, then, that requirement shall be deemed to have been satisfied if such documents, records or information are retained in the electronic form, if--

(a) the information contained therein remains accessible so as to be usable for a subsequent reference;

(b) the electronic record is retained in the format in which it was originally generated, sent or received or in a format which can be demonstrated to represent accurately the information originally generated, sent or received;

(c) the details which will facilitate the identification of the origin, destination, date and time of dispatch or receipt of such electronic record are available in the electronic record:

Provided that this clause does not apply to any information which is automatically generated solely for the purpose of enabling an electronic record to be dispatched or received.

(2) Nothing in this section shall apply to any law that expressly provides for the retention of documents, records or information in the form of electronic records.

Information Technology Act, 2000 - Section 11 - Attribution of electronic records:

An electronic record shall be attributed to the originator,--

(a) if it was sent by the originator himself;

(b) by a person who had the authority to act on behalf of the originator in respect of that electronic record; or

(c) by an information system programmed by or on behalf of the originator to operate automatically.

Information Technology Act, 2000 - Section 13 - Time and place of despatch and receipt of electronic record:

(1) Save as otherwise agreed to between the originator and the addressee, the dispatch of an electronic record occurs when it enters a computer resource outside the control of the originator.

(2) Save as otherwise agreed between the originator and the addressee, the time of receipt of an electronic record shall be determined as follows, namely:--

(a) if the addressee has designated a computer resource for the purpose of receiving electronic records,--

(i) receipt occurs at the time when the electronic record enters the designated computer resource; or

(ii) if the electronic record is sent to a computer resource of the addressee that is not the designated computer resource, receipt occurs at the time when the electronic record is retrieved by the addressee;

(b) if the addressee has not designated a computer resource along with specified timings, if any, receipt occurs when the electronic record enters the computer resource of the addressee.

(3) Save as otherwise agreed to between the originator and the addressee, an electronic record is deemed to be dispatched at the place where the originator has his place of business, and is deemed to be received at the place where the addressee has his place of business.

(4) The provisions of sub-section (2) shall apply notwithstanding that the place where the computer resource is located may be different from the place where the electronic record is deemed to have been received under sub-section (3).

(5) For the purposes of this section,--

(a) if the originator or the addressee has more than one place of business, the principal place of business, shall be the place of business;

(b) if the originator or the addressee does not have a place of business, his usual place of residence shall be deemed to be the place of business;

(c) "usual place of residence", in relation to a body corporate, means the place where it is registered.

Information Technology Act, 2000 - Section 14 - Secure electronic record:

Where any security procedure has been applied to an electronic record at a specific point of time, then such record shall he deemed to be a secure electronic record from such point of time to the time of verification.

Bharatiya Nyaya Sanhita, 2023 - Section 210 - Omission to produce document or electronic record to public servant by person legally bound to produce it:

Whoever, being legally bound to produce or deliver up any document or electronic record to any public servant, as such, intentionally omits so to produce or deliver up the same,--

(a) shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five thousand rupees, or with both;

(b) and where the document or electronic record is to be produced or delivered up to a Court with simple imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both.

Illustration

A, being legally bound to produce a document before a District Court, intentionally omits to produce the same. A has committed the offence defined in this section.

Bharatiya Nyaya Sanhita, 2023 - Section 241 - Destruction of document or electronic record to prevent its production as evidence:

Whoever secretes or destroys any document or electronic record which he may be lawfully compelled to produce as evidence in a Court or in any proceeding lawfully held before a public servant, as such, or obliterates or renders illegible the whole or any part of such document or electronic record with the intention of preventing the same from being produced or used as evidence before such Court or public servant as aforesaid, or after he shall have been lawfully summoned or required to produce the same for that purpose, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine which may extend to five thousand rupees, or with both.

Bharatiya Nyaya Sanhita, 2023 - Section 340 - Forged document or electronic record and using it as genuine:

(1) A false document or electronic record made wholly or in part by forgery is designated a forged document or electronic record.

(2) Whoever fraudulently or dishonestly uses as genuine any document or electronic record which he knows or has reason to believe to be a forged document or electronic record, shall be punished in the same manner as if he had forged such document or electronic record.

Go Back to Section 62, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 63 Bharatiya Saskhya Adhiniyam, 2023:

Information Technology Act, 2000 - Section 3 - Authentication of electronic records:

(1) Subject to the provisions of this section, any subscriber may authenticate an electronic record by affixing his digital signature.

(2) The authentication of the electronic record shall be effected by the use of asymmetric crypto system and hash function which envelop and transform the initial electronic record into another electronic record.

Explanation.--For the purposes of this sub-section, "hash function" means an algorithm mapping or translation of one sequence of bits into another, generally smaller, set known as "hash result" such that an electronic record yields the same hash result every time the algorithm is executed with the same electronic record as its input making it computationally infeasible--

(a) to derive or reconstruct the original electronic record from the hash result produced by the algorithm;

(b) that two electronic records can produce the same hash result using the algorithm.

(3) Any person by the use of a public key of the subscriber can verify the electronic record.

(4) The private key and the public key are unique to the subscriber and constitute a functioning key pair.

Information Technology Act, 2000 – Section 4 - Legal recognition of electronic records:

Where any law provides that information or any other matter shall be in writing or in the typewritten or printed form, then, notwithstanding anything contained in such law, such requirement shall be deemed to have been satisfied if such information or matter is--

(a) rendered or made available in an electronic form; and

(b) accessible so as to be usable for a subsequent reference.

Information Technology Act, 2000 – Section6 - Use of electronic records and electronic signatures in Government and its agencies:

(1) Where any law provides for--

(a) the filing of any form, application or any other document with any office, authority, body or agency owned or controlled by the appropriate Government in a particular manner;

(b) the issue or grant of any licence, permit, sanction or approval by whatever name called in a particular manner;

(c) the receipt or payment of money in a particular manner,

then, notwithstanding anything contained in any other law for the time being in force, such requirement shall be deemed to have been satisfied if such filing, issue, grant, receipt or payment, as the case may be, is effected by means of such electronic form as may be prescribed by the appropriate Government.

(2) The appropriate Government may, for the purposes of sub-section (1), by rules, prescribe--

(a) the manner and format in which such electronic records shall be filed, created or issued;

(b) the manner or method of payment of any fee or charges for filing, creation or issue any electronic record under clause (a).

Information Technology Act, 2000 - Section 7 - Retention of electronic records:

(1) Where any law provides that documents, records or information shall be retained for any specific period, then, that requirement shall be deemed to have been satisfied if such documents, records or information are retained in the electronic form, if--

(a) the information contained therein remains accessible so as to be usable for a subsequent reference;

(b) the electronic record is retained in the format in which it was originally generated, sent or received or in a format which can be demonstrated to represent accurately the information originally generated, sent or received;

(c) the details which will facilitate the identification of the origin, destination, date and time of dispatch or receipt of such electronic record are available in the electronic record:

Provided that this clause does not apply to any information which is automatically generated solely for the purpose of enabling an electronic record to be dispatched or received.

(2) Nothing in this section shall apply to any law that expressly provides for the retention of documents, records or information in the form of electronic records.

Information Technology Act, 2000 - Section 11 - Attribution of electronic records:

An electronic record shall be attributed to the originator,--

(a) if it was sent by the originator himself;

(b) by a person who had the authority to act on behalf of the originator in respect of that electronic record; or

(c) by an information system programmed by or on behalf of the originator to operate automatically.

Information Technology Act, 2000 - Section 13 - Time and place of despatch and receipt of electronic record:

(1) Save as otherwise agreed to between the originator and the addressee, the dispatch of an electronic record occurs when it enters a computer resource outside the control of the originator.

(2) Save as otherwise agreed between the originator and the addressee, the time of receipt of an electronic record shall be determined as follows, namely:--

(a) if the addressee has designated a computer resource for the purpose of receiving electronic records,--

(i) receipt occurs at the time when the electronic record enters the designated computer resource; or

(ii) if the electronic record is sent to a computer resource of the addressee that is not the designated computer resource, receipt occurs at the time when the electronic record is retrieved by the addressee;

(b) if the addressee has not designated a computer resource along with specified timings, if any, receipt occurs when the electronic record enters the computer resource of the addressee.

(3) Save as otherwise agreed to between the originator and the addressee, an electronic record is deemed to be dispatched at the place where the originator has his place of

business, and is deemed to be received at the place where the addressee has his place of business.

(4) The provisions of sub-section (2) shall apply notwithstanding that the place where the computer resource is located may be different from the place where the electronic record is deemed to have been received under sub-section (3).

(5) For the purposes of this section,--

(a) if the originator or the addressee has more than one place of business, the principal place of business, shall be the place of business;

(b) if the originator or the addressee does not have a place of business, his usual place of residence shall be deemed to be the place of business;

(c) "usual place of residence", in relation to a body corporate, means the place where it is registered.

Information Technology Act, 2000 - Section 14 - Secure electronic record:

Where any security procedure has been applied to an electronic record at a specific point of time, then such record shall he deemed to be a secure electronic record from such point of time to the time of verification.

Bharatiya Nyaya Sanhita, 2023 - Section 210 - Omission to produce document or electronic record to public servant by person legally bound to produce it:

Whoever, being legally bound to produce or deliver up any document or electronic record to any public servant, as such, intentionally omits so to produce or deliver up the same,--

(a) shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five thousand rupees, or with both;

(b) and where the document or electronic record is to be produced or delivered up to a Court with simple imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both.

Illustration

A, being legally bound to produce a document before a District Court, intentionally omits to produce the same. A has committed the offence defined in this section.

Bharatiya Nyaya Sanhita, 2023 - Section 241 - Destruction of document or electronic record to prevent its production as evidence:

Whoever secretes or destroys any document or electronic record which he may be lawfully compelled to produce as evidence in a Court or in any proceeding lawfully held before a public servant, as such, or obliterates or renders illegible the whole or any part of such document or electronic record with the intention of preventing the same from being produced or used as evidence before such Court or public servant as aforesaid, or after he shall have been lawfully summoned or required to produce the same for that purpose, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine which may extend to five thousand rupees, or with both.

Bharatiya Nyaya Sanhita, 2023 - Section 340 - Forged document or electronic record and using it as genuine:

(1) A false document or electronic record made wholly or in part by forgery is designated a forged document or electronic record.

(2) Whoever fraudulently or dishonestly uses as genuine any document or electronic record which he knows or has reason to believe to be a forged document or electronic record, shall be punished in the same manner as if he had forged such document or electronic record.

Go Back to Section 63, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 66 Bharatiya Saskhya Adhiniyam, 2023:

Information Technology Act, 2000 – Section 3A - Electronic Signature

(1) Notwithstanding anything contained in section 3, but subject to the provisions of sub-section (2), a subscriber may authenticate any electronic record by such electronic signature or electronic authentication technique which--

(a) is considered reliable; and

(b) may be specified in the Second Schedule.

(2) For the purposes of this section any electronic signature or electronic authentication technique shall be considered reliable if--

(a) the signature creation data or the authentication data are, within the context in which they are used, linked to the signatory' or, as (the case may be, the authenticator and to no other person;

(b) the signature creation data or the authentication data were, at the time of signing, under the control of the signatory or, as the case may be, the authenticator and of no other person;

(c) any alteration to the electronic signature made after affixing such signature is detectable;

(d) any alteration to the information made after its authentication by electronic signature is detectable; and

(e) it fulfils such other conditions which may be prescribed.

(3) The Central Government may prescribe the procedure for the purpose of ascertaining whether electronic signature is that of the person by whom it is purported to have been affixed or authenticated.

(4) The Central Government may, by notification in the Official Gazette, add to or omit any electronic signature or electronic authentication technique and the procedure for affixing such signature from the Second Schedule:

Provided that no electronic signature or authentication technique shall be specified in the Second Schedule unless such signature or technique is reliable.

(5) Every notification issued under sub-section (4) shall be laid before each House of Parliament.

Information Technology Act, 2000 – Section 40A - Duties Of Subscriber Of Electronic Signature Certificate

In respect of Electronic Signature Certificate the subscriber shall perform such duties as may be prescribed.

Information Technology Act, 2000 - Section 5 - Legal Recognition Of Electronic Signatures

Where any law provides that information or any other matter shall be authenticated by affixing the signature or any document shall be signed or bear the signature of any person, then, notwithstanding anything contained in such law, such requirement shall be deemed to have been satisfied, if such information or matter is authenticated by

means of electronic signature affixed in such manner as may be prescribed by the Central Government.

Explanation.--For the purposes of this section, "signed", with its grammatical variations and cognate expressions, shall, with reference to a person, mean affixing of his hand written signature or any mark on any document and the expression "signature" shall be construed accordingly.

Information Technology Act, 2000 - Section 6 - Use Of Electronic Records And Electronic Signatures In Government And Its Agencies

(1) Where any law provides for--

(a) the filing of any form, application or any other document with any office, authority, body or agency owned or controlled by the appropriate Government in a particular manner;

(b) the issue or grant of any licence, permit, sanction or approval by whatever name called in a particular manner;

(c) the receipt or payment of money in a particular manner, then, notwithstanding anything contained in any other law for the time being in force, such requirement shall be deemed to have been satisfied if such filing, issue, grant, receipt or payment, as the case may be, is effected by means of such electronic form as may be prescribed by the appropriate Government.

(2) The appropriate Government may, for the purposes of sub-section (1), by rules, prescribe-

(a) the manner and format in which such electronic records shall be filed, created or issued;

(b) the manner or method of payment of any fee or charges for filing, creation or issue any electronic record under clause (a).

Information Technology Act, 2000 - Section 10 - Power To Make Rules By Central Government In Respect Of Electronic Signature

The Central Government may, for the purposes of this Act, by rules, prescribe--

(a) the type of electronic signature;

(b) the manner and format in which the electronic signature shall be affixed;

(c) the manner or procedure which facilitates identification of the person affixing the electronic signature;

(d) control processes and procedures to ensure adequate integrity, security and confidentiality of electronic records or payments; and

(e) any other matter which is necessary to give legal effect to electronic signatures.

Information Technology Act, 2000 – Section 15 - Secure Electronic Signature

An electronic signature shall be deemed to be a secure electronic signature if--

(i) the signature creation data, at the time of affixing signature, was under the exclusive control of signatory and no other person; and

(ii) the signature creation data was stored and affixed in such exclusive manner as may be prescribed.

Explanation.-- In case of digital signature, the "signature creation data" means the private key of the subscriber.

Information Technology Act, 2000 – Section 21 - Licence To Issue Electronic Signature Certificates

(1) Subject to the provisions of sub-section (2), any person may make an application to the Controller for a licence to issue electronic Signature Certificates.

(2) No licence shall be issued under sub-section (1), unless the applicant fulfills such requirements with respect to qualification, expertise, manpower, financial resources and other infrastructure facilities, which arc necessary to issue 1[electronic] Signature Certificates as may be prescribed by the Central Government,

(3) A licence granted under this section shall--

(a) be valid for such period as may be prescribed by the Central Government;

(b) not be transferable or heritable;

(c) be subject to such terms and conditions as may be specified by the regulations.

Information Technology Act, 2000 – Section 35 - Certifying Authority To Issue Electronic Signature Certificate

(1) Any person may make an application to the Certifying Authority for the issue of a Electronic Signature Certificate in such form as may be prescribed by the Central Government.

(2) Every such application shall be accompanied by such fee not exceeding twenty-five thousand rupees as may be prescribed by the Central Government, to be paid to the Certifying Authority:

Provided that while prescribing fees under sub-section (2) different fees may be prescribed for different classes of applicants.

(3) Every such application shall be accompanied by a certification practice statement or where there is no such statement, a statement containing such particulars, as may be specified by regulations.

(4) On receipt of an application under sub-section (1), the Certifying Authority may, after consideration of the certification practice statement or the other statement under sub-section (3) and after making such enquiries as it may deem fit, grant the Electronic SignatureCertificate or for reasons to be recorded in writing, reject the application:

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Provided that no application shall be rejected unless the applicant has been given a reasonable opportunity of showing cause against the proposed rejection.

Information Technology Act, 2000 – Section 73 - Penalty For Publishing Electronic Signature Certificate False In Certain Particulars

(1) No person shall publish a Electronic Signature Certificate or otherwise make it available to any other person with the knowledge that—

(a) the Certifying Authority listed in the certificate has not issued it; or

(b) the subscriber listed in the certificate has not accepted it; or

(c) the certificate has been revoked or suspended,

unless such publication is for the purpose of verifying a Electronic signature created prior to such suspension or revocation.

(2) Any person who contravenes the provisions of sub-section (1) shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to one lakh rupees, or with both.

Go Back to Section 66, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 73 Bharatiya Saskhya Adhiniyam, 2023:

Information Technology Act, 2000 – Section 3A - Electronic Signature

(1) Notwithstanding anything contained in section 3, but subject to the provisions of sub-section (2), a subscriber may authenticate any electronic record by such electronic signature or electronic authentication technique which--

(a) is considered reliable; and

(b) may be specified in the Second Schedule.

(2) For the purposes of this section any electronic signature or electronic authentication technique shall be considered reliable if--

(a) the signature creation data or the authentication data are, within the context in which they are used, linked to the signatory' or, as (the case may be, the authenticator and to no other person;

(b) the signature creation data or the authentication data were, at the time of signing, under the control of the signatory or, as the case may be, the authenticator and of no other person;

(c) any alteration to the electronic signature made after affixing such signature is detectable;

(d) any alteration to the information made after its authentication by electronic signature is detectable; and

(e) it fulfils such other conditions which may be prescribed.

(3) The Central Government may prescribe the procedure for the purpose of ascertaining whether electronic signature is that of the person by whom it is purported to have been affixed or authenticated.

(4) The Central Government may, by notification in the Official Gazette, add to or omit any electronic signature or electronic authentication technique and the procedure for affixing such signature from the Second Schedule:

Provided that no electronic signature or authentication technique shall be specified in the Second Schedule unless such signature or technique is reliable.

(5) Every notification issued under sub-section (4) shall be laid before each House of Parliament.

Information Technology Act, 2000 - Section 5 - Legal Recognition Of Electronic Signatures

Where any law provides that information or any other matter shall be authenticated by affixing the signature or any document shall be signed or bear the signature of any person, then, notwithstanding anything contained in such law, such requirement shall be deemed to have been satisfied, if such information or matter is authenticated by means of electronic signature affixed in such manner as may be prescribed by the Central Government.

Explanation.--For the purposes of this section, "signed", with its grammatical variations and cognate expressions, shall, with reference to a person, mean affixing of his hand written signature or any mark on any document and the expression "signature" shall be construed accordingly.

Information Technology Act, 2000 – Section 35 - Certifying Authority To Issue Electronic Signature Certificate

(1) Any person may make an application to the Certifying Authority for the issue of a Electronic Signature Certificate in such form as may be prescribed by the Central Government.

(2) Every such application shall be accompanied by such fee not exceeding twenty-five thousand rupees as may be prescribed by the Central Government, to be paid to the Certifying Authority:

Provided that while prescribing fees under sub-section (2) different fees may be prescribed for different classes of applicants.

(3) Every such application shall be accompanied by a certification practice statement or where there is no such statement, a statement containing such particulars, as may be specified by regulations.

(4) On receipt of an application under sub-section (1), the Certifying Authority may, after consideration of the certification practice statement or the other statement under sub-section (3) and after making such enquiries as it may deem fit, grant the Electronic SignatureCertificate or for reasons to be recorded in writing, reject the application:

***

Provided that no application shall be rejected unless the applicant has been given a reasonable opportunity of showing cause against the proposed rejection.

Information Technology Act, 2000 – Section 36 - Representations Upon Issuance Of Digital Signature Certificate

A Certifying Authority while issuing a Digital Signature Certificate shall certify that--

(a) it has complied with the provisions of this Act and the rules and regulations made thereunder;

(b) it has published the Digital Signature Certificate or otherwise made it available to such person relying on it and the subscriber has accepted it:

(c) the subscriber holds the private key corresponding to the public key, listed in the Digital Signature Certificate;

(ca) the subscriber holds a private key which is capable of creating a digital signature;

(cb) the public key to be listed in the certificate can be used to verify a digital signature affixed by the private key held by the subscriber;

(d) the subscriber's public key and private key constitute a functioning key pair;

(e) the information contained in the Digital Signature Certificate is accurate; and

(f) it has no knowledge of any material fact, which if it had been included in the Digital Signature Certificate would adversely affect the reliability of the representations in clauses (a) to (d).

Information Technology Act, 2000 – Section 37 - Suspension Of Digital Signature Certificate

(1) Subject to the provisions of sub-section (2), the Certifying Authority which has issued a Digital Signature Certificate may suspend such Digital Signature Certificate,-

(a) on receipt of a request to that effect from--

(i) the subscriber listed in the Digital Signature Certificate; or

(ii) any person duly authorised to act on behalf of that subscriber;

(b) if it is of opinion that the Digital Signature Certificate should be suspended in public interest.

(2) A Digital Signature Certificate shall not be suspended for a period exceeding fifteen days unless the subscriber has been given an opportunity of being heard in the matter.

(3) On suspension of a Digital Signature Certificate under this section, the Certifying Authority shall communicate the same to the subscriber.

Information Technology Act, 2000 – Section 38 - Revocation Of Digital Signature Certificate

(1) A Certifying Authority may revoke a Digital Signature Certificate issued by it--

(a) where the subscriber or any other person authorised by him makes a request to that effect; or

(b) upon the death of the subscriber; or

(c) upon the dissolution of the firm or winding up of the company where the subscriber is a firm or a company.

(2) Subject to the provisions of sub-section (3) and without prejudice to the provisions of sub-section (1), a Certifying Authority may revoke a Digital Signature Certificate which has been issued by it at any time, if it is of opinion that--

(a) a material fact represented in the Digital Signature Certificate is false or has been concealed:

(b) a requirement for issuance of the Digital Signature Certificate was not satisfied;

(c) the Certifying Authority's private key or security system was compromised in a manner materially affecting the Digital Signature Certificate's reliability;

(d) the subscriber has been declared insolvent or dead or where a subscriber is a firm or a company, which has been dissolved, wound-up or otherwise ceased to exist.

(3) A Digital Signature Certificate shall not be revoked unless the subscriber has been given an opportunity of being heard in the matter.

(4) On revocation of a Digital Signature Certificate under this section, the Certifying Authority shall communicate the same to the subscriber.

Information Technology Act, 2000 – Section 41 - Acceptance Of Digital Signature Certificate

(1) A subscriber shall be deemed to have accepted a Digital Signature Certificate if he publishes or authorises the publication of a Digital Signature Certificate-

(a) to one or more persons;

(b) in a repository; or

otherwise demonstrates his approval of the Digital Signature Certificate in any manner.

(2) By accepting a Digital Signature Certificate the subscriber certifies to all who reasonably rely on the information contained in the Digital Signature Certificate that--

(a) the subscriber holds the private key corresponding to the public key listed in the Digital Signature Certificate and is entitled to hold the same;

(b) all representations made by the subscriber to the Certifying Authority and all material relevant to the information contained in the Digital Signature Certificate are true;

(c) all information in the Digital Signature Certificate that is within the knowledge of the subscriber is true.

Go Back to Section 73, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 75 Bharatiya Saskhya Adhiniyam, 2023:

Code of Civil Procedure, 1908 - Section 37 - Definition of Court Which Passed A Decree

The expression "Court which passed a decree", or words to that effect, shall, in relation to the execution of decrees, unless there is anything repugnant in the subject or context, be deemed to include,-

(a) where the decree to be executed has been passed in the exercise of appellate jurisdiction, the Court of first instance, and

(b) where the Court of first instance has ceased to exist or to have jurisdiction to execute it, the Court which, if the suit wherein the decree was passed was instituted at the time of making the application for the execution of the decree, would have jurisdiction to try such suit.

Explanation.--The Court of first instance does not cease to have jurisdiction to execute a decree merely on the ground that after the institution of the suit wherein the decree was passed or after the passing of the decree, any area has been transferred from the jurisdiction of that Court to the jurisdiction of any other Court; but, in every such case, such other Court shall also have jurisdiction to execute the decree, if at the time of making the application for execution of the decree it would have jurisdiction to try the said suit.

Foreign Marriage Act, 1969 - Section 25 - Certified Copy of Entries To Be Evidences

Every certified copy purporting to be signed by the Marriage Officer of an entry of a marriage in the Marriage Certificate Book shall be received in evidence without production or proof of the original.

Indian Christian Marriage Act, 1872 - Section 80 - Certified Copy of Entry In Marriage Register, Etc, To Be Evidence

Every certified copy, purporting to be signed by the person entrusted under this Act with the custody of any marriage-register or certificate, or duplicate, required to be kept or delivered under this Act, of any entry of a marriage in such register or of any such certificate or duplicate, shall be received as evidence of the marriage purporting to be so entered, or of the facts purporting to be so certified therein, without further

proof of such register or certificate, or duplicate, or of entry therein, respectively or of such copy.

Indian Marriage Act, 1865 - Section 44 - Certified Copy of Entry In Marriage Register, &C. To Be Received As Evidence Of Marriage Without Further Proof

Every certified copy, purporting to be signed by the person entrusted under this Act with the custody of any Marriage Register or certificate or duplicate certificate required to be kept or delivered under this Act, of any entry of a marriage in such Register, or of any such certificate or duplicate certificate, shall be received as evidence of the marriage purporting to be so entered, or of the facts purporting to be so certified therein, without further proof of such Register or certificate, or duplicate copy, or of any entry therein respectively, or of such copy.

Land Acquisition Act, 1894 - Section 51A - Acceptance Of Certified Copy As Evidence

In any proceeding under this Act, a certified copy of a document registered under the Registration Act, 1908 (16 of 1908), including a copy given under section 57 of that Act, may be accepted as evidence of the transaction recorded in such document.

Go Back to Section 75, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 76, Bharatiya Sakshya Adhiniyam, 2023:

Code of Civil Procedure, 1908 - Section 37 – Definition Of Court Which Passed A Decree:

The expression "Court which passed a decree", or words to that effect, shall, in relation to the execution of decrees, unless there is anything repugnant in the subject or context, be deemed to include, -

(a) where the decree to be executed has been passed in the exercise of appellate jurisdiction, the Court of first instance, and

(b) where the Court of first instance has ceased to exist or to have jurisdiction to execute it, the Court which, if the suit wherein the decree was passed was instituted

at the time of making the application for the execution of the decree, would have jurisdiction to try such suit.

Explanation.- The Court of first instance does not cease to have jurisdiction to execute a decree merely on the ground that after the institution of the suit wherein the decree was passed or after the passing of the decree, any area has been transferred from the jurisdiction of that Court to the jurisdiction of any other Court; but, in every such case, such other Court shall also have jurisdiction to execute the decree, if at the time of making the application for execution of the decree it would have jurisdiction to try the said suit.

Foreign Marriage Act, 1969 – Section 25 – Certified copy of entries to be evidences:

Every certified copy purporting to be signed by the Marriage Officer of an entry of a marriage in the Marriage Certificate Book shall be received in evidence without production or proof of the original.

Indian Christian Marriage Act, 1872 - Section 80 – Certified Copy Of Entry In Marriage Register, Etc, To Be Evidence:

Every certified copy, purporting to be signed by the person entrusted under this Act with the custody of any marriage-register or certificate, or duplicate, required to be kept or delivered under this Act, of any entry of a marriage in such register or of any such certificate or duplicate, shall be received as evidence of the marriage purporting to be so entered, or of the facts purporting to be so certified therein, without further proof of such register or certificate, or duplicate, or of entry therein, respectively or of such copy.

Indian Marriage Act, 1865 - Section 44 – Certified Copy Of Entry In Marriage Register, &C. To Be Received As Evidence Of Marriage Without Further Proof:

Every certified copy, purporting to be signed by the person entrusted under this Act with the custody of any Marriage Register or certificate or duplicate certificate required to be kept or delivered under this Act, of any entry of a marriage in such Register, or of any such certificate or duplicate certificate, shall be received as evidence of the marriage purporting to be so entered, or of the facts purporting to be so certified therein, without further proof of such Register or certificate, or duplicate copy, or of any entry therein respectively, or of such copy.

Land Acquisition Act, 1894 - Section 51A - Acceptance Of Certified Copy As Evidence

In any proceeding under this Act, a certified copy of a document registered under the Registration Act, 1908 (16 of 1908), including a copy given under section 57 of that Act, may be accepted as evidence of the transaction recorded in such document.

Manipur Municipalities Act, 1994 - Section 223 – Mode Of Proof Of Municipal Record And Fee For Certified Copy:

(1) A copy of any receipt, application, plan, notice, order, entry in a register or other document in the possession of a Nagar Panchayat or a Council, shall, if duly certified by any person authorised by any bye-law in this behalf, be received as evidence of the existence of any entry or document and shall be admitted as evidence of the matters and transactions therein recorded in every case, where and to the same extent as, the original entry or document would, if produced, have been admissible to prove such matters.

(2) For the issue of such copies the Nagar Panchayat or as the case may be, the Council may impose such fees as may be fixed by any bye-law in this behalf.

Patent Act, 1859 - Section 13 – Certified Copy To Be Prima Facie Evidence:

Certified copy of entry to be given

Every such certified copy shall be prima facie evidence of the document of which it purports to be a copy.

Go Back to Section 76, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 77, Bharatiya Sakshya Adhiniyam, 2023:

Air Force Act, 1950 - Section 57 - Falsifying Official Documents And False Declaration:

Any person subject to this Act who commits any of the following offences, that is to say,--

(a) in any report, return, list, certificate; book or other document made or signed by him, or of the contents of which it is his duty to ascertain the accuracy, knowingly makes, or is privy to the making of, any false or fraudulent statement; or

(b) in any document of the description mentioned in clause (a) knowingly makes, or is privy to the making of, any omission, with intent to defraud; or

(c) knowingly and. with intent to injure any person, or knowingly and with intent to defraud, suppresses, defaces, alters or makes away with any document which it is his duty to preserve or produce; or

(d) where it is his official duty to make a declaration respecting any matter knowingly makes a false declaration; or

(e) obtains for himself, or for any other person, any pension, allowance or other advantage or privilege by a statement which is false, and which he either knows or believes to be false or does not believe to be true, or by making or using a false entry in any book or record, or by making any document containing a false statement, or by omitting to make a true entry or document containing a true statement;

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned.

Army Act, 1950 - Section 57 - Falsifying Official Documents And False Declaration:

Any person mentioned in clause (a) knowingly makes, or is privy to the making of, any omission, with intent to defraud; or

(c) knowingly and with intent to injure any person, or knowingly and with intent to defraud, suppresses, defaces, alters or makes away with any documents which it is his duty to preserve or produce; or

(d) where it is his official duty to make a declaration respecting any matter, knowingly makes a false declaration; or

(e) obtains for himself, or for any other person, any pension, allowance or other advantage or privilege by a statement which is false, and which he either knows or believes to be false or does not believe to be true, or by making or using a false entry in any book or record or by making any document containing a false statement, or by omitting to make a true entry or document containing a true statement,

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act

Border Security Force Act, 1968 - Section 35 - Falsifying Official Documents And False Declarations:

Any person subject to this Act who commits any of the following offences, that is to say,--

(a)in any report, return, list, certificate, book or other document made or signed by him, or of the contents of which it is his duty to ascertain the accuracy, knowingly makes, or is privy to the making of, any false or fraudulent statement; or

(b)in any document of the description mentioned in clause (a) knowingly makes, or is privy to the making of, any omission, with intent to defraud; or

(c)knowingly and with intent to injure any person, or knowingly and with intent to defraud, suppresses, defaces, alters or makes away with any document which it is his duty to preserve or produce; or

(d)where it is his official duty to make a declaration respecting any matter, knowingly makes a false declaration; or

(e)obtains for himself, or for any other person, any pension, allowance or other advantage or privilege by a statement which is false, and which he either knows or believes to be false or does not believe to be true, or by making or using a false entry in any book or record, or by making any document containing a false statement, or by omitting to make a true entry or document containing a true statement,

shall, on conviction by a Security Force Court, be liable to suffer imprisonment for a term which may extend to ten years or such less punishment as is in this Act mentioned.

Coast Guard Act, 1978 - Section 33 - Falsifying Official Documents And False Declarations:

Any person subject to this Act who commits any of the following offences, that is to say,--

(a) in any report, return, list, certificate, book or other document made or signed by him, or of the contents of which it is his duty to ascertain the accuracy knowingly makes; or is privy to the making of, any false or fraudulent statement; or

(b) in any document of the description mentioned in clause (a) knowingly makes, or is privy to the making of, any omission, with intent to defraud; or

(c) knowingly and with intent to injury any person, or knowingly and with intent to defraud, suppresses, defaces, alters or makes away with any document which it is his duty to preserve or produce; or

(d) where it is his official duty to make a declaration respecting any matter, knowingly makes a false declaration; or

(e) obtains for himself, or for any other person, any pension, allowance or other advantage or privilege by a statement which is false, and which he either knows or believes to be false, or does not believe to be true, or by making or using a false entry in any book or recorder by making any document containing a false statement, or by omitting to make a true entry or document containing a true statement.

shall, on conviction by a Coast Guard Court be liable to suffer imprisonment for a term which may extend to ten years or such less punishment as is in this Act mentioned.

The Indo-Tibetan Border Police Force Act, 1992 - Section 38 - Falsifying Official Documents And False Declarations:

Any person subject to this Act who commits any of the following offences, that is to say,-

(a) in any report, return, list, certificate, book or other document made or signed by him, or of the contents of which it is his duty to ascertain the accuracy, knowingly makes, or is privy to the making of, any false or fraudulent statement; or

(b) in any document of the description mentioned in clause (a) knowingly makes, or is privy to the making of, any omission, with intent to defraud; or

(c) knowingly and with intent to injure any person, or knowingly and with intent to defraud, suppresses, defaces, alters or makes away with any document which it is his duty to preserve or produce; or

(d) where it is his official duty to make a declaration respecting any matter, knowingly makes a false declaration; or

(e) obtains for himself, or for any other person, any pension, allowance or other advantage or privilege by a statement which is false, and which he either knows or believes to be false or does not believe to be true, or by making or using a false entry in any book or record, or by making any document containing false statement, or by omitting to make a true entry or document containing a true statement.

shall, on conviction by a Force Court, be liable to suffer imprisonment for a term which may extend to ten years or such less punishment as is in this Act mentioned.

National Security Guard Act, 1986 - Section 34 - Falsifying Official Documents And False Declarations:

Any person subject to this Act who commits any of the following offences, that is to say,--

(a) in any report, return, list, certificate, book or other document made or signed by him, or of the contents of which it is his duty to ascertain the accuracy knowingly makes, or is privy to the making of, any false or fraudulent statement; or

(b) in any document of the description mentioned in clause (a) knowingly makes, or is privy to the making of, any omission, with intent to defraud, or

(c) knowingly and with intent to injure any person, or knowingly and with intent to defraud, suppresses, defaces, alters or makes away with any document which it is his duty to preserve or produce; or

(d) where it is his official duty to make a declaration respecting any matter, knowingly makes a false declaration; or

(e) obtains for himself, or for any other person, any pension, allowance or other advantage or privilege by a statement which is false, and which he either knows or believes to be false or does not believe to be true, or by making or using a false entry in any book or record, or by making any document containing a false statement, or by omitting to make a true entry of document containing a true statement,

shall, on conviction by a Security Guard Court, be liable to suffer imprisonment for a term which may extend to ten years or such less punishment as is in this Act mentioned.

Navy Act, 1957 - Section 60 - Falsifying Official Documents And False Declarations:

Every person subject to naval law--

(a) who knowingly makes or signs a false report, return, list, certificate, book, muster or other document to be used for official purposes; or

(b) who commands, counsels or procures the making or signing thereof; or

(c) who aids or abets any other person in the making or signing thereof; or

(d) who knowingly makes, commands, counsels or procures the making of, a false or fraudulent statement or a fraudulent omission in any such document;

shall be punished with imprisonment for a term which may extend to seven years or such other punishment as is hereinafter mentioned.

Sashastra Seema Bal Act, 2007 - Section 38 - Falsifying Official Documents And False Declaration:

Any person subject to this Act who commits any of the following offences, namely:--

(a) in any report, return, list, certificate, book or other document made or signed by him, or of the contents of which it is his duty to ascertain the accuracy, knowingly makes, or is privy to the making of, any false or fraudulent statement; or

(b) in any document of the description mentioned in clause (a) knowingly makes, or is privy to the making of, any omission, with intent to defraud; or

(c) knowingly and with intent to injure any person, or knowingly and with intent to defraud, suppresses, defaces, alters or makes away with any document which it is his duty to preserve or produce; or

(d) where it is his official duty to make a declaration respecting any matter knowingly makes a false declaration; or

(e) obtains for himself, or for any other person, any pension, allowance or other advantage or privilege by a statement which is false, and which he either knows or believes to be false or does not believe to be true, or by making or using a false entry in any book or record, or by making any document containing a false statement, or by omitting to make a true entry or document containing a true statement,

shall, on conviction by a Force Court, be liable to suffer imprisonment for a term which may extend to ten years or such less punishment as is in this Act mentioned.

Go Back to Section 77, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 78, Bharatiya Sakshya Adhiniyam, 2023:

Code of Civil Procedure, 1908 - Section 37 - Definition of Court which passed a decree:

The expression "Court which passed a decree", or words to that effect, shall, in relation to the execution of decrees, unless there is anything repugnant in the subject or context, be deemed to include,--

a) where the decree to be executed has been passed in the exercise of appellate jurisdiction, the Court of first instance, and

b) where the Court of first instance has ceased to exist or to have jurisdiction to execute it, the Court which, if the suit wherein the decree was passed was instituted at the time of making the application for the execution of the decree, would have jurisdiction to try such suit.

Explanation.--The Court of first instance does not cease to have jurisdiction to execute a decree merely on the ground that after the institution of the suit wherein the decree was passed or after the passing of the decree, any area has been transferred from the jurisdiction of that Court to the jurisdiction of any other Court; but, in every such case, such other Court shall also have jurisdiction to execute the decree, if at the time of making the application for execution of the decree it would have jurisdiction to try the said suit.

Foreign Marriage Act, 1969 – Section 25 – Certified copy of entries to be evidences:

Every certified copy purporting to be signed by the Marriage Officer of an entry of a marriage in the Marriage Certificate Book shall be received in evidence without production or proof of the original.

Indian Christian Marriage Act, 1872 - Section 80 – Certified Copy Of Entry In Marriage Register, Etc, To Be Evidence:

Every certified copy, purporting to be signed by the person entrusted under this Act with the custody of any marriage-register or certificate, or duplicate, required to be kept or delivered under this Act, of any entry of a marriage in such register or of any such certificate or duplicate, shall be received as evidence of the marriage purporting to be so entered, or of the facts purporting to be so certified therein, without further proof of such register or certificate, or duplicate, or of entry therein, respectively or of such copy.

Indian Marriage Act, 1865 - Section 44 – Certified Copy Of Entry In Marriage Register, &C. To Be Received As Evidence Of Marriage Without Further Proof:

Every certified copy, purporting to be signed by the person entrusted under this Act with the custody of any Marriage Register or certificate or duplicate certificate required to be kept or delivered under this Act, of any entry of a marriage in such Register, or of any such certificate or duplicate certificate, shall be received as evidence of the marriage purporting to be so entered, or of the facts purporting to be so certified therein, without further proof of such Register or certificate, or duplicate copy, or of any entry therein respectively, or of such copy.

Land Acquisition Act, 1894 - Section 51A - Acceptance Of Certified Copy As Evidence

In any proceeding under this Act, a certified copy of a document registered under the Registration Act, 1908 (16 of 1908), including a copy given under section 57 of that Act, may be accepted as evidence of the transaction recorded in such document.

Patent Act, 1859 - Section 13 - Certified Copy To Be Prima Facie Evidence:

Certified copy of entry to be given

Every such certified copy shall be prima facie evidence of the document of which it purports to be a copy.

Go Back to Section 78, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 79, Bharatiya Sakshya Adhiniyam, 2023:

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 395 - Order to pay compensation:

(1) When a Court imposes a sentence of fine or a sentence (including a sentence of death) of which fine forms a part, the Court may, when passing judgment, order the whole or any part of the fine recovered to be applied-

(a) in defraying the expenses properly incurred in the prosecution;

(b) in the payment to any person of compensation for any loss or injury caused by the offence, when compensation is, in the opinion of the Court, recoverable by such person in a Civil Court;

(c) when any person is convicted of any offence for having caused the death of another person or of having abetted the commission of such an offence, in paying compensation to the persons who are, under the Fatal Accidents Act, 1855 (13 of 1855), entitled to recover damages from the person sentenced for the loss resulting to them from such death;

(d) when any person is convicted of any offence which includes theft, criminal misappropriation, criminal breach of trust, or cheating, or of having dishonestly received or retained, or of having voluntarily assisted in disposing of, stolen property knowing or having reason to believe the same to be stolen, in compensating any bona fide purchaser of such property for the loss of the same if such property is restored to the possession of the person entitled thereto.

(2) If the fine is imposed in a case which is subject to appeal, no such payment shall be made before the period allowed for presenting the appeal has elapsed, or, if an appeal be presented, before the decision of the appeal.

(3) When a Court imposes a sentence, of which fine does not form a part, the Court may, when passing judgment, order the accused person to pay, by way of compensation, such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced.

(4) An order under this section may also be made by an Appellate Court or by the High Court or Court of Session when exercising its powers of revision.

(5) At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any sum paid or recovered as compensation under this section.

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 403 - Court not to alter judgment:

Save as otherwise provided by this Sanhita or by any other law for the time being in force, no Court, when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error.

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 406 - Court of Session to send copy of finding and sentence to District Magistrate:

In cases tried by the Court of Session or a Chief Judicial Magistrate, the Court or such Magistrate, as the case may be, shall forward a copy of its or his finding and sentence (if any) to the District Magistrate within whose local jurisdiction the trial was held.

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 312 - Language of record of evidence:

In every case where evidence is taken down under section 310 or section 311,-

(a) if the witness gives evidence in the language of the Court, it shall be taken down in that language;

(b) if he gives evidence in any other language, it may, if practicable, be taken down in that language, and if it is not practicable to do so, a true translation of the evidence in the language of the Court shall be prepared as the examination of the witness proceeds, signed by the Magistrate or presiding Judge, and shall form part of the record;

(c) where under clause (b) evidence is taken down in a language other than the language of the Court, a true translation thereof in the language of the Court shall be prepared as soon as practicable, signed by the Magistrate or presiding Judge, and shall form part of the record:

Provided that when under clause (b) evidence is taken down in English and a translation thereof in the language of the Court is not required by any of the parties, the Court may dispense with such translation.

