

# **THE BHARATIYA SAKSHYA (SECOND) ADHINIYAM, 2023**

## **ARRANGEMENT OF SECTIONS**

### **PART I**

#### CHAPTER I

##### PRELIMINARY

1. Short title, application and commencement.
2. Definitions.

### **PART II**

#### CHAPTER II

##### RELEVANCY OF FACTS

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

##### Closely connected facts

4. Relevancy of facts forming part of same transaction.
5. Facts which are occasion, cause or effect of facts in issue or relevant facts.
6. Motive, preparation and previous or subsequent conduct.
7. Facts necessary to explain or introduce fact in issue or relevant facts.
8. Things said or done by conspirator in reference to common design.
9. When facts not otherwise relevant become relevant.
10. Facts tending to enable Court to determine amount are relevant in suits for damages.
11. Facts relevant when right or custom is in question.
12. Facts showing existence of state of mind, or of body or bodily feeling.
13. Facts bearing on question whether act was accidental or intentional.
14. Existence of course of business when relevant.

## Admissions

15. Admission defined.
16. Admission by party to proceeding or his agent.
17. Admissions by persons whose position must be proved as against party to suit.
18. Admissions by persons expressly referred to by party to suit.
19. Proof of admissions against persons making them, and by or on their behalf.
20. When oral admissions as to contents of documents are relevant.
21. Admissions in civil cases when relevant.
22. Confession caused by inducement, threat, coercion or promise, when irrelevant in criminal proceeding.
23. Confession to police officer.
24. Consideration of proved confession affecting person making it and others jointly under trial for same offence.
25. Admissions not conclusive proof, but may estop.

## Statements by persons who cannot be called as witnesses

26. Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant.
27. Relevancy of certain evidence for proving, in subsequent proceeding, truth of facts therein stated.

## Statements made under special circumstances

28. Entries in books of account when relevant.
29. Relevancy of entry in public record or an electronic record made in performance of duty.
30. Relevancy of statements in maps, charts and plans.
31. Relevancy of statement as to fact of public nature contained in certain Acts or notifications.

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

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.

Judgments of Courts when relevant

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

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

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

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

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

Opinions of third persons when relevant

39. Opinions of experts.

40. Facts bearing upon opinions of experts.

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

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

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

44. Opinion on relationship, when relevant.

45. Grounds of opinion, when relevant.

Character when relevant

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

47. In criminal cases previous good character relevant.

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

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

50. Character as affecting damages. 3

### **PART III**

#### ON PROOF

#### CHAPTER III

#### FACTS WHICH NEED NOT BE PROVED

#### SECTIONS.

51. Fact judicially noticeable need not be proved.

52. Facts of which Court shall take judicial notice.

53. Facts admitted need not be proved.

#### CHAPTER IV

#### OF ORAL EVIDENCE

54. Proof of facts by oral evidence.

55. Oral evidence to be direct.

#### CHAPTER V

#### OF DOCUMENTARY EVIDENCE

56. Proof of contents of documents.

57. Primary evidence.

58. Secondary evidence.

59. Proof of documents by primary evidence.

60. Cases in which secondary evidence relating to documents maybe given.

61. Electronic or digital record.

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

63. Admissibility of electronic records.

64. Rules as to notice to produce.

- 65. Proof of signature and handwriting of person alleged to have signed or written document produced.
- 66. Proof as to electronic signature.
- 67. Proof of execution of document required by law to be attested.
- 68. Proof where no attesting witness found.
- 69. Admission of execution by party to attested document.
- 70. Proof when attesting witness denies execution.
- 71. Proof of document not required by law to be attested.
- 72. Comparison of signature, writing or seal with others admitted or proved.
- 73. Proof as to verification of digital signature.

#### Public documents

- 74. Public and private documents.
- 75. Certified copies of public documents. 4
- 76. Proof of documents by production of certified copies.
- 77. Proof of other official documents.

#### Presumptions as to documents

- 78. Presumption as to genuineness of certified copies.
- 79. Presumption as to documents produced as record of evidence, etc.
- 80. Presumption as to Gazettes, newspapers, and other documents.
- 81. Presumption as to Gazettes in electronic or digital record.
- 82. Presumption as to maps or plans made by authority of Government.
- 83. Presumption as to collections of laws and reports of decisions.
- 84. Presumption as to powers-of-attorney.
- 85. Presumption as to electronic agreements.
- 86. Presumption as to electronic records and electronic signatures.

- 87. Presumption as to Electronic Signature Certificates.
- 88. Presumption as to certified copies of foreign judicial records.
- 89. Presumption as to books, maps and charts.
- 90. Presumption as to electronic messages.
- 91. Presumption as to due execution, etc., of documents not produced.
- 92. Presumption as to documents thirty years old.
- 93. Presumption as to electronic records five years old.

## 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.
- 95. Exclusion of evidence of oral agreement.
- 96. Exclusion of evidence to explain or amend ambiguous document.
- 97. Exclusion of evidence against application of document to existing facts.
- 98. Evidence as to document unmeaning in reference to existing facts.
- 99. Evidence as to application of language which can apply to one only of several persons.
- 100. Evidence as to application of language to one of two sets of facts, to neither of which the whole correctly applies.
- 101. Evidence as to meaning of illegible characters, etc.
- 102. Who may give evidence of agreement varying terms of document.
- 103. Saving of provisions of Indian Succession Act relating to wills. 5

## **PART IV**

### PRODUCTION AND EFFECT OF EVIDENCE

## CHAPTER VII

### OF THE BURDEN OF PROOF

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

## CHAPTER VIII

### ESTOPPEL

- 121. Estoppel.
- 122. Estoppel of tenant and of licensee of person in possession.
- 123. Estoppel of acceptor of bill of exchange, bailee or licensee.

## CHAPTER IX

### OF WITNESSES

- 124. Who may testify.
- 125. Witness unable to communicate verbally.
- 126. Competency of husband and wife as witnesses in certain cases.
- 127. Judges and Magistrates.
- 128. Communications during marriage.
- 129. Evidence as to affairs of State.
- 130. Official communications.
- 131. Information as to commission of offences.
- 132. Professional communications. 6
- 133. Privilege not waived by volunteering evidence.
- 134. Confidential communication with legal advisers.
- 135. Production of title-deeds of witness not a party.
- 136. Production of documents or electronic records which another person, having possession, could refuse to produce.
- 137. Witness not excused from answering on ground that answer will criminate.
- 138. Accomplice.
- 139. Number of witnesses.

## CHAPTER X

### OF EXAMINATION OF WITNESSES

- 140. Order of production and examination of witnesses.
- 141. Judge to decide as to admissibility of evidence.
- 142. Examination of witnesses.



143. Order of examinations.
144. Cross examination of person called to produce a document.
145. Witnesses to character.
146. Leading questions.
147. Evidence as to matters in writing.
148. Cross examination as to previous statements in writing.
149. Questions lawful in cross examination.
150. When witness to be compelled to answer.
151. Court to decide when question shall be asked and when witness compelled to answer.
152. Question not to be asked without reasonable grounds.
153. Procedure of Court in case of question being asked without reasonable grounds.
154. Indecent and scandalous questions.
155. Questions intended to insult or annoy.
156. Exclusion of evidence to contradict answers to questions testing veracity.
157. Question by party to his own witness.
158. Impeaching credit of witness.
159. Questions tending to corroborate evidence of relevant fact, admissible.
160. Former statements of witness may be proved to corroborate later testimony as to same fact.
161. What matters may be proved in connection with proved statement relevant under section 26 or 27.
162. Refreshing memory.
163. Testimony to facts stated in document mentioned in section 162.
164. Right of adverse party as to writing used to refresh memory.

165. Production of documents. 7

## SECTIONS

166. Giving, as evidence, of document called for and produced on notice.

167. Using, as evidence, of document production of which was refused on notice.

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

## CHAPTER XI

### OF IMPROPER ADMISSION AND REJECTION OF EVIDENCE

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

## CHAPTER XII

### REPEAL AND SAVINGS

170. Repeal and savings.

## PART I

### CHAPTER I: PRELIMINARY

#### **Section 1: Short title, application and commencement.**

(1) This Act may be called the Bharatiya Sakshya (Second) 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.

#### **Simplified act**

(1) This law is called the Bharatiya Sakshya (Second) Act, 2023.

(2) It applies to all court cases and legal proceedings, including military courts, but it does not apply to written statements (affidavits) given to a court or officer, or to cases handled by an arbitrator.

(3) It will start on a date chosen by the Central Government, which will be announced in the Official Gazette.

### **Explanation using Example**

Example 1:

Scenario: A criminal trial in a Sessions Court in Mumbai.

Explanation: The Bharatiya Sakshya (Second) Adhiniyam, 2023 applies to this trial because it is a judicial proceeding in a court. The evidence presented by both the prosecution and the defense will be governed by the rules and provisions of this Act. However, if an affidavit is submitted as part of the evidence, the specific rules of this Act will not apply to the affidavit itself.

Example 2:

Scenario: A disciplinary hearing in a Court-martial for an Indian Army officer.

Explanation: The Bharatiya Sakshya (Second) Adhiniyam, 2023 applies to this Court-martial proceeding. The evidence and testimonies presented during the hearing will be regulated by the provisions of this Act, ensuring that the process follows the established legal standards for evidence in judicial proceedings.

Example 3:

Scenario: A commercial dispute being resolved through arbitration in Delhi.

Explanation: The Bharatiya Sakshya (Second) Adhiniyam, 2023 does not apply to this arbitration proceeding. Arbitration is an alternative dispute resolution mechanism, and the Act explicitly states that it does not apply to proceedings before an arbitrator. Therefore, the rules of evidence in this arbitration will be determined by the arbitration agreement and relevant arbitration laws, not by this Act.

Example 4:

Scenario: A civil lawsuit in the High Court of Karnataka involving a property dispute.

Explanation: The Bharatiya Sakshya (Second) Adhiniyam, 2023 applies to this civil lawsuit because it is a judicial proceeding in a court. All evidence, including documents, witness testimonies, and expert opinions, will be

governed by the rules and provisions of this Act. However, if any affidavits are presented, the specific rules of this Act will not apply to those affidavits.

Example 5:

Scenario: A notification in the Official Gazette by the Central Government.

Explanation: The Bharatiya Sakshya (Second) Adhiniyam, 2023 will come into force on the date specified in the notification issued by the Central Government in the Official Gazette. For instance, if the notification states that the Act will come into force on 1st January 2024, then from that date onwards, the provisions of this Act will be applicable to all relevant judicial proceedings.

## **Section 2: Definitions.**

- (1) In this Adhiniyam, unless the context otherwise requires, -
- (a) "Court" includes all Judges and Magistrates, and all persons, except arbitrators, legally authorised to take evidence;
  - (b) "conclusive proof" means when one fact is declared by this Adhiniyam to be conclusive proof of another, the Court shall, on proof of the one fact, regard the other as proved, and shall not allow evidence to be given for the purpose of disproving it;
  - (c) "disproved" in relation to a fact, means when, after considering the matters before it, the Court either believes that it does not exist, or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist;
  - (d) "document" means any matter expressed or described or otherwise recorded upon any substance by means of letters, figures or marks or any other means or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter and includes electronic and digital records.

### **Illustrations**

- (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 smart phone, messages, websites, locational evidence and voice mail messages stored on digital devices are documents;

(e) "Evidence" means and includes -

(i) all statements including statements given electronically which the Court permits or requires to be made before it by witnesses in relation to matters of fact under inquiry and such statements are called oral evidence;

(ii) All documents including electronic or digital records produced for the inspection of the Court and such documents are called documentary evidence;

(f) "Fact" means and includes -

(i) Anything, 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

(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;

(g) "facts in issue" means and includes any fact from which, either by itself or in connection with other facts, the existence, non-existence, nature or extent of any right, liability or disability, asserted or denied in any suit or proceeding, necessarily follows.

Explanation. - 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;

(i) "Not proved". - A fact is said to be not proved when it is neither proved nor disproved;

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

(k) "Relevant". - A fact is said to be relevant to another when it is connected with the other in any of the ways referred to in the provisions of this Adhiniyam relating to the relevancy of facts;

(l) "Shall presume". - Whenever it is directed by this Adhiniyam that the Court shall presume a fact, it shall regard such fact as proved, unless and until it is disproved.

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

Provided that any reference in this Adhiniyam to the Bharatiya Nagarik Suraksha Sanhita, 2023 or the Bharatiya Nyaya Sanhita, 2023 shall be construed as a reference to the Bharatiya Nagarik Suraksha (Second) Sanhita, 2023 or the Bharatiya Nyaya (Second) Sanhita, 2023, respectively.

### **Simplified act**

#### **Definitions**

(1) In this Act, unless the context otherwise requires, -

(a) "Court" includes all Judges and Magistrates, and all persons, except arbitrators, who are legally authorized to take evidence;

(b) "conclusive proof" means 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 to disprove 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 reasonable person would act on the assumption that it does not exist;

(d) "document" means any matter expressed, described, or recorded on any substance by means of letters, figures, marks, or any other means, intended to be used, or which may be used, for recording that matter and includes electronic and digital records.

#### Examples

(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, laptops or smart phones, messages, websites, locational evidence, and voice mail messages stored on digital devices are documents;

(e) "Evidence" means and includes -

(i) all statements, including those given electronically, which the Court permits or requires to be made before it by witnesses in relation to matters of fact under inquiry, and such statements are called oral evidence;

(ii) All documents, including electronic or digital records, produced for the inspection of the Court, and such documents are called documentary evidence;

(f) "Fact" means and includes -

- (i) Anything, state of things, or relation of things, capable of being perceived by the senses;
- (ii) Any mental condition of which any person is conscious.

#### Examples

- (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;
- (g) "facts in issue" means and includes any fact from which, either by itself or in connection with other facts, the existence, non-existence, nature, or extent of any right, liability, or disability, asserted or denied in any suit or proceeding, necessarily follows.

Explanation. - 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.

#### Examples

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 Act that the Court may presume a fact, it may either regard such fact as proved, unless and until it is disproved, or may call for proof of it;



(i) "Not proved". - A fact is said to be not proved when it is neither proved nor disproved;

(j) "Proved". - A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a reasonable person would act on the assumption 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 Act relating to the relevancy of facts;

(l) "Shall presume". - Whenever it is directed by this Act that the Court shall presume a fact, it shall regard such fact as proved, unless and until it is disproved.

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

Provided that any reference in this Act to the Bharatiya Nagarik Suraksha Sanhita, 2023 or the Bharatiya Nyaya Sanhita, 2023 shall be construed as a reference to the Bharatiya Nagarik Suraksha (Second) Sanhita, 2023 or the Bharatiya Nyaya (Second) Sanhita, 2023, respectively.

#### Explanation using Example

##### Example 1:

Scenario: A Theft Case in a Local Court

Context: Ravi is accused of stealing a laptop from a local electronics store. The store's CCTV footage shows a person resembling Ravi taking the laptop.

Application of Definitions:

Court: The local Magistrate's Court handling Ravi's case.

Conclusive Proof: If the CCTV footage is declared as conclusive proof of Ravi's presence at the store, the Court will accept that Ravi was at the store without requiring further evidence.

Disproved: Ravi's lawyer argues that the person in the footage is not Ravi. If the Court believes the footage does not show Ravi or finds it highly probable that it is not Ravi, the fact that Ravi was at the store is disproved.

Document: The CCTV footage is a document as it is a recorded matter on a digital device.

Evidence: The CCTV footage (documentary evidence) and witness statements from the store employees (oral evidence) are presented in Court.

Fact: The presence of a person resembling Ravi in the CCTV footage is a fact. The store employees' statements that they saw Ravi is also a fact.

Facts in Issue: Whether Ravi stole the laptop, whether he intended to steal it, and whether he was present at the store at the time of the theft.

May Presume: The Court may presume that the person in the footage is Ravi unless disproved by Ravi's lawyer.

Not Proved: If the Court finds the evidence inconclusive, it may determine that Ravi's presence at the store is not proved.

Proved: If the Court believes the footage and witness statements, it may find that Ravi's presence and the act of theft are proved.

Relevant: The CCTV footage and witness statements are relevant to the case as they are connected to the theft.

Shall Presume: If the law directs that the Court shall presume the footage as proof of Ravi's presence, the Court will accept it as proof unless disproved.

Example 2:

Scenario: A Property Dispute in a Civil Court

Context: Sita claims that she owns a piece of land, but Ram also claims ownership based on an old sale deed.

Application of Definitions:

Court: The Civil Court handling the property dispute.

Conclusive Proof: If the sale deed is declared as conclusive proof of ownership, the Court will accept Ram's ownership without requiring further evidence.

Disproved: Sita presents evidence that the sale deed is forged. If the Court believes the deed is forged or finds it highly probable, the fact of Ram's ownership is disproved.

Document: The sale deed is a document as it is a written record of the transaction.

Evidence: The sale deed (documentary evidence) and witness statements from people who were present during the sale (oral evidence) are presented in Court.

Fact: The existence of the sale deed and the transaction it records are facts. The witnesses' statements about the sale are also facts.

Facts in Issue: Whether the sale deed is genuine, whether Sita or Ram owns the land, and whether the transaction recorded in the deed actually took place.

May Presume: The Court may presume the sale deed is genuine unless disproved by Sita.

Not Proved: If the Court finds the evidence about the deed inconclusive, it may determine that the ownership is not proved.

Proved: If the Court believes the sale deed and witness statements, it may find that Ram's ownership is proved.

Relevant: The sale deed and witness statements are relevant to the case as they are connected to the ownership of the land.

Shall Presume: If the law directs that the Court shall presume the sale deed as proof of ownership, the Court will accept it as proof unless disproved.

## **PART II**

### **CHAPTER II: RELEVANCY OF FACTS**

#### **Section 3: Evidence may be given of facts in issue and relevant facts.**

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

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**

(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.

### **Simplified act**

You can present evidence in any lawsuit or legal proceeding to prove whether a fact is true or not, as long as the fact is relevant according to the rules mentioned later in this document. You cannot present evidence about anything else.

Explanation. - This section does not allow anyone to present evidence about a fact if the law currently in force says they are not allowed to do so, especially laws related to Civil Procedure.

### **Examples**

(a) A is on trial for murdering B by hitting him with a club, intending to kill him.

In A's trial, the important facts to prove are:

A hit B with the club;

A caused B's death by hitting him;

A intended to kill B.

(b) If someone involved in a lawsuit does not bring a bond (a type of legal document) to the first hearing of the case, this section does not allow them to present the bond or prove what it says later in the proceedings, unless they follow the rules set by the Code of Civil Procedure, 1908.

### **Explanation using Example**

Example 1:

Scenario: A is accused of stealing a gold necklace from B's house.

Facts in Issue:

Whether A was present at B's house on the day of the theft.

Whether A took the gold necklace from B's house.

Whether A had the intention to steal the necklace.

Relevant Facts:

Witness C saw A entering B's house on the day of the theft.

A was found in possession of a gold necklace similar to the one stolen from B's house.

A had previously expressed a desire to own a gold necklace but did not have the means to buy one.

In this scenario, evidence can be given to prove or disprove the facts in issue (A's presence, the act of taking the necklace, and A's intention). Additionally, relevant facts such as witness testimony and possession of the necklace can also be presented as evidence.

Example 2:

Scenario: A files a lawsuit against B for breach of contract, claiming that B did not deliver goods as agreed.

Facts in Issue:

Whether there was a valid contract between A and B.

Whether B failed to deliver the goods as per the contract.

Whether A suffered damages due to B's failure to deliver the goods.

Relevant Facts:

The written contract between A and B outlining the terms of delivery.

Correspondence between A and B regarding the delivery schedule.

Testimony from C, a third party, who witnessed the agreement and the subsequent failure to deliver.

In this scenario, evidence can be given to establish the existence of the contract, the breach by B, and the damages suffered by A. Relevant facts such as the written contract, correspondence, and third-party testimony can also be presented as evidence.

Example 3:

Scenario: A is tried for the murder of B by poisoning.

Facts in Issue:

Whether A administered poison to B.

Whether B died as a result of the poisoning.

Whether A had the intention to cause B's death.

Relevant Facts:

Testimony from D, who saw A mixing something into B's drink.

Medical reports confirming that B died from poisoning.

Evidence that A had recently purchased the poison used.

In this scenario, evidence can be given to prove or disprove the facts in issue (A administering poison, B's death from poisoning, and A's intention). Relevant facts such as witness testimony, medical reports, and evidence of poison purchase can also be presented as evidence.

Example 4:

Scenario: A sues B for defamation, claiming that B made false statements damaging A's reputation.

Facts in Issue:

Whether B made the alleged statements.

Whether the statements were false.

Whether the statements damaged A's reputation.

Relevant Facts:

Testimony from E, who heard B making the statements.

Evidence showing that the statements made by B were false.

Testimony from F, who can attest to the damage to A's reputation as a result of the statements.

In this scenario, evidence can be given to prove or disprove the facts in issue (B making the statements, the falsity of the statements, and the damage to A's reputation). Relevant facts such as witness testimony and evidence of the falsity of the statements can also be presented as evidence.

#### **Section 4: Relevancy of facts forming part of same transaction.**

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

Illustrations

(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.

#### **Simplified act**

Facts that are not directly in question but are connected to the main issue or a related fact, making them part of the same event, are important. This is true whether they happened at the same time and place or at different times and places.

## Examples

(a) A is accused of murdering B by beating him. Anything said or done by A, B, or the bystanders during the beating, or shortly before or after it, is important.

(b) A is accused of waging war against the Government of India by participating in an armed rebellion where property is destroyed, troops are attacked, and jails are broken open. These events are important as part of the overall situation, even if A was not present at all of them.

(c) A sues B for defamation in a letter that is part of a series of letters. Other letters between A and B related to the issue, even if they do not contain the defamatory statement, are important.

(d) The question is whether certain goods ordered from B were delivered to A. The goods were delivered through several people one after another. Each delivery is important.

## Explanation using Example

### Example 1:

A is accused of robbing a bank in Mumbai. During the robbery, A allegedly threatened the bank manager, C, and took the money. Witnesses, including bank employees and customers, saw A committing the robbery. After the robbery, A was seen fleeing the scene in a car. The police later found the car abandoned with some of the stolen money inside.

In this case, the following facts are relevant:

The threats made by A to the bank manager, C, during the robbery.

The actions of the bank employees and customers who witnessed the robbery.

The fact that A was seen fleeing the scene in a car.

The discovery of the abandoned car with stolen money inside.

All these facts, though not the main issue (the robbery itself), are connected to the main transaction and help establish the sequence of events.

### Example 2:

B is accused of participating in a large-scale protest in Delhi that turned violent. During the protest, several government buildings were vandalized, and



police officers were attacked. B was not present at the scene of all the incidents but was seen leading a group of protesters at one of the locations.

In this case, the following facts are relevant:

The vandalism of government buildings during the protest.

The attacks on police officers by the protesters.

B's presence and actions at one of the protest locations.

These facts, though not directly involving B in every incident, are part of the same transaction (the violent protest) and are relevant to understanding B's role in the overall event.

Example 3:

C sues D for defamation based on a series of social media posts. The defamatory statement was made in one specific post, but there were several other posts by D leading up to and following the defamatory post that discussed the same topic.

In this case, the following facts are relevant:

The content of the specific post containing the defamatory statement.

The content of the other posts by D that discuss the same topic and provide context to the defamatory statement.

These posts, though not containing the defamatory statement themselves, are part of the same transaction (the series of social media posts) and help establish the context and intent behind the defamation.

Example 4:

E orders a shipment of electronics from F. The shipment is supposed to be delivered to E's warehouse in Chennai. However, the shipment passes through several intermediaries and warehouses before reaching E. When the shipment arrives, some items are missing.

In this case, the following facts are relevant:

The initial order placed by E with F.

The delivery of the shipment to each intermediary and warehouse.

The condition of the shipment at each stage of its journey.

Each of these deliveries and the condition of the shipment at each stage are part of the same transaction (the delivery of the electronics) and are relevant to determining where the items went missing.

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

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

**Illustrations**

(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.

**Simplified act**

Facts that are related to relevant facts or issues, or that show the situation in which they happened, or that provided a chance for them to happen, are important.

**Examples**

(a) The question is whether A robbed B. The fact that B went to a fair with money shortly before the robbery, and that he showed or mentioned the money to others, is important.

(b) The question is whether A murdered B. Marks on the ground from a struggle near the place where the murder happened are important facts.

(c) The question is whether A poisoned B. The state of B's health before showing symptoms of poisoning, and B's habits known to A that provided a chance to poison B, are important facts.

Explanation using Example

Example 1:

Scenario: A is accused of stealing a gold necklace from B's house.

Relevant Facts:

Occasion: B had hosted a party at his house the night the necklace went missing. The fact that A attended the party is relevant.

Cause: B had shown the necklace to A and other guests during the party, mentioning its value. This fact is relevant as it could have motivated A to steal it.

Effect: The next day, A was found with a gold necklace matching the description of B's missing necklace. This fact is relevant as it shows the effect of the alleged theft.

Example 2:

Scenario: A is accused of setting fire to B's shop.

Relevant Facts:

Occasion: B had recently fired A from his job at the shop. The fact that A was fired is relevant as it could provide a motive for arson.

Cause: Witnesses saw A buying a large quantity of petrol the day before the fire. This fact is relevant as it could indicate preparation for committing the arson.

Effect: After the fire, A was found with burn marks on his hands and clothes smelling of petrol. These facts are relevant as they show the immediate effect of the alleged crime.

Example 3:

Scenario: A is accused of assaulting B during a street protest.

Relevant Facts:

Occasion: There was a large protest happening on the street where the assault took place. The fact that A and B were both present at the protest is relevant.

Cause: B had been shouting slogans against a cause that A strongly supported. This fact is relevant as it could explain why A might have assaulted B.

Effect: B was found with injuries consistent with being hit by a blunt object, and A was found with a stick that had B's blood on it. These facts are relevant as they show the immediate effect of the alleged assault.

Example 4:

Scenario: A is accused of defrauding B by selling a fake antique.

Relevant Facts:

Occasion: B had expressed interest in buying antiques and had been in contact with A, who claimed to have a valuable antique for sale. The fact that B was looking to buy antiques is relevant.

Cause: A had shown B a certificate of authenticity, which later turned out to be forged. This fact is relevant as it could indicate A's intent to defraud.

Effect: After the sale, B discovered that the antique was a fake and reported the fraud to the police. This fact is relevant as it shows the immediate effect of the alleged fraud.

## **Section 6: Motive, preparation and previous or subsequent conduct.**

Relevant Facts

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

Explanation

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.

(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 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.

### **Simplified act**

#### Relevant Facts

(1) Any fact is relevant if it shows a reason or preparation for any important issue or related fact.

(2) The behavior of any party, or their agent, in a case or proceeding is relevant if it affects or is affected by any important issue or related fact, whether it happened before or after.

#### Explanation

Explanation 1. - "Behavior" here does not include statements, unless those statements explain actions. This does not change the relevance of statements under other sections of this law.

Explanation 2. - When someone's behavior is relevant, any statement made to them or in their presence that affects their behavior is also relevant.

#### Examples

- (a) A is on trial for murdering B. It is relevant that A murdered C, that B knew about it, and that B tried to blackmail A by threatening to reveal this information.
- (b) A sues B for money owed on a bond. B denies making the bond. It is relevant that, at the time the bond was supposedly made, B needed money for a specific reason.
- (c) A is on trial for poisoning B. It is relevant that, before B's death, A obtained poison similar to that given to B.
- (d) The question is whether a document is A's will. It is relevant that, shortly before the will's date, A looked into matters related to the will, consulted lawyers, and had drafts of other wills prepared that he did not approve.
- (e) A is accused of a crime. It is relevant that, before, during, or after the alleged crime, A provided or destroyed evidence to make the case look favorable to him, or prevented witnesses from being present, or convinced others to give false evidence.
- (f) The question is whether A robbed B. It is relevant that, after B was robbed, C said in A's presence, "the police are coming to look for the robber," and A immediately ran away.
- (g) The question is whether A owes B ten thousand rupees. It is relevant that A asked C for money, and D said to C in A's presence, "Don't trust A, he owes B ten thousand rupees," and A did not respond.
- (h) The question is whether A committed a crime. It is relevant that A disappeared after receiving a letter warning that an investigation was happening, and the contents of the letter.
- (i) A is accused of a crime. It is relevant that, after the alleged crime, A disappeared, had property or proceeds from the crime, or tried to hide things used in the crime.
- (j) The question is whether A was raped. It is relevant that shortly after the alleged rape, A made a complaint about it, the circumstances, and the terms of the complaint. It is not relevant if A just said she was raped without making a complaint, although it might be relevant as a dying declaration or as supporting evidence.

(k) The question is whether A was robbed. It is relevant that shortly after the alleged robbery, A made a complaint about it, the circumstances, and the terms of the complaint. It is not relevant if A just said he was robbed without making a complaint, although it might be relevant as a dying declaration or as supporting evidence.

Explanation using Example

Example 1:

A is accused of murdering B. During the investigation, it is found that A had a significant financial debt and B had recently threatened to expose A's financial troubles unless A repaid the debt. The fact that A was under financial stress and B's threat to expose A's financial situation can be considered as a motive for the murder. Additionally, if A had purchased a weapon similar to the one used in the murder shortly before the crime, this preparation is also relevant to the case.

Example 2:

A is on trial for the theft of a valuable necklace from B's house. During the trial, it is revealed that A had been seen loitering around B's house several times in the days leading up to the theft. This conduct of A, which shows preparation for the theft, is relevant. Furthermore, after the theft, A was found in possession of a large sum of money, which he could not account for. This subsequent conduct of A, which suggests he benefited from the theft, is also relevant to the case.

**Section 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 libelous 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 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.

### **Simplified act**

Facts that help explain or introduce an important fact, or that support or challenge a conclusion based on an important fact, or that help identify a person or thing, or that establish the time or place of an important event, or that show the relationship between people involved in an important event, are relevant if they are necessary for these purposes.

### **Examples**

(a) The question is whether a certain document is A's will. The state of A's property and family at the time the will was supposedly made may be important facts.

(b) A sues B for saying something bad about A. B claims what he said is true. The relationship and positions of A and B at the time the statement was made

may be important facts. Details of an unrelated dispute between A and B are not important, but the fact that there was a dispute might be important if it affected their relationship.

(c) A is accused of a crime. The fact that A left his house soon after the crime is important because it shows his behavior after the crime. The fact that A had urgent business at the place he went to is also important because it explains why he left suddenly. The details of the business are not important unless they show that the business was indeed sudden and urgent.

(d) A sues B for convincing C to break a work contract with A. When C leaves A's job, he tells A, "I am leaving because B made me a better offer." This statement is important because it explains C's actions, which are important to the case.

(e) A, accused of theft, is seen giving the stolen property to B, who then gives it to A's wife. B says, "A told me to hide this" when he hands it over. B's statement is important because it explains part of the event.

(f) A is on trial for leading a riot and is shown to have been at the front of a mob. The shouts of the mob are important because they explain the nature of the event.

### Explanation using Example

#### Example 1:

Scenario: A dispute over a property will.

Situation: Mr. Sharma has passed away, and there is a dispute over the validity of his will. His son, Raj, claims that the will is genuine, while his daughter, Priya, argues that it is a forgery.

#### Application of Section 7:

Fact in Issue: Whether the will is genuine.

Relevant Facts: The state of Mr. Sharma's property and his family situation at the time the will was allegedly made.

Explanation: To determine the validity of the will, the court may consider Mr. Sharma's financial status, his relationship with his children, and any other relevant circumstances at the time the will was created. For instance, if Mr.

Sharma had a history of favoring Raj over Priya, this could be relevant to understanding the context of the will.

#### Example 2:

Scenario: A defamation case.

Situation: Ms. Gupta sues Mr. Verma for defamation, claiming that he published a false statement accusing her of embezzlement.

#### Application of Section 7:

Fact in Issue: Whether the statement made by Mr. Verma is true or false.

Relevant Facts: The relationship between Ms. Gupta and Mr. Verma at the time the statement was made, and any prior disputes between them.

Explanation: The court may look into the history of interactions between Ms. Gupta and Mr. Verma to understand the context of the alleged defamatory statement. If there was a prior business dispute or personal animosity, this could be relevant to determining whether the statement was made with malicious intent or based on factual evidence.

#### Example 3:

Scenario: A criminal case involving theft.

Situation: Mr. Khan is accused of stealing a valuable necklace from a jewelry store. Shortly after the theft, he is seen giving the necklace to his friend, Mr. Ali, who then gives it to Mr. Khan's wife.

#### Application of Section 7:

Fact in Issue: Whether Mr. Khan committed the theft.

Relevant Facts: The actions of Mr. Khan and Mr. Ali immediately following the theft.

Explanation: The fact that Mr. Khan gave the stolen necklace to Mr. Ali, and Mr. Ali's statement that "Mr. Khan says you are to hide this," are relevant to explaining the transaction and establishing Mr. Khan's involvement in the theft. These facts help to paint a complete picture of the events surrounding the crime.

#### Example 4:

Scenario: A breach of contract case.

Situation: Mr. Mehta sues Mr. Singh for inducing Mr. Patel to break a service contract with Mr. Mehta.

Application of Section 7:

Fact in Issue: Whether Mr. Singh induced Mr. Patel to break the contract.

Relevant Facts: Mr. Patel's statement to Mr. Mehta when he left the job, saying, "I am leaving because Mr. Singh made me a better offer."

Explanation: Mr. Patel's statement is relevant as it explains his conduct and provides context for the breach of contract. This helps to establish the connection between Mr. Singh's offer and Mr. Patel's decision to leave Mr. Mehta's employment.

Example 5:

Scenario: A riot case.

Situation: Mr. Desai is on trial for leading a riot. He was seen at the head of a mob that caused significant property damage.

Application of Section 7:

Fact in Issue: Whether Mr. Desai was leading the riot.

Relevant Facts: The cries and slogans of the mob during the riot.

Explanation: The cries and slogans of the mob are relevant as they help to explain the nature of the transaction and Mr. Desai's role in it. If the mob was shouting slogans that indicated a coordinated effort led by Mr. Desai, this would be relevant to proving his leadership in the riot.

### **Section 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.

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.

## Simplified act

If there is a good reason to believe that two or more people have planned together to commit a crime or a wrongful act, anything said, done, or written by any one of these people about their shared plan, after they first started planning, is important evidence against each of them. This evidence can be used to prove that the conspiracy exists and to show that each person was involved in it.

## Example

There is a good reason to believe that A has joined a plan to wage war against the State.

The fact that B got weapons in Europe for the plan,

C collected money in Kolkata for the same purpose,

D convinced people to join the plan in Mumbai,

E published writings supporting the plan in Agra, and

F sent the money collected by C in Kolkata from Delhi to G in Singapore, along with a letter from H explaining the plan, are all important. They help prove that the conspiracy exists and that A was involved, even if A didn't know about all these actions, didn't know the people who did them, or if these actions happened before A joined or after A left the plan.

#### Explanation using Example

##### Example 1:

Scenario: A group of individuals, A, B, C, and D, conspire to commit a bank robbery in Mumbai.

A plans the robbery and assigns roles to each member.

B purchases masks and gloves in Delhi to be used during the robbery.

C rents a getaway car in Pune.

D scouts the bank and gathers information about its security systems in Mumbai.

Application of Section 8: Even if A was not aware of the specific actions taken by B, C, and D, all these actions (purchasing masks, renting a car, scouting the bank) are relevant facts. They can be used to prove the existence of the conspiracy and A's involvement in it, as they were all done in reference to the common design of robbing the bank.

##### Example 2:

Scenario: A group of activists, X, Y, Z, and W, conspire to organize an illegal protest against a government policy in Delhi.

X drafts and circulates a manifesto outlining the protest's objectives.

Y arranges for transportation to bring protestors from different parts of the country to Delhi.

Z collects funds in Chennai to support the protest activities.

W uses social media to recruit more participants and spread the word about the protest.

Application of Section 8: Even if X was not directly involved in the actions taken by Y, Z, and W, all these actions (circulating the manifesto, arranging

transportation, collecting funds, recruiting participants) are relevant facts. They can be used to prove the existence of the conspiracy to organize the illegal protest and X's involvement in it, as they were all done in reference to the common design of organizing the protest.

Example 3:

Scenario: A group of hackers, P, Q, R, and S, conspire to hack into a government database to steal sensitive information.

P identifies the vulnerabilities in the database.

Q writes the malicious code needed to exploit these vulnerabilities.

R sets up a server in Bangalore to receive the stolen data.

S contacts a buyer in Dubai to sell the stolen information.

Application of Section 8: Even if P was not aware of the specific actions taken by Q, R, and S, all these actions (identifying vulnerabilities, writing malicious code, setting up a server, contacting a buyer) are relevant facts. They can be used to prove the existence of the conspiracy to hack the database and P's involvement in it, as they were all done in reference to the common design of stealing sensitive information.

### **Section 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;
- (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.

### Simplified act

When Facts That Don't Seem Relevant Actually Matter

- (1) If they contradict any important fact or relevant detail.
- (2) If they, alone or with other facts, make it very likely or unlikely that an important fact is true or false.

Examples

(a) The question is whether A committed a crime in Chennai on a specific day. The fact that A was in Ladakh on that day is important. The fact that A was far from the crime scene around the time the crime happened, making it very unlikely (but not impossible) that A did it, is also important.

(b) The question is whether A committed a crime. The situation is such that the crime must have been done by either A, B, C, or D. Any fact that shows the crime could only have been done by A, and not by B, C, or D, is important.

Explanation using Example

Example 1:

Scenario: A theft occurred in a jewelry store in Mumbai on the night of January 15th. The police suspect Mr. Rajesh of committing the theft.

Application of Section 9:

Fact in Issue: Whether Mr. Rajesh committed the theft.

Relevant Fact: Mr. Rajesh's location on the night of January 15th.

Illustration:

Mr. Rajesh claims he was attending a wedding in Delhi on January 15th. The fact that Mr. Rajesh was in Delhi on the night of the theft is relevant because it makes it highly improbable that he could have committed the theft in Mumbai.

Additionally, if there is evidence showing that Mr. Rajesh was seen at the wedding in Delhi around the time of the theft, this fact becomes relevant as it further supports his alibi and makes it highly improbable that he committed the theft.



Example 2:

Scenario: A murder occurred in a park in Bangalore. The police have narrowed down the suspects to four individuals: Mr. Arun, Mr. Bhavesh, Ms. Charu, and Mr. Deepak.

Application of Section 9:

Fact in Issue: Whether Mr. Arun committed the murder.

Relevant Fact: Any fact that shows the murder could not have been committed by Mr. Bhavesh, Ms. Charu, or Mr. Deepak.

Illustration:

If Mr. Bhavesh was hospitalized at the time of the murder, this fact is relevant because it shows he could not have committed the murder.

If Ms. Charu was attending a conference in another city and there is video evidence of her presence at the conference, this fact is relevant as it makes it highly improbable that she committed the murder.

If Mr. Deepak was under police custody for an unrelated matter at the time of the murder, this fact is relevant because it shows he could not have committed the murder.

By eliminating Mr. Bhavesh, Ms. Charu, and Mr. Deepak as suspects through relevant facts, it becomes more probable that Mr. Arun committed the murder, making the facts relevant under Section 9.

## **Section 10: Facts tending to enable Court to determine amount are relevant in suits for damages.**

In suits in which damages are claimed, any fact which will enable the Court to determine the amount of damages which ought to be awarded, is relevant.

### **Simplified act**

In lawsuits where someone is asking for money because they were harmed, any information that helps the Court figure out how much money should be given is important.

## Explanation using Example

### Example 1:

Rajesh was involved in a car accident caused by the negligence of another driver, Suresh. Rajesh suffered injuries and his car was severely damaged. Rajesh files a suit for damages against Suresh. In this case, the following facts would be relevant to determine the amount of damages:

Medical bills and records showing the extent of Rajesh's injuries and the cost of his treatment.

Repair bills and estimates for the damage to Rajesh's car.

Evidence of lost wages due to Rajesh's inability to work while recovering from his injuries.

Testimony from medical experts about the long-term impact of Rajesh's injuries on his health and ability to work.

### Example 2:

Meera, a software engineer, was wrongfully terminated from her job by her employer, XYZ Pvt. Ltd. She files a suit for damages claiming wrongful termination. The following facts would be relevant to determine the amount of damages:

Meera's employment contract, which outlines her salary, benefits, and terms of employment.

Evidence of the job market conditions and the time it took Meera to find a new job.

Testimony from career experts about the impact of the wrongful termination on Meera's career prospects and future earnings.

Documentation of any emotional distress or mental health treatment Meera underwent as a result of the wrongful termination.

Records of any severance pay or compensation provided by XYZ Pvt. Ltd. at the time of termination.

## **Section 11: Facts relevant when right or custom is in question.**

Where the question is as to the existence of any right or custom, the following facts are relevant:

- (a) any transaction by which the right or custom in question was created, claimed, modified, recognised, asserted or denied, or which was inconsistent with its existence;
- (b) particular instances in which the right or custom was claimed, recognised or exercised, or in which its exercise was disputed, asserted or departed from.

#### 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 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.

#### Simplified act

When there is a question about the existence of any right or custom, the following facts are important:

- (a) Any event or action that created, claimed, changed, recognized, asserted, or denied the right or custom, or that was inconsistent with its existence;
- (b) Specific examples where the right or custom was claimed, recognized, exercised, disputed, asserted, or abandoned.

#### Example

The question is whether A has the right to fish in a certain area. Relevant facts include:

A document giving the fishing rights to A's ancestors,

A mortgage of the fishing rights by A's father,

A later grant of the fishing rights by A's father that conflicts with the mortgage,

Specific instances where A's father used the fishing rights,

Instances where A's neighbors stopped A's father from using the fishing rights.

Explanation using Example

### Example 1:

Scenario: Dispute over a village pathway

Context: Villagers in a rural area are in a dispute over whether a particular pathway through a field is a public right of way.

Relevant Facts:

Transaction: A 50-year-old village council record showing that the pathway was officially designated as a public right of way.

Claim: A letter from a former village headman asserting that the pathway has always been used by the public.

Modification: A recent village council meeting where it was decided to pave the pathway, indicating recognition of its public use.

Recognition: Testimonies from elderly villagers stating that they have used the pathway for decades without any obstruction.

Assertion/Denial: A recent complaint by a field owner claiming that the pathway is private and should not be used by the public.

Inconsistency: A lease agreement from 20 years ago where the field owner leased the land but excluded the pathway, indicating recognition of its public use.

### Example 2:

Scenario: Customary water usage rights

Context: Two farming communities are in conflict over the customary right to use water from a local river for irrigation.

Relevant Facts:

Transaction: An old agreement between the communities outlining shared water usage rights.

Claim: Historical records showing that both communities have been using the river water for irrigation for over a century.

Modification: A recent government order modifying the water usage schedule to accommodate seasonal changes.

Recognition: Annual community meetings where water usage rights are discussed and agreed upon.

Assertion/Denial: A recent legal notice from one community claiming exclusive rights to the river water.

Inconsistency: Instances where one community blocked the river flow, leading to disputes and subsequent resolutions through local mediation.

Example 3:

Scenario: Customary festival practices

Context: A dispute arises in a town over the right to organize a traditional festival procession through a particular street.

Relevant Facts:

Transaction: A historical document from the town's archives granting permission for the festival procession to use the street.

Claim: Statements from long-time residents affirming that the procession has always taken the same route.

Modification: A recent municipal order changing the route due to new traffic regulations.

Recognition: Photographs and videos from past years showing the procession on the disputed street.

Assertion/Denial: A petition from local shop owners opposing the procession route due to business disruptions.

Inconsistency: Instances where the procession was rerouted due to construction work, but reverted to the original route once the work was completed.

## **Section 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 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 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.

(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.

### **Simplified act**

Facts that show someone's state of mind (like intention, knowledge, good faith, negligence, rashness, ill-will, or goodwill) or their physical state or feelings are important when these states are relevant to the case.

#### **Explanation 1**

A fact that shows someone's state of mind must be directly related to the specific matter in question.

#### **Explanation 2**

If someone is on trial for a crime, their previous crimes are also relevant to the case.

#### **Illustrations**

(a) If A is accused of receiving stolen goods knowing they were stolen, and it is proven that he had other stolen items at the same time, this suggests he knew all the items were stolen.

(b) If A is accused of giving someone fake money knowing it was fake, and he had more fake money at the same time, this is relevant. If A was previously convicted of a similar crime, this is also relevant.

