

Bhartiya Sakshya Adhinyam (BSA)

(Handbook)

Delhi Police



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Team

Delhi Police Academy

FOREWORD



After having served as the fulcrum of criminal justice administration for over 150 years, with several amendments and upgrades, the erstwhile three Criminal Major Laws have recently been replaced by Bharatiya Nyaya Sanhita, Bharatiya Nagarik Suraksha Sanhita and Bharatiya Sakshya Adhiniyam through Acts of Parliament. The enactment of the three new Criminal Major Acts marks a significant post-colonial shift in the criminal justice administration of our country; the distinguishing feature being focus on 'justice' from conventionally being purely 'penal'.

The new laws aim at structural overhaul of criminal justice administration by acknowledging the changes that have taken roots in a developing country and society over the past century and, are futuristic in-as-much as they aim at providing a cohesive definition and prescribing the consequences of new age delinquencies in a rational, just and nationalistic framework.

The new laws are expected to be notified for implementation in the coming days. It is going to be a multi-stakeholder endeavour wherein central organizations like NCRB, BPR&D etc. will play an important role along with State Police forces. For on-ground



understanding and implementation of the new laws, Delhi Police has already taken the first step with the preparation of this comprehensive Handbook, which shows the commitment and perseverance of our Training Division, under the able leadership of Ms. Chhaya Sharma, Spl.CP/Training.

The challenge with adoption and implementation of the new laws is primarily 'attitudinal'. For a police force accustomed to learning, practicing and internalizing laws that have been the 'daily bread' of policing for generations of police officers, the first challenge is to acknowledge that development is de-envelopment i.e., the old yolk is to be done away with. The process of unlearning and re-learning can indeed be very difficult in absence of experienced mentors, quality study material and structured, practical tutoring. The Handbook at hand aims to fill the critical second paradigm mentioned above, while we scout and prepare professional trainers and lay down a calendar for training over seventy thousand personnel of Delhi Police on this journey of excitement and discoveries.

I once again extend my heartfelt compliments to the entire team of Training Division of Delhi Police, who worked assiduously, ably assisted by experts drawn from various professions into drafting the Handbook and I am sure that this will serve as the beacon light for not just Delhi Police but several other State Police forces, who are moving along with us into the future of national service through our policing efforts.

Sanjay Arora

Commissioner of Police, Delhi



PREFACE

In the Bharatiya Sakshya Adhiniyam, there are total 169 Sections whereas there were a total of 167 sections in the Indian Evidence Act. (I.E.A.) One new section has been added in BSA whereas 5 existing sections of I.E.A. have been deleted. A committee was constituted for preparation of course material for Investigating Officers of Delhi Police which after much deliberation, has made this guide to help the Investigating Officers of Delhi Police and to simplify the understanding of the new 'Bharatiya Sakshya Adhiniyam-2023'.

Here, you will find around 25 sections of I.E.A. carefully chosen with their comparative analyses as per the new Adhiniyam to assist your transition from the old Indian Evidence Act to this updated Bharatiya Sakshya Adhiniyam and to ensure quality of investigation.

Our goal is to make the shift smoother, offering practical insights that empower you on the ground. As you navigate this legal update, consider this booklet your go-to resource for understanding and implementing these changes effectively. Together, let us ensure a seamless transition, enhancing our collective commitment to justice and community safety as well as making Delhi Police one of the best organizations to serve the society.

Team Delhi Police Academy



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Section A

Introduction

- The Indian Evidence Act, 1872 (IEA) was enacted in the year 1872 with a view to consolidate the law relating to evidence Act on which the Court could come to the rightful conclusion about the facts of the case.
- The law of evidence falls in the category of adjective law (not being substantive or procedural)
- It defines the pleadings and methodology by which the substantive or procedural laws are operationalised.
- The existing law does not address properly the technological advancement undergone in the country during the last few decades.
- The aim of BSA of 2023 is to consolidate and to provide for general rules and principles for evidence for fair trial.
- The IEA-1872 consists of 167 sections whereas there are 169 sections in this new Act.
- Five sections of IEA-1872 i.e. Sec. 22A, Sec. 82, Sec. 88 and Sec.113 and Sec.166 have been removed.
- One new Section, i.e. Section 61 has been introduced in the BSA of 2023.
- Formats for Certificate u/s 63(4) BSA (Previously Sec.65-B of the IEA) has been appended in the BSA of 2023.
- Most of the sections of the IEA have been adopted in the BSA, as ditto and some with minor/major additions and alterations. Detailed discussion has been made in the handbook, later on.
- The IEA-1872 was applicable to whole of India but from Sec. 1 of the BSA the word 'India' has been omitted. Probable reason for omitting the word 'India' is to make electronic evidence collected outside the territory of India, admissible.
- Sec. 2(2) of the BSA provides those words and expressions used herein and not defined but defined in the IT Act-2000, BNSS-2023 and the BNS-2023 shall have the same meanings as assigned to them in the said Act and Sanhitas.



Section B

Salient features of BSA, 2023

- It provides that evidence includes any information given electronically which would permit appearance of witness, accused, experts and victims through electronic means.
- It provides the admissibility of an electronic or digital record having the same legal effect, validity and enforceability as any other document.
- It seeks to expand the scope of secondary evidence.
- It seeks to put limits on the facts which are admissible and its certification as such in the Courts.

A. Sections of Indian Evidence Act, 1872 frequently used by police officers

- Sec 24, 25, 26, 27, 28, 29, 30 and 32 (Confessions)
- Sec 45, 45A, 46, 47 and 47A (Experts)
- Sec 62, 63, 64, 65, 65A and 65B (Primary & Secondary Evidence)
- Sec 111A, 113A and 113B (Presumption)
- Sec 133 (Accomplice)
- Sec 159 (Refreshing Memory)
- Sec 162 (Production of Documents)
- **A comparative study of these sections with the corresponding sections of the new Act i.e., Bharatiya Sakshya Adhinyam will be elaborated in section C & D of this booklet.**

- ▶ A Detailed chart of comparison of sections of I.E.A and BSA has been mentioned in tabular form attached at Annexure - II.

B. Change in definitions

Sec 2 (1) (d) of BSA, 2023 (previously Sec 3 of I.E.A, 1872):

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.