Go Back to Section 79, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 81, Bharatiya Sakshya Adhiniyam, 2023:

Information Technology Act, 2000 - Section 3 - Authentication Of Electronic Records:

(1) Subject to the provisions of this section, any subscriber may authenticate an electronic record by affixing his digital signature.

(2) The authentication of the electronic record shall be effected by the use of asymmetric crypto system and hash function which envelop and transform the initial electronic record into another electronic record.

Explanation.--For the purposes of this sub-section, "hash function" means an algorithm mapping or translation of one sequence of bits into another, generally smaller, set known as "hash result" such that an electronic record yields the same hash result every time the algorithm is executed with the same electronic record as its input making it computationally infeasible--

(a) to derive or reconstruct the original electronic record from the hash result produced by the algorithm;

(b) that two electronic records can produce the same hash result using the algorithm.

(3) Any person by the use of a public key of the subscriber can verify the electronic record.

(4) The private key and the public key are unique to the subscriber and constitute a functioning key pair.

Information Technology Act, 2000 - Section 3A - Electronic Signature:

(1) Notwithstanding anything contained in section 3, but subject to the provisions of sub-section (2), a subscriber may authenticate any electronic record by such electronic signature or electronic authentication technique which--

(a) is considered reliable; and

(b) may be specified in the Second Schedule.

(2) For the purposes of this section any electronic signature or electronic authentication technique shall be considered reliable if--

(a) the signature creation data or the authentication data are, within the context in which they are used, linked to the signatory' or, as (the case may be, the authenticator and to no other person;

(b) the signature creation data or the authentication data were, at the time of signing, under the control of the signatory or, as the case may be, the authenticator and of no other person;

(c) any alteration to the electronic signature made after affixing such signature is detectable;

(d) any alteration to the information made after its authentication by electronic signature is detectable; and

(e) it fulfils such other conditions which may be prescribed.

(3) The Central Government may prescribe the procedure for the purpose of ascertaining whether electronic signature is that of the person by whom it is purported to have been affixed or authenticated.

(4) The Central Government may, by notification in the Official Gazette, add to or omit any electronic signature or electronic authentication technique and the procedure for affixing such signature from the Second Schedule:

Provided that no electronic signature or authentication technique shall be specified in the Second Schedule unless such signature or technique is reliable.

(5) Every notification issued under sub-section (4) shall be laid before each House of Parliament.

Information Technology Act, 2000 - Section 4 – Legal - recognition of electronic records:

Where any law provides that information or any other matter shall be in writing or in the typewritten or printed form, then, notwithstanding anything contained in such law, such requirement shall be deemed to have been satisfied if such information or matter is-

(a) rendered or made available in an electronic form; and

(b) accessible so as to be usable for a subsequent reference.

Information Technology Act, 2000 - Section 6 - Use of Electronic Records And Electronic Signatures In Government And Its Agencies:

(1) Where any law provides for--

(a) the filing of any form, application or any other document with any office, authority, body or agency owned or controlled by the appropriate Government in a particular manner;

(b) the issue or grant of any licence, permit, sanction or approval by whatever name called in a particular manner;

(c) the receipt or payment of money in a particular manner,

then, notwithstanding anything contained in any other law for the time being in force, such requirement shall be deemed to have been satisfied if such filing, issue, grant, receipt or payment, as the case may be, is effected by means of such electronic form as may be prescribed by the appropriate Government.

(2) The appropriate Government may, for the purposes of sub-section (1), by rules, prescribe--

(a) the manner and format in which such electronic records shall be filed, created or issued;

(b) the manner or method of payment of any fee or charges for filing, creation or issue any electronic record under clause (a).

Information Technology Act, 2000 - Section 7 - Retention Of Electronic Records:

(1) Where any law provides that documents, records or information shall be retained for any specific period, then, that requirement shall be deemed to have been satisfied if such documents, records or information are retained in the electronic form, if--

(a) the information contained therein remains accessible so as to be usable for a subsequent reference;

(b) the electronic record is retained in the format in which it was originally generated, sent or received or in a format which can be demonstrated to represent accurately the information originally generated, sent or received;

(c) the details which will facilitate the identification of the origin, destination, date and time of dispatch or receipt of such electronic record are available in the electronic record:

Provided that this clause does not apply to any information which is automatically generated solely for the purpose of enabling an electronic record to be dispatched or received.

(2) Nothing in this section shall apply to any law that expressly provides for the retention of documents, records or information in the form of electronic records.

Information Technology Act, 2000 - Section 11 - Attribution Of Electronic Records:

An electronic record shall be attributed to the originator,-

(a) if it was sent by the originator himself;

(b) by a person who had the authority to act on behalf of the originator in respect of that electronic record; or

(c) by an information system programmed by or on behalf of the originator to operate automatically.

Information Technology Act, 2000 - Section 13 - Time And Place Of Despatch And Receipt Of Electronic Record:

(1) Save as otherwise agreed to between the originator and the addressee, the dispatch of an electronic record occurs when it enters a computer resource outside the control of the originator.

(2) Save as otherwise agreed between the originator and the addressee, the time of receipt of an electronic record shall be determined as follows, namely:--

(a) if the addressee has designated a computer resource for the purpose of receiving electronic records,--

(i) receipt occurs at the time when the electronic record enters the designated computer resource; or

(ii) if the electronic record is sent to a computer resource of the addressee that is not the designated computer resource, receipt occurs at the time when the electronic record is retrieved by the addressee;

(b) if the addressee has not designated a computer resource along with specified timings, if any, receipt occurs when the electronic record enters the computer resource of the addressee.

(3) Save as otherwise agreed to between the originator and the addressee, an electronic record is deemed to be dispatched at the place where the originator has his place of business, and is deemed to be received at the place where the addressee has his place of business.

(4) The provisions of sub-section (2) shall apply notwithstanding that the place where the computer resource is located may be different from the place where the electronic record is deemed to have been received under sub-section (3).

(5) For the purposes of this section,--

(a) if the originator or the addressee has more than one place of business, the principal place of business, shall be the place of business;

(b) if the originator or the addressee does not have a place of business, his usual place of residence shall be deemed to be the place of business;

(c) "usual place of residence", in relation to a body corporate, means the place where it is registered.

Information Technology Act, 2000 - Section 14 - Secure Electronic Record:

Where any security procedure has been applied to an electronic record at a specific point of time, then such record shall he deemed to be a secure electronic record from such point of time to the time of verification.

Bharatiya Nyaya Sanhita, 2023 - Section 210 - Omission to produce document or electronic record to public servant by person legally bound to produce it:

Whoever, being legally bound to produce or deliver up any document or electronic record to any public servant, as such, intentionally omits so to produce or deliver up the same,-

(a) shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five thousand rupees, or with both;

(b) and where the document or electronic record is to be produced or delivered up to a Court with simple imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both.

Illustration

A, being legally bound to produce a document before a District Court, intentionally omits to produce the same. A has committed the offence defined in this section.

Bharatiya Nyaya Sanhita, 2023 - Section 241 - Destruction of document or electronic record to prevent its production as evidence:

Whoever secretes or destroys any document or electronic record which he may be lawfully compelled to produce as evidence in a Court or in any proceeding lawfully held before a public servant, as such, or obliterates or renders illegible the whole or any part of such document or electronic record with the intention of preventing the same from being produced or used as evidence before such Court or public servant as aforesaid, or after he shall have been lawfully summoned or required to produce the same for that purpose, shall be punished with imprisonment of either description

for a term which may extend to three years, or with fine which may extend to five thousand rupees, or with both.

Bharatiya Nyaya Sanhita, 2023 - Section 340 - Forged document or electronic record and using it as genuine:

(1) A false document or electronic record made wholly or in part by forgery is designated a forged document or electronic record.

(2) Whoever fraudulently or dishonestly uses as genuine any document or electronic record which he knows or has reason to believe to be a forged document or electronic record, shall be punished in the same manner as if he had forged such document or electronic record.

Go Back to Section 81, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 82, Bharatiya Sakshya Adhiniyam, 2023:

Registration Act, 1908 - Section 21 - Description Of Property And Maps Or Plans:

(1) No non-testamentary document relating to immovable property shall be accepted for registration unless it contains a description of such property sufficient to identify the same.

(2) Houses in towns shall be described as situate on the north or other side of the street or road (which should be specified) to which they front, and by their existing and former occupancies, and by their numbers if the houses in such street or road are numbered.

(3) Other houses and lands shall be described by their name, if any, and as being the territorial division in which they are situate, and by their superficial contents, the roads and other properties on to which they abut, and their existing occupancies, and also, whenever it is practicable, by reference to a Government map or survey.

(4) No non-testamentary document containing a map or plan of any property comprised therein shall be accepted for registration unless it is accompanied by a true copy of the map or plan, or, in case such property is situate in several districts, by such number of true copies of the map or plan as are equal to the number of such districts.

Registration Act, 1908 - Section 22 - Description Of Houses And Land By Reference To Government Maps Or Surveys:

(1) Where it is, in the opinion of the State Government, practicable to describe houses, not being houses in towns, and lands by reference to a Government map or survey, the State Government may, by rule made under this Act, require that such houses and lands as aforesaid shall, for the purposes of section 21, be so described.

(2) Save as otherwise provided by any rule made under sub-section (1), failure to comply with the provisions of section 21, sub-section (2) or sub-section (3), shall not disentitle a document to be registered if the description of the property to which it relates is sufficient to identify that property.

Go Back to Section 82, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 84, Bharatiya Sakshya Adhiniyam, 2023:

Registration Act, 1908 - Section 33 - Power-of-Attorney Recognizable For Purposes of Section 32:

(1) For the purposes of section 32, the following powers-of-attorney shall alone be recognized, namely:-

(a) if the principal at the time of executing the power-of-attorney resides in any part of India in which this Act is for the time being in force, a power-of-attorney executed before and authenticated by the Registrar or Sub-Registrar within whose district or sub-district the principal resides;

(b) if the principal at the time aforesaid resides in any part of India in which this Act is not in force, a power-of-attorney executed before and authenticated by any Magistrate;

(c) if the principal at the time aforesaid does not reside in India, a power-of-attorney executed before and authenticated by a Notary Public, or any Court, Judge, Magistrate, Indian Consul or Vice-Consul, or representative of the Central Government:

Provided that the following persons shall not be required to attend at any registration-office or Court for the purpose of executing any such power-of-attorney as is mentioned in clauses (a) and (b) of this section, namely:--

(i) persons who by reason of bodily infirmity are unable without risk or serious inconvenience so to attend;

(ii) persons who are in jail under civil or criminal process; and

(iii) persons exempt by law from personal appearance in court.

Explanation.- In this sub-section "India" means India, as defined in clause (28) of section 3 of the General Clauses Act, 1897 (10 of 1897).

(2) In the case of every such person the Registrar or Sub-Registrar or Magistrate, as the case may be, if satisfied that the power-of-attorney has been voluntarily executed by the person purporting to be the principal, may attest the same without requiring his personal attendance at the office or Court aforesaid.

(3) To obtain evidence as to the voluntary nature of the execution, the Registrar or Sub-Registrar or Magistrate may either himself go to the house of the person purporting to be the principal, or to the jail in which he is confined, and examine him, or issue a commission for his examination.

(4) Any power-of-attorney mentioned in this section may be proved by the production of it without further proof when it purports on the face of it to have been executed before and authenticated by the person or Court hereinbefore mentioned in that behalf.

Government of India Act, 1915 - Section 24 - Power of Attorney For Sale or Purchase of Stock And Receipt Of Dividends:

The Secretary of State in Council, by power of attorney executed by two members of the Council of India and countersigned by the Secretary of State or one of his under secretaries or his assistant under secretary, may authorise all or any of the cashiers of the Bank of England-

(a) to sell and transfer all or any part of any stock standing in the books of the Bank to the account of the Secretary of State in Council; and

(b) to purchase and accept stock for any such account; and

(c) to receive dividends on any stock standing to any such account; and, by any writing signed by two members of the Council of India and countersigned as

aforesaid, may direct the application of the money to be received in respect of any such sale or dividend:

Provided that stock shall not be purchased or sold and transferred under the authority of any such general power of attorney, except on an order in writing directed to the chief cashier and chief accountant of the Bank of England and signed and countersigned as aforesaid.

Go Back to Section 84, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 85, Bharatiya Sakshya Adhiniyam, 2023:

Information Technology Act, 2000 - Section 3 - Authentication Of Electronic Records:

(1) Subject to the provisions of this section, any subscriber may authenticate an electronic record by affixing his digital signature.

(2) The authentication of the electronic record shall be effected by the use of asymmetric crypto system and hash function which envelop and transform the initial electronic record into another electronic record.

Explanation.- For the purposes of this sub-section, "hash function" means an algorithm mapping or translation of one sequence of bits into another, generally smaller, set known as "hash result" such that an electronic record yields the same hash result every time the algorithm is executed with the same electronic record as its input making it computationally infeasible--

(a) to derive or reconstruct the original electronic record from the hash result produced by the algorithm;

(b) that two electronic records can produce the same hash result using the algorithm.

(3) Any person by the use of a public key of the subscriber can verify the electronic record.

(4) The private key and the public key are unique to the subscriber and constitute a functioning key pair.

Information Technology Act, 2000 - Section 3A - Electronic Signature:

(1) Notwithstanding anything contained in section 3, but subject to the provisions of sub-section (2), a subscriber may authenticate any electronic record by such electronic signature or electronic authentication technique which--

(a) is considered reliable; and

(b) may be specified in the Second Schedule.

(2) For the purposes of this section any electronic signature or electronic authentication technique shall be considered reliable if--

(a) the signature creation data or the authentication data are, within the context in which they are used, linked to the signatory' or, as (the case may be, the authenticator and to no other person;

(b) the signature creation data or the authentication data were, at the time of signing, under the control of the signatory or, as the case may be, the authenticator and of no other person;

(c) any alteration to the electronic signature made after affixing such signature is detectable;

(d) any alteration to the information made after its authentication by electronic signature is detectable; and

(e) it fulfils such other conditions which may be prescribed.

(3) The Central Government may prescribe the procedure for the purpose of ascertaining whether electronic signature is that of the person by whom it is purported to have been affixed or authenticated.

(4) The Central Government may, by notification in the Official Gazette, add to or omit any electronic signature or electronic authentication technique and the procedure for affixing such signature from the Second Schedule:

Provided that no electronic signature or authentication technique shall be specified in the Second Schedule unless such signature or technique is reliable.

(5) Every notification issued under sub-section (4) shall be laid before each House of Parliament.

Information Technology Act, 2000 - Section 4 - Legal recognition of electronic records:

Where any law provides that information or any other matter shall be in writing or in the typewritten or printed form, then, notwithstanding anything contained in such law, such requirement shall be deemed to have been satisfied if such information or matter is-

(a) rendered or made available in an electronic form; and

(b) accessible so as to be usable for a subsequent reference.

Information Technology Act, 2000 - Section 6 - Use of Electronic Records And Electronic Signatures In Government And Its Agencies:

(1) Where any law provides for-

(a) the filing of any form, application or any other document with any office, authority, body or agency owned or controlled by the appropriate Government in a particular manner;

(b) the issue or grant of any licence, permit, sanction or approval by whatever name called in a particular manner;

(c) the receipt or payment of money in a particular manner,

then, notwithstanding anything contained in any other law for the time being in force, such requirement shall be deemed to have been satisfied if such filing, issue, grant, receipt or payment, as the case may be, is effected by means of such electronic form as may be prescribed by the appropriate Government.

(2) The appropriate Government may, for the purposes of sub-section (1), by rules, prescribe-

(a) the manner and format in which such electronic records shall be filed, created or issued;

(b) the manner or method of payment of any fee or charges for filing, creation or issue any electronic record under clause (a).

Information Technology Act, 2000 - Section 7 - Retention of Electronic Records:

(1) Where any law provides that documents, records or information shall be retained for any specific period, then, that requirement shall be deemed to have been satisfied if such documents, records or information are retained in the electronic form, if-

(a) the information contained therein remains accessible so as to be usable for a subsequent reference;

(b) the electronic record is retained in the format in which it was originally generated, sent or received or in a format which can be demonstrated to represent accurately the information originally generated, sent or received;

(c) the details which will facilitate the identification of the origin, destination, date and time of dispatch or receipt of such electronic record are available in the electronic record:

Provided that this clause does not apply to any information which is automatically generated solely for the purpose of enabling an electronic record to be dispatched or received.

(2) Nothing in this section shall apply to any law that expressly provides for the retention of documents, records or information in the form of electronic records.

Information Technology Act, 2000 - Section 11 - Attribution Of Electronic Records:

An electronic record shall be attributed to the originator,-

(a) if it was sent by the originator himself;

(b) by a person who had the authority to act on behalf of the originator in respect of that electronic record; or

(c) by an information system programmed by or on behalf of the originator to operate automatically.

Information Technology Act, 2000 - Section 13 - Time And Place of Despatch and Receipt of Electronic Record:

(1) Save as otherwise agreed to between the originator and the addressee, the dispatch of an electronic record occurs when it enters a computer resource outside the control of the originator.

(2) Save as otherwise agreed between the originator and the addressee, the time of receipt of an electronic record shall be determined as follows, namely:--

(a) if the addressee has designated a computer resource for the purpose of receiving electronic records,--

(i) receipt occurs at the time when the electronic record enters the designated computer resource; or

(ii) if the electronic record is sent to a computer resource of the addressee that is not the designated computer resource, receipt occurs at the time when the electronic record is retrieved by the addressee;

(b) if the addressee has not designated a computer resource along with specified timings, if any, receipt occurs when the electronic record enters the computer resource of the addressee.

(3) Save as otherwise agreed to between the originator and the addressee, an electronic record is deemed to be dispatched at the place where the originator has his place of business, and is deemed to be received at the place where the addressee has his place of business.

(4) The provisions of sub-section (2) shall apply notwithstanding that the place where the computer resource is located may be different from the place where the electronic record is deemed to have been received under sub-section (3).

(5) For the purposes of this section,--

(a) if the originator or the addressee has more than one place of business, the principal place of business, shall be the place of business;

(b) if the originator or the addressee does not have a place of business, his usual place of residence shall be deemed to be the place of business;

(c) "usual place of residence", in relation to a body corporate, means the place where it is registered.

Information Technology Act, 2000 - Section 14 - Secure Electronic Record:

Where any security procedure has been applied to an electronic record at a specific point of time, then such record shall he deemed to be a secure electronic record from such point of time to the time of verification.

Bharatiya Nyaya Sanhita, 2023 - Section 210 - Omission to produce document or electronic record to public servant by person legally bound to produce it:

Whoever, being legally bound to produce or deliver up any document or electronic record to any public servant, as such, intentionally omits so to produce or deliver up the same,-

(a) shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five thousand rupees, or with both;

(b) and where the document or electronic record is to be produced or delivered up to a Court with simple imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both.

Illustration

A, being legally bound to produce a document before a District Court, intentionally omits to produce the same. A has committed the offence defined in this section.

Bharatiya Nyaya Sanhita, 2023 - Section 241 - Destruction of document or electronic record to prevent its production as evidence:

Whoever secretes or destroys any document or electronic record which he may be lawfully compelled to produce as evidence in a Court or in any proceeding lawfully held before a public servant, as such, or obliterates or renders illegible the whole or any part of such document or electronic record with the intention of preventing the same from being produced or used as evidence before such Court or public servant as aforesaid, or after he shall have been lawfully summoned or required to produce the same for that purpose, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine which may extend to five thousand rupees, or with both.

Go Back to Section 85, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 86, Bharatiya Sakshya Adhiniyam, 2023:

Information Technology Act, 2000 - Section 3 - Authentication Of Electronic Records:

(1) Subject to the provisions of this section, any subscriber may authenticate an electronic record by affixing his digital signature.

(2) The authentication of the electronic record shall be effected by the use of asymmetric crypto system and hash function which envelop and transform the initial electronic record into another electronic record.

Explanation.- For the purposes of this sub-section, "hash function" means an algorithm mapping or translation of one sequence of bits into another, generally smaller, set known as "hash result" such that an electronic record yields the same hash result every time the algorithm is executed with the same electronic record as its input making it computationally infeasible--

(a) to derive or reconstruct the original electronic record from the hash result produced by the algorithm;

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(a) is considered reliable; and

(b) may be specified in the Second Schedule.

(2) For the purposes of this section any electronic signature or electronic authentication technique shall be considered reliable if--

(a) the signature creation data or the authentication data are, within the context in which they are used, linked to the signatory' or, as (the case may be, the authenticator and to no other person;

(b) the signature creation data or the authentication data were, at the time of signing, under the control of the signatory or, as the case may be, the authenticator and of no other person;

(c) any alteration to the electronic signature made after affixing such signature is detectable;

(d) any alteration to the information made after its authentication by electronic signature is detectable; and

(e) it fulfils such other conditions which may be prescribed.

(3) The Central Government may prescribe the procedure for the purpose of ascertaining whether electronic signature is that of the person by whom it is purported to have been affixed or authenticated.

(4) The Central Government may, by notification in the Official Gazette, add to or omit any electronic signature or electronic authentication technique and the procedure for affixing such signature from the Second Schedule:

Provided that no electronic signature or authentication technique shall be specified in the Second Schedule unless such signature or technique is reliable.

(5) Every notification issued under sub-section (4) shall be laid before each House of Parliament.

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Where any law provides that information or any other matter shall be in writing or in the typewritten or printed form, then, notwithstanding anything contained in such law, such requirement shall be deemed to have been satisfied if such information or matter is-

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(1) Where any law provides for-

(a) the filing of any form, application or any other document with any office, authority, body or agency owned or controlled by the appropriate Government in a particular manner;

(b) the issue or grant of any licence, permit, sanction or approval by whatever name called in a particular manner;

(c) the receipt or payment of money in a particular manner,

then, notwithstanding anything contained in any other law for the time being in force, such requirement shall be deemed to have been satisfied if such filing, issue, grant, receipt or payment, as the case may be, is effected by means of such electronic form as may be prescribed by the appropriate Government.

(2) The appropriate Government may, for the purposes of sub-section (1), by rules, prescribe-

(a) the manner and format in which such electronic records shall be filed, created or issued;

(b) the manner or method of payment of any fee or charges for filing, creation or issue any electronic record under clause (a).

Information Technology Act, 2000 - Section 7 - Retention Of Electronic Records:

(1) Where any law provides that documents, records or information shall be retained for any specific period, then, that requirement shall be deemed to have been satisfied if such documents, records or information are retained in the electronic form, if--

(a) the information contained therein remains accessible so as to be usable for a subsequent reference;

(b) the electronic record is retained in the format in which it was originally generated, sent or received or in a format which can be demonstrated to represent accurately the information originally generated, sent or received;

(c) the details which will facilitate the identification of the origin, destination, date and time of dispatch or receipt of such electronic record are available in the electronic record:

Provided that this clause does not apply to any information which is automatically generated solely for the purpose of enabling an electronic record to be dispatched or received.

(2) Nothing in this section shall apply to any law that expressly provides for the retention of documents, records or information in the form of electronic records.

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An electronic record shall be attributed to the originator,-

(a) if it was sent by the originator himself;

(b) by a person who had the authority to act on behalf of the originator in respect of that electronic record; or

(c) by an information system programmed by or on behalf of the originator to operate automatically.

Information Technology Act, 2000 - Section 13 - Time And Place Of Despatch And Receipt Of Electronic Record:

(1) Save as otherwise agreed to between the originator and the addressee, the dispatch of an electronic record occurs when it enters a computer resource outside the control of the originator.

(2) Save as otherwise agreed between the originator and the addressee, the time of receipt of an electronic record shall be determined as follows, namely:--

(a) if the addressee has designated a computer resource for the purpose of receiving electronic records,-

(i) receipt occurs at the time when the electronic record enters the designated computer resource; or

(ii) if the electronic record is sent to a computer resource of the addressee that is not the designated computer resource, receipt occurs at the time when the electronic record is retrieved by the addressee;

(b) if the addressee has not designated a computer resource along with specified timings, if any, receipt occurs when the electronic record enters the computer resource of the addressee.

(3) Save as otherwise agreed to between the originator and the addressee, an electronic record is deemed to be dispatched at the place where the originator has his place of business, and is deemed to be received at the place where the addressee has his place of business.

(4) The provisions of sub-section (2) shall apply notwithstanding that the place where the computer resource is located may be different from the place where the electronic record is deemed to have been received under sub-section (3).

(5) For the purposes of this section,-

(a) if the originator or the addressee has more than one place of business, the principal place of business, shall be the place of business;

(b) if the originator or the addressee does not have a place of business, his usual place of residence shall be deemed to be the place of business;

(c) "usual place of residence", in relation to a body corporate, means the place where it is registered.

Information Technology Act, 2000 - Section 14 - Secure Electronic Record:

Where any security procedure has been applied to an electronic record at a specific point of time, then such record shall he deemed to be a secure electronic record from such point of time to the time of verification.

Bharatiya Nyaya Sanhita, 2023 - Section 210 - Omission to produce document or electronic record to public servant by person legally bound to produce it:

Whoever, being legally bound to produce or deliver up any document or electronic record to any public servant, as such, intentionally omits so to produce or deliver up the same,-

(a) shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five thousand rupees, or with both;

(b) and where the document or electronic record is to be produced or delivered up to a Court with simple imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both.

Illustration

A, being legally bound to produce a document before a District Court, intentionally omits to produce the same. A has committed the offence defined in this section.

Bharatiya Nyaya Sanhita, 2023 - Section 241 - Destruction of document or electronic record to prevent its production as evidence:

Whoever secretes or destroys any document or electronic record which he may be lawfully compelled to produce as evidence in a Court or in any proceeding lawfully held before a public servant, as such, or obliterates or renders illegible the whole or any part of such document or electronic record with the intention of preventing the same from being produced or used as evidence before such Court or public servant as aforesaid, or after he shall have been lawfully summoned or required to produce the same for that purpose, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine which may extend to five thousand rupees, or with both.

Bharatiya Nyaya Sanhita, 2023 - Section 340 - Forged document or electronic record and using it as genuine:

(1) A false document or electronic record made wholly or in part by forgery is designated a forged document or electronic record.

(2) Whoever fraudulently or dishonestly uses as genuine any document or electronic record which he knows or has reason to believe to be a forged document or electronic record, shall be punished in the same manner as if he had forged such document or electronic record.

Go Back to Section 86, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 87, Bharatiya Sakshya Adhiniyam, 2023:

Information Technology Act, 2000 - Section 3 - Authentication Of Electronic Records:

(1) Subject to the provisions of this section, any subscriber may authenticate an electronic record by affixing his digital signature.

(2) The authentication of the electronic record shall be effected by the use of asymmetric crypto system and hash function which envelop and transform the initial electronic record into another electronic record.

Explanation.- For the purposes of this sub-section, "hash function" means an algorithm mapping or translation of one sequence of bits into another, generally smaller, set known as "hash result" such that an electronic record yields the same hash result every time the algorithm is executed with the same electronic record as its input making it computationally infeasible--

(a) to derive or reconstruct the original electronic record from the hash result produced by the algorithm;

(b) that two electronic records can produce the same hash result using the algorithm.

(3) Any person by the use of a public key of the subscriber can verify the electronic record.

(4) The private key and the public key are unique to the subscriber and constitute a functioning key pair.

Information Technology Act, 2000 - Section 3A - Electronic Signature:

(1) Notwithstanding anything contained in section 3, but subject to the provisions of sub-section (2), a subscriber may authenticate any electronic record by such electronic signature or electronic authentication technique which--

(a) is considered reliable; and

(b) may be specified in the Second Schedule.

(2) For the purposes of this section any electronic signature or electronic authentication technique shall be considered reliable if--

(a) the signature creation data or the authentication data are, within the context in which they are used, linked to the signatory' or, as (the case may be, the authenticator and to no other person;

(b) the signature creation data or the authentication data were, at the time of signing, under the control of the signatory or, as the case may be, the authenticator and of no other person;

(c) any alteration to the electronic signature made after affixing such signature is detectable;

(d) any alteration to the information made after its authentication by electronic signature is detectable; and

(e) it fulfils such other conditions which may be prescribed.

(3) The Central Government may prescribe the procedure for the purpose of ascertaining whether electronic signature is that of the person by whom it is purported to have been affixed or authenticated.

(4) The Central Government may, by notification in the Official Gazette, add to or omit any electronic signature or electronic authentication technique and the procedure for affixing such signature from the Second Schedule:

Provided that no electronic signature or authentication technique shall be specified in the Second Schedule unless such signature or technique is reliable.

(5) Every notification issued under sub-section (4) shall be laid before each House of Parliament.

Information Technology Act, 2000 - Section 4 - Legal recognition of electronic records:

Where any law provides that information or any other matter shall be in writing or in the typewritten or printed form, then, notwithstanding anything contained in such law, such requirement shall be deemed to have been satisfied if such information or matter is-

(a) rendered or made available in an electronic form; and

(b) accessible so as to be usable for a subsequent reference.

Information Technology Act, 2000 - Section 6 - Use Of Electronic Records And Electronic Signatures In Government And Its Agencies:

(1) Where any law provides for-

(a) the filing of any form, application or any other document with any office, authority, body or agency owned or controlled by the appropriate Government in a particular manner;

(b) the issue or grant of any licence, permit, sanction or approval by whatever name called in a particular manner;

(c) the receipt or payment of money in a particular manner,

then, notwithstanding anything contained in any other law for the time being in force, such requirement shall be deemed to have been satisfied if such filing, issue, grant, receipt or payment, as the case may be, is effected by means of such electronic form as may be prescribed by the appropriate Government.

(2) The appropriate Government may, for the purposes of sub-section (1), by rules, prescribe-

(a) the manner and format in which such electronic records shall be filed, created or issued;

(b) the manner or method of payment of any fee or charges for filing, creation or issue any electronic record under clause (a).

Information Technology Act, 2000 - Section 7 - Retention Of Electronic Records:

(1) Where any law provides that documents, records or information shall be retained for any specific period, then, that requirement shall be deemed to have been satisfied if such documents, records or information are retained in the electronic form, if--

(a) the information contained therein remains accessible so as to be usable for a subsequent reference;

(b) the electronic record is retained in the format in which it was originally generated, sent or received or in a format which can be demonstrated to represent accurately the information originally generated, sent or received;

(c) the details which will facilitate the identification of the origin, destination, date and time of dispatch or receipt of such electronic record are available in the electronic record:

Provided that this clause does not apply to any information which is automatically generated solely for the purpose of enabling an electronic record to be dispatched or received.

(2) Nothing in this section shall apply to any law that expressly provides for the retention of documents, records or information in the form of electronic records.

Information Technology Act, 2000 - Section 11 - Attribution Of Electronic Records:

An electronic record shall be attributed to the originator,-

(a) if it was sent by the originator himself;

(b) by a person who had the authority to act on behalf of the originator in respect of that electronic record; or

(c) by an information system programmed by or on behalf of the originator to operate automatically.

Information Technology Act, 2000 - Section 13 - Time And Place Of Despatch And Receipt Of Electronic Record:

(1) Save as otherwise agreed to between the originator and the addressee, the dispatch of an electronic record occurs when it enters a computer resource outside the control of the originator.

(2) Save as otherwise agreed between the originator and the addressee, the time of receipt of an electronic record shall be determined as follows, namely:--

(a) if the addressee has designated a computer resource for the purpose of receiving electronic records,-

(i) receipt occurs at the time when the electronic record enters the designated computer resource; or

(ii) if the electronic record is sent to a computer resource of the addressee that is not the designated computer resource, receipt occurs at the time when the electronic record is retrieved by the addressee;

(b) if the addressee has not designated a computer resource along with specified timings, if any, receipt occurs when the electronic record enters the computer resource of the addressee.

(3) Save as otherwise agreed to between the originator and the addressee, an electronic record is deemed to be dispatched at the place where the originator has his place of business, and is deemed to be received at the place where the addressee has his place of business.

(4) The provisions of sub-section (2) shall apply notwithstanding that the place where the computer resource is located may be different from the place where the electronic record is deemed to have been received under sub-section (3).

(5) For the purposes of this section,-

(a) if the originator or the addressee has more than one place of business, the principal place of business, shall be the place of business;

(b) if the originator or the addressee does not have a place of business, his usual place of residence shall be deemed to be the place of business;

(c) "usual place of residence", in relation to a body corporate, means the place where it is registered.

Information Technology Act, 2000 - Section 14 - Secure Electronic Record:

Where any security procedure has been applied to an electronic record at a specific point of time, then such record shall he deemed to be a secure electronic record from such point of time to the time of verification.

Information Technology Act, 2000 - Section 36 - Representations Upon Issuance Of Digital Signature Certificate:

A Certifying Authority while issuing a Digital Signature Certificate shall certify that-

(a) it has complied with the provisions of this Act and the rules and regulations made thereunder;

(b) it has published the Digital Signature Certificate or otherwise made it available to such person relying on it and the subscriber has accepted it:

(c) the subscriber holds the private key corresponding to the public key, listed in the Digital Signature Certificate;

(ca) the subscriber holds a private key which is capable of creating a digital signature;

(cb) the public key to be listed in the certificate can be used to verify a digital signature affixed by the private key held by the subscriber;

(d) the subscriber's public key and private key constitute a functioning key pair;

(e) the information contained in the Digital Signature Certificate is accurate; and

(f) it has no knowledge of any material fact, which if it had been included in the Digital Signature Certificate would adversely affect the reliability of the representations in clauses (a) to (d).

Information Technology Act, 2000 - Section 37 - Suspension Of Digital Signature Certificate:

(1) Subject to the provisions of sub-section (2), the Certifying Authority which has issued a Digital Signature Certificate may suspend such Digital Signature Certificate,-

(a) on receipt of a request to that effect from-

(i) the subscriber listed in the Digital Signature Certificate; or

(ii) any person duly authorised to act on behalf of that subscriber;

(b) if it is of opinion that the Digital Signature Certificate should be suspended in public interest.

(2) A Digital Signature Certificate shall not be suspended for a period exceeding fifteen days unless the subscriber has been given an opportunity of being heard in the matter.

(3) On suspension of a Digital Signature Certificate under this section, the Certifying Authority shall communicate the same to the subscriber.

Information Technology Act, 2000 - Section 38 - Revocation Of Digital Signature Certificate:

(1) A Certifying Authority may revoke a Digital Signature Certificate issued by it-

(a) where the subscriber or any other person authorised by him makes a request to that effect; or

(b) upon the death of the subscriber; or

(c) upon the dissolution of the firm or winding up of the company where the subscriber is a firm or a company.

(2) Subject to the provisions of sub-section (3) and without prejudice to the provisions of sub-section (1), a Certifying Authority may revoke a Digital Signature Certificate which has been issued by it at any time, if it is of opinion that-

(a) a material fact represented in the Digital Signature Certificate is false or has been concealed:

(b) a requirement for issuance of the Digital Signature Certificate was not satisfied;

(c) the Certifying Authority's private key or security system was compromised in a manner materially affecting the Digital Signature Certificate's reliability;

(d) the subscriber has been declared insolvent or dead or where a subscriber is a firm or a company, which has been dissolved, wound-up or otherwise ceased to exist.

(3) A Digital Signature Certificate shall not be revoked unless the subscriber has been given an opportunity of being heard in the matter.

(4) On revocation of a Digital Signature Certificate under this section, the Certifying Authority shall communicate the same to the subscriber.

Information Technology Act, 2000 - Section 41 - Acceptance of Digital Signature Certificate:

(1) A subscriber shall be deemed to have accepted a Digital Signature Certificate if he publishes or authorises the publication of a Digital Signature Certificate--

(a) to one or more persons;

(b) in a repository; or

otherwise demonstrates his approval of the Digital Signature Certificate in any manner.

(2) By accepting a Digital Signature Certificate the subscriber certifies to all who reasonably rely on the information contained in the Digital Signature Certificate that--

(a) the subscriber holds the private key corresponding to the public key listed in the Digital Signature Certificate and is entitled to hold the same;

(b) all representations made by the subscriber to the Certifying Authority and all material relevant to the information contained in the Digital Signature Certificate are true;

(c) all information in the Digital Signature Certificate that is within the knowledge of the subscriber is true.

Bharatiya Nyaya Sanhita, 2023 - Section 210 - Omission to produce document or electronic record to public servant by person legally bound to produce it:

Whoever, being legally bound to produce or deliver up any document or electronic record to any public servant, as such, intentionally omits so to produce or deliver up the same,-

(a) shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five thousand rupees, or with both;

(b) and where the document or electronic record is to be produced or delivered up to a Court with simple imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both.

Illustration

A, being legally bound to produce a document before a District Court, intentionally omits to produce the same. A has committed the offence defined in this section.

Bharatiya Nyaya Sanhita, 2023 - Section 241 - Destruction of document or electronic record to prevent its production as evidence:

Whoever secretes or destroys any document or electronic record which he may be lawfully compelled to produce as evidence in a Court or in any proceeding lawfully held before a public servant, as such, or obliterates or renders illegible the whole or any part of such document or electronic record with the intention of preventing the same from being produced or used as evidence before such Court or public servant as aforesaid, or after he shall have been lawfully summoned or required to produce the same for that purpose, shall be punished with imprisonment of either description

for a term which may extend to three years, or with fine which may extend to five thousand rupees, or with both.

Bharatiya Nyaya Sanhita, 2023 - Section 340 - Forged document or electronic record and using it as genuine:

(1) A false document or electronic record made wholly or in part by forgery is designated a forged document or electronic record.

(2) Whoever fraudulently or dishonestly uses as genuine any document or electronic record which he knows or has reason to believe to be a forged document or electronic record, shall be punished in the same manner as if he had forged such document or electronic record.

Go Back to Section 87, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 89, Bharatiya Sakshya Adhiniyam, 2023:

Registration Act, 1908 - Section 21 - Description Of Property And Maps Or Plans:

(1) No non-testamentary document relating to immovable property shall be accepted for registration unless it contains a description of such property sufficient to identify the same.

(2) Houses in towns shall be described as situate on the north or other side of the street or road (which should be specified) to which they front, and by their existing and former occupancies, and by their numbers if the houses in such street or road are numbered.

(3) Other houses and lands shall be described by their name, if any, and as being the territorial division in which they are situate, and by their superficial contents, the roads and other properties on to which they abut, and their existing occupancies, and also, whenever it is practicable, by reference to a Government map or survey.

(4) No non-testamentary document containing a map or plan of any property comprised therein shall be accepted for registration unless it is accompanied by a true copy of the map or plan, or, in case such property is situate in several districts, by such number of true copies of the map or plan as are equal to the number of such districts.

Registration Act, 1908 - Section 22 - Description Of Houses And Land By Reference To Government Maps Or Surveys:

(1) Where it is, in the opinion of the State Government, practicable to describe houses, not being houses in towns, and lands by reference to a Government map or survey, the State Government may, by rule made under this Act, require that such houses and lands as aforesaid shall, for the purposes of section 21, be so described.

(2) Save as otherwise provided by any rule made under sub-section (1), failure to comply with the provisions of section 21, sub-section (2) or sub-section (3), shall not disentitle a document to be registered if the description of the property to which it relates is sufficient to identify that property.

Go Back to Section 89, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 90, Bharatiya Sakshya Adhiniyam, 2023:

Information Technology Act, 2000 - Section 3 - Authentication Of Electronic Records:

(1) Subject to the provisions of this section, any subscriber may authenticate an electronic record by affixing his digital signature.

(2) The authentication of the electronic record shall be effected by the use of asymmetric crypto system and hash function which envelop and transform the initial electronic record into another electronic record.

Explanation.- For the purposes of this sub-section, "hash function" means an algorithm mapping or translation of one sequence of bits into another, generally smaller, set known as "hash result" such that an electronic record yields the same hash result every time the algorithm is executed with the same electronic record as its input making it computationally infeasible--

(a) to derive or reconstruct the original electronic record from the hash result produced by the algorithm;

(b) that two electronic records can produce the same hash result using the algorithm.

(3) Any person by the use of a public key of the subscriber can verify the electronic record.

(4) The private key and the public key are unique to the subscriber and constitute a functioning key pair.

Information Technology Act, 2000 - Section 3A - Electronic Signature:

(1) Notwithstanding anything contained in section 3, but subject to the provisions of sub-section (2), a subscriber may authenticate any electronic record by such electronic signature or electronic authentication technique which--

(a) is considered reliable; and

(b) may be specified in the Second Schedule.

(2) For the purposes of this section any electronic signature or electronic authentication technique shall be considered reliable if--

(a) the signature creation data or the authentication data are, within the context in which they are used, linked to the signatory' or, as (the case may be, the authenticator and to no other person;

(b) the signature creation data or the authentication data were, at the time of signing, under the control of the signatory or, as the case may be, the authenticator and of no other person;

(c) any alteration to the electronic signature made after affixing such signature is detectable;

(d) any alteration to the information made after its authentication by electronic signature is detectable; and

(e) it fulfils such other conditions which may be prescribed.

(3) The Central Government may prescribe the procedure for the purpose of ascertaining whether electronic signature is that of the person by whom it is purported to have been affixed or authenticated.

(4) The Central Government may, by notification in the Official Gazette, add to or omit any electronic signature or electronic authentication technique and the procedure for affixing such signature from the Second Schedule:

Provided that no electronic signature or authentication technique shall be specified in the Second Schedule unless such signature or technique is reliable.

(5) Every notification issued under sub-section (4) shall be laid before each House of Parliament.

Information Technology Act, 2000 - Section 4 - Legal recognition of electronic records:

Where any law provides that information or any other matter shall be in writing or in the typewritten or printed form, then, notwithstanding anything contained in such law, such requirement shall be deemed to have been satisfied if such information or matter is-

(a) rendered or made available in an electronic form; and

(b) accessible so as to be usable for a subsequent reference.

Information Technology Act, 2000 - Section 6 - Use of Electronic Records And Electronic Signatures In Government And Its Agencies:

(1) Where any law provides for-

(a) the filing of any form, application or any other document with any office, authority, body or agency owned or controlled by the appropriate Government in a particular manner;

(b) the issue or grant of any licence, permit, sanction or approval by whatever name called in a particular manner;

(c) the receipt or payment of money in a particular manner,

then, notwithstanding anything contained in any other law for the time being in force, such requirement shall be deemed to have been satisfied if such filing, issue, grant, receipt or payment, as the case may be, is effected by means of such electronic form as may be prescribed by the appropriate Government.