(c) If A sues B for damage caused by B's dog, which B knew was dangerous, the fact that the dog had bitten others before and they complained to B is relevant.



- (d) If the question is whether A knew the payee's name on a bill was fake, the fact that A had accepted similar bills before is relevant, showing he knew the payee was not real.
- (e) If A is accused of defaming B, previous publications by A about B showing ill-will are relevant to prove A's intention to harm B's reputation. The fact that there was no previous quarrel and A repeated what he heard shows A did not intend to harm B.
- (f) If A is sued by B for falsely claiming C was financially stable, causing B to trust C and suffer loss, the fact that others also believed C was stable is relevant to show A acted in good faith.
- (g) If A is sued by B for work done on A's house ordered by C, a contractor, A's defense that B's contract was with C is supported by the fact that A paid C for the work, showing A acted in good faith.
- (h) If A is accused of dishonestly keeping found property, the fact that a public notice of the loss was given where A was is relevant to show A did not believe the owner couldn't be found. If A knew the notice was fraudulent, this shows A's good faith.
- (i) If A is charged with shooting at B with intent to kill, the fact that A previously shot at B can be used to show A's intent.
- (j) If A is charged with sending threatening letters to B, previous threatening letters sent by A to B can be used to show the intention behind the letters.
- (k) If the question is whether A was cruel to B, his wife, their expressions of feelings towards each other shortly before or after the alleged cruelty are relevant.
- (l) If the question is whether A's death was caused by poison, statements made by A during his illness about his symptoms are relevant.
- (m) If the question is about A's health when he got life insurance, statements made by A about his health at that time are relevant.
- (n) If A sues B for providing a car that was not safe, causing injury to A, the fact that B was warned about the car's defect before is relevant. However, B's general negligence with other cars is not relevant.

(o) If A is tried for murdering B by shooting him, the fact that A shot at B on other occasions is relevant to show his intention. However, A's habit of shooting at people with intent to murder is not relevant.

(p) If A is tried for a crime, statements indicating his intention to commit that specific crime are relevant. General statements about his tendency to commit similar crimes are not relevant.

#### Explanation using Example

##### Example 1:

A is accused of intentionally causing harm to B by hitting him with a stick. During the trial, it is relevant to show that A had previously threatened B with harm on multiple occasions. This demonstrates A's state of mind and intention to harm B, making the previous threats relevant to the case.

##### Example 2:

A is accused of stealing a car. It is relevant to show that A was found in possession of multiple stolen car parts at the time of arrest. This indicates A's knowledge and intention regarding the stolen car, making the possession of other stolen car parts relevant to the case.

##### Example 3:

A is accused of negligence after a building he constructed collapsed, causing injuries. It is relevant to show that A had been previously warned about the poor quality of materials used in the construction. This demonstrates A's state of mind and negligence, making the previous warnings relevant to the case.

##### Example 4:

A is accused of defaming B by publishing false information about B's business practices. It is relevant to show that A had previously published similar defamatory statements about B. This indicates A's ill-will towards B and intention to harm B's reputation, making the previous publications relevant to the case.

##### Example 5:

A is accused of fraudulently selling counterfeit jewelry to B. It is relevant to show that A was found in possession of a large quantity of counterfeit jewelry at the time of the sale. This demonstrates A's knowledge and intention

regarding the counterfeit nature of the jewelry, making the possession of other counterfeit jewelry relevant to the case.

Example 6:

A is accused of causing a car accident due to reckless driving. It is relevant to show that A had been previously fined for reckless driving on multiple occasions. This indicates A's habitual rashness and negligence, making the previous fines relevant to the case.

Example 7:

A is accused of poisoning B. It is relevant to show that A had previously made statements expressing a desire to harm B. This demonstrates A's state of mind and intention to poison B, making the previous statements relevant to the case.

Example 8:

A is accused of cruelty towards his wife, B. It is relevant to show that A had previously expressed hostile feelings towards B shortly before the alleged acts of cruelty. This indicates A's state of mind and intention, making the previous expressions of hostility relevant to the case.

Example 9:

A is accused of misappropriating funds from his employer. It is relevant to show that A had previously been caught and warned for similar financial misconduct. This demonstrates A's state of mind and intention, making the previous warnings relevant to the case.

Example 10:

A is accused of causing bodily harm to B by administering a harmful substance. It is relevant to show that A had previously researched the effects of the substance and discussed its harmful potential with others. This indicates A's knowledge and intention, making the previous research and discussions relevant to the case.

### **Section 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.

### 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.

(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.

### Simplified act

When there's a question about whether someone did something by accident or on purpose, or if they did it with a certain knowledge or intention, it's important to consider if this act is part of a pattern of similar actions by the same person.

### Examples

(a) A is accused of burning down his house to get insurance money. It's important to know that A has lived in several houses, each of which he insured, each had a fire, and each time A got money from a different insurance company. This suggests the fires were not accidents.

(b) A works for B and is supposed to record the money he collects from B's debtors in a book. He records that he received less money than he actually did. The question is whether this mistake was accidental or on purpose. The fact that A has made other false entries in the same book, and that these false entries always benefit A, is important.

(c) A is accused of giving fake money to B. The question is whether this was an accident. The fact that A gave fake money to C, D, and E around the same time is important, as it shows that giving fake money to B was not an accident.

Explanation using Example

Example 1:

A is a shop owner in Mumbai who claims that a fire in his shop was accidental. However, it is discovered that A had previously owned three other shops in different parts of the city, each of which also caught fire under suspicious circumstances. In each case, A had insured the shops for large amounts and received substantial insurance payouts after the fires. These facts are relevant to determine whether the latest fire was truly accidental or part of a deliberate pattern to claim insurance money.

Example 2:

B is a cashier at a bank in Delhi. He is accused of embezzling funds by making false entries in the bank's ledger. On one occasion, B recorded that he received ₹50,000 from a customer, but the actual amount received was ₹1,00,000. The question is whether this discrepancy was accidental. It is found that B has made similar false entries in the past, each time recording a lower amount than what was actually received, and the discrepancies always benefited B financially. These facts are relevant to show that the false entry was intentional and not accidental.

Example 3:

C is accused of selling counterfeit medicines in a pharmacy in Chennai. The question is whether the sale of counterfeit medicines to a customer was accidental. It is discovered that C had sold counterfeit medicines to several other customers in the same week. These facts are relevant to show that the sale of counterfeit medicines was not an isolated incident but part of a deliberate pattern, indicating that the act was intentional.

Example 4:

D is a driver for a logistics company in Bangalore. He is accused of intentionally damaging goods during transit to claim compensation. The question is whether the damage was accidental. It is found that D had been involved in multiple incidents where goods were damaged under similar

circumstances, and in each case, he had filed for compensation. These facts are relevant to determine whether the damage was intentional.

Example 5:

E is a student in a university in Kolkata who is accused of cheating during an exam. The question is whether the cheating was accidental. It is discovered that E had been caught with unauthorized materials in previous exams as well. These facts are relevant to show that the cheating was part of a pattern of behavior, indicating that it was intentional rather than accidental.

#### **Section 14: Existence of course of business when relevant.**

When there is a question whether a particular act was done, the existence of any course of business, according to which it naturally would have been done, is a relevant fact.

Illustrations

(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.

#### **Simplified act**

When there's a question about whether a specific action was taken, it's important to consider the usual way things are done in that situation. This usual way can help determine if the action likely happened.

Examples

(a) The question is whether a specific letter was sent. It's important to know that normally, all letters placed in a certain spot are taken to the post office, and that this particular letter was placed in that spot.

(b) The question is whether a specific letter reached person A. It's important to know that the letter was sent in the usual way and was not returned to the sender.

Explanation using Example

### Example 1:

Scenario: A dispute arises in a company regarding whether a shipment of goods was sent to a client.

Application of Section 14:

Question: Did the company send the shipment to the client?

Relevant Facts:

It is the company's standard procedure to log all outgoing shipments in a dispatch register.

The dispatch register shows an entry for the shipment in question.

The company has a practice of sending all shipments through a specific courier service.

The courier service's records show that they picked up a shipment from the company on the date in question.

Conclusion: The existence of the company's standard procedure and the corresponding entries in the dispatch register and courier records are relevant facts that support the claim that the shipment was indeed sent.

### Example 2:

Scenario: A legal case involves determining whether a bank sent a loan approval letter to a customer.

Application of Section 14:

Question: Did the bank send the loan approval letter to the customer?

Relevant Facts:

The bank has a routine process where all approval letters are printed and placed in a specific outbox for mailing.

The bank's records show that the loan approval letter was printed and placed in the outbox.

The bank's mailing department logs all letters sent out each day, and the log shows an entry for the loan approval letter on the relevant date.

The customer did not receive any return mail indicating that the letter was undeliverable.

Conclusion: The bank's routine process and the corresponding records in the outbox and mailing log are relevant facts that support the claim that the loan approval letter was sent to the customer.

## **Admissions**

### **Section 15: Admission defined.**

An admission is a statement, oral or documentary or contained in electronic form, which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons, and under the circumstances, hereinafter mentioned.

#### **Simplified act**

An admission is a statement, whether spoken, written, or in electronic form, that hints at a fact that is important to the case or related to it. This statement must be made by certain people and under specific conditions, which are described later.

Explanation using Example

Example 1:

Rajesh is accused of stealing a laptop from his office. During a conversation with his colleague, he says, "I took the laptop because I needed it for a project." This statement is considered an admission because it suggests that Rajesh took the laptop, which is a fact in issue in the theft case. This oral statement can be used as evidence in court to infer that Rajesh committed the theft.

Example 2:

Priya is involved in a car accident, and there is a dispute about who was at fault. In a text message to her friend, she writes, "I was driving too fast and couldn't stop in time." This electronic statement is an admission because it suggests that Priya was driving recklessly, which is a relevant fact in determining fault in the accident. This message can be used as evidence in court to infer that Priya's driving contributed to the accident.

### **Section 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) 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

(iii) 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.

### **Simplified act**

(1) Statements made by someone involved in a court case, or by their representative (if the court believes the representative is allowed to speak for them), are considered admissions.

(2) Statements made by -

(i) people involved in a lawsuit in a representative role are not considered admissions unless they were made while they were in that role; or

(ii) people who have a financial or ownership interest in the case and make statements because of that interest; or

(iii) people from whom the parties in the lawsuit got their interest in the case, are considered admissions if they are made while the person still has that interest.

Explanation using Example

Example 1:

Ravi and Suresh are involved in a legal dispute over the ownership of a piece of land. During the court proceedings, Ravi's lawyer submits a written statement where Ravi admits that he had previously agreed to sell the land to Suresh. This statement is considered an admission under Section 16(1) of The

Bharatiya Sakshya Adhiniyam 2023 because it was made by Ravi, a party to the proceeding.

Example 2:

Priya is suing a company for breach of contract. During the trial, the company's authorized agent, Mr. Sharma, admits in an email that the company failed to deliver the goods on time. The court regards Mr. Sharma as an agent expressly authorized to make such statements on behalf of the company. Therefore, his admission is considered valid under Section 16(1) of The Bharatiya Sakshya Adhiniyam 2023.

Example 3:

Anita is suing on behalf of her deceased father's estate, claiming that her father was promised a piece of property by his business partner, Raj. During the proceedings, Raj admits that he had indeed promised the property to Anita's father. Since Raj made this statement while he was still in a position to make such promises, it is considered an admission under Section 16(2)(iii) of The Bharatiya Sakshya Adhiniyam 2023.

Example 4:

Vikram is involved in a lawsuit over the ownership of a family business. His uncle, who has a 30% stake in the business, makes a statement during a family meeting that Vikram is the rightful owner. Since the uncle has a proprietary interest in the business and made the statement in his capacity as a stakeholder, this statement is considered an admission under Section 16(2)(ii) of The Bharatiya Sakshya Adhiniyam 2023.

Example 5:

Meera is suing a trust for mismanagement of funds. The trustee, who was in charge at the time of the alleged mismanagement, admits in a recorded meeting that the funds were indeed mismanaged. Since the trustee made this admission while holding the position of trustee, it is considered an admission under Section 16(2)(i) of The Bharatiya Sakshya Adhiniyam 2023.

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

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.

#### Simplified act

Statements made by people about their own responsibilities or liabilities can be used as evidence against them in a lawsuit. These statements are considered admissions if they would be relevant in a case involving their responsibilities or liabilities, and if they were made while they were in that position or had that liability.

#### Example

A agrees to collect rent for B. B sues A because A didn't collect rent from C that was owed to B. A says that C didn't owe any rent to B. If C had said that he did owe rent to B, this statement would be an admission and could be used as evidence against A if A denies that C owed rent to B.

#### Explanation using Example

##### Example 1:

Ravi is a property manager for Suresh. Suresh sues Ravi for not collecting rent from tenant Priya. Ravi claims that Priya did not owe any rent to Suresh. However, Priya had previously stated in an email that she owed rent to Suresh. Priya's statement is an admission and is relevant against Ravi in the lawsuit, as it contradicts Ravi's claim that Priya did not owe rent.

##### Example 2:

Meera is responsible for managing the accounts of a company owned by Raj. Raj sues Meera for failing to collect a debt from a client, Anil. Meera argues that Anil did not owe any money to the company. However, Anil had earlier acknowledged in a recorded conversation that he owed money to Raj's company. Anil's acknowledgment is an admission and is relevant against

Meera in the lawsuit, as it disproves Meera's argument that Anil did not owe any money.

Example 3:

Arjun is a contractor hired by Neha to oversee the construction of her house. Neha sues Arjun for not paying the subcontractors. Arjun claims that the subcontractors were not owed any money. However, one of the subcontractors, Ramesh, had previously sent a letter to Arjun stating that he was owed a certain amount for his work. Ramesh's letter is an admission and is relevant against Arjun in the lawsuit, as it shows that the subcontractors were indeed owed money.

Example 4:

Kavita is an accountant for a business owned by Vikram. Vikram sues Kavita for not collecting payments from a customer, Sunil. Kavita denies that Sunil owed any payments. However, Sunil had earlier sent a text message to Kavita acknowledging his debt to Vikram's business. Sunil's text message is an admission and is relevant against Kavita in the lawsuit, as it contradicts her denial that Sunil owed any payments.

### **Section 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.

### **Simplified act**

Statements made by people that one of the parties in a lawsuit has specifically mentioned for information about the issue in dispute are considered admissions.

Example

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

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

Explanation using Example

Example 1:

Ravi and Suresh are in a legal dispute over the quality of a car that Ravi sold to Suresh. Suresh claims the car has several defects. During their conversation, Ravi tells Suresh, "You can ask Mr. Sharma, the mechanic who serviced the car, he knows everything about its condition." Mr. Sharma's statements about the car's condition would be considered admissions under Section 18 of the Bharatiya Sakshya Adhiniyam 2023.

Example 2:

Neha and Priya are in a court case regarding the authenticity of a painting that Neha sold to Priya. Priya believes the painting is a fake. Neha tells Priya, "If you don't believe me, you can ask Mr. Verma, the art dealer who authenticated the painting." Mr. Verma's statements about the painting's authenticity would be considered admissions under Section 18 of the Bharatiya Sakshya Adhiniyam 2023.

### **Section 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 statement by A that the 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.

### **Simplified act**

Admissions (statements that someone makes) are important and can be used as evidence against the person who made them or their representative. However, they cannot be used as evidence by the person who made them or their representative, except in the following situations:

(1) A statement can be used by the person who made it if it is the kind of statement that would still be important if the person were dead, and it would be relevant between other people under section 26.

(2) A statement can be used by the person who made it if it describes their state of mind or body at the time it was made, and their actions make it unlikely that the statement is false.

(3) A statement can be used by the person who made it if it is relevant for reasons other than being an admission.

### Examples

(a) If A and B are arguing about whether a document is real or fake, A can use a statement by B saying the document is real, and B can use a statement by A saying the document is fake. But A cannot use his own statement saying the document is real, and B cannot use his own statement saying the document is fake.

(b) If A, a ship captain, is on trial for intentionally wrecking the ship, and there is evidence that the ship went off course, A can use a logbook he kept showing the ship stayed on course. This is allowed because if A were dead, the logbook would be relevant between other people under section 26.

(c) If A is accused of a crime in Kolkata but shows a letter he wrote in Chennai on the same day, with a Chennai postmark, this letter can be used as evidence. This is because if A were dead, the letter would be relevant under section 26.

(d) If A is accused of knowingly having stolen goods, he can use evidence that he refused to sell them for less than their value. This is allowed because it explains his actions related to the issue.

(e) If A is accused of having fake money and knowing it was fake, he can use evidence that he asked an expert to check the money because he was unsure, and the expert said it was real. This is allowed because it explains his actions related to the issue.

### Explanation using Example

#### Example 1:

Scenario: Raj is accused of forging a property deed. During the investigation, Raj claims that the deed is genuine, while the opposing party, Priya, claims it is forged.

#### Application of Section 19:

Raj can prove a statement made by Priya where she admitted that the deed is genuine.

Priya can prove a statement made by Raj where he admitted that the deed is forged.

However, Raj cannot use his own statement to prove that the deed is genuine, nor can Priya use her own statement to prove that the deed is forged.

Example 2:

Scenario: Captain Arjun is on trial for allegedly causing his ship to deviate from its proper course, leading to its wreck.

Application of Section 19:

Arjun presents a logbook maintained by him in the ordinary course of his business, showing daily observations that indicate the ship was on its proper course.

This logbook can be used as evidence because, if Arjun were dead, it would be admissible between third parties under clause (b) of section 26.

Example 3:

Scenario: Sita is accused of committing a crime in Mumbai on a specific date. She produces a letter she wrote on that date, which is postmarked from Delhi.

Application of Section 19:

The date on the letter is admissible as evidence because, if Sita were dead, it would be admissible under clause (b) of section 26.

Example 4:

Scenario: Ravi is accused of knowingly receiving stolen goods. He wants to prove that he refused to sell the goods below their market value.

Application of Section 19:

Ravi can use his statement about refusing to sell the goods below their value as evidence. This is because the statement explains his conduct influenced by the facts in issue.

Example 5:



Scenario: Meera is accused of possessing counterfeit currency, which she allegedly knew was fake. She wants to prove that she asked an expert to examine the currency because she doubted its authenticity, and the expert told her it was genuine.

Application of Section 19:

Meera can use her statement about asking an expert to examine the currency and the expert's response as evidence. This is because the statement is explanatory of her conduct influenced by the facts in issue.

**Section 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.

**Simplified act**

You can't use someone's spoken words about what's in a document as evidence, unless: a. You can prove that you have the right to use a copy of the document instead of the original, according to the rules mentioned later, or b. There's a question about whether the document shown is real or not.

Explanation using Example

Example 1:

Ravi and Suresh are in a legal dispute over a property agreement. Ravi claims that Suresh orally admitted to the terms of the agreement during a conversation. However, the original property agreement document is missing. According to Section 20 of The Bharatiya Sakshya Adhiniyam 2023, Ravi's claim about Suresh's oral admission is not relevant unless Ravi can prove that he is entitled to provide secondary evidence of the document's contents, such as a photocopy or a witness who saw the document. If Ravi can show that the original document is lost and he has a valid reason to present secondary evidence, then the oral admission may become relevant.

Example 2:

Priya is suing her former employer, Mr. Sharma, for unpaid wages. Priya claims that Mr. Sharma orally admitted to owing her Rs. 50,000 during a phone call. Mr. Sharma denies this and insists that all payments were made as per the employment contract. The original employment contract is available and does not mention any unpaid wages. Under Section 20 of The Bharatiya Sakshya Adhiniyam 2023, Priya's claim about the oral admission is not relevant unless she can show that she is entitled to give secondary evidence of the contract's contents, or if the genuineness of the contract itself is in question. Since the original contract is available and its genuineness is not disputed, Priya's claim about the oral admission is not relevant in this case.

### **Section 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.

### **Simplified act**

In civil cases, any admission (statement accepting something as true) is not considered relevant if:

It was made with a clear condition that it should not be used as evidence.

It was made in a situation where the Court can understand that both parties agreed it should not be used as evidence.

Explanation: This rule does not mean that a lawyer is exempt from giving evidence about something if they are required to do so under sub-sections (1) and (2) of section 132.

Explanation using Example

Example 1:

Ravi and Suresh are involved in a civil dispute over a piece of land. During a private negotiation, Ravi admits to Suresh that he does not have the original documents proving his ownership of the land. However, Ravi makes this admission on the condition that Suresh will not use this admission as evidence

in court. Later, when the case goes to court, Suresh tries to present Ravi's admission as evidence. According to Section 21 of The Bharatiya Sakshya Adhiniyam 2023, this admission is not relevant because it was made on the express condition that it would not be used as evidence.

Example 2:

Priya and Anil are in a civil lawsuit regarding a breach of contract. During a mediation session, Priya admits that she did not fulfill her part of the contract. However, the mediation session was conducted under the understanding that all discussions would remain confidential and not be used as evidence in court. When Anil tries to use Priya's admission in court, the judge rules it inadmissible based on Section 21 of The Bharatiya Sakshya Adhiniyam 2023, as the admission was made under circumstances indicating that it should not be used as evidence.

Example 3:

During a settlement discussion, Meera admits to Rajesh that she owes him money but insists that this admission should not be used in court. Rajesh agrees to this condition. Later, when the case is brought to court, Rajesh attempts to use Meera's admission as evidence. The court, referring to Section 21 of The Bharatiya Sakshya Adhiniyam 2023, determines that the admission is not relevant because it was made with the express condition that it would not be used as evidence.

Example 4:

In a civil case involving a property dispute, Arjun admits to his neighbor, Neha, that he encroached on her land. This admission is made during a confidential settlement meeting where both parties agree that nothing discussed will be used in court. When Neha tries to introduce Arjun's admission as evidence, the court rules it inadmissible under Section 21 of The Bharatiya Sakshya Adhiniyam 2023, as the admission was made under circumstances indicating it should not be used as evidence.

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

A confession made by an accused person is irrelevant in a criminal proceeding, if 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.

### **Simplified act**

If someone accused of a crime confesses, that confession can't be used in court if the judge thinks it was made because the person was pressured, threatened, forced, or promised something by someone in authority. The judge must believe that the accused had a good reason to think confessing would help them or protect them from harm in the case.

However, if the judge believes that any pressure, threat, force, or promise that influenced the confession was completely removed before the confession was made, then the confession can be used in court.

Additionally, even if the confession was made because the accused was promised secrecy, tricked, drunk, or asked questions they didn't have to answer, or if they weren't told they didn't have to confess and that their confession could be used against them, the confession can still be used in court if it is otherwise relevant.

### **Explanation using Example**

#### **Example 1:**

Ravi is accused of theft and is taken into police custody. During interrogation, the police officer tells Ravi that if he confesses to the crime, he will be released on bail immediately and will not have to spend time in jail. Feeling pressured and wanting to avoid jail time, Ravi confesses to the theft. Later, in court,

Ravi's lawyer argues that the confession should be considered irrelevant because it was made under the inducement of being released on bail. The court agrees, finding that the confession was caused by an inducement from a person in authority (the police officer) and is therefore irrelevant in the criminal proceeding.

Example 2:

Sita is accused of fraud and is being questioned by the police. During the interrogation, the police threaten Sita, saying that if she does not confess, they will arrest her family members and charge them with complicity in the fraud. Fearing for her family's safety, Sita confesses to the crime. In court, Sita's lawyer argues that the confession should be disregarded because it was made under the threat of harm to her family. The court finds that the confession was caused by a threat from a person in authority and is thus irrelevant in the criminal proceeding.

Example 3:

Amit is accused of assault and is interrogated by the police. The police promise Amit that if he confesses, they will ensure that he receives a lighter sentence. Believing that he will benefit from a reduced sentence, Amit confesses to the assault. In court, Amit's lawyer contends that the confession should be considered irrelevant because it was made under the promise of a lighter sentence. The court agrees, determining that the confession was caused by a promise from a person in authority and is therefore irrelevant in the criminal proceeding.

Example 4:

Priya is accused of embezzlement and is questioned by the police while she is intoxicated. The police deceive Priya by telling her that they have irrefutable evidence against her and that confessing is her only option. Under the influence of alcohol and believing the deception, Priya confesses to the crime. In court, Priya's lawyer argues that the confession should be considered irrelevant because it was made while she was drunk and under deception. The court, however, finds that the confession is still relevant because it was not caused by inducement, threat, coercion, or promise, and the deception alone does not make it irrelevant.

Example 5:

Raj is accused of burglary and is interrogated by the police. The police do not inform Raj that he is not obligated to answer their questions and that his answers could be used against him in court. Raj, unaware of his rights, confesses to the burglary. In court, Raj's lawyer argues that the confession should be considered irrelevant because Raj was not warned about his rights. The court, however, finds that the confession is still relevant because the lack of warning does not make the confession irrelevant under the law.

### **Section 23: Confession to police officer.**

(1) No confession made to a police officer shall be proved as against a person accused of any offence.

(2) No confession made by 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 proved 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.

### **Simplified act**

(1) Any confession made to a police officer cannot be used as evidence against someone accused of a crime.

(2) Any confession made by a person while they are in police custody cannot be used against them unless it is made in front of a Magistrate:

However, if any fact is found out because of information given by a person accused of a crime while in police custody, the part of the information that directly relates to the discovered fact can be used as evidence, whether it is a confession or not.

Explanation using Example

Example 1:

Ravi is arrested on suspicion of theft and is taken to the police station for questioning. During the interrogation, Ravi confesses to the police officer that he stole a valuable necklace from a local jewelry store. According to Section 23 of The Bharatiya Sakshya Adhiniyam 2023, this confession cannot be used as evidence against Ravi in court because it was made to a police officer.

### Example 2:

Priya is in police custody for allegedly being involved in a drug trafficking ring. While in custody, she tells the police officer that she has hidden a stash of drugs in her house. The police then search her house and find the drugs exactly where Priya said they would be. Although Priya's confession to the police officer cannot be used against her in court, the fact that the drugs were found based on her information can be used as evidence. This is because the discovery of the drugs is a fact that was distinctly related to the information she provided while in custody.

### **Section 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.

## Simplified act

When multiple people are being tried together for the same crime, and one of them confesses to the crime in a way that implicates both themselves and others, the Court can consider that confession as evidence against both the person who confessed and the others involved.

### Explanation I

The term "Offence" in this section also includes helping someone commit the crime or trying to commit the crime.

### Explanation II

If a trial involves multiple people but one of them is not present because they have run away or ignored a court order, it will still be considered a joint trial for the purposes of this section.

### Illustrations

(a) A and B are being tried together for the murder of C. It is shown that A said, "B and I murdered C." The Court can use this confession as evidence against B.

(b) A is on trial for the murder of C. There is evidence that C was murdered by A and B, and that B said, "A and I murdered C." The Court cannot use this statement against A because B is not being tried together with A.

### Explanation using Example

#### Example 1:

Amit and Raj are being jointly tried for the robbery of a bank. During the investigation, Amit confesses to the police, saying, "Raj and I planned and executed the bank robbery together." This confession is presented in court. According to Section 24 of The Bharatiya Sakshya Adhiniyam 2023, the court can consider Amit's confession not only against Amit but also against Raj, since they are being tried together for the same offence.

#### Example 2:

Priya and Neha are jointly tried for the abetment of a fraud scheme. During the trial, Priya confesses, stating, "Neha and I encouraged Ramesh to commit the fraud." This confession is proved in court. Under Section 24, the court can take Priya's confession into account against both Priya and Neha, as they are jointly tried for the same offence of abetment.



### Example 3:

Ravi and Suresh are being jointly tried for attempting to smuggle illegal goods. During the trial, Ravi confesses, "Suresh and I tried to smuggle the goods across the border." This confession is proved in court. According to Section 24, the court can consider Ravi's confession against both Ravi and Suresh, as they are being tried together for the same offence.

### Example 4:

Anjali and Meera are being jointly tried for the murder of a business partner. Anjali confesses during the trial, saying, "Meera and I planned and executed the murder." This confession is presented in court. Under Section 24, the court can take Anjali's confession into account against both Anjali and Meera, as they are jointly tried for the same offence.

### Example 5:

Vikram and Arjun are being jointly tried for the offence of kidnapping. During the trial, Vikram confesses, "Arjun and I kidnapped the child for ransom." This confession is proved in court. According to Section 24, the court can consider Vikram's confession against both Vikram and Arjun, as they are being tried together for the same offence.

## **Section 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.

### Simplified act

Admissions are not final proof of the things admitted, but they can prevent someone from arguing otherwise later, as explained in the following rules.

### Explanation using Example

### Example 1:

Ravi and Suresh are involved in a civil dispute over the ownership of a piece of land. During a conversation, Ravi admits to Suresh that he had borrowed money from Suresh to buy the land. Later, in court, Ravi denies that he borrowed any money from Suresh.

Application of Section 25: Ravi's admission to Suresh is not conclusive proof that he borrowed money, meaning it alone cannot definitively prove the fact in

court. However, Ravi may be estopped (prevented) from denying the admission he made to Suresh because his earlier statement can be used against him to show inconsistency and lack of credibility.

Example 2:

Priya is suing her employer for wrongful termination, claiming she was fired without cause. During a meeting with her employer before the lawsuit, Priya admitted that she had been consistently late to work. In court, Priya argues that her termination was unjustified and unrelated to her tardiness.

Application of Section 25: Priya's admission about her tardiness is not conclusive proof that her termination was justified. However, her employer can use her admission to estop her from claiming that her termination was entirely without cause, as it shows a potential reason for her dismissal.

Example 3:

Anita and Rajesh are in a dispute over a contract. Anita claims that Rajesh agreed to deliver goods by a certain date. In an email, Rajesh admitted that he had agreed to the delivery date but later argues in court that there was no fixed date for delivery.

Application of Section 25: Rajesh's email admission is not conclusive proof of the agreed delivery date. However, Anita can use the email to estop Rajesh from denying the agreed date, as his earlier admission contradicts his current claim.

Example 4:

Sunita is accused of damaging her neighbor's property. In a casual conversation with another neighbor, Sunita admitted that she accidentally caused the damage. In court, Sunita denies any involvement in the damage.

Application of Section 25: Sunita's casual admission is not conclusive proof that she caused the damage. However, the neighbor can testify about Sunita's admission, which may estop Sunita from denying her involvement, as it shows inconsistency in her statements.

### **Statements by persons who can not be called as witnesses**

**Section 26: Cases in which statement of relevant fact by person who is dead or can not 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 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 acknowledgment 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 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 place mentioned, in Nagpur, for the purpose of conferring with him upon specified business, is a relevant fact.

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

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

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

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

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

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

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

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

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

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

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

### **Simplified act**

Statements, written or verbal, of important facts made by someone who is dead, cannot be found, can't give evidence, or whose presence would cause unreasonable delay or expense, are important in these situations:

(a) When the person talks about the cause of their own death or any related circumstances, and their death is being questioned. These statements matter whether or not the person thought they were going to die at the time they made them, and regardless of the type of case.

(b) When the person made the statement during their regular business activities. This includes entries in business books, professional duties, receipts of money or goods, commercial documents, or dated letters.

- (c) When the statement goes against the person's financial or property interests, or if it would have exposed them to criminal charges or a lawsuit.
- (d) When the statement gives the person's opinion on public rights, customs, or general public interest matters they were likely to know about, and was made before any dispute arose.
- (e) When the statement is about family relationships by blood, marriage, or adoption that the person had special knowledge of, and was made before any dispute about these relationships arose.
- (f) When the statement is about relationships by blood, marriage, or adoption of deceased persons, and is found in family-related documents like wills, family trees, tombstones, or portraits, made before any dispute.
- (g) When the statement is in any document like a deed or will related to specific transactions mentioned in section 11.
- (h) When the statement was made by many people and expresses their feelings or impressions about the matter in question.

#### Examples

- (a) If the question is whether A was murdered by B, or if A died from injuries during a rape, or if B can be sued by A's widow, statements by A about their death cause are important.
- (b) If the question is about A's birth date, an entry in a deceased surgeon's diary about delivering A's mother on a certain day is important.
- (c) If the question is whether A was in Nagpur on a specific day, a diary entry by a deceased lawyer about meeting A in Nagpur is important.
- (d) If the question is whether a ship left Mumbai harbor on a specific day, a letter from a deceased merchant about the ship's departure is important.
- (e) If the question is whether rent was paid to A for land, a letter from A's deceased agent about receiving the rent is important.
- (f) If the question is whether A and B were legally married, a statement by a deceased clergyman about marrying them is important.
- (g) If the question is whether A, who can't be found, wrote a letter on a specific day, the date on the letter is important.

(h) If the question is about the cause of a shipwreck, a protest by the absent captain is important.

(i) If the question is whether a road is public, a statement by a deceased village headman about the road is important.

(j) If the question is the price of grain on a specific day in a market, a statement by a deceased business person about the price is important.

(k) If the question is whether A, who is dead, was B's father, a statement by A saying B was his son is important.

(l) If the question is A's birth date, a letter from A's deceased father announcing A's birth is important.

(m) If the question is whether and when A and B were married, an entry by B's deceased father about the marriage date is important.

(n) If A sues B for a defamatory caricature, the comments of spectators about the caricature can be used as evidence.

#### Explanation using Example

##### Example 1:

Scenario: A murder case where the victim, Mr. A, was found dead under suspicious circumstances.

##### Application of the Act:

Mr. A had written a letter to his friend a day before his death, stating that he feared Mr. B was planning to kill him due to a business dispute.

Mr. A's letter is relevant under Section 26(a) as it pertains to the cause of his death and the circumstances leading to it.

##### Example 2:

Scenario: A property dispute where the ownership of a piece of land is in question.

##### Application of the Act:

Mr. C, who is now deceased, had maintained a diary in which he recorded all transactions related to the land, including payments received and agreements made.

The entries in Mr. C's diary are relevant under Section 26(b) as they were made in the ordinary course of business and pertain to the ownership and transactions of the land.

#### Example 3:

Scenario: A case involving the legitimacy of a marriage between Mr. D and Ms. E.

#### Application of the Act:

A deceased clergyman had written a letter to a friend, stating that he had officiated the marriage of Mr. D and Ms. E under circumstances that would make the marriage legally binding.

The clergyman's letter is relevant under Section 26(f) as it pertains to the existence of the marriage and was made before any dispute arose.

#### Example 4:

Scenario: A case where the public right to use a road is in question.

#### Application of the Act:

The deceased headman of the village had made a statement in a village meeting, asserting that the road in question was a public way used by villagers for generations.

The headman's statement is relevant under Section 26(d) as it pertains to the existence of a public right and was made before any controversy arose.

#### Example 5:

Scenario: A case involving the paternity of a child, Mr. F.

#### Application of the Act:

Mr. F's deceased father had written a letter to a friend, stating that Mr. F was his legitimate son born on a specific date.

The father's letter is relevant under Section 26(e) as it pertains to the existence of a relationship by blood and was made before any dispute arose.

#### Example 6:

Scenario: A case where the cause of a shipwreck is in question.



Application of the Act:

The captain of the ship, who cannot be found, had made a protest document stating the reasons for the shipwreck, including bad weather and navigational errors.

The captain's protest document is relevant under Section 26(h) as it pertains to the cause of the shipwreck and the captain's attendance cannot be procured.

Example 7:

Scenario: A case involving the price of grain on a specific day in a market.

Application of the Act:

A deceased business person had maintained records of grain prices in his ledger, which was kept in the ordinary course of business.

The entries in the business person's ledger are relevant under Section 26(j) as they pertain to the price of grain and were made in the ordinary course of business.

Example 8:

Scenario: A defamation case where Mr. G sues Mr. H for a libelous caricature displayed in a shop window.

Application of the Act:

The remarks made by a crowd of spectators who viewed the caricature and expressed their opinions on its similarity to Mr. G and its defamatory nature.

The spectators' remarks are relevant under Section 26(n) as they express feelings or impressions relevant to the matter in question.

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

Evidence given by a witness in a judicial proceeding, or before 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 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.

### **Simplified act**

If a witness gives evidence in a court case or to someone legally allowed to take it, that evidence can be used in a later court case or at a later stage of the same case to prove the truth of what the witness said, if:

The witness has died,

The witness cannot be found,

The witness is unable to give evidence,

The witness is being kept away by the opposing party, or

It would take too long or cost too much to get the witness to court, and the court thinks this is unreasonable.

This is only allowed if:

The later case is between the same parties or their representatives,

The opposing party in the first case had the right and chance to question the witness, and

The main issues in both cases are basically the same.

Explanation: A criminal trial or investigation is considered a case between the prosecutor and the accused for the purposes of this rule.

Explanation using Example

Example 1:

Scenario: A civil dispute over property ownership.

Details:

In 2018, Mr. Sharma testified in a court case regarding the ownership of a piece of land. He provided detailed evidence and was cross-examined by both parties.

In 2023, a new dispute arises over the same piece of land between the same parties (or their legal representatives).

Mr. Sharma has since passed away.

Application of Section 27:

The court can use Mr. Sharma's 2018 testimony as evidence in the 2023 case to prove the truth of the facts he stated, since he is no longer available to testify, and the previous proceeding involved the same parties and issues.

Example 2:

Scenario: A criminal trial involving a robbery.

Details:

In 2020, Ms. Gupta testified in a criminal trial against Mr. Khan, who was accused of robbery. She provided crucial evidence and was cross-examined by Mr. Khan's defense attorney.

In 2023, a new trial is initiated against Mr. Khan for a related robbery incident that occurred around the same time as the first one.

Ms. Gupta has moved abroad and cannot be located despite reasonable efforts.

Application of Section 27:

The court can use Ms. Gupta's 2020 testimony in the 2023 trial to establish the facts she stated, as she cannot be found, and the previous trial involved the same parties and similar issues.

Example 3:

Scenario: A commercial contract dispute.

Details:

In 2019, Mr. Verma testified in a court case regarding a breach of contract between Company A and Company B. His testimony was crucial and he was cross-examined by both parties.

In 2022, a new dispute arises between Company A and Company B over a different contract but involving similar terms and conditions.

Mr. Verma has become mentally incapacitated and is unable to testify.

Application of Section 27:

The court can use Mr. Verma's 2019 testimony in the 2022 case to prove the truth of the facts he stated, as he is now incapable of giving evidence, and the previous proceeding involved the same parties and similar issues.

### **Statements made under special circumstances**

#### **Section 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.

#### **Simplified act**

Records in business account books, including electronic ones, are important when the Court needs to look into a matter. However, these records alone are not enough to hold someone responsible.

Example

A sues B for one thousand rupees and shows entries in his account books that say B owes him this amount. These entries are important, but they are not enough by themselves to prove the debt without other evidence.

Explanation using Example

Example 1:

Rajesh runs a small electronics shop in Mumbai. He maintains a digital ledger where he records all transactions. One day, he sells a television to Suresh on credit, and the transaction is duly recorded in his digital ledger. A few months

later, Rajesh sues Suresh for non-payment of ₹25,000, the cost of the television. Rajesh presents the digital ledger entries as evidence in court. According to Section 28 of The Bharatiya Sakshya Adhiniyam 2023, these entries are relevant to the case. However, Rajesh must provide additional evidence, such as a signed invoice or witness testimony, to prove that Suresh indeed owes him the money. The ledger entries alone are not sufficient to charge Suresh with liability.

#### Example 2:

Meena owns a garment manufacturing business in Delhi. She maintains a physical book of accounts where she records all her business transactions. She supplies a bulk order of garments to a retailer, Anil, and records the transaction in her account book. Later, Meena claims that Anil has not paid ₹50,000 for the garments and decides to take legal action. In court, Meena presents her account book showing the entry of the transaction. Under Section 28 of The Bharatiya Sakshya Adhiniyam 2023, the court will consider the account book entries as relevant evidence. However, Meena will need to provide additional proof, such as delivery receipts or emails confirming the order and delivery, to establish Anil's liability. The account book entries alone are not enough to hold Anil responsible for the debt.

### **Section 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.

#### **Simplified act**

If a public servant or any other person, who is required by law, writes down a fact in an official book, register, record, or electronic record while doing their job, that written fact is considered important and relevant.

#### Explanation using Example

#### Example 1:

Ravi is involved in a property dispute with his neighbor, Suresh. Ravi claims that a piece of land belongs to him, while Suresh argues that it is his property.

To resolve the dispute, Ravi presents an entry from the land registry office, which is a public record maintained by the government. The entry, made by a government official in the performance of their duty, clearly states that the land in question was registered in Ravi's name. According to Section 29 of The Bharatiya Sakshya Adhiniyam 2023, this entry is a relevant fact and can be used as evidence in court to support Ravi's claim.

Example 2:

Priya is accused of not paying her income taxes for the past three years. During the investigation, the Income Tax Department retrieves electronic records from their database, which show that Priya had indeed filed her tax returns and paid the required taxes on time. These electronic records were made by the tax officials in the performance of their official duties. Under Section 29 of The Bharatiya Sakshya Adhiniyam 2023, these electronic records are considered relevant facts and can be used as evidence to prove Priya's compliance with tax laws.

### **Section 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.

#### **Simplified act**

Statements about important facts or related facts that are found in published maps or charts that are generally sold to the public are considered relevant facts.

Statements in maps or plans made by the Central Government or any State Government about things usually shown in such maps, charts, or plans are also considered relevant facts.

Explanation using Example

Example 1:

Ravi is involved in a property dispute with his neighbor, Suresh, over the exact boundary line between their two properties. Ravi presents a map published by the Survey of India, a government authority, which clearly shows the boundary

line as per the official records. According to Section 30 of The Bharatiya Sakshya Adhiniyam 2023, this map is considered a relevant fact in the court case because it is a published map made under the authority of the Central Government.

Example 2:

The state government of Maharashtra has created a detailed plan for the development of a new highway. This plan includes charts and maps showing the proposed route of the highway. During a public consultation, a local resident, Priya, raises concerns about the highway passing through her farmland. The government presents the official development plan, which includes the maps and charts, to demonstrate the planned route. Under Section 30 of The Bharatiya Sakshya Adhiniyam 2023, these maps and charts are relevant facts in addressing Priya's concerns because they are made under the authority of the State Government.

**Section 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.

**Simplified act**

When the Court needs to decide if a public fact exists, it can consider statements about that fact.

These statements can be found in:

Any Central or State Act (laws made by the central or state government)

Notifications from the Central or State Government published in the Official Gazette

Printed papers or electronic/digital versions that claim to be from the Official Gazette

These sources are considered relevant and can be used by the Court to form its opinion.

## Explanation using Example

### Example 1:

A dispute arises regarding the boundaries of a wildlife sanctuary in Maharashtra. The court needs to determine the official boundaries of the sanctuary. The court refers to a notification published in the Official Gazette by the Maharashtra State Government, which clearly outlines the boundaries of the sanctuary. This notification is considered a relevant fact under Section 31 of The Bharatiya Sakshya Adhiniyam 2023, and the court uses it to form an opinion on the boundaries.

### Example 2:

A case is brought before the court to determine whether a particular area in Rajasthan is classified as a drought-prone region. The court refers to a Central Government notification published in the Official Gazette, which lists all the drought-prone areas in India, including the specific area in question. This notification is a relevant fact under Section 31 of The Bharatiya Sakshya Adhiniyam 2023, and the court uses it to confirm the classification of the area as drought-prone.

## **Section 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.

### **Simplified act**

When a Court needs to understand the law of another country, it can use books or digital documents that claim to be officially published by that country's government and contain the law.

The Court can also use reports of court decisions from that country, as long as these reports are in books or digital documents that claim to be official reports of those decisions.



## Explanation using Example

### Example 1:

**Scenario:** A dispute arises in an Indian court regarding the interpretation of a specific law from the United Kingdom that is relevant to the case.

**Application:** The Indian court needs to understand the UK law to make a decision. The court refers to a book that is published under the authority of the UK Government and contains the relevant UK law. Additionally, the court looks at a digital report of a ruling by a UK court on a similar issue, which is available on an official UK government website.

**Outcome:** The Indian court considers both the printed book and the digital report as relevant evidence to form an opinion on the UK law, as per Section 32 of The Bharatiya Sakshya Adhiniyam 2023.

### Example 2:

**Scenario:** An Indian company is involved in a legal dispute over a contract with a company based in the United States. The contract includes a clause that refers to a specific US law.

**Application:** To resolve the dispute, the Indian court needs to interpret the US law mentioned in the contract. The court refers to an electronic version of a US law book that is published under the authority of the US Government. The court also reviews an online database of US court rulings to find relevant case law.