Sec 2 (1) (e) of BSA, 2023 (previously Sec 3 of I.E.A, 1872):

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;

Comments: Now, the definitions of the document and evidence have become wider as electronic record and digital records have been incorporated within the definition of document and evidence. Any activity done through the electronic mode and digital mode will be considered as document and will be having its value as evidence. Earlier in the definition of evidence as per IEA, electronic record was included but now electronic as well as digital record produced for the inspection of Court is evidence.

Explanation: The new definition of 'Evidence' empowers the courts to examine witnesses during trial by way of video conference. This has been added in consonance with Sec.530 of the BNSS (trial and proceedings to be held in electronic mode)

C. Corresponding Sections of BSA, 2023 frequently used by police officers in day to day working

S. No.	Indian Evidence Act, 1872	Heading	BSA, 2023	Heading	Whether any change or not
1	Sec 24	Confession caused by inducement, threat or promise, when irrelevant in criminal proceedings	Sec 22	Confession caused by inducement, threat, coercion or promise, when irrelevant in criminal proceedings	Word 'Coercion' added.

S. No.	Indian Evidence Act, 1872	Heading	BSA, 2023	Heading	Whether any change or not
2	Sec 25	Confession to police officer not to be proved	Sec 23(1)	Confession to police officer	No Change
3	Sec 26	Confession by accused while in custody of police not to be proved against him	Sec 23(2)	Confession to police officer	No Change
4	Sec 27	How much of information received from accused may be proved	Proviso to Sec 23	Confession to police officer	No Change
5	Sec 28	Confession made after removal of impression caused by inducement, threat or promise, relevant	Proviso I to Sec 22	Confession caused by inducement, threat, coercion or promise, when irrelevant in criminal proceedings	Word 'Coercion' added.
6	Sec 29	Confession otherwise relevant not to become irrelevant because of promise of secrecy, etc.	Proviso II to Sec 22	Confession caused by inducement, threat, coercion or promise, when irrelevant in criminal proceedings	Word 'Coercion' added.

S. No.	Indian Evidence Act, 1872	Heading	BSA, 2023	Heading	Whether any change or not
7	Sec 30	Consideration of proved confession affecting person making it and others jointly under trial for same offence.	Sec 24	Consideration of proved confession affecting person making it and others jointly under trial for same offence.	Explanation - II added
8	Sec 32	Cases in which statement of relevant fact by person who is dead or cannot be found, etc, is relevant	Sec 26	Cases in which statement of relevant fact by person who is dead or cannot be found, etc, is relevant	No Change
9	Sec 45	Opinion of experts	Sec 39(1)	Opinion of experts	Words 'Or any, other field added
10	Sec 45A	Opinion of Examiner of Electronic Evidence	Sec 39(2)	Opinion of experts	No Change
11	Sec 47	Opinion as to handwriting, when relevant	Sec 41(1)	Opinion as to handwriting and signatures, when relevant	No Change
12	Sec 47A	Opinion as to electronic signature when relevant	Sec 41(2)	Opinion as to handwriting and signatures, when relevant	No Change
13	Sec 62	Primary Evidence	Sec 57	Primary Evidence	Explanations 4, 5, 6 and 7 added

S. No.	Indian Evidence Act, 1872	Heading	BSA, 2023	Heading	Whether any change or not
14	Sec 63	Secondary Evidence	Sec 58	Secondary Evidence	Sub Clauses (vi), (vii) and (viii) added
15	Sec 64	Proof of documents by primary evidence	Sec 59	Proof of documents by primary evidence	No Change
16	Sec 65	Cases in which secondary evidence relating to documents may be given	Sec 60	Cases in which secondary evidence relating to documents may be given	No Change
17			Sec 61	Electronic or digital record.	New Section added.
18	Sec 65A	Special provisions as to evidence relating to electronic record	Sec 62	Special provisions as to evidence relating to electronic record	No Change
19	Sec 65B	Admissibility of electronic record	Sec 63	Admissibility of electronic record	Material Changes done
20	Sec 111A	Presumption as to certain offences	Sec 115	Presumption as to certain offences	No Change
21	Sec 113A	Presumptions as to abetment of suicide by a married woman	Sec 117	Presumptions as to abetment of suicide by a married women	No Change
22	Sec 113B	Presumption as to dowry death	Sec 118	Presumption as to dowry death	No Change

S. No.	Indian Evidence Act, 1872	Heading	BSA, 2023	Heading	Whether any change or not
23	Sec 133	Accomplice	Sec 138	Accomplice	Changes done
24	Sec 159	Refreshing memory	Sec 162	Refreshing memory	No Change
25	Sec 162	Production of Documents	Sec 165	Production of Documents	Changes done

D. Section wise changes explained

Old Sec in IEA, 1872

New Sec BSA, 2023

Section - 24, 28 and 29

Section - 22

Confession caused by inducement, threat, coercion or promise, when irrelevant in criminal proceedings

Content

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 practiced 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**.

Comments: In sections pertaining to confessional statement a new word 'coercion' has been added. This word has not been legally defined but its dictionary meaning is "it is an act or process of persuading someone forcefully to do something that he does not want to do. The synonyms of 'coercion' are force, pressure, threats, bullying, constraint, intimidation, compulsion, duress, browbeating and strongarm tactics. Confession statement would be considered as irrelevant in a criminal proceeding if it appears to the court that it is caused by.

1. any inducement,
2. threat,
3. coercion
4. or promise,

The above inducement threat, coercion or promise must be connected to the charge against the accused and should come from a person in authority.

In the opinion of the court, the inducement, threat, coercion or promise should be sufficient to give accused reasonable grounds that by making it he would gain any advantage or avoid any loss in reference to the proceedings against him.

Old Sec in IEA, 1872

New Sec BSA, 2023

Section - 30

Section - 24

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

Content

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 Sec, 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 Sec 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.

Comments: There is no change in the language of previous Sec 30 of IEA and the fresh Sec 24 of BSA, 2023 except the explanation II has been added in the later.

The change has made a material difference in the sense that previously if somebody had absconded or declared a proclaimed offender, their trial was stalled but now the absconder or proclaimed offender can be tried with other accused persons in absentia.