(2) The appropriate Government may, for the purposes of sub-section (1), by rules, prescribe-

(a) the manner and format in which such electronic records shall be filed, created or issued;

(b) the manner or method of payment of any fee or charges for filing, creation or issue any electronic record under clause (a).

Information Technology Act, 2000 - Section 7 - Retention of Electronic Records:

(1) Where any law provides that documents, records or information shall be retained for any specific period, then, that requirement shall be deemed to have been satisfied if such documents, records or information are retained in the electronic form, if--

(a) the information contained therein remains accessible so as to be usable for a subsequent reference;

(b) the electronic record is retained in the format in which it was originally generated, sent or received or in a format which can be demonstrated to represent accurately the information originally generated, sent or received;

(c) the details which will facilitate the identification of the origin, destination, date and time of dispatch or receipt of such electronic record are available in the electronic record:

Provided that this clause does not apply to any information which is automatically generated solely for the purpose of enabling an electronic record to be dispatched or received.

(2) Nothing in this section shall apply to any law that expressly provides for the retention of documents, records or information in the form of electronic records.

Information Technology Act, 2000 - Section 11 - Attribution of Electronic Records:

An electronic record shall be attributed to the originator,-

(a) if it was sent by the originator himself;

(b) by a person who had the authority to act on behalf of the originator in respect of that electronic record; or

(c) by an information system programmed by or on behalf of the originator to operate automatically.

Information Technology Act, 2000 - Section 13 - Time And Place of Despatch And Receipt of Electronic Record:

(1) Save as otherwise agreed to between the originator and the addressee, the dispatch of an electronic record occurs when it enters a computer resource outside the control of the originator.

(2) Save as otherwise agreed between the originator and the addressee, the time of receipt of an electronic record shall be determined as follows, namely:--

(a) if the addressee has designated a computer resource for the purpose of receiving electronic records,-

(i) receipt occurs at the time when the electronic record enters the designated computer resource; or

(ii) if the electronic record is sent to a computer resource of the addressee that is not the designated computer resource, receipt occurs at the time when the electronic record is retrieved by the addressee;

(b) if the addressee has not designated a computer resource along with specified timings, if any, receipt occurs when the electronic record enters the computer resource of the addressee.

(3) Save as otherwise agreed to between the originator and the addressee, an electronic record is deemed to be dispatched at the place where the originator has his place of business, and is deemed to be received at the place where the addressee has his place of business.

(4) The provisions of sub-section (2) shall apply notwithstanding that the place where the computer resource is located may be different from the place where the electronic record is deemed to have been received under sub-section (3).

(5) For the purposes of this section,-

(a) if the originator or the addressee has more than one place of business, the principal place of business, shall be the place of business;

(b) if the originator or the addressee does not have a place of business, his usual place of residence shall be deemed to be the place of business;

(c) "usual place of residence", in relation to a body corporate, means the place where it is registered.

Information Technology Act, 2000 - Section 14 - Secure Electronic Record:

Where any security procedure has been applied to an electronic record at a specific point of time, then such record shall he deemed to be a secure electronic record from such point of time to the time of verification.

Information Technology Act, 2000 - Section 36 - Representations Upon Issuance of Digital Signature Certificate:

A Certifying Authority while issuing a Digital Signature Certificate shall certify that-

(a) it has complied with the provisions of this Act and the rules and regulations made thereunder;

(b) it has published the Digital Signature Certificate or otherwise made it available to such person relying on it and the subscriber has accepted it:

(c) the subscriber holds the private key corresponding to the public key, listed in the Digital Signature Certificate;

(ca) the subscriber holds a private key which is capable of creating a digital signature;

(cb) the public key to be listed in the certificate can be used to verify a digital signature affixed by the private key held by the subscriber;

(d) the subscriber's public key and private key constitute a functioning key pair;

(e) the information contained in the Digital Signature Certificate is accurate; and

(f) it has no knowledge of any material fact, which if it had been included in the Digital Signature Certificate would adversely affect the reliability of the representations in clauses (a) to (d).

Information Technology Act, 2000 - Section 37 - Suspension of Digital Signature Certificate:

(1) Subject to the provisions of sub-section (2), the Certifying Authority which has issued a Digital Signature Certificate may suspend such Digital Signature Certificate,-

(a) on receipt of a request to that effect from-

(i) the subscriber listed in the Digital Signature Certificate; or

(ii) any person duly authorised to act on behalf of that subscriber;

(b) if it is of opinion that the Digital Signature Certificate should be suspended in public interest.

(2) A Digital Signature Certificate shall not be suspended for a period exceeding fifteen days unless the subscriber has been given an opportunity of being heard in the matter.

(3) On suspension of a Digital Signature Certificate under this section, the Certifying Authority shall communicate the same to the subscriber.

Information Technology Act, 2000 - Section 38 - Revocation of Digital Signature Certificate:

(1) A Certifying Authority may revoke a Digital Signature Certificate issued by it-

(a) where the subscriber or any other person authorised by him makes a request to that effect; or

(b) upon the death of the subscriber; or

(c) upon the dissolution of the firm or winding up of the company where the subscriber is a firm or a company.

(2) Subject to the provisions of sub-section (3) and without prejudice to the provisions of sub-section (1), a Certifying Authority may revoke a Digital Signature Certificate which has been issued by it at any time, if it is of opinion that-

(a) a material fact represented in the Digital Signature Certificate is false or has been concealed:

(b) a requirement for issuance of the Digital Signature Certificate was not satisfied;

(c) the Certifying Authority's private key or security system was compromised in a manner materially affecting the Digital Signature Certificate's reliability;

(d) the subscriber has been declared insolvent or dead or where a subscriber is a firm or a company, which has been dissolved, wound-up or otherwise ceased to exist.

(3) A Digital Signature Certificate shall not be revoked unless the subscriber has been given an opportunity of being heard in the matter.

(4) On revocation of a Digital Signature Certificate under this section, the Certifying Authority shall communicate the same to the subscriber.

Information Technology Act, 2000 - Section 41 - Acceptance of Digital Signature Certificate:

(1) A subscriber shall be deemed to have accepted a Digital Signature Certificate if he publishes or authorises the publication of a Digital Signature Certificate--

(a) to one or more persons;

(b) in a repository; or

otherwise demonstrates his approval of the Digital Signature Certificate in any manner.

(2) By accepting a Digital Signature Certificate the subscriber certifies to all who reasonably rely on the information contained in the Digital Signature Certificate that--

(a) the subscriber holds the private key corresponding to the public key listed in the Digital Signature Certificate and is entitled to hold the same;

(b) all representations made by the subscriber to the Certifying Authority and all material relevant to the information contained in the Digital Signature Certificate are true;

(c) all information in the Digital Signature Certificate that is within the knowledge of the subscriber is true.

Bharatiya Nyaya Sanhita, 2023 - Section 210 - Omission to produce document or electronic record to public servant by person legally bound to produce it:

Whoever, being legally bound to produce or deliver up any document or electronic record to any public servant, as such, intentionally omits so to produce or deliver up the same,-

(a) shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five thousand rupees, or with both;

(b) and where the document or electronic record is to be produced or delivered up to a Court with simple imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both.

Illustration

A, being legally bound to produce a document before a District Court, intentionally omits to produce the same. A has committed the offence defined in this section.

Bharatiya Nyaya Sanhita, 2023 - Section 241 - Destruction of document or electronic record to prevent its production as evidence:

Whoever secretes or destroys any document or electronic record which he may be lawfully compelled to produce as evidence in a Court or in any proceeding lawfully held before a public servant, as such, or obliterates or renders illegible the whole or

any part of such document or electronic record with the intention of preventing the same from being produced or used as evidence before such Court or public servant as aforesaid, or after he shall have been lawfully summoned or required to produce the same for that purpose, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine which may extend to five thousand rupees, or with both.

Bharatiya Nyaya Sanhita, 2023 - Section 340 - Forged document or electronic record and using it as genuine:

(1) A false document or electronic record made wholly or in part by forgery is designated a forged document or electronic record.

(2) Whoever fraudulently or dishonestly uses as genuine any document or electronic record which he knows or has reason to believe to be a forged document or electronic record, shall be punished in the same manner as if he had forged such document or electronic record.

Go Back to Section 90, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 92, Bharatiya Sakshya Adhiniyam, 2023:

Central Excise Act, 1944 - Section 36A - Presumption As To Documents In Certain Cases:

Where any document is produced by any person or has been seized from the custody or control of any person, in either case, under this Act or under any other law and such document is tendered by the prosecution in evidence against him or against him and any other person who is tried jointly with him, the Court shall, --

(a) unless the contrary is proved by such person, presume --

(i) the truth of the contents of such documents;

(ii) that the signature and every other part of such document which purports to be in the handwriting of any particular person or which the Court may reasonably assume to have been signed by, or to be in the handwriting of, any particular person, is in that person's handwriting, and in the case of a document executed or attested, that it was executed or attested by the person by whom it purports to have been so executed or attested;

(b) admit the document in evidence, notwithstanding that it is not duly stamped; if such document is otherwise admissible in evidence.

Central Goods and Services Tax Act, 2017- Section 144 - Presumption As To Documents In Certain Cases:

Where any document--

(i) is produced by any person under this Act or any other law for the time being in force; or

(ii) has been seized from the custody or control of any person under this Act or any other law for the time being in force; or

(iii) has been received from any place outside India in the course of any proceedings under this Act or any other law for the time being in force, and such document is tendered by the prosecution in evidence against him or any other person who is tried jointly with him, the court shall--

(a) unless the contrary is proved by such person, presume--

(i) the truth of the contents of such document;

(ii) that the signature and every other part of such document which purports to be in the handwriting of any particular person or which the court may reasonably assume to have been signed by, or to be in the handwriting of, any particular person, is in that person's handwriting, and in the case of a document executed or attested, that it was executed or attested by the person by whom it purports to have been so executed or attested;

(b) admit the document in evidence notwithstanding that it is not duly stamped, if such document is otherwise admissible in evidence.

The Customs Act, 1962 - Section 139 - Presumption As To Documents In Certain Cases:

Where any document-

(i) is produced by any person or has been seized from the custody of control of any person, in either case, under this Act or under any other law, or

(ii) has been received from any place outside India in the course of investigation of any offence alleged to have been committed by any person under this Act,

and such document is tendered by the prosecution in evidence against him or against him and any other person who is tried jointly with him, the court shall-

(a) presume, unless the contrary is proved, that the signature and every other part of such document which purports to be in the handwriting of any particular person or which the court may

reasonably assume to have been signed by, or to be in the handwriting of, any particular person, is in that person's handwriting, and in the case of a document executed or attested that it was executed or attested by the person by whom it purports to have been so executed or attested ;

(b) admit the document in evidence, notwithstanding that it is not duly stamped, if such document is otherwise admissible in evidence ;

(c) in a case falling under clause (i) also presume, unless the contrary is proved, the truth of the contents of such document.]

Explanation:-- For the purposes of this section "document" includes inventories, photographs and lists certified by a Magistrate under sub-section (1C), or Commissioner (Appeals) under sub-section (1D), of section 110.

The Foreign Exchange Management Act, 1999 - Section 39 - Presumption As To Documents In Certain Cases:

Where any document--

(i) is produced or furnished by any person or has been seized from the custody or control of any person, in either case, under this Act or under any other law; or

(ii) has been received from any place outside India (duly authenticated by such authority or person and in such manner as may be prescribed) in the course of investigation of any contravention under this Act alleged to have been committed by any person, and such document is tendered in any proceeding under this Act in evidence against him, or

against him and any other person who is proceeded against jointly with him, the court or the Adjudicating Authority, as the case may be, shall--

(a) presume, unless the contrary is proved, that the signature and every other part of such document which purports to be in the handwriting of any particular person or which the court may reasonably assume to have been signed by, or to be in the handwriting of, any particular person, is in that person's handwriting and in the case of a document executed or attested, that it was executed or attested by the person by whom it purports to have been so executed or attested;

(b) admit the document in evidence notwithstanding that it is not duly stamped, if such document is otherwise admissible in evidence;

(c) in a case falling under clause (i), also presume, unless the contrary is proved, the truth of the contents of such document.

Foreign Exchange Regulations Act, 1973 - Section 72 - Presumption As To Documents In Certain Cases:

Where any document-

(i) is produced or furnished by any person or has been seized from the custody or control of any person, in either case, under this Act or under any other law, or

(ii) has been received from any place outside India (duly authenticated by such authority or person and in such manner as may be prescribed)

in the course of investigation of any offence under this Act alleged to have been committed by any person,

and such document is tendered in any proceedings tinder this Act in evidence against him, or against him and any other person who is proceeded against jointly with him, the court or the adjudicating officer, as the case may be, shall-

(a) presume, unless the contrary is proved, that the signature and every other part of such document which purports to be in the handwriting of any particular person or which the court may reasonably assume to have been signed by, or to be in the handwriting of, any particular person, is in that person's handwriting and in the case of a document executed or attested, that it was executed or attested by the person by whom it purports to have been so executed or attested;

(b) admit the document in evidence notwithstanding that it is not duly stamped, if such document is otherwise admissible in evidence;

(c) in a case falling under clause (i), also presume, unless the contrary is proved, the truth of the contents of such document.

Gold (Control) Act, 1968 - Section 67 - Presumption As To Documents In Certain Cases:

Where any document is produced by any person under this Act or has been seized thereunder from the custody or control of any person and such document is tendered by the prosecution in evidence against him, the court shall, notwithstanding anything to the contrary contained in any other law for the time being in force,--

(a) presume, unless the contrary is proved, that the signature and every other part of such document which purports to be in the handwriting of any particular person or which the court may reasonably assume to have been signed by or to be in the handwriting of, any particular person, is in that person's handwriting, and in the case of a document executed or attested, that it was executed or attested by the person by whom it purports to have been so executed or attested;

(b) admit the document in evidence, notwithstanding that it is not duly stamped if such document is otherwise admissible in evidence.

Narcotic-Drugs and Psychotropic Substances Act 1985 - Section 66 - Presumption As To Documents In Certain Cases:

Where any document--

(i) is produced or furnished by any person or has been seized from the custody or control of any person, in either case, under this Act or under any other law, or

(ii) has been received from any place outside India (duly authenticated by such authority or person and in such manner as may be prescribed by the Central Government) in the course of investigation of any offence under this Act alleged to have been committed by a person,

and such document is tendered in any prosecution under this Act in evidence against him, or against him and any other person who is tried jointly with him, the court shall--

(a) presume, unless the contrary is proved, that the signature and every other part of such document which purports to be in the handwriting of any particular person or which the court may reasonably assume to have been signed by, or to be in the handwriting of, any particular person, is in that person's handwriting; and in the case of a document executed or attested, that it was executed or attested by the person by whom it purports to have been so executed or attested;

(b) admit the document in evidence, notwithstanding that it is not duly stamped, if such document is otherwise admissible in evidence;

(c) in a case falling under clause (i), also presume, unless the contrary is proved, the truth of the contents of such document.

Go Back to Section 92, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 93, Bharatiya Sakshya Adhiniyam, 2023:

Information Technology Act, 2000 - Section 14 - Secure Electronic Record:

Where any security procedure has been applied to an electronic record at a specific point of time, then such record shall he deemed to be a secure electronic record from such point of time to the time of verification.

Information Technology Act, 2000 - Section 13 - Time And Place Of Despatch And Receipt Of Electronic Record:

(1) Save as otherwise agreed to between the originator and the addressee, the dispatch of an electronic record occurs when it enters a computer resource outside the control of the originator.

(2) Save as otherwise agreed between the originator and the addressee, the time of receipt of an electronic record shall be determined as follows, namely:--

(a) if the addressee has designated a computer resource for the purpose of receiving electronic records,--

(i) receipt occurs at the time when the electronic record enters the designated computer resource; or

(ii) if the electronic record is sent to a computer resource of the addressee that is not the designated computer resource, receipt occurs at the time when the electronic record is retrieved by the addressee;

(b) if the addressee has not designated a computer resource along with specified timings, if any, receipt occurs when the electronic record enters the computer resource of the addressee.

(3) Save as otherwise agreed to between the originator and the addressee, an electronic record is deemed to be dispatched at the place where the originator has his place of business, and is deemed to be received at the place where the addressee has his place of business.

(4) The provisions of sub-section (2) shall apply notwithstanding that the place where the computer resource is located may be different

from the place where the electronic record is deemed to have been received under sub-section (3).

(5) For the purposes of this section,--

(a) if the originator or the addressee has more than one place of business, the principal place of business, shall be the place of business;

(b) if the originator or the addressee does not have a place of business, his usual place of residence shall be deemed to be the place of business;

(c) "usual place of residence", in relation to a body corporate, means the place where it is registered.

Information Technology Act, 2000 - Section 11 - Attribution Of Electronic Records:

An electronic record shall be attributed to the originator,--

(a) if it was sent by the originator himself;

(b) by a person who had the authority to act on behalf of the originator in respect of that electronic record; or

(c) by an information system programmed by or on behalf of the originator to operate automatically.

Information Technology Act, 2000 - Section 7 - Retention Of Electronic Records:

(1) Where any law provides that documents, records or information shall be retained for any specific period, then, that requirement shall

be deemed to have been satisfied if such documents, records or information are retained in the electronic form, if--

(a) the information contained therein remains accessible so as to be usable for a subsequent reference;

(b) the electronic record is retained in the format in which it was originally generated, sent or received or in a format which can be demonstrated to represent accurately the information originally generated, sent or received;

(c) the details which will facilitate the identification of the origin, destination, date and time of dispatch or receipt of such electronic record are available in the electronic record:

Provided that this clause does not apply to any information which is automatically generated solely for the purpose of enabling an electronic record to be dispatched or received.

(2) Nothing in this section shall apply to any law that expressly provides for the retention of documents, records or information in the form of electronic records.

Information Technology Act, 2000 - Section 6 - Use Of Electronic Records And Electronic Signatures In Government And Its Agencies:

(1) Where any law provides for--

(a) the filing of any form, application or any other document with any office, authority, body or agency owned or controlled by the appropriate Government in a particular manner;

(b) the issue or grant of any licence, permit, sanction or approval by whatever name called in a particular manner;

(c) the receipt or payment of money in a particular manner,

then, notwithstanding anything contained in any other law for the time being in force, such requirement shall be deemed to have been satisfied if such filing, issue, grant, receipt or payment, as the case may be, is effected by means of such electronic form as may be prescribed by the appropriate Government.

(2) The appropriate Government may, for the purposes of sub-section (1), by rules, prescribe--

(a) the manner and format in which such electronic records shall be filed, created or issued;

(b) the manner or method of payment of any fee or charges for filing, creation or issue any electronic record under clause (a).

Information Technology Act, 2000 - Section 4 Legal recognition of electronic records:

Where any law provides that information or any other matter shall be in writing or in the typewritten or printed form, then, notwithstanding anything contained in such law, such requirement shall be deemed to have been satisfied if such information or matter is--

(a) rendered or made available in an electronic form; and

(b) accessible so as to be usable for a subsequent reference.

Information Technology Act, 2000 - Section 3 - Authentication Of Electronic Records:

(1) Subject to the provisions of this section, any subscriber may authenticate an electronic record by affixing his digital signature.

(2) The authentication of the electronic record shall be effected by the use of asymmetric crypto system and hash function which envelop and transform the initial electronic record into another electronic record.

Explanation.--For the purposes of this sub-section, "hash function" means an algorithm mapping or translation of one sequence of bits into another, generally smaller, set known as "hash result" such that an electronic record yields the same hash result every time the algorithm is executed with the same electronic record as its input making it computationally infeasible--

(a) to derive or reconstruct the original electronic record from the hash result produced by the algorithm;

(b) that two electronic records can produce the same hash result using the algorithm.

(3) Any person by the use of a public key of the subscriber can verify the electronic record.

(4) The private key and the public key are unique to the subscriber and constitute a functioning key pair.

Bharatiya Nyaya Sanhita, 2023 - Section 210 - Omission to produce document or electronic record to public servant by person legally bound to produce it:

Whoever, being legally bound to produce or deliver up any document or electronic record to any public servant, as such, intentionally omits so to produce or deliver up the same,--

(a) shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five thousand rupees, or with both;

(b) and where the document or electronic record is to be produced or delivered up to a Court with simple imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both.

Illustration

A, being legally bound to produce a document before a District Court, intentionally omits to produce the same. A has committed the offence defined in this section.

Bharatiya Nyaya Sanhita, 2023 - Section 241 - Destruction of document or electronic record to prevent its production as evidence:

Whoever secretes or destroys any document or electronic record which he may be lawfully compelled to produce as evidence in a Court or in any proceeding lawfully held before a public servant, as such, or obliterates or renders illegible the whole or any part of such document or electronic record with the intention of preventing the same from

being produced or used as evidence before such Court or public servant as aforesaid, or after he shall have been lawfully summoned or required to produce the same for that purpose, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine which may extend to five thousand rupees, or with both.

Bharatiya Nyaya Sanhita, 2023 - Section 340 - Forged document or electronic record and using it as genuine:

(1) A false document or electronic record made wholly or in part by forgery is designated a forged document or electronic record.

(2) Whoever fraudulently or dishonestly uses as genuine any document or electronic record which he knows or has reason to believe to be a forged document or electronic record, shall be punished in the same manner as if he had forged such document or electronic record.

Go Back to Section 93, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 94, Bharatiya Sakshya Adhiniyam, 2023:

Companies Act, 2013 - Section 27 - Variation In Terms Of Contract Or Objects In Prospectus:

(1) A company shall not, at any time, vary the terms of a contract referred to in the prospectus or objects for which the prospectus was issued, except subject to the approval of, or except subject to an

authority given by the company in general meeting by way of special resolution:

Provided that the details, as may be prescribed, of the notice in respect of such resolution to shareholders, shall also be published in the newspapers (one in English and one in vernacular language) in the city where the registered office of the company is situated indicating clearly the justification for such variation:

Provided further that such company shall not use any amount raised by it through prospectus for buying, trading or otherwise dealing in equity shares of any other listed company.

(2) The dissenting shareholders being those shareholders who have not agreed to the proposal to vary the terms of contracts or objects referred to in the prospectus, shall be given an exit offer by promoters or controlling shareholders at such exit price, and in such manner and conditions as may be specified by the Securities and Exchange Board by making regulations in this behalf.

The Indian Contract Act, 1872 - Section 133 - Discharge Of Surety By Variance In Terms Of Contract:

Any variance, made without the surety's consent, in the terms of the contract between the principal debtor and the creditor, discharges the surety as to transactions subsequent to the variance.

Illustrations

(a) A becomes surety to C for B's conduct as a manager in C's bank. Afterwards B and C contract, without A's consent, that B's salary shall

be raised, and that he shall become liable for one- fourth of the losses on overdrafts. B allows a customer to over-draw, and the bank loses a sum of money.

A is discharged from his surety ship by the variance made without his consent, and is not liable to make good this loss.

(b) A guarantees C against the misconduct of B in an office to which B is appointed by C, and of which the duties are defined by an Act of the Legislature. By a subsequent Act, the nature of the office is materially altered. Afterwards, B misconducts himself. A is discharged by the change from future liability under his guarantee, though the misconduct of B is in respect of a duty not affected by the later Act.

(c) C agrees to appoint B as his clerk to sell goods at a yearly salary, upon A's becoming surety to C for B's duly accounting for moneys received by him as such clerk. Afterwards, without A's knowledge or consent, C and B agree that B should be paid by a commission on the goods sold by him and not by a fixed salary. A is not liable for subsequent misconduct of B.

(d) A gives to C a continuing guarantee to the extent of 3,000 rupees for any oil supplied by C to B on credit. Afterwards B becomes embarrassed, and, without the knowledge of A, B and C contract that C shall continue to supply B with oil for ready money, and that the payments shall be applied to the then existing debts between B and C. A is not liable on his guarantee for any goods supplied after this new arrangement.

(e) C contracts to lend B 5,000 rupees on the 1st March. A guarantees repayment. C pays the 5,000 rupees to B on the 1st January, A is

discharged from his liability, as the contract has been varied, inasmuch as C might sue B for the money before the 1st of March.

Go Back to Section 94, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 95, Bharatiya Sakshya Adhiniyam, 2023:

Registration Act, 1908 - Section 48 - Registered Documents Relating To Property When To Take Effect Against Oral Agreements:

All non-testamentary documents duly registered under this Act, and relating to any property, whether movable or immovable, shall take effect against any order agreement or declaration relating to such property, unless where the agreement or declaration has been accompanied or followed by delivery of possession and the same constitutes a valid transfer under any law for the time being in force:

Provided that a mortgage by deposit of title-deeds as defined in section 58 of the Transfer of Property Act, 1882 (4 of 1882), shall take effect against any mortgage-deed subsequently executed and registered which relates to the same property.

Go Back to Section 95, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 104, Bharatiya Sakshya Adhiniyam, 2023:

The Bonded Labour System (Abolition) Act, 1976 - Section 15 - Burden Of Proof:

Whenever any debt is claimed by a bonded labourer, or a Vigilance Committee, to be a bonded debt, the burden of proof that such debt is not a bonded debt shall lie on the creditor.

The Capital Issues (Control) Act, 1947 - Section 14 - Burden Of Proof In Certain Cases:

Where any person is prosecuted for contravening any provision of this Act or of any order made there under which prohibits him from doing an act without the consent or permission of any authority the burden of proving that he had the requisite consent or permission shall be on him.

Central Goods and Services Tax Act, 2017- Section 155 - Burden Of Proof:

Where any person claims that he is eligible for input tax credit under this Act, the burden of proving such claim shall lie on such person.

The Central Sales Tax Act, 1956 - Section 6A - Burden Of Proof, Etc., In Case Of Transfer Of Goods Claimed Otherwise Than By Way Of Sale:

(1) Where any dealer claims that he is not liable to pay tax under this Act, in respect of any goods, on the ground that the movement of such goods from one State of another was occasioned by reason of transfer of such goods by him to any other place of his business or to his agent or principal, as the case may be, and not by reason of sale, the burden of proving that the movement of those goods was so occasioned shall be on that dealer and for this purpose he may furnish to the assessing authority, within the prescribed time or within such further time as that authority may, for sufficient cause, permit, a declaration, duly filled and signed by the principal officer of the other place of business, or his agent or principal, as the case may be, containing the prescribed particulars in the prescribed form obtained from the prescribed authority, along with the evidence of dispatch of such goods. 2[and if the dealer fails to furnish such declaration, then, the movement of such goods shall be deemed for all purposes of this Act to have been occasioned as a result of sale

(2) If the assessing authority is satisfied after making such inquiry as he may deem necessary that the particulars contained in the declaration furnished by a dealer under sub-section (1) are true and that no inter-State sale has been effected, he may, at the time of, or at any time before, the assessment of the tax payable by the dealer under this Act, make an order to that effect and thereupon the movement of goods to which the declaration relates shall, subject to the provisions of sub-section (3), be deemed for the purpose of this Act to have been occasioned otherwise than as a result of sale.

Explanation.-- In this section, "assessing authority", in relation to dealer, means the authority for the time being competent to assess the tax payable by the dealer under this Act.

(3) Nothing contained in sub-section (2) shall preclude reassessment by the assessing authority on the ground of discovery of new facts or revision by a higher authority on the ground that the findings of the assessing authority are contrary to law, and such reassessment or revision may be done in accordance with the provisions of general sales tax law of the State.

The Commission of Sati (Prevention) Act, 1987 - Section 16 - Burden Of Proof:

Where any person is prosecuted of an offence under section 4, the burden of proving that he had not committed the offence under the said section shall be on him.

The Customs Act, 1962 - Section 123 - Burden Of Proof In Certain Cases:

(1) Where any goods to which this section applies are seized under this Act in the reasonable belief that they are smuggled goods, the burden of proving that they are not smuggled goods shall be-

(a) in a case where such seizure is made from the possession of any person,-

(i) on the person from whose possession the goods were seized; and

(ii) if any person, other than the person from whose possession the goods were seized, claims to be the owner thereof, also on such other person;

(b) in any other case, on the person, if any, who claims to be the owner of the goods so seized.

(2) This section shall apply to gold, and manufactures thereof] watches, and any other class of goods which the Central Government may by notification in the Official Gazette specify.

Delhi Sales Tax Act, 1975 - Section 6 - Burden Of Proof:

The burden of proving that in respect of any sale effected by a dealer he is not liable to pay tax under this Act, shall lie on him.

The Dowry Prohibition Act, 1961 - Section 8A - Burden Of Proof In Certain Cases:

8A. Burden of proof in certain cases

Where any person is prosecuted for taking or abetting the taking of any dowry under section 3, or the demanding of dowry under section 4, the burden of proving that he had not committed an offence under these sections shall be on him.

STATE AMENDMENTS

Himachal Pradesh

In Section 8 A

The following section 8-A shall be substituted, namely:--

"8-A. Cognizance of offences.--

No court shall take cognizance of any offence under this Act except on a police report under section 173 of the Code of Criminal Procedure, 1973 (2 of 1974) or a complaint made by a person aggrieved by the offence, as the case may be, within one year from the date of the commission of the offence:

Provided that no police officer of the rank lower than that of the Deputy Superintendent of Police shall investigate any case registered under this Act:

Provided further that no court shall take cognizance of any offence under this Act except with the previous sanction of the District Magistrate, having jurisdiction in the area."

Essential Commodities Act, 1955 - Section 14 - Burden Of Proof In Certain Cases:

Where a person is prosecuted for contravening any order made under section 3 which prohibits him from doing any act or being in possession of a thing without lawful authority or without a permit, licence or other document, the burden of proving that he has such authority, permit, licence or other document shall be on him.

Foreign Exchange Regulations Act, 1973- Section 71 - Burden Of Proof In Certain Cases:

(1) Where any person is prosecuted or proceeded against for contravening any of the provisions of this Act or of any rule, direction or order made thereunder which prohibits hi m from doing an act

without permission, the burden of proving that he had the requisite permission shall be on him.

(2) Where any person is prosecuted or proceeded against for contravening the provisions of sub-section (3) of section 8 , the burden of proving that the foreign exchange acquired by such person has been used for the purpose for which the permission to acquire it was granted shall be on him.

(3) If any person is found or is proved to have been in possession of any foreign exchange exceeding in value 1[fifteen thousand rupees], the burden of proving that the foreign exchange came into hi s possession lawfully shall be on him.

Foreigners Act, 1946 - Section 9 - Burden Of Proof:

If in any case not falling under section 8 any question arises with reference to this Act or any order made or direction given thereunder, whether any person is or is not a foreigner or is or is not a foreigner of a particular class or description the onus of proving that such person is not a foreigner or is not a foreigner of such particular class or description, as the case may be, shall, notwithstanding anything contained in the Indian Evidence, Act, 1872 (1 of 1872), lie upon such person.

The Indian Factories Act, 1881 - Section 16 - Burden Of Proof As To Age:

Where an act or omission would, if a person were under seven or twelve years of age, be an offence punishable under this Act, and such person is, in the opinion of the Court, apparently under such age, it shall lie on the accused to prove that such person is not under such age.

A declaration in writing by a certifying surgeon that he has personally examined a person employed in a factory, and believes him to be under or over the age set forth in such declaration, shall, for the purposes of this Act, be admissible as evidence of the age of that person.

Indian Railways Act, 1890 - Section 76 - Burden Of Proof In Suits For Compensation:

In any suit against a railway administration for compensation for any delay, loss, destruction, deterioration or damage, the burden of proving-

(a)in the case of animals, the value thereof, or the higher value declared under section 73, and, where the animal has been injured, the extent of the injury; or

(b)in the case of any parcel or package the value of which has been declared under section 75, that the value so declared is its true value,

shall lie on the person claiming the compensation, but, subject to the other provisions contained in this Act, it shall not be necessary for him to prove how the delay, loss, destruction, deterioration or damage was caused.

The Industries (Development and Regulation) Act, 1951 - Section 28 - Burden Of Proof In Certain Cases:

Where any person is imposed penalty for contravening any order made under Section 18-G which prohibits him from doing an act or being in possession of a thing without lawful authority or without a permit, licence or other document, the burden of proving that he has such authority, permit, licence or other document shall be on him.

Narcotic-Drugs and Psychotropic Substances Act 1985 - Section 68J - Burden Of Proof:

In any proceedings under this Chapter, the burden of proving that any property specified in the notice served under section 68H is not illegally acquired property shall be on the person affected.

Patents Act, 1970 - Section 104A - Burden Of Proof In Case Of Suits Concerning Infringement:

(1) In any suit for infringement of a patent, where the subject matter of patent is a process for obtaining a product, the court may direct the defendant to prove that the process used by him to obtain the product, identical to the product of the patented process, is different from the patented process if,-

(a) the subject matter of the patent is a process for obtaining a new product; or

(b) there is a substantial likelihood that the identical product is made by the process, and the patentee or a person deriving title or interest in the patent from him, has been unable through reasonable efforts to determine the process actually used:

Provided that the patentee or a person deriving title or interest in the patent from him, first proves that the product is identical to the product directly obtained by the patented process.

(2) In considering whether a party has discharged the burden imposed upon him by sub-section (1), the court shall not require him to disclose any manufacturing or commercial secrets, if it appears to the court that it would be unreasonable to do so.

The Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 - Section 16A - Burden Of Proof In Certain Cases:

Where any petroleum product together with any tool, vehicle or any item used in committing any such offence under sub-section (2) or sub-section (4) of section 15 are seized under this Act in the reasonable belief that such petroleum product has been stolen from the pipeline laid under section 7, the burden of proving that they are not stolen property shall be, in case where such seizure is made from the possession of any person,--

(i) on the person from whose possession the property was seized, and

(ii) on the person who claims to be the owner thereof, if any person other than the person from whose possession the stolen property was seized.

Prevention of Money Laundering Act, 2002 - Section 24 - Burden Of Proof:

In any proceeding relating to proceeds of crime under this Act,--

(a) in the case of a person charged with the offence of money-laundering under section 3. the Authority or Court shall, unless the contrary is proved presume that such proceeds of crime are involved in money-laundering; and

(b) in the case of any other person the Authority or Court, may presume that such proceeds of crime are involved in money-laundering.

Public Interest Disclosure (Protection of Informers) Act, 2002 - Section 14 - Burden Of Proof In Certain Cases:

Where the Competent Authority conducts inquiry into an application under sub section (3) of section 10, the burden of proving that such action or proceeding which is the subject of victimization would have been taken even if no disclosure had been made by the applicant, shall be upon such public servant or public authority against whom allegation of vitimisation has been made.

Railways Act, 1989 - Section 41 - Burden Of Proof, Etc.:

In the case of any complaint under clause (a) of section 36,--

(a) whenever it is shown that a railway administration charges one trader or class of traders or the traders in any local area, lower rates for the same or similar goods or lower charges for the same or similar services than it charges to other traders in any other local area, the burden of providing that such lower rate or charge does not amount to an undue preference, shall lie on the railway administration;

(b) in deciding whether a lower rate or charge does not amount to an undue preference, the Tribunal may, in addition to any other considerations affecting the case, take into consideration whether such lower rate or charge is necessary in the interests of the public.

Railways Act, 1989- Section 110 - Burden Of Proof:

In an application before the Claims Tribunal for compensation for loss, destruction, damage, deterioration or non-delivery of any goods, the burden of proving--

(a) the monetary loss actually sustained; or

(b) where the value has been declared under sub-section (2) of section 103 in respect of any consignment that the value so declared is its true value,

shall lie on the person claiming compensation, but subject to the other provisions contained in this Act, it shall not be necessary for him to prove how the loss, destruction, damage, deterioration or non-delivery was caused.

Reciprocity Act, 1943 - Section 4 - Burden Of Proof On Person Claiming Exemption:

If any person alleged to be domiciled in any British possession and to be subject to the provisions of this Act pleads that he is not so domiciled, or that the provisions of this Act do not apply to him, the onus of proving the truth of such a plea shall be on him.

Registration of Foreigners Act, 1939 - Section 4 - Burden Of Proof:

If any question arises with reference to this Act or any rule made thereunder whether-any person is or is not a foreigner or is or is not a foreigner of a particular class or description, the onus of proving that such person is not a foreigner or is not a foreigner of such particular class or description, as the case may be, shall, notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1872), lie upon such person.

Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 - Section 8 - Burden Of Proof:

any proceedings under this Act, the burden of proving that any property specified in the notice served under section 6 is not illegally acquired property shall be on the person affected.

Wild Life (Protection) Act, 1972 - Section 58J - Burden Of Proof:

In any proceedings under this Chapter, the burden of proving that any property specified in the notice served under section 58H is not illegally acquired property shall be on the person affected.

Go Back to Section 104, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 105, Bharatiya Sakshya Adhiniyam, 2023:

Reciprocity Act, 1943 - Section 4 - Burden Of Proof On Person Claiming Exemption:

If any person alleged to be domiciled in any British possession and to be subject to the provisions of this Act pleads that he is not so domiciled, or that the provisions of this Act do not apply to him, the onus of proving the truth of such a plea shall be on him.

Go Back to Section 105, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 112, Bharatiya Sakshya Adhiniyam, 2023:

Limited Liability Partnership Act, 2008 - Section 23 - Relationship Of Partners:

(1) Save as otherwise provided by this Act, the mutual rights and duties of the partners of a limited liability partnership, and the mutual rights and duties of a limited liability partnership and its partners, shall be governed by the limited liability partnership agreement between the partners, or between the limited liability partnership and its partners.

(2) The limited liability partnership agreement and any changes, if any, made therein shall be filed with the Registrar in such form, manner and accompanied by such fees as may be prescribed.

(3) An agreement in writing made before the incorporation of a limited liability partnership between the persons who subscribe their names to the incorporation document may impose obligations on the limited liability partnership, provided such agreement is ratified by all the partners after the incorporation of the limited liability partnership.

(4) In the absence of agreement as to any matter, the mutual rights and duties of the partners and the mutual rights and duties of the limited liability partnership and the partners shall be determined by the provisions relating to that matter as are set- out in the First Schedule.

Go Back to Section 112, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 113, Bharatiya Sakshya Adhiniyam, 2023:

Ajmer Tenancy and Land Records Act, 1950 - Section 193 - Dispute As Regards Ownership Of Land:

(1) If, in connection with any Action taken by a landlord under clause (iii) of section 9, a dispute arises between him and any other person who claims to have a proprietary interest in the land in respect of which such action is taken, either party may apply to the collector for the decision of such dispute.

(2) On the receipt of such application, the collector shall follow the procedure specified in section 38 and the provisions of that section shall, mutatis mutandis, apply to the case.

(3) If, in consequence of the order passed by the collector, any loss results to a tenant or to any other person having an interest in the land to which such order relates, the collector shall, before submitting the record of the case to the confirming court, award monetary compensation to such tenant or other person.

(4) Any compensation awarded under this section shall be recovered as arrears of revenue and paid to the person entitled.

Companies Act, 1956 - Section 187D - Investigation Of Beneficial Ownership Of Shares In Certain Cases:

Where it appears to the Central Government that there are good reasons so to do, it may appoint one or more Inspectors to investigate and report as to whether the provisions of section 187C have been complied with regard to any share, and thereupon the provisions of section 247 shall, as far as may be, apply to such investigation as if it were an investigation ordered under that section.

Companies Act, 1956- Section 247 - Investigation Of Ownership Of Company:

(1) Where it appears to the Central Government that there is good reason so to do it may appoint one or more inspectors to investigate and report on the membership of any company and other mailers

relating to the company, for the purpose of determining the true persons -

(a) who are or have been financially interested in the success or failure, whether real or apparent, of the company; or

(b) who are or have been able to control or materially to influence the policy of the company.

1 (1A) Without prejudice to its powers under this section, the Central Government shall appoint one or more inspectors under sub-section (1), if the Tribunal in the course of any proceedings before it, declares by an order that the affairs of the company ought to be investigated as regards the membership of the company and other matters relating to the company, for the purposes of determining the true persons -

(a) who are or have been financially interested in the success or failure, whether real or apparent, of the company; or

(b) who are or have been able to control or materially to influence the policy of the company.

(2) When appointing an inspector under sub-section (1), the Central Government may define the scope of his investigation, whether as respects the matters or the period to which it is to extend or otherwise, and in particular, may limit the investigation to matters connected with particular shares or debentures.

(3) Subject to the terms of an inspector's appointment, his powers shall extend to the investigation of any circumstances suggesting the existence of any arrangement or understanding which, though not legally binding, is or was observed or is likely to be observed in practice and which is relevant to the purposes of his investigation.

(5) For the purposes of any investigation under this section, sections 239, 240 and 241 shall apply with the necessary modifications of references to the affairs of the company or to those of any other body corporate

Provided that the said sections shall apply in relation to all persons (including persons concerned only on behalf of others) who are or have been, or whom the inspector has reasonable cause to believe to be or to have been, -

(i) financially interested in the success or failure, or the apparent success or failure, of the company, or of any other body corporate, whose membership or constitution is investigated with that of the company; or

(ii) able to control or materially to influence the policy of such company body corporate,

as they apply in relation to officers and other employees and agents] of the company, of the other body corporate, as the case may be: as the case may be:

Provided further that the Central Government shall not be bound to furnish the company or any oilier person with a copy of any report by an inspector appointed under this section or with a complete copy thereof, if it is of opinion that there is good reason for not divulging the contents of the report or of parts thereof; but in such a case, the Central Government shall cause to be kept by the Registrar a copy of any such report, or as the case may be, of the parts thereof, as respects which it is not of that opinion.

(6) The expenses of any investigation under this section shall be defrayed by the Central Government out of moneys provided by Parliament, unless the Central Government directs that the expenses or any part thereof should be paid by the persons on whose application the investigation was ordered.

Companies Act, 1956- Section 216 - Profit And Loss Account To Be Annexed And Auditors' Report To Be Attached To Balance-Sheet:

The profit and loss account shall be annexed to the balance-sheet and the auditors' report (including the auditors' separate, special or supplementary report, if any) shall be attached thereto.

Gold (Control) Act, 1968 - Section 99 - Presumption As To Ownership Of Gold:

Any person who has in his possession, custody or control any primary gold, article or ornament shall be presumed, unless the contrary is proved, to be the owner thereof.