**Outcome:** The Indian court uses the electronic law book and the online database of court rulings as relevant evidence to understand and apply the US law in the context of the contract dispute, in accordance with Section 32 of The Bharatiya Sakshya Adhiniyam 2023.

## **How much of a statement is to be proved**

**Section 33: What evidence to be given when statement forms part of 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, 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.

### **Simplified act**

If a statement that is being used as evidence is part of a longer statement, a conversation, a document, a book, an electronic record, or a series of letters or papers, only the part that the Court thinks is necessary to understand the statement and the situation in which it was made should be used as evidence.

#### Explanation using Example

##### Example 1:

Scenario: A dispute arises over a business contract between two companies, Company A and Company B. Company A claims that Company B agreed to certain terms during a series of email exchanges.

Application of Section 33: During the court proceedings, Company A presents an email from Company B that contains the alleged agreement. However, this email is part of a longer thread of emails discussing various aspects of the contract.

Court's Decision: The court decides that to fully understand the context and the nature of the agreement, it is necessary to consider not just the single email but the entire thread of emails. Therefore, evidence is given of the entire email conversation to provide a complete picture of the agreement and the circumstances under which it was made.

##### Example 2:

Scenario: In a criminal case, the prosecution presents a recorded phone conversation between the accused and an accomplice. The conversation includes a statement where the accused allegedly admits to committing the crime.

Application of Section 33: The defense argues that the statement is taken out of context and that the entire conversation should be considered to understand the true nature of the statement.

Court's Decision: The court decides that to fully understand the accused's statement and the context in which it was made, it is necessary to listen to the entire recorded conversation. Therefore, evidence is given of the entire phone conversation, not just the isolated statement, to ensure a fair understanding of the circumstances.

Example 3:

Scenario: A legal dispute involves the interpretation of a clause in a will. The will is part of a larger document that includes several letters and notes written by the deceased.

Application of Section 33: One party argues that a specific clause in the will should be interpreted in a particular way based on a single note written by the deceased.

Court's Decision: The court decides that to fully understand the clause and the deceased's intentions, it is necessary to consider not just the single note but all related letters and notes. Therefore, evidence is given of the entire series of letters and notes to provide a comprehensive understanding of the deceased's intentions and the circumstances under which the will was written.

Example 4:

Scenario: In a defamation case, a plaintiff claims that a defamatory statement was made about them in a newspaper article. The article is part of a series of articles published over several weeks.

Application of Section 33: The defendant argues that the statement should be considered in the context of the entire series of articles to understand its true meaning and intent.

Court's Decision: The court decides that to fully understand the nature and effect of the alleged defamatory statement, it is necessary to consider the entire series of articles. Therefore, evidence is given of the entire series of articles to provide a complete context and understanding of the statement and the circumstances under which it was made.

### **Judgments of Courts when relevant**

#### **Section 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.

### **Simplified act**

If there is a judgment, order, or decree that legally stops a Court from hearing a case or conducting a trial, this is an important fact.

This fact is important when deciding if the Court should hear the case or conduct the trial.

Explanation using Example

Example 1:

Ravi filed a lawsuit against Shyam in 2021 claiming that Shyam owed him Rs. 5 lakhs for a business transaction. The court ruled in favor of Shyam, stating that there was no evidence to support Ravi's claim. In 2023, Ravi tries to file another lawsuit against Shyam for the same Rs. 5 lakhs, citing the same business transaction. According to Section 34 of The Bharatiya Sakshya Adhiniyam 2023, the previous judgment from 2021 is a relevant fact that bars the court from taking cognizance of Ravi's new suit. The court will dismiss Ravi's new lawsuit based on the previous judgment.

Example 2:

Meena was accused of theft and was tried in 2022. The court acquitted her, finding no substantial evidence to prove her guilt. In 2023, the same theft case is brought up again by the prosecution, attempting to retry Meena for the same crime. Under Section 34 of The Bharatiya Sakshya Adhiniyam 2023, the previous acquittal is a relevant fact that prevents the court from holding a new trial for the same offense. The court will refuse to take cognizance of the new trial based on the earlier acquittal.

### **Section 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.

### **Simplified act**

(1) A final decision, order, or ruling from a qualified Court or Tribunal, in cases involving wills, marriage, maritime issues, or bankruptcy, that gives or takes away any legal status from a person, or declares someone to have a certain status or right to something (not against a specific person but in general), is important when the existence of that legal status or right is relevant.

(2) Such a decision, order, or ruling is definite proof that -

(i) any legal status it gives to someone started when the decision, order, or ruling took effect;

(ii) any legal status it says someone has, started for that person when the decision, order, or ruling says it did;

(iii) any legal status it takes away from someone ended when the decision, order, or ruling says it ended or should end; and

(iv) anything it says someone is entitled to was that person's property from the time the decision, order, or ruling says it was or should be their property.

Explanation using Example

Example 1:

Scenario: Probate Jurisdiction

Ravi's father passed away, leaving behind a will that bequeaths his entire estate to Ravi. Ravi's stepbrother, Suresh, contests the will, claiming it is forged. The matter goes to the probate court, which examines the evidence and finally issues a judgment declaring the will to be valid and Ravi to be the rightful heir to the estate.

Application of Section 35:

The probate court's final judgment confers upon Ravi the legal character of the heir to his father's estate.

This judgment is relevant in any future disputes regarding Ravi's legal character as the heir.

The judgment is conclusive proof that Ravi's legal character as the heir accrued at the time the judgment was issued.

Example 2:

Scenario: Matrimonial Jurisdiction

Priya files for divorce from her husband, Raj, on the grounds of cruelty. The family court examines the evidence and issues a final decree of divorce, declaring Priya and Raj legally divorced.

Application of Section 35:

The family court's final decree confers upon Priya and Raj the legal character of being divorced individuals.

This decree is relevant in any future legal matters where the marital status of Priya or Raj is questioned.

The decree is conclusive proof that Priya and Raj's legal character as divorced individuals accrued at the time the decree was issued.

Example 3:

Scenario: Insolvency Jurisdiction

Anita, a businesswoman, is declared insolvent by a competent tribunal due to her inability to pay off her debts. The tribunal issues a final order declaring her insolvency and appoints an official receiver to manage her assets.

Application of Section 35:

The tribunal's final order confers upon Anita the legal character of an insolvent individual.

This order is relevant in any future legal matters where Anita's financial status is questioned.

The order is conclusive proof that Anita's legal character as an insolvent individual accrued at the time the order was issued.

Example 4:

Scenario: Admiralty Jurisdiction

A shipping company, Oceanic Ltd., claims ownership of a vessel that is currently in dispute. Another company, Maritime Inc., contests this claim, stating that the vessel belongs to them. The admiralty court examines the evidence and issues a final judgment declaring Oceanic Ltd. to be the rightful owner of the vessel.

Application of Section 35:

The admiralty court's final judgment confers upon Oceanic Ltd. the legal character of the owner of the vessel.

This judgment is relevant in any future disputes regarding the ownership of the vessel.

The judgment is conclusive proof that Oceanic Ltd.'s legal character as the owner of the vessel accrued at the time the judgment was issued.

### **Section 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.

### **Simplified act**

Judgments, orders, or decisions that are not covered by section 35 are still important if they deal with public matters that are relevant to the case being looked into. However, these judgments, orders, or decisions are not final proof of what they say.

#### **Example**

A is suing B for trespassing on his land. B claims there is a public path through the land, which A denies. If there was a previous decision in favor of B in a case where A sued C for trespassing on the same land, and C also claimed there was a public path, this previous decision is important to consider. However, it does not definitively prove that the public path exists.

#### **Explanation using Example**

##### **Example 1:**

Ravi owns a piece of agricultural land in a village. He files a lawsuit against his neighbor, Suresh, claiming that Suresh has been illegally using a part of his land for grazing cattle. Suresh defends himself by stating that there is a public pathway through Ravi's land that villagers have been using for years. Ravi denies the existence of any such pathway.

During the trial, Suresh presents a previous court order from a case where another neighbor, Mohan, had claimed the same public pathway through Ravi's land. In that case, the court had ruled in favor of Mohan, acknowledging the pathway's existence. This previous judgment is relevant to the current case as it pertains to the same public pathway issue. However, it is not conclusive proof that the pathway exists; the court in Ravi's case will still need to examine the evidence and make its own determination.

##### **Example 2:**

Priya is involved in a legal dispute with the local municipal corporation over the ownership of a small plot of land. The municipal corporation claims that the land is part of a public park, while Priya asserts that it is her private property.

In her defense, Priya presents a previous court order from a case where another resident, Anil, had a similar dispute with the municipal corporation



over a different section of the same park. In that case, the court had ruled in favor of Anil, stating that the section in question was indeed private property and not part of the public park.

This previous judgment is relevant to Priya's case as it deals with the same public park and similar ownership issues. However, it is not conclusive proof that Priya's plot is private property. The court will need to consider all the evidence presented in Priya's case before making a final decision.

**Section 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.

**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.

(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.

**Simplified act**

Judgments, orders, or decrees, other than those mentioned in sections 34, 35, and 36, are not important unless the existence of such judgment, order, or

decree is directly related to the case or is relevant under some other rule in this law.

### Examples

(a) A and B each sue C separately for defamation (saying something harmful about them). C claims that what he said is true, and the situation is such that it is likely true for both cases or neither. A wins the case against C because C couldn't prove his statement was true. This result doesn't matter in B's case against C.

(b) A accuses B of stealing a cow and B is found guilty. Later, A sues C for the cow, which B sold to C before being convicted. The judgment against B doesn't matter in the case between A and C.

(c) A wins a court order to take possession of land from B. C, who is B's son, kills A because of this. The existence of the court order is important because it shows why C might have committed the crime.

(d) A is accused of theft and it is also mentioned that A was previously convicted of theft. The previous conviction is important because it is directly related to the current case.

(e) A is on trial for murdering B. The fact that B had previously prosecuted A for defamation and A was convicted and sentenced is important because it shows a possible motive for the murder.

### Explanation using Example

#### Example 1:

Scenario: Raj and Simran both file separate defamation lawsuits against Aman, claiming that Aman published false statements about them in a local newspaper. Aman defends himself in both cases by asserting that the statements are true. Raj wins his case and is awarded damages because Aman fails to prove the truth of his statements. Simran's case is still pending.

Application of Section 37: The judgment in Raj's case is irrelevant to Simran's case. Even though both cases involve similar allegations against Aman, the outcome of Raj's case does not affect the legal proceedings or the judgment in Simran's case.

#### Example 2:

Scenario: Priya accuses Ramesh of stealing her bicycle and files a criminal case against him. Ramesh is convicted of theft. Later, Priya sues Suresh, who bought the bicycle from Ramesh before Ramesh's conviction, to recover her bicycle.

Application of Section 37: The judgment convicting Ramesh of theft is irrelevant in the civil case between Priya and Suresh. The fact that Ramesh was convicted does not automatically entitle Priya to recover the bicycle from Suresh.

#### Example 3:

Scenario: Anil wins a court case against Bharat for the possession of a piece of land. Bharat's son, Chandan, is enraged by the judgment and subsequently murders Anil.

Application of Section 37: The judgment in favor of Anil is relevant in the murder trial of Chandan. It shows the motive behind Chandan's act of murdering Anil, as it provides context for Chandan's anger and subsequent actions.

#### Example 4:

Scenario: Sunil is charged with theft and the prosecution also alleges that he has a prior conviction for theft. During the trial, the court considers the previous conviction as part of the evidence.

Application of Section 37: The previous conviction of Sunil is relevant in the current theft case. It is a fact in issue that can be used to establish a pattern of behavior or intent.

#### Example 5:

Scenario: Meera is on trial for the murder of Ravi. It is revealed during the trial that Ravi had previously prosecuted Meera for defamation and Meera was convicted and sentenced.

Application of Section 37: The previous conviction of Meera for defamation is relevant in the murder trial. It shows a possible motive for Meera's actions, as it provides a background to the animosity between Meera and Ravi.

**Section 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.

### **Simplified act**

If you are involved in a lawsuit or any legal proceeding, you can argue that a judgment, order, or decision that the other side is using against you (and is relevant under sections 34, 35, or 36) is not valid if: a. The court that made the decision did not have the authority to do so, or b. The decision was obtained through fraud or secret cooperation.

Explanation using Example

Example 1:

Ravi filed a lawsuit against Suresh for the recovery of a loan amounting to ₹5 lakhs. The court ruled in favor of Ravi, and Suresh was ordered to repay the amount. However, Suresh later discovered that Ravi had bribed a court official to influence the judgment. Suresh can now invoke Section 38 of The Bharatiya Sakshya Adhiniyam 2023 to prove that the judgment was obtained by fraud and should be invalidated.

Example 2:

Meena and Priya were involved in a property dispute over a piece of land. The court ruled in favor of Meena, stating that she was the rightful owner. Priya later found out that the court that delivered the judgment did not have the jurisdiction to decide on property matters of that particular area. Priya can use Section 38 of The Bharatiya Sakshya Adhiniyam 2023 to challenge the judgment on the grounds that it was delivered by an incompetent court.

### **Opinions of third persons when relevant**

#### **Section 39: Opinions of experts.**

Expert Opinions

(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.

### 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.

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

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

### **Simplified act**

#### Expert Opinions

(1) When the Court needs to decide on a matter involving foreign law, science, art, or any other specialized field, or to identify handwriting or fingerprints, the opinions of people who are experts in those areas are important and can be used as evidence. These people are called experts.

#### Examples

(a) If the question is whether A died from poison, the opinions of experts about the symptoms caused by the poison that A is believed to have died from are important.

(b) If the question is whether A was unable to understand what he was doing because of a mental disorder, the opinions of experts about whether A's symptoms indicate a mental disorder, and whether such a disorder usually makes people unable to understand their actions or know that what they are doing is wrong or illegal, are important.

(c) If the question is whether a certain document was written by A, and another document that is known to have been written by A is provided, the opinions of experts on whether both documents were written by the same person or by different people are important.

(2) When the Court needs to decide on any matter related to information stored or transmitted in a computer or any other electronic or digital form, the opinion of the Examiner of Electronic Evidence, as mentioned in section 79A of the Information Technology Act, 2000, is important and can be used as evidence.

Explanation: For this part, an Examiner of Electronic Evidence is considered an expert.

Explanation using Example

Example 1:

Scenario: A high-profile murder case in Mumbai involves the death of a businessman, Mr. Sharma, who was found dead in his apartment. The police suspect that he was poisoned.

Application of Section 39:

The court needs to determine whether Mr. Sharma's death was caused by poison.

The prosecution presents the testimony of Dr. Mehta, a forensic toxicologist, who is an expert in poisons.

Dr. Mehta explains the symptoms of the specific poison found in Mr. Sharma's body and confirms that these symptoms match those observed in Mr. Sharma's case.

The court considers Dr. Mehta's expert opinion as a relevant fact in determining the cause of death.

#### Example 2:

Scenario: In a property dispute in Delhi, a will is presented that allegedly bears the signature of the deceased, Mr. Verma. However, Mr. Verma's son claims that the signature is forged.

#### Application of Section 39:

The court needs to determine whether the signature on the will is genuinely Mr. Verma's.

The court calls upon Mr. Kapoor, a handwriting expert, to compare the signature on the will with other documents known to have been signed by Mr. Verma.

Mr. Kapoor analyzes the handwriting characteristics and provides his expert opinion that the signature on the will matches Mr. Verma's known signatures.

The court considers Mr. Kapoor's expert opinion as a relevant fact in deciding the authenticity of the will.

#### Example 3:

Scenario: A software company in Bengaluru is accused of hacking into a competitor's computer system and stealing confidential data. The case involves complex digital evidence.

#### Application of Section 39:

The court needs to form an opinion on the digital evidence presented.

The court appoints Mr. Rao, an Examiner of Electronic Evidence as per Section 79A of the Information Technology Act, 2000, to analyze the digital data.

Mr. Rao examines the logs, metadata, and other digital footprints to determine whether the hacking occurred and identifies the source of the breach.

The court considers Mr. Rao's expert opinion as a relevant fact in deciding the case.

#### Example 4:

Scenario: In a criminal case in Chennai, the defendant, Mr. Kumar, claims that he was not in his right mind when he committed the alleged crime due to a mental disorder.

Application of Section 39:

The court needs to determine whether Mr. Kumar was of unsound mind at the time of the crime.

The court calls upon Dr. Reddy, a psychiatrist, to evaluate Mr. Kumar's mental state.

Dr. Reddy examines Mr. Kumar and reviews his medical history, providing an expert opinion that Mr. Kumar's symptoms are consistent with a severe mental disorder that could impair his judgment.

The court considers Dr. Reddy's expert opinion as a relevant fact in determining Mr. Kumar's mental state during the crime.

#### **Section 40: Facts bearing upon opinions of experts.**

Facts, not otherwise relevant, are relevant if they support or are inconsistent with the opinions of experts, when such opinions are relevant.

Illustrations

(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.

#### **Simplified act**

Facts that are not usually important become important if they support or contradict the opinions of experts, when those expert opinions are important.

Examples

(a) The question is whether A was poisoned by a certain poison. The fact that other people who were poisoned by that poison showed certain symptoms, which experts say are or are not symptoms of that poison, is important.



(b) The question is whether a blockage in a harbor was caused by a certain sea-wall. The fact that other harbors, which are similar in other ways but do not have such sea-walls, also started getting blocked around the same time, is important.

Explanation using Example

Example 1:

Scenario: A criminal case is being tried in a court in Mumbai. The question is whether Mr. Sharma was poisoned by arsenic.

Application of Section 40:

Expert Opinion: A forensic toxicologist testifies that arsenic poisoning typically causes symptoms such as severe abdominal pain, vomiting, and diarrhea.

Relevant Facts: The prosecution presents evidence that other individuals who were poisoned by arsenic exhibited similar symptoms. This evidence supports the expert's opinion and is therefore relevant to the case.

Example 2:

Scenario: A civil case involves a dispute over the cause of flooding in a residential area in Chennai. The question is whether a newly constructed dam is responsible for the flooding.

Application of Section 40:

Expert Opinion: A hydrologist provides an expert opinion that the dam's construction could alter water flow patterns, potentially causing flooding.

Relevant Facts: The plaintiffs present evidence that other areas with similar topography and without such dams did not experience flooding during the same period. This evidence is relevant as it supports the expert's opinion that the dam could be the cause of the flooding.

Example 3:

Scenario: In a medical malpractice case in Delhi, the question is whether Dr. Kapoor's surgical procedure was performed negligently, leading to the patient's complications.

Application of Section 40:

**Expert Opinion:** A medical expert testifies that a specific surgical technique, if performed incorrectly, can lead to the complications experienced by the patient.

**Relevant Facts:** The defense presents evidence that other patients who underwent the same surgical procedure by different doctors did not experience such complications. This evidence is relevant as it may be inconsistent with the expert's opinion that Dr. Kapoor's technique was the cause of the complications.

**Example 4:**

**Scenario:** A property dispute in Bangalore involves the question of whether a particular construction method used by a builder is responsible for the structural damage to a building.

**Application of Section 40:**

**Expert Opinion:** A structural engineer provides an expert opinion that the construction method used is known to cause structural weaknesses.

**Relevant Facts:** The plaintiffs present evidence that other buildings constructed using the same method by the same builder have also shown similar structural damage. This evidence supports the expert's opinion and is therefore relevant to the case.

### **Section 41: Opinion as to handwriting and signature, when relevant.**

**Relevant Facts Regarding Handwriting and Electronic Signatures**

#### **(1) Handwriting**

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**

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) Electronic Signature

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.

### Simplified act

#### Important Information About Handwriting and Electronic Signatures

##### (1) Handwriting

When the Court needs to decide who wrote or signed a document, the opinion of someone who knows the handwriting of the person in question is important. This means if someone familiar with the handwriting says it was or wasn't written or signed by that person, their opinion matters.

Explanation: A person is considered familiar with someone else's handwriting if they have seen that person write, received documents from that person in response to their own letters, or regularly dealt with documents from that person in their job.

##### Example

Imagine the Court needs to decide if a letter was written by A, a merchant in Itanagar. B, a merchant in Bengaluru, has written to A and received letters that seem to be from A. C is B's clerk who handles B's mail, and D is B's broker who regularly reviews letters from A to give advice. The opinions of B, C, and D about whether the letter is in A's handwriting are important, even though none of them have seen A write.

##### (2) Electronic Signature

When the Court needs to decide if an electronic signature belongs to someone, the opinion of the Certifying Authority that issued the Electronic Signature Certificate is important.

#### Explanation using Example

##### Example 1:

Scenario: A dispute arises in a court in Mumbai regarding the authenticity of a handwritten will purportedly signed by Mr. Sharma, a wealthy businessman from Delhi.

##### Application of the Act:

The court needs to determine if the handwriting and signature on the will are indeed Mr. Sharma's.

Mr. Verma, a long-time business associate of Mr. Sharma, has exchanged numerous letters with him over the years.

Ms. Gupta, Mr. Verma's secretary, has regularly handled and filed these letters.

Mr. Khan, Mr. Verma's financial advisor, has frequently reviewed these letters for business advice.

##### Relevance:

The opinions of Mr. Verma, Ms. Gupta, and Mr. Khan regarding whether the handwriting and signature on the will are Mr. Sharma's are relevant to the court's decision, even though none of them have seen Mr. Sharma write in person.

##### Example 2:

Scenario: A legal case in Chennai involves a contract signed electronically by Ms. Reddy, a software engineer, and her employer.

##### Application of the Act:

The court needs to verify the authenticity of Ms. Reddy's electronic signature on the contract.

The Certifying Authority that issued Ms. Reddy's Electronic Signature Certificate is consulted.

##### Relevance:

The opinion of the Certifying Authority regarding the validity of Ms. Reddy's electronic signature is a relevant fact for the court to consider in determining the authenticity of the electronic contract.

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

When the Court has to form an opinion as to the existence of any general custom or right, the opinions, as to the existence of such custom or right, of persons who would be likely to know of its existence if it existed, are relevant.

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.

**Simplified act**

When the Court needs to decide if a general custom or right exists, it can consider the opinions of people who are likely to know about it.

Explanation. - "General custom or right" means customs or rights that are common to a large group of people.

**Example**

If the villagers of a certain village have the right to use water from a specific well, this is considered a general right under this section.

**Explanation using Example**

**Example 1:**

In a rural village in Maharashtra, there is a dispute over whether the villagers have the right to graze their cattle on a particular piece of land that has been used for this purpose for generations. The court needs to determine if this grazing right is a general custom. The court will consider the opinions of elderly villagers and local historians who have knowledge of the village's customs. If these individuals confirm that the land has traditionally been used for grazing by the villagers, their opinions will be relevant in establishing the existence of this general custom.

Example 2:

In a town in Kerala, a conflict arises regarding the use of a community pond for fishing. Some residents claim that the pond has always been used by the local fishermen for their livelihood, while others argue that it should be restricted for environmental reasons. The court must decide if there is a general right for the fishermen to use the pond. The court will seek the opinions of long-time residents, local leaders, and members of the fishermen's association who are familiar with the historical use of the pond. Their testimonies about the traditional fishing practices will be relevant in determining the existence of this general right.

**Section 43: Opinion as to usages, tenets, etc., when relevant.**

When the Court has to form an opinion as to -

- (i) the usages and tenets of any body of men or family;
- (ii) the constitution and governance of any religious or charitable foundation;
- (iii) the meaning of words or terms used in particular districts or by particular classes of people,

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

**Simplified act**

When the Court needs to decide on -

- (i) the customs and beliefs of a group of people or a family;
- (ii) the rules and management of any religious or charitable organization;
- (iii) the meaning of words or terms used in specific areas or by certain groups of people,

the opinions of people who have special knowledge about these matters are important and can be considered.

Explanation using Example

Example 1:

Scenario: A dispute arises in a family regarding the inheritance of property. The family follows a unique custom where the eldest daughter inherits the family estate, contrary to the general practice of the eldest son inheriting the property.

Application: The court needs to understand this specific family custom to make a fair judgment. Here, the opinion of an elder or a historian who has special knowledge about the family's customs and usages becomes relevant. Their testimony can help the court form an opinion on the matter.

#### Example 2:

Scenario: A conflict occurs over the management of a charitable trust dedicated to a religious cause. The dispute involves the interpretation of the trust's founding documents and the traditional practices followed by the trust.

Application: The court must determine the proper governance and constitution of the trust. In this case, the opinions of religious scholars or long-standing trustees who have special knowledge of the trust's operations and religious practices are relevant. Their insights can guide the court in understanding the trust's governance structure and resolving the dispute.

#### Example 3:

Scenario: A legal case involves the interpretation of a term used in a contract between two parties from different regions of India. The term has a specific meaning in one region that differs from its general usage.

Application: The court needs to ascertain the meaning of the term as understood in the particular district where one of the parties resides. Here, the opinion of a local expert or linguist who understands the regional usage of the term is relevant. Their testimony can help the court accurately interpret the contract's terms.

### **Section 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, or in prosecution under sections 82 and 84 of the Bharatiya Nyaya Sanhita, 2023.

## 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.

## Simplified act

When the Court needs to decide if two people are related, it can consider how people who know them well act towards them. This includes family members or others who have special knowledge about their relationship. This behavior can be used as evidence:

However, this kind of evidence alone cannot be used to prove a marriage in divorce cases or in certain criminal cases under the Bharatiya Nyaya Sanhita, 2023.

## Examples

- (a) If the question is whether A and B are married, the fact that their friends usually treat them as husband and wife is important.
- (b) If the question is whether A is B's legitimate son, the fact that family members always treated A as B's son is important.

## Explanation using Example

### Example 1:

Scenario: Determining the relationship between two individuals in a property dispute.

Situation: A property dispute arises where the court needs to determine if Mr. Rajesh and Ms. Sunita were married, as this would affect the inheritance rights of their children.

Application: The court considers the opinion of Mr. Rajesh's and Ms. Sunita's neighbors and friends, who have always treated and referred to them as husband and wife. This opinion, expressed by their conduct, is relevant to establish the relationship between Mr. Rajesh and Ms. Sunita.

Outcome: The court finds the neighbors' and friends' consistent treatment of Mr. Rajesh and Ms. Sunita as a married couple to be a relevant fact in



determining their marital status, although it is not sufficient on its own to prove the marriage conclusively.

Example 2:

Scenario: Establishing the legitimacy of a child in a family inheritance case.

Situation: In a case where the legitimacy of Mr. Anil as the son of Mr. Bhaskar is questioned, which impacts his right to inherit property from Mr. Bhaskar.

Application: The court looks at the conduct of Mr. Bhaskar's family members, who have always treated Mr. Anil as Mr. Bhaskar's legitimate son. This includes family members referring to Mr. Anil as Mr. Bhaskar's son in social gatherings, family functions, and in everyday interactions.

Outcome: The court considers the consistent treatment of Mr. Anil as Mr. Bhaskar's legitimate son by the family members as a relevant fact in establishing his legitimacy, although it is not the sole proof required to establish this fact conclusively.

#### **Section 45: Grounds of opinion, when relevant.**

Whenever the opinion of any living person is relevant, the grounds on which such opinion is based are also relevant.

Illustration

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

#### **Simplified act**

Whenever what someone thinks is important, the reasons why they think that way are also important.

Example

An expert can explain the tests they did to come up with their opinion.

Explanation using Example

Example 1:

Dr. Mehta, a forensic expert, is called to testify in a murder trial. He provides his opinion that the bloodstains found on the accused's clothing match the blood type of the victim. To support his opinion, Dr. Mehta explains the

scientific experiments and DNA tests he conducted in the laboratory, detailing the procedures and results that led him to this conclusion. The court considers both his opinion and the grounds on which it is based as relevant evidence.

Example 2:

In a property dispute case, Mr. Sharma, a handwriting expert, is asked to determine whether a signature on a disputed will is genuine. Mr. Sharma testifies that, in his expert opinion, the signature is a forgery. He supports his opinion by presenting a detailed analysis of the handwriting characteristics, comparing the disputed signature with known samples of the deceased's handwriting, and explaining the specific features that led him to conclude that the signature was not authentic. The court takes into account both his opinion and the detailed analysis he provided.

### **Character when relevant**

#### **Section 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.

### **Simplified act**

In civil cases, whether a person's character makes it likely or unlikely that they did something is not important, unless their character is shown through other relevant facts.

Explanation using Example

Example 1:

Scenario: A landlord files a civil lawsuit against a tenant for not paying rent for several months. The tenant argues that the landlord has a bad character and has been involved in fraudulent activities in the past.

Application of Section 46: In this case, the tenant's argument about the landlord's bad character is irrelevant to the issue of unpaid rent. The court will focus on whether the tenant has paid the rent or not, and not on the landlord's past character or conduct.

Example 2:

Scenario: A company sues a former employee for breach of contract, claiming that the employee shared confidential information with a competitor. The employee defends himself by stating that the company's owner has a reputation for dishonesty and unethical behavior.

Application of Section 46: The employee's defense about the company's owner's reputation is irrelevant to the breach of contract case. The court will examine the facts related to the alleged sharing of confidential information and the terms of the contract, rather than the character of the company's owner.

**Section 47: In criminal cases previous good character relevant.**

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

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

**Simplified act**

If someone is being prosecuted for a crime under sections 64 to 71 or sections 74 to 78 of the Bharatiya Nyaya Sanhita, 2023, or for trying to commit any of these crimes, and the question of consent comes up:

The character of the victim or their past sexual experiences with anyone else cannot be used as evidence to decide whether they gave consent or the quality of that consent.

Explanation using Example

Example 1:

Scenario: Riya files a complaint against Rajesh for sexual assault under Section 64 of the Bharatiya Nyaya Sanhita, 2023. During the trial, Rajesh's lawyer tries to introduce evidence that Riya had previous sexual relationships

with other individuals to argue that she might have consented to the act with Rajesh.

Application of Section 48: The court will not allow this evidence to be presented. According to Section 48 of the Bharatiya Sakshya Adhiniyam, 2023, Riya's past sexual experiences are not relevant to the issue of whether she consented to the act with Rajesh. The focus will remain on the specific incident in question and whether consent was given for that particular act.

#### Example 2:

Scenario: Anjali accuses her boss, Vikram, of sexual harassment under Section 67 of the Bharatiya Nyaya Sanhita, 2023. Vikram's defense team attempts to introduce evidence that Anjali has a history of flirtatious behavior with other colleagues to suggest that she might have consented to Vikram's advances.

Application of Section 48: The court will reject this evidence. Section 48 clearly states that Anjali's character or previous sexual experiences are not relevant to the issue of consent in this case. The court will only consider the facts related to the alleged harassment by Vikram and whether Anjali consented to his actions.

#### Example 3:

Scenario: Priya accuses her neighbor, Suresh, of attempting to rape her under Section 75 of the Bharatiya Nyaya Sanhita, 2023. Suresh's lawyer tries to introduce evidence that Priya had a consensual sexual relationship with another neighbor to argue that she might have consented to Suresh's advances.

Application of Section 48: The court will not permit this evidence. Under Section 48, Priya's previous sexual experiences with any other person are not relevant to the issue of consent in the case involving Suresh. The court will focus solely on the incident involving Suresh and whether Priya consented to his actions.

#### Example 4:

Scenario: Meera accuses her ex-boyfriend, Arjun, of stalking and attempting to sexually assault her under Section 76 of the Bharatiya Nyaya Sanhita, 2023. Arjun's defense team tries to introduce evidence that Meera had a history of consensual sexual relationships with other men to argue that she might have consented to Arjun's actions.

Application of Section 48: The court will exclude this evidence. According to Section 48, Meera's past sexual experiences are not relevant to the issue of consent in the case involving Arjun. The court will concentrate on the specific incident and whether Meera consented to Arjun's actions.

**Section 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.

**Simplified act**

In criminal trials, the fact that the person accused has a bad character does not matter, unless there is evidence showing that they have a good character. In that case, their bad character becomes important.

Explanation 1

This rule does not apply if the person's bad character is directly related to the case.

Explanation 2

A past conviction can be used as proof of bad character.

Explanation using Example

Example 1:

Ravi is on trial for theft. During the trial, the prosecution wants to introduce evidence that Ravi has been convicted of theft in the past. According to Section 49 of The Bharatiya Sakshya Adhiniyam 2023, this evidence is not relevant and cannot be introduced unless Ravi himself introduces evidence that he has a good character. If Ravi's defense team presents witnesses who testify that

Ravi is an honest and law-abiding citizen, then the prosecution can introduce Ravi's previous theft conviction to counter this claim.

Example 2:

Sita is accused of fraud. During the trial, the prosecution attempts to introduce evidence that Sita has a history of committing fraud in her previous jobs. According to Section 49, this evidence is not relevant unless Sita introduces evidence of her good character. However, if Sita's defense presents evidence that she has always been trustworthy and reliable in her previous jobs, the prosecution can then introduce her history of fraud to challenge this claim.

Example 3:

Ajay is on trial for assault. The prosecution wants to introduce evidence that Ajay has a history of violent behavior. According to Section 49, this evidence is not relevant unless Ajay introduces evidence of his good character. If Ajay's defense team presents witnesses who testify that Ajay is a peaceful and non-violent person, then the prosecution can introduce Ajay's history of violent behavior to counter this claim.

Example 4:

Meera is accused of embezzlement. During the trial, the prosecution wants to introduce evidence that Meera has been previously convicted of embezzlement. According to Section 49, this evidence is not relevant unless Meera introduces evidence of her good character. If Meera's defense team presents evidence that she has a reputation for being honest and trustworthy, then the prosecution can introduce her previous conviction to challenge this claim.

## **Section 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.

## Simplified act

In civil cases, the character of a person can be considered when deciding how much money they should get in damages.

Explanation. - In this section and sections 46, 47, and 49, "character" means both what people generally think about the person (reputation) and the person's usual behavior (disposition). However, except for section 49, you can only provide evidence about the person's general reputation and general behavior, not specific actions that show their reputation or behavior.

Explanation using Example

Example 1:

Ravi, a well-known businessman in his community, sues a local newspaper for defamation after it publishes a false story about him being involved in fraudulent activities. During the trial, the newspaper's lawyer argues that Ravi's reputation for honesty and integrity should be considered when determining the amount of damages he should receive. The court takes into account Ravi's good character and awards him higher damages because the false story significantly harmed his well-established reputation.

Example 2:

Priya, a school teacher, files a lawsuit against her neighbor for spreading false rumors that she is involved in illegal activities. Priya's lawyer presents evidence that she has a good reputation in her community and is known for her dedication to teaching and helping students. The court considers Priya's positive character and reputation when deciding the amount of damages she should receive, ultimately awarding her a substantial amount to compensate for the harm caused to her reputation.

Example 3:

Arjun, a software engineer, is involved in a car accident caused by another driver's negligence. Arjun sues the driver for damages, including compensation for his injuries and the impact on his career. During the trial, Arjun's lawyer presents evidence of his good character, highlighting his reputation as a hardworking and responsible individual. The court considers Arjun's character when determining the amount of damages, awarding him a higher amount to reflect the negative impact the accident has had on his life and career.

Example 4:

Meera, a social worker, files a lawsuit against a former employer for wrongful termination, claiming that she was fired based on false accusations of misconduct. Meera's lawyer presents evidence of her good character, including testimonials from colleagues and community members who vouch for her integrity and dedication to her work. The court takes Meera's positive reputation into account when deciding the amount of damages she should receive, awarding her a significant sum to compensate for the harm to her professional reputation and career prospects.

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

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

##### **Section 51: Fact judicially noticeable need not be proved.**

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

##### **Section 52: Facts of which Court shall take judicial notice.**

Judicial Notice of Facts

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



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

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

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

(i) the territory of India;

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

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

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

(2) In the cases referred to in sub-section (1) and also on all matters of public history, literature, science or art, the Court may resort for its aid to appropriate books or documents of reference and if the Court is called upon by any person to take judicial notice of any fact, it may refuse to do so unless and until such person produces any such book or document as it may consider necessary to enable it to do so.

### **Simplified act**

#### Judicial Notice of Facts

(1) The Court will automatically recognize the following facts without needing proof:

(a) All laws that are currently in effect in India, including those that apply outside of India.

(b) Any international treaties, agreements, or conventions that India is part of, and decisions made by India in international organizations.

(c) The proceedings of the Constituent Assembly of India, the Indian Parliament, and State Legislatures.

- (d) The official seals of all Courts and Tribunals.
  - (e) The official seals of Admiralty and Maritime Courts, Notaries Public, and any other seals authorized by the Constitution, Parliament, State Legislatures, or legal regulations in India.
  - (f) The appointment, names, titles, roles, and signatures of people holding public office in any State, if their appointment is announced in an Official Gazette.
  - (g) The existence, titles, and national flags of all countries or sovereigns recognized by the Indian Government.
  - (h) The divisions of time, geographical divisions of the world, and public holidays, festivals, and fasts announced in the Official Gazette.
  - (i) The territory of India.
  - (j) The start, continuation, and end of conflicts between the Indian Government and any other country or group.
  - (k) The names of the members and officers of the Court, their deputies, assistants, and other officials, as well as advocates and other authorized persons.
  - (l) The rules of the road for land and sea travel.
- (2) For the facts mentioned above and for matters of public history, literature, science, or art, the Court can refer to appropriate books or documents. If someone asks the Court to recognize a fact, the Court can refuse unless that person provides the necessary books or documents to support it.

#### Explanation using Example

##### Example 1:

Scenario: A dispute arises in a court in Mumbai regarding the validity of a contract signed under a new law passed by the Parliament of India.

Application of Section 52: The court will take judicial notice of the new law without requiring any party to prove its existence or content. This means the judge will acknowledge the law as valid and in force without needing additional evidence.

##### Example 2:

Scenario: During a trial in Delhi, a question arises about the official public holidays in India for the year 2023.

Application of Section 52: The court will take judicial notice of the public holidays as notified in the Official Gazette. The parties do not need to provide evidence of these holidays; the judge will recognize them as official.

#### Example 3:

Scenario: A case in Chennai involves a dispute over the recognition of a foreign sovereign state by the Government of India.

Application of Section 52: The court will take judicial notice of the existence and title of the foreign sovereign state as recognized by the Government of India. No party needs to prove this recognition; the court will acknowledge it based on official records.

#### Example 4:

Scenario: In a maritime dispute in Kolkata, the authenticity of a seal used by a Notary Public is questioned.

Application of Section 52: The court will take judicial notice of the seal of the Notary Public, as it is authorized by the Constitution or an Act of Parliament. The parties do not need to provide further proof of the seal's authenticity.

#### Example 5:

Scenario: A legal proceeding in Bengaluru involves the appointment of a new Chief Minister of Karnataka, and the opposing party challenges the legitimacy of the appointment.

Application of Section 52: The court will take judicial notice of the Chief Minister's appointment if it has been notified in the Official Gazette. The judge will recognize the appointment without requiring additional evidence.

#### Example 6:

Scenario: A case in Hyderabad involves a dispute over the rules of the road applicable to a traffic accident.

Application of Section 52: The court will take judicial notice of the rule of the road on land, as these are established and recognized laws. The parties do not need to provide evidence of these rules; the judge will apply them directly.

Example 7:

Scenario: During a trial in Jaipur, a question arises about the geographical divisions of India for determining jurisdiction.

Application of Section 52: The court will take judicial notice of the geographical divisions of India. The parties do not need to provide maps or other evidence; the judge will recognize the official divisions as per government records.

**Section 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.

**Simplified act**

In any legal case, you don't need to prove a fact if:

Both sides or their representatives agree it's true during the hearing.

Both sides agree it's true in writing before the hearing.

The rules say they have already admitted it's true in their legal documents.

However, the Court can still ask for proof of these facts even if they were admitted.

Explanation using Example

Example 1:

Scenario: Property Dispute

Context: Raj and Simran are involved in a property dispute over a piece of land. During the court proceedings, both parties agree in writing that the land in question was purchased by their grandfather and that they are the legal heirs.

Application of Section 53: Since both Raj and Simran have admitted in writing that the land was purchased by their grandfather and they are the legal heirs, this fact does not need to be proved in court. The court can proceed with the

case based on this admission, unless it decides to require further proof at its discretion.

#### Example 2:

##### Scenario: Breach of Contract

Context: A company, XYZ Pvt. Ltd., and a supplier, ABC Traders, are in a legal dispute over a breach of contract. During the hearing, both parties agree that the contract was signed on 1st January 2022 and that the terms included a delivery schedule of 100 units per month.

Application of Section 53: Since both XYZ Pvt. Ltd. and ABC Traders have admitted these facts during the hearing, these facts do not need to be proved in court. The court can rely on these admissions to focus on the actual breach of contract issue, unless it decides to require additional proof.

#### Example 3:

##### Scenario: Personal Injury Claim

Context: Priya files a personal injury claim against a driver, Arjun, for an accident that occurred on 15th March 2023. Both parties agree in their pleadings that the accident took place at the intersection of MG Road and Brigade Road.

Application of Section 53: Since Priya and Arjun have admitted in their pleadings that the accident occurred at the specified location, this fact does not need to be proved in court. The court can proceed with determining liability and damages based on this admission, unless it decides to require further proof.

#### Example 4:

##### Scenario: Loan Agreement

Context: Suresh sues his friend, Ramesh, for not repaying a loan. During the hearing, both parties agree that Ramesh borrowed ₹50,000 from Suresh on 1st June 2022 and agreed to repay it within six months.

Application of Section 53: Since both Suresh and Ramesh have admitted these facts during the hearing, these facts do not need to be proved in court. The court can focus on whether Ramesh has repaid the loan or not, unless it decides to require additional proof.

Example 5:

Scenario: Employment Dispute

Context: An employee, Anjali, files a case against her employer, DEF Corp., for wrongful termination. Both parties agree in writing that Anjali was employed from 1st January 2020 to 31st December 2022.

Application of Section 53: Since both Anjali and DEF Corp. have admitted these employment dates in writing, these facts do not need to be proved in court. The court can proceed with examining the reasons for termination, unless it decides to require further proof.

#### **CHAPTER IV: OF ORAL EVIDENCE**

##### **Section 54: Proof of facts by oral evidence.**

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

##### **Section 55: Oral evidence to be direct.**

Oral evidence 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 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.

### **Simplified act**

Oral evidence must always be direct. This means:

- (i) If it's about something that could be seen, the witness must be someone who actually saw it.
- (ii) If it's about something that could be heard, the witness must be someone who actually heard it.
- (iii) If it's about something that could be sensed in another way, the witness must be someone who actually sensed it that way.
- (iv) If it's about an opinion or the reasons for that opinion, the witness must be the person who has that opinion and knows the reasons for it.

However, expert opinions written in books that are commonly sold can be used as evidence if the author is dead, cannot be found, is unable to give evidence, or cannot be called as a witness without unreasonable delay or cost.

Additionally, if the oral evidence is about the existence or condition of a physical object (not a document), the Court can ask to see that object if it thinks it's necessary.

### **Explanation using Example**

#### **Example 1:**

#### **Scenario: A Road Accident**

Ravi was walking on the sidewalk when he witnessed a car accident at a busy intersection in Mumbai. He saw a red car run a red light and crash into a blue car that was crossing the intersection legally.

#### **Application of Section 55:**

**Fact Seen:** Ravi can provide oral evidence in court stating that he saw the red car run the red light and crash into the blue car. His testimony is direct evidence because he personally witnessed the event.

#### **Example 2:**

Scenario: A Theft in a Market

Priya was shopping at a local market in Delhi when she heard someone shout, "Thief! Thief!" She turned around and saw a man running away with a woman's purse.

Application of Section 55:

Fact Heard: Priya can provide oral evidence in court stating that she heard someone shout "Thief! Thief!" This is direct evidence because she personally heard the shout.

Fact Seen: Priya can also testify that she saw the man running away with the purse, which is direct evidence of what she saw.

Example 3:

Scenario: Smell of Gas Leak

Arjun was in his apartment in Bangalore when he smelled a strong odor of gas. He immediately called the building maintenance to report a potential gas leak.

Application of Section 55:

Fact Perceived by Sense of Smell: Arjun can provide oral evidence in court stating that he smelled gas. This is direct evidence because he personally perceived the smell.

Example 4:

Scenario: Expert Opinion on Handwriting

Dr. Mehta, a renowned handwriting expert, has written a book on handwriting analysis. Unfortunately, Dr. Mehta has passed away.

Application of Section 55:

Expert Opinion: In a forgery case, the court can accept the opinions expressed in Dr. Mehta's book as evidence, even though Dr. Mehta cannot testify in person. The book can be produced in court to prove the expert opinion.

