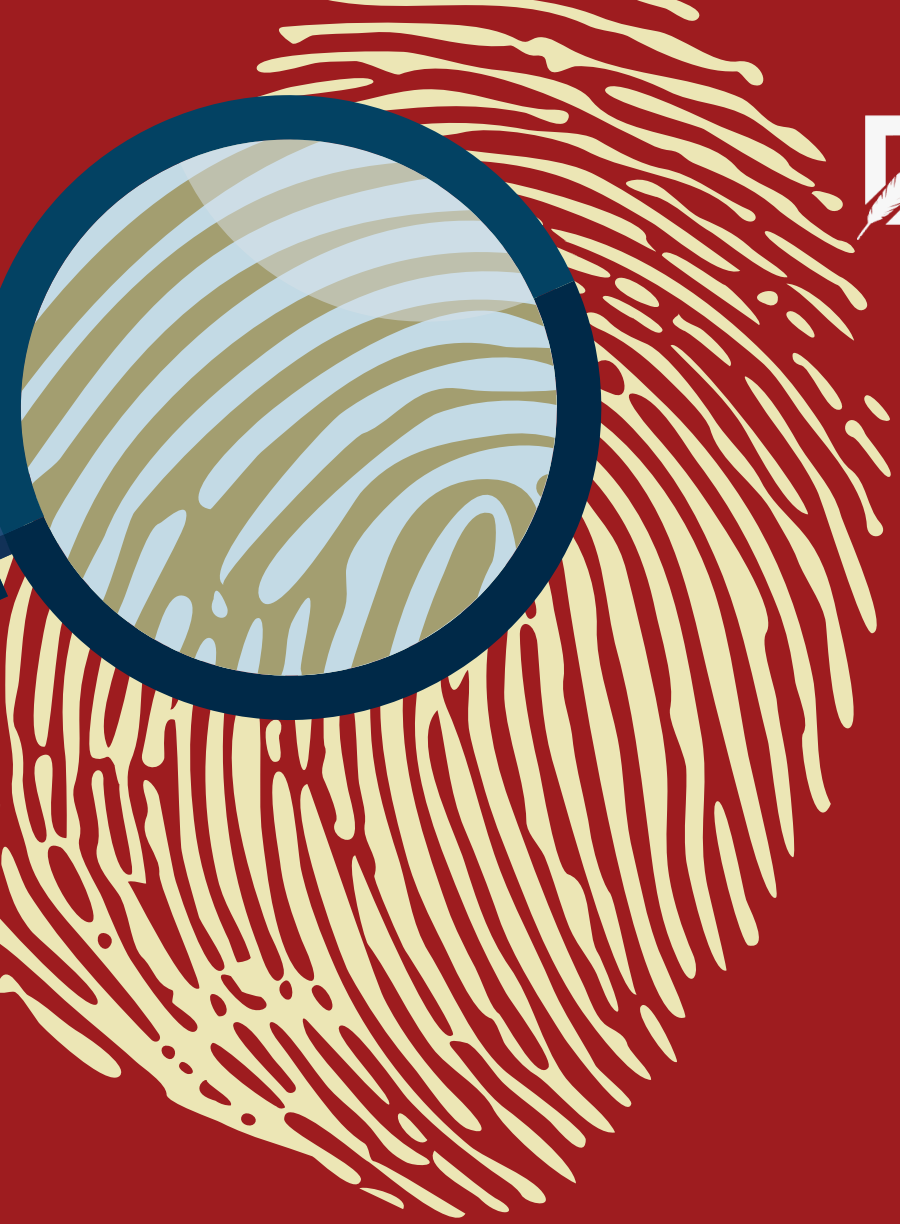

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Bharatiya Sakshya Adhiniyam, 2023

भारतीय साक्ष्य अधिनियम, 2023

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FOREWORD

Manupatra Information Solutions Pvt. Ltd. has released this e-book of Bharatiya Sakshya Adhiniyam, 2023 in an e-book format for ecological reasons. The team at Manupatra is committed to deliver such content and legal-tech solutions that drive the change and development in the field of law.

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DETAILS OF THE ACT

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Act Repealed: **(from the date of enforcement)**	The Indian Evidence Act, 1872 (1 of 1872)

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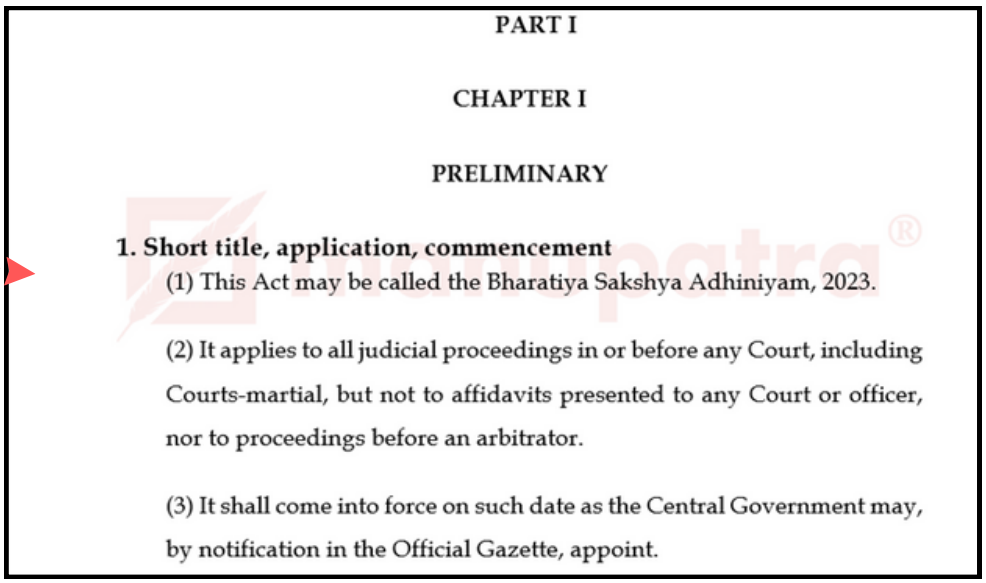
GUIDE ON HOW TO MAKE THE MOST OF THIS E-BOOK!

01

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



PART I

CHAPTER I

PRELIMINARY

1. Short title, application, commencement

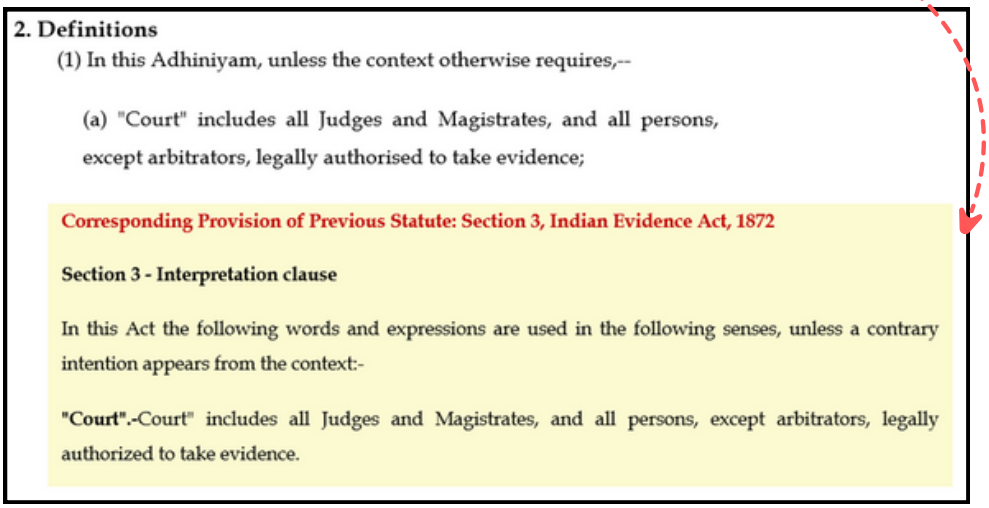
(1) This Act may be called the Bharatiya Sakshya Adhiniyam, 2023.

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

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

02

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



2. Definitions

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

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

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

Section 3 - Interpretation clause

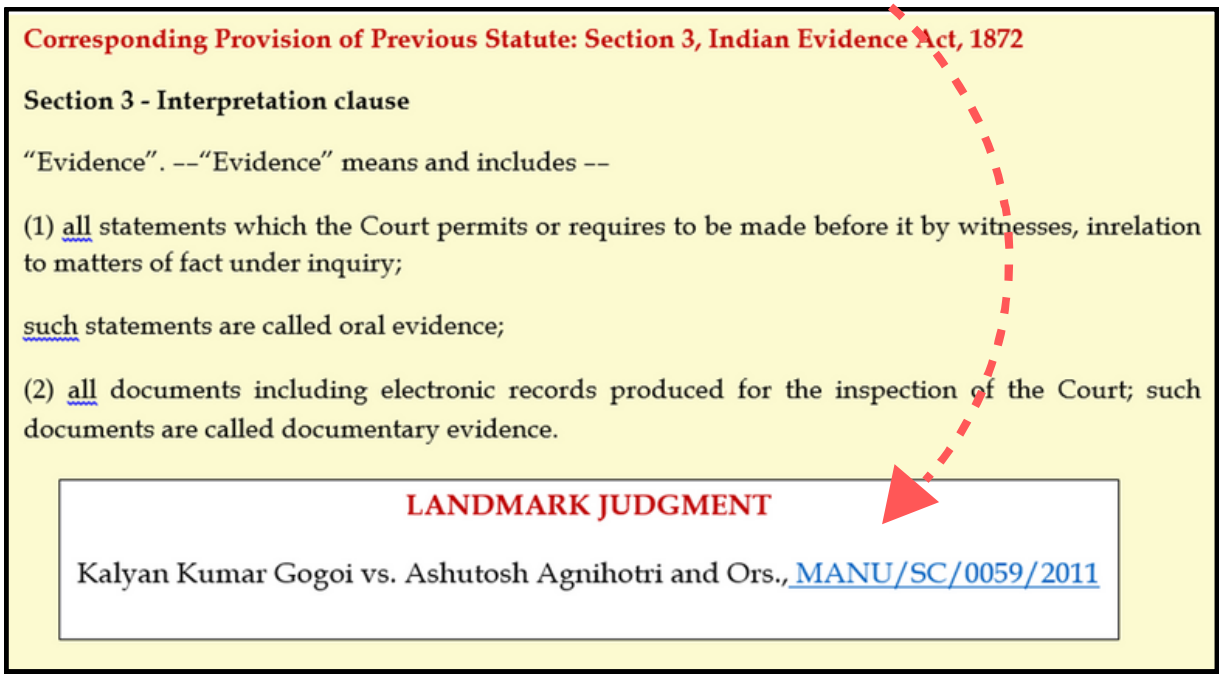
In this Act the following words and expressions are used in the following senses, unless a contrary intention appears from the context:-

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

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

03

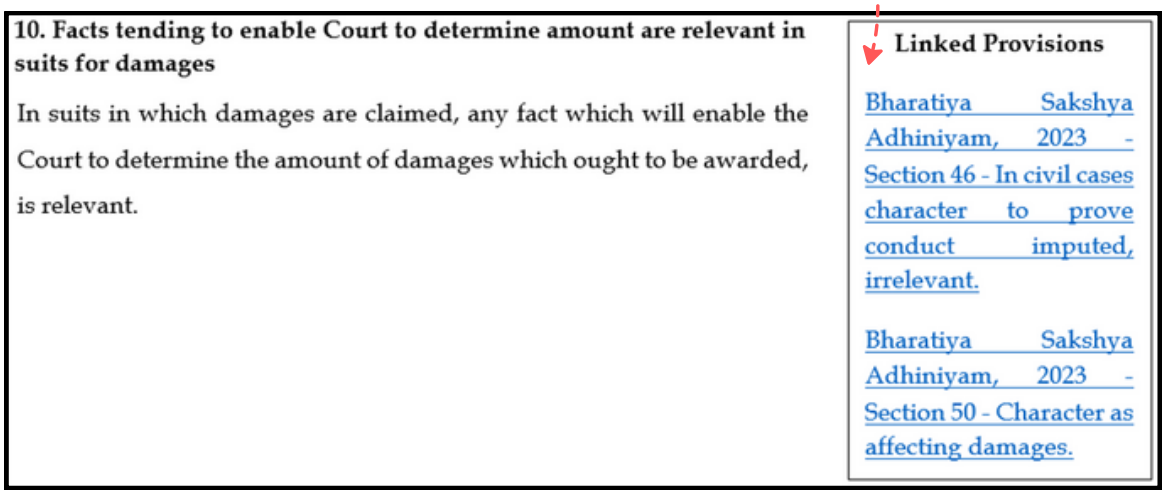
In some of these yellow boxes, landmark decisions of the corresponding provision from the Indian Evidence Act, 1872 are present.



Simply click on the link and read the entire judgment.

04

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



THE BHARATIYA SAKSHYA ADHINIYAM, 2023

Preamble - THE BHARATIYA SAKSHYA ADHINIYAM, 2023

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THE BHARATIYA SAKSHYA ADHINIYAM, 2023

[Act No. 47 of 2023]

[25th December, 2023]

PREAMBLE

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

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

PART I

CHAPTER I

PRELIMINARY

1. Short title, application, commencement

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

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

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

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

1. Short title, extent and Commencement

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

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

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2. Definitions

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

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

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

Section 3 - Interpretation clause

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

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

(b) "conclusive proof" means when one fact is declared by this Adhiniyam to be conclusive proof of another, the Court shall, on proof of the one fact, regard the other as proved, and shall not allow evidence to be given for the purpose of disproving it;

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

Section 4 - "Conclusive proof".--When one fact is declared by this Act to be conclusive proof of another, the Court shall, on proof of the one fact, regard the other as proved, and shall not allow evidence to be given for the purpose of disproving it.

(c) "disproved" in relation to a fact, means when, after considering the matters before it, the Court either believes that it does not exist, or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist;

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

Section 3 - Interpretation clause "Disproved".--A fact is said to be disproved when, after considering the matters before it, the Court either believes that it does not exist, or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist.

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(d) "document" means any matter expressed or described or otherwise recorded upon any substance by means of letters, figures or marks or any other means or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter and includes electronic and digital records.

Illustrations

(i) A writing is a document.

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

(iii) A map or plan is a document.

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

(v) A caricature is a document.

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

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

Section 3 - Interpretation clause

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

Illustrations

A writing is a document;

Words printed lithographed or photographed are documents;

A map or plan is a document;

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

A caricature is a document.

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(e) "evidence" means and includes--

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

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

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

Section 3 - Interpretation clause

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

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

such statements are called oral evidence;

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

LANDMARK JUDGMENT

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

(f) "fact" means and includes--

(i) any thing, state of things, or relation of things, capable of being perceived by the senses;

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

Illustrations

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

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

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

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

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

Section 3 - Interpretation clause

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

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

Illustrations

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

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

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

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

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

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

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

Illustrations

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

(i) That A caused B's death.

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

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

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

(h) "may presume".--Whenever it is provided by this Adhiniyam that the Court may presume a fact, it may either regard such fact as proved, unless and until it is disproved or may call for proof of it;

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

Section 4 - "May presume"–Whenever it is provided by this Act that the Court may presume a fact, it mayeither regard such fact as proved, unless and until it is disproved, or may call for proof of it.

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

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

Section 3 - Interpretation clause

"Facts in issue"– The expression "facts in issue" means and includes–

any fact from which, either by itself or in connection with other facts, the existence, non-existence, nature or extent of any right, liability, or disability, asserted or denied in any suit or proceeding, necessarily follows.

Back to Index

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

Illustrations

A is accused of the murder of B.

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

That A caused B's death;

That A intended to cause B's death;

That A had received grave and sudden provocation from B;

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

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

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

Section 3 - Interpretation clause

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

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

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

Section 3 - Interpretation clause

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

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

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

Section 4 - "Shall presume".––Whenever it is directed by this Act that the Court shall presume a fact, it shallregard such fact as proved, unless and until it is disproved.

(2) Words and expressions used herein and not defined but defined in the Information Technology Act, 2000 (21 of 2000), the Bharatiya Nagarik Suraksha Sanhita, 2023 and the Bharatiya Nyaya Sanhita, 2023 shall have the same meanings as assigned to them in the said Act and Sanhitas.

PART II

CHAPTER II

RELEVANCY OF FACTS

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

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

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

Illustrations

Linked Provisions

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

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

Back to Index

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

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

A's beating B with the club;

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

A's intention to cause B's death.

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

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

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

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

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

Illustrations

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

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

A's beating B with the club;

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

A's intention to cause B's death.

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

4. Relevancy of facts forming part of same transaction

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

Illustrations

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

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

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

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

Linked Provisions

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

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

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

Section 6 - Relevancy of facts forming part of same transaction

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

Illustrations

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

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

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

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

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

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

Illustrations

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

Linked Provisions

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

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

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

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

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

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

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

Illustrations

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

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

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

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

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

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

6. Motive, preparation and previous or subsequent conduct

(1) Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact.

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

Linked Provisions

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

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

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

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

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

Illustrations

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Illustrations

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

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

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

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

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

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

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

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

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

(e) A is accused of a crime.

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

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

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

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

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

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

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

(i) A is accused of a crime.

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

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

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

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

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

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

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

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

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

Illustrations

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

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

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

Linked Provisions

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

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

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

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

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

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

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

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

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

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

Section 9 - Facts necessary to explain or introduce relevant facts –Facts necessary to explain or introduce a fact in issue or relevant fact, or which support or rebut an inference suggested by a fact in issue orrelevant fact, or which establish the identity of any thing or person whose identity is relevant, or fix thetime or place at which any fact in issue or relevant fact happened, or which show the relation of parties bywhom any such fact was transacted, are relevant in so far as they are necessary for that purpose.

Illustrations

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

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

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

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

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

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

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

(c) A is accused of a crime.

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

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

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

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

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

8. Things said or done by conspirator in reference to common design

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

Illustration

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

Linked Provisions

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

Bharatiya Nyaya Sanhita, 2023 - Section 61 - Criminal Conspiracy

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

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

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

Illustrations

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

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

9. When facts not otherwise relevant become relevant

Facts not otherwise relevant are relevant--

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

Linked Provisions

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

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

Illustrations

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

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

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

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

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

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

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

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

Illustrations

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

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

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

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

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

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10. Facts tending to enable Court to determine amount are relevant in suits for damages

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

Linked Provisions

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

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

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

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

11. Facts relevant when right or custom is in question

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

(a) any transaction by which the right or custom in question was created, claimed, modified, recognised, asserted or denied, or which was inconsistent with its existence;

(b) particular instances in which the right or custom was claimed, recognised or exercised, or in which its exercise was disputed, asserted or departed from.

Illustration

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

Linked Provisions

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

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

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

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

Section 13 - Facts relevant when right or custom is in question - Where the question is as to the existenceof any right or custom, the following facts are relevant:–

(a) any transaction by which the right or custom in question was created, claimed, modified,recognised, asserted or denied, or which was inconsistent with its existence;

(b) particular instances in which the right or custom was claimed, recognised or exercised, or inwhich its exercise was disputed, asserted or departed from.

Illustrations

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

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

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

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

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

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

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

Illustrations

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Illustrations

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(p) A is tried for a crime.

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

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

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

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

Linked Provisions

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

Illustrations

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

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

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

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

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

Illustrations

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

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

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

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

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

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

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

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

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14. Existence of course of business when relevant

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

Illustrations

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

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

Linked Provisions

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

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

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

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

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

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

Illustrations

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

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

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

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Admissions

15. Admission defined

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

Linked Provisions

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

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

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

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

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

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

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

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

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

Section 17 - Admission defined - An admission is a statement, oral or documentary or contained in electronic form, which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons, and under the circumstances, hereinafter mentioned.

16. Admission by party to proceeding or his agent

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

(2) Statements made by--

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

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

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

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

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

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 15 - Admission defined

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

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

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

Statements made by -

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

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

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

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

Illustration

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

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 15 - Admission defined

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

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

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

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

Illustration

A undertakes to collect rents for B.

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

A denies that rent was due from C to B.

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

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

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

Illustration

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

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

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 15 - Admission defined

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

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

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

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

Illustration

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

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

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

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

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

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

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

Illustrations

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

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 15 - Admission defined

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

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

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

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

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

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

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

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

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

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

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

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

Illustrations

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 15 - Admission defined

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

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

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

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

21. Admissions in civil cases when relevant

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

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

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 15 - Admission defined

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

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

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

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

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

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

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

Linked Provisions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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23. Confession to police officer

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

(2) No confession made by any person while he is in the custody of a police officer, unless it is made in the immediate presence of a Magistrate shall be proved against him:

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

Linked Provisions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

LANDMARK JUDGMENT

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

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

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

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

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

Illustrations

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

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

Linked Provisions

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

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

Bharatiya Sakshya Adhiniyam, 2023 - Section 138 - Accomplice

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

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

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

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Illustrations

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

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

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

25. Admissions not conclusive proof, but may estop

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

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 121 - Estoppel

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

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

26. Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant

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

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

Linked Provisions

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

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

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

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

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

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

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

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

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

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

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

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

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

Illustrations

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 32- Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant - Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot befound, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which under the circumstances of the case appears to the Court unreasonable, are themselves relevant facts in the following cases: ––

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

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

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

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

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

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

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

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

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

Illustrations

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Linked Provisions

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

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

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

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

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

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

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

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

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

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

Provided ––

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

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

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Statements made under special circumstances

28. Entries in books of account when relevant

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

Illustration

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

Linked Provisions

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

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

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

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

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

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

Illustration

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

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

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

Linked Provisions

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

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

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

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

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

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

30. Relevancy of statements in maps, charts and plans

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

Linked Provisions

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

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

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

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

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

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

Linked Provisions

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

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

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

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

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

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

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

Linked Provisions

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

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

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

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

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

How much of a statement is to be proved

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

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

Linked Provisions

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

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

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

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

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

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

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

Judgments of Courts when relevant

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

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

Linked Provisions

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

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

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

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

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

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

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

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

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

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

Linked Provisions

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

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

Section 41- Relevancy of certain judgments in probate, etc., jurisdiction –A final judgment, order or decree of a competent Court, in the exercise of probate, matrimonial, admiralty or insolvency jurisdiction, which confers upon or takes away from any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing, not as against any specified person but absolutely, is relevant when the existence of any such legal character, or the title of any such person to any such thing, is relevant.

Such judgment, order or decree is conclusive proof ––

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

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

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

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

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

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

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

Illustration

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

Linked Provisions

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

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

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

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

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

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

Illustration

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

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

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

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

Linked Provisions

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

Illustrations

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

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

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

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

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

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

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

Illustrations

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

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

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

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

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

C says that she never was A's wife.

The judgment against B is irrelevant as against C.

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

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

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

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

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

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relevant as a fact in issue.

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

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

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

Linked Provisions

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

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

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

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

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

Opinions of third persons when relevant

39. Opinions of experts

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

Linked Provisions

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

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Illustrations

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

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

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

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

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

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

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

Section 45- Opinions of experts - When the Court has to form an opinion upon a point of foreign law or of science, or art, or as to identity of handwriting or finger impressions, the opinions upon that point of persons specially skilled in such foreign law, science or art, or in questions as to identity of handwriting or finger impressions are relevant facts.

Such persons are called experts.

Illustrations

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

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

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

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

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

40. Facts bearing upon opinions of experts

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

Illustrations

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

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

Linked Provisions

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

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

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

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

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

Section 46- Facts bearing upon opinions of experts - Facts, not otherwise relevant, are relevant if they support or are inconsistent with the opinions of experts, when such opinions are relevant.

Illustrations

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

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

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

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

41. Opinion as to handwriting and signature, when relevant

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

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

Illustration

Linked Provisions

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

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

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

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

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

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

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

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

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

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

Illustration

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

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

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

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

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

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

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

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

Illustration

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

Linked Provisions

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

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

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

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

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

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

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

Illustration

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

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

When the Court has to form an opinion as to--

(i) the usages and tenets of any body of men or family;

(ii) the constitution and governance of any religious or charitable foundation; or

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

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

Linked Provisions

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

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

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

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

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

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

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

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

44. Opinion on relationship, when relevant

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

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

Linked Provisions

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

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

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Illustrations

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

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

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

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

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

Illustrations

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

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

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

45. Grounds of opinion, when relevant

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

Illustration

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

Linked Provisions

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

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

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

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

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

Section 51–Grounds of opinion, when relevant - Whenever the opinion of any living person is relevant, the grounds on which such opinion is based are also relevant.

Illustration

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

Character when relevant

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

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

Linked Provisions

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

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

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

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

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LANDMARK JUDGMENT

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

47. In criminal cases previous good character relevant

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

Linked Provisions

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

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

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

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

LANDMARK JUDGMENT

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

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

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

Linked Provisions

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

Bharatiya Sakshya Adhiniyam, 2023 - Section

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

47 - In criminal cases previous good character relevant

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

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

49. Previous bad character not relevant, except in reply

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

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

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

Linked Provisions

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

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

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

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

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

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

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

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50. Character as affecting damages

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

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

Linked Provisions

Air Force Act, 1950 - Section 133 - Judicial Notice

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

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

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

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

PART III

ON PROOFs

CHAPTER III

FACTS WHICH NEED NOT BE PROVED

51. Fact judicially noticeable need not be proved

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

Linked Provisions

Air Force Act, 1950– Section 134 - Judicial Notice

Air Force Act, 1950 - Section 133 - Judicial Notice

Air Force Act, 1950 - Section 93 - Judicial Notice

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

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

Navy Act, 1957 - Section 132 - Judicial Notice

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

Army Act, 1950 – Section 134 - Judicial Notice

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

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

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

52. Facts of which Court shall take judicial notice

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

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

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

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

Linked Provisions

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

Air Force Act, 1950 - Section 93 - Judicial Notice

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

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(d) the seals of all Courts and Tribunals;

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

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

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

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

(i) the territory of India;

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

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

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

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

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

Navy Act, 1957 - Section 132 - Judicial Notice

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(11) The commencement, continuance and termination of hostilities between the Government of India and any other State or body of persons;

(12) The names of the members and officers of the Court, and of their deputies and subordinate officers and assistants, and also of all officers acting in execution of its process, and of all advocates, attorneys, proctors, vakils, pleaders and other persons authorised by law to appear or act before it;

(13) The rule of the road on land or at sea.

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In all these cases and also on all matters of public history, literature, science or art, the Court mayresort for its aid to appropriate books or documents of reference.

If the Court is called upon by any person to take judicial notice of any fact, it may refuse to do sounless and until such person produces any such book or document as it may consider necessary to enable it to do so.

53. Facts admitted need not be proved

No fact needs to be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings:

Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 15 - Admission defined

Corresponding Provision of Previous Statute: Section 58, Indian Evidence Act, 1872

Section 58 – Facts admitted need not be proved - No fact need be proved in any proceeding which theparties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree toadmit by any writing under their hands, or which by any rule of pleading in force at the time they aredeemed to have admitted by their pleadings:

Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise thanby such admissions.

CHAPTER IV

OF ORAL EVIDENCE

54. Proof of facts by oral evidence

All facts, except the contents of documents may be proved by oral evidence.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 20 - When oral admissions as to contents of documents are relevant

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Bharatiya Sakshya Adhiniyam, 2023 - Section 55 - Oral evidence to be direct

Bharatiya Sakshya Adhiniyam, 2023 - Section 125 - Witness unable to communicate verbally

Corresponding Provision of Previous Statute: Section 59, Indian Evidence Act, 1872

Section 59 – Proof of facts by oral evidence – All facts, except the contents of documents or electronic records, may be proved by oral evidence.

55. Oral evidence to be direct

Oral evidence shall, in all cases whatever, be direct; if it refers to,--

(i) a fact which could be seen, it must be the evidence of a witness who says he saw it;

(ii) a fact which could be heard, it must be the evidence of a witness who says he heard it;

(iii) a fact which could be perceived by any other sense or in any other manner, it must be the evidence of a witness who says he perceived it by that sense or in that manner;

(iv) an opinion or to the grounds on which that opinion is held, it must be the evidence of the person who holds that opinion on those grounds:

Provided that the opinions of experts expressed in any treatise commonly offered for sale, and the grounds on which such opinions are held, may be proved by the production of such treatises if the author is dead or cannot be found, or has become incapable of giving evidence, or cannot be called as a

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 125 - Witness unable to communicate verbally

Bharatiya Sakshya Adhiniyam, 2023 - Section 20 - When oral admissions as to contents of documents are relevant

Bharatiya Sakshya Adhiniyam, 2023 - Section 54 - Proof of facts by oral evidence

Bharatiya Sakshya Adhiniyam, 2023 - Section 168 - Judge's power to put questions or order production

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witness without an amount of delay or expense which the Court regards as unreasonable:

Provided further that, if oral evidence refers to the existence or condition of any material thing other than a document, the Court may, if it thinks fit, require the production of such material thing for its inspection.

Corresponding Provision of Previous Statute: Section 60, Indian Evidence Act, 1872

Section 60 – Oral evidence must be direct - Oral evidence must, in all cases whatever, be direct; that is to say –

if it refers to a fact which could be seen, it must be the evidence of a witness who says he saw it;

if it refers to a fact which could be heard, it must be the evidence of a witness who says he heardit;

if it refers to a fact which could be perceived by any other sense or in any other manner, it mustbe the evidence of a witness who says he perceived it by that sense or in that manner;

if it refers to an opinion or to the grounds on which that opinion is held, it must be the evidence ofthe person who holds that opinion on those grounds:

Provided that the opinions of experts expressed in any treatise commonly offered for sale, and thegrounds on which such opinions are held, may be proved by the production of such treatises if theauthor is dead or cannot be found, or has become incapable of givingevidence, or cannot be calledasa witness without an amount of delay or expense which the Court regards as unreasonable:

Provided also that, if oral evidence refers to the existence or condition of any material thing otherthan a document, the Court may, if it thinks fit, require the production of such material thing for itsinspection.

CHAPTER V

OF DOCUMENTARY EVIDENCE

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56. Proof of contents of documents

The contents of documents may be proved either by primary or by secondary evidence.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 60 - Cases in which secondary evidence relating to documents may be given

Bharatiya Sakshya Adhiniyam, 2023 - Section 20 - When oral admissions as to contents of documents are relevant

Corresponding Provision of Previous Statute: Section 61, Indian Evidence Act, 1872

Section 61 – Proof of contents of documents - The contents of documents may be proved either by primary or by secondary evidence.

57. Primary evidence

Primary evidence means the document itself produced for the inspection of the Court.

Explanation 1.--Where a document is executed in several parts, each part is primary evidence of the document.

Explanation 2.--Where a document is executed in counterpart, each counterpart being executed by one or some of the parties only, each counterpart is primary evidence as against the parties executing it.

Explanation 3.--Where a number of documents are all made by one uniform process, as in the case of printing, lithography or photography, each is primary evidence of the contents of the rest; but, where they are all copies of a common original, they are not primary evidence of the contents of the original.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 59 - Proof of documents by primary evidence

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Explanation 4.--Where an electronic or digital record is created or stored, and such storage occurs simultaneously or sequentially in multiple files, each such file is primary evidence.

Explanation 5.--Where an electronic or digital record is produced from proper custody, such electronic and digital record is primary evidence unless it is disputed.

Explanation 6.--Where a video recording is simultaneously stored in electronic form and transmitted or broadcast or transferred to another, each of the stored recordings is primary evidence.

Explanation 7.--Where an electronic or digital record is stored in multiple storage spaces in a computer resource, each such automated storage, including temporary files, is primary evidence.

Illustration

A person is shown to have been in possession of a number of placards, all printed at one time from one original. Any one of the placards is primary evidence of the contents of any other, but no one of them is primary evidence of the contents of the original.

Corresponding Provision of Previous Statute: Section 62, Indian Evidence Act, 1872

Section 62 – Primary evidence - Primary evidence means the document itself produced for the inspection ofthe Court.

Explanation 1. ––Where a document is executed in several parts, each part is primary evidence of thedocument.

Where a document is executed in counterpart, each counterpart being executed by one or some oftheparties only, each counterpart is primary evidence as against the parties executing it.

Explanation 2. –– Where a number of documents are all made by one uniform process, as in the caseof printing, lithography or photography, each is primary evidence of the contents of the rest; but, wherethey are all copies of a common original, they are not primary evidence of the contents of the original.

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Illustration

A person is shown to have been in possession of a number of placards, all printed at one time from one original. Any one of the placards is primary evidence of the contents of any other, but no one of themis primary evidence of the contents of the original.

58. Secondary evidence

Secondary evidence includes--

(i) certified copies given under the provisions hereinafter contained;

(ii) copies made from the original by mechanical processes which in themselves ensure the accuracy of the copy, and copies compared with such copies;

(iii) copies made from or compared with the original;

(iv) counterparts of documents as against the parties who did not execute them;

(v) oral accounts of the contents of a document given by some person who has himself seen it;

(vi) oral admissions;

(vii) written admissions;

(viii) evidence of a person who has examined a document, the original of which consists of numerous accounts or other documents which cannot conveniently be examined in Court, and who is skilled in the examination of such documents.

Illustrations

(a) A photograph of an original is secondary evidence of its contents, though the two have not been compared, if it is proved that the thing photographed was the original.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 60 - Cases in which secondary evidence relating to documents may be given

Bharatiya Sakshya Adhiniyam, 2023 - Section 64 - Rules as to notice to produce

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(b) A copy compared with a copy of a letter made by a copying machine is secondary evidence of the contents of the letter, if it is shown that the copy made by the copying machine was made from the original.

(c) A copy transcribed from a copy, but afterwards compared with the original, is secondary evidence; but the copy not so compared is not secondary evidence of the original, although the copy from which it was transcribed was compared with the original.

(d) Neither an oral account of a copy compared with the original, nor an oral account of a photograph or machine-copy of the original, is secondary evidence of the original.

Corresponding Provision of Previous Statute: Section 63, Indian Evidence Act, 1872

Section 63 – Secondary evidence. Secondary evidence means and includes ––

(1) certified copies given under the provisions hereinafter contained;

(2) copies made from the original by mechanical processes which in themselves insure the accuracy of the copy, and copies compared with such copies;

(3) copies made from or compared with the original;

(4) counterparts of documents as against the parties who did not execute them;

(5) oral accounts of the contents of a document given by some person who has himself seen it.

Illustrations

(a) A photograph of an original is secondary evidence of its contents, though the two have not been compared, if it is proved that the thing photographed was the original.

(b) A copy compared with a copy of a letter made by a copying machine is secondary evidence of the contents of the letter, if it is shown that the copy made by the copying machine was made from the original.

(c) A copy transcribed from a copy, but afterwards compared with the original, is secondary evidence; but the copy not so compared is not secondary evidence of the original, although the copy from which it was transcribed was compared with the original.

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(d) Neither an oral account of a copy compared with the original, nor an oral account of a photographor machine-copy of the original, is secondary evidence of the original.

59. Proof of documents by primary evidence

Documents shall be proved by primary evidence except in the cases hereinafter mentioned.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 8 - Things said or done by conspirator in reference to common design

Bharatiya Sakshya Adhiniyam, 2023 - Section 56 - Proof of contents of documents

Bharatiya Sakshya Adhiniyam, 2023 - Section 76 - Proof of documents by production of certified copies

Corresponding Provision of Previous Statute: Section 64, Indian Evidence Act, 1872

Section 64 – Proof of documents by primary evidence - Documents must be proved by primary evidenceexcept in the cases hereinafter mentioned.

60. Cases in which secondary evidence relating to documents may be given

Secondary evidence may be given of the existence, condition, or contents of a document in the following cases, namely:--

(a) when the original is shown or appears to be in the possession or power--

(i) of the person against whom the document is sought to be proved; or

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 58 - Secondary evidence

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(ii) of any person out of reach of, or not subject to, the process of the Court; or

(iii) of any person legally bound to produce it, and when, after the notice mentioned in section 64 such person does not produce it;

(b) when the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest;

(c) when the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time;

(d) when the original is of such a nature as not to be easily movable;

(e) when the original is a public document within the meaning of section 74;

(f) when the original is a document of which a certified copy is permitted by this Adhiniyam, or by any other law in force in India to be given in evidence;

(g) when the originals consist of numerous accounts or other documents which cannot conveniently be examined in Court, and the fact to be proved is the general result of the whole collection.

Explanation.--For the purposes of--

(i) clauses (a), (c) and (d), any secondary evidence of the contents of the document is admissible;

(ii) clause (b), the written admission is admissible;

(iii) clause (e) or (f), a certified copy of the document, but no other kind of secondary evidence, is admissible;

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(iv) clause (g), evidence may be given as to the general result of the documents by any person who has examined them, and who is skilled in the examination of such document.

Corresponding Provision of Previous Statute: Section 65, Indian Evidence Act, 1872

Section 65 – Cases in which secondary evidence relating to documents may be given - Secondary evidence may be given of the existence, condition, or contents of a document in the following cases:–

(a) when the original is shown or appears to be in the possession or power ––

of the person against whom the document is sought to be proved, or

of any person out of reach of, or not subject to, the process of the Court, or

of any person legally bound to produce it,

and when, after the notice mentioned in section 66, such person does not produce it;

(b) when the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest;

(c) when the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time;

(d) when the original is of such a nature as not to be easily movable;

(e) when the original is a public document within the meaning of section 74;

(f) when the original is a document of which a certified copy is permitted by this Act, or by another law in force in India to be given in evidence;

(g) when the originals consist of numerous accounts or other documents which cannot conveniently be examined in Court, and the fact to be proved is the general result of the whole collection.

In cases (a), (c) and (d), any secondary evidence of the contents of the document is admissible.

In case (b), the written admission is admissible.

In case (e) or (f), a certified copy of the document, but no other kind of secondary evidence, is admissible.

In case (g), evidence may be given as to the general result of the documents by any person who has examined them, and who is skilled in the examination of such documents.

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61. Electronic or digital record

Nothing in this Adhiniyam shall apply to deny the admissibility of an electronic or digital record in the evidence on the ground that it is an electronic or digital record and such record shall, subject to section 63, have the same legal effect, validity and enforceability as other document.

62. Special provisions as to evidence relating to electronic record

The contents of electronic records may be proved in accordance with the provisions of section 63.

Linked Provisions

Information Technology Act, 2000 - Section 14 - Secure Electronic Record

Information Technology Act, 2000 - Section 13 - Time And Place Of Despatch And Receipt Of Electronic Record

Information Technology Act, 2000 - Section 11 - Attribution Of Electronic Records

Information Technology Act, 2000 - Section 7 - Retention Of Electronic Records

Information Technology Act, 2000 - Section 6 - Use Of Electronic Records And Electronic Signatures In Government And Its Agencies

Information Technology Act, 2000 - Section 3A - Electronic Signature

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Information Technology Act, 2000 - Section 3 - Authentication Of Electronic Records

Bharatiya Sakshya Adhiniyam, 2023 - Section 63 - Admissibility of electronic records

Bharatiya Sakshya Adhiniyam, 2023 - Section 29 - Relevancy of entry in public record or an electronic record made in performance of duty

Bharatiya Sakshya Adhiniyam, 2023 - Section 33 - What evidence to be given when statement forms part of a conversation, document, electronic record, book or series of letters or papers

Bharatiya Sakshya Adhiniyam, 2023 - Section 86 - Presumption as to electronic records and electronic signatures

Bharatiya Sakshya Adhiniyam, 2023 - Section 93 - Presumption as to electronic records five years old

Bharatiya Sakshya Adhiniyam, 2023 - Section 136 - Production of documents or electronic records which another person, having possession, would refuse to produce

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Bharatiya Nyaya Sanhita, 2023 - Section 210 - Omission to produce document or electronic record to public servant by person legally bound to produce it

Bharatiya Nyaya Sanhita, 2023 - Section 241 - Destruction of document or electronic record to prevent its production as evidence

Bharatiya Nyaya Sanhita, 2023 -Section 340 - Forged document or electronic record and using it as genuine

Corresponding Provision of Previous Statute: Section 65A, Indian Evidence Act, 1872

Section 65A – Special provisions as to evidence relating to electronic record - The contents of electronicrecords may be proved in accordance with the provisions of section 65B.

LANDMARK JUDGMENT

The State of Maharashtra and P.C. Singh vs. Praful B. Desai and Ors., MANU/SC/0268/2003.

63. Admissibility of electronic records

(1) Notwithstanding anything contained in this Adhiniyam, any information contained in an electronic record which is printed on paper, stored, recorded or copied in optical or magnetic media or semiconductor memory which is produced by a computer or any communication device or otherwise stored, recorded or copied in any electronic form (hereinafter referred to as the computer output) shall be

Linked Provisions

Information Technology Act, 2000 - Section 14 - Secure Electronic Record

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deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence or any contents of the original or of any fact stated therein of which direct evidence would be admissible.

(2) The conditions referred to in sub-section (1) in respect of a computer output shall be the following, namely:--

(a) the computer output containing the information was produced by the computer or communication device during the period over which the computer or Communication device was used regularly to create, store or process information for the purposes of any activity regularly carried on over that period by the person having lawful control over the use of the computer or communication device;

(b) during the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer or Communication device in the ordinary course of the said activities;

(c) throughout the material part of the said period, the computer or communication device was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents; and

(d) the information contained in the electronic record reproduces or is derived from such information fed into the computer or Communication device in the ordinary course of the said activities.

(3) Where over any period, the function of creating, storing or processing information for the purposes of any activity regularly carried on over that period as mentioned in clause (a) of sub-section (2) was

Information Technology Act, 2000 - Section 13 - Time And Place Of Despatch And Receipt Of Electronic Record

Information Technology Act, 2000 - Section 11 - Attribution Of Electronic Records

Information Technology Act, 2000 - Section 7 - Retention Of Electronic Records

Information Technology Act, 2000 - Section 6 - Use Of Electronic Records And Electronic Signatures In Government And Its Agencies

Information Technology Act, 2000 - Section 3A - Electronic Signature

Information Technology Act, 2000 - Section 3 - Authentication Of Electronic Records

Bharatiya Sakshya Adhiniyam, 2023 - Section 29 - Relevancy of entry in public record or an electronic record made in performance of duty

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regularly performed by means of one or more computers or communication device, whether--

(a) in standalone mode; or

(b) on a computer system; or

(c) on a computer network; or

(d) on a computer resource enabling information creation or providing information processing and storage; or

(e) through an intermediary,

all the computers or communication devices used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer or communication device; and references in this section to a computer or communication device shall be construed accordingly.

(4) In any proceeding where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things shall be submitted along with the electronic record at each instance where it is being submitted for admission, namely:--

(a) identifying the electronic record containing the statement and describing the manner in which it was produced;

(b) giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer or a communication device referred to in clauses (a) to (e) of sub-section (3);

(c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate,

Bharatiya Sakshya Adhiniyam, 2023 - Section 33 - What evidence to be given when statement forms part of a conversation, document, electronic record, book or series of letters or papers

Bharatiya Sakshya Adhiniyam, 2023 - Section 86 - Presumption as to electronic records and electronic signatures

Bharatiya Sakshya Adhiniyam, 2023 - Section 93 - Presumption as to electronic records five years old

Bharatiya Sakshya Adhiniyam, 2023 - Section 136 - Production of documents or electronic records which another person, having possession, would refuse to produce

Bharatiya Sakshya Adhiniyam, 2023 - Section 62 - Special provisions as to evidence relating to electronic record

Bharatiya Nyaya Sanhita, 2023 - Section 210 - Omission to produce document or electronic

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and purporting to be signed by a person in charge of the computer or communication device or the management of the relevant activities (whichever is appropriate) and an expert shall be evidence of any matter stated in the certificate; and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it in the certificate specified in the Schedule.

(5) For the purposes of this section,--

(a) information shall be taken to be supplied to a computer or communication device if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;

(b) a computer output shall be taken to have been produced by a computer or communication device whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment or by other electronic means as referred to in clauses (a) to (e) of sub-section (3).

record to public servant by person legally bound to produce it

Bharatiya Nyaya Sanhita, 2023 - Section 241 - Destruction of document or electronic record to prevent its production as evidence

Bharatiya Nyaya Sanhita, 2023 -Section 340 - Forged document or electronic record and using it as genuine

Corresponding Provision of Previous Statute: Section 65B, Indian Evidence Act, 1872

Section 65B – Admissibility of electronic records - (1) Notwithstanding anything contained in this Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer (hereinafter referred to as the computer output)shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence or any contents of the original or of any fact stated therein of which direct evidence would be admissible.

(2) The conditions referred to in sub-section (1) in respect of a computer output shall be the following, namely: ––

(a) the computer output containing the information was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;

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(b) during the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer in the ordinary course of the said activities;

(c) throughout the material part of the said period, the computer was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents; and

(d) the information contained in the electronic record reproduces or is derived from such information fed into the computer in the ordinary course of the said activities.

(3) Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in clause (a) of sub-section (2) was regularly performed by computers, whether––

(a) by a combination of computers operating over that period; or

(b) by different computers operating in succession over that period; or

(c) by different combinations of computers operating in succession over that period; or

(d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers,

all the computers used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer; and references in this section to a computer shall be construed accordingly.

(4) In any proceedings where it is desired to give a statement in evidence by virtue of this section,a certificate doing any of the following things, that is to say, ––

(a) identifying the electronic record containing the statement and describing the manner inwhich it was produced;

(b) giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer;

(c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate, and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this subsection it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

(5) For the purposes of this section, ––

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(a) information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) bymeans of any appropriate equipment;

(b) whether in the course of activities carried on by any official, information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;

(c) a computer output shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.

Explanation.––For the purposes of this section any reference to information being derived from other information shall be a reference to its being derived therefrom by calculation, comparison or any other process.

LANDMARK JUDGMENT

The State of Maharashtra and P.C. Singh vs. Praful B. Desai and Ors., MANU/SC/0268/2003

Arjun Panditrao Khotkar vs. Kailash Kushanrao Gorantyal and Ors., MANU/SC/0521/2020

Anvar P.V. vs. P.K. Basheer, MANU/SC/0834/2014

64. Rules as to notice to produce

Secondary evidence of the contents of the documents referred to in clause (a) of section 60, shall not be given unless the party proposing to give such secondary evidence has previously given to the party in whose possession or power the document is, or to his advocate or representative, such notice to produce it as is prescribed by law; and if no notice is prescribed by law, then such notice as the Court considers reasonable under the circumstances of the case:

Provided that such notice shall not be required in order to render secondary evidence admissible in any of the following cases, or in any other case in which the Court thinks fit to dispense with it:--

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 60 - Cases in which secondary evidence relating to documents may be given

Bharatiya Sakshya Adhiniyam, 2023 - Section 58 - Secondary evidence

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(a) when the document to be proved is itself a notice;

(b) when, from the nature of the case, the adverse party must know that he will be required to produce it;

(c) when it appears or is proved that the adverse party has obtained possession of the original by fraud or force;

(d) when the adverse party or his agent has the original in Court;

(e) when the adverse party or his agent has admitted the loss of the document;

(f) when the person in possession of the document is out of reach of, or not subject to, the process of the Court.

Corresponding Provision of Previous Statute: Section 66, Indian Evidence Act, 1872

Section 66 – Rules as to notice to produce — Secondary evidence of the contents of the documents referred to in section 65, clause (a), shall not be given unless the party proposing to give such secondary evidence has previously given to the party in whose possession or power the document is, or to his attorney or pleader, such notice to produce it as is prescribed by law; and if no notice is prescribed by law, then such notice as the Court considers reasonable under the circumstances of the case:

Provided that such notice shall not be required in order to render secondary evidence admissible in any of the following cases, or in any other case in which the Court thinks fit to dispense with it: – (1) when the document to be proved is itself a notice;

(2) when, from the nature of the case, the adverse party must know that he will be required to produce it;

(3) when it appears or is proved that the adverse party has obtained possession of the original by fraud or force;

(4) when the adverse party or his agent has the original in Court;

(5) when the adverse party or his agent has admitted the loss of the document;

(6) when the person in possession of the document is out of reach of, or not subject to, the process of the Court.

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65. Proof of signature and handwriting of person alleged to have signed or written document produced

If a document is alleged to be signed or to have been written wholly or in part by any person, the signature or the handwriting of so much of the document as is alleged to be in that person's handwriting must be proved to be in his handwriting.

Corresponding Provision of Previous Statute: Section 67, Indian Evidence Act, 1872

Section 67 - Proof of signature and handwriting of person alleged to have signed or written document produced –If a document is alleged to be signed or to have been written wholly or in part by any person, the signature or the handwriting of so much of the document as is alleged to be in that person's handwriting must be proved to be in his handwriting.

66. Proof as to electronic signature

Except in the case of a secure electronic signature, if the electronic signature of any subscriber is alleged to have been affixed to an electronic record, the fact that such electronic signature is the electronic signature of the subscriber must be proved.

Linked Provisions

Information Technology Act, 2000 - Section 5 - Legal Recognition Of Electronic Signatures

Information Technology Act, 2000 - Section 6 - Use Of Electronic Records And Electronic Signatures In Government And Its Agencies

Information Technology Act, 2000 - Section 10 - Power To Make Rules By Central Government In Respect Of Electronic Signature

Information Technology Act, 2000 - Section 15 - Secure Electronic Signature

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Information Technology Act, 2000 - Section 21 - Licence To Issue Electronic Signature Certificates

Information Technology Act, 2000 - Section 35 - Certifying Authority To Issue Electronic Signature Certificate

Information Technology Act, 2000 - Section 73 - Penalty For Publishing Electronic Signature Certificate False In Certain Particulars

Information Technology Act, 2000 - Section 3A - Electronic Signature

Information Technology Act, 2000 - Section 40A - Duties Of Subscriber Of Electronic Signature Certificate

Bharatiya Sakshya Adhiniyam, 2023 - Section 41 - Opinion as to hand-writing and signature, when relevant

Bharatiya Sakshya Adhiniyam, 2023 - Section 86 - Presumption as to electronic records and electronic signatures

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Bharatiya Sakshya Adhiniyam, 2023 - Section 87 - Presumption as to Electronic Signature Certificates

Corresponding Provision of Previous Statute: Section 67A, Indian Evidence Act, 1872

Section 67A - Proof as to electronic signature - Except in the case of a secure electronic signature, if the electronic signature of any subscriber is alleged to have been affixed to an electronic record the fact that such electronic signature is the electronic signature of the subscriber must be proved.

67. Proof of execution of document required by law to be attested

If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence:

Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908 (16 of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 68 - Proof where no attesting witness found

Bharatiya Sakshya Adhiniyam, 2023 - Section 70 - Proof when attesting witness denies the execution

Corresponding Provision of Previous Statute: Section 68, Indian Evidence Act, 1872

Section 68 - Proof of execution of document required by law to be attested - If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence:

Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908 (16 of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied.

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68. Proof where no attesting witness found

If no such attesting witness can be found, it must be proved that the attestation of one attesting witness at least is in his handwriting, and that the signature of the person executing the document is in the handwriting of that person.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 67 - Proof of execution of document required by law to be attested

Bharatiya Sakshya Adhiniyam, 2023 - Section 70 - Proof when attesting witness denies the execution

Corresponding Provision of Previous Statute: Section 69, Indian Evidence Act, 1872

Section 69 - Proof where no attesting witness found - If no such attesting witness can be found, or if the document purports to have been executed in the United Kingdom, it must be proved that the attestation of one attesting witness at least is in his handwriting, and that the signature of the person executing the document is in the hand writing of that person.

69. Admission of execution by party to attested document

The admission of a party to an attested document of its execution by himself shall be sufficient proof of its execution as against him, though it be a document required by law to be attested.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 67 - Proof of execution of document required by law to be attested

Corresponding Provision of Previous Statute: Section 70, Indian Evidence Act, 1872

Section 70 - Admission of execution by party to attested document - The admission of a party to an attested document of its execution by himself shall be sufficient proof of its execution as against him, though it be a document required by law to be attested.

70. Proof when attesting witness denies execution

If the attesting witness denies or does not recollect the execution of the document, its execution may be proved by other evidence.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 68 - Proof where

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no attesting witness found

Bharatiya Sakshya Adhiniyam, 2023 - Section 67 - Proof of execution of document required by law to be attested

Corresponding Provision of Previous Statute: Section 71, Indian Evidence Act, 1872

Section 71 - Proof when attesting witness denies the execution - If the attesting witness denies or does not recollect the execution of the document, its execution may be proved by other evidence.

71. Proof of document not required by law to be attested

An attested document not required by law to be attested may be proved as if it was unattested.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 67 - Proof of execution of document required by law to be attested

Corresponding Provision of Previous Statute: Section 72, Indian Evidence Act, 1872

Section 72 - Proof of document not required by law to be attested - An attested document not required by law to be attested may be proved as if it was unattested.

72. Comparison of signature, writing or seal with others admitted or proved

(1) In order to ascertain whether a signature, writing or seal is that of the person by whom it purports to have been written or made, any signature, writing, or seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing or seal has not been produced or proved for any other purpose.

(2) The Court may direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words

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or figures so written with any words or figures alleged to have been written by such person.

(3) This section applies also, with any necessary modifications, to finger impressions.

Corresponding Provision of Previous Statute: Section 73, Indian Evidence Act, 1872

Section 73 - Comparison of signature, writing or seal with others admitted or proved - In order to ascertain whether a signature, writing, or seal is that of the person by whom it purports to have been written or made, any signature, writing, or seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing, or seal has not been produced or proved for any other purpose.

The Court may direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person.

This section applies also, with any necessary modifications, to finger-impressions.

73. Proof as to verification of digital signature

In order to ascertain whether a digital signature is that of the person by whom it purports to have been affixed, the Court may direct--

(a) that person or the Controller or the Certifying Authority to produce the Digital Signature Certificate;

(b) any other person to apply the public key listed in the Digital Signature Certificate and verify the digital signature purported to have been affixed by that person.

Linked Provisions

Information Technology Act, 2000 - Section 36 - Representations upon Issuance of Digital Signature Certificate

Information Technology Act, 2000 - Section 37 - Suspension of Digital Signature Certificate

Information Technology Act, 2000 - Section 38 - Revocation of Digital Signature Certificate

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Information Technology Act, 2000 - Section 41 - Acceptance of Digital Signature Certificate

Information Technology Act, 2000 - Section 3A - Electronic Signature

Information Technology Act, 2000 - Section 5 - Legal Recognition of Electronic Signatures

Information Technology Act, 2000 - Section 35 - Certifying Authority to Issue Electronic Signature Certificate

Bharatiya Sakshya Adhiniyam, 2023 - Section 41 - Opinion as to hand-writing and signature, when relevant

Bharatiya Sakshya Adhiniyam, 2023 - Section 86 -Presumption as to electronic records and electronic signatures

Bharatiya Sakshya Adhiniyam, 2023 - Section 87 -Presumption as to Electronic Signature Certificates

Corresponding Provision of Previous Statute: Section 73A, Indian Evidence Act, 1872

Section 73A - Proof as to verification of digital signature - In order to ascertain whether a digital signature is that of the person by whom it purports to have been affixed, the Court may direct -

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(a) that person or the Controller or the Certifying Authority to produce the Digital Signature Certificate;

(b) any other person to apply the public key listed in the Digital Signature Certificate and verify the digital signature purported to have been affixed by that person.

Explanation. -For the purposes of this section, "Controller" means the Controller appointed under sub-section (1) of section 17 of the Information Technology Act, 2000 (21 of 2000).]

Public documents

74. Public and private documents

(1) The following documents are public documents:--

(a) documents forming the acts, or records of the acts--

(i) of the sovereign authority;

(ii) of official bodies and tribunals; and

(iii) of public officers, legislative, judicial and executive of India or of a foreign country;

(b) public records kept in any State or Union territory of private documents.

(2) All other documents except the documents referred to in sub-section (1) are private.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 75 - Certified copies of public documents

Bharatiya Sakshya Adhiniyam, 2023 - Section 29 - Relevancy of entry in public record or an electronic record made in performance of duty

Corresponding Provision of Previous Statute: Section 74, Indian Evidence Act, 1872

Section 74 - Public documents - The following documents are public documents: –

(1) Documents forming the acts, or records of the acts –

(i) of the sovereign authority,

(ii) of official bodies and tribunals, and

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(iii) of public officers, legislative, judicial and executive, of any part of India or of the Commonwealth, or of a foreign country;

(2) Public records kept in any State of private documents.

Section 75 - Private documents - All other documents are private

75. Certified copies of public documents

Every public officer having the custody of a public document, which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees therefor, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title, and shall be sealed, whenever such officer is authorised by law to make use of a seal; and such copies so certified shall be called certified copies.

Explanation.--Any officer who, by the ordinary course of official duty, is authorised to deliver such copies, shall be deemed to have the custody of such documents within the meaning of this section.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 74 - Public and private documents

Bharatiya Sakshya Adhiniyam, 2023 - Section 29 - Relevancy of entry in public record or an electronic record made in performance of duty

Code of Civil Procedure, 1908 - Section 37 - Definition of Court Which Passed a Decree

Foreign Marriage Act, 1969 - Section 25 - Certified Copy of Entries to Be Evidences

Indian Christian Marriage Act, 1872 - Section 80 - Certified Copy of Entry In Marriage Register, Etc, To Be Evidence

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Indian Marriage Act, 1865 - Section 44 - Certified Copy of Entry in Marriage Register, &C. To Be Received As Evidence of Marriage

Land Acquisition Act, 1894 – Section 51A - Acceptance of Certified Copy as Evidence

Corresponding Provision of Previous Statute: Section 76, Indian Evidence Act, 1872

Section 76 - Certified copies of public documents - Every public officer having the custody of a public document, which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees there for, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title, and shall be sealed, whenever such officers authorized by law to make use of a seal; and such copies so certified shall be called certified copies.

Explanation.––Any officer who, by the ordinary course of official duty, is authorized to deliver such copies, shall be deemed to have the custody of such documents within the meaning of this section.

76. Proof of documents by production of certified copies

Such certified copies may be produced in proof of the contents of the public documents or parts of the public documents of which they purport to be copies.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 59- Proof of documents by primary evidence

Code of Civil Procedure, 1908 – Section 37 - Definition Of Court Which Passed A Decree

Foreign Marriage Act, 1969 - Section 25 - Certified Copy Of Entries To Be Evidences

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Indian Christian Marriage Act, 1872 - Section 80 - Certified Copy Of Entry In Marriage Register, Etc, To Be Evidence

Indian Marriage Act, 1865 - Section 44 - Certified Copy Of Entry In Marriage Register, &C. To Be Received As Evidence Of Marriage Without Further Proof

Land Acquisition Act, 1894 - Section 51A - Acceptance Of Certified Copy As Evidence

Manipur Municipalities Act - Section 223 - Mode Of Proof Of Municipal Record And Fee For Certified Copy

Patent Act, 1859 - Section 13 - Certified Copy To Be Prima Facie Evidence

Corresponding Provision of Previous Statute: Section 77, Indian Evidence Act, 1872

Section 77 - Proof of documents by production of certified copies - Such certified copies may be produced in proof of the contents of the public documents or parts of the public documents of which they purport to be copies.

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77. Proof of other official documents

The following public documents may be proved as follows:--

(a) Acts, orders or notifications of the Central Government in any of its Ministries and Departments or of any State Government or any Department of any State Government or Union territory Administration--

(i) by the records of the Departments, certified by the head of those Departments respectively; or

(ii) by any document purporting to be printed by order of any such Government;

(b) the proceedings of Parliament or a State Legislature, by the journals of those bodies respectively, or by published Acts or abstracts, or by copies purporting to be printed by order of the Government concerned;

(c) proclamations, orders or Regulations issued by the President of India or the Governor of a State or the Administrator or Lieutenant Governor of a Union territory, by copies or extracts contained in the Official Gazette;

(d) the Acts of the Executive or the proceedings of the Legislature of a foreign country, by journals published by their authority, or commonly received in that country as such, or by a copy certified under the seal of the country or sovereign, or by a recognition thereof in any Central Act;

(e) the proceedings of a municipal or local body in a State, by a copy of such proceedings, certified by the legal keeper thereof, or by a printed book purporting to be published by the authority of such body;

Linked Provisions

Air Force Central Excise Act, 1950 - Section 57 - Falsifying Official Documents And False Declaration

Army Act, 1950 – Section 57 - Falsifying Official Documents And False Declaration

Border Security Force Act, 1968 – Section 35 - Falsifying Official Documents And False Declarations

Coast Guard Act, 1978 - Section 33 - Falsifying Official Documents And False Declarations

The Indo-Tibetan Border Police Force Act. 1992 - Section 38 - Falsifying Official Documents And False Declarations

National Security Guard Act, 1986 - Section 34 - Falsifying Official Documents And False Declarations

Navy Act, 1957 - Section 60 - Falsifying Official Documents And False Declarations

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(f) public documents of any other class in a foreign country, by the original or by a copy certified by the legal keeper thereof, with a certificate under the seal of a Notary Public, or of an Indian Consul or diplomatic agent, that the copy is duly certified by the officer having the legal custody of the original, and upon proof of the character of the document according to the law of the foreign country.

Sashastra Seema Bal Act, 2007 - Section 38 - Falsifying Official Documents And False Declaration

Corresponding Provision of Previous Statute: Section 78, Indian Evidence Act, 1872

Section 78 - Proof of other official documents - The following public documents may be proved as follows:-

(1) Acts, orders or notifications of the Central Government in any of its departments, or of the Crown Representative or of any State Government or any department of any State Government, -

by the records of the departments, certified by the head of those departments respectively, or by any document purporting to be printed by order of any such Government or, as the case may be, of the Crown Representative;

(2) the proceedings of the Legislatures, -

by the journals of those bodies respectively, or by published Acts or abstracts, or by copies purporting to be printed by order of the Government concerned;

(3) proclamations, orders or regulations issued by Her Majesty or by the Privy Council, or by any department of Her Majesty's Government, -

by copies or extracts contained in the London Gazette, or purporting to be printed by the Queen's Printer;

(4) the Acts of the Executive or the proceedings of the Legislature of a foreign country, -

by journals published by their authority, or commonly received in that country as such, or by a copy certified under the seal of the country or sovereign, or by a recognition thereof in some

(5) the proceedings of a municipal body in a State, -

by a copy of such proceedings, certified by the legal keeper thereof, or by a printed book purporting to be published by the authority of such body;

(6) public documents of any other class in a foreign country, -

by the original, or by a copy certified by the legal keeper thereof, with a certificate under the seal of a Notary Public, or of an Indian Consul or diplomatic agent, that the copy is duly certified by the officer having the legal custody of the original, and upon proof of the character of the document according to the law of the foreign country.

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78. Presumption as to genuineness of certified copies

(1) The Court shall presume to be genuine every document purporting to be a certificate, certified copy or other document, which is by law declared to be admissible as evidence of any particular fact and which purports to be duly certified by any officer of the Central Government or of a State Government:

Provided that such document is substantially in the form and purports to be executed in the manner directed by law in that behalf.

(2) The Court shall also presume that any officer by whom any such document purports to be signed or certified, held, when he signed it, the official character which he claims in such paper.

Linked Provisions

Code of Civil Procedure, 1908 - Section 37 - Definition Of Court Which Passed A Decree

Foreign Marriage Act, 1969 - Section 25 - Certified Copy Of Entries To Be Evidences

Indian Christian Marriage Act, 1872 - Section 80 - Certified Copy Of Entry In Marriage Register, Etc, To Be Evidence

Indian Marriage Act, 1865 - Section 44 - Certified Copy Of Entry In Marriage Register, &C. To Be Received As Evidence Of Marriage Without Further Proof

Land Acquisition Act, 1894 - Section 51A - Acceptance Of Certified Copy As Evidence

Patent Act, 1859 - Section 13 - Certified Copy To Be Prima Facie Evidence

Corresponding Provision of Previous Statute: Section 79, Indian Evidence Act, 1872

Section 79 - Presumption as to genuineness of certified copies - The Court shall presume 8 to be genuine every document purporting to be a certificate, certified copy or other document, which is by Law declared to be admissible as evidence of any particular fact, and which purports to be duly

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certified by any officer of the Central Government or of a State Government, or by any officer 10[in the State of Jammu and Kashmir who is duly authorized thereto by the Central Government:

Provided that such document is substantially in the form and purports to be executed in the manner directed by law in that behalf.

The Court shall also presume that any officer by whom any such document purports to be signed or certified, held, when he signed it, the official character which he claims in such paper.