Indian Treasure-Trove Act, 1878 - Section 13 - In Case Of Dispute As To Ownership Of Place, Proceedings To Be Stayed:

When a declaration has been made as aforesaid in respect of any treasure, and two or more persons have appeared as aforesaid and each of them claimed as owner of the place where such treasure of was found, or the right of any person who has so appeared and claimed is disputed by the finder of such treasure, the Collector shall retain such

treasure and shall make an order staying his proceedings with a view to the matter being inquired into and determined by a Civil Court.

[STATE AMENDMENTS

[Himachal Pradesh

In Section 11

The following sub-sections shall be added, namely:-

"(2) If the right of any such person who has so appeared and claimed is disputed by the Government, the matter shall be determined by the Collector;

(3) Any person aggrieved by the decision of the Collector under sub-section (2) may appeal within two months of the date of such decision to the Financial Commissioner.

(4) Subject to the decision of the appellate authority, the decision of the Collector under sub-section (2) shall be final and conclusive".]

Merchant Shipping Act, 1958 - Section 29 - Declaration Of Ownership On Registry:

A person shall not be registered as the owner of an Indian ship or of a share therein until he or, in the case of a company, or a co-operative society the person authorised by this Act to make declarations on its behalf has made and signed a declaration of ownership in the prescribed form referring to the ship as described in the certificate of the surveyor and containing the following particulars :--

(a) a statement whether he is or is not a citizen of India; or in the case of a company, or a co-operative society, whether the company or a co-operative society, satisfies the requirements specified in clause (b) or, as the case may be, clause (c) of section 21.

(b) a statement of the time when and the place where the ship was built or if the ship is built outside India and the time and place of building is not known, a statement to that effect; and in addition, in the case of a ship previously registered outside India, a statement of the name by which she was so registered.

(c) the name of her master;

(d) the number of shares in the ship in respect of which he or the company, or the co-operative society as the case may be, claims to be registered as owner; and

(e) a declaration that the particulars stated arc true to the best of his knowledge and belief.

Explanation.-- In respect of a ship or share owned by more than one person, a declaration may be made by such one of them as may be authorised by them.

The Trade And Merchandise Marks Act, 1958 - Section 129 - Declaration As To Ownership Of Trade Mark Not Registrable Under The Indian Registration Act, 1908,:

Notwithstanding anything contained in the Indian Registration Act, 1908 (16 of 1908), no document declaring or purporting to declare the

ownership or title of a person to a trade mark other than a registered trade mark shall be registered under that Act.

The Trade And Merchandise Marks Act, 1958 - Section 152 - Declaration As To Ownership Of Trade Mark Not Registrable Under The Indian Registration Act, 1908:

Notwithstanding anything contained in the Registration Act, 1908 (16 of 1908), no document declaring or purporting to declare the ownership or title of a person to a trade mark other than a registered trade mark shall be registered under that Act.

Go Back to Section 113, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 114, Bharatiya Sakshya Adhiniyam, 2023:

Delhi Police Act, 1978 - Section 138 - No Police Officer To Be Liable To Penalty Or Damage For Act Done In Good Faith In Pursuance Of Duty:

No police officer shall be liable to any penalty or to payment of any damages on account of an act done in good faith in pursuance of or purported to be done in pursuance of any duty imposed or any authority conferred on him by any provision of this Act or any other law for the time being in force or any rule, regulation, order or direction made or given thereunder.

Bharatiya Nyaya Sanhita, 2023 - Section 27 - Act done in good faith for benefit of child or person of unsound mind, by, or by consent of guardian:

Nothing which is done in good faith for the benefit of a person under twelve years of age, or person of unsound mind, by, or by consent, either express or implied, of the guardian or other person having lawful charge of that person, is an offence by reason of any harm which it may cause, or be intended by the doer to cause or be known by the doer to be likely to cause to that person:

Provided that this exception shall not extend to--

(a) the intentional causing of death, or to the attempting to cause death;

(b) the doing of anything which the person doing it knows to be likely to cause death, for any purpose other than the preventing of death or grievous hurt, or the curing of any grievous disease or infirmity;

(c) the voluntary causing of grievous hurt, or to the attempting to cause grievous hurt, unless it be for the purpose of preventing death or grievous hurt, or the curing of any grievous disease or infirmity;

(d) the abetment of any offence, to the committing of which offence it would not extend.

Illustration

A, in good faith, for his child's benefit without his child's consent, has his child cut for the stone by a surgeon knowing it to be likely that the operation will cause the child's death, but not intending to cause the

child's death. A is within the exception, in as much as his object was the cure of the child.

Bharatiya Nyaya Sanhita, 2023 - Section 30 - Act done in good faith for benefit of person without consent:

Nothing is an offence by reason of any harm which it may cause to a person for whose benefit it is done in good faith, even without that person's consent, if the circumstances are such that it is impossible for that person to signify consent, or if that person is incapable of giving consent, and has no guardian or other person in lawful charge of him from whom it is possible to obtain consent in time for the thing to be done with benefit:

Provided that this exception shall not extend to--

(a) the intentional causing of death, or the attempting to cause death;

(b) the doing of anything which the person doing it knows to be likely to cause death, for any purpose other than the preventing of death or grievous hurt, or the curing of any grievous disease or infirmity;

(c) the voluntary causing of hurt, or to the attempting to cause hurt, for any purpose other than the preventing of death or hurt;

(d) the abetment of any offence, to the committing of which offence it would not extend.

Illustrations

(1) Z is thrown from his horse, and is insensible. A, a surgeon, finds that Z requires to be trepanned. A, not intending Z's death, but in good

faith, for Z's benefit, performs the trepan before Z recovers his power of judging for himself. A has committed no offence.

(2) Z is carried off by a tiger. A fires at the tiger knowing it to be likely that the shot may kill Z, but not intending to kill Z, and in good faith intending Z's benefit. A's bullet gives Z a mortal wound. A has committed no offence.

(3) A, a surgeon, sees a child suffer an accident which is likely to prove fatal unless an operation be immediately performed. There is no time to apply to the child's guardian. A performs the operation in spite of the entreaties of the child, intending, in good faith, the child's benefit. A has committed no offence.

(4) A is in a house which is on fire, with Z, a child. People below hold out a blanket. A drops the child from the house top, knowing it to be likely that the fall may kill the child, but not intending to kill the child, and intending, in good faith, the child's benefit. Here, even if the child is killed by the fall, A has committed no offence.

Explanation.--Mere pecuniary benefit is not benefit within the meaning of sections 26, 27 and this section.

Go Back to Section 114, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 115, Bharatiya Sakshya Adhiniyam, 2023:

Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 - Section 3 - Power To Declare Areas To Be Disturbed Areas:

If, in relation to the State of Jammu and Kashmir, the Governor of that State or the Central Government, is of opinion that the whole or any part of the State is in such a disturbed and dangerous condition that the use of armed forces in aid of the civil power is necessary to prevent--

(a) activities involving terrorist acts directed towards overawing the Government as by law established or striking terror in the people or any section of the people or alienating any section of the people or adversely affecting the harmony amongst different sections of the people;

(b) activities directed towards disclaiming, questioning or disrupting the sovereignty and territorial integrity of India or bringing about cession of a part of the territory of India or secession of a part of the territory of India front the Union or causing insult to the Indian National Flag, the Indian National Anthem and the Constitution of India, the Governor of the State or the Central Government, may, by notification in the Official Gazette, declare the whole or any part of the State to be a disturbed area.

Explanation.- In this section, "terrorist act" has the same meaning as in Explanation to article 248 of the Constitution of India as applicable to the State of Jammu and Kashmir.

Armed Forces (Special Powers) Act, 1958 - Section 3 - Power To Declare Areas To Be Disturbed Areas:

If, in relation to any State or Union Territory lo which this Act extends, the Governor of that State or the Administrator of that Union Territory

or the Central Government, in either case, is of the opinion that 1[the whole or as the case may be, such a part of the state of Nagaland], is in such a disturbed or dangerous condition that the use of armed forces in aid of the civil power is necessary, the Governor of that State or the Administrator of that Union Territory or the Central Government, as the case may be, may, by notification in the Official Gazette, declare the whole or such part of such State or Union Territory to be a disturbed area.

The Arms Act, 1959 - Section 24A - Prohibition As To Possession Of Notified Arms In Disturbed Areas, Etc.:

(1) Where the Central Government is satisfied that there is extensive disturbance of public peace and tranquillity or imminent danger of such disturbance in any area and that for the prevention of offences involving the use of arms in such area, it is necessary or expedient so to do, it may by notification in the Official Gazette--

(a) specify the limits of such area;

(b) direct that before the commencement of the period specified in the notification (which period shall be a period commencing from a date not earlier than the fourth day after the date of publication of the notification in the Official Gazette), every person having in his possession in such area any arms of such description as may be specified in the notification (the arms so specified being hereafter in this section referred to as notified arms, shall, notwithstanding anything contained in any other provisions of this Act (except section 41) or in any other law for the time being in force, as from the date of

publication such notification in the Official Gazette be deemed to have ceased to be lawful;

(c) declare that as from the commencement of, and until the expiry of, the period specified in the notification, it shall not be lawful for any person to have in his possession in such area any notified arms;

(d) authorise any such officer subordinate to the Central Government or a State Government as may be specified in the notification,--

(i) to search at any time during the period specified in the notification any person in, or passing through, or any premises in , or any animal or vessel or vehicle or other conveyance of whatever nature in or passing through or any premises in or other container of whatever nature in, such area if such officer has reason to believe through, or any receptacle or other container of whatever nature in, such area if such officer has reason to believe that any notified arms are secreted by such person or in such premises or on such animal or in such vessel, vehicle or other conveyance or in such receptacle or other container,

(ii) the seize at any time during the period specified in the notification any notified arms in the possession of any person in such area or discovered through a search under sub-clause (i) and detain the same during the period specified in the notification.

(2) The period specified in a notification issued under sub-section (1) in respect of any area shall not, in the first instance exceed ninety days, but the Central Government may amend such notification to extend such period from time to time by any period not exceeding ninety days at any one time, in the opinion of that Government, there continues to be in such area such disturbance of public peace and tranquility as is referred to in sub-section (1) or imminent danger thereof and that for

the prevention of offences involving the use of arms in such area it is necessary or expedient so to do.

(3) The provisions of the Code of Criminal Procedure, 1973 (2 of 1974), relating to searches and seizures shall, so far as may be, apply to any search or seizure made under sub-section (1)

(4) For the purposes of this section,--

(a) "arms" includes ammunition;

(b) where the period specified in a notification , as originally issued under sub-section (1), is extended under sub-section (2), then, in relation to such notification, references in subsection (1) to "the period specified in the notification" shall be construed as references to the period as so extended.

The Arms Act, 1959 - Section 24B - Prohibition As To Carrying Of Notified Arms In Or Through Public Places In Disturbed Areas, Etc.:

(1) Where the Central Government is satisfied that there is extensive disturbance of public peace and tranquillity or imminent danger of such disturbance in any area and that for the prevention of offences involving the use of arms in such area it is necessary or expedient so to do, it may, by notification in the Official Gazette,--

(a) specify the limits of such area;

(b) direct that during the period specified in the notification (which period shall be a period commencing from a date not earlier than the second day after the date of publication of the notification in the Official Gazette0, no person shall carry or otherwise have in his

possession any arms of such description as may be specified in the notification (the arms so specified being hereafter in this section referred to as notified arms) through or in any public place in such area;

(c) authorise any such officer subordinate to the Central Government or a State Government as may be specified in the notification,--

(i) to search at any time during the period specified in the notification any person in or passing through, or any premises in or forming part of, or any animal or vessel or vehicle or other conveyance of whatever nature, in or passing through, or any receptacle or other container of whatever nature in, any public place in such area if such officer has reason to believe that any notified arms are secreted by such vessel, vehicle or other conveyance or in such receptacle or other container;

(ii) to seize at any time during the period specified in the notification any notified arms being carried by or other-wise in the possession of any person, through or in a public place in such area or discovered through a search under sub-clause (i) and detain the same during the period specified in the notification.

(2) The period specified in a notification issued under sub-section (1) in respect of any area shall not, in the first instance, exceed ninety days, but the Central Government may amend such notification to extend such period from time to time by any period not exceeding ninety days at any one time if, in the opinion of that Government, there continues to be in such area such disturbance of public peace and tranquillity as is referred to in sub-section (1) or imminent danger thereof and that for the prevention of offences involving the use of arms in such area it is necessary or expedient so to do.

(3) The provisions of the Code of Criminal Procedure, 1973, (2 of 1974), relating to searches and seizures shall, so far as may be, apply to any search or seizure made under sub-section (1).

(4) For the purposes of this section,--

(a) "arms" includes ammunition;

(b) "public place" means any place intended for use by, or accessible to , the public or any section of the public; and

(c) where the period specified in a notification, as originally issued under sub-section (1), is extended under sub-section (2) , then, in relation to such notification, references in sub-section (1) to "the period specified in the notification " shall be construed as references to the period as so extended.]

Go Back to Section 115, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 117, Bharatiya Sakshya Adhiniyam, 2023:

The Commission of Sati (Prevention) Act, 1987 - Section 4 - Abetment Of Sati:

(1) Notwithstanding anything contained in the Indian Penal Code (45 of 1860), if any person commits sati, whoever abets the commission of such sati, either directly or indirectly, shall be punishable with death or imprisonment for life and shall also be liable to fine.

(2) If any person attempts to commit sati, whoever abets such attempt, either directly or indirectly, shall be punishable with imprisonment for life and shall also be liable to fine.

Explanation.--For the purposes of this section, any of the following acts or the like shall also be deemed to be an abetment, namely:--

(a) any inducement to a widow or woman to get her burnt or buried alive along with the body of her deceased husband or with any other relative or with any article, object or thing associated with the husband or such relative, irrespective of whether she is in a fit state of mind or is labouring under a state of intoxication or stupefaction or other cause impeding the exercise of her free will;

(b) making a widow or woman believe that the commission of sati would result in some spiritual benefit to her or her deceased husband or relative of the general well being of the family;

(c) encouraging a widow or woman to remain fixed in her resolve to commit sati and thus instigating her to commit sati;

(d) participating in any procession in connection with the commission of sati or aiding the widow or woman in her decision to commit sati by taking her along with the body of her deceased husband or relative to the cremation or burial ground;

(e) being present at the place where sati is committed as an active participant to such commission or to any ceremony connected with it;

(f) preventing or obstructing the widow or woman from saving herself from being burnt or buried alive;

(g) obstructing, or interfering with, the police in the discharge of its duties of taking any steps to prevent the commission of sati.

Bharatiya Nyaya Sanhita, 2023 - Section 108 - Abetment of suicide:

If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Bharatiya Nyaya Sanhita, 2023 - Section 85 - Husband or relative of husband of a woman subjecting her to cruelty:

Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Go Back to Section 117, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 118, Bharatiya Sakshya Adhiniyam, 2023:

Bharatiya Nyaya Sanhita, 2023 - Section 80 - Dowry Death:

(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death

she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.

Explanation.--For the purposes of this sub-section, "dowry" shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.

Go Back to Section 118, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 120, Bharatiya Sakshya Adhiniyam, 2023:

Bharatiya Nyaya Sanhita, 2023 - Section 64 - Punishment for rape:

(1) Whoever, except in the cases provided for in sub-section (2), commits rape, shall be punished with rigorous imprisonment of either description for a term which shall not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine.

(2) Whoever,--

(a) being a police officer, commits rape,--

(i) within the limits of the police station to which such police officer is appointed; or

(ii) in the premises of any station house; or

(iii) on a woman in such police officer's custody or in the custody of a police officer subordinate to such police officer; or

(b) being a public servant, commits rape on a woman in such public servant's custody or in the custody of a public servant subordinate to such public servant; or

(c) being a member of the armed forces deployed in an area by the Central Government or a State Government commits rape in such area; or

(d) being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a women's or children's institution, commits rape on any inmate of such jail, remand home, place or institution; or

(e) being on the management or on the staff of a hospital, commits rape on a woman in that hospital; or

(f) being a relative, guardian or teacher of, or a person in a position of trust or authority towards the woman, commits rape on such woman; or

(g) commits rape during communal or sectarian violence; or

(h) commits rape on a woman knowing her to be pregnant; or

(i) commits rape, on a woman incapable of giving consent; or

(j) being in a position of control or dominance over a woman, commits rape on such woman; or

(k) commits rape on a woman suffering from mental or physical disability; or

(l) while committing rape causes grievous bodily harm or maims or disfigures or endangers the life of a woman; or

(m) commits rape repeatedly on the same woman,

shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.

Explanation.--For the purposes of this sub-section,--

(a) "armed forces" means the naval, army and air forces and includes any member of the Armed Forces constituted under any law for the time being in force, including the paramilitary forces and any auxiliary forces that are under the control of the Central Government or the State Government;

(b) "hospital" means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation;

(c) "police officer" shall have the same meaning as assigned to the expression "police" under the Police Act, 1861(5 of 1861) ;

(d) "women's or children's institution" means an institution, whether called an orphanage or a home for neglected women or children or a widow's home or an institution called by any other name, which is

established and maintained for the reception and care of women or children.

Bharatiya Nyaya Sanhita, 2023 - Section 65(1) - Rape on woman under 16 years of age:

(1) Whoever, commits rape on a woman under sixteen years of age shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine:

Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:

Provided further that any fine imposed under this sub-section shall be paid to the victim.

Bharatiya Nyaya Sanhita, 2023 - Section 63 – Rape:

A man is said to commit "rape" if he--

(a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or

(b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or

(c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or

(d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person,

under the circumstances falling under any of the following seven descriptions:--

(i) against her will;

(ii) without her consent;

(iii) with her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt;

(iv) with her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married;

(v) with her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent;

(vi) with or without her consent, when she is under eighteen years of age;

(vii) when she is unable to communicate consent.

Explanation 1.--For the purposes of this section, "vagina" shall also include labia majora.

Explanation 2.--Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act:

Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

Exception 1.--A medical procedure or intervention shall not constitute rape.

Exception 2.--Sexual intercourse or sexual acts by a man with his own wife, the wife not being under eighteen years of age, is not rape.

Go Back to Section 120, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 121, Bharatiya Sakshya Adhiniyam, 2023:

Negotiable Instruments Act, 1881 - Section 120 - Estoppel Against Denying Original Validity Of Instrument:

No maker of a promissory note, and no drawer of a bill of exchange or cheque, and no acceptor of a bill of exchange for the honour of the drawer shall, in a suit thereon by a holder in due course, be permitted to deny the validity of the instrument as originally made or drawn.

Negotiable Instruments Act, 1881 - Section 121 - Estoppel Against Denying Capacity Of Payee To Indorse:

No maker of a promissory note and no acceptor of a bill of exchange payable to order shall, in a suit thereon by a holder in due course, be permitted to deny the payee's capacity, at the rate of the note or bill, to indorse the same.

Negotiable Instruments Act, 1881 - Section 122 - Estoppel Against Denying Signature Or Capacity Of Prior Party:

No indorser of a negotiable instrument shall, in a suit thereon by a subsequent holder, be permitted to deny the signature or capacity to contract of any prior party to the instrument.

Go Back to Section 121, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 123, Bharatiya Sakshya Adhiniyam, 2023:

Negotiable Instruments Act, 1881 - Section 5 - Bill Of Exchange:

A "bill of exchange" is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of, a certain person or to the bearer of the instrument.

A promise or order to pay is not "conditional", within the meaning of this section and section 4, by reason of the time for payment of the

amount or any installment thereof being expressed to be on the lapse of a certain period after the occurrence of a specified event which, according to the ordinary expectation of mankind, is certain to happen, although the time of its happening may be uncertain.

The sum payable may be "certain", within the meaning of this section and section 4, although it includes future interest or is payable at an indicated rate of exchange, or is according to the course of exchange, and although the instrument provides that, on default of payment of an installment, the balance unpaid shall become due.

The person to whom it is clear that the direction is given or that payment is to be made may be a "certain person", within the meaning of this section and section 4, although he is mis-named or designated by description only.

The Indian Contract Act, 1872 - Section 148 - 'Bailment', `Bailor' And `Bailee' Defined:

A 'bailment' is the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them. The person delivering the goods is called the 'bailor'. The person to whom they are delivered is called the 'bailee'.

Explanation. – If a person already in possession of the goods of another contracts to hold them as a bailee, he thereby becomes the bailee, and the owner becomes the bailor of such goods, although they may not have been delivered by way of bailment.

Go Back to Section 123, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 128, Bharatiya Sakshya Adhiniyam, 2023:

Foreign Marriage Act, 1969 - Section 11 - Marriage Not To Be In Contravention Of Local Laws:

(1) The Marriage Officer may, for reason to be recorded in writing refuse to solemnize a marriage under this Act if the intended marriage is prohibited by any law in force in the foreign country where it is to be solemnized.

(2) The Marriage Officer may, for reasons to be recorded in writing, refuse to solemnize a marriage under this Act on the ground that in his opinion, the solemnization of the marriage would be inconsistent with international law or the comity of nations.

(3) Where a Marriage Officer refuses to solemnize a marriage under this section, any party to the intended marriage may appeal to the Central Government in the prescribed manner within a period of thirty days from the date of such refusal; and the Marriage Officer shall act in conformity with the decision of the Central Government on such appeal.

Hindu Marriage Act, 1955 - Section 11 - Void Marriages:

Any marriage solemnised after the commencement of this Act shall be null and void and may, on a petition presented by either party thereto against the other party, be so declared by a decree of nullity if it contravenes any one of the conditions specified in clauses (i), (iv) and (v) of section 5.

Special Marriage Act, 1954 - Section 24 - Void Marriages:

(1) Any marriage solemnized under this Act shall be null and void and may, on a petition presented by either party thereto against the other party, be so declared by a decree of nullity if--

(i) any of the conditions specified in clauses (a), (b), (c) and (d) of section 4 has not been fulfilled; or

(ii) the respondent was impotent at the time of the marriage and at the time of the institution of the suit.

(2) Nothing contained in this section shall apply to any marriage deemed to be solemnized under this Act within the meaning of section 18, but the registration of any such marriage under Chapter III may be declared to be of no effect if the registration was in contravention of any of the conditions specified in clauses (a) to (e) of section 15:

Provided that no such declaration shall be made in any case where an appeal -has been preferred under section 17 and the decision of the district court has become final.

Go Back to Section 128, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 131, Bharatiya Sakshya Adhiniyam, 2023:

Chemical Weapons Convention Act, 2000 - Section 38 - Information As To Commission Of Offences:

No enforcement officer, subordinate officer to enforcement officer or officer of the National Authority or the State Government or officer subordinate to such officer as is mentioned in sub-section (2) of section 22 acting in exercise of powers vested in him under any provision of this Act or any such order made there under shall be compelled to say when he got any information as to the commission of any offence.

Narcotic-Drugs and Psychotropic Substances Act 1985 - Section 68 - Information As To Commission Of Offences:

No officer acting in exercise of powers vested in him under any provision of this Act or any rule or order made thereunder shall be compelled to say whence he got any information as to the commission of any offence.

Go Back to Section 131, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 132, Bharatiya Sakshya Adhiniyam, 2023:

Companies Act, 2013 - Section 227 - Legal Advisers And Bankers Not To Disclose Certain Information:

Nothing in this Chapter shall require the disclosure to the Tribunal or to the Central Government or to the Registrar or to an inspector appointed by the Central Government--

(a) by a legal adviser, of any privileged communication made to him in that capacity, except as respects the name and address of his client; or

(b) by the bankers of any company, body corporate, or other person, of any information as to the affairs of any of their customers, other than such company, body corporate, or person.

Consumer Protection Act, 2019 - Section 77 - Duty Of Mediator To Disclose Certain Facts:

It shall be the duty of the mediator to disclose--

(a) any personal, professional or financial interest in the outcome of the consumer dispute;

(b) the circumstances which may give rise to a justifiable doubt as to his independence or impartiality; and

(c) such other facts as may be specified by regulations.

Go Back to Section 132, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 135, Bharatiya Sakshya Adhiniyam, 2023:

Code of Civil Procedure, 1908 - Section 15 - Court In Which Suits To Be Instituted:

Every suit shall be instituted in the Court of the lowest grade competent to try it.

Go Back to Section 135, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 136, Bharatiya Sakshya Adhiniyam, 2023:

Information Technology Act, 2000 - Section 4 - Legal Recognition Of Electronic Records:

Where any law provides that information or any other matter shall be in writing or in the typewritten or printed form, then, notwithstanding anything contained in such law, such requirement shall be deemed to have been satisfied if such information or matter is--

(a) rendered or made available in an electronic form; and

(b) accessible so as to be usable for a subsequent reference.

Go Back to Section 136, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 138, Bharatiya Sakshya Adhiniyam, 2023:

The Indo-Tibetan Border Police Force Act, 1992 - Section 119 - Tender Of Pardon To Accomplice (Accomplice):

(1) With a view to obtaining the evidence of any person supposed to have been directly or indirectly concern in or privy to an offence triable by a Force Court other than a Summary Force Court under this Act, the commanding officer, the convening officer or the Force Court, at any stage of the investigation or inquiry into or the trial of, the offence, may tender a pardon to such person on condition of his making a full and true disclosure of the whole of the circumstances within his knowledge relating to the offence and to every other person concerned, whether as principal or abettor, in the commission thereof.

(2) The commanding officer or the convening officer who tenders a pardon under sub-section (1) shall record-

(a) his reasons for so doing;

(b) whether the tender was or was not accepted by the person to whom it was made, and shall, on application made by the accused, furnish him with a copy of such record free of cost.

(3) Every person accepting a tender of pardon made under sub-section (1)-

(a) shall be examined as a witness by the commanding officer of the accused and in the subsequent trial, if any;

(b) may be detained in Force custody until the termination of the trial.

Go Back to Section 138, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 141, Bharatiya Sakshya Adhiniyam, 2023:

Unlawful Activities (Prevention) Act, 1967 - Section 46 - Admissibility of evidence collected through the interception of communications:

Notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1872) or any other law for the time being in force, the evidence collected through the interception of wire, electronic or oral communication under the provisions of the Indian Telegraph Act, 1885 (13 of 1885) or the Information Technology Act, 2000 (21 of 2000) or any other law for the time being in force, shall be admissible as evidence against the accused in the court during the trial of a case: Provided that the contents of any wire, electronic or oral communication intercepted or evidence derived therefrom shall not be received in evidence or otherwise disclosed in any trial, hearing or other proceeding in any court unless each accused has been furnished with a copy of the order of the competent authority under the aforesaid law, under which the interception was directed, not less than ten days before trial, hearing or proceeding: Provided further that the period of ten days may be waived by the judge trying the matter, if he comes to the conclusion that it was not possible to furnish the accused with such order ten days before the trial, hearing or proceeding and that the accused shall not be prejudiced by the delay in receiving such order.

Prevention of Terrorism Act, 2002 - Section 45 - Admissibility Of Evidence Collected Through The Interception Of Communications:

Notwithstanding anything in the Code or in any other law for the time being in force, the evidence collected through the interception of wire,

electronic or oral communication under this Chapter shall be admissible as evidence against the accused in the Court during the trial of a case:

Provided that, the contents of any wire, electronic or oral communication intercepted pursuant to this Chapter or evidence derived therefrom shall not be received in evidence or otherwise disclosed in any trial, hearing or other proceeding in any court unless each accused has been furnished with a copy of the order of the Competent Authority, and accompanying application, under which the interception was authorised or approved not less than ten days before trial, hearing or proceeding:

Provided further that, the period of ten days may be waived by the judge trying the matter, if he comes to the conclusion that it was not possible to furnish the accused with the above information ten days before the trial, hearing or proceeding and that the accused will not be prejudiced by the delay in receiving such information.

Go Back to Section 141, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 149, Bharatiya Sakshya Adhiniyam, 2023:

Bharatiya Nyaya Sanhita, 2023 - Section 64 - Punishment for rape:

(1) Whoever, except in the cases provided for in sub-section (2), commits rape, shall be punished with rigorous imprisonment of either

description for a term which shall not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine.

(2) Whoever,--

(a) being a police officer, commits rape,--

(i) within the limits of the police station to which such police officer is appointed; or

(ii) in the premises of any station house; or

(iii) on a woman in such police officer's custody or in the custody of a police officer subordinate to such police officer; or

(b) being a public servant, commits rape on a woman in such public servant's custody or in the custody of a public servant subordinate to such public servant; or

(c) being a member of the armed forces deployed in an area by the Central Government or a State Government commits rape in such area; or

(d) being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a women's or children's institution, commits rape on any inmate of such jail, remand home, place or institution; or

(e) being on the management or on the staff of a hospital, commits rape on a woman in that hospital; or

(f) being a relative, guardian or teacher of, or a person in a position of trust or authority towards the woman, commits rape on such woman; or

(g) commits rape during communal or sectarian violence; or

(h) commits rape on a woman knowing her to be pregnant; or

(i) commits rape, on a woman incapable of giving consent; or

(j) being in a position of control or dominance over a woman, commits rape on such woman; or

(k) commits rape on a woman suffering from mental or physical disability; or

(l) while committing rape causes grievous bodily harm or maims or disfigures or endangers the life of a woman; or

(m) commits rape repeatedly on the same woman,

shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.

Explanation.--For the purposes of this sub-section,--

(a) "armed forces" means the naval, army and air forces and includes any member of the Armed Forces constituted under any law for the time being in force, including the paramilitary forces and any auxiliary forces that are under the control of the Central Government or the State Government;

(b) "hospital" means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of persons

during convalescence or of persons requiring medical attention or rehabilitation;

(c) "police officer" shall have the same meaning as assigned to the expression "police" under the Police Act, 1861(5 of 1861) ;

(d) "women's or children's institution" means an institution, whether called an orphanage or a home for neglected women or children or a widow's home or an institution called by any other name, which is established and maintained for the reception and care of women or children.

Bharatiya Nyaya Sanhita, 2023 - Section 65(1) - Rape on woman under 16 years of age:

(1) Whoever, commits rape on a woman under sixteen years of age shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine:

Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:

Provided further that any fine imposed under this sub-section shall be paid to the victim.

Bharatiya Nyaya Sanhita, 2023 - Section 65(2) - Rape on woman under 12 years of age:

(2) Whoever, commits rape on a woman under twelve years of age shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and with fine or with death:

Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:

Provided further that any fine imposed under this sub-section shall be paid to the victim.

Bharatiya Nyaya Sanhita, 2023 - Section 66 - Rape causing death or persistent vegetative state:

Whoever, commits an offence punishable under sub-section (1) or sub-section (2) of section 64 and in the course of such commission inflicts an injury which causes the death of the woman or causes the woman to be in a persistent vegetative state, shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, or with death.

Bharatiya Nyaya Sanhita, 2023 - Section 70 (1) - Gang Rape:

(1) Where a woman is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and

shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life which shall mean imprisonment for the remainder of that person's natural life, and with fine:

Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:

Provided further that any fine imposed under this sub-section shall be paid to the victim.

Bharatiya Nyaya Sanhita, 2023 - Section 67 - Sexual intercourse during separation:

Whoever has sexual intercourse with his own wife, who is living separately, whether under a decree of separation or otherwise, without her consent, shall be punished with imprisonment of either description for a term which shall not be less than two years but which may extend to seven years, and shall also be liable to fine.

Explanation.--In this section, "sexual intercourse" shall mean any of the acts mentioned in clauses (a) to (d) of section 63.

Bharatiya Nyaya Sanhita, 2023 - Section 68 - Sexual intercourse by person in authority:

Whoever, being--

(a) in a position of authority or in a fiduciary relationship; or

(b) a public servant; or

(c) superintendent or manager of a jail, remand home or other place of custody established by or under any law for the time being in force, or a women's or children's institution; or

(d) on the management of a hospital or being on the staff of a hospital, abuses such position or fiduciary relationship to induce or seduce any woman either in his custody or under his charge or present in the premises to have sexual intercourse with him, such sexual intercourse not amounting to the offence of rape, shall be punished with rigorous imprisonment of either description for a term which shall not be less than five years, but which may extend to ten years, and shall also be liable to fine.

Explanation 1.--In this section, "sexual intercourse" shall mean any of the acts mentioned in clauses (a) to (d) of section 63.

Explanation 2.--For the purposes of this section, Explanation 1 to section 63 shall also be applicable.

Explanation 3.--"Superintendent", in relation to a jail, remand home or other place of custody or a women's or children's institution, includes a person holding any other office in such jail, remand home, place or institution by virtue of which such person can exercise any authority or control over its inmates.

Explanation 4.--The expressions "hospital" and "women's or children's institution" shall respectively have the same meanings as in clauses (b) and (d) of the Explanation to sub-section (2) of section 64.

Bharatiya Nyaya Sanhita, 2023 - Section 71 - Repeat Offenders:

Whoever has been previously convicted of an offence punishable under section 64 or section 65 or section 66 or section 70 and is subsequently convicted of an offence punishable under any of the said sections shall be punished with imprisonment for life which shall mean imprisonment for the remainder of that person's natural life, or with death.

Bharatiya Nyaya Sanhita, 2023 - Section 70(2) - Gang rape on women under the age of 18:

(2) Where a woman under eighteen years of age is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and with fine, or with death:

Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:

Provided further that any fine imposed under this sub-section shall be paid to the victim.

Bharatiya Nyaya Sanhita, 2023 - Section 69 - Sexual intercourse by deceitful means or false promise to marry:

Whoever, by deceitful means or by making promise to marry to a woman without any intention of fulfilling the same, has sexual intercourse with her, such sexual intercourse not amounting to the

offence of rape, shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.

Explanation.--"deceitful means" shall include inducement for, or false promise of employment or promotion, or marrying by suppressing identity.

Go Back to Section 149, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 156, Bharatiya Sakshya Adhiniyam, 2023:

Bharatiya Nyaya Sanhita, 2023 - Section 212 - Furnishing False Information:

Whoever, being legally bound to furnish information on any subject to any public servant, as such, furnishes, as true, information on the subject which he knows or has reason to believe to be false,--

(a) shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to five thousand rupees, or with both;

(b) where the information which he is legally bound to give respects the commission of an offence, or is required for the purpose of preventing the commission of an offence, or in order to the apprehension of an offender, with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Illustrations

(a) A, a landholder, knowing of the commission of a murder within the limits of his estate, wilfully misinforms the Magistrate of the district that the death has occurred by accident in consequence of the bite of a snake. A is guilty of the offence defined in this section.

(b) A, a village watchman, knowing that a considerable body of strangers has passed through his village in order to commit a dacoity in the house of Z, a wealthy merchant residing in a neighbouring place, and being legally bound to give early and punctual information of the above fact to the officer of the nearest police station, wilfully misinforms the police officer that a body of suspicious characters passed through the village with a view to commit dacoity in a certain distant place in a different direction. Here A is guilty of the offence defined in this section.

Explanation.--In section 211 and in this section the word "offence" include any act committed at any place out of India, which, if committed in India, would be punishable under any of the following sections, namely, 103, 105, 307, sub-sections (2), (3) and (4) of section 309, sub-sections (2), (3), (4) and (5) of section 310, 311, 312, clauses (f) and (g) of section 326, sub-sections (4), (6), (7) and (8) of section 331, clauses (a) and (b) of section 332 and the word "offender" includes any person who is alleged to have been guilty of any such act.

Go Back to Section 156, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 165, Bharatiya Sakshya Adhiniyam, 2023:

Bharatiya Nyaya Sanhita, 2023 - Section 198 - Public servant disobeying law, with intent to cause injury to any person:

Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending to cause, or knowing it to be likely that he will by such disobedience, cause injury to any person, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

Illustration

A, being an officer directed by law to take property in execution, in order to satisfy a decree pronounced in Z's favour by a Court, knowingly disobeys that direction of law, with the knowledge that he is likely thereby to cause injury to Z. A has committed the offence defined in this section.

Go Back to Section 165, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 169, Bharatiya Sakshya Adhiniyam, 2023:

Code of Civil Procedure, 1908 - Section 99 - No Decree To Be Reversed Or Modified For Error Or Irregularity Not Affecting Merits Or Jurisdiction:

No decree shall be reversed or substantially varied, nor shall any case be remanded, in appeal on account of any misjoinder or non-joinder of parties or causes of action or any error, defect or irregularity in any proceedings in the suit, not affecting the merits of the case or the jurisdiction of the Court:

Provided that nothing in this section shall apply to non-joinder of a necessary party.

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 506 - Irregularities which do not vitiate proceedings:

If any Magistrate not empowered by law to do any of the following things, namely:--

(a) to issue a search-warrant under section 97;

(b) to order, under section 174, the police to investigate an offence;

(c) to hold an inquest under section 196;

(d) to issue process under section 207, for the apprehension of a person within his local jurisdiction who has committed an offence outside the limits of such jurisdiction;

(e) to take cognizance of an offence under clause (a) or clause (b) of sub-section (1) of section 210;

(f) to make over a case under sub-section (2) of section 212;

(g) to tender a pardon under section 343;

(h) to recall a case and try it himself under section 450; or

(i) to sell property under section 504 or section 505, erroneously in good faith does that thing, his proceedings shall not be set aside merely on the ground of his not being so empowered.

Go Back to Section 169, Bharatiya Sakshya Adhiniyam, 2023

Back to Section 3(f) of Indian Evidence Act, 1872

MANU/SC/0059/2011

IN THE SUPREME COURT OF INDIA

Civil Appeal No. 4820 of 2007

Decided On: 18.01.2011

Kalyan Kumar Gogoi Vs. Ashutosh Agnihotri and Ors.

Hon'ble Judges/Coram:

J.M. Panchal and Gyan Sudha Misra, JJ.

Counsels:

For Appellant/Petitioner/Plaintiff: Rajiv Dhawan, Sr. Adv., Anupam Chowdhury, Anupam Lal Das and Raktim Gogoi, Advs.

For Respondents/Defendant: Nagendra Rai, Sr. Adv., Amit Yadav, Smarhar Singh, Sanjay Kumar Visen, Bijender Singh and Ambar Qamaruddin, Advs.

JUDGMENT

J.M. Panchal, J.

1. This appeal, filed under Section 116A of the Representation of People Act, 1951 ("the Act" for short), is directed against judgment dated August 28, 2007, rendered by the learned Single Judge of the Gauhati High Court in Election Petition No. 4 of 2006, by which the prayers made by the Appellant to declare the election of the Respondent No. 2, who is returned candidate from Legislative Assembly Constituency of Dibrugarh, to be void and to order

repoll in Polling Station No. 124 Manik Dutta L.P. School (Madhya) of 116 Dibrugarh Legislative Assembly Constituency, are rejected.

2. The facts emerging from the record of the case are as under:

A notice was published inviting nominations from eligible candidates to contest the Assam State Legislative Assembly Election for 116 Dibrugarh Constituency as required by Section 31 of the Act read with Rule 3 of the Conduct of Election Rules, 1961, notifying the schedule of the election, which was as under: -

The Appellant filed his nomination papers to contest the Assam State Legislative Assembly Elections from 116 Dibrugarh Legislative Assembly Constituency as an approved candidate of the Indian National Congress. Along with him, the Respondent No. 2 herein filed his nomination papers as the candidate of Bhartiya Janata Party for the said constituency. There were six other candidates also, who were in fray and had filed their nomination papers for contesting the said election. Upon scrutiny of the nomination papers of the eight candidates, papers of seven candidates including those of the Appellant and the Respondent No. 2 were declared valid by the Returning Officer. The polling took place for the Constituency in question on April 3, 2006. It may be mentioned that in 116 Dibrugarh Legislative Assembly Constituency, in all there were 126 notified polling stations, names/particulars of which were published under Section 25 of the Act. On the date of polling one notified polling station, i.e., Polling Station No. 124 was not set up in the notified school, namely, Manik Dutta L.P. School (Madhya) and instead, the polling was conducted in another school, namely, Chiring Gaon Railway Colony L.P. School, which was admittedly not a notified polling station. It is not in dispute that the polling in the said non-notified polling station started at 7.00 A.M. The case

of the Appellant is that as the polling in the non-notified polling station continued up to 12.30 P.M., there was confusion and chaos amongst the voters and many of them went away without casting their votes. The Appellant claims that his election agent lodged complaint before the Deputy Commissioner, Dibrugarh, who was also the Returning Officer, for the constituency concerned and, therefore, the polling station was shifted to the notified school and was made functional later on. It is necessary to mention that out of the total 1050 voters whose names were registered at the polling station located at the school notified, 557 voters had cast their votes, which constitute, according to the Appellant, 53.8% of votes while the total polling percentage in the entire constituency was 67.23%. The counting of the votes for the election of the said constituency took place on May 12, 2006 and results were declared on the same day. The Respondent No. 2 was declared elected having polled 28,424 votes as the Appellant could secure 28,249 votes out of total valid votes of 79,736. Thus the margin of the votes between the Appellant and the Respondent No. 2 was of 175 votes.

On the same day, the Appellant lodged a complaint before the Returning Officer demanding repoll at the polling station concerned inter alia making grievance that the shifting of the polling station from the notified area to Chiring Gaon Railway Colony L.P. School was illegal and deprived many voters from exercising their right of franchise due to utter confusion and/or chaos. The Appellant also made grievance about the manner in which the Electronic Voting Machines were shifted from Chiring Gaon Railway Colony L.P. School to Manik Dutta L.P. School (Madhya). In response to this complaint the Deputy Commissioner and District Election Officer, Dibrugarh, addressed a letter dated May 20, 2006 to the Appellant mentioning that the problem about the functioning of Polling Station notified was solved immediately on the day of the polling under the guidance of the Election Observer in the presence of the Zonal Officer, Sector Officer of the Constituency Magistrate and Polling Agents and as the complaint lodged by the Appellant was found to be an after thought, the same was not entertained.

3. Thereupon, the Appellant filed Election Petition No. 4 of 2006 on June 21, 2006 before the Gauhati High Court under Sections 80, 80A and 81 of the Act seeking a declaration that the election of the Respondent No. 2 from constituency concerned was void and an order directing repolling in Polling Station notified be made.

4. The Respondent No. 2 filed his written statement mentioning amongst other facts that the shifting of the polling station from a notified place to a non-notified place and thereafter rectifying the defect did not vitiate the election nor had materially affected his result of the election. The Respondent No. 1, i.e., Mr. Ashutosh Agnihotri, who was then District Election Officer, Dibrugarh and Returning Officer, filed his reply mentioning, inter alia, that though in the morning polling was held at a non-notified polling station, namely, Chiring Gaon Railway Colony L.P. School instead of Manik Dutta L.P. School (Madhya), voters were not deprived of their right of casting vote. The Respondent No. 1 further stated that the Appellant had never raised, prior to the declaration of the result, any objection or made any complaint about initial voting having taken place at the polling station which was not notified or about subsequent shifting of the polling station to the notified place.