Example 5:

Scenario: Condition of a Damaged Car



During a property damage case, the condition of a damaged car is in question. The car is available for inspection.

Application of Section 55:

Material Thing Inspection: The court may require the production of the damaged car for its inspection to verify its condition, rather than relying solely on oral evidence about the car's condition.

## **CHAPTER V: OF DOCUMENTARY EVIDENCE**

### **Section 56: Proof of contents of documents.**

The contents of documents may be proved either by primary or by secondary evidence.

### **Section 57: Primary evidence.**

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

Explanations

Explanation 1: Where a document is executed in several parts, each part is primary evidence of the document.

Explanation 2: Where a document is executed in counterpart, each counterpart being executed by one or some of the parties only, each counterpart is primary evidence as against the parties executing it.

Explanation 3: Where a number of documents are all made by one uniform process, as in the case of printing, lithography or photography, each is primary evidence of the contents of the rest; but, where they are all copies of a common original, they are not primary evidence of the contents of the original.

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

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

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

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

#### 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.

### **Simplified act**

#### Primary Evidence

Primary evidence is the actual document shown to the Court.

#### Explanations

Explanation 1: If a document is made in several parts, each part is considered primary evidence.

Explanation 2: If a document is made in different versions, with each version signed by different people, each version is primary evidence for the people who signed it.

Explanation 3: If multiple documents are created using the same process, like printing or photography, each document is primary evidence of the others. But if they are all copies of one original document, they are not primary evidence of the original.

Explanation 4: If an electronic or digital record is created or stored in multiple files at the same time or one after another, each file is primary evidence.

Explanation 5: If an electronic or digital record is taken from a reliable source, it is primary evidence unless someone disputes it.

Explanation 6: If a video recording is stored electronically and also transmitted or shared, each stored version is primary evidence.

Explanation 7: If an electronic or digital record is stored in different places on a computer, each storage, including temporary files, is primary evidence.

#### Illustration

If a person has several posters that were all printed at the same time from one original, any one of the posters is primary evidence of the contents of any other poster. However, none of the posters is primary evidence of the contents of the original document they were copied from.

#### Explanation using Example

##### Example 1:

Ravi and Suman enter into a rental agreement for a property in Delhi. The agreement is executed in two parts, one part kept by Ravi and the other by Suman. If a dispute arises and the matter goes to court, either Ravi or Suman can produce their respective part of the agreement as primary evidence of the rental agreement.

##### Example 2:

A company, XYZ Ltd., prints 500 copies of its annual report using the same printing process. If there is a need to present the annual report in court, any one of the 500 printed copies can be used as primary evidence of the contents of the report.

##### Example 3:

An electronic contract is signed between two parties, A and B, and stored in a cloud storage service. If a dispute arises, the electronic record stored in the cloud can be produced in court as primary evidence, provided it is not disputed.

##### Example 4:

A CCTV camera records a theft incident and stores the footage on a hard drive. The footage is also transmitted to a remote server. In court, both the footage stored on the hard drive and the footage on the remote server can be used as primary evidence of the theft incident.

##### Example 5:

A digital photograph is taken and stored on a smartphone. The same photograph is also uploaded to a social media platform. If the photograph is

needed in court, both the version on the smartphone and the one on the social media platform can be used as primary evidence.

Example 6:

A software company develops a program and stores its source code in multiple repositories for backup. If there is a legal dispute regarding the source code, any of the repositories containing the source code can be presented in court as primary evidence.

Example 7:

A person receives an important email and saves it in multiple folders within their email account. If the email needs to be presented in court, any of the saved copies in the different folders can be used as primary evidence.

### **Section 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.

(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.

### **Simplified act**

Secondary evidence includes

(i) Certified copies given according to the rules mentioned later;

(ii) Copies made from the original using machines that ensure the copy is accurate, and copies checked against these machine-made copies;

(iii) Copies made from or checked against the original document;

(iv) Copies of documents for people who did not sign them;

(v) Spoken descriptions of a document's contents by someone who has seen the document;

(vi) Spoken admissions;

(vii) Written admissions;

(viii) Testimony from a person who has examined a document, where the original document has many parts or is too large to be easily examined in court, and who is skilled in examining such documents.

Examples

(a) A photograph of an original document is secondary evidence of its contents, even if the photograph and the original haven't been compared, as long as it's proven that the photographed item was the original.

(b) A copy made by a copying machine and then compared with another copy is secondary evidence of the original letter's contents, if it's shown that the machine-made copy was made from the original.

(c) A copy made from another copy, but later checked against the original, is secondary evidence. However, a copy that hasn't been checked against the original is not secondary evidence, even if the copy it was made from was checked against the original.

(d) A spoken description of a copy checked against the original, or a spoken description of a photograph or machine-made copy of the original, is not secondary evidence of the original.

#### Explanation using Example

##### Example 1:

Ravi is involved in a property dispute with his neighbor, Suresh. The original property deed is with the local land registry office, and Ravi cannot obtain the original document. However, Ravi has a certified copy of the deed provided by the land registry office. Under Section 58 of The Bharatiya Sakshya Adhiniyam 2023, this certified copy is considered secondary evidence and can be used in court to prove the contents of the original property deed.

##### Example 2:

Priya is contesting a will in court. The original will was lost in a fire, but Priya has a photocopy of the will that was made before the fire. Additionally, Priya's lawyer has compared this photocopy with another photocopy that was made from the original will. According to Section 58, this photocopy, which has been compared with another copy made from the original, qualifies as secondary evidence and can be presented in court to establish the contents of the original will.

##### Example 3:

Anil is accused of forging a contract. The original contract is missing, but a witness, Raj, who had seen the original contract, provides an oral account of its contents. Under Section 58, Raj's oral account of the document he has seen

himself is considered secondary evidence and can be used in court to describe the contents of the original contract.

Example 4:

Meera is involved in a business dispute where the original invoices are too numerous to be conveniently examined in court. An expert accountant, who has examined all the original invoices, provides a summary of the accounts. According to Section 58, the expert's evidence is considered secondary evidence and can be used in court to present the contents of the numerous original invoices.

Example 5:

Sunita is trying to prove the terms of a lease agreement. The original lease document was signed by her landlord but not by her. Sunita has a counterpart of the lease agreement. Under Section 58, this counterpart is considered secondary evidence against the landlord, who did not execute it, and can be used in court to prove the terms of the lease agreement.

**Section 59: Proof of documents by primary evidence.**

Documents shall be proved by primary evidence except in the cases hereinafter mentioned.

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

Secondary evidence may be given of the existence, condition, or contents of a document in the following cases, namely:

- (a) when the original is shown or appears to be in the possession or power -
  - (i) of the person against whom the document is sought to be proved; or
  - (ii) of any person out of reach of, or not subject to, the process of the Court; or
  - (iii) of any person legally bound to produce it, and when, after the notice mentioned in section 64 such person does not produce it;
- (b) when the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest;

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

#### Explanation

For the purposes of:

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

#### **Simplified act**

#### Secondary Evidence

You can use secondary evidence (a copy or other proof) of a document's existence, condition, or contents in the following situations:

- (a) when the original document is:
  - (i) with the person you are trying to prove something against; or
  - (ii) with someone who is out of the court's reach or not under its control; or
  - (iii) with someone who is legally required to produce it, but they don't produce it even after being notified as mentioned in section 64;



- (b) when the person you are proving something against, or their representative, has admitted in writing that the original document exists, its condition, or its contents;
- (c) when the original document has been destroyed or lost, or if you can't produce it in a reasonable time for any reason that isn't your fault;
- (d) when the original document is not easily movable;
- (e) when the original document is a public document as defined in section 74;
- (f) when the original document is one for which a certified copy is allowed by this law or any other law in India to be used as evidence;
- (g) when the original documents are numerous accounts or other documents that can't be easily examined in court, and you need to prove the general result of the whole collection.

#### Explanation

For the purposes of:

- (i) clauses (a), (c), and (d), any secondary evidence of the document's contents is allowed;
- (ii) clause (b), the written admission is allowed;
- (iii) clause (e) or (f), only a certified copy of the document is allowed as secondary evidence;
- (iv) clause (g), someone who has examined the documents and is skilled in examining such documents can give evidence about the general result of the documents.

#### Explanation using Example

##### Example 1:

Ravi is in a legal dispute with his former business partner, Suresh, over the ownership of a piece of land. Ravi claims that the original sale deed, which proves his ownership, is in Suresh's possession. Despite multiple requests, Suresh refuses to produce the original document. Under Section 60(a)(i) of The Bharatiya Sakshya Adhiniyam 2023, Ravi can present a photocopy of the sale deed as secondary evidence in court, since the original is in the possession of the person against whom the document is sought to be proved.

#### Example 2:

Priya is trying to prove that she has repaid a loan to her friend, Anil. The original loan agreement was destroyed in a fire at Priya's house. Under Section 60(c) of The Bharatiya Sakshya Adhiniyam 2023, Priya can present a scanned copy of the loan agreement as secondary evidence, since the original has been destroyed and the loss was not due to her own fault or neglect.

#### Example 3:

A government office in Delhi holds the original birth certificate of Rajesh, which he needs to prove his age in a court case. Since the original birth certificate is a public document under Section 74, Rajesh can use a certified copy of the birth certificate as secondary evidence under Section 60(e) of The Bharatiya Sakshya Adhiniyam 2023.

#### Example 4:

Meena is involved in a case where she needs to prove the financial transactions of her company over the past ten years. The original documents consist of numerous account books and records that cannot be conveniently examined in court. Under Section 60(g) of The Bharatiya Sakshya Adhiniyam 2023, Meena can present a summary of the accounts prepared by a qualified accountant as secondary evidence to show the general result of the financial transactions.

#### Example 5:

Vikram is in a legal battle over the terms of a contract with his employer. The employer has admitted in writing that the original contract contains certain terms favorable to Vikram. Under Section 60(b) of The Bharatiya Sakshya Adhiniyam 2023, Vikram can use the written admission as secondary evidence to prove the contents of the original contract.

### **Section 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.

### **Simplified act**

This law does not prevent electronic or digital records from being used as evidence just because they are electronic or digital.

These electronic or digital records will be treated the same as other documents, as long as they follow the rules in section 63.

They will have the same legal effect, validity, and enforceability as any other document.

Explanation using Example

Example 1:

Ravi is involved in a property dispute with his neighbor, Suresh. Ravi has an email from Suresh where Suresh acknowledges that the disputed land belongs to Ravi. During the court proceedings, Ravi's lawyer presents the email as evidence. Suresh's lawyer objects, arguing that an email should not be considered valid evidence. However, under Section 61 of The Bharatiya Sakshya Adhiniyam 2023, the court accepts the email as valid evidence because electronic records are admissible and have the same legal effect as traditional paper documents.

Example 2:

Priya is suing a company for breach of contract. She has a digital copy of the contract saved on her computer, which was signed electronically by both parties. The company's lawyer argues that the digital contract should not be considered valid evidence. However, under Section 61 of The Bharatiya Sakshya Adhiniyam 2023, the court rules that the digital contract is admissible as evidence and has the same legal effect and enforceability as a paper contract, provided it meets the conditions laid out in Section 63.

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

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

## **Section 63: Admissibility of electronic records.**

(1) Notwithstanding anything contained in this Adhiniyam, any information contained in an electronic record which is printed on paper, stored, recorded or copied in optical or magnetic media or semiconductor memory which is produced by a computer or any communication device or otherwise stored, recorded or copied in any electronic form (hereinafter referred to as the computer output) shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and

computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence or any contents of the original or of any fact stated therein of which direct evidence would be admissible.

(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 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 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 in the ordinary course of the said activities.

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

(a) in standalone mode; or

(b) on a computer system; or

(c) on a computer network; or

(d) on a computer resource enabling information creation or providing information processing and storage; or

(e) through an intermediary,

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

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

(a) identifying the electronic record containing the statement and describing the manner in which it was produced;

(b) giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer or a communication device referred to in clauses (a) to (e) of sub-section (3);

(c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate,

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

(5) For the purposes of this section:

(a) information shall be taken to be supplied to a computer or communication device if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;

(b) a computer output shall be taken to have been produced by a computer or communication device whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment or by other electronic means as referred to in clauses (a) to (e) of sub-section (3).

### **Simplified act**

#### Section

(1) Even if this law says otherwise, any information stored electronically (like on a computer, phone, or other device) and then printed on paper or saved in any digital form (called "computer output") will be considered a document. This is true if certain conditions are met, and it can be used as evidence in court without needing the original document.

(2) The conditions for the "computer output" to be considered a document are:

(a) The information was created, stored, or processed by a computer or device that was regularly used for such activities by someone who had the right to use it.

(b) During that time, the type of information was regularly entered into the computer as part of normal activities.

(c) The computer or device was working properly during the important times, or if it wasn't, it didn't affect the accuracy of the information.

(d) The information in the electronic record matches what was entered into the computer during normal activities.

(3) If the information was created, stored, or processed by one or more computers or devices over a period of time, whether:

(a) used alone;

(b) as part of a computer system;

(c) on a network;

(d) using resources that help create or store information; or

(e) through an intermediary,

all these computers or devices will be considered as one single computer or device for this section.

(4) When using an electronic record as evidence, a certificate must be provided with it. This certificate should:

(a) Identify the electronic record and explain how it was created.

(b) Provide details about the device used to create the record to show it was made by a computer or device mentioned earlier.

(c) Address any conditions mentioned in point (2).

The certificate should be signed by the person in charge of the computer or device, or the person managing the relevant activities, and an expert. This certificate will be considered evidence, and it should be based on the best knowledge and belief of the person signing it.

(5) For this section:

(a) Information is considered supplied to a computer or device if it is entered in any appropriate way, either directly or with the help of other equipment.

(b) A computer output is considered produced by a computer or device whether it was made directly by it or with the help of other equipment or electronic means mentioned earlier.

Explanation using Example

Example 1:

Scenario: A bank fraud case involving forged electronic bank statements.

Details: Mr. Sharma is accused of committing bank fraud by submitting forged electronic bank statements to secure a loan. The prosecution presents printed copies of the electronic bank statements as evidence. These statements were originally stored on the bank's secure server and were regularly updated and maintained by the bank's IT department.

Application of Section 63:

The printed copies of the electronic bank statements are admissible as evidence under Section 63 of The Bharatiya Sakshya Adhiniyam 2023.

The bank's IT department provides a certificate identifying the electronic records, describing how they were produced, and confirming that the records were regularly fed into the bank's computer system in the ordinary course of business.

The certificate is signed by the head of the IT department, who is in charge of the computer system, and it states that the computer was operating properly during the relevant period.

Example 2:

Scenario: A dispute over the terms of a digital contract.

Details: Ms. Gupta and Mr. Verma entered into a digital contract for the sale of goods. The contract was created, stored, and signed electronically using a secure online platform. A dispute arises regarding the terms of the contract, and Ms. Gupta presents a printed copy of the electronic contract as evidence in court.

Application of Section 63:

The printed copy of the electronic contract is admissible as evidence under Section 63 of The Bharatiya Sakshya Adhiniyam 2023.

The online platform provides a certificate identifying the electronic contract, describing the manner in which it was produced, and confirming that the contract was created and stored on their secure server.

The certificate includes details of the platform's computer system and is signed by the platform's technical manager, who is responsible for the system's operation. The certificate states that the system was functioning correctly during the creation and storage of the contract.

Example 3:

Scenario: A criminal case involving threatening emails.

Details: Mr. Khan is accused of sending threatening emails to his colleague, Mr. Singh. The police retrieve the emails from Mr. Singh's email account and present printed copies of the emails as evidence in court.

Application of Section 63:

The printed copies of the emails are admissible as evidence under Section 63 of The Bharatiya Sakshya Adhiniyam 2023.

The IT department of Mr. Singh's company provides a certificate identifying the emails, describing how they were retrieved from the email server, and confirming that the emails were regularly stored on the company's email server in the ordinary course of business.

The certificate is signed by the IT manager, who is in charge of the email server, and it states that the server was operating properly during the relevant period.

Example 4:

Scenario: A civil case involving digital photographs as evidence.



Details: In a property dispute, Mr. Patel presents digital photographs of the property boundaries as evidence. The photographs were taken using a digital camera and stored on a computer.

Application of Section 63:

The digital photographs, when printed, are admissible as evidence under Section 63 of The Bharatiya Sakshya Adhiniyam 2023.

Mr. Patel provides a certificate identifying the photographs, describing how they were taken and stored on the computer, and confirming that the computer was used regularly to store such information.

The certificate is signed by Mr. Patel, who is in charge of the computer, and it states that the computer was operating properly during the relevant period.

Example 5:

Scenario: A business dispute involving electronic invoices.

Details: A company, ABC Pvt. Ltd., is involved in a dispute with a supplier over unpaid invoices. The company presents printed copies of electronic invoices that were generated and stored using their accounting software.

Application of Section 63:

The printed copies of the electronic invoices are admissible as evidence under Section 63 of The Bharatiya Sakshya Adhiniyam 2023.

The company's accounting department provides a certificate identifying the electronic invoices, describing how they were generated and stored using the accounting software, and confirming that the software was used regularly for such purposes.

The certificate is signed by the head of the accounting department, who is responsible for the software, and it states that the software was operating properly during the relevant period.

## **Section 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:

- (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.

### **Simplified act**

Secondary evidence of the contents of the documents mentioned in clause (a) of section 60 cannot be given unless the party wanting to present this secondary evidence has already given notice to the party who has the document, or to their lawyer or representative, to produce it as required by law. If no specific notice is required by law, then a reasonable notice as decided by the Court must be given:

However, such notice is not needed to make secondary evidence acceptable in the following situations, or in any other situation where the Court decides it is not necessary:

- (a) when the document itself is a notice;
- (b) when, due to the nature of the case, the other party must know they will need to produce it;
- (c) when it is shown that the other party got the original document through fraud or force;
- (d) when the other party or their agent has the original document in Court;

- (e) when the other party or their agent has admitted that the document is lost;
- (f) when the person who has the document is out of the Court's reach or not under the Court's authority.

#### Explanation using Example

##### Example 1:

Scenario: Ramesh is involved in a property dispute with Suresh. Ramesh claims that he has a lease agreement signed by both parties, but the original document is with Suresh.

Application of Section 64: Ramesh wants to present a photocopy of the lease agreement as evidence in court. According to Section 64 of the Bharatiya Sakshya Adhiniyam 2023, Ramesh must first give Suresh a notice to produce the original lease agreement. If Suresh fails to produce the original document after receiving the notice, Ramesh can then present the photocopy as secondary evidence.

##### Exceptions:

If Suresh admits in court that he has lost the original lease agreement, Ramesh does not need to give a notice to produce.

If Suresh brings the original lease agreement to court, Ramesh can directly refer to it without needing to give prior notice.

If Ramesh can prove that Suresh obtained the original lease agreement by fraud or force, the court may allow the photocopy as evidence without requiring a notice to produce.

##### Example 2:

Scenario: Priya is suing her former employer for wrongful termination. She claims that her termination letter, which is crucial to her case, is in the possession of her former employer.

Application of Section 64: Priya needs to present a copy of the termination letter in court. She must first send a notice to her former employer, asking them to produce the original termination letter. If the employer does not produce the original document after receiving the notice, Priya can then use the copy as secondary evidence.

##### Exceptions:

If the termination letter itself is a notice, Priya does not need to send a separate notice to produce.

If Priya's former employer acknowledges in court that they have the original termination letter but refuse to produce it, Priya can use the copy as evidence.

If the former employer is out of the court's jurisdiction or unreachable, Priya can present the copy without sending a notice to produce.

Example 3:

Scenario: Anil is in a legal battle over a contract dispute with his business partner, Sunil. Anil claims that the original contract, which is crucial to the case, is with Sunil.

Application of Section 64: Anil wants to use a scanned copy of the contract as evidence. He must first send a notice to Sunil, requesting him to produce the original contract. If Sunil does not comply, Anil can then present the scanned copy as secondary evidence.

Exceptions:

If Sunil admits in court that he has lost the original contract, Anil does not need to send a notice to produce.

If Sunil brings the original contract to court, Anil can refer to it directly without prior notice.

If Anil can prove that Sunil obtained the original contract by fraudulent means, the court may allow the scanned copy as evidence without requiring a notice to produce.

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

If a document is alleged to be signed or 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.

### **Simplified act**

If someone claims that a document has been signed or written, either fully or partially, by a specific person, they must prove that the signature or the handwriting on the document actually belongs to that person.

## Explanation using Example

### Example 1:

Ravi is accused of forging a signature on a property sale agreement. The prosecution presents the document in court, claiming that Ravi signed it. According to Section 65 of The Bharatiya Sakshya Adhiniyam 2023, the prosecution must prove that the signature on the document is indeed Ravi's. They might call a handwriting expert to compare the signature on the document with other known samples of Ravi's signature. If the expert confirms that the signatures match, the court can accept the document as evidence against Ravi.

### Example 2:

Priya receives a handwritten letter threatening her with harm if she does not pay a certain amount of money. She suspects that the letter was written by her former business partner, Amit. To prove this in court, Priya must show that the handwriting in the letter matches Amit's handwriting. She can present other documents written by Amit, such as business contracts or personal notes, and call a handwriting expert to testify that the handwriting in the threatening letter is the same as Amit's. If the expert's testimony is convincing, the court can accept the letter as evidence that Amit wrote it.

## **Section 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.

### **Simplified act**

If someone claims that an electronic signature (except a secure electronic signature) belongs to a person, they must prove that it is indeed that person's signature.

## Explanation using Example

### Example 1:

Ravi is an entrepreneur who enters into a business contract with Sita through email. The contract is signed electronically by both parties. Later, Sita claims that she never signed the contract and that the electronic signature attributed

to her is forged. According to Section 66 of The Bharatiya Sakshya Adhiniyam 2023, Ravi must prove that the electronic signature on the contract is indeed Sita's. This could involve presenting evidence such as the digital certificate used to sign the document, logs from the email service provider, or expert testimony on the validity of the electronic signature.

#### Example 2:

Priya receives an email from her bank asking her to sign an electronic document to update her account details. She signs the document using her electronic signature. Later, Priya notices unauthorized transactions in her account and claims that she never signed the document. The bank, in this case, must prove that the electronic signature on the document is indeed Priya's. They might use evidence such as the secure electronic signature mechanism, audit trails, or the digital certificate issued to Priya to establish the authenticity of the signature.

### **Section 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, unless its execution by the person by whom it purports to have been executed is specifically denied.

### **Simplified act**

If a document needs to be witnessed by law, it cannot be used as evidence in court until at least one of the witnesses who signed it is called to confirm that it was properly signed. This is only if there is a witness who is still alive, can be brought to court, and is able to testify.

However, you do not need to call a witness to confirm the signing of a document (except for a will) if the document has been registered according to the Indian Registration Act, 1908, unless someone specifically denies that the person who supposedly signed it actually did so.

Explanation using Example

#### Example 1:

Ravi wants to sell his house to Suresh. According to Indian law, the sale deed must be attested by two witnesses. Ravi and Suresh sign the sale deed in the presence of two witnesses, Anil and Sunita. Later, Suresh claims that the sale deed is not valid. To prove the validity of the sale deed in court, Ravi needs to call either Anil or Sunita (the attesting witnesses) to testify that they witnessed the signing of the document. If Anil or Sunita is alive, capable of giving evidence, and can be summoned by the court, their testimony will be required to prove the execution of the sale deed.

#### Example 2:

Meera takes a loan from a bank and signs a mortgage deed, which is attested by two witnesses, Ramesh and Priya. The mortgage deed is also registered under the Indian Registration Act, 1908. Later, Meera disputes the mortgage deed, claiming she never signed it. In this case, since the mortgage deed is registered, it is not necessary to call Ramesh or Priya to prove its execution unless Meera specifically denies that she signed the document. If Meera denies her signature, then the bank may need to call Ramesh or Priya to testify that they witnessed Meera signing the mortgage deed.

### **Section 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.

#### Simplified act

If you can't find any witness who signed the document, you need to prove two things:

At least one witness's signature is in their own handwriting.

The person who signed the document also signed it in their own handwriting.

Explanation using Example

#### Example 1:

Ravi had signed a loan agreement with his friend Suresh, and the document was attested by two witnesses, Amit and Raj. Years later, a dispute arises, and

Ravi claims that the document is not valid because neither Amit nor Raj can be found to testify. According to Section 68 of The Bharatiya Sakshya Adhiniyam 2023, Suresh can still prove the validity of the document by showing that the attestation by at least one of the witnesses, say Amit, is in Amit's handwriting. Additionally, Suresh must also prove that Ravi's signature on the document is indeed in Ravi's handwriting. This can be done through handwriting experts or other evidence.

Example 2:

Priya and her brother Arjun had a property agreement attested by their uncle, Mr. Sharma. After Mr. Sharma's death, a dispute arises over the property. Priya claims the agreement is invalid because the attesting witness is no longer available. Under Section 68 of The Bharatiya Sakshya Adhiniyam 2023, Arjun can validate the agreement by proving that the attestation by Mr. Sharma is in Mr. Sharma's handwriting. Additionally, Arjun must also prove that Priya's signature on the agreement is in her handwriting. This can be established through handwriting analysis or other corroborative evidence.

### **Section 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.

#### **Simplified act**

If a person admits that they signed a document in front of witnesses, this admission is enough to prove that they signed it, even if the law requires the document to be signed in front of witnesses.

Explanation using Example

Example 1:

Ravi and Suresh enter into a contract where Ravi agrees to sell his house to Suresh. The contract is a written document that requires attestation by law. Ravi signs the document in the presence of two witnesses, who also sign as attesting witnesses. Later, Suresh claims that Ravi did not execute the document properly. However, Ravi admits in court that he did sign the document in the presence of the witnesses. According to Section 69 of The Bharatiya Sakshya Adhiniyam 2023, Ravi's admission of signing the document



is sufficient proof of its execution against him, even though the document required attestation.

Example 2:

Priya takes a loan from a bank and signs a loan agreement that requires attestation. The agreement is signed by Priya and two witnesses. Later, Priya defaults on the loan, and the bank takes her to court. Priya argues that the loan agreement was not properly executed. However, during the court proceedings, Priya admits that she did sign the loan agreement in the presence of the witnesses. Under Section 69 of The Bharatiya Sakshya Adhiniyam 2023, Priya's admission of signing the document is sufficient proof of its execution against her, even though the document required attestation.

### **Section 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.

#### **Simplified act**

If the witness who signed the document says they didn't sign it or can't remember signing it, you can use other evidence to prove that the document was signed.

Explanation using Example

Example 1:

Ravi and Suman entered into a contract for the sale of Ravi's house. The contract was signed in the presence of an attesting witness, Anil. Later, when a dispute arose, Suman took the matter to court and presented the contract as evidence. However, Anil, the attesting witness, denied having seen Ravi sign the document. According to Section 70 of The Bharatiya Sakshya Adhiniyam 2023, Suman can still prove the execution of the contract by presenting other evidence, such as emails between Ravi and Suman discussing the sale, bank statements showing the transfer of money, or testimony from other individuals who were aware of the transaction.

Example 2:

Priya borrowed Rs. 1,00,000 from her friend, Meera, and signed a promissory note in the presence of an attesting witness, Raj. When Meera asked for repayment, Priya refused, claiming that she never signed any such document.

Raj, the attesting witness, stated in court that he does not recollect witnessing Priya sign the promissory note. Under Section 70 of The Bharatiya Sakshya Adhiniyam 2023, Meera can use other evidence to prove the execution of the promissory note. This could include text messages where Priya acknowledges the debt, a video recording of the signing, or testimony from other friends who were aware of the loan agreement.

### **Section 71: Proof of document not required by law to be attested.**

An attested document not required by law to be attested may be proved as if it was unattested.

### **Section 72: Comparison of signature, writing or seal with others admitted or proved.**

(1) 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 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.

### **Simplified act**

(1) To find out if a signature, writing, or seal really belongs to a person, the Court can compare it with another signature, writing, or seal that is already accepted or proven to be from that person. This comparison can be done even if the accepted signature, writing, or seal was not shown or proven for any other reason.

(2) The Court can ask anyone present in the courtroom to write some words or numbers. This helps the Court compare the new writing with the writing that is claimed to be from that person.

(3) This rule also applies to fingerprints, with any necessary changes.

## Explanation using Example

### Example 1:

Scenario: A property dispute case where the authenticity of a signature on a sale deed is questioned.

#### Details:

Mr. Sharma claims that he never signed the sale deed transferring his property to Mr. Verma.

Mr. Verma presents the sale deed in court, which bears Mr. Sharma's signature.

Mr. Sharma's lawyer argues that the signature is forged.

#### Application of Section 72:

The court asks Mr. Sharma to provide samples of his signature from other documents, such as his passport, bank records, and previous legal documents, which are admitted or proved to be his.

The court compares these admitted signatures with the signature on the disputed sale deed.

Additionally, the court may ask Mr. Sharma to sign his name in the courtroom to further compare the handwriting.

Based on the comparison, the court determines whether the signature on the sale deed is genuine or forged.

### Example 2:

Scenario: A criminal case involving a forged cheque.

#### Details:

Ms. Gupta is accused of forging Mr. Khan's signature on a cheque to withdraw money from his bank account.

Mr. Khan denies signing the cheque and claims it is a forgery.

#### Application of Section 72:

The court requests Mr. Khan to provide samples of his signature from various documents, such as his driving license, previous cheques, and official correspondence, which are admitted or proved to be his.

The court compares these admitted signatures with the signature on the disputed cheque.

The court may also ask Mr. Khan to write his signature in the courtroom for further comparison.

Additionally, if there are any seals or stamps on the cheque, the court may compare them with other admitted seals or stamps used by Mr. Khan.

Based on the comparison, the court decides whether the signature on the cheque is forged.

#### Example 3:

Scenario: A case involving disputed handwritten notes in a will.

#### Details:

After Mr. Desai's death, a will is presented in court that includes handwritten notes allegedly made by Mr. Desai, altering the distribution of his assets.

Mr. Desai's family members contest the authenticity of the handwritten notes, claiming they were not written by him.

#### Application of Section 72:

The court asks for samples of Mr. Desai's handwriting from other documents, such as letters, diaries, and previous legal documents, which are admitted or proved to be his.

The court compares these admitted handwriting samples with the handwriting in the disputed notes.

The court may also direct any person present in court, who is familiar with Mr. Desai's handwriting, to write similar notes for comparison.

Based on the comparison, the court determines whether the handwritten notes in the will were indeed written by Mr. Desai.

#### Example 4:

Scenario: A case involving disputed fingerprints on a contract.

Details:

A business contract is presented in court with fingerprints alleged to be those of Mr. Patel.

Mr. Patel denies placing his fingerprints on the contract and claims they are forged.

Application of Section 72:

The court requests Mr. Patel to provide his fingerprints for comparison.

The court compares the admitted fingerprints with the fingerprints on the disputed contract.

The court may also direct Mr. Patel to place his fingerprints in the courtroom for further comparison.

Based on the comparison, the court decides whether the fingerprints on the contract are genuine or forged.

### **Section 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.

### **Simplified act**

To find out if a digital signature really belongs to the person who is supposed to have signed it, the Court can ask:

- (a) that person, the Controller, or the Certifying Authority to show the Digital Signature Certificate;
- (b) anyone else to use the public key in the Digital Signature Certificate to check if the digital signature is genuine.

Explanation using Example

### Example 1:

Rajesh is involved in a legal dispute with his business partner, Suresh, over the authenticity of a digital contract. Rajesh claims that Suresh digitally signed the contract, agreeing to certain terms. Suresh denies this, stating that the digital signature is not his.

To resolve this, the court directs Suresh to produce his Digital Signature Certificate. Additionally, the court asks the Certifying Authority, which issued the certificate, to verify the digital signature using the public key listed in the certificate. Upon verification, it is confirmed that the digital signature indeed belongs to Suresh, thereby validating the contract.

### Example 2:

Priya receives an email with a digitally signed document from her employer, offering her a promotion. However, when she discusses the offer with her employer, they claim no such document was sent.

Priya takes the matter to court. The court instructs the employer to produce the Digital Signature Certificate associated with the email. The court also directs an IT expert to use the public key from the certificate to verify the digital signature on the document. The verification process shows that the digital signature matches the employer's certificate, proving that the document was indeed sent by the employer.

## **Public documents**

### **Section 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.

## Simplified act

(1) The following documents are public documents:

(a) Documents that are part of the actions or records of actions:

(i) of the government;

(ii) of official organizations and courts; and

(iii) of public officials, whether they are part of the legislative, judicial, or executive branches in India or another country;

(b) Public records kept in any State or Union territory that come from private documents.

(2) All other documents, except the ones mentioned in section (1), are private.

Explanation using Example

Example 1:

Scenario: Ramesh is involved in a property dispute with his neighbor, Suresh. Ramesh claims that the land belongs to him based on a government-issued land registry document.

Application of Section 74:

The land registry document is a public document because it is a record of the acts of a public officer in the executive branch of the government.

Ramesh can present this document in court as evidence without needing further authentication, as it is considered a public document under Section 74(1)(a)(iii).

Example 2:

Scenario: Priya needs to prove her date of birth for a passport application. She submits her birth certificate issued by the municipal corporation.

Application of Section 74:

The birth certificate is a public document because it is a record of the acts of an official body (the municipal corporation).

Under Section 74(1)(a)(ii), this document is considered a public document and is accepted as proof of her date of birth without requiring additional verification.

#### Example 3:

Scenario: An Indian company is involved in a legal dispute with a foreign company. The Indian company needs to present a judgment from a foreign court to support its case.

#### Application of Section 74:

The judgment from the foreign court is a public document because it is a record of the acts of a judicial authority of a foreign country.

According to Section 74(1)(a)(iii), this document can be presented in the Indian court as evidence.

#### Example 4:

Scenario: A historian is researching the history of a particular region and needs access to old land records and census data maintained by the state government.

#### Application of Section 74:

The old land records and census data are public documents because they are public records kept by the state government.

Under Section 74(1)(b), these documents are considered public records and can be accessed for research purposes.

#### Example 5:

Scenario: An individual needs to prove a private contract signed between two parties in a civil lawsuit.

#### Application of Section 74:

The private contract is a private document because it does not fall under any of the categories listed in Section 74(1).

According to Section 74(2), this document is considered a private document and may require additional authentication or witnesses to be accepted as evidence in court.



## **Section 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.

### **Simplified act**

Every public officer who keeps a public document that anyone has the right to see must give a copy of it to anyone who asks for it, as long as they pay the required fees. The officer must also write a note at the bottom of the copy saying it is a true copy of the original document or part of it. This note must include the date, the officer's name, and their official title. If the officer is allowed to use a seal, they must seal the copy. These copies are called certified copies.

### **Explanation**

Any officer who is normally allowed to give out such copies as part of their job is considered to be in charge of these documents according to this section.

### **Explanation using Example**

#### **Example 1:**

Ravi needs a certified copy of his birth certificate for a passport application. He visits the local municipal office where the birth records are kept. Ravi fills out a request form and pays the required fee. The municipal officer, who is authorized to provide such documents, retrieves Ravi's birth certificate, makes a copy, and certifies it by writing a statement at the bottom of the copy that it is a true copy of the original document. The officer dates and signs the

certificate, adds his official title, and affixes the municipal seal. Ravi receives the certified copy, which he can now use for his passport application.

Example 2:

Meera is involved in a property dispute and needs a certified copy of a land deed that is a public document held by the local land registry office. She submits a formal request and pays the necessary fee. The registrar, who is responsible for maintaining these records, locates the original land deed, makes a photocopy, and certifies it by writing a statement at the bottom confirming it is a true copy of the original. The registrar then dates, signs, and stamps the document with the official seal of the land registry office. Meera receives the certified copy, which she can present in court as evidence in her property dispute case.

### **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.

#### **Simplified act**

You can use these certified copies to prove what is written in the public documents or parts of the public documents that they are supposed to represent.

Explanation using Example

Example 1:

Ravi is involved in a property dispute with his neighbor, Suresh. The dispute revolves around the ownership of a piece of land. Ravi claims that the land belongs to him and presents a certified copy of the land registry document from the local municipal office. According to Section 76 of The Bharatiya Sakshya Adhiniyam 2023, this certified copy can be used as proof of the contents of the original public document, which is the land registry in this case. The court accepts the certified copy as valid evidence to support Ravi's claim.

Example 2:

Priya needs to prove her date of birth in a legal proceeding to claim her inheritance. She does not have the original birth certificate but obtains a

certified copy from the municipal corporation where her birth was registered. Under Section 76 of The Bharatiya Sakshya Adhiniyam 2023, this certified copy is admissible in court as proof of the contents of the original birth certificate. The court accepts the certified copy as evidence of Priya's date of birth, allowing her to proceed with her inheritance claim.

### **Section 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;

(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.

## Simplified act

The following public documents can be proven in these ways:

(a) Acts, orders, or notifications from the Central Government (any Ministry or Department) or any State Government or Union Territory Administration -

(i) by the records of the Departments, certified by the head of those Departments; or

(ii) by any document that appears to be printed by order of such Government;

(b) The proceedings of Parliament or a State Legislature can be proven by the journals of those bodies, or by published Acts or summaries, or by copies that appear to be printed by order of the Government concerned;

(c) Proclamations, orders, or regulations issued by the President of India, the Governor of a State, or the Administrator or Lieutenant Governor of a Union Territory can be proven by copies or extracts found in the Official Gazette;

(d) The Acts of the Executive or the proceedings of the Legislature of a foreign country can be proven by journals published by their authority, or commonly accepted in that country, or by a copy certified under the seal of the country or sovereign, or by recognition in any Central Act;

(e) The proceedings of a municipal or local body in a State can be proven by a copy of such proceedings, certified by the legal keeper, or by a printed book that appears to be published by the authority of such body;

(f) Public documents of any other class in a foreign country can be proven by the original or by a copy certified by the legal keeper, with a certificate under the seal of a Notary Public, or of an Indian Consul or diplomatic agent, stating that the copy is duly certified by the officer having the legal custody of the original, and upon proof of the nature of the document according to the law of the foreign country.

Explanation using Example

Example 1:

Scenario: Ramesh is involved in a legal dispute regarding the ownership of a piece of land. He claims that the land was allocated to him by the State Government through an official order.

Application of Section 77: Ramesh can prove the official order by:

Obtaining a certified copy of the order from the relevant Department, signed by the head of that Department.

Presenting a document that appears to be printed by the order of the State Government.

#### Example 2:

Scenario: Priya is contesting a local municipal decision that affects her property rights. She needs to present evidence of the municipal proceedings where the decision was made.

Application of Section 77: Priya can prove the municipal proceedings by:

Obtaining a certified copy of the proceedings from the legal keeper of the municipal records.

Presenting a printed book that appears to be published by the authority of the municipal body.

#### Example 3:

Scenario: An Indian company is involved in a trade dispute with a foreign company. The Indian company needs to present evidence of a foreign legislative act that impacts the contract terms.

Application of Section 77: The Indian company can prove the foreign legislative act by:

Presenting journals published by the authority of the foreign country.

Providing a copy certified under the seal of the foreign country or sovereign.

Showing recognition of the act in any Central Act of India.

#### Example 4:

Scenario: A journalist is writing an article on a new regulation issued by the President of India and needs to cite the official proclamation.

Application of Section 77: The journalist can prove the proclamation by:

Providing copies or extracts of the regulation contained in the Official Gazette.

#### Example 5:

Scenario: An Indian student studying abroad needs to authenticate a public document from the foreign university for use in India.

Application of Section 77: The student can prove the public document by:

Presenting the original document or a copy certified by the legal keeper of the document.

Obtaining a certificate under the seal of a Notary Public, or an Indian Consul or diplomatic agent, confirming that the copy is duly certified by the officer having legal custody of the original.

Providing proof of the character of the document according to the law of the foreign country.

### **Presumptions as to documents**

#### **Section 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.

### **Simplified act**

(1) The Court will assume that any document that looks like a certificate, certified copy, or similar document is real if the law says it can be used as proof of a specific fact. This is true if the document appears to be properly certified by an officer of the Central Government or a State Government:

As long as the document is mostly in the correct format and seems to be made in the way the law requires.

(2) The Court will also assume that any officer who appears to have signed or certified such a document had the official position they claim to have when they signed it.

## Explanation using Example

### Example 1:

Scenario: Ramesh is involved in a property dispute with his neighbor, Suresh. Ramesh presents a certified copy of the property deed, which he obtained from the local land registry office, as evidence in court.

#### Application of Section 78:

The court will presume that the certified copy of the property deed presented by Ramesh is genuine.

The court will also presume that the officer who certified the copy held the official position he claimed at the time of certification.

This means Ramesh does not need to provide additional proof of the authenticity of the certified copy or the authority of the certifying officer.

### Example 2:

Scenario: Priya is contesting a will in court. She presents a certified copy of the death certificate of her late father, which she obtained from the municipal corporation.

#### Application of Section 78:

The court will presume that the certified copy of the death certificate is genuine.

The court will also presume that the municipal officer who certified the death certificate held the official position he claimed at the time of certification.

Priya does not need to provide further evidence to prove the authenticity of the death certificate or the authority of the certifying officer.

### Example 3:

Scenario: Anil is accused of tax evasion. He presents a certified copy of his income tax returns, which he obtained from the Income Tax Department, as evidence of his compliance with tax laws.

#### Application of Section 78:

The court will presume that the certified copy of the income tax returns is genuine.

The court will also presume that the officer from the Income Tax Department who certified the document held the official position he claimed at the time of certification.

Anil does not need to provide additional proof of the authenticity of the certified copy or the authority of the certifying officer.

Example 4:

Scenario: Meera is applying for a government job and needs to prove her educational qualifications. She presents a certified copy of her university degree, which she obtained from the university's registrar office.

Application of Section 78:

The court (or the government authority reviewing her application) will presume that the certified copy of the university degree is genuine.

The court will also presume that the university registrar who certified the document held the official position he claimed at the time of certification.

Meera does not need to provide further evidence to prove the authenticity of the certified copy or the authority of the certifying officer.

**Section 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;
- (iii) such evidence, statement or confession was duly taken.

**Simplified act**



Whenever a document is brought before a Court that looks like it is a record or summary of the evidence given by a witness in a legal case, or a statement or confession by a prisoner or accused person, and it appears to be signed by a Judge, Magistrate, or authorized officer, the Court will assume that:

- (i) the document is real;
- (ii) any statements about how the document was created, made by the person who signed it, are true;
- (iii) the evidence, statement, or confession was properly taken.

Explanation using Example

Example 1:

Ravi is accused of theft and is being tried in a court in Mumbai. During the trial, the prosecution presents a document that is a record of Ravi's confession made before a Magistrate. The document is signed by the Magistrate and details the circumstances under which the confession was made. According to Section 79 of The Bharatiya Sakshya Adhiniyam 2023, the court will presume that this document is genuine, the statements about the circumstances under which the confession was taken are true, and the confession was duly taken in accordance with the law. Ravi's lawyer would need to provide strong evidence to challenge the authenticity or validity of this document.

Example 2:

In a civil case regarding a property dispute in Delhi, a witness named Sita provides crucial evidence during a judicial proceeding. The court records her testimony, and the document is signed by the presiding Judge. Later, when the case is being reviewed, this document is produced as part of the evidence. Under Section 79 of The Bharatiya Sakshya Adhiniyam 2023, the court will presume that the document is genuine, the statements about the circumstances under which Sita's testimony was recorded are true, and the testimony was duly taken. This presumption helps streamline the judicial process by reducing the need for additional verification of such documents unless specifically contested.

## **Section 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, a 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.

### **Simplified act**

The Court will assume that certain documents are genuine if they appear to be official publications like the Official Gazette, newspapers, or journals. This also applies to documents that the law requires someone to keep, as long as they are kept in the correct format and come from the right place.

Explanation:

For this section and section 92, a document is considered to be in proper custody if it is kept in the right place and by the right person as required by law. However, even if a document is not in the expected place, it can still be considered properly kept if it can be shown that it came from a legitimate source or if the situation makes it likely that it did.

Explanation using Example

Example 1:

Rajesh is involved in a legal dispute over a piece of land. During the trial, Rajesh presents a copy of the Official Gazette from 2021, which includes a government notification about the land boundaries. The opposing party questions the authenticity of the Gazette. According to Section 80 of The Bharatiya Sakshya Adhiniyam 2023, the court will presume the genuineness of the Official Gazette without requiring further proof, as it is an official document produced from proper custody.