Old Sec in IEA, 1872

New Sec BSA, 2023

Section - 45 + 45A

Section - 39

Opinions of experts

Content

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 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 Sec 79A of the Information Technology Act, 2000, is a relevant fact.

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

Comments: Previous Sections 45, 45A of IEA, 1872, have been merged in new Section 39 of BSA, 2023. The new Section is verbatim to the previous ones except addition of “or any other field”. By addition of these new words, definition of experts has become more expansive and help of more experts in fields hitherto unknown can be taken.

Old Sec in IEA, 1872

New Sec BSA, 2023

Section - 62

Section - 57

Primary evidence

Content

Primary evidence means the document itself produced for the inspection of the Court.

Explanation 1.—Where a document is executed in several parts, each part is primary evidence of the document.

Explanation 2.—Where a document is executed in counterpart, each counterpart being executed by one or some of the parties only, each counterpart is primary evidence as against the parties executing it.

Explanation 3.—Where a number of documents are all made by one uniform process, as in the case of printing, lithography or photography, each is primary evidence of the contents of the rest; but, where they are all copies of a common original, they are not primary evidence of the contents of the original.

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

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

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

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

Comments: In the new section, electronic record/digital record is also considered as Primary evidence. There is no other material change in this Section. A comprehensive note explaining changes made to this section as well as procedure to search & seizure of the electronic and digital evidence in amended criminal law, is enclosed as Annexure-1.

Old Sec in IEA, 1872

New Sec BSA, 2023

Section - 63

Section - 58

Secondary evidence

Content

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.

Comments: Definition of secondary evidence has become more wide/broad where oral and written admissions have been considered as secondary evidences.

Further, in such cases where record is in large quantity and it is not possible to examine it in Court, then the evidence of examiner/expert, who has examined the documents, would be considered as secondary evidence.

Annexure -1 may also be referred for further comments on this section.

Note: Secondary evidence refers to the copies or testimony about the primary evidence in the absence of the primary evidence and is considered to be substitute for the primary evidence.

Old Sec in IEA, 1872

New Sec BSA, 2023

New Section

Section - 61

Electronic or digital record

Content

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

Comments: New section has been inserted where admissibility of electronic record/digital record has been accepted as evidence.

It may be read with Section 180 of BNSS, 2023 (Examination of witnesses by Police: Provide that statement made under this sub-section may also be recorded by audio-video electronic means).

Annexure -1 may also be referred for further comments on this section.

Old Sec in IEA, 1872

New Sec BSA, 2023

Section - 65 B

Section - 63

Admissibility of electronic records

Content

- (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 Sec 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-Sec (1) in respect of a computer output shall be the following, namely:—
 - (a) the computer output containing the information was produced by the computer or **communication device** during the period over which the computer or communication device was used regularly to **create**, store or process information for the purposes of any activity regularly carried on over that period by the person having lawful control over the use of the computer **or communication device**;
 - (b) during the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer or communication device in the ordinary course of the said activities;
 - (c) throughout the material part of the said period, the computer **or communication device** was operating properly or, if not, then in respect of any period in which it was not operating properly or was out

of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents; and

- (d) the information contained in the electronic record reproduces or is derived from such information fed into the computer or communication device in the ordinary course of the said activities.
- (3) Where over any period, the function of **Creating**, storing or processing information for the purposes of any **activity** regularly carried on over that period as mentioned in clause (a) of sub-Sec (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 device** 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 Sec, 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-Sec 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).**

Comments: Annexure -1 may also be referred for further comments on this section.

Old Sec in IEA, 1872

New Sec BSA, 2023

Section - 133

Section - 138

Accomplice

Content

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.

Comments:

- Earlier, formulation of law in Sec 133, IEA was in conflict with illustration of Sec 114 IEA (now 119 BSA). This has now been rectified.
- Also read with Sec 119 (i)(b): that an accomplice is unworthy of credit, unless he is corroborated in the material particulars.

Old Sec in IEA, 1872

New Sec BSA, 2023

Section - 162

Section - 165

Production of Documents

Content

1. A witness summoned to produce a document shall, if it is in his possession or power, bring it to the 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 Bhartiya Nyaya Sanhita, 2023:

Provided that no court shall require any communication between the Ministries and the President of India to be produce before it.

Comments: All IOs be sensitized that such communication shall also not be sought during the course of investigation.



Section C

ANNEXURE - I

A note on search and seizure of digital evidence in amended criminal laws

The issue of digital/electronic evidence in new criminal justice delivery system revolves around two kinds of digital/electronics evidences:

1. **The evidence already available which is to be searched and seized during investigation.**
2. **The digital evidences produced through audio-video recording of procedure of search, seizure, statement, etc.**

Another important issue related to digital evidences may be divided into following categories:

- A. **Legalities:** Law has prescribed in Bhartiya Nagrik Suraksha Sanhita (BNSS) that search and seizure at any place by police officer must be audio-video recorded whereas statements in certain situation may also be recorded through audio-video recording, which shall be produced in the court as evidence.

In Bhartiya Sakshya Adhinyam (BSA), any data/record directly saved in any storage media and produced from the proper custody, shall be admissible as primary evidence unless disputed. However, its contents shall be proved in the court as evidence with a certificate u/s 63 (4) BSA.

It can be inferred from the statute that any storage media containing the electronics/digital data is separate from the contents (in human understandable form) from such storage media presented for appreciation as evidence in the court.

In other words, the storage media containing data/record directly produced

by the computer device is primary evidence but when it is reproduced in human understandable form from such media as evidence, it require certification being a secondary data (copy of original data)

Explanation 4 of Section 57 of BSA: Example of "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"

Email Threads: A conversation unfolds over several email messages sent and received at different times. Each email in the thread (including attachments) is primary evidence as they collectively show the chronological exchange of information.

Backups and Archives: A computer file is regularly backed up, creating multiple versions at different points in time. Each backup file is primary evidence as it represents the state of the file at that specific time.

Website Content: A website's content is stored across multiple files like HTML, CSS, JavaScript, and images. Each file is primary evidence as it contributes to the overall representation of the website at that time.

Chat Logs: A conversation on a chat platform is recorded in a sequence of messages. Each message in the log is primary evidence as it reflects the conversation's flow and content.