5. On the basis of pleadings of the parties, necessary issues for determination were framed and evidence was led by the parties. The Appellant examined in all twelve witnesses whereas the Respondent No. 2 examined six witnesses.

6. According to the learned Judge since the election petition was filed challenging the result of the returned candidate on the ground of non-compliance of the provisions of the Act and the Rules of 1961, the election Petitioner, i.e., the Appellant was required to prove such non-compliance and also that such non-compliance had materially affected the result of the

election as proof of mere non-compliance of any of the provisions of the Act or the Rules framed thereunder by itself without showing that such non-compliance had materially affected the result of the election of the returned candidate would not be sufficient to declare the election of the Respondent No. 2 void under Section 100(1)(d)(iv) of the Act. The learned Judge held that the evidence adduced established that the distance between the two schools was hardly about 100 meters. The learned Judge also noticed that the evidence established that polling in the Chiring Gaon Railway Colony L.P. School had continued only up to 9.30 A.M. and after shifting the polling station to the notified school at around 9.45 A.M., the polling was resumed/had restarted at about 9.55 A.M. On consideration of the evidence, the learned Judge concluded that the Polling Station No. 124 was not set up in the notified place initially but was subsequently set up at the notified place and thus there was breach of provisions of Sections 25 and 56 of the Act as well as Rule 15 of the Rules of 1961. The learned Judge examined the contention of the Appellant that the Presiding Officer having found that the Polling Station No. 124 was set up in a non-notified place was duty bound to adjourn the polling which was taking place at the said polling station in exercise of powers conferred by Section 57(1) of the Act and the Presiding Officer having not done so, the election of the Respondent No. 2 was liable to be set aside. However, the learned Judge found that the Appellant had neither pleaded violation of any of the provisions of Section 57 of the Act nor led evidence to prove that the setting up of the Polling Station in a non-notified place and its subsequent shifting to the notified place amounted to 'sufficient cause' within the meaning of Section 57 of the Act and, therefore, concluded that it was not necessary to decide the said contention. On examination, the contention of the Appellant, that the error and/or irregularity, namely, setting up of the polling station at the wrong place and subsequent shifting of the same at the notified place, committed during the conduct of the election, should have been reported by the Returning Officer forthwith to the Election Commission and failure to so report, has vitiated the election of the Respondent No. 2, was found to be without any substance because, according to the learned Judge, there was no pleading relating to breach of Section 58(1)(b) or commission of irregularity and/or error likely to vitiate the poll and it was further held that question of taking steps under Section 58 of the

Act would arise only in a case where destruction of ballot boxes, E.V.M. is pleaded and proved and not otherwise. The case of the Appellant that shifting was made to the notified place without sealing the EVM and other election materials also, was not accepted by the learned Judge because except the Appellant, no other person present at that point of time at Chiring Gaon Railway Colony L.P. School had stated anything about the non-sealing of the EVM and other election materials.

7. Having held that there was non-compliance of the provisions of Sections 25 and 56 of the Act and Rule 15 of 1961 Rules, the learned Judge further examined the question whether such non-compliance had materially affected the result of the election. After noticing that the question as to whether the infraction of law has materially affected the result of the election or not, is purely a question of fact, it was held that no presumption or any inference of fact can be raised that the result of the election of the returned candidate must have been materially affected and the fact that such infraction had materially affected the result of the election, must be proved by adducing cogent and reliable evidence. The learned Judge thereafter discussed the evidence on record and concluded that none of the witnesses had stated that a large number of voters had left the notified place without casting their votes because of non-availability of the polling facility at the notified place. In view of the above mentioned conclusions, the learned Judge held that initially voting, which had taken place at the non-notified place, had not materially affected the election result of the Respondent No. 2 and dismissed the election petition by the impugned judgment, giving rise to the instant appeal.

8. This Court has heard the learned Counsel for the parties at length and in great detail. This Court has also considered the documents forming part of the present appeal.

9. The first grievance made by Dr. Rajiv Dhavan, learned senior counsel for the Appellant, was that a wrong test of burden of proof, namely, absolute test was adopted by the learned Judge of the High Court, which could not have been adopted in view of the provisions of Section 100(1)(d)(iv) of the Act and the test of either broad probabilities or the test of sufficiency of evidence should have been applied while considering the question whether polling at the non-notified place and curtailing of time of voting had materially affected the result of the election. According to the learned Counsel for the Appellant, the hearsay rule on appreciation of evidence cannot be made applicable while determining the question whether polling at the non-notified place and curtailing of time of voting had materially affected the result of the election, so far as a candidate contesting election and his agents are concerned and, therefore, reliable testimony of the Appellant and that of his agents should have been accepted by the learned Judge. According to the learned Counsel for the Appellant, one of the reasons given by the High Court for disbelieving some of the witnesses was that though they were illiterate, they had filed affidavits in English language through their lawyer and on being asked about the contents of the affidavit, they had stated that they were not in position to explain the same, forgetting the material fact that they had acted through their lawyer and the lawyer on the basis of instructions given by them had prepared their affidavits. The learned Counsel argued that the reasons assigned by the learned Judge in the impugned judgment for dismissing the Election Petition filed by the Appellant are not only erroneous but contrary to the evidence on record and, therefore, this Court should accept the appeal.

10. Mr. Nagendra Rai, learned Counsel for the Respondent No. 2, argued that burden of proof was rightly placed on the Appellant in view of several reported decisions of this Court, which firmly lay down the principle that the ground pleaded for setting aside an election, must be proved beyond reasonable doubt and, therefore, no error can be said to have been committed by the learned Judge in applying the principle of burden of proof to the facts of the case. According to the learned Counsel for the Respondent No. 2, hearsay evidence remains hearsay and the said rule has to be applied to all matters including the determination of the

question whether voting at the non-notified place and curtailing of time of voting had materially affected the result of the election of the Respondent No. 2. It was, therefore, pleaded that it is not correct to argue that hearsay rule cannot be made applicable while determining the validity of election of the returned candidate under Section 100(1)(d)(iv) of the Act. What was maintained before this Court by the learned Counsel for the Respondent No. 2 was that on behalf of the illiterate people, affidavits were prepared by lawyer without making the illiterate people aware about the contents of the affidavits and, therefore, the High Court was justified in brushing aside the evidence of those witnesses while considering the question whether polling at a non-notified place had, in fact, affected the result of election materially. The learned Counsel submitted that cogent and convincing reasons have been given by the learned Judge in the impugned judgment for dismissing the election petition filed by the Appellant and, therefore, this Court should not interfere with the same in the instant appeal, more particularly, when the period left at the disposal of the Respondent No. 2, so far as his term as MLA is concerned, is less than a year.

11. The first question to be considered is whether there had been or not a breach of the Act and the Rules in the conduct of the election at this constituency. It is hardly necessary for this Court to go over the evidence with a view to ascertaining whether there was or was not a breach of the Act and the Rules in the conduct of the election concerned. Having read the evidence on record, this Court is in entire agreement with the decision of the learned Single Judge that by the change of venue of casting votes, breach of the provisions of Sections 25 and 56 of the Act read with Rule 15 of the Rules of 1961 was committed by the officials who were in charge of the conduct of the election at this constituency.

12. This shows that the matter is governed by Section 100(1)(d)(iv) of the Act. The question still remains whether the condition precedent to the avoidance of the election of the returned candidate which requires proof from the election Petitioner, i.e., the Appellant that the result

of the election had been materially affected insofar as the returned candidate, i.e., the Respondent No. 2, was concerned, has been established in this case.

13. This Court finds that the learned Judge has recorded a finding that cogent and reliable evidence should be adduced by an election Petitioner when election of the successful candidate is challenged on the ground of breach of provisions of Section 100(1)(d)(iv) of the Act. The contention advanced by Dr. Rajiv Dhavan, learned Counsel for the Appellant, that the test of either broad probabilities or the test of sufficiency of evidence should be applied while deciding the question whether the result of the elected candidate is materially affected or not cannot be accepted. Section 100(1)(d)(iv) of the Act reads as under: -

100. Grounds for declaring election to be void. - (1) Subject to the provisions of Sub-section (2) if the High Court is of opinion -

(a) to (c) ....

(d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected -

(i) to (iii) ....

(iv) by any non-compliance with the provisions of the Constitution or of this Act or any rules or orders made under this Act, the High Court shall declare the election of the returned candidate to be void.

14. It may be mentioned that here in this case non-compliance with the provisions of the Representation of People Act, 1951 and the Election Rules of 1961 was by the officers, who were in-charge of the conduct of the election and not by the elected candidate. It is true that if Clause (iv) is read in isolation, then one may be tempted to come to the conclusion that any non-compliance with the provisions of the Constitution or of the Act of 1951 or any Rules of 1961 Rules or orders made under the Act would render the election of the returned candidate void, but one cannot forget the important fact that Clause (d) begins with a rider, namely, that the result of the election, insofar as it concerns a returned candidate, must have been materially affected. This means that if it is not proved to the satisfaction of the Court that the result of the election insofar as it concerns a returned candidate has been materially affected, the election of the returned candidate would not be liable to be declared void notwithstanding non-compliance with the provisions of the Constitution or of the Act or of any Rules of 1961 Rules or orders made thereunder. It is well to remember that this Court has laid down in several reported decisions that the election of a returned candidate should not normally be set aside unless there are cogent and convincing reasons. The success of a winning candidate at an election cannot be lightly interfered with. This is all the more so when the election of a successful candidate is sought to be set aside for no fault of his but of someone else. That is why the scheme of Section 100 of the Act, especially Clause (d) of Sub-section (1) thereof clearly prescribes that in spite of the availability of grounds contemplated by Sub-clauses (i) to (iv) of Clause (d), the election of a returned candidate shall not be voided unless and until it is proved that the result of the election insofar as it concerns a returned candidate is materially affected.

The volume of opinion expressed in judicial pronouncements, preponderates in favour of the view that the burden of proving that the votes not cast would have been distributed in such a manner between the contesting candidates as would have brought about the defeat of the returned candidate lies upon one who objects to the validity of the election. Therefore, the standard of proof to be adopted, while judging the question whether the result of the election insofar as it concerns a returned candidate is materially affected, would be proof beyond reasonable doubt or beyond pale of doubt and not the test of proof as suggested by the learned Counsel for the Appellant.

This part of the case depends upon the ruling of this Court in Vashisht Narain Sharma v. Dev Chandra MANU/SC/0101/1954 : (1955) 1 SCR 509 : AIR 1954 SC 513. In that case, there was a difference of 111 votes between the returned candidate and the candidate who had secured the next higher number of votes. One candidate by name of Dudh Nath Singh was found not competent to stand election and the question arose whether the votes wasted on Dudh Nath Singh, if they had been polled in favour of remaining candidates, would have materially affected the fate of the election. Certain principles were stated as to how the probable effect upon the election of the successful candidate, of votes which were wasted (in this case effect of votes not cast) must be worked out. Two witnesses were brought to depose that if Dudh Nath Singh had not been a candidate for whom no voting had to be done, the voters would have voted for the next successful candidate. Ghulam Hasan, J. did not accept this kind of evidence. It is observed as follows:

It is impossible to accept the ipse dixit of witnesses coming for one side or the other to say that all or some of the votes would have gone to one or the other on some supposed or imaginary ground. The question is one of fact and has to be proved by positive evidence. If the Petitioner is unable to adduce evidence in a case such as the present, the only inescapable conclusion to which the Tribunal can come is that the burden is not discharged and the election must stand.

While interpreting the words "the result of the election has been materially affected" occurring in Section 100(1)(c), this Court in the said case notified that these words have been the subject of much controversy before the Election Tribunals and the opinions expressed were not uniform or consistent. While putting the controversy at rest, it was observed as under:

These words seem to us to indicate that the result should not be judged by the mere increase or decrease in the total number of votes secured by the returned candidate but by proof of the fact that the wasted votes would have been distributed in such a manner between the contesting candidates as would have brought about the defeat of the returned candidate.

In another para in the said decision it is observed:

It will not do merely to say that all or a majority of the wasted votes might have gone to the next highest candidate. The casting of votes at an election depends upon a variety of factors and it is not possible for any one to predicate how many or which proportion of the votes will go to one or the other of the candidates. While it must be recognized that the Petitioner in such a case is confronted with a difficult situation, it is not possible to relieve him of the duty imposed upon him by Section 100(1)(c) and hold without evidence that the duty has been discharged.

15. Again, in Paokai Haokip v. Rishang and Ors. MANU/SC/0405/1968 : AIR 1969 SC 663, the Appellant who was the returned candidate from the Outer Manipur Parliamentary Constituency had received 30,403 votes as against the next candidate, who had received 28,862 votes. There was thus a majority of 1541 votes.

The candidate, who had secured the second largest number of votes, had filed election petition. The main ground of attack, which had succeeded in the Judicial Commissioner's Court, was that polling was disturbed because of numerous circumstances. These were that the polling centres were, in some cases, changed from the original buildings to other buildings of which due notification was not issued earlier, with the result that many of the voters who had gone to vote at the old polling booths had found no arrangement for voting and rather than going to the new polling station, had gone away without casting their votes. The second ground was that owing to firing by the Naga Hostiles, the voting at some of the polling stations was disturbed and almost no votes were cast. The third ground was that the polling hours, at some stations, were reduced with the result that some of the voters, who had gone to the polling station, were unable to cast their votes.

This Court considered the evidence led in the said case and after concluding that by the change of venue and owing to the firing, a number of voters had, probably failed to record their votes, held that the matter was governed by Section 100(1)(d)(iv) of the Act. Having held so, the Court then proceeded to consider the question whether the condition precedent to the avoidance of the election of the returned candidate, which requires proof from the election Petitioner that the result of the election had been materially affected insofar as the returned candidate was concerned, was established. After extensively quoting from Vashisht Narain Sharma's case the Court noticed that witnesses were brought forward to state that a number of voters did not vote because of change of venue or because of firing and that they had decided to vote en bloc for the election Petitioner. This Court, on appreciation of evidence led in that case held that the kind of evidence adduced was merely an assertion on the part of the witnesses, who could not have spoken for 500 voters for the simple reason that casting of votes at an election depended upon a variety of factors and it was not possible for anyone to predict how many or which proportion of votes would have gone to one or the other of the candidates. Therefore, the Court refused to accept the statement even of a Headman that the whole village would have voted in favour of one candidate to the exclusion of the others. The

Court in the said case examined the polling pattern in the election and after applying the law of averages, concluded that it was demonstrated at once that the election Petitioner could not have expected to wipe off the large arrears under which he was labouring and that he could not have, therefore, made a successful bid for the seat, even with the assistance of the voters who had not cast their votes. Noting that the learned Judicial Commissioner had reached the conclusion by committing the same error, which was criticized in Vashisht Narain Sharma's case, this Court observed that the learned Judicial Commissioner had taken the statement of the witnesses at their worth and had held on the basis of those statements that all the votes that had not been cast, would have gone to the election Petitioner. This Court ruled in the said case that for this approach adopted by the learned Judicial Commissioner there was no foundation in fact, it was a surmise and it was anybody's guess as to how these people who had not voted, would have actually voted. This Court, on appreciation of evidence, held that the decision of the learned Judicial Commissioner that the election was in contravention of the Act and the Rules was correct, but that did not alter the position with regard to Section 100(1)(d)(iv) of the Act, which required that election Petitioner must go a little further and prove that the result of the election had been materially affected. After holding that the election Petitioner had failed to prove that the result of the election insofar as it concerned the returned candidate, had been materially affected, the appeal was allowed and it was declared that the election of the returned candidate would stand. What is important to notice is that while allowing the appeal of the returned candidate, the Court has made following pertinent observations regarding burden of proof which hold the field even today: -

It is no doubt true that the burden which is placed by law is very strict; even if it is strict it is for the courts to apply it. It is for the Legislature to consider whether it should be altered. If there is another way of determining the burden, the law should say it and not the courts. It is only in given instances that, taking the law as it is, the courts can reach the conclusion whether the burden of proof has been successfully discharged by the election Petitioner or not.

16. In the light of the principles stated above what this Court has to see is whether the burden has been successfully discharged by the election Petitioner by demonstrating to the Court positively that the poll would have gone against the returned candidate if the breach of the provisions of the Act and the Rules had not occurred and proper poll had taken place at the notified polling station.

17. Before considering the question posed above, it would be relevant to deal with the argument raised by the learned Counsel for the Appellant that hearsay rule of appreciation of evidence would not be applicable to the determination of the question whether the result of the election of the Respondent No. 2 was materially affected because of change of venue of the polling station.

18. The word 'evidence' is used in common parlance in three different senses: (a) as equivalent to relevant (b) as equivalent to proof and (c) as equivalent to the material, on the basis of which courts come to a conclusion about the existence or non-existence of disputed facts. Though, in the definition of the word "evidence" given in Section 3 of the Evidence Act one finds only oral and documentary evidence, this word is also used in phrases such as: best evidence, circumstantial evidence, corroborative evidence, derivative evidence, direct evidence, documentary evidence, hearsay evidence, indirect evidence, oral evidence, original evidence, presumptive evidence, primary evidence, real evidence, secondary evidence, substantive evidence, testimonial evidence, etc. The idea of best evidence is implicit in the Evidence Act. Evidence under the Act, consists of statements made by a witness or contained in a document. If it is a case of oral evidence, the Act requires that only that person who has actually perceived something by that sense, by which it is capable of perception, should make the statement about it and no one else. If it is documentary evidence, the Evidence Act requires that ordinarily the original should be produced, because a copy may contain

omissions or mistakes of a deliberate or accidental nature. These principles are expressed in Sections 60 and 64 of the Evidence Act.

19. The term 'hearsay' is used with reference to what is done or written as well as to what is spoken and in its legal sense, it denotes that kind of evidence which does not derive its value solely from the credit given to the witness himself, but which rests also, in part, on the veracity and competence of some other person. The word 'hearsay' is used in various senses. Sometimes it means whatever a person is heard to say. Sometimes it means whatever a person declares on information given by someone else and sometimes it is treated as nearly synonymous with irrelevant. The sayings and doings of third person are, as a rule, irrelevant, so that no proof of them can be admitted. Every act done or spoken which is relevant on any ground must be proved by someone who saw it with his own eyes and heard it with his own ears.

20. The argument that the rule of appreciation of hearsay evidence would not apply to determination of the question whether change of venue of polling station has materially affected the result of the election of the returned candidate, cannot be accepted for the simple reason that, this question has to be determined in a properly constituted election petition to be tried by a High Court in view of the provisions contained in Part VI of the Representation of the People Act, 1951 and Section 87(2) of the Act of 1951, which specifically provides that the provisions of the Indian Evidence Act, 1872, shall subject to the provisions of the Act, be deemed to apply in all respects to the trial of an election petition. The learned Counsel for the Appellant could not point out any provision of the Act of 1951, which excludes the application of rule of appreciation of hearsay evidence to the determination of question posed for consideration of this Court in the instant appeal.

21. Here comes the rule of appreciation of hearsay evidence. Hearsay evidence is excluded on the ground that it is always desirable, in the interest of justice, to get the person, whose statement is relied upon, into court for his examination in the regular way, in order that many possible sources of inaccuracy and untrustworthiness can be brought to light and exposed, if they exist, by the test of cross-examination. The phrase "hearsay evidence" is not used in the Evidence Act because it is inaccurate and vague. It is a fundamental rule of evidence under the Indian Law that hearsay evidence is inadmissible. A statement, oral or written, made otherwise than a witness in giving evidence and a statement contained or recorded in any book, document or record whatever, proof of which is not admitted on other grounds, are deemed to be irrelevant for the purpose of proving the truth of the matter stated. An assertion other than one made by a person while giving oral evidence in the proceedings is inadmissible as evidence of any fact asserted. That this species of evidence cannot be tested by cross-examination and that, in many cases, it supposes some better testimony which ought to be offered in a particular case, are not the sole grounds for its exclusion. Its tendency to protract legal investigations to an embarrassing and dangerous length, its intrinsic weakness, its incompetency to satisfy the mind of a Judge about the existence of a fact, and the fraud which may be practiced with impunity, under its cover, combine to support the rule that hearsay evidence is inadmissible.

22. The reasons why hearsay evidence is not received as relevant evidence are: (a) the person giving such evidence does not feel any responsibility. The law requires all evidence to be given under personal responsibility, i.e., every witness must give his testimony, under such circumstance, as expose him to all the penalties of falsehood. If the person giving hearsay evidence is cornered, he has a line of escape by saying "I do not know, but so and so told me", (b) truth is diluted and diminished with each repetition and (c) if permitted, gives ample scope for playing fraud by saying "someone told me that....". It would be attaching importance to false rumour flying from one foul lip to another. Thus statement of witnesses based on information received from others is inadmissible.

23. In the light of the above stated principles of law, this Court will have to decide the question whether it is proved by the Appellant, beyond reasonable doubt that the result of the election, insofar as the Respondent No. 2 is concerned, was materially affected because of change of venue of the polling station. The first attempt made by the Appellant is to establish that about 200 to 300 voters had gone away without casting their votes when they found that no arrangements were made for casting votes at the notified place.

24. The evidence in this case, which has been brought out by the election Petitioner, is the kind of evidence which has been criticized by this Court in several reported decisions. The analysis of the evidence tendered by the witnesses of the Appellant makes it very clear that none of them had seen big number of voters, i.e., 200/300 returning back without casting their votes, because the polling station was initially arranged at a non-notified place and was subsequently shifted to the notified place. In fact, a close analysis of the evidence tendered by the witnesses of the Appellant indicates that they have exaggerated the facts. For example, Dr. Kalyan Kumar Gogoi, i.e., the Appellant as PW-1, had stated in his evidence that the distance between Manik Dutta L.P. School (Madhya) and Chiring Gaon Railway Colony L.P. School was about one and half kilometers whereas as a material fact, the distance found was hardly 440 feet and the schools were visible from each other. What is relevant to notice is that his evidence further discloses that he was informed by his workers, i.e., Durlav Kalita and Pushpanath Sharma that a large number of voters could not cast their votes. He does not claim that he himself had seen the voters returning because of specification of non-notified place as place for voting. The worker Durlav Kalita has not been examined by Appellant and the second worker Pushpanath Sharma, who has been examined as PW3, has not been found to be reliable by this Court, hence the assertion of the Appellant that he was told by his abovenamed two workers that a large number of voters had gone away without casting their votes when they found that no arrangements for casting votes at the notified place were

made, will have to be regarded as hearsay evidence and, therefore, inadmissible in evidence. The evidence of Dugdha Chandra Gogoi PW-2 establishes that he was the election agent of the Appellant and according to him he had informed the Appellant that about 200 to 300 voters had gone away when they had found that no arrangements were made for voting at the notified venue. However, he has in no uncertain terms stated during his cross-examination that he had set up booths at Manik Dutta L.P. School (Madhya) Polling Station as well as Chiring Gaon Railway Colony L.P. School. If that was so, those who had come for voting at Manik Dutta L.P. School (Madhya) Polling Station between 7.00 A.M. to 9.45 A.M., could have been directed to go to Chiring Gaon Railway Colony L.P. School Polling Station and vice versa after the polling station was shifted from non-notified place to the notified place. Therefore, his assertion that he had informed the Appellant that about 200 to 300 voters had gone away without casting their votes when it was found by them that no voting arrangements were made at the notified venue, does not inspire confidence of this Court. Similarly, witness Pushpanath Sharma, examined by the Appellant as PW-3, has stated that on reaching Manik Dutta L.P. School (Madhya), he had learnt that the polling station was not set up there and there was utter confusion. The witness has thereafter stated that he had enquired about non-setting up of polling station at the notified place and learnt that, unable to locate the polling station set up at a place which was not notified, many voters had left without casting their votes. This is nothing else but hearsay evidence and it would be hazardous to act upon such an evidence for the purpose of setting aside the election of an elected candidate. Moreover, this Court finds that PW-6, i.e., Sri Pranjal Borah, has stated that on the day of the poll, i.e., on April 3, 2006 at about 11.30 O'clock in the morning when he went to cast his vote at 124 Manik Dutta L.P. School (Madhya) polling station, i.e., the notified place, he found that the polling station was not set up there. This has turned out to be utter lie because as per the finding recorded by the learned Single Judge on appreciation of evidence with which this Court completely agrees on re-appreciation of evidence, is that by 9.45 A.M. the notified Polling Station had started functioning fully and the voters were found standing in queue to cast their votes. Similar is the state of affairs so far as evidence of witness No. 8 Smt. Subarna Borah and witness No. 9 Smt. Pratima Borah are concerned. It means that

the witnesses are not only unreliable but have tendency to state untrue facts. One of the grounds mentioned by the learned Single Judge of the High Court for disbelieving the witnesses of the Appellant is that they were illiterate, but their affidavits were got prepared in English language through lawyer which were treated as their examination-in-chief. There is no denial by the Appellant that the witnesses were illiterate and that their affidavits were prepared by the lawyer and were presented before the Court. The persons, who had put their thumb marks on the affidavits, which were in English language, could have been hardly made aware about the English contents of the affidavits sworn by them. The evidence tendered by the Appellant to establish that about 200 to 300 voters had gone back on not finding the polling station at the notified place has not inspired the confidence of the learned Single Judge of the High Court, who had advantage of observing demeanour of the witnesses. On re-appreciation of the said evidence it has not inspired confidence of this Court also. Under the circumstances, this Court finds that it is hazardous to rely upon the evidence adduced by the Appellant for coming to the conclusion that because of specification of wrong place as polling station, the result, so far as the same concerns Respondent No. 2, was materially affected. It is relevant to notice that the election in question had taken place on April 3, 2006 and the result was declared on May 11, 2006. However, for the first time the Appellant filed a complaint regarding polling having taken place at a non-notified place only on May 12, 2006. Further, in the belatedly filed complaint, it was never claimed by the Appellant that casting of the votes had taken place initially at a non-notified place and, therefore, about 200 to 300 voters, who had gone to the notified place to cast their votes, had returned back without casting their votes, when they had learnt that the polling station was not set up at the notified place. Similarly, in the Election Petition it is nowhere mentioned by the Appellant that before the shifting of the notified place polling station, voters, who were roughly 200 to 300 in number, had to return back without casting their votes. The evidence adduced by the Appellant does not establish beyond reasonable doubt that about 200 to 300 voters had gone away, without casting their votes when it was found by them that no arrangements were made for casting votes at the notified place. The finding recorded by the learned Single Judge on this point is eminently just and is hereby upheld. What is relevant to

notice is that out of 1050 voters, whose names were registered at the notified polling station, 557 voters had cast their votes. It means that the voting percentage was 53.8%. The assertion made by the witnesses of the Appellant that roughly about 200 to 300 voters could not cast their votes because of shifting of official polling station, cannot be believed for the other weighty reason that the general pattern of polling not only in this constituency but in the whole of India is that all the voters do not always go to the polls. Voting in India is not compulsory and, therefore, no minimum percentage of votes has been prescribed either for treating an election in a constituency as valid or for securing the return of a candidate at the election. The voters may not turn up in large number to cast their votes for variety of reasons such as an agitation going on in the State concerned on national and/or regional issues or because of boycott call given by some of the recognized State parties, in the wake of certain political developments in the State or because of disruptive activities of some extremist elements, etc. It is common knowledge that voting and abstention from voting as also the pattern of voting, depend upon complex and variety of factors, which may defy reasoning and logic. Depending on a particular combination of contesting candidates and the political party fielding them, the same set of voters may cast their votes in a particular way and may respond differently on a change in such combination. Voters, it is said, have a short lived memory and not an inflexible allegiance to political parties and candidates. Election manifestos of political parties and candidates in a given election, recent happenings, incidents and speeches delivered before the time of voting may persuade the voters to change their mind and decision to vote for a particular party or candidate, giving up their previous commitment or belief. In Paokai Haokip v. Rishang MANU/SC/0405/1968 : AIR 1969 SC 663, this Court has taken judicial notice of the fact that in India all the voters do not always go to the polls and that the casting of votes at an election depends upon a variety of factors and it is not possible for anyone to predicate how many or which proportion of votes will go to one or the other of the candidate. Therefore, 200 to 300 voters not casting their votes can hardly be attributed to change of venue of the polling station, though the evidence on record does not indicate at all that about 200 to 300 voters had gone back without casting their votes. Even if it assumed for sake of argument that about 200 to 300 voters had gone away without

casting their votes on learning that no polling station was set up at the notified place, this Court finds that no evidence relating to the pattern of voting as was disclosed in the various polling booths at which the voters had in fact gone, was adduced by the Appellant, as was adduced in case of Paokai Haokip (supra) on the basis of which the law of averages was arrived at against the election Petitioner therein. Therefore, it is very difficult to accept the ipse dixit of the Appellant and his witnesses that if 200 to 300 had not gone away without casting their votes due to non-setting up of notified polling station, they would have voted in favour of the Appellant. There is no warrant for drawing presumption that those, who had gone away without casting votes, would have cast their votes in favour of the Appellant, if there had been no change of venue of voting. Vashisht Narain's case insists on proof. In the opinion of this Court, the matter cannot be considered on possibility. There is no room for a reasonable judicial guess.

25. The heads of substantive rights in Section 100(1) are laid down in two parts: the first dealing with situations in which the election must be declared void on proof of certain facts and the second in which the election can only be declared void if the result of the election, insofar as it concerns the returned candidate, can be held to be materially affected on proof of some other facts. The Appellant has totally failed to prove that the election of the Respondent No. 2, who is returned candidate, was materially affected because of non-compliance with the provisions of the Representation of the People Act, 1951, or Rules or Orders made under it.

26. On the facts and in the circumstances of the case this Court is of the firm opinion that the learned Single Judge of the High Court did not commit any error in dismissing the petition filed by the Appellant challenging the election of the Respondent No. 2. Therefore, the appeal, which lacks merits, deserves to be dismissed.

27. For the foregoing reasons, the appeal fails and is dismissed. There shall be no order as to costs.

MANU/SC/0723/2002

Back to Section 27 of Indian Evidence Act, 1872.

IN THE SUPREME COURT OF INDIA

Appeal (crl.) 921 of 2000

Decided On: 03.09.2002

Bodh Raj and Ors. Vs. State of Jammu and Kashmir

Hon'ble Judges/Coram:

Ruma Pal and Dr. Arijit Pasayat, JJ.

Counsels:

Sushil Kumar and U.R. Lalit, Sr. Advs., M. Aslam Gooni, Adv. Genl. for J & K, R.K. Garg, A.D.N. Rao, R.K. Joshi, P.N. Puri and Anis Suhrawardy, Advs. for the appearing parties

JUDGMENT

Arijit Pasayat, J.

1. These four appeals relate to a Division Bench judgment of the Jammu and Kashmir High Court dated 31.7.2000. While Criminal Appeal No. 921/2000, 791/2001, 792/2001 have been filed by the accused, Criminal Appeal No. 837/2001 has been filed by the State.

2. Ravinder Kumar (accused No. 1), Ashok Kumar (accused No. 2) and Rajesh Kumar (accused No. 6) were convicted by the Trial Court while Bodhraj (accused No. 3), Bhupinder (accused No. 4), Subash Kumar (accused No. 5) and Rakesh Kumar (accused No. 7) were

acquitted by the Trial Court, but the High Court set aside their acquittal and convicted them. Rohit Kumar (accused No. 8) and Kewal Krishan (accused No. 9) were acquitted by the Trial Court and their acquittal has been upheld by the High Court. Another accused i.e. Kishore Kumar was acquitted by the Trial Court. He having died during the pendency of the appeal before the High Court, the appeal against him was held to have abated. Accused Rajesh Kumar has not preferred any appeal against the conviction as upheld by the High Court.

3. Accused No. 1 and accused No. 2 having been convicted under Section 302 read with Section 120-B of the Indian Penal Code, 1860 (in short the 'IPC') were sentenced to suffer imprisonment for life and pay a fine of Rs. 20,000/- each. It was stipulated that for default in paying the fine, each had to suffer another year of imprisonment. Similar was the case with accused No. 6. So far as the accused Nos. 3, 4, 5 and 7 are concerned, the High Court convicted and sentenced them at par with the other three accused.

4. Factual scenario as highlighted by the prosecution is as follows:

5. Swaran Singh @ Pappi (hereinafter referred to as the 'deceased') was running a finance company. Accused No. 2 (Ashok Kumar) and accused No. 1 (Ravinder Kumar) had taken huge amounts as loan from the deceased. They suggested to the deceased to enter into a financial arrangement. On the fateful day i.e. 3rd August, 1994, deceased went to his business premises. After about 10 minutes of his arrival accused - Ravinder Kumar also reached his office. As the deceased had brought some money from his house which was to be deposited in a bank, Darshan Singh (PW 15) an employee was asked to make the deposit. Since no vehicle was available, Ravinder Kumar gave the key of his car to Darshan Singh. The registration number of the car is CH01 5408. Darshan Singh left the office around 11.30 a.m. and returned around 1.30 p.m. On his return, Darshan found the deceased in the company of

accused Ravinder Kumar and Ashok Kumar. He returned the key of the car to Ravinder Kumar. After about 10/15 minutes, deceased and accused-Ashok Kumar left the office. At the time of his departure, deceased told Darshan to take the food which was to come from his house, as they were going out to have food. Accused-Ashok Kumar and the deceased went to Hotel Asia for taking their food. Later on, accused-Ravinder Kumar joined them. All the three after taking food went to the business premises of Gian Singh (PW-1) who was a property dealer and broker. He was informed that they were interested in purchasing some land for setting up a flour mill. Ravinder and Ashok Kumar persuaded the deceased to accompany them for the selection of the site. Along with Gian Singh (PW-1), another property dealer was also picked up. This was done as PW-1 wanted to go to the site in question along with Pratap Singh (PW-2) who was his business partner. All of them went to village Dhiansar where the land was situated They went by car No. JK-02B 566. As accused-Ravinder Kumar appeared to be in extreme haste, he told that site has been approved and PWs. 1 and 2 were told that they would settle the matter at their business premises. When they were returning, the deceased was attacked by some persons (later on identified as accused 3 to 10). The accused 1 and 2 remained silent spectators and even did not pay any heed to the pitiful plea of the deceased to bring the car so that he can escape the attacks. On the contrary, they left the scene of occurrence leaving behind the deceased and PWs. 1 and 2. They did not report the matter to the police and even though they claimed to be friends of the deceased, did not even inform family members of the deceased. They owed huge amounts and issued cheques for which they had made no provision. Ashok Kumar made use of the cheque book of his wife and issued a cheque in respect of her bank account, though, the same was not operated for quite some time. Accused-Rajesh Kumar's presence was established as later on, licensed revolver belonging to accused-Ravinder Kumar was recovered at the instance of Ravinder Kumar. The licence of the revolver was seized from the house of Ravinder Kumar and father of the said accused produced the same before the police in the presence of witnesses. Pistol of the deceased was also recovered at his instance. The license in respect of the pistol was seized on personal search of the deceased at the spot of occurrence. One Hari Kumar (PW-18) stated that accused Ravinder Kumar and Ashok Kumar made a statement before him that

they had got the deceased killed because he was demanding money from them. From the fact that the land was to be selected was only known to accused Ravinder Kumar and Ashok Kumar, an inference was drawn that it was these two accused who had hired the assailants and planted them well in advance for the ultimate elimination of the deceased. The fact that accused Ravinder Kumar left the office of the deceased earlier and joined them at the Hotel was considered significant, as the intervening period was utilized by him to inform the assailants as to where they would be taking the deceased for the assaults being carried out. Accused Rajesh Kumar and Subash Kumar had also suffered bullet injury which was on account of the firing done by the deceased while he was trying to save his life.

6. Recoveries of various weapons used by assailants were made pursuant to the disclosures made by the accused Bodhraj, Bhupinder, Subhash Kumar Rajesh Kumar and Rakesh Kumar. Recoveries were witnessed by several witnesses. Bodhraj was identified by Jhuggar Singh (PW 6) and Santokh Singh (PW 7). Bhupinder Singh was identified by Hari Kumar (PW 18) and Gurmit Singh. Similar was the case with accused Subash Kumar. Rajesh Kumar was identified by Ranjit Sharma (PW 23) and Hari Kumar (PW 18). Accused Rakesh Kumar was identified by Ranjit Sharma (PW 23) and Gurmit Singh, who was not examined in Court. Accused Bodhraj, Bhupinder, Rakesh Kumar, Rohit and Kewal Krishan were identified by Nainu Singh (PW 9) while Subhash Kumar and Rajesh were identified by Santokh Singh (PW 7) and Surjit Singh (PW 8). The identification was done on two dates i.e. 11.8.1994 and 16.8.1994. Different eye-witnesses claimed to have seen the occurrence either in full or partially. PWs 1, 2, 7, 8 and 9 were really the crucial witnesses. Santokh Singh (PW 7 was disbelieved by Trial Court as well as by the High Court.

7. In order to establish the plea that conspiracy was hatched, reliance was placed on the plea of Kapur Chand who was not examined in Court. Several other circumstances were highlighted by the prosecution, to establish the plea of conspiracy. It was submitted that

nobody knew except PW-2 where the land was. If he was the person who had hired the assailants, they (meaning PW 1 and deceased) would not have gone empty handed. But, knowing particularly well that the deceased was always armed, accused Ravinder purchased a car which was used as a get away car but never transferred it to his name. It was, however, conceded by the learned Advocate General appearing before the Trial Court that there was no direct evidence of conspiracy. Police seems to have proceeded to reach the spot on getting some reliable information.

8. In order to attach vulnerability to the judgment of the High Court; several points were urged by the learned counsel for the accused persons. It was pointed out that there was no evidence of any conspiracy. The only witness Kapur Chand who is alleged to have stated before the police about the conspiracy was not examined. Even the Investigating Officer has admitted that there was no direct evidence of conspiracy. There was no evidence collected against the accused persons to link them with the crime till 11.8.1994 when suddenly materials supposed to have come like a floodgate. Initiation of action by the police is also shrouded in mystery. It has not been disclosed in either Trial Court or High Court as to how the police received information about the killing and arrived at the spot. Though it was claimed at some point of time that a telephone call was supposedly made, but the FIR was registered on the basis of reliable sources. There are no independent witnesses. It is surprising as alleged killing took place in the evening time at a highly populated place. The so called identification of the witnesses is highly improbable. Additionally, having discarded the evidence of PW-7 the Courts erred in believing the evidence of PWs. 8 and 9 who stand on the same footing. The presence of these witnesses is highly doubtful. Their behavior was un-natural and there is no corroborative evidence. They are persons with criminal records. Since their presence is doubtful, identification, if any, done by them becomes ipso facto doubtful. The recoveries purported to have done pursuant to the disclosure made by the accused persons is highly improbable and requisite safeguards have not been adopted while making alleged recoveries. The case against four of the accused persons who were acquitted by the

Trial Court rests on circumstantial evidence. The approach to the adopted by the Court while dealing with circumstantial evidence was kept in view by the Trial Court. Unfortunately, the High Court did not do so. It was further submitted that there was no complete chain of circumstances established which ruled out even any remote possibility of anybody else than the accused persons being the authors of the crime. The examination of so-called eye-witnesses PWs 1 and 2 was belated and, therefore, should not have been accepted. The evidence of PWs vis-a-vis accused persons is so improbable that no credence should be put on it. The High Court should not have disturbed the findings of innocence of four accused persons without any plausible reasoning.

9. On the contrary, learned counsel for the prosecution submitted that the background facts and the evidence on record has to be tested with a pragmatic approach. The situation which prevailed in the area at the relevant time cannot be lost sight of. Accused 1 and 2 are very influential persons. The witnesses were naturally terrified. It has come on record that witnesses PWs 1 and 2 were to terrified even to depose and had asked for police protection. There is no reason as to why the witnesses would depose falsely against accused 1 and 2 who are known to them. There is nothing irregular or illegal in the procedure adopted while effecting recovery pursuant to the disclosure made by the accused persons.

10. Before analyzing factual aspects it may be stated that for a crime to be proved it is not necessary that the crime must be seen to have been committed and must, in all circumstances be proved by direct ocular evidence by examining before the Court those persons who had seen its commission. The offence can be proved by circumstantial evidence also. The principal fact or factum probandum may be proved indirectly by means of certain inferences drawn from factum probans, that is, the evidentiary facts. To put it differently circumstantial evidence is not direct to the point in issue but consists of evidence of various other facts which are so closely associated with the fact in issue that taken together they form a chain of

circumstances from which the existence of the principal fact can be legally inferred or presumed.

11. It has been consistently laid down by the this Court that where a case rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the gilt of any other person. (See Hukam Singh v. State of Rajasthan MANU/SC/0094/1977 : 1977CriLJ639 ; Eradu and Ors. v. State of Hyderabad MANU/SC/0116/1955 : MANU/SC/0116/1955 : 1956CriLJ559 ; Earabhadrappa v. State of Karnataka : : 1983CriLJ846 ; State of U.P. v. Sukhbasi and Ors. MANU/SC/0115/1985 : 1985CriLJ1479 ; Balwinder Singh v. State of Punjab MANU/SC/0160/1986 : 1987CriLJ330 ; Ashok Kumar Chatterjee v. State of M.P. MANU/SC/0035/1989 : 1989CriLJ2124 . The circumstances from which an inference as to the guilt of the accused is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances. In Bhagat Ram v. State of Punjab MANU/SC/0158/1954 : AIR1954SC621 , it was laid down that where the case depends upon the conclusion drawn from circumstances the cumulative effect of the circumstances must be such as to negative the innocence of the accused and bring the offences home beyond any reasonable doubt.

12. We may also make a reference to a decision of this Court in C. Chenga Reddy and Ors. v. State of A.P. MANU/SC/0928/1996 : 1996CriLJ3461 , wherein it has been observed thus:

"In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. Further the proved circumstances must be consistent

only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence...".

13. In Padala Veera Reddy v. State of A.P. and Ors. MANU/SC/0018/1990 : AIR1990SC79 , it was laid down that when a case rests upon circumstantial evidence, such evidence must satisfy the following tests:

(1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;

(3) the circumstances, taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and

(4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

14. In State of U.P. v. Ashok Kumar Srivastava, MANU/SC/0161/1992 : [1992]1SCR37 , it was pointed out that great care must be taken in evaluating circumstantial evidence and if the evidence relied on is reasonably capable of two inferences, the one in favour of the

accused must be accepted. It was also pointed out that the circumstances relied upon must be found to have been fully established and the cumulative effect of all the facts so established must be consistent only with the hypothesis of guilt.