Example 2:

Sunita is accused of defamation after publishing an article in a local newspaper alleging corruption by a public official. During the trial, Sunita's lawyer submits the newspaper in which the article was published as evidence. The court, under Section 80, will presume the genuineness of the newspaper without needing additional verification, as newspapers are considered documents whose authenticity is presumed by law.

**Example 3:**

A company, XYZ Pvt. Ltd., is being audited, and the auditors request the company's statutory registers, which are required by law to be maintained. The company produces these registers, which are kept in the prescribed format and stored in the company's registered office. Under Section 80, the court will presume the genuineness of these statutory registers since they are kept in the form required by law and produced from proper custody.

**Example 4:**

During a criminal investigation, the police seize a logbook from a transport company that is required by law to maintain records of all its vehicles' movements. The logbook is kept in the company's main office and is in the format prescribed by the relevant transport regulations. If this logbook is presented in court, the court will presume its genuineness under Section 80, as it is a document directed by law to be kept and is produced from proper custody.

**Example 5:**

An individual, Priya, is contesting a will that was published in a local journal. The journal is known for publishing legal notices and documents. Priya claims the will is forged. However, under Section 80, the court will initially presume the genuineness of the journal and the documents published within it, including the will, unless there is substantial evidence to prove otherwise.

**Section 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.

### **Simplified act**

The Court will assume that any electronic or digital record is genuine if it looks like an Official Gazette or any other record that the law says must be kept by someone. This is true as long as the record is kept in the way the law requires and is taken from the right place.

Explanation:

For this section and section 93, electronic records are considered to be in the right place if they are kept where they are supposed to be and by the person who is supposed to keep them. However, if it can be shown that the record came from a legitimate source or the situation makes it likely that it came from a legitimate source, then the custody is not considered improper.

Explanation using Example

Example 1:

Scenario: A company is involved in a legal dispute over a government notification regarding environmental regulations.

Application of Section 81: The company presents an electronic copy of the Official Gazette, which contains the notification about the new environmental regulations. The court will presume that this electronic record is genuine because it is an official document that is supposed to be kept in electronic form by law. The company obtained this record from the official government website, which is considered proper custody.

Outcome: The court accepts the electronic copy of the Official Gazette as genuine evidence without requiring further proof of its authenticity.

Example 2:

Scenario: An individual is contesting a traffic fine issued based on a digital record of traffic violations maintained by the traffic police department.

Application of Section 81: The traffic police department presents a digital record showing the individual's traffic violations, which is maintained as per the legal requirements. The record is produced from the department's official database, which is the proper custody for such records.

Outcome: The court presumes the digital record to be genuine and accepts it as valid evidence of the individual's traffic violations, unless the individual can provide evidence to the contrary.

#### Example 3:

Scenario: A journalist is accused of defamation for publishing an article based on a digital record of a public speech made by a government official.

Application of Section 81: The journalist presents a digital recording of the speech, which is stored on the official government website. The court will presume the digital recording to be genuine because it is an official record kept in the required form and produced from proper custody.

Outcome: The court accepts the digital recording as genuine evidence, supporting the journalist's defense that the article was based on an accurate representation of the official's speech.

#### Example 4:

Scenario: A property dispute arises, and one party presents an electronic land registry record to prove ownership.

Application of Section 81: The party presents an electronic record from the official land registry database, which is maintained as per legal requirements. The record is produced from the official land registry office, which is the proper custody for such records.

Outcome: The court presumes the electronic land registry record to be genuine and accepts it as valid evidence of property ownership, unless the opposing party can provide evidence to challenge its authenticity.

### **Section 82: Presumption as to maps or plans made by authority of Government.**

The Court shall presume that maps or plans purporting to be made by 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.

## Simplified act

The Court will assume that maps or plans that claim to be made by the Central Government or any State Government were indeed made by them and are correct.

However, if maps or plans are made specifically for a legal case, their accuracy must be proven.

Explanation using Example

Example 1:

Scenario: A dispute arises between two neighboring farmers, Raj and Mohan, over the boundary of their agricultural lands in Punjab. Raj claims that Mohan has encroached on his land, while Mohan denies the allegation.

Application of Section 82: During the court proceedings, Raj presents a map issued by the Punjab State Government's Land Records Department, showing the official boundaries of their respective lands. According to Section 82 of The Bharatiya Sakshya Adhiniyam 2023, the court will presume that this map is accurate and was made by the authority of the State Government. Mohan, however, presents a privately commissioned surveyor's map to counter Raj's claim.

Outcome: The court will require Mohan to provide additional proof to establish the accuracy of the privately commissioned map, as it does not automatically carry the presumption of accuracy that the government-issued map does. If Mohan fails to prove the accuracy of his map, the court is likely to rely on the government-issued map to resolve the boundary dispute.

Example 2:

Scenario: The Municipal Corporation of Mumbai plans to widen a major road and needs to acquire land from several property owners along the proposed route. Some property owners, including Mr. Sharma, dispute the extent of the land being acquired, claiming that the municipal corporation's plan is incorrect.

Application of Section 82: The Municipal Corporation submits a detailed plan of the road widening project, which was prepared by the Maharashtra State Government's Urban Development Department. According to Section 82 of The

Bharatiya Sakshya Adhiniyam 2023, the court will presume that this plan is accurate and was made by the authority of the State Government.

Outcome: Mr. Sharma will need to provide substantial evidence to challenge the accuracy of the government-prepared plan. If he cannot prove that the plan is inaccurate, the court will likely accept the government's plan as accurate and proceed with the land acquisition based on that plan.

### **Section 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.

#### **Simplified act**

The Court will assume that any book that looks like it was printed or published by the government of any country is genuine.

The Court will also assume that any book that looks like it contains the laws of that country is genuine.

Additionally, the Court will assume that any book that looks like it contains reports of court decisions from that country is genuine.

#### **Explanation using Example**

##### **Example 1:**

Scenario: A lawyer presents a book in an Indian court that contains the laws of the United Kingdom.

Application: According to Section 83 of The Bharatiya Sakshya Adhiniyam 2023, the court will presume that the book is genuine because it purports to be printed or published under the authority of the UK Government and contains the laws of the United Kingdom. The lawyer does not need to provide additional proof of the book's authenticity.

##### **Example 2:**

Scenario: During a trial, an advocate submits a book that includes reports of decisions made by the Supreme Court of India.

Application: Under Section 83 of The Bharatiya Sakshya Adhiniyam 2023, the court will presume the genuineness of the book because it purports to contain reports of decisions of the Courts of India. The advocate does not need to provide further evidence to prove that the book is an authentic collection of court decisions.

#### **Section 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.

#### **Simplified act**

The Court will assume that any document that looks like a power-of-attorney and claims to have been signed and verified by a Notary Public, any Court, Judge, Magistrate, Indian Consul or Vice-Consul, or a representative of the Central Government, was indeed signed and verified by them.

Explanation using Example

Example 1:

Ravi, a businessman based in Mumbai, needs to manage some property transactions in Delhi but cannot travel due to his busy schedule. He decides to give a power-of-attorney to his trusted friend, Suresh, to handle these transactions on his behalf. Ravi goes to a Notary Public in Mumbai, signs the power-of-attorney document, and gets it authenticated by the Notary Public. Later, when Suresh presents this document in a Delhi court to prove his authority to act on Ravi's behalf, the court presumes that the power-of-attorney is valid and was properly executed and authenticated, as per Section 84 of The Bharatiya Sakshya Adhiniyam 2023.

Example 2:

Priya, who lives in Chennai, plans to sell her ancestral property in Kolkata. Since she cannot travel to Kolkata frequently, she gives a power-of-attorney to her cousin, Anil, who resides in Kolkata. Priya executes the power-of-attorney document in front of a Magistrate in Chennai, who then authenticates it. When Anil uses this document to negotiate and finalize the sale of the property in Kolkata, the buyers and the local authorities accept the document without questioning its validity, relying on the presumption under Section 84 of The



Bharatiya Sakshya Adhiniyam 2023 that it was properly executed and authenticated.

### **Section 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.

#### **Simplified act**

The Court will assume that any electronic document that looks like an agreement and has the electronic or digital signatures of the parties involved was indeed signed by those parties.

Explanation using Example

Example 1:

Ravi and Priya enter into a business agreement through email. Ravi drafts the agreement and sends it to Priya, who then digitally signs the document using her Aadhaar-based e-signature and emails it back to Ravi. Ravi also digitally signs the document using his Aadhaar-based e-signature. Later, a dispute arises regarding the terms of the agreement. When the case goes to court, the judge presumes that the electronic agreement was validly concluded with the digital signatures of both Ravi and Priya, as per Section 85 of The Bharatiya Sakshya Adhiniyam 2023.

Example 2:

Sunita and Anil decide to lease a property. They use an online platform to draft and sign the lease agreement. Sunita signs the agreement using her digital signature certificate issued by a licensed certifying authority, and Anil does the same. After a few months, a disagreement occurs about the lease terms. When the matter is brought before the court, the court presumes that the electronic lease agreement was validly concluded with the digital signatures of both Sunita and Anil, in accordance with Section 85 of The Bharatiya Sakshya Adhiniyam 2023.

## **Section 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.

(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.

### **Simplified act**

(1) In any court case that involves a secure electronic record, the Court will assume, unless proven otherwise, that the secure electronic record has not been changed since the time it was marked as secure.

(2) In any court case that involves a secure electronic signature, the Court will assume, unless proven otherwise, that -

(a) the secure electronic signature was placed by the person with the intention of signing or approving the electronic record;

(b) except for secure electronic records or secure electronic signatures, this section does not create any assumptions about the authenticity and integrity of the electronic record or any electronic signature.

Explanation using Example

Example 1:

Scenario: A business contract signed electronically.

Situation: Rajesh and Suresh enter into a business contract for the supply of goods. The contract is signed electronically using a secure electronic signature. Later, Suresh claims that the contract was altered after he signed it and that he did not intend to sign the document.

Application of Section 86:

**Presumption of Integrity:** The court will presume that the secure electronic record (the contract) has not been altered since the time it was signed, unless Suresh can provide evidence to the contrary.

**Presumption of Intent:** The court will also presume that Suresh affixed his secure electronic signature with the intention of signing or approving the contract, unless he can prove otherwise.

**Outcome:** Suresh must provide substantial evidence to prove that the contract was altered or that he did not intend to sign it. If he fails to do so, the court will uphold the validity of the contract based on the presumptions under Section 86.

Example 2:

**Scenario:** An electronic will.

**Situation:** Priya creates a will electronically and signs it using a secure electronic signature. After her death, her relatives contest the will, claiming that it was tampered with and that Priya did not intend to sign it.

**Application of Section 86:**

**Presumption of Integrity:** The court will presume that the secure electronic record (the will) has not been altered since the time it was signed, unless the relatives can provide evidence to the contrary.

**Presumption of Intent:** The court will also presume that Priya affixed her secure electronic signature with the intention of signing or approving the will, unless the relatives can prove otherwise.

**Outcome:** The relatives must provide substantial evidence to prove that the will was tampered with or that Priya did not intend to sign it. If they fail to do so, the court will uphold the validity of the will based on the presumptions under Section 86.

### **Section 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.

### **Simplified act**

The Court will assume that the details in an Electronic Signature Certificate are correct unless proven otherwise.

This assumption does not apply to subscriber information that has not been verified.

This rule applies if the subscriber has accepted the certificate.

Explanation using Example

Example 1:

Rajesh is a businessman who enters into a contract with Suresh for the supply of goods. The contract is signed electronically using an Electronic Signature Certificate issued by a recognized certifying authority. Later, Suresh disputes the contract, claiming that the electronic signature is not valid. Rajesh takes the matter to court. According to Section 87 of The Bharatiya Sakshya Adhiniyam 2023, the court will presume that the information in the Electronic Signature Certificate is correct unless Suresh can provide evidence to the contrary. This means that the court will initially accept the electronic signature as valid, putting the burden on Suresh to prove otherwise.

Example 2:

Priya receives an email from her bank, asking her to update her personal information through a secure link. The email is digitally signed using an Electronic Signature Certificate. Priya is cautious and decides to verify the authenticity of the email. She contacts the bank, and they confirm that the email was indeed sent by them. If Priya were to take this email to court for any reason, the court would presume that the information in the Electronic Signature Certificate is correct, as per Section 87 of The Bharatiya Sakshya Adhiniyam 2023. This presumption would hold unless someone could prove that the certificate information was incorrect or that the subscriber information had not been verified.

### **Section 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, 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.

### **Simplified act**

(1) The Court can assume that any document that looks like a certified copy of a court record from a country outside India is real and correct. This is true if the document appears to be certified in a way that a representative of the Indian government in that country says is the usual method for certifying court records there.

(2) An officer who is a Political Agent for any area outside India, as defined in clause (43) of section 3 of the General Clauses Act, 1897, will be considered a representative of the Indian government for that area for the purposes of this section.

### **Explanation using Example**

#### **Example 1:**

Scenario: Ramesh is involved in a property dispute in India. He needs to present a certified copy of a court judgment from the United States to support his case.

Application of Section 88: Ramesh obtains a certified copy of the U.S. court judgment. The document is certified by a U.S. notary public, which is a common practice in the United States for certifying judicial records. Additionally, the Indian Consulate in the United States verifies that this is the standard certification method in the U.S.

Outcome: The Indian court presumes the certified copy of the U.S. court judgment to be genuine and accurate, as it meets the certification requirements outlined in Section 88 of The Bharatiya Sakshya Adhiniyam 2023. This allows Ramesh to use the document as evidence in his property dispute case.

#### **Example 2:**

Scenario: Priya is contesting a divorce case in India and needs to submit a certified copy of her marriage annulment from Canada.

Application of Section 88: Priya obtains a certified copy of the annulment decree from a Canadian court. The document is certified by a Canadian court clerk, which is the standard practice in Canada for certifying judicial records. The Indian High Commission in Canada confirms that this is the usual method of certification in Canada.

Outcome: The Indian court presumes the certified copy of the Canadian annulment decree to be genuine and accurate, as it adheres to the certification standards specified in Section 88 of The Bharatiya Sakshya Adhiniyam 2023. This allows Priya to use the document as evidence in her divorce case in India.

### **Section 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.

#### **Simplified act**

The Court can assume that any book it looks at for information on public or general matters, and any published map or chart that is relevant, was written and published by the person it says it was, and at the time and place it says it was.

Explanation using Example

Example 1:

A historian is involved in a legal dispute over the authenticity of a historical map of India from the 18th century. The map is produced in court as evidence. According to Section 89 of The Bharatiya Sakshya Adhiniyam 2023, the court may presume that the map was published by the person and at the time and place it claims to have been published. Therefore, unless there is strong evidence to the contrary, the court will accept the map as an authentic document from the 18th century.

Example 2:

In a case involving land boundaries, a government surveyor presents a published chart showing the official boundaries of a district. The opposing party questions the validity of the chart. Under Section 89 of The Bharatiya

Sakshya Adhiniyam 2023, the court may presume that the chart was published by the relevant government authority at the time and place it claims. This presumption helps the court to rely on the chart as an accurate representation of the district boundaries unless proven otherwise.

### **Section 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 fed into his computer for transmission; but the Court shall not make any presumption as to the person by whom such message was sent.

### **Simplified act**

The Court can assume that an electronic message sent by the sender through an email server to the recipient is the same as the message that was entered into the sender's computer for sending.

However, the Court will not assume anything about who actually sent the message.

Explanation using Example

Example 1:

Rajesh is involved in a business dispute with his supplier, Mehta Enterprises. Rajesh claims that he sent an email to Mehta Enterprises confirming a large order of goods. Mehta Enterprises denies receiving such an email. Rajesh presents a copy of the email from his sent items folder as evidence in court. Under Section 90 of The Bharatiya Sakshya Adhiniyam 2023, the court may presume that the email Rajesh forwarded through his email server to Mehta Enterprises corresponds with the message as it was originally fed into his computer for transmission. However, the court will not presume that Rajesh himself sent the email; it only presumes the content of the email is as claimed.

Example 2:

Priya is accused of sending defamatory emails to her colleague, Anil. Anil presents the emails in court as evidence. The emails were sent from an email address that appears to belong to Priya. Under Section 90 of The Bharatiya Sakshya Adhiniyam 2023, the court may presume that the emails Anil received correspond with the messages as they were originally fed into the sender's

computer for transmission. However, the court will not automatically presume that Priya was the person who sent the emails. Anil would need to provide additional evidence to prove that Priya was indeed the sender.

**Section 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.

**Simplified act**

If the court asks for a document and it is not shown after being asked, the court will assume that the document was properly signed, stamped, and completed according to the law.

Explanation using Example

Example 1:

Ravi is involved in a property dispute with his neighbor, Suresh. Ravi claims that he has a sale deed that proves his ownership of the disputed land. The court asks Ravi to produce the sale deed, but Ravi fails to do so despite being given notice to produce the document. Under Section 91 of The Bharatiya Sakshya Adhiniyam 2023, the court will presume that the sale deed, if it had been produced, would have been properly attested, stamped, and executed according to the law. This presumption can work against Ravi, as the court may infer that the document was not produced because it might not support his claim.

Example 2:

Meena is contesting a will that her late father allegedly signed, leaving all his property to her brother, Raj. Meena argues that the will is forged and demands that Raj produce the original document in court. Raj fails to produce the will despite receiving a notice to do so. According to Section 91 of The Bharatiya Sakshya Adhiniyam 2023, the court will presume that the will, if it had been produced, was properly attested, stamped, and executed as required by law. This presumption can be detrimental to Raj's case, as the court may suspect that the will was not produced because it might not be genuine or legally valid.



## **Section 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.

### **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.

### **Simplified act**

If a document that looks or is proven to be 30 years old is brought to court from a place the court thinks is appropriate, the court can assume that the signature and everything else in the document, which seems to be written by a specific person, is actually written by that person. Also, if the document was signed or witnessed, the court can assume it was properly signed and witnessed by the people it says did so.

Explanation. - The explanation in section 80 also applies to this section.

### **Examples**

(a) A has owned a piece of land for a long time. He shows the court documents from his own storage that prove he owns the land. The court will consider this storage appropriate.

(b) A shows the court documents about a piece of land he has a mortgage on. The person who borrowed the money (the mortgagor) is living on the land. The court will consider this storage appropriate.

(c) A, who is related to B, shows the court documents about land that B owns. B gave these documents to A for safekeeping. The court will consider this storage appropriate.

#### Explanation using Example

##### Example 1:

Ravi has been living in his ancestral home in a village for over 40 years. He claims ownership of the property based on a deed that was signed by his grandfather 35 years ago. Ravi produces this deed in court to prove his ownership. Since the deed is over 30 years old and has been in Ravi's proper custody, the court presumes that the signatures and other handwritten parts of the deed are genuine and that the deed was duly executed and attested by Ravi's grandfather.

##### Example 2:

Meena is in possession of a piece of agricultural land that she inherited from her father. She finds an old document in her father's belongings that is 32 years old, which shows that her father had purchased the land from a neighbor. Meena presents this document in court to establish her legal ownership. The court considers the document to be in proper custody since it was found among her father's belongings. Therefore, the court presumes that the signatures and other handwritten parts of the document are authentic and that it was properly executed and attested.

##### Example 3:

Vikram is a mortgagee of a commercial property owned by Suresh. The mortgage agreement was signed 31 years ago and has been kept by Vikram since then. Suresh is still in possession of the property. Vikram produces the mortgage agreement in court to enforce the mortgage terms. The court deems the document to be in proper custody as it has been with Vikram, the mortgagee. Consequently, the court presumes that the signatures and other handwritten parts of the mortgage agreement are genuine and that it was duly executed and attested.

##### Example 4:

Anita, a close friend of Raj, has been keeping some of Raj's important documents for safekeeping. Among these documents is a 33-year-old sale deed for a piece of land that Raj owns. Raj needs to prove his ownership in court and asks Anita to produce the sale deed. Since the document was deposited with Anita for safekeeping and she has maintained proper custody, the court presumes that the signatures and other handwritten parts of the sale deed are authentic and that it was properly executed and attested.

### **Section 93: Presumption as to electronic records five years old.**

Where any electronic record, purporting or proved to be five years old, is produced from any custody which the Court in the particular case considers proper, the Court may presume that the electronic signature which purports to be the electronic signature of any particular person was so affixed by him or any person authorised by him in this behalf.

Explanation. - The Explanation to section 81 shall also apply to this section.

#### **Simplified act**

If an electronic record that appears to be or is proven to be five years old is presented from a source that the Court considers appropriate, the Court can assume that the electronic signature on the record was placed there by the person it claims to be from, or by someone authorized by that person.

Explanation. - The explanation given in section 81 also applies to this section.

Explanation using Example

Example 1:

Rajesh is involved in a property dispute with his cousin, Suresh. Rajesh claims that he has an old email from Suresh, dated six years ago, in which Suresh acknowledges Rajesh's ownership of the disputed property. Rajesh produces this email in court. Since the email is more than five years old and is produced from Rajesh's email account, which the court considers proper custody, the court may presume that the electronic signature on the email is indeed Suresh's or was affixed by someone authorized by Suresh.

Example 2:

Meera is accused of not repaying a loan to her friend, Anil. Anil presents a digital promissory note, signed electronically by Meera, which is seven years old. The note is retrieved from Anil's secure digital vault, which the court

deems proper custody. Given that the electronic record is more than five years old, the court may presume that the electronic signature on the promissory note is Meera's or was affixed by someone authorized by her, unless Meera can provide evidence to the contrary.

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

### **Section 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 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.
- (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.
- (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.

## Simplified act

When the terms of a contract, a grant, or any other transfer of property are written down in a document, and when the law requires something to be written down, you can only use the document itself as evidence to prove what the terms are. If the original document is not available, you can use a copy if the law allows it.

### Exception 1

If a public officer needs to be appointed in writing by law, and it is shown that a person has acted as that officer, you don't need to prove the written appointment.

### Exception 2

Wills that have been officially approved in India can be proven by the official approval document.

### Explanation 1

This rule applies whether the contract, grant, or property transfer is in one document or several documents.

### Explanation 2

If there are multiple original documents, you only need to prove one of them.

### Explanation 3

If a document mentions a fact that is not related to the contract, grant, or property transfer, you can still use spoken evidence to prove that fact.

### Illustrations

(a) If a contract is written in several letters, all the letters must be shown as evidence.

(b) If a contract is written in a bill of exchange, the bill of exchange must be shown as evidence.

(c) If a bill of exchange is made in a set of three, you only need to show one of them as evidence.

(d) If A and B have a written contract for the delivery of indigo, and the contract mentions that B paid A for other indigo in a verbal agreement, you can use spoken evidence to prove that no payment was made for the other indigo.

(e) If A gives B a receipt for money paid, you can use spoken evidence to prove the payment.

### Explanation using Example

#### Example 1:

Ravi and Suresh enter into a written contract where Ravi agrees to sell his house to Suresh for ₹50 lakhs. The contract is documented and signed by both parties. Later, a dispute arises where Suresh claims that Ravi had verbally agreed to include the furniture in the sale. According to Section 94 of The Bharatiya Sakshya Adhiniyam 2023, since the terms of the contract have been reduced to a written document, no oral evidence can be given to prove the inclusion of the furniture. Only the written contract will be considered as evidence.

#### Example 2:

Priya receives a grant from the government for her startup, and the terms of the grant are documented in an official grant letter. Later, Priya claims that a government official verbally promised additional funding. According to Section 94, only the documented grant letter can be used as evidence to prove the terms of the grant. Any verbal promises made by the official cannot be considered as evidence.

#### Example 3:

Anil and Sunita have a written agreement where Anil agrees to lease his shop to Sunita for a period of 5 years. The agreement is documented and signed. After 2 years, Anil claims that Sunita had verbally agreed to pay an additional maintenance fee every month. According to Section 94, since the lease agreement is in written form, no oral evidence can be given to prove the additional maintenance fee. Only the written lease agreement will be considered as evidence.

#### Example 4:

Rajesh is appointed as a public officer by a written order from the government. He has been acting in this capacity for several years. In a legal proceeding, someone challenges his appointment and demands proof of the written order. According to Exception 1 of Section 94, since Rajesh has been acting as a public officer, the written order of his appointment does not need to be proved.

#### Example 5:

Meera's father passes away, leaving a will that is admitted to probate in India. Meera's brother challenges the will, claiming it is invalid. According to Exception 2 of Section 94, the will can be proved by the probate, and no further evidence is required to prove its validity.

#### Example 6:

A company issues a bill of exchange in a set of three originals. In a dispute over the bill of exchange, only one of the originals needs to be proved in court, as per Explanation 2 of Section 94.

#### Example 7:

Vikram and Neha have a written contract for the sale of a car. The contract mentions that Neha had previously paid Vikram for another car verbally agreed upon. Neha disputes this and offers oral evidence that no payment was made for the other car. According to Illustration (d) of Section 94, the oral evidence is admissible to prove that no payment was made for the other car.

### **Section 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:

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, can not 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, can not be proved.



(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 can not 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.

(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.

### **Simplified act**

When the terms of any contract, grant, or other property arrangement, or any matter required by law to be written down, have been proven according to section 94, no evidence of any spoken agreement or statement will be allowed

between the parties involved or their representatives to contradict, change, add to, or take away from its terms:

However, any fact that would invalidate the document or entitle someone to a decree or order related to it can be proven, such as fraud, intimidation, illegality, improper execution, lack of capacity in any contracting party, lack or failure of consideration, or mistake in fact or law:

Additionally, the existence of any separate spoken agreement about a matter not mentioned in the document and not inconsistent with its terms can be proven. The Court will consider how formal the document is when deciding if this applies:

Also, the existence of any separate spoken agreement that is a condition before any obligation under the contract, grant, or property arrangement can be proven:

Furthermore, the existence of any distinct later spoken agreement to cancel or change the contract, grant, or property arrangement can be proven, except in cases where the law requires such agreements to be in writing or registered:

Moreover, any usual practice or custom that adds incidents not mentioned in the contract can be proven:

Provided that adding such an incident would not go against or be inconsistent with the express terms of the contract:

Finally, any fact that shows how the language of a document relates to existing facts can be proven.

### Examples

(a) An insurance policy covers goods "in ships from Kolkata to Visakhapatnam". If the goods are shipped in a specific ship that is lost, the fact that this ship was orally excluded from the policy cannot be proven.

(b) A agrees in writing to pay B one thousand rupees on March 1, 2023. The fact that there was an oral agreement that the money should not be paid until March 31, 2023, cannot be proven.

(c) An estate called "the Rampur tea estate" is sold with a deed that includes a map of the property. The fact that land not included in the map was always considered part of the estate and was meant to be included in the deed cannot be proven.

(d) A makes a written contract with B to work certain mines owned by B under certain terms. A was induced to do so by B's misrepresentation of their value. This fact can be proven.

(e) A sues B for the specific performance of a contract and also asks for the contract to be corrected because a provision was included by mistake. A can prove that such a mistake was made, which by law would entitle him to have the contract corrected.

(f) A orders goods from B by a letter that does not mention the time of payment and accepts the goods on delivery. B sues A for the price. A can show that the goods were supplied on credit for a term that has not yet expired.

(g) A sells B a horse and verbally guarantees it is sound. A gives B a paper stating "Bought of A a horse for thirty thousand rupees". B can prove the verbal guarantee.

(h) A rents lodgings from B and gives B a card stating "Rooms, ten thousand rupees a month". A can prove a verbal agreement that these terms included partial board. A rents lodging from B for a year, and a formal agreement is made between them, which is silent on the subject of board. A cannot prove that board was included verbally.

(i) A asks B for a debt owed to A by sending a receipt for the money. B keeps the receipt but does not send the money. In a suit for the amount, A can prove this.

(j) A and B make a written contract to take effect upon a certain event. The writing is left with B, who sues A upon it. A can show the circumstances under which it was delivered.

Explanation using Example

Example 1:

Scenario: Ramesh and Suresh enter into a written agreement where Ramesh agrees to sell his car to Suresh for ₹5,00,000. The agreement specifies that the car will be delivered on the 1st of January, 2024.

Application of Section 95:

Oral Agreement Exclusion: Ramesh cannot later claim that there was an oral agreement stating that the car would be delivered on the 15th of January,

2024, instead of the 1st of January, 2024. The written agreement's terms are final.

**Exception for Fraud:** If Suresh can prove that Ramesh fraudulently misrepresented the condition of the car to induce him to sign the agreement, this fact can be proved in court.

**Example 2:**

**Scenario:** Priya leases a shop to Anil through a written lease agreement that states the rent is ₹20,000 per month. The agreement is silent on the issue of maintenance charges.

**Application of Section 95:**

**Oral Agreement Exclusion:** Priya cannot later claim that there was an oral agreement requiring Anil to pay an additional ₹5,000 per month for maintenance charges.

**Exception for Custom:** If it is a well-known custom in that locality that tenants usually pay maintenance charges separately, this custom can be proved in court, provided it is not inconsistent with the written lease agreement.

**Example 3:**

**Scenario:** Sunita sells her house to Rajesh through a registered sale deed. The deed includes a detailed description of the property but does not mention the inclusion of a garage.

**Application of Section 95:**

**Oral Agreement Exclusion:** Sunita cannot later claim that there was an oral agreement to include the garage as part of the sale.

**Exception for Mistake:** If Rajesh can prove that there was a mutual mistake and both parties intended to include the garage in the sale, this fact can be proved in court.

**Example 4:**

**Scenario:** A written contract between Meera and Nikhil states that Meera will deliver 100 bags of rice to Nikhil by the 10th of each month. The contract does not specify the payment terms.

**Application of Section 95:**

Oral Agreement Exclusion: Meera cannot later claim that there was an oral agreement requiring Nikhil to pay within 5 days of delivery.

Exception for Separate Oral Agreement: If there was a separate oral agreement that Nikhil would pay within 15 days of delivery, and this is not inconsistent with the written contract, this oral agreement can be proved in court.

Example 5:

Scenario: A written contract between Arjun and Bhavna states that Arjun will paint Bhavna's house for ₹50,000. The contract is silent on the quality of paint to be used.

Application of Section 95:

Oral Agreement Exclusion: Arjun cannot later claim that there was an oral agreement to use premium quality paint.

Exception for Usage or Custom: If it is a common custom in the painting industry to use a certain quality of paint for such contracts, this custom can be proved in court, provided it is not inconsistent with the written contract.

Example 6:

Scenario: A written agreement between Kavita and Rohit states that Kavita will supply 500 chairs to Rohit for ₹2,00,000. The agreement is silent on the delivery date.

Application of Section 95:

Oral Agreement Exclusion: Kavita cannot later claim that there was an oral agreement to deliver the chairs by the end of the month.

Exception for Separate Oral Agreement: If there was a separate oral agreement that the chairs would be delivered within 15 days, and this is not inconsistent with the written contract, this oral agreement can be proved in court.

### **Section 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 can not be given to show which price was to be given.

(b) A deed contains blanks. Evidence can not be given of facts which would show how they were meant to be filled.

### **Simplified act**

When the wording in a document is unclear or has mistakes, you cannot use other evidence to explain what it means or to fix the mistakes.

#### Examples

(a) If A agrees in writing to sell a horse to B for "one lakh rupees or one lakh fifty thousand rupees", you cannot use other evidence to show which price was intended.

(b) If a document has blank spaces, you cannot use other evidence to show how those blanks were supposed to be filled.

#### Explanation using Example

##### Example 1:

Ravi and Suresh enter into a written agreement where Ravi agrees to sell his car to Suresh. The agreement states that the price of the car is "five lakh rupees or six lakh rupees". Later, a dispute arises about the actual price agreed upon. Suresh claims that the price was five lakh rupees, while Ravi insists it was six lakh rupees. According to Section 96 of The Bharatiya Sakshya Adhiniyam 2023, no evidence can be introduced to clarify whether the agreed price was five lakh rupees or six lakh rupees because the document itself is ambiguous.

##### Example 2:

Priya and Anil sign a lease agreement for a commercial property. The lease document has several blanks, including the duration of the lease and the monthly rent amount. When a disagreement arises about the terms of the lease, Priya tries to introduce oral evidence to show that the lease was supposed to be for three years at a monthly rent of fifty thousand rupees. However, under Section 96 of The Bharatiya Sakshya Adhiniyam 2023, Priya cannot provide evidence to fill in the blanks or clarify the terms because the document itself is defective and ambiguous.

## **Section 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.

### **Simplified act**

When the language used in a document is clear and straightforward, and it accurately describes the current situation, you cannot provide evidence to show that it was meant to describe something else.

### **Example**

A sells to B, through a legal document, "my estate at Rampur containing one hundred bighas". A actually has an estate at Rampur that is one hundred bighas in size. You cannot provide evidence to show that the estate meant to be sold was at a different location and of a different size.

### **Explanation using Example**

#### **Example 1:**

Ravi sells to Sita, by a written agreement, "my house at Green Park, Delhi, measuring 2000 square feet". Ravi indeed owns a house at Green Park, Delhi, which measures exactly 2000 square feet. Later, Ravi tries to argue that he actually intended to sell his house in another locality, which is smaller in size. According to Section 97 of The Bharatiya Sakshya Adhiniyam 2023, Ravi cannot present evidence to show that he meant a different house because the language in the document is clear and accurately applies to the existing facts.

#### **Example 2:**

Manoj leases to Priya, by a lease deed, "my shop at Connaught Place, New Delhi, with an area of 500 square feet". Manoj owns a shop at Connaught Place, New Delhi, which is exactly 500 square feet. Later, Manoj tries to claim

that he intended to lease a different shop located in another market area with a different size. Under Section 97 of The Bharatiya Sakshya Adhiniyam 2023, Manoj cannot introduce evidence to show that he meant a different shop because the document's language is plain and accurately describes the existing shop.

Example 3:

Anita sells to Rajesh, by a sale deed, "my agricultural land in Haryana, measuring 50 acres". Anita owns agricultural land in Haryana that measures exactly 50 acres. Later, Anita attempts to argue that she intended to sell a different piece of land located in Punjab, which is smaller. According to Section 97 of The Bharatiya Sakshya Adhiniyam 2023, Anita cannot provide evidence to show that she meant a different piece of land because the language in the document is clear and accurately applies to the existing facts.

Example 4:

Vikram mortgages to Neha, by a mortgage deed, "my flat in Bandra, Mumbai, with an area of 1500 square feet". Vikram owns a flat in Bandra, Mumbai, which is exactly 1500 square feet. Later, Vikram tries to argue that he actually intended to mortgage a different flat in another part of Mumbai, which is smaller. Under Section 97 of The Bharatiya Sakshya Adhiniyam 2023, Vikram cannot present evidence to show that he meant a different flat because the document's language is plain and accurately describes the existing flat.

### **Section 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.

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.

### **Simplified act**



When the language used in a document is clear but doesn't make sense with the actual facts, you can provide evidence to show that the words were used in a special way.

#### Example

A sells to B, through a legal document, "my house in Kolkata". A didn't have a house in Kolkata, but it turns out he had a house in Howrah, which B had been living in since the document was signed. These facts can be shown to prove that the document was actually talking about the house in Howrah.

#### Explanation using Example

##### Example 1:

Ravi enters into a written agreement to sell his "car in Mumbai" to Suresh. However, Ravi does not own a car in Mumbai but owns a car in Pune, which Suresh has been using for the past few months. In this case, evidence can be provided to show that the term "car in Mumbai" was used in a peculiar sense to actually refer to the car in Pune that Suresh has been using.

##### Example 2:

Meena signs a contract to lease her "office in Delhi" to Rajesh. It turns out that Meena does not own any office in Delhi, but she does own an office in Gurgaon, which Rajesh has been using for his business operations. Evidence can be introduced to demonstrate that the term "office in Delhi" was intended to refer to the office in Gurgaon that Rajesh has been occupying.

##### Example 3:

Anita agrees to sell her "farm in Chennai" to Deepak through a written contract. Anita does not own any farm in Chennai, but she does own a farm in Kanchipuram, which Deepak has been visiting and managing. Evidence can be presented to show that the term "farm in Chennai" was used to refer to the farm in Kanchipuram.

##### Example 4:

Vikram signs a deed to transfer his "shop in Bangalore" to Priya. However, Vikram does not own any shop in Bangalore but owns a shop in Mysore, which Priya has been running for her business. Evidence can be provided to clarify that the term "shop in Bangalore" was used to mean the shop in Mysore.

#### Example 5:

Sunil agrees to sell his "plot in Hyderabad" to Anjali through a written agreement. Sunil does not own any plot in Hyderabad, but he does own a plot in Secunderabad, which Anjali has been developing. Evidence can be introduced to show that the term "plot in Hyderabad" was intended to refer to the plot in Secunderabad.

### **Section 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.

#### Illustrations

- (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.

### **Simplified act**

When the words used in an agreement or statement could refer to one specific person or thing, but there are multiple possible options, you can use additional information to figure out which person or thing was actually meant.

#### Examples

- (a) A agrees to sell B "my white horse" for one thousand rupees. A has two white horses. You can use extra information to figure out which white horse A meant.
- (b) A agrees to go with B to Ramgarh. You can use extra information to figure out whether they meant Ramgarh in Rajasthan or Ramgarh in Uttarakhand.

#### Explanation using Example

#### Example 1:

Ravi agrees to rent his "office space in Mumbai" to Suresh for Rs. 50,000 per month. Ravi owns two office spaces in Mumbai, one in Andheri and another in Bandra. Evidence may be given of facts which show which of the two office spaces was meant in the agreement.

Example 2:

Priya agrees to sell her "red car" to Anil for Rs. 5,00,000. Priya owns two red cars, one is a Maruti Suzuki and the other is a Hyundai. Evidence may be given of facts which show which of the two red cars was meant in the sale agreement.

Example 3:

Sunita agrees to deliver "the shipment to Delhi" for a fee. There are two possible destinations: Delhi in India and Delhi in Canada. Evidence may be given of facts showing whether the shipment was meant to be delivered to Delhi in India or Delhi in Canada.

Example 4:

Rajesh agrees to sell "the plot in Sector 45" to Meena for Rs. 20,00,000. Rajesh owns two plots in Sector 45, one in Gurgaon and another in Noida. Evidence may be given of facts which show which of the two plots was meant in the sale agreement.

Example 5:

Anita agrees to provide catering services for "the wedding in Green Park". There are two venues named Green Park, one in Delhi and another in Kolkata. Evidence may be given of facts showing which Green Park was meant for the catering services.

**Section 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.

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.

### **Simplified act**

When the words used in a contract or agreement partly fit one situation and partly fit another, but don't completely fit either situation, you can use evidence to show which situation the words were actually meant to describe.

#### Example

A agrees to sell to B "my land at X that Y is using". A has land at X, but Y is not using it, and A also has land that Y is using, but it is not at X. You can use evidence to show which piece of land A actually meant to sell.

#### Explanation using Example

##### Example 1:

Ravi agrees to lease to Sita "my shop at Market Street in the possession of Raj". Ravi owns a shop on Market Street, but it is not in the possession of Raj. He also owns another shop that is in the possession of Raj, but it is located on Temple Road. In this case, evidence can be provided to determine which shop Ravi intended to lease to Sita.

##### Example 2:

Priya agrees to sell to Arjun "my house in Green Park where Sunil lives". Priya owns a house in Green Park, but Sunil does not live there. She also owns another house where Sunil lives, but it is located in Rose Garden. Evidence can be introduced to clarify which house Priya meant to sell to Arjun.

##### Example 3:

Manoj agrees to rent to Neha "my apartment in Sector 15 occupied by Ramesh". Manoj has an apartment in Sector 15, but it is not occupied by Ramesh. He also has another apartment occupied by Ramesh, but it is in Sector 20. Evidence may be given to show which apartment Manoj intended to rent to Neha.

##### Example 4:

Anita agrees to transfer to Vikram "my farmland in Village A cultivated by Suresh". Anita owns farmland in Village A, but it is not cultivated by Suresh.

She also owns farmland cultivated by Suresh, but it is in Village B. Evidence can be provided to determine which farmland Anita meant to transfer to Vikram.

Example 5:

Ramesh agrees to sell to Deepa "my factory in Industrial Area occupied by Kumar". Ramesh has a factory in the Industrial Area, but it is not occupied by Kumar. He also has another factory occupied by Kumar, but it is in the Commercial Zone. Evidence may be given to show which factory Ramesh intended to sell to Deepa.

### **Section 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.

### **Simplified act**

You can provide evidence to explain the meaning of unclear or hard-to-understand writing, foreign languages, old-fashioned terms, technical jargon, local dialects, abbreviations, and words used in a special way.

Example

A, a sculptor, agrees to sell to B, "all my mods". A has both models and modeling tools. Evidence can be provided to show which items A meant to sell.

Explanation using Example

Example 1:

Ravi, a software developer, agrees to sell to Sita, "all my scripts". Ravi has both programming scripts and handwritten notes. Evidence may be given to show which he meant to sell.

Example 2:

Priya, a farmer, agrees to sell to Ramesh, "all my produce". Priya has both fresh vegetables and preserved pickles. Evidence may be given to show which she meant to sell.

### **Section 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.

#### **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.

#### **Simplified act**

People who are not directly involved in a written agreement, or their representatives, can provide evidence of any facts that suggest there was a separate agreement made at the same time that changes the terms of the written agreement.

#### **Example**

A and B sign a written contract where B agrees to sell cotton to A, and A agrees to pay for it when it is delivered. At the same time, they also make a verbal agreement that A can pay for the cotton three months later. This verbal agreement cannot be used as evidence between A and B, but it can be used by C if it affects C's interests.

#### **Explanation using Example**

##### **Example 1:**

A and B enter into a written contract where B agrees to sell A a specific quantity of rice, with payment to be made upon delivery. At the same time, A and B have an oral agreement that A will be given a discount if the rice is delivered late. This oral agreement cannot be used as evidence between A and B to alter the written contract terms. However, if C, a third party who has a financial interest in the timely delivery of the rice (perhaps because he has a subsequent contract with A), wants to show that the oral agreement exists

because it affects his interests, he may be allowed to present evidence of this oral agreement.

Example 2:

D and E sign a written lease agreement for a commercial property, stating that the rent is to be paid on the first of every month. Concurrently, they have an oral agreement that E will provide D with a grace period of five days for the rent payment. This oral agreement cannot be used to change the written lease terms between D and E. However, if F, a neighboring tenant who has a clause in his lease that depends on the timely payment of rent by D, wants to show that the oral agreement exists because it affects his lease terms, he may be allowed to present evidence of this oral agreement.

### **Section 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 as to the construction of wills.

#### **Simplified act**

This Chapter does not change any rules in the Indian Succession Act, 1925 about how wills are interpreted.

Explanation using Example

Example 1:

Ravi, a resident of Mumbai, passed away and left behind a will detailing the distribution of his assets among his family members. His son, Arjun, contests the will, claiming that certain oral promises made by Ravi should be considered in the distribution of assets. However, under Section 103 of The Bharatiya Sakshya Adhiniyam 2023, the court will not consider these oral promises because the Indian Succession Act, 1925, governs the construction of wills. Therefore, only the written will is valid, and the oral promises cannot be used to alter its terms.

Example 2:

Meera, a businesswoman from Delhi, drafted a will specifying that her property should be divided equally among her three children. After her death, her daughter, Priya, argues that Meera had verbally told her that she would receive a larger share due to her financial needs. Despite Priya's claim, the court refers

to Section 103 of The Bharatiya Sakshya Adhiniyam 2023, which states that the provisions of the Indian Succession Act, 1925, regarding the construction of wills are not affected by this chapter. As a result, the court upholds the written will, and Priya's oral claim is not considered.

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

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

#### **Section 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.

#### **Simplified act**

If you want a court to make a decision about a legal right or responsibility based on certain facts you claim to be true, you need to prove that those facts are true. When someone has to prove that something is true, we say that the "burden of proof" is on that person.

#### **Examples**

- (a) If A wants a court to decide that B should be punished for a crime that A says B committed, A must prove that B actually committed the crime.
- (b) If A wants a court to decide that he should get a piece of land that B currently has, based on certain facts that A claims and B denies, A must prove that those facts are true.

#### **Explanation using Example**

Example 1:



Ravi claims that his neighbor, Suresh, has built a wall that encroaches on his property. Ravi files a case in court seeking a judgment that the wall be removed. According to Section 104 of The Bharatiya Sakshya Adhiniyam 2023, Ravi must provide evidence to prove that the wall indeed encroaches on his property. This could include property maps, survey reports, or witness testimonies. The burden of proof lies on Ravi to establish the facts he asserts.