Explanation 5 of Section 57 of BSA: Examples of "Where an electronic or digital record is produced from proper custody, such electronic and digital record is primary evidence unless it is disputed" might be applied in different contexts:

"Proper custody" means the record was maintained in a secure and reliable system with appropriate access controls and audit trails. **(Kindly refer Sec. 81 with explanation, Sec. 93 of the BSA)**

This rule doesn't guarantee **absolute admissibility**; the opposing party can still challenge the authenticity, accuracy, or completeness of the record.

The **burden of proof** ultimately lies with the party presenting the evidence, but initially, "proper custody" strengthens the record's evidentiary value.

Email from secured Server:

A company claims a contract was finalized via email exchanges with a client.

The company produces the email thread from their official email server, showing the complete conversation and attachments.

As these emails were maintained in proper custody (company server with access controls), they are considered primary evidence for the contract terms.

The opposing party may dispute the emails' authenticity or argue their content doesn't reflect the true agreement, but the initial burden of proof lies with the company presenting the emails.

CCTV Footage from secured recorder:

Police investigate a robbery at a store and obtain CCTV footage from the security system.

The footage stored on the system's secure recorder, accessible only to authorized personnel, is considered primary evidence.

The defense may argue the footage has been tampered with or doesn't clearly show the alleged perpetrator, but the prosecution presenting the footage from proper custody establishes its initial evidentiary weight.

Financial Records from bank's Secured Database:

An individual is accused of financial misconduct and authorities access their bank statements from the bank's secure database.

These statements, maintained with proper audit trails and access controls, are considered primary evidence of financial transactions.

The accused may contest the accuracy of the statements or claim unauthorized access, but the initial burden of proof lies with the prosecution presenting the records from proper custody.

Social Media Posts from Service Provider's Server:

An individual sues another for defamatory statements made on a social media platform.

The social media platform provides a certified copy of the disputed posts, including timestamps and user information, from their secure database.

These posts, maintained with proper record-keeping practices, are considered primary evidence of the alleged defamation.

The defendant may argue the context of the posts or claim a hacked account, but the initial burden of proof lies with the plaintiff presenting the posts from proper custody.

Explanation 6 of Section 57 of BSA: Examples of "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":

A data is stored on different place through same data stream.

All the stored recordings must be from the **same video capture event**.

Each recording should be maintained in a **secure and reliable way with proper timestamps and metadata**.

The burden of proof for authenticity and chain of custody still lies with the party presenting the evidence.

Security Cameras data stored locally as well as with backup on cloud:

A security camera captures a robbery on video. The footage is simultaneously stored on the camera's internal memory and transmitted to a central recording server.

Both the footage on the camera and the recording on the server are considered primary evidence as they represent the same event from different locations.

This can be crucial for corroborating details or confirming the authenticity of the video.

Live Streaming being broadcasting and recorded at different storage media:

A live event like a concert or a sports game is broadcasted simultaneously through a streaming platform and recorded locally by the organizer.

Both the streamed recording and the local recording are considered primary evidence as they capture the same event from different perspectives.

This can be helpful if there are technical issues with the livestream or if a specific angle or detail needs to be verified.

Video Conferencing Calls being recorded by different participants:

An important meeting or interview is conducted over a video conferencing platform that records the call automatically.

Both the recording stored on the platform's server and the local recording saved by the participants are considered primary evidence.

This can be helpful if there are discrepancies in the audio quality or if specific statements need to be verified.

CCTV Recordings with Cloud Backup:

A retail store uses a CCTV system that simultaneously stores video footage locally on the recorder and backs it up to a cloud storage service.

Both the local recordings and the cloud backups are considered primary evidence as they provide redundancy and accessibility in case of system failures.

This can be crucial for investigations and evidence preservation.

Explanation 7 of Section 57 of BSA: Examples of situations where "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":

1. Recovered Deleted Files

A suspect deletes a file containing incriminating evidence, but forensic software recovers fragments of the file from various locations like unallocated space, temporary folders, and system caches.

Each recovered fragment, even if incomplete, is considered primary evidence as it contributes to reconstructing the original file and proving its existence.

2. Web Browsing History

An investigation into online activity examines the user's web browsing history, including cached images, cookies, and temporary internet files.

These temporary files, alongside the main browsing history, can reveal visited websites, searched keywords, and downloaded content, serving as primary evidence of online activity.

3. System Registry Entries

The Windows registry stores configuration settings and data for various system components.

Entries related to specific software installations, file access timestamps, or user preferences can be extracted from the registry, serving as primary evidence for forensic investigations or software analysis.

- **Nothing is primary evidence in computer. All records are secondary. Primary is binary language of the computer. But with the recent amendments in BSA vide Section 57 with Explanation 4 to 7 the electronic and digital record has also been considered primary class of evidence. There is still ambiguity as to whether certificate under section 63(4)(c) would still be required in case electronic and digital data is maintained and presented in court in the manner as mentioned vide Explanation 4 to 7 under Section 57 since it is primary class of evidence now. If original device/document is produced in the court then there is no need of 63 certificate. With the support of Section 61 and Section 62 the problem is somewhat solved.**

B. **Technicalities:** Every kind of electronic/digital data/information which can be saved in the electronic/digital media storage, the same can be used as evidence. Source of such data/information/records may be:

- i. **Hardware:** Computers, mobile devices, storage media, network peripherals.
- ii. **Software:** Operating systems, applications, firmware, malicious code.
- iii. **Data:** Documents, emails, images, audio/video files, logs, metadata.

- iv. **Online Evidence:** Social media, cloud storage, websites, internet activity logs.

There is a procedure to extract data/information, preservation, analysis and presentation of such contents as evidence in the court. There is need to ensure integrity of digital evidence as it is very volatile and fragile in nature which may be corrupted remotely.

There are two types of digital data i.e. one is in saved status in a non-volatile medium and second is in dynamic in nature and remains present temporarily in volatile medium.

The saved data in non-volatile medium is mirrored/imaged in non-volatile medium and its totality and integrity is ensured by mirroring and write-blocking so that flow of information is one sided and no change may occur in the targeted data from user side while complete data bit by bit is copied on the storage media which is to be used for analysis and investigative purposes.