15. Sir Alfred Wills in his admirable book "Wills" Circumstantial Evidence" (Chapter VI) lays down the following rules specially to be observed in the case of circumstantial evidence: (1) the facts alleged as the basis of any legal inference must be clearly proved and beyond reasonable doubt connected with the factum probandum; (2) the burden of proof is always on the party who asserts the existence of any fact, which infers legal accountability; (3) in all cases, whether of director circumstantial evidence the best evidence must be adduced which the nature of the case admits; (4) in order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation, upon any other reasonable hypothesis than that of his guilt, (5) if there be any reasonable doubt of the guilt of the accused, he is entitled as of right to be acquitted".

16. There is no doubt that conviction can be based solely on circumstantial evidence but it should be tested by the touch-stone of law relating to circumstantial evidence laid down by the this Court as far back as in 1952.

17. In Hanumant Govind Nargundkar and Anr. v. State of Madhya Pradesh, MANU/SC/0037/1952 : 1953CriLJ129 , wherein it was observed:

"It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should be in the first instance be fully established and all the facts so established should be consistent only with the

hypothesis of the guilt of the accused. Again the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."

18. A reference may be made to a later decision in Sharad Birdhichand Sarda v. State of Maharashtra, MANU/SC/0111/1984 : 1984CriLJ1738 . Therein, while dealing with circumstantial evidence, it has been held that onus was on the prosecution to prove that the chain is complete and the infirmity of lacuna in prosecution cannot be cured by false defence or plea. The conditions precedent in the words of the this Court, before conviction could be base don circumstantial evidence, must be fully established. They are:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned must or should and not may be established;

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;

(3) the circumstances should be of a conclusive nature and tendency;

(4) they should exclude every possible hypothesis except the one to be proved; and

(5) there must be a chain of evidence so compete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

19. Emphasis was laid as a circumstance on recovery of weapon of assault, on the basis of information given by the accused while in custody. The question is whether the evidence relating to recovery is sufficient to fasten guilt on the accused. Section 27 of the Indian Evidence Act, 1872 (in short 'the Evidence Act') is by way of proviso to Sections 25 to 26 and a statement even by way of confession made in police custody which distinctly relates to the fact discovered is admissible in evidence against the accused. This position was succinctly dealt with by the this Court in Delhi Admn. v. Balakrishnan MANU/SC/0093/1971 : 1972CriLJ1 and Md. Inayatullah v. State of Maharashtra MANU/SC/0166/1975 : 1976CriLJ481 . The words "so much of such information" as relates distinctly to the fact thereby discovered, are very important and the whole force of the section concentrates on them. Clearly the extent of the information admissible must depend on the exact nature of the fact discovered to which such information is required to relate. The ban as imposed by the preceding sections was presumably inspired by the fear of the Legislature that a person under police influence might be induced to confess by the exercise of undue pressure. If all that is required to lift the ban be the inclusion in the confession information relating to an object subsequently produced, it seems reasonable to suppose that the persuasive powers of the police will prove equal to the occasion, and that in practice the ban will lose its effect. The object of the provision i.e. Section 27 was to provide for the admission of evidence which but for the existence of the section could not in consequence of the preceding sections, be admitted in evidence. It would appear that under Section 27 as it stand sin order to render the evidence leading to discovery of any fact admissible, the information must come from any accused in custody of the police. The requirement of police custody is productive of extremely anomalous results and may lead to the exclusion of much valuable evidence in cases where a person, who is subsequently taken into custody and becomes an accused, after

committing a crime meets a police officer or voluntarily goes to him or to the police station and states the circumstances of the crime which lead to the discovery of the dead body, weapon or any other material fact, in consequence of the information thus received from him. this information which is otherwise admissible becomes inadmissible under Section 27 if the information did not come from a person in the custody of a police officer or did come from a person not in the custody of a police officer. The statement which is admissible under Section 27 is the one which is the information leading to discovery. Thus, what is admissible being the information, the same has to be proved and not the opinion formed on it by the police officer. In other words, the exact information given by the accused while in custody which led to recovery of the articles has to be proved. It is, therefore, necessary for the benefit of both the accused and prosecution that information given should be recorded and proved and if not so recorded, the exact information must be adduced through evidence. The basic idea embedded in Section 27 of the Evidence Act is the doctrine of confirmation by subsequent events. The doctrine is founded on the principle that if any fact is discovered as a search made on the strength of any information obtained from a prisoner, such a discovery is a guarantee that the information supplied by the prisoner is true. The information might be confessional or non-exculpatory in nature but if it results in discovery of a fact, it becomes a reliable information. It is now well settled that recovery of an object is not discovery of fact envisaged in the section. Decision of Privy Council in Palukuri Kotayya v. Emperor AIR 1947 PC 67 is the most quoted authority for supporting the interpretation that the "fact discovered" envisaged in the section embraces the place from which the object was produced, the knowledge of the accused as to it, but the information given must relate distinctly to that effect. [see State of Maharashtra v. Danu Gopinath Shirde and Ors. MANU/SC/0299/2000 : 2000CriLJ2301]. No doubt, the information permitted to be admitted in evidence is confined to that portion of the information which "distinctly relates to the fact thereby discovered". But the information to get admissibility need not be so truncated as to make it insensible or incomprehensible. The extent of information admitted should be consistent with understandability. Mere statement that the accused led the police and the witnesses to the place where he had concealed the articles is not indicative of the information given.

20. Coming to evidence brought on record to substantiate the accusations, it is at least clear that accused Nos. 1 and 2 left in the company of the deceased. Some evidence has also been brought to establish the motive i.e. the indebtedness of the accused to the deceased. In addition to this is the evidence of PWs 1 and 2. So far as accused No. 2 is concerned, he almost stands on the same footing as accused No. 1. Additionally, Hari Kumar (PW-18) has stated that accused No. 1 came to his shop and took sweets and left in car No. 566 JK02B belonging to accused No. 1. He has also stated about the return of accused No. 2 to the shop and a demand for a scooter. This witness has also stated to have seen car No. 5408-CH01 passing in front of the shop carrying seven to eight persons out of which he identified accused Kishore Kumar (since dead). PW-9 also has stated to have seen the deceased running being chased and he claimed to have seen the deceased firing. he stated about the accused Nos. 1 and 2 giving 'Lalkara' that the deceased shall be killed and should not escape. Accused No. 1 had fired some shots in the air. Another white car No. 5408 CHO1 was also standing there. he had identified accused Bodhraj, Bhupinde, Rakesh Kumar and the two acquitted accused Rohit and Kewal Krishan. It has to be noted that Car No. 5408 CHO1 was found discarded after it had met with an accident. This car is stated to be the get away car.

21. As the evidence of PWs. 1 and 2 are very material it is desirable to note as to what their evidence was. On 3rd August, 1994 PW-1 was in his shop. At about 4.30 p.m., A-1 accompanied by the deceased and A-2 came to meet him in a car. A-1 informed him that he and his colleagues in the car were interested in setting up a flour mill. A-2 was in a hurry to proceed towards the site. On their way, PW-1 asked A-1 to stop the car to pick up PW-2. A-2 was reluctant to stop the car and only on PW-1's insistence PW-2 was picked up. When the deceased was attacked by the assailants and was pursued by the assailants he had started running towards the national highway. A-2 also ran after the deceased whereas A-1 kept standing near PW-1. The deceased asked A-1 to bring the car immediately but A-1 only

shouted to one Shori that the deceased should not escape PW-1 identified A-1 and A-2 who were present in the Court.

22. PW-2 stated that on 3rd August, 1994, he was sitting at his house when at about 4 to 4.30 to 5.00 p.m., PW-1 accompanied by A-1 and A-2 came to his residence and asked him to show some land to the persons accompanying them for the installation of rice-cum-flour mill. They all went to Dhiansar by car. When they were still seeing the land A-2 told them that he approved of the land and led them to the shop. While returning the deceased was attacked by 4-5 persons who were armed with tokas, daggers etc. The deceased started running away towards the canal and the assailants followed him and assaulted him. Then PW-1 immediately told him to inform the police, by which time the deceased had started bleeding, and that he ran to ring up the police. PW-2 however noticed that while the deceased was running, he asked accused A-1 to bring the car but the latter did not move. Meanwhile, PW-2 went to the house of a contractor which was at a distance of 200 fts. from the place of occurrence to make the telephone call. When he came back, he found the dead body of the deceased lying on the road and heard accused A-2 telling accused A-1. "Kam ho gaya let us go to Jammu". The presence of PWs 1 and 2 at the place of occurrence is fortified from the fact that they were witnesses to the seizure memos Ex. PW-GS, PW-GS/1, PW-GS/2 recorded by the police immediately after incident.

23. Evidence of PWs 8, 9 and 18 are also relevant and their evidence is to the following effect. PW-8 (Surjit Singh) inter alia, stated as follows:

24. On 3rd August, 1994 he had gone for repair of his vehicle to Dhiansar. He was at a tea stall near the garage when he saw vehicle Nos. 566 5408 parked on the other side of the road. He saw Kishore was armed with a revolver. Shots fired by the deceased caused injuries to

two assailants. Rajesh shot the deceased. The deceased was then surrounded by the assailants and attacked by tokas, swords, etc. Accused Kishore fired in the air and the assailants ran towards vehicle No. 5408. He had noticed accused A-1 and A-2 standing near their vehicle. The assailants reversed the other car and drove towards the deceased and accused Rajesh came out of the vehicle, picked up the weapon lying near the deceased and they mounted on the vehicle and drove off. A-1 and A-2 also drove off.

25. PW-9 (Nainu Singh) inter alia stated as follows:

26. On 3rd August, 1994, he was getting a vehicle repaired in a worship at Dhiansar. He along with Surjit Singh went towards at tea shop. They heard sound of fire arms being used. They saw the deceased bleeding profusely and running towards Jammu Pathankot road. Six-seven assailants were chasing him. They were armed with tokas, churas and revolver. The deceased while running had fired at the assailants. Kishore Kumar who was armed with a pistol was running after the deceased. the shots fired by the deceased were fired in his presence. Two of the accused were identified by him as Subash Kumar and Rajesh Kumar. When the deceased reached near the road, Rajesh Kumar fired at him and hit on his arm. Thereafter, six to seven persons surrounded the deceased. They were said to be armed with Chakus (knives) and churas (bigger knives) and were stabbing the deceased. Near the work shop gate car No. 566 was standing. This was of grey (slaty) colour. A-2 and A-1 had given a lalkara that the deceased should be killed and should not escape. A-1 had fired some shots in the air. Another white car bearing No. CH01 5408 was also parked there. He noticed the accused sitting in the car. He had identified Krishan Kumar, A-2 and A-1. The driver reversed the car. It was stopped near the dead body of the deceased. The revolver lying near the deceased was picked up. After the car had left, A-1 and A-2 also left in another car. He knew the name of the accused Bhupinder, Rohit and Rakesh Kumar because he had identified them in the police station in the presence of Tehsildar. He deposed that accused Bhupinder, Rakesh, Subash and

Rajesh were holding Toka, Kirch, Sword and Revolver respectively. The witness identified the revolver, sword, kirch and toka and stated that these were the weapons with which the accused were armed.

27. Evidence of PW-18 (Hari Kumar) inter alia stated is as follows:

28. He was the owner of a Halwai shop in Parade Ground, Jammu. On 3rd August, 1994, at about 11.00 a.m. accused Ravi Kumar came to the shop of Hari Kumar in his car No. 5408-CH01 and left for Moti Bazar. At 1 or 1.30 p.m., accused Ashok and the deceased came to his shop and told them that they were going to Hotel Asia for taking meals. They took some sweets from his shop and left in car No. 566 JK02B which belonged to A-1. After 10 or 15 minutes, A-2 also came to the shop and demanded a scooter for him for going to Hotel Asia, telling him that he needs the scooter since he had given his car to some friend. He did not give a scooter to A-2. Half an hour thereafter, he found car No. CH01 5408 passing in front of his office shop carrying 7-8 boys out of which he identified Kishore Kumar (who is now dead). Car was being driven by a dark complexioned boy.

29. Some factors which weighed with the High Court in upholding conviction of the three accused as was done by the Trial Court are the evidence of eye-witnesses, PWs 1 and 2. Evidence of these witnesses have been analysed in detail by both the Trial Court and the High Court. Before both the said courts, it was urged that they cannot be termed to be truthful witnesses. By elaborate reasoning the stand was negatived. Additionally, it was noticed that both accused Nos. 1 and 2 were seen in the company of the deceased by employees of the deceased i.e. Darshan Singh (PW 15) and Rajinder Kumar (PW 14). Additionally, Hari Kumar (PW 18) has also spoken about having seen deceased in the company of accused Nos. 1 and 2. For some time accused No. 1 was not in the company of the deceased and accused No. 2.

At that period of the time he wanted PW 18 to take him to Hotel Asia. He has also stated that accused No. 2 and the deceased had taken some sweets from his shop and were travelling in a car No. JK02B 566. He has also stated about the statement of accused 1 and 2 that there was some scuffle between some boys and the deceased at the land which they had gone to see and in that scuffle the killing took place. The reason for this was stated to be pressure on accused 1 and 2 to return the money. One of the important circumstances noticed by the Trial Court as well as the High Court is that the land which was to be seen to be the deceased was only known to accused 1 and 2. Another circumstance noted was the use of a car 5408 CHO1. There was some amount of controversy raised about the owner of the car, as it was evident from the lengthy cross examination made so far as the original owner, that is, L.B. Gupta, Advocate (PW 31).

30. The evidence of PWs 1 and 2 has rightly been accepted by the Trial court and the High Court and we find no reason to discard their evidence. So far as accused Rajesh Kumar is concerned as has been found by the Trial Court and the High Court, live pistol belonging to accused No. 1 was recovered from his house. He has sustained bullet injuries on account of firing done by the deceased while trying to protect his life.

31. In view of the circumstances noticed and highlighted by the Trial court and the High Court and in our considered opinion rightly the appeals filed by accused Ravinder Kumar and Ashok Kumar are devoid of merit and deserve dismissal, which we direct.

32. Coming to the appeals filed by four appellants who were acquitted by the Trial Court but convicted by the High Court, it has been argued with emphasis that if it is accepted the two views are possible on the evidence, the one in favour of the accused was to be accepted and their acquittals should not have been rightly interfered with. It is to be noticed that the Trial

Court placed reliance on the evidence of Hari Kumar (PW 18) for the purpose of convicting accused Rajesh Kumar, but so far as the other four accused are concerned, it was not held to be reliable. There was no cogent reason indicated as to why the same was termed to be unreliable. Additionally, recoveries were made pursuant to the disclosure made by them. Though, arguments were advanced that due procedure was not followed, in view of the evidence of the witnesses examined by the prosecution in that regard, we find nothing illegal ruling out its acceptance. There are certain additional features also. A pant was recovered from the house of Subash Kumar which had holes indicating passage of bullet. However, a chemist (PW 22) was examined to show when he had gone to purchase the medicine to be applied to the injury. It was submitted that so far as Santokh Singh (PW 7) is concerned, his evidence was held to be not reliable. therefore, the identification of accused No. 5, Subash Kumar by Santokh Singh was not of any consequence. Even if it is accepted, the evidence relating to recovery established by the evidence of PW 18 cannot be lost sight of.

33. The evidence of Nainu (PW 9) was also described to be un-reliable and it was said that he stood at par with Santokh Singh. Similar was the criticism in respect of Surjit Singh. Their evidence has been analysed in great detail by the High Court and has been held to be reliable. It is of significance that practically there was no cross-examination on the recovery aspect. We do not find any reason to differ with the High Court in that regard. There can be no dispute with the proposition as urged by learned counsel for the appellants that two views are possible, the one in favour of the accused has to be preferred. But where the relevant materials have not been considered to arrive at a view by the Trial Court, certainly High Court has a duty to arrive at a correct conclusion taking a view different from the one adopted by the Trial Court. In the case at hand, the course adopted by the High Court is proper.

34. Judged in the foresaid background, conviction by the High Court of those four who were acquitted by the High Court does not warrant any interference.

35. The last seen theory comes into play where the time gap between the point of time when the accused and deceased were seen last alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that accused and deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases. In this case there is positive evidence that deceases, A-1 and A-2 were seen together by witnesses, i.e. PWs 14, 15 and 18; in addition to the evidence of PWs 1 and 2.

36. It was submitted that there was unexplained delay in sending the FIR. This point was urged before the Trial Court and also the High Court. It was noticed by the High Court that Showkat Khan (PW 38) was an investing officer on 3rd August, 1994 for a day only. He had taken steps from 5.30 evening onwards to 9.00 p.m. on the spot. Thereafter, Gian Chand Sharma (PW 42) was asked to investigate into the matter. It was also noticed that the road between Bari Brahamana and Samba where the court was located was closed due to traffic on account of heavy rains. Though, the road was open from Jammu to Bari Brahamana but it was closed from Bari Brahamana to Samba. The day's delay for the aforesaid purpose (the FIR has reached the Magistrate on 5.8.1994) cannot be said to be un-usual when proper explanation has been offered for the delay. The plea of delayed dispatch has been rightly held to be without any substance.

37. Another point which was urged was the alleged delayed examination of the witnesses. Here again, it was explained as to why there was delay. Important witnesses were examined immediately. Further statements were recorded subsequently. Reasons necessitating such examination were indicated. It was urged that the same was to rope in accused persons. This

aspect has also been considered by the Trial Court and the High Court. It has been recorded that there was valid reason for the subsequent and/or delayed examination. Such conclusion has been arrived at after analyzing the explanation offered. It cannot be laid down as a rule of universal application that if there is any delay in examination of a particular witness the prosecution version becomes suspect. It would depend upon several factors. If the explanation offered for the delayed examination is plausible and acceptable and the court accepts the same as plausible, there is no reason to interfere with the conclusion.

38. As was observed by this Court in Ranbir and Ors. v. State of Punjab MANU/SC/0441/1973 : [1974]1SCR102 the investigating officer has to be specifically asked as to the reasons for the delayed examination where the accused raised a plea that there was unusual delay in the examination of the witnesses. In the instant case however the situation does not arise.

39. therefore, in the aforesaid background, the appeals filed by the four appellants who were acquitted by the Trial Court but convicted by the High Court also deserve dismissal which we direct.

40. Coming to the appeal filed by the State in respect of whom both the Trial Court and the High Court recorded acquittal, it is seen that there was no acceptable material. This aspect has been analysed in great detail by the Trial Court and the High Court and we do not find any reason to interfere with the conclusions. The appeal filed by the State is accordingly dismissed. In the ultimate result, all the four appeals are dismissed.

MANU/DE/1233/2006

Back to Section 52 of Indian Evidence Act, 1872.

IN THE HIGH COURT OF DELHI

CS (OS) No. 1212/2005 and is No. 6787/2005

Decided On: 22.02.2006

Raghu Nath Pandey and Ors. Vs. Bobby Bedi and Ors.,

Hon'ble Judges/Coram:

A.K. Sikri, J.

Counsels:

For Appellant/Petitioner/plaintiff: M.N. Krishnamani, Sr. Adv., M. Tarique Siddiqui, Adv. for plaintiff No. 1 and Hari, M. Tarique and Siddiqui, Advs. for plaintiff No.

For Respondents/Defendant: V.P. Singh, Sr. Adv. and Jyotsna Balakrishnan, Adv. for defendants No. 2 and 5 and Praveen Anand, Adv. for defendants No. 1, 3, 4, 6 and 7

JUDGMENT

A.K. Sikri, J.

1. Mangal Pandey, though the first martyr of freedom struggle of India of 1857, but lesser known earlier, is a household name today. It was a name known to the students of history earlier. Even history students, except those who studied freedom struggle of India in depth, may not have known in detail about his deeds except that there was a character Mangal Pandey who was in British Army and revolted against the Britishers in 1857

Mutiny. Today heroic deeds of Mangal Pandey are known to every person-be it a student of history or not; be it a highly educated person or illiterate; be it an old or a young; be it a college going student or a child studying in primary school. It is because of the movie titled 'Mangal Pandey-The Rising' produced and released in India and abroad in the month of August 2005. The impact of Bollywood films-even when they are commercial films-is well known among Indian public. The impact becomes greater and deeper when the movie cast is the icon. Glamorisation and widespread advertising adds to this impact. Much before the movie 'Mangal Pandey-The Rising' was released, media hype about this movie was created when it was being shot. That is the reason that on its release it created ripples. Whether it became a Box Office hit, i.e. commercially successful venture or not, is immaterial. The fact remains that it was much talked about, particularly the character of Mangal Pandey who is depicted as the great freedom fighter and on whose life the film has been produced as a historical movie to present to the young generation his personal and patriotic life. At the same time it has been embroiled in controversy.

2. Indubitably, Mangal Pandey was a less known freedom fighter even for the historians. There is not much literature about his personal life and his heroic deeds. Therefore, the movie evoked reactions about the correctness of his sublime character depicted in the movie. Columns, articles, write ups, critiques appeared in newspapers and magazines. There were discussions on this in various programmes shown in electronic media as well. We are not concerned with this kind of controversies which the main character Mangal Pandey of the movie generated.

3. Present suit filed by the plaintiffs, who claim themselves to be descendants of Mangal Pandey family, raises different kind of controversy altogether. While on the one hand they express their gratitudes to the producers of the film for glorifying the great freedom fighter and making today's generation aware of his sacrifices, at the same time they feel

pained and anguished at the introduction of some of the characters and scenes in the film associating Mangal Pandey with them. According to the plaintiffs, defendants have, by doing this, distorted the history of freedom struggle for independence of India and also defamed and disreputed Mangal Pandey and the entire Pandey family as well as their generations. According to the plaintiffs, it is unfortunate that this action of the defendants, who are the producers, distributors, directors, story/script writers and main characters (hero and heroine) of the movie, is guided by the ulterior motives of making personal financial gains for commercial success of the movie, totally unmindful of their duty not to offend the personal life and character of the great martyr, his coming generations and the place he belonged to and even the entire nation. They, Therefore, feel cheated and are unhappy.

4. In order to appreciate this grievance of the plaintiffs, we may take note of the scenes in which hero and heroine of the film are together. There are five such scenes which need graphic account:

(a) Heera, the main female character is a prostitute which is played by Rani Mukherjee, heroine of the film. In the very first scene, which introduces this character in the film, she is shown to have been sold as a slave and driven in the flesh trade much against her wishes and notwithstanding her defiance. First time she meets the hero of the film, namely, Mangal Pandey, played by Aamir Khan, in a dispensary. Their encounter is limited to a dialogue whereby she says to Mangal Pandey and other British sepoys, who are Indians, in a taunting way, We sell our bodies but you sepoys sell your soul . This leaves a powerful impact on Mangal Pandey.

(b) Some scenes later Mangal Pandey visits Heera and meets her at the backyard of the Kotha where she stays. He asks her if she would like to escape and she refuses.

(c) Third encounter of the two central characters is during a celebration of Holi. Entire town is celebrating Holi. It is well known that depiction of Holi scenes is popular for most of the film makers and Holi song is an integral part of it. Both are shown to have played the Holi together along with others. During this Holi scene they come close to each other and there is a physical contact as well. After the song is over, they proceed alone, away from rest of the crowd, and dip into the Holi river together. Some kind of physical chemistry between the two and a certain level of intimacy between them is more than obvious. This scene gives an impression that they are attracted to each other.

(d) Next time they meet when Heera comes to inform Mangal Pandey about the British plan to disband the regiment and hang the rebel leaders. That is the stage in the film when Mangal Pandey and many of Indian soldiers in his regiment had decided to rebel and were planning an attack on the British Army. Heera is frightened as Britishers have come to know of this move of the rebel soldiers and have decided to hang them. She wants safety of Mangal Pandey. She, Therefore, meets him. This meeting takes place in a secluded place and Heera requests Mangal Pandey to escape. Mangal Pandey, however, firmly turns down this offer.

(e) Last meeting of the hero and heroine in the film is almost in the last scene of the film when Mangal Pandey is about to be hanged and Heera comes to meet him and requests him to liberate her by applying 'Sindoor' in her hair-parting. He obliges Heera. This, according to the plaintiffs, is symbolic of Mangal Pandey marrying Heera.

5. The plaintiffs have no quarrel about the introduction of Heera as a character in the film who is a prostitute. What pains them is her association with Mangal Pandey. What is objectionable according to the plaintiffs? It is the characterisation of Mangal Pandey showing him as a drunkard, regular visitor to the Kothas, his association with a sex worker and ultimately marrying the said sex worker. plaintiffs claim that to the best of their knowledge and belief such a depiction is utterly false, baseless, highly defamatory and derogatory to the great son of India. From the literature available on Mangal Pandey, it is emphasised that he was a 26 years old bachelor who belonged to a Brahmin family and a puritan. However, in the movie the defendants have, without any authentic source, introduced a passionate lady love in the personal life of Mangal Pandey, that too an important character of a prostitute played by none other than the leading lady of the film and showing Mangal Pandey in intimate love scenes with her, running to the river side and getting into deep water after eloping from the Holi festival celebrations, participated by the village folks. Towards the end of the film the said prostitute even suggests to Mangal Pandey that they elope from the scene and go to live a peaceful life. Mangal Pandey, before proceeding for the gallows, recognises the relationship and accepts the prostitute as his wife. The event of love life and marriage and that too with a sex worker in the life of Mangal Pandey and his visiting Kothas is wholly untruthful and finds no support from any source and least any authentic source. Therefore, it is pleaded with much vehemence that the defendants could not have introduced such a character of a sex worker in the film to be associated with Mangal Pandey. Even if the character of a prostitute named Heera in the film, is a fiction, it cannot be permitted to integrate in the personal life of Mangal Pandey, a historical legend and allowed to pass on to the future generations. The plaintiffs argue that even a fiction as falsehood of history that tends to damage the personal character even of a common man and to defame him and his family would be bad in law. It is stated that disclaimer in the film is totally an eye wash and as it is not specifically informed to the viewers that the character Heera in the film is not a real character but fictionalised and, Therefore, audience would get an impression that Mangal Pandey had fallen in love and married a prostitute. It amounts to even distorting

the family tree of the plaintiffs by introducing a prostitute in the Pandey clan. Therefore, these scenes are not palatable to the plaintiffs. It is the case of the plaintiffs that while they have no intention to seek ban on the screening of the film per se, their prayer is that the aforesaid offending and defamatory scenes be removed from the film and only with this editing that the movie be exhibited.

6. Defendants have contested the suit as well as prayer for interim injunction on number of grounds. They have, in the first instance, challenged the very maintainability of such a suit filed by the plaintiffs on the grounds that:

a) plaintiffs are not the descendants of Mangal Pandey and, Therefore, have no legal right or locus standi to file such a suit.

b) No action for defamation can be taken in respect of a dead person since defamation is a personal wrong and the legal right does not survive and is not actionable after the death of the person in view of principle laid down in the maxim 'actio personalis moritur cum persona'.

c) The suit is bad for non-joinder of defendants No. 3, 4, 6 and 7 who are the director, script writer, lead actor and lead actress respectively, are unnecessarily impleaded even when no relief is claimed against them.

d) The disclaimer in the film which appears at the outset before the start of the film categorically states that certain characters have been changed or fictionalised for dramatic

purpose and certain characters may be composites or entirely fictions. It is also mentioned that the scenes depicted may be hybrid of fact and fiction. Therefore, according to the defendants, the public is made aware of the fiction in the film and because of this disclaimer there is no cause of action on the basis of which this suit is founded.

7. On merits it is stated that there is no defamatory or objectionable scene in the film which, in any manner, undermines the character of Mangal Pandey or for that matter his descendants. Defendants claim that they are responsible citizens who have excelled in each of their fields and have earned immense respect and admiration not only among Indian public but also film lovers around the world. Defendant No. 1 is a reputed film producer who has produced award winning and critically acclaimed films including 'Bandit Queen', 'Maqbool', 'Fire', 'Sathia' etc. He has pioneered the introduction of international industry standards and professional business practices into Indian movie making and has been successful in bridging the gap between Offbeat and Main Screen cinema by making films that appeal to the sensibilities of the audiences. The clarification of the defendants, in so far as the film in question is concerned, is that with a view to retell the story how one man triggered the first fight against the then mighty British empire, this movie is produced. Film portrays Mangal Pandey as a hero and celebrates his courage and determination. Producer has brought together and synergies the creative and artistic talents of some of the best and the most popular actors, musicians, artists, writers, technicians and craftsmen in the country for making of the film. Together they have put in their creative energies and imaginations to bring to life and portray as a human being in flesh and blood, the heroic figure of Mangal Pandey about whom very little is known aside from his act of rebellion against the British in East India Company who condemned him to death after which stories of his courage fired up and triggered the 1857 Revolt. Thus, far from denigrating Mangal Pandey the film is a recognition of his role as the first spark of freedom struggle and thus glorifies and extols his sacrifices and courage and tells his story in the backdrop of 1857 Revolt. The intent and effect of

the film has been to generate interest, respect and admiration among Indians for Mangal Pandey. The film is to be considered as a whole while judging its effect on audiences and few scenes of the film cannot be taken out of context to make a grievance. It is emphasised that reactions of the people who have seen this film would show that they have held Mangal Pandey in high esteem of his heroic deeds who sacrificed his life. Therefore, far from being defamatory, the film leaves the impact of him being a real hero. It, Therefore, cannot be said that the film is disparaging of Mangal Pandey. It is also explained by the defendants that before the defendants decided to make this film very little was known about the hero who lived almost 150 years ago. However, a number of legends have been built up over the role played by Mangal Pandey in 1857 Mutiny which are evident from oral folklore and stories which have been passed on from generation and are part of the collective conscience of various Indian communities. However, the defendants did extensive research while making the film and found that following were the only facts which were absolutely certain:

i) In 1857, the British East India Company ruled a large part of the Indian subcontinent.

ii) The British East India Company had a large army of Indian sepoys.

iii) In 1857, greased cartridges were introduced in the army with new Enfield rifles.

iv) There was grave concern and resentment about this cartridge amongst the Hindu and Muslim sepoys because it was believed that the cartridges were greased with cow and pig fat and the sepoys refused to bite these cartridges.

v) At Berhampore, Col. Mitchell tried to force the sepoys to bite the cartridges with threat of using the cannon. There was a mini mutiny and the Sepoys captured the Bell of arms.

vi) At Berhampore, on 29th March 1857, Mangal Pandey rebelled, shot two British officers and when faced with a large force, shot himself.

vii) On 4th of April 1857, he was subjected to court martial and sentenced to death.

viii) On 7th of April 1857, they failed to hang him because no hangman was available.

ix) On 8th of April 1857, there was a public hanging of Mangal Pandey.

8. The defendants, Therefore, maintain that the aforesaid facts with core symbolism of the historical figure that Mangal Pandey is revered and celebrated for his symbolism significance as the trigger for India's rising and assertion of our people's right to freedom. The film is a work of fiction, in contrast to a documentary film and biography and links together various themes associated with the 1857 Revolt and its period-like the opium trade with China and the anger of India's kings and rulers and the practice of Sati etc. This is the part of artistic and cinematic license and cannot be suppressed. In the process the character of Heera, a woman forced into enslavement is, in fact, envisaged and built upon as a symbol of the India's condition during colonial regime. Still, the defendants have ensured that she is a woman of strong character. Mangal Pandey was a British soldier. Even when he was an Indian, he had joined army of the East-India Company and was fighting against Indians. Therefore, it was necessary to sow the seeds of patriotism

in him. It is dramatised by the dialogues of Heera who says We sell our bodies, but you sepoys sell your souls. It is this taunt which triggers the spirit of freedom in Mangal Pandey and is, Therefore, a very positive sentiment without any negative connotation. Defendants have sought to justify the scenes of interaction between Heera and Mangal Pandey. It is stated that sporadic and singular visit of Mangal Pandey to the backyard of Kotha with a purpose only to meet Heera as he was impressed by her dialogue, was merely a gesture of gratitude for opening his eyes and to ask her if she would like to escape. There are no sexual favor sought and there are no sexual connotation to the scene. The scene of Holi celebration is sought to be down played by saying that they go to river to wash off the colours of Holi. The scenes of applying Sindoor is endeavored to explain away by arguing that it was her request to liberate her and gesture of Mangal Pandey in obliging her by accepting this request showed a very high order of humanism of liberating a woman of her shame of enslavement. As even he was about to die and, Therefore, cannot be treated as any stigma on his character.

9. In so far as scene of consuming 'bhang' is concerned, the Explanation of the defendants is that in mid 19th century India there was no prejudice against 'bhang' and thus, no negative connotation as was intended or is communicated in the film. On the contrary, there are number of historical records, which substantiate the fact that Mangal Pandey was known to consume 'bhang'.

It is, thus, pleaded that over all effect of the film should be taken into account in the light of the period depicted and the contemporary standards of the people to whom it relates and one or two scenes of the film cannot be cited or judged out of context.

10. Mr. Krishnamani, learned senior counsel, argued for the plaintiff No. 1 and Mr. Hari made his submissions on behalf of plaintiff no. 2 highlighting the aforesaid offending scenes and impact thereof in great detail. They were ably assisted by Mr. M. Tarique Siddiqui, Advocate. In the process few judgments were cited laying down the principles of law in a matter like this. The submissions of the plaintiffs were countered by Mr. V.P. Singh, learned senior counsel, on behalf of the defendants No. 2 and 5 and Mr. Praveen Anand, made his submissions on behalf of defendants No. 1, 3, 4, 6 and 7. In addition, highlighting their submissions, as noted above, they have also cited plethora of case law. Submissions of both the parties shall be dealt with during my discussion which follows hereafter.

11. The central theme of the plaintiffs' arguments is two-fold. First, because of the scenes which are objectionable according to the plaintiffs and noted above, the image of Mangal Pandey is tarnished by depicting him a drunkard, a regular visitor to Kotha and not only associating him with a prostitute with whom he is shown to have fallen in love but he even marries her. In the process second limb of submission, which follows from first, is that the history is distorted. Mangal Pandey was a bachelor, a Brahmin and puritan who died at the age of 26 years. However, film falsely projects his love affair with a girl, that too a prostitute whom he married.

12. Let me first analyze the first limb of the argument which is based on the premise that certain scenes in the film are defamatory to Mangal Pandey, the great hero of India and have the effect of defaming the successive generations, including the present one. While examining this aspect, I am keeping aside the other aspect altogether, namely, the alleged distortion of history. I make it clear that I proceed to examine this aspect keeping in view that Mangal Pandey was young and brilliant, Brahmin by caste, who loved his religion more than his life. He was a bachelor and he was pure in his private life. At the same time

we have to keep in mind that the movie Mangal Pandey-The Rising though based on historical events and the life of Mangal Pandey, is neither a documentary nor a biography. It is a commercial film and indubitably, fiction is infused into historical events (how much and what kind of fiction could be allowed would be the subject-matter of the second limb).

13. In any film made on commercial basis, dramatic effect of certain scenes has to be allowed. Film is to be an entertainer to woo the masses. Its powerful appeal when compared with any other medium, cannot be undermined. Importance of feature films as a medium of education and spreading a particular message cannot be undermined. It is a powerful medium because the message is delivered while entertaining the people. The appeal of the film is directed to an audience so diverse that it transcends social and spatial categories. Watched by almost fifteen million people every day, popular cinema's values and language have long since crossed urban boundaries to enter the folk culture of the rural-based population, where they have begun to influence Indian idea of the good life and the ideology of social, family, and love relationships. Thus, people come for entertainment and at the same time they are educated. Audiences want emotions. Empty heroic acts would not suffice to make a film a success. For that purpose, one can read a book also. Visual impact of a message is far greater than words. For this reason every film even when it is based on historical fact, which is known as period film is dramatised. The historical facts are to be in narrative form. There has to be a story line in a feature film. The spell of the story has always exercised a special potency in the oral-based Indian tradition and Indians have characteristically sought expression of central and collective meanings through narrative design. Many psychologists believe that narrative thinking-storing -is not only a successful method of organising perception, thought, memory, and action but, in its natural domain of every day inter-personal experience, it is most effective. [see: John A. Robinson and Linda Hawpe's Narrative Thinking as Heuristic Process in Narrative Psychology: The storied nature of Human Conduct, ed. T. Sarbin

(New York: Praeger, 1986) p. 123]. If in this context the producer, story writer or director of the film thought that it would be interesting, nay important, that character of Heera is introduced in the film, even when it was a pure fiction, this much play in the joints is allowed. Blending of fact and fiction is inevitable in a movie, even when it is a historical film. To quote from Sudhir Kakkar's Intimate Relations-Exploring Indian Sexuality

I have always felt, at least for a society such as India where individualism even now stirs but faintly, that it is difficult to maintain a distinction between folktales and myths as products of collective fantasy on the one hand and movies and literature as individual creations on the other. The narration of a myth or a folktale almost invariably includes as individual variation, a personal twist by the narrator in the omission or addition of details and the placing of an accent, which makes his personal voice discernible within the collective chorus. Most Indian novels, on the other hand, are closer in spirit to the literary tradition represented by such nineteenth-century writers as Dickens, Balzac, and Stendhal, whose preoccupation with the larger social and moral implications of their characters' experience is the salient feature of their literary creations. In other words, it is generally true of Indian literature, across the different regional languages, that the fictional characters, in their various struggles, fantasies, unusual fates, hopes, and fears, seek to represent their societies in miniature.

14. Before proceeding further, let us analyze the character of 'Heera' in the film. Her character is carefully chosen. She is a young and petite girl. At the same time she is strong, rustic and her words few and brusque. She is not the one who had adopted prostitution as her trade by choice. It was not to earn money. In the very first scene introducing her character she-coming from unknown and one could infer from a poverty stricken background-is sold as a slave. Even at that time her resistance speaks volumes of her mighty character. Nevertheless she is helpless when forced to prostitution. She is forced to sell her flesh but her soul is intact. She does not compromise with her honour, dignity

and self-respect. She is not a body with a soul. She is a soul with a physical part called the body. She is more conscious of the presence of the soul. That is why she is sarcastic to the hero in the very first meet up between them. She knows that even as a prostitute who is forced to satisfy the Gores with her body this profession of hers is shown as a lesser evil than that of the sepoys who are serving those Gores. She knows that it is the soul which is superior than the body and in this backdrop retort comes with the sentence We sell our bodies but you sepoys sell your soul . Depiction of Heera with such strong attributes of her character would not be viewed by the public as something abhorrent. Audience fall in love even with the negative characters when crafted carefully by the producers. Filmmakers keep in mind as to what will appeal the viewers. They regard the Indian cinema audience not only as the reader but also the real author of the text of Hindi films. I do not think that even a common man would have a perception that Mangal Pandey has denigrated himself by associating with Heera, whose character would rather be admired. A prostitute is also a woman. She can possess strong character like any other woman of good virtues. In the following Hymn of Isis, third or fourth century B.C., discovered in Nag Hammadi (borrowed from the novel Eleven Minutes authored by Brazilian Paulo Coelho) this is the projection of a woman:

For I am the first and the last

I am the venerated and the despised

I am the prostitute and the saint

I am the wife and the virgin

I am the mother and the daughter

I am the arms of my mother

I am barren and my children are many

I am married woman and the spinster

I am the woman who gives birth and she

who never procreated

I am the consolation for the pain of birth

I am the wife and the husband

And it was my man who created me

I am the mother of my father

I am the sister of my husband

And he is my rejected son Always respect me For I am the shameful and the magnificent one.

15. Therefore, mere association of a prostitute with Mangal Pandey would not be offensive. Even Bible talks of an interaction of Jesus Christ with a prostitute. Luke 7:37-47 gives the following:

And, behold, a woman which was in the city, a sinner; and when she knew that Jesus was sitting at meat in the Pharisee's house, she brought an alabaster curse of ointment.

And standing behind at his feet, weeping she began to wet his feet with her tears, and wiped them with the hair of her head, and kissed his feet, and anointed them with the ointment.

Now when the Pharisee which had bidden him saw it, he spike within himself, saying, This man, if he were a prophet, would have perceived who and what manner of woman this is which touched him, that she is a sinner.

And Jesus answering said unto him, Simon, I have somewhat to say unto thee. And he saith, Master, say on.

A certain lender had two debtors: the one owed five hundred pence, and the other fifty.

And when they had not wherewith to pay, he forgave them both. Which of them Therefore will love him most?

Simon answered and said, He, I suppose, to whom he forgave the most. And he said unto him, Thou hast rightly judged.

And turning to the woman, he said unto Simon, Seest thou this woman? I entered into thine house, thou gavest me no water for my feet; but she hath washed my feet with her tears, and wiped them her hair.

Thou gavest me no kiss: but she, since the time I came in, hath not ceased to kiss my feet.

My head with oil thou didst not anoint: but this she hath anointed my feet with ointment.

Wherefore I say unto thee, Her sins, which are many, are forgiven; for she loved much: but to whom little is forgiven the same loveth little.

16. Jesus did not feel any humiliation when a prostitute kissed his feet, washed them with her tears and wiped them with her hair. He did not feel that it was offensive to come in contact with a prostitute who anointed his feet with ointment.

17. Likewise, in the novel 'The Da Vinci Code' authored by Dan Brown following description appears about Mary Magdalene, a prostitute in the life of Jesus Christ, while explaining the painting 'The Last Supper':

Sophie examined the figure to Jesus' immediate right, focusing in. As she studied the person's face and body, a wave of astonishment rose within her. The individual had flowing red hair, delicate folded hands, and the hint of a bosom. It was, without a doubt ... female.

That's a woman ! Sophie exclaimed.

Teabing was laughing. Surprise, surprise, Believe me, it's no mistake. Leonardo was skilled at painting the difference between the sexes.

Sophie could not take her eyes from the woman beside Christ. The Last Supper is supposed to be thirteen men. Who is this woman? Although Sophie had seen this glaring discrepancy.

Everyone misses it, Teabing said. Our preconceived notions of this scene are so powerful that our mind blocks out the incongruity and overrides our eyes.

It's known as scotoma, Langdon added. The brain does it sometimes with powerful symbols .

Another reason you might have missed the woman, Teabing said, is that many of the photographs in art books were taken before 1954, when the details were still hidden beneath layers of grime and several restorative repainting done by clumsy hands in the eighteenth century. Now, at least, the fresco has been cleaned down to Da Vinci's original layer of paint. He motioned to the photograph. Et voila!