Example 2:

Priya accuses her colleague, Anil, of stealing her laptop from their office. Priya wants the court to convict Anil of theft. Under Section 104, Priya must prove that Anil committed the theft. This means she needs to present evidence such as CCTV footage, eyewitness accounts, or any other relevant proof that shows Anil taking the laptop. The responsibility to prove Anil's guilt lies with Priya.

Example 3:

Sunita claims that she is the rightful owner of a piece of land currently occupied by Rajesh. Sunita files a lawsuit to reclaim the land, asserting that she has inherited it from her ancestors. According to Section 104, Sunita must provide evidence such as inheritance documents, land records, or other legal documents to prove her claim. The burden of proof is on Sunita to establish her legal right to the land.

Example 4:

Manoj alleges that his business partner, Vikram, has breached their partnership agreement by diverting company funds for personal use. Manoj seeks a court judgment to recover the diverted funds. Under Section 104, Manoj must present evidence such as financial records, bank statements, or emails that demonstrate Vikram's misuse of company funds. The burden of proof lies on Manoj to substantiate his allegations.

Example 5:

A tenant, Ramesh, claims that his landlord, Neha, has unlawfully increased the rent beyond the agreed amount in their rental agreement. Ramesh files a complaint in court seeking a judgment to revert the rent to the original amount. According to Section 104, Ramesh must provide the rental agreement and any other relevant documents to prove that the rent increase was unlawful. The burden of proof is on Ramesh to establish the facts he asserts.

## **Section 105: On whom burden of proof lies.**

### The Burden of Proof

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.

### Simplified act

### The Burden of Proof

In a legal case, the responsibility to prove something lies with the person who would lose if no evidence was presented by either side.

### Examples

(a) A is suing B for a piece of land that B currently owns. A claims that the land was left to them by C, who is B's father. If neither A nor B provides any evidence, B would get to keep the land. So, A has to prove their claim.

(b) A is suing B for money that A says B owes based on a signed agreement (bond). B admits the bond exists but claims it was signed because of fraud, which A denies. If neither A nor B provides any evidence, A would win because the bond is not disputed and the fraud is not proven. So, B has to prove the fraud.

### Explanation using Example

#### Example 1:

Amit sues Raj for the ownership of a house. Raj is currently living in the house and claims that he inherited it from his father, Suresh. Amit, on the other hand, asserts that Suresh left the house to him in his will. If neither Amit nor

Raj presents any evidence, Raj would continue to live in the house because he is already in possession of it. Therefore, the burden of proof lies on Amit to prove that the house was indeed left to him by Suresh's will.

Example 2:

Priya sues Vikram for Rs. 1,00,000, claiming that Vikram owes her this amount based on a signed promissory note. Vikram admits that he signed the promissory note but argues that he was coerced into signing it under duress. If no evidence is presented by either party, Priya would win the case because the existence of the promissory note is not in dispute, and Vikram's claim of duress is not proven. Therefore, the burden of proof lies on Vikram to prove that he was coerced into signing the promissory note.

### **Section 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) 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.

### **Simplified act**

The responsibility to prove a specific fact is on the person who wants the Court to believe that the fact is true, unless a law says that someone else has to prove it.

Example

- (a) If A accuses B of stealing and wants the Court to believe that B confessed to C about the theft, A has to prove that B made the confession.
- (b) If B wants the Court to believe that he was somewhere else when the theft happened, B has to prove that he was indeed somewhere else.

Explanation using Example

Example 1:

Ravi accuses Suresh of damaging his car. Ravi claims that Suresh admitted to the act in front of their mutual friend, Anil. According to Section 106 of The Bharatiya Sakshya Adhiniyam 2023, Ravi must prove that Suresh made this admission to Anil. Ravi cannot simply state that Suresh admitted it; he must provide evidence, such as Anil's testimony, to support his claim.

Example 2:

Priya is accused of stealing jewelry from her neighbor, Meena. Priya claims that she was at a family function in another city at the time the theft occurred. According to Section 106 of The Bharatiya Sakshya Adhiniyam 2023, Priya must provide evidence to prove that she was indeed at the family function. This could include witness statements from family members, photographs, or travel tickets that show her presence in the other city.

Example 3:

Arjun files a lawsuit against his employer, claiming that he was wrongfully terminated because of his religion. Arjun asserts that his manager, Ramesh, explicitly stated that his religion was the reason for his termination. Under Section 106, Arjun must provide evidence that Ramesh made this statement. This could be in the form of a witness who heard the statement or a written document where Ramesh mentioned the reason for termination.

Example 4:

Sunita is accused of cheating in an exam. She claims that she was not in the examination hall at the time the cheating incident was reported. According to Section 106, Sunita must provide proof of her whereabouts during the exam. This could include testimony from people who saw her elsewhere, CCTV footage, or any other relevant evidence that supports her claim.

Example 5:

Manoj is accused of assaulting his neighbor, Rajesh. Manoj claims that he was at a local market during the time of the alleged assault. According to Section 106, Manoj must provide evidence to support his alibi. This could include receipts from the market, testimony from shopkeepers, or any other evidence that can prove he was at the market and not at the scene of the assault.

## **Section 107: Burden of proving fact to be proved to make evidence admissible.**

The burden of proving any fact necessary to be proved in order to enable any person to give evidence of any other fact is on the person who wishes to give such evidence.

### **Illustrations**

- (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.

### **Simplified act**

The responsibility to prove any fact that is needed to allow someone to give evidence about another fact lies with the person who wants to present that evidence.

### **Examples**

- (a) If A wants to prove a statement made by B before B died, A must prove that B has actually died.
- (b) If A wants to prove the contents of a lost document using a copy or other secondary evidence, A must prove that the original document is indeed lost.

### **Explanation using Example**

#### **Example 1:**

Ravi is accused of stealing a valuable painting from a museum. During the trial, Ravi's lawyer wants to introduce a statement made by a security guard, who allegedly saw someone else committing the theft. However, the security guard has since passed away. According to Section 107 of The Bharatiya Sakshya Adhiniyam 2023, Ravi's lawyer must first prove that the security guard is indeed deceased before the court can consider the statement as evidence.

#### **Example 2:**

Meera is involved in a property dispute with her neighbor, Suresh. Meera claims that she had a written agreement with Suresh regarding the boundary lines of their properties, but she lost the document in a recent flood. To

introduce a photocopy of the agreement as evidence, Meera must first prove to the court that the original document was indeed lost in the flood, as required by Section 107 of The Bharatiya Sakshya Adhiniyam 2023.

**Section 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.

**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 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.

**Simplified act**

When someone is accused of a crime, it is their responsibility to prove that their situation fits into any of the General Exceptions in the Bharatiya Nyaya Sanhita, 2023, or any special exceptions or conditions in any other part of the same law, or in any law that defines the crime. The Court will assume that these exceptions do not apply unless the accused can prove otherwise.

**Examples**

(a) If A is accused of murder and claims that he didn't understand what he was doing because of a mental illness, A has to prove this.

(b) If A is accused of murder and claims that he lost self-control because of a sudden and serious provocation, A has to prove this.

(c) Section 117 of the Bharatiya Nyaya Sanhita, 2023 says that anyone who causes serious injury on purpose, except in the situation described in sub-section (2) of section 122, will face certain punishments. If A is charged with causing serious injury on purpose under section 117, A has to prove that his case fits into the situation described in sub-section (2) of section 122.

Explanation using Example

Example 1:

Ravi is accused of theft under the Bharatiya Nyaya Sanhita, 2023. During the trial, Ravi claims that he took the items because he was under duress; specifically, he alleges that a gang threatened to kill him if he did not steal the items. According to Section 108 of the Bharatiya Sakshya Adhiniyam, 2023, the burden of proving that he was under duress (a special exception) lies on Ravi. The court will presume that there was no duress unless Ravi can provide sufficient evidence to prove otherwise.

Example 2:

Sita is charged with causing grievous hurt to her neighbor under Section 117 of the Bharatiya Nyaya Sanhita, 2023. Sita claims that she acted in self-defense because her neighbor attacked her first. According to Section 108, the burden of proving that she acted in self-defense (a general exception) is on Sita. The court will assume that there was no self-defense unless Sita can provide convincing evidence to support her claim.

Example 3:

Manoj is accused of committing arson. He argues that he was not in control of his actions because he was suffering from a severe mental disorder at the time of the incident. Under Section 108, Manoj must prove that his mental disorder falls under the general exceptions of the Bharatiya Nyaya Sanhita, 2023. The court will initially presume that Manoj was of sound mind unless he can provide medical records or expert testimony to prove his claim.

Example 4:

Priya is charged with voluntarily causing grievous hurt to her colleague. She claims that she acted under a sudden and grave provocation when her colleague insulted her in front of others. According to Section 108, the burden of proving that she acted under sudden and grave provocation (a special exception) lies on Priya. The court will assume that there was no such

provocation unless Priya can present evidence, such as witness testimonies, to support her defense.

### **Section 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.

### **Simplified act**

When someone knows a specific fact that others don't, it's their responsibility to prove that fact.

#### Examples

(a) If someone does something with a different intention than what it looks like, they need to prove what their real intention was.

(b) If A is accused of traveling on a train without a ticket, A has to prove that they actually had a ticket.

#### Explanation using Example

##### Example 1:

Ravi is found in possession of a rare and expensive painting that was reported stolen from an art gallery. The police arrest Ravi and charge him with theft. Ravi claims that he bought the painting from a street vendor. According to Section 109 of The Bharatiya Sakshya Adhiniyam 2023, the burden of proving that he legally purchased the painting from a street vendor is on Ravi, as the fact of the purchase is especially within his knowledge.

##### Example 2:

Priya is accused of cheating in her final exams by using unauthorized notes. The invigilator found notes in her possession during the exam. Priya claims



that the notes were not hers and that someone else placed them there. Under Section 109, the burden of proving that the notes were not hers and that someone else placed them there is on Priya, as this fact is especially within her knowledge.

Example 3:

Rajesh is caught by a traffic police officer for driving a car without a valid driver's license. Rajesh argues that he has a valid license but forgot to carry it with him. According to Section 109, the burden of proving that he has a valid driver's license is on Rajesh, as the existence of the license is a fact especially within his knowledge.

Example 4:

Sunita is found with a large sum of money in her bag during a routine security check at the airport. She is suspected of money laundering. Sunita claims that the money is from the sale of her ancestral property. Under Section 109, the burden of proving that the money is from the sale of her ancestral property is on Sunita, as this fact is especially within her knowledge.

Example 5:

Amit is accused of trespassing on a private property. He claims that he had the owner's permission to be there. According to Section 109, the burden of proving that he had the owner's permission is on Amit, as this fact is especially within his knowledge.

### **Section 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.

#### **Simplified act**

If we need to decide whether a person is alive or dead, and it is proven that the person was alive at some point in the last thirty years, then the responsibility to prove that the person is now dead falls on the person who claims that the person is dead.

Explanation using Example

Example 1:

Ravi, a businessman, was last seen alive in Mumbai in 1995. In 2023, his family wants to declare him legally dead to settle his estate. According to Section 110 of The Bharatiya Sakshya Adhiniyam 2023, since Ravi was known to be alive within the last thirty years, the burden of proving that he is dead falls on his family. They must provide evidence, such as a death certificate or other substantial proof, to support their claim that Ravi is no longer alive.

Example 2:

Meena, a resident of Delhi, was last known to be alive in 2000. In 2029, her husband files a petition in court to declare her dead so he can remarry. Under Section 110 of The Bharatiya Sakshya Adhiniyam 2023, since Meena was known to be alive within the last thirty years, her husband must prove that she is dead. This could involve presenting evidence like police reports, witness testimonies, or any other documentation that supports the claim of her death.

**Section 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.

### Simplified act

If there is a question about whether a person is alive or dead, and it is shown that no one who would normally hear from him has heard from him for seven years, then the responsibility to prove that he is still alive falls on the person who claims he is alive.

Explanation using Example

Example 1:

Ravi, a businessman from Mumbai, went missing in 2015. His family, including his wife and children, have not heard from him since then. In 2023, his wife wants to declare him legally dead to settle his estate and claim his life insurance. According to Section 111 of The Bharatiya Sakshya Adhiniyam 2023, since Ravi has not been heard of for seven years, the burden of proving

that he is still alive shifts to anyone who claims he is alive. If no one can provide such proof, Ravi can be legally declared dead.

Example 2:

Sunita, a resident of Delhi, disappeared in 2016. Her parents and friends, who would naturally have heard from her if she were alive, have not received any communication from her since her disappearance. In 2024, her parents want to sell her property to pay off debts. Under Section 111 of The Bharatiya Sakshya Adhiniyam 2023, since Sunita has not been heard of for seven years, the responsibility to prove that she is alive falls on anyone who asserts that she is still living. If no such proof is provided, Sunita can be presumed dead, allowing her parents to proceed with the sale of her property.

**Section 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.

**Simplified act**

If there is a question about whether people are partners, landlord and tenant, or principal and agent, and it has been shown that they have been acting in those roles, then:

The person who says they are not in those roles, or have stopped being in those roles, must prove it.

Explanation using Example

Example 1:

Scenario: Raj and Simran have been running a business together for several years. They share profits and losses equally and have a joint bank account for business transactions. One day, Raj claims that they are not partners anymore and that Simran has no right to the business profits.

Application of Section 112: Since Raj and Simran have been acting as partners, the burden of proof is on Raj to prove that they are no longer partners. Raj must provide evidence that their partnership has been dissolved or that they have ceased to act as partners.

### Example 2:

Scenario: Mr. Sharma has been renting an apartment from Mrs. Gupta for the past five years. He pays rent monthly and has a rental agreement. Recently, Mrs. Gupta claims that Mr. Sharma is no longer her tenant and demands that he vacate the apartment immediately.

Application of Section 112: Since Mr. Sharma has been acting as a tenant and paying rent, the burden of proof is on Mrs. Gupta to prove that Mr. Sharma is no longer her tenant. Mrs. Gupta must provide evidence that the rental agreement has been terminated or that Mr. Sharma has ceased to be her tenant.

### Example 3:

Scenario: Priya has been working as an agent for a real estate company owned by Mr. Verma. She has been negotiating deals and signing contracts on behalf of the company. One day, Mr. Verma claims that Priya is no longer his agent and that she has no authority to act on behalf of the company.

Application of Section 112: Since Priya has been acting as an agent for Mr. Verma's company, the burden of proof is on Mr. Verma to prove that Priya is no longer his agent. Mr. Verma must provide evidence that Priya's agency has been terminated or that she has ceased to act as his agent.

### **Section 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.

### **Simplified act**

If there is a question about whether someone owns something they have, the responsibility to prove that they do not own it falls on the person who claims they are not the owner.

Explanation using Example

### Example 1:

Ravi has been living in and maintaining a house in Mumbai for the past 10 years. One day, Suresh claims that the house actually belongs to him and not Ravi. According to Section 113 of The Bharatiya Sakshya Adhiniyam 2023,

since Ravi is in possession of the house, the burden of proof is on Suresh to prove that Ravi is not the owner of the house.

Example 2:

Priya has been driving a car registered in her name for the last 5 years. One day, her neighbor, Anil, claims that the car actually belongs to him. Under Section 113 of The Bharatiya Sakshya Adhiniyam 2023, because Priya is in possession of the car, Anil must provide evidence to prove that Priya is not the owner of the car.

**Section 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.

(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.

**Simplified act**

If there is a doubt about whether a transaction between two people was done honestly, and one of those people is in a position of trust or authority over the other, the person in the position of trust or authority must prove that the transaction was done honestly.

Examples

(a) If a client questions the honesty of a sale made to their lawyer in a lawsuit, the lawyer must prove that the sale was done honestly.

(b) If a son who has just become an adult questions the honesty of a sale made to his father in a lawsuit, the father must prove that the sale was done honestly.

## Explanation using Example

### Example 1:

Ravi, a young man who recently turned 18, sells a piece of ancestral land to his father, Mr. Sharma, for a significantly lower price than its market value. A few months later, Ravi realizes that he might have been taken advantage of due to his lack of experience and files a suit against his father, questioning the good faith of the transaction. According to Section 114 of The Bharatiya Sakshya Adhiniyam 2023, the burden of proving that the transaction was conducted in good faith lies on Mr. Sharma, as he is in a position of active confidence being Ravi's father.

### Example 2:

Ms. Priya, a successful businesswoman, decides to sell her company shares to her long-time financial advisor, Mr. Kapoor. Later, Ms. Priya suspects that Mr. Kapoor might have used his position to influence her decision and files a suit questioning the good faith of the transaction. Under Section 114 of The Bharatiya Sakshya Adhiniyam 2023, Mr. Kapoor, being in a position of active confidence as Ms. Priya's financial advisor, has the burden of proving that the transaction was conducted in good faith.

### Example 3:

Dr. Mehta, a renowned doctor, sells his clinic to his assistant, Dr. Ramesh, who has been working with him for over a decade. After the sale, Dr. Mehta feels that Dr. Ramesh might have used their close professional relationship to get the clinic at a lower price and files a suit. According to Section 114 of The Bharatiya Sakshya Adhiniyam 2023, Dr. Ramesh, being in a position of active confidence as Dr. Mehta's long-time assistant, must prove that the transaction was conducted in good faith.

### Example 4:

An elderly woman, Mrs. Gupta, sells her house to her caregiver, Ms. Anjali, for a price much lower than its market value. Mrs. Gupta's children believe that Ms. Anjali might have unduly influenced their mother and file a suit questioning the good faith of the transaction. Under Section 114 of The Bharatiya Sakshya Adhiniyam 2023, Ms. Anjali, being in a position of active confidence as Mrs. Gupta's caregiver, has the burden of proving that the transaction was conducted in good faith.

### **Section 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 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.

### **Simplified act**

(1) If someone is accused of committing any of the crimes listed in sub-section (2) in -

(a) an area declared as a disturbed area under any current law aimed at controlling disorder and maintaining public order; or

(b) an area where there has been significant public unrest for more than a month,

and it is proven that the person was present in that area at a time when firearms or explosives were used to attack or resist armed forces or public order forces doing their duties, it will be assumed, unless proven otherwise, that the person committed the crime.

(2) The crimes mentioned in sub-section (1) are:

(a) a crime under section 147, section 148, section 149, or section 150 of the Bharatiya Nyaya Sanhita, 2023;

(b) criminal conspiracy, attempt to commit, or helping to commit a crime under section 149 or section 150 of the Bharatiya Nyaya Sanhita, 2023.

Explanation using Example

Example 1:

Ravi lives in a town that has been declared a disturbed area due to ongoing riots and public disorder. One evening, during a police operation to restore peace, shots are fired from a building where Ravi was present. The police arrest Ravi and accuse him of participating in the attack against them. Under Section 115 of The Bharatiya Sakshya Adhiniyam 2023, it is presumed that Ravi committed the offence because he was at the location where firearms were used against the police. Ravi will need to provide evidence to prove that he did not participate in the attack to counter this presumption.

Example 2:

In a village experiencing continuous public unrest for over a month, a group of people, including Sita, are found near a site where explosives were used to resist the police. The police arrest Sita and charge her with criminal conspiracy under Section 149 of the Bharatiya Nyaya Sanhita, 2023. According to Section 115 of The Bharatiya Sakshya Adhiniyam 2023, it is presumed that Sita was involved in the conspiracy because she was present at the location during the disturbance. Sita must present evidence to show that she was not involved in the conspiracy to rebut this presumption.

### **Section 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.

### **Simplified act**



If a child is born while their mother is married to a man, or within 280 days after the marriage ends (as long as the mother hasn't remarried), it is automatically assumed that the child is the legitimate child of that man.

This assumption can only be challenged if it can be proven that the mother and the man were not together at any time when the child could have been conceived.

#### Explanation using Example

##### Example 1:

Ravi and Priya were married in 2018. In 2021, Priya gave birth to a baby boy, Arjun. Ravi and Priya were living together as a married couple during the time Arjun was conceived. According to Section 116 of The Bharatiya Sakshya Adhiniyam 2023, Arjun is conclusively presumed to be the legitimate child of Ravi, as he was born during the continuance of their valid marriage.

##### Example 2:

Sunil and Meera were married in 2015 but got divorced in January 2022. In July 2022, Meera gave birth to a baby girl, Ananya. Since Ananya was born within 280 days after the dissolution of Sunil and Meera's marriage, and Meera did not remarry during this period, Ananya is conclusively presumed to be the legitimate child of Sunil under Section 116 of The Bharatiya Sakshya Adhiniyam 2023, unless it can be proven that Sunil and Meera had no access to each other during the time Ananya could have been conceived.

##### Example 3:

Amit and Sita were married in 2010 but separated in 2018, although they did not legally divorce. In 2020, Sita gave birth to a baby boy, Rohit. Amit claims that he is not the father of Rohit. However, under Section 116 of The Bharatiya Sakshya Adhiniyam 2023, Rohit is presumed to be Amit's legitimate child because he was born during the continuance of their valid marriage. Amit would need to provide evidence that he and Sita had no access to each other during the time Rohit could have been conceived to challenge this presumption.

##### Example 4:

Neeraj and Kavita were married in 2012 and got divorced in March 2021. Kavita remained unmarried after the divorce. In December 2021, Kavita gave

birth to a baby girl, Pooja. Since Pooja was born within 280 days after the dissolution of Neeraj and Kavita's marriage, and Kavita did not remarry, Pooja is conclusively presumed to be the legitimate child of Neeraj under Section 116 of The Bharatiya Sakshya Adhiniyam 2023, unless it can be shown that Neeraj and Kavita had no access to each other during the time Pooja could have been conceived.

### **Section 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.

#### **Simplified act**

If a woman commits suicide within seven years of her marriage, and it is shown that her husband or his relatives treated her cruelly, the Court can assume that her husband or his relatives helped cause her suicide.

Explanation:

"Cruelty" here means the same as it does in section 86 of the Bharatiya Nyaya Sanhita, 2023.

Explanation using Example

Example 1:

Priya got married to Rajesh in 2020. Unfortunately, Priya committed suicide in 2025, within five years of their marriage. During the investigation, it was revealed that Priya had been subjected to continuous verbal and physical abuse by Rajesh and his mother. Priya's family provided evidence of her suffering, including medical reports and witness testimonies. Under Section 117 of the Bharatiya Sakshya Adhiniyam 2023, the court may presume that Rajesh and his mother abetted Priya's suicide due to the cruelty she faced within seven years of marriage.

## Example 2:

Anita married Suresh in 2018. In 2023, Anita was found dead, having committed suicide. Her friends and family testified that Anita had been facing severe mental harassment from Suresh and his sister, who constantly demanded dowry and insulted her. Text messages and emails were presented as evidence of the harassment. Given that Anita's suicide occurred within seven years of her marriage and she was subjected to cruelty, the court, under Section 117 of the Bharatiya Sakshya Adhiniyam 2023, may presume that Suresh and his sister abetted her suicide.

### **Section 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.

### **Simplified act**

If there is a question about whether a person has caused the dowry death of a woman, and it is shown that shortly before her death, this woman was treated cruelly or harassed by that person because of dowry demands, the Court will assume that this person caused the dowry death.

Explanation. - For this section, "dowry death" means the same as it does in section 80 of the Bharatiya Nyaya Sanhita, 2023.

Explanation using Example

## Example 1:

Scenario: Rita was married to Rajesh for three years. During this period, Rajesh and his family constantly demanded additional dowry from Rita's parents, despite having already received a substantial amount at the time of marriage. Rita was subjected to severe mental and physical harassment by Rajesh and his family for not fulfilling their dowry demands. Tragically, Rita was found dead under suspicious circumstances in her marital home.

Application of Section 118: In this case, the court will presume that Rajesh and his family caused Rita's dowry death because it is shown that soon before her death, Rita was subjected to cruelty and harassment in connection with dowry demands. Rajesh and his family will have the burden to prove otherwise to counter this presumption.

Example 2:

Scenario: Sunita was married to Anil for two years. Anil and his parents frequently harassed Sunita for not bringing enough dowry. They demanded a car and additional cash from Sunita's parents. Sunita's parents were unable to meet these demands, leading to increased harassment. One day, Sunita was found dead in her marital home, and the initial investigation suggested that she had been subjected to cruelty related to dowry demands shortly before her death.

Application of Section 118: In this situation, the court will presume that Anil and his parents are responsible for Sunita's dowry death. The evidence of harassment and cruelty related to dowry demands soon before her death triggers this presumption. Anil and his parents will need to provide evidence to rebut this presumption to avoid being held liable for dowry death.

### **Section 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.

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 unfavorable 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:

(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 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.

### **Simplified act**

(1) The Court can assume that certain facts are true if they seem likely based on normal events, human behavior, and usual business practices related to the case.

#### Examples

The Court can assume that -

(a) a person found with stolen goods soon after a theft is either the thief or knew the goods were stolen, unless they can explain how they got them;

(b) a partner in crime is not trustworthy unless there is other evidence supporting their story;

(c) a bill of exchange (a type of financial document) was accepted or signed for a good reason;

(d) something that existed recently is still around if it usually lasts longer than the time since it was last seen;

(e) official and legal actions were done properly;

(f) normal business practices were followed in specific cases;

(g) evidence that could be shown but isn't, would likely be bad for the person hiding it;

(h) if someone refuses to answer a question they don't legally have to answer, their answer would probably be bad for them;

(i) if a document that creates a debt is with the person who owes the debt, the debt has been paid off.

(2) The Court should also consider the following situations when deciding if these assumptions apply to a case:

(i) for Example (a) - a shopkeeper has a marked coin soon after it was stolen and can't explain it, but they handle many coins in their business;

(ii) for Example (b) - A, a very reputable person, is on trial for causing a death by being careless with machinery. B, also reputable, explains what happened and admits both were careless;

(iii) for Example (b) - a crime is committed by several people. A, B, and C are caught and kept apart. Each blames D, and their stories match in a way that makes it unlikely they planned it together;

(iv) for Example (c) - A, a business person, draws a bill of exchange. B, who accepts it, is young and inexperienced, and under A's influence;

(v) for Example (d) - it is shown that a river flowed a certain way five years ago, but there have been floods since that could have changed its course;

(vi) for Example (e) - a legal action, whose regularity is questioned, was done under unusual circumstances;

(vii) for Example (f) - the question is whether a letter was received. It was posted, but the postal service was disrupted by disturbances;

(viii) for Example (g) - a man refuses to show a document related to a minor contract dispute, but it might also harm his family's reputation;

(ix) for Example (h) - a man refuses to answer a question he doesn't have to by law, but the answer might cause him unrelated financial loss;

(x) for Example (i) - a bond is with the person who owes the debt, but it might have been stolen by them.

Explanation using Example

#### Example 1:

Ravi is caught by the police with a bag full of stolen jewelry just a day after a high-profile burglary in his neighborhood. The court may presume that Ravi is either the thief or has received the stolen goods knowing they were stolen, unless Ravi can provide a credible explanation for his possession of the jewelry.

#### Example 2:

Amit, a shopkeeper, is found with a marked 500-rupee note that was reported stolen from a nearby store. Amit cannot specifically account for the marked note but explains that he receives numerous 500-rupee notes daily in his business. The court may consider this explanation while deciding whether to presume Amit's involvement in the theft.

#### Example 3:

During a trial for a bank robbery, one of the accomplices, Raj, testifies against the main accused, Suresh. Raj's testimony alone is not enough to convict Suresh unless it is corroborated by other material evidence, as the court may presume that an accomplice's testimony is unworthy of credit unless supported by additional proof.

#### Example 4:

Priya, a businesswoman, presents a bill of exchange that was accepted by her business partner, Ramesh. The court may presume that the bill was accepted for good consideration unless there is evidence to the contrary.

#### Example 5:

A river's course is being disputed in a property case. It is shown that the river ran in a certain direction five years ago, but there have been significant floods since then. The court may consider the possibility that the floods could have altered the river's course.

#### Example 6:

A judicial act performed by a judge is questioned for its regularity. However, it is shown that the act was performed under exceptional circumstances, such as during a natural disaster. The court may presume that the judicial act was regularly performed unless there is strong evidence to suggest otherwise.

#### Example 7:



A letter is claimed to have been received by a party in a contract dispute. It is shown that the letter was posted, but there were postal service interruptions due to civil disturbances. The court may consider these interruptions while deciding whether to presume that the letter was received.

Example 8:

In a contract dispute, one party refuses to produce a document that could impact the case. The court may presume that the document, if produced, would be unfavorable to the person withholding it, especially if the document is of small importance to the contract but could harm the person's reputation.

Example 9:

During a trial, a witness refuses to answer a question that he is not legally compelled to answer. The court may presume that the answer, if given, would be unfavorable to the witness, particularly if the answer could cause him financial loss in unrelated matters.

Example 10:

A bond is found in the possession of the obligor, who claims that the obligation has been discharged. However, the circumstances suggest that the obligor may have stolen the bond. The court may consider these circumstances while deciding whether to presume that the obligation has been discharged.

### **Section 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.

### **Simplified act**

If someone is on trial for rape under section 64(2) of the Bharatiya Nyaya Sanhita, 2023, and it is proven that the accused had sexual intercourse with the woman, the main question becomes whether the woman agreed to it or not.

If the woman testifies in court that she did not agree to the sexual intercourse, the court will assume she did not give her consent.

Explanation: In this section, "sexual intercourse" includes any acts listed in section 63 of the Bharatiya Nyaya Sanhita, 2023.

Explanation using Example

Example 1:

A woman named Priya files a complaint against a man named Raj, accusing him of raping her. During the trial, it is established that Raj had sexual intercourse with Priya. Priya testifies in court that she did not consent to the sexual intercourse. According to Section 120 of the Bharatiya Sakshya Adhiniyam 2023, the court will presume that Priya did not consent, shifting the burden of proof to Raj to provide evidence that Priya did consent.

Example 2:

A college student, Anjali, accuses her classmate, Vikram, of raping her after a party. The prosecution proves that Vikram had sexual intercourse with Anjali. Anjali testifies in court, stating that she was unconscious and did not give her consent. Under Section 120 of the Bharatiya Sakshya Adhiniyam 2023, the court will presume that Anjali did not consent to the sexual intercourse, and it will be up to Vikram to prove otherwise.

## **CHAPTER VIII: ESTOPPEL**

### **Section 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.

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.

### **Simplified act**

When someone, through their words, actions, or lack of action, makes another person believe something is true and that person acts based on that belief, the first person (or their representative) cannot later claim that the thing is not true in any legal case between them.

#### Example

A person named A intentionally makes another person named B believe that a piece of land belongs to A. Because of this, B buys the land and pays for it. Later, the land actually becomes A's property, and A tries to cancel the sale by saying that at the time of the sale, he didn't own the land. A is not allowed to prove that he didn't own the land at the time of the sale.

#### Explanation using Example

##### Example 1:

Ravi owns a piece of land and tells his friend, Suresh, that he also owns the adjacent plot, which actually belongs to someone else. Ravi convinces Suresh to buy the adjacent plot from him. Suresh, believing Ravi's claim, pays Ravi for the plot. Later, the actual owner of the adjacent plot sells it to Ravi. Ravi then tries to claim that the sale to Suresh was invalid because he did not own the plot at the time of the sale. Under Section 121: Estoppel, Ravi cannot deny his earlier claim and must honor the sale to Suresh.

##### Example 2:

Priya, a businesswoman, tells her supplier, Anil, that she has the necessary government permits to operate a factory. Based on Priya's statement, Anil supplies her with machinery worth ₹10 lakhs. Later, it is discovered that Priya did not have the permits at the time of the transaction. Priya then tries to avoid paying Anil by claiming she did not have the permits. Under Section 121: Estoppel, Priya cannot deny her earlier statement and must pay Anil for the machinery supplied.

##### Example 3:

Meera, a tenant, tells her landlord, Raj, that she has paid the electricity bill for the month. Raj, believing Meera, does not check the bill and later finds out that the bill was not paid. Meera then tries to claim that she never said she paid the bill. Under Section 121: Estoppel, Meera cannot deny her earlier statement and must be held responsible for the unpaid bill.

Example 4:

Arjun, a car dealer, tells his customer, Neha, that a car has never been in an accident. Neha buys the car based on this information. Later, Neha finds out that the car had been in a major accident before she bought it. Arjun then tries to claim that he was not aware of the accident. Under Section 121: Estoppel, Arjun cannot deny his earlier statement and must compensate Neha for the misrepresentation.

### **Section 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.

### **Simplified act**

If you are renting a property or claiming through someone who is renting, you cannot say that the landlord did not own the property at the start of your rental period. This rule applies both while you are renting and after you stop renting.

If you were allowed to use a property by someone who was in possession of it, you cannot say that the person who gave you permission did not have the right to possess the property at the time they gave you permission.

Explanation using Example

Example 1:

Ravi rents a shop from Suresh in Mumbai. Ravi has been paying rent regularly for the past three years. One day, Ravi decides to stop paying rent and claims that Suresh is not the rightful owner of the shop. According to Section 122 of The Bharatiya Sakshya Adhiniyam 2023, Ravi cannot deny Suresh's title to the shop during the tenancy or even after it ends. Ravi is estopped from challenging Suresh's ownership because he accepted Suresh as the landlord when he started renting the shop.

Example 2:

Priya allows her friend Anjali to stay in her apartment in Delhi for a few months while Anjali looks for a new place. Anjali later refuses to leave and claims that Priya never had the right to let her stay in the apartment. Under Section 122 of The Bharatiya Sakshya Adhiniyam 2023, Anjali cannot deny Priya's right to possession of the apartment at the time the license was given. Anjali is estopped from challenging Priya's authority to allow her to stay there.

Example 3:

Manoj leases a piece of agricultural land from Ramesh in Punjab. After a few years, Manoj decides to build a house on the land and claims that Ramesh never had the right to lease the land to him. According to Section 122 of The Bharatiya Sakshya Adhiniyam 2023, Manoj cannot deny Ramesh's title to the land during the tenancy or after it ends. Manoj is estopped from challenging Ramesh's ownership because he accepted Ramesh as the landlord when he started leasing the land.

Example 4:

Sunita allows her cousin, Meena, to use her garage in Bangalore to store some furniture. After a year, Sunita asks Meena to remove the furniture, but Meena refuses and claims that Sunita never had the right to let her use the garage. Under Section 122 of The Bharatiya Sakshya Adhiniyam 2023, Meena cannot deny Sunita's right to possession of the garage at the time the license was given. Meena is estopped from challenging Sunita's authority to allow her to use the garage.

### **Section 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.

## Simplified act

No one who accepts a bill of exchange (a type of financial document) can claim that the person who created or endorsed the bill didn't have the right to do so. Similarly, no one who borrows or is given permission to use something (a bailee or licensee) can claim that the person who lent or gave permission (the bailor or licensor) didn't have the right to do so at the time the agreement started.

### Explanation 1

The person who accepts a bill of exchange can argue that the bill wasn't actually created by the person it says created it.

### Explanation 2

If someone who has borrowed goods gives them to someone else, they can argue that the other person had a right to the goods against the original owner.

### Explanation using Example

#### Example 1:

Scenario: Rajesh accepts a bill of exchange from Suresh.

Details: Suresh draws a bill of exchange and Rajesh accepts it, agreeing to pay the amount specified in the bill. Later, Rajesh tries to deny that Suresh had the authority to draw the bill.

Application of Section 123: According to Section 123 of The Bharatiya Sakshya Adhinyam 2023, Rajesh cannot deny that Suresh had the authority to draw the bill of exchange once he has accepted it. Rajesh is estopped from making such a denial.

Explanation 1 Application: However, Rajesh can claim that the bill was not actually drawn by Suresh, but by someone else pretending to be Suresh. This is allowed under Explanation 1 of Section 123.

#### Example 2:

Scenario: Priya rents a warehouse from Anil.

Details: Anil grants a license to Priya to use his warehouse for storage. Later, Priya tries to deny that Anil had the authority to grant her the license to use the warehouse.

Application of Section 123: According to Section 123, Priya cannot deny that Anil had the authority to grant the license once she has accepted it and started using the warehouse. Priya is estopped from making such a denial.

Explanation 2 Application: If Priya, as a bailee, delivers the goods stored in the warehouse to another person, she can prove that this person had a right to the goods against Anil, the licensor. For instance, if Anil's business partner, who has a legal claim to the goods, takes them, Priya can show that the partner had a right to the goods as against Anil.

## **CHAPTER IX: OF WITNESSES**

### **Section 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.

### **Simplified act**

Everyone is allowed to give evidence in court unless the court thinks they can't understand the questions being asked or can't give sensible answers because they are too young, too old, sick in body or mind, or for any similar reason.

Explanation:

A person with a mental illness can still give evidence unless their mental illness stops them from understanding the questions or giving sensible answers.

Explanation using Example

Example 1:

Ravi, a 25-year-old man, witnessed a car accident in Mumbai. He is called to testify in court about what he saw. The court finds Ravi competent to testify because he is of sound mind and can understand the questions put to him and provide rational answers. However, during the trial, it is revealed that Ravi has a mild speech impediment. The court determines that this does not prevent

him from understanding the questions or giving rational answers, so he is allowed to testify.

**Example 2:**

Meera, an 85-year-old woman, is a key witness in a property dispute case in Delhi. When she is called to testify, the court observes that she has difficulty hearing and sometimes gets confused about dates and events. The judge decides to assess her ability to understand the questions and provide rational answers. After a brief examination, the court concludes that Meera's extreme old age and hearing issues prevent her from fully comprehending the questions and giving coherent answers. Therefore, the court rules that she is not competent to testify in this case.

**Example 3:**

Arjun, a 10-year-old boy, witnessed a theft in his neighborhood in Bangalore. The court needs his testimony to understand what happened. Before allowing him to testify, the judge asks Arjun a few simple questions to determine if he can understand them and provide rational answers. Arjun answers the questions clearly and accurately. The court finds that despite his tender years, Arjun is competent to testify because he can understand the questions and give rational answers.

**Example 4:**

Sita, a woman suffering from schizophrenia, witnessed a robbery in Chennai. The court needs her testimony to establish the facts of the case. The judge decides to evaluate her mental state to determine if she can understand the questions and provide rational answers. After consulting with a medical expert and observing Sita's responses, the court concludes that her unsoundness of mind does not prevent her from understanding the questions or giving rational answers. Therefore, Sita is deemed competent to testify.

**Section 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.

### **Simplified act**

If a witness cannot speak, they can give their evidence in another way that can be understood, like writing or using signs. However, this writing or these signs must be done in the courtroom, and this type of evidence will be considered as spoken evidence.

If the witness cannot communicate verbally, the court will get help from an interpreter or a special educator to record the statement, and this statement will be recorded on video.

### **Explanation using Example**

#### **Example 1:**

Ravi, a deaf and mute individual, witnessed a robbery at a local market in Delhi. When the case went to trial, Ravi was called to testify. Since Ravi cannot speak, the court arranged for a special educator who understands sign language to assist. In the courtroom, Ravi used sign language to describe the events he witnessed. The special educator translated Ravi's signs into spoken words for the court, and the entire process was videographed to ensure accuracy. Ravi's testimony was considered as valid oral evidence under Section 125 of The Bharatiya Sakshya Adhiniyam 2023.

#### **Example 2:**

Meena, a woman who lost her ability to speak due to a medical condition, saw a car accident in Mumbai. She was summoned to court to provide her testimony. Meena can write, so the court provided her with paper and a pen. In the presence of the judge and the attorneys, Meena wrote down her account of the accident. Her written testimony was read aloud in court and was treated as oral evidence. Additionally, the entire process was videographed to maintain a clear record. This procedure ensured that Meena's inability to speak did not prevent her from contributing valuable evidence to the case.

## **Section 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.

(2) In criminal proceedings against any person, the husband or wife of such person, respectively, shall be a competent witness.

### **Simplified act**

(1) In all civil court cases, the people involved in the case, and their husbands or wives, can be witnesses.

(2) In criminal court cases against someone, that person's husband or wife can be a witness.

Explanation using Example

Example 1:

Scenario: A Civil Dispute Over Property

Situation: Raj and Priya are involved in a civil lawsuit over the ownership of a piece of land. Raj claims that the land was gifted to him by his late father, while Priya argues that the land was jointly purchased by both of them.

Application of Section 126:

Raj can testify in court to provide evidence supporting his claim that the land was gifted to him.

Priya can also testify to provide evidence supporting her claim that the land was jointly purchased.

Additionally, Raj's wife, Anjali, can be called as a witness to testify about any relevant conversations or documents she might have seen regarding the land.

Similarly, Priya's husband, Amit, can be called as a witness to testify about any relevant information he might have regarding the purchase of the land.

Example 2:

Scenario: A Criminal Case of Domestic Violence

Situation: Sunita has filed a criminal complaint against her husband, Ramesh, accusing him of domestic violence. Ramesh denies the allegations and claims that Sunita is making false accusations.

Application of Section 126:

In the criminal proceedings against Ramesh, Sunita can be called as a witness to testify about the incidents of domestic violence she experienced.

Ramesh can also testify in his own defense to deny the allegations and provide his side of the story.

Additionally, if there are any relevant incidents or conversations that Ramesh's wife, Sunita, witnessed, she can be called to testify about those as well.

Similarly, if there are any relevant incidents or conversations that Sunita's husband, Ramesh, witnessed, he can be called to testify about those as well.

### **Section 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.

### **Simplified act**

No Judge or Magistrate has to answer questions about their actions or what they learned while working in court, unless a higher court specifically orders

them to do so. However, they can be asked about other things that happened in their presence while they were working.

### Examples

(a) If someone on trial says that a Magistrate named B took a statement incorrectly, B does not have to answer questions about it unless a higher court orders it.

(b) If someone is accused of lying in court before Magistrate B, B does not have to say what the person said unless a higher court orders it.

(c) If someone is accused of trying to murder a police officer during their trial before Judge B, Judge B can be asked about what happened.

### Explanation using Example

#### Example 1:

Scenario: A judge named Mr. Sharma is presiding over a high-profile corruption case. During the trial, a witness claims that Mr. Sharma made biased comments during a previous hearing.

#### Application of Section 127:

Mr. Sharma cannot be compelled to answer questions about his conduct or comments made during the previous hearing unless a higher court issues a special order.

However, if there were other events or statements made in his presence during the trial that are relevant to the case, he can be examined about those.

#### Example 2:

Scenario: Ms. Gupta, a Magistrate, presided over a case where the defendant, Mr. Verma, was accused of theft. During the trial, Mr. Verma alleges that Ms. Gupta improperly influenced the testimony of a key witness.

#### Application of Section 127:

Ms. Gupta cannot be forced to answer questions about her conduct or any knowledge she gained during the trial unless a superior court orders it.

If there were other incidents or statements made in her presence during the trial that are pertinent to the case, she can be questioned about those.

### Example 3:

Scenario: Mr. Khan, a Sessions Judge, is overseeing a murder trial. During the trial, the defendant, Mr. Singh, attempts to bribe Mr. Khan.

#### Application of Section 127:

Mr. Khan can be examined about the bribery attempt because it is an event that occurred in his presence while he was acting as a judge.

However, he cannot be compelled to answer questions about his conduct or any knowledge he gained during the trial without a special order from a higher court.

### Example 4:

Scenario: A Magistrate, Ms. Rao, is accused of having a conflict of interest in a case she presided over. The defense attorney wants to question her about her decision-making process during the trial.

#### Application of Section 127:

Ms. Rao cannot be compelled to answer questions about her conduct or decision-making process during the trial unless a superior court issues a special order.

She can be questioned about other relevant events or statements made in her presence during the trial.

### Example 5:

Scenario: During a trial, a defendant claims that the Magistrate, Mr. Patel, received confidential information about the case outside of court proceedings.

#### Application of Section 127:

Mr. Patel cannot be forced to answer questions about any knowledge he gained during the trial unless a higher court orders it.

He can be examined about other relevant matters that occurred in his presence while he was acting as a Magistrate.

### **Section 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.

### **Simplified act**

If you are or have been married, you cannot be forced to reveal any private conversations you had with your spouse during the marriage.

You are also not allowed to share these private conversations unless your spouse (or their legal representative) agrees to it.

The only exceptions to this rule are: a. If you are involved in a lawsuit against your spouse. b. If there is a legal case where one spouse is accused of committing a crime against the other.

Explanation using Example

Example 1:

Ravi and Priya are married. During their marriage, Ravi confides in Priya about a business deal that involves some questionable practices. Later, Ravi is accused of fraud related to that business deal. In court, Priya cannot be forced to reveal what Ravi told her about the business deal during their marriage, nor can she voluntarily disclose it without Ravi's consent. However, if Ravi and Priya are involved in a divorce proceeding, Priya may be allowed to disclose the communication if it is relevant to the case.