79. Presumption as to documents produced as record of evidence, etc

Whenever any document is produced before any Court, purporting to be a record or memorandum of the evidence, or of any part of the evidence, given by a witness in a judicial proceeding or before any officer authorised by law to take such evidence or to be a statement or confession by any prisoner or accused person, taken in accordance with law, and purporting to be signed by any Judge or Magistrate, or by any such officer as aforesaid, the Court shall presume that--

(i) the document is genuine;

(ii) any statements as to the circumstances under which it was taken, purporting to be made by the person signing it, are true; and

(iii) such evidence, statement or confession was duly taken.

Linked Provisions

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 395 - Order to pay compensation

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 403 - Court not to alter judgment

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 406 - Court of Session to send copy of finding and sentence to District Magistrate

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 403 - Court not to alter judgment

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 312 - Language of record of evidence

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Corresponding Provision of Previous Statute: Section 80, Indian Evidence Act, 1872

Section 80 - Presumption as to documents produced as record of evidence - Whenever any document is produced before any Court, purporting to be a record or memorandum of the evidence, or of any part of the evidence, given by a witness in a judicial proceeding or before any officer authorized by law to take such evidence or to be a statement or confession by any prisoner or accused person, taken in accordance with law, and purporting to be signed by any Judge or Magistrate, or by any such officer as aforesaid, the Court shall presume –

that the document is genuine; that any statements as to the circumstances under which it was taken, purporting to be made by the person signing it, are true, and that such evidence, statement or confession was duly taken.

80. Presumption as to Gazettes, newspapers, and other documents

The Court shall presume the genuineness of every document purporting to be the Official Gazette, or to be a newspaper or journal, and of every document purporting to be a document directed by any law to be kept by any person, if such document is kept substantially in the form required by law and is produced from proper custody.

Explanation.--For the purposes of this section and section 92, document is said to be in proper custody if it is in the place in which, and looked after by the person with whom such document is required to be kept; but no custody is improper if it is proved to have had a legitimate origin, or if the circumstances of the particular case are such as to render that origin probable.

Corresponding Provision of Previous Statute: Section 81, Indian Evidence Act, 1872

Section 81 - Presumption as to Gazettes, newspapers, private Acts of Parliament and other Documents - The Court shall presume the genuineness of every document purporting to be the London Gazette or any Official Gazette, or the Government Gazette of any colony, dependency or possession of the British Crown, or to be a newspaper or journal, or to be a copy of a private Act of Parliament of the United Kingdom printed by the Queen's Printer, and of every document purporting to be a document directed by any law to be kept by any person, if such document is kept substantially in the form required by law and is produced from proper custody.

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81. Presumption as to Gazettes in electronic or digital record

The Court shall presume the genuineness of every electronic or digital record purporting to be the Official Gazette, or purporting to be electronic or digital record directed by any law to be kept by any person, if such electronic or digital record is kept substantially in the form required by law and is produced from proper custody.

Explanation.--For the purposes of this section and section 93 electronic records are said to be in proper custody if they are in the place in which, and looked after by the person with whom such document is required to be kept; but no custody is improper if it is proved to have had a legitimate origin, or the circumstances of the particular case are such as to render that origin probable.

Linked Provisions

Information Technology Act, 2000 – Section 14 - Secure Electronic Record

Information Technology Act, 2000 – Section 13 - Time And Place Of Despatch And Receipt Of Electronic Record

Information Technology Act, 2000 – Section 11 - Attribution Of Electronic Records

Information Technology Act, 2000 – Section 7 - Retention Of Electronic Records

Information Technology Act, 2000 – Section 6 - Use Of Electronic Records And Electronic Signatures In Government And Its Agencies

Information Technology Act, 2000 - Section 3A - Electronic Signature

Information Technology Act, 2000 – Section 3 - Authentication Of Electronic Records

Bharatiya Sakshya Adhiniyam, 2023 - Section 29 - Relevancy of entry in public record or an electronic record made in performance of duty

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Bharatiya Sakshya Adhiniyam, 2023 - Section 33 - What evidence to be given when statement forms part of a conversation, document, electronic record, book or series of letters or papers

Bharatiya Sakshya Adhiniyam, 2023 - Section 86 - Presumption as to electronic records and electronic signatures

Bharatiya Sakshya Adhiniyam, 2023 - Section 93 - Presumption as to electronic records five years old

Bharatiya Sakshya Adhiniyam, 2023 - Section 136 - Production of documents or electronic records which another person, having possession, would refuse to produce

Bharatiya Sakshya Adhiniyam, 2023 - Section 63 - Admissibility of electronic records

Bharatiya Sakshya Adhiniyam, 2023 - Section 80 - Presumption as to Gazettes, newspapers, and other documents

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Bharatiya Nyaya Sanhita, 2023 - Section 210 - Omission to produce document or electronic record to public servant by person legally bound to produce it

Bharatiya Nyaya Sanhita, 2023 - Section 241 - Destruction of document or electronic record to prevent its production as evidence

Bharatiya Nyaya Sanhita, 2023 - Section 340 - Forged document or electronic record and using it as genuine

Information Technology Act, 2000 - Section 4 - Legal recognition of electronic records.

Corresponding Provision of Previous Statute: Section 81A, Indian Evidence Act, 1872

Section 81A - Presumption as to Gazettes in electronic forms - The Court shall presume the genuineness of every electronic record purporting to be the Official Gazette, or purporting to be electronic record directed by any law to be kept by any person, if such electronic record is kept substantially in the form required by law and is produced from proper custody.

82. Presumption as to maps or plans made by authority of Government

The Court shall presume that maps or plans purporting to be made by the authority of the Central Government or any State Government were

Linked Provisions

Registration Act, 1908 - Section 21 - Description Of Property And Maps Or Plans

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so made, and are accurate; but maps or plans made for the purposes of any cause must be proved to be accurate.

Registration Act, 1908 - Section 22 - Description Of Houses And Land By Reference To Government Maps Or Surveys

Bharatiya Sakshya Adhiniyam, 2023 - Section 30 - Relevancy of statements in maps, charts and plans

Bharatiya Sakshya Adhiniyam, 2023 - Section 89 - Presumption as to books, maps and charts

Corresponding Provision of Previous Statute: Section 83, Indian Evidence Act, 1872

Section 83 - Presumption as to maps or plans made by authority of Government - The Court shall presume that maps or plans purporting to be made by the authority of the Central Government or any State Government were so made, and are accurate; but maps or plans made for the purposes of any cause must be proved to be accurate

83. Presumption as to collections of laws and reports of decisions

The Court shall presume the genuineness of, every book purporting to be printed or published under the authority of the Government of any country, and to contain any of the laws of that country, and of every book purporting to contain reports of decisions of the Courts of such country.

Corresponding Provision of Previous Statute: Section 84, Indian Evidence Act, 1872

Section 84 - Presumption as to collections of laws and reports of decisions - The Court shall presume the genuineness of every book purporting to be printed or published under the authority of the Government of any country, and to contain any of the laws of that country, and of every book purporting to contain reports of decisions of the Courts of such country

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84. Presumption as to powers-of-attorney

The Court shall presume that every document purporting to be a power-of-attorney, and to have been executed before, and authenticated by, a Notary Public, or any Court, Judge, Magistrate, Indian Consul or Vice-Consul, or representative of the Central Government, was so executed and authenticated.

Linked Provisions

Registration Act, 1908 - Section 33 - Power-Of-Attorney Recognizable For Purposes Of Section 32

Government of India Act, 1915 - Section 24 - Power Of Attorney For Sale Or Purchase Of Stock And Receipt Of Dividends

Corresponding Provision of Previous Statute: Section 85, Indian Evidence Act, 1872

Section 85 - Presumption as to powers-of-attorney - The Court shall presume that every document purporting to be a power-of-attorney, and to have been executed before, and authenticated by, a Notary Public, or any Court, Judge, Magistrate, Indian Consul or Vice-Consul, or representative *** of the Central Government, was so executed and authenticated

85. Presumption as to electronic agreements

The Court shall presume that every electronic record purporting to be an agreement containing the electronic or digital signature of the parties was so concluded by affixing the electronic or digital signature of the parties.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 29 - Relevancy of entry in public record or an electronic record made in performance of duty

Bharatiya Sakshya Adhiniyam, 2023 - Section 33 - What evidence to be given when statement forms part of a conversation, document, electronic record, book or series of letters or papers

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Bharatiya Sakshya Adhiniyam, 2023 - Section 86 - Presumption as to electronic records and electronic signatures

Bharatiya Sakshya Adhiniyam, 2023 - Section 93 - Presumption as to electronic records five years old

Bharatiya Sakshya Adhiniyam, 2023 - Section 136 - Production of documents or electronic records which another person, having possession, would refuse to produce

Information Technology Act, 2000 – Section 14 - Secure Electronic Record

Information Technology Act, 2000 – Section 13 - Time And Place Of Despatch And Receipt Of Electronic Record

Information Technology Act, 2000 – Section 11 - Attribution Of Electronic Records

Information Technology Act, 2000 – Section 7 - Retention Of Electronic Records

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Information Technology Act, 2000 – Section 6 - Use Of Electronic Records And Electronic Signatures In Government And Its Agencies

Information Technology Act, 2000 – Section 3A - Electronic Signature

Information Technology Act, 2000 – Section 3 - Authentication Of Electronic Records

Information Technology Act, 2000 – Section 13 - Time And Place Of Despatch And Receipt Of Electronic Record

Information Technology Act, 2000 – Section 14 - Secure Electronic Record

Bharatiya Sakshya Adhiniyam, 2023 - Section 87 - Presumption as to Electronic Signature Certificates

Bharatiya Sakshya Adhiniyam, 2023 - Section 63 - Admissibility of electronic records

Bharatiya Sakshya Adhiniyam, 2023 - Section 62 - Special provisions as to evidence relating to electronic record

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Bharatiya Sakshya Adhiniyam, 2023 - Section 90 - Presumption as to electronic messages

Bharatiya Nyaya Sanhita, 2023 - Section 210 - Omission to produce document or electronic record to public servant by person legally bound to produce it

Bharatiya Nyaya Sanhita, 2023 - Section 241 - Destruction of document or electronic record to prevent its production as evidence

Bharatiya Nyaya Sanhita, 2023 - Section 340 - Forged document or electronic record and using it as genuine

Corresponding Provision of Previous Statute: Section 85A, Indian Evidence Act, 1872

Section 85A - Presumption as to electronic agreements - The Court shall presume that every electronic record purporting to be an agreement containing the electronic signature of the parties was so concluded by affixing the electronic signature of the parties.

86. Presumption as to electronic records and electronic signatures

(1) In any proceeding involving a secure electronic record, the Court shall presume unless contrary is proved, that the secure electronic record has not been altered since the specific point of time to which the secure status relates.

Linked Provisions

Information Technology Act, 2000 – Section 14 - Secure Electronic Record

Information Technology Act, 2000 – Section 13 - Time And Place Of

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(2) In any proceeding, involving secure electronic signature, the Court shall presume unless the contrary is proved that--

(a) the secure electronic signature is affixed by subscriber with the intention of signing or approving the electronic record;

(b) except in the case of a secure electronic record or a secure electronic signature, nothing in this section shall create any presumption, relating to authenticity and integrity of the electronic record or any electronic signature.

Despatch And Receipt Of Electronic Record

Information Technology Act, 2000 – Section 11 - Attribution Of Electronic Records

Information Technology Act, 2000 – Section 7 - Retention Of Electronic Records

Information Technology Act, 2000 – Section 6 - Use Of Electronic Records And Electronic Signatures In Government And Its Agencies

Information Technology Act, 2000 – Section 3A – Electronic Signature

Information Technology Act, 2000 – Section 3 - Authentication Of Electronic Records

Bharatiya Sakshya Adhiniyam, 2023 - Section 29 - Relevancy of entry in public record or an electronic record made in performance of duty

Bharatiya Sakshya Adhiniyam, 2023 - Section 33 - What evidence to be given when statement forms part of a

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conversation, document, electronic record, book or series of letters or papers

Bharatiya Sakshya Adhiniyam, 2023 - Section 93 - Presumption as to electronic records five years old

Bharatiya Sakshya Adhiniyam, 2023 - Section 136 - Production of documents or electronic records which another person, having possession, would refuse to produce

Bharatiya Sakshya Adhiniyam, 2023 - Section 85 - Presumption as to electronic agreements

Bharatiya Sakshya Adhiniyam, 2023 - Section 62 - Special provisions as to evidence relating to electronic record

Bharatiya Sakshya Adhiniyam, 2023 - Section 87 - Presumption as to Electronic Signature Certificates

Bharatiya Sakshya Adhiniyam, 2023 - Section 90 - Presumption as to electronic messages

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Bharatiya Nyaya Sanhita, 2023 - Section 210 - Omission to produce document or electronic record to public servant by person legally bound to produce it

Bharatiya Nyaya Sanhita, 2023 - Section 241 - Destruction of document or electronic record to prevent its production as evidence

Bharatiya Nyaya Sanhita, 2023 - Section 340 - Forged document or electronic record and using it as genuine

Corresponding Provision of Previous Statute: Section 85B, Indian Evidence Act, 1872

Section 85B - Presumption as to electronic records and electronic signatures - (1) In any proceedings involving a secure electronic record, the Court shall presume unless contrary is proved, that the secure electronic record has not been altered since the specific point of time to which the secure status relates.

(2) In any proceedings, involving secure digital signature, the Court shall presume unless the contrary is proved that -

(a) the secure electronic signature is affixed by subscriber with the intention of signing or approving the electronic record;

(b) except in the case of a secure electronic record or a secure electronic signature, nothing in this section shall cerate any presumption, relating to authenticity and integrity of the electronic record or any electronic signature.

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87. Presumption as to Electronic Signature Certificates

The Court shall presume, unless contrary is proved, that the information listed in an Electronic Signature Certificate is correct, except for information specified as subscriber information which has not been verified, if the certificate was accepted by the subscriber.

Linked Provisions

Information Technology Act, 2000 – Section 14 - Secure Electronic Record

Information Technology Act, 2000 – Section 13 - Time And Place Of Despatch And Receipt Of Electronic Record

Information Technology Act, 2000 – Section 11 - Attribution Of Electronic Records

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Corresponding Provision of Previous Statute: Section 85C, Indian Evidence Act, 1872

Section 85C - Presumption as to Electronic Signature Certificates - The Court shall presume, unless contrary is proved, that the information listed in a Electronic Signature Certificate is correct, except for information specified as subscriber information which has not been verified, if the certificate was accepted by the subscribe**r.**

88. Presumption as to certified copies of foreign judicial records

(1) The Court may presume that any document purporting to be a certified copy of any judicial record of any country beyond India is genuine and accurate, if the document purports to be certified in any manner which is certified by any representative of the Central Government in or for such country to be the manner commonly in use in that country for the certification of copies of judicial records.

(2) An officer who, with respect to any territory or place outside India is a Political Agent therefor, as defined in clause (43) of section 3 of the General Clauses Act, 1897 (10 of 1897), shall, for the purposes of this section, be deemed to be a representative of the Central Government in and for the country comprising that territory or place.

Corresponding Provision of Previous Statute: Section 86, Indian Evidence Act, 1872

Section 86 - Presumption as to certified copies of foreign judicial records - The Court may presume that any document purporting to be a certified copy of any judicial record of * * * any country not forming part of India or of Her Majesty's Dominions is genuine and accurate, if the document purports to be certified in any manner which is certified by any representative of * * * the Central Government in or for such country to be the manner commonly in use in that country for the certification of copies of judicial records.

An officer who, with respect to *** any territory or place not forming part of India or Her Majesty's Dominions, is a Political Agent there for, as defined in section 3, clause (43), of the General Clauses Act, 1897 (10 of 1897), shall, for the purposes of this section, be deemed to be a representative of the Central Government in and for the country comprising that territory or place.

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89. Presumption as to books, maps and charts

The Court may presume that any book to which it may refer for information on matters of public or general interest, and that any published map or chart, the statements of which are relevant facts, and which is produced for its inspection, was written and published by the person, and at the time and place, by whom or at which it purports to have been written or published.

Linked Provisions

Registration Act, 1908 - Section 21 - Description Of Property And Maps Or Plans

Registration Act, 1908 - Section 22 - Description Of Houses And Land By Reference To Government Maps Or Surveys

Bharatiya Sakshya Adhiniyam, 2023 - Section 82 - Presumption as to maps or plans made by authority of Government

Bharatiya Sakshya Adhiniyam, 2023 - Section 30 -Relevancy of statements in maps, charts and plans

Corresponding Provision of Previous Statute: Section 87, Indian Evidence Act, 1872

Section 87 - Presumption as to books, maps and charts - The Court may presume that any book to which it may refer for information on matters of public or general interest, and that any published map or chart, the statements of which are relevant facts, and which is produced for its inspection, was written and published by the person, and at the time and place, by whom or at which it purports to have been written or published.

90. Presumption as to electronic messages

The Court may presume that an electronic message, forwarded by the originator through an electronic mail server to the addressee to whom the message purports to be addressed corresponds with the message as

Linked Provisions

Information Technology Act, 2000 - Section 14 - Secure Electronic Record

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fed into his computer for transmission; but the Court shall not make any presumption as to the person by whom such message was sent.

Information Technology Act, 2000 - Section 13 - Time And Place Of Despatch And Receipt Of Electronic Record

Information Technology Act, 2000 - Section 11 - Attribution Of Electronic Records

Information Technology Act, 2000 - Section 7 - Retention Of Electronic Records

Information Technology Act, 2000 - Section 6 - Use Of Electronic Records And Electronic Signatures In Government And Its Agencies

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Bharatiya Nyaya Sanhita, 2023 - Section 210 - Omission to produce document or electronic record to public servant by person legally bound to produce it

Bharatiya Nyaya Sanhita, 2023 - Section 241 - Destruction of document or electronic record to prevent its production as evidence

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Corresponding Provision of Previous Statute: Section 88A, Indian Evidence Act, 1872

Section 88A - Presumption as to electronic messages - The Court may presume that an electronic message, forwarded by the originator through an electronic mail server to the addressee to whom the message purports to be addressed corresponds with the message as fed into his computer for transmission; but the Court shall not make any presumption as to the person by whom such message was sent.

Explanation. - For the purposes of this section, the expressions "addressee" and "originator" shall have the same meanings respectively assigned to them in clauses (b) and (za) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000).

91. Presumption as to due execution, etc., of documents not produced

The Court shall presume that every document, called for and not produced after notice to produce, was attested, stamped and executed in the manner required by law.

Corresponding Provision of Previous Statute: Section 89, Indian Evidence Act, 1872

Section 89 - Presumption as to due execution, etc., of documents not produced - The Court shall presume that every document, called for and not produced after notice to produce, was attested, stamped and executed in the manner required by law.

92. Presumption as to documents thirty years old

Where any document, purporting or proved to be thirty years old, is produced from any custody which the Court in the particular case considers proper, the Court may presume that the signature and every other part of such document, which purports to be in the handwriting of any particular person, is in that person's handwriting, and, in the case of a document executed or attested, that it was duly executed and attested by the persons by whom it purports to be executed and attested.

Explanation.--The Explanation to section 80 shall also apply to this section.

Linked Provisions

Central Excise Act, 1944 - Section 36A - Presumption As To Documents In Certain Cases

Central Goods and Services Tax Act, 2017- Section 144 - Presumption As To Documents In Certain Cases

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Illustrations

(a) A has been in possession of landed property for a long time. He produces from his custody deeds relating to the land showing his titles to it. The custody shall be proper.

(b) A produces deeds relating to landed property of which he is the mortgagee. The mortgagor is in possession. The custody shall be proper.

(c) A, a connection of B, produces deeds relating to lands in B's possession, which were deposited with him by B for safe custody. The custody shall be proper.

The Customs Act, 1962 - Section 139 - Presumption As To Documents In Certain Cases

The Foreign Exchange Management Act, 1999 - Section 39 - Presumption As To Documents In Certain Cases

Foreign Exchange Regulations Act, 1973 - Section 72 - Presumption As To Documents In Certain Cases

Gold (Control) Act, 1968 - Section 67 - Presumption As To Documents In Certain Cases

Narcotic-Drugs and Psychotropic Substances Act 1985 - Section 66 - Presumption As To Documents In Certain Cases

Bharatiya Sakshya Adhiniyam, 2023 - Section 79 - Presumption as to documents produced as record of evidence, etc.

Bharatiya Sakshya Adhiniyam, 2023 - Section 80 - Presumption as to Gazettes, newspapers, and other documents

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Corresponding Provision of Previous Statute: Section 90, Indian Evidence Act, 1872

Section 90 - Presumption as to documents thirty years old - Where any document, purporting or proved to be thirty years old, is produced from any custody which the Court in the particular case considers proper, the Court may presume that the signature and every other part of such document, which purports to be in the handwriting of any particular person, is in that person's handwriting, and, in the case of a document executed or attested, that it was duly executed and attested by the persons by whom it purports to be executed and attested.

Explanation.- Documents are said to be in proper custody if they are in the place in which, and under the care of the person with whom, they would naturally be; but no custody is improper if it is proved to have had a legitimate origin, or if the circumstances of the particular case are such as to render such an origin probable.

This explanation applies also to section 81.

Illustrations

(a) A has been in possession of landed property for a long time. He produces from his custody deeds relating to the land showing his titles to it. The custody is proper.

(b) A produces deeds relating to landed property of which he is the mortgagee. The mortgagor is in possession. The custody is proper.

(c) A, a connection of B, produces deeds relating to lands in B's possession, which were deposited with him by B for safe custody. The custody is proper.

LANDMARK JUDGMENT

Ram Jas and Ors. vs. Surendra Nath and Ors., MANU/UP/0260/1980

93. Presumption as to electronic records five years old

Where any electronic record, purporting or proved to be five years old, is produced from any custody which the Court in the particular case considers proper, the Court may presume that the electronic signature which purports to be the electronic signature of any particular person was so affixed by him or any person authorised by him in this behalf.

Linked Provisions

Information Technology Act, 2000 – Section 14 - Secure Electronic Record

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Explanation.--The Explanation to section 81 shall also apply to this section.

Information Technology Act, 2000 – Section 13 - Time And Place Of Despatch And Receipt Of Electronic Record

Information Technology Act, 2000 – Section 11 - Attribution Of Electronic Records

Information Technology Act, 2000 – Section 7 - Retention Of Electronic Records

Information Technology Act, 2000 – Section 6 - Use Of Electronic Records And Electronic Signatures In Government And Its Agencies

Information Technology Act, 2000 – Section 4 - Electronic Signature

Information Technology Act, 2000 – Section 3 - Authentication Of Electronic Records

Bharatiya Sakshya Adhiniyam, 2023 - Section 63 - Admissibility of electronic records

Bharatiya Sakshya Adhiniyam, 2023 - Section 29- Relevancy of entry in public record or an electronic record made in performance of duty

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Bharatiya Sakshya Adhiniyam, 2023 - Section 86 - Presumption as to electronic records and electronic signatures

Bharatiya Sakshya Adhiniyam, 2023 - Section 136 - Production of documents or electronic records which another person, having possession, would refuse to produce

Bharatiya Nyaya Sanhita, 2023 - Section 210 - Omission to produce document or electronic record to public servant by person legally bound to produce it

Bharatiya Nyaya Sanhita, 2023 - Section 241 - Destruction of document or electronic record to prevent its production as evidence

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Bharatiya Nyaya Sanhita, 2023 - Section 340 - Forged document or electronic record and using it as genuine

Corresponding Provision of Previous Statute: Section 90A, Indian Evidence Act, 1872

Section 90A - Presumption as to electronic records five years old - Where any electronic record, purporting or proved to be five years old, is produced from any custody which the Court in the particular case considers proper, the Court may presume that the electronic signature which purports to be the electronic signature of any particular person was so affixed by him or any person authorised by him in this behalf.

Explanation. – Electronic records are said to be in proper custody if they are in the place in which,and under the care of the person with whom, they naturally be; but no custody is improper if it is proved to have had a legitimate origin, or the circumstances of the particular case are such as to render such an origin probable.

This *Explanation* applies also to section 81A.

LANDMARK JUDGMENT

Ram Jas and Ors. vs. Surendra Nath and Ors., MANU/UP/0260/1980

CHAPTER VI

OF THE EXCLUSION OF ORAL EVIDENCE BY DOCUMENTARY EVIDENCE

94. Evidence of terms of contracts, grants and other dispositions of property reduced to form of document

When the terms of a contract, or of a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form

Linked Provisions

Companies Act, 2013 - Section 27 - Variation In Terms Of Contract Or Objects In Prospectus

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of a document, no evidence shall be given in proof of the terms of such contract, grant or other disposition of property, or of such matter, except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained.

The Indian Contract Act, 1872 - Section 133 - Discharge Of Surety By Variance In Terms Of Contract

Exception 1.--When a public officer is required by law to be appointed in writing, and when it is shown that any particular person has acted as such officer, the writing by which he is appointed need not be proved.

Exception 2.--Wills admitted to probate in India may be proved by the probate.

Explanation 1.--This section applies equally to cases in which the contracts, grants or dispositions of property referred to are contained in one document, and to cases in which they are contained in more documents than one.

Explanation 2.--Where there are more originals than one, one original only need be proved.

Explanation 3.--The statement, in any document whatever, of a fact other than the facts referred to in this section, shall not preclude the admission of oral evidence as to the same fact.

Illustrations

(a) If a contract be contained in several letters, all the letters in which it is contained must be proved.

(b) If a contract is contained in a bill of exchange, the bill of exchange must be proved.

(c) If a bill of exchange is drawn in a set of three, one only need be proved.

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(d) A contracts, in writing, with B, for the delivery of indigo upon certain terms. The contract mentions the fact that B had paid A the price of other indigo contracted for verbally on another occasion. Oral evidence is offered that no payment was made for the other indigo. The evidence is admissible.

(e) A gives B a receipt for money paid by B. Oral evidence is offered of the payment. The evidence is admissible.

Corresponding Provision of Previous Statute: Section 91, Indian Evidence Act, 1872

Section 91 - Evidence of terms of contracts, grants and other dispositions of property reduced to form of Document - When the terms of a contract, or of a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant or other disposition of property, or of such matter, except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained.

Exception 1.–When a public officer is required by law to be appointed in writing, and when it is shown that any particular person has acted as such officer, the writing by which he is appointed need not be proved.

Exception 2.– Wills admitted to probate in India may be proved by the probate.

Explanation 1.– This section applies equally to cases in which the contracts, grants or dispositions of property referred to are contained in one document, and to cases in which they are contained in more documents than one.

Explanation 2.- Where there are more originals than one, one original only need be proved.

Explanation 3.- The statement, in any document whatever, of a fact other than the facts referred to in this section, shall not preclude the admission of oral evidence as to the same fact.

Illustrations

(a) If a contract be contained in several letters, all the letters in which it is contained must be proved.

(b) If a contract is contained in a bill of exchange, the bill of exchange must be proved.

(c) If a bill of exchange is drawn in a set of three, one only need be proved.

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(d) A contracts, in writing, with B, for the delivery of indigo upon certain terms. The contract mentions the fact that B had paid A the price of other indigo contracted for verbally on another occasion..

Oral evidence is offered that no payment was made for the other indigo. The evidence is admissible.

(e) A gives B a receipt for money paid by B.

Oral evidence is offered of the payment.

The evidence is admissible.

LANDMARK JUDGMENT

Roop Kumar vs. Section Mohan Thedani, MANU/SC/0276/2003

95. Exclusion of evidence of oral agreement

When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to section 94, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms:

Provided that any fact may be proved which would invalidate any document, or which would entitle any person to any decree or order relating thereto; such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, want or failure of consideration, or mistake in fact or law:

Provided further that the existence of any separate oral agreement as to any matter on which a document is silent, and which is not inconsistent with its terms, may be proved. In considering whether or not this proviso applies, the Court shall have regard to the degree of formality of the document:

Linked Provisions

Registration Act, 1908 - Section 48 - Registered Documents Relating To Property When To Take Effect Against Oral Agreements

Bharatiya Sakshya Adhiniyam, 2023 - Section 156 - Exclusion of evidence to contradict answers to questions testing veracity

Bharatiya Sakshya Adhiniyam, 2023 - Section 96 - Exclusion of evidence to explain or amend ambiguous document

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Bharatiya Sakshya Adhiniyam, 2023 - Section 97 - Exclusion of evidence against application of document to existing facts

Provided also that the existence of any separate oral agreement, constituting a condition precedent to the attaching of any obligation under any such contract, grant or disposition of property, may be proved:

Provided also that the existence of any distinct subsequent oral agreement to rescind or modify any such contract, grant or disposition of property, may be proved, except in cases in which such contract, grant or disposition of property is by law required to be in writing, or has been registered according to the law in force for the time being as to the registration of documents:

Provided also that any usage or custom by which incidents not expressly mentioned in any contract are usually annexed to contracts of that description, may be proved:

Provided also that the annexing of such incident would not be repugnant to, or inconsistent with, the express terms of the contract:

Provided also that any fact may be proved which shows in what manner the language of a document is related to existing facts.

Illustrations

(a) A policy of insurance is effected on goods "in ships from Kolkata to Visakhapatnam". The goods are shipped in a particular ship which is lost. The fact that particular ship was orally excepted from the policy, cannot be proved.

(b) A agrees absolutely in writing to pay B one thousand rupees on the 1st March, 2023. The fact that, at the same time, an oral agreement was made that the money should not be paid till the 31st March, 2023, cannot be proved.

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(c) An estate called "the Rampur tea estate" is sold by a deed which contains a map of the property sold. The fact that land not included in the map had always been regarded as part of the estate and was meant to pass by the deed cannot be proved.

(d) A enters into a written contract with B to work certain mines, the property of B, upon certain terms. A was induced to do so by a misrepresentation of B's as to their value. This fact may be proved.

(e) A institutes a suit against B for the specific performance of a contract, and also prays that the contract may be reformed as to one of its provisions, as that provision was inserted in it by mistake. A may prove that such a mistake was made as would by law entitle him to have the contract reformed.

(f) A orders goods of B by a letter in which nothing is said as to the time of payment, and accepts the goods on delivery. B sues A for the price. A may show that the goods were supplied on credit for a term still unexpired.

(g) A sells B a horse and verbally warrants him sound. A gives B a paper in these words-- "Bought of A a horse for thirty thousand rupees". B may prove the verbal warranty.

(h) A hires lodgings of B, and gives B a card on which is written-- "Rooms, ten thousand rupees a month". A may prove a verbal agreement that these terms were to include partial board. A hires lodging of B for a year, and a regularly stamped agreement, drawn up by an advocate, is made between them. It is silent on the subject of board. A may not prove that board was included in the term verbally.

(i) A applies to B for a debt due to A by sending a receipt for the money. B keeps the receipt and does not send the money. In a suit for the amount, A may prove this.

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(j) A and B make a contract in writing to take effect upon the happening of a certain contingency. The writing is left with B who sues A upon it. A may show the circumstances under which it was delivered.

Corresponding Provision of Previous Statute: Section 92, Indian Evidence Act, 1872

Section 92 - Exclusion of evidence of oral agreement - When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms:

Proviso (1) - Any fact may be proved which would invalidate any document, or which would entitle any person to any decree or order relating thereto; such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, want or failure of consideration, or mistake in fact or law.

Proviso (2) - The existence of any separate oral agreement as to any matter on which a document is silent, and which is not inconsistent with its terms, may be proved. In considering whether or not this proviso applies, the Court shall have regard to the degree of formality of the document.

Proviso (3) - The existence of any separate oral agreement, constituting a condition precedent to the attaching of any obligation under any such contract, grant or disposition of property, may be proved.

Proviso (4) - The existence of any distinct subsequent oral agreement to rescind or modify any such contract, grant or disposition of property, may be proved, except in cases in which such contract, grant or disposition of property is by law required to be in writing, or has been registered according to the law in force for the time being as to the registration of documents.

Proviso (5) - Any usage or custom by which incidents not expressly mentioned in any contract are usually annexed to contracts of that description, may be proved:

Provided that the annexing of such incident would not be repugnant to, or inconsistent with, the express terms of the contract.

Proviso (6) - Any fact may be proved which shows in what manner the language of a document is related to existing facts.

Illustrations

(a) A policy of insurance is effected on goods "in ships from Calcutta to London". The goods are shipped in a particular ship which is lost. The fact that particular ship was orally excepted from the policy, cannot be proved.

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(b) A agrees absolutely in writing to pay B Rs. 1,000 on the first March 1873. The fact that, at the same time, an oral agreement was made that the money should not be paid till the thirty-first March, cannot be proved.

(c) An estate called "the Rampore tea estate" is sold by a deed which contains a map of the property sold. The fact that land not included in the map had always been regarded as part of the estate and was meant to pass by the deed cannot be proved.

(d) A enters into a written contract with B to work certain mines, the property of B, upon certain terms. A was induced to do so by a misrepresentation of B's as to their value. This fact may be proved.

(e) A institutes a suit against B for the specific performance of a contract, and also prays that the contract may be reformed as to one of its provisions, as that provision was inserted in it by mistake. A may prove that such a mistake was made as would by law entitle him to have the contract reformed.

(f) A orders goods of B by a letter in which nothing is said as to the time of payment, and accepts the goods on delivery. B sues A for the price. A may show that the goods were supplied on credit for a term still unexpired.

(g) A sells B a horse and verbally warrants him sound. A gives B a paper in these words: "Bought of A a horse of Rs. 500". B may prove the verbal warranty.

(h) A hires lodgings of B, and gives B a card on which is written ––"Rooms, Rs. 200 a month." A may prove a verbal agreement that these terms were to include partial board.

A hires lodgings of B for a year, and a regularly stamped agreement, drawn up by an attorney, is made between them. It is silent on the subject of board. A may not prove that board was included in the term verbally.

(i) A applies to B for a debt due to A by sending a receipt for the money. B keeps the receipt and does not send the money. In a suit for the amount, A may prove this.

(j) A and B make a contract in writing to take effect upon the happening of a certain contingency. The writing is left with B, who sues A upon it. A may show the circumstances under which it was delivered.

LANDMARK JUDGMENT

Roop Kumar vSection Mohan Thedani, MANU/SC/0276/2003.

Mangala Waman Karandikar (D) tr. L.RSection vSection Prakash Damodar Ranade, MANU/SC/0343/2021

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96. Exclusion of evidence to explain or amend ambiguous document

When the language used in a document is, on its face, ambiguous or defective, evidence may not be given of facts which would show its meaning or supply its defects.

Illustrations

(a) A agrees, in writing, to sell a horse to B for "one lakh rupees or one lakh fifty thousand rupees". Evidence cannot be given to show which price was to be given.

(b) A deed contains blanks. Evidence cannot be given of facts which would show how they were meant to be filled.

Linked Provisions

Registration Act, 1908 - Section 48 - Registered Documents Relating To Property When To Take Effect Against Oral Agreements

Bharatiya Sakshya Adhiniyam, 2023 - Section 156 - Exclusion of evidence to contradict answers to questions testing veracity

Bharatiya Sakshya Adhiniyam, 2023 - Section 96 - Exclusion of evidence to explain or amend ambiguous document

Corresponding Provision of Previous Statute: Section 93, Indian Evidence Act, 1872

Section 93 - Exclusion of evidence to explain or amend ambiguous document - When the language used in a document is, on its face, ambiguous or defective, evidence may not be given of facts which would show its meaning or supply its defects.

Illustrations

(a) A agrees, in writing, to sell a horse to B for “Rs. 1,000 or Rs. 1,500”. Evidence cannot be given to show which price was to be given.

(b) A deed contains blanks. Evidence cannot be given of facts which would show how they were meant to be filled.

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97. Exclusion of evidence against application of document to existing facts

When language used in a document is plain in itself, and when it applies accurately to existing facts, evidence may not be given to show that it was not meant to apply to such facts.

Illustration

A sells to B, by deed, "my estate at Rampur containing one hundred bighas". A has an estate at Rampur containing one hundred bighas. Evidence may not be given of the fact that the estate meant to be sold was one situated at a different place and of a different size.

Linked Provisions

Registration Act, 1908 - Section 48 - Registered Documents Relating To Property When To Take Effect Against Oral Agreements

Bharatiya Sakshya Adhiniyam, 2023 - Section 156 - Exclusion of evidence to contradict answers to questions testing veracity

Bharatiya Sakshya Adhiniyam, 2023 - Section 96 - Exclusion of evidence to explain or amend ambiguous document

Corresponding Provision of Previous Statute: Section 94, Indian Evidence Act, 1872

Section 94 - Exclusion of evidence against application of document to existing facts - When language used in a document is plain in itself, and when it applies accurately to existing facts, evidence may not be given to show that it was not meant to apply to such facts.

Illustration

A sells to B, by deed, “my estate at Rampur containing 100 bighas”. A has an estate at Rampur containing 100 bighas. Evidence may not be given of the fact that the estate meant to be sold was one situated at a different place and of a different size.

98. Evidence as to document unmeaning in reference to existing facts

When language used in a document is plain in itself, but is unmeaning in reference to existing facts, evidence may be given to show that it was used in a peculiar sense.

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Illustration

A sells to B, by deed, "my house in Kolkata". A had no house in Kolkata, but it appears that he had a house at Howrah, of which B had been in possession since the execution of the deed. These facts may be proved to show that the deed related to the house at Howrah.

Corresponding Provision of Previous Statute: Section 95, Indian Evidence Act, 1872

Section 95 - Evidence as to document unmeaning reference to existing facts - When language used in a document is plain in itself, but is unmeaning in reference to existing facts, evidence may be given to show that it was used in a peculiar sense.

Illustration

A sells to B, by deed, "my house in Calcutta".

A had no house in Calcutta, but it appears that he had a house at Howrah, of which B had been in possession since the execution of the deed.

These facts may be proved to show that the deed related to the house at Howrah.

LANDMARK JUDGMENT

Mangala Waman Karandikar (D) tr. L.RSection vSection Prakash Damodar Ranade, MANU/SC/0343/2021

99. Evidence as to application of language which can apply to one only of several persons

When the facts are such that the language used might have been meant to apply to any one, and could not have been meant to apply to more than one, of several persons or things, evidence may be given of facts which show which of those persons or things it was intended to apply to.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 100 - Evidence as to application of language to one of two sets of facts, to neither of which the whole correctly applies

Illustrations

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(a) A agrees to sell to B, for one thousand rupees, "my white horse". A has two white horses. Evidence may be given of facts which show which of them was meant.

(b) A agrees to accompany B to Ramgarh. Evidence may be given of facts showing whether Ramgarh in Rajasthan or Ramgarh in Uttarakhand was meant.

Corresponding Provision of Previous Statute: Section 96, Indian Evidence Act, 1872

Section 96 - Evidence as to application of language which can apply to one only of several Persons - When the facts are such that the language used might have been meant to apply to any one, and could not have been meant to apply to more than one, of several persons or things, evidence may be given of facts which show which of those persons or things it was intended to apply to.

Illustrations

(a) A agrees to sell to B, for Rs. 1,000, “my white horse”. A has two white horses. Evidence may be give of facts which show which of them was meant.

(b) A agrees to accompany B to Haidarabad. Evidence may be given of facts showing whether Haidarabad in the Dekkhan or Haiderabad in Sind was meant.

100. Evidence as to application of language to one of two sets of facts, to neither of which the whole correctly applies

When the language used applies partly to one set of existing facts, and partly to another set of existing facts, but the whole of it does not apply correctly to either, evidence may be given to show to which of the two it was meant to apply.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 99 - Evidence as to application of language which can apply to one only of several persons

Illustration

A agrees to sell to B "my land at X in the occupation of Y". A has land at X, but not in the occupation of Y, and he has land in the occupation of Y but it is not at X. Evidence may be given of facts showing which he meant to sell.

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Corresponding Provision of Previous Statute: Section 97, Indian Evidence Act, 1872

Section 97 - Evidence as to application of language to one of two sets of facts, to neither of which the whole correctly applies - When the language used applies partly to one set of existing facts, and partly to another set of existing facts, but the whole of it does not apply correctly to either, evidence may be given to show to which of the two it was meant to apply.

Illustration

A agrees to sell to B "my land at X in the occupation of Y". A has land at X, but not in the occupation of Y, and he has land in the occupation of Y but it is not at X. Evidence may be given of facts showing which he meant to sell.

101. Evidence as to meaning of illegible characters, etc

Evidence may be given to show the meaning of illegible or not commonly intelligible characters, of foreign, obsolete, technical, local and regional expressions, of abbreviations and of words used in a peculiar sense.

Illustration

A, sculptor, agrees to sell to B, "all my mods". A has both models and modelling tools. Evidence may be given to show which he meant to sell.

Corresponding Provision of Previous Statute: Section 98, Indian Evidence Act, 1872

Section 98 - Evidence as to meaning of illegible characters, etc. - Evidence may be given to show the meaning of illegible or not commonly intelligible characters, of foreign, obsolete, technical, local and provincial expressions, of abbreviations and of words used in a peculiar sense.

Illustration

A, sculptor, agrees to sell to B, "all my mods". A has both models and modelling tools. Evidence may be given to show which he meant to sell.

102. Who may give evidence of agreement varying terms of document

Persons who are not parties to a document, or their representatives in interest, may give evidence of any facts tending to show a contemporaneous agreement varying the terms of the document.

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Illustration

A and B make a contract in writing that B shall sell A certain cotton, to be paid for on delivery. At the same time, they make an oral agreement that three months' credit shall be given to A. This could not be shown as between A and B, but it might be shown by C, if it affected his interests.

Corresponding Provision of Previous Statute: Section 99, Indian Evidence Act, 1872

Section 99 - Who may give evidence of agreement varying terms of document - Persons who are not parties to a document, or their representatives in interest, may give evidence of any facts tending to show a contemporaneous agreement varying the terms of the document.

Illustration

A and B make a contract in writing that B shall sell A certain cotton, to be paid for on delivery. At the same time they make an oral agreement that three months credit shall be given to A. This could not be shown as between

103. Saving of provisions of Indian Succession Act relating to wills

Nothing in this Chapter shall be taken to affect any of the provisions of the Indian Succession Act, 1925 (39 of 1925) as to the construction of wills.

Corresponding Provision of Previous Statute: Section 100, Indian Evidence Act, 1872

Section 100 - Saving of provisions of Indian Succession Act relating to wills - Nothing in this Chapter contained shall be taken to affect any of the provisions of the Indian Succession Act, 1865 (10 of 1865) as to the construction of willsA and B, but it might be shown by C, if it affected his interests.

PART IV

PRODUCTION AND EFFECT OF EVIDENCE

CHAPTER VII

OF THE BURDEN OF PROOF

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104. Burden of proof

Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist, and when a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

Illustrations

(a) A desires a Court to give judgment that B shall be punished for a crime which A says B has committed. A must prove that B has committed the crime.

(b) A desires a Court to give judgment that he is entitled to certain land in the possession of B, by reason of facts which he asserts, and which B denies, to be true. A must prove the existence of those facts.

Linked Provisions

The Bonded Labour System (Abolition) Act, 1976 - Section 15 - Burden Of Proof

The Capital Issues (Control) Act, 1947 - Section 14 - Burden Of Proof In Certain Cases

Central Goods and Services Tax Act, 2017- Section 155 - Burden Of Proof

The Central Sales Tax Act, 1956 - Section 6A - Burden Of Proof, Etc., In Case Of Transfer Of Goods Claimed Otherwise Than By Way Of Sale

The Commission of Sati (Prevention) Act, 1987 - Section 16 - Burden Of Proof

The Customs Act, 1962 - Section 123 - Burden Of Proof In Certain Cases

Delhi Sales Tax Act, 1975 - Section 6 - Burden Of Proof

The Dowry Prohibition Act, 1961 - Section 8A - Burden Of Proof In Certain Cases

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Essential Commodities Act, 1955 - Section 14 - Burden Of Proof In Certain Cases

Foreign Exchange Regulations Act, 1973 - Section 71 - Burden Of Proof In Certain Cases

Foreigners Act, 1946 - Section 9 - Burden Of Proof

The Indian Factories Act, 1881 - Section 16 - Burden Of Proof As To Age

Indian Railways Act, 1890 - Section 76 - Burden Of Proof In Suits For Compensation

The Industries (Development and Regulation) Act, 1951 - Section 28 - Burden Of Proof In Certain Cases

Narcotic-Drugs and Psychotropic Substances Act 1985 - Section 68J - Burden Of Proof

Patents Act, 1970 - Section 104A - Burden Of Proof In Case Of Suits Concerning Infringement

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The Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 - Section 16A - Burden Of Proof In Certain Cases

Prevention of Money Laundering Act, 2002 - Section 24 - Burden Of Proof

Public Interest Disclosure (Protection of Informers) Act, 2002 - Section 14 - Burden Of Proof In Certain Cases

Railways Act - Section 41 - Burden Of Proof, Etc.

Railways Act- Section 110 - Burden Of Proof

Reciprocity Act, 1943 - Section 4 - Burden Of Proof On Person Claiming Exemption

Registration of Foreigners Act, 1939 - Section 4 - Burden Of Proof

Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 - Section 8 - Burden Of Proof

Wild Life (Protection) Act, 1972 - Section 58J - Burden Of Proof

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Bharatiya Sakshya Adhiniyam, 2023 - Section 105 - On whom burden of proof lies

Bharatiya Sakshya Adhiniyam, 2023 - Section 106 - Burden of proof as to particular fact

Bharatiya Sakshya Adhiniyam, 2023 - Section 112 - Burden of proof as to relationship in the cases of partners, landlord and tenant, principal and agent

Bharatiya Sakshya Adhiniyam, 2023 - Section 113 - Burden of proof as to ownership

Corresponding Provision of Previous Statute: Section 101, Indian Evidence Act, 1872

Section 101 - Burden of proof - Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

Illustrations

(a) A desires a Court to give judgment that B shall be punished for a crime which A says B has committed. A must prove that B has committed the crime.

(b) A desires a Court to give judgment that he is entitled to certain land in the possession of B, by reason of facts which he asserts, and which B denies, to be true. A must prove the existence of those facts.

LANDMRK JUDGMENT

State of U.P. vSection Deoman Upadhyaya, MANU/SC/0060/1960

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105. On whom burden of proof lies

The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

Illustrations

(a) A sues B for land of which B is in possession, and which, as A asserts, was left to A by the will of C, B's father. If no evidence were given on either side, B would be entitled to retain his possession. Therefore, the burden of proof is on A.

(b) A sues B for money due on a bond. The execution of the bond is admitted, but B says that it was obtained by fraud, which A denies. If no evidence were given on either side, A would succeed, as the bond is not disputed and the fraud is not proved. Therefore, the burden of proof is on B.

Linked Provisions

Reciprocity Act, 1943 - Section 4 - Burden Of Proof On Person Claiming Exemption

Bharatiya Sakshya Adhiniyam, 2023 - Section 104 - Burden of proof

Corresponding Provision of Previous Statute: Section 102, Indian Evidence Act, 1872

Section 102 - On whom burden of proof lies - The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

Illustrations

(a) A sues B for land of which B is in possession, and which, as A asserts, was left to A by the will of C, B's father.

If no evidence were given on either side, B would be entitled to retain his possession.

Therefore the burden of proof is on A.

(b) A sues B for money due on a bond.

The execution of the bond is admitted, but B says that it was obtained by fraud, which A denies.

If no evidence were given on either side, A would succeed, as the bond is not disputed and the fraud is not proved.

Therefore the burden of proof is on B.

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106. Burden of proof as to particular fact

The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

Illustration

A prosecutes B for theft, and wishes the Court to believe that B admitted the theft to C. A must prove the admission. B wishes the Court to believe that, at the time in question, he was elsewhere. He must prove it.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 104 - Burden of proof

Bharatiya Sakshya Adhiniyam, 2023 - Section 107 - Burden of proving fact to be proved to make evidence admissible

Bharatiya Sakshya Adhiniyam, 2023 - Section 109 - Burden of proving fact especially within knowledge

Corresponding Provision of Previous Statute: Section 103, Indian Evidence Act, 1872

Section 103 - Burden of proof as to particular fact - The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

Illustrations

(a) A prosecutes B for theft, and wishes the Court to believe that B admitted the theft to C. A must prove the admission.

(b) B wishes the Court to believe that, at the time in question, he was elsewhere. He must prove it.

107. Burden of proving fact to be proved to make evidence admissible

The burden of proving any fact necessary to be proved in order to enable any person to give evidence of any other fact is on the person who wishes to give such evidence.

Illustrations

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 109 - Burden of proving fact especially within knowledge

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(a) A wishes to prove a dying declaration by B. A must prove B's death.

(b) A wishes to prove, by secondary evidence, the contents of a lost document. A must prove that the document has been lost.

Bharatiya Sakshya Adhiniyam, 2023 - Section 106 - Burden of proof as to particular fact

Corresponding Provision of Previous Statute: Section 104, Indian Evidence Act, 1872

Section 104 - Burden of proving fact to be proved to make evidence admissible - The burden of proving any fact necessary to be proved in order to enable any person to give evidence of any other fact is on the person who wishes to give such evidence.

Illustrations

(a) A wishes to prove a dying declaration by B. A must prove B's death.

(b) A wishes to prove, by secondary evidence, the contents of a lost document.

A must prove that the document has been lost.

108. Burden of proving that case of accused comes within exceptions

When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Bharatiya Nyaya Sanhita, 2023 or within any special exception or proviso contained in any other part of the said Sanhita, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 104 - Burden of proof

Illustrations

(a) A, accused of murder, alleges that, by reason of unsoundness of mind, he did not know the nature of the act. The burden of proof is on A.

(b) A, accused of murder, alleges that, by grave and sudden provocation, he was deprived of the power of self-control. The burden of proof is on A.

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(c) Section 117 of the Bharatiya Nyaya Sanhita, 2023 provides that whoever, except in the case provided for by sub-section (2) of section 122, voluntarily causes grievous hurt, shall be subject to certain punishments. A is charged with voluntarily causing grievous hurt under section 117. The burden of proving the circumstances bringing the case under sub-section (2) of section 122 lies on A.

Corresponding Provision of Previous Statute: Section 105, Indian Evidence Act, 1872

Section 105 - Burden of proving that case of accused comes within exceptions - When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Indian Penal Code (45 of 1860), or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances.

Illustrations

(a) A, accused of murder, alleges that, by reason of unsoundness of mind, he did not know the nature of the act.

The burden of proof is on A.

(b) A, accused of murder, alleges that, by grave and sudden provocation, he was deprived of the power of self-control.

The burden of proof is on A.

(c) Section 325 of the Indian Penal Code (45 of 1860) provides that whoever, except in the case provided for by section 335, voluntarily causes grievous hurt, shall be subject to certain punishments.

A is charged with voluntarily causing grievous hurt under section 325.

The burden of proving the circumstances bringing the case under section 335 lies on A.

LANDMARK JUDGMENT

K.M. Nanavati vSection State of Maharashtra, MANU/SC/0147/1961

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109. Burden of proving fact especially within knowledge

When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

Illustrations

(a) When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.

(b) A is charged with travelling on a railway without a ticket. The burden of proving that he had a ticket is on him.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 106 - Burden of proof as to particular fact

Bharatiya Sakshya Adhiniyam, 2023 - Section 107 - Burden of proving fact to be proved to make evidence admissible

Corresponding Provision of Previous Statute: Section 106, Indian Evidence Act, 1872

Section 106 - Burden of proving fact especially within knowledge - When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

Illustrations

(a) When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.

(b) A is charged with travelling on a railway without a ticket. The burden of proving that he had a ticket is on him

110. Burden of proving death of person known to have been alive within thirty years

When the question is whether a man is alive or dead, and it is shown that he was alive within thirty years, the burden of proving that he is dead is on the person who affirms it.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 106 - Burden of proof as to particular fact

Bharatiya Sakshya Adhiniyam, 2023 - Section 107 - Burden of proving fact to be proved to make evidence admissible

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Corresponding Provision of Previous Statute: Section 107, Indian Evidence Act, 1872

Section 107 - Burden of proving death of person known to have been alive within thirty years - When the question is whether a man is alive or dead, and it is shown that he was alive within thirty years, the burden of proving that he is dead is on the person who affirms it.

111. Burden of proving that person is alive who has not been heard of for seven years

When the question is whether a man is alive or dead, and it is proved that he has not been heard of for seven years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is shifted to the person who affirms it.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 104 - Burden of proof

Corresponding Provision of Previous Statute: Section 108, Indian Evidence Act, 1872

Section 108 - Burden of proving that person is alive who has not been heard of for seven Years -

Provided that when the question is whether a man is alive or dead, and it is proved that he has not been heard of for seven years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is shifted to] the person who affirms it

112. Burden of proof as to relationship in the cases of partners, landlord and tenant, principal and agent

When the question is whether persons are partners, landlord and tenant, or principal and agent, and it has been shown that they have been acting as such, the burden of proving that they do not stand, or have ceased to stand, to each other in those relationships respectively, is on the person who affirms it.

Linked Provisions

Limited Liability Partnership Act, 2008 - Section 23 - Relationship Of Partners

Corresponding Provision of Previous Statute: Section 109, Indian Evidence Act, 1872

Section 109 - Burden of proof as to relationship in the cases of partners, landlord and tenant, principal and agent - When the question is whether persons are partners, landlord and tenant, or principal and agent, and it has been shown that they have been acting as such, the burden of proving that they do not stand, or have ceased to stand, to each other in those relationships respectively, is on the person who affirms it.

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113. Burden of proof as to ownership

When the question is whether any person is owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner.

Linked Provisions

Ajmer Tenancy and Land Records Act, 1950 - Section 193 - Dispute As Regards Ownership Of Land

Companies Act, 1956- Section 187D - Investigation Of Beneficial Ownership Of Shares In Certain Cases

Companies Act, 1956- Section 247 - Investigation Of Ownership Of Company

Companies Act, 2013 - Section 216 - Profit And Loss Account To Be Annexed And Auditors' Report To Be Attached To Balance-Sheet

Gold (Control) Act, 1968 - Section 99 - Presumption As To Ownership Of Gold

Indian Treasure-Trove Act, 1878 - Section 13 - In Case Of Dispute As To Ownership Of Place, Proceedings To Be Stayed

Merchant Shipping Act, 1958 - Section 29 - Declaration Of Ownership On Registry

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The Trade And Merchandise Marks Act, 1958 - Section 129 - Declaration As To Ownership Of Trade Mark Not Registrable Under The Indian Registration Act, 1908

The Trade And Merchandise Marks Act, 1958 - Section 152 - Declaration As To Ownership Of Trade Mark Not Registrable Under The Indian Registration Act, 1908, 1908

Corresponding Provision of Previous Statute: Section 110, Indian Evidence Act, 1872

Section 110 - Burden of proof as to ownership - When the question is whether any person is owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner.

114. Proof of good faith in transactions where one party is in relation of active confidence

Where there is a question as to the good faith of a transaction between parties, one of whom stands to the other in a position of active confidence, the burden of proving the good faith of the transaction is on the party who is in a position of active confidence.

Illustrations.

(a) The good faith of a sale by a client to an advocate is in question in a suit brought by the client. The burden of proving the good faith of the transaction is on the advocate.

Linked Provisions

Delhi Police Act - Section 138 - No Police Officer To Be Liable To Penalty Or Damage For Act Done In Good Faith In Pursuance Of Duty

Bharatiya Nyaya Sanhita, 2023 - Section 27 - Act done in good faith for benefit of child or person of unsound mind

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(b) The good faith of a sale by a son just come of age to a father is in question in a suit brought by the son. The burden of proving the good faith of the transaction is on the father.

Bharatiya Nyaya Sanhita, 2023 - Section 30 - Act done in good faith for benefit of person without consent

Corresponding Provision of Previous Statute: Section 111, Indian Evidence Act, 1872

Section 111 - Proof of good faith in transactions where one party is in relation of active confidence - Where there is a question as to the good faith of a transaction between parties, one of whom stands to the other in a position of active confidence, the burden of proving the good faith of the transaction is on the party who is in a position of active confidence.

Illustrations

(a) The good faith of a sale by a client to an attorney is in question in a suit brought by the client. The burden of proving the good faith of the transaction is on the attorney.

(b) The good faith of a sale by a son just come of age to a father is in question in a suit brought by the son. The burden of proving the good faith of the transaction is on the father.

115. Presumption as to certain offences

(1) Where a person is accused of having committed any offence specified in sub-section (2), in--

(a) any area declared to be a disturbed area under any enactment for the time being in force, making provision for the suppression of disorder and restoration and maintenance of public order; or

(b) any area in which there has been, over a period of more than one month, extensive disturbance of the public peace,

and it is shown that such person had been at a place in such area at a time when firearms or explosives were used at or from that place to attack or resist the members of any armed forces or the forces charged with the maintenance of public order acting in the discharge of their

Linked Provisions

Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 - Section 3 - Power To Declare Areas To Be Disturbed Areas

Armed Forces (Special Powers) Act, 1958 - Section 3 - Power To Declare Areas To Be Disturbed Areas

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duties, it shall be presumed, unless the contrary is shown, that such person had committed such offence.

(2) The offences referred to in sub-section (1) are the following, namely:-

-

(a) an offence under section 147, section 148, section 149 or section 150 of the Bharatiya Nyaya Sanhita, 2023;

(b) criminal conspiracy or attempt to commit, or abetment of, an offence under section 149 or section 150 of the Bharatiya Nyaya Sanhita, 2023.

The Arms Act, 1959 - Section 24A - Prohibition As To Possession Of Notified Arms In Disturbed Areas, Etc.

The Arms Act, 1959 - Section 24B - Prohibition As To Carrying Of Notified Arms In Or Through Public Places In Disturbed Areas, Etc.

Corresponding Provision of Previous Statute: Section 111A, Indian Evidence Act, 1872

Section 111A - Presumption as to certain offences - (1) Where a person is accused of having committed any offence specified in sub-section (2), in –

(a) any area declared to be a disturbed area under any enactment, for the time being in force, making provision for the suppression of disorder and restoration and maintenance of public order; or

(b) any area in which there has been, over a period of more than one month, extensive disturbance of the public peace,

and it is shown that such person had been at a place in such area at a time when firearms or explosives were used at or from that place to attack or resist the members of any armed forces or the forces charged with the maintenance of public order acting in the discharge of their duties, it shall be presumed, unless the contrary is shown, that such person had committed such offence.

(2) The offences referred to in sub-section (1) are the following, namely: –

(a) an offence under section 121, section 121A, section 122 or section 123 of the Indian Penal

Code (45 of 1860);

(b) criminal conspiracy or attempt to commit, or abetment of, an offence under section 122 or section 123 of the Indian Penal Code (45 of 1860).

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116. Birth during marriage, conclusive proof of legitimacy

The fact that any person was born during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the legitimate child of that man, unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten.

Corresponding Provision of Previous Statute: Section 112, Indian Evidence Act, 1872

Section 112 - Birth during marriage, conclusive proof of legitimacy - The fact that any person was born during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the legitimate son of that man, unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten.

117. Presumption as to abetment of suicide by a married woman

When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.

Explanation.--For the purposes of this section, "cruelty" shall have the same meaning as in section 86 of the Bharatiya Nyaya Sanhita, 2023.

Linked Provisions

The Commission of Sati (Prevention) Act, 1987 - Section 4 - Abetment Of Sati

Bharatiya Nyaya Sanhita, 2023 - Section 108 - Abetment of suicide

Bharatiya Nyaya Sanhita, 2023 - Section 85 - Husband or relative of husband of a woman subjecting her to cruelty

Corresponding Provision of Previous Statute: Section 113A, Indian Evidence Act, 1872

Section 113A - Presumption as to abetment of suicide by a married woman - When the question is

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whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.

Explanation. – For the purposes of this section, "cruelty" shall have the same meaning as in section 498A of the Indian Penal Code (45 of 1860).

118. Presumption as to dowry death

When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death, such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.

Explanation.--For the purposes of this section, "dowry death" shall have the same meaning as in section 80 of the Bharatiya Nyaya Sanhita, 2023.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 80 - Dowry Death

Corresponding Provision of Previous Statute: Section 113A, Indian Evidence Act, 1872

Section 113A - Presumption as to dowry death - When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the court shall presume that such person had caused the dowry death.

Explanation. - For the purposes of this section, "dowry death" shall have the same meaning as in section 304B of the Indian Penal Code (45 of 1860).

119. Court may presume existence of certain facts

(1) The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

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Illustrations.

The Court may presume that--

(a) a man who is in possession of stolen goods soon, after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession;

(b) an accomplice is unworthy of credit, unless he is corroborated in material particulars;

(c) a bill of exchange, accepted or endorsed, was accepted or endorsed for good consideration;

(d) a thing or state of things which has been shown to be in existence within a period shorter than that within which such things or state of things usually cease to exist, is still in existence;

(e) judicial and official acts have been regularly performed;

(f) the common course of business has been followed in particular cases;

(g) evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it;

(h) if a man refuses to answer a question which he is not compelled to answer by law, the answer, if given, would be unfavourable to him;

(i) when a document creating an obligation is in the hands of the obligor, the obligation has been discharged.

(2) The Court shall also have regard to such facts as the following, in considering whether such maxims do or do not apply to the particular case before it:--

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(i) as to Illustration (a)--a shop-keeper has in his bill a marked rupee soon after it was stolen, and cannot account for its possession specifically, but is continually receiving rupees in the course of his business;

(ii) as to Illustration (b)--A, a person of the highest character, is tried for causing a man's death by an act of negligence in arranging certain machinery. B, a person of equally good character, who also took part in the arrangement, describes precisely what was done, and admits and explains the common carelessness of A and himself;

(iii) as to Illustration (b)--a crime is committed by several persons. A, B and C, three of the criminals, are captured on the spot and kept apart from each other. Each gives an account of the crime implicating D, and the accounts corroborate each other in such a manner as to render previous concert highly improbable;

(iv) as to Illustration (c)--A, the drawer of a bill of exchange, was a man of business. B, the acceptor, was a young and ignorant person, completely under A's influence;

(v) as to Illustration (d)--it is proved that a river ran in a certain course five years ago, but it is known that there have been floods since that time which might change its course;

(vi) as to Illustration (e)--a judicial act, the regularity of which is in question, was performed under exceptional circumstances;

(vii) as to Illustration (f)--the question is, whether a letter was received. It is shown to have been posted, but the usual course of the post was interrupted by disturbances;

(viii) as to Illustration (g)--a man refuses to produce a document which would bear on a contract of small importance on which he is

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sued, but which might also injure the feelings and reputation of his family;

(ix) as to Illustration (h)--a man refuses to answer a question which he is not compelled by law to answer, but the answer to it might cause loss to him in matters unconnected with the matter in relation to which it is asked;

(x) as to Illustration (i)--a bond is in possession of the obligor, but the circumstances of the case are such that he may have stolen it.

Corresponding Provision of Previous Statute: Section 114, Indian Evidence Act, 1872

Section 114 - Court may presume existence of certain facts - The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case

Illustrations

The Court may presume -

(a) that a man who is in possession of stolen goods soon, after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession;

(b) that an accomplice is unworthy of credit, unless he is corroborated in material particulars;

(c) that a bill of exchange, accepted or endorsed, was accepted or endorsed for good consideration;

(d) that a thing or state of things which has been shown to be in existence within a period shorter than that within which such things or states of things usually cease to exist, is still in existence;

(e) that judicial and official acts have been regularly performed;

(f) that the common course of business has been followed in particular cases;

(g) that evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it;

(h) that if a man refuses to answer a question which he is not compelled to answer by law, the answer, if given, would be unfavourable to him;

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(i) that when a document creating an obligation is in the hands of the obligor, the obligation has been discharged.