Sophie moved closer to the image. The woman to Jesus' right was young and pious-looking, with a demure face, beautiful red hair, and hands folded quietly. This is the woman who single handily could crumble the Church?

Who is she? Sophie asked.

That, my dear, Teabing replied, is Mary Magdalene.

Sophie turned. The prostitute?

Teabing drew a short breath, as if the word had injured him personally. Magdalene was no such thing. That unfortunate misconception is the legacy of a smear campaign launched by the early Church. The Church needed to defame Mary Magdalene in order to cover up her dangerous secret- her role as the Holy Grail.

Her role?

As I mentioned, Teabing clarified, the early Church needed to convince the world that the mortal prophet Jesus was a divine being. Therefore, any gospels that described earthly aspects of Jesus' life had to be omitted from the Bible. Unfortunately for the early editors, one particularly troubling earthly theme kept recurring in the gospels. Mary Magdalene. He paused. More specifically, her marriage to Jesus Christ.

I beg your pardon. Sophie's eyes moved to Langdon and then back to Teabing.

It's a matter of historical record, Teabing said, and Da Vinci was certainly aware of that fact. The last supper practically shouts at the viewer that Jesus and Magdalene were a pair.

18. If the movie makers wanted to give a dramatic effect by shaking the conscience of Mangal Pandey through the means of a prostitute, by no means it can be perceived as something offensive. If this interaction and strong worded statement of Heera triggers the spirit of freedom and Mangal Pandey get impressed by this character (Heera) in the film, maybe a prostitute, it would not mean any violence to his caste or even his 'purity'.

Was it necessary to introduce afflatus inspiration-a divine method-to awake his innerself, because he was a Brahmin' I think the medium adopted is no less powerful and has better spell-binding effect, as it is woven in a story. At having humiliated her, he wanted to repay. He is not able to contain himself and visits Heera. No doubt, he goes to Kotha for this purpose but he does not go to Kotha for satiating his carnal desires. In any case, he could not, as purportedly that Kotha was meant for Britishers where Indians were not permitted. He goes to the backyard of Kotha where he meets Heera and asks her as to whether she would like to escape. Impressed by her personality he is able to see through that she is at that rotten place because of forced circumstances. He wants to end this sordid routine of hers and, Therefore, takes courage to venture her escape which was fraught with dangers. However, there are no innuendos, no insinuations, no proposals. The scene is as neat as it could be. The defendants have rightly showed that there are no sexual favors sought and no sexual or erotic connotation to the scene at all. Solitary visit of this type to that Kotha by the hero of the film would not depict him as a regular visitor to the Kotha , as alleged by the plaintiffs.

19. What is objectionable if hero in a film wants that a prostitute be made to free herself from the trade in which she is indulged in ? Have we not seen number of films in the past with this as the central theme where hero struggling and fighting with the mighty system to liberate a prostitute and in the process visiting Kotha and the concerned prostitute number of times. Has the public ever viewed such acts of heroes in such films depicting their bad character. On the contrary, such acts are treated as heroic ones where the theme is to expose the ills of prostitution and people are exhorted to come out and eradicate this system.

20. In this backdrop we proceed further. Now, the hero and the heroine celebrate Holi. At once I reject the claim of the defendants that it was simply a Holi scene with entire

town participating, including two main characters and their going to river was only to wash off the colours of Holi. Synergy between the two is apparent. There are amorous glances. It is a romantic song. Some intimacy is shown between the two. There is some physical contact also, though it does not transgress the limits of decency. I also proceed on the basis that they go to river together not with the intention to wash off colours. It is because they are attracted to each other and this attraction drives them away from the crowd. The question, however, is as to whether depiction of such a scene as in any manner undermine the character of Mangal Pandey. I do not think so. No doubt, Mangal Pandey was a Brahmin. No doubt, he was a bachelor. However, adding this much fiction in the life of Mangal Pandey would not make him impure. He was a young boy of 26 and unmarried. Would he not have any dreams and desires. To borrow the eternal words of wisdom of Justice Krishna Iyer uttered in Raj Kapoor v. State MANU/SC/0210/1979 : 1980CriLJ202 :

Art, morals and law s manacles on aesthetics are a sensitive subject where jurisprudence meets other social sciences and never goes alone to bark and bite because State-made strait-jacket is an inhibitive prescription for a free country unless enlightened society actively participates in the administration of justice to aesthetics.

21. If this girl had on an earlier occasion impressed him and they come close on a occasion when people are celebrating Holi, flirtation of this kind would not stigmatise his character in any manner. The scenes are shorn of any ugliness or obscenity. Todays audience is used to watch much bolder scenes. However, film makers keeping the dignity of the character Mangal Pandey, did not cross the Laxamanrekha. One has to keep in mind the difference between love and lust. A pure and sublime love almost at platonic level would by no stretch of imagination be offending. The scene per se, Therefore cannot be treated as objectionable. I am also of the view that even if this platonic love scene is enacted with a girl who is a prostitute, it would not be offensive when adjudged in the

entirety of circumstances and in the backdrop in which the character of Heera is evolved in the film.

22. Again in order to appreciate the effect of last scene when Mangal Pandey applies Sindoor in the hair parting of Heera, one has to keep in mind its context. Mangal Pandey is in jail. He is going to be hanged. A boy of 26 in his prime youth is about to die and she is the only girl came to his life. No doubt, she was a prostitute but she was forced into prostitution. Audience would sympathise with her. The film makers ensured that-at least endeavored that. That is why positive side of her character is depicted in the film. She had left her indelible mark on the hero due to her positive traits. If the fag end of his life, when the death is whisker away and he knows it, he decides to liberate this girl-victim of circumstances-at her request. Would it be seen as denigrating or defamatory to the character of hero? I do not think so and I think the audiences did not think so. Applying Sindoor to a girl's hair parting may normally be seen as marrying the girl. Here, the message was different. It was done with a view to liberate her from the flesh trade she was driven to. The idea was to send the message that after this she was liberated and live her life as of any other respected woman. Audience would perceive this as another act of heroism on the part of Mangal Pandey, rather than defaming his sublime character-who was not only a patriot but a good human being as well, a man with nerve of steel and a golden heart. Audience would cherish such a hero rather than looking down upon him. To quote here, again, Sudhir Kakar (supra):

Having viewed some dreams in Indian popular cinema with the enthusiast's happy eye but with the analyst's sober perspective, let me reiterate in conclusion that oneruos-dream, fantasy-between the sexes and within the family, dos not coincide with the cultural propositions on these relationships. In essence, oneruos consists of what seeps out of the crevices in the cultural floor. Given secret shape in narrative, onerous conveys

to us a particular culture's versions of what Joyce McDougall calls the Impossible and the Forbidden, the unlit stages of desire where so much of our inner theater takes place.

23. The defendants are right in their submission, which even the plaintiffs do not dispute, that the film as a whole enhances the image of Mangal Pandey as a hero who triggered the freedom movement; who was the torch bearer of 1857 Mutiny. The overall impression of Mangal Pandey in the estimation of public remains positive. These scenes in question do not, in any manner, undermine his character or even have slightly shaken effect. Showing him taking 'bhang' on particular occasions, once after his wrestling bout with Gordon when they patch up their differences and again during Holi celebration, do not affect his heroic deeds in any manner. The defendants have produced the literature to show that taking 'bhang' in those days was not seen as a negative connotation so much so, even Mangal Pandey was known to consume 'bhang'. Even if it is presumed that the history in this behalf is distorted at the hands of producers, mere taking of 'bhang' is not derogatory. The public is wise enough and mature enough and does not associate such acts as reflecting the character of a person in any manner, be it few love scenes or taking 'bhang'. The Indian audience has come of age if the script demands it and the scene is shot aesthetically, there should be no controversy over it. Art is self-regulatory and if such scenes are depicted artistically, there should be no problem. Obviously, the scenes, with which the plaintiffs feel offended, were there to compliment the script and are not incorporated to titillate. Meaningful and artistic action cannot be allowed to be curbed.

24. Let me now advert to second limb of the argument based on the alleged distortion of historical facts. As mentioned above, it is not a documentary film. It is a feature film, a commercial film, produced by the defendants. No doubt, the film is based on historical events. It is a period film. Mangal Pandey, main character of this film, once lived on this earth. He is not fictionalised. He ignited and fought the first rebellion against East-India Company. Film was made to glorify his deeds. While making the film some fiction is

added. The hard reality is that even the recording of history is never based on facts alone. There is an element of fiction in the work of historians also. The physicist Leo Shirred once announced to his friend Hans Bethel that he was thinking of keeping a diary; I don't intend to publish. I am merely going to record the facts for the information of God . Don't you think God knows the fact? Bethel asked. Yes Said Shirred, He knows the facts but He does not know this version of the facts.

25. Therefore, historians have their own version of the facts. When a feature film is to be made on historical events, invariably it is not only the version of facts but fiction is also infused into the version of facts. That is the essential difference between a documentary film and a feature film. Entelechies of historical events in a film cannot be expected as it is not a history book. In the present case, the producer has acknowledged this fact specifically in the disclaimer which appears at the outset by stating that The scenes depicted may be hybrid of fact and fiction.... It is also mentioned that certain characters may be composites or entirely fictions.

26. The plaintiffs do not quarrel producer's right to be imaginative while telling historical stories. However, the objection is to the extent of infusing this fiction into reality thereby entirely distorting the history. Learned counsel for the plaintiffs argued that even if little is known about Mangal Pandey, what is certain is that he was a Brahmin by caste, a Brahmchari who went to gallows as an unmarried person. While showing his character, Therefore, violence could not have been done with this part of the history by showing his love affair with a girl; that too with a prostitute and going to Kotha to visit her. They have even objection to a prostitute inspiring hero of the film. These scenes, according to the learned counsel, are utter falsehood in so far as history is concerned and they interfere with the essential character of the hero to a great extent. It is submitted that the alleged

disclaimer, in this backdrop is of no consequence, as there is no specific disclaimer about the heroine of the film. At this stage, I reproduce the said disclaimer:

This story is based on Actual Events. In certain cases, incidents, characters timings have been changed or fictionalised for dramatic purpose. Certain characters may be composites or entirely fictions. Some names and locations have been changed. The scenes depicted may be hybrid of fact and fiction which fairly represent the source materials for the film believed to be true by the filmmakers.

27. It is the submission of the learned Counsel for the plaintiffs that the above statement of filmmakers is a categorical representation and assurance to the viewers all over the universe that each of the event depicted in the film is a statement of fact and, Therefore, an authenticated part of the story knowing fully well that the said representation is based on falsehood as they had themselves distorted the facts to turn the historical patriotic movie into a 'Masala Movie'. It is emphasised that the very first sentence of the statement, i.e. This story is based on actual events gives an impression that the character of heroine is also an actual event. No doubt, in the very next sentence it is mentioned that some of the characters have been changed and fictionalised for dramatic purpose and certain characters may be entirely fictions, heroine is the main character and cannot be a certain character, which expression would refer to some incidental characters only in the film. It is further submitted that even when it is stated that scenes depicted may be hybrid of fact and fiction, at the same time the defendants claim that these scenes fairly represent the source material for the film believed to be true by the filmmakers. Those persons who do not know the history will get an impression after watching the movie that Mangal Pandey was involved with a prostitute with whom he married. It is also mentioned that the disclaimer is, Therefore, not proper/sufficient disclaimer and that too only in English and, Therefore, many would not even know that there is any such disclaimer. It is submitted that there is a difference between events and incidents . When the events are

shown they should be correctly shown, though some incidents can be fictionalised. The plaintiffs' grievance, Therefore, is that it is a false depiction of history which cannot be allowed to remain on record and the plaintiffs were here for correction of this part of history. It is also submitted that in the name of art and drama the defendants cannot be allowed to invade the history and morally corrupt the character of Mangal Pandey.

28. I have already held that in so far as the scenes to which the plaintiffs object are to be judged from morality and obscenity point of view, there is nothing wrong with the same. I have also recorded my opinion above that mere introduction of a character like Heera, maybe a prostitute, in the life of Mangal Pandey cannot be defamatory per se and would not amount to character assassination of Mangal Pandey. Nobody would denigrate or disparage the character of Mangal Pandey as a whole merely because girl like Heera came to his life and spent those moments.

29. In Halsbury's Laws of England, Fourth Edition, Vol. 28, 'defamatory statement' is defined as under:

Defamatory statement. A defamatory statement is a statement which tends to lower a person in the estimation of right thinking members of society generally or to cause him to be shunned or avoided or to expose him to hatred, contempt or ridicule, or to convey an imputation on him disparaging or injurious to him in his office, profession, calling, trade or business.

It is not necessary to site Indian law which has developed accepting the aforesaid connotation of 'defamation'. Applying these tests it cannot be said that either Mangal Pandey and for that matter his descendants are defamed in any manner in the movie.

30. I am also of the view that in stories based on actual events/historical events, some fiction is permitted. Well known and world famous film director and producer Steven Spielberg has recently made a film named 'Munich'. It is based in part on a book 'Vengeance', by George Jonas. It is based on Munich massacre at the 1972 Olympics when Palestinian terrorists held 11 members of Israeli Olympic team hostage which led to botched rescue attempt by the Israeli Intelligence Officers and forces and the murder of the surviving athletes (two had already been killed by the terrorists). It is a film of sympathetic (and in this case anguish) characters and it is, morally speaking, infinitely more complex than the action films. It superficially resembles-features that simply pit terrorists against counter terrorists without an attempt to explore anyone's motives and their tragic implications. While handling the central theme, namely, Munich massacre and the aftermath, in which the Israeli Government mounted a secret war of revenge against the murders, much of fiction is added into the actual events. Some of the critics even say that it is full of distortions and flies of fancy that would impact any Israeli Intelligence officer blush. After watching the movie one would raise the question, where in 'Munich' does fact end and fiction begin? On the controversy as to whether all facts are shown, some facts left out or distorted and how much fiction has interfered with actual events, Aaron J. Klein, correspondent of 'Time' Magazine in his article The History Behind Munich-separating truth from fiction in Spielberg's movie made the following remarks:

Much is left out. For instance, it would have been nice to know that it was German incompetence-their rescue operation was, operationally, a disaster-that led directly to the massacre. But a film can't show everything, and the meat of Spielber's narrative is not the massacre itself but Israel's response to it, a counter-terror campaign that has long been shrouded in mystery-and to some extent still is. It is here that artistic license overwhelms, when it does not entirely dispense with, the true story of what happened after Munich.

In the same article, elsewhere, he writes:

But Spielberg has brought into one of the myths of the Mossad-that after Munich they staged a revenge operation to hunt down and assassinate everyone responsible. Israelis, too, bought into this myth (myself included, at one time) which a shocked public demanded-but that doesn't make it true. Spielberg, in inventing a story about violence begetting violence inspired by real events is raising questions worth asking. Even so, Israel's response to Munich was not a simple revenge operation carried out by angst-ridden Israelis. But the larger context, and the facts on the ground, rarely get in Spielberg's way. A rigorous factual accounting may not be the point of Munich, which Spielberg has characterized as a prayer for peace. But as result, Munich has less to do with history and the grim aftermath of the Munich Massacre than some might wish.

Thus, the extent to which the movie repose fact is a matter of debate. Spielberg has himself referred to it as historic fiction saying it is inspired by actual events. In so far as making of the film as an artistic venture is concerned, it has received largely positive reviews with many critics considering it amongst Spielberg's best films with particular praise going to Eric Bana's performance.

31. Thus viewed the film Mangal Pandey, labeling it as historic fiction inspired by actual events, it cannot be said that introduction of the character of Heera and her association with Mangal Pandey in the film is in any case distorting the history. The film, notwithstanding the doubts about its Box Office success or not, has received brilliant reviews. It has succeeded remarkably in achieving its objective, namely, showing Mangal Pandey as a hero who triggered the 1857 Revolt. The viewers after watching the movie will see him in high esteem and merely because of his association with Heera, a prostitute, will not denigrate him. As pointed out above, though Heera is a prostitute in the film, her character also has strong positive attributes because of which she is able to win the

sympathy of the audience and is not seen as somebody who is to be shunned. Her liberation is viewed as a heroic act on the part of Mangal Pandey.

32. Following passages from Jean Guglielmi v. Spelling-Goldberg Productions 25 Cal. 3D 860 can be extracted at this stage:

Using fiction as a vehicle, commentaries on our values, habits, customs, prejudices, justice, heritage and future are frequently expressed. What may be difficult to communicate or understand when factually reported may be poignant and powerful if offered in satire, science fiction or parable. Indeed, Dickens and Dostoevski may well have written more trenchant and comprehensive commentaries on their times than any factual recitation could ever yield. Such authors are no less entitled to express their views than the town crier with the daily news or the philosopher with his discourse on the nature of justice. Even the author who creates distracting tables for amusement is entitled to constitutional protection.

Whether (works of fiction) are creations of merit, whether they have value only as entertainment and no value whatever as opinion, information or education, pose questions which would require us to stake out those elusive lines. It is fundamental that courts may not muffle expression by passing judgment on its skill or clumsiness, its sensitivity or coarseness; nor on whether it pains or pleases. It is enough that the work is a form of expression 'deserving of substantial freedom both as entertainment and as a form of social and literary criticism.

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Moreover, in defamation cases, the concern is with defamatory lies masquerading as truth. In contrast, the author who denotes his work as fiction proclaims his literary license and indifference to the facts . There is no pretense. All fiction, by definition, eschews an obligation to be faithful to historical truth. Every fiction writer knows his creation is in some sense false . That is the nature of art.

xxxxx

Moreover, the creation of historical novels and other works inspired by actual events and people would be off limits to the fictional author. An important avenue of self-expression would be blocked and the marketplace of ideas would be diminished.

xxxxx

Having established that any interest in financial gain in producing the film did not affect the constitutional stature of respondent's undertaking.

33. In Boby Art International v. Om Pal Singh Hoon MANU/SC/0466/1996 : AIR1996SC1846 the Supreme court laid down the principle with which the so-called offending portions of the film are to be judged and observed: The film must be judged in its entirety from the point of view of its overall impact. It must be judged in the light of the period depicted and the contemporary standards of the people whom it relates. Here even the learned Counsel for the plaintiffs conceded that what is shown is in moderation,

so far as relation between Mangal Pandey and Heera was concerned. Para 20 of the said judgment is worth taking note of in this context:

20. The guidelines aforementioned have been carefully drawn. They require the authorities concerned with film certification to be responsive to the values and standards of society and take note of social change. They are required to ensure that artistic expression and creative freedom are not unduly curbed. The film must be judged in its entirely from the point of view of its overall impact. It must also be judged in the light of the period depicted and the contemporary standards of the people to whom it relates, but it must not deprave the morality of the audience. Clause 2 requires that human sensibilities are not offended by vulgarity, obscenity or depravity, that scenes degrading or denigrating women are not presented and scenes of sexual violence against women are avoided, but if such scenes are germane to the them, they be reduced to a minimum and not particularised.

34. The Court also referred to an earlier judgment in the case of State of Bihar v. Shailabala Devi MANU/SC/0015/1952 : 1952CriLJ1373 to the effect that a writing had to be considered as a whole and in a fair and free and liberal spirit, not dwelling too much upon isolated passages or upon a strong word here and there, and an endeavor had to be made to gather the general effect which the whole composition would have on the mind of the public.

35. In the case of Manisha Koirala v. Sashilal Nair and Ors. MANU/MH/1179/2002, the Bombay High Court was concerned with a situation where the plaintiff, who played central character in the film, claimed that the producer of the film had, without her permission, used some scenes shot by a duplicate of the plaintiff. These scenes were objectionable and defame the plaintiff in eyes of society. Her grievance was that people watching the film would not know that those scenes were shot by a duplicate but would

perceive the plaintiff doing those obscene scenes. Rejecting her contention that the scenes were defamatory, the Court held:

8. The next issue would be whether prima facie atleast the scene enacted by the double would result in the tort or defamation. tort of defamation in the instant case is by association. The plaintiff may be prima facie to contend that those who view the film would not differentiate between a fill-in artist and the plaintiff and association will be with the plaintiff. The question, however, is whether the scenes which are shown in the film would fall with the expression defamation as understood. Salmond and Heuston on the Law of torts, Twentieth Edition defines a defamatory statement as under:

A defamatory statement is one which has a tendency to injure the reputation of the person to whom it refers; which tends, that is to say, to lower him in the estimation of eight-thinking members of society generally and in particular to cause him to be regarded with feelings of hatred, contempt, ridicule, fear, dislike, or disesteem. The statement is judged by the standard of an ordinary, right-thinking member of society. Hence the test is an objective one, and it is no defense to say that the statement was not intended to be defamatory, or uttered by way of a joke. A tendency to injure or lower the reputation of the plaintiff suffices, for If words are used which impute discreditable conduct to my friend, he has been defamed to me, although I do not believe the imputation, and may even know that it is untrue. Hence, it is settled that a statement may be defamatory although no one to whom it is published believes it to be true.

Carter-Ruck on Libel and Slander, Fifth Edition have carved out some of the tests as under:

(1) A statement concerning any person which exposes him to hatred, ridicule, or contempt, or which causes him to be shunned or avoided, or which has a tendency to injure him in his office, professional or trade.

(2) A false statement about a man to his discredit.

(3) Would the words tend to lower the plaintiff in the estimation of right thinking members of society generally?

These are the tests which the Judge must apply. These tests have to be decided not in the context of what the plaintiff wants or what the defendant No. 1 thinks to be just and proper. The test would be based on the theme of the story and the ideas behind it. It will also not be possible for this Court to decide whether any particular scene out to have been used or not used or in what sequence or context. That would be purely in the realm of the person making or directing the film and the impact that person would like to create on the audience who wish to view the film. As set out earlier the theme which has been described earlier is about a working girl and her relationship and intimacy with a boy friend and the infatuation of the young boy when thinks he is in love with her. These prima facie formed part of the story board and was known to the plaintiff. If seen in this context it cannot be said that the scene would fall within the definition of what the plaintiff contends is defamation.

36. At this stage, it would be apposite to take note of a judgment of the Division Bench of the Punjab and Haryana High Court in the case of Paramjit Kaur and Ors. v. Union of India and Ors. MANU/PH/1064/2003. Three films, in quick succession, depicting the

life of Sardar Bhagat Singh, a freedom fighter and martyr were released. Petitioners filed writ petition challenging some of the scenes in all these films primarily on the ground that those scenes contain distorted version of the real life history of Shaheed-E-Azam Sardar Bhagat Singh. They also sought directions to be issued to the respondents to refrain from distorting the acts of heroism and patriotism displayed by Sardar Bhagat Singh. On facts the High Court did not find that these films contain any distorted version of the real life story of Bhagat Singh. Therefore, on facts the plaintiffs may be able to distinguish the said case from the case at hand. However, I may take note of some of the portions in the movie titled as Shaheed-E-Azam Sardar Bhagat Singh , which, according to the petitioners in the said case, were offensive:

a) In this film, in one of the scenes Sardar Bhagat Singh, has been shown to be sitting with other revolutionaries and the dialogues spoken include:

'Bhagat Singh kitna sunder hai. Kittni gorian marti hain is par.'

'Bhagat Singh tu kisi angrej afsar ki beti ko pata ley aur hum dahej mein sara Hindustan maang lenge.'

This is complete character assassination of Sardar Bhagat Singh. He had once mentioned to his parents that he sees Bharat Mata tied in chains of slavery in his dreams. However, the above dialogues suggest a total contrary picture. Moreover in this scene itself, Chander Shekhar Azad is shown to be fighting with his colleagues on funny issue like 'Gur Jhootha Kar diya' etc. etc.

b) In another scene, a police officer gives an option to Bhagat Singh to settle in England and marry an English girl. After this Sardar Bhagat Singh is shown to be abusing that officer by using words to the effect that

You are a bloody pimp

This again is highly derogatory for the reputation of a man like Bhagat Singh who has always been admired as a decent and learned gentleman.

c) In this film, Sardar Bhagat Singh has been shown to have returned to his house from Kanpur on his own along with Rajguru. This is totally incorrect as Sardar Bhagat Singh returned to his house only when he got the information that his grand mother was not well.

d) Further, at many places in the film, the revolutionaries including Sardar Bhagat Singh are shown to be saying 'Jai Hindi' between themselves. Whereas, the slogan 'Jai Hind' was coined by Shri Subhash Chander Bose and Bhagat Singh and others used 'Vande Matram' while greeting each other or raising other slogans.

g) That in another scene of this film, Sardar Bhagat Singh is shown to be talking to his Chacha Ajit Singh. The fact remains that Shri Ajit Singh left India when Sardar Bhagat Singh was only 2 years of age.

36. The Explanation given in the counter affidavit filed by the respondents in respect of the above-mentioned scenes was as under:

4. That Shaheed Bhagat Singh is shown with Chacha Ajit Singh when he is only a child in the beginning of the film. Moreover, the film Shaheed-E-Azam has a caption in the beginning of the film. This film is a dramatised version based on the life of the great martyr Bhagat Singh and his contemporary freedom fighters.

7. That Shaheed Bhagat Singh tries to create patriotism in the minds of youngsters through drama at National College, Lahore and this is merely an incident shown in the film with dramatisation and cinematographic presentation.

8. That in outburst shown of Shaheed Bhagat Singh, it only goes to show his patriotism and hatred for Britishers.

37. What is sought to be highlighted is that though some of the scenes did not depict the history correctly, Explanation of the filmmakers was that the film was a dramatised version based on the life of great martyr Bhagat Singh; some incidents shown in the film were merely dramatisation and cinematographic presentation; character of Bhagat Singh even when he had shown his outburst towards Britishers was to project his patriotism and hatred towards Britishers. This was accepted by the Court as valid justification and permissive dramatisation even if some of the scenes were not actual reproduction of historical facts. More important is the narration of legal position contained in following paragraphs:

21. There is no need to further elaborate, inasmuch as, what kind of exhibition of films would violate Articles 21 and 25 of the Constitution of India or would be against the provisions contained in Section 5B of the Act of 1952, is no more res-integra and that being so, it would be appropriate to advert to judicial precedents on issue straightaway. Hon'ble Supreme court in Ramesh Chotalal Dalai v. Union of India and Ors. MANU/SC/0404/1988 : [1988]2SCR1011 , considered exhibition of telecasting or screening of Serial titled 'Tamas' in the context of fundamental rights of the petitioner under Articles 21 and 25 of the Constitution of India as also Section 5B of the Act of 1952. The petitioner who was a practicing lawyer in the Bombay High Court, had approached Hon'ble Supreme Court by means of the petition under Article 32 of the Constitution for issuance of writ in the nature of prohibition restraining the respondents from telecasting or screening the Serial titled 'Tamas'. It was the case of the petitioner that the Serial was against the public order and was likely to incite the people to indulge in commission of offences and it was, Therefore, vocative of Section 5B(1) of the Act of 1952 and destructive of principle embodied under Article 25 of the Constitution. After noticing Section 5B and 5C of the Act of 1952 and the contention raised by learned Counsel representing the parties. Hon'ble Supreme Court while relying upon the views of Vivian Bose, J. in Bhagwati Charan Shukla v. Provincial Government MANU/NA/0057/1946 as also three judgments of Supreme Court in K.A. Abbas v. Union of India MANU/SC/0053/1970 : [1971]2SCR446 , Ebrahim Sulaiman Sali v. M.C. Muhammad MANU/SC/0347/1979 : [1980]1SCR1148 and Raj Kapoor v. Laxman MANU/SC/0211/1979 : 1980CriLJ436 , rejected the prayer of the petitioner to restrain order on telecasting or screening the Serial titled 'Tamas'. The portion of the judgment of Vivian Bose in Bhagwati Charan Shukla's case (supra), that was relied upon, as reproduced in the judgment in paragraph 13, reads as follows:

That the effect of the words must be judged from the standards of reasonable, strong minded, firm and courageous men, and not those of weak and vacillating minds, nor of those who scent danger in every hostile point of view.

27. After examining all distortions mentioned in the additional affidavit, we are of the view that there is nothing such that may put to shade or even slightly diminish the exemplary role played by Shaheed Bhagat Singh in its endeavor of freedom struggle, for which clause, he ultimately sacrificed his life. It is not even disputed that supreme sacrifice made by Shaheed-A-Azam Bhagat Singh and the message, the same would convey to the taming millions in the country runs through and through all the films sought to be banned for exhibition. If that be so, no complaint can at all be made on few scenes or dialogues which Story Writers, Directors and Producers might have thought necessary for better success of the films at the box office. It is too well known that cut and die story of any National Hero, some glamorisation or addition to the main events, which may not be derogatory or offending as such has been made, nothing wrong can be found with the same. The court is rather of the view that in the present scenario, when almost 7 decades have gone by when Shaheed-A-Azam Bhagat Singh died, the only way to remember his sacrifices would be through TV Serials or films or the like but, if, no addition, and we may mention that such addition would not distort the main theme, is made it may not attract the audience, which itself would frustrate the very aim for which the films are on exhibition. We are of the view that the petitioners, who are none other than dependents of Sardar Bhagat Singh, far from feeling depressed would feel happy that after so many years, the memories of their ancestral, who laid his life for the nation, is being kept alive. The real brother of Shaheed-A-Azam Bhagat Singh has appreciated the film and congratulated the Director of one of the films by writing letter dated 18.5.2002, clearly stating therein that the film is based upon true life story of his elder brother Sardar Bhagat Singh. It may be reiterated that younger brother of Bhagat Singh was on the panel of consultants. It is further stated in the letter that during his visit to the sets of shooting the film, he was shown the entire script and it was very heartening that

Mr. Santoshi and his team had done so much research and come up with a script which has done full justice in conveying the principles, showing the personality, ideas, views and love for the country and the spirit with which 'Sardar Bhagat Singh' motivated his comrades and countrymen to fight for freedom of the country. He further states in the letter aforesaid that I was delighted to see that utmost care was taken depicting 'Sardar Bhagat Singh' and his comrades in the film. It is apparent that Mr. Santoshi has done excellent research, which is brought out by the fact that during the detention in the jail and execution, Ajay Devgan, who is playing Sardar Bhagat Singh in the film, is shown as clean shaven, the way I saw him last, before his execution.

38. In the light of aforesaid discussion, case of Shilpa S. Shetty v. Magna Publications Co. Ltd. MANU/MH/0211/2001 : AIR2001Bom176 , as cited by learned Counsel for the plaintiffs, would be of no avail. That was a case where infringing articles contained account of plaintiff's personal life as to whether she was having a relationship with a third actor or whether she was having a relationship with a married man. In the infringing article she was also described as 'maniser' in the manner in which men are called 'womanisers'. The Court granted injunction on the ground that these articles bring down the reputation of the plaintiff and have the impact on her personal life and showed her in an undesirable manner to the world at large. It is not the position in the present case.

39. Another case cited by learned Counsel for the plaintiffs was the judgment of Madhya Pradesh High Court in Shyam Narayan Chouksey v. Union of India MANU/MP/0292/2003 : AIR2003MP233 . That was a case where the manner in which national anthem was shown in the film 'Kabhi Khushi Kabhi Gum' was objected to. The Court found that the national anthem had been sung in the movie as if it was a song of advertisement for a commercial purpose. Further the Court took note of the fact that when national anthem is sung in a film the audience in the film do not stand up

immediately and, Therefore, it is derogatory to show national anthem. While granting injunction against depiction of national anthem in the film, the Court observed:

But a sixty-four million dollar question arises whether in the name of creativity in a feature film the national anthem can be utilized in this manner. National Anthem as has been indicated is the symbol of history, unity and pride. In the film, the national anthem has been bifurcated into two parts. The boy sings one part and the mother sings the rest, may be the last five words. Mr. Singh, learned senior counsel appearing for the respondents 4 and 5 with all his forensic skill would submit that the mother immediately thought it appropriate to complete the national anthem as it should not go unfinished. But the fact remains that the boy says 'sorry' in the midst of the anthem and mother after some time completes the same. All this has been done to create a dramatic impact in the picture for the benefit of the producer. This should not be allowed to be done for the popularisation of the national anthem as has been understood in this great country. That apart in our considered view the national anthem which is the glory of the country and portrays the unity of the country cannot be shown in a variety show or a cultural programme of a school as an item. In our considered opinion if Section 5A of Cinematograph Act and Rules framed there under, guidelines framed by the Central Government and Art. 51A-(a) of the Constitution and above all the Apex Court decision rendered in the case of Benjoi MANU/SC/0061/1986 : 1986CriLJ1736 (supra) are understood and appreciated in proper perspective, the irresistible conclusion is that incorporation of the national anthem in the film is totally uncalled for. The Board has failed in its duty while giving the certificate. We may say that it has not acted with due responsibility. The Board has taken the stand that nothing was found wrong as it was done for laudable purpose. Watching the necessary part of the picture we do not see any laudable purpose. On the contrary it is for benefit of the individual. Collective sensitivity and national feeling cannot be violated. Corrosive attitude in regard to honour of the

national sentiment is totally impermissible. The dramatisation of the national anthem is against the constitutional philosophy.

Obviously, factual premise of the present case is totally different. 40. In Ramanlal Lalbhai Desai v. Central Board of Film Certification MANU/MH/0352/1988 : AIR1988Bom278 , writ was filed against the Censor Board for deleting few scenes. While writ was partly allowed, in respect of the following scene the refusal was upheld:

7. To recapitulate, the refusal of the Board and justified by the Tribunal to certify the film for public exhibition, on the ground of its being based on superstition and depicting superstitious practices, is contrary to the statute inclusive of the guidelines. In so far as the certification is declined on the ground of unduly long exposure of the female body outside a swimming tank, inside the bathroom in a bath-tub, three prolonged rape and attempted rape sequences and the passionate love scenes between Roma and Ravi are concerned, the refusal is upheld. Also upheld is the refusal in so far as it depicts erotic movements of Roma's body while being sexually assaulted by an invisible spirit. These scenes will be deleted or suitably altered and the film will be represented for certification to the Board. The Board shall rule upon the request within four weeks of the presentation of the altered film. Rule in the above terms is made absolute, with parties being left to bear their own costs.

In the present case the learned Counsel for the plaintiffs had in the beginning of the case itself, accepted that there is no vulgarity in the film.

41. Last case referred and relied upon by the plaintiffs' counsel was K.V. Mallikarjuna Rao and Anr. v. Deptt. Of Home and Ors. MANU/AP/0064/1995 : AIR1995AP359 . The offending scene in the said film was depicting the currency notes in the scale of Goddess of Justice and the Judge rising when the Chief Minister comes and salutes him. The Court

found these scenes as derogatory to the high office of a Judge holding the Court because of the following reasons:

4. ...The Goddess of Justice holding even scales connotes the fair and equal justice administered by the Court, but the currency notes placed in the said scales means otherwise and that too glaringly that the Court is corrupt and that justice is not administered on facts of the case and the law governing the same, but for money considerations. This is derogatory to the cause of justice denigrating the courts. It is nothing but scandalizing the Court as a corrupt institution, corrupting the minds of our cine-goers that the justice in the Court can be purchased. Equally the other scene, Judge rising when a Chief Minister comes into the Court in connection with the case tried by him and wishing him Namaskars is also highly objectionable. No doubt, cinema is a fiction and it may have flashbacks and several other scenes relating to the story and events, but it cannot distort with regard to court procedure. A Judge presiding over a Court never rises no matter how big a person is or the position held by him.... It certainly creates an impression in the minds of the cine-goers that a Judge presiding over a Court of law is a subordinate to the executive government held by the Chief Minister. Such an impression is dangerous to the independence of judiciary as the people will lose faith in the institution of Justice and justice delivery system itself.

5. The judiciary is one of the important pillars of democracy erected by Rule of law, which is designed to protect the value of human rights. It is needless to mention that democracy should conform to Rule of law. Freedom of free society does not mean that anything and everything can be done by the citizens or the State as they please. If the freedom is not regulated, it will turn out to be gall and wormwood to the people who gave their representatives the power to rule, this is sought to be achieved by appointing a guardian of the Constitution and the laws and the task of this guardian is to keep the law-making

and the executive limbs of Government from breaking through the bounds of the people's will. The name of this guardian is Judiciary. Such a judiciary can never be humbled and humiliated and the offending scenes mentioned supra tend to do so and as such, have got to be deleted. It is the duty of the constitutional court like this, if invited to do so, to make known the people that Rule of law means the supremacy of the Constitution and the laws and that none is above the law and whenever any act is invalid on the touchstone of the Constitution, the same shall be declared as guilty of transgression of fundamental laws, and that it is essential to our free society that the people, lay and professional alike hold the Judgeship in the highest esteem that they regard it as a symbol of impartial, fair and equal justice under law and to cherish the Courts of law as respectable institutions.

42. Drawing parallel learned Counsel for the plaintiffs had argued that if the objectionable scenes in this film are permitted and the defendants are allowed to distort the history in this heinous manner and introduce such part of fiction which is far from truth in the name of dramatisation, the filmmakers may cross the limits in the name of free speech and there may not be any end to such a right of the filmmakers. Argument is more in terrorem. The judgment of the Andhra Pradesh High Court cited by the plaintiffs themselves, is a sufficient indicator that wherever, in the name of free society, freedom of speech, limits are crossed, the Courts have put the reins.

43. Having discussed the matter in its length and breadth, one aspect which still lingers on in the mind is that Mangal Pandey was a bachelor. Though avowed objective of 'sindoor scene' may be different, it can also be perceived as Mangal Pandey marrying Heera. Further, not a certain character but main character like Heera is introduced in his life in the form of fiction. As it is done in a historical fiction more for the purpose of dramatisation and without, in any way, compromising with the strength of Mangal Pandey's heroic character and compromising with the central theme and without, in any

manner, denigrating him, it is permissible. At the same time it would also be necessary to give clarification by informing the public at large to remove all possible guess work, that Heera's character was fictionalised. Therefore, I am of the opinion that the grievance of the plaintiffs can be taken care of by making the following statement/announcement at the end of the movie in English as well as in Hindi:

The character of Heera is fictionalised. There was no such Heera in the life of Mangal Pandey. Mangal Pandey died a bachelor.

is is disposed of with aforesaid direction and rejecting other prayers made therein.

44. The entire matter is examined on the basis of averments made in the plaint and on the assumption that the plaintiffs are the descendants of Mangal Pandey and have locus standi to file this suit. The averments made in the plaint are treated as correct on their face value and on that basis legal position is examined. Therefore, it is not even necessary to set down the case for trial as even if the factual averments are ultimately established, my conclusion would be same as recorded above. I find no merit in the grievance of the plaintiffs. Thus it is not necessary to go into the preliminary objections raised to the maintainability of the suit. Therefore, entire dispute raised in the suit stands decided. While dismissing the suit of the plaintiffs, it is directed that the defendants shall immediately incorporate the above quoted statement at the end of the movie and shall show the movie with the aforesaid insertion.

45. The suit as well as the is stand disposed of. No costs.

MANU/SC/0034/1953

Back to Section 53 of Indian Evidence Act, 1872

IN THE SUPREME COURT OF INDIA

Criminal Appeal No. 43 of 1952

Decided On: 05.10.1953

Habeeb Mohammad Vs. The State of Hyderabad

Hon'ble Judges/Coram:

B. Jagannadhadas, B.K. Mukherjea and M.C. Mahajan, JJ.

JUDGMENT

M.C. Mahajan, J.

1. This is an appeal by special leave from the judgment of the High Court of Judicature of Hyderabad upholding the conviction of the appellant by the Special Judge, Warangal, appointed under Regulation X of 1939-F., under sections 243, 248, 368, 282 and 174 of the Hyderabad Penal Code (corresponding to sections 302, 307, 436, 342 and 148, Indian Penal Code) and the respective sentences passed under these section against him.

2. The case for the prosecution which has been substantially accepted by the Special Judge and by the majority of the High Court is that the appellant was in the year 1947 the Subedar of Warangal within the State of Hyderabad, that on the 9th December, 1947, he proceeded to the village of Gurtur situate within his jurisdiction at about 10 a.m. along with a number of police officials and a posse of police force ostensibly to raid the village in order to arrest certain bad characters, that when a party of villagers, 60 or 70 in number,

came out to meet him in order to make representations, he ordered the policemen to open fire on the unarmed and inoffensive villagers, as a result of which tailor Venkayya and Yelthuri Rama died of bullet wounds on the spot, Yelthuri Eradu and Pilli Malladu received bullet wounds and died subsequently, five others received bullet wounds but they recovered, that the appellant gave match boxes and directed the policemen to go into the village and set fire to the houses as a result of which 191 houses were burnt down; that about 70 of the villagers were tied up under the orders of the appellant and taken to Varadhanapeth and were kept under wrongful confinement for some time and thereafter some were released and others were taken to Warangal jail and lodged there; that these acts were done by the appellant without legal authority or legal justification and that he and the two absconding accused were therefore guilty of the offenses of murder, attempt to murder, arson, etc.

3. The prosecution produced 21 witnesses in support of their case, while the accused examined a solitary witness in defence. The firing by the police, the death of the persons concerned, the arrest of some of the villagers and the burning down of the village houses on the date and the time in question are facts which were not disputed. But what was alleged by the defense was that the appellant did not give the order to fire, that the villagers were violent and attempted to attack the officials and the police by force and therefore whatever was done was done in self-defence. It was said that the raiders were arrested in due course of law and that the destruction of their houses by fire was committed by the villagers them selves, and that the appellant had gone to the village only to arrest congress mischief-mongers and to maintain and enforce law and order.

4. The Special Judge on the materials before him came to the conclusion that the accused was guilty of the offenses with which he stood charged. On appeal to the High Court of Hyderabad, a bench of two Judges (Sripatrao and Siadat Ali Khan JJ.) delivered differing

judgments, Sripatrao J. taking the view that the appeal should be dismissed and the other learned Judge being of the opinion that the appeal ought to be allowed and the accused acquitted. The case was then referred to a third Judge (Manohar Prasad J.) who by a judgment dated 11th December, 1950, agreed with the opinion of Sripatrao J. and dismissed the appeal. The present appeal has been preferred against the judgment of the majority of the High Court by our leave.

5. This appeal was in the first instance heard by the Constitution Bench (See MANU/SC/0080/1953 : [1953] S.C.R. 661.) and at the stage the hearing was confined to certain constitutional points which had been raised by the appellant attacking the legality of the entire trial which resulted in his conviction on the ground that the procedure for trial laid down in Regulation X of 1359-F. became void after the 26th January, 1950, by reason of its conflict with the equal protection clause embodied in article 14 of Constitution. The constitutional points raised by the appellant failed and the application preferred by him under article of 32 of the Constitution was rejected, and the case was directed to be posted in the usual course for being heard on its merits and it is now before us.