Example 2:

Anita and Rajesh are married. Rajesh tells Anita in confidence that he has been hiding income to evade taxes. Years later, they get divorced. During a tax evasion investigation against Rajesh, the authorities cannot compel Anita to disclose what Rajesh told her during their marriage about hiding income. However, if Rajesh is being prosecuted for a crime against Anita, such as domestic violence, Anita may be permitted to disclose the communication if it is relevant to the case.

### **Section 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.

### **Simplified act**

No one is allowed to provide evidence from unpublished official records about State matters unless they have permission.

The permission must come from the head officer of the relevant department.

The head officer can decide whether to give or deny permission based on their judgment.

Explanation using Example

Example 1:

Scenario: A journalist is investigating a corruption scandal involving a high-ranking government official. The journalist obtains some unpublished official records from a whistleblower within the government department.

Application of Section 129: The journalist cannot use these unpublished official records as evidence in court unless they obtain permission from the head of the concerned government department. If the head of the department decides not to grant permission, the records cannot be used as evidence in any legal proceedings.

Example 2:

Scenario: A citizen files a Right to Information (RTI) request to access certain unpublished official records related to a government project that allegedly caused environmental damage. The citizen wants to use these records in a public interest litigation (PIL) against the government.

Application of Section 129: Even if the citizen obtains the records through the RTI, they cannot present these unpublished official records as evidence in court without the permission of the head of the concerned department. The head of the department has the discretion to grant or withhold permission based on their judgment.

Example 3:

Scenario: A defense lawyer in a criminal case wants to use unpublished official records from the Ministry of Home Affairs to prove their client's innocence. The records contain sensitive information about internal security measures.

Application of Section 129: The defense lawyer must seek permission from the head of the Ministry of Home Affairs to use these unpublished official records as evidence in court. If the head of the department denies permission, the lawyer cannot present these records as evidence in the trial.

Example 4:

Scenario: An academic researcher is conducting a study on the decision-making process within a government department and wants to use unpublished official records to support their findings in a published paper.

Application of Section 129: The researcher must obtain permission from the head of the concerned department to use the unpublished official records. If permission is not granted, the researcher cannot use these records in their published work or any related legal proceedings.

### **Section 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.

#### **Simplified act**

No public officer has to reveal information shared with them in confidence if they believe that sharing it would harm the public interest.

Explanation using Example

Example 1:

Scenario: A senior police officer receives a confidential tip-off about a potential terrorist attack. The information is shared with him by an undercover informant who is embedded within a terrorist group. During a court trial related to the attack, the defense attorney demands that the police officer disclose the identity of the informant and the details of the communication.

Application of Section 130: The police officer can refuse to disclose the identity of the informant and the details of the communication, arguing that revealing this information would compromise public safety and the informant's life, thereby harming public interests.

Example 2:



Scenario: A government health official receives a confidential report about a new, highly contagious disease outbreak in a specific region. The report includes sensitive information about the potential source and initial affected individuals. During a public inquiry, a journalist requests the official to disclose the details of the report.

Application of Section 130: The health official can refuse to disclose the details of the report, stating that making this information public could cause widespread panic and hinder the efforts to control the outbreak, thus negatively impacting public interests.

### **Section 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 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.

### **Simplified act**

No judge or police officer has to tell when they learned about any crime being committed.

No tax officer has to tell when they learned about any crime related to public money.

Explanation. - A "tax officer" is any officer who works with public money matters.

Explanation using Example

Example 1:

Scenario: A police officer, Inspector Sharma, receives an anonymous tip about a planned robbery at a local bank. He takes immediate action and prevents the robbery. During the trial, the defense attorney asks Inspector Sharma to disclose when he received the information about the robbery.

Application of Section 131: Inspector Sharma is not compelled to disclose the exact time or source of the information he received about the planned robbery.

This protection ensures that the flow of information to law enforcement is not hindered by the fear of exposure.

Example 2:

Scenario: Revenue Officer Mehta discovers a large-scale tax evasion scheme involving a prominent business tycoon. He initiates an investigation and gathers substantial evidence. During the court proceedings, the defense lawyer questions Officer Mehta about when he first received information regarding the tax evasion.

Application of Section 131: Officer Mehta is not required to reveal when he received the information about the tax evasion. This provision protects revenue officers from being compelled to disclose the timing of their information, thereby safeguarding the sources and methods used in detecting offenses against public revenue.

### **Section 132: Professional communications.**

#### Confidentiality of 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 -

- (a) any such communication made in furtherance of any illegal purpose;
  - (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.

## Simplified act

### Confidentiality of Communications

(1) An advocate (lawyer) cannot reveal any communication made by their client during their professional relationship, unless the client gives explicit permission. This includes:

Any communication made by the client or on behalf of the client.

The contents or condition of any document the lawyer has seen during their professional service.

Any advice given by the lawyer to the client.

However, this rule does not apply if:

(a) The communication was made to further an illegal purpose.

(b) The lawyer observes any fact during their service that shows a crime or fraud has been committed since they started working for the client.

(2) It does not matter whether the client pointed out the fact of crime or fraud to the lawyer or not.

Explanation: The lawyer's duty to keep communications confidential continues even after their professional relationship with the client ends.

### Examples

(a) If a client tells their lawyer, "I have committed forgery, and I want you to defend me," this communication is protected because defending someone known to be guilty is not a criminal purpose.

(b) If a client tells their lawyer, "I want to take possession of property using a forged deed and I want you to sue for it," this communication is not protected because it is made to further a criminal purpose.

(c) If a client is charged with embezzlement and hires a lawyer to defend them, and during the case, the lawyer notices a new entry in the client's account book showing the embezzled amount, which was not there when the lawyer started, this observation is not protected because it shows a fraud committed during the lawyer's service.

(3) These rules also apply to interpreters, clerks, and employees of the advocates.

### Explanation using Example

#### Example 1:

Scenario: Rajesh, a businessman, hires Advocate Mehta to represent him in a civil lawsuit regarding a breach of contract.

Communication: During their meetings, Rajesh tells Advocate Mehta, "I have hidden some assets from the court to avoid paying the full amount if I lose the case."

Application of the Act: Since Rajesh's communication to Advocate Mehta is made in furtherance of an illegal purpose (hiding assets from the court), Advocate Mehta is not protected by confidentiality under Section 132 and may be required to disclose this information if asked by the court.

#### Example 2:

Scenario: Priya, an employee, consults Advocate Sharma about a wrongful termination case against her employer.

Communication: Priya tells Advocate Sharma, "I was fired because I reported my manager's fraudulent activities to the company's ethics committee."

Application of the Act: This communication is protected under Section 132 because it is not made in furtherance of any illegal purpose. Advocate Sharma cannot disclose this information without Priya's express consent.

#### Example 3:

Scenario: Anil, a client, tells Advocate Verma, "I have committed tax evasion in the past, and I need your help to rectify my tax filings."

Communication: Anil's admission of past tax evasion is made for the purpose of seeking legal advice to correct his filings.

Application of the Act: This communication is protected under Section 132 because it is not made in furtherance of an ongoing illegal purpose. Advocate Verma cannot disclose this information without Anil's express consent.

#### Example 4:

Scenario: Sunita, a client, tells Advocate Rao, "I plan to bribe a government official to get my work done faster."

Communication: Sunita's statement about her future plan to bribe a government official is made in furtherance of an illegal purpose.

Application of the Act: This communication is not protected under Section 132, and Advocate Rao may be required to disclose this information if asked by the authorities.

#### Example 5:

Scenario: During a property dispute case, Advocate Singh observes that a crucial document presented by his client, Mr. Kumar, appears to have been altered after the commencement of his professional service.

Observation: Advocate Singh notices that the date on the property deed has been changed to a more recent date.

Application of the Act: Since this alteration indicates that a fraud has been committed since the commencement of Advocate Singh's service, this fact is not protected under Section 132, and Advocate Singh may be required to disclose this observation in court.

### **Section 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.

#### **Simplified act**

If someone involved in a lawsuit gives evidence, either on their own or because someone else asked them to, it doesn't mean they agree to share all information as described in section 132.

If someone involved in a lawsuit calls their lawyer to testify as a witness, they only agree to let the lawyer share information if they ask the lawyer questions about things the lawyer wouldn't normally be allowed to talk about.

Explanation using Example

Example 1:

Ravi is involved in a civil lawsuit regarding a property dispute. During the trial, Ravi voluntarily provides some documents and testimony to support his case. However, these documents contain some confidential communications between him and his lawyer. According to Section 133 of The Bharatiya Sakshya Adhiniyam 2023, Ravi's act of providing these documents does not mean he has waived his right to keep other confidential communications with his lawyer private. The court cannot force Ravi to disclose additional confidential information just because he volunteered some evidence.

Example 2:

Priya is in a legal battle over a breach of contract. During the proceedings, Priya's lawyer is called to the witness stand by the opposing party. The opposing party starts questioning Priya's lawyer about the advice given to Priya regarding the contract. According to Section 133, Priya is considered to have consented to the disclosure of this specific advice only because the opposing party questioned the lawyer about it. However, this does not mean that all other confidential communications between Priya and her lawyer are now open to disclosure. Only the specific matters questioned are subject to disclosure.

## **Section 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.

### **Simplified act**

No one can be forced to tell the Court about private conversations they had with their lawyer.

If a person decides to be a witness, they might have to share some of those private conversations.

The Court will only ask for the parts of the conversations that are needed to understand the evidence the person has given.

The person won't have to share any other private conversations.

Explanation using Example

Example 1:

Ravi is accused of embezzlement at his workplace. He hires a lawyer, Ms. Sharma, to defend him. During their meetings, Ravi confides in Ms. Sharma about various details of his case, including some sensitive information. When the case goes to trial, the prosecution demands that Ms. Sharma disclose what Ravi told her in confidence. According to Section 134 of The Bharatiya Sakshya Adhiniyam 2023, Ms. Sharma cannot be compelled to reveal these confidential communications in court. However, if Ravi decides to testify in his own defense, and his testimony includes information that needs clarification, the court may require him to disclose certain communications with Ms. Sharma that are necessary to explain his evidence.

Example 2:

Priya is involved in a civil lawsuit regarding a property dispute. She consults her legal adviser, Mr. Verma, and shares all the details of her case, including her strategy and personal opinions about the other party. During the trial, the opposing counsel requests that Mr. Verma disclose what Priya told him. Under Section 134 of The Bharatiya Sakshya Adhiniyam 2023, Mr. Verma is not obligated to disclose any confidential communications between him and Priya.

However, if Priya chooses to take the stand and testify, and her testimony includes statements that need further explanation, the court may require her to reveal specific communications with Mr. Verma that are necessary to clarify her evidence.

### **Section 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.

#### **Simplified act**

If you are a witness and not directly involved in a lawsuit, you cannot be forced to show:

The ownership papers of any property you own.

Any document that shows you hold property as a pledge or mortgage.

Any document that could make you look guilty of a crime.

The only exception is if you have agreed in writing to show these documents to the person asking for them or to someone connected to that person.

Explanation using Example

Example 1:

Ravi is a witness in a civil lawsuit between two parties, Asha and Bharat, over a property dispute. Ravi owns a piece of land, and he has the title-deeds to this land. Asha's lawyer requests Ravi to produce his title-deeds in court to support their case. However, Ravi is not a party to the lawsuit; he is merely a witness. According to Section 135 of The Bharatiya Sakshya Adhiniyam 2023, Ravi cannot be compelled to produce his title-deeds unless he has agreed in writing to do so with Asha or someone through whom Asha claims. Since Ravi has not made such an agreement, he is not legally required to produce his title-deeds in court.

Example 2:



Sunita is a witness in a criminal case where the accused, Rajesh, is charged with fraud. Sunita holds a property as a mortgagee and has documents that prove her mortgagee status. The prosecution requests Sunita to produce these documents in court to establish a financial link between her and Rajesh. However, Sunita is not a party to the case; she is only a witness. Under Section 135 of The Bharatiya Sakshya Adhiniyam 2023, Sunita cannot be forced to produce her mortgage documents unless she has agreed in writing to produce them with the prosecution or someone through whom the prosecution claims. Since no such agreement exists, Sunita is not obligated to produce her mortgage documents in court.

**Section 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.

**Simplified act**

You cannot be forced to show documents or electronic records that you have if someone else would have the right to refuse to show them if they had them, unless that other person agrees to let you show them.

Explanation using Example

Example 1:

Ravi is a journalist who has obtained confidential documents from his source, Priya, who works at a government office. These documents contain sensitive information about a corruption scandal. The court summons Ravi to produce these documents as evidence. However, Priya, who originally had possession of these documents, would have the right to refuse to produce them due to their confidential nature. Therefore, under Section 136 of The Bharatiya Sakshya Adhiniyam 2023, Ravi cannot be compelled to produce these documents unless Priya consents to their production.

Example 2:

Anita is a lawyer representing a client, Raj, in a civil dispute. During the case, Anita comes into possession of Raj's personal emails that are crucial to the case. The opposing party requests the court to compel Anita to produce these

emails as evidence. However, Raj, who originally had control over these emails, has the right to refuse to produce them due to attorney-client privilege. Therefore, under Section 136 of The Bharatiya Sakshya Adhiniyam 2023, Anita cannot be compelled to produce these emails unless Raj consents to their production.

**Section 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 for giving false evidence by such answer.

**Simplified act**

A witness must answer any question that is relevant to the case in any civil or criminal trial, even if the answer might show that the witness has committed a crime or could lead to the witness being punished or losing something.

However, if the witness is forced to answer such a question, that answer cannot be used to arrest or prosecute the witness, or be used against them in any criminal case, except if the witness is being prosecuted for lying in their answer.

Explanation using Example

Example 1:

Scenario: A bank fraud case is being heard in court. Mr. Sharma, an employee of the bank, is called as a witness. During the cross-examination, he is asked whether he was aware of the fraudulent transactions happening in the bank.

Application of Section 137: Mr. Sharma cannot refuse to answer the question on the grounds that his answer might incriminate him or expose him to penalties. He must answer the question truthfully. However, the law protects

him by ensuring that his answer cannot be used to arrest or prosecute him for the fraud itself, unless he gives false evidence.

Outcome: Mr. Sharma answers that he was aware of the fraudulent transactions. This information helps the court understand the extent of the fraud. Mr. Sharma is protected from prosecution for the fraud based on this testimony, but if he lies, he can be prosecuted for perjury.

#### Example 2:

Scenario: In a civil case regarding property disputes, Mrs. Gupta is called as a witness. She is asked if she had forged signatures on certain property documents.

Application of Section 137: Mrs. Gupta cannot refuse to answer the question by claiming that her answer might incriminate her or lead to penalties. She is legally required to answer the question. However, her answer cannot be used to arrest or prosecute her for forgery, unless she is found to be lying under oath.

Outcome: Mrs. Gupta admits to forging the signatures. This admission helps resolve the property dispute. Mrs. Gupta is protected from being prosecuted for forgery based on this admission, but she can be prosecuted if it is later found that she lied in her testimony.

#### Example 3:

Scenario: In a criminal trial for drug trafficking, Mr. Khan is called as a witness. He is asked if he has ever been involved in drug trafficking activities.

Application of Section 137: Mr. Khan cannot refuse to answer the question on the grounds that it might incriminate him. He must answer truthfully. However, his answer cannot be used to arrest or prosecute him for drug trafficking, unless he provides false evidence.

Outcome: Mr. Khan admits to having been involved in drug trafficking in the past. This admission provides crucial information for the case. Mr. Khan is protected from prosecution for his past involvement based on this testimony, but he can be prosecuted if he is found to have lied under oath.

#### Example 4:

Scenario: In a tax evasion case, Mr. Verma is called as a witness. He is asked if he has ever falsified his income tax returns.

Application of Section 137: Mr. Verma cannot refuse to answer the question by claiming that his answer might incriminate him or expose him to penalties. He is legally required to answer the question. However, his answer cannot be used to arrest or prosecute him for tax evasion, unless he is found to be lying under oath.

Outcome: Mr. Verma admits to falsifying his income tax returns. This admission helps the court understand the extent of the tax evasion. Mr. Verma is protected from being prosecuted for tax evasion based on this admission, but he can be prosecuted if it is later found that he lied in his testimony.

### **Section 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.

#### **Simplified act**

A person who helps commit a crime can be a valid witness against the person accused of the crime.

A conviction (finding someone guilty) is legal if it is based on the supported testimony of the person who helped commit the crime.

Explanation using Example

Example 1:

Ravi and Suresh plan a bank robbery together. During the robbery, Ravi is caught by the police, but Suresh manages to escape. Ravi decides to cooperate with the police and testifies against Suresh in court. According to Section 138 of The Bharatiya Sakshya Adhiniyam 2023, Ravi, even though he was an accomplice in the crime, is considered a competent witness. The court can convict Suresh based on Ravi's testimony, provided there is additional evidence that supports Ravi's statements.

Example 2:

Priya and Anjali are involved in a scheme to embezzle funds from their employer. Priya is arrested and agrees to testify against Anjali in exchange for a reduced sentence. During the trial, Priya provides detailed information about how the embezzlement was carried out and Anjali's role in it. Under Section 138 of The Bharatiya Sakshya Adhiniyam 2023, Priya's testimony is admissible

in court. The judge can convict Anjali based on Priya's testimony if there is corroborating evidence, such as financial records or witness statements, that supports Priya's account.

**Section 139: Number of witnesses.**

No particular number of witnesses shall in any case be required for the proof of any fact.

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

**CHAPTER X: OF EXAMINATION OF WITNESSES**

**Section 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.

**Simplified act**

The order in which witnesses are brought in and questioned will follow the current laws and practices for civil and criminal cases. If there are no specific laws about this, the Court will decide the order.

Explanation using Example

Example 1:

Scenario: A criminal trial for theft in a district court in India.

Details:

The prosecution has a list of witnesses, including the shop owner, a security guard, and a forensic expert.

The defense also has witnesses, including an alibi witness and a character witness.

Application of Section 140:

The court will follow the Criminal Procedure Code (CrPC) to determine the order in which these witnesses are called to testify.

Typically, the prosecution will present its witnesses first. The shop owner may be called to testify about the theft, followed by the security guard who witnessed the incident, and then the forensic expert who analyzed the evidence.

After the prosecution has presented its witnesses, the defense will have the opportunity to call its witnesses. The alibi witness may testify that the accused was elsewhere at the time of the theft, and the character witness may testify about the accused's good character.

If there is no specific law or procedure guiding the order of witnesses, the judge has the discretion to decide the order in which witnesses are called.

Example 2:

Scenario: A civil case involving a property dispute in a family court in India.

Details:

The plaintiff claims ownership of a piece of land and has witnesses including a surveyor, a neighbor, and a local government official.

The defendant disputes the claim and has witnesses including a previous owner and a document expert.

Application of Section 140:

The court will follow the Civil Procedure Code (CPC) to determine the order in which these witnesses are called to testify.

Typically, the plaintiff will present their witnesses first. The surveyor may testify about the boundaries of the land, the neighbor may testify about the plaintiff's long-term possession, and the local government official may testify about the land records.

After the plaintiff has presented their witnesses, the defendant will have the opportunity to call their witnesses. The previous owner may testify about the history of the land ownership, and the document expert may testify about the authenticity of the land documents.

If there is no specific law or procedure guiding the order of witnesses, the judge has the discretion to decide the order in which witnesses are called.

## **Section 141: Judge to decide as to admissibility of evidence.**

### **Evidence of Facts**

(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 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.

## Simplified act

### Evidence of Facts

(1) When either side in a case wants to present evidence about something, the Judge can ask them to explain how that evidence is important to the case. The Judge will allow the evidence if they believe it is relevant, otherwise, they will not.

(2) If the evidence can only be accepted after proving another fact first, then that other fact must be proven before presenting the main evidence. However, if the party promises to prove the other fact later and the Court is okay with that promise, they can proceed.

(3) If proving one fact depends on proving another fact first, the Judge can decide whether to allow the first fact to be presented before the second fact is proven, or require the second fact to be proven first.

### Examples

(a) If someone wants to use a statement made by a person who is said to be dead, they must first prove that the person is actually dead before using the statement as evidence.

(b) If someone wants to use a copy of a document because the original is lost, they must first prove that the original document is indeed lost before using the copy.

(c) If someone is accused of having stolen property and they denied having it, the importance of their denial depends on proving that the property is the stolen one. The Court can decide whether to identify the property first or allow the denial to be presented first.

(d) If someone wants to prove a fact (A) that is said to be the cause or result of another fact in the case, and there are other facts (B, C, and D) that need to be shown first, the Court can decide whether to prove A first or require B, C, and D to be proven before A.

### Explanation using Example

#### Example 1:

Scenario: A car accident case where the plaintiff claims that the defendant was speeding and caused the accident.



Application of Section 141:

The plaintiff proposes to give evidence that a witness saw the defendant's car speeding just before the accident.

The Judge asks the plaintiff how this evidence is relevant.

The plaintiff explains that if the witness's statement is proved, it would show that the defendant was driving recklessly, which is relevant to proving negligence.

The Judge decides that the evidence is admissible because it is relevant to the case.

Example 2:

Scenario: A theft case where the defendant is accused of stealing a valuable painting from a gallery.

Application of Section 141:

The prosecution proposes to give evidence that the defendant was seen near the gallery on the night of the theft.

The Judge asks the prosecution how this evidence is relevant.

The prosecution explains that if the defendant's presence near the gallery is proved, it would suggest an opportunity to commit the theft, which is relevant to establishing the defendant's involvement.

The Judge decides that the evidence is admissible because it is relevant to the case.

Example 3:

Scenario: A forgery case where the defendant is accused of forging a signature on a contract.

Application of Section 141:

The prosecution proposes to give evidence of a handwriting expert's opinion that the signature on the contract is forged.

The Judge asks the prosecution how this evidence is relevant.

The prosecution explains that if the expert's opinion is proved, it would show that the signature is not genuine, which is relevant to proving the forgery.

The Judge decides that the evidence is admissible because it is relevant to the case.

Example 4:

Scenario: A murder case where the defendant is accused of killing a person.

Application of Section 141:

The prosecution proposes to give evidence that the defendant had a motive to kill the victim.

The Judge asks the prosecution how this evidence is relevant.

The prosecution explains that if the motive is proved, it would show that the defendant had a reason to commit the murder, which is relevant to establishing intent.

The Judge decides that the evidence is admissible because it is relevant to the case.

Example 5:

Scenario: A property dispute where one party claims ownership of a piece of land.

Application of Section 141:

The claimant proposes to give evidence of an old title deed showing ownership of the land.

The Judge asks the claimant how this evidence is relevant.

The claimant explains that if the title deed is proved, it would show legal ownership of the land, which is relevant to resolving the dispute.

The Judge decides that the evidence is admissible because it is relevant to the case.

## **Section 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.

### **Simplified act**

(1) When a party questions their own witness, it is called the main examination.

(2) When the opposing party questions that witness, it is called cross-examination.

(3) When the original party questions their witness again after the cross-examination, it is called re-examination.

### **Explanation using Example**

#### **Example 1:**

Ravi is a witness in a theft case. The prosecution (the party who called Ravi) begins by asking Ravi questions about what he saw on the night of the theft. This initial questioning by the prosecution is known as the examination-in-chief.

After the prosecution finishes, the defense lawyer (the adverse party) gets a chance to question Ravi. The defense lawyer asks Ravi questions to challenge his testimony or to bring out inconsistencies. This is known as cross-examination.

Once the defense lawyer finishes, the prosecution may ask Ravi additional questions to clarify or rebut points raised during the cross-examination. This is known as re-examination.

#### **Example 2:**

In a civil case involving a property dispute, Priya is called as a witness by the plaintiff (the party who called her). The plaintiff's lawyer asks Priya questions about the property documents and her knowledge of the property's history. This is the examination-in-chief.

After the plaintiff's lawyer finishes, the defendant's lawyer (the adverse party) questions Priya to find any discrepancies in her statements or to present a different perspective on the property documents. This is the cross-examination.

Following the cross-examination, the plaintiff's lawyer may ask Priya further questions to address any issues raised during the cross-examination. This is the re-examination.

### **Section 143: Order of examinations.**

#### Witness Examination Procedure

- (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.

#### **Simplified act**

#### Witness Examination Procedure

- (1) Witnesses will first be questioned by the party who called them (this is called examination-in-chief). Then, if the other party wants, they can question the witness (this is called cross-examination). After that, if the party who called the witness wants, they can ask more questions (this is called re-examination).
- (2) The initial questioning (examination-in-chief) and the questioning by the other party (cross-examination) must be about relevant facts. However, during cross-examination, the questions do not have to be limited to what the witness talked about during the initial questioning.
- (3) The re-examination should focus on clarifying things that came up during the cross-examination. If the court allows new topics to be introduced during re-examination, the other party can ask more questions about those new topics.

#### Explanation using Example

##### Example 1:

Scenario: A car accident case in Mumbai.

Examination-in-Chief:

Prosecution Lawyer: Calls Ramesh, an eyewitness, to testify.

Ramesh: Describes how he saw the defendant's car speeding and hitting the victim at a crosswalk.

Cross-Examination:

Defense Lawyer: Questions Ramesh.

Defense Lawyer: "Isn't it true that it was raining heavily, and visibility was poor?"

Ramesh: "Yes, it was raining heavily."

Re-Examination:

Prosecution Lawyer: Seeks to clarify Ramesh's testimony.

Prosecution Lawyer: "Despite the rain, were you able to clearly see the car hit the victim?"

Ramesh: "Yes, I was standing very close to the crosswalk and saw everything clearly."

Example 2:

Scenario: A theft case in Delhi.

Examination-in-Chief:

Prosecution Lawyer: Calls Priya, the shop owner, to testify.

Priya: States that she saw the defendant stealing items from her shop.

Cross-Examination:

Defense Lawyer: Questions Priya.

Defense Lawyer: "Isn't it true that your shop was very crowded at the time of the alleged theft?"

Priya: "Yes, it was quite crowded."

Re-Examination:

Prosecution Lawyer: Seeks to clarify Priya's testimony.

Prosecution Lawyer: "Even though the shop was crowded, did you have a clear view of the defendant taking the items?"

Priya: "Yes, I was standing behind the counter and had a clear view of the defendant."

Further Cross-Examination (if new matter introduced):

Defense Lawyer: With the court's permission, asks further questions.

Defense Lawyer: "You mentioned you were behind the counter. How far is the counter from the shelves where the theft occurred?"

Priya: "About 10 feet away."

Example 3:

Scenario: A contract dispute in Bangalore.

Examination-in-Chief:

Plaintiff's Lawyer: Calls Anil, a business partner, to testify.

Anil: States that the defendant agreed to deliver goods by a certain date but failed to do so.

Cross-Examination:

Defense Lawyer: Questions Anil.

Defense Lawyer: "Isn't it true that the delivery date was extended by mutual agreement?"

Anil: "Yes, but only by a week."

Re-Examination:

Plaintiff's Lawyer: Seeks to clarify Anil's testimony.

Plaintiff's Lawyer: "After the extension, did the defendant still fail to deliver the goods on the new agreed date?"

Anil: "Yes, the goods were not delivered even after the extension."

Further Cross-Examination (if new matter introduced):

Defense Lawyer: With the court's permission, asks further questions.

Defense Lawyer: "Was there any written agreement about the extension?"

Anil: "No, it was a verbal agreement."

Example 4:

Scenario: A property dispute in Chennai.

Examination-in-Chief:

Plaintiff's Lawyer: Calls Suresh, a neighbor, to testify.

Suresh: States that he witnessed the defendant encroaching on the plaintiff's land.

Cross-Examination:

Defense Lawyer: Questions Suresh.

Defense Lawyer: "Isn't it true that there is no clear boundary marker between the two properties?"

Suresh: "Yes, the boundary marker is not very clear."

Re-Examination:

Plaintiff's Lawyer: Seeks to clarify Suresh's testimony.

Plaintiff's Lawyer: "Despite the unclear boundary marker, did you see the defendant building a fence on the plaintiff's side?"

Suresh: "Yes, I saw the defendant building a fence well within the plaintiff's property."

Further Cross-Examination (if new matter introduced):

Defense Lawyer: With the court's permission, asks further questions.

Defense Lawyer: "How do you know the exact boundary if the marker is unclear?"

Suresh: "I have lived next to the property for 20 years and know the boundary well."

## **Section 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.

### **Simplified act**

If someone is asked to bring a document to court, just bringing the document does not make them a witness.

They cannot be questioned by the other side's lawyer unless they are officially called to testify as a witness.

Explanation using Example

Example 1:

Scenario: Ravi is summoned to court to produce a contract document related to a business deal between two companies, A and B. Ravi is not directly involved in the case but has possession of the document.

Application of Section 144: Ravi brings the contract document to court as requested. The lawyer for Company A wants to question Ravi about the contents of the document and his knowledge of the business deal. However, under Section 144 of The Bharatiya Sakshya Adhiniyam 2023, Ravi cannot be cross-examined just because he produced the document. He can only be cross-examined if he is formally called as a witness by either party.

Example 2:

Scenario: Priya, an employee at a bank, is summoned to produce bank statements of a client, Mr. Sharma, who is involved in a fraud case. Priya brings the bank statements to the court.

Application of Section 144: The prosecutor wants to ask Priya questions about the transactions listed in the bank statements and her knowledge of Mr. Sharma's banking activities. According to Section 144, Priya cannot be cross-examined merely because she produced the bank statements. She can only be cross-examined if she is officially called as a witness in the case.



## **Section 145: Witnesses to character.**

Witnesses to character may be cross-examined and re-examined.

## **Section 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.

### **Simplified act**

(1) A leading question is one that suggests the answer the person asking it wants or expects to hear.

(2) During the main questioning or follow-up questioning of a witness, leading questions cannot be asked if the other side objects, unless the Court allows it.

(3) The Court will allow leading questions for basic information, things everyone agrees on, or things that have already been clearly proven.

(4) Leading questions can be asked during cross-examination.

Explanation using Example

Example 1:

Scenario: A theft case in a local market.

Context: During the examination-in-chief (initial questioning) of a witness by the prosecution.

Prosecution Lawyer: "Did you see the accused, Mr. Sharma, stealing the wallet from the shop?"

Defense Lawyer: "Objection, Your Honor. This is a leading question."

Judge: "Objection sustained. The prosecution must rephrase the question."

Prosecution Lawyer: "Can you describe what you saw in the shop on the day of the incident?"

Explanation: The initial question suggested the answer that the prosecution wanted, which is not allowed during the examination-in-chief unless permitted by the court. The rephrased question is open-ended and does not suggest an answer.

Example 2:

Scenario: A car accident case.

Context: During the cross-examination of a witness by the defense lawyer.

Defense Lawyer: "Isn't it true that you were texting on your phone when the accident happened?"

Prosecution Lawyer: "Objection, Your Honor. This is a leading question."

Judge: "Objection overruled. Leading questions are allowed in cross-examination."

Explanation: In cross-examination, leading questions are permitted. The defense lawyer is allowed to ask questions that suggest the answer they expect to receive.

Example 3:

Scenario: A property dispute case.

Context: During the re-examination of a witness by the plaintiff's lawyer.

Plaintiff's Lawyer: "You mentioned earlier that you saw Mr. Verma signing the agreement. Is that correct?"

Defense Lawyer: "Objection, Your Honor. This is a leading question."

Judge: "Objection sustained. The plaintiff's lawyer must rephrase the question."

Plaintiff's Lawyer: "Can you clarify what you saw Mr. Verma doing with the agreement?"

Explanation: Leading questions are not allowed during re-examination unless the court permits them. The rephrased question is open-ended and does not suggest an answer.

Example 4:

Scenario: A contract dispute case.

Context: During the examination-in-chief of a witness by the plaintiff's lawyer.

Plaintiff's Lawyer: "You were present when the contract was signed, correct?"

Defense Lawyer: "Objection, Your Honor. This is a leading question."

Judge: "Objection overruled. The question pertains to an introductory matter which is undisputed."

Explanation: The court may allow leading questions on matters that are introductory or undisputed. In this case, the presence of the witness during the signing of the contract is an introductory fact that is not in dispute.

#### **Section 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 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.

#### **Simplified act**

Any witness can be asked, while they are being questioned, whether any contract, grant, or other property arrangement they are talking about was written down in a document. If the witness says it was written down, or if they are about to talk about what is in a document that the Court thinks should be

shown, the other side can object to this evidence being used until the document is shown, or until it is proven that the party who called the witness has the right to use a copy of the document.

Explanation. - A witness can talk about what other people said about the contents of documents if what they said is important to the case.

### Example

The question is whether A attacked B. C says that he heard A tell D, "B wrote a letter accusing me of theft, and I will get back at him." This statement is important because it shows A's reason for the attack, and it can be used as evidence even if there is no other evidence about the letter.

### Explanation using Example

#### Example 1:

##### Scenario: Property Dispute

Context: Raj and Simran are in a legal dispute over the ownership of a piece of land. Raj claims that Simran sold the land to him through a written agreement, but Simran denies this and says there was no such document.

Application of Section 147: During the trial, Raj calls a witness, Aman, who claims to have seen the written agreement. The court asks Aman if the agreement was in writing. Aman confirms it was. Simran's lawyer objects, stating that the actual document should be produced as evidence. The court agrees and rules that Raj must produce the written agreement. If Raj cannot produce the document, he must provide secondary evidence to prove its existence and contents.

Outcome: Raj fails to produce the written agreement and cannot provide sufficient secondary evidence. The court rules in favor of Simran, dismissing Raj's claim.

#### Example 2:

##### Scenario: Contractual Dispute

Context: Meera and Arjun are in a dispute over a business contract. Meera claims that Arjun agreed to supply 100 units of goods per month, but Arjun denies this and says there was no written contract.

Application of Section 147: During the trial, Meera calls a witness, Priya, who claims to have seen the written contract. The court asks Priya if the contract was in writing. Priya confirms it was. Arjun's lawyer objects, stating that the actual document should be produced as evidence. The court agrees and rules that Meera must produce the written contract. If Meera cannot produce the document, she must provide secondary evidence to prove its existence and contents.

Outcome: Meera produces the written contract, which clearly states the terms of the agreement. The court rules in favor of Meera, ordering Arjun to fulfill the contract terms.

### Example 3:

Scenario: Criminal Case

Context: The police are investigating a case where Rohan is accused of assaulting Vikram. During the investigation, a witness, Suresh, claims that he heard Rohan say to another person, "Vikram wrote a letter accusing me of fraud, and I will teach him a lesson."

Application of Section 147: During the trial, Suresh is called to testify. The court asks Suresh if the statement about the letter was in writing. Suresh confirms it was an oral statement he heard. Vikram's lawyer objects, stating that the actual letter should be produced as evidence. However, the court rules that Suresh's testimony about Rohan's statement is relevant to show Rohan's motive for the assault, even if the letter itself is not produced.

Outcome: Suresh's testimony is admitted as evidence, and it helps establish Rohan's motive for the assault. The court considers this along with other evidence in the case.

### Example 4:

Scenario: Will Dispute

Context: Anjali and her brother, Ravi, are in a dispute over their late father's will. Anjali claims that their father left a written will bequeathing the family house to her, but Ravi denies this and says there was no such document.

Application of Section 147: During the trial, Anjali calls a witness, Sunita, who claims to have seen the written will. The court asks Sunita if the will was in writing. Sunita confirms it was. Ravi's lawyer objects, stating that the actual

document should be produced as evidence. The court agrees and rules that Anjali must produce the written will. If Anjali cannot produce the document, she must provide secondary evidence to prove its existence and contents.

Outcome: Anjali produces the written will, which clearly states that the family house is bequeathed to her. The court rules in favor of Anjali, granting her ownership of the house.

#### **Section 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.

#### **Simplified act**

A witness can be asked questions about things they wrote down before, or things that were written down for them, if those things are related to the case.

The written statements do not need to be shown to the witness or proven to be true before asking these questions.

However, if you want to use the written statements to show that the witness is saying something different now, you must first tell the witness which parts of the writing you are talking about before you can use it to contradict them.

Explanation using Example

Example 1:

Scenario: A car accident case where the witness, Mr. Sharma, gave a written statement to the police immediately after the accident, stating that the traffic light was red when the defendant's car crossed the intersection.

Courtroom Situation: During the trial, Mr. Sharma is called as a witness and states under oath that the traffic light was green when the defendant's car crossed the intersection.

Cross-Examination:

Lawyer: "Mr. Sharma, did you provide a written statement to the police on the day of the accident?"

Mr. Sharma: "Yes, I did."

Lawyer: "In your written statement, did you mention the color of the traffic light at the time of the accident?"

Mr. Sharma: "I don't remember exactly."

Lawyer: "Is it true that you stated the traffic light was red in your written statement?"

Mr. Sharma: "I don't recall."

Lawyer: "Let me read a part of your statement to you: 'The traffic light was red when the car crossed the intersection.' Does this refresh your memory?"

Mr. Sharma: "Yes, I remember now."

Explanation: The lawyer cross-examines Mr. Sharma about his previous written statement without showing it to him initially. When Mr. Sharma's current testimony contradicts his previous statement, the lawyer brings his attention to the specific part of the written statement to highlight the contradiction.

#### Example 2:

Scenario: A theft case where the witness, Ms. Gupta, wrote a statement to the police claiming she saw the accused, Mr. Khan, at the scene of the crime.

Courtroom Situation: During the trial, Ms. Gupta testifies that she did not see Mr. Khan at the scene of the crime.

Cross-Examination:

Lawyer: "Ms. Gupta, did you provide a written statement to the police regarding the theft?"

Ms. Gupta: "Yes, I did."

Lawyer: "In your written statement, did you mention seeing Mr. Khan at the scene?"

Ms. Gupta: "I don't remember."

Lawyer: "Is it true that you wrote you saw Mr. Khan at the scene of the crime?"

Ms. Gupta: "I don't recall."

Lawyer: "Let me read a part of your statement to you: 'I saw Mr. Khan near the shop at the time of the theft.' Does this refresh your memory?"

Ms. Gupta: "Yes, I remember now."

Explanation: The lawyer cross-examines Ms. Gupta about her previous written statement without initially showing it to her. When her current testimony contradicts her previous statement, the lawyer brings her attention to the specific part of the written statement to highlight the contradiction.

### **Section 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
- (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.

### **Simplified act**

When a witness is being cross-examined, they can be asked any questions that:

- (a) check if they are telling the truth; or
- (b) find out who they are and what their life situation is; or
- (c) challenge their credibility by damaging their character, even if the answers might incriminate them or expose them to a penalty or loss.

However, in cases involving offenses under sections 64 to 71 of the Bharatiya Nyaya Sanhita, 2023, or attempts to commit such offenses, if the issue of



consent is being discussed, it is not allowed to present evidence or ask questions about the victim's general immoral character or past sexual experiences with anyone to prove consent or the nature of the consent.

#### Explanation using Example

##### Example 1:

Scenario: A witness, Mr. Sharma, is testifying in a fraud case where the defendant, Mr. Verma, is accused of embezzling funds from his company.

##### Cross-Examination:

Question to Test Veracity: "Mr. Sharma, isn't it true that you were previously convicted of perjury in 2018?"

Purpose: To test Mr. Sharma's truthfulness by bringing up his past conviction for lying under oath.

Question to Discover Identity and Position: "Mr. Sharma, can you confirm your current occupation and your role in the company?"

Purpose: To understand Mr. Sharma's background and his position, which may affect his credibility or bias.

Question to Shake Credit by Injuring Character: "Mr. Sharma, isn't it true that you were dismissed from your previous job for falsifying documents?"

Purpose: To challenge Mr. Sharma's credibility by highlighting past dishonest behavior, even if it may incriminate him or expose him to penalties.

##### Example 2:

Scenario: A witness, Ms. Gupta, is testifying in a case of theft where the defendant, Mr. Khan, is accused of stealing valuable jewelry.

##### Cross-Examination:

Question to Test Veracity: "Ms. Gupta, have you ever been involved in any criminal activities or been arrested before?"

Purpose: To assess Ms. Gupta's honesty by inquiring about her past criminal record.

Question to Discover Identity and Position: "Ms. Gupta, what is your relationship with the defendant, Mr. Khan, and how long have you known him?"

Purpose: To understand Ms. Gupta's relationship with the defendant, which may reveal potential bias or motive.

Question to Shake Credit by Injuring Character: "Ms. Gupta, isn't it true that you were caught shoplifting in 2015?"

Purpose: To undermine Ms. Gupta's credibility by bringing up past misconduct, even if it may incriminate her or expose her to penalties.

Example 3:

Scenario: A victim, Ms. Rani, is testifying in a case of sexual assault where the defendant, Mr. Singh, is accused of the crime.

Cross-Examination:

Prohibited Question: "Ms. Rani, isn't it true that you have had multiple sexual partners in the past?"

Purpose: This question is not allowed as it aims to discredit the victim by referring to her past sexual history, which is irrelevant to the issue of consent in the current case.

Allowed Question: "Ms. Rani, can you describe the events that led up to the incident on the night in question?"

Purpose: To gather relevant information about the incident without attacking the victim's character or past sexual experiences.

### **Section 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.

### **Simplified act**

If any question comes up that is important to the case or legal process, the rules in section 137 will be used to handle it.

Explanation using Example

Example 1:

Scenario: A civil case involving a property dispute between two brothers, Raj and Ravi.

Context: During the trial, Raj's lawyer asks a witness, Suresh, about a conversation he had with Ravi regarding the ownership of the property.

Application of Section 150:

Suresh is hesitant to answer the question, fearing it might incriminate him or reveal sensitive information.

The judge refers to Section 150 of The Bharatiya Sakshya Adhiniyam 2023 and determines that the question is relevant to the case.

The judge compels Suresh to answer the question, ensuring that the provisions of Section 137 (which deals with the examination of witnesses) are followed.

Example 2:

Scenario: A criminal case where a businessman, Arjun, is accused of embezzlement.

Context: During the cross-examination, the prosecutor asks a key witness, Meera, about financial transactions she handled for Arjun.

Application of Section 150:

Meera is reluctant to answer, worried that her response might implicate her in the crime.

The judge evaluates the relevance of the question to the embezzlement charges.

Finding the question pertinent, the judge invokes Section 150 and compels Meera to answer, ensuring compliance with Section 137 to protect her rights during the examination.

Example 3:

Scenario: A family court case where a couple, Anil and Sunita, are undergoing a divorce, and the custody of their child is in question.

Context: Sunita's lawyer asks a witness, Anil's colleague, about Anil's behavior and lifestyle at work.

Application of Section 150:

The colleague is uncomfortable answering, fearing it might affect his job or relationship with Anil.

The judge assesses the relevance of the question to the custody battle.

Concluding that the information is crucial for determining the child's best interest, the judge uses Section 150 to compel the colleague to answer, while ensuring the process adheres to Section 137.

Example 4:

Scenario: A defamation case where a journalist, Priya, is sued by a politician, Mr. Sharma, for publishing an allegedly false article.

Context: Mr. Sharma's lawyer questions a source, Ramesh, who provided information to Priya for the article.

Application of Section 150:

Ramesh is hesitant to answer, fearing retaliation or legal consequences.

The judge considers the relevance of the question to the defamation claim.

Determining that the question is essential to the case, the judge invokes Section 150 to compel Ramesh to answer, ensuring that the examination follows the guidelines of Section 137.

**Section 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 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.

### **Simplified act**

(1) If a question in a case or legal proceeding is not directly related to the case, except if it affects the witness's credibility by harming their character, the Court will decide if the witness must answer it. The Court can also warn the witness that they do not have to answer the question.

(2) When deciding, the Court will consider the following points:

(a) Questions are appropriate if they are serious enough that the truth behind them would significantly affect the Court's view of the witness's trustworthiness regarding their testimony.

(b) Questions are inappropriate if they are about things that happened a long time ago or are of such a nature that the truth behind them would not, or only slightly, affect the Court's view of the witness's trustworthiness regarding their testimony.

(c) Questions are inappropriate if the negative impact on the witness's character is much greater than the importance of their testimony.

(d) The Court can assume that if the witness refuses to answer, the answer would have been unfavorable to the witness.

### **Explanation using Example**

#### **Example 1:**

In a civil case involving a property dispute, Mr. Sharma is called as a witness. During cross-examination, the opposing lawyer asks Mr. Sharma about a past criminal conviction for theft that occurred 20 years ago. Mr. Sharma's lawyer objects, arguing that the question is not relevant to the current property dispute.