But the Court shall also have regard to such facts as the following, in considering whether such maxims do or do not apply to the particular case before it: –

as to illustration (a) –– a shop-keeper has in his bill a marked rupee soon after it was stolen, and cannot account for its possession specifically, but is continually receiving rupees in the course of his business;

as to illustration (b) ––A, a person of the highest character, is tried for causing a man's death by an act of negligence in arranging certain machinery. B, a person of equally good character, who also took part in the arrangement, describes precisely what was done, and admits and explains the common carelessness of A and himself;

as to illustration (b) –– a crime is committed by several persons. A, B and C, three of the criminals, are captured on the spot and kept apart from each other. Each gives an account of the crime implicating D, and the accounts corroborate each other in such a manner as to render previous concert highly improbable;

as to illustration (c) –– A, the drawer of a bill of exchange, was a man of business. B, the acceptor, was a young and ignorant person, completely under A's influence;

as to illustration (d) –– it is proved that a river ran in a certain course five years ago, but it is known that there have been floods since that time which might change its course;

as to illustration (e) –– a judicial act, the regularity of which is in question, was performed under exceptional circumstances;

as to illustration (f) –– the question is, whether a letter was received. It is shown to have been posted, but the usual course of the post was interrupted by disturbances;

as to illustration (g) –– a man refuses to produce a document which would bear on a contract of small

importance on which he is sued, but which might also injure the feelings and reputation of his family;

as to illustration (h) –– a man refuses to answer a question which he is not compelled by law to answer, but the answer to it might cause loss to him in matters unconnected with the matter in relation to which it is asked;

as to illustration (i) –– a bond is in possession of the obligor, but the circumstances of the case are such that he may have stolen it.

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120. Presumption as to absence of consent in certain prosecution for rape

In a prosecution for rape under sub-section (2) of section 64 of the Bharatiya Nyaya Sanhita, 2023, where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and such woman states in her evidence before the Court that she did not consent, the Court shall presume that she did not consent.

Explanation.--In this section, "sexual intercourse" shall mean any of the acts mentioned in section 63 of the Bharatiya Nyaya Sanhita, 2023.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 64 - Punishment for rape

Bharatiya Nyaya Sanhita, 2023 - Section 65(1) - Rape on woman under 16 years of age

Bharatiya Nyaya Sanhita, 2023 - Section 63 - Rape

Corresponding Provision of Previous Statute: Section 114, Indian Evidence Act, 1872

Section 114 - Presumption as to absence of consent in certain prosecution for rape - In a prosecution for rape under clause (a), clause (b), clause (c), clause (d), clause (e), clause (f), clause (g), clause (h), clause (i), clause (j), clause (k), clause (l), clause (m) or clause (n) of sub-section (2) of section 376 of the Indian Penal Code (45 of 1860), where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and such woman states in her evidence before the court that she did not consent, the court shall presume that she did not consent.

Explanation.– In this section, "sexual intercourse" shall mean any of the acts mentioned in clauses (a) to (d) of section 375 of the Indian Penal Code (45 of 1860).

CHAPTER VIII

ESTOPPEL

121. Estoppel

When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing.

Linked Provisions

Negotiable Instruments Act, 1881 - Section 120 - Estoppel Against Denying Original Validity Of Instrument

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Illustration

A intentionally and falsely leads B to believe that certain land belongs to A, and thereby induces B to buy and pay for it. The land afterwards becomes the property of A, and A seeks to set aside the sale on the ground that, at the time of the sale, he had no title. He must not be allowed to prove his want of title.

Negotiable Instruments Act, 1881 - Section 121 - Estoppel Against Denying Capacity Of Payee To Indorse

Negotiable Instruments Act, 1881 - Section 122 - Estoppel Against Denying Signature Or Capacity Of Prior Party

Bharatiya Sakshya Adhiniyam, 2023 - Section 122 - Estoppel of tenants and of licensee of person in possession

Bharatiya Sakshya Adhiniyam, 2023 - Section 123 - Estoppel of acceptor of bill of exchange, bailee or licensee

Corresponding Provision of Previous Statute: Section 115, Indian Evidence Act, 1872

Section 115 - Estoppel - When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing.

Illustration

A intentionally and falsely leads B to believe that certain land belongs to A, and thereby induces B to buy and pay for it.

The land afterwards becomes the property of A, and A seeks to set aside the sale on the ground that, at the time of the sale, he had no title. He must not be allowed to prove his want of title.

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122. Estoppel of tenant and of licensee of person in possession

No tenant of immovable property, or person claiming through such tenant, shall, during the continuance of the tenancy or any time thereafter, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property; and no person who came upon any immovable property by the licence of the person in possession thereof shall be permitted to deny that such person had a title to such possession at the time when such licence was given.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 121 - Estoppel

Bharatiya Sakshya Adhiniyam, 2023 - Section 123 - Estoppel of acceptor of bill of exchange, bailee or licensee

Corresponding Provision of Previous Statute: Section 116, Indian Evidence Act, 1872

Section 116 - Estoppel of tenants and of licensee of person in possession - No tenant of immovable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property; and no person who came upon any immovable property by the licence of the person in possession there of shall be permitted to deny that such person had a title to such possession at the time when such licence was given.

123. Estoppel of acceptor of bill of exchange, bailee or licensee

No acceptor of a bill of exchange shall be permitted to deny that the drawer had authority to draw such bill or to endorse it; nor shall any bailee or licensee be permitted to deny that his bailor or licensor had, at the time when the bailment or licence commenced, authority to make such bailment or grant such licence.

Explanation 1.--The acceptor of a bill of exchange may deny that the bill was really drawn by the person by whom it purports to have been drawn.

Explanation 2.--If a bailee delivers the goods bailed to a person other than the bailor, he may prove that such person had a right to them as against the bailor.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 121 - Estoppel

Bharatiya Sakshya Adhiniyam, 2023 - Section 122 - Estoppel of tenants and of licensee of person in possession

Negotiable Instruments Act, 1881 - Section 5 - Bill Of Exchange

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The Indian Contract Act, 1872 - Section 148 - 'Bailment', `Bailor' And `Bailee' Defined

Corresponding Provision of Previous Statute: Section 117, Indian Evidence Act, 1872

Section 117 - Estoppel of acceptor of bill of exchange, bailee or licensee - No acceptor of a bill of exchange shall be permitted to deny that the drawer had authority to draw such bill or to endorse it; nor shall any bailee or licensee be permitted to deny that his bailor or licensor had, at the time when the bailment or licence commenced, authority to make such bailment or grant such licence.

Explanation (1). –– The acceptor of a bill of exchange may deny that the bill was really drawn by the person by whom it purports to have been drawn.

Explanation (2). –– If a bailee delivers the goods bailed to a person other than the bailor, he may prove that such person had a right to them as against the bailor

CHAPTER IX

OF WITNESSES

124. Who may testify

All persons shall be competent to testify unless the Court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind.

Explanation.--A person of unsound mind is not incompetent to testify, unless he is prevented by his unsoundness of mind from understanding the questions put to him and giving rational answers to them.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 121 - Estoppel

Bharatiya Sakshya Adhiniyam, 2023 - Section 122 - Estoppel of tenants and of licensee of person in possession

Negotiable Instruments Act, 1881 - Section 5 - Bill Of Exchange

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Corresponding Provision of Previous Statute: Section 118, Indian Evidence Act, 1872

Section 118 - Who may testify - All persons shall be competent to testify unless the Court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind.

Explanation - A lunatic is not incompetent to testify, unless he is prevented by his lunacy from understanding the questions put to him and giving rational answers to them.

125. Witness unable to communicate verbally

A witness who is unable to speak may give his evidence in any other manner in which he can make it intelligible, as by writing or by signs; but such writing must be written and the signs made in open Court and evidence so given shall be deemed to be oral evidence:

Provided that if the witness is unable to communicate verbally, the Court shall take the assistance of an interpreter or a special educator in recording the statement, and such statement shall be videographed.

Corresponding Provision of Previous Statute: Section 119, Indian Evidence Act, 1872

Section 119 - Witness unable to communicate verbally - A witness who is unable to speak may give his evidence in any other manner in which he can make it intelligible, as by writing or by signs; but such writing must be written and the signs made in open Court, evidence so given shall be deemed to be oral evidence:

Provided that if the witness is unable to communicate verbally, the Court shall take the assistance of an interpreter or a special educator in recording the statement, and such statement shall be video graphed.

126. Competency of husband and wife as witnesses in certain cases

(1) In all civil proceedings the parties to the suit, and the husband or wife of any party to the suit, shall be competent witnesses.

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(2) In criminal proceedings against any person, the husband or wife of such person, respectively, shall be a competent witness.

Corresponding Provision of Previous Statute: Section 120, Indian Evidence Act, 1872

Section 120 - Parties to civil suit, and their wives or husbands. Husband or wife of person under criminal trial - In all civil proceedings the parties to the suit, and the husband or wife of any party to the suit, shall be competent witnesses. In criminal proceedings against any person, the husband or wife of such person, respectively, shall be a competent witness.

127. Judges and Magistrates

No Judge or Magistrate shall, except upon the special order of some Court to which he is subordinate, be compelled to answer any question as to his own conduct in Court as such Judge or Magistrate, or as to anything which came to his knowledge in Court as such Judge or Magistrate; but he may be examined as to other matters which occurred in his presence whilst he was so acting.

Illustrations.

(a) A, on his trial before the Court of Session, says that a deposition was improperly taken by B, the Magistrate. B cannot be compelled to answer questions as to this, except upon the special order of a superior Court.

(b) A is accused before the Court of Session of having given false evidence before B, a Magistrate. B cannot be asked what A said, except upon the special order of the superior Court.

(c) A is accused before the Court of Session of attempting to murder a police officer whilst on his trial before B, a Sessions Judge. B may be examined as to what occurred.

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Corresponding Provision of Previous Statute: Section 120, Indian Evidence Act, 1872

Section 120 - Judges and Magistrates - No Judge or Magistrate shall, except upon the special order of some Court to which he is subordinate, be compelled to answer any questions as to his own conduct in Court as such Judge or Magistrate, or as to anything which came to his knowledge in Court as such Judge or Magistrate; but he may be examined as to other matters which occurred in his presence whilst he was so acting.

Illustrations

(a) A, on his trial before the Court of Session, says that a deposition was improperly taken by B, the Magistrate. B cannot be compelled to answer questions as to this, except upon the special order of a superior Court.

(b) A is accused before the Court of Session of having given false evidence before B, a Magistrate. B cannot be asked what A said, except upon the special order of the superior Court.

(c) A is accused before the Court of Session of attempting to murder a police-officer whilst on his trial before B, a Sessions Judge. B may be examined as to what occurred.

128. Communications during marriage

No person who is or has been married, shall be compelled to disclose any communication made to him during marriage by any person to whom he is or has been married; nor shall he be permitted to disclose any such communication, unless the person who made it, or his representative in interest, consents, except in suits between married persons, or proceedings in which one married person is prosecuted for any crime committed against the other.

Linked Provisions

Foreign Marriage Act, 1969 - S, 11 - Marriage Not To Be In Contravention Of Local Laws

Hindu Marriage Act, 1955 - Section 11 - Void Marriages Special

Marriage Act, 1954 - Section 24 - Void Marriages

Corresponding Provision of Previous Statute: Section 122, Indian Evidence Act, 1872

Section 122 - Communications during marriage - No person who is or has been married, shall becompelled to disclose any communication made to him during marriage by any person to whom

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he is or has been married; nor shall he be permitted to disclose any such communication, unless the person who made it, or his representative in interest, consents, except in suits between married persons, or proceedings in which one married person is prosecuted for any crime committed against the other.

129. Evidence as to affairs of State

No one shall be permitted to give any evidence derived from unpublished official records relating to any affairs of State, except with the permission of the officer at the head of the department concerned, who shall give or withhold such permission as he thinks fit.

Corresponding Provision of Previous Statute: Section 123, Indian Evidence Act, 1872

Section 123 - Evidence as to affairs of State - No one shall be permitted to give any evidence derived from unpublished official records relating to any affairs of State, except with the permission of the officer at the head of the department concerned, who shall give or withhold such permission as he thinks fit.

130. Official communications

No public officer shall be compelled to disclose communications made to him in official confidence, when he considers that the public interests would suffer by the disclosure.

Corresponding Provision of Previous Statute: Section 124, Indian Evidence Act, 1872

Section 124 - Official communications - No public officer shall be compelled to disclose communications made to him in official confidence, when he considers that the public interests would suffer by the disclosure.

131. Information as to commission of offences

No Magistrate or police officer shall be compelled to say when he got any information as to the commission of any offence, and no revenue

Linked Provisions

Chemical Weapons Convention Act, 2000 - Section 38 - Information

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officer shall be compelled to say when he got any information as to the commission of any offence against the public revenue.

Explanation. -- "revenue officer" means any officer employed in or about the business of any branch of the public revenue.

As To Commission Of Offences

Narcotic-Drugs and Psychotropic Substances Act 1985 - Section 68 - Information As To Commission Of Offences

Corresponding Provision of Previous Statute: Section 125, Indian Evidence Act, 1872

Section 125 - Information as to commission of offences - No Magistrate or police-officer shall be compelled to say whence he got any information as to the commission of any offence, and no revenueofficer shall be compelled to say whence he got any information as to the commission of any offence against the public revenue.

Explanation.– "Revenue-officer" in this section means any officer employed in or about the business of any branch of the public revenue.

132. Professional communications

(1) No advocate, shall at any time be permitted, unless with his client's express consent, to disclose any communication made to him in the course and for the purpose of his service as such advocate, by or on behalf of his client, or to state the contents or condition of any document with which he has become acquainted in the course and for the purpose of his professional service, or to disclose any advice given by him to his client in the course and for the purpose of such service:

Provided that nothing in this section shall protect from disclosure of-

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(a) any such communication made in furtherance of any illegal purpose;

Linked Provisions

Companies Act, 2013 - Section 227 - Legal Advisers And Bankers Not To Disclose Certain Information

Consumer Protection Act, 2019 - Section 77 - Duty Of Mediator To Disclose Certain Facts

Bharatiya Sakshya Adhiniyam, 2023 - Section 132 - Professional communications

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(b) any fact observed by any advocate, in the course of his service as such, showing that any crime or fraud has been committed since the commencement of his service.

(2) It is immaterial whether the attention of such advocate referred to in the proviso to sub-section (1), was or was not directed to such fact by or on behalf of his client.

Explanation.--The obligation stated in this section continues after the professional service has ceased.

Illustrations.

(a) A, a client, says to B, an advocate - "I have committed forgery, and I wish you to defend me". As the defence of a man known to be guilty is not a criminal purpose, this communication is protected from disclosure.

(b) A, a client, says to B, an advocate - "I wish to obtain possession of property by the use of a forged deed on which I request you to sue". This communication, being made in furtherance of a criminal purpose, is not protected from disclosure.

(c) A, being charged with embezzlement, retains B, an advocate, to defend him. In the course of the proceedings, B observes that an entry has been made in A's account book, charging A with the sum said to have been embezzled, which entry was not in the book at the commencement of his professional service. This being a fact observed by B in the course of his service, showing that a fraud has been committed since the commencement of the proceedings, it is not protected from disclosure.

(3) The provisions of this section shall apply to interpreters, and the clerks or employees of advocates.

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Corresponding Provision of Previous Statute: Section 126, Indian Evidence Act, 1872

Section 126 - Professional communications - No barrister, attorney, pleader or vakil, shall at any time be permitted, unless with his client's express consent, to disclose any communication made to him in the course and for the purpose of his employment as such barrister, pleader, attorney or vakil, by or on behalf of his client, or to state the contents or condition of any document with which he has become acquainted in the course and for the purpose of his professional employment, or to disclose any advice given by him to his client in the course and for the purpose of such employment:

Provided that nothing in this section shall protect from disclosure –

(1) any such communication made in furtherance of any illegal purpose,

(2) any fact observed by any barrister, pleader, attorney or vakil, in the course of his employment as such, showing that any crime or fraud has been committed since the commencement of his employment.

It is immaterial whether the attention of such barrister, pleader, attorney or vakil was or was not directed to such fact by or on behalf of his client.

Explanation. – The obligation stated in this section continues after the employment has ceased.

Illustrations

(a) A, a client, says to B, an attorney – "I have committed forgery, and I wish you to defend me."

As the defence of a man known to be guilty is not a criminal purpose, this communication is protected from disclosure.

(b) A, a client, says to B, an attorney – "I wish to obtain possession of property by the use of a forged deed on which I request you to sue."

This communication, being made in furtherance of a criminal purpose, is not protected from disclosure.

(c) A, being charged with embezzlement, retains B, an attorney, to defend him. In the course of the proceedings, B observes that an entry has been made in A's account book, charging A with the sum said to have been embezzled, which entry was not in the book at the commencement of his employment.

This being a fact observed by B in the course of his employment, showing that a fraud has been committed since the commencement of the proceedings, it is not protected from disclosure.

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Section 127 - Section 126 to apply to interpreters, etc. - The provisions of section 126 shall apply to interpreters, and the clerks or servants of barristers, pleaders, attorneys and vakils.

133. Privilege not waived by volunteering evidence

If any party to a suit gives evidence therein at his own instance or otherwise, he shall not be deemed to have consented thereby to such disclosure as is mentioned in section 132; and, if any party to a suit or proceeding calls any such advocate, as a witness, he shall be deemed to have consented to such disclosure only if he questions such advocate, on matters which, but for such question, he would not be at liberty to disclose.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 132 - Professional communications

Corresponding Provision of Previous Statute: Section 128, Indian Evidence Act, 1872

Section 128 - Privilege not waived by volunteering evidence - If any party to a suit gives evidence therein at his own instance or otherwise, he shall not be deemed to have consented thereby to such disclosure as is mentioned in section 126; and, if any party to a suit or proceeding calls any such barrister, pleader, attorney or vakil as a witness, he shall be deemed to have consented to such disclosure only if he questions such barrister, attorney or vakil on matters which, but for such question, he would not be at liberty to disclose.

134. Confidential communication with legal advisers

No one shall be compelled to disclose to the Court any confidential communication which has taken place between him and his legal adviser, unless he offers himself as a witness, in which case he may be compelled to disclose any such communications as may appear to the Court necessary to be known in order to explain any evidence which he has given, but no others.

Corresponding Provision of Previous Statute: Section 129, Indian Evidence Act, 1872

Section 129 - Confidential communications with legal advisers - No one shall be compelled to disclose to the Court any confidential communication which has taken place between him and his

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legal professional adviser, unless he offers himself as a witness, in which case he may be compelled to disclose any such communications as may appear to the Court necessary to be known in order to explain any evidence which he has given, but no others.

135. Production of title-deeds of witness not a party

No witness who is not a party to a suit shall be compelled to produce his title-deeds to any property, or any document in virtue of which he holds any property as pledgee or mortgagee or any document the production of which might tend to criminate him, unless he has agreed in writing to produce them with the person seeking the production of such deeds or some person through whom he claims.

Linked Provisions

Code of Civil Procedure, 1908 - Section 15 - Court In Which Suits To Be Instituted

Corresponding Provision of Previous Statute: Section 130, Indian Evidence Act, 1872

Section 130 - Production of title-deeds of witness not a party - No witness who is not a party to a suit shall be compelled to produce his title-deeds to any property, or any document in virtue of which he holds any property as pledge or mortgagee or any document the production of which might tend to criminate him, unless he has agreed in writing to produce them with the person seeking the production of such deeds or some person through whom he claims.

136. Production of documents or electronic records which another person, having possession, could refuse to produce

No one shall be compelled to produce documents in his possession or electronic records under his control, which any other person would be entitled to refuse to produce if they were in his possession or control, unless such last-mentioned person consents to their production.

Linked Provisions

Information Technology Act, 2000 – Section 4 - Legal Recognition Of Electronic Records

Corresponding Provision of Previous Statute: Section 131, Indian Evidence Act, 1872

Section 131 - Production of documents or electronic records which another person, having possession, could refuse to produce - No one shall be compelled to produce documents in his possession or electronic records under his control, which any other person would be entitled to refuse to produce if they were in his possession or control, unless such last-mentioned person consents to their production.

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137. Witness not excused from answering on ground that answer will criminate

A witness shall not be excused from answering any question as to any matter relevant to the matter in issue in any suit or in any civil or criminal proceeding, upon the ground that the answer to such question will criminate, or may tend directly or indirectly to criminate, such witness, or that it will expose, or tend directly or indirectly to expose, such witness to a penalty or forfeiture of any kind:

Provided that no such answer, which a witness shall be compelled to give, shall subject him to any arrest or prosecution, or be proved against him in any criminal proceeding, except a prosecution forgiving false evidence by such answer.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 150 - When witness to be compelled to answer

Corresponding Provision of Previous Statute: Section 132, Indian Evidence Act, 1872

Section 132 - Witness not excused from answering on ground that answer will criminate - A witness shall not be excused from answering any question as to any matter relevant to the matter in issue in any suit or in any civil or criminal proceeding, upon the ground that the answer to such question will criminate, or may tend directly or indirectly to criminate, such witness, or that it will expose, or tend directly or indirectly to expose, such witness to a penalty or forfeiture of any kind:

Proviso.- Provided that no such answer, which a witness shall be compelled to give, shall subject him to any arrest or prosecution, or be proved against him in any criminal proceeding, except a prosecution for giving false evidence by such answer.

138. Accomplice

An accomplice shall be a competent witness against an accused person; and a conviction is not illegal if it proceeds upon the corroborated testimony of an accomplice.

Linked Provisions

The Indo-Tibetan Border Police Force Act. 1992 - Section 119 - Tender Of Pardon To Accomplice (Accomplice)

Bharatiya Sakshya Adhiniyam, 2023 - Section 124 - Who may testify

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Corresponding Provision of Previous Statute: Section 133, Indian Evidence Act, 1872

Section 133 – Accomplice - An accomplice shall be a competent witness against an accused person; and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice.

139. Number of witnesses

No particular number of witnesses shall in any case be required for the proof of any fact.

Corresponding Provision of Previous Statute: Section 134, Indian Evidence Act, 1872

Section 134 – Number of witnesses - No particular number of witnesses shall in any case be required for the proof of any fact.

CHAPTER X

OF EXAMINATION OF WITNESSES

140. Order of production and examination of witnesses

The order in which witnesses are produced and examined shall be regulated by the law and practice for the time being relating to civil and criminal procedure respectively, and, in the absence of any such law, by the discretion of the Court.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 143 - Order of examinations

Corresponding Provision of Previous Statute: Section 135, Indian Evidence Act, 1872

Section 135 – Order of production and examination of witnesses - The order in which witnesses are produced and examined shall be regulated by the law and practice for the time being relating to civil and criminal procedure respectively, and, in the absence of any such law, by the discretion of the Court.

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141. Judge to decide as to admissibility of evidence

(1) When either party proposes to give evidence of any fact, the Judge may ask the party proposing to give the evidence in what manner the alleged fact, if proved, would be relevant; and the Judge shall admit the evidence if he thinks that the fact, if proved, would be relevant, and not otherwise.

(2) If the fact proposed to be proved is one of which evidence is admissible only upon proof of some other fact, such last mentioned fact must be proved before evidence is given of the fact first mentioned, unless the party undertakes to give proof of such fact, and the Court is satisfied with such undertaking.

(3) If the relevancy of one alleged fact depends upon another alleged fact being first proved, the Judge may, in his discretion, either permit evidence of the first fact to be given before the second fact is proved, or require evidence to be given of the second fact before evidence is given of the first fact.

Illustrations.

(a) It is proposed to prove a statement about a relevant fact by a person alleged to be dead, which statement is relevant under section 26. The fact that the person is dead must be proved by the person proposing to prove the statement, before evidence is given of the statement.

(b) It is proposed to prove, by a copy, the contents of a document said to be lost. The fact that the original is lost must be proved by the person proposing to produce the copy, before the copy is produced.

(c) A is accused of receiving stolen property knowing it to have been stolen. It is proposed to prove that he denied the possession of the property. The relevancy of the denial depends on the identity of the

Linked Provisions

Unlawful Activities (Prevention) Act, 1967- Section 46

Prevention of Terrorism Act, 2002 - Section 45 - Admissibility Of Evidence Collected Through The Interception Of Communications

Bharatiya Sakshya Adhiniyam, 2023 – Section 168 - Judge's power to put questions or order production

Bharatiya Sakshya Adhiniyam, 2023 - Section 7 - Facts necessary to explain or introduce fact in issue or relevant facts

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property. The Court may, in its discretion, either require the property to be identified before the denial of the possession is proved, or permit the denial of the possession to be proved before the property is identified.

(d) It is proposed to prove a fact A which is said to have been the cause or effect of a fact in issue. There are several intermediate facts B, C and D which must be shown to exist before the fact A can be regarded as the cause or effect of the fact in issue. The Court may either permit A to be proved before B, C or D is proved, or may require proof of B, C and D before permitting proof of A.

Corresponding Provision of Previous Statute: Section 136, Indian Evidence Act, 1872

Section 136 – Judge to decide as to admissibility of evidence - When either party proposes to give evidence of any fact, the Judge may ask the party proposing to give the evidence in what manner the alleged fact, if proved, would be relevant; and the Judge shall admit the evidence if he thinks that the fact, if proved, would be relevant, and not otherwise.

If the fact proposed to be proved is one of which evidence is admissible only upon proof of some other fact, such last-mentioned fact must be proved before evidence is given of the fact first-mentioned, unless the party undertakes to give proof of such fact, and the Court is satisfied with such undertaking.

If the relevancy of one alleged fact depends upon another alleged fact being first proved, the Judge may, in his discretion, either permit evidence of the first fact to be given before the second fact is proved, or require evidence to be given of the second fact before evidence is given of the first fact.

Illustrations

(a) It is proposed to prove a statement about a relevant fact by a person alleged to be dead, which statement is relevant under section 32.

The fact that the person is dead must be proved by the person proposing to prove the statement, before evidence is given of the statement.

(b) It is proposed to prove, by a copy, the contents of a document said to be lost.

The fact that the original is lost must be proved by the person proposing to produce the copy, before the copy is produced.

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(c) A is accused of receiving stolen property knowing it to have been stolen.

It is proposed to prove that he denied the possession of the property.

The relevancy of the denial depends on the identity of the property. The Court may, in its discretion, either require the property to be identified before the denial of the possession is proved, or permit the denial of the possession to be proved before the property is identified.

(d) It is proposed to prove a fact (A) which is said to have been the cause or effect of fact in issue. There are several intermediate facts (B, C and D) which must be shown to exist before the fact (A) can be regarded as the cause or effect of the fact in issue. The Court may either permit A to be proved before B, C or D is proved, or may require proof of B, C and D before permitting proof of A.

142. Examination of witnesses

(1) The examination of a witness by the party who calls him shall be called his examination-in-chief.

(2) The examination of a witness by the adverse party shall be called his cross-examination.

(3) The examination of a witness, subsequent to the cross-examination, by the party who called him, shall be called his re-examination.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 124 - Who may testify

Corresponding Provision of Previous Statute: Section 137, Indian Evidence Act, 1872

Section 137 – Examination-in-chief - The examination of witness by the party who calls him shall be called his examination-in-chief.

Cross-examination – The examination of a witness by the adverse party shall be called his cross-examination.

Re-examination - The examination of a witness, subsequent to the cross-examination by the party who called him, shall be called his re-examination.

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143. Order of examinations

(1) Witnesses shall be first examined-in-chief, then (if the adverse party so desires) cross-examined, then (if the party calling him so desires) re-examined.

(2) The examination-in-chief and cross-examination must relate to relevant facts, but the cross-examination need not be confined to the facts to which the witness testified on his examination-in-chief.

(3) The re-examination shall be directed to the explanation of matters referred to in cross-examination; and, if new matter is, by permission of the Court, introduced in re-examination, the adverse party may further cross-examine upon that matter.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 124 - Who may testify

Bharatiya Sakshya Adhiniyam, 2023 - Section 142 - Examination of witnesses

Corresponding Provision of Previous Statute: Section 138, Indian Evidence Act, 1872

Section 138 – Order of examinations - Witnesses shall be first examined-in-chief, then (if the adverse party so desires) cross-examined, then (if the party calling him so desires) re-examined.

The examination and cross-examination must relate to relevant facts, but the cross-examination need not be confined to the facts to which the witness testified on his examination-in-chief.

Direction of re-examination - The re-examination shall be directed to the explanation of matters referred to in cross-examination; and, if new matter is, by permission of the Court, introduced in re-examination, the adverse party may further cross-examine upon that matter.

144. Cross-examination of person called to produce a document

A person summoned to produce a document does not become a witness by the mere fact that he produces it, and cannot be cross-examined unless and until he is called as a witness.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 142 - Examination of witnesses

Bharatiya Sakshya Adhiniyam, 2023 - Section 143 - Order of examinations

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Corresponding Provision of Previous Statute: Section 139, Indian Evidence Act, 1872

Section 139 – Cross-examination of person called to produce a document - A person summoned to produce a document does not become a witness by the mere fact that he produces it, and cannot be cross-examined unless and until he is called as a witness.

145. Witnesses to character

Witnesses to character may be cross-examined and re-examined.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 46 - In civil cases character to prove conduct imputed, irrelevant

Bharatiya Sakshya Adhiniyam, 2023 - Section 47 - In criminal cases previous good character relevant

Bharatiya Sakshya Adhiniyam, 2023 - Section 48 - Evidence of character or previous sexual experience not relevant in certain cases

Bharatiya Sakshya Adhiniyam, 2023 - Section 49 - Previous bad character not relevant, except in reply

Bharatiya Sakshya Adhiniyam, 2023 - Section 50 - Character as affecting damages

Corresponding Provision of Previous Statute: Section 140, Indian Evidence Act, 1872

Section 140 – Witnesses to character - Witnesses to character may be cross-examined and re-examined.

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146. Leading questions

(1) Any question suggesting the answer which the person putting it wishes or expects to receive, is called a leading question.

(2) Leading questions must not, if objected to by the adverse party, be asked in an examination-in-chief, or in a re-examination, except with the permission of the Court.

(3) The Court shall permit leading questions as to matters which are introductory or undisputed, or which have, in its opinion, been already sufficiently proved.

(4) Leading questions may be asked in cross-examination.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 146 - Leading questions

Bharatiya Sakshya Adhiniyam, 2023 - Section 142 - Examination of witnesses

Corresponding Provision of Previous Statute: Section 141, Indian Evidence Act, 1872

Section 141 – Leading questions - Any question suggesting the answer which the person putting it wishes or expects to receive, is called a leading question.

Section 142 - When they must not be asked - Leading questions must not, if objected to by the adverse party, be asked in an examination-in-chief, or in a re-examination, except with the permission of the Court.

The Court shall permit leading questions as to matters which are introductory or undisputed, or which have, in its opinion, been already sufficiently proved.

Section 143 - When they may be asked - Leading questions may be asked in cross-examination.

147. Evidence as to matters in writing

Any witness may be asked, while under examination, whether any contract, grant or other disposition of property, as to which he is giving evidence, was not contained in a document, and if he says that it was, or if he is about to make any statement as to the contents of any document, which, in the opinion of the Court, ought to be produced, the adverse party may object to such evidence being given until such

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 60 - Cases in which secondary evidence relating to documents may be given

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document is produced, or until facts have been proved which entitle the party who called the witness to give secondary evidence of it.

Explanation.- A witness may give oral evidence of statements made by other persons about the contents of documents if such statements are in themselves relevant facts.

Illustration.

The question is, whether A assaulted B. C deposes that he heard A say to D - "B wrote a letter accusing me of theft, and I will be revenged on him". This statement is relevant, as showing A's motive for the assault, and evidence may be given of it, though no other evidence is given about the letter.

Bharatiya Sakshya Adhiniyam, 2023 - Section 58 - Secondary evidence

Bharatiya Sakshya Adhiniyam, 2023 - Section 94 - Evidence of terms of contracts, grants and other dispositions of property reduced to form of document

Corresponding Provision of Previous Statute: Section 144, Indian Evidence Act, 1872

Section 144 – Evidence as to matters in writing - Any witness may be asked, whilst under examination, whether any contract, grant or other disposition of property, as to which he is giving evidence, was not contained in a document, and if he says that it was, or if he is about to make any statement as to the contents of any document, which, in the opinion of the Court, ought to be produced, the adverse party may object to such evidence being given until such document is produced, or until facts have been proved which entitle the party who called the witness to give secondary evidence of it.

Explanation - A witness may give oral evidence of statements made by other persons about the contents of documents if such statements are in themselves relevant facts.

Illustration

The question is, whether A assaulted B.

C deposes that he heard A say to D– "B wrote a letter accusing me of theft, and I will be revenged on him." This statement is relevant, as showing A's motive for the assault, and evidence may be given of it, though no other evidence is given about the letter.

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148. Cross-examination as to previous statements in writing

A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 142 - Examination of witnesses

Bharatiya Sakshya Adhiniyam, 2023 - Section 58 - Secondary evidence

Bharatiya Sakshya Adhiniyam, 2023 - Section 156 - Exclusion of evidence to contradict answers to questions testing veracity

Bharatiya Sakshya Adhiniyam, 2023 - Section 158 - Impeaching credit of witness

Corresponding Provision of Previous Statute: Section 145, Indian Evidence Act, 1872

Section 145 – Cross-examination as to previous statements in writing - A witness may be crossexamined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.

149. Questions lawful in cross-examination

When a witness is cross-examined, he may, in addition to the questions hereinbefore referred to, be asked any questions which tend--

(a) to test his veracity; or

(b) to discover who he is and what is his position in life; or

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 142 - Examination of witnesses

Bharatiya Nyaya Sanhita, 2023 - Section 64- Punishment for rape

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(c) to shake his credit, by injuring his character, although the answer to such questions might tend directly or indirectly to criminate him, or might expose or tend directly or indirectly to expose him to a penalty or forfeiture:

Provided that in a prosecution for an offence under section 64, section 65, section 66, section 67, section 68, section 69, section 70 or section 71 of the Bharatiya Nyaya Sanhita, 2023 or for attempt to commit any such offence, where the question of consent is an issue, it shall not be permissible to adduce evidence or to put questions in the cross-examination of the victim as to the general immoral character, or previous sexual experience, of such victim with any person for proving such consent or the quality of consent.

Bharatiya Nyaya Sanhita, 2023 - Section 65(1) - Rape on woman under 16 years of age

Bharatiya Nyaya Sanhita, 2023 - Section 65(2) - Rape on woman under 12 years of age

Bharatiya Nyaya Sanhita, 2023 - Section 66 - Rape causing death or persistent vegetative state

Bharatiya Nyaya Sanhita, 2023 - Section 70 (1) - Gang Rape

Bharatiya Nyaya Sanhita, 2023 - Section 67 - Sexual intercourse during separation

Bharatiya Nyaya Sanhita, 2023 - Section 68 - Sexual intercourse by person in authority

Bharatiya Nyaya Sanhita, 2023 - Section 71 - Repeat Offenders

Bharatiya Nyaya Sanhita, 2023 - Section 70 (2) - Gang rape on women under the age of 18

Bharatiya Nyaya Sanhita, 2023 - Section 69 - Sexual intercourse by deceitful means or false promise to marry

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Corresponding Provision of Previous Statute: Section 146, Indian Evidence Act, 1872

Section 146 – Questions lawful in cross-examination - When a witness is cross-examined, he may, in addition to the questions hereinbefore referred to, be asked any questions which tend––

(1) to test his veracity,

(2) to discover who he is and what is his position in life, or

(3) to shake his credit, by injuring his character, although the answer to such questions might tend directly or indirectly to criminate him, or might expose or tend directly or indirectly to expose him to a penalty or forfeiture:

Provided that in a prosecution for an offence under section 376, section 376A, section 376AB section 376B, section 376C, section 376D, section 376DA, section 376DB or section 376E of the Indian Penal Code (45 of 1860) or for attempt to commit any such offence, where the question of consent is an issue, it shall not be permissible to adduce evidence or to put questions in the cross-examination of the victim as to the general immoral character, or previous sexual experience, of such victim with any person for proving such consent or the quality of consent.

150. When witness to be compelled to answer

If any such question relates to a matter relevant to the suit or proceeding, the provisions of section 137 shall apply thereto.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 151 - Court to decide when question shall be asked and when witness compelled to answer

Corresponding Provision of Previous Statute: Section 147, Indian Evidence Act, 1872

Section 147 – When witness to be compelled to answer - If any such question relates to a matter relevant to the suit or proceeding, the provisions of section 132 shall apply thereto.

151. Court to decide when question shall be asked and when witness compelled to answer

(1) If any such question relates to a matter not relevant to the suit or proceeding, except in so far as it affects the credit of the witness by injuring his character, the Court shall decide whether or not the witness

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 150 - When witness to be compelled to answer

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shall be compelled to answer it, and may, if it thinks fit, warn the witness that he is not obliged to answer it.

(2) In exercising its discretion, the Court shall have regard to the following considerations, namely:-

(a) such questions are proper if they are of such a nature that the truth of the imputation conveyed by them would seriously affect the opinion of the Court as to the credibility of the witness on the matter to which he testifies;

(b) such questions are improper if the imputation which they convey relates to matters so remote in time, or of such a character, that the truth of the imputation would not affect, or would affect in a slight degree, the opinion of the Court as to the credibility of the witness on the matter to which he testifies;

(c) such questions are improper if there is a great disproportion between the importance of the imputation made against the witness's character and the importance of his evidence;

(d) the Court may, if it sees fit, draw, from the witness's refusal to answer, the inference that the answer if given would be unfavourable.

Bharatiya Sakshya Adhiniyam, 2023 - Section 149 - Questions lawful in cross-examination

Corresponding Provision of Previous Statute: Section 148, Indian Evidence Act, 1872

Section 148 – Court to decide when question shall be asked and when witness compelled to answer – If any such question relates to a matter not relevant to the suit or proceeding, except in so far as it affects the credit of the witness by injuring his character, the Court shall decide whether or not the witness shall be compelled to answer it, and may, if it thinks fit, warn the witness that he is not obliged to answer it. In exercising its discretion, the Court shall have regard to the following considerations:–

(1) such questions are proper if they are of such a nature that the truth of the imputation conveyed by them would seriously affect the opinion of the Court as to the credibility of the witness on the matter to which he testifies;

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(2) such questions are improper if the imputation which they convey relates to matters so remote in time, or of such a character, that the truth of the imputation would not affect, or would affect in a slight degree, the opinion of the Court as to the credibility of the witness on the matter to which he testifies;

(3) such questions are improper if there is a great disproportion between the importance of the imputation made against the witness's character and the importance of his evidence;

(4) the Court may, if it sees fit, draw, from the witness's refusal to answer, the inference that the answer if given would be unfavourable.

152. Question not to be asked without reasonable grounds

No such question as is referred to in section 151 ought to be asked, unless the person asking it has reasonable grounds for thinking that the imputation which it conveys is well-founded.

Illustrations.

(a) An advocate is instructed by another advocate that an important witness is a dacoit. This is a reasonable ground for asking the witness whether he is a dacoit.

(b) An advocate is informed by a person in Court that an important witness is a dacoit. The informant, on being questioned by the advocate, gives satisfactory reasons for his statement. This is a reasonable ground for asking the witness whether he is a dacoit.

(c) A witness, of whom nothing whatever is known, is asked at random whether he is a dacoit. There are here no reasonable grounds for the question.

(d) A witness, of whom nothing whatever is known, being questioned as to his mode of life and means of living, gives unsatisfactory answers. This may be a reasonable ground for asking him if he is a dacoit.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 151 - Court to decide when question shall be asked and when witness compelled to answer

Bharatiya Sakshya Adhiniyam, 2023 - Section 153 - Procedure of Court in case of question being asked without reasonable grounds

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Corresponding Provision of Previous Statute: Section 149, Indian Evidence Act, 1872

Section 149 – Question not to be asked without reasonable grounds - No such question as is referred to in section 148 ought to be asked, unless the person asking it has reasonable grounds for thinking that the imputation which it conveys is well-founded.

Illustrations

(a) A barrister is instructed by an attorney or vakil that an important witness is a dakait. This is a reasonable ground for asking the witness whether he is a dakait.

(b) A pleader is informed by a person in Court that an important witness is a dakait. The informant, on being questioned by the pleader, gives satisfactory reasons for his statement. This is a reasonable ground for asking the witness whether he is a dakait.

(c) A witness, of whom nothing whatever is known is asked at random whether he is a dakait. There are here no reasonable ground for the question.

(d) A witness, of whom nothing whatever is known, being questioned as to his mode of life and means of living, gives unsatisfactory answers. This may be a reasonable ground for asking him if he is a dakait.

153. Procedure of Court in case of question being asked without reasonable grounds

If the Court is of opinion that any such question was asked without reasonable grounds, it may, if it was asked by any advocate, report the circumstances of the case to the High Court or other authority to which such advocate is subject in the exercise of his profession.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 152 - Question not to be asked without reasonable grounds

Corresponding Provision of Previous Statute: Section 150, Indian Evidence Act, 1872

Section 150 – Procedure of Court in case of question being asked without reasonable grounds - If the Court is of opinion that any such question was asked without reasonable grounds, it may, if it was asked by any barrister, pleader, vakil or attorney, report the circumstances of the case to the High Court or other authority to which such barrister, pleader, vakil or attorney is subject in the exercise of his profession.

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154. Indecent and scandalous questions

The Court may forbid any questions or inquiries which it regards as indecent or scandalous, although such questions or inquiries may have some bearing on the questions before the Court, unless they relate to facts in issue, or to matters necessary to be known in order to determine whether or not the facts in issue existed.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 149 - Questions lawful in cross-examination

Bharatiya Sakshya Adhiniyam, 2023 - Section 150 - When witness to be compelled to answer

Bharatiya Sakshya Adhiniyam, 2023 - Section 152 - Question not to be asked without reasonable grounds

Bharatiya Sakshya Adhiniyam, 2023 - Section 155 - Questions intended to insult or annoy

Corresponding Provision of Previous Statute: Section 151, Indian Evidence Act, 1872

Section 151 – Indecent and scandalous questions - The Court may forbid any questions or inquiries which it regards as indecent or scandalous, although such questions or inquiries may have some bearing on the questions before the Court, unless they relate to facts in issue, or to matters necessary to be known in order to determine whether or not the facts in issue existed.

155. Questions intended to insult or annoy

The Court shall forbid any question which appears to it to be intended to insult or annoy, or which, though proper in itself, appears to the Court needlessly offensive in form.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 149 - Questions lawful in cross-examination

Bharatiya Sakshya Adhiniyam, 2023 - Section 150 - When witness to be compelled to answer

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Bharatiya Sakshya Adhiniyam, 2023 - Section 152 - Question not to be asked without reasonable grounds

Bharatiya Sakshya Adhiniyam, 2023 - Section 155 - Questions intended to insult or annoy

Corresponding Provision of Previous Statute: Section 152, Indian Evidence Act, 1872

Section 152 – Questions intended to insult or annoy - The Court shall forbid any question which appears to it to be intended to insult or annoy, or which, though proper in itself, appears to the Court needlessly offensive in form.

156. Exclusion of evidence to contradict answers to questions testing veracity

When a witness has been asked and has answered any question which is relevant to the inquiry only in so far as it tends to shake his credit by injuring his character, no evidence shall be given to contradict him; but, if he answers falsely, he may afterwards be charged with giving false evidence.

Exception 1 - If a witness is asked whether he has been previously convicted of any crime and denies it, evidence may be given of his previous conviction.

Exception 2 - If a witness is asked any question tending to impeach his impartiality, and answers it by denying the facts suggested, he may be contradicted.

Illustrations.

Linked Provisions

Bharatiya Nyaya Sanhita, 2023 - Section 212 - Furnishing False Information

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(a) A claim against an underwriter is resisted on the ground of fraud. The claimant is asked whether, in a former transaction, he had not made a fraudulent claim. He denies it. Evidence is offered to show that he did make such a claim. The evidence is inadmissible.

(b) A witness is asked whether he was not dismissed from a situation for dishonesty. He denies it. Evidence is offered to show that he was dismissed for dishonesty. The evidence is not admissible.

(c) A affirms that on a certain day he saw B at Goa. A is asked whether he himself was not on that day at Varanasi. He denies it. Evidence is offered to show that A was on that day at Varanasi. The evidence is admissible, not as contradicting A on a fact which affects his credit, but as contradicting the alleged fact that B was seen on the day in question in Goa. In each of these cases, the witness might, if his denial was false, be charged with giving false evidence.

(d) A is asked whether his family has not had a blood feud with the family of B against whom he gives evidence. He denies it. He may be contradicted on the ground that the question tends to impeach his impartiality.

Corresponding Provision of Previous Statute: Section 153, Indian Evidence Act, 1872

Section 153 – Exclusion of evidence to contradict answers to questions testing veracity - When a witness has been asked and has answered any question which is relevant to the inquiry only in so far as it tends to shake his credit by injuring his character, no evidence shall be given to contradict him; but, if he answers falsely, he may after wards be charged with giving false evidence.

Exception 1 - If a witness is asked whether he has been previously convicted of any crime and denies it, evidence may be given of his previous conviction.

Exception 2 - If a witness is asked any question tending to impeach his impartiality, and answers it by denying the facts suggested, he may be contradicted.

Illustrations

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(a) A claim against an underwriter is resisted on the ground of fraud.

The claimant is asked whether, in a former transaction, he had not made a fraudulent claim. He denies it.

Evidence is offered to show that he did make such a claim.

The evidence is inadmissible.

(b) A witness is asked whether he was not dismissed from a situation for dishonesty.

He denies it.

Evidence is offered to show that he was dismissed for dishonesty.

The evidence is not admissible.

(c) A affirms that on a certain day he saw B at Lahore.

A is asked whether he himself was not on that day at Calcutta. He denies it.

Evidence is offered to show that A was on that day at Calcutta.

The evidence is admissible, not as contradicting A on a fact which affects his credit, but as contradicting the alleged fact that B was seen on the day in question in Lahore.

In each of these cases the witness might, if his denial was false, be charged with giving false evidence.

(d) A is asked whether his family has not had a bloodfeud with the family of B against whom he gives evidence.

He denies it. He may be contradicted on the ground that the question tends to impeach his impartiality.

157. Question by party to his own witness

(1) The Court may, in its discretion, permit the person who calls a witness to put any question to him which might be put in cross-examination by the adverse party.

(2) Nothing in this section shall disentitle the person so permitted under sub-section (1), to rely on any part of the evidence of such witness.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 149 - Questions lawful in cross-examination

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Corresponding Provision of Previous Statute: Section 154, Indian Evidence Act, 1872

Section 154 – Question by party to his own witness - (1) The Court may, in its discretion, permit the person who calls a witness to put any questions to him which might be put in cross-examination by the adverse party.

(2) Nothing in this section shall disentitle the person so permitted under sub-section (1), to rely on any part of the evidence of such witness.

158. Impeaching credit of witness

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 149 - Questions lawful in cross-examination

The credit of a witness may be impeached in the following ways by the adverse party, or, with the consent of the Court, by the party who calls him-

(a) by the evidence of persons who testify that they, from their knowledge of the witness, believe him to be unworthy of credit;

(b) by proof that the witness has been bribed, or has accepted the offer of a bribe, or has received any other corrupt inducement to give his evidence;

(c) by proof of former statements inconsistent with any part of his evidence which is liable to be contradicted.

Explanation - A witness declaring another witness to be unworthy of credit may not, upon his examination-in-chief, give reasons for his belief, but he may be asked his reasons in cross-examination, and the answers which he gives cannot be contradicted, though, if they are false, he may afterwards be charged with giving false evidence.

Illustrations.

(a) A sues B for the price of goods sold and delivered to B. C says that he delivered the goods to B. Evidence is offered to show that, on a

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previous occasion, he said that he had not delivered goods to B. The evidence is admissible.

(b) A is accused of the murder of B. C says that B, when dying, declared that A had given B the wound of which he died. Evidence is offered to show that, on a previous occasion, C said that B, when dying, did not declare that A had given B the wound of which he died. The evidence is admissible.

Corresponding Provision of Previous Statute: Section 155, Indian Evidence Act, 1872

Section 155 – Impeaching credit of witness - The credit of a witness may be impeached in the following ways by the adverse party, or, with the consent of the Court, by the party who calls him:-

(1) By the evidence of persons who testify that they, from their knowledge of the witness, believe him to be unworthy of credit;

(2) By proof that the witness has been bribed, or has accepted the offer of a bribe, or has received any other corrupt inducement to give his evidence;

(3) By proof of former statements inconsistent with any part of his evidence which is liable to be contradicted;

* * * * *

Explanation - A witness declaring another witness to be unworthy of credit may not, upon his examination-in-chief, give reasons for his belief, but he may be asked his reasons in cross-examination, and the answers which he gives cannot be contradicted, though, if they are false, he may afterwards be charged with giving false evidence.

Illustrations

(a) A sues B for the price of goods sold and delivered to B.

C says that he delivered the goods to B.

Evidence is offered to show that, on a previous occasion, he said that he had not delivered goods to B. The evidence is admissible.

(b) A is indicted for the murder of B.

C says that B, when dying, declared that A had given B the wound of which he died.

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Evidence is offered to show that, on a previous occasion, C said that the wound was not given by A or in his presence.

The evidence is admissible.

159. Questions tending to corroborate evidence of relevant fact, admissible

When a witness whom it is intended to corroborate gives evidence of any relevant fact, he may be questioned as to any other circumstances which he observed at or near to the time or place at which such relevant fact occurred, if the Court is of opinion that such circumstances, if proved, would corroborate the testimony of the witness as to the relevant fact which he testifies.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 138 - Accomplice

Illustration.

A, an accomplice, gives an account of a robbery in which he took part. He describes various incidents unconnected with the robbery which occurred on his way to and from the place where it was committed. Independent evidence of these facts may be given in order to corroborate his evidence as to the robbery itself.

Corresponding Provision of Previous Statute: Section 156, Indian Evidence Act, 1872

Section 156 – Questions tending to corroborate evidence of relevant fact, admissible - When a witness whom it is intended to corroborate gives evidence of any relevant fact, he may be questioned as to any other circumstances which he observed at or near to the time or place at which such relevant fact occurred, if the Court is of opinion that such circumstances, if proved, would corroborate the testimony of the witness as to the relevant fact which he testifies.

Illustration

A, an accomplice, gives an account of a robbery in which he took part. He describes various incidents unconnected with the robbery which occurred on his way to and from the place where it was committed.

Independent evidence of these facts may be given in order to corroborate his evidence as to the robbery itself.

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160. Former statements of witness may be proved to corroborate later testimony as to same fact

In order to corroborate the testimony of a witness, any former statement made by such witness relating to the same fact, at or about the time when the fact took place, or before any authority legally competent to investigate the fact, may be proved.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 138 - Accomplice

Bharatiya Sakshya Adhiniyam, 2023 - Section 124 - Who may testify

Corresponding Provision of Previous Statute: Section 157, Indian Evidence Act, 1872

Section 157 – Former statements of witness may be proved to corroborate later testimony as to same Fact – In order to corroborate the testimony of a witness, any former statement made by such witness relating to the same fact, at or about the time when the fact took place, or before any authority legally competent to investigate the fact, may be proved.

161. What matters may be proved in connection with proved statement relevant under section 26 or 27

Whenever any statement, relevant under section 26 or 27, is proved, all matters may be proved either in order to contradict or to corroborate it, or in order to impeach or confirm the credit of the person by whom it was made, which might have been proved if that person had been called as a witness and had denied upon cross-examination the truth of the matter suggested.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 26 - Cases in which statement of facts in issue or relevant fact by person who is dead or cannot be found, etc., is relevant

Bharatiya Sakshya Adhiniyam, 2023 - Section 27 - Relevancy of certain evidence for proving, in subsequent proceeding, the truth of facts therein stated

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Corresponding Provision of Previous Statute: Section 158, Indian Evidence Act, 1872

Section 158 – What matters may be proved in connection with proved statement relevant under section 32 or 33 - Whenever any statement, relevant under section 32 or 33, is proved, all matters may be proved either in order to contradict or to corroborate it, or in order to impeach or confirm the credit of the person by whom it was made, which might have been proved if that person had been called as a witness and had denied upon cross-examination the truth of the matter suggested.

162. Refreshing memory

(1) A witness may, while under examination, refresh his memory by referring to any writing made by himself at the time of the transaction concerning which he is questioned, or so soon afterwards that the Court considers it likely that the transaction was at that time fresh in his memory:

Provided that the witness may also refer to any such writing made by any other person, and read by the witness within the time aforesaid, if when he read it, he knew it to be correct.

(2) Whenever a witness may refresh his memory by reference to any document, he may, with the permission of the Court, refer to a copy of such document:

Provided that the Court be satisfied that there is sufficient reason for the non-production of the original:

Provided further that an expert may refresh his memory by reference to professional treatises.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 163 - Testimony to facts stated in document mentioned in section 162

Corresponding Provision of Previous Statute: Section 159, Indian Evidence Act, 1872

Section 159 – Refreshing memory - A witness may, while under examination, refresh his memory by referring to any writing made by himself at the time of the transaction concerning which he is questioned, or so soon afterwards that the Court considers it likely that the transaction was at that time fresh in his memory.

The witness may also refer to any such writing made by any other person, and read by the witness within the time aforesaid, if when he read it he knew it to be correct.

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When witness may use copy of document to refresh memory - Whenever a witness may refresh his memory by reference to any document, he may, with the permission of the Court, refer to a copy of such document:

Provided the Court be satisfied that there is sufficient reason for the non-production of the original. An expert may refresh his memory by reference to professional treatises.

163. Testimony to facts stated in document mentioned in section 162

A witness may also testify to facts mentioned in any such document as is mentioned in section 162, although he has no specific recollection of the facts themselves, if he is sure that the facts were correctly recorded in the document.

Illustration.

A book-keeper may testify to facts recorded by him in books regularly kept in the course of business, if he knows that the books were correctly kept, although he has forgotten the particular transactions entered.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 162 - Refreshing memory

Bharatiya Sakshya Adhiniyam, 2023 - Section 56 - Proof of contents of documents

Corresponding Provision of Previous Statute: Section 160, Indian Evidence Act, 1872

Section 160 – Testimony to facts stated in document mentioned in section 159 - A witness may also testify to facts mentioned in any such document as is mentioned in section 159, although he has no specific recollection of the facts themselves, if he is sure that the facts were correctly recorded in the document.

Illustration

A book-keeper may testify to facts recorded by him in books regularly kept in the course of business, if he knows that the books were correctly kept, although he has forgotten the particular transactions entered

164. Right of adverse party as to writing used to refresh memory

Any writing referred to under the provisions of the two last preceding sections shall be produced and shown to the adverse party if he requires it; such party may, if he pleases, cross-examine the witness thereupon.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 163 - Testimony to facts

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stated in document mentioned in section 162

Bharatiya Sakshya Adhiniyam, 2023 - Section 162 - Refreshing memory

Bharatiya Sakshya Adhiniyam, 2023 - Section 142 -Examination of witnesses

Corresponding Provision of Previous Statute: Section 161, Indian Evidence Act, 1872

Section 161 – Right of adverse party as to writing used to refresh memory - Any writing referred to under the provisions of the two last preceding sections must be produced and shown to the adverse party if he requires it; such party may, if he pleases, cross-examine the witness thereupon.

165. Production of documents

(1) A witness summoned to produce a document shall, if it is in his possession or power, bring it to Court, notwithstanding any objection which there may be to its production or to its admissibility:

Provided that the validity of any such objection shall be decided on by the Court.

(2) The Court, if it sees fit, may inspect the document, unless it refers to matters of State, or take other evidence to enable it to determine on its admissibility.

(3) If for such a purpose it is necessary to cause any document to be translated, the Court may, if it thinks fit, direct the translator to keep the contents secret, unless the document is to be given in evidence and, if the interpreter disobeys such direction, he shall be held to have

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 79 - Presumption as to documents produced as record of evidence, etc.

Bharatiya Sakshya Adhiniyam, 2023 - Section 94 - Evidence of terms of contracts, grants and other dispositions of property reduced to form of document

Bharatiya Sakshya Adhiniyam, 2023 - Section 144 - Cross-examination of person called to produce a document

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committed an offence under section 198 of the Bharatiya Nyaya Sanhita, 2023:

Provided that no Court shall require any communication between the Ministers and the President of India to be produced before it.

Bharatiya Sakshya Adhiniyam, 2023 - Section 166 - Giving, as evidence, of document called for and produced on notice

Bharatiya Sakshya Adhiniyam, 2023 - Section 167 - Using, as evidence, of document production of which was refused on notice

Bharatiya Nyaya Sanhita, 2023 - Section 198 - Public servant disobeying law, with intent to cause injury to any person

Corresponding Provision of Previous Statute: Section 162, Indian Evidence Act, 1872

Section 162 – Production of documents - A witness summoned to produce a document shall, if it is in his possession or power, bring it to Court, notwithstanding any objection which there may be to its production or to its admissibility. The validity of any such objection shall be decided on by the Court. The Court, if it sees fit, may inspect the document, unless it refers to matters of State, or take other evidence to enable it to determine on its admissibility.

Translation of documents - If for such a purpose it is necessary to cause any document to be translated, the Court may, if it thinks fit, direct the translator to keep the contents secret, unless the document is to be given in evidence and, if the interpreter disobeys such direction, he shall be held to have committed an offence under section 166 of the Indian Penal Code (45 of 1860).

166. Giving, as evidence, of document called for and produced on notice

When a party calls for a document which he has given the other party notice to produce, and such document is produced and inspected by the party calling for its production, he is bound to give it as evidence if the party producing it requires him to do so.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 165 - Production of documents

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Corresponding Provision of Previous Statute: Section 163, Indian Evidence Act, 1872

Section 163 – Giving, as evidence, of document called for and produced on notice - When a party calls for a document which he has given the other party notice to produce, and such document is produced and inspected by the party calling for its production, he is bound to give it as evidence if the party producing it requires him to do so.

167. Using, as evidence, of document production of which was refused on notice

When a party refuses to produce a document which he has had notice to produce, he cannot afterwards use the document as evidence without the consent of the other party or the order of the Court.

Illustration.

A sues B on an agreement and gives B notice to produce it. At the trial, A calls for the document and B refuses to produce it. A gives secondary evidence of its contents. B seeks to produce the document itself to contradict the secondary evidence given by A, or in order to show that the agreement is not stamped. He cannot do so.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 165 - Production of documents

Corresponding Provision of Previous Statute: Section 164, Indian Evidence Act, 1872

Section 164 – Using, as evidence, of document production of which was refused on notice - When a party refuses to produce a document which he has had notice to produce, he cannot afterwards use the document as evidence without the consent of the other party or the order of the Court.

Illustration

A sues B on an agreement and gives B notice to produce it. At the trial, A calls for the document and B refuses to produce it. A gives secondary evidence of its contents. B seeks to produce the document itself to contradict the secondary evidence given by A, or in order to show that the agreement is not stamped. He cannot do so.

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168. Judge's power to put questions or order production

The Judge may, in order to discover or obtain proof of relevant facts, ask any question he considers necessary, in any form, at any time, of any witness, or of the parties about any fact; and may order the production of any document or thing; and neither the parties nor their representatives shall be entitled to make any objection to any such question or order, nor, without the leave of the Court, to cross-examine any witness upon any answer given in reply to any such question:

Provided that the judgment must be based upon facts declared by this Adhiniyam to be relevant, and duly proved:

Provided further that this section shall not authorise any Judge to compel any witness to answer any question, or to produce any document which such witness would be entitled to refuse to answer or produce under sections 127 to 136, both inclusive, if the question were asked or the document were called for by the adverse party; nor shall the Judge ask any question which it would be improper for any other person to ask under section 151 or 152; nor shall he dispense with primary evidence of any document, except in the cases hereinbefore excepted.

Linked Provisions

Bharatiya Sakshya Adhiniyam, 2023 - Section 141 - Judge to decide as to admissibility of evidence

Bharatiya Sakshya Adhiniyam, 2023 - Section 142 - Examination of witnesses

Corresponding Provision of Previous Statute: Section 165, Indian Evidence Act, 1872

Section 165 – Judge's power to put questions or order production - The Judge may, in order to discover or to obtain proper proof of relevant facts, ask any question he pleases, in any form, at any time, of any witness, or of the parties about any fact relevant or irrelevant; and may order the production of any document or thing; and neither the parties nor their agents shall be entitled to make any objection to any such question or order, nor, without the leave of the Court, to cross-examine any witness upon any answer given in reply to any such question:

Provided that the judgment must be based upon facts declared by this Act to be relevant, and duly proved:

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Provided also that this section shall not authorize any Judge to compel any witness to answer any question, or to produce any document which such witness would be entitled to refuse to answer or produce under sections 121 to 131, both inclusive, if the question were asked or the document were called for by the adverse party; nor shall the Judge ask any question which it would be improper for any other person to ask under section 148 or 149; nor shall he dispense with primary evidence of any document, except in the cases hereinbefore excepted.

CHAPTER XI

OF IMPROPER ADMISSION AND REJECTION OF EVIDENCE

169. No new trial for improper admission or rejection of evidence

The improper admission or rejection of evidence shall not be ground of itself for a new trial or reversal of any decision in any case, if it shall appear to the Court before which such objection is raised that, independently of the evidence objected to and admitted, there was sufficient evidence to justify the decision, or that, if the rejected evidence had been received, it ought not to have varied the decision.

Linked Provisions

Code of Civil Procedure, 1908 - Section 99 - No Decree To Be Reversed Or Modified For Error Or Irregularity Not Affecting Merits Or Jurisdiction

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 506 - Irregularities which do not vitiate proceedings

Corresponding Provision of Previous Statute: Section 167, Indian Evidence Act, 1872

Section 167 – No new trial for improper admission or rejection of evidence - The improper admission or rejection of evidence shall not be ground of itself for a new trial or reversal of any decision in any case, if it shall appear to the Court before which such objection is raised that, independently of the evidence objected to and admitted, there was sufficient evidence to justify the decision, or that, if the rejected evidence had been received, it ought not to have varied the decision.

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CHAPTER XII

REPEAL AND SAVINGS

170. Repeal and savings

(1) The Indian Evidence Act, 1872 (1 of 1872) is hereby repealed.

(2) Notwithstanding such repeal, if, immediately before the date on which this Adhiniyam comes into force, there is any application, trial, inquiry, investigation, proceeding or appeal pending, then, such application, trial, inquiry, investigation, proceeding or appeal shall be dealt with under the provisions of the Indian Evidence Act, 1872 (1 of 1872), as in force immediately before such commencement, as if this Adhiniyam had not come into force.

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THE SCHEDULE

[See section 63(4)(c)]

CERTIFICATE

PART A

(To be filled by the Party)

I, _____ (Name), Son/daughter/spouse of _____ residing/employed at _____ do hereby solemnly affirm and sincerely state and submit as follows:--

I have produced electronic record/output of the digital record taken from the following device/digital record source (tick mark):--

Computer/Storage Media ☐ DVR ☐ Mobile ☐ Flash Drive ☐

CD/DVD ☐ Server ☐ Cloud ☐ Other ☐

Other: _____

Make & Model: _____ Color: _____

Serial Number: _____

IMEI/UIN/UID/MAC/Cloud ID _____ (as applicable)

and any other relevant information, if any, about the device/digital record____ (specify).

The digital device or the digital record source was under the lawful control for regularly creating, storing or processing information for the purposes of carrying out regular activities and during this period, the

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computer or the communication device was working properly and the relevant information was regularly fed into the computer during the ordinary course of business. If the computer/digital device at any point of time was not working properly or out of operation, then it has not affected the electronic/digital record or its accuracy. The digital device or the source of the digital record is:--

Owned ☐ Maintained ☐ Managed ☐ Operated ☐

by me (select as applicable).

I state that the HASH value/s of the electronic/digital record/s is _____, obtained through the following algorithm:--

☐ SHA1:

☐ SHA256:

☐ MD5:

☐ Other _____ (Legally acceptable standard)

(Hash report to be enclosed with the certificate)

(Name and signature)

Date (DD/MM/YYYY): _____

Time (IST): _____ hours (In 24 hours format)

Place: _____

PART B

(To be filled by the Expert)

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I, _____ (Name), Son/daughter/spouse of _____ residing/employed at _____ do hereby solemnly affirm and sincerely state and submit as follows:--

The produced electronic record/output of the digital record are obtained from the following device/digital record source (tick mark):--

Computer/Storage Media ☐ DVR ☐ Mobile ☐ Flash Drive ☐

CD/DVD ☐ Server ☐ Cloud ☐ Other ☐

Other: _____

Make & Model: _____ Color: _____

Serial Number: _____

IMEI/UIN/UID/MAC/Cloud ID _____ (as applicable)

and any other relevant information, if any, about the device/digital record _____ (specify).

