

Evidence Act- Sakshya Adhiniyam 2023

Bharat Lakhtariya
Adjunct Faculty
NFSU, GANDHINAGAR

Historic Laws Replaced with New Titles

Aim and Objects

- Punitive to a Justice Oriented Approach
- Protects citizens' rights
- Upholds the Rule of Law
- Ensuring accessible and speedy justice for all
- Bharatiya Nyaya Sanhita, 2023 (IPC)
- Bharatiya Nagarik Suraksha Sanhita, 2023 (Cr.PC)
- Bharatiya Sakshya Adhiniyam, 2023 (Evidence Act)

Citizen Centric Laws

- Zero FIR and e-FIR
- Citizen entitled to free copy of FIR
- Police mandated to inform the victim on the progress of the investigation within 90 days
- Medical examination of a victim with consent
- Medical report within 7 days
- Own legal representation to assist prosecution
- Victim's right to free medical treatment & Compensation
- Victim consent for withdrawal from prosecution
- Witness protection scheme

Major Changes

- Investigation, Inquiry & Trial proceedings electronically
- e- records, summons, notices & submission of documents
- Videography during search and seizure
- Electronic statement of victims & e-Appearance for the presence of witnesses, accused, experts & victims
- 'Documents' includes server logs, locational evidence & digital voice messages

Major Changes

- Recognizes electronic/digital records as primary evidence
- Provides framework for digital evidence authenticity
- Expanded definition of documents
- Parity in admissibility of digital records as other documents
- Admissibility of electronic records acceptable in court
- Arrest of infirm person/ Sr. citizen in offence punishable up-to 3 yrs requires permission of Dy.Sp.

Evidence(Sec.2(e))

Means & Include

ORAL EVIDENCE

- All Statements (Includes Electronically)
- Court permits it, or
- Requires to be made before the court by witness
- In relation to matters of fact under inquiry
- Proof of Facts (Sec. 59) All facts may be proved by oral evidence except the contents of document

DOCUMENTARY EVIDENCE

Produce for the inspection of the Court

- Electronic & Digital Records

Document (Sec.2(d))

- Recorded on any substance by Means of Letters, Figures, Marks etc.
- Intended to be used or may be used for the purpose of recording
- Electronic & Digital Records – email, server, logs, documents on computer, laptop, smart phone,
- Messages, website, location evidence & voice mail messages stored in digital devices

Relevant and Relevancy

- Connection with the others in any of the ways referred in the Act to the relevancy of facts (Sec. 2(k))
- Relevancy of Facts (Chapter II) (Sec. 3 to 50)
- Sec. 3 to 14 (Specific Relevancy)
- 15 to 27 (Admission & Confession)
- 39 to 45 (Opinions of Experts and Others)

Rule of Relevancy (Sec. 3)

Principle of Evidence

- Party at liberty to give evidence
 - Every fact in issue in Proceeding/suit
 - Fact in Issue means related to right and liabilities – Does it Exist or Not Exist – Give Proof of it.
 - Other such fact declared as relevant fact by the Act
- (Sec. 4 to 45 – Different Relevancy)

Relevancy of General nature (4 to 7)

- Anything which can form part of Same Transaction (Sec. 4)
Same Transaction explain be example - Trap in Corruption case – Demand and Acceptance of Bribe -
- Occasion, Cause, Effect (Sec.5)
Contributory Circumstances – Provide Opportunity to offender- Give Reason to Offender – Effect of Poison – Symptoms of poison
- Motive, Preparation, Conduct-Previous & After (Sec.6)
- Necessary to Explain (Sec.7)
Test Identification Parade – Accused identified by witness or victim in the parade conducted by IO in Presence of Magistrate

Conspiracy & Alibi (Sec.8,9)

- Conspiracy- (Define under (BNS- Sec. (61)
- Common intention, agreement
- Meeting of two mind,
- May be Abetment, Aid, or Instigation (Sec.8)
- Alibi- Defence of accused- not present at the time of offence-
Application of logic
- Highly probable or Highly improbable in relation to total irrelevant fact but consider as relevant fact (Sec.9)

Determination of damages (Sec.10)

- Contractual liabilities
- Harm & Compensation
- Determination of damages
- Defamation – Reputation of a Person or Company
- Motor Accident – Loss or Damage to the Vehicle
- Breach of Contract – Loss to the Profit or Accounts giving details of loss occurred
- Books of Account revealing the details

Right & Custom (Sec.11)

- Rights
- Customary Rights
- Existence of custom or right
- Right to pass through land in the village
- Right to observe certain festival/Rituals
- Certain Tradition/custom followed in the community
- Customary Right required to prove – Existence of Customs and Followed since long in continuously- i.e. more than 30 years

Feelings (Sec.12)

Fact showing states of mind or body

- Knowledge
- Good faith
- Ill will
- Negligence
- Mens rea

Justifiable, Excusable, Mistake or Ignorance as defence -

Act of child below 7 yrs, 7-12 yrs, 12-18 yrs

Knowledge-Good faith words are used in defining offences

Accident, Intention (Sec.13)