6. To appreciate the contentions raised on behalf of the appellant, it is necessary to give a short narrative of the incident and the events following thereupon which led to the prosecution of the appellant.

7. In the first information report lodged against the appellant on the 29th January, 1949, it was said that the following persons accompanied the Subedar that morning :-

1. Moulvi Ghulam Afzal Biabani, Deputy Commissioner, District Police, Warangal.

2. Abdul Lateef Khan, Circle Inspector of Police, Warangal (absconding accused).

3. Military Assistant.

4. Naseem Ahmed, Sub-Inspector, Vardhanapeth.

5. Head-Constables of Police, Vardhanapeth.

6. Abdul Waheed Girdavar.

7. Abdul Aleem Sahib, Vakil of Hanamkonda.

8. 70 military men, 10 policemen and 11 razakars.

8. It appears that another person Abdul Wahid, Assistant D.S.P., also went with this party. He submitted a diary of the happenings at Gurtur on the same day. It was briefly stated therein that the people rebelled, that they had to open fire and that 70 persons were arrested. Abdul Lateef Khan, the absconding accused and who was the Circle Inspector of Police, also submitted a diary the same day of the happenings of the 9th December. According to him, a crowd of 5,000, pursued the two persons who had been sent to the

village and fired at the policemen, threw stones by the slings by which Kankiah the jamedar was injured, that one bullet fell in front of the Nayeb Nazim, that the unlawful assembly shouting slogans against the Government tried to surround the policemen; that the police tried to make understand but they did not listen, that the crowd was armed with guns, spears, lathis, axes, sickles and slings and that seeing the delicate circumstances the above mentioned high officers ordered the police to open fire in self-defence. Turab Ali, Sub-Inspector of Police, and Station-House Officer, Vardhanapeth, on this information recorded the first information report under section 155 of the Hyderabad Penal Code on 9th December, 1947, against Narsivan Reddy, Congress leader of Mango Banda, and several others under sections 124, 248, 272 and 82 of the Hyderabad Penal Code. In this report the facts stated by Abdul Lateef, Circle Inspector, were reiterated. Turab Ali also prepared a panchnama on the same date, the panchas being Khaja Ahmed Wali Hyder, revenue Inspector, residing at Vardhanapeth and Md. Abdul Wahid, special Girdavar of the same place. The narrative of events given in the report of Abdul Lateef was recited in the panchnama. Annexed to this panchnama was a list of the articles and weapons recovered from the individuals arrested on the 9th December, 1947. The list mentions a number of lathis, spears, sickles, chairs, a muzzle-loader and some axes. On the 11th December the appellant sent his report of the incident at Gurtur to Government and in this demi-official letter substantially the account given by Abdul Lateef, Circle Inspector, was repeated and the justification for the firing was fully set out. Whether Monlvi Afzal Biabani, Deputy Commissioner of Police, Warangal, also submitted a report giving his version of the incident to Government or to the Inspector-General of Police is a debatable point. The Government replied to the D.O. letter on 21st January, 1948, and called for a report from the Subedar as to how much collective fine was to be imposed on the villages mentioned in the D.O. letter. He was also asked to submit a resolution for the appointment of penal police soon so that sanction might be taken according to the procedure. On 13 March, 1948, a challan was presented against 70 persons arrested on the 9th December, 1947, by the police for offenses under sections 124, 248 etc. in the Court of the Special District Judge of Hyderabad. The accused were remanded to the Central

Jail, Warangal, and it was ordered that if there were any material objects in the case the police should bring them at the next hearing, viz., 31st March, 1948. On that date the special magistrate committed to the court of session 22 persons to be tried under sections 124, 293 and 248 of the Hyderabad Penal Code. The rest of the persons arrested were discharged. The Special Judge fixed the case for hearing on 18th May, 1948. On that date or some subsequent date in May the police put in an application withdrawing the case. The court accordingly acquitted all the accused and the proceedings initiated on the first information report of Abdul Lateef, Circle Inspector, thus terminated. On what grounds the case against these accused persons was withdrawn by the police is a matter which has been left unexplained on the record. Between the date of the withdrawal of this case and the police action in Hyderabad taken by the Government of India in September, 1948, whether any investigation was made as to the incidents at Gurtur by the Government is not known, but it appears that soon after the police action was over, in November, 1948, a statement was recorded of one Ranganathaswami who is prosecution witness in the present case by one B. J. Dora Raj, Deputy Collector, on 5th November, 1948, in which Ranganathaswami said as follows :-

"On 9th December, 1947, at about 10.30 a.m. Habeeb Mohammad the Subedar, Biabani the D.S.P., Naseem the Sub-Inspector, Abdul Wahid, Special Girdavar and about 70 persons, State Police, Razakars and Abdul Aleem, Vakil, had come to the village Gurtur, taluqa Mahaboobad, dist. Warangal. Policemen burnt nearly 200 houses by the order of the D.S.P. It caused damage to the extent of Rs. 1 lakh. Policemen fired the tailor Ramulu, two dheds, on the order of Biabani, the D.S.P. I do not know the names of the dheds. Five or six persons were injured. They were injured by the bullets. I do not know their names. At that time there was doing the work of teaching. They arrested 70 persons saying that they are Congressmen and carried them forcibly to the Warangal jail. They snatched gold ornaments of 8 tolas valuing Rs. 400 from the women of Apana Raju and Narsivan Raju. I incurred lass of Rs. 600 as the house in which I was staying was burnt. The school peon

incurred loss of Rs. 300 as his house was also burnt. When these above events were happening Subedar was present. They left the 70 persons who were put into the jail, after taking Rs. 600 bribe. I myself have been the above events. I have read the statement. It is correct."

9. The statement bears an endorsement of the Deputy Collector to the effect that it was taken before him, and was read over and admitted to be correct. It also appears that the Assistant Civil Administrator examined 76 villagers on the 28th November, 1948, and their statement is to the following effect :

"On 9-12-47 at 9.30 a.m. the Subedar of Warangal, the Deputy Commissioner of Police, Biabani (who has a kanti on his neck), Military Assistant, Circle Inspector of Warangal, Sub-Inspector of Police of Vardhanapeth, Head-Constable of Police of Vardhanapeth, Girdavar, in the company of military police and 40 persons came to our village. Came from Okal and stayed out of the city on the west side. Nearly 100 or 150 persons of the village went to them. They fired the guns by which Olsuri Eriah, Olsuri Ramiah and Kota Konda Venkiah died. Batula Veriah, Basta Pali Maliah, Olsuri Veriah Yeliah, Ladaf Madar Dever Konda Lingiah and Beara Konda Peda Balraju were injured by the bullets. After this they entered into the village and after taking round in the bazar they got into the houses and looted. They looted money and clothes. Then they surrounded the village and gathering the village people took them out of the village. Made them lie down with face downwards and tied their hands, and kept them in the same condition from 10 a.m. to 3 p.m. the Subedar gave match boxes to his men and told them to burn the houses. On this they burnt the houses. The Subedar made us stand and said 'see the Lanka Dahan of your village.' The Deputy Commissioner also said the same thing. After this they beat us and took us to Mailaram. From there they carried us in a car to the police station, Vardhanapeth..... The whole household utensils of the houses were looted, due to which the damage amounted to one lakh. It was also learnt that they outraged the

modesty of 4 women. They felt ashamed to state their names before the public. The women are ashamed to expose the names of the persons concerned. The names of these women are with State Congress."

10. On the basis of these two statements the Inspector of C.I.D. District Police, one Md. Ibrahim Ghori, wrote to the Sub-Inspector of Police of Nalikadur, district. Warangal, to issue the first information report for offenses committed under sections 248, 312, 331 and 368 of the Hyderabad Penal Code against the Subedar and it was directed that the two sheets of original statements of the complainants should be sent to the court with the first information report and that he would himself investigate the case. On receipt of this letter the Sub-Inspector of Police recorded the first information report for the offenses mentioned above on 29th January, 1949, in terms of the above letter. Though this first information report was recorded on 29th January, 1949, the investigation of the case against the appellant did not start till the 8th August, 1949. What happened in this interval and why the investigation was delayed by a period of over seven months is again a matter on which no explanation has been furnished on the record and the learned Advocate-General who appeared on behalf of the State before us was unable to explain the cause of this delay in the investigation of the crimes alleged to have been committed by the appellant.

11. On 28th August, 1949, there was an order in terms of section 3 of the Special Tribunal Regulation V of 1358-F., which was in force at that time directing the appellant to be tried by Special Tribunal (A). The Military Governor gave sanction for the prosecution of the appellant on 20th September, 1949. On 13th December, 1949, a new Regulation, Regulation X of 1359-F., was passed by the Hyderabad Government which ended the Special Tribunals created under the previous regulation and upon such termination, provided for the appointment, powers and procedure of the Special Judge. On 5th January, 1950, the case of the appellant was made over to Dr. Laxman Rao, Special Judge,

who was appointed the above regulation under an order of the Civil Administrator, Warangal, to whom power under section 5 of the Regulation was delegated and on the same day the Special Judge took cognizance of the office with the result already indicated.

12. Mr. MeKenna, who argued the appeal on behalf of the Subedar, contended that his client was considerably prejudiced by certain grave irregularities and illegalities committed in the course of the trial by the Special Judge and that three had been a grievous disregard of the proper forms of legal process and violation of principles of criminal jurisprudence in such a fashion as amounted to a denial of justice and that injustice of a serious and substantial character has occurred. The first ground of attack in this respect was that a number of material witnesses, including Moulvi Afzal Biabani, Deputy Commissioner of Police, who accompanied the Subedar and witnessed the occurrence and who could give a narrative of the events of the 9th December, 1947, were not produced by the prosecution, though some of them were alive and available, that these witnesses were essential for unfolding the narrative on which the prosecution was based and should have been called by the prosecution, no matter whether in the result the effect of their testimony would have been for or against the case for the prosecution. The facts relating to Biabani are these :

13. Admittedly he was a member of the party that visited village Gurtur on the fateful morning of the 9th December, 1947. There can be no doubt that he was a witness of this occurrence and could give a narrative of the incidents that happened there on that day. In the statement of Ranganathaswami cited above which accompanied the first information report against the appellant it was asserted that the firing took place under the orders of Biabani and the houses were burnt by his order. In the challan that was prepared on the first information report lodged under the directions contained in the letter of Md. Ibrahim Ghori, Inspector of C.I.D., District Police, against the appellant and

the two absconding accused it was alleged that the accused merely on the pretext that the village Gurtur was the headquarters of the communists raided the village with the aid of the armed police force, that the villagers appeared before the accused, but accused 1 (the appellant) in view of the general policy of the Ittehad-ul-Muslimeen that the Hindus might be killed and be forced to run away from Hyderabad and to achieve this object opened fire on them, that as a result of the firing two villagers were killed on the spot, two of them died in the hospital, five others badly injured, that when the villagers took to their heels the appellant distributed match boxes amongst the police constables and ordered them to go into the village habitation, loot and burn the houses and molest the villagers. In this challan the whole burden for the crimes committed on 9th December was thrown on Habeeb Mohammad in spite of the fact that in the documents accompanying the first information report this burden had been thrown on Biabani, the Deputy Commissioner of Police, P.W. 21, the investigating officer, was questioned on this point and he deposed that in the course of the investigation the offence was only proved against the appellant and the two absconding accused and that it was not proved that Ghulam Afzal Biabani, Deputy Inspector-General of District Police, or Nasim Ahmad, Sub-Inspector of Police, or Jamedar of Police, Vardhanapeth, Abdul Wahib, Revenue Inspector, or Abdul Alim, pleader, or the military police had committed any crimes or aided or abetted and for this reason their names were not mentioned therein. The prosecution in these circumstances in the list of prosecution witnesses mentioned the name of Biabani as P.W. 2, but for some unexplained reason it did not produce him as a witness during the trial. No explanation has been given by the prosecution for withholding this material witness from the court who was the most responsible officer next to the Subedar present at the time of the occurrence and who was at the time of the trial holding an important office under Government and who presumably would have given the court an accurate and true version of what took place.

14. On 24th March, 1950, the appellant made an application to the Special Judge alleging, inter alia, that though a number of police officers and other officials were present at the scene of occurrence including Ghulam Afzal Biabani, Kankiah, Abdul Wahib, Girdawar who was then confined in Warangal jail, Naseem Ahmad, Sub-Inspector of Police, Vardhanapeth, Khaja Moinuddin, Police Jamedar, Abdul Ghaffar Khan, Reserve District Police Inspector, Turab Ali, Sub-Inspector, Vardhanapeth, and Shaik Chand, Police Inspector, they were neither arrested nor any action taken against any of them, that the investigating officer Ibrahim Ghori and Sub-Inspector of Nallikudur police station were not produced in court, that though Kankiah Jamedar was presented to give evidence, Ghulam Afzal Biabani, ex-Deputy District Police Commissioner, was not produced. It was alleged in this application that when this objection was raised on behalf of the accused, the Government Pleader said that they could not produce him, and if the honorable court so desired, it may summon him. It was further alleged therein that the conduct of the prosecution showed that they were endeavouring to incriminate the accused who was not guilty and on the other hand were trying to shield the police constables and officers, and that the Government Pleader had refused to produce the best evidence that could be produced in the case. It was stated that in those circumstances it would be in conformity with justice that the court should inquire into the facts and summon the persons mentioned above under section 507 of the Code of Criminal Procedure and record their statements in order to find out the real facts. It was said further that Ghulam Afzal Biabani, ex-Deputy District Police Commissioner, who was then in service in the Police Training School, had sent a report with regard to the incident to the Inspector-General of Police and to the Secretary to Government, Home Department. On this application the learned Judge recorded the following order :-

"The application of the accused is not worth consideration because neither the complainant nor the accused can persuade the court in this way. This right can be exercised only to settle a defect in the evidence. Otherwise it is not to be exercised at all.

The right should be exercised only to rectify the defects of any of the parties. The accused has full right to adduce defense witnesses. Even after producing the defense evidence, if anything is omitted, the court by itself, will settle it. This application is filed beforehand."

15. Order was, however, made to summon the report, if any, made by Ghulam Afzal Biabani. In his judgment convicting the appellant, regarding Biabani the learned Judge made the following observations :

"I regret to learn from Kesera Singh, investigating officer, that such a man is in service, i.e., in the capacity of Principal of Police Training School. 'Will he impart to the would-be subordinate officers the same lesson of protection of life and property of royts.' And this case the said Biabani is not challenged only because he is a police officer. This should not be construed in this sense that as the police left Biabani scot-free because they favored him, so also the court should leave Habeeb Mohamed. A strange logic that 'you left one, therefore I leave the other' will continue."

16. It is difficult to support such observations made behind the back of a person. Such observations could only be made after giving an opportunity to Biabani to explain his conduct. Before the High Court Mr. Walford who argued the case stressed the point that the police ought to have produced Ghulam Afzal Biabani to prove the fact that it was the appellant who ordered firing and in the alternative, the court should have summoned him as a court witness. This argument was disposed of by reference to the decision of their Lordships of the Privy Council in Adel Mohammad v. Attorney-General of Palestine A.I.R. 1945 P.C. 42, wherein it was observed that there was no obligation on the prosecution to tender witnesses whose names were upon the information but who were not called to give evidence by the prosecution, for cross-examination by the defense, and that the prosecutor has a discretion as to what witnesses should be called for the prosecution and the court will not interfere with the exercise of that discretion unless it can be shown that the prosecutor has been influenced by some oblique motive. It was

held that in view of these observations it could not be said that the prosecution committed any mistake in not producing Afzal Biabani or that it had been influenced by some oblique motive. It was a further held that no occasion arose for interfering with the discretion exercised by the Special Judge under section 507, Hyderabad Criminal Procedure Code, and that the evidence of this witness could not be regarded as essential for the just decision of the case. The dissenting Judge, Siadat Ali Khan J., took the view that Biabani was the second top-ranking officer at the occurrence and as his report was not forthcoming, there was a lacuna in the record and that it was the duty of the court to call him as a witness. In the judgment of the third Judge, Manohar Prasad J., it is stated that Mr. Murtuza Khan who appeared for the accused did in course of his arguments concede that from the documents filed in appeared that the order of fire was given by the appellant. Mr. Murtuza Khan who is a retired Judge of the Hyderabad High Court has filed an affidavit contesting the correctness of this observation. On the question therefore whether the order to fire was given by the appellant we have the solitary testimony of P.W. 10, Kankiah, the police jamedar, contrary to the statements contained in the document accompanying the first information report; and even in his deposition it is said that the police officer took instructions from Biabani before carrying out the orders of the appellant. In this situation it seems to us that Biabani who was a top-ranking police officer present at the scene was a material witness in the case and it was the bounded duty of the prosecution to examine him, particularly when no allegation was made that if produced, he would not speak the truth; and, in any case, the court would have been well advised to exercise its discretionary powers to examine that witness. The witness was at the time of the trial in charge of the Police Training School and was certainly available. In our opinion, not only does an adverse inference arise against the prosecution case from his non-production as a witness in view of illustration (g) to section 114 of the Indian Evidence Act, but the circumstance of his being withheld from court casts a serious reflection on the fairness of the trial. It seems to us that the appellant was considerably prejudiced in his defense by reason of this omission on the part of the prosecution and on the part of the court. The reason given by the learned Judge for refusing to summon

Biabani do not show that the Judge seriously applied his mind either to the provisions of the section or to the effects of omitting to examine such an important witness. the terms in which the order of the Special Judge is couched exhibit lack of judicial balance in a matter which required serious consideration. The reliance placed on the decision of their Lordships of the Privy Council in Adel Mohammad v. Attorney-General of Palestine (A.I.R. 1945 P.C. 42.) is again misplaced. That decision has no bearing on the question that arises in the present case. The case came from Palestine and the decision was given under the provisions of the Palestine Criminal Code Ordinance, 1936. The contention there raised was that the accused had a right to have the witnesses whose names were upon the information, but were not called to give evidence for the prosecution, tendered by the Crown for cross-examination by the defense. The learned Chief Justice of Palestine ruled that there was no obligation on the prosecution to call them. The court of criminal appeal held that the strict position in law was that it was not necessary legally for the prosecution to put forward these witnesses. They, however, pointed out that in their opinion the better practice was that the witnesses should be so tendered at the close of the case for the prosecution so that the defense may cross-examine them if they so wish. Their Lordships observed that there was no obligation on the part of the prosecution to tender those witnesses. They further observed that it was doubtful whether the rule of practice as a expressed by the court of criminal appeal sufficiently recognised that the prosecutor had a discretion as to what witnesses should be called for the prosecution, and the court would not interfere with the exercise of that discretion, unless, perhaps, it could be shown that the prosecutor was influenced by some oblique motive. No such suggestion was made in that case. The point considered by their Lordships of the Privy Council there was somewhat different from the point raised in the present case, but it is difficult to hold on this record that there was no oblique motive of the prosecution in the present case for not producing Biabani as a witness. The object clearly was to shield him, who possibly might be a co-accused in the case, and also to shield the other police officers and men who formed the raiding party. In our opinion, the true rule applicable in this country on the question whether it is the duty of the prosecution to produce material witnesses has been

laid down by the Privy Council in the case of Stephen Senivaratne v. The King A.I.R. 1936 P.C. 289, and it is in these terms :-

"It is said that the state of things above described arose because of a supposed obligation on the prosecution to call every available witness on the principle laid down in such a case as Ram Ranjan Roy v. Emperor (I.L.R. 42 Ca. 422.), to the effect that all available eye-witnesses should be called by the prosecution even though, as in the case cited, their names were on the list of defense witnesses. Their Lordships do not desire to lay down any rules to fetter discretion on a matter such as this which is so dependent on the particular circumstances of each case. Still less do they desire to discourage the utmost candour and fairness on the part of those conducting prosecutions; but at the same time they cannot, speaking generally, approve of an idea that a prosecution must call witnesses irrespective of considerations of number and of reliability, or that a prosecution ought to discharge the functions both of prosecution and defense. If it does so confusion is very apt to result, and never is it more likely to result than if the prosecution calls witnesses and then proceeds almost automatically to discredit them by cross-examination. Witnesses essential to the unfolding of the narrative on which the prosecution is based, must, of course, be called by the prosecution, whether in the result the effect of their testimony is for or against the case for the prosecution."

17. In a long series of decisions the view taken in India was, as was expressed by Jenkins C.J. in Ram Ranjan Roy v. Emperor I.L.R. 43 Cal. 422, that the purpose of a criminal trial is not to support at all costs a theory but to investigate the offence and to determine the guilt or innocence of the accused and the duty of a public prosecutor is to represent not the police but the Crown, and this duty should be discharged fairly and fearlessly with full sense of the responsibility attaching to his position and that he should in a capital case place before the court the testimony of all the available eye-witnesses, though brought to the court by the defense and though they give different accounts, and that the

rule is not a technical one, but founded on common sense and humanity. This view so widely expressed was not fully accepted by their Lordships of the Privy Council in Stephen Senaviratne v. The King A.I.R. 1936 P.C. 289., that came from Ceylon, but at the same time their Lordships affirmed the preposition that it was the duty of the prosecution to examine all material witnesses who could give an account of the narrative of the events on which the prosecution is essentially based and that the question depended on the circumstances of each case. In our opinion, the appellant was considerably prejudiced by the omission on the part of the prosecution to examine Biabani and the other officer in the circumstances of this case and his conviction merely based on the testimony of the police jamedar, in the absence of Biabani and other witnesses admitted present on the scene, cannot be said to have been arrived at after a fair trial, particularly when no satisfactory explanation has been given or even attempted for this omission.

18. Another grave irregularity vitiating the trial and on which Mr. McKenna laid great emphasis concerns the refusal of the Special Judge to summon six defense witnesses whom the appellant wished to call. The facts relating to this matter are these : On the 24th March, 1950, the appellant filed a list of defense witnesses containing the following names :-

1. Moulvi Syed Hussain Sahib Zaidi, Ex-District Superintendent of Police, Warangal, who was then special officer, Bahawalpur State, Pakistan.

2. Moulvi Abdul Hamid Khan, Ex-Secretary, Revenue Department, at present Minister for Sarf-e-Khas Mubarak.

3. Nawab Deen-Yar-Jung Bahadur, Ex-Inspector-General of Police, Districts and City.

4. Moulvi Abdul Rahim, Ex-Railways Minister.

5. Rai Raj Mohan Lal, Ex-law Minister.

6. Moulvi Zahir Ahmed, Ex-Secretary to Government, Home Department, at present residing at London.

19. The first witness was called to prove that the inhabitants of Gurtur committed destructive activities and threw stones on the police and that the police fired in self-defence by the order of the Deputy Police Commissioner of the District. It was said that he would also reveal many other facts. Regarding the second witness, it was said that he would depose as to what happened to the D.O. letter sent by the accused and he would also reveal other facts. Regarding the third witness, it was said that he would confirm the report of Ghulam Afzal Biabani the Deputy Commissioner of Police and would reveal other facts about Gurtur incidents. About the fourth and fifth witnesses, it was said that they would depose about the accused's efficiency and his behavior towards ryots and they would also reveal other facts. On 14th April, 1950, an application was made by the pleader for the accused that instead of sending for syed Hussain Zaidi, Superintendent of Police, residing at Pakistan, Abdur Rasheed Khan Sahib, former Assistant Superintendent of Police, Warangal district, may be sent for. The learned Judge on this made the following order :

"This request is improper. The application of the accused dated 24th March, 1950, about the list of the defense witnesses may be referred. In it the first name is of Zaidi, the Superintendent of Police. It is written in it by the accused himself that Mr. Zaidi will say whatever he has heard from the other policemen. Now I cannot understand when it is written so in the list, how can Abdur Rasheed be called for instead of Zaidi, and what evidence he will give. So the application to call for Abdur Rasheed Khan Sahib is disallowed."

20. Regarding witness No. 2, Abdul Hammed Khan, the learned Judge made the following order :-

"It is stated that he will speak about the efficiency of the accused and also about his behavior towards his subjects. Efficiency and behavior is neither a point at issue in this case, nor a relevant fact, (section 216, Criminal Procedure Code, and section 110, sections 3 and 4 of the Evidence Act may be referred). It is also written below it that he will state what action was taken on the D.O. letter of the accused. No such paper is produced to show as to what has happened to the proceedings, for which Abdul Hameed Khan can be summoned to prove. Besides this the statement of the accused is in regard to something and witness Abdul Hameed Khan is being summoned for some other thing."

21. Regarding the third witness the Judge said as follows :-

"Nawab Deen-Yar-Jung Bahadur, former Inspector-General of Police, is called to certify the report of Ghulam Afzal Biabani, Deputy Director of Police. The report of Ghulam Afzal Biabani was called for from the office of the Inspector-General of Police, Home Secretary, and from the office of the Civil Administrator, Warangal. But from all these offices, we have received replies stating that there is no report of Ghulam Afzal Biabani.

In the light of these replies it is unnecessary to summon Deen-Yar-Jung Bahadur. When there is no report, what can Deen-Yar-Jung testify."

22. Regarding witnesses 4 and 5, the Judge observed as follows :-

"These witnesses are called for to state about the efficiency and behavior of the accused. It is not a point at issue nor a relevant fact."

23. Regarding witness 6, the Judge thought that there was no procedure to summon a witness residing in London. Finally it was observed that "by seeing the list of witnesses and the defense statement of the accused which are many pages, it appears that these applications are given only to prolong the case unjustifiably and to disturb the justice. These are not worthy to be allowed. So the said application dated 24th March, 1950, is disallowed." Section 257 Criminal Procedure Code, which corresponds to section 216 of the Hyderabad Criminal Procedure Code is in these terms :-

"If the accused, after he has entered upon his defense, applies to the Magistrate to issue any process for compelling the attendance of any witness for the purpose of examination or cross-examination, or the production of any document or other thing, the Magistrate shall issue such process unless he considers that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice. Such ground shall be recorded by him in writing."

24. We have not been able to appreciate the view of the learned Judge that the application to summon defense witnesses who were available in Hyderabad was of a vexatious character and its object was to delay or defeat the ends of justice. There was controversy in the case between the prosecution and the defense about the motive of the accused which was stated by the prosecution to be that in pursuance of the policy of the Ittehad-ul-Muslimeen, and with the common object of destroying the Hindus and turning them

out of Hyderabad the appellant went to this village to achieve that object with the help of the police. The accused was entitled to disprove the allegations and prove his version that the village was in a state of rebellion, that the people who came out in a crowd did not come with peaceful motives but they were aggressive and were armed with weapons, that he was not inimical to the Hindus, that his behavior towards them had always been good and his state of mind was not inimical to them and the idea of exterminating them was far from his mind. Under the provisions of section 53 of the Evidence Act evidence as to the character of an accused is always relevant in a criminal case. So is the evidence as to the state of his mind. Evidence as to disturbed condition prevailing at Gurtur and of the destructive activates of its inhabitants was also a relevant fact. Whatever may be said about the other witnesses, three of the witnesses named in that list were certainly material witnesses for the purpose of the defense. In criminal proceedings a man's character is often a matter of importance in explaining his conduct and in judging his innocence or criminality. Many acts of an accused person would be suspicious or free from all suspicion when we come to know the character of the person by whom they are done. Even on the question of punishment an accused is allowed to prove general good character. When the allegation against the appellant was that he was acting in pursuance of the policy of the Ittehad-ul-Muslimeen that his state of mind was to exterminate the Hindus, he was entitled to lead evidence to show that he did not possess that state of mind; but that on the other hand, his behavior towards the Hindus throughout his official career had been very good and he could not possibly think of exterminating them. But even if the judge was right in thinking that the evidence of character in this particular case would not have affected materially the result, the evidence of other witnesses who would have deposed as to whether Biabani had submitted a report, and what version he had given, or of those who were able to depose as to the condition of things at Gurtur where the incident took place, or who were in a position to depose from reports already submitted to the Home Department and the Inspector-General of Police about the behavior of the villagers of the Gurtur, would have very materially assisted the defense if those witnesses were able to speak in favour of the appellant's contention. In our

opinion, the trial before the Special Judge was vitiated by his failure in summoning the defense witnesses who were available at Hyderabad and who might have materially helped to prove the defense version. The first witness or his substitute may well have been able to depose as to what happened to the arms that were alleged to have been captured from the villagers on the 9th December, 1947, and regarding which a panchnama was prepared and as to whether they existed in fact or not. That would have thrown a flood of light on the character of the mob that was fired upon and it may well have transpired from that evidence that the firing was ordered the instance of Biabani and not at the instance of the accused as alleged in the first instance by Ranganathaswamy. In the result we are constrained to hold that the accused has been denied the fullest opportunity to defend himself.

25. Another point that was stressed by the learned counsel for the appellant is that the police investigation into the offenses with which the appellant has been charged, after the first information report has been lodged in January, 1949, has been not only of a perfunctory nature but that there has been an unexplained delay of more than six months in making it and this has considerably prejudiced the defense. It was suggested that during this period most likely the police was cooking evidence against the accused without making any entries in the case diaries of statements made by the villagers. On this question it is necessary to set out a part of the statement of P.W. 21, the investigating officer, on which reliance was placed to support this contention. In cross-examination the witness said as follows :-

"I went for investigation in the month of Mehir 1358-F. (August, 1949) ..... Union officers did not investigate prior to my investigation; not even any collector undertook my investigation ..... Mohd. Ibrahim Ghori, Inspector, C.I.D., informed Sub-Inspector of Nallikadur through a D.O. dated the 29th Isfandar, 1358-F., to issue an information

report ..... I have no knowledge which officer ordered Mohd. Ibrahim Ghori to investigate and who signed on it. Superintendent of C.I.D. Police whose name I do not remember now gave order to Mohd. Ibrahim Ghori to investigate the facts. Now the case diary is not with me ..... The names of Mohd. Ibrahim and Achal Singh are not mentioned in the witnesses lists of A & B ..... Charges under sections 312 and 331 are mentioned in the report, but during my investigation, these offenses were not proved ..... The Superintendent of C.I.D. Police gave me a order to investigate but I do not remember the date of that order now ..... I prepared panchnamas on 8th Mehar, 1338-F. Probably I reached Gurtur one or two days earlier. I finished circumstantial investigation within eight days. Afterwards proceedings for permission were continued. At last on 20th August, 1949, the Civil Administrator gave order to file a challan ..... In the course of my investigation, it was proved that accused Habeeb Mohammad, Abdul Latif Khan and Abdul Wahid had committed crimes. It was not proved during the course of my investigation that Ghulam Afzal Biabani, Deputy I.G. of District Police, Assistant of Force, Nasim Ahmad Sahib, Sub-Inspector of Police, Vardhanapeth, jamedar of Police, Vardhanapeth, Abdul Wahid, Revenue Inspector, Abdul Alim Saheb, pleader, Hanamkonda, 70 military men and police and Razakars had committed crimes or aided and abetted. Therefore their names were not mentioned in the challan. The crimes against them are not proved means that they are not identified; the witnesses are not acquainted with them; so they are not prosecuted. Though in the information report 70 military men were mentioned I found in the course of my investigation 70 policemen only. I could not make out the identity of these policemen but I came to know that they belonged to Warangal district police force. I do not know how many of them were Hindus and how many were Muslims. But the names Kankiah, police jamedar (head-constable) and Abdul Latif Khan, Circle Inspector, were evident from the diary; therefore it is produced as evidence. On enquiry, Kankiah said to me that he could not identify them now and that he could not recollect the number of policemen who went along with him (Kankiah) to Vardhanapeth. I could not see the register at Superintendent's office to ascertain who went there because it was destroyed during the police action. When I asked the line

Inspector in this connection he replied that he could not even say whether the register was destroyed and that he could not remember the names now. As I could not gather any information from them, I did not refer their names in the case diary. I had not even mentioned about line Inspector in the case diary because I considered it unnecessary. From other source also, I could not make out the identity of these 70 men. Ghulam Afzal Biabani, Deputy Inspector General of Police, is alive and in service and I heard that he is now the Principal of the Police Training School. I cannot tell who was assistant of Force. I do not know the whereabouts of Nasim Ahmad as well as about his post. I did not make enquiries about Police Jamedar of Vardhanapeth who was mentioned in the information report, in regard to his identity and whether he is alive or dead because I could not find out his name from my witnesses. Further I do not know who was Shaik Chand. But I came to know from Kankiah that Shaik Chand was present on the scene of occurrence. Now I do not know about the whereabouts of Shaik Chand or about his job. None of the other witnesses recognised Shaik Chand and that I had not paraded him before the witnesses because I do not know his whereabouts. Though Jamedar Kankiah deposed that Abdul Ghaffar, Police Inspector, was present on the scene of occurrence the other witnesses were not acquainted with him. Whether Abdul Majid, Revenue Inspector, was on the place of occurrence or not, I could not make out and further whether he is alive or dead, too, I could not make out. Except Ghulam Afzal Biabani, I did not examine any of the other men, i.e., Assistant of Force, Nasim Ahmad, Police Jamedar of Vardhanapeth, Abdul Wahid, Revenue Inspector and others. I remember that after circumstantial investigation at Gurtur, I went to Hyderabad and enquired the facts to Ghulam Afzal Biabani orally; I did not take any statement from him. Whatever I enquired from him I entered in the case diary. I do not know what Ghulam Afzal Biabani reported to the high authority and whether yet reported it or not reported at all. I did not question him about it..... I do not remember the name of the police petal of Gurtur village. I did not take his statement and he did not give any report in regard to his occurrence. Guns were not recovered because the incident occurred one year ago and persons were not identified."

26. It is apparent from this statement that the investigation conducted by P.W. 21 was of a very perfunctory character. Apart from P. W. 10 Kankiah, none of the policemen or other officers or panches present at the scene of occurrence were examined and even their whereabouts were not investigated. This is all due to the circumstance that though the depositions of the villagers were recorded in November, 1948, against the conduct of the appellant and though the first information report against him was lodged in January, 1949, for some reason of which no plausible or satisfactory explanation has been suggested, the matter was not investigated and relevant evidence as to this incident, whether for or against the appellant, was not recorded for a period of over six months. It is not unreasonable to presume that during this period of seven or eight months that evidence became either unavailable or the villagers after this delay in investigation were not able to satisfactorily identify any of the persons who were present on the occasion. It seems to us that there is force in the contention that a good deal of material evidence was lost and considerable material that might have been helpful to the case of the defence or which would have fully established the part played by the accused, was in the meantime lost. In this situation the learned counsel in the courts below as well as in this court laid emphasis on the point that the case diaries were not brought into court till after the close of the case and they were withheld to avoid any controversy of this nature and this omission had also resulted in a trial which has perfunctory and prejudicial to the accused. During the examination of the investigating officer the question was put to him whether he had the case diaries. The cross-examining counsel wanted to elicit from him certain materials about the conduct of the investigation after he had refreshed his memory from those diaries, but P.W. 21 deposed that he had not the diaries with him and the matter was closed at that stage. On 12th April, 1950, an application was made to the court asking for copies of statements of P.Ws. recorded by the police. This application was obviously a belated one as the accused had no right to get the copies after the statements of those witnesses had been recorded by the Judge. The diaries were brought into court on 18th April, 1950. The learned Special Judge in his judgment on this point said as follows :-

"I have sent for the case diary relating to Superintendent of C.I.D. in confidential on the prayer of the accused. I have seen it intently. Statements therein are almost the same as are deposed in the court. The statements of witnesses would not become unreliable even in view of the entries made in the case diary."

27. Section 162, Criminal Procedure Code, which concerns police diaries and the use that can be made of them, is in these terms :-

"No statement made by any person to a police officer in the course of an investigation under this Chapter shall, if reduced to writing, be signed by the person making it; nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record, be used for any purpose (save as hereinafter provided) at any inquiry or trial in respect of any offence under investigation at the time when such statement was made :

Provided that, when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, the Court shall on the request of the accused refer to such writing and direct that the accused be furnished with a copy thereof, in order that any part of such statement, if duly proved, may be used to contradict such witness in the manner provided by section 145 of the Indian Evidence Act, 1872. When any part of such statement is so used, any part thereof, may also be used in the re-examination of such witness, but for the purpose only of explaining any method referred to in his cross-examination."

28. Section 172 provides that any criminal court may send for the police diaries of a case under inquiry or trial in such court and may use such diaries, not as evidence in the case but to aid it in such inquiry or trial. It seems to us that the learned Judge was in error in making use of the police diaries at all in his judgment and in seeking confirmation of his opinion on the question of appreciation of evidence from statements contained in those diaries. The only proper use he could make of these diaries was the one allot by section 172, Criminal Procedure Code, i.e., during the trial he could get assistance from them by suggesting means of further elucidating points which needed clearing up and which might be material for the purpose of doing justice between the State and the accused. This he did not do because the diaries were not before him. It was pointed out in Rex v. Mannu I.L.R. 19 All. 390 by a full court that a special diary may be used by the court to assist in an inquiry or trial by suggesting means of further elucidating points which need clearing up and which are material for the purpose of doing justices between the Crown and the accused but not as containing entries which can by themselves be taken to be evidence of any date, fact or statement therein contained. The police officer who made the diary may be furnished with it but not any other witness. The Judge made improper use of the diary by referring to it in his judgment and by saying that he intently perused it and the statements of witnesses taken in court were not inconsistent with those that were made by the witnesses before the police officer. It is difficult to say to what extent the perusal of the case diaries at that stage influenced the mind of the judge in the decision of the case. It may well be that perusal strengthened the view of the judge on the evidence against the appellant and operated to his prejudice. If there was any case in which it was necessary to derive assistance from the case diary during the trial it was this case and the investigating officer who appeared in the witness box instead of giving unsatisfactory answers to the question put to him might well have given accurate answers by refreshing his memory from those diaries and cleared up the lacunae that appeared in the prosecution case.

29. It was next contended that a number of documents that the accused wanted for his defence were not produced by the prosecution and were intentionally withheld. Reference in this connection may be made to an application submitted by the accused to the court on the 20 April, 1950. It reads thus :-

"As many documents were called for in defence of the accused, it was replied from the police or from the Home Department that the documents in question were either destroyed in the course of the police action, or as they are confidential, could not be sent. You are requested to review the excuses put forth by the police or other departments. In Warangal proper neither any firing took place nor any offices were burnt. I and Taluqdar Sahib lived in the headquarters for many months after the police action. Taluqdar Sahib lived for four months after the police action, and I lived there for nearly one month after the police action. Each and every document of my office in Taluqdar's office are safe and which can be ascertained by the Civil Administrator, Warangal, himself. This is my last prayer to you to send immediately today for summary of intelligence of second, third and fourth weeks of the month of Bahman, 1357-F., from the office of the Peshi of Mr. Obal Reddy, the District Superintendent of Police, Warangal. These weekly reviews are confidential which are prepared at the C.I.D. branch of the office of the Inspector-General of Police, and dispatched to the districts. The District Superintendents of Police used to send these reviews to the Deputy Commissioner of Police, Subedars and Taluqdars. The Gurtur incident was mentioned in them. If they are not available from the office of the District Superintendent of Police, Warangal, they may be called for from the office of the Inspector-General of Police, C.I.D., and they may be filed in the record."

30. On this application the court recorded the following order :-

"The way in which the accused Habeeb Mohamed remarked on the higher office that documents are either not received or that they are destroyed is not the proper way of

remarking. Investigation against officers cannot be conducted. Besides this, in this file all other things are decided and the accused was given sufficient time. Filing of an application on every hearing is not to be tolerated."

31. The appellant's counsel produced before us a list of the documents which were asked for, some of which were brought into court and regarding some the report was that they were destroyed or were not available. We cannot accede to the contention of the learned counsel that the court was called upon to make investigation into the question whether the replies from different officers as to what documents were destroyed or were not available were correct or not. It was open to the counsel for the accused, whenever any such report came, to challenge the statement and at that stage the court might have been in a position to ask the prosecution to support their replies by affidavits or otherwise. It, however, does appear somewhat curious that important documents which were required by the defence to establish the appellant's version of the incident are stated to have been destroyed or not available. Such bald assertions do not create much confidence in the mind of the court and it does not appear that there was any occasion during police action for the officer responsible for it to destroy records made by police officers and submitted to the Inspector-General of Police or to the Home Secretary. The appellant to certain extent was justified in such circumstances to ask the court to raise the inference that if these documents were produced they would not have supported the prosecution story.

32. The learned Advocate-General appearing for the State contended that assuming that the failure of the prosecution to examine Biabani has caused serious prejudice to the accused or that the denial of opportunity to him to examine certain witnesses in defence has also caused him serious prejudice, this court may direct the High Court to summon the witnesses and record their statement and transmit them to this court and that the appeal may be decided after that evidence has been taken. In our opinion, this course would not be proper in the peculiar circumstances of the present case. It is not possible

without setting aside the conviction of the appellant to reopen the case and allow the prosecution to examine a material witness or witnesses that ought to have produced and allow the defence also to lead defence evidence. A conviction arrived at without affording opportunity to the defence to lead whatever relevant evidence it wanted to produce cannot be sustained. The only course open to us in this situation is to set aside the conviction. The next question for consideration is whether in the result we should order a retrial of the appellant. After a careful consideration of the matter we have reached the conclusion that this course will not be conducive to the ends of justice. The appellant was in some kind of detention even before he was arrested. Since January, 1949, up to this date he has either been in detention or undergoing rigorous imprisonment and since the last three years he has been a condemned prisoner. The events regarding which evidence will have to be taken afresh took place on the 9th December, 1947, and after the lapse of six years it will be unfair and contrary to settled practice to order a fresh trial. In our opinion, as in substance there has been no fair and proper trial in this case, we are constrained to allow this appeal, set aside the conviction of the appellant under the different sections of the Hyderabad Penal Code and direct that he be set at liberty forthwith. It may well be pointed out that if there had been mere mistakes on the part of the court below of a technical character which had not occasioned any failure of justice or if the question was purely one of this court talking a difference view of the evidence given in the case, there would have been no interference by us under the provisions of article 136 of the Constitution. Such questions are as a general rule treated as being for the final decision of the courts below. In these circumstances it is unnecessary to examine the merits of the case on which both the learned counsel addressed us at some length.

33. Before concluding, however, it may be mentioned that Mr. McKenna apart from the points above mentioned raised a few other points of a technical character but on those points we did not call upon the learned Advocate-General in reply. It was contended that the court did not examine the accused under section 256, Criminal Procedure Code, after