#### **Court's Decision:**

The court considers whether the past conviction affects Mr. Sharma's credibility as a witness in the property dispute.

The court decides that the past conviction is too remote in time and does not significantly impact Mr. Sharma's credibility regarding the property dispute.

The court rules that Mr. Sharma is not compelled to answer the question about his past conviction.

Example 2:

In a criminal trial, Ms. Gupta is a key witness testifying about an alleged bribery incident. During cross-examination, the defense lawyer asks Ms. Gupta if she has ever been involved in any fraudulent activities. Ms. Gupta's lawyer objects, stating that the question is irrelevant to the bribery case.

Court's Decision:

The court evaluates whether the question about fraudulent activities affects Ms. Gupta's credibility in the bribery case.

The court finds that if Ms. Gupta has a history of fraudulent activities, it could seriously affect the court's opinion of her credibility.

The court decides that Ms. Gupta must answer the question about her involvement in fraudulent activities, as it is relevant to her credibility in the current case.

The court also warns Ms. Gupta that she is not obliged to answer if she believes the question is too invasive, but her refusal to answer may lead the court to infer that the answer would be unfavorable to her credibility.

**Section 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.

### **Simplified act**

No one should ask a question like the one mentioned in section 151 unless they have good reasons to believe that the accusation in the question is true.

#### **Examples**

(a) If a lawyer is told by another lawyer that an important witness is a criminal, this is a good reason to ask the witness if they are a criminal.

(b) If a lawyer is told by someone in court that an important witness is a criminal, and the person gives good reasons for their statement, this is a good reason to ask the witness if they are a criminal.

(c) If a lawyer asks a random witness, who they know nothing about, if they are a criminal, there is no good reason for this question.

(d) If a lawyer asks a witness, who they know nothing about, questions about their lifestyle and the witness gives suspicious answers, this might be a good reason to ask if they are a criminal.

#### **Explanation using Example**

##### **Example 1:**

During a criminal trial, Advocate Sharma is defending a client accused of theft. Advocate Sharma has been informed by his colleague, Advocate Verma, that the prosecution's key witness, Mr. Singh, has a history of being involved in organized crime. Advocate Verma provides detailed information about Mr. Singh's past criminal activities, including specific cases and charges. Based on this information, Advocate Sharma has reasonable grounds to ask Mr. Singh during cross-examination if he has ever been involved in organized crime. This

question is permissible under Section 152 because it is based on well-founded information provided by a reliable source.

Example 2:

In a civil case regarding a property dispute, Advocate Mehta is representing the plaintiff. During the trial, a witness named Mr. Kumar is called to testify about the ownership of the property. Advocate Mehta has no prior information about Mr. Kumar's background. However, during cross-examination, Mr. Kumar gives vague and inconsistent answers about his occupation and source of income. Based on these unsatisfactory responses, Advocate Mehta suspects that Mr. Kumar might be involved in illegal activities. Advocate Mehta decides to ask Mr. Kumar if he has ever been involved in any criminal activities. This question is permissible under Section 152 because the advocate's suspicion is based on the witness's unsatisfactory answers during the examination.

Example 3:

In a high-profile corruption case, Advocate Rao is representing a government official accused of accepting bribes. The prosecution calls a witness, Mr. Patel, who claims to have seen the accused accepting the bribe. Advocate Rao has no prior information about Mr. Patel and has not received any credible information suggesting that Mr. Patel has a criminal background. Despite this, Advocate Rao randomly asks Mr. Patel if he has ever been involved in bribery or corruption. This question is not permissible under Section 152 because it is asked without any reasonable grounds or well-founded information.

Example 4:

During a divorce proceeding, Advocate Kapoor is representing the wife, who claims that her husband has been unfaithful. The husband calls a witness, Mr. Gupta, to testify about his character. Advocate Kapoor has been informed by a reliable source that Mr. Gupta has a history of lying under oath in previous cases. The source provides specific details and instances of Mr. Gupta's perjury. Based on this information, Advocate Kapoor has reasonable grounds to ask Mr. Gupta if he has ever lied under oath. This question is permissible under Section 152 because it is based on credible and well-founded information.



### **Section 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.

#### **Simplified act**

If the Court thinks that a question was asked without a good reason, it can take action.

If an advocate (lawyer) asked the question, the Court can report the situation to the High Court or another authority that oversees the advocate's professional conduct.

Explanation using Example

Example 1:

During a criminal trial in a Sessions Court in Mumbai, Advocate Sharma, representing the defense, asks the witness, Mr. Kumar, a question about his personal financial transactions that have no relevance to the case at hand. The question appears to be aimed at embarrassing the witness rather than uncovering any truth related to the case. The judge, observing that the question has no reasonable grounds and is irrelevant to the case, decides to report Advocate Sharma's conduct to the High Court for further action.

Example 2:

In a civil case regarding a property dispute in the Delhi High Court, Advocate Mehta, representing the plaintiff, asks the defendant, Mrs. Singh, a series of questions about her past relationships. These questions have no bearing on the property dispute and seem intended to harass the defendant. The judge, recognizing that these questions are asked without reasonable grounds, decides to report Advocate Mehta's behavior to the Bar Council of Delhi for disciplinary action.

### **Section 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.

### **Simplified act**

The Court can stop any questions or investigations it thinks are inappropriate or offensive, even if they are somewhat related to the case.

However, the Court will allow these questions if they are directly about the main facts of the case or are needed to figure out if those main facts are true.

Explanation using Example

Example 1:

During a trial for theft, the defense attorney asks the victim about their sexual history, implying that their character might be questionable and thus their testimony unreliable. The prosecution objects, stating that the question is indecent and scandalous. The judge agrees and forbids the question, as it does not relate to the facts in issue (the theft) and is not necessary to determine whether the theft occurred.

Example 2:

In a divorce case, the husband's lawyer asks the wife about her private conversations with her friends regarding her husband's alleged infidelity. The wife's lawyer objects, arguing that the question is scandalous and meant to embarrass the wife. The judge rules that the question is indeed scandalous and forbids it, as it does not directly relate to the facts in issue (the grounds for divorce) and is not necessary to determine the existence of those fact

### **Section 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.

### **Simplified act**

The Court will not allow any question that seems to be meant to insult or bother someone.

The Court will also not allow any question that, even if appropriate, seems unnecessarily rude or offensive.

## Explanation using Example

### Example 1:

During a cross-examination in a theft case, the defense lawyer asks the witness, "Isn't it true that you have been fired from your job for being dishonest?" The prosecution objects, arguing that the question is intended to insult and annoy the witness rather than to elicit relevant information about the theft case. The judge agrees and forbids the question, stating that it appears to be needlessly offensive and not directly related to the matter at hand.

### Example 2:

In a domestic violence case, the defense attorney asks the victim, "How many boyfriends have you had in the past year?" The prosecution objects, claiming that the question is intended to insult and annoy the victim and is irrelevant to the case. The judge concurs and forbids the question, noting that it is needlessly offensive and does not contribute to the facts of the case.

## **Section 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

(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.

### Simplified act

When a witness is asked a question that is only relevant because it might make them look bad and they answer it, no other evidence can be used to prove them wrong. However, if they lie, they can be charged with lying later.

#### Exception 1

If a witness is asked if they have been convicted of a crime before and they say no, evidence can be shown to prove they were convicted.

#### Exception 2

If a witness is asked a question that suggests they might be biased and they deny it, evidence can be shown to prove they are biased.

#### Illustrations

(a) Someone is claiming money from an insurance company, and the company says the claim is fraudulent. The claimant is asked if they made a fraudulent claim before and they deny it. Evidence is offered to show they did make a fraudulent claim before. This evidence is not allowed.

(b) A witness is asked if they were fired for being dishonest and they deny it. Evidence is offered to show they were fired for dishonesty. This evidence is not allowed.

(c) A says they saw B in Goa on a certain day. A is asked if they were actually in Varanasi on that day and they deny it. Evidence is offered to show A was in Varanasi on that day. This evidence is allowed, not to show A is lying about their character, but to show B was not in Goa on that day. If A's denial was false, they could be charged with lying.

(d) A is asked if their family has a feud with B's family, against whom A is giving evidence. A denies it. Evidence can be shown to prove the feud because it suggests A might be biased.

### Explanation using Example

#### Example 1:

Ravi is a witness in a theft case. During cross-examination, the defense lawyer asks Ravi if he has ever been convicted of theft before. Ravi denies having any previous convictions. The defense lawyer then presents court records showing that Ravi was indeed convicted of theft five years ago. According to Exception 1 of Section 156, this evidence is admissible to contradict Ravi's denial.

#### Example 2:

Sunita is testifying in a property dispute case. The opposing lawyer asks Sunita if she was fired from her previous job for dishonesty. Sunita denies being fired for dishonesty. The lawyer attempts to introduce evidence showing that Sunita was indeed fired for dishonesty. According to the main provision of Section 156, this evidence is not admissible to contradict Sunita's answer.

#### Example 3:

Raj is a witness in a murder trial. He testifies that he saw the accused, Mohan, in Mumbai on the day of the murder. The prosecutor asks Raj if he was actually in Delhi on that day. Raj denies being in Delhi. The prosecutor then presents evidence showing that Raj was indeed in Delhi on the day of the murder. According to Illustration (c) of Section 156, this evidence is admissible, not to discredit Raj's character, but to contradict the fact that Mohan was seen in Mumbai on the day in question.

#### Example 4:

Anil is testifying in a case involving a land dispute. During cross-examination, the lawyer asks Anil if his family has a long-standing feud with the family of the defendant. Anil denies any such feud. The lawyer then presents evidence

showing that there has been a blood feud between the two families for decades. According to Exception 2 of Section 156, this evidence is admissible to impeach Anil's impartiality.

**Section 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 subsection (1), to rely on any part of the evidence of such witness.

**Simplified act**

(1) The Court can allow the person who brought a witness to ask that witness any question that the opposing side could ask during cross-examination.

(2) This section does not prevent the person who is allowed to ask these questions from using any part of the witness's testimony as evidence.

Explanation using Example

Example 1:

Rajesh is a prosecutor in a criminal case where the accused, Suresh, is charged with theft. Rajesh calls Ramesh, a key witness, to testify. During the examination, Ramesh starts giving inconsistent statements that seem to favor the defense. Rajesh, sensing that Ramesh might be hostile or not telling the truth, requests the court's permission to treat Ramesh as a hostile witness. The court grants permission, allowing Rajesh to ask Ramesh questions as if he were cross-examining him, which includes asking leading questions and challenging his credibility. This helps Rajesh to bring out the truth and clarify the inconsistencies in Ramesh's testimony.

Example 2:

In a civil case regarding a property dispute, Priya calls her friend, Anil, as a witness to support her claim. During the examination, Anil starts giving vague answers and seems to be withholding information. Priya believes that Anil is not being entirely truthful and requests the court to allow her to cross-examine Anil. The court permits Priya to ask Anil questions that would typically be asked by the opposing party, such as leading questions and questions that

challenge his statements. This allows Priya to extract more accurate information and strengthen her case.

### **Section 158: 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 -

- (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 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.

### **Simplified act**

The credibility of a witness can be challenged in the following ways by the opposing party, or, with the Court's permission, by the party who called the witness:

- (a) By presenting people who testify that, based on their knowledge of the witness, they believe the witness is not trustworthy.

(b) By proving that the witness has been bribed, has accepted a bribe, or has received any other corrupt incentive to give their testimony.

(c) By proving that the witness has made previous statements that contradict their current testimony.

Explanation: A witness who says another witness is not trustworthy cannot give reasons for this belief during their initial questioning. However, they can be asked for their reasons during cross-examination, and their answers cannot be contradicted. If their answers are false, they can later be charged with giving false evidence.

### Examples

(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 presented showing that, on a previous occasion, C said he had not delivered goods to B. This evidence is allowed.

(b) A is accused of murdering B. C says that B, when dying, declared that A had inflicted the fatal wound. Evidence is presented showing that, on a previous occasion, C said that B, when dying, did not declare that A had inflicted the fatal wound. This evidence is allowed.

### Explanation using Example

#### Example 1:

Case: Ramesh vs. State of Maharashtra

Scenario: Ramesh is on trial for theft. The prosecution calls a witness, Suresh, who testifies that he saw Ramesh stealing from a shop. During cross-examination, the defense attorney asks Suresh if he has ever been convicted of a crime. Suresh admits that he was convicted of perjury (lying under oath) two years ago.

#### Application of Section 158:

The defense can use Suresh's past conviction to impeach his credibility, arguing that someone who has lied under oath before might not be trustworthy.

The defense may also call another witness, Rajesh, who testifies that he knows Suresh well and believes him to be untrustworthy based on his past behavior.

#### Example 2:



Case: Priya vs. State of Karnataka

Scenario: Priya is accused of accepting a bribe while working as a government official. The prosecution calls a witness, Anil, who testifies that he saw Priya accepting the bribe. During cross-examination, the defense presents evidence that Anil himself was offered a bribe by the prosecution to testify against Priya.

Application of Section 158:

The defense can use the evidence of Anil being bribed to impeach his credibility, suggesting that his testimony may be influenced by the bribe.

The defense may also present evidence that Anil made a previous statement to the police denying that he saw Priya accepting any bribe, which contradicts his current testimony.

Example 3:

Case: Sunita vs. State of Tamil Nadu

Scenario: Sunita is on trial for assault. The prosecution's key witness, Meena, testifies that she saw Sunita hitting the victim. During cross-examination, the defense attorney presents a video recording from a previous police interview where Meena stated that she did not see who hit the victim.

Application of Section 158:

The defense can use the video recording to show that Meena's current testimony is inconsistent with her previous statement, thereby impeaching her credibility.

The defense may also call another witness, Kavita, who testifies that she knows Meena and believes her to be untrustworthy because Meena has a history of lying.

Example 4:

Case: Ajay vs. State of Uttar Pradesh

Scenario: Ajay is accused of fraud. The prosecution calls a witness, Vikram, who testifies that Ajay confessed to him about committing the fraud. During cross-examination, the defense attorney presents evidence that Vikram was recently fired from his job for dishonesty.

Application of Section 158:

The defense can use Vikram's recent firing for dishonesty to impeach his credibility, suggesting that his testimony may not be reliable.

The defense may also present evidence that Vikram had previously stated to another person that Ajay never confessed to any fraud, which contradicts his current testimony.

**Section 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.

**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.

**Simplified act**

When a witness is giving evidence about an important fact, they can be asked about other things they noticed around the same time or place as that important fact. This is allowed if the court thinks that these other things, if proven true, would support the witness's story about the important fact.

**Example**

A, who helped commit a robbery, tells the court about the robbery and also mentions other unrelated events that happened on his way to and from the robbery. Other evidence can be used to confirm these unrelated events to support A's story about the robbery.

**Explanation using Example**

**Example 1:**

Ravi is a witness in a case involving a hit-and-run accident. He testifies that he saw the car speeding and hitting a pedestrian at a busy intersection in

Mumbai. To corroborate Ravi's testimony, the court allows questions about other observations he made around the same time, such as the color of the traffic light, the presence of other vehicles, and the weather conditions. If Ravi's observations about these additional circumstances are consistent and credible, they can help strengthen his testimony about the hit-and-run incident.

Example 2:

Priya is a witness in a burglary case in Delhi. She testifies that she saw the accused, Raj, entering the house through a window at midnight. To support Priya's testimony, the court permits questions about other details she noticed, such as the sound of breaking glass, the presence of a getaway vehicle, and the time she heard the neighborhood dogs barking. If Priya's account of these surrounding circumstances is verified by independent evidence, it can corroborate her testimony about seeing Raj enter the house, thereby making her evidence more reliable.

**Section 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.

**Simplified act**

To support what a witness says, you can use any earlier statement they made about the same event.

This earlier statement should have been made around the time the event happened or to someone who had the legal authority to look into the event.

Explanation using Example

Example 1:

Ravi is a witness in a theft case. He initially gave a statement to the police right after the theft occurred, stating that he saw the accused, Raj, stealing a bicycle from the neighborhood. Months later, during the trial, Ravi testifies in court and repeats his earlier statement, saying he saw Raj stealing the bicycle. To strengthen Ravi's testimony, the prosecution can present Ravi's initial

statement to the police as evidence. This helps to corroborate Ravi's testimony in court, showing consistency in his account of the event.

Example 2:

Meera witnessed a car accident and gave a detailed statement to the traffic police on the same day, describing how the accident happened and identifying the driver at fault. A year later, during the court proceedings, Meera is called to testify. She recounts the same details she provided in her initial statement. The defense lawyer tries to discredit her by suggesting she might be mistaken or influenced over time. To support Meera's credibility, the prosecution introduces her original statement to the traffic police as evidence. This demonstrates that her account has remained consistent from the time of the accident to her testimony in court.

**Section 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.

**Simplified act**

If a statement is important under section 26 or 27 and is shown to be true,

You can bring up other information to either: a. Disagree with the statement, b. Support the statement, c. Question the trustworthiness of the person who made the statement, or d. Confirm the trustworthiness of the person who made the statement.

This is the same as if the person who made the statement was a witness in court and denied the truth of the statement during questioning.

Explanation using Example

Example 1:

Ravi is accused of theft and during police interrogation, he makes a statement that leads to the discovery of stolen goods. This statement is relevant under Section 27 of the Bharatiya Sakshya Adhiniyam 2023. During the trial, Ravi's lawyer argues that the statement was made under duress and should not be

considered credible. To support this claim, Ravi's lawyer presents evidence that Ravi was threatened by the police during the interrogation. The prosecution, on the other hand, brings in witnesses who testify that Ravi voluntarily made the statement and was not under any pressure. Here, both parties are allowed to present evidence to either contradict or corroborate Ravi's statement, as per Section 161.

Example 2:

Sita is a witness in a murder case and gives a statement to the police that implicates her neighbor, Ramesh. This statement is relevant under Section 26 of the Bharatiya Sakshya Adhiniyam 2023. During the trial, Sita is called to testify, but she denies making the statement. The defense attorney then presents evidence that Sita has a history of lying and has previously made false accusations against others. The prosecution counters by presenting evidence that Sita has always been a reliable witness in past cases. Here, both the defense and prosecution are allowed to present evidence to either impeach or confirm Sita's credibility, as per Section 161.

### **Section 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.

### **Simplified act**

(1) A witness can look at notes or writings they made at the time of the event they are being asked about, or shortly after, to help them remember details while they are testifying.

However, the witness can also look at notes made by someone else if they read those notes soon after the event and knew they were accurate at that time.

(2) If a witness is allowed to use a document to refresh their memory, they can also use a copy of that document if the Court allows it.

This is only allowed if the Court believes there is a good reason why the original document cannot be produced.

Additionally, an expert witness can use professional books or articles to refresh their memory.

#### Explanation using Example

##### Example 1:

Ravi is a shopkeeper who witnessed a robbery at his store. During the trial, he is called to testify about the incident. While on the witness stand, Ravi is asked to describe the sequence of events that took place during the robbery. Ravi had written down the details of the robbery in his diary immediately after the incident. The court allows Ravi to refer to his diary to refresh his memory about the exact time the robbers entered the store and what they were wearing. This helps Ravi provide accurate testimony.

##### Example 2:

Dr. Mehta, a forensic expert, is called to testify in a murder trial. He had conducted an autopsy on the victim and prepared a detailed report. During his testimony, Dr. Mehta is asked about the specific findings from the autopsy. He requests permission from the court to refer to his autopsy report to ensure he provides precise information. The court grants permission, and Dr. Mehta uses the report to refresh his memory about the cause of death and the time of death, which are crucial to the case.

##### Example 3:

Sunita, a bank manager, is a witness in a case involving financial fraud. She had reviewed and signed off on several transaction records shortly after the fraudulent activities were discovered. During her examination in court, Sunita is asked to explain the discrepancies in the transaction records. She asks the

court if she can refer to the transaction records she reviewed at the time. The court allows her to do so, and Sunita uses the records to accurately explain the fraudulent transactions and identify the individuals involved.

Example 4:

Amit, a journalist, witnessed a car accident and wrote an article about it the next day. He is later called to testify in court about what he saw. During his testimony, Amit is asked to recall specific details about the accident, such as the color of the cars involved and the exact location of the collision. Amit requests permission to refer to his published article to refresh his memory. The court permits this, and Amit uses the article to provide a detailed and accurate account of the accident.

Example 5:

Priya, an accountant, is testifying in a case involving embezzlement at her company. She had prepared a financial report detailing the discrepancies in the company's accounts shortly after the embezzlement was discovered. During her testimony, Priya is asked to explain the financial irregularities. She asks the court if she can refer to the financial report she prepared. The court allows her to do so, and Priya uses the report to accurately describe the embezzlement scheme and the amounts involved.

### **Section 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.

### **Simplified act**

A witness can talk about facts written in a document mentioned in section 162, even if they don't specifically remember the facts themselves, as long as they are confident that the facts were accurately recorded in the document.

Example

A book-keeper can talk about facts he wrote down in business records, if he knows the records were kept correctly, even if he has forgotten the specific transactions he wrote about.

Explanation using Example

Example 1:

Ravi is a clerk at a large manufacturing company. He regularly records transactions in the company's ledger. One day, the company is involved in a legal dispute over a particular transaction that took place two years ago. Ravi is called to testify in court. Although Ravi does not specifically remember the transaction, he testifies that he recorded the transaction in the ledger at the time it occurred and that he is confident the ledger was accurately maintained. The court accepts his testimony based on the accuracy of the records he kept.

Example 2:

Meena works as a nurse in a hospital and is responsible for maintaining patient records. During a malpractice lawsuit, she is asked to testify about the treatment given to a patient two years ago. Meena does not remember the specific details of the treatment, but she refers to the patient's medical records, which she had meticulously maintained. She testifies that the records accurately reflect the treatment provided. The court accepts her testimony because the records were kept regularly and accurately in the course of her duties.

#### **Section 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.

#### **Simplified act**

If a written document is mentioned in the last two sections, it must be shown to the other party if they ask for it.

The other party has the right to question the witness about that document if they want to.

Explanation using Example

Example 1:



Scenario: A car accident case is being heard in court. The plaintiff, Mr. Sharma, claims that the defendant, Mr. Verma, was driving recklessly and caused the accident. During the trial, Mr. Sharma's lawyer calls a witness, Mr. Gupta, who was present at the scene of the accident.

Application of Section 164: Mr. Gupta, while testifying, refers to a written note he made immediately after the accident to refresh his memory about the events. Mr. Verma's lawyer, noticing this, requests to see the note.

Outcome: According to Section 164 of The Bharatiya Sakshya Adhiniyam 2023, Mr. Verma's lawyer has the right to see the note Mr. Gupta used to refresh his memory. The note is produced and shown to Mr. Verma's lawyer, who then uses it to cross-examine Mr. Gupta about the details of the accident.

#### Example 2:

Scenario: In a fraud case, Ms. Rao is accused of embezzling funds from her employer. During the trial, the prosecution calls an accountant, Mr. Singh, as a witness. Mr. Singh refers to a financial report he prepared to refresh his memory about the transactions in question.

Application of Section 164: Ms. Rao's defense lawyer requests to see the financial report Mr. Singh used to refresh his memory.

Outcome: As per Section 164 of The Bharatiya Sakshya Adhiniyam 2023, the financial report must be produced and shown to Ms. Rao's defense lawyer. The defense lawyer then cross-examines Mr. Singh using the information in the report to challenge the accuracy and reliability of his testimony regarding the alleged embezzlement.

### **Section 165: Production of documents.**

(1) A witness summoned to produce a document shall, if it is in his possession or power, bring it to Court, notwithstanding any objection which there may be to its production or to its admissibility:

Provided that the validity of any such objection shall be decided on by the Court.

(2) The Court, if it sees fit, may inspect the document, unless it refers to matters of State, or take other evidence to enable it to determine on its admissibility.

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

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

### Simplified act

(1) If a witness is asked to bring a document to court, they must do so if they have it or can get it, even if there are reasons to object to showing it or using it as evidence:

However, the court will decide if those reasons are valid.

(2) The court can look at the document, unless it involves government secrets, or gather other evidence to decide if it can be used.

(3) If the document needs to be translated, the court can tell the translator to keep it secret, unless it will be used as evidence. If the translator doesn't follow this order, they will be punished under section 198 of the Bharatiya Nyaya Sanhita, 2023:

But, no court can ask for communications between the Ministers and the President of India to be shown.

### Explanation using Example

#### Example 1:

Scenario: A civil dispute over property ownership.

Context: Rajesh and Suresh are in a legal battle over the ownership of a piece of land. Rajesh claims that he has the original sale deed that proves his ownership, while Suresh disputes this claim.

#### Application of Section 165:

Summoning the Document: The court summons Rajesh to produce the original sale deed.

Objection: Rajesh objects, stating that the document is confidential and should not be produced in court.

Court's Decision: Despite Rajesh's objection, he is required to bring the document to court. The court will then decide on the validity of his objection.

Inspection: The court inspects the sale deed to determine its admissibility as evidence.

Translation: If the sale deed is in a regional language, the court may direct a translator to translate it, ensuring the translator keeps the contents secret unless the document is admitted as evidence.

#### Example 2:

Scenario: A criminal case involving bribery allegations.

Context: Anil, a government official, is accused of accepting a bribe. The prosecution claims to have a diary maintained by Anil that records the bribes he received.

Application of Section 165:

Summoning the Document: The court summons Anil to produce the diary.

Objection: Anil objects, arguing that the diary contains personal information unrelated to the case.

Court's Decision: Anil must bring the diary to court despite his objection. The court will then decide whether his objection is valid.

Inspection: The court inspects the diary to determine if the entries related to bribery are admissible as evidence.

Translation: If the diary entries are in a code or another language, the court may direct a translator to translate the entries, ensuring the translator keeps the contents secret unless the diary is admitted as evidence.

State Matters: If the diary contains sensitive information related to state matters, the court may decide not to inspect those parts.

#### Example 3:

Scenario: A defamation case involving a newspaper article.

Context: Priya sues a newspaper for defamation, claiming that an article published by the newspaper has damaged her reputation. The newspaper

claims that they have documents proving the truth of the statements made in the article.

Application of Section 165:

Summoning the Document: The court summons the newspaper to produce the documents that allegedly prove the truth of the statements.

Objection: The newspaper objects, stating that the documents are confidential and protected by journalistic privilege.

Court's Decision: The newspaper must bring the documents to court despite their objection. The court will then decide on the validity of the objection.

Inspection: The court inspects the documents to determine their admissibility as evidence.

Translation: If the documents are in a foreign language, the court may direct a translator to translate them, ensuring the translator keeps the contents secret unless the documents are admitted as evidence.

State Matters: If the documents contain sensitive information related to state matters, the court may decide not to inspect those parts.

**Section 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.

**Simplified act**

If one party asks the other party to show a document and the other party shows it,

The party who asked to see the document must use it as evidence if the other party wants them to.

Explanation using Example

Example 1:

Scenario: A civil dispute over property ownership.

Parties Involved:

Plaintiff: Mr. Sharma

Defendant: Mr. Verma

Situation: Mr. Sharma claims that he is the rightful owner of a piece of land, but Mr. Verma is currently in possession of it. Mr. Sharma files a lawsuit against Mr. Verma and requests the court to order Mr. Verma to produce the original sale deed of the property, which Mr. Verma has in his possession.

Application of Section 166: Mr. Sharma sends a formal notice to Mr. Verma to produce the original sale deed in court. Mr. Verma complies and brings the document to court. Mr. Sharma inspects the document and finds it relevant to his case. According to Section 166, since Mr. Sharma called for the document and inspected it, he is now obligated to present it as evidence if Mr. Verma insists on it.

Outcome: Mr. Verma requests the court to have Mr. Sharma submit the sale deed as evidence. The court then accepts the document as evidence in the case, and it is used to determine the rightful ownership of the property.

Example 2:

Scenario: A criminal case involving a forged cheque.

Parties Involved:

Prosecution: State of Maharashtra

Accused: Mr. Khan

Situation: Mr. Khan is accused of forging a cheque to withdraw money from Mr. Patel's bank account. The prosecution claims that Mr. Khan forged Mr. Patel's signature on the cheque. During the investigation, the prosecution requests Mr. Khan to produce the original cheque for examination.

Application of Section 166: The prosecution sends a notice to Mr. Khan to produce the original cheque in court. Mr. Khan complies and brings the cheque to court. The prosecution inspects the cheque and finds it crucial for proving the forgery. According to Section 166, since the prosecution called for the cheque and inspected it, they are now required to present it as evidence if Mr. Khan demands it.

Outcome: Mr. Khan requests the court to have the prosecution submit the cheque as evidence. The court then accepts the cheque as evidence in the case, and it is used to determine whether Mr. Khan is guilty of forgery.

**Section 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.

**Simplified act**

When someone is asked to show a document in a legal case and they refuse, they can't later use that document as evidence unless the other side agrees or the court allows it.

**Example**

A is suing B based on an agreement and asks B to show the agreement in court. During the trial, A asks for the document, but B refuses to show it. A then provides other evidence about what the agreement says. Later, B tries to show the actual document to challenge A's evidence or to prove that the agreement isn't properly stamped. B is not allowed to do this.

**Explanation using Example**

**Example 1:**

Ravi files a lawsuit against Suresh claiming that Suresh owes him Rs. 50,000 based on a written loan agreement. Ravi gives Suresh a notice to produce the original loan agreement in court. During the trial, Suresh refuses to produce the document. Ravi then provides a photocopy of the loan agreement as secondary evidence to support his claim. Later, Suresh tries to present the original loan agreement to argue that the loan amount was actually Rs. 30,000 and not Rs. 50,000. According to Section 167 of The Bharatiya Sakshya

Adhiniyam 2023, Suresh cannot use the original document as evidence without Ravi's consent or a court order because he refused to produce it when initially asked.

Example 2:

Meera sues her former business partner, Anil, for breach of contract. Meera gives Anil a notice to produce the original partnership agreement in court. Anil refuses to produce the document during the trial. Meera then submits a copy of the partnership agreement as secondary evidence to prove her case. Anil later attempts to present the original partnership agreement to show that there was a clause allowing him to terminate the partnership under certain conditions. Under Section 167 of The Bharatiya Sakshya Adhiniyam 2023, Anil is not allowed to use the original document as evidence without Meera's consent or a court order because he initially refused to produce it when requested.

### **Section 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.

### **Simplified act**

The Judge can ask any question to find out or prove important facts. This can be done at any time, in any way, to any witness or party involved in the case. The Judge can also ask for any document or item to be shown. The parties

involved or their lawyers cannot object to these questions or requests. They also cannot question the witness further about their answers without the Court's permission.

However, the final decision must be based on facts that are considered relevant and properly proven according to this law.

Additionally, this rule does not allow the Judge to force a witness to answer a question or show a document if they have the right to refuse under sections 127 to 136. The Judge also cannot ask questions that would be inappropriate for anyone else to ask under sections 151 or 152. The Judge must also follow the rules about using original documents, except in certain special cases mentioned earlier.

#### Explanation using Example

##### Example 1:

Scenario: A Theft Case

Context: During a trial for theft, the prosecution presents a witness who claims to have seen the accused near the scene of the crime.

Application of Section 168:

Judge's Action: The judge, seeking to clarify the timeline, asks the witness, "At what exact time did you see the accused near the shop?"

Witness's Response: The witness responds, "I saw him around 8 PM."

Judge's Order: The judge then orders the production of CCTV footage from the shop to verify the witness's statement.

Parties' Reaction: Neither the defense nor the prosecution can object to the judge's question or the order for the CCTV footage.

Legal Boundaries: The judge ensures that the questions asked and the evidence sought are relevant and permissible under the law, without compelling the witness to provide information they are legally entitled to withhold.

##### Example 2:

Scenario: A Contract Dispute



Context: In a civil case involving a breach of contract, the plaintiff claims that the defendant failed to deliver goods as per the agreement.

Application of Section 168:

Judge's Action: The judge asks the plaintiff, "Can you provide the original contract document that outlines the terms of delivery?"

Plaintiff's Response: The plaintiff submits the original contract document to the court.

Judge's Order: The judge orders the defendant to produce any correspondence or emails related to the delivery schedule.

Parties' Reaction: Neither party can object to the judge's questions or the order to produce documents.

Legal Boundaries: The judge ensures that the questions and orders are within the legal framework, respecting the parties' rights to withhold certain privileged information as per sections 127 to 136 of the Adhiniyam.

Example 3:

Scenario: A Murder Trial

Context: In a murder trial, a key witness testifies that they saw the accused with a weapon on the night of the murder.

Application of Section 168:

Judge's Action: The judge asks the witness, "Can you describe the weapon you saw in the accused's possession?"

Witness's Response: The witness describes the weapon in detail.

Judge's Order: The judge orders the police to produce the forensic report of the weapon found at the crime scene.

Parties' Reaction: Neither the defense nor the prosecution can object to the judge's question or the order for the forensic report.

Legal Boundaries: The judge ensures that the questions asked and the evidence sought are relevant and permissible under the law, without compelling the witness to provide information they are legally entitled to withhold.

Example 4:

Scenario: A Property Dispute

Context: In a property dispute, the plaintiff claims that the defendant has encroached on their land.

Application of Section 168:

Judge's Action: The judge asks the plaintiff, "Do you have the original land ownership documents?"

Plaintiff's Response: The plaintiff submits the original land ownership documents to the court.

Judge's Order: The judge orders a surveyor to produce a recent survey report of the disputed land.

Parties' Reaction: Neither party can object to the judge's questions or the order for the survey report.

Legal Boundaries: The judge ensures that the questions and orders are within the legal framework, respecting the parties' rights to withhold certain privileged information as per sections 127 to 136 of the Adhiniyam.

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

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

#### **Section 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.

#### **Simplified act**

If evidence is wrongly allowed or not allowed in a trial, this alone is not a reason for a new trial or to change the decision.

The court will look at whether there was enough other evidence to support the decision without considering the disputed evidence.

If the evidence that was not allowed had been included, the court will consider if it would have changed the decision.

Explanation using Example

Example 1:

Rajesh was on trial for theft. During the trial, the prosecution presented a piece of evidence that Rajesh's lawyer argued was improperly admitted because it was obtained without a proper search warrant. Despite this, the court found Rajesh guilty based on other substantial evidence, such as eyewitness testimonies and CCTV footage showing Rajesh committing the theft. Rajesh's lawyer appealed for a new trial on the grounds of the improper admission of evidence. However, the appellate court denied the request, stating that even without the improperly admitted evidence, there was enough other evidence to justify the guilty verdict.

Example 2:

Meena was suing her employer for wrongful termination. During the trial, the judge rejected a piece of evidence that Meena's lawyer wanted to present, which was an email from the employer that Meena claimed showed discriminatory intent. Despite this, the court ruled in Meena's favor based on other evidence, such as witness statements and company records showing a pattern of discriminatory behavior. The employer appealed the decision, arguing that the rejection of the email evidence was improper and warranted a new trial. The appellate court upheld the original decision, stating that even if the email had been admitted, it would not have changed the outcome of the case.

## **CHAPTER XII: REPEAL AND SAVINGS**

### **Section 170: Repeal and savings.**

- (1) The Indian Evidence Act, 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, as in force immediately before such commencement, as if this Adhiniyam had not come into force.

### **Simplified act**

(1) The Indian Evidence Act, 1872 is now cancelled.

(2) Even though it is cancelled, if there is any application, trial, inquiry, investigation, proceeding, or appeal that is still ongoing right before this new law starts, then it will continue to be handled according to the rules of the Indian Evidence Act, 1872, as if this new law had not started yet.

Explanation using Example

Example 1:

Scenario: A criminal trial for theft is ongoing in a district court in Mumbai. The trial began in January 2023, and the court has been following the Indian Evidence Act, 1872, to evaluate the evidence presented.

Application of Section 170: When the Bharatiya Sakshya Adhiniyam 2023 comes into force in April 2023, the ongoing trial will not switch to the new rules. Instead, it will continue to be governed by the Indian Evidence Act, 1872, as it was before the new act came into effect. This ensures that the trial proceeds without any disruption or confusion due to changes in the law.

Example 2:

Scenario: A civil case regarding a property dispute is under investigation in Delhi. The investigation started in February 2023, and the authorities are using the Indian Evidence Act, 1872, to gather and assess evidence.

Application of Section 170: Even after the Bharatiya Sakshya Adhiniyam 2023 is enacted in April 2023, the investigation will continue under the provisions of the Indian Evidence Act, 1872. This means that all the evidence collected and the procedures followed will be based on the old act, ensuring consistency and fairness in the investigation process.

Example 3:

Scenario: An appeal is pending in the High Court of Karnataka regarding a fraud case. The appeal was filed in March 2023, and the court is using the Indian Evidence Act, 1872, to review the evidence and arguments.

Application of Section 170: With the Bharatiya Sakshya Adhiniyam 2023 coming into force in April 2023, the appeal will still be decided based on the Indian Evidence Act, 1872. The new act will not affect the ongoing appeal, and the court will continue to apply the old rules to ensure a fair and just decision.

Example 4:

Scenario: A police investigation into a cybercrime case is underway in Hyderabad. The investigation began in December 2022, and the police are following the Indian Evidence Act, 1872, to collect and analyze digital evidence.

Application of Section 170: After the Bharatiya Sakshya Adhiniyam 2023 is enacted in April 2023, the ongoing investigation will not be affected by the new act. The police will continue to use the Indian Evidence Act, 1872, to complete their investigation, ensuring that the process remains consistent and legally sound.

## THE SCHEDULE

### CERTIFICATE

#### PART A

#### Affidavit for Digital Evidence

(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: \_\_\_\_\_

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

Color: \_\_\_\_\_

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

IMEI / UIN / UID / MAC / Cloud ID \_\_\_\_\_ (as applicable) and any other relevant information, if any, about the device / digital record \_\_\_\_ (specify).

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

Owned

Maintained

Managed

Operated

by me (select as applicable).

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

SHA1: \_\_\_\_\_

SHA256: \_\_\_\_\_

MD5: \_\_\_\_\_

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

(Hash report to be enclosed with the certificate)

(Name and signature)

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

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

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

### **Simplified act**

#### Affidavit for Digital Evidence

(To be filled out by the person providing the evidence)

I, \_\_\_\_\_ (Your Name), Son / daughter / spouse of  
\_\_\_\_\_ (Name of Parent/Spouse) living / working at  
\_\_\_\_\_ (Your Address) do hereby solemnly affirm and  
sincerely state and submit as follows:

I have provided an electronic record or output from the following device or  
digital source (check the appropriate box):

Computer / Storage Media

DVR

Mobile

Flash Drive

CD / DVD

Server

Cloud

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 my lawful control for regularly creating, storing, or processing information for regular activities. During this time, the computer or communication device was working properly, and the relevant information was regularly entered into the computer during normal business activities. If the computer or digital device was not working properly or was out of operation at any time, it did not affect the electronic or 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 or 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-hour format)

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

Explanation using Example

Example 1:

Affidavit for Digital Evidence

(To be filled by the Party)



I, Rajesh Kumar, Son of Suresh Kumar residing at 123, MG Road, Bengaluru 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: \_\_\_\_\_

Make & Model: Samsung Galaxy S21

Color: Black

Serial Number: 1234567890

IMEI / UIN / UID / MAC / Cloud ID 123456789012345 (as applicable) and any other relevant information, if any, about the device / digital record \_\_\_\_ (specify).

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

Owned

Maintained

Managed

Operated

by me (select as applicable).

I state that the HASH value / s of the electronic / digital record / s is 098f6bcd4621d373cade4e832627b4f6, obtained through the following algorithm:

SHA1: \_\_\_\_\_

SHA256: \_\_\_\_\_

MD5: 098f6bcd4621d373cade4e832627b4f6

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

(Hash report to be enclosed with the certificate)

(Name and signature)

Date (DD / MM / YYYY): 15 / 10 / 2023

Time (IST): 14:30 hours (In 24 hours format)

Place: Bengaluru

Example 2:

Affidavit for Digital Evidence

(To be filled by the Party)

I, Priya Sharma, Daughter of Ramesh Sharma residing at 45, Nehru Place, New Delhi 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: \_\_\_\_\_

Make & Model: Dell Inspiron 15

Color: Silver

Serial Number: 9876543210

IMEI / UIN / UID / MAC / Cloud ID 00:1A:2B:3C:4D:5E (as applicable) and any other relevant information, if any, about the device / digital record \_\_\_\_ (specify).

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

Owned

Maintained

Managed

Operated

by me (select as applicable).

I state that the HASH value / s of the electronic / digital record / s is 5d41402abc4b2a76b9719d911017c592, obtained through the following algorithm:

SHA1: \_\_\_\_\_

SHA256: \_\_\_\_\_

MD5: 5d41402abc4b2a76b9719d911017c592

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

(Hash report to be enclosed with the certificate)

(Name and signature)

Date (DD / MM / YYYY): 20 / 10 / 2023

Time (IST): 10:00 hours (In 24 hours format)

Place: New Delhi

THE SCHEDULE

CERTIFICATE

PART B

Affidavit

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

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

Computer

Storage Media

DVR

Mobile

Flash Drive

CD / DVD

Server

Cloud

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

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

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

Color: \_\_\_\_\_

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

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

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

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

SHA1: \_\_\_\_\_

SHA256: \_\_\_\_\_

MD5: \_\_\_\_\_

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

(Hash report to be enclosed with the certificate)

(Name, designation and signature)

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

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

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

### **Simplified act**

#### Affidavit

I, \_\_\_\_\_ (Name), son/daughter/spouse of \_\_\_\_\_, living/working at \_\_\_\_\_, do hereby solemnly swear and sincerely state the following:

The electronic record or output provided comes from the following device or digital source (please check the appropriate box):

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)

Any other relevant information about the device or digital record: \_\_\_\_\_  
(specify).

I confirm that the HASH value(s) of the electronic or digital record(s) is  
\_\_\_\_\_, obtained using the following algorithm:

SHA1: \_\_\_\_\_

SHA256: \_\_\_\_\_

MD5: \_\_\_\_\_

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

(The hash report should be attached with this certificate)

(Name, job title, and signature)

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

Time (IST): \_\_\_\_\_ hours (24-hour format)

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

Explanation using Example

Example 1:

Scenario: A dispute over a digital contract

Context: Rajesh and Sunita entered into a digital contract for the sale of a piece of land. Rajesh claims that Sunita has altered the contract after it was signed digitally. To resolve the dispute, Rajesh needs to provide evidence of the original digital contract.

Affidavit: I, Rajesh Kumar, Son of Ramesh Kumar residing at 123, MG Road, Bangalore 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: Digital Contract Management System

Make & Model: Dell Inspiron 15

Color: Black

Serial Number: 12345XYZ

IMEI / UIN / UID / MAC / Cloud ID: 00-14-22-01-23-45

and any other relevant information, if any, about the device / digital record:  
The contract was signed using Adobe Sign.

I state that the HASH value / s of the electronic / digital record / s is e3b0c44298fc1c149afb4c8996fb92427ae41e4649b934ca495991b7852b855, obtained through the following algorithm:

SHA1: \_\_\_\_\_

SHA256:

e3b0c44298fc1c149afbf4c8996fb92427ae41e4649b934ca495991b7852b855

MD5: \_\_\_\_\_

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

(Hash report to be enclosed with the certificate)

Rajesh Kumar, Owner

Date (DD / MM / YYYY): 15 / 10 / 2023

Time (IST): 14:30 hours (In 24 hours format)

Place: Bangalore

Example 2:

Scenario: Evidence in a cybercrime case

Context: The police have seized a mobile phone from a suspect in a cybercrime case. The phone contains crucial evidence in the form of messages and emails. The police need to submit this evidence in court.

Affidavit: I, Inspector Ravi Sharma, Son of Mohan Sharma employed at Cyber Crime Unit, Delhi Police 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: Samsung Galaxy S21

Color: Phantom Gray

Serial Number: SM-G991BZAINU

IMEI / UIN / UID / MAC / Cloud ID: 356789123456789

and any other relevant information, if any, about the device / digital record:  
The phone was seized from the suspect's residence.

I state that the HASH value / s of the electronic / digital record / s is  
d41d8cd98f00b204e9800998ecf8427e, obtained through the following  
algorithm:

SHA1: \_\_\_\_\_

SHA256: \_\_\_\_\_

MD5: d41d8cd98f00b204e9800998ecf8427e

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

(Hash report to be enclosed with the certificate)

Ravi Sharma, Inspector

Date (DD / MM / YYYY): 15 / 10 / 2023

Time (IST): 10:00 hours (In 24 hours format)

Place: Delhi