- Accident
- Intention

Anything Accidental is matter of relevancy

No intention to caused harm

No Negligence or No Intention in the act

Intention in the offence of Murder, Theft, Robbery is essential

Intentional Act causing harm

Evidence showing intention is relevant

Business transaction (sec 14)

- Letters
- Entry in books,
- Postage
- Administration of any organisation having certain course of business as routine affairs
- Maintaining inward register, outward register
- Maintaining of Log Book of Vehicle
- Books of Accounts maintain in a traditional manner etc are the examples of course of business transaction

Admission (15 to 21, 25)

Admission of Fact- Acceptance of certain plain facts

Admission by Statement, Oral or Documentary
Plaint, affidavit, letter, Reply, Receipt, Cheque

- Party or its agent, representative in reference to disputes or third party whose interest affects

Admission itself is Suggestion or Inference as to

- Any fact in issue or relevant fact
- Made by any of the person
- Doctrine of admission without prejudice- settlement (23)

Under the circumstances hereinafter mentioned

- Sec. 31 Admission are not conclusive proof
- They may operate as estoppels
- Not allow to retract it. Prohibits party from retraction

Confession (Sec.22 to 24)

Word is not define in the Act

- Confession before the Authority
- Confession before the Magistrate
- Confession before the Police
- Confession during detention or custody
- Confession before any person
- Confession before co-accused

Confession (sec.22)

- Sec.22 - Made **by an accused person**
- **Relevant** in Criminal Proceeding having reference to the **charge against him**

Conditions

-No inducement-No Threat-No Promise

From the person in Authority

- By making it he would not gain any advantage or avoid any evil or a temporal nature in reference to the proceeding against him
- Court has to form an opinion about the grounds or **reasonableness for supposition**

Confession

- Statement admitting facts giving inference that accused might have committed crime is not confession
- Statement exculpating the maker of it cannot be confession
- Confession must either in terms admit the offence
- Substantially admitting all facts which constitute the offence is confession
- Acceptance of Guilty by Accused
- No one can confessed on behalf of accused

Removal of Impression

- It is **relevant**.
- If such a confession is made after the impression caused by
- Any such **inducement, threat or promise** has been **fully removed**
- Reflect free will
- Influence of the factors of inducement threat or promise is no more in existence of mind of the accused
- Result of Voluntariness

Confession to Police Officer (Sec. 23)

- No Confession Made to Police Officer Shall be Proved

As against a person

Accused of Any Offence

- Right to remain silent
- Right against self incrimination

Police Officer Not Necessarily Investigation Officer

Police Officer means Any Police Officer enrolled or appointed

Police Officer of any rank – May be Constable or IGP

Police Officer of Any Division of Police Set-up

Confession before the Magistrate (Sec.23)

- Any confession at the time of detention or custody is Inadmissible
- During Police Remand Custody Confession before any one is inadmissible
- But during the police custody if Confession made before Judicial Magistrate is Admissible
- Immediate After the custody production before the Judicial Magistrate and Voluntarily Confession is Admissible
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Recovery of fact (Sec.23)

Exception to Sec. 25

- Any information given by accused results in Discovery of fact is Admissible
- Admissible for limited portion
- Discovery must be related to offence
- Information must be given by Accused in interrogation
- Accused must have disclosed it to IO
- Information must result into discovery of fact – material- dead body, weapon, vehicle etc.
- Such Discovery is Admissible

Extra Judicial Confession (Sec. 22)

Statement - Positive provisions

If it is relevant & made on

- Promise to keep Secrecy
- By Deception
- Under the influence of intoxication
- Answer is obtained **without compulsion & warned**
- **“God will not forgive you – tell me what you have done”**

No Promise, threat or inducement in the sentence and no compulsion

Confession by Co-accused Sec.24

- Confession by co-accused can be used
- Abetment, preparation, aid, instigation
- Others jointly tried for same offence
- Betrayal with other accused
- Weak evidence
- Dangerous evidence
- Requires corroboration of the confession of co-accused
- It is relevant against other accused

Confession and Cr. P.C

- **Confessions or admissions of guilt to police officers inadmissible (Sec. 148)**
- **Confessions or admissions of guilt** whilst a person is in **custody of a police officer**, which was inadmissible unless **made in the immediate presence of a Magistrate** (Sec. 149)
- "When **any fact is deposed to by a police officer as discovered by him in consequence of information received from a person accused of any offence**, so much of such information, whether it amounts to a confession or admission of guilt or not, as **relates distinctly to the fact discovered by it**, may be received in evidence (Sec. 150)

Hearsay Evidence (26-27)

- Not defined
- Exception to Best Evidence Rule to oral evidence (Sec.60)
- Death, Illness, other inevitable circumstances
- Indirect evidence of Hearsay is admissible
- Inevitable evil & weak evidence
- Hearsay modified the original fact
- No chance for verification & less reliable

Four Reasons

- As to the Cause of Death,
- In relation to Business Transaction,
- Against Self Interest of Property or Finance,
- Opinion as to Custom about Public Right

Opinions (Sec.39-45)