Sometime, we need to check/verify the data for investigative purposes in the suspect system. In such situation, write-blocker is necessary to protect the data in the device from outside interference. Write blocker works as a valve and used to prevent any accidental or intentional modification of data on a storage device, preserving its original state for forensic analysis or evidence collection. Write-blockers are available in hardware and software and must be used while analyzing the live data on any system.

Mirroring or imaging of data is bit by bit copy of memory in to the storage device of having capacity more than the capacity of memory from which mirroring is done. Mirroring must be carried out with write blocking. Specialized forensic tools incorporate the write-blockers in the functionality of mirroring/imaging. In other words, mirroring is not a copy of just data available in memory but it is a bit by bit copy of each memory cell of the whole memory which is being mirrored.

Hashing is a fingerprinting of any digital data present in non-volatile medium and it may be done in respect of any file, folder or complete media which contains data. Hashing is mathematical algorithm applied on a particular data to generate an alpha-numeric string of characters of fixed length and it will remain same of

same data but any slightest change in data will change the hashing value entirely which can be easily noticed on comparison.

Hashing is done of primary evidence i.e. original media as well as mirrored copy of the media to prove that both are having absolutely same data by matching the hash value. Different hashing algorithms are as follows:

- MD5 (Message Digest 5) - once widely used but now considered less secure due to potential collisions.
- SHA-1 (Secure Hash Algorithm 1) - also facing security concerns and phasing out.
- SHA-2 family (SHA-256, SHA-384, SHA-512)- widely used, secure, and recommended for most applications.
- SHA-3 (Secure Hash Algorithm 3) - newer, more efficient, and designed for future security needs.

Following tools are available for hashing:

Hash Check: Open-source, cross-platform tool with support for various hash algorithms and file formats.

Hash Tab: Windows tool that integrates with the Explorer context menu to easily hash files.

Hash My Files: Multi-platform tool with advanced features like batch hashing, comparing hash values, and generating reports.

MD5 Hash Generator: Generates various hash values for online text input.

SHA-256 Online: Simple web tool for hashing files uploaded from your device.

Cyber Chef: Multi-purpose online toolset with a hashing module for various algorithms and encodings.

C. **Implementation:** Purpose of any evidence being presented in criminal trial is to prove/disprove a relevant fact as well as to link the evidence with accused and victim. So while presenting a digital evidence, it just not to prove some fact but also to establish source and destination of such evidential and digital artifact.

- In respect of digital evidences, source and destination of evidential artifact are computer/digital devices which belong to the alleged or victim or witness of the crime. Each digital file/folder carries its identification details in its metadata while identification details of devices are in soft form as well as printed on devices also. Please recall that section 63 (4) BSA require the identification of the record/data as well as description of the device producing such record. So, the metadata of the digital evidence and description of the producing device must be captured as part of evidence to produce in the court. Meta Data: Right click, go to property, you will find **Meta data. It must also carry when go for images and photograph to avoid any morphing by using clone detection technique.**

The ownership of any device is to be proved with the possession/recovery of device as well as knowledge of password of the device. In respect of any online account, ownership/possession is to be proved with user ID and password. It is further corroborated with locations, IPs of activities logs etc. of any online activities.

Generally android and other imaging tools capture the geolocation with time stamp of any photo taken by them.

Important points for audio-video recording:

- i. It is important to caliber time and location of the camera before starting recording.
- ii. The whole episode of recording must be without any break.
- iii. Ensure proper lightning arrangements while conducting search.
- iv. To take spare bank memory cards.
- v. Ensure maximum charging of battery of camera and connecting wires for direct charging/operating camera.
- vi. There should be starting and ending shot in the recording for describing the starting and ending point of recording.
- vii. If search to be prolonged then to the capacity of one memory card, then there

should be two audio-video recording so that continuity may be maintained by recording the scene of crime as well as change of memory card may be capture with other spare device and that recording also shall be preserved with main memory card.

- viii. It is to be take on record that memory card was blank before any recording.
- ix. Process of recovery of evidences with closeup videography revealing the identifiable details of the recovered evidence should be done.
- x. Process of preparing seizure memo and signing the same by the witnesses and concerned person also should be video-graphed.
- xi. Detail of camera, date/time and description of storage media i.e memory card should be mentioned in seizure memo which matches with the details generated by camera.
- xii. **63(4)(c) certification does not require the owner of device but the person who actually manages the device regularly at the relevant time.**
- xiii. **Always provide email header, property an email itself. Both in soft and hard copy to avoid any challenge by defence of Presumption of Section 119 illustration (g).**

ANNEXURE - II

[Tabular Comparison] Sections of Indian Evidence Act 1872 and of Bharatiya Sakshya Adhinyam 2023

INDIAN EVIDENCE ACT, 1872		BHARTIYA SAKSHYA ADHINIYAM, 2023	
Section	Heading	Section	Heading
1	Short title, extent and commencement	1	Short title, extent and commencement
2	Repeal of enactments [Repealed]	170	Repeal and savings
3	Interpretation clause	2	Definitions
3, para 1	Court	2(1)(a)	Court
3, para 2	Fact	2(1)(f)	Fact
3, para 3	Relevant	2(1)(k)	Relevant
3, para 4	Facts in issue	2(1)(g)	Facts in issue
3, para 5	Document	2(1)(d)	Document
3, para 6	Evidence	2(1)(e)	Evidence
3, para 7	Proved	2(1)(j)	Proved
3, para 8	Disproved	2(1)(c)	Disproved
3, para 9	Not proved	2(1)(i)	Not proved
3, para 10	India	-	-
4, para 1	May presume	2(1)(h)	May presume
4, para 2	Shall presume	2(1)(l)	Shall presume
4, para 3	Conclusive proof	2(1)(b)	Conclusive proof
5	Evidence may be given of facts in issue and relevant facts	3	Evidence may be given of facts in issue and relevant facts