I state that the HASH value/s of the electronic/digital record/s is _____, obtained through the following algorithm:--

☐ SHA1:

☐ SHA256:

☐ MD5:

☐ Other _____ (Legally acceptable standard)

(Hash report to be enclosed with the certificate)

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(Name, designation and signature)

Date (DD/MM/YYYY): _____

Time (IST): _____ hours (In 24 hours format)

Place: _____

STATEMENT OF OBJECTS AND REASONS

1. The Indian Evidence Act, 1872 was enacted in the year 1872 with a view to consolidate the law relating to evidence on which the Court could come to the conclusion about the facts of the case and then pronounce judgment thereupon and it came into force on 1st September, 1872.

2. The experience of seven decades of Indian democracy calls for comprehensive review of our criminal laws including the Indian Evidence Act, 1872 and adopt them in accordance with the contemporary needs and aspirations of the people. The law of evidence (not being substantive or procedural law), falls in the category of "adjective law", that defines the pleading and methodology by which the substantive or procedural laws are operationalised. The existing law does not address the technological advancement undergone in the country during the last few decades.

3. Accordingly, a Bill, namely, the Bharatiya Sakshya Bill, 2023 was introduced in Lok Sabha on 11th August, 2023. The Bill was referred to the Department-related Parliamentary Standing Committee on Home Affairs for its consideration and report. The Committee after deliberations made its recommendations in its report submitted on 10th November, 2023. The recommendations made by the Committee have been considered by the Government and it has been decided to withdraw the Bill pending in Lok Sabha and introduce a new Bill

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incorporating therein those recommendations made by the Committee that have been accepted by the Government.

4. The proposed legislation, inter alia, provides as under:-

(i) it provides that "evidence" includes any information given electronically, which would permit appearance of witnesses, accused, experts and victims through electronic means;

(ii) it provides for admissibility of an electronic or digital record as evidence having the same legal effect, validity and enforceability as any other document;

(iii) it seeks to expand the scope of secondary evidence to include copies made from original by mechanical processes, copies made from or compared with the original, counterparts of documents as against the parties who did not execute them and oral accounts of the contents of a document given by some person who has himself seen it and giving matching hash value of original record will be admissible as proof of evidence in the form of secondary evidence;

(iv) it seeks to put limits on the facts which are admissible and its certification as such in the courts. The proposed Bill introduces more precise and uniform rules of practice of courts in dealing with facts and circumstances of the case by means of evidence.

5. The Notes on Clauses explain the various provisions of the Bill.

6. The Bill seeks to achieve the above objectives.

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LINKED PROVISIONS

Linked Provisions of Section 4, Bharatiya Saskhya Adhiniyam, 2023:

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 243 - Trial for more than one offence:

(1) If, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence.

(2) When a person charged with one or more offences of criminal breach of trust or dishonest misappropriation of property as provided in sub-section (2) of section 235 or in sub-section (1) of section 242, is accused of committing, for the purpose of facilitating or concealing the commission of that offence or those offences, one or more offences of falsification of accounts, he may be charged with, and tried at one trial for, every such offence.

(3) If the acts alleged constitute an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, the person accused of them may be charged with, and tried at one trial for, each of such offences.

(4) If several acts, of which one or more than one would by itself or themselves constitute an offence, constitute when combined a different offence, the person accused of them may be charged with, and tried at one trial for the offence constituted by such acts when combined, and for any offence constituted by any one, or more, of such acts.

(5) Nothing contained in this section shall affect section 9 of the Bharatiya Nyaya Sanhita, 2023.

Illustrations to sub-section (1)

(a) A rescues B, a person in lawful custody, and in so doing causes grievous hurt to C, a constable in whose custody B was. A may be charged with, and convicted of, offences under sub-section (2) of section 121 and section 263 of the Bharatiya Nyaya Sanhita, 2023.

(b) A commits house-breaking by day with intent to commit rape, and commits, in the house so entered, rape with B's wife. A may be separately charged with, and convicted of, offences under section 64 and sub-section (3) of section 331 of the Bharatiya Nyaya Sanhita, 2023.

(c) A has in his possession several seals, knowing them to be counterfeit and intending to use them for the purpose of committing several forgeries punishable under section 337 of the Bharatiya Nyaya Sanhita, 2023. A may be separately charged with, and convicted of, the possession of each seal under sub-section (2) of section 341 of the Bharatiya Nyaya Sanhita, 2023.

(d) With intent to cause injury to B, A institutes a criminal proceeding against him, knowing that there is no just or lawful ground for such proceeding, and also falsely accuses B of having committed an offence, knowing that there is no just or lawful ground for such charge. A may be separately charged with, and convicted of, two offences under section 248 of the Bharatiya Nyaya Sanhita, 2023.

(e) A, with intent to cause injury to B, falsely accuses him of having committed an offence, knowing that there is no just or lawful ground for such charge. On the trial, A gives false evidence against B, intending thereby to cause B to be convicted of a capital offence. A may be separately charged with, and convicted of, offences under sections 230 and 248 of the Bharatiya Nyaya Sanhita, 2023.

(f) A, with six others, commits the offences of rioting, grievous hurt and assaulting a public servant endeavouring in the discharge of his duty as such to suppress the riot. A may be separately charged with, and convicted of, offences under sub-section (2) of section 117, sub-section (2) of section 191 and section 195 of the Bharatiya Nyaya Sanhita, 2023.

(g) A threatens B, C and D at the same time with injury to their persons with intent to cause alarm to them. A may be separately charged with, and convicted of, each of the three offences under sub-sections (2) and (3) of section 351 of the Bharatiya Nyaya Sanhita, 2023.

The separate charges referred to in illustrations (a) to (g), respectively, may be tried at the same time.

Illustrations to sub-section (3)

(h) A wrongfully strikes B with a cane. A may be separately charged with, and convicted of, offences under sub-section (2) of section 115 and section 131 of the Bharatiya Nyaya Sanhita, 2023.

(i) Several stolen sacks of corn are made over to A and B, who knew they are stolen property, for the purpose of concealing them. A and B thereupon voluntarily assist each other to conceal the sacks at the bottom of a grain-pit. A and B may be separately charged with, and convicted of, offences under sub-sections (2) and (5) of section 317 of the Bharatiya Nyaya Sanhita, 2023.

(j) A exposes her child with the knowledge that she is thereby likely to cause its death. The child dies in consequence of such exposure. A may be separately charged with, and convicted of, offences under sections 93 and 105 of the Bharatiya Nyaya Sanhita, 2023.

(k) A dishonestly uses a forged document as genuine evidence, in order to convict B, a public servant, of an offence under section 201 of the Bharatiya Nyaya Sanhita, 2023. A may be separately charged with, and convicted of, offences under section 233 and sub-section (2) of section 340 (read with section 337) of that Sanhita.

Illustration to sub-section (4)

(l) A commits robbery on B, and in doing so voluntarily causes hurt to him. A may be separately charged with, and convicted of, offences under sub-section (2) of section 115 and sub-sections (2) and (4) of section 309 of the Bharatiya Nyaya Sanhita, 2023.

Go Back to Section 4, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 8, Bharatiya Saskhya Adhiniyam, 2023:

Bharatiya Nyaya Sanhita, 2023 - Section 3 - General explanations:

(5)When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.

Go Back to Section 8, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 13, Bharatiya Saskhya Adhiniyam, 2023:

Bharatiya Nyaya Sanhita, 2023 - Section 18 - Accident in doing a lawful act:

Nothing is an offence which is done by accident or misfortune, and without any criminal intention or knowledge in the doing of a lawful act in a lawful manner by lawful means and with proper care and caution.

Illustration

A is at work with a hatchet; the head flies off and kills a man who is standing by. Here, if there was no want of proper caution on the part of A, his act is excusable and not an offence.

Go Back to Section 13, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 15, Bharatiya Saskhya Adhiniyam, 2023:

Partnership Act, 1932 - Section 23– Effect of Admission by a Partner:

An admission or representation made by a partner concerning the affairs of the firmis evidence against the firm, it is made in the ordinary course of business.

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 266 - Evidence for defence

(1) The accused shall then be called upon to enter upon his defence and produce his evidence; and if the accused puts in any written statement, the Magistrate shall file it with the record.

(2) If the accused, after he has entered upon his defence, applies to the Magistrate to issue any process for compelling the attendance of any witness for the purpose of examination or cross-examination, or the production of any document or other thing, the Magistrate shall issue such process unless he considers that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice and such ground shall be recorded by him in writing:

Provided that when the accused has cross-examined or had the opportunity of cross-examining any witness before entering on his defence, the attendance of such witness shall not be compelled under this section, unless the Magistrate is satisfied that it is necessary for the ends of justice:

Provided further that the examination of a witness under this sub-section may be done by audio-video electronic means at the designated place to be notified by the State Government.

(3) The Magistrate may, before summoning any witness on an application under sub-section (2), require that the reasonable expenses incurred by the witness in attending for the purposes of the trial be deposited in Court.

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 288 - Language of record and judgment:

(1) Every such record and judgment shall be written in the language of the Court.

(2) The High Court may authorise any Magistrate empowered to try offences summarily to prepare the aforesaid record or judgment or both by means of an officer appointed in this behalf by the Chief Judicial Magistrate, and the record or judgment so prepared shall be signed by such Magistrate.

Go Back to Section 15, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 22, Bharatiya Saskhya Adhiniyam, 2023:

Prevention of Terrorism Act, 2002 - Section 32 - Certain confessions made to police officers to be taken into consideration:

(1) Notwithstanding anything in the Code or in the Indian Evidence Act, 1872 (1 of 1872), but subjectto the provisions of this section, a confession made by a person before a police officer not lower inrank than a Superintendent of Police and recorded by such police officer either in writing or on anymechanical or electronic device like cassettes, tapes or sound tracks from out of which sound orimages can be reproduced, shall be admissible in the trial of such person for an offence under this Actor the rules made thereunder.

(2) A police officer shall, before recording any confession made by a person under sub-section (1),explain to such person in writing that he is not bound to make a confession and that if he does so, itmay be used against him:

Provided that where such person prefers to remain silent, the police officer shall not compel or inducehim to make any confession.

(3) The confession shall be recorded in an atmosphere free from threat or inducement and shall be inthe same language in which the person makes it.

(4) The person from whom a confession has been recorded under sub-section (1), shall be producedbefore the Court of a Chief Metropolitan Magistrate or the Court of a Chief Judicial Magistrate alongwith the original statement of confession, written or recorded on mechanical or electronic device withinforty-eight hours.

(5) The Chief Metropolitan Magistrate or the Chief Judicial Magistrate, shall, record the statement, ifany, made by the person so produced and get his signature or thumb impression and if there is anycomplaint of torture, such person shall be directed to be produced for medical examination before aMedical Officer not lower in rank than an Assistant Civil Surgeon and thereafter, he shall be sent tojudicial custody.

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 167 - Local inquiry:

(1) Whenever a local inquiry is necessary for the purposes of section 164, section 165 or section 166, a District Magistrate or Sub-divisional Magistrate may depute any Magistrate subordinate to him to make the inquiry, and may furnish him with such written instructions as may seem necessary for his guidance, and may declare by whom the whole or any part of the necessary expenses of the inquiry shall be paid.

(2) The report of the person so deputed may be read as evidence in the case.

(3) When any costs have been incurred by any party to a proceeding under section 164, section 165 or section 166, the Magistrate passing a decision may direct by whom such costs shall be paid, whether by such party or by any other party to the proceeding, and whether in whole or in part or proportion and such costs may include any expenses incurred in respect of witnesses and of advocates' fees, which the Court may consider reasonable.

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 182 - No inducement to be offered:

(1) No police officer or other person in authority shall offer or make, or cause to be offered or made, any such inducement, threat or promise as is mentioned in section 22 of the Bharatiya Sakshya Adhiniyam, 2023.

(2) But no police officer or other person shall prevent, by any caution or otherwise, any person from making in the course of any investigation under this Chapter any statement which he may be disposed to make of his own free will:

Provided that nothing in this sub-section shall affect the provisions of sub-section (4) of section 183.

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 354 - No influence to be used to induce disclosure:

Except as provided in sections 343 and 344, no influence, by means of any promise or threat or otherwise, shall be used to an accused person to induce him to disclose or withhold any matter within his knowledge.

Bharatiya Nyaya Sanhita, 2023 - Section 32 - Act to which a person is compelled by threats:

Except murder, and offences against the State punishable with death, nothing is an offence which is done by a person who is compelled to do it by threats, which, at the time of doing it, reasonably cause the apprehension that instant death to that person will otherwise be the consequence:

Provided that the person doing the act did not of his own accord, or from a reasonable apprehension of harm to himself short of instant death, place himself in the situation by which he became subject to such constraint.

Explanation 1.--A person who, of his own accord, or by reason of a threat of being beaten, joins a gang of dacoits, knowing their character, is not entitled to the benefit of this exception, on the ground of his having been compelled by his associates to do anything that is an offence by law.

Explanation 2.--A person seized by a gang of dacoits, and forced, by threat of instant death, to do a thing which is an offence by law; for example, a smith compelled to take his tools and to force the door of a house for the dacoits to enter and plunder it, is entitled to the benefit of this exception.

Bharatiya Nyaya Sanhita, 2023 - Section 120 - Voluntarily causing hurt or grievous hurt to extort confession, or to compel restoration of property:

(1) Whoever voluntarily causes hurt for the purpose of extorting from the sufferer or from any person interested in the sufferer, any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the sufferer or any person interested in the sufferer to restore or to cause the restoration of any property or valuable security or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Illustrations

(a) A, a police officer, tortures Z in order to induce Z to confess that he committed a crime. A is guilty of an offence under this section.

(b) A, a police officer, tortures B to induce him to point out where certain stolen property is deposited. A is guilty of an offence under this section.

(c) A, a revenue officer, tortures Z in order to compel him to pay certain arrears of revenue due from Z. A is guilty of an offence under this section.

(2) Whoever voluntarily causes grievous hurt for any purpose referred to in sub-section (1), shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Bharatiya Nyaya Sanhita, 2023 - Section 121 - Voluntarily causing hurt or grievous hurt to deter public servant from his duty:

(1) Whoever voluntarily causes hurt to any person being a public servant in the discharge of his duty as such public servant, or with intent to prevent or deter that person or any other public servant from discharging his duty as such public servant or in consequence of anything done or attempted to be done by that person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

Go Back to Section 22, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 23, Bharatiya Saskhya Adhiniyam, 2023:

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 167 - Local inquiry:

(1) Whenever a local inquiry is necessary for the purposes of section 164, section 165 or section 166, a District Magistrate or Sub-divisional Magistrate may depute any Magistrate subordinate to him to make the inquiry, and may furnish him with such written instructions as may seem necessary for his guidance, and may declare by whom the whole or any part of the necessary expenses of the inquiry shall be paid.

(2) The report of the person so deputed may be read as evidence in the case.

(3) When any costs have been incurred by any party to a proceeding under section 164, section 165 or section 166, the Magistrate passing a decision may direct by whom such costs shall be paid, whether by such party or by any other party to the proceeding, and whether in whole or in part or proportion and such costs may

include any expenses incurred in respect of witnesses and of advocates' fees, which the Court may consider reasonable.

Prevention of Terrorism Act, 2002 - Section 32 - Certain confessions made to police officers to be taken into consideration:

(1) Notwithstanding anything in the Code or in the Indian Evidence Act, 1872 (1 of 1872), but subjectto the provisions of this section, a confession made by a person before a police officer not lower inrank than a Superintendent of Police and recorded by such police officer either in writing or on anymechanical or electronic device like cassettes, tapes or sound tracks from out of which sound orimages can be reproduced, shall be admissible in the trial of such person for an offence under this Actor the rules made thereunder.

(2) A police officer shall, before recording any confession made by a person under sub-section (1), explain to such person in writing that he is not bound to make a confession and that if he does so, itmay be used against him:

Provided that where such person prefers to remain silent, the police officer shall not compel or inducehim to make any confession.

(3) The confession shall be recorded in an atmosphere free from threat or inducement and shall be inthe same language in which the person makes it.

(4) The person from whom a confession has been recorded under sub-section (1), shall be producedbefore the Court of a Chief Metropolitan Magistrate or the Court of a Chief Judicial Magistrate alongwith the original statement of confession, written or recorded on mechanical or electronic device withinforty-eight hours.

(5) The Chief Metropolitan Magistrate or the Chief Judicial Magistrate, shall, record the statement, ifany, made by the person so produced and get his signature or thumb impression and if there is anycomplaint of torture, such person shall be directed to be produced for medical examination before aMedical Officer not lower in rank than an Assistant Civil Surgeon and thereafter, he shall be sent tojudicial custody.

Go Back to Section 23, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 27, Bharatiya Saskhya Adhiniyam, 2023:

Prevention of Terrorism Act, 2002 - Section 32 - Certain confessions made to police officers to be taken into consideration:

(1) Notwithstanding anything in the Code or in the Indian Evidence Act, 1872 (1 of 1872), but subjectto the provisions of this section, a confession made by a person before a police officer not lower inrank than a Superintendent of Police and recorded by such police officer either in writing or on anymechanical or electronic device like cassettes, tapes or sound tracks from out of which sound orimages can be reproduced, shall be admissible in the trial of such person for an offence under this Actor the rules made thereunder.

(2) A police officer shall, before recording any confession made by a person under sub-section (1),explain to such person in writing that he is not bound to make a confession and that if he does so, itmay be used against him:

Provided that where such person prefers to remain silent, the police officer shall not compel or inducehim to make any confession.

(3) The confession shall be recorded in an atmosphere free from threat or inducement and shall be inthe same language in which the person makes it.

(4) The person from whom a confession has been recorded under sub-section (1), shall be producedbefore the Court of a Chief Metropolitan Magistrate or the Court of a Chief Judicial Magistrate alongwith the original statement of confession, written or recorded on mechanical or electronic device withinforty-eight hours.

(5) The Chief Metropolitan Magistrate or the Chief Judicial Magistrate, shall, record the statement, ifany, made by the person so produced and get his signature or thumb impression and if there is anycomplaint of torture, such person shall be directed to be produced for medical examination before aMedical Officer not lower in rank than an Assistant Civil Surgeon and thereafter, he shall be sent tojudicial custody.

Go Back to Section 27, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 34, Bharatiya Saskhya Adhiniyam, 2023:

Code of Civil Procedure, 1908 – Section 11 - Res judicata:

No Court shall try any suit or issue in which the matter directly and substantiallyin issue has been directly and substantially in issue in a former suit between the same parties, or betweenparties under whom they or any of them claim, litigating under the same title, in a Court competent to trysuch subsequent suit or the suit in which such issue has been subsequently raised, and has been heard andfinally decided by such Court.

Explanation I.—The expression "former suit" shall denote a suit which has been decided prior to a suitin question whether or not it was instituted prior thereto.

Explanation II.—For the purposes of this section, the competence of a Court shall be determinedirrespective of any provisions as to a right of appeal from the decision of such Court.

Explanation III.—The matter above referred to must in the former suit have been alleged by one partyand either denied or admitted, expressly or impliedly, by the other.

Explanation IV.—Any matter which might and ought to have been made ground of defence or attackin such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

Explanation V.—Any relief claimed in the plaint, which is not expressly granted by the decree, shallfor the purposes of this section, be deemed to have been refused.

Explanation VI.—Where persons litigate bona fide in respect of a public right or of a private rightclaimed in common for themselves and others, all persons interested in such right shall, for the purposesof this section, be deemed to claim under the persons so litigating.

Explanation VII.—The provisions of this section shall apply to a proceeding for the execution of a decreeand references in this section to any suit, issue or former suit shall be construed as references, respectively, to aproceeding for the execution of the decree, question arising in such proceeding and a former proceeding for theexecution of that decree.

Explanation VIII. —An issue heard and finally decided by a Court of limited jurisdiction, competent todecide such issue, shall operate as res judicata in a subsequent suit, notwithstanding that such Court oflimited jurisdiction was not

competent to try such subsequent suit or the suit in which such issue has been subsequently raised.

Go Back to Section 34, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 36, Bharatiya Saskhya Adhiniyam, 2023:

Code of Civil Procedure, 1908 – Section 2 (2):

"decree" means the formal expression of an adjudication which, so far as regards the Courtexpressing it, conclusively determines the rights of the parties with regard to all or any of the matters incontroversy in the suit and may be either preliminary or final. It shall be deemed to include the rejectionof a plaint and the determination of any question within section 144, but shall not include—

(a) any adjudication from which an appeal lies as an appeal from an order, or

(b) any order of dismissal for default.

Explanation.—A decree is preliminary when further proceedings have to be taken before the suitcan be completely disposed of. It is final when such adjudication completely disposes of the suit.It may be partly preliminary and partly final;

Code of Civil Procedure, 1908 – Section 2 (9):

"judgment" means the statement given by the Judge of the grounds of a decree or order;

Code of Civil Procedure, 1908 – Section 2 (14):

"order" means the formal expression of any decision of a Civil Court which is not a decree;

Go Back to Section 36, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 37, Bharatiya Saskhya Adhiniyam, 2023:

Code of Civil Procedure, 1908 – Section 2 (9):

"judgment" means the statement given by the Judge of the grounds of a decree or order;

Go Back to Section 37, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 38, Bharatiya Saskhya Adhiniyam, 2023:

Indian Contract Act, 1872 – Section 17 – "Fraud" defined:

"Fraud" means and includes any of the following acts committed by a partyto a contract, or with his connivance, or by his agent , with intent to deceive another party thereto of hisagent, or to induce him to enter into the contract:—

(1) the suggestion, as a fact, of that which is not true, by one who does not believe it to be true;

(2) the active concealment of a fact by one having knowledge or belief of the fact;

(3) a promise made without any intention of performing it;

(4) any other act fitted to deceive;

(5) any such act or omission as the law specially declares to be fraudulent.

Explanation.—Mere silence as to facts likely to affect the willingness of a person to enter into acontract is not fraud, unless the circumstances of the case are such that, regard being had to them, it is theduty of the person keeping silence to speak, or unless his silence is, in itself, equivalent to speech.

(a) A sells, by auction, to B, a horse which A knows to be unsound. A says nothing to B about the horse's unsoundness.This is not fraud in A.

(b) B is A's daughter and has just come of age. Here, the relation between the parties would make it A's duty to tell B if thehorse is unsound.

(c) B says to A—"If you do not deny it, I shall assume that the horse is sound." A says nothing. Here, A's silence isequivalent to speech.

(d) A and B, being traders, enter upon a contract. A has private information of a change in prices which would affect B'swillingness to proceed with the contract. A is not bound to inform B.

Code of Civil Procedure – Section 13 – When foreign judgment not conclusive:

A foreign judgment shall be conclusive as to anymatter thereby directly adjudicated upon between the same parties or between parties under whom they orany of them claim litigating under the same title except—

(a) where it has not been pronounced by a Court of competent jurisdiction;

(b) where it has not been given on the merits of the case;

(c) where it appears on the face of the proceedings to be founded on an incorrect view ofinternational law or a refusal to recognise the law of India in cases in which such law is applicable;

(d) where the proceedings in which the judgment was obtained are opposed to natural justice;

(e) where it has been obtained by fraud;

(f) where it sustains a claim founded on a breach of any law in force in India.

Arbitration and Conciliation Act, 1996 – Section 34 - Application for setting aside arbitral awards:

(1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).

(2) An arbitral award may be set aside by the Court only if—

(a) the party making the application establishes on the basis of the record of the arbitral tribunal that—

(i)a party was under some incapacity, or

(ii) the arbitration agreement is not valid under the law to which the parties have subjected itor, failing any indication thereon, under the law for the time being in force; or

(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iv) the arbitral award deals with a dispute not contemplated by or not falling within the termsof the submission to arbitration, or it contains decisions on matters beyond the scope of thesubmission to arbitration:

Provided that, if the decisions on matters submitted to arbitration can be separated from thosenot so submitted, only that part of the arbitral award which contains decisions on matters notsubmitted to arbitration may be set aside; or

(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordancewith the agreement of the parties, unless such agreement was in conflict with a provision of thisPart from which the parties cannot derogate, or, failing such agreement, was not in accordancewith this Part; or

(b) the Court finds that—

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the lawfor the time being in force, or

(ii) the arbitral award is in conflict with the public policy of India.

Explanation 1.—For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if,—

(i) the making of the award was induced or affected by fraud or corruption or was in violationof section 75 or section 81; or

(ii) it is in contravention with the fundamental policy of Indian law; or

(iii) it is in conflict with the most basic notions of morality or justice.

Explanation 2.—For the avoidance of doubt, the test as to whether there is a contravention with thefundamental policy of Indian law shall not entail a review on the merits of the dispute.

(2A) An arbitral award arising out of arbitrations other than international commercial arbitrations,may also be set aside by the Court, if the Court finds that the award is vitiated by patent illegalityappearing on the face of the award:

Provided that an award shall not be set aside merely on the ground of an erroneous application of thelaw or by reappreciation of evidence.

(3) An application for setting aside may not be made after three months have elapsed from the date onwhich the party making that application had received the arbitral award or, if a request had been madeunder section 33, from the date on which that request had been disposed of by the arbitral tribunal:

Provided that if the Court is satisfied that the applicant was prevented by sufficient cause frommaking the application within the said period of three months it may entertain the application within afurther period of thirty days, but not thereafter.

(4) On receipt of an application under sub-section (1), the Court may, where it is appropriate and it isso requested by a party, adjourn the proceedings for a period of time determined by it in order to give thearbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in theopinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award.

(5) An application under this section shall be filed by a party only after issuing a prior notice to theother party and such application shall be accompanied by an affidavit by the applicant endorsingcompliance with the said requirement.

(6) An application under this section shall be disposed of expeditiously, and in any event, within aperiod of one year from the date on which the notice referred to in sub-section (5) is served upon the other party.

Go Back to Section 38, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 39, Bharatiya Saskhya Adhiniyam, 2023:

Protection of Children from Sexual Offences Act, 2012 – Section 39 - Guidelines for child to take assistance of experts, etc.:

Subject to such rules as may be made in this behalf, the State Government shall prepare guidelines for use of non-governmental organisations, professionals and experts or persons having knowledge of psychology, social work, physical health, mental health and child development to be associated with the pre-trial and trial stage to assist the child.

Go Back to Section 39, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 40 Bharatiya Saskhya Adhiniyam, 2023:

Protection of Children from Sexual Offences Act, 2012 – Section 39 - Guidelines for child to take assistance of experts, etc.:

Subject to such rules as may be made in this behalf, the State Government shall prepare guidelines for use of non-governmental organisations, professionals and experts or persons having knowledge of psychology, social work, physical health, mental health and child development to be associated with the pre-trial and trial stage to assist the child.

Go Back to Section 40, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 41 Bharatiya Saskhya Adhiniyam, 2023:

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 349 - Power of Magistrate to order person to give specimen signatures or handwriting, etc.:

If a Magistrate of the first class is satisfied that, for the purposes of any investigation or proceeding under this Sanhita, it is expedient to direct any person, including an accused person, to give specimen signatures or finger impressions or handwriting or voice sample, he may make an order to that effect and in that case the person to whom the order relates shall be produced or shall attend at the time and place specified in such order and shall give his specimen signatures or finger impressions or handwriting or voice sample:

Provided that no order shall be made under this section unless the person has at some time been arrested in connection with such investigation or proceeding:

Provided further that the Magistrate may, for the reasons to be recorded in writing, order any person to give such specimen or sample without him being arrested.

Go Back to Section 41, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 50 Bharatiya Saskhya Adhiniyam, 2023:

Air Force Act, 1950 – Section 133 - Judicial notice:

A court-martial may take judicial notice of any matter within the general air force knowledge of the members.

Go Back to Section 50, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 51 Bharatiya Saskhya Adhiniyam, 2023:

Air Force Act, 1950 – Section 93 - Computation of time of absence of custody:

For the purposes of clauses (a) and (b) of section 92—

(a) no person shall be treated as absent or in custody for a day unless the absence or custody has lasted, whether wholly in one day, or partly in one day and partly in another, for six consecutive hours or upwards;

(b) any absence or custody for less than a day may be reckoned as absence or custody for a day if such absence or custody prevented the absence from fulfilling any air force duty which was thereby thrown upon some other person;

(c) absence or custody for twelve consecutive hours or upwards may be reckoned as absence or custody for the whole of each day during any portion of which the person was absent or in custody;

(d) a period of absence, or imprisonment, which commences before and ends after midnight may be reckoned as a day.

Air Force Act, 1950 – Section 133 - Judicial notice:

A court-martial may take judicial notice of any matter within the general air force knowledge of the members.

Air Force Act, 1950 – Section 134 - Summoning witnesses

(1) The convening officer, the presiding officer of a court-martial the Judge advocate or the commanding officer of the accused person, may, by summons under his hand, require the attendance at a time and place to be mentioned in the summons, of any person either to give evidence or to produce any document or other thing.

(2) In the case of a witness amenable to air force authority, the summons shall be sent to his commanding officer and such officer shall serve it upon him accordingly.

(3) In the case of any other witness, the summons shall be sent to the magistrate within whose jurisdiction he may be or reside, and such magistrate shall give effect to the summons as if the witness were required in the court of such magistrate.

(4) When a witness is required to produce any particular document or other thing in his possession or power, the summons shall describe it with reasonable precision.

Indo-Tibetan Border Police Force Act, 1992 – Section 100 - Judicial notice:

A Force Court may take judicial notice of any matter within thegeneral knowledge of the members as officers of the Force.

National Security Guard Act, 1986 – Section 85- Judicial notice:

A Security Guard Court may take judicial notice of any matter within thegeneral knowledge of the members as officers of the Security Guard.

Navy Act, 1957 – Section 132 - Judicial notice:

A court-martial may take judicial notice of any matter within the generalnaval, army or air force experience and knowledge of the members.

Sashastra Seema Bal Act, 2007 – Section 100 – Judicial Notice:

A Force Court may take judicial notice of any matter within the general knowledge of the members as officers of the Force.

Army Act, 1950 – Section 134 - Judicial notice:

A court-martial may take judicial notice of any matter within the general military knowledge of the members.

Go Back to Section 51, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 52 Bharatiya Saskhya Adhiniyam, 2023:

Sashastra Seema Bal Act, 2007 – Section 100 – Judicial Notice:

A Force Court may take judicial notice of any matter within the general knowledgeof the members as officers of the Force.

National Security Guard Act, 1986 – Section 85- Judicial notice:

A Security Guard Court may take judicial notice of any matter within thegeneral knowledge of the members as officers of the Security Guard.

Navy Act, 1957 – Section 132 - Judicial notice:

A court-martial may take judicial notice of any matter within the generalnaval, army or air force experience and knowledge of the members.

Indo-Tibetan Border Police Force Act, 1992 – Section 100 - Judicial notice:

A Force Court may take judicial notice of any matter within thegeneral knowledge of the members as officers of the Force.

Air Force Act, 1950 – Section 93 - Computation of time of absence of custody:

For the purposes of clauses (a) and (b) of section 92—

(a) no person shall be treated as absent or in custody for a day unless the absence or custody has lasted, whether wholly in one day, or partly in one day and partly in another, for six consecutive hours or upwards;

(b) any absence or custody for less than a day may be reckoned as absence or custody for a day if such absence or custody prevented the absence from fulfilling any air force duty which was thereby thrown upon some other person;

(c) absence or custody for twelve consecutive hours or upwards may be reckoned as absence or custody for the whole of each day during any portion of which the person was absent or in custody;

(d) a period of absence, or imprisonment, which commences before and ends after midnight may be reckoned as a day.

Border Security Force Act, 1968 - Section 88 - Judicial notice:

A Security Force Court may take judicial notice of any matter within the general knowledge of the members as officers of the Force.

Go Back to Section 52, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 62 Bharatiya Saskhya Adhiniyam, 2023:

Information Technology Act, 2000 - Section 3 - Authentication of electronic records:

(1) Subject to the provisions of this section, any subscriber may authenticate an electronic record by affixing his digital signature.

(2) The authentication of the electronic record shall be effected by the use of asymmetric crypto system and hash function which envelop and transform the initial electronic record into another electronic record.

Explanation.--For the purposes of this sub-section, "hash function" means an algorithm mapping or translation of one sequence of bits into another, generally smaller, set known as "hash result" such that an electronic record yields the same hash result every time the algorithm is executed with the same electronic record as its input making it computationally infeasible--

(a) to derive or reconstruct the original electronic record from the hash result produced by the algorithm;

(b) that two electronic records can produce the same hash result using the algorithm.

(3) Any person by the use of a public key of the subscriber can verify the electronic record.

(4) The private key and the public key are unique to the subscriber and constitute a functioning key pair.

Information Technology Act, 2000 – Section - 4 - Legal recognition of electronic records:

Where any law provides that information or any other matter shall be in writing or in the typewritten or printed form, then, notwithstanding anything contained in such

law, such requirement shall be deemed to have been satisfied if such information or matter is--

(a) rendered or made available in an electronic form; and

(b) accessible so as to be usable for a subsequent reference.

Information Technology Act, 2000 - Section 6 - Use of electronic records and electronic signatures in Government and its agencies:

(1) Where any law provides for--

(a) the filing of any form, application or any other document with any office, authority, body or agency owned or controlled by the appropriate Government in a particular manner;

(b) the issue or grant of any licence, permit, sanction or approval by whatever name called in a particular manner;

(c) the receipt or payment of money in a particular manner,

then, notwithstanding anything contained in any other law for the time being in force, such requirement shall be deemed to have been satisfied if such filing, issue, grant, receipt or payment, as the case may be, is effected by means of such electronic form as may be prescribed by the appropriate Government.

(2) The appropriate Government may, for the purposes of sub-section (1), by rules, prescribe--

(a) the manner and format in which such electronic records shall be filed, created or issued;

(b) the manner or method of payment of any fee or charges for filing, creation or issue any electronic record under clause (a).

Information Technology Act, 2000 - Section 7 - Retention of electronic records:

(1) Where any law provides that documents, records or information shall be retained for any specific period, then, that requirement shall be deemed to have been satisfied if such documents, records or information are retained in the electronic form, if--

(a) the information contained therein remains accessible so as to be usable for a subsequent reference;

(b) the electronic record is retained in the format in which it was originally generated, sent or received or in a format which can be demonstrated to represent accurately the information originally generated, sent or received;

(c) the details which will facilitate the identification of the origin, destination, date and time of dispatch or receipt of such electronic record are available in the electronic record:

Provided that this clause does not apply to any information which is automatically generated solely for the purpose of enabling an electronic record to be dispatched or received.

(2) Nothing in this section shall apply to any law that expressly provides for the retention of documents, records or information in the form of electronic records.

Information Technology Act, 2000 - Section 11 - Attribution of electronic records:

An electronic record shall be attributed to the originator,--

(a) if it was sent by the originator himself;

(b) by a person who had the authority to act on behalf of the originator in respect of that electronic record; or

(c) by an information system programmed by or on behalf of the originator to operate automatically.

Information Technology Act, 2000 - Section 13 - Time and place of despatch and receipt of electronic record:

(1) Save as otherwise agreed to between the originator and the addressee, the dispatch of an electronic record occurs when it enters a computer resource outside the control of the originator.

(2) Save as otherwise agreed between the originator and the addressee, the time of receipt of an electronic record shall be determined as follows, namely:--

(a) if the addressee has designated a computer resource for the purpose of receiving electronic records,--

(i) receipt occurs at the time when the electronic record enters the designated computer resource; or

(ii) if the electronic record is sent to a computer resource of the addressee that is not the designated computer resource, receipt occurs at the time when the electronic record is retrieved by the addressee;

(b) if the addressee has not designated a computer resource along with specified timings, if any, receipt occurs when the electronic record enters the computer resource of the addressee.

(3) Save as otherwise agreed to between the originator and the addressee, an electronic record is deemed to be dispatched at the place where the originator has his place of business, and is deemed to be received at the place where the addressee has his place of business.

(4) The provisions of sub-section (2) shall apply notwithstanding that the place where the computer resource is located may be different from the place where the electronic record is deemed to have been received under sub-section (3).

(5) For the purposes of this section,--

(a) if the originator or the addressee has more than one place of business, the principal place of business, shall be the place of business;

(b) if the originator or the addressee does not have a place of business, his usual place of residence shall be deemed to be the place of business;

(c) "usual place of residence", in relation to a body corporate, means the place where it is registered.

Information Technology Act, 2000 - Section 14 - Secure electronic record:

Where any security procedure has been applied to an electronic record at a specific point of time, then such record shall he deemed to be a secure electronic record from such point of time to the time of verification.

Bharatiya Nyaya Sanhita, 2023 - Section 210 - Omission to produce document or electronic record to public servant by person legally bound to produce it:

Whoever, being legally bound to produce or deliver up any document or electronic record to any public servant, as such, intentionally omits so to produce or deliver up the same,--

(a) shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five thousand rupees, or with both;

(b) and where the document or electronic record is to be produced or delivered up to a Court with simple imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both.

Illustration

A, being legally bound to produce a document before a District Court, intentionally omits to produce the same. A has committed the offence defined in this section.

Bharatiya Nyaya Sanhita, 2023 - Section 241 - Destruction of document or electronic record to prevent its production as evidence:

Whoever secretes or destroys any document or electronic record which he may be lawfully compelled to produce as evidence in a Court or in any proceeding lawfully held before a public servant, as such, or obliterates or renders illegible the whole or any part of such document or electronic record with the intention of preventing the same from being produced or used as evidence before such Court or public servant as aforesaid, or after he shall have been lawfully summoned or required to produce the same for that purpose, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine which may extend to five thousand rupees, or with both.

Bharatiya Nyaya Sanhita, 2023 - Section 340 - Forged document or electronic record and using it as genuine:

(1) A false document or electronic record made wholly or in part by forgery is designated a forged document or electronic record.

(2) Whoever fraudulently or dishonestly uses as genuine any document or electronic record which he knows or has reason to believe to be a forged document or electronic record, shall be punished in the same manner as if he had forged such document or electronic record.

Go Back to Section 62, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 63 Bharatiya Saskhya Adhiniyam, 2023:

Information Technology Act, 2000 - Section 3 - Authentication of electronic records:

(1) Subject to the provisions of this section, any subscriber may authenticate an electronic record by affixing his digital signature.

(2) The authentication of the electronic record shall be effected by the use of asymmetric crypto system and hash function which envelop and transform the initial electronic record into another electronic record.

Explanation.--For the purposes of this sub-section, "hash function" means an algorithm mapping or translation of one sequence of bits into another, generally smaller, set known as "hash result" such that an electronic record yields the same hash result every time the algorithm is executed with the same electronic record as its input making it computationally infeasible--

(a) to derive or reconstruct the original electronic record from the hash result produced by the algorithm;

(b) that two electronic records can produce the same hash result using the algorithm.

(3) Any person by the use of a public key of the subscriber can verify the electronic record.

(4) The private key and the public key are unique to the subscriber and constitute a functioning key pair.

Information Technology Act, 2000 – Section 4 - Legal recognition of electronic records:

Where any law provides that information or any other matter shall be in writing or in the typewritten or printed form, then, notwithstanding anything contained in such law, such requirement shall be deemed to have been satisfied if such information or matter is--

(a) rendered or made available in an electronic form; and

(b) accessible so as to be usable for a subsequent reference.

Information Technology Act, 2000 – Section6 - Use of electronic records and electronic signatures in Government and its agencies:

(1) Where any law provides for--

(a) the filing of any form, application or any other document with any office, authority, body or agency owned or controlled by the appropriate Government in a particular manner;

(b) the issue or grant of any licence, permit, sanction or approval by whatever name called in a particular manner;

(c) the receipt or payment of money in a particular manner,

then, notwithstanding anything contained in any other law for the time being in force, such requirement shall be deemed to have been satisfied if such filing, issue, grant, receipt or payment, as the case may be, is effected by means of such electronic form as may be prescribed by the appropriate Government.

(2) The appropriate Government may, for the purposes of sub-section (1), by rules, prescribe--

(a) the manner and format in which such electronic records shall be filed, created or issued;

(b) the manner or method of payment of any fee or charges for filing, creation or issue any electronic record under clause (a).

Information Technology Act, 2000 - Section 7 - Retention of electronic records:

(1) Where any law provides that documents, records or information shall be retained for any specific period, then, that requirement shall be deemed to have been satisfied if such documents, records or information are retained in the electronic form, if--

(a) the information contained therein remains accessible so as to be usable for a subsequent reference;

(b) the electronic record is retained in the format in which it was originally generated, sent or received or in a format which can be demonstrated to represent accurately the information originally generated, sent or received;

(c) the details which will facilitate the identification of the origin, destination, date and time of dispatch or receipt of such electronic record are available in the electronic record:

Provided that this clause does not apply to any information which is automatically generated solely for the purpose of enabling an electronic record to be dispatched or received.

(2) Nothing in this section shall apply to any law that expressly provides for the retention of documents, records or information in the form of electronic records.

Information Technology Act, 2000 - Section 11 - Attribution of electronic records:

An electronic record shall be attributed to the originator,--

(a) if it was sent by the originator himself;

(b) by a person who had the authority to act on behalf of the originator in respect of that electronic record; or

(c) by an information system programmed by or on behalf of the originator to operate automatically.

Information Technology Act, 2000 - Section 13 - Time and place of despatch and receipt of electronic record:

(1) Save as otherwise agreed to between the originator and the addressee, the dispatch of an electronic record occurs when it enters a computer resource outside the control of the originator.

(2) Save as otherwise agreed between the originator and the addressee, the time of receipt of an electronic record shall be determined as follows, namely:--

(a) if the addressee has designated a computer resource for the purpose of receiving electronic records,--

(i) receipt occurs at the time when the electronic record enters the designated computer resource; or

(ii) if the electronic record is sent to a computer resource of the addressee that is not the designated computer resource, receipt occurs at the time when the electronic record is retrieved by the addressee;

(b) if the addressee has not designated a computer resource along with specified timings, if any, receipt occurs when the electronic record enters the computer resource of the addressee.

(3) Save as otherwise agreed to between the originator and the addressee, an electronic record is deemed to be dispatched at the place where the originator has his place of

business, and is deemed to be received at the place where the addressee has his place of business.

(4) The provisions of sub-section (2) shall apply notwithstanding that the place where the computer resource is located may be different from the place where the electronic record is deemed to have been received under sub-section (3).

(5) For the purposes of this section,--

(a) if the originator or the addressee has more than one place of business, the principal place of business, shall be the place of business;

(b) if the originator or the addressee does not have a place of business, his usual place of residence shall be deemed to be the place of business;

(c) "usual place of residence", in relation to a body corporate, means the place where it is registered.

Information Technology Act, 2000 - Section 14 - Secure electronic record:

Where any security procedure has been applied to an electronic record at a specific point of time, then such record shall he deemed to be a secure electronic record from such point of time to the time of verification.

Bharatiya Nyaya Sanhita, 2023 - Section 210 - Omission to produce document or electronic record to public servant by person legally bound to produce it:

Whoever, being legally bound to produce or deliver up any document or electronic record to any public servant, as such, intentionally omits so to produce or deliver up the same,--

(a) shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five thousand rupees, or with both;

(b) and where the document or electronic record is to be produced or delivered up to a Court with simple imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both.

Illustration

A, being legally bound to produce a document before a District Court, intentionally omits to produce the same. A has committed the offence defined in this section.

Bharatiya Nyaya Sanhita, 2023 - Section 241 - Destruction of document or electronic record to prevent its production as evidence:

Whoever secretes or destroys any document or electronic record which he may be lawfully compelled to produce as evidence in a Court or in any proceeding lawfully held before a public servant, as such, or obliterates or renders illegible the whole or any part of such document or electronic record with the intention of preventing the same from being produced or used as evidence before such Court or public servant as aforesaid, or after he shall have been lawfully summoned or required to produce the same for that purpose, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine which may extend to five thousand rupees, or with both.

Bharatiya Nyaya Sanhita, 2023 - Section 340 - Forged document or electronic record and using it as genuine:

(1) A false document or electronic record made wholly or in part by forgery is designated a forged document or electronic record.

(2) Whoever fraudulently or dishonestly uses as genuine any document or electronic record which he knows or has reason to believe to be a forged document or electronic record, shall be punished in the same manner as if he had forged such document or electronic record.

Go Back to Section 63, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 66 Bharatiya Saskhya Adhiniyam, 2023:

Information Technology Act, 2000 – Section 3A - Electronic Signature

(1) Notwithstanding anything contained in section 3, but subject to the provisions of sub-section (2), a subscriber may authenticate any electronic record by such electronic signature or electronic authentication technique which--

(a) is considered reliable; and

(b) may be specified in the Second Schedule.

(2) For the purposes of this section any electronic signature or electronic authentication technique shall be considered reliable if--

(a) the signature creation data or the authentication data are, within the context in which they are used, linked to the signatory' or, as (the case may be, the authenticator and to no other person;

(b) the signature creation data or the authentication data were, at the time of signing, under the control of the signatory or, as the case may be, the authenticator and of no other person;

(c) any alteration to the electronic signature made after affixing such signature is detectable;

(d) any alteration to the information made after its authentication by electronic signature is detectable; and

(e) it fulfils such other conditions which may be prescribed.

(3) The Central Government may prescribe the procedure for the purpose of ascertaining whether electronic signature is that of the person by whom it is purported to have been affixed or authenticated.

(4) The Central Government may, by notification in the Official Gazette, add to or omit any electronic signature or electronic authentication technique and the procedure for affixing such signature from the Second Schedule:

Provided that no electronic signature or authentication technique shall be specified in the Second Schedule unless such signature or technique is reliable.

(5) Every notification issued under sub-section (4) shall be laid before each House of Parliament.

Information Technology Act, 2000 – Section 40A - Duties Of Subscriber Of Electronic Signature Certificate

In respect of Electronic Signature Certificate the subscriber shall perform such duties as may be prescribed.

Information Technology Act, 2000 - Section 5 - Legal Recognition Of Electronic Signatures

Where any law provides that information or any other matter shall be authenticated by affixing the signature or any document shall be signed or bear the signature of any person, then, notwithstanding anything contained in such law, such requirement shall be deemed to have been satisfied, if such information or matter is authenticated by

means of electronic signature affixed in such manner as may be prescribed by the Central Government.

Explanation.--For the purposes of this section, "signed", with its grammatical variations and cognate expressions, shall, with reference to a person, mean affixing of his hand written signature or any mark on any document and the expression "signature" shall be construed accordingly.

Information Technology Act, 2000 - Section 6 - Use Of Electronic Records And Electronic Signatures In Government And Its Agencies

(1) Where any law provides for--

(a) the filing of any form, application or any other document with any office, authority, body or agency owned or controlled by the appropriate Government in a particular manner;

(b) the issue or grant of any licence, permit, sanction or approval by whatever name called in a particular manner;

(c) the receipt or payment of money in a particular manner, then, notwithstanding anything contained in any other law for the time being in force, such requirement shall be deemed to have been satisfied if such filing, issue, grant, receipt or payment, as the case may be, is effected by means of such electronic form as may be prescribed by the appropriate Government.

(2) The appropriate Government may, for the purposes of sub-section (1), by rules, prescribe-

(a) the manner and format in which such electronic records shall be filed, created or issued;

(b) the manner or method of payment of any fee or charges for filing, creation or issue any electronic record under clause (a).

Information Technology Act, 2000 - Section 10 - Power To Make Rules By Central Government In Respect Of Electronic Signature

The Central Government may, for the purposes of this Act, by rules, prescribe--

(a) the type of electronic signature;

(b) the manner and format in which the electronic signature shall be affixed;

(c) the manner or procedure which facilitates identification of the person affixing the electronic signature;

(d) control processes and procedures to ensure adequate integrity, security and confidentiality of electronic records or payments; and

(e) any other matter which is necessary to give legal effect to electronic signatures.

Information Technology Act, 2000 – Section 15 - Secure Electronic Signature

An electronic signature shall be deemed to be a secure electronic signature if--

(i) the signature creation data, at the time of affixing signature, was under the exclusive control of signatory and no other person; and

(ii) the signature creation data was stored and affixed in such exclusive manner as may be prescribed.

Explanation.-- In case of digital signature, the "signature creation data" means the private key of the subscriber.

Information Technology Act, 2000 – Section 21 - Licence To Issue Electronic Signature Certificates

(1) Subject to the provisions of sub-section (2), any person may make an application to the Controller for a licence to issue electronic Signature Certificates.

(2) No licence shall be issued under sub-section (1), unless the applicant fulfills such requirements with respect to qualification, expertise, manpower, financial resources and other infrastructure facilities, which arc necessary to issue 1[electronic] Signature Certificates as may be prescribed by the Central Government,

(3) A licence granted under this section shall--

(a) be valid for such period as may be prescribed by the Central Government;

(b) not be transferable or heritable;

(c) be subject to such terms and conditions as may be specified by the regulations.

Information Technology Act, 2000 – Section 35 - Certifying Authority To Issue Electronic Signature Certificate

(1) Any person may make an application to the Certifying Authority for the issue of a Electronic Signature Certificate in such form as may be prescribed by the Central Government.

(2) Every such application shall be accompanied by such fee not exceeding twenty-five thousand rupees as may be prescribed by the Central Government, to be paid to the Certifying Authority:

Provided that while prescribing fees under sub-section (2) different fees may be prescribed for different classes of applicants.

(3) Every such application shall be accompanied by a certification practice statement or where there is no such statement, a statement containing such particulars, as may be specified by regulations.

(4) On receipt of an application under sub-section (1), the Certifying Authority may, after consideration of the certification practice statement or the other statement under sub-section (3) and after making such enquiries as it may deem fit, grant the Electronic SignatureCertificate or for reasons to be recorded in writing, reject the application:

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Provided that no application shall be rejected unless the applicant has been given a reasonable opportunity of showing cause against the proposed rejection.

Information Technology Act, 2000 – Section 73 - Penalty For Publishing Electronic Signature Certificate False In Certain Particulars

(1) No person shall publish a Electronic Signature Certificate or otherwise make it available to any other person with the knowledge that—

(a) the Certifying Authority listed in the certificate has not issued it; or

(b) the subscriber listed in the certificate has not accepted it; or

(c) the certificate has been revoked or suspended,

unless such publication is for the purpose of verifying a Electronic signature created prior to such suspension or revocation.

(2) Any person who contravenes the provisions of sub-section (1) shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to one lakh rupees, or with both.

Go Back to Section 66, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 73 Bharatiya Saskhya Adhiniyam, 2023:

Information Technology Act, 2000 – Section 3A - Electronic Signature

(1) Notwithstanding anything contained in section 3, but subject to the provisions of sub-section (2), a subscriber may authenticate any electronic record by such electronic signature or electronic authentication technique which--

(a) is considered reliable; and

(b) may be specified in the Second Schedule.

(2) For the purposes of this section any electronic signature or electronic authentication technique shall be considered reliable if--

(a) the signature creation data or the authentication data are, within the context in which they are used, linked to the signatory' or, as (the case may be, the authenticator and to no other person;

(b) the signature creation data or the authentication data were, at the time of signing, under the control of the signatory or, as the case may be, the authenticator and of no other person;

(c) any alteration to the electronic signature made after affixing such signature is detectable;

(d) any alteration to the information made after its authentication by electronic signature is detectable; and

(e) it fulfils such other conditions which may be prescribed.

(3) The Central Government may prescribe the procedure for the purpose of ascertaining whether electronic signature is that of the person by whom it is purported to have been affixed or authenticated.

(4) The Central Government may, by notification in the Official Gazette, add to or omit any electronic signature or electronic authentication technique and the procedure for affixing such signature from the Second Schedule:

Provided that no electronic signature or authentication technique shall be specified in the Second Schedule unless such signature or technique is reliable.

(5) Every notification issued under sub-section (4) shall be laid before each House of Parliament.

Information Technology Act, 2000 - Section 5 - Legal Recognition Of Electronic Signatures

Where any law provides that information or any other matter shall be authenticated by affixing the signature or any document shall be signed or bear the signature of any person, then, notwithstanding anything contained in such law, such requirement shall be deemed to have been satisfied, if such information or matter is authenticated by means of electronic signature affixed in such manner as may be prescribed by the Central Government.

Explanation.--For the purposes of this section, "signed", with its grammatical variations and cognate expressions, shall, with reference to a person, mean affixing of his hand written signature or any mark on any document and the expression "signature" shall be construed accordingly.

Information Technology Act, 2000 – Section 35 - Certifying Authority To Issue Electronic Signature Certificate

(1) Any person may make an application to the Certifying Authority for the issue of a Electronic Signature Certificate in such form as may be prescribed by the Central Government.

(2) Every such application shall be accompanied by such fee not exceeding twenty-five thousand rupees as may be prescribed by the Central Government, to be paid to the Certifying Authority:

Provided that while prescribing fees under sub-section (2) different fees may be prescribed for different classes of applicants.

(3) Every such application shall be accompanied by a certification practice statement or where there is no such statement, a statement containing such particulars, as may be specified by regulations.

(4) On receipt of an application under sub-section (1), the Certifying Authority may, after consideration of the certification practice statement or the other statement under sub-section (3) and after making such enquiries as it may deem fit, grant the Electronic SignatureCertificate or for reasons to be recorded in writing, reject the application:

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Provided that no application shall be rejected unless the applicant has been given a reasonable opportunity of showing cause against the proposed rejection.

Information Technology Act, 2000 – Section 36 - Representations Upon Issuance Of Digital Signature Certificate

A Certifying Authority while issuing a Digital Signature Certificate shall certify that--

(a) it has complied with the provisions of this Act and the rules and regulations made thereunder;

(b) it has published the Digital Signature Certificate or otherwise made it available to such person relying on it and the subscriber has accepted it:

(c) the subscriber holds the private key corresponding to the public key, listed in the Digital Signature Certificate;

(ca) the subscriber holds a private key which is capable of creating a digital signature;

(cb) the public key to be listed in the certificate can be used to verify a digital signature affixed by the private key held by the subscriber;

(d) the subscriber's public key and private key constitute a functioning key pair;

(e) the information contained in the Digital Signature Certificate is accurate; and

(f) it has no knowledge of any material fact, which if it had been included in the Digital Signature Certificate would adversely affect the reliability of the representations in clauses (a) to (d).

Information Technology Act, 2000 – Section 37 - Suspension Of Digital Signature Certificate

(1) Subject to the provisions of sub-section (2), the Certifying Authority which has issued a Digital Signature Certificate may suspend such Digital Signature Certificate,-

(a) on receipt of a request to that effect from--

(i) the subscriber listed in the Digital Signature Certificate; or

(ii) any person duly authorised to act on behalf of that subscriber;

(b) if it is of opinion that the Digital Signature Certificate should be suspended in public interest.

(2) A Digital Signature Certificate shall not be suspended for a period exceeding fifteen days unless the subscriber has been given an opportunity of being heard in the matter.

(3) On suspension of a Digital Signature Certificate under this section, the Certifying Authority shall communicate the same to the subscriber.

Information Technology Act, 2000 – Section 38 - Revocation Of Digital Signature Certificate

(1) A Certifying Authority may revoke a Digital Signature Certificate issued by it--

(a) where the subscriber or any other person authorised by him makes a request to that effect; or

(b) upon the death of the subscriber; or

(c) upon the dissolution of the firm or winding up of the company where the subscriber is a firm or a company.

(2) Subject to the provisions of sub-section (3) and without prejudice to the provisions of sub-section (1), a Certifying Authority may revoke a Digital Signature Certificate which has been issued by it at any time, if it is of opinion that--

(a) a material fact represented in the Digital Signature Certificate is false or has been concealed:

(b) a requirement for issuance of the Digital Signature Certificate was not satisfied;

(c) the Certifying Authority's private key or security system was compromised in a manner materially affecting the Digital Signature Certificate's reliability;

(d) the subscriber has been declared insolvent or dead or where a subscriber is a firm or a company, which has been dissolved, wound-up or otherwise ceased to exist.

(3) A Digital Signature Certificate shall not be revoked unless the subscriber has been given an opportunity of being heard in the matter.

(4) On revocation of a Digital Signature Certificate under this section, the Certifying Authority shall communicate the same to the subscriber.

Information Technology Act, 2000 – Section 41 - Acceptance Of Digital Signature Certificate

(1) A subscriber shall be deemed to have accepted a Digital Signature Certificate if he publishes or authorises the publication of a Digital Signature Certificate-

(a) to one or more persons;

(b) in a repository; or

otherwise demonstrates his approval of the Digital Signature Certificate in any manner.

(2) By accepting a Digital Signature Certificate the subscriber certifies to all who reasonably rely on the information contained in the Digital Signature Certificate that--

(a) the subscriber holds the private key corresponding to the public key listed in the Digital Signature Certificate and is entitled to hold the same;

(b) all representations made by the subscriber to the Certifying Authority and all material relevant to the information contained in the Digital Signature Certificate are true;

(c) all information in the Digital Signature Certificate that is within the knowledge of the subscriber is true.

Go Back to Section 73, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 75 Bharatiya Saskhya Adhiniyam, 2023:

Code of Civil Procedure, 1908 - Section 37 - Definition of Court Which Passed A Decree

The expression "Court which passed a decree", or words to that effect, shall, in relation to the execution of decrees, unless there is anything repugnant in the subject or context, be deemed to include,-

(a) where the decree to be executed has been passed in the exercise of appellate jurisdiction, the Court of first instance, and

(b) where the Court of first instance has ceased to exist or to have jurisdiction to execute it, the Court which, if the suit wherein the decree was passed was instituted at the time of making the application for the execution of the decree, would have jurisdiction to try such suit.

Explanation.--The Court of first instance does not cease to have jurisdiction to execute a decree merely on the ground that after the institution of the suit wherein the decree was passed or after the passing of the decree, any area has been transferred from the jurisdiction of that Court to the jurisdiction of any other Court; but, in every such case, such other Court shall also have jurisdiction to execute the decree, if at the time of making the application for execution of the decree it would have jurisdiction to try the said suit.

Foreign Marriage Act, 1969 - Section 25 - Certified Copy of Entries To Be Evidences

Every certified copy purporting to be signed by the Marriage Officer of an entry of a marriage in the Marriage Certificate Book shall be received in evidence without production or proof of the original.

Indian Christian Marriage Act, 1872 - Section 80 - Certified Copy of Entry In Marriage Register, Etc, To Be Evidence

Every certified copy, purporting to be signed by the person entrusted under this Act with the custody of any marriage-register or certificate, or duplicate, required to be kept or delivered under this Act, of any entry of a marriage in such register or of any such certificate or duplicate, shall be received as evidence of the marriage purporting to be so entered, or of the facts purporting to be so certified therein, without further

proof of such register or certificate, or duplicate, or of entry therein, respectively or of such copy.

Indian Marriage Act, 1865 - Section 44 - Certified Copy of Entry In Marriage Register, &C. To Be Received As Evidence Of Marriage Without Further Proof

Every certified copy, purporting to be signed by the person entrusted under this Act with the custody of any Marriage Register or certificate or duplicate certificate required to be kept or delivered under this Act, of any entry of a marriage in such Register, or of any such certificate or duplicate certificate, shall be received as evidence of the marriage purporting to be so entered, or of the facts purporting to be so certified therein, without further proof of such Register or certificate, or duplicate copy, or of any entry therein respectively, or of such copy.

Land Acquisition Act, 1894 - Section 51A - Acceptance Of Certified Copy As Evidence

In any proceeding under this Act, a certified copy of a document registered under the Registration Act, 1908 (16 of 1908), including a copy given under section 57 of that Act, may be accepted as evidence of the transaction recorded in such document.

Go Back to Section 75, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 76, Bharatiya Sakshya Adhiniyam, 2023:

Code of Civil Procedure, 1908 - Section 37 – Definition Of Court Which Passed A Decree:

The expression "Court which passed a decree", or words to that effect, shall, in relation to the execution of decrees, unless there is anything repugnant in the subject or context, be deemed to include, -

(a) where the decree to be executed has been passed in the exercise of appellate jurisdiction, the Court of first instance, and

(b) where the Court of first instance has ceased to exist or to have jurisdiction to execute it, the Court which, if the suit wherein the decree was passed was instituted

at the time of making the application for the execution of the decree, would have jurisdiction to try such suit.

Explanation.- The Court of first instance does not cease to have jurisdiction to execute a decree merely on the ground that after the institution of the suit wherein the decree was passed or after the passing of the decree, any area has been transferred from the jurisdiction of that Court to the jurisdiction of any other Court; but, in every such case, such other Court shall also have jurisdiction to execute the decree, if at the time of making the application for execution of the decree it would have jurisdiction to try the said suit.

Foreign Marriage Act, 1969 – Section 25 – Certified copy of entries to be evidences:

Every certified copy purporting to be signed by the Marriage Officer of an entry of a marriage in the Marriage Certificate Book shall be received in evidence without production or proof of the original.

Indian Christian Marriage Act, 1872 - Section 80 – Certified Copy Of Entry In Marriage Register, Etc, To Be Evidence:

Every certified copy, purporting to be signed by the person entrusted under this Act with the custody of any marriage-register or certificate, or duplicate, required to be kept or delivered under this Act, of any entry of a marriage in such register or of any such certificate or duplicate, shall be received as evidence of the marriage purporting to be so entered, or of the facts purporting to be so certified therein, without further proof of such register or certificate, or duplicate, or of entry therein, respectively or of such copy.

Indian Marriage Act, 1865 - Section 44 – Certified Copy Of Entry In Marriage Register, &C. To Be Received As Evidence Of Marriage Without Further Proof:

Every certified copy, purporting to be signed by the person entrusted under this Act with the custody of any Marriage Register or certificate or duplicate certificate required to be kept or delivered under this Act, of any entry of a marriage in such Register, or of any such certificate or duplicate certificate, shall be received as evidence of the marriage purporting to be so entered, or of the facts purporting to be so certified therein, without further proof of such Register or certificate, or duplicate copy, or of any entry therein respectively, or of such copy.

Land Acquisition Act, 1894 - Section 51A - Acceptance Of Certified Copy As Evidence

In any proceeding under this Act, a certified copy of a document registered under the Registration Act, 1908 (16 of 1908), including a copy given under section 57 of that Act, may be accepted as evidence of the transaction recorded in such document.

Manipur Municipalities Act, 1994 - Section 223 – Mode Of Proof Of Municipal Record And Fee For Certified Copy:

(1) A copy of any receipt, application, plan, notice, order, entry in a register or other document in the possession of a Nagar Panchayat or a Council, shall, if duly certified by any person authorised by any bye-law in this behalf, be received as evidence of the existence of any entry or document and shall be admitted as evidence of the matters and transactions therein recorded in every case, where and to the same extent as, the original entry or document would, if produced, have been admissible to prove such matters.

(2) For the issue of such copies the Nagar Panchayat or as the case may be, the Council may impose such fees as may be fixed by any bye-law in this behalf.

Patent Act, 1859 - Section 13 – Certified Copy To Be Prima Facie Evidence:

Certified copy of entry to be given

Every such certified copy shall be prima facie evidence of the document of which it purports to be a copy.

Go Back to Section 76, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 77, Bharatiya Sakshya Adhiniyam, 2023:

Air Force Act, 1950 - Section 57 - Falsifying Official Documents And False Declaration:

Any person subject to this Act who commits any of the following offences, that is to say,--

(a) in any report, return, list, certificate; book or other document made or signed by him, or of the contents of which it is his duty to ascertain the accuracy, knowingly makes, or is privy to the making of, any false or fraudulent statement; or

(b) in any document of the description mentioned in clause (a) knowingly makes, or is privy to the making of, any omission, with intent to defraud; or

(c) knowingly and. with intent to injure any person, or knowingly and with intent to defraud, suppresses, defaces, alters or makes away with any document which it is his duty to preserve or produce; or

(d) where it is his official duty to make a declaration respecting any matter knowingly makes a false declaration; or

(e) obtains for himself, or for any other person, any pension, allowance or other advantage or privilege by a statement which is false, and which he either knows or believes to be false or does not believe to be true, or by making or using a false entry in any book or record, or by making any document containing a false statement, or by omitting to make a true entry or document containing a true statement;

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned.