Relevancy of Opinion

Third Party- No bias

- Jury of Expert in European legal system
- Panch in India – As an experience person
- Aid & Guidance to Court

Opinion

- Opinion is a gist of knowledge or experience
- Gained by Deep study, thinking, or experience
- Expertisation – Advice or Opinion
- – Opinion is not excepted as admissible evidence
- Exceptional matter of special subjects is admissible
- It is an aid or guidance to judge to decide the case
- Finger prints science (1899)

Expert Opinion Sec.39-45

- Foreign Law, Science, Arts & Handwritings, Finger prints
- Identification of prisoners Act, 1920 Sec. 4 & 5 authorised to take blood, hair, nail, handwritings, specimen of signatures
- Bodily matter of accused or victims, examinations, findings & Opinion
- Medical & Technical opinion
- Existence of Right, Custom
- **DNA profiling of Accused**
- **Medical Examination of the victim of rape**

Result of a genuine DNA test is said to be scientifically accurate.

Guideline for Polygraph, Brain Mapping and Narco Test

- Consent of the accused essential
- Access to a lawyer and the physical, emotional and legal implication explained
- Consent before a Judicial Magistrate and due representation by lawyer of the accused
- It is not a 'Confessional' statement but a Police Statement.
- Magistrate shall consider all factors relating to the detention.
- Recording of the Lie Detector Test by an independent agency (such as a hospital) and in presence of a lawyer
- Full medical and factual narration of the manner of the information received must be taken on record.

Kind of Evidence

- **Oral Evidence**

Evidence means and includes

All statements which the Court permits or

Requires to be made before it by witnesses,

In relation to matters of fact under inquiry

- **Documentary Evidence**

Documents produced for the inspection of the Court

- **Things for the inspection of court**

Oral Evidence Sec.54

- All **facts** proved by Oral Evidence
Except Contents of Documents
- Direct or Indirect oral evidence (Sec.56)
- Facts means perceived by five senses/conscious mind/Relation of things/materials for inspection of court
- Eye witness testimony
- Opinion with Reference of Book/Treaties
- Permitted or directed by court to make oral statement in relation to fact under Inquiry

Documentary Evidence – Sec.59 & 60

- Contents of documents to be proved
- Best Evidence Rule- Give Original Document
- Original document or its part
- Secondary Document – Original lost etc. Copies permitted
- Presumption about documents
- Documents are Public & Private
- Documents are produce before the court for inspection
- Handwritings to be proved of the author
- Old Document 30 yrs or more presumed to be genuine
- Old Digital Evidence -5 yrs or more presumed to be genuine

Admissibility of Electronic/Digital Record

Sec. 61 & 62

- Admissibility is subject to conditions u/s 63
- Information contained in Electronic Records deemed to be document
- No further proof is needed for original
- Condition for admissibility
 - Person must have lawful control over the system
 - Regularly feed & derived from the system
 - System must Operate properly
 - Reproduction must be ordinary course of activities
 - Function of creating regularly performed
 - Certificate in that regards etc.

When Document is under control/in possession of another (Sec. 136)

- Document or Electronic Records
- Under control of person or in possession of another person
- Entitled to refuse to produced in the proceedings
- Not compelled to produce it
- Last person consent to their production is necessary
- Right of third party is protected under this section

Production of Witness & Examination (Sec.140-144)

- Order of production of witness
- Who will produce First?
 - As per the Law what rules are there?
 - Law – Civil or Criminal
 - Generally by complainant/prosecutor
- Procedure Regulated by Law and Practice
- In absence of provision of law related to production of witness
 - Discretionary power lies with court

Judge to Decide Admissibility of Evidence (Sec.141)

- Evidence of fact proposed
- Judge ask what manner alleged fact to be proved would be relevant
- Relevancy part of Evidence Act 9(Se.3 to 50)
- If Relevancy is proved then admit it and not otherwise
- Admissible only on proof of some other fact
- Last fact must be proved – Dying Declaration- Death and then Dying Declaration
- Judge can decide which fact required to be first or last
- Original Document is lost then copy of original etc.

Examination of Witness Sec. 142/143/144/145/146

- Examination in Chief of Witness - Witness can be Anyone – Ordinary/ Official/ Expert/ Victim/ Accused too..
- Party who call his witness conduct first examination in chief
 - Narration of witness in question answer form
 - No leading question is permitted
 - Leading Question means suggesting answer in question
- Adverse Party conduct Cross Examination
 - On the basis of Examination in Chief- Relevant and Irrelevant fact – Leading Question is Permitted
 - Questioning the Credibility of Witness by Impeaching the Credit
- Re-Examination - Party who called his witness to clarify the confusion created in cross examination by adverse party – It is for the limited purpose

Production of Document

- Production of Document is mechanical process
- Person produce the document is not necessary be called as witness
- He cannot be examined or cross examined
- Person really concerned with document and the fact in issue involved and court deemed fit to consider as witness of production of document then he may be consider as witness
- Court permit him to be examined as witness like any other witness – examination in chief- cross examination and re-examination

End of the Course of Evidence

Thanks