INDIAN EVIDENCE ACT, 1872		BHARTIYA SAKSHYA ADHINIYAM, 2023	
Section	Heading	Section	Heading
6	Relevancy of facts forming part of same transaction	4	Relevancy of facts forming part of same transaction
7	Facts which are the occasion, cause or effect of facts in issue.	5	Facts which are the occasion, cause or effect of facts in issue or relevant facts
8	Motive, preparation and previous or subsequent conduct	6	Motive, preparation and previous or subsequent conduct
9	Facts necessary to explain or introduce relevant facts	7	Facts necessary to explain or introduce fact in issue or relevant facts
10	Things said or done by conspirator in reference to common design	8	Things said, done by conspirator in reference to common design
11	When facts not otherwise relevant become relevant	9	When facts not otherwise relevant become relevant
12	In suits for damages, facts tending to enable Court to determine amount are relevant	10	Facts tending to enable Court to determine amount are relevant in suits for damages
13	Facts relevant when right or custom is in question	11	Facts relevant when right or custom is in question
14	Facts showing existence of state of mind, or of body or bodily feeling	12	Facts showing existence of state of mind, or of body or bodily feeling
15	Facts bearing on question whether act was accidental or intentional	13	Facts bearing on question whether act was accidental or intentional
16	Existence of course of business when relevant	14	Existence of course of business when relevant
17	Admission defined	15	Admission defined

INDIAN EVIDENCE ACT, 1872		BHARTIYA SAKSHYA ADHINIYAM, 2023	
Section	Heading	Section	Heading
18	Admission by party to proceeding or his agent	16	Admission by party to proceeding or his agent
19	Admissions by persons whose position must be proved as against party to suit	17	Admissions by persons whose position must be proved as against party to suit
20	Admissions by persons expressly referred to by party to suit	18	Admissions by persons expressly referred to by party to suit
21	Proof of admissions against persons making them, and by or on their behalf	19	Proof of admissions against persons making them, and by or on their behalf
22	When oral admissions as to contents of documents are relevant	20	When oral admissions as to contents of documents are relevant
22A	When oral admissions as to contents of electronic records are relevant	—	—
23	Admissions in civil cases, when relevant	21	Admissions in civil cases when relevant
24	Confession caused by inducement, threat or promise, when irrelevant in criminal proceeding	22(1)	Confession caused by inducement, threat, coercion or promise, when irrelevant in criminal proceeding
25	Confession to police officer not to be proved	23(1)	Confession to police officer
26	Confession by accused while in custody of Police not to be proved against him	23(2)	Confession to police officer
27	How much of information received from accused may be proved	23(2)	Confession to police officer

INDIAN EVIDENCE ACT, 1872		BHARTIYA SAKSHYA ADHINIYAM, 2023	
Section	Heading	Section	Heading
28	Confession made after removal of impression caused by inducement, threat or promise, relevant	23(1)	Confession caused by inducement, threat, coercion or promise, when irrelevant in criminal proceedings
29	Confession otherwise relevant not to become irrelevant because of promise of secrecy, etc.	22(2)	Confession caused by inducement, threat, coercion or promise, when irrelevant in criminal proceedings
30	Consideration of proved confession affecting person making it and others jointly under trial for same offence	24	Consideration of proved confession affecting person making it and others jointly under trial for same offence
31	Admissions not conclusive proof, but may estop	25	Admissions not conclusive proof, but may estop
32	Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant	26	Cases in which statement of facts in issue or relevant fact by person who is dead or cannot be found, etc., is relevant
33	Relevancy of certain evidence for proving, in subsequent proceeding, the truth of facts therein stated	27	Relevancy of certain evidence for proving, in subsequent proceeding, the truth of facts therein stated
34	Entries in books of account including those maintained in an electronic form when relevant	28	Entries in books of account when relevant
35	Relevancy of entry in public record or an electronic record made in performance of duty	29	Relevancy of entry in public record or an electronic record made in performance of duty

INDIAN EVIDENCE ACT, 1872		BHARTIYA SAKSHYA ADHINIYAM, 2023	
Section	Heading	Section	Heading
36	Relevancy of statements in maps, charts and plans	30	Relevancy of statements in maps, charts and plans
37	Relevancy of statement as to fact of public nature, contained in certain Acts or notifications	31	Relevancy of statement as to fact of public nature contained in certain Acts or notifications
38	Relevancy of statements as to any law contained in law books	32	Relevancy of statements as to any law contained in law books including electronic or digital form
39	What evidence to be given when statement forms part of a conversation, document, electronic record, book or series of letters or papers	33	What evidence to be given when statement forms part of a conversation, document, electronic record, book or series of letters or papers
40	Previous judgments relevant to bar a second suit or trial	34	Previous judgments relevant to bar a second suit or trial
41	Relevancy of certain judgments in probate, etc., jurisdiction	35	Relevancy of certain judgments in probate, etc., jurisdiction
42	Relevancy and effect of judgments, orders or decrees, other than those mentioned in section 41	36	Relevancy and effect of judgments, orders or decrees, other than those mentioned in section 35
43	Judgments, etc., other than those mentioned in sections 40 to 42, when relevant	37	Judgments, etc., other than those mentioned in sections 34, 35 and 36 when relevant
44	Fraud or collusion in obtaining judgment, or incompetency of Court, may be proved	38	Fraud or collusion in obtaining judgment, or incompetency of Court, may be proved

INDIAN EVIDENCE ACT, 1872		BHARTIYA SAKSHYA ADHINIYAM, 2023	
Section	Heading	Section	Heading
45	Opinions of experts	39(1)	Opinions of experts
45A	Opinion of Examiner of Electronic Evidence	39(2)	Opinions of experts
46	Facts bearing upon opinions of experts	40	Facts bearing upon opinions of experts
47	Opinion as to handwriting, when relevant	41(1)	Opinion as to handwriting and digital signature, when relevant
47A	Opinion as to electronic signature when relevant	41(2)	Opinion as to handwriting and signature, when relevant
48	Opinion as to existence of right or custom, when relevant	42	Opinion as to existence of general custom or right, when relevant
49	Opinions as to usages, tenets, etc., when relevant	43	Opinion as to usages, tenets, etc., when relevant
50	Opinion on relationship, when relevant	44	Opinion on relationship, when relevant
51	Grounds of opinion, when relevant	45	Grounds of opinion, when relevant
52	In civil cases character to prove conduct imputed, irrelevant	46	In civil cases character to prove conduct imputed, irrelevant
53	In criminal cases, previous good character relevant	47	In criminal cases previous good character relevant
53A	Evidence of character or previous sexual experience not relevant in certain cases	48	Evidence of character or previous sexual experience not relevant in certain cases
54	Previous bad character not relevant, except in reply	49	Previous bad character not relevant, except in reply