Army Act, 1950 - Section 57 - Falsifying Official Documents And False Declaration:

Any person mentioned in clause (a) knowingly makes, or is privy to the making of, any omission, with intent to defraud; or

(c) knowingly and with intent to injure any person, or knowingly and with intent to defraud, suppresses, defaces, alters or makes away with any documents which it is his duty to preserve or produce; or

(d) where it is his official duty to make a declaration respecting any matter, knowingly makes a false declaration; or

(e) obtains for himself, or for any other person, any pension, allowance or other advantage or privilege by a statement which is false, and which he either knows or believes to be false or does not believe to be true, or by making or using a false entry in any book or record or by making any document containing a false statement, or by omitting to make a true entry or document containing a true statement,

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act

Border Security Force Act, 1968 - Section 35 - Falsifying Official Documents And False Declarations:

Any person subject to this Act who commits any of the following offences, that is to say,--

(a)in any report, return, list, certificate, book or other document made or signed by him, or of the contents of which it is his duty to ascertain the accuracy, knowingly makes, or is privy to the making of, any false or fraudulent statement; or

(b)in any document of the description mentioned in clause (a) knowingly makes, or is privy to the making of, any omission, with intent to defraud; or

(c)knowingly and with intent to injure any person, or knowingly and with intent to defraud, suppresses, defaces, alters or makes away with any document which it is his duty to preserve or produce; or

(d)where it is his official duty to make a declaration respecting any matter, knowingly makes a false declaration; or

(e)obtains for himself, or for any other person, any pension, allowance or other advantage or privilege by a statement which is false, and which he either knows or believes to be false or does not believe to be true, or by making or using a false entry in any book or record, or by making any document containing a false statement, or by omitting to make a true entry or document containing a true statement,

shall, on conviction by a Security Force Court, be liable to suffer imprisonment for a term which may extend to ten years or such less punishment as is in this Act mentioned.

Coast Guard Act, 1978 - Section 33 - Falsifying Official Documents And False Declarations:

Any person subject to this Act who commits any of the following offences, that is to say,--

(a) in any report, return, list, certificate, book or other document made or signed by him, or of the contents of which it is his duty to ascertain the accuracy knowingly makes; or is privy to the making of, any false or fraudulent statement; or

(b) in any document of the description mentioned in clause (a) knowingly makes, or is privy to the making of, any omission, with intent to defraud; or

(c) knowingly and with intent to injury any person, or knowingly and with intent to defraud, suppresses, defaces, alters or makes away with any document which it is his duty to preserve or produce; or

(d) where it is his official duty to make a declaration respecting any matter, knowingly makes a false declaration; or

(e) obtains for himself, or for any other person, any pension, allowance or other advantage or privilege by a statement which is false, and which he either knows or believes to be false, or does not believe to be true, or by making or using a false entry in any book or recorder by making any document containing a false statement, or by omitting to make a true entry or document containing a true statement.

shall, on conviction by a Coast Guard Court be liable to suffer imprisonment for a term which may extend to ten years or such less punishment as is in this Act mentioned.

The Indo-Tibetan Border Police Force Act, 1992 - Section 38 - Falsifying Official Documents And False Declarations:

Any person subject to this Act who commits any of the following offences, that is to say,-

(a) in any report, return, list, certificate, book or other document made or signed by him, or of the contents of which it is his duty to ascertain the accuracy, knowingly makes, or is privy to the making of, any false or fraudulent statement; or

(b) in any document of the description mentioned in clause (a) knowingly makes, or is privy to the making of, any omission, with intent to defraud; or

(c) knowingly and with intent to injure any person, or knowingly and with intent to defraud, suppresses, defaces, alters or makes away with any document which it is his duty to preserve or produce; or

(d) where it is his official duty to make a declaration respecting any matter, knowingly makes a false declaration; or

(e) obtains for himself, or for any other person, any pension, allowance or other advantage or privilege by a statement which is false, and which he either knows or believes to be false or does not believe to be true, or by making or using a false entry in any book or record, or by making any document containing false statement, or by omitting to make a true entry or document containing a true statement.

shall, on conviction by a Force Court, be liable to suffer imprisonment for a term which may extend to ten years or such less punishment as is in this Act mentioned.

National Security Guard Act, 1986 - Section 34 - Falsifying Official Documents And False Declarations:

Any person subject to this Act who commits any of the following offences, that is to say,--

(a) in any report, return, list, certificate, book or other document made or signed by him, or of the contents of which it is his duty to ascertain the accuracy knowingly makes, or is privy to the making of, any false or fraudulent statement; or

(b) in any document of the description mentioned in clause (a) knowingly makes, or is privy to the making of, any omission, with intent to defraud, or

(c) knowingly and with intent to injure any person, or knowingly and with intent to defraud, suppresses, defaces, alters or makes away with any document which it is his duty to preserve or produce; or

(d) where it is his official duty to make a declaration respecting any matter, knowingly makes a false declaration; or

(e) obtains for himself, or for any other person, any pension, allowance or other advantage or privilege by a statement which is false, and which he either knows or believes to be false or does not believe to be true, or by making or using a false entry in any book or record, or by making any document containing a false statement, or by omitting to make a true entry of document containing a true statement,

shall, on conviction by a Security Guard Court, be liable to suffer imprisonment for a term which may extend to ten years or such less punishment as is in this Act mentioned.

Navy Act, 1957 - Section 60 - Falsifying Official Documents And False Declarations:

Every person subject to naval law--

(a) who knowingly makes or signs a false report, return, list, certificate, book, muster or other document to be used for official purposes; or

(b) who commands, counsels or procures the making or signing thereof; or

(c) who aids or abets any other person in the making or signing thereof; or

(d) who knowingly makes, commands, counsels or procures the making of, a false or fraudulent statement or a fraudulent omission in any such document;

shall be punished with imprisonment for a term which may extend to seven years or such other punishment as is hereinafter mentioned.

Sashastra Seema Bal Act, 2007 - Section 38 - Falsifying Official Documents And False Declaration:

Any person subject to this Act who commits any of the following offences, namely:--

(a) in any report, return, list, certificate, book or other document made or signed by him, or of the contents of which it is his duty to ascertain the accuracy, knowingly makes, or is privy to the making of, any false or fraudulent statement; or

(b) in any document of the description mentioned in clause (a) knowingly makes, or is privy to the making of, any omission, with intent to defraud; or

(c) knowingly and with intent to injure any person, or knowingly and with intent to defraud, suppresses, defaces, alters or makes away with any document which it is his duty to preserve or produce; or

(d) where it is his official duty to make a declaration respecting any matter knowingly makes a false declaration; or

(e) obtains for himself, or for any other person, any pension, allowance or other advantage or privilege by a statement which is false, and which he either knows or believes to be false or does not believe to be true, or by making or using a false entry in any book or record, or by making any document containing a false statement, or by omitting to make a true entry or document containing a true statement,

shall, on conviction by a Force Court, be liable to suffer imprisonment for a term which may extend to ten years or such less punishment as is in this Act mentioned.

Go Back to Section 77, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 78, Bharatiya Sakshya Adhiniyam, 2023:

Code of Civil Procedure, 1908 - Section 37 - Definition of Court which passed a decree:

The expression "Court which passed a decree", or words to that effect, shall, in relation to the execution of decrees, unless there is anything repugnant in the subject or context, be deemed to include,--

a) where the decree to be executed has been passed in the exercise of appellate jurisdiction, the Court of first instance, and

b) where the Court of first instance has ceased to exist or to have jurisdiction to execute it, the Court which, if the suit wherein the decree was passed was instituted at the time of making the application for the execution of the decree, would have jurisdiction to try such suit.

Explanation.--The Court of first instance does not cease to have jurisdiction to execute a decree merely on the ground that after the institution of the suit wherein the decree was passed or after the passing of the decree, any area has been transferred from the jurisdiction of that Court to the jurisdiction of any other Court; but, in every such case, such other Court shall also have jurisdiction to execute the decree, if at the time of making the application for execution of the decree it would have jurisdiction to try the said suit.

Foreign Marriage Act, 1969 – Section 25 – Certified copy of entries to be evidences:

Every certified copy purporting to be signed by the Marriage Officer of an entry of a marriage in the Marriage Certificate Book shall be received in evidence without production or proof of the original.

Indian Christian Marriage Act, 1872 - Section 80 – Certified Copy Of Entry In Marriage Register, Etc, To Be Evidence:

Every certified copy, purporting to be signed by the person entrusted under this Act with the custody of any marriage-register or certificate, or duplicate, required to be kept or delivered under this Act, of any entry of a marriage in such register or of any such certificate or duplicate, shall be received as evidence of the marriage purporting to be so entered, or of the facts purporting to be so certified therein, without further proof of such register or certificate, or duplicate, or of entry therein, respectively or of such copy.

Indian Marriage Act, 1865 - Section 44 – Certified Copy Of Entry In Marriage Register, &C. To Be Received As Evidence Of Marriage Without Further Proof:

Every certified copy, purporting to be signed by the person entrusted under this Act with the custody of any Marriage Register or certificate or duplicate certificate required to be kept or delivered under this Act, of any entry of a marriage in such Register, or of any such certificate or duplicate certificate, shall be received as evidence of the marriage purporting to be so entered, or of the facts purporting to be so certified therein, without further proof of such Register or certificate, or duplicate copy, or of any entry therein respectively, or of such copy.

Land Acquisition Act, 1894 - Section 51A - Acceptance Of Certified Copy As Evidence

In any proceeding under this Act, a certified copy of a document registered under the Registration Act, 1908 (16 of 1908), including a copy given under section 57 of that Act, may be accepted as evidence of the transaction recorded in such document.

Patent Act, 1859 - Section 13 - Certified Copy To Be Prima Facie Evidence:

Certified copy of entry to be given

Every such certified copy shall be prima facie evidence of the document of which it purports to be a copy.

Go Back to Section 78, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 79, Bharatiya Sakshya Adhiniyam, 2023:

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 395 - Order to pay compensation:

(1) When a Court imposes a sentence of fine or a sentence (including a sentence of death) of which fine forms a part, the Court may, when passing judgment, order the whole or any part of the fine recovered to be applied-

(a) in defraying the expenses properly incurred in the prosecution;

(b) in the payment to any person of compensation for any loss or injury caused by the offence, when compensation is, in the opinion of the Court, recoverable by such person in a Civil Court;

(c) when any person is convicted of any offence for having caused the death of another person or of having abetted the commission of such an offence, in paying compensation to the persons who are, under the Fatal Accidents Act, 1855 (13 of 1855), entitled to recover damages from the person sentenced for the loss resulting to them from such death;

(d) when any person is convicted of any offence which includes theft, criminal misappropriation, criminal breach of trust, or cheating, or of having dishonestly received or retained, or of having voluntarily assisted in disposing of, stolen property knowing or having reason to believe the same to be stolen, in compensating any bona fide purchaser of such property for the loss of the same if such property is restored to the possession of the person entitled thereto.

(2) If the fine is imposed in a case which is subject to appeal, no such payment shall be made before the period allowed for presenting the appeal has elapsed, or, if an appeal be presented, before the decision of the appeal.

(3) When a Court imposes a sentence, of which fine does not form a part, the Court may, when passing judgment, order the accused person to pay, by way of compensation, such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced.

(4) An order under this section may also be made by an Appellate Court or by the High Court or Court of Session when exercising its powers of revision.

(5) At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any sum paid or recovered as compensation under this section.

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 403 - Court not to alter judgment:

Save as otherwise provided by this Sanhita or by any other law for the time being in force, no Court, when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error.

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 406 - Court of Session to send copy of finding and sentence to District Magistrate:

In cases tried by the Court of Session or a Chief Judicial Magistrate, the Court or such Magistrate, as the case may be, shall forward a copy of its or his finding and sentence (if any) to the District Magistrate within whose local jurisdiction the trial was held.

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 312 - Language of record of evidence:

In every case where evidence is taken down under section 310 or section 311,-

(a) if the witness gives evidence in the language of the Court, it shall be taken down in that language;

(b) if he gives evidence in any other language, it may, if practicable, be taken down in that language, and if it is not practicable to do so, a true translation of the evidence in the language of the Court shall be prepared as the examination of the witness proceeds, signed by the Magistrate or presiding Judge, and shall form part of the record;

(c) where under clause (b) evidence is taken down in a language other than the language of the Court, a true translation thereof in the language of the Court shall be prepared as soon as practicable, signed by the Magistrate or presiding Judge, and shall form part of the record:

Provided that when under clause (b) evidence is taken down in English and a translation thereof in the language of the Court is not required by any of the parties, the Court may dispense with such translation.

Go Back to Section 79, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 81, Bharatiya Sakshya Adhiniyam, 2023:

Information Technology Act, 2000 - Section 3 - Authentication Of Electronic Records:

(1) Subject to the provisions of this section, any subscriber may authenticate an electronic record by affixing his digital signature.

(2) The authentication of the electronic record shall be effected by the use of asymmetric crypto system and hash function which envelop and transform the initial electronic record into another electronic record.

Explanation.--For the purposes of this sub-section, "hash function" means an algorithm mapping or translation of one sequence of bits into another, generally smaller, set known as "hash result" such that an electronic record yields the same hash result every time the algorithm is executed with the same electronic record as its input making it computationally infeasible--

(a) to derive or reconstruct the original electronic record from the hash result produced by the algorithm;

(b) that two electronic records can produce the same hash result using the algorithm.

(3) Any person by the use of a public key of the subscriber can verify the electronic record.

(4) The private key and the public key are unique to the subscriber and constitute a functioning key pair.

Information Technology Act, 2000 - Section 3A - Electronic Signature:

(1) Notwithstanding anything contained in section 3, but subject to the provisions of sub-section (2), a subscriber may authenticate any electronic record by such electronic signature or electronic authentication technique which--

(a) is considered reliable; and

(b) may be specified in the Second Schedule.

(2) For the purposes of this section any electronic signature or electronic authentication technique shall be considered reliable if--

(a) the signature creation data or the authentication data are, within the context in which they are used, linked to the signatory' or, as (the case may be, the authenticator and to no other person;

(b) the signature creation data or the authentication data were, at the time of signing, under the control of the signatory or, as the case may be, the authenticator and of no other person;

(c) any alteration to the electronic signature made after affixing such signature is detectable;

(d) any alteration to the information made after its authentication by electronic signature is detectable; and

(e) it fulfils such other conditions which may be prescribed.

(3) The Central Government may prescribe the procedure for the purpose of ascertaining whether electronic signature is that of the person by whom it is purported to have been affixed or authenticated.

(4) The Central Government may, by notification in the Official Gazette, add to or omit any electronic signature or electronic authentication technique and the procedure for affixing such signature from the Second Schedule:

Provided that no electronic signature or authentication technique shall be specified in the Second Schedule unless such signature or technique is reliable.

(5) Every notification issued under sub-section (4) shall be laid before each House of Parliament.

Information Technology Act, 2000 - Section 4 – Legal - recognition of electronic records:

Where any law provides that information or any other matter shall be in writing or in the typewritten or printed form, then, notwithstanding anything contained in such law, such requirement shall be deemed to have been satisfied if such information or matter is-

(a) rendered or made available in an electronic form; and

(b) accessible so as to be usable for a subsequent reference.

Information Technology Act, 2000 - Section 6 - Use of Electronic Records And Electronic Signatures In Government And Its Agencies:

(1) Where any law provides for--

(a) the filing of any form, application or any other document with any office, authority, body or agency owned or controlled by the appropriate Government in a particular manner;

(b) the issue or grant of any licence, permit, sanction or approval by whatever name called in a particular manner;

(c) the receipt or payment of money in a particular manner,

then, notwithstanding anything contained in any other law for the time being in force, such requirement shall be deemed to have been satisfied if such filing, issue, grant, receipt or payment, as the case may be, is effected by means of such electronic form as may be prescribed by the appropriate Government.

(2) The appropriate Government may, for the purposes of sub-section (1), by rules, prescribe--

(a) the manner and format in which such electronic records shall be filed, created or issued;

(b) the manner or method of payment of any fee or charges for filing, creation or issue any electronic record under clause (a).

Information Technology Act, 2000 - Section 7 - Retention Of Electronic Records:

(1) Where any law provides that documents, records or information shall be retained for any specific period, then, that requirement shall be deemed to have been satisfied if such documents, records or information are retained in the electronic form, if--

(a) the information contained therein remains accessible so as to be usable for a subsequent reference;

(b) the electronic record is retained in the format in which it was originally generated, sent or received or in a format which can be demonstrated to represent accurately the information originally generated, sent or received;

(c) the details which will facilitate the identification of the origin, destination, date and time of dispatch or receipt of such electronic record are available in the electronic record:

Provided that this clause does not apply to any information which is automatically generated solely for the purpose of enabling an electronic record to be dispatched or received.

(2) Nothing in this section shall apply to any law that expressly provides for the retention of documents, records or information in the form of electronic records.

Information Technology Act, 2000 - Section 11 - Attribution Of Electronic Records:

An electronic record shall be attributed to the originator,-

(a) if it was sent by the originator himself;

(b) by a person who had the authority to act on behalf of the originator in respect of that electronic record; or

(c) by an information system programmed by or on behalf of the originator to operate automatically.

Information Technology Act, 2000 - Section 13 - Time And Place Of Despatch And Receipt Of Electronic Record:

(1) Save as otherwise agreed to between the originator and the addressee, the dispatch of an electronic record occurs when it enters a computer resource outside the control of the originator.

(2) Save as otherwise agreed between the originator and the addressee, the time of receipt of an electronic record shall be determined as follows, namely:--

(a) if the addressee has designated a computer resource for the purpose of receiving electronic records,--

(i) receipt occurs at the time when the electronic record enters the designated computer resource; or

(ii) if the electronic record is sent to a computer resource of the addressee that is not the designated computer resource, receipt occurs at the time when the electronic record is retrieved by the addressee;

(b) if the addressee has not designated a computer resource along with specified timings, if any, receipt occurs when the electronic record enters the computer resource of the addressee.

(3) Save as otherwise agreed to between the originator and the addressee, an electronic record is deemed to be dispatched at the place where the originator has his place of business, and is deemed to be received at the place where the addressee has his place of business.

(4) The provisions of sub-section (2) shall apply notwithstanding that the place where the computer resource is located may be different from the place where the electronic record is deemed to have been received under sub-section (3).

(5) For the purposes of this section,--

(a) if the originator or the addressee has more than one place of business, the principal place of business, shall be the place of business;

(b) if the originator or the addressee does not have a place of business, his usual place of residence shall be deemed to be the place of business;

(c) "usual place of residence", in relation to a body corporate, means the place where it is registered.

Information Technology Act, 2000 - Section 14 - Secure Electronic Record:

Where any security procedure has been applied to an electronic record at a specific point of time, then such record shall he deemed to be a secure electronic record from such point of time to the time of verification.

Bharatiya Nyaya Sanhita, 2023 - Section 210 - Omission to produce document or electronic record to public servant by person legally bound to produce it:

Whoever, being legally bound to produce or deliver up any document or electronic record to any public servant, as such, intentionally omits so to produce or deliver up the same,-

(a) shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five thousand rupees, or with both;

(b) and where the document or electronic record is to be produced or delivered up to a Court with simple imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both.

Illustration

A, being legally bound to produce a document before a District Court, intentionally omits to produce the same. A has committed the offence defined in this section.

Bharatiya Nyaya Sanhita, 2023 - Section 241 - Destruction of document or electronic record to prevent its production as evidence:

Whoever secretes or destroys any document or electronic record which he may be lawfully compelled to produce as evidence in a Court or in any proceeding lawfully held before a public servant, as such, or obliterates or renders illegible the whole or any part of such document or electronic record with the intention of preventing the same from being produced or used as evidence before such Court or public servant as aforesaid, or after he shall have been lawfully summoned or required to produce the same for that purpose, shall be punished with imprisonment of either description

for a term which may extend to three years, or with fine which may extend to five thousand rupees, or with both.

Bharatiya Nyaya Sanhita, 2023 - Section 340 - Forged document or electronic record and using it as genuine:

(1) A false document or electronic record made wholly or in part by forgery is designated a forged document or electronic record.

(2) Whoever fraudulently or dishonestly uses as genuine any document or electronic record which he knows or has reason to believe to be a forged document or electronic record, shall be punished in the same manner as if he had forged such document or electronic record.

Go Back to Section 81, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 82, Bharatiya Sakshya Adhiniyam, 2023:

Registration Act, 1908 - Section 21 - Description Of Property And Maps Or Plans:

(1) No non-testamentary document relating to immovable property shall be accepted for registration unless it contains a description of such property sufficient to identify the same.

(2) Houses in towns shall be described as situate on the north or other side of the street or road (which should be specified) to which they front, and by their existing and former occupancies, and by their numbers if the houses in such street or road are numbered.

(3) Other houses and lands shall be described by their name, if any, and as being the territorial division in which they are situate, and by their superficial contents, the roads and other properties on to which they abut, and their existing occupancies, and also, whenever it is practicable, by reference to a Government map or survey.

(4) No non-testamentary document containing a map or plan of any property comprised therein shall be accepted for registration unless it is accompanied by a true copy of the map or plan, or, in case such property is situate in several districts, by such number of true copies of the map or plan as are equal to the number of such districts.

Registration Act, 1908 - Section 22 - Description Of Houses And Land By Reference To Government Maps Or Surveys:

(1) Where it is, in the opinion of the State Government, practicable to describe houses, not being houses in towns, and lands by reference to a Government map or survey, the State Government may, by rule made under this Act, require that such houses and lands as aforesaid shall, for the purposes of section 21, be so described.

(2) Save as otherwise provided by any rule made under sub-section (1), failure to comply with the provisions of section 21, sub-section (2) or sub-section (3), shall not disentitle a document to be registered if the description of the property to which it relates is sufficient to identify that property.

Go Back to Section 82, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 84, Bharatiya Sakshya Adhiniyam, 2023:

Registration Act, 1908 - Section 33 - Power-of-Attorney Recognizable For Purposes of Section 32:

(1) For the purposes of section 32, the following powers-of-attorney shall alone be recognized, namely:-

(a) if the principal at the time of executing the power-of-attorney resides in any part of India in which this Act is for the time being in force, a power-of-attorney executed before and authenticated by the Registrar or Sub-Registrar within whose district or sub-district the principal resides;

(b) if the principal at the time aforesaid resides in any part of India in which this Act is not in force, a power-of-attorney executed before and authenticated by any Magistrate;

(c) if the principal at the time aforesaid does not reside in India, a power-of-attorney executed before and authenticated by a Notary Public, or any Court, Judge, Magistrate, Indian Consul or Vice-Consul, or representative of the Central Government:

Provided that the following persons shall not be required to attend at any registration-office or Court for the purpose of executing any such power-of-attorney as is mentioned in clauses (a) and (b) of this section, namely:--

(i) persons who by reason of bodily infirmity are unable without risk or serious inconvenience so to attend;

(ii) persons who are in jail under civil or criminal process; and

(iii) persons exempt by law from personal appearance in court.

Explanation.- In this sub-section "India" means India, as defined in clause (28) of section 3 of the General Clauses Act, 1897 (10 of 1897).

(2) In the case of every such person the Registrar or Sub-Registrar or Magistrate, as the case may be, if satisfied that the power-of-attorney has been voluntarily executed by the person purporting to be the principal, may attest the same without requiring his personal attendance at the office or Court aforesaid.

(3) To obtain evidence as to the voluntary nature of the execution, the Registrar or Sub-Registrar or Magistrate may either himself go to the house of the person purporting to be the principal, or to the jail in which he is confined, and examine him, or issue a commission for his examination.

(4) Any power-of-attorney mentioned in this section may be proved by the production of it without further proof when it purports on the face of it to have been executed before and authenticated by the person or Court hereinbefore mentioned in that behalf.

Government of India Act, 1915 - Section 24 - Power of Attorney For Sale or Purchase of Stock And Receipt Of Dividends:

The Secretary of State in Council, by power of attorney executed by two members of the Council of India and countersigned by the Secretary of State or one of his under secretaries or his assistant under secretary, may authorise all or any of the cashiers of the Bank of England-

(a) to sell and transfer all or any part of any stock standing in the books of the Bank to the account of the Secretary of State in Council; and

(b) to purchase and accept stock for any such account; and

(c) to receive dividends on any stock standing to any such account; and, by any writing signed by two members of the Council of India and countersigned as

aforesaid, may direct the application of the money to be received in respect of any such sale or dividend:

Provided that stock shall not be purchased or sold and transferred under the authority of any such general power of attorney, except on an order in writing directed to the chief cashier and chief accountant of the Bank of England and signed and countersigned as aforesaid.

Go Back to Section 84, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 85, Bharatiya Sakshya Adhiniyam, 2023:

Information Technology Act, 2000 - Section 3 - Authentication Of Electronic Records:

(1) Subject to the provisions of this section, any subscriber may authenticate an electronic record by affixing his digital signature.

(2) The authentication of the electronic record shall be effected by the use of asymmetric crypto system and hash function which envelop and transform the initial electronic record into another electronic record.

Explanation.- For the purposes of this sub-section, "hash function" means an algorithm mapping or translation of one sequence of bits into another, generally smaller, set known as "hash result" such that an electronic record yields the same hash result every time the algorithm is executed with the same electronic record as its input making it computationally infeasible--

(a) to derive or reconstruct the original electronic record from the hash result produced by the algorithm;

(b) that two electronic records can produce the same hash result using the algorithm.

(3) Any person by the use of a public key of the subscriber can verify the electronic record.

(4) The private key and the public key are unique to the subscriber and constitute a functioning key pair.

Information Technology Act, 2000 - Section 3A - Electronic Signature:

(1) Notwithstanding anything contained in section 3, but subject to the provisions of sub-section (2), a subscriber may authenticate any electronic record by such electronic signature or electronic authentication technique which--

(a) is considered reliable; and

(b) may be specified in the Second Schedule.

(2) For the purposes of this section any electronic signature or electronic authentication technique shall be considered reliable if--

(a) the signature creation data or the authentication data are, within the context in which they are used, linked to the signatory' or, as (the case may be, the authenticator and to no other person;

(b) the signature creation data or the authentication data were, at the time of signing, under the control of the signatory or, as the case may be, the authenticator and of no other person;

(c) any alteration to the electronic signature made after affixing such signature is detectable;

(d) any alteration to the information made after its authentication by electronic signature is detectable; and

(e) it fulfils such other conditions which may be prescribed.

(3) The Central Government may prescribe the procedure for the purpose of ascertaining whether electronic signature is that of the person by whom it is purported to have been affixed or authenticated.

(4) The Central Government may, by notification in the Official Gazette, add to or omit any electronic signature or electronic authentication technique and the procedure for affixing such signature from the Second Schedule:

Provided that no electronic signature or authentication technique shall be specified in the Second Schedule unless such signature or technique is reliable.

(5) Every notification issued under sub-section (4) shall be laid before each House of Parliament.

Information Technology Act, 2000 - Section 4 - Legal recognition of electronic records:

Where any law provides that information or any other matter shall be in writing or in the typewritten or printed form, then, notwithstanding anything contained in such law, such requirement shall be deemed to have been satisfied if such information or matter is-

(a) rendered or made available in an electronic form; and

(b) accessible so as to be usable for a subsequent reference.

Information Technology Act, 2000 - Section 6 - Use of Electronic Records And Electronic Signatures In Government And Its Agencies:

(1) Where any law provides for-

(a) the filing of any form, application or any other document with any office, authority, body or agency owned or controlled by the appropriate Government in a particular manner;

(b) the issue or grant of any licence, permit, sanction or approval by whatever name called in a particular manner;

(c) the receipt or payment of money in a particular manner,

then, notwithstanding anything contained in any other law for the time being in force, such requirement shall be deemed to have been satisfied if such filing, issue, grant, receipt or payment, as the case may be, is effected by means of such electronic form as may be prescribed by the appropriate Government.

(2) The appropriate Government may, for the purposes of sub-section (1), by rules, prescribe-

(a) the manner and format in which such electronic records shall be filed, created or issued;

(b) the manner or method of payment of any fee or charges for filing, creation or issue any electronic record under clause (a).

Information Technology Act, 2000 - Section 7 - Retention of Electronic Records:

(1) Where any law provides that documents, records or information shall be retained for any specific period, then, that requirement shall be deemed to have been satisfied if such documents, records or information are retained in the electronic form, if-

(a) the information contained therein remains accessible so as to be usable for a subsequent reference;

(b) the electronic record is retained in the format in which it was originally generated, sent or received or in a format which can be demonstrated to represent accurately the information originally generated, sent or received;

(c) the details which will facilitate the identification of the origin, destination, date and time of dispatch or receipt of such electronic record are available in the electronic record:

Provided that this clause does not apply to any information which is automatically generated solely for the purpose of enabling an electronic record to be dispatched or received.

(2) Nothing in this section shall apply to any law that expressly provides for the retention of documents, records or information in the form of electronic records.

Information Technology Act, 2000 - Section 11 - Attribution Of Electronic Records:

An electronic record shall be attributed to the originator,-

(a) if it was sent by the originator himself;

(b) by a person who had the authority to act on behalf of the originator in respect of that electronic record; or

(c) by an information system programmed by or on behalf of the originator to operate automatically.

Information Technology Act, 2000 - Section 13 - Time And Place of Despatch and Receipt of Electronic Record:

(1) Save as otherwise agreed to between the originator and the addressee, the dispatch of an electronic record occurs when it enters a computer resource outside the control of the originator.

(2) Save as otherwise agreed between the originator and the addressee, the time of receipt of an electronic record shall be determined as follows, namely:--

(a) if the addressee has designated a computer resource for the purpose of receiving electronic records,--

(i) receipt occurs at the time when the electronic record enters the designated computer resource; or

(ii) if the electronic record is sent to a computer resource of the addressee that is not the designated computer resource, receipt occurs at the time when the electronic record is retrieved by the addressee;

(b) if the addressee has not designated a computer resource along with specified timings, if any, receipt occurs when the electronic record enters the computer resource of the addressee.

(3) Save as otherwise agreed to between the originator and the addressee, an electronic record is deemed to be dispatched at the place where the originator has his place of business, and is deemed to be received at the place where the addressee has his place of business.

(4) The provisions of sub-section (2) shall apply notwithstanding that the place where the computer resource is located may be different from the place where the electronic record is deemed to have been received under sub-section (3).

(5) For the purposes of this section,--

(a) if the originator or the addressee has more than one place of business, the principal place of business, shall be the place of business;

(b) if the originator or the addressee does not have a place of business, his usual place of residence shall be deemed to be the place of business;

(c) "usual place of residence", in relation to a body corporate, means the place where it is registered.

Information Technology Act, 2000 - Section 14 - Secure Electronic Record:

Where any security procedure has been applied to an electronic record at a specific point of time, then such record shall he deemed to be a secure electronic record from such point of time to the time of verification.

Bharatiya Nyaya Sanhita, 2023 - Section 210 - Omission to produce document or electronic record to public servant by person legally bound to produce it:

Whoever, being legally bound to produce or deliver up any document or electronic record to any public servant, as such, intentionally omits so to produce or deliver up the same,-

(a) shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five thousand rupees, or with both;

(b) and where the document or electronic record is to be produced or delivered up to a Court with simple imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both.

Illustration

A, being legally bound to produce a document before a District Court, intentionally omits to produce the same. A has committed the offence defined in this section.

Bharatiya Nyaya Sanhita, 2023 - Section 241 - Destruction of document or electronic record to prevent its production as evidence:

Whoever secretes or destroys any document or electronic record which he may be lawfully compelled to produce as evidence in a Court or in any proceeding lawfully held before a public servant, as such, or obliterates or renders illegible the whole or any part of such document or electronic record with the intention of preventing the same from being produced or used as evidence before such Court or public servant as aforesaid, or after he shall have been lawfully summoned or required to produce the same for that purpose, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine which may extend to five thousand rupees, or with both.

Go Back to Section 85, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 86, Bharatiya Sakshya Adhiniyam, 2023:

Information Technology Act, 2000 - Section 3 - Authentication Of Electronic Records:

(1) Subject to the provisions of this section, any subscriber may authenticate an electronic record by affixing his digital signature.

(2) The authentication of the electronic record shall be effected by the use of asymmetric crypto system and hash function which envelop and transform the initial electronic record into another electronic record.

Explanation.- For the purposes of this sub-section, "hash function" means an algorithm mapping or translation of one sequence of bits into another, generally smaller, set known as "hash result" such that an electronic record yields the same hash result every time the algorithm is executed with the same electronic record as its input making it computationally infeasible--

(a) to derive or reconstruct the original electronic record from the hash result produced by the algorithm;

(b) that two electronic records can produce the same hash result using the algorithm.

(3) Any person by the use of a public key of the subscriber can verify the electronic record.

(4) The private key and the public key are unique to the subscriber and constitute a functioning key pair.

Information Technology Act, 2000 - Section 3A - Electronic Signature:

(1) Notwithstanding anything contained in section 3, but subject to the provisions of sub-section (2), a subscriber may authenticate any electronic record by such electronic signature or electronic authentication technique which--

(a) is considered reliable; and

(b) may be specified in the Second Schedule.

(2) For the purposes of this section any electronic signature or electronic authentication technique shall be considered reliable if--

(a) the signature creation data or the authentication data are, within the context in which they are used, linked to the signatory' or, as (the case may be, the authenticator and to no other person;

(b) the signature creation data or the authentication data were, at the time of signing, under the control of the signatory or, as the case may be, the authenticator and of no other person;

(c) any alteration to the electronic signature made after affixing such signature is detectable;

(d) any alteration to the information made after its authentication by electronic signature is detectable; and

(e) it fulfils such other conditions which may be prescribed.

(3) The Central Government may prescribe the procedure for the purpose of ascertaining whether electronic signature is that of the person by whom it is purported to have been affixed or authenticated.

(4) The Central Government may, by notification in the Official Gazette, add to or omit any electronic signature or electronic authentication technique and the procedure for affixing such signature from the Second Schedule:

Provided that no electronic signature or authentication technique shall be specified in the Second Schedule unless such signature or technique is reliable.

(5) Every notification issued under sub-section (4) shall be laid before each House of Parliament.

Information Technology Act, 2000 - Section 4 - Legal recognition of electronic records:

Where any law provides that information or any other matter shall be in writing or in the typewritten or printed form, then, notwithstanding anything contained in such law, such requirement shall be deemed to have been satisfied if such information or matter is-

(a) rendered or made available in an electronic form; and

(b) accessible so as to be usable for a subsequent reference.

Information Technology Act, 2000 - Section 6 - Use Of Electronic Records And Electronic Signatures In Government And Its Agencies:

(1) Where any law provides for-

(a) the filing of any form, application or any other document with any office, authority, body or agency owned or controlled by the appropriate Government in a particular manner;

(b) the issue or grant of any licence, permit, sanction or approval by whatever name called in a particular manner;

(c) the receipt or payment of money in a particular manner,

then, notwithstanding anything contained in any other law for the time being in force, such requirement shall be deemed to have been satisfied if such filing, issue, grant, receipt or payment, as the case may be, is effected by means of such electronic form as may be prescribed by the appropriate Government.

(2) The appropriate Government may, for the purposes of sub-section (1), by rules, prescribe-

(a) the manner and format in which such electronic records shall be filed, created or issued;

(b) the manner or method of payment of any fee or charges for filing, creation or issue any electronic record under clause (a).

Information Technology Act, 2000 - Section 7 - Retention Of Electronic Records:

(1) Where any law provides that documents, records or information shall be retained for any specific period, then, that requirement shall be deemed to have been satisfied if such documents, records or information are retained in the electronic form, if--

(a) the information contained therein remains accessible so as to be usable for a subsequent reference;

(b) the electronic record is retained in the format in which it was originally generated, sent or received or in a format which can be demonstrated to represent accurately the information originally generated, sent or received;

(c) the details which will facilitate the identification of the origin, destination, date and time of dispatch or receipt of such electronic record are available in the electronic record:

Provided that this clause does not apply to any information which is automatically generated solely for the purpose of enabling an electronic record to be dispatched or received.

(2) Nothing in this section shall apply to any law that expressly provides for the retention of documents, records or information in the form of electronic records.

Information Technology Act, 2000 - Section 11 - Attribution Of Electronic Records:

An electronic record shall be attributed to the originator,-

(a) if it was sent by the originator himself;

(b) by a person who had the authority to act on behalf of the originator in respect of that electronic record; or

(c) by an information system programmed by or on behalf of the originator to operate automatically.

Information Technology Act, 2000 - Section 13 - Time And Place Of Despatch And Receipt Of Electronic Record:

(1) Save as otherwise agreed to between the originator and the addressee, the dispatch of an electronic record occurs when it enters a computer resource outside the control of the originator.

(2) Save as otherwise agreed between the originator and the addressee, the time of receipt of an electronic record shall be determined as follows, namely:--

(a) if the addressee has designated a computer resource for the purpose of receiving electronic records,-

(i) receipt occurs at the time when the electronic record enters the designated computer resource; or

(ii) if the electronic record is sent to a computer resource of the addressee that is not the designated computer resource, receipt occurs at the time when the electronic record is retrieved by the addressee;

(b) if the addressee has not designated a computer resource along with specified timings, if any, receipt occurs when the electronic record enters the computer resource of the addressee.

(3) Save as otherwise agreed to between the originator and the addressee, an electronic record is deemed to be dispatched at the place where the originator has his place of business, and is deemed to be received at the place where the addressee has his place of business.

(4) The provisions of sub-section (2) shall apply notwithstanding that the place where the computer resource is located may be different from the place where the electronic record is deemed to have been received under sub-section (3).

(5) For the purposes of this section,-

(a) if the originator or the addressee has more than one place of business, the principal place of business, shall be the place of business;

(b) if the originator or the addressee does not have a place of business, his usual place of residence shall be deemed to be the place of business;

(c) "usual place of residence", in relation to a body corporate, means the place where it is registered.

Information Technology Act, 2000 - Section 14 - Secure Electronic Record:

Where any security procedure has been applied to an electronic record at a specific point of time, then such record shall he deemed to be a secure electronic record from such point of time to the time of verification.

Bharatiya Nyaya Sanhita, 2023 - Section 210 - Omission to produce document or electronic record to public servant by person legally bound to produce it:

Whoever, being legally bound to produce or deliver up any document or electronic record to any public servant, as such, intentionally omits so to produce or deliver up the same,-

(a) shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five thousand rupees, or with both;

(b) and where the document or electronic record is to be produced or delivered up to a Court with simple imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both.

Illustration

A, being legally bound to produce a document before a District Court, intentionally omits to produce the same. A has committed the offence defined in this section.

Bharatiya Nyaya Sanhita, 2023 - Section 241 - Destruction of document or electronic record to prevent its production as evidence:

Whoever secretes or destroys any document or electronic record which he may be lawfully compelled to produce as evidence in a Court or in any proceeding lawfully held before a public servant, as such, or obliterates or renders illegible the whole or any part of such document or electronic record with the intention of preventing the same from being produced or used as evidence before such Court or public servant as aforesaid, or after he shall have been lawfully summoned or required to produce the same for that purpose, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine which may extend to five thousand rupees, or with both.

Bharatiya Nyaya Sanhita, 2023 - Section 340 - Forged document or electronic record and using it as genuine:

(1) A false document or electronic record made wholly or in part by forgery is designated a forged document or electronic record.

(2) Whoever fraudulently or dishonestly uses as genuine any document or electronic record which he knows or has reason to believe to be a forged document or electronic record, shall be punished in the same manner as if he had forged such document or electronic record.

Go Back to Section 86, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 87, Bharatiya Sakshya Adhiniyam, 2023:

Information Technology Act, 2000 - Section 3 - Authentication Of Electronic Records:

(1) Subject to the provisions of this section, any subscriber may authenticate an electronic record by affixing his digital signature.

(2) The authentication of the electronic record shall be effected by the use of asymmetric crypto system and hash function which envelop and transform the initial electronic record into another electronic record.

Explanation.- For the purposes of this sub-section, "hash function" means an algorithm mapping or translation of one sequence of bits into another, generally smaller, set known as "hash result" such that an electronic record yields the same hash result every time the algorithm is executed with the same electronic record as its input making it computationally infeasible--

(a) to derive or reconstruct the original electronic record from the hash result produced by the algorithm;

(b) that two electronic records can produce the same hash result using the algorithm.

(3) Any person by the use of a public key of the subscriber can verify the electronic record.

(4) The private key and the public key are unique to the subscriber and constitute a functioning key pair.

Information Technology Act, 2000 - Section 3A - Electronic Signature:

(1) Notwithstanding anything contained in section 3, but subject to the provisions of sub-section (2), a subscriber may authenticate any electronic record by such electronic signature or electronic authentication technique which--

(a) is considered reliable; and

(b) may be specified in the Second Schedule.

(2) For the purposes of this section any electronic signature or electronic authentication technique shall be considered reliable if--

(a) the signature creation data or the authentication data are, within the context in which they are used, linked to the signatory' or, as (the case may be, the authenticator and to no other person;

(b) the signature creation data or the authentication data were, at the time of signing, under the control of the signatory or, as the case may be, the authenticator and of no other person;

(c) any alteration to the electronic signature made after affixing such signature is detectable;

(d) any alteration to the information made after its authentication by electronic signature is detectable; and

(e) it fulfils such other conditions which may be prescribed.

(3) The Central Government may prescribe the procedure for the purpose of ascertaining whether electronic signature is that of the person by whom it is purported to have been affixed or authenticated.

(4) The Central Government may, by notification in the Official Gazette, add to or omit any electronic signature or electronic authentication technique and the procedure for affixing such signature from the Second Schedule:

Provided that no electronic signature or authentication technique shall be specified in the Second Schedule unless such signature or technique is reliable.

(5) Every notification issued under sub-section (4) shall be laid before each House of Parliament.

Information Technology Act, 2000 - Section 4 - Legal recognition of electronic records:

Where any law provides that information or any other matter shall be in writing or in the typewritten or printed form, then, notwithstanding anything contained in such law, such requirement shall be deemed to have been satisfied if such information or matter is-

(a) rendered or made available in an electronic form; and

(b) accessible so as to be usable for a subsequent reference.

Information Technology Act, 2000 - Section 6 - Use Of Electronic Records And Electronic Signatures In Government And Its Agencies:

(1) Where any law provides for-

(a) the filing of any form, application or any other document with any office, authority, body or agency owned or controlled by the appropriate Government in a particular manner;

(b) the issue or grant of any licence, permit, sanction or approval by whatever name called in a particular manner;

(c) the receipt or payment of money in a particular manner,

then, notwithstanding anything contained in any other law for the time being in force, such requirement shall be deemed to have been satisfied if such filing, issue, grant, receipt or payment, as the case may be, is effected by means of such electronic form as may be prescribed by the appropriate Government.

(2) The appropriate Government may, for the purposes of sub-section (1), by rules, prescribe-

(a) the manner and format in which such electronic records shall be filed, created or issued;

(b) the manner or method of payment of any fee or charges for filing, creation or issue any electronic record under clause (a).

Information Technology Act, 2000 - Section 7 - Retention Of Electronic Records:

(1) Where any law provides that documents, records or information shall be retained for any specific period, then, that requirement shall be deemed to have been satisfied if such documents, records or information are retained in the electronic form, if--

(a) the information contained therein remains accessible so as to be usable for a subsequent reference;

(b) the electronic record is retained in the format in which it was originally generated, sent or received or in a format which can be demonstrated to represent accurately the information originally generated, sent or received;

(c) the details which will facilitate the identification of the origin, destination, date and time of dispatch or receipt of such electronic record are available in the electronic record:

Provided that this clause does not apply to any information which is automatically generated solely for the purpose of enabling an electronic record to be dispatched or received.

(2) Nothing in this section shall apply to any law that expressly provides for the retention of documents, records or information in the form of electronic records.

Information Technology Act, 2000 - Section 11 - Attribution Of Electronic Records:

An electronic record shall be attributed to the originator,-

(a) if it was sent by the originator himself;

(b) by a person who had the authority to act on behalf of the originator in respect of that electronic record; or

(c) by an information system programmed by or on behalf of the originator to operate automatically.

Information Technology Act, 2000 - Section 13 - Time And Place Of Despatch And Receipt Of Electronic Record:

(1) Save as otherwise agreed to between the originator and the addressee, the dispatch of an electronic record occurs when it enters a computer resource outside the control of the originator.

(2) Save as otherwise agreed between the originator and the addressee, the time of receipt of an electronic record shall be determined as follows, namely:--

(a) if the addressee has designated a computer resource for the purpose of receiving electronic records,-

(i) receipt occurs at the time when the electronic record enters the designated computer resource; or

(ii) if the electronic record is sent to a computer resource of the addressee that is not the designated computer resource, receipt occurs at the time when the electronic record is retrieved by the addressee;

(b) if the addressee has not designated a computer resource along with specified timings, if any, receipt occurs when the electronic record enters the computer resource of the addressee.

(3) Save as otherwise agreed to between the originator and the addressee, an electronic record is deemed to be dispatched at the place where the originator has his place of business, and is deemed to be received at the place where the addressee has his place of business.

(4) The provisions of sub-section (2) shall apply notwithstanding that the place where the computer resource is located may be different from the place where the electronic record is deemed to have been received under sub-section (3).

(5) For the purposes of this section,-

(a) if the originator or the addressee has more than one place of business, the principal place of business, shall be the place of business;

(b) if the originator or the addressee does not have a place of business, his usual place of residence shall be deemed to be the place of business;

(c) "usual place of residence", in relation to a body corporate, means the place where it is registered.

Information Technology Act, 2000 - Section 14 - Secure Electronic Record:

Where any security procedure has been applied to an electronic record at a specific point of time, then such record shall he deemed to be a secure electronic record from such point of time to the time of verification.

Information Technology Act, 2000 - Section 36 - Representations Upon Issuance Of Digital Signature Certificate:

A Certifying Authority while issuing a Digital Signature Certificate shall certify that-

(a) it has complied with the provisions of this Act and the rules and regulations made thereunder;

(b) it has published the Digital Signature Certificate or otherwise made it available to such person relying on it and the subscriber has accepted it:

(c) the subscriber holds the private key corresponding to the public key, listed in the Digital Signature Certificate;

(ca) the subscriber holds a private key which is capable of creating a digital signature;

(cb) the public key to be listed in the certificate can be used to verify a digital signature affixed by the private key held by the subscriber;

(d) the subscriber's public key and private key constitute a functioning key pair;

(e) the information contained in the Digital Signature Certificate is accurate; and

(f) it has no knowledge of any material fact, which if it had been included in the Digital Signature Certificate would adversely affect the reliability of the representations in clauses (a) to (d).

Information Technology Act, 2000 - Section 37 - Suspension Of Digital Signature Certificate:

(1) Subject to the provisions of sub-section (2), the Certifying Authority which has issued a Digital Signature Certificate may suspend such Digital Signature Certificate,-

(a) on receipt of a request to that effect from-

(i) the subscriber listed in the Digital Signature Certificate; or

(ii) any person duly authorised to act on behalf of that subscriber;

(b) if it is of opinion that the Digital Signature Certificate should be suspended in public interest.

(2) A Digital Signature Certificate shall not be suspended for a period exceeding fifteen days unless the subscriber has been given an opportunity of being heard in the matter.

(3) On suspension of a Digital Signature Certificate under this section, the Certifying Authority shall communicate the same to the subscriber.

Information Technology Act, 2000 - Section 38 - Revocation Of Digital Signature Certificate:

(1) A Certifying Authority may revoke a Digital Signature Certificate issued by it-

(a) where the subscriber or any other person authorised by him makes a request to that effect; or

(b) upon the death of the subscriber; or

(c) upon the dissolution of the firm or winding up of the company where the subscriber is a firm or a company.

(2) Subject to the provisions of sub-section (3) and without prejudice to the provisions of sub-section (1), a Certifying Authority may revoke a Digital Signature Certificate which has been issued by it at any time, if it is of opinion that-

(a) a material fact represented in the Digital Signature Certificate is false or has been concealed:

(b) a requirement for issuance of the Digital Signature Certificate was not satisfied;

(c) the Certifying Authority's private key or security system was compromised in a manner materially affecting the Digital Signature Certificate's reliability;

(d) the subscriber has been declared insolvent or dead or where a subscriber is a firm or a company, which has been dissolved, wound-up or otherwise ceased to exist.

(3) A Digital Signature Certificate shall not be revoked unless the subscriber has been given an opportunity of being heard in the matter.

(4) On revocation of a Digital Signature Certificate under this section, the Certifying Authority shall communicate the same to the subscriber.

Information Technology Act, 2000 - Section 41 - Acceptance of Digital Signature Certificate:

(1) A subscriber shall be deemed to have accepted a Digital Signature Certificate if he publishes or authorises the publication of a Digital Signature Certificate--

(a) to one or more persons;

(b) in a repository; or

otherwise demonstrates his approval of the Digital Signature Certificate in any manner.

(2) By accepting a Digital Signature Certificate the subscriber certifies to all who reasonably rely on the information contained in the Digital Signature Certificate that--

(a) the subscriber holds the private key corresponding to the public key listed in the Digital Signature Certificate and is entitled to hold the same;

(b) all representations made by the subscriber to the Certifying Authority and all material relevant to the information contained in the Digital Signature Certificate are true;

(c) all information in the Digital Signature Certificate that is within the knowledge of the subscriber is true.

Bharatiya Nyaya Sanhita, 2023 - Section 210 - Omission to produce document or electronic record to public servant by person legally bound to produce it:

Whoever, being legally bound to produce or deliver up any document or electronic record to any public servant, as such, intentionally omits so to produce or deliver up the same,-

(a) shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five thousand rupees, or with both;

(b) and where the document or electronic record is to be produced or delivered up to a Court with simple imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both.

Illustration

A, being legally bound to produce a document before a District Court, intentionally omits to produce the same. A has committed the offence defined in this section.

Bharatiya Nyaya Sanhita, 2023 - Section 241 - Destruction of document or electronic record to prevent its production as evidence:

Whoever secretes or destroys any document or electronic record which he may be lawfully compelled to produce as evidence in a Court or in any proceeding lawfully held before a public servant, as such, or obliterates or renders illegible the whole or any part of such document or electronic record with the intention of preventing the same from being produced or used as evidence before such Court or public servant as aforesaid, or after he shall have been lawfully summoned or required to produce the same for that purpose, shall be punished with imprisonment of either description

for a term which may extend to three years, or with fine which may extend to five thousand rupees, or with both.

Bharatiya Nyaya Sanhita, 2023 - Section 340 - Forged document or electronic record and using it as genuine:

(1) A false document or electronic record made wholly or in part by forgery is designated a forged document or electronic record.

(2) Whoever fraudulently or dishonestly uses as genuine any document or electronic record which he knows or has reason to believe to be a forged document or electronic record, shall be punished in the same manner as if he had forged such document or electronic record.

Go Back to Section 87, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 89, Bharatiya Sakshya Adhiniyam, 2023:

Registration Act, 1908 - Section 21 - Description Of Property And Maps Or Plans:

(1) No non-testamentary document relating to immovable property shall be accepted for registration unless it contains a description of such property sufficient to identify the same.

(2) Houses in towns shall be described as situate on the north or other side of the street or road (which should be specified) to which they front, and by their existing and former occupancies, and by their numbers if the houses in such street or road are numbered.

(3) Other houses and lands shall be described by their name, if any, and as being the territorial division in which they are situate, and by their superficial contents, the roads and other properties on to which they abut, and their existing occupancies, and also, whenever it is practicable, by reference to a Government map or survey.

(4) No non-testamentary document containing a map or plan of any property comprised therein shall be accepted for registration unless it is accompanied by a true copy of the map or plan, or, in case such property is situate in several districts, by such number of true copies of the map or plan as are equal to the number of such districts.

Registration Act, 1908 - Section 22 - Description Of Houses And Land By Reference To Government Maps Or Surveys:

(1) Where it is, in the opinion of the State Government, practicable to describe houses, not being houses in towns, and lands by reference to a Government map or survey, the State Government may, by rule made under this Act, require that such houses and lands as aforesaid shall, for the purposes of section 21, be so described.

(2) Save as otherwise provided by any rule made under sub-section (1), failure to comply with the provisions of section 21, sub-section (2) or sub-section (3), shall not disentitle a document to be registered if the description of the property to which it relates is sufficient to identify that property.

Go Back to Section 89, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 90, Bharatiya Sakshya Adhiniyam, 2023:

Information Technology Act, 2000 - Section 3 - Authentication Of Electronic Records:

(1) Subject to the provisions of this section, any subscriber may authenticate an electronic record by affixing his digital signature.

(2) The authentication of the electronic record shall be effected by the use of asymmetric crypto system and hash function which envelop and transform the initial electronic record into another electronic record.

Explanation.- For the purposes of this sub-section, "hash function" means an algorithm mapping or translation of one sequence of bits into another, generally smaller, set known as "hash result" such that an electronic record yields the same hash result every time the algorithm is executed with the same electronic record as its input making it computationally infeasible--

(a) to derive or reconstruct the original electronic record from the hash result produced by the algorithm;

(b) that two electronic records can produce the same hash result using the algorithm.

(3) Any person by the use of a public key of the subscriber can verify the electronic record.

(4) The private key and the public key are unique to the subscriber and constitute a functioning key pair.

Information Technology Act, 2000 - Section 3A - Electronic Signature:

(1) Notwithstanding anything contained in section 3, but subject to the provisions of sub-section (2), a subscriber may authenticate any electronic record by such electronic signature or electronic authentication technique which--

(a) is considered reliable; and

(b) may be specified in the Second Schedule.

(2) For the purposes of this section any electronic signature or electronic authentication technique shall be considered reliable if--

(a) the signature creation data or the authentication data are, within the context in which they are used, linked to the signatory' or, as (the case may be, the authenticator and to no other person;

(b) the signature creation data or the authentication data were, at the time of signing, under the control of the signatory or, as the case may be, the authenticator and of no other person;

(c) any alteration to the electronic signature made after affixing such signature is detectable;

(d) any alteration to the information made after its authentication by electronic signature is detectable; and

(e) it fulfils such other conditions which may be prescribed.

(3) The Central Government may prescribe the procedure for the purpose of ascertaining whether electronic signature is that of the person by whom it is purported to have been affixed or authenticated.

(4) The Central Government may, by notification in the Official Gazette, add to or omit any electronic signature or electronic authentication technique and the procedure for affixing such signature from the Second Schedule:

Provided that no electronic signature or authentication technique shall be specified in the Second Schedule unless such signature or technique is reliable.

(5) Every notification issued under sub-section (4) shall be laid before each House of Parliament.

Information Technology Act, 2000 - Section 4 - Legal recognition of electronic records:

Where any law provides that information or any other matter shall be in writing or in the typewritten or printed form, then, notwithstanding anything contained in such law, such requirement shall be deemed to have been satisfied if such information or matter is-

(a) rendered or made available in an electronic form; and

(b) accessible so as to be usable for a subsequent reference.

Information Technology Act, 2000 - Section 6 - Use of Electronic Records And Electronic Signatures In Government And Its Agencies:

(1) Where any law provides for-

(a) the filing of any form, application or any other document with any office, authority, body or agency owned or controlled by the appropriate Government in a particular manner;

(b) the issue or grant of any licence, permit, sanction or approval by whatever name called in a particular manner;

(c) the receipt or payment of money in a particular manner,

then, notwithstanding anything contained in any other law for the time being in force, such requirement shall be deemed to have been satisfied if such filing, issue, grant, receipt or payment, as the case may be, is effected by means of such electronic form as may be prescribed by the appropriate Government.

(2) The appropriate Government may, for the purposes of sub-section (1), by rules, prescribe-

(a) the manner and format in which such electronic records shall be filed, created or issued;

(b) the manner or method of payment of any fee or charges for filing, creation or issue any electronic record under clause (a).

Information Technology Act, 2000 - Section 7 - Retention of Electronic Records:

(1) Where any law provides that documents, records or information shall be retained for any specific period, then, that requirement shall be deemed to have been satisfied if such documents, records or information are retained in the electronic form, if--

(a) the information contained therein remains accessible so as to be usable for a subsequent reference;

(b) the electronic record is retained in the format in which it was originally generated, sent or received or in a format which can be demonstrated to represent accurately the information originally generated, sent or received;

(c) the details which will facilitate the identification of the origin, destination, date and time of dispatch or receipt of such electronic record are available in the electronic record:

Provided that this clause does not apply to any information which is automatically generated solely for the purpose of enabling an electronic record to be dispatched or received.

(2) Nothing in this section shall apply to any law that expressly provides for the retention of documents, records or information in the form of electronic records.

Information Technology Act, 2000 - Section 11 - Attribution of Electronic Records:

An electronic record shall be attributed to the originator,-

(a) if it was sent by the originator himself;

(b) by a person who had the authority to act on behalf of the originator in respect of that electronic record; or

(c) by an information system programmed by or on behalf of the originator to operate automatically.

Information Technology Act, 2000 - Section 13 - Time And Place of Despatch And Receipt of Electronic Record:

(1) Save as otherwise agreed to between the originator and the addressee, the dispatch of an electronic record occurs when it enters a computer resource outside the control of the originator.

(2) Save as otherwise agreed between the originator and the addressee, the time of receipt of an electronic record shall be determined as follows, namely:--

(a) if the addressee has designated a computer resource for the purpose of receiving electronic records,-

(i) receipt occurs at the time when the electronic record enters the designated computer resource; or

(ii) if the electronic record is sent to a computer resource of the addressee that is not the designated computer resource, receipt occurs at the time when the electronic record is retrieved by the addressee;

(b) if the addressee has not designated a computer resource along with specified timings, if any, receipt occurs when the electronic record enters the computer resource of the addressee.

(3) Save as otherwise agreed to between the originator and the addressee, an electronic record is deemed to be dispatched at the place where the originator has his place of business, and is deemed to be received at the place where the addressee has his place of business.

(4) The provisions of sub-section (2) shall apply notwithstanding that the place where the computer resource is located may be different from the place where the electronic record is deemed to have been received under sub-section (3).

(5) For the purposes of this section,-

(a) if the originator or the addressee has more than one place of business, the principal place of business, shall be the place of business;

(b) if the originator or the addressee does not have a place of business, his usual place of residence shall be deemed to be the place of business;

(c) "usual place of residence", in relation to a body corporate, means the place where it is registered.

Information Technology Act, 2000 - Section 14 - Secure Electronic Record:

Where any security procedure has been applied to an electronic record at a specific point of time, then such record shall he deemed to be a secure electronic record from such point of time to the time of verification.

Information Technology Act, 2000 - Section 36 - Representations Upon Issuance of Digital Signature Certificate:

A Certifying Authority while issuing a Digital Signature Certificate shall certify that-

(a) it has complied with the provisions of this Act and the rules and regulations made thereunder;

(b) it has published the Digital Signature Certificate or otherwise made it available to such person relying on it and the subscriber has accepted it:

(c) the subscriber holds the private key corresponding to the public key, listed in the Digital Signature Certificate;

(ca) the subscriber holds a private key which is capable of creating a digital signature;

(cb) the public key to be listed in the certificate can be used to verify a digital signature affixed by the private key held by the subscriber;

(d) the subscriber's public key and private key constitute a functioning key pair;

(e) the information contained in the Digital Signature Certificate is accurate; and

(f) it has no knowledge of any material fact, which if it had been included in the Digital Signature Certificate would adversely affect the reliability of the representations in clauses (a) to (d).

Information Technology Act, 2000 - Section 37 - Suspension of Digital Signature Certificate:

(1) Subject to the provisions of sub-section (2), the Certifying Authority which has issued a Digital Signature Certificate may suspend such Digital Signature Certificate,-

(a) on receipt of a request to that effect from-

(i) the subscriber listed in the Digital Signature Certificate; or

(ii) any person duly authorised to act on behalf of that subscriber;

(b) if it is of opinion that the Digital Signature Certificate should be suspended in public interest.

(2) A Digital Signature Certificate shall not be suspended for a period exceeding fifteen days unless the subscriber has been given an opportunity of being heard in the matter.

(3) On suspension of a Digital Signature Certificate under this section, the Certifying Authority shall communicate the same to the subscriber.

Information Technology Act, 2000 - Section 38 - Revocation of Digital Signature Certificate:

(1) A Certifying Authority may revoke a Digital Signature Certificate issued by it-

(a) where the subscriber or any other person authorised by him makes a request to that effect; or

(b) upon the death of the subscriber; or

(c) upon the dissolution of the firm or winding up of the company where the subscriber is a firm or a company.

(2) Subject to the provisions of sub-section (3) and without prejudice to the provisions of sub-section (1), a Certifying Authority may revoke a Digital Signature Certificate which has been issued by it at any time, if it is of opinion that-

(a) a material fact represented in the Digital Signature Certificate is false or has been concealed:

(b) a requirement for issuance of the Digital Signature Certificate was not satisfied;

(c) the Certifying Authority's private key or security system was compromised in a manner materially affecting the Digital Signature Certificate's reliability;

(d) the subscriber has been declared insolvent or dead or where a subscriber is a firm or a company, which has been dissolved, wound-up or otherwise ceased to exist.

(3) A Digital Signature Certificate shall not be revoked unless the subscriber has been given an opportunity of being heard in the matter.

(4) On revocation of a Digital Signature Certificate under this section, the Certifying Authority shall communicate the same to the subscriber.

Information Technology Act, 2000 - Section 41 - Acceptance of Digital Signature Certificate:

(1) A subscriber shall be deemed to have accepted a Digital Signature Certificate if he publishes or authorises the publication of a Digital Signature Certificate--

(a) to one or more persons;

(b) in a repository; or

otherwise demonstrates his approval of the Digital Signature Certificate in any manner.

(2) By accepting a Digital Signature Certificate the subscriber certifies to all who reasonably rely on the information contained in the Digital Signature Certificate that--

(a) the subscriber holds the private key corresponding to the public key listed in the Digital Signature Certificate and is entitled to hold the same;

(b) all representations made by the subscriber to the Certifying Authority and all material relevant to the information contained in the Digital Signature Certificate are true;

(c) all information in the Digital Signature Certificate that is within the knowledge of the subscriber is true.

Bharatiya Nyaya Sanhita, 2023 - Section 210 - Omission to produce document or electronic record to public servant by person legally bound to produce it:

Whoever, being legally bound to produce or deliver up any document or electronic record to any public servant, as such, intentionally omits so to produce or deliver up the same,-

(a) shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five thousand rupees, or with both;

(b) and where the document or electronic record is to be produced or delivered up to a Court with simple imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both.

Illustration

A, being legally bound to produce a document before a District Court, intentionally omits to produce the same. A has committed the offence defined in this section.

Bharatiya Nyaya Sanhita, 2023 - Section 241 - Destruction of document or electronic record to prevent its production as evidence:

Whoever secretes or destroys any document or electronic record which he may be lawfully compelled to produce as evidence in a Court or in any proceeding lawfully held before a public servant, as such, or obliterates or renders illegible the whole or

any part of such document or electronic record with the intention of preventing the same from being produced or used as evidence before such Court or public servant as aforesaid, or after he shall have been lawfully summoned or required to produce the same for that purpose, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine which may extend to five thousand rupees, or with both.

Bharatiya Nyaya Sanhita, 2023 - Section 340 - Forged document or electronic record and using it as genuine:

(1) A false document or electronic record made wholly or in part by forgery is designated a forged document or electronic record.

(2) Whoever fraudulently or dishonestly uses as genuine any document or electronic record which he knows or has reason to believe to be a forged document or electronic record, shall be punished in the same manner as if he had forged such document or electronic record.

Go Back to Section 90, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 92, Bharatiya Sakshya Adhiniyam, 2023:

Central Excise Act, 1944 - Section 36A - Presumption As To Documents In Certain Cases:

Where any document is produced by any person or has been seized from the custody or control of any person, in either case, under this Act or under any other law and such document is tendered by the prosecution in evidence against him or against him and any other person who is tried jointly with him, the Court shall, --

(a) unless the contrary is proved by such person, presume --

(i) the truth of the contents of such documents;

(ii) that the signature and every other part of such document which purports to be in the handwriting of any particular person or which the Court may reasonably assume to have been signed by, or to be in the handwriting of, any particular person, is in that person's handwriting, and in the case of a document executed or attested, that it was executed or attested by the person by whom it purports to have been so executed or attested;

(b) admit the document in evidence, notwithstanding that it is not duly stamped; if such document is otherwise admissible in evidence.

Central Goods and Services Tax Act, 2017- Section 144 - Presumption As To Documents In Certain Cases:

Where any document--

(i) is produced by any person under this Act or any other law for the time being in force; or

(ii) has been seized from the custody or control of any person under this Act or any other law for the time being in force; or

(iii) has been received from any place outside India in the course of any proceedings under this Act or any other law for the time being in force, and such document is tendered by the prosecution in evidence against him or any other person who is tried jointly with him, the court shall--

(a) unless the contrary is proved by such person, presume--

(i) the truth of the contents of such document;

(ii) that the signature and every other part of such document which purports to be in the handwriting of any particular person or which the court may reasonably assume to have been signed by, or to be in the handwriting of, any particular person, is in that person's handwriting, and in the case of a document executed or attested, that it was executed or attested by the person by whom it purports to have been so executed or attested;

(b) admit the document in evidence notwithstanding that it is not duly stamped, if such document is otherwise admissible in evidence.

The Customs Act, 1962 - Section 139 - Presumption As To Documents In Certain Cases:

Where any document-

(i) is produced by any person or has been seized from the custody of control of any person, in either case, under this Act or under any other law, or

(ii) has been received from any place outside India in the course of investigation of any offence alleged to have been committed by any person under this Act,

and such document is tendered by the prosecution in evidence against him or against him and any other person who is tried jointly with him, the court shall-

(a) presume, unless the contrary is proved, that the signature and every other part of such document which purports to be in the handwriting of any particular person or which the court may

reasonably assume to have been signed by, or to be in the handwriting of, any particular person, is in that person's handwriting, and in the case of a document executed or attested that it was executed or attested by the person by whom it purports to have been so executed or attested ;

(b) admit the document in evidence, notwithstanding that it is not duly stamped, if such document is otherwise admissible in evidence ;

(c) in a case falling under clause (i) also presume, unless the contrary is proved, the truth of the contents of such document.]

Explanation:-- For the purposes of this section "document" includes inventories, photographs and lists certified by a Magistrate under sub-section (1C), or Commissioner (Appeals) under sub-section (1D), of section 110.

The Foreign Exchange Management Act, 1999 - Section 39 - Presumption As To Documents In Certain Cases:

Where any document--

(i) is produced or furnished by any person or has been seized from the custody or control of any person, in either case, under this Act or under any other law; or

(ii) has been received from any place outside India (duly authenticated by such authority or person and in such manner as may be prescribed) in the course of investigation of any contravention under this Act alleged to have been committed by any person, and such document is tendered in any proceeding under this Act in evidence against him, or

against him and any other person who is proceeded against jointly with him, the court or the Adjudicating Authority, as the case may be, shall--

(a) presume, unless the contrary is proved, that the signature and every other part of such document which purports to be in the handwriting of any particular person or which the court may reasonably assume to have been signed by, or to be in the handwriting of, any particular person, is in that person's handwriting and in the case of a document executed or attested, that it was executed or attested by the person by whom it purports to have been so executed or attested;

(b) admit the document in evidence notwithstanding that it is not duly stamped, if such document is otherwise admissible in evidence;

(c) in a case falling under clause (i), also presume, unless the contrary is proved, the truth of the contents of such document.

Foreign Exchange Regulations Act, 1973 - Section 72 - Presumption As To Documents In Certain Cases:

Where any document-

(i) is produced or furnished by any person or has been seized from the custody or control of any person, in either case, under this Act or under any other law, or

(ii) has been received from any place outside India (duly authenticated by such authority or person and in such manner as may be prescribed)

in the course of investigation of any offence under this Act alleged to have been committed by any person,

and such document is tendered in any proceedings tinder this Act in evidence against him, or against him and any other person who is proceeded against jointly with him, the court or the adjudicating officer, as the case may be, shall-

(a) presume, unless the contrary is proved, that the signature and every other part of such document which purports to be in the handwriting of any particular person or which the court may reasonably assume to have been signed by, or to be in the handwriting of, any particular person, is in that person's handwriting and in the case of a document executed or attested, that it was executed or attested by the person by whom it purports to have been so executed or attested;

(b) admit the document in evidence notwithstanding that it is not duly stamped, if such document is otherwise admissible in evidence;

(c) in a case falling under clause (i), also presume, unless the contrary is proved, the truth of the contents of such document.

Gold (Control) Act, 1968 - Section 67 - Presumption As To Documents In Certain Cases:

Where any document is produced by any person under this Act or has been seized thereunder from the custody or control of any person and such document is tendered by the prosecution in evidence against him, the court shall, notwithstanding anything to the contrary contained in any other law for the time being in force,--

(a) presume, unless the contrary is proved, that the signature and every other part of such document which purports to be in the handwriting of any particular person or which the court may reasonably assume to have been signed by or to be in the handwriting of, any particular person, is in that person's handwriting, and in the case of a document executed or attested, that it was executed or attested by the person by whom it purports to have been so executed or attested;

(b) admit the document in evidence, notwithstanding that it is not duly stamped if such document is otherwise admissible in evidence.

Narcotic-Drugs and Psychotropic Substances Act 1985 - Section 66 - Presumption As To Documents In Certain Cases:

Where any document--

(i) is produced or furnished by any person or has been seized from the custody or control of any person, in either case, under this Act or under any other law, or

(ii) has been received from any place outside India (duly authenticated by such authority or person and in such manner as may be prescribed by the Central Government) in the course of investigation of any offence under this Act alleged to have been committed by a person,

and such document is tendered in any prosecution under this Act in evidence against him, or against him and any other person who is tried jointly with him, the court shall--

(a) presume, unless the contrary is proved, that the signature and every other part of such document which purports to be in the handwriting of any particular person or which the court may reasonably assume to have been signed by, or to be in the handwriting of, any particular person, is in that person's handwriting; and in the case of a document executed or attested, that it was executed or attested by the person by whom it purports to have been so executed or attested;

(b) admit the document in evidence, notwithstanding that it is not duly stamped, if such document is otherwise admissible in evidence;

(c) in a case falling under clause (i), also presume, unless the contrary is proved, the truth of the contents of such document.

Go Back to Section 92, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 93, Bharatiya Sakshya Adhiniyam, 2023:

Information Technology Act, 2000 - Section 14 - Secure Electronic Record:

Where any security procedure has been applied to an electronic record at a specific point of time, then such record shall he deemed to be a secure electronic record from such point of time to the time of verification.

Information Technology Act, 2000 - Section 13 - Time And Place Of Despatch And Receipt Of Electronic Record:

(1) Save as otherwise agreed to between the originator and the addressee, the dispatch of an electronic record occurs when it enters a computer resource outside the control of the originator.

(2) Save as otherwise agreed between the originator and the addressee, the time of receipt of an electronic record shall be determined as follows, namely:--

(a) if the addressee has designated a computer resource for the purpose of receiving electronic records,--

(i) receipt occurs at the time when the electronic record enters the designated computer resource; or

(ii) if the electronic record is sent to a computer resource of the addressee that is not the designated computer resource, receipt occurs at the time when the electronic record is retrieved by the addressee;

(b) if the addressee has not designated a computer resource along with specified timings, if any, receipt occurs when the electronic record enters the computer resource of the addressee.

(3) Save as otherwise agreed to between the originator and the addressee, an electronic record is deemed to be dispatched at the place where the originator has his place of business, and is deemed to be received at the place where the addressee has his place of business.

(4) The provisions of sub-section (2) shall apply notwithstanding that the place where the computer resource is located may be different

from the place where the electronic record is deemed to have been received under sub-section (3).

(5) For the purposes of this section,--

(a) if the originator or the addressee has more than one place of business, the principal place of business, shall be the place of business;

(b) if the originator or the addressee does not have a place of business, his usual place of residence shall be deemed to be the place of business;

(c) "usual place of residence", in relation to a body corporate, means the place where it is registered.

Information Technology Act, 2000 - Section 11 - Attribution Of Electronic Records:

An electronic record shall be attributed to the originator,--

(a) if it was sent by the originator himself;

(b) by a person who had the authority to act on behalf of the originator in respect of that electronic record; or

(c) by an information system programmed by or on behalf of the originator to operate automatically.

Information Technology Act, 2000 - Section 7 - Retention Of Electronic Records:

(1) Where any law provides that documents, records or information shall be retained for any specific period, then, that requirement shall

be deemed to have been satisfied if such documents, records or information are retained in the electronic form, if--

(a) the information contained therein remains accessible so as to be usable for a subsequent reference;

(b) the electronic record is retained in the format in which it was originally generated, sent or received or in a format which can be demonstrated to represent accurately the information originally generated, sent or received;

(c) the details which will facilitate the identification of the origin, destination, date and time of dispatch or receipt of such electronic record are available in the electronic record:

Provided that this clause does not apply to any information which is automatically generated solely for the purpose of enabling an electronic record to be dispatched or received.

(2) Nothing in this section shall apply to any law that expressly provides for the retention of documents, records or information in the form of electronic records.

Information Technology Act, 2000 - Section 6 - Use Of Electronic Records And Electronic Signatures In Government And Its Agencies:

(1) Where any law provides for--

(a) the filing of any form, application or any other document with any office, authority, body or agency owned or controlled by the appropriate Government in a particular manner;

(b) the issue or grant of any licence, permit, sanction or approval by whatever name called in a particular manner;

(c) the receipt or payment of money in a particular manner,

then, notwithstanding anything contained in any other law for the time being in force, such requirement shall be deemed to have been satisfied if such filing, issue, grant, receipt or payment, as the case may be, is effected by means of such electronic form as may be prescribed by the appropriate Government.

(2) The appropriate Government may, for the purposes of sub-section (1), by rules, prescribe--

(a) the manner and format in which such electronic records shall be filed, created or issued;

(b) the manner or method of payment of any fee or charges for filing, creation or issue any electronic record under clause (a).

Information Technology Act, 2000 - Section 4 Legal recognition of electronic records:

Where any law provides that information or any other matter shall be in writing or in the typewritten or printed form, then, notwithstanding anything contained in such law, such requirement shall be deemed to have been satisfied if such information or matter is--

(a) rendered or made available in an electronic form; and

(b) accessible so as to be usable for a subsequent reference.

Information Technology Act, 2000 - Section 3 - Authentication Of Electronic Records:

(1) Subject to the provisions of this section, any subscriber may authenticate an electronic record by affixing his digital signature.

(2) The authentication of the electronic record shall be effected by the use of asymmetric crypto system and hash function which envelop and transform the initial electronic record into another electronic record.

Explanation.--For the purposes of this sub-section, "hash function" means an algorithm mapping or translation of one sequence of bits into another, generally smaller, set known as "hash result" such that an electronic record yields the same hash result every time the algorithm is executed with the same electronic record as its input making it computationally infeasible--

(a) to derive or reconstruct the original electronic record from the hash result produced by the algorithm;

(b) that two electronic records can produce the same hash result using the algorithm.

(3) Any person by the use of a public key of the subscriber can verify the electronic record.

(4) The private key and the public key are unique to the subscriber and constitute a functioning key pair.

Bharatiya Nyaya Sanhita, 2023 - Section 210 - Omission to produce document or electronic record to public servant by person legally bound to produce it:

Whoever, being legally bound to produce or deliver up any document or electronic record to any public servant, as such, intentionally omits so to produce or deliver up the same,--

(a) shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five thousand rupees, or with both;

(b) and where the document or electronic record is to be produced or delivered up to a Court with simple imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both.

Illustration

A, being legally bound to produce a document before a District Court, intentionally omits to produce the same. A has committed the offence defined in this section.

Bharatiya Nyaya Sanhita, 2023 - Section 241 - Destruction of document or electronic record to prevent its production as evidence:

Whoever secretes or destroys any document or electronic record which he may be lawfully compelled to produce as evidence in a Court or in any proceeding lawfully held before a public servant, as such, or obliterates or renders illegible the whole or any part of such document or electronic record with the intention of preventing the same from

being produced or used as evidence before such Court or public servant as aforesaid, or after he shall have been lawfully summoned or required to produce the same for that purpose, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine which may extend to five thousand rupees, or with both.

Bharatiya Nyaya Sanhita, 2023 - Section 340 - Forged document or electronic record and using it as genuine:

(1) A false document or electronic record made wholly or in part by forgery is designated a forged document or electronic record.

(2) Whoever fraudulently or dishonestly uses as genuine any document or electronic record which he knows or has reason to believe to be a forged document or electronic record, shall be punished in the same manner as if he had forged such document or electronic record.

Go Back to Section 93, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 94, Bharatiya Sakshya Adhiniyam, 2023:

Companies Act, 2013 - Section 27 - Variation In Terms Of Contract Or Objects In Prospectus:

(1) A company shall not, at any time, vary the terms of a contract referred to in the prospectus or objects for which the prospectus was issued, except subject to the approval of, or except subject to an

authority given by the company in general meeting by way of special resolution:

Provided that the details, as may be prescribed, of the notice in respect of such resolution to shareholders, shall also be published in the newspapers (one in English and one in vernacular language) in the city where the registered office of the company is situated indicating clearly the justification for such variation:

Provided further that such company shall not use any amount raised by it through prospectus for buying, trading or otherwise dealing in equity shares of any other listed company.

(2) The dissenting shareholders being those shareholders who have not agreed to the proposal to vary the terms of contracts or objects referred to in the prospectus, shall be given an exit offer by promoters or controlling shareholders at such exit price, and in such manner and conditions as may be specified by the Securities and Exchange Board by making regulations in this behalf.

The Indian Contract Act, 1872 - Section 133 - Discharge Of Surety By Variance In Terms Of Contract:

Any variance, made without the surety's consent, in the terms of the contract between the principal debtor and the creditor, discharges the surety as to transactions subsequent to the variance.

Illustrations

(a) A becomes surety to C for B's conduct as a manager in C's bank. Afterwards B and C contract, without A's consent, that B's salary shall

be raised, and that he shall become liable for one- fourth of the losses on overdrafts. B allows a customer to over-draw, and the bank loses a sum of money.

A is discharged from his surety ship by the variance made without his consent, and is not liable to make good this loss.

(b) A guarantees C against the misconduct of B in an office to which B is appointed by C, and of which the duties are defined by an Act of the Legislature. By a subsequent Act, the nature of the office is materially altered. Afterwards, B misconducts himself. A is discharged by the change from future liability under his guarantee, though the misconduct of B is in respect of a duty not affected by the later Act.

(c) C agrees to appoint B as his clerk to sell goods at a yearly salary, upon A's becoming surety to C for B's duly accounting for moneys received by him as such clerk. Afterwards, without A's knowledge or consent, C and B agree that B should be paid by a commission on the goods sold by him and not by a fixed salary. A is not liable for subsequent misconduct of B.

(d) A gives to C a continuing guarantee to the extent of 3,000 rupees for any oil supplied by C to B on credit. Afterwards B becomes embarrassed, and, without the knowledge of A, B and C contract that C shall continue to supply B with oil for ready money, and that the payments shall be applied to the then existing debts between B and C. A is not liable on his guarantee for any goods supplied after this new arrangement.

(e) C contracts to lend B 5,000 rupees on the 1st March. A guarantees repayment. C pays the 5,000 rupees to B on the 1st January, A is

discharged from his liability, as the contract has been varied, inasmuch as C might sue B for the money before the 1st of March.

Go Back to Section 94, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 95, Bharatiya Sakshya Adhiniyam, 2023:

Registration Act, 1908 - Section 48 - Registered Documents Relating To Property When To Take Effect Against Oral Agreements:

All non-testamentary documents duly registered under this Act, and relating to any property, whether movable or immovable, shall take effect against any order agreement or declaration relating to such property, unless where the agreement or declaration has been accompanied or followed by delivery of possession and the same constitutes a valid transfer under any law for the time being in force:

Provided that a mortgage by deposit of title-deeds as defined in section 58 of the Transfer of Property Act, 1882 (4 of 1882), shall take effect against any mortgage-deed subsequently executed and registered which relates to the same property.

Go Back to Section 95, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 104, Bharatiya Sakshya Adhiniyam, 2023:

The Bonded Labour System (Abolition) Act, 1976 - Section 15 - Burden Of Proof:

Whenever any debt is claimed by a bonded labourer, or a Vigilance Committee, to be a bonded debt, the burden of proof that such debt is not a bonded debt shall lie on the creditor.

The Capital Issues (Control) Act, 1947 - Section 14 - Burden Of Proof In Certain Cases:

Where any person is prosecuted for contravening any provision of this Act or of any order made there under which prohibits him from doing an act without the consent or permission of any authority the burden of proving that he had the requisite consent or permission shall be on him.

Central Goods and Services Tax Act, 2017- Section 155 - Burden Of Proof:

Where any person claims that he is eligible for input tax credit under this Act, the burden of proving such claim shall lie on such person.

The Central Sales Tax Act, 1956 - Section 6A - Burden Of Proof, Etc., In Case Of Transfer Of Goods Claimed Otherwise Than By Way Of Sale:

(1) Where any dealer claims that he is not liable to pay tax under this Act, in respect of any goods, on the ground that the movement of such goods from one State of another was occasioned by reason of transfer of such goods by him to any other place of his business or to his agent or principal, as the case may be, and not by reason of sale, the burden of proving that the movement of those goods was so occasioned shall be on that dealer and for this purpose he may furnish to the assessing authority, within the prescribed time or within such further time as that authority may, for sufficient cause, permit, a declaration, duly filled and signed by the principal officer of the other place of business, or his agent or principal, as the case may be, containing the prescribed particulars in the prescribed form obtained from the prescribed authority, along with the evidence of dispatch of such goods. 2[and if the dealer fails to furnish such declaration, then, the movement of such goods shall be deemed for all purposes of this Act to have been occasioned as a result of sale

(2) If the assessing authority is satisfied after making such inquiry as he may deem necessary that the particulars contained in the declaration furnished by a dealer under sub-section (1) are true and that no inter-State sale has been effected, he may, at the time of, or at any time before, the assessment of the tax payable by the dealer under this Act, make an order to that effect and thereupon the movement of goods to which the declaration relates shall, subject to the provisions of sub-section (3), be deemed for the purpose of this Act to have been occasioned otherwise than as a result of sale.

Explanation.-- In this section, "assessing authority", in relation to dealer, means the authority for the time being competent to assess the tax payable by the dealer under this Act.

(3) Nothing contained in sub-section (2) shall preclude reassessment by the assessing authority on the ground of discovery of new facts or revision by a higher authority on the ground that the findings of the assessing authority are contrary to law, and such reassessment or revision may be done in accordance with the provisions of general sales tax law of the State.

The Commission of Sati (Prevention) Act, 1987 - Section 16 - Burden Of Proof:

Where any person is prosecuted of an offence under section 4, the burden of proving that he had not committed the offence under the said section shall be on him.

The Customs Act, 1962 - Section 123 - Burden Of Proof In Certain Cases:

(1) Where any goods to which this section applies are seized under this Act in the reasonable belief that they are smuggled goods, the burden of proving that they are not smuggled goods shall be-

(a) in a case where such seizure is made from the possession of any person,-

(i) on the person from whose possession the goods were seized; and

(ii) if any person, other than the person from whose possession the goods were seized, claims to be the owner thereof, also on such other person;

(b) in any other case, on the person, if any, who claims to be the owner of the goods so seized.

(2) This section shall apply to gold, and manufactures thereof] watches, and any other class of goods which the Central Government may by notification in the Official Gazette specify.

Delhi Sales Tax Act, 1975 - Section 6 - Burden Of Proof:

The burden of proving that in respect of any sale effected by a dealer he is not liable to pay tax under this Act, shall lie on him.

The Dowry Prohibition Act, 1961 - Section 8A - Burden Of Proof In Certain Cases:

8A. Burden of proof in certain cases

Where any person is prosecuted for taking or abetting the taking of any dowry under section 3, or the demanding of dowry under section 4, the burden of proving that he had not committed an offence under these sections shall be on him.

STATE AMENDMENTS

Himachal Pradesh

In Section 8 A

The following section 8-A shall be substituted, namely:--

"8-A. Cognizance of offences.--

No court shall take cognizance of any offence under this Act except on a police report under section 173 of the Code of Criminal Procedure, 1973 (2 of 1974) or a complaint made by a person aggrieved by the offence, as the case may be, within one year from the date of the commission of the offence:

Provided that no police officer of the rank lower than that of the Deputy Superintendent of Police shall investigate any case registered under this Act:

Provided further that no court shall take cognizance of any offence under this Act except with the previous sanction of the District Magistrate, having jurisdiction in the area."

Essential Commodities Act, 1955 - Section 14 - Burden Of Proof In Certain Cases:

Where a person is prosecuted for contravening any order made under section 3 which prohibits him from doing any act or being in possession of a thing without lawful authority or without a permit, licence or other document, the burden of proving that he has such authority, permit, licence or other document shall be on him.

Foreign Exchange Regulations Act, 1973- Section 71 - Burden Of Proof In Certain Cases:

(1) Where any person is prosecuted or proceeded against for contravening any of the provisions of this Act or of any rule, direction or order made thereunder which prohibits hi m from doing an act

without permission, the burden of proving that he had the requisite permission shall be on him.

(2) Where any person is prosecuted or proceeded against for contravening the provisions of sub-section (3) of section 8 , the burden of proving that the foreign exchange acquired by such person has been used for the purpose for which the permission to acquire it was granted shall be on him.

(3) If any person is found or is proved to have been in possession of any foreign exchange exceeding in value 1[fifteen thousand rupees], the burden of proving that the foreign exchange came into hi s possession lawfully shall be on him.

Foreigners Act, 1946 - Section 9 - Burden Of Proof:

If in any case not falling under section 8 any question arises with reference to this Act or any order made or direction given thereunder, whether any person is or is not a foreigner or is or is not a foreigner of a particular class or description the onus of proving that such person is not a foreigner or is not a foreigner of such particular class or description, as the case may be, shall, notwithstanding anything contained in the Indian Evidence, Act, 1872 (1 of 1872), lie upon such person.

The Indian Factories Act, 1881 - Section 16 - Burden Of Proof As To Age:

Where an act or omission would, if a person were under seven or twelve years of age, be an offence punishable under this Act, and such person is, in the opinion of the Court, apparently under such age, it shall lie on the accused to prove that such person is not under such age.

A declaration in writing by a certifying surgeon that he has personally examined a person employed in a factory, and believes him to be under or over the age set forth in such declaration, shall, for the purposes of this Act, be admissible as evidence of the age of that person.

Indian Railways Act, 1890 - Section 76 - Burden Of Proof In Suits For Compensation:

In any suit against a railway administration for compensation for any delay, loss, destruction, deterioration or damage, the burden of proving-

(a)in the case of animals, the value thereof, or the higher value declared under section 73, and, where the animal has been injured, the extent of the injury; or

(b)in the case of any parcel or package the value of which has been declared under section 75, that the value so declared is its true value,

shall lie on the person claiming the compensation, but, subject to the other provisions contained in this Act, it shall not be necessary for him to prove how the delay, loss, destruction, deterioration or damage was caused.

The Industries (Development and Regulation) Act, 1951 - Section 28 - Burden Of Proof In Certain Cases:

Where any person is imposed penalty for contravening any order made under Section 18-G which prohibits him from doing an act or being in possession of a thing without lawful authority or without a permit, licence or other document, the burden of proving that he has such authority, permit, licence or other document shall be on him.

Narcotic-Drugs and Psychotropic Substances Act 1985 - Section 68J - Burden Of Proof:

In any proceedings under this Chapter, the burden of proving that any property specified in the notice served under section 68H is not illegally acquired property shall be on the person affected.

Patents Act, 1970 - Section 104A - Burden Of Proof In Case Of Suits Concerning Infringement:

(1) In any suit for infringement of a patent, where the subject matter of patent is a process for obtaining a product, the court may direct the defendant to prove that the process used by him to obtain the product, identical to the product of the patented process, is different from the patented process if,-

(a) the subject matter of the patent is a process for obtaining a new product; or

(b) there is a substantial likelihood that the identical product is made by the process, and the patentee or a person deriving title or interest in the patent from him, has been unable through reasonable efforts to determine the process actually used:

Provided that the patentee or a person deriving title or interest in the patent from him, first proves that the product is identical to the product directly obtained by the patented process.

(2) In considering whether a party has discharged the burden imposed upon him by sub-section (1), the court shall not require him to disclose any manufacturing or commercial secrets, if it appears to the court that it would be unreasonable to do so.

The Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 - Section 16A - Burden Of Proof In Certain Cases:

Where any petroleum product together with any tool, vehicle or any item used in committing any such offence under sub-section (2) or sub-section (4) of section 15 are seized under this Act in the reasonable belief that such petroleum product has been stolen from the pipeline laid under section 7, the burden of proving that they are not stolen property shall be, in case where such seizure is made from the possession of any person,--

(i) on the person from whose possession the property was seized, and

(ii) on the person who claims to be the owner thereof, if any person other than the person from whose possession the stolen property was seized.

Prevention of Money Laundering Act, 2002 - Section 24 - Burden Of Proof:

In any proceeding relating to proceeds of crime under this Act,--

(a) in the case of a person charged with the offence of money-laundering under section 3. the Authority or Court shall, unless the contrary is proved presume that such proceeds of crime are involved in money-laundering; and

(b) in the case of any other person the Authority or Court, may presume that such proceeds of crime are involved in money-laundering.

Public Interest Disclosure (Protection of Informers) Act, 2002 - Section 14 - Burden Of Proof In Certain Cases:

Where the Competent Authority conducts inquiry into an application under sub section (3) of section 10, the burden of proving that such action or proceeding which is the subject of victimization would have been taken even if no disclosure had been made by the applicant, shall be upon such public servant or public authority against whom allegation of vitimisation has been made.

Railways Act, 1989 - Section 41 - Burden Of Proof, Etc.:

In the case of any complaint under clause (a) of section 36,--

(a) whenever it is shown that a railway administration charges one trader or class of traders or the traders in any local area, lower rates for the same or similar goods or lower charges for the same or similar services than it charges to other traders in any other local area, the burden of providing that such lower rate or charge does not amount to an undue preference, shall lie on the railway administration;

(b) in deciding whether a lower rate or charge does not amount to an undue preference, the Tribunal may, in addition to any other considerations affecting the case, take into consideration whether such lower rate or charge is necessary in the interests of the public.

Railways Act, 1989- Section 110 - Burden Of Proof:

In an application before the Claims Tribunal for compensation for loss, destruction, damage, deterioration or non-delivery of any goods, the burden of proving--

(a) the monetary loss actually sustained; or

(b) where the value has been declared under sub-section (2) of section 103 in respect of any consignment that the value so declared is its true value,

shall lie on the person claiming compensation, but subject to the other provisions contained in this Act, it shall not be necessary for him to prove how the loss, destruction, damage, deterioration or non-delivery was caused.

Reciprocity Act, 1943 - Section 4 - Burden Of Proof On Person Claiming Exemption:

If any person alleged to be domiciled in any British possession and to be subject to the provisions of this Act pleads that he is not so domiciled, or that the provisions of this Act do not apply to him, the onus of proving the truth of such a plea shall be on him.

Registration of Foreigners Act, 1939 - Section 4 - Burden Of Proof:

If any question arises with reference to this Act or any rule made thereunder whether-any person is or is not a foreigner or is or is not a foreigner of a particular class or description, the onus of proving that such person is not a foreigner or is not a foreigner of such particular class or description, as the case may be, shall, notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1872), lie upon such person.

Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 - Section 8 - Burden Of Proof:

any proceedings under this Act, the burden of proving that any property specified in the notice served under section 6 is not illegally acquired property shall be on the person affected.

Wild Life (Protection) Act, 1972 - Section 58J - Burden Of Proof:

In any proceedings under this Chapter, the burden of proving that any property specified in the notice served under section 58H is not illegally acquired property shall be on the person affected.

Go Back to Section 104, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 105, Bharatiya Sakshya Adhiniyam, 2023:

Reciprocity Act, 1943 - Section 4 - Burden Of Proof On Person Claiming Exemption:

If any person alleged to be domiciled in any British possession and to be subject to the provisions of this Act pleads that he is not so domiciled, or that the provisions of this Act do not apply to him, the onus of proving the truth of such a plea shall be on him.

Go Back to Section 105, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 112, Bharatiya Sakshya Adhiniyam, 2023:

Limited Liability Partnership Act, 2008 - Section 23 - Relationship Of Partners:

(1) Save as otherwise provided by this Act, the mutual rights and duties of the partners of a limited liability partnership, and the mutual rights and duties of a limited liability partnership and its partners, shall be governed by the limited liability partnership agreement between the partners, or between the limited liability partnership and its partners.

(2) The limited liability partnership agreement and any changes, if any, made therein shall be filed with the Registrar in such form, manner and accompanied by such fees as may be prescribed.

(3) An agreement in writing made before the incorporation of a limited liability partnership between the persons who subscribe their names to the incorporation document may impose obligations on the limited liability partnership, provided such agreement is ratified by all the partners after the incorporation of the limited liability partnership.

(4) In the absence of agreement as to any matter, the mutual rights and duties of the partners and the mutual rights and duties of the limited liability partnership and the partners shall be determined by the provisions relating to that matter as are set- out in the First Schedule.

Go Back to Section 112, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 113, Bharatiya Sakshya Adhiniyam, 2023:

Ajmer Tenancy and Land Records Act, 1950 - Section 193 - Dispute As Regards Ownership Of Land:

(1) If, in connection with any Action taken by a landlord under clause (iii) of section 9, a dispute arises between him and any other person who claims to have a proprietary interest in the land in respect of which such action is taken, either party may apply to the collector for the decision of such dispute.

(2) On the receipt of such application, the collector shall follow the procedure specified in section 38 and the provisions of that section shall, mutatis mutandis, apply to the case.

(3) If, in consequence of the order passed by the collector, any loss results to a tenant or to any other person having an interest in the land to which such order relates, the collector shall, before submitting the record of the case to the confirming court, award monetary compensation to such tenant or other person.

(4) Any compensation awarded under this section shall be recovered as arrears of revenue and paid to the person entitled.

Companies Act, 1956 - Section 187D - Investigation Of Beneficial Ownership Of Shares In Certain Cases:

Where it appears to the Central Government that there are good reasons so to do, it may appoint one or more Inspectors to investigate and report as to whether the provisions of section 187C have been complied with regard to any share, and thereupon the provisions of section 247 shall, as far as may be, apply to such investigation as if it were an investigation ordered under that section.

Companies Act, 1956- Section 247 - Investigation Of Ownership Of Company:

(1) Where it appears to the Central Government that there is good reason so to do it may appoint one or more inspectors to investigate and report on the membership of any company and other mailers

relating to the company, for the purpose of determining the true persons -

(a) who are or have been financially interested in the success or failure, whether real or apparent, of the company; or

(b) who are or have been able to control or materially to influence the policy of the company.

1 (1A) Without prejudice to its powers under this section, the Central Government shall appoint one or more inspectors under sub-section (1), if the Tribunal in the course of any proceedings before it, declares by an order that the affairs of the company ought to be investigated as regards the membership of the company and other matters relating to the company, for the purposes of determining the true persons -

(a) who are or have been financially interested in the success or failure, whether real or apparent, of the company; or

(b) who are or have been able to control or materially to influence the policy of the company.

(2) When appointing an inspector under sub-section (1), the Central Government may define the scope of his investigation, whether as respects the matters or the period to which it is to extend or otherwise, and in particular, may limit the investigation to matters connected with particular shares or debentures.

(3) Subject to the terms of an inspector's appointment, his powers shall extend to the investigation of any circumstances suggesting the existence of any arrangement or understanding which, though not legally binding, is or was observed or is likely to be observed in practice and which is relevant to the purposes of his investigation.

(5) For the purposes of any investigation under this section, sections 239, 240 and 241 shall apply with the necessary modifications of references to the affairs of the company or to those of any other body corporate

Provided that the said sections shall apply in relation to all persons (including persons concerned only on behalf of others) who are or have been, or whom the inspector has reasonable cause to believe to be or to have been, -

(i) financially interested in the success or failure, or the apparent success or failure, of the company, or of any other body corporate, whose membership or constitution is investigated with that of the company; or

(ii) able to control or materially to influence the policy of such company body corporate,

as they apply in relation to officers and other employees and agents] of the company, of the other body corporate, as the case may be: as the case may be:

Provided further that the Central Government shall not be bound to furnish the company or any oilier person with a copy of any report by an inspector appointed under this section or with a complete copy thereof, if it is of opinion that there is good reason for not divulging the contents of the report or of parts thereof; but in such a case, the Central Government shall cause to be kept by the Registrar a copy of any such report, or as the case may be, of the parts thereof, as respects which it is not of that opinion.

(6) The expenses of any investigation under this section shall be defrayed by the Central Government out of moneys provided by Parliament, unless the Central Government directs that the expenses or any part thereof should be paid by the persons on whose application the investigation was ordered.

Companies Act, 1956- Section 216 - Profit And Loss Account To Be Annexed And Auditors' Report To Be Attached To Balance-Sheet:

The profit and loss account shall be annexed to the balance-sheet and the auditors' report (including the auditors' separate, special or supplementary report, if any) shall be attached thereto.

Gold (Control) Act, 1968 - Section 99 - Presumption As To Ownership Of Gold:

Any person who has in his possession, custody or control any primary gold, article or ornament shall be presumed, unless the contrary is proved, to be the owner thereof.

Indian Treasure-Trove Act, 1878 - Section 13 - In Case Of Dispute As To Ownership Of Place, Proceedings To Be Stayed:

When a declaration has been made as aforesaid in respect of any treasure, and two or more persons have appeared as aforesaid and each of them claimed as owner of the place where such treasure of was found, or the right of any person who has so appeared and claimed is disputed by the finder of such treasure, the Collector shall retain such

treasure and shall make an order staying his proceedings with a view to the matter being inquired into and determined by a Civil Court.

[STATE AMENDMENTS

[Himachal Pradesh

In Section 11

The following sub-sections shall be added, namely:-

"(2) If the right of any such person who has so appeared and claimed is disputed by the Government, the matter shall be determined by the Collector;

(3) Any person aggrieved by the decision of the Collector under sub-section (2) may appeal within two months of the date of such decision to the Financial Commissioner.

(4) Subject to the decision of the appellate authority, the decision of the Collector under sub-section (2) shall be final and conclusive".]

Merchant Shipping Act, 1958 - Section 29 - Declaration Of Ownership On Registry:

A person shall not be registered as the owner of an Indian ship or of a share therein until he or, in the case of a company, or a co-operative society the person authorised by this Act to make declarations on its behalf has made and signed a declaration of ownership in the prescribed form referring to the ship as described in the certificate of the surveyor and containing the following particulars :--

(a) a statement whether he is or is not a citizen of India; or in the case of a company, or a co-operative society, whether the company or a co-operative society, satisfies the requirements specified in clause (b) or, as the case may be, clause (c) of section 21.

(b) a statement of the time when and the place where the ship was built or if the ship is built outside India and the time and place of building is not known, a statement to that effect; and in addition, in the case of a ship previously registered outside India, a statement of the name by which she was so registered.

(c) the name of her master;

(d) the number of shares in the ship in respect of which he or the company, or the co-operative society as the case may be, claims to be registered as owner; and

(e) a declaration that the particulars stated arc true to the best of his knowledge and belief.

Explanation.-- In respect of a ship or share owned by more than one person, a declaration may be made by such one of them as may be authorised by them.

The Trade And Merchandise Marks Act, 1958 - Section 129 - Declaration As To Ownership Of Trade Mark Not Registrable Under The Indian Registration Act, 1908,:

Notwithstanding anything contained in the Indian Registration Act, 1908 (16 of 1908), no document declaring or purporting to declare the

ownership or title of a person to a trade mark other than a registered trade mark shall be registered under that Act.

The Trade And Merchandise Marks Act, 1958 - Section 152 - Declaration As To Ownership Of Trade Mark Not Registrable Under The Indian Registration Act, 1908:

Notwithstanding anything contained in the Registration Act, 1908 (16 of 1908), no document declaring or purporting to declare the ownership or title of a person to a trade mark other than a registered trade mark shall be registered under that Act.

Go Back to Section 113, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 114, Bharatiya Sakshya Adhiniyam, 2023:

Delhi Police Act, 1978 - Section 138 - No Police Officer To Be Liable To Penalty Or Damage For Act Done In Good Faith In Pursuance Of Duty:

No police officer shall be liable to any penalty or to payment of any damages on account of an act done in good faith in pursuance of or purported to be done in pursuance of any duty imposed or any authority conferred on him by any provision of this Act or any other law for the time being in force or any rule, regulation, order or direction made or given thereunder.

Bharatiya Nyaya Sanhita, 2023 - Section 27 - Act done in good faith for benefit of child or person of unsound mind, by, or by consent of guardian:

Nothing which is done in good faith for the benefit of a person under twelve years of age, or person of unsound mind, by, or by consent, either express or implied, of the guardian or other person having lawful charge of that person, is an offence by reason of any harm which it may cause, or be intended by the doer to cause or be known by the doer to be likely to cause to that person:

Provided that this exception shall not extend to--

(a) the intentional causing of death, or to the attempting to cause death;

(b) the doing of anything which the person doing it knows to be likely to cause death, for any purpose other than the preventing of death or grievous hurt, or the curing of any grievous disease or infirmity;

(c) the voluntary causing of grievous hurt, or to the attempting to cause grievous hurt, unless it be for the purpose of preventing death or grievous hurt, or the curing of any grievous disease or infirmity;

(d) the abetment of any offence, to the committing of which offence it would not extend.

Illustration

A, in good faith, for his child's benefit without his child's consent, has his child cut for the stone by a surgeon knowing it to be likely that the operation will cause the child's death, but not intending to cause the

child's death. A is within the exception, in as much as his object was the cure of the child.

Bharatiya Nyaya Sanhita, 2023 - Section 30 - Act done in good faith for benefit of person without consent:

Nothing is an offence by reason of any harm which it may cause to a person for whose benefit it is done in good faith, even without that person's consent, if the circumstances are such that it is impossible for that person to signify consent, or if that person is incapable of giving consent, and has no guardian or other person in lawful charge of him from whom it is possible to obtain consent in time for the thing to be done with benefit:

Provided that this exception shall not extend to--

(a) the intentional causing of death, or the attempting to cause death;

(b) the doing of anything which the person doing it knows to be likely to cause death, for any purpose other than the preventing of death or grievous hurt, or the curing of any grievous disease or infirmity;

(c) the voluntary causing of hurt, or to the attempting to cause hurt, for any purpose other than the preventing of death or hurt;

(d) the abetment of any offence, to the committing of which offence it would not extend.

Illustrations

(1) Z is thrown from his horse, and is insensible. A, a surgeon, finds that Z requires to be trepanned. A, not intending Z's death, but in good

faith, for Z's benefit, performs the trepan before Z recovers his power of judging for himself. A has committed no offence.

(2) Z is carried off by a tiger. A fires at the tiger knowing it to be likely that the shot may kill Z, but not intending to kill Z, and in good faith intending Z's benefit. A's bullet gives Z a mortal wound. A has committed no offence.

(3) A, a surgeon, sees a child suffer an accident which is likely to prove fatal unless an operation be immediately performed. There is no time to apply to the child's guardian. A performs the operation in spite of the entreaties of the child, intending, in good faith, the child's benefit. A has committed no offence.

(4) A is in a house which is on fire, with Z, a child. People below hold out a blanket. A drops the child from the house top, knowing it to be likely that the fall may kill the child, but not intending to kill the child, and intending, in good faith, the child's benefit. Here, even if the child is killed by the fall, A has committed no offence.

Explanation.--Mere pecuniary benefit is not benefit within the meaning of sections 26, 27 and this section.

Go Back to Section 114, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 115, Bharatiya Sakshya Adhiniyam, 2023:

Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 - Section 3 - Power To Declare Areas To Be Disturbed Areas:

If, in relation to the State of Jammu and Kashmir, the Governor of that State or the Central Government, is of opinion that the whole or any part of the State is in such a disturbed and dangerous condition that the use of armed forces in aid of the civil power is necessary to prevent--

(a) activities involving terrorist acts directed towards overawing the Government as by law established or striking terror in the people or any section of the people or alienating any section of the people or adversely affecting the harmony amongst different sections of the people;

(b) activities directed towards disclaiming, questioning or disrupting the sovereignty and territorial integrity of India or bringing about cession of a part of the territory of India or secession of a part of the territory of India front the Union or causing insult to the Indian National Flag, the Indian National Anthem and the Constitution of India, the Governor of the State or the Central Government, may, by notification in the Official Gazette, declare the whole or any part of the State to be a disturbed area.

Explanation.- In this section, "terrorist act" has the same meaning as in Explanation to article 248 of the Constitution of India as applicable to the State of Jammu and Kashmir.

Armed Forces (Special Powers) Act, 1958 - Section 3 - Power To Declare Areas To Be Disturbed Areas:

If, in relation to any State or Union Territory lo which this Act extends, the Governor of that State or the Administrator of that Union Territory

or the Central Government, in either case, is of the opinion that 1[the whole or as the case may be, such a part of the state of Nagaland], is in such a disturbed or dangerous condition that the use of armed forces in aid of the civil power is necessary, the Governor of that State or the Administrator of that Union Territory or the Central Government, as the case may be, may, by notification in the Official Gazette, declare the whole or such part of such State or Union Territory to be a disturbed area.

The Arms Act, 1959 - Section 24A - Prohibition As To Possession Of Notified Arms In Disturbed Areas, Etc.:

(1) Where the Central Government is satisfied that there is extensive disturbance of public peace and tranquillity or imminent danger of such disturbance in any area and that for the prevention of offences involving the use of arms in such area, it is necessary or expedient so to do, it may by notification in the Official Gazette--

(a) specify the limits of such area;

(b) direct that before the commencement of the period specified in the notification (which period shall be a period commencing from a date not earlier than the fourth day after the date of publication of the notification in the Official Gazette), every person having in his possession in such area any arms of such description as may be specified in the notification (the arms so specified being hereafter in this section referred to as notified arms, shall, notwithstanding anything contained in any other provisions of this Act (except section 41) or in any other law for the time being in force, as from the date of

publication such notification in the Official Gazette be deemed to have ceased to be lawful;

(c) declare that as from the commencement of, and until the expiry of, the period specified in the notification, it shall not be lawful for any person to have in his possession in such area any notified arms;

(d) authorise any such officer subordinate to the Central Government or a State Government as may be specified in the notification,--

(i) to search at any time during the period specified in the notification any person in, or passing through, or any premises in , or any animal or vessel or vehicle or other conveyance of whatever nature in or passing through or any premises in or other container of whatever nature in, such area if such officer has reason to believe through, or any receptacle or other container of whatever nature in, such area if such officer has reason to believe that any notified arms are secreted by such person or in such premises or on such animal or in such vessel, vehicle or other conveyance or in such receptacle or other container,

(ii) the seize at any time during the period specified in the notification any notified arms in the possession of any person in such area or discovered through a search under sub-clause (i) and detain the same during the period specified in the notification.

(2) The period specified in a notification issued under sub-section (1) in respect of any area shall not, in the first instance exceed ninety days, but the Central Government may amend such notification to extend such period from time to time by any period not exceeding ninety days at any one time, in the opinion of that Government, there continues to be in such area such disturbance of public peace and tranquility as is referred to in sub-section (1) or imminent danger thereof and that for

the prevention of offences involving the use of arms in such area it is necessary or expedient so to do.

(3) The provisions of the Code of Criminal Procedure, 1973 (2 of 1974), relating to searches and seizures shall, so far as may be, apply to any search or seizure made under sub-section (1)

(4) For the purposes of this section,--

(a) "arms" includes ammunition;

(b) where the period specified in a notification , as originally issued under sub-section (1), is extended under sub-section (2), then, in relation to such notification, references in subsection (1) to "the period specified in the notification" shall be construed as references to the period as so extended.

The Arms Act, 1959 - Section 24B - Prohibition As To Carrying Of Notified Arms In Or Through Public Places In Disturbed Areas, Etc.:

(1) Where the Central Government is satisfied that there is extensive disturbance of public peace and tranquillity or imminent danger of such disturbance in any area and that for the prevention of offences involving the use of arms in such area it is necessary or expedient so to do, it may, by notification in the Official Gazette,--

(a) specify the limits of such area;

(b) direct that during the period specified in the notification (which period shall be a period commencing from a date not earlier than the second day after the date of publication of the notification in the Official Gazette0, no person shall carry or otherwise have in his

possession any arms of such description as may be specified in the notification (the arms so specified being hereafter in this section referred to as notified arms) through or in any public place in such area;

(c) authorise any such officer subordinate to the Central Government or a State Government as may be specified in the notification,--

(i) to search at any time during the period specified in the notification any person in or passing through, or any premises in or forming part of, or any animal or vessel or vehicle or other conveyance of whatever nature, in or passing through, or any receptacle or other container of whatever nature in, any public place in such area if such officer has reason to believe that any notified arms are secreted by such vessel, vehicle or other conveyance or in such receptacle or other container;

(ii) to seize at any time during the period specified in the notification any notified arms being carried by or other-wise in the possession of any person, through or in a public place in such area or discovered through a search under sub-clause (i) and detain the same during the period specified in the notification.

(2) The period specified in a notification issued under sub-section (1) in respect of any area shall not, in the first instance, exceed ninety days, but the Central Government may amend such notification to extend such period from time to time by any period not exceeding ninety days at any one time if, in the opinion of that Government, there continues to be in such area such disturbance of public peace and tranquillity as is referred to in sub-section (1) or imminent danger thereof and that for the prevention of offences involving the use of arms in such area it is necessary or expedient so to do.

(3) The provisions of the Code of Criminal Procedure, 1973, (2 of 1974), relating to searches and seizures shall, so far as may be, apply to any search or seizure made under sub-section (1).

(4) For the purposes of this section,--

(a) "arms" includes ammunition;

(b) "public place" means any place intended for use by, or accessible to , the public or any section of the public; and

(c) where the period specified in a notification, as originally issued under sub-section (1), is extended under sub-section (2) , then, in relation to such notification, references in sub-section (1) to "the period specified in the notification " shall be construed as references to the period as so extended.]

Go Back to Section 115, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 117, Bharatiya Sakshya Adhiniyam, 2023:

The Commission of Sati (Prevention) Act, 1987 - Section 4 - Abetment Of Sati:

(1) Notwithstanding anything contained in the Indian Penal Code (45 of 1860), if any person commits sati, whoever abets the commission of such sati, either directly or indirectly, shall be punishable with death or imprisonment for life and shall also be liable to fine.

(2) If any person attempts to commit sati, whoever abets such attempt, either directly or indirectly, shall be punishable with imprisonment for life and shall also be liable to fine.

Explanation.--For the purposes of this section, any of the following acts or the like shall also be deemed to be an abetment, namely:--

(a) any inducement to a widow or woman to get her burnt or buried alive along with the body of her deceased husband or with any other relative or with any article, object or thing associated with the husband or such relative, irrespective of whether she is in a fit state of mind or is labouring under a state of intoxication or stupefaction or other cause impeding the exercise of her free will;

(b) making a widow or woman believe that the commission of sati would result in some spiritual benefit to her or her deceased husband or relative of the general well being of the family;

(c) encouraging a widow or woman to remain fixed in her resolve to commit sati and thus instigating her to commit sati;

(d) participating in any procession in connection with the commission of sati or aiding the widow or woman in her decision to commit sati by taking her along with the body of her deceased husband or relative to the cremation or burial ground;

(e) being present at the place where sati is committed as an active participant to such commission or to any ceremony connected with it;

(f) preventing or obstructing the widow or woman from saving herself from being burnt or buried alive;

(g) obstructing, or interfering with, the police in the discharge of its duties of taking any steps to prevent the commission of sati.

Bharatiya Nyaya Sanhita, 2023 - Section 108 - Abetment of suicide:

If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Bharatiya Nyaya Sanhita, 2023 - Section 85 - Husband or relative of husband of a woman subjecting her to cruelty:

Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Go Back to Section 117, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 118, Bharatiya Sakshya Adhiniyam, 2023:

Bharatiya Nyaya Sanhita, 2023 - Section 80 - Dowry Death:

(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death

she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.

Explanation.--For the purposes of this sub-section, "dowry" shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.

Go Back to Section 118, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 120, Bharatiya Sakshya Adhiniyam, 2023:

Bharatiya Nyaya Sanhita, 2023 - Section 64 - Punishment for rape:

(1) Whoever, except in the cases provided for in sub-section (2), commits rape, shall be punished with rigorous imprisonment of either description for a term which shall not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine.

(2) Whoever,--

(a) being a police officer, commits rape,--

(i) within the limits of the police station to which such police officer is appointed; or

(ii) in the premises of any station house; or

(iii) on a woman in such police officer's custody or in the custody of a police officer subordinate to such police officer; or

(b) being a public servant, commits rape on a woman in such public servant's custody or in the custody of a public servant subordinate to such public servant; or

(c) being a member of the armed forces deployed in an area by the Central Government or a State Government commits rape in such area; or

(d) being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a women's or children's institution, commits rape on any inmate of such jail, remand home, place or institution; or

(e) being on the management or on the staff of a hospital, commits rape on a woman in that hospital; or

(f) being a relative, guardian or teacher of, or a person in a position of trust or authority towards the woman, commits rape on such woman; or

(g) commits rape during communal or sectarian violence; or

(h) commits rape on a woman knowing her to be pregnant; or

(i) commits rape, on a woman incapable of giving consent; or

(j) being in a position of control or dominance over a woman, commits rape on such woman; or

(k) commits rape on a woman suffering from mental or physical disability; or

(l) while committing rape causes grievous bodily harm or maims or disfigures or endangers the life of a woman; or

(m) commits rape repeatedly on the same woman,

shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.

Explanation.--For the purposes of this sub-section,--

(a) "armed forces" means the naval, army and air forces and includes any member of the Armed Forces constituted under any law for the time being in force, including the paramilitary forces and any auxiliary forces that are under the control of the Central Government or the State Government;

(b) "hospital" means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation;

(c) "police officer" shall have the same meaning as assigned to the expression "police" under the Police Act, 1861(5 of 1861) ;

(d) "women's or children's institution" means an institution, whether called an orphanage or a home for neglected women or children or a widow's home or an institution called by any other name, which is

established and maintained for the reception and care of women or children.

Bharatiya Nyaya Sanhita, 2023 - Section 65(1) - Rape on woman under 16 years of age:

(1) Whoever, commits rape on a woman under sixteen years of age shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine:

Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:

Provided further that any fine imposed under this sub-section shall be paid to the victim.

Bharatiya Nyaya Sanhita, 2023 - Section 63 – Rape:

A man is said to commit "rape" if he--

(a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or

(b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or

(c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or

(d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person,

under the circumstances falling under any of the following seven descriptions:--

(i) against her will;

(ii) without her consent;

(iii) with her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt;

(iv) with her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married;

(v) with her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent;

(vi) with or without her consent, when she is under eighteen years of age;

(vii) when she is unable to communicate consent.

Explanation 1.--For the purposes of this section, "vagina" shall also include labia majora.

Explanation 2.--Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act:

Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

Exception 1.--A medical procedure or intervention shall not constitute rape.

Exception 2.--Sexual intercourse or sexual acts by a man with his own wife, the wife not being under eighteen years of age, is not rape.

Go Back to Section 120, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 121, Bharatiya Sakshya Adhiniyam, 2023:

Negotiable Instruments Act, 1881 - Section 120 - Estoppel Against Denying Original Validity Of Instrument:

No maker of a promissory note, and no drawer of a bill of exchange or cheque, and no acceptor of a bill of exchange for the honour of the drawer shall, in a suit thereon by a holder in due course, be permitted to deny the validity of the instrument as originally made or drawn.

Negotiable Instruments Act, 1881 - Section 121 - Estoppel Against Denying Capacity Of Payee To Indorse:

No maker of a promissory note and no acceptor of a bill of exchange payable to order shall, in a suit thereon by a holder in due course, be permitted to deny the payee's capacity, at the rate of the note or bill, to indorse the same.

Negotiable Instruments Act, 1881 - Section 122 - Estoppel Against Denying Signature Or Capacity Of Prior Party:

No indorser of a negotiable instrument shall, in a suit thereon by a subsequent holder, be permitted to deny the signature or capacity to contract of any prior party to the instrument.

Go Back to Section 121, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 123, Bharatiya Sakshya Adhiniyam, 2023:

Negotiable Instruments Act, 1881 - Section 5 - Bill Of Exchange:

A "bill of exchange" is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of, a certain person or to the bearer of the instrument.

A promise or order to pay is not "conditional", within the meaning of this section and section 4, by reason of the time for payment of the

amount or any installment thereof being expressed to be on the lapse of a certain period after the occurrence of a specified event which, according to the ordinary expectation of mankind, is certain to happen, although the time of its happening may be uncertain.

The sum payable may be "certain", within the meaning of this section and section 4, although it includes future interest or is payable at an indicated rate of exchange, or is according to the course of exchange, and although the instrument provides that, on default of payment of an installment, the balance unpaid shall become due.

The person to whom it is clear that the direction is given or that payment is to be made may be a "certain person", within the meaning of this section and section 4, although he is mis-named or designated by description only.

The Indian Contract Act, 1872 - Section 148 - 'Bailment', `Bailor' And `Bailee' Defined:

A 'bailment' is the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them. The person delivering the goods is called the 'bailor'. The person to whom they are delivered is called the 'bailee'.

Explanation. – If a person already in possession of the goods of another contracts to hold them as a bailee, he thereby becomes the bailee, and the owner becomes the bailor of such goods, although they may not have been delivered by way of bailment.

Go Back to Section 123, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 128, Bharatiya Sakshya Adhiniyam, 2023:

Foreign Marriage Act, 1969 - Section 11 - Marriage Not To Be In Contravention Of Local Laws:

(1) The Marriage Officer may, for reason to be recorded in writing refuse to solemnize a marriage under this Act if the intended marriage is prohibited by any law in force in the foreign country where it is to be solemnized.

(2) The Marriage Officer may, for reasons to be recorded in writing, refuse to solemnize a marriage under this Act on the ground that in his opinion, the solemnization of the marriage would be inconsistent with international law or the comity of nations.

(3) Where a Marriage Officer refuses to solemnize a marriage under this section, any party to the intended marriage may appeal to the Central Government in the prescribed manner within a period of thirty days from the date of such refusal; and the Marriage Officer shall act in conformity with the decision of the Central Government on such appeal.

Hindu Marriage Act, 1955 - Section 11 - Void Marriages:

Any marriage solemnised after the commencement of this Act shall be null and void and may, on a petition presented by either party thereto against the other party, be so declared by a decree of nullity if it contravenes any one of the conditions specified in clauses (i), (iv) and (v) of section 5.

Special Marriage Act, 1954 - Section 24 - Void Marriages:

(1) Any marriage solemnized under this Act shall be null and void and may, on a petition presented by either party thereto against the other party, be so declared by a decree of nullity if--

(i) any of the conditions specified in clauses (a), (b), (c) and (d) of section 4 has not been fulfilled; or

(ii) the respondent was impotent at the time of the marriage and at the time of the institution of the suit.

(2) Nothing contained in this section shall apply to any marriage deemed to be solemnized under this Act within the meaning of section 18, but the registration of any such marriage under Chapter III may be declared to be of no effect if the registration was in contravention of any of the conditions specified in clauses (a) to (e) of section 15:

Provided that no such declaration shall be made in any case where an appeal -has been preferred under section 17 and the decision of the district court has become final.

Go Back to Section 128, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 131, Bharatiya Sakshya Adhiniyam, 2023:

Chemical Weapons Convention Act, 2000 - Section 38 - Information As To Commission Of Offences:

No enforcement officer, subordinate officer to enforcement officer or officer of the National Authority or the State Government or officer subordinate to such officer as is mentioned in sub-section (2) of section 22 acting in exercise of powers vested in him under any provision of this Act or any such order made there under shall be compelled to say when he got any information as to the commission of any offence.

Narcotic-Drugs and Psychotropic Substances Act 1985 - Section 68 - Information As To Commission Of Offences:

No officer acting in exercise of powers vested in him under any provision of this Act or any rule or order made thereunder shall be compelled to say whence he got any information as to the commission of any offence.

Go Back to Section 131, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 132, Bharatiya Sakshya Adhiniyam, 2023:

Companies Act, 2013 - Section 227 - Legal Advisers And Bankers Not To Disclose Certain Information:

Nothing in this Chapter shall require the disclosure to the Tribunal or to the Central Government or to the Registrar or to an inspector appointed by the Central Government--

(a) by a legal adviser, of any privileged communication made to him in that capacity, except as respects the name and address of his client; or

(b) by the bankers of any company, body corporate, or other person, of any information as to the affairs of any of their customers, other than such company, body corporate, or person.

Consumer Protection Act, 2019 - Section 77 - Duty Of Mediator To Disclose Certain Facts:

It shall be the duty of the mediator to disclose--

(a) any personal, professional or financial interest in the outcome of the consumer dispute;

(b) the circumstances which may give rise to a justifiable doubt as to his independence or impartiality; and

(c) such other facts as may be specified by regulations.

Go Back to Section 132, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 135, Bharatiya Sakshya Adhiniyam, 2023:

Code of Civil Procedure, 1908 - Section 15 - Court In Which Suits To Be Instituted:

Every suit shall be instituted in the Court of the lowest grade competent to try it.

Go Back to Section 135, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 136, Bharatiya Sakshya Adhiniyam, 2023:

Information Technology Act, 2000 - Section 4 - Legal Recognition Of Electronic Records:

Where any law provides that information or any other matter shall be in writing or in the typewritten or printed form, then, notwithstanding anything contained in such law, such requirement shall be deemed to have been satisfied if such information or matter is--

(a) rendered or made available in an electronic form; and

(b) accessible so as to be usable for a subsequent reference.

Go Back to Section 136, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 138, Bharatiya Sakshya Adhiniyam, 2023:

The Indo-Tibetan Border Police Force Act, 1992 - Section 119 - Tender Of Pardon To Accomplice (Accomplice):

(1) With a view to obtaining the evidence of any person supposed to have been directly or indirectly concern in or privy to an offence triable by a Force Court other than a Summary Force Court under this Act, the commanding officer, the convening officer or the Force Court, at any stage of the investigation or inquiry into or the trial of, the offence, may tender a pardon to such person on condition of his making a full and true disclosure of the whole of the circumstances within his knowledge relating to the offence and to every other person concerned, whether as principal or abettor, in the commission thereof.

(2) The commanding officer or the convening officer who tenders a pardon under sub-section (1) shall record-

(a) his reasons for so doing;

(b) whether the tender was or was not accepted by the person to whom it was made, and shall, on application made by the accused, furnish him with a copy of such record free of cost.

(3) Every person accepting a tender of pardon made under sub-section (1)-

(a) shall be examined as a witness by the commanding officer of the accused and in the subsequent trial, if any;

(b) may be detained in Force custody until the termination of the trial.

Go Back to Section 138, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 141, Bharatiya Sakshya Adhiniyam, 2023:

Unlawful Activities (Prevention) Act, 1967 - Section 46 - Admissibility of evidence collected through the interception of communications:

Notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1872) or any other law for the time being in force, the evidence collected through the interception of wire, electronic or oral communication under the provisions of the Indian Telegraph Act, 1885 (13 of 1885) or the Information Technology Act, 2000 (21 of 2000) or any other law for the time being in force, shall be admissible as evidence against the accused in the court during the trial of a case: Provided that the contents of any wire, electronic or oral communication intercepted or evidence derived therefrom shall not be received in evidence or otherwise disclosed in any trial, hearing or other proceeding in any court unless each accused has been furnished with a copy of the order of the competent authority under the aforesaid law, under which the interception was directed, not less than ten days before trial, hearing or proceeding: Provided further that the period of ten days may be waived by the judge trying the matter, if he comes to the conclusion that it was not possible to furnish the accused with such order ten days before the trial, hearing or proceeding and that the accused shall not be prejudiced by the delay in receiving such order.

Prevention of Terrorism Act, 2002 - Section 45 - Admissibility Of Evidence Collected Through The Interception Of Communications:

Notwithstanding anything in the Code or in any other law for the time being in force, the evidence collected through the interception of wire,

electronic or oral communication under this Chapter shall be admissible as evidence against the accused in the Court during the trial of a case:

Provided that, the contents of any wire, electronic or oral communication intercepted pursuant to this Chapter or evidence derived therefrom shall not be received in evidence or otherwise disclosed in any trial, hearing or other proceeding in any court unless each accused has been furnished with a copy of the order of the Competent Authority, and accompanying application, under which the interception was authorised or approved not less than ten days before trial, hearing or proceeding:

Provided further that, the period of ten days may be waived by the judge trying the matter, if he comes to the conclusion that it was not possible to furnish the accused with the above information ten days before the trial, hearing or proceeding and that the accused will not be prejudiced by the delay in receiving such information.

Go Back to Section 141, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 149, Bharatiya Sakshya Adhiniyam, 2023:

Bharatiya Nyaya Sanhita, 2023 - Section 64 - Punishment for rape:

(1) Whoever, except in the cases provided for in sub-section (2), commits rape, shall be punished with rigorous imprisonment of either

description for a term which shall not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine.

(2) Whoever,--

(a) being a police officer, commits rape,--

(i) within the limits of the police station to which such police officer is appointed; or

(ii) in the premises of any station house; or

(iii) on a woman in such police officer's custody or in the custody of a police officer subordinate to such police officer; or

(b) being a public servant, commits rape on a woman in such public servant's custody or in the custody of a public servant subordinate to such public servant; or

(c) being a member of the armed forces deployed in an area by the Central Government or a State Government commits rape in such area; or

(d) being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a women's or children's institution, commits rape on any inmate of such jail, remand home, place or institution; or

(e) being on the management or on the staff of a hospital, commits rape on a woman in that hospital; or

(f) being a relative, guardian or teacher of, or a person in a position of trust or authority towards the woman, commits rape on such woman; or

(g) commits rape during communal or sectarian violence; or

(h) commits rape on a woman knowing her to be pregnant; or

(i) commits rape, on a woman incapable of giving consent; or

(j) being in a position of control or dominance over a woman, commits rape on such woman; or

(k) commits rape on a woman suffering from mental or physical disability; or

(l) while committing rape causes grievous bodily harm or maims or disfigures or endangers the life of a woman; or

(m) commits rape repeatedly on the same woman,

shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.

Explanation.--For the purposes of this sub-section,--

(a) "armed forces" means the naval, army and air forces and includes any member of the Armed Forces constituted under any law for the time being in force, including the paramilitary forces and any auxiliary forces that are under the control of the Central Government or the State Government;

(b) "hospital" means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of persons

during convalescence or of persons requiring medical attention or rehabilitation;

(c) "police officer" shall have the same meaning as assigned to the expression "police" under the Police Act, 1861(5 of 1861) ;

(d) "women's or children's institution" means an institution, whether called an orphanage or a home for neglected women or children or a widow's home or an institution called by any other name, which is established and maintained for the reception and care of women or children.

Bharatiya Nyaya Sanhita, 2023 - Section 65(1) - Rape on woman under 16 years of age:

(1) Whoever, commits rape on a woman under sixteen years of age shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine:

Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:

Provided further that any fine imposed under this sub-section shall be paid to the victim.

Bharatiya Nyaya Sanhita, 2023 - Section 65(2) - Rape on woman under 12 years of age:

(2) Whoever, commits rape on a woman under twelve years of age shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and with fine or with death:

Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:

Provided further that any fine imposed under this sub-section shall be paid to the victim.

Bharatiya Nyaya Sanhita, 2023 - Section 66 - Rape causing death or persistent vegetative state:

Whoever, commits an offence punishable under sub-section (1) or sub-section (2) of section 64 and in the course of such commission inflicts an injury which causes the death of the woman or causes the woman to be in a persistent vegetative state, shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, or with death.

Bharatiya Nyaya Sanhita, 2023 - Section 70 (1) - Gang Rape:

(1) Where a woman is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and

shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life which shall mean imprisonment for the remainder of that person's natural life, and with fine:

Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:

Provided further that any fine imposed under this sub-section shall be paid to the victim.

Bharatiya Nyaya Sanhita, 2023 - Section 67 - Sexual intercourse during separation:

Whoever has sexual intercourse with his own wife, who is living separately, whether under a decree of separation or otherwise, without her consent, shall be punished with imprisonment of either description for a term which shall not be less than two years but which may extend to seven years, and shall also be liable to fine.

Explanation.--In this section, "sexual intercourse" shall mean any of the acts mentioned in clauses (a) to (d) of section 63.