INDIAN EVIDENCE ACT, 1872		BHARTIYA SAKSHYA ADHINIYAM, 2023	
Section	Heading	Section	Heading
55	Character as affecting damages	50	Character as affecting damages
56	Fact judicially noticeable need not be proved	51	Fact judicially noticeable need not be proved
57	Facts of which Court must take -judicial notice	52	Facts of which Court shall take judicial notice
58	Facts admitted need not be proved	53	Facts admitted need not be proved
59	Proof of facts by oral evidence	54	Proof of facts by oral evidence
60	Oral evidence must be direct	55	Oral evidence to be direct
61	Proof of contents of documents	56	Proof of contents of documents
62	Primary evidence	57	Primary evidence
63	Secondary evidence	58	Secondary evidence
64	Proof of documents by primary evidence	59	Proof of documents by primary evidence
65	Cases in which secondary evidence relating to documents may be given	60	Cases in which secondary evidence relating to documents may be given
65A	Special provisions as to evidence relating to electronic record	62	Special provisions as to evidence relating to electronic record
65B	Admissibility of electronic records	63	Admissibility of electronic records
66	Rules as to notice to produce	64	Rules as to notice to produce
67	Proof of signature and handwriting of person alleged to have signed or written document produced	65	Proof of signature and handwriting of person alleged to have signed or written document produced

INDIAN EVIDENCE ACT, 1872		BHARTIYA SAKSHYA ADHINIYAM, 2023	
Section	Heading	Section	Heading
67A	Proof as to electronic signature	66	Proof as to electronic signature
68	Proof of execution of document required by law to be attested	67	Proof of execution of document required by law to be attested
69	Proof where no attesting witness found	68	Proof where no attesting witness found
70	Admission of execution by party to attested document	69	Admission of execution by party to attested document
71	Proof when attesting witness denies the execution	70	Proof when attesting witness denies the execution
72	Proof of document not required by law to be attested	71	Proof of document not required by law to be attested
73	Comparison of signature, writing or seal with others admitted or proved	72	Comparison of signature, writing or seal with others admitted or proved
73A	Proof as to verification of digital signature	73	Proof as to verification of digital signature
74	Public documents	74(1)	Public and private documents
75	Private documents	74(2)	Public and private documents
76	Certified copies of public documents	75	Certified copies of public documents
77	Proof of documents by production of certified copies	76	Proof of documents by production of certified copies
78	Proof of other official documents	77	Proof of other official documents

INDIAN EVIDENCE ACT, 1872		BHARTIYA SAKSHYA ADHINIYAM, 2023	
Section	Heading	Section	Heading
79	Presumption as to genuineness of certified copies	78	Presumption as to genuineness of certified copies
80	Presumption as to documents produced as record of evidence	79	Presumption as to documents produced as record of evidence, etc.
81	Presumption as to Gazettes, newspapers, private Acts of Parliament and other documents	80	Presumption as to Gazettes, newspapers, and other documents
81A	Presumption as to Gazettes in electronic forms	81	Presumption as to Gazettes in electronic or digital record
82	Presumption as to document admissible in England without proof of seal or signature	—	—
83	Presumption as to maps or plans made by authority of Government	82	Presumption as to maps or plans made by authority of Government
84	Presumption as to collections of laws and reports of decisions	83	Presumption as to collections of laws and reports of decisions
85	Presumption as to power-of-attorney	84	Presumption as to powers-of-attorney
85A	Presumption as to electronic agreements	85	Presumption as to electronic agreements
85B	Presumptions as to electronic records and electronic signatures	86	Presumption as to electronic records and electronic signatures
85C	Presumption as to Electronic Signature Certificates	87	Presumption as to Electronic Signature Certificates

INDIAN EVIDENCE ACT, 1872		BHARTIYA SAKSHYA ADHINIYAM, 2023	
Section	Heading	Section	Heading
86	Presumption as to certified copies of foreign judicial records	88	Presumption as to certified copies of foreign judicial records
87	Presumption as to books, maps and charts	89	Presumption as to books, maps and charts
88	Presumption as to telegraphic messages	—	—
88A	Presumption as to electronic messages	90	Presumption as to electronic messages
89	Presumption as to due execution, etc., of documents, not produced	91	Presumption as to due execution, etc., of documents not produced
90	Presumption as to documents thirty years old	92	Presumption as to documents thirty years old
90A	Presumption as to electronic records five years old	93	Presumption as to electronic records five years old
91	Evidence of terms of contracts, grants and other dispositions of property reduced to form of documents	94	Evidence of terms of contracts, grants and other dispositions of property reduced to form of document
92	Exclusion of evidence of oral agreement	95	Exclusion of evidence of oral agreement
93	Exclusion of evidence to explain or amend ambiguous document	96	Exclusion of evidence to explain or amend ambiguous document
94	Exclusion of evidence against application of document to existing facts	97	Exclusion of evidence against application of document to existing facts

INDIAN EVIDENCE ACT, 1872		BHARTIYA SAKSHYA ADHINIYAM, 2023	
Section	Heading	Section	Heading
95	Evidence as to document unmeaning in reference to existing facts	98	Evidence as to document unmeaning reference to existing facts
96	Evidence as to application of language which can apply to one only of several persons	99	Evidence as to application of language which can apply to one only of several persons
97	Evidence as to application of language to one of two sets of facts, to neither of which the whole correctly applies	100	Evidence as to application of language to one of two sets of facts, to neither of which the whole correctly applies
98	Evidence as to meaning of illegible characters, etc.	101	Evidence as to meaning of illegible characters, etc.
99	Who may give evidence of agreement varying terms of document	102	Who may give evidence of agreement varying terms of document
100	Saving of provisions of Indian Succession Act relating to wills	103	Saving of provisions of Indian Succession Act relating to Wills
101	Burden of proof	104	Burden of proof
102	On whom burden of proof lies	105	On whom burden of proof lies
103	Burden of proof as to particular fact	106	Burden of proof as to particular fact
104	Burden of proving fact to be proved to make evidence admissible	107	Burden of proving fact to be proved to make evidence admissible
105	Burden of proving that case of accused comes within exceptions	108	Burden of proving that case of accused comes within exceptions