Bharatiya Nyaya Sanhita, 2023 - Section 68 - Sexual intercourse by person in authority:

Whoever, being--

(a) in a position of authority or in a fiduciary relationship; or

(b) a public servant; or

(c) superintendent or manager of a jail, remand home or other place of custody established by or under any law for the time being in force, or a women's or children's institution; or

(d) on the management of a hospital or being on the staff of a hospital, abuses such position or fiduciary relationship to induce or seduce any woman either in his custody or under his charge or present in the premises to have sexual intercourse with him, such sexual intercourse not amounting to the offence of rape, shall be punished with rigorous imprisonment of either description for a term which shall not be less than five years, but which may extend to ten years, and shall also be liable to fine.

Explanation 1.--In this section, "sexual intercourse" shall mean any of the acts mentioned in clauses (a) to (d) of section 63.

Explanation 2.--For the purposes of this section, Explanation 1 to section 63 shall also be applicable.

Explanation 3.--"Superintendent", in relation to a jail, remand home or other place of custody or a women's or children's institution, includes a person holding any other office in such jail, remand home, place or institution by virtue of which such person can exercise any authority or control over its inmates.

Explanation 4.--The expressions "hospital" and "women's or children's institution" shall respectively have the same meanings as in clauses (b) and (d) of the Explanation to sub-section (2) of section 64.

Bharatiya Nyaya Sanhita, 2023 - Section 71 - Repeat Offenders:

Whoever has been previously convicted of an offence punishable under section 64 or section 65 or section 66 or section 70 and is subsequently convicted of an offence punishable under any of the said sections shall be punished with imprisonment for life which shall mean imprisonment for the remainder of that person's natural life, or with death.

Bharatiya Nyaya Sanhita, 2023 - Section 70(2) - Gang rape on women under the age of 18:

(2) Where a woman under eighteen years of age is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and with fine, or with death:

Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:

Provided further that any fine imposed under this sub-section shall be paid to the victim.

Bharatiya Nyaya Sanhita, 2023 - Section 69 - Sexual intercourse by deceitful means or false promise to marry:

Whoever, by deceitful means or by making promise to marry to a woman without any intention of fulfilling the same, has sexual intercourse with her, such sexual intercourse not amounting to the

offence of rape, shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.

Explanation.--"deceitful means" shall include inducement for, or false promise of employment or promotion, or marrying by suppressing identity.

Go Back to Section 149, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 156, Bharatiya Sakshya Adhiniyam, 2023:

Bharatiya Nyaya Sanhita, 2023 - Section 212 - Furnishing False Information:

Whoever, being legally bound to furnish information on any subject to any public servant, as such, furnishes, as true, information on the subject which he knows or has reason to believe to be false,--

(a) shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to five thousand rupees, or with both;

(b) where the information which he is legally bound to give respects the commission of an offence, or is required for the purpose of preventing the commission of an offence, or in order to the apprehension of an offender, with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Illustrations

(a) A, a landholder, knowing of the commission of a murder within the limits of his estate, wilfully misinforms the Magistrate of the district that the death has occurred by accident in consequence of the bite of a snake. A is guilty of the offence defined in this section.

(b) A, a village watchman, knowing that a considerable body of strangers has passed through his village in order to commit a dacoity in the house of Z, a wealthy merchant residing in a neighbouring place, and being legally bound to give early and punctual information of the above fact to the officer of the nearest police station, wilfully misinforms the police officer that a body of suspicious characters passed through the village with a view to commit dacoity in a certain distant place in a different direction. Here A is guilty of the offence defined in this section.

Explanation.--In section 211 and in this section the word "offence" include any act committed at any place out of India, which, if committed in India, would be punishable under any of the following sections, namely, 103, 105, 307, sub-sections (2), (3) and (4) of section 309, sub-sections (2), (3), (4) and (5) of section 310, 311, 312, clauses (f) and (g) of section 326, sub-sections (4), (6), (7) and (8) of section 331, clauses (a) and (b) of section 332 and the word "offender" includes any person who is alleged to have been guilty of any such act.

Go Back to Section 156, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 165, Bharatiya Sakshya Adhiniyam, 2023:

Bharatiya Nyaya Sanhita, 2023 - Section 198 - Public servant disobeying law, with intent to cause injury to any person:

Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending to cause, or knowing it to be likely that he will by such disobedience, cause injury to any person, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

Illustration

A, being an officer directed by law to take property in execution, in order to satisfy a decree pronounced in Z's favour by a Court, knowingly disobeys that direction of law, with the knowledge that he is likely thereby to cause injury to Z. A has committed the offence defined in this section.

Go Back to Section 165, Bharatiya Sakshya Adhiniyam, 2023

Linked Provisions of Section 169, Bharatiya Sakshya Adhiniyam, 2023:

Code of Civil Procedure, 1908 - Section 99 - No Decree To Be Reversed Or Modified For Error Or Irregularity Not Affecting Merits Or Jurisdiction:

No decree shall be reversed or substantially varied, nor shall any case be remanded, in appeal on account of any misjoinder or non-joinder of parties or causes of action or any error, defect or irregularity in any proceedings in the suit, not affecting the merits of the case or the jurisdiction of the Court:

Provided that nothing in this section shall apply to non-joinder of a necessary party.

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 506 - Irregularities which do not vitiate proceedings:

If any Magistrate not empowered by law to do any of the following things, namely:--

(a) to issue a search-warrant under section 97;

(b) to order, under section 174, the police to investigate an offence;

(c) to hold an inquest under section 196;

(d) to issue process under section 207, for the apprehension of a person within his local jurisdiction who has committed an offence outside the limits of such jurisdiction;

(e) to take cognizance of an offence under clause (a) or clause (b) of sub-section (1) of section 210;

(f) to make over a case under sub-section (2) of section 212;

(g) to tender a pardon under section 343;

(h) to recall a case and try it himself under section 450; or

(i) to sell property under section 504 or section 505, erroneously in good faith does that thing, his proceedings shall not be set aside merely on the ground of his not being so empowered.

Go Back to Section 169, Bharatiya Sakshya Adhiniyam, 2023

Back to Section 3(f) of Indian Evidence Act, 1872

MANU/SC/0059/2011

IN THE SUPREME COURT OF INDIA

Civil Appeal No. 4820 of 2007

Decided On: 18.01.2011

Kalyan Kumar Gogoi Vs. Ashutosh Agnihotri and Ors.

Hon'ble Judges/Coram:

J.M. Panchal and Gyan Sudha Misra, JJ.

Counsels:

For Appellant/Petitioner/Plaintiff: Rajiv Dhawan, Sr. Adv., Anupam Chowdhury, Anupam Lal Das and Raktim Gogoi, Advs.

For Respondents/Defendant: Nagendra Rai, Sr. Adv., Amit Yadav, Smarhar Singh, Sanjay Kumar Visen, Bijender Singh and Ambar Qamaruddin, Advs.

JUDGMENT

J.M. Panchal, J.

1. This appeal, filed under Section 116A of the Representation of People Act, 1951 ("the Act" for short), is directed against judgment dated August 28, 2007, rendered by the learned Single Judge of the Gauhati High Court in Election Petition No. 4 of 2006, by which the prayers made by the Appellant to declare the election of the Respondent No. 2, who is returned candidate from Legislative Assembly Constituency of Dibrugarh, to be void and to order

repoll in Polling Station No. 124 Manik Dutta L.P. School (Madhya) of 116 Dibrugarh Legislative Assembly Constituency, are rejected.

2. The facts emerging from the record of the case are as under:

A notice was published inviting nominations from eligible candidates to contest the Assam State Legislative Assembly Election for 116 Dibrugarh Constituency as required by Section 31 of the Act read with Rule 3 of the Conduct of Election Rules, 1961, notifying the schedule of the election, which was as under: -

The Appellant filed his nomination papers to contest the Assam State Legislative Assembly Elections from 116 Dibrugarh Legislative Assembly Constituency as an approved candidate of the Indian National Congress. Along with him, the Respondent No. 2 herein filed his nomination papers as the candidate of Bhartiya Janata Party for the said constituency. There were six other candidates also, who were in fray and had filed their nomination papers for contesting the said election. Upon scrutiny of the nomination papers of the eight candidates, papers of seven candidates including those of the Appellant and the Respondent No. 2 were declared valid by the Returning Officer. The polling took place for the Constituency in question on April 3, 2006. It may be mentioned that in 116 Dibrugarh Legislative Assembly Constituency, in all there were 126 notified polling stations, names/particulars of which were published under Section 25 of the Act. On the date of polling one notified polling station, i.e., Polling Station No. 124 was not set up in the notified school, namely, Manik Dutta L.P. School (Madhya) and instead, the polling was conducted in another school, namely, Chiring Gaon Railway Colony L.P. School, which was admittedly not a notified polling station. It is not in dispute that the polling in the said non-notified polling station started at 7.00 A.M. The case

of the Appellant is that as the polling in the non-notified polling station continued up to 12.30 P.M., there was confusion and chaos amongst the voters and many of them went away without casting their votes. The Appellant claims that his election agent lodged complaint before the Deputy Commissioner, Dibrugarh, who was also the Returning Officer, for the constituency concerned and, therefore, the polling station was shifted to the notified school and was made functional later on. It is necessary to mention that out of the total 1050 voters whose names were registered at the polling station located at the school notified, 557 voters had cast their votes, which constitute, according to the Appellant, 53.8% of votes while the total polling percentage in the entire constituency was 67.23%. The counting of the votes for the election of the said constituency took place on May 12, 2006 and results were declared on the same day. The Respondent No. 2 was declared elected having polled 28,424 votes as the Appellant could secure 28,249 votes out of total valid votes of 79,736. Thus the margin of the votes between the Appellant and the Respondent No. 2 was of 175 votes.

On the same day, the Appellant lodged a complaint before the Returning Officer demanding repoll at the polling station concerned inter alia making grievance that the shifting of the polling station from the notified area to Chiring Gaon Railway Colony L.P. School was illegal and deprived many voters from exercising their right of franchise due to utter confusion and/or chaos. The Appellant also made grievance about the manner in which the Electronic Voting Machines were shifted from Chiring Gaon Railway Colony L.P. School to Manik Dutta L.P. School (Madhya). In response to this complaint the Deputy Commissioner and District Election Officer, Dibrugarh, addressed a letter dated May 20, 2006 to the Appellant mentioning that the problem about the functioning of Polling Station notified was solved immediately on the day of the polling under the guidance of the Election Observer in the presence of the Zonal Officer, Sector Officer of the Constituency Magistrate and Polling Agents and as the complaint lodged by the Appellant was found to be an after thought, the same was not entertained.

3. Thereupon, the Appellant filed Election Petition No. 4 of 2006 on June 21, 2006 before the Gauhati High Court under Sections 80, 80A and 81 of the Act seeking a declaration that the election of the Respondent No. 2 from constituency concerned was void and an order directing repolling in Polling Station notified be made.

4. The Respondent No. 2 filed his written statement mentioning amongst other facts that the shifting of the polling station from a notified place to a non-notified place and thereafter rectifying the defect did not vitiate the election nor had materially affected his result of the election. The Respondent No. 1, i.e., Mr. Ashutosh Agnihotri, who was then District Election Officer, Dibrugarh and Returning Officer, filed his reply mentioning, inter alia, that though in the morning polling was held at a non-notified polling station, namely, Chiring Gaon Railway Colony L.P. School instead of Manik Dutta L.P. School (Madhya), voters were not deprived of their right of casting vote. The Respondent No. 1 further stated that the Appellant had never raised, prior to the declaration of the result, any objection or made any complaint about initial voting having taken place at the polling station which was not notified or about subsequent shifting of the polling station to the notified place.

5. On the basis of pleadings of the parties, necessary issues for determination were framed and evidence was led by the parties. The Appellant examined in all twelve witnesses whereas the Respondent No. 2 examined six witnesses.

6. According to the learned Judge since the election petition was filed challenging the result of the returned candidate on the ground of non-compliance of the provisions of the Act and the Rules of 1961, the election Petitioner, i.e., the Appellant was required to prove such non-compliance and also that such non-compliance had materially affected the result of the

election as proof of mere non-compliance of any of the provisions of the Act or the Rules framed thereunder by itself without showing that such non-compliance had materially affected the result of the election of the returned candidate would not be sufficient to declare the election of the Respondent No. 2 void under Section 100(1)(d)(iv) of the Act. The learned Judge held that the evidence adduced established that the distance between the two schools was hardly about 100 meters. The learned Judge also noticed that the evidence established that polling in the Chiring Gaon Railway Colony L.P. School had continued only up to 9.30 A.M. and after shifting the polling station to the notified school at around 9.45 A.M., the polling was resumed/had restarted at about 9.55 A.M. On consideration of the evidence, the learned Judge concluded that the Polling Station No. 124 was not set up in the notified place initially but was subsequently set up at the notified place and thus there was breach of provisions of Sections 25 and 56 of the Act as well as Rule 15 of the Rules of 1961. The learned Judge examined the contention of the Appellant that the Presiding Officer having found that the Polling Station No. 124 was set up in a non-notified place was duty bound to adjourn the polling which was taking place at the said polling station in exercise of powers conferred by Section 57(1) of the Act and the Presiding Officer having not done so, the election of the Respondent No. 2 was liable to be set aside. However, the learned Judge found that the Appellant had neither pleaded violation of any of the provisions of Section 57 of the Act nor led evidence to prove that the setting up of the Polling Station in a non-notified place and its subsequent shifting to the notified place amounted to 'sufficient cause' within the meaning of Section 57 of the Act and, therefore, concluded that it was not necessary to decide the said contention. On examination, the contention of the Appellant, that the error and/or irregularity, namely, setting up of the polling station at the wrong place and subsequent shifting of the same at the notified place, committed during the conduct of the election, should have been reported by the Returning Officer forthwith to the Election Commission and failure to so report, has vitiated the election of the Respondent No. 2, was found to be without any substance because, according to the learned Judge, there was no pleading relating to breach of Section 58(1)(b) or commission of irregularity and/or error likely to vitiate the poll and it was further held that question of taking steps under Section 58 of the

Act would arise only in a case where destruction of ballot boxes, E.V.M. is pleaded and proved and not otherwise. The case of the Appellant that shifting was made to the notified place without sealing the EVM and other election materials also, was not accepted by the learned Judge because except the Appellant, no other person present at that point of time at Chiring Gaon Railway Colony L.P. School had stated anything about the non-sealing of the EVM and other election materials.

7. Having held that there was non-compliance of the provisions of Sections 25 and 56 of the Act and Rule 15 of 1961 Rules, the learned Judge further examined the question whether such non-compliance had materially affected the result of the election. After noticing that the question as to whether the infraction of law has materially affected the result of the election or not, is purely a question of fact, it was held that no presumption or any inference of fact can be raised that the result of the election of the returned candidate must have been materially affected and the fact that such infraction had materially affected the result of the election, must be proved by adducing cogent and reliable evidence. The learned Judge thereafter discussed the evidence on record and concluded that none of the witnesses had stated that a large number of voters had left the notified place without casting their votes because of non-availability of the polling facility at the notified place. In view of the above mentioned conclusions, the learned Judge held that initially voting, which had taken place at the non-notified place, had not materially affected the election result of the Respondent No. 2 and dismissed the election petition by the impugned judgment, giving rise to the instant appeal.

8. This Court has heard the learned Counsel for the parties at length and in great detail. This Court has also considered the documents forming part of the present appeal.

9. The first grievance made by Dr. Rajiv Dhavan, learned senior counsel for the Appellant, was that a wrong test of burden of proof, namely, absolute test was adopted by the learned Judge of the High Court, which could not have been adopted in view of the provisions of Section 100(1)(d)(iv) of the Act and the test of either broad probabilities or the test of sufficiency of evidence should have been applied while considering the question whether polling at the non-notified place and curtailing of time of voting had materially affected the result of the election. According to the learned Counsel for the Appellant, the hearsay rule on appreciation of evidence cannot be made applicable while determining the question whether polling at the non-notified place and curtailing of time of voting had materially affected the result of the election, so far as a candidate contesting election and his agents are concerned and, therefore, reliable testimony of the Appellant and that of his agents should have been accepted by the learned Judge. According to the learned Counsel for the Appellant, one of the reasons given by the High Court for disbelieving some of the witnesses was that though they were illiterate, they had filed affidavits in English language through their lawyer and on being asked about the contents of the affidavit, they had stated that they were not in position to explain the same, forgetting the material fact that they had acted through their lawyer and the lawyer on the basis of instructions given by them had prepared their affidavits. The learned Counsel argued that the reasons assigned by the learned Judge in the impugned judgment for dismissing the Election Petition filed by the Appellant are not only erroneous but contrary to the evidence on record and, therefore, this Court should accept the appeal.

10. Mr. Nagendra Rai, learned Counsel for the Respondent No. 2, argued that burden of proof was rightly placed on the Appellant in view of several reported decisions of this Court, which firmly lay down the principle that the ground pleaded for setting aside an election, must be proved beyond reasonable doubt and, therefore, no error can be said to have been committed by the learned Judge in applying the principle of burden of proof to the facts of the case. According to the learned Counsel for the Respondent No. 2, hearsay evidence remains hearsay and the said rule has to be applied to all matters including the determination of the

question whether voting at the non-notified place and curtailing of time of voting had materially affected the result of the election of the Respondent No. 2. It was, therefore, pleaded that it is not correct to argue that hearsay rule cannot be made applicable while determining the validity of election of the returned candidate under Section 100(1)(d)(iv) of the Act. What was maintained before this Court by the learned Counsel for the Respondent No. 2 was that on behalf of the illiterate people, affidavits were prepared by lawyer without making the illiterate people aware about the contents of the affidavits and, therefore, the High Court was justified in brushing aside the evidence of those witnesses while considering the question whether polling at a non-notified place had, in fact, affected the result of election materially. The learned Counsel submitted that cogent and convincing reasons have been given by the learned Judge in the impugned judgment for dismissing the election petition filed by the Appellant and, therefore, this Court should not interfere with the same in the instant appeal, more particularly, when the period left at the disposal of the Respondent No. 2, so far as his term as MLA is concerned, is less than a year.

11. The first question to be considered is whether there had been or not a breach of the Act and the Rules in the conduct of the election at this constituency. It is hardly necessary for this Court to go over the evidence with a view to ascertaining whether there was or was not a breach of the Act and the Rules in the conduct of the election concerned. Having read the evidence on record, this Court is in entire agreement with the decision of the learned Single Judge that by the change of venue of casting votes, breach of the provisions of Sections 25 and 56 of the Act read with Rule 15 of the Rules of 1961 was committed by the officials who were in charge of the conduct of the election at this constituency.

12. This shows that the matter is governed by Section 100(1)(d)(iv) of the Act. The question still remains whether the condition precedent to the avoidance of the election of the returned candidate which requires proof from the election Petitioner, i.e., the Appellant that the result

of the election had been materially affected insofar as the returned candidate, i.e., the Respondent No. 2, was concerned, has been established in this case.

13. This Court finds that the learned Judge has recorded a finding that cogent and reliable evidence should be adduced by an election Petitioner when election of the successful candidate is challenged on the ground of breach of provisions of Section 100(1)(d)(iv) of the Act. The contention advanced by Dr. Rajiv Dhavan, learned Counsel for the Appellant, that the test of either broad probabilities or the test of sufficiency of evidence should be applied while deciding the question whether the result of the elected candidate is materially affected or not cannot be accepted. Section 100(1)(d)(iv) of the Act reads as under: -

100. Grounds for declaring election to be void. - (1) Subject to the provisions of Sub-section (2) if the High Court is of opinion -

(a) to (c) ....

(d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected -

(i) to (iii) ....

(iv) by any non-compliance with the provisions of the Constitution or of this Act or any rules or orders made under this Act, the High Court shall declare the election of the returned candidate to be void.

14. It may be mentioned that here in this case non-compliance with the provisions of the Representation of People Act, 1951 and the Election Rules of 1961 was by the officers, who were in-charge of the conduct of the election and not by the elected candidate. It is true that if Clause (iv) is read in isolation, then one may be tempted to come to the conclusion that any non-compliance with the provisions of the Constitution or of the Act of 1951 or any Rules of 1961 Rules or orders made under the Act would render the election of the returned candidate void, but one cannot forget the important fact that Clause (d) begins with a rider, namely, that the result of the election, insofar as it concerns a returned candidate, must have been materially affected. This means that if it is not proved to the satisfaction of the Court that the result of the election insofar as it concerns a returned candidate has been materially affected, the election of the returned candidate would not be liable to be declared void notwithstanding non-compliance with the provisions of the Constitution or of the Act or of any Rules of 1961 Rules or orders made thereunder. It is well to remember that this Court has laid down in several reported decisions that the election of a returned candidate should not normally be set aside unless there are cogent and convincing reasons. The success of a winning candidate at an election cannot be lightly interfered with. This is all the more so when the election of a successful candidate is sought to be set aside for no fault of his but of someone else. That is why the scheme of Section 100 of the Act, especially Clause (d) of Sub-section (1) thereof clearly prescribes that in spite of the availability of grounds contemplated by Sub-clauses (i) to (iv) of Clause (d), the election of a returned candidate shall not be voided unless and until it is proved that the result of the election insofar as it concerns a returned candidate is materially affected.

The volume of opinion expressed in judicial pronouncements, preponderates in favour of the view that the burden of proving that the votes not cast would have been distributed in such a manner between the contesting candidates as would have brought about the defeat of the returned candidate lies upon one who objects to the validity of the election. Therefore, the standard of proof to be adopted, while judging the question whether the result of the election insofar as it concerns a returned candidate is materially affected, would be proof beyond reasonable doubt or beyond pale of doubt and not the test of proof as suggested by the learned Counsel for the Appellant.

This part of the case depends upon the ruling of this Court in Vashisht Narain Sharma v. Dev Chandra MANU/SC/0101/1954 : (1955) 1 SCR 509 : AIR 1954 SC 513. In that case, there was a difference of 111 votes between the returned candidate and the candidate who had secured the next higher number of votes. One candidate by name of Dudh Nath Singh was found not competent to stand election and the question arose whether the votes wasted on Dudh Nath Singh, if they had been polled in favour of remaining candidates, would have materially affected the fate of the election. Certain principles were stated as to how the probable effect upon the election of the successful candidate, of votes which were wasted (in this case effect of votes not cast) must be worked out. Two witnesses were brought to depose that if Dudh Nath Singh had not been a candidate for whom no voting had to be done, the voters would have voted for the next successful candidate. Ghulam Hasan, J. did not accept this kind of evidence. It is observed as follows:

It is impossible to accept the ipse dixit of witnesses coming for one side or the other to say that all or some of the votes would have gone to one or the other on some supposed or imaginary ground. The question is one of fact and has to be proved by positive evidence. If the Petitioner is unable to adduce evidence in a case such as the present, the only inescapable conclusion to which the Tribunal can come is that the burden is not discharged and the election must stand.

While interpreting the words "the result of the election has been materially affected" occurring in Section 100(1)(c), this Court in the said case notified that these words have been the subject of much controversy before the Election Tribunals and the opinions expressed were not uniform or consistent. While putting the controversy at rest, it was observed as under:

These words seem to us to indicate that the result should not be judged by the mere increase or decrease in the total number of votes secured by the returned candidate but by proof of the fact that the wasted votes would have been distributed in such a manner between the contesting candidates as would have brought about the defeat of the returned candidate.

In another para in the said decision it is observed:

It will not do merely to say that all or a majority of the wasted votes might have gone to the next highest candidate. The casting of votes at an election depends upon a variety of factors and it is not possible for any one to predicate how many or which proportion of the votes will go to one or the other of the candidates. While it must be recognized that the Petitioner in such a case is confronted with a difficult situation, it is not possible to relieve him of the duty imposed upon him by Section 100(1)(c) and hold without evidence that the duty has been discharged.

15. Again, in Paokai Haokip v. Rishang and Ors. MANU/SC/0405/1968 : AIR 1969 SC 663, the Appellant who was the returned candidate from the Outer Manipur Parliamentary Constituency had received 30,403 votes as against the next candidate, who had received 28,862 votes. There was thus a majority of 1541 votes.

The candidate, who had secured the second largest number of votes, had filed election petition. The main ground of attack, which had succeeded in the Judicial Commissioner's Court, was that polling was disturbed because of numerous circumstances. These were that the polling centres were, in some cases, changed from the original buildings to other buildings of which due notification was not issued earlier, with the result that many of the voters who had gone to vote at the old polling booths had found no arrangement for voting and rather than going to the new polling station, had gone away without casting their votes. The second ground was that owing to firing by the Naga Hostiles, the voting at some of the polling stations was disturbed and almost no votes were cast. The third ground was that the polling hours, at some stations, were reduced with the result that some of the voters, who had gone to the polling station, were unable to cast their votes.

This Court considered the evidence led in the said case and after concluding that by the change of venue and owing to the firing, a number of voters had, probably failed to record their votes, held that the matter was governed by Section 100(1)(d)(iv) of the Act. Having held so, the Court then proceeded to consider the question whether the condition precedent to the avoidance of the election of the returned candidate, which requires proof from the election Petitioner that the result of the election had been materially affected insofar as the returned candidate was concerned, was established. After extensively quoting from Vashisht Narain Sharma's case the Court noticed that witnesses were brought forward to state that a number of voters did not vote because of change of venue or because of firing and that they had decided to vote en bloc for the election Petitioner. This Court, on appreciation of evidence led in that case held that the kind of evidence adduced was merely an assertion on the part of the witnesses, who could not have spoken for 500 voters for the simple reason that casting of votes at an election depended upon a variety of factors and it was not possible for anyone to predict how many or which proportion of votes would have gone to one or the other of the candidates. Therefore, the Court refused to accept the statement even of a Headman that the whole village would have voted in favour of one candidate to the exclusion of the others. The

Court in the said case examined the polling pattern in the election and after applying the law of averages, concluded that it was demonstrated at once that the election Petitioner could not have expected to wipe off the large arrears under which he was labouring and that he could not have, therefore, made a successful bid for the seat, even with the assistance of the voters who had not cast their votes. Noting that the learned Judicial Commissioner had reached the conclusion by committing the same error, which was criticized in Vashisht Narain Sharma's case, this Court observed that the learned Judicial Commissioner had taken the statement of the witnesses at their worth and had held on the basis of those statements that all the votes that had not been cast, would have gone to the election Petitioner. This Court ruled in the said case that for this approach adopted by the learned Judicial Commissioner there was no foundation in fact, it was a surmise and it was anybody's guess as to how these people who had not voted, would have actually voted. This Court, on appreciation of evidence, held that the decision of the learned Judicial Commissioner that the election was in contravention of the Act and the Rules was correct, but that did not alter the position with regard to Section 100(1)(d)(iv) of the Act, which required that election Petitioner must go a little further and prove that the result of the election had been materially affected. After holding that the election Petitioner had failed to prove that the result of the election insofar as it concerned the returned candidate, had been materially affected, the appeal was allowed and it was declared that the election of the returned candidate would stand. What is important to notice is that while allowing the appeal of the returned candidate, the Court has made following pertinent observations regarding burden of proof which hold the field even today: -

It is no doubt true that the burden which is placed by law is very strict; even if it is strict it is for the courts to apply it. It is for the Legislature to consider whether it should be altered. If there is another way of determining the burden, the law should say it and not the courts. It is only in given instances that, taking the law as it is, the courts can reach the conclusion whether the burden of proof has been successfully discharged by the election Petitioner or not.

16. In the light of the principles stated above what this Court has to see is whether the burden has been successfully discharged by the election Petitioner by demonstrating to the Court positively that the poll would have gone against the returned candidate if the breach of the provisions of the Act and the Rules had not occurred and proper poll had taken place at the notified polling station.

17. Before considering the question posed above, it would be relevant to deal with the argument raised by the learned Counsel for the Appellant that hearsay rule of appreciation of evidence would not be applicable to the determination of the question whether the result of the election of the Respondent No. 2 was materially affected because of change of venue of the polling station.

18. The word 'evidence' is used in common parlance in three different senses: (a) as equivalent to relevant (b) as equivalent to proof and (c) as equivalent to the material, on the basis of which courts come to a conclusion about the existence or non-existence of disputed facts. Though, in the definition of the word "evidence" given in Section 3 of the Evidence Act one finds only oral and documentary evidence, this word is also used in phrases such as: best evidence, circumstantial evidence, corroborative evidence, derivative evidence, direct evidence, documentary evidence, hearsay evidence, indirect evidence, oral evidence, original evidence, presumptive evidence, primary evidence, real evidence, secondary evidence, substantive evidence, testimonial evidence, etc. The idea of best evidence is implicit in the Evidence Act. Evidence under the Act, consists of statements made by a witness or contained in a document. If it is a case of oral evidence, the Act requires that only that person who has actually perceived something by that sense, by which it is capable of perception, should make the statement about it and no one else. If it is documentary evidence, the Evidence Act requires that ordinarily the original should be produced, because a copy may contain

omissions or mistakes of a deliberate or accidental nature. These principles are expressed in Sections 60 and 64 of the Evidence Act.

19. The term 'hearsay' is used with reference to what is done or written as well as to what is spoken and in its legal sense, it denotes that kind of evidence which does not derive its value solely from the credit given to the witness himself, but which rests also, in part, on the veracity and competence of some other person. The word 'hearsay' is used in various senses. Sometimes it means whatever a person is heard to say. Sometimes it means whatever a person declares on information given by someone else and sometimes it is treated as nearly synonymous with irrelevant. The sayings and doings of third person are, as a rule, irrelevant, so that no proof of them can be admitted. Every act done or spoken which is relevant on any ground must be proved by someone who saw it with his own eyes and heard it with his own ears.

20. The argument that the rule of appreciation of hearsay evidence would not apply to determination of the question whether change of venue of polling station has materially affected the result of the election of the returned candidate, cannot be accepted for the simple reason that, this question has to be determined in a properly constituted election petition to be tried by a High Court in view of the provisions contained in Part VI of the Representation of the People Act, 1951 and Section 87(2) of the Act of 1951, which specifically provides that the provisions of the Indian Evidence Act, 1872, shall subject to the provisions of the Act, be deemed to apply in all respects to the trial of an election petition. The learned Counsel for the Appellant could not point out any provision of the Act of 1951, which excludes the application of rule of appreciation of hearsay evidence to the determination of question posed for consideration of this Court in the instant appeal.

21. Here comes the rule of appreciation of hearsay evidence. Hearsay evidence is excluded on the ground that it is always desirable, in the interest of justice, to get the person, whose statement is relied upon, into court for his examination in the regular way, in order that many possible sources of inaccuracy and untrustworthiness can be brought to light and exposed, if they exist, by the test of cross-examination. The phrase "hearsay evidence" is not used in the Evidence Act because it is inaccurate and vague. It is a fundamental rule of evidence under the Indian Law that hearsay evidence is inadmissible. A statement, oral or written, made otherwise than a witness in giving evidence and a statement contained or recorded in any book, document or record whatever, proof of which is not admitted on other grounds, are deemed to be irrelevant for the purpose of proving the truth of the matter stated. An assertion other than one made by a person while giving oral evidence in the proceedings is inadmissible as evidence of any fact asserted. That this species of evidence cannot be tested by cross-examination and that, in many cases, it supposes some better testimony which ought to be offered in a particular case, are not the sole grounds for its exclusion. Its tendency to protract legal investigations to an embarrassing and dangerous length, its intrinsic weakness, its incompetency to satisfy the mind of a Judge about the existence of a fact, and the fraud which may be practiced with impunity, under its cover, combine to support the rule that hearsay evidence is inadmissible.

22. The reasons why hearsay evidence is not received as relevant evidence are: (a) the person giving such evidence does not feel any responsibility. The law requires all evidence to be given under personal responsibility, i.e., every witness must give his testimony, under such circumstance, as expose him to all the penalties of falsehood. If the person giving hearsay evidence is cornered, he has a line of escape by saying "I do not know, but so and so told me", (b) truth is diluted and diminished with each repetition and (c) if permitted, gives ample scope for playing fraud by saying "someone told me that....". It would be attaching importance to false rumour flying from one foul lip to another. Thus statement of witnesses based on information received from others is inadmissible.

23. In the light of the above stated principles of law, this Court will have to decide the question whether it is proved by the Appellant, beyond reasonable doubt that the result of the election, insofar as the Respondent No. 2 is concerned, was materially affected because of change of venue of the polling station. The first attempt made by the Appellant is to establish that about 200 to 300 voters had gone away without casting their votes when they found that no arrangements were made for casting votes at the notified place.

24. The evidence in this case, which has been brought out by the election Petitioner, is the kind of evidence which has been criticized by this Court in several reported decisions. The analysis of the evidence tendered by the witnesses of the Appellant makes it very clear that none of them had seen big number of voters, i.e., 200/300 returning back without casting their votes, because the polling station was initially arranged at a non-notified place and was subsequently shifted to the notified place. In fact, a close analysis of the evidence tendered by the witnesses of the Appellant indicates that they have exaggerated the facts. For example, Dr. Kalyan Kumar Gogoi, i.e., the Appellant as PW-1, had stated in his evidence that the distance between Manik Dutta L.P. School (Madhya) and Chiring Gaon Railway Colony L.P. School was about one and half kilometers whereas as a material fact, the distance found was hardly 440 feet and the schools were visible from each other. What is relevant to notice is that his evidence further discloses that he was informed by his workers, i.e., Durlav Kalita and Pushpanath Sharma that a large number of voters could not cast their votes. He does not claim that he himself had seen the voters returning because of specification of non-notified place as place for voting. The worker Durlav Kalita has not been examined by Appellant and the second worker Pushpanath Sharma, who has been examined as PW3, has not been found to be reliable by this Court, hence the assertion of the Appellant that he was told by his abovenamed two workers that a large number of voters had gone away without casting their votes when they found that no arrangements for casting votes at the notified place were

made, will have to be regarded as hearsay evidence and, therefore, inadmissible in evidence. The evidence of Dugdha Chandra Gogoi PW-2 establishes that he was the election agent of the Appellant and according to him he had informed the Appellant that about 200 to 300 voters had gone away when they had found that no arrangements were made for voting at the notified venue. However, he has in no uncertain terms stated during his cross-examination that he had set up booths at Manik Dutta L.P. School (Madhya) Polling Station as well as Chiring Gaon Railway Colony L.P. School. If that was so, those who had come for voting at Manik Dutta L.P. School (Madhya) Polling Station between 7.00 A.M. to 9.45 A.M., could have been directed to go to Chiring Gaon Railway Colony L.P. School Polling Station and vice versa after the polling station was shifted from non-notified place to the notified place. Therefore, his assertion that he had informed the Appellant that about 200 to 300 voters had gone away without casting their votes when it was found by them that no voting arrangements were made at the notified venue, does not inspire confidence of this Court. Similarly, witness Pushpanath Sharma, examined by the Appellant as PW-3, has stated that on reaching Manik Dutta L.P. School (Madhya), he had learnt that the polling station was not set up there and there was utter confusion. The witness has thereafter stated that he had enquired about non-setting up of polling station at the notified place and learnt that, unable to locate the polling station set up at a place which was not notified, many voters had left without casting their votes. This is nothing else but hearsay evidence and it would be hazardous to act upon such an evidence for the purpose of setting aside the election of an elected candidate. Moreover, this Court finds that PW-6, i.e., Sri Pranjal Borah, has stated that on the day of the poll, i.e., on April 3, 2006 at about 11.30 O'clock in the morning when he went to cast his vote at 124 Manik Dutta L.P. School (Madhya) polling station, i.e., the notified place, he found that the polling station was not set up there. This has turned out to be utter lie because as per the finding recorded by the learned Single Judge on appreciation of evidence with which this Court completely agrees on re-appreciation of evidence, is that by 9.45 A.M. the notified Polling Station had started functioning fully and the voters were found standing in queue to cast their votes. Similar is the state of affairs so far as evidence of witness No. 8 Smt. Subarna Borah and witness No. 9 Smt. Pratima Borah are concerned. It means that

the witnesses are not only unreliable but have tendency to state untrue facts. One of the grounds mentioned by the learned Single Judge of the High Court for disbelieving the witnesses of the Appellant is that they were illiterate, but their affidavits were got prepared in English language through lawyer which were treated as their examination-in-chief. There is no denial by the Appellant that the witnesses were illiterate and that their affidavits were prepared by the lawyer and were presented before the Court. The persons, who had put their thumb marks on the affidavits, which were in English language, could have been hardly made aware about the English contents of the affidavits sworn by them. The evidence tendered by the Appellant to establish that about 200 to 300 voters had gone back on not finding the polling station at the notified place has not inspired the confidence of the learned Single Judge of the High Court, who had advantage of observing demeanour of the witnesses. On re-appreciation of the said evidence it has not inspired confidence of this Court also. Under the circumstances, this Court finds that it is hazardous to rely upon the evidence adduced by the Appellant for coming to the conclusion that because of specification of wrong place as polling station, the result, so far as the same concerns Respondent No. 2, was materially affected. It is relevant to notice that the election in question had taken place on April 3, 2006 and the result was declared on May 11, 2006. However, for the first time the Appellant filed a complaint regarding polling having taken place at a non-notified place only on May 12, 2006. Further, in the belatedly filed complaint, it was never claimed by the Appellant that casting of the votes had taken place initially at a non-notified place and, therefore, about 200 to 300 voters, who had gone to the notified place to cast their votes, had returned back without casting their votes, when they had learnt that the polling station was not set up at the notified place. Similarly, in the Election Petition it is nowhere mentioned by the Appellant that before the shifting of the notified place polling station, voters, who were roughly 200 to 300 in number, had to return back without casting their votes. The evidence adduced by the Appellant does not establish beyond reasonable doubt that about 200 to 300 voters had gone away, without casting their votes when it was found by them that no arrangements were made for casting votes at the notified place. The finding recorded by the learned Single Judge on this point is eminently just and is hereby upheld. What is relevant to

notice is that out of 1050 voters, whose names were registered at the notified polling station, 557 voters had cast their votes. It means that the voting percentage was 53.8%. The assertion made by the witnesses of the Appellant that roughly about 200 to 300 voters could not cast their votes because of shifting of official polling station, cannot be believed for the other weighty reason that the general pattern of polling not only in this constituency but in the whole of India is that all the voters do not always go to the polls. Voting in India is not compulsory and, therefore, no minimum percentage of votes has been prescribed either for treating an election in a constituency as valid or for securing the return of a candidate at the election. The voters may not turn up in large number to cast their votes for variety of reasons such as an agitation going on in the State concerned on national and/or regional issues or because of boycott call given by some of the recognized State parties, in the wake of certain political developments in the State or because of disruptive activities of some extremist elements, etc. It is common knowledge that voting and abstention from voting as also the pattern of voting, depend upon complex and variety of factors, which may defy reasoning and logic. Depending on a particular combination of contesting candidates and the political party fielding them, the same set of voters may cast their votes in a particular way and may respond differently on a change in such combination. Voters, it is said, have a short lived memory and not an inflexible allegiance to political parties and candidates. Election manifestos of political parties and candidates in a given election, recent happenings, incidents and speeches delivered before the time of voting may persuade the voters to change their mind and decision to vote for a particular party or candidate, giving up their previous commitment or belief. In Paokai Haokip v. Rishang MANU/SC/0405/1968 : AIR 1969 SC 663, this Court has taken judicial notice of the fact that in India all the voters do not always go to the polls and that the casting of votes at an election depends upon a variety of factors and it is not possible for anyone to predicate how many or which proportion of votes will go to one or the other of the candidate. Therefore, 200 to 300 voters not casting their votes can hardly be attributed to change of venue of the polling station, though the evidence on record does not indicate at all that about 200 to 300 voters had gone back without casting their votes. Even if it assumed for sake of argument that about 200 to 300 voters had gone away without

casting their votes on learning that no polling station was set up at the notified place, this Court finds that no evidence relating to the pattern of voting as was disclosed in the various polling booths at which the voters had in fact gone, was adduced by the Appellant, as was adduced in case of Paokai Haokip (supra) on the basis of which the law of averages was arrived at against the election Petitioner therein. Therefore, it is very difficult to accept the ipse dixit of the Appellant and his witnesses that if 200 to 300 had not gone away without casting their votes due to non-setting up of notified polling station, they would have voted in favour of the Appellant. There is no warrant for drawing presumption that those, who had gone away without casting votes, would have cast their votes in favour of the Appellant, if there had been no change of venue of voting. Vashisht Narain's case insists on proof. In the opinion of this Court, the matter cannot be considered on possibility. There is no room for a reasonable judicial guess.

25. The heads of substantive rights in Section 100(1) are laid down in two parts: the first dealing with situations in which the election must be declared void on proof of certain facts and the second in which the election can only be declared void if the result of the election, insofar as it concerns the returned candidate, can be held to be materially affected on proof of some other facts. The Appellant has totally failed to prove that the election of the Respondent No. 2, who is returned candidate, was materially affected because of non-compliance with the provisions of the Representation of the People Act, 1951, or Rules or Orders made under it.

26. On the facts and in the circumstances of the case this Court is of the firm opinion that the learned Single Judge of the High Court did not commit any error in dismissing the petition filed by the Appellant challenging the election of the Respondent No. 2. Therefore, the appeal, which lacks merits, deserves to be dismissed.

27. For the foregoing reasons, the appeal fails and is dismissed. There shall be no order as to costs.

MANU/SC/0723/2002

Back to Section 27 of Indian Evidence Act, 1872.

IN THE SUPREME COURT OF INDIA

Appeal (crl.) 921 of 2000

Decided On: 03.09.2002

Bodh Raj and Ors. Vs. State of Jammu and Kashmir

Hon'ble Judges/Coram:

Ruma Pal and Dr. Arijit Pasayat, JJ.

Counsels:

Sushil Kumar and U.R. Lalit, Sr. Advs., M. Aslam Gooni, Adv. Genl. for J & K, R.K. Garg, A.D.N. Rao, R.K. Joshi, P.N. Puri and Anis Suhrawardy, Advs. for the appearing parties

JUDGMENT

Arijit Pasayat, J.

1. These four appeals relate to a Division Bench judgment of the Jammu and Kashmir High Court dated 31.7.2000. While Criminal Appeal No. 921/2000, 791/2001, 792/2001 have been filed by the accused, Criminal Appeal No. 837/2001 has been filed by the State.

2. Ravinder Kumar (accused No. 1), Ashok Kumar (accused No. 2) and Rajesh Kumar (accused No. 6) were convicted by the Trial Court while Bodhraj (accused No. 3), Bhupinder (accused No. 4), Subash Kumar (accused No. 5) and Rakesh Kumar (accused No. 7) were

acquitted by the Trial Court, but the High Court set aside their acquittal and convicted them. Rohit Kumar (accused No. 8) and Kewal Krishan (accused No. 9) were acquitted by the Trial Court and their acquittal has been upheld by the High Court. Another accused i.e. Kishore Kumar was acquitted by the Trial Court. He having died during the pendency of the appeal before the High Court, the appeal against him was held to have abated. Accused Rajesh Kumar has not preferred any appeal against the conviction as upheld by the High Court.

3. Accused No. 1 and accused No. 2 having been convicted under Section 302 read with Section 120-B of the Indian Penal Code, 1860 (in short the 'IPC') were sentenced to suffer imprisonment for life and pay a fine of Rs. 20,000/- each. It was stipulated that for default in paying the fine, each had to suffer another year of imprisonment. Similar was the case with accused No. 6. So far as the accused Nos. 3, 4, 5 and 7 are concerned, the High Court convicted and sentenced them at par with the other three accused.

4. Factual scenario as highlighted by the prosecution is as follows:

5. Swaran Singh @ Pappi (hereinafter referred to as the 'deceased') was running a finance company. Accused No. 2 (Ashok Kumar) and accused No. 1 (Ravinder Kumar) had taken huge amounts as loan from the deceased. They suggested to the deceased to enter into a financial arrangement. On the fateful day i.e. 3rd August, 1994, deceased went to his business premises. After about 10 minutes of his arrival accused - Ravinder Kumar also reached his office. As the deceased had brought some money from his house which was to be deposited in a bank, Darshan Singh (PW 15) an employee was asked to make the deposit. Since no vehicle was available, Ravinder Kumar gave the key of his car to Darshan Singh. The registration number of the car is CH01 5408. Darshan Singh left the office around 11.30 a.m. and returned around 1.30 p.m. On his return, Darshan found the deceased in the company of

accused Ravinder Kumar and Ashok Kumar. He returned the key of the car to Ravinder Kumar. After about 10/15 minutes, deceased and accused-Ashok Kumar left the office. At the time of his departure, deceased told Darshan to take the food which was to come from his house, as they were going out to have food. Accused-Ashok Kumar and the deceased went to Hotel Asia for taking their food. Later on, accused-Ravinder Kumar joined them. All the three after taking food went to the business premises of Gian Singh (PW-1) who was a property dealer and broker. He was informed that they were interested in purchasing some land for setting up a flour mill. Ravinder and Ashok Kumar persuaded the deceased to accompany them for the selection of the site. Along with Gian Singh (PW-1), another property dealer was also picked up. This was done as PW-1 wanted to go to the site in question along with Pratap Singh (PW-2) who was his business partner. All of them went to village Dhiansar where the land was situated They went by car No. JK-02B 566. As accused-Ravinder Kumar appeared to be in extreme haste, he told that site has been approved and PWs. 1 and 2 were told that they would settle the matter at their business premises. When they were returning, the deceased was attacked by some persons (later on identified as accused 3 to 10). The accused 1 and 2 remained silent spectators and even did not pay any heed to the pitiful plea of the deceased to bring the car so that he can escape the attacks. On the contrary, they left the scene of occurrence leaving behind the deceased and PWs. 1 and 2. They did not report the matter to the police and even though they claimed to be friends of the deceased, did not even inform family members of the deceased. They owed huge amounts and issued cheques for which they had made no provision. Ashok Kumar made use of the cheque book of his wife and issued a cheque in respect of her bank account, though, the same was not operated for quite some time. Accused-Rajesh Kumar's presence was established as later on, licensed revolver belonging to accused-Ravinder Kumar was recovered at the instance of Ravinder Kumar. The licence of the revolver was seized from the house of Ravinder Kumar and father of the said accused produced the same before the police in the presence of witnesses. Pistol of the deceased was also recovered at his instance. The license in respect of the pistol was seized on personal search of the deceased at the spot of occurrence. One Hari Kumar (PW-18) stated that accused Ravinder Kumar and Ashok Kumar made a statement before him that

they had got the deceased killed because he was demanding money from them. From the fact that the land was to be selected was only known to accused Ravinder Kumar and Ashok Kumar, an inference was drawn that it was these two accused who had hired the assailants and planted them well in advance for the ultimate elimination of the deceased. The fact that accused Ravinder Kumar left the office of the deceased earlier and joined them at the Hotel was considered significant, as the intervening period was utilized by him to inform the assailants as to where they would be taking the deceased for the assaults being carried out. Accused Rajesh Kumar and Subash Kumar had also suffered bullet injury which was on account of the firing done by the deceased while he was trying to save his life.

6. Recoveries of various weapons used by assailants were made pursuant to the disclosures made by the accused Bodhraj, Bhupinder, Subhash Kumar Rajesh Kumar and Rakesh Kumar. Recoveries were witnessed by several witnesses. Bodhraj was identified by Jhuggar Singh (PW 6) and Santokh Singh (PW 7). Bhupinder Singh was identified by Hari Kumar (PW 18) and Gurmit Singh. Similar was the case with accused Subash Kumar. Rajesh Kumar was identified by Ranjit Sharma (PW 23) and Hari Kumar (PW 18). Accused Rakesh Kumar was identified by Ranjit Sharma (PW 23) and Gurmit Singh, who was not examined in Court. Accused Bodhraj, Bhupinder, Rakesh Kumar, Rohit and Kewal Krishan were identified by Nainu Singh (PW 9) while Subhash Kumar and Rajesh were identified by Santokh Singh (PW 7) and Surjit Singh (PW 8). The identification was done on two dates i.e. 11.8.1994 and 16.8.1994. Different eye-witnesses claimed to have seen the occurrence either in full or partially. PWs 1, 2, 7, 8 and 9 were really the crucial witnesses. Santokh Singh (PW 7 was disbelieved by Trial Court as well as by the High Court.

7. In order to establish the plea that conspiracy was hatched, reliance was placed on the plea of Kapur Chand who was not examined in Court. Several other circumstances were highlighted by the prosecution, to establish the plea of conspiracy. It was submitted that

nobody knew except PW-2 where the land was. If he was the person who had hired the assailants, they (meaning PW 1 and deceased) would not have gone empty handed. But, knowing particularly well that the deceased was always armed, accused Ravinder purchased a car which was used as a get away car but never transferred it to his name. It was, however, conceded by the learned Advocate General appearing before the Trial Court that there was no direct evidence of conspiracy. Police seems to have proceeded to reach the spot on getting some reliable information.

8. In order to attach vulnerability to the judgment of the High Court; several points were urged by the learned counsel for the accused persons. It was pointed out that there was no evidence of any conspiracy. The only witness Kapur Chand who is alleged to have stated before the police about the conspiracy was not examined. Even the Investigating Officer has admitted that there was no direct evidence of conspiracy. There was no evidence collected against the accused persons to link them with the crime till 11.8.1994 when suddenly materials supposed to have come like a floodgate. Initiation of action by the police is also shrouded in mystery. It has not been disclosed in either Trial Court or High Court as to how the police received information about the killing and arrived at the spot. Though it was claimed at some point of time that a telephone call was supposedly made, but the FIR was registered on the basis of reliable sources. There are no independent witnesses. It is surprising as alleged killing took place in the evening time at a highly populated place. The so called identification of the witnesses is highly improbable. Additionally, having discarded the evidence of PW-7 the Courts erred in believing the evidence of PWs. 8 and 9 who stand on the same footing. The presence of these witnesses is highly doubtful. Their behavior was un-natural and there is no corroborative evidence. They are persons with criminal records. Since their presence is doubtful, identification, if any, done by them becomes ipso facto doubtful. The recoveries purported to have done pursuant to the disclosure made by the accused persons is highly improbable and requisite safeguards have not been adopted while making alleged recoveries. The case against four of the accused persons who were acquitted by the

Trial Court rests on circumstantial evidence. The approach to the adopted by the Court while dealing with circumstantial evidence was kept in view by the Trial Court. Unfortunately, the High Court did not do so. It was further submitted that there was no complete chain of circumstances established which ruled out even any remote possibility of anybody else than the accused persons being the authors of the crime. The examination of so-called eye-witnesses PWs 1 and 2 was belated and, therefore, should not have been accepted. The evidence of PWs vis-a-vis accused persons is so improbable that no credence should be put on it. The High Court should not have disturbed the findings of innocence of four accused persons without any plausible reasoning.

9. On the contrary, learned counsel for the prosecution submitted that the background facts and the evidence on record has to be tested with a pragmatic approach. The situation which prevailed in the area at the relevant time cannot be lost sight of. Accused 1 and 2 are very influential persons. The witnesses were naturally terrified. It has come on record that witnesses PWs 1 and 2 were to terrified even to depose and had asked for police protection. There is no reason as to why the witnesses would depose falsely against accused 1 and 2 who are known to them. There is nothing irregular or illegal in the procedure adopted while effecting recovery pursuant to the disclosure made by the accused persons.

10. Before analyzing factual aspects it may be stated that for a crime to be proved it is not necessary that the crime must be seen to have been committed and must, in all circumstances be proved by direct ocular evidence by examining before the Court those persons who had seen its commission. The offence can be proved by circumstantial evidence also. The principal fact or factum probandum may be proved indirectly by means of certain inferences drawn from factum probans, that is, the evidentiary facts. To put it differently circumstantial evidence is not direct to the point in issue but consists of evidence of various other facts which are so closely associated with the fact in issue that taken together they form a chain of

circumstances from which the existence of the principal fact can be legally inferred or presumed.

11. It has been consistently laid down by the this Court that where a case rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the gilt of any other person. (See Hukam Singh v. State of Rajasthan MANU/SC/0094/1977 : 1977CriLJ639 ; Eradu and Ors. v. State of Hyderabad MANU/SC/0116/1955 : MANU/SC/0116/1955 : 1956CriLJ559 ; Earabhadrappa v. State of Karnataka : : 1983CriLJ846 ; State of U.P. v. Sukhbasi and Ors. MANU/SC/0115/1985 : 1985CriLJ1479 ; Balwinder Singh v. State of Punjab MANU/SC/0160/1986 : 1987CriLJ330 ; Ashok Kumar Chatterjee v. State of M.P. MANU/SC/0035/1989 : 1989CriLJ2124 . The circumstances from which an inference as to the guilt of the accused is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances. In Bhagat Ram v. State of Punjab MANU/SC/0158/1954 : AIR1954SC621 , it was laid down that where the case depends upon the conclusion drawn from circumstances the cumulative effect of the circumstances must be such as to negative the innocence of the accused and bring the offences home beyond any reasonable doubt.

12. We may also make a reference to a decision of this Court in C. Chenga Reddy and Ors. v. State of A.P. MANU/SC/0928/1996 : 1996CriLJ3461 , wherein it has been observed thus:

"In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. Further the proved circumstances must be consistent

only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence...".

13. In Padala Veera Reddy v. State of A.P. and Ors. MANU/SC/0018/1990 : AIR1990SC79 , it was laid down that when a case rests upon circumstantial evidence, such evidence must satisfy the following tests:

(1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;

(3) the circumstances, taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and

(4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

14. In State of U.P. v. Ashok Kumar Srivastava, MANU/SC/0161/1992 : [1992]1SCR37 , it was pointed out that great care must be taken in evaluating circumstantial evidence and if the evidence relied on is reasonably capable of two inferences, the one in favour of the

accused must be accepted. It was also pointed out that the circumstances relied upon must be found to have been fully established and the cumulative effect of all the facts so established must be consistent only with the hypothesis of guilt.

15. Sir Alfred Wills in his admirable book "Wills" Circumstantial Evidence" (Chapter VI) lays down the following rules specially to be observed in the case of circumstantial evidence: (1) the facts alleged as the basis of any legal inference must be clearly proved and beyond reasonable doubt connected with the factum probandum; (2) the burden of proof is always on the party who asserts the existence of any fact, which infers legal accountability; (3) in all cases, whether of director circumstantial evidence the best evidence must be adduced which the nature of the case admits; (4) in order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation, upon any other reasonable hypothesis than that of his guilt, (5) if there be any reasonable doubt of the guilt of the accused, he is entitled as of right to be acquitted".

16. There is no doubt that conviction can be based solely on circumstantial evidence but it should be tested by the touch-stone of law relating to circumstantial evidence laid down by the this Court as far back as in 1952.

17. In Hanumant Govind Nargundkar and Anr. v. State of Madhya Pradesh, MANU/SC/0037/1952 : 1953CriLJ129 , wherein it was observed:

"It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should be in the first instance be fully established and all the facts so established should be consistent only with the

hypothesis of the guilt of the accused. Again the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."

18. A reference may be made to a later decision in Sharad Birdhichand Sarda v. State of Maharashtra, MANU/SC/0111/1984 : 1984CriLJ1738 . Therein, while dealing with circumstantial evidence, it has been held that onus was on the prosecution to prove that the chain is complete and the infirmity of lacuna in prosecution cannot be cured by false defence or plea. The conditions precedent in the words of the this Court, before conviction could be base don circumstantial evidence, must be fully established. They are:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned must or should and not may be established;

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;

(3) the circumstances should be of a conclusive nature and tendency;

(4) they should exclude every possible hypothesis except the one to be proved; and

(5) there must be a chain of evidence so compete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

19. Emphasis was laid as a circumstance on recovery of weapon of assault, on the basis of information given by the accused while in custody. The question is whether the evidence relating to recovery is sufficient to fasten guilt on the accused. Section 27 of the Indian Evidence Act, 1872 (in short 'the Evidence Act') is by way of proviso to Sections 25 to 26 and a statement even by way of confession made in police custody which distinctly relates to the fact discovered is admissible in evidence against the accused. This position was succinctly dealt with by the this Court in Delhi Admn. v. Balakrishnan MANU/SC/0093/1971 : 1972CriLJ1 and Md. Inayatullah v. State of Maharashtra MANU/SC/0166/1975 : 1976CriLJ481 . The words "so much of such information" as relates distinctly to the fact thereby discovered, are very important and the whole force of the section concentrates on them. Clearly the extent of the information admissible must depend on the exact nature of the fact discovered to which such information is required to relate. The ban as imposed by the preceding sections was presumably inspired by the fear of the Legislature that a person under police influence might be induced to confess by the exercise of undue pressure. If all that is required to lift the ban be the inclusion in the confession information relating to an object subsequently produced, it seems reasonable to suppose that the persuasive powers of the police will prove equal to the occasion, and that in practice the ban will lose its effect. The object of the provision i.e. Section 27 was to provide for the admission of evidence which but for the existence of the section could not in consequence of the preceding sections, be admitted in evidence. It would appear that under Section 27 as it stand sin order to render the evidence leading to discovery of any fact admissible, the information must come from any accused in custody of the police. The requirement of police custody is productive of extremely anomalous results and may lead to the exclusion of much valuable evidence in cases where a person, who is subsequently taken into custody and becomes an accused, after

committing a crime meets a police officer or voluntarily goes to him or to the police station and states the circumstances of the crime which lead to the discovery of the dead body, weapon or any other material fact, in consequence of the information thus received from him. this information which is otherwise admissible becomes inadmissible under Section 27 if the information did not come from a person in the custody of a police officer or did come from a person not in the custody of a police officer. The statement which is admissible under Section 27 is the one which is the information leading to discovery. Thus, what is admissible being the information, the same has to be proved and not the opinion formed on it by the police officer. In other words, the exact information given by the accused while in custody which led to recovery of the articles has to be proved. It is, therefore, necessary for the benefit of both the accused and prosecution that information given should be recorded and proved and if not so recorded, the exact information must be adduced through evidence. The basic idea embedded in Section 27 of the Evidence Act is the doctrine of confirmation by subsequent events. The doctrine is founded on the principle that if any fact is discovered as a search made on the strength of any information obtained from a prisoner, such a discovery is a guarantee that the information supplied by the prisoner is true. The information might be confessional or non-exculpatory in nature but if it results in discovery of a fact, it becomes a reliable information. It is now well settled that recovery of an object is not discovery of fact envisaged in the section. Decision of Privy Council in Palukuri Kotayya v. Emperor AIR 1947 PC 67 is the most quoted authority for supporting the interpretation that the "fact discovered" envisaged in the section embraces the place from which the object was produced, the knowledge of the accused as to it, but the information given must relate distinctly to that effect. [see State of Maharashtra v. Danu Gopinath Shirde and Ors. MANU/SC/0299/2000 : 2000CriLJ2301]. No doubt, the information permitted to be admitted in evidence is confined to that portion of the information which "distinctly relates to the fact thereby discovered". But the information to get admissibility need not be so truncated as to make it insensible or incomprehensible. The extent of information admitted should be consistent with understandability. Mere statement that the accused led the police and the witnesses to the place where he had concealed the articles is not indicative of the information given.

20. Coming to evidence brought on record to substantiate the accusations, it is at least clear that accused Nos. 1 and 2 left in the company of the deceased. Some evidence has also been brought to establish the motive i.e. the indebtedness of the accused to the deceased. In addition to this is the evidence of PWs 1 and 2. So far as accused No. 2 is concerned, he almost stands on the same footing as accused No. 1. Additionally, Hari Kumar (PW-18) has stated that accused No. 1 came to his shop and took sweets and left in car No. 566 JK02B belonging to accused No. 1. He has also stated about the return of accused No. 2 to the shop and a demand for a scooter. This witness has also stated to have seen car No. 5408-CH01 passing in front of the shop carrying seven to eight persons out of which he identified accused Kishore Kumar (since dead). PW-9 also has stated to have seen the deceased running being chased and he claimed to have seen the deceased firing. he stated about the accused Nos. 1 and 2 giving 'Lalkara' that the deceased shall be killed and should not escape. Accused No. 1 had fired some shots in the air. Another white car No. 5408 CHO1 was also standing there. he had identified accused Bodhraj, Bhupinde, Rakesh Kumar and the two acquitted accused Rohit and Kewal Krishan. It has to be noted that Car No. 5408 CHO1 was found discarded after it had met with an accident. This car is stated to be the get away car.

21. As the evidence of PWs. 1 and 2 are very material it is desirable to note as to what their evidence was. On 3rd August, 1994 PW-1 was in his shop. At about 4.30 p.m., A-1 accompanied by the deceased and A-2 came to meet him in a car. A-1 informed him that he and his colleagues in the car were interested in setting up a flour mill. A-2 was in a hurry to proceed towards the site. On their way, PW-1 asked A-1 to stop the car to pick up PW-2. A-2 was reluctant to stop the car and only on PW-1's insistence PW-2 was picked up. When the deceased was attacked by the assailants and was pursued by the assailants he had started running towards the national highway. A-2 also ran after the deceased whereas A-1 kept standing near PW-1. The deceased asked A-1 to bring the car immediately but A-1 only

shouted to one Shori that the deceased should not escape PW-1 identified A-1 and A-2 who were present in the Court.

22. PW-2 stated that on 3rd August, 1994, he was sitting at his house when at about 4 to 4.30 to 5.00 p.m., PW-1 accompanied by A-1 and A-2 came to his residence and asked him to show some land to the persons accompanying them for the installation of rice-cum-flour mill. They all went to Dhiansar by car. When they were still seeing the land A-2 told them that he approved of the land and led them to the shop. While returning the deceased was attacked by 4-5 persons who were armed with tokas, daggers etc. The deceased started running away towards the canal and the assailants followed him and assaulted him. Then PW-1 immediately told him to inform the police, by which time the deceased had started bleeding, and that he ran to ring up the police. PW-2 however noticed that while the deceased was running, he asked accused A-1 to bring the car but the latter did not move. Meanwhile, PW-2 went to the house of a contractor which was at a distance of 200 fts. from the place of occurrence to make the telephone call. When he came back, he found the dead body of the deceased lying on the road and heard accused A-2 telling accused A-1. "Kam ho gaya let us go to Jammu". The presence of PWs 1 and 2 at the place of occurrence is fortified from the fact that they were witnesses to the seizure memos Ex. PW-GS, PW-GS/1, PW-GS/2 recorded by the police immediately after incident.

23. Evidence of PWs 8, 9 and 18 are also relevant and their evidence is to the following effect. PW-8 (Surjit Singh) inter alia, stated as follows:

24. On 3rd August, 1994 he had gone for repair of his vehicle to Dhiansar. He was at a tea stall near the garage when he saw vehicle Nos. 566 5408 parked on the other side of the road. He saw Kishore was armed with a revolver. Shots fired by the deceased caused injuries to

two assailants. Rajesh shot the deceased. The deceased was then surrounded by the assailants and attacked by tokas, swords, etc. Accused Kishore fired in the air and the assailants ran towards vehicle No. 5408. He had noticed accused A-1 and A-2 standing near their vehicle. The assailants reversed the other car and drove towards the deceased and accused Rajesh came out of the vehicle, picked up the weapon lying near the deceased and they mounted on the vehicle and drove off. A-1 and A-2 also drove off.

25. PW-9 (Nainu Singh) inter alia stated as follows:

26. On 3rd August, 1994, he was getting a vehicle repaired in a worship at Dhiansar. He along with Surjit Singh went towards at tea shop. They heard sound of fire arms being used. They saw the deceased bleeding profusely and running towards Jammu Pathankot road. Six-seven assailants were chasing him. They were armed with tokas, churas and revolver. The deceased while running had fired at the assailants. Kishore Kumar who was armed with a pistol was running after the deceased. the shots fired by the deceased were fired in his presence. Two of the accused were identified by him as Subash Kumar and Rajesh Kumar. When the deceased reached near the road, Rajesh Kumar fired at him and hit on his arm. Thereafter, six to seven persons surrounded the deceased. They were said to be armed with Chakus (knives) and churas (bigger knives) and were stabbing the deceased. Near the work shop gate car No. 566 was standing. This was of grey (slaty) colour. A-2 and A-1 had given a lalkara that the deceased should be killed and should not escape. A-1 had fired some shots in the air. Another white car bearing No. CH01 5408 was also parked there. He noticed the accused sitting in the car. He had identified Krishan Kumar, A-2 and A-1. The driver reversed the car. It was stopped near the dead body of the deceased. The revolver lying near the deceased was picked up. After the car had left, A-1 and A-2 also left in another car. He knew the name of the accused Bhupinder, Rohit and Rakesh Kumar because he had identified them in the police station in the presence of Tehsildar. He deposed that accused Bhupinder, Rakesh, Subash and

Rajesh were holding Toka, Kirch, Sword and Revolver respectively. The witness identified the revolver, sword, kirch and toka and stated that these were the weapons with which the accused were armed.