INDIAN EVIDENCE ACT, 1872		BHARTIYA SAKSHYA ADHINIYAM, 2023	
Section	Heading	Section	Heading
106	Burden of proving fact especially within knowledge	109	Burden of proving fact especially within knowledge
107	Burden of proving death of person known to have been alive within thirty years	110	Burden of proving death of person known to have been alive within thirty years
108	Burden of proving that person is alive who has not been heard of for seven years	111	Burden of proving that person is alive who has not been heard of for seven years
109	Burden of proof as to relationship in the cases of partners, landlord and tenant, principal and agent	112	Burden of proof as to relationship in the cases of partners, landlord and tenant, principal and agent
110	Burden of proof as to ownership	113	Burden of proof as to ownership
111	Proof of good faith in transactions where one party is in relation of active confidence	114	Proof of good faith in transactions where one party is in relation of active confidence
111A	Presumption as to certain offences	115	Presumption as to certain offences
112	Birth during marriage, conclusive proof of legitimacy	116	Birth during marriage, conclusive proof of legitimacy
113	Proof of cession of territory	—	—
113A	Presumption as to abetment of suicide by a married woman	117	Presumption as to abetment of suicide by a married woman
113B	Presumption as to dowry death	118	Presumption as to dowry death

INDIAN EVIDENCE ACT, 1872		BHARTIYA SAKSHYA ADHINIYAM, 2023	
Section	Heading	Section	Heading
114	Court may presume existence of certain facts	119	Court may presume existence of certain facts
114A	Presumption as to absence of consent in certain prosecution for rape	120	Presumption as to absence of consent in certain prosecution for rape
115	Estoppel	121	Estoppel
116	Estoppel of tenant; and of licensee of person in possession	122	Estoppel of tenants and of licensee of person in possession
117	Estoppel of acceptor of bill of exchange, bailee or licensee	123	Estoppel of acceptor of bill of exchange, bailee or licensee
118	Whom may testify	124	Who may testify
119	Witness unable to communicate verbally	125	Witness unable to communicate verbally
120	Parties to civil suit, and their wives or husbands—husband or wife of person under criminal trial	126	Competency of husband and wife as witnesses in certain cases
121	Judges and Magistrates	127	Judges and Magistrates
122	Communications during marriage	128	Communications during marriage
123	Evidence as to affairs of State	129	Evidence as to affairs of State
124	Official communications	130	Official communications
125	Information as to commission of offences	131	Information as to commission of offences
126	Professional communications	132(1)(2)	Professional communications
127	Section 126 to apply to interpreters, etc.	132(3)	Professional communications

INDIAN EVIDENCE ACT, 1872		BHARTIYA SAKSHYA ADHINIYAM, 2023	
Section	Heading	Section	Heading
128	Privilege not waived by volunteering evidence	133	Privilege not waived by volunteering evidence
129	Confidential communications with legal advisers	134	Confidential communication with legal advisers
130	Production of title-deeds of witness not a party	135	Production of title-deeds of witness not a party
131	Production of documents or electronic records which another person, having possession, could refuse to produce	136	Production of documents or electronic records which another person, having possession, would refuse to produce
132	Witness not excused from answering on ground that answer will criminate	137	Witness not excused from answering on ground that answer will criminate
133	Accomplice	138	Accomplice
134	Number of witnesses	139	Number of witnesses
135	Order of production and examination of witnesses	140	Order of production and examination of witnesses
136	Judge to decide as to admissibility of evidence	141	Judge to decide as to admissibility of evidence
137	Examination-in-chief	142	Examination of witnesses
138	Order of examinations	143	Order of examinations
139	Cross-examination of person called to produce a document	144	Cross-examination of person called to produce a document
140	Witnesses to character	145	Witnesses to character
141	Leading questions	146(1)	Leading questions
142	When they must not be asked	146(2)(3)	Leading questions
143	When they may be asked	146	Leading questions

INDIAN EVIDENCE ACT, 1872		BHARTIYA SAKSHYA ADHINIYAM, 2023	
Section	Heading	Section	Heading
144	Evidence as to matters in writing	147	Evidence as to matters in writing
145	Cross-examination as to previous statements in writing	148	Cross-examination as to previous statements in writing
146	Questions lawful in cross-examination	149	Questions lawful in cross-examination
147	When witness to be compelled to answer	150	When witness to be compelled to answer
148	Court to decide when question shall be asked and when witness compelled to answer	151	Court to decide when question shall be asked and when witness compelled to answer
149	Question not to be asked without reasonable grounds	152	Question not to be asked without reasonable grounds
150	Procedure of Court in case of question being asked without reasonable grounds	153	Procedure of Court in case of question being asked without reasonable grounds
151	Indecent and scandalous questions	154	Indecent and scandalous questions
152	Questions intended to insult or annoy	155	Questions intended to insult or annoy
153	Exclusion of evidence to contradict answers to questions testing veracity	156	Exclusion of evidence to contradict answers to questions testing veracity
154	Question by party to his own witness	157	Question by party to his own witness
155	Impeaching credit of witness	158	Impeaching credit of witness
156	Questions tending to corroborate evidence of relevant fact, admissible	159	Questions tending to corroborate evidence of relevant fact, admissible

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Section	Heading	Section	Heading
157	Former statements of witness may be proved to corroborate later testimony as to same fact	160	Former statements of witness may be proved to corroborate later testimony as to same fact
158	What matters may be proved in connection with proved statement relevant under section 32 or 33	161	What matters may be proved in connection with proved statement relevant under section 26 or 27
159	Refreshing memory	162	Refreshing memory
160	Testimony to facts stated in document mentioned in section 159	163	Testimony to facts stated in document mentioned in section 162
161	Right of adverse party as to writing used to refresh memory	164	Right of adverse party as to writing used to refresh memory
162	Production of documents	165	Production of documents
163	Giving, as evidence, of document called for and produced on notice	166	Giving, as evidence, of document called for and produced on notice
164	Using, as evidence, of document, production of which was refused on notice	167	Using, as evidence, of document production of which was refused on notice
165	Judge's power to put questions or order production	168	Judge's power to put questions or order production
166	Power of jury or assessors to put questions	—	—
167	No new trial for improper admission or rejection of evidence	169	No new trial for improper admission or rejection of evidence