27. Evidence of PW-18 (Hari Kumar) inter alia stated is as follows:

28. He was the owner of a Halwai shop in Parade Ground, Jammu. On 3rd August, 1994, at about 11.00 a.m. accused Ravi Kumar came to the shop of Hari Kumar in his car No. 5408-CH01 and left for Moti Bazar. At 1 or 1.30 p.m., accused Ashok and the deceased came to his shop and told them that they were going to Hotel Asia for taking meals. They took some sweets from his shop and left in car No. 566 JK02B which belonged to A-1. After 10 or 15 minutes, A-2 also came to the shop and demanded a scooter for him for going to Hotel Asia, telling him that he needs the scooter since he had given his car to some friend. He did not give a scooter to A-2. Half an hour thereafter, he found car No. CH01 5408 passing in front of his office shop carrying 7-8 boys out of which he identified Kishore Kumar (who is now dead). Car was being driven by a dark complexioned boy.

29. Some factors which weighed with the High Court in upholding conviction of the three accused as was done by the Trial Court are the evidence of eye-witnesses, PWs 1 and 2. Evidence of these witnesses have been analysed in detail by both the Trial Court and the High Court. Before both the said courts, it was urged that they cannot be termed to be truthful witnesses. By elaborate reasoning the stand was negatived. Additionally, it was noticed that both accused Nos. 1 and 2 were seen in the company of the deceased by employees of the deceased i.e. Darshan Singh (PW 15) and Rajinder Kumar (PW 14). Additionally, Hari Kumar (PW 18) has also spoken about having seen deceased in the company of accused Nos. 1 and 2. For some time accused No. 1 was not in the company of the deceased and accused No. 2.

At that period of the time he wanted PW 18 to take him to Hotel Asia. He has also stated that accused No. 2 and the deceased had taken some sweets from his shop and were travelling in a car No. JK02B 566. He has also stated about the statement of accused 1 and 2 that there was some scuffle between some boys and the deceased at the land which they had gone to see and in that scuffle the killing took place. The reason for this was stated to be pressure on accused 1 and 2 to return the money. One of the important circumstances noticed by the Trial Court as well as the High Court is that the land which was to be seen to be the deceased was only known to accused 1 and 2. Another circumstance noted was the use of a car 5408 CHO1. There was some amount of controversy raised about the owner of the car, as it was evident from the lengthy cross examination made so far as the original owner, that is, L.B. Gupta, Advocate (PW 31).

30. The evidence of PWs 1 and 2 has rightly been accepted by the Trial court and the High Court and we find no reason to discard their evidence. So far as accused Rajesh Kumar is concerned as has been found by the Trial Court and the High Court, live pistol belonging to accused No. 1 was recovered from his house. He has sustained bullet injuries on account of firing done by the deceased while trying to protect his life.

31. In view of the circumstances noticed and highlighted by the Trial court and the High Court and in our considered opinion rightly the appeals filed by accused Ravinder Kumar and Ashok Kumar are devoid of merit and deserve dismissal, which we direct.

32. Coming to the appeals filed by four appellants who were acquitted by the Trial Court but convicted by the High Court, it has been argued with emphasis that if it is accepted the two views are possible on the evidence, the one in favour of the accused was to be accepted and their acquittals should not have been rightly interfered with. It is to be noticed that the Trial

Court placed reliance on the evidence of Hari Kumar (PW 18) for the purpose of convicting accused Rajesh Kumar, but so far as the other four accused are concerned, it was not held to be reliable. There was no cogent reason indicated as to why the same was termed to be unreliable. Additionally, recoveries were made pursuant to the disclosure made by them. Though, arguments were advanced that due procedure was not followed, in view of the evidence of the witnesses examined by the prosecution in that regard, we find nothing illegal ruling out its acceptance. There are certain additional features also. A pant was recovered from the house of Subash Kumar which had holes indicating passage of bullet. However, a chemist (PW 22) was examined to show when he had gone to purchase the medicine to be applied to the injury. It was submitted that so far as Santokh Singh (PW 7) is concerned, his evidence was held to be not reliable. therefore, the identification of accused No. 5, Subash Kumar by Santokh Singh was not of any consequence. Even if it is accepted, the evidence relating to recovery established by the evidence of PW 18 cannot be lost sight of.

33. The evidence of Nainu (PW 9) was also described to be un-reliable and it was said that he stood at par with Santokh Singh. Similar was the criticism in respect of Surjit Singh. Their evidence has been analysed in great detail by the High Court and has been held to be reliable. It is of significance that practically there was no cross-examination on the recovery aspect. We do not find any reason to differ with the High Court in that regard. There can be no dispute with the proposition as urged by learned counsel for the appellants that two views are possible, the one in favour of the accused has to be preferred. But where the relevant materials have not been considered to arrive at a view by the Trial Court, certainly High Court has a duty to arrive at a correct conclusion taking a view different from the one adopted by the Trial Court. In the case at hand, the course adopted by the High Court is proper.

34. Judged in the foresaid background, conviction by the High Court of those four who were acquitted by the High Court does not warrant any interference.

35. The last seen theory comes into play where the time gap between the point of time when the accused and deceased were seen last alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that accused and deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases. In this case there is positive evidence that deceases, A-1 and A-2 were seen together by witnesses, i.e. PWs 14, 15 and 18; in addition to the evidence of PWs 1 and 2.

36. It was submitted that there was unexplained delay in sending the FIR. This point was urged before the Trial Court and also the High Court. It was noticed by the High Court that Showkat Khan (PW 38) was an investing officer on 3rd August, 1994 for a day only. He had taken steps from 5.30 evening onwards to 9.00 p.m. on the spot. Thereafter, Gian Chand Sharma (PW 42) was asked to investigate into the matter. It was also noticed that the road between Bari Brahamana and Samba where the court was located was closed due to traffic on account of heavy rains. Though, the road was open from Jammu to Bari Brahamana but it was closed from Bari Brahamana to Samba. The day's delay for the aforesaid purpose (the FIR has reached the Magistrate on 5.8.1994) cannot be said to be un-usual when proper explanation has been offered for the delay. The plea of delayed dispatch has been rightly held to be without any substance.

37. Another point which was urged was the alleged delayed examination of the witnesses. Here again, it was explained as to why there was delay. Important witnesses were examined immediately. Further statements were recorded subsequently. Reasons necessitating such examination were indicated. It was urged that the same was to rope in accused persons. This

aspect has also been considered by the Trial Court and the High Court. It has been recorded that there was valid reason for the subsequent and/or delayed examination. Such conclusion has been arrived at after analyzing the explanation offered. It cannot be laid down as a rule of universal application that if there is any delay in examination of a particular witness the prosecution version becomes suspect. It would depend upon several factors. If the explanation offered for the delayed examination is plausible and acceptable and the court accepts the same as plausible, there is no reason to interfere with the conclusion.

38. As was observed by this Court in Ranbir and Ors. v. State of Punjab MANU/SC/0441/1973 : [1974]1SCR102 the investigating officer has to be specifically asked as to the reasons for the delayed examination where the accused raised a plea that there was unusual delay in the examination of the witnesses. In the instant case however the situation does not arise.

39. therefore, in the aforesaid background, the appeals filed by the four appellants who were acquitted by the Trial Court but convicted by the High Court also deserve dismissal which we direct.

40. Coming to the appeal filed by the State in respect of whom both the Trial Court and the High Court recorded acquittal, it is seen that there was no acceptable material. This aspect has been analysed in great detail by the Trial Court and the High Court and we do not find any reason to interfere with the conclusions. The appeal filed by the State is accordingly dismissed. In the ultimate result, all the four appeals are dismissed.

MANU/DE/1233/2006

Back to Section 52 of Indian Evidence Act, 1872.

IN THE HIGH COURT OF DELHI

CS (OS) No. 1212/2005 and is No. 6787/2005

Decided On: 22.02.2006

Raghu Nath Pandey and Ors. Vs. Bobby Bedi and Ors.,

Hon'ble Judges/Coram:

A.K. Sikri, J.

Counsels:

For Appellant/Petitioner/plaintiff: M.N. Krishnamani, Sr. Adv., M. Tarique Siddiqui, Adv. for plaintiff No. 1 and Hari, M. Tarique and Siddiqui, Advs. for plaintiff No.

For Respondents/Defendant: V.P. Singh, Sr. Adv. and Jyotsna Balakrishnan, Adv. for defendants No. 2 and 5 and Praveen Anand, Adv. for defendants No. 1, 3, 4, 6 and 7

JUDGMENT

A.K. Sikri, J.

1. Mangal Pandey, though the first martyr of freedom struggle of India of 1857, but lesser known earlier, is a household name today. It was a name known to the students of history earlier. Even history students, except those who studied freedom struggle of India in depth, may not have known in detail about his deeds except that there was a character Mangal Pandey who was in British Army and revolted against the Britishers in 1857

Mutiny. Today heroic deeds of Mangal Pandey are known to every person-be it a student of history or not; be it a highly educated person or illiterate; be it an old or a young; be it a college going student or a child studying in primary school. It is because of the movie titled 'Mangal Pandey-The Rising' produced and released in India and abroad in the month of August 2005. The impact of Bollywood films-even when they are commercial films-is well known among Indian public. The impact becomes greater and deeper when the movie cast is the icon. Glamorisation and widespread advertising adds to this impact. Much before the movie 'Mangal Pandey-The Rising' was released, media hype about this movie was created when it was being shot. That is the reason that on its release it created ripples. Whether it became a Box Office hit, i.e. commercially successful venture or not, is immaterial. The fact remains that it was much talked about, particularly the character of Mangal Pandey who is depicted as the great freedom fighter and on whose life the film has been produced as a historical movie to present to the young generation his personal and patriotic life. At the same time it has been embroiled in controversy.

2. Indubitably, Mangal Pandey was a less known freedom fighter even for the historians. There is not much literature about his personal life and his heroic deeds. Therefore, the movie evoked reactions about the correctness of his sublime character depicted in the movie. Columns, articles, write ups, critiques appeared in newspapers and magazines. There were discussions on this in various programmes shown in electronic media as well. We are not concerned with this kind of controversies which the main character Mangal Pandey of the movie generated.

3. Present suit filed by the plaintiffs, who claim themselves to be descendants of Mangal Pandey family, raises different kind of controversy altogether. While on the one hand they express their gratitudes to the producers of the film for glorifying the great freedom fighter and making today's generation aware of his sacrifices, at the same time they feel

pained and anguished at the introduction of some of the characters and scenes in the film associating Mangal Pandey with them. According to the plaintiffs, defendants have, by doing this, distorted the history of freedom struggle for independence of India and also defamed and disreputed Mangal Pandey and the entire Pandey family as well as their generations. According to the plaintiffs, it is unfortunate that this action of the defendants, who are the producers, distributors, directors, story/script writers and main characters (hero and heroine) of the movie, is guided by the ulterior motives of making personal financial gains for commercial success of the movie, totally unmindful of their duty not to offend the personal life and character of the great martyr, his coming generations and the place he belonged to and even the entire nation. They, Therefore, feel cheated and are unhappy.

4. In order to appreciate this grievance of the plaintiffs, we may take note of the scenes in which hero and heroine of the film are together. There are five such scenes which need graphic account:

(a) Heera, the main female character is a prostitute which is played by Rani Mukherjee, heroine of the film. In the very first scene, which introduces this character in the film, she is shown to have been sold as a slave and driven in the flesh trade much against her wishes and notwithstanding her defiance. First time she meets the hero of the film, namely, Mangal Pandey, played by Aamir Khan, in a dispensary. Their encounter is limited to a dialogue whereby she says to Mangal Pandey and other British sepoys, who are Indians, in a taunting way, We sell our bodies but you sepoys sell your soul . This leaves a powerful impact on Mangal Pandey.

(b) Some scenes later Mangal Pandey visits Heera and meets her at the backyard of the Kotha where she stays. He asks her if she would like to escape and she refuses.

(c) Third encounter of the two central characters is during a celebration of Holi. Entire town is celebrating Holi. It is well known that depiction of Holi scenes is popular for most of the film makers and Holi song is an integral part of it. Both are shown to have played the Holi together along with others. During this Holi scene they come close to each other and there is a physical contact as well. After the song is over, they proceed alone, away from rest of the crowd, and dip into the Holi river together. Some kind of physical chemistry between the two and a certain level of intimacy between them is more than obvious. This scene gives an impression that they are attracted to each other.

(d) Next time they meet when Heera comes to inform Mangal Pandey about the British plan to disband the regiment and hang the rebel leaders. That is the stage in the film when Mangal Pandey and many of Indian soldiers in his regiment had decided to rebel and were planning an attack on the British Army. Heera is frightened as Britishers have come to know of this move of the rebel soldiers and have decided to hang them. She wants safety of Mangal Pandey. She, Therefore, meets him. This meeting takes place in a secluded place and Heera requests Mangal Pandey to escape. Mangal Pandey, however, firmly turns down this offer.

(e) Last meeting of the hero and heroine in the film is almost in the last scene of the film when Mangal Pandey is about to be hanged and Heera comes to meet him and requests him to liberate her by applying 'Sindoor' in her hair-parting. He obliges Heera. This, according to the plaintiffs, is symbolic of Mangal Pandey marrying Heera.

5. The plaintiffs have no quarrel about the introduction of Heera as a character in the film who is a prostitute. What pains them is her association with Mangal Pandey. What is objectionable according to the plaintiffs? It is the characterisation of Mangal Pandey showing him as a drunkard, regular visitor to the Kothas, his association with a sex worker and ultimately marrying the said sex worker. plaintiffs claim that to the best of their knowledge and belief such a depiction is utterly false, baseless, highly defamatory and derogatory to the great son of India. From the literature available on Mangal Pandey, it is emphasised that he was a 26 years old bachelor who belonged to a Brahmin family and a puritan. However, in the movie the defendants have, without any authentic source, introduced a passionate lady love in the personal life of Mangal Pandey, that too an important character of a prostitute played by none other than the leading lady of the film and showing Mangal Pandey in intimate love scenes with her, running to the river side and getting into deep water after eloping from the Holi festival celebrations, participated by the village folks. Towards the end of the film the said prostitute even suggests to Mangal Pandey that they elope from the scene and go to live a peaceful life. Mangal Pandey, before proceeding for the gallows, recognises the relationship and accepts the prostitute as his wife. The event of love life and marriage and that too with a sex worker in the life of Mangal Pandey and his visiting Kothas is wholly untruthful and finds no support from any source and least any authentic source. Therefore, it is pleaded with much vehemence that the defendants could not have introduced such a character of a sex worker in the film to be associated with Mangal Pandey. Even if the character of a prostitute named Heera in the film, is a fiction, it cannot be permitted to integrate in the personal life of Mangal Pandey, a historical legend and allowed to pass on to the future generations. The plaintiffs argue that even a fiction as falsehood of history that tends to damage the personal character even of a common man and to defame him and his family would be bad in law. It is stated that disclaimer in the film is totally an eye wash and as it is not specifically informed to the viewers that the character Heera in the film is not a real character but fictionalised and, Therefore, audience would get an impression that Mangal Pandey had fallen in love and married a prostitute. It amounts to even distorting

the family tree of the plaintiffs by introducing a prostitute in the Pandey clan. Therefore, these scenes are not palatable to the plaintiffs. It is the case of the plaintiffs that while they have no intention to seek ban on the screening of the film per se, their prayer is that the aforesaid offending and defamatory scenes be removed from the film and only with this editing that the movie be exhibited.

6. Defendants have contested the suit as well as prayer for interim injunction on number of grounds. They have, in the first instance, challenged the very maintainability of such a suit filed by the plaintiffs on the grounds that:

a) plaintiffs are not the descendants of Mangal Pandey and, Therefore, have no legal right or locus standi to file such a suit.

b) No action for defamation can be taken in respect of a dead person since defamation is a personal wrong and the legal right does not survive and is not actionable after the death of the person in view of principle laid down in the maxim 'actio personalis moritur cum persona'.

c) The suit is bad for non-joinder of defendants No. 3, 4, 6 and 7 who are the director, script writer, lead actor and lead actress respectively, are unnecessarily impleaded even when no relief is claimed against them.

d) The disclaimer in the film which appears at the outset before the start of the film categorically states that certain characters have been changed or fictionalised for dramatic

purpose and certain characters may be composites or entirely fictions. It is also mentioned that the scenes depicted may be hybrid of fact and fiction. Therefore, according to the defendants, the public is made aware of the fiction in the film and because of this disclaimer there is no cause of action on the basis of which this suit is founded.

7. On merits it is stated that there is no defamatory or objectionable scene in the film which, in any manner, undermines the character of Mangal Pandey or for that matter his descendants. Defendants claim that they are responsible citizens who have excelled in each of their fields and have earned immense respect and admiration not only among Indian public but also film lovers around the world. Defendant No. 1 is a reputed film producer who has produced award winning and critically acclaimed films including 'Bandit Queen', 'Maqbool', 'Fire', 'Sathia' etc. He has pioneered the introduction of international industry standards and professional business practices into Indian movie making and has been successful in bridging the gap between Offbeat and Main Screen cinema by making films that appeal to the sensibilities of the audiences. The clarification of the defendants, in so far as the film in question is concerned, is that with a view to retell the story how one man triggered the first fight against the then mighty British empire, this movie is produced. Film portrays Mangal Pandey as a hero and celebrates his courage and determination. Producer has brought together and synergies the creative and artistic talents of some of the best and the most popular actors, musicians, artists, writers, technicians and craftsmen in the country for making of the film. Together they have put in their creative energies and imaginations to bring to life and portray as a human being in flesh and blood, the heroic figure of Mangal Pandey about whom very little is known aside from his act of rebellion against the British in East India Company who condemned him to death after which stories of his courage fired up and triggered the 1857 Revolt. Thus, far from denigrating Mangal Pandey the film is a recognition of his role as the first spark of freedom struggle and thus glorifies and extols his sacrifices and courage and tells his story in the backdrop of 1857 Revolt. The intent and effect of

the film has been to generate interest, respect and admiration among Indians for Mangal Pandey. The film is to be considered as a whole while judging its effect on audiences and few scenes of the film cannot be taken out of context to make a grievance. It is emphasised that reactions of the people who have seen this film would show that they have held Mangal Pandey in high esteem of his heroic deeds who sacrificed his life. Therefore, far from being defamatory, the film leaves the impact of him being a real hero. It, Therefore, cannot be said that the film is disparaging of Mangal Pandey. It is also explained by the defendants that before the defendants decided to make this film very little was known about the hero who lived almost 150 years ago. However, a number of legends have been built up over the role played by Mangal Pandey in 1857 Mutiny which are evident from oral folklore and stories which have been passed on from generation and are part of the collective conscience of various Indian communities. However, the defendants did extensive research while making the film and found that following were the only facts which were absolutely certain:

i) In 1857, the British East India Company ruled a large part of the Indian subcontinent.

ii) The British East India Company had a large army of Indian sepoys.

iii) In 1857, greased cartridges were introduced in the army with new Enfield rifles.

iv) There was grave concern and resentment about this cartridge amongst the Hindu and Muslim sepoys because it was believed that the cartridges were greased with cow and pig fat and the sepoys refused to bite these cartridges.

v) At Berhampore, Col. Mitchell tried to force the sepoys to bite the cartridges with threat of using the cannon. There was a mini mutiny and the Sepoys captured the Bell of arms.

vi) At Berhampore, on 29th March 1857, Mangal Pandey rebelled, shot two British officers and when faced with a large force, shot himself.

vii) On 4th of April 1857, he was subjected to court martial and sentenced to death.

viii) On 7th of April 1857, they failed to hang him because no hangman was available.

ix) On 8th of April 1857, there was a public hanging of Mangal Pandey.

8. The defendants, Therefore, maintain that the aforesaid facts with core symbolism of the historical figure that Mangal Pandey is revered and celebrated for his symbolism significance as the trigger for India's rising and assertion of our people's right to freedom. The film is a work of fiction, in contrast to a documentary film and biography and links together various themes associated with the 1857 Revolt and its period-like the opium trade with China and the anger of India's kings and rulers and the practice of Sati etc. This is the part of artistic and cinematic license and cannot be suppressed. In the process the character of Heera, a woman forced into enslavement is, in fact, envisaged and built upon as a symbol of the India's condition during colonial regime. Still, the defendants have ensured that she is a woman of strong character. Mangal Pandey was a British soldier. Even when he was an Indian, he had joined army of the East-India Company and was fighting against Indians. Therefore, it was necessary to sow the seeds of patriotism

in him. It is dramatised by the dialogues of Heera who says We sell our bodies, but you sepoys sell your souls. It is this taunt which triggers the spirit of freedom in Mangal Pandey and is, Therefore, a very positive sentiment without any negative connotation. Defendants have sought to justify the scenes of interaction between Heera and Mangal Pandey. It is stated that sporadic and singular visit of Mangal Pandey to the backyard of Kotha with a purpose only to meet Heera as he was impressed by her dialogue, was merely a gesture of gratitude for opening his eyes and to ask her if she would like to escape. There are no sexual favor sought and there are no sexual connotation to the scene. The scene of Holi celebration is sought to be down played by saying that they go to river to wash off the colours of Holi. The scenes of applying Sindoor is endeavored to explain away by arguing that it was her request to liberate her and gesture of Mangal Pandey in obliging her by accepting this request showed a very high order of humanism of liberating a woman of her shame of enslavement. As even he was about to die and, Therefore, cannot be treated as any stigma on his character.

9. In so far as scene of consuming 'bhang' is concerned, the Explanation of the defendants is that in mid 19th century India there was no prejudice against 'bhang' and thus, no negative connotation as was intended or is communicated in the film. On the contrary, there are number of historical records, which substantiate the fact that Mangal Pandey was known to consume 'bhang'.

It is, thus, pleaded that over all effect of the film should be taken into account in the light of the period depicted and the contemporary standards of the people to whom it relates and one or two scenes of the film cannot be cited or judged out of context.

10. Mr. Krishnamani, learned senior counsel, argued for the plaintiff No. 1 and Mr. Hari made his submissions on behalf of plaintiff no. 2 highlighting the aforesaid offending scenes and impact thereof in great detail. They were ably assisted by Mr. M. Tarique Siddiqui, Advocate. In the process few judgments were cited laying down the principles of law in a matter like this. The submissions of the plaintiffs were countered by Mr. V.P. Singh, learned senior counsel, on behalf of the defendants No. 2 and 5 and Mr. Praveen Anand, made his submissions on behalf of defendants No. 1, 3, 4, 6 and 7. In addition, highlighting their submissions, as noted above, they have also cited plethora of case law. Submissions of both the parties shall be dealt with during my discussion which follows hereafter.

11. The central theme of the plaintiffs' arguments is two-fold. First, because of the scenes which are objectionable according to the plaintiffs and noted above, the image of Mangal Pandey is tarnished by depicting him a drunkard, a regular visitor to Kotha and not only associating him with a prostitute with whom he is shown to have fallen in love but he even marries her. In the process second limb of submission, which follows from first, is that the history is distorted. Mangal Pandey was a bachelor, a Brahmin and puritan who died at the age of 26 years. However, film falsely projects his love affair with a girl, that too a prostitute whom he married.

12. Let me first analyze the first limb of the argument which is based on the premise that certain scenes in the film are defamatory to Mangal Pandey, the great hero of India and have the effect of defaming the successive generations, including the present one. While examining this aspect, I am keeping aside the other aspect altogether, namely, the alleged distortion of history. I make it clear that I proceed to examine this aspect keeping in view that Mangal Pandey was young and brilliant, Brahmin by caste, who loved his religion more than his life. He was a bachelor and he was pure in his private life. At the same time

we have to keep in mind that the movie Mangal Pandey-The Rising though based on historical events and the life of Mangal Pandey, is neither a documentary nor a biography. It is a commercial film and indubitably, fiction is infused into historical events (how much and what kind of fiction could be allowed would be the subject-matter of the second limb).

13. In any film made on commercial basis, dramatic effect of certain scenes has to be allowed. Film is to be an entertainer to woo the masses. Its powerful appeal when compared with any other medium, cannot be undermined. Importance of feature films as a medium of education and spreading a particular message cannot be undermined. It is a powerful medium because the message is delivered while entertaining the people. The appeal of the film is directed to an audience so diverse that it transcends social and spatial categories. Watched by almost fifteen million people every day, popular cinema's values and language have long since crossed urban boundaries to enter the folk culture of the rural-based population, where they have begun to influence Indian idea of the good life and the ideology of social, family, and love relationships. Thus, people come for entertainment and at the same time they are educated. Audiences want emotions. Empty heroic acts would not suffice to make a film a success. For that purpose, one can read a book also. Visual impact of a message is far greater than words. For this reason every film even when it is based on historical fact, which is known as period film is dramatised. The historical facts are to be in narrative form. There has to be a story line in a feature film. The spell of the story has always exercised a special potency in the oral-based Indian tradition and Indians have characteristically sought expression of central and collective meanings through narrative design. Many psychologists believe that narrative thinking-storing -is not only a successful method of organising perception, thought, memory, and action but, in its natural domain of every day inter-personal experience, it is most effective. [see: John A. Robinson and Linda Hawpe's Narrative Thinking as Heuristic Process in Narrative Psychology: The storied nature of Human Conduct, ed. T. Sarbin

(New York: Praeger, 1986) p. 123]. If in this context the producer, story writer or director of the film thought that it would be interesting, nay important, that character of Heera is introduced in the film, even when it was a pure fiction, this much play in the joints is allowed. Blending of fact and fiction is inevitable in a movie, even when it is a historical film. To quote from Sudhir Kakkar's Intimate Relations-Exploring Indian Sexuality

I have always felt, at least for a society such as India where individualism even now stirs but faintly, that it is difficult to maintain a distinction between folktales and myths as products of collective fantasy on the one hand and movies and literature as individual creations on the other. The narration of a myth or a folktale almost invariably includes as individual variation, a personal twist by the narrator in the omission or addition of details and the placing of an accent, which makes his personal voice discernible within the collective chorus. Most Indian novels, on the other hand, are closer in spirit to the literary tradition represented by such nineteenth-century writers as Dickens, Balzac, and Stendhal, whose preoccupation with the larger social and moral implications of their characters' experience is the salient feature of their literary creations. In other words, it is generally true of Indian literature, across the different regional languages, that the fictional characters, in their various struggles, fantasies, unusual fates, hopes, and fears, seek to represent their societies in miniature.

14. Before proceeding further, let us analyze the character of 'Heera' in the film. Her character is carefully chosen. She is a young and petite girl. At the same time she is strong, rustic and her words few and brusque. She is not the one who had adopted prostitution as her trade by choice. It was not to earn money. In the very first scene introducing her character she-coming from unknown and one could infer from a poverty stricken background-is sold as a slave. Even at that time her resistance speaks volumes of her mighty character. Nevertheless she is helpless when forced to prostitution. She is forced to sell her flesh but her soul is intact. She does not compromise with her honour, dignity

and self-respect. She is not a body with a soul. She is a soul with a physical part called the body. She is more conscious of the presence of the soul. That is why she is sarcastic to the hero in the very first meet up between them. She knows that even as a prostitute who is forced to satisfy the Gores with her body this profession of hers is shown as a lesser evil than that of the sepoys who are serving those Gores. She knows that it is the soul which is superior than the body and in this backdrop retort comes with the sentence We sell our bodies but you sepoys sell your soul . Depiction of Heera with such strong attributes of her character would not be viewed by the public as something abhorrent. Audience fall in love even with the negative characters when crafted carefully by the producers. Filmmakers keep in mind as to what will appeal the viewers. They regard the Indian cinema audience not only as the reader but also the real author of the text of Hindi films. I do not think that even a common man would have a perception that Mangal Pandey has denigrated himself by associating with Heera, whose character would rather be admired. A prostitute is also a woman. She can possess strong character like any other woman of good virtues. In the following Hymn of Isis, third or fourth century B.C., discovered in Nag Hammadi (borrowed from the novel Eleven Minutes authored by Brazilian Paulo Coelho) this is the projection of a woman:

For I am the first and the last

I am the venerated and the despised

I am the prostitute and the saint

I am the wife and the virgin

I am the mother and the daughter

I am the arms of my mother

I am barren and my children are many

I am married woman and the spinster

I am the woman who gives birth and she

who never procreated

I am the consolation for the pain of birth

I am the wife and the husband

And it was my man who created me

I am the mother of my father

I am the sister of my husband

And he is my rejected son Always respect me For I am the shameful and the magnificent one.

15. Therefore, mere association of a prostitute with Mangal Pandey would not be offensive. Even Bible talks of an interaction of Jesus Christ with a prostitute. Luke 7:37-47 gives the following:

And, behold, a woman which was in the city, a sinner; and when she knew that Jesus was sitting at meat in the Pharisee's house, she brought an alabaster curse of ointment.

And standing behind at his feet, weeping she began to wet his feet with her tears, and wiped them with the hair of her head, and kissed his feet, and anointed them with the ointment.

Now when the Pharisee which had bidden him saw it, he spike within himself, saying, This man, if he were a prophet, would have perceived who and what manner of woman this is which touched him, that she is a sinner.

And Jesus answering said unto him, Simon, I have somewhat to say unto thee. And he saith, Master, say on.

A certain lender had two debtors: the one owed five hundred pence, and the other fifty.

And when they had not wherewith to pay, he forgave them both. Which of them Therefore will love him most?

Simon answered and said, He, I suppose, to whom he forgave the most. And he said unto him, Thou hast rightly judged.

And turning to the woman, he said unto Simon, Seest thou this woman? I entered into thine house, thou gavest me no water for my feet; but she hath washed my feet with her tears, and wiped them her hair.

Thou gavest me no kiss: but she, since the time I came in, hath not ceased to kiss my feet.

My head with oil thou didst not anoint: but this she hath anointed my feet with ointment.

Wherefore I say unto thee, Her sins, which are many, are forgiven; for she loved much: but to whom little is forgiven the same loveth little.

16. Jesus did not feel any humiliation when a prostitute kissed his feet, washed them with her tears and wiped them with her hair. He did not feel that it was offensive to come in contact with a prostitute who anointed his feet with ointment.

17. Likewise, in the novel 'The Da Vinci Code' authored by Dan Brown following description appears about Mary Magdalene, a prostitute in the life of Jesus Christ, while explaining the painting 'The Last Supper':

Sophie examined the figure to Jesus' immediate right, focusing in. As she studied the person's face and body, a wave of astonishment rose within her. The individual had flowing red hair, delicate folded hands, and the hint of a bosom. It was, without a doubt ... female.

That's a woman ! Sophie exclaimed.

Teabing was laughing. Surprise, surprise, Believe me, it's no mistake. Leonardo was skilled at painting the difference between the sexes.

Sophie could not take her eyes from the woman beside Christ. The Last Supper is supposed to be thirteen men. Who is this woman? Although Sophie had seen this glaring discrepancy.

Everyone misses it, Teabing said. Our preconceived notions of this scene are so powerful that our mind blocks out the incongruity and overrides our eyes.

It's known as scotoma, Langdon added. The brain does it sometimes with powerful symbols .

Another reason you might have missed the woman, Teabing said, is that many of the photographs in art books were taken before 1954, when the details were still hidden beneath layers of grime and several restorative repainting done by clumsy hands in the eighteenth century. Now, at least, the fresco has been cleaned down to Da Vinci's original layer of paint. He motioned to the photograph. Et voila!

Sophie moved closer to the image. The woman to Jesus' right was young and pious-looking, with a demure face, beautiful red hair, and hands folded quietly. This is the woman who single handily could crumble the Church?

Who is she? Sophie asked.

That, my dear, Teabing replied, is Mary Magdalene.

Sophie turned. The prostitute?

Teabing drew a short breath, as if the word had injured him personally. Magdalene was no such thing. That unfortunate misconception is the legacy of a smear campaign launched by the early Church. The Church needed to defame Mary Magdalene in order to cover up her dangerous secret- her role as the Holy Grail.

Her role?

As I mentioned, Teabing clarified, the early Church needed to convince the world that the mortal prophet Jesus was a divine being. Therefore, any gospels that described earthly aspects of Jesus' life had to be omitted from the Bible. Unfortunately for the early editors, one particularly troubling earthly theme kept recurring in the gospels. Mary Magdalene. He paused. More specifically, her marriage to Jesus Christ.

I beg your pardon. Sophie's eyes moved to Langdon and then back to Teabing.

It's a matter of historical record, Teabing said, and Da Vinci was certainly aware of that fact. The last supper practically shouts at the viewer that Jesus and Magdalene were a pair.

18. If the movie makers wanted to give a dramatic effect by shaking the conscience of Mangal Pandey through the means of a prostitute, by no means it can be perceived as something offensive. If this interaction and strong worded statement of Heera triggers the spirit of freedom and Mangal Pandey get impressed by this character (Heera) in the film, maybe a prostitute, it would not mean any violence to his caste or even his 'purity'.

Was it necessary to introduce afflatus inspiration-a divine method-to awake his innerself, because he was a Brahmin' I think the medium adopted is no less powerful and has better spell-binding effect, as it is woven in a story. At having humiliated her, he wanted to repay. He is not able to contain himself and visits Heera. No doubt, he goes to Kotha for this purpose but he does not go to Kotha for satiating his carnal desires. In any case, he could not, as purportedly that Kotha was meant for Britishers where Indians were not permitted. He goes to the backyard of Kotha where he meets Heera and asks her as to whether she would like to escape. Impressed by her personality he is able to see through that she is at that rotten place because of forced circumstances. He wants to end this sordid routine of hers and, Therefore, takes courage to venture her escape which was fraught with dangers. However, there are no innuendos, no insinuations, no proposals. The scene is as neat as it could be. The defendants have rightly showed that there are no sexual favors sought and no sexual or erotic connotation to the scene at all. Solitary visit of this type to that Kotha by the hero of the film would not depict him as a regular visitor to the Kotha , as alleged by the plaintiffs.

19. What is objectionable if hero in a film wants that a prostitute be made to free herself from the trade in which she is indulged in ? Have we not seen number of films in the past with this as the central theme where hero struggling and fighting with the mighty system to liberate a prostitute and in the process visiting Kotha and the concerned prostitute number of times. Has the public ever viewed such acts of heroes in such films depicting their bad character. On the contrary, such acts are treated as heroic ones where the theme is to expose the ills of prostitution and people are exhorted to come out and eradicate this system.

20. In this backdrop we proceed further. Now, the hero and the heroine celebrate Holi. At once I reject the claim of the defendants that it was simply a Holi scene with entire

town participating, including two main characters and their going to river was only to wash off the colours of Holi. Synergy between the two is apparent. There are amorous glances. It is a romantic song. Some intimacy is shown between the two. There is some physical contact also, though it does not transgress the limits of decency. I also proceed on the basis that they go to river together not with the intention to wash off colours. It is because they are attracted to each other and this attraction drives them away from the crowd. The question, however, is as to whether depiction of such a scene as in any manner undermine the character of Mangal Pandey. I do not think so. No doubt, Mangal Pandey was a Brahmin. No doubt, he was a bachelor. However, adding this much fiction in the life of Mangal Pandey would not make him impure. He was a young boy of 26 and unmarried. Would he not have any dreams and desires. To borrow the eternal words of wisdom of Justice Krishna Iyer uttered in Raj Kapoor v. State MANU/SC/0210/1979 : 1980CriLJ202 :

Art, morals and law s manacles on aesthetics are a sensitive subject where jurisprudence meets other social sciences and never goes alone to bark and bite because State-made strait-jacket is an inhibitive prescription for a free country unless enlightened society actively participates in the administration of justice to aesthetics.

21. If this girl had on an earlier occasion impressed him and they come close on a occasion when people are celebrating Holi, flirtation of this kind would not stigmatise his character in any manner. The scenes are shorn of any ugliness or obscenity. Todays audience is used to watch much bolder scenes. However, film makers keeping the dignity of the character Mangal Pandey, did not cross the Laxamanrekha. One has to keep in mind the difference between love and lust. A pure and sublime love almost at platonic level would by no stretch of imagination be offending. The scene per se, Therefore cannot be treated as objectionable. I am also of the view that even if this platonic love scene is enacted with a girl who is a prostitute, it would not be offensive when adjudged in the

entirety of circumstances and in the backdrop in which the character of Heera is evolved in the film.

22. Again in order to appreciate the effect of last scene when Mangal Pandey applies Sindoor in the hair parting of Heera, one has to keep in mind its context. Mangal Pandey is in jail. He is going to be hanged. A boy of 26 in his prime youth is about to die and she is the only girl came to his life. No doubt, she was a prostitute but she was forced into prostitution. Audience would sympathise with her. The film makers ensured that-at least endeavored that. That is why positive side of her character is depicted in the film. She had left her indelible mark on the hero due to her positive traits. If the fag end of his life, when the death is whisker away and he knows it, he decides to liberate this girl-victim of circumstances-at her request. Would it be seen as denigrating or defamatory to the character of hero? I do not think so and I think the audiences did not think so. Applying Sindoor to a girl's hair parting may normally be seen as marrying the girl. Here, the message was different. It was done with a view to liberate her from the flesh trade she was driven to. The idea was to send the message that after this she was liberated and live her life as of any other respected woman. Audience would perceive this as another act of heroism on the part of Mangal Pandey, rather than defaming his sublime character-who was not only a patriot but a good human being as well, a man with nerve of steel and a golden heart. Audience would cherish such a hero rather than looking down upon him. To quote here, again, Sudhir Kakar (supra):

Having viewed some dreams in Indian popular cinema with the enthusiast's happy eye but with the analyst's sober perspective, let me reiterate in conclusion that oneruos-dream, fantasy-between the sexes and within the family, dos not coincide with the cultural propositions on these relationships. In essence, oneruos consists of what seeps out of the crevices in the cultural floor. Given secret shape in narrative, onerous conveys

to us a particular culture's versions of what Joyce McDougall calls the Impossible and the Forbidden, the unlit stages of desire where so much of our inner theater takes place.

23. The defendants are right in their submission, which even the plaintiffs do not dispute, that the film as a whole enhances the image of Mangal Pandey as a hero who triggered the freedom movement; who was the torch bearer of 1857 Mutiny. The overall impression of Mangal Pandey in the estimation of public remains positive. These scenes in question do not, in any manner, undermine his character or even have slightly shaken effect. Showing him taking 'bhang' on particular occasions, once after his wrestling bout with Gordon when they patch up their differences and again during Holi celebration, do not affect his heroic deeds in any manner. The defendants have produced the literature to show that taking 'bhang' in those days was not seen as a negative connotation so much so, even Mangal Pandey was known to consume 'bhang'. Even if it is presumed that the history in this behalf is distorted at the hands of producers, mere taking of 'bhang' is not derogatory. The public is wise enough and mature enough and does not associate such acts as reflecting the character of a person in any manner, be it few love scenes or taking 'bhang'. The Indian audience has come of age if the script demands it and the scene is shot aesthetically, there should be no controversy over it. Art is self-regulatory and if such scenes are depicted artistically, there should be no problem. Obviously, the scenes, with which the plaintiffs feel offended, were there to compliment the script and are not incorporated to titillate. Meaningful and artistic action cannot be allowed to be curbed.

24. Let me now advert to second limb of the argument based on the alleged distortion of historical facts. As mentioned above, it is not a documentary film. It is a feature film, a commercial film, produced by the defendants. No doubt, the film is based on historical events. It is a period film. Mangal Pandey, main character of this film, once lived on this earth. He is not fictionalised. He ignited and fought the first rebellion against East-India Company. Film was made to glorify his deeds. While making the film some fiction is

added. The hard reality is that even the recording of history is never based on facts alone. There is an element of fiction in the work of historians also. The physicist Leo Shirred once announced to his friend Hans Bethel that he was thinking of keeping a diary; I don't intend to publish. I am merely going to record the facts for the information of God . Don't you think God knows the fact? Bethel asked. Yes Said Shirred, He knows the facts but He does not know this version of the facts.

25. Therefore, historians have their own version of the facts. When a feature film is to be made on historical events, invariably it is not only the version of facts but fiction is also infused into the version of facts. That is the essential difference between a documentary film and a feature film. Entelechies of historical events in a film cannot be expected as it is not a history book. In the present case, the producer has acknowledged this fact specifically in the disclaimer which appears at the outset by stating that The scenes depicted may be hybrid of fact and fiction.... It is also mentioned that certain characters may be composites or entirely fictions.

26. The plaintiffs do not quarrel producer's right to be imaginative while telling historical stories. However, the objection is to the extent of infusing this fiction into reality thereby entirely distorting the history. Learned counsel for the plaintiffs argued that even if little is known about Mangal Pandey, what is certain is that he was a Brahmin by caste, a Brahmchari who went to gallows as an unmarried person. While showing his character, Therefore, violence could not have been done with this part of the history by showing his love affair with a girl; that too with a prostitute and going to Kotha to visit her. They have even objection to a prostitute inspiring hero of the film. These scenes, according to the learned counsel, are utter falsehood in so far as history is concerned and they interfere with the essential character of the hero to a great extent. It is submitted that the alleged

disclaimer, in this backdrop is of no consequence, as there is no specific disclaimer about the heroine of the film. At this stage, I reproduce the said disclaimer:

This story is based on Actual Events. In certain cases, incidents, characters timings have been changed or fictionalised for dramatic purpose. Certain characters may be composites or entirely fictions. Some names and locations have been changed. The scenes depicted may be hybrid of fact and fiction which fairly represent the source materials for the film believed to be true by the filmmakers.

27. It is the submission of the learned Counsel for the plaintiffs that the above statement of filmmakers is a categorical representation and assurance to the viewers all over the universe that each of the event depicted in the film is a statement of fact and, Therefore, an authenticated part of the story knowing fully well that the said representation is based on falsehood as they had themselves distorted the facts to turn the historical patriotic movie into a 'Masala Movie'. It is emphasised that the very first sentence of the statement, i.e. This story is based on actual events gives an impression that the character of heroine is also an actual event. No doubt, in the very next sentence it is mentioned that some of the characters have been changed and fictionalised for dramatic purpose and certain characters may be entirely fictions, heroine is the main character and cannot be a certain character, which expression would refer to some incidental characters only in the film. It is further submitted that even when it is stated that scenes depicted may be hybrid of fact and fiction, at the same time the defendants claim that these scenes fairly represent the source material for the film believed to be true by the filmmakers. Those persons who do not know the history will get an impression after watching the movie that Mangal Pandey was involved with a prostitute with whom he married. It is also mentioned that the disclaimer is, Therefore, not proper/sufficient disclaimer and that too only in English and, Therefore, many would not even know that there is any such disclaimer. It is submitted that there is a difference between events and incidents . When the events are

shown they should be correctly shown, though some incidents can be fictionalised. The plaintiffs' grievance, Therefore, is that it is a false depiction of history which cannot be allowed to remain on record and the plaintiffs were here for correction of this part of history. It is also submitted that in the name of art and drama the defendants cannot be allowed to invade the history and morally corrupt the character of Mangal Pandey.

28. I have already held that in so far as the scenes to which the plaintiffs object are to be judged from morality and obscenity point of view, there is nothing wrong with the same. I have also recorded my opinion above that mere introduction of a character like Heera, maybe a prostitute, in the life of Mangal Pandey cannot be defamatory per se and would not amount to character assassination of Mangal Pandey. Nobody would denigrate or disparage the character of Mangal Pandey as a whole merely because girl like Heera came to his life and spent those moments.

29. In Halsbury's Laws of England, Fourth Edition, Vol. 28, 'defamatory statement' is defined as under:

Defamatory statement. A defamatory statement is a statement which tends to lower a person in the estimation of right thinking members of society generally or to cause him to be shunned or avoided or to expose him to hatred, contempt or ridicule, or to convey an imputation on him disparaging or injurious to him in his office, profession, calling, trade or business.

It is not necessary to site Indian law which has developed accepting the aforesaid connotation of 'defamation'. Applying these tests it cannot be said that either Mangal Pandey and for that matter his descendants are defamed in any manner in the movie.

30. I am also of the view that in stories based on actual events/historical events, some fiction is permitted. Well known and world famous film director and producer Steven Spielberg has recently made a film named 'Munich'. It is based in part on a book 'Vengeance', by George Jonas. It is based on Munich massacre at the 1972 Olympics when Palestinian terrorists held 11 members of Israeli Olympic team hostage which led to botched rescue attempt by the Israeli Intelligence Officers and forces and the murder of the surviving athletes (two had already been killed by the terrorists). It is a film of sympathetic (and in this case anguish) characters and it is, morally speaking, infinitely more complex than the action films. It superficially resembles-features that simply pit terrorists against counter terrorists without an attempt to explore anyone's motives and their tragic implications. While handling the central theme, namely, Munich massacre and the aftermath, in which the Israeli Government mounted a secret war of revenge against the murders, much of fiction is added into the actual events. Some of the critics even say that it is full of distortions and flies of fancy that would impact any Israeli Intelligence officer blush. After watching the movie one would raise the question, where in 'Munich' does fact end and fiction begin? On the controversy as to whether all facts are shown, some facts left out or distorted and how much fiction has interfered with actual events, Aaron J. Klein, correspondent of 'Time' Magazine in his article The History Behind Munich-separating truth from fiction in Spielberg's movie made the following remarks:

Much is left out. For instance, it would have been nice to know that it was German incompetence-their rescue operation was, operationally, a disaster-that led directly to the massacre. But a film can't show everything, and the meat of Spielber's narrative is not the massacre itself but Israel's response to it, a counter-terror campaign that has long been shrouded in mystery-and to some extent still is. It is here that artistic license overwhelms, when it does not entirely dispense with, the true story of what happened after Munich.

In the same article, elsewhere, he writes:

But Spielberg has brought into one of the myths of the Mossad-that after Munich they staged a revenge operation to hunt down and assassinate everyone responsible. Israelis, too, bought into this myth (myself included, at one time) which a shocked public demanded-but that doesn't make it true. Spielberg, in inventing a story about violence begetting violence inspired by real events is raising questions worth asking. Even so, Israel's response to Munich was not a simple revenge operation carried out by angst-ridden Israelis. But the larger context, and the facts on the ground, rarely get in Spielberg's way. A rigorous factual accounting may not be the point of Munich, which Spielberg has characterized as a prayer for peace. But as result, Munich has less to do with history and the grim aftermath of the Munich Massacre than some might wish.

Thus, the extent to which the movie repose fact is a matter of debate. Spielberg has himself referred to it as historic fiction saying it is inspired by actual events. In so far as making of the film as an artistic venture is concerned, it has received largely positive reviews with many critics considering it amongst Spielberg's best films with particular praise going to Eric Bana's performance.

31. Thus viewed the film Mangal Pandey, labeling it as historic fiction inspired by actual events, it cannot be said that introduction of the character of Heera and her association with Mangal Pandey in the film is in any case distorting the history. The film, notwithstanding the doubts about its Box Office success or not, has received brilliant reviews. It has succeeded remarkably in achieving its objective, namely, showing Mangal Pandey as a hero who triggered the 1857 Revolt. The viewers after watching the movie will see him in high esteem and merely because of his association with Heera, a prostitute, will not denigrate him. As pointed out above, though Heera is a prostitute in the film, her character also has strong positive attributes because of which she is able to win the

sympathy of the audience and is not seen as somebody who is to be shunned. Her liberation is viewed as a heroic act on the part of Mangal Pandey.

32. Following passages from Jean Guglielmi v. Spelling-Goldberg Productions 25 Cal. 3D 860 can be extracted at this stage:

Using fiction as a vehicle, commentaries on our values, habits, customs, prejudices, justice, heritage and future are frequently expressed. What may be difficult to communicate or understand when factually reported may be poignant and powerful if offered in satire, science fiction or parable. Indeed, Dickens and Dostoevski may well have written more trenchant and comprehensive commentaries on their times than any factual recitation could ever yield. Such authors are no less entitled to express their views than the town crier with the daily news or the philosopher with his discourse on the nature of justice. Even the author who creates distracting tables for amusement is entitled to constitutional protection.

Whether (works of fiction) are creations of merit, whether they have value only as entertainment and no value whatever as opinion, information or education, pose questions which would require us to stake out those elusive lines. It is fundamental that courts may not muffle expression by passing judgment on its skill or clumsiness, its sensitivity or coarseness; nor on whether it pains or pleases. It is enough that the work is a form of expression 'deserving of substantial freedom both as entertainment and as a form of social and literary criticism.

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Moreover, in defamation cases, the concern is with defamatory lies masquerading as truth. In contrast, the author who denotes his work as fiction proclaims his literary license and indifference to the facts . There is no pretense. All fiction, by definition, eschews an obligation to be faithful to historical truth. Every fiction writer knows his creation is in some sense false . That is the nature of art.

xxxxx

Moreover, the creation of historical novels and other works inspired by actual events and people would be off limits to the fictional author. An important avenue of self-expression would be blocked and the marketplace of ideas would be diminished.

xxxxx

Having established that any interest in financial gain in producing the film did not affect the constitutional stature of respondent's undertaking.

33. In Boby Art International v. Om Pal Singh Hoon MANU/SC/0466/1996 : AIR1996SC1846 the Supreme court laid down the principle with which the so-called offending portions of the film are to be judged and observed: The film must be judged in its entirety from the point of view of its overall impact. It must be judged in the light of the period depicted and the contemporary standards of the people whom it relates. Here even the learned Counsel for the plaintiffs conceded that what is shown is in moderation,

so far as relation between Mangal Pandey and Heera was concerned. Para 20 of the said judgment is worth taking note of in this context:

20. The guidelines aforementioned have been carefully drawn. They require the authorities concerned with film certification to be responsive to the values and standards of society and take note of social change. They are required to ensure that artistic expression and creative freedom are not unduly curbed. The film must be judged in its entirely from the point of view of its overall impact. It must also be judged in the light of the period depicted and the contemporary standards of the people to whom it relates, but it must not deprave the morality of the audience. Clause 2 requires that human sensibilities are not offended by vulgarity, obscenity or depravity, that scenes degrading or denigrating women are not presented and scenes of sexual violence against women are avoided, but if such scenes are germane to the them, they be reduced to a minimum and not particularised.

34. The Court also referred to an earlier judgment in the case of State of Bihar v. Shailabala Devi MANU/SC/0015/1952 : 1952CriLJ1373 to the effect that a writing had to be considered as a whole and in a fair and free and liberal spirit, not dwelling too much upon isolated passages or upon a strong word here and there, and an endeavor had to be made to gather the general effect which the whole composition would have on the mind of the public.

35. In the case of Manisha Koirala v. Sashilal Nair and Ors. MANU/MH/1179/2002, the Bombay High Court was concerned with a situation where the plaintiff, who played central character in the film, claimed that the producer of the film had, without her permission, used some scenes shot by a duplicate of the plaintiff. These scenes were objectionable and defame the plaintiff in eyes of society. Her grievance was that people watching the film would not know that those scenes were shot by a duplicate but would

perceive the plaintiff doing those obscene scenes. Rejecting her contention that the scenes were defamatory, the Court held:

8. The next issue would be whether prima facie atleast the scene enacted by the double would result in the tort or defamation. tort of defamation in the instant case is by association. The plaintiff may be prima facie to contend that those who view the film would not differentiate between a fill-in artist and the plaintiff and association will be with the plaintiff. The question, however, is whether the scenes which are shown in the film would fall with the expression defamation as understood. Salmond and Heuston on the Law of torts, Twentieth Edition defines a defamatory statement as under:

A defamatory statement is one which has a tendency to injure the reputation of the person to whom it refers; which tends, that is to say, to lower him in the estimation of eight-thinking members of society generally and in particular to cause him to be regarded with feelings of hatred, contempt, ridicule, fear, dislike, or disesteem. The statement is judged by the standard of an ordinary, right-thinking member of society. Hence the test is an objective one, and it is no defense to say that the statement was not intended to be defamatory, or uttered by way of a joke. A tendency to injure or lower the reputation of the plaintiff suffices, for If words are used which impute discreditable conduct to my friend, he has been defamed to me, although I do not believe the imputation, and may even know that it is untrue. Hence, it is settled that a statement may be defamatory although no one to whom it is published believes it to be true.

Carter-Ruck on Libel and Slander, Fifth Edition have carved out some of the tests as under:

(1) A statement concerning any person which exposes him to hatred, ridicule, or contempt, or which causes him to be shunned or avoided, or which has a tendency to injure him in his office, professional or trade.

(2) A false statement about a man to his discredit.

(3) Would the words tend to lower the plaintiff in the estimation of right thinking members of society generally?

These are the tests which the Judge must apply. These tests have to be decided not in the context of what the plaintiff wants or what the defendant No. 1 thinks to be just and proper. The test would be based on the theme of the story and the ideas behind it. It will also not be possible for this Court to decide whether any particular scene out to have been used or not used or in what sequence or context. That would be purely in the realm of the person making or directing the film and the impact that person would like to create on the audience who wish to view the film. As set out earlier the theme which has been described earlier is about a working girl and her relationship and intimacy with a boy friend and the infatuation of the young boy when thinks he is in love with her. These prima facie formed part of the story board and was known to the plaintiff. If seen in this context it cannot be said that the scene would fall within the definition of what the plaintiff contends is defamation.

36. At this stage, it would be apposite to take note of a judgment of the Division Bench of the Punjab and Haryana High Court in the case of Paramjit Kaur and Ors. v. Union of India and Ors. MANU/PH/1064/2003. Three films, in quick succession, depicting the

life of Sardar Bhagat Singh, a freedom fighter and martyr were released. Petitioners filed writ petition challenging some of the scenes in all these films primarily on the ground that those scenes contain distorted version of the real life history of Shaheed-E-Azam Sardar Bhagat Singh. They also sought directions to be issued to the respondents to refrain from distorting the acts of heroism and patriotism displayed by Sardar Bhagat Singh. On facts the High Court did not find that these films contain any distorted version of the real life story of Bhagat Singh. Therefore, on facts the plaintiffs may be able to distinguish the said case from the case at hand. However, I may take note of some of the portions in the movie titled as Shaheed-E-Azam Sardar Bhagat Singh , which, according to the petitioners in the said case, were offensive:

a) In this film, in one of the scenes Sardar Bhagat Singh, has been shown to be sitting with other revolutionaries and the dialogues spoken include:

'Bhagat Singh kitna sunder hai. Kittni gorian marti hain is par.'

'Bhagat Singh tu kisi angrej afsar ki beti ko pata ley aur hum dahej mein sara Hindustan maang lenge.'

This is complete character assassination of Sardar Bhagat Singh. He had once mentioned to his parents that he sees Bharat Mata tied in chains of slavery in his dreams. However, the above dialogues suggest a total contrary picture. Moreover in this scene itself, Chander Shekhar Azad is shown to be fighting with his colleagues on funny issue like 'Gur Jhootha Kar diya' etc. etc.

b) In another scene, a police officer gives an option to Bhagat Singh to settle in England and marry an English girl. After this Sardar Bhagat Singh is shown to be abusing that officer by using words to the effect that

You are a bloody pimp

This again is highly derogatory for the reputation of a man like Bhagat Singh who has always been admired as a decent and learned gentleman.

c) In this film, Sardar Bhagat Singh has been shown to have returned to his house from Kanpur on his own along with Rajguru. This is totally incorrect as Sardar Bhagat Singh returned to his house only when he got the information that his grand mother was not well.

d) Further, at many places in the film, the revolutionaries including Sardar Bhagat Singh are shown to be saying 'Jai Hindi' between themselves. Whereas, the slogan 'Jai Hind' was coined by Shri Subhash Chander Bose and Bhagat Singh and others used 'Vande Matram' while greeting each other or raising other slogans.

g) That in another scene of this film, Sardar Bhagat Singh is shown to be talking to his Chacha Ajit Singh. The fact remains that Shri Ajit Singh left India when Sardar Bhagat Singh was only 2 years of age.

36. The Explanation given in the counter affidavit filed by the respondents in respect of the above-mentioned scenes was as under:

4. That Shaheed Bhagat Singh is shown with Chacha Ajit Singh when he is only a child in the beginning of the film. Moreover, the film Shaheed-E-Azam has a caption in the beginning of the film. This film is a dramatised version based on the life of the great martyr Bhagat Singh and his contemporary freedom fighters.

7. That Shaheed Bhagat Singh tries to create patriotism in the minds of youngsters through drama at National College, Lahore and this is merely an incident shown in the film with dramatisation and cinematographic presentation.

8. That in outburst shown of Shaheed Bhagat Singh, it only goes to show his patriotism and hatred for Britishers.

37. What is sought to be highlighted is that though some of the scenes did not depict the history correctly, Explanation of the filmmakers was that the film was a dramatised version based on the life of great martyr Bhagat Singh; some incidents shown in the film were merely dramatisation and cinematographic presentation; character of Bhagat Singh even when he had shown his outburst towards Britishers was to project his patriotism and hatred towards Britishers. This was accepted by the Court as valid justification and permissive dramatisation even if some of the scenes were not actual reproduction of historical facts. More important is the narration of legal position contained in following paragraphs:

21. There is no need to further elaborate, inasmuch as, what kind of exhibition of films would violate Articles 21 and 25 of the Constitution of India or would be against the provisions contained in Section 5B of the Act of 1952, is no more res-integra and that being so, it would be appropriate to advert to judicial precedents on issue straightaway. Hon'ble Supreme court in Ramesh Chotalal Dalai v. Union of India and Ors. MANU/SC/0404/1988 : [1988]2SCR1011 , considered exhibition of telecasting or screening of Serial titled 'Tamas' in the context of fundamental rights of the petitioner under Articles 21 and 25 of the Constitution of India as also Section 5B of the Act of 1952. The petitioner who was a practicing lawyer in the Bombay High Court, had approached Hon'ble Supreme Court by means of the petition under Article 32 of the Constitution for issuance of writ in the nature of prohibition restraining the respondents from telecasting or screening the Serial titled 'Tamas'. It was the case of the petitioner that the Serial was against the public order and was likely to incite the people to indulge in commission of offences and it was, Therefore, vocative of Section 5B(1) of the Act of 1952 and destructive of principle embodied under Article 25 of the Constitution. After noticing Section 5B and 5C of the Act of 1952 and the contention raised by learned Counsel representing the parties. Hon'ble Supreme Court while relying upon the views of Vivian Bose, J. in Bhagwati Charan Shukla v. Provincial Government MANU/NA/0057/1946 as also three judgments of Supreme Court in K.A. Abbas v. Union of India MANU/SC/0053/1970 : [1971]2SCR446 , Ebrahim Sulaiman Sali v. M.C. Muhammad MANU/SC/0347/1979 : [1980]1SCR1148 and Raj Kapoor v. Laxman MANU/SC/0211/1979 : 1980CriLJ436 , rejected the prayer of the petitioner to restrain order on telecasting or screening the Serial titled 'Tamas'. The portion of the judgment of Vivian Bose in Bhagwati Charan Shukla's case (supra), that was relied upon, as reproduced in the judgment in paragraph 13, reads as follows:

That the effect of the words must be judged from the standards of reasonable, strong minded, firm and courageous men, and not those of weak and vacillating minds, nor of those who scent danger in every hostile point of view.

27. After examining all distortions mentioned in the additional affidavit, we are of the view that there is nothing such that may put to shade or even slightly diminish the exemplary role played by Shaheed Bhagat Singh in its endeavor of freedom struggle, for which clause, he ultimately sacrificed his life. It is not even disputed that supreme sacrifice made by Shaheed-A-Azam Bhagat Singh and the message, the same would convey to the taming millions in the country runs through and through all the films sought to be banned for exhibition. If that be so, no complaint can at all be made on few scenes or dialogues which Story Writers, Directors and Producers might have thought necessary for better success of the films at the box office. It is too well known that cut and die story of any National Hero, some glamorisation or addition to the main events, which may not be derogatory or offending as such has been made, nothing wrong can be found with the same. The court is rather of the view that in the present scenario, when almost 7 decades have gone by when Shaheed-A-Azam Bhagat Singh died, the only way to remember his sacrifices would be through TV Serials or films or the like but, if, no addition, and we may mention that such addition would not distort the main theme, is made it may not attract the audience, which itself would frustrate the very aim for which the films are on exhibition. We are of the view that the petitioners, who are none other than dependents of Sardar Bhagat Singh, far from feeling depressed would feel happy that after so many years, the memories of their ancestral, who laid his life for the nation, is being kept alive. The real brother of Shaheed-A-Azam Bhagat Singh has appreciated the film and congratulated the Director of one of the films by writing letter dated 18.5.2002, clearly stating therein that the film is based upon true life story of his elder brother Sardar Bhagat Singh. It may be reiterated that younger brother of Bhagat Singh was on the panel of consultants. It is further stated in the letter that during his visit to the sets of shooting the film, he was shown the entire script and it was very heartening that

Mr. Santoshi and his team had done so much research and come up with a script which has done full justice in conveying the principles, showing the personality, ideas, views and love for the country and the spirit with which 'Sardar Bhagat Singh' motivated his comrades and countrymen to fight for freedom of the country. He further states in the letter aforesaid that I was delighted to see that utmost care was taken depicting 'Sardar Bhagat Singh' and his comrades in the film. It is apparent that Mr. Santoshi has done excellent research, which is brought out by the fact that during the detention in the jail and execution, Ajay Devgan, who is playing Sardar Bhagat Singh in the film, is shown as clean shaven, the way I saw him last, before his execution.

38. In the light of aforesaid discussion, case of Shilpa S. Shetty v. Magna Publications Co. Ltd. MANU/MH/0211/2001 : AIR2001Bom176 , as cited by learned Counsel for the plaintiffs, would be of no avail. That was a case where infringing articles contained account of plaintiff's personal life as to whether she was having a relationship with a third actor or whether she was having a relationship with a married man. In the infringing article she was also described as 'maniser' in the manner in which men are called 'womanisers'. The Court granted injunction on the ground that these articles bring down the reputation of the plaintiff and have the impact on her personal life and showed her in an undesirable manner to the world at large. It is not the position in the present case.

39. Another case cited by learned Counsel for the plaintiffs was the judgment of Madhya Pradesh High Court in Shyam Narayan Chouksey v. Union of India MANU/MP/0292/2003 : AIR2003MP233 . That was a case where the manner in which national anthem was shown in the film 'Kabhi Khushi Kabhi Gum' was objected to. The Court found that the national anthem had been sung in the movie as if it was a song of advertisement for a commercial purpose. Further the Court took note of the fact that when national anthem is sung in a film the audience in the film do not stand up

immediately and, Therefore, it is derogatory to show national anthem. While granting injunction against depiction of national anthem in the film, the Court observed:

But a sixty-four million dollar question arises whether in the name of creativity in a feature film the national anthem can be utilized in this manner. National Anthem as has been indicated is the symbol of history, unity and pride. In the film, the national anthem has been bifurcated into two parts. The boy sings one part and the mother sings the rest, may be the last five words. Mr. Singh, learned senior counsel appearing for the respondents 4 and 5 with all his forensic skill would submit that the mother immediately thought it appropriate to complete the national anthem as it should not go unfinished. But the fact remains that the boy says 'sorry' in the midst of the anthem and mother after some time completes the same. All this has been done to create a dramatic impact in the picture for the benefit of the producer. This should not be allowed to be done for the popularisation of the national anthem as has been understood in this great country. That apart in our considered view the national anthem which is the glory of the country and portrays the unity of the country cannot be shown in a variety show or a cultural programme of a school as an item. In our considered opinion if Section 5A of Cinematograph Act and Rules framed there under, guidelines framed by the Central Government and Art. 51A-(a) of the Constitution and above all the Apex Court decision rendered in the case of Benjoi MANU/SC/0061/1986 : 1986CriLJ1736 (supra) are understood and appreciated in proper perspective, the irresistible conclusion is that incorporation of the national anthem in the film is totally uncalled for. The Board has failed in its duty while giving the certificate. We may say that it has not acted with due responsibility. The Board has taken the stand that nothing was found wrong as it was done for laudable purpose. Watching the necessary part of the picture we do not see any laudable purpose. On the contrary it is for benefit of the individual. Collective sensitivity and national feeling cannot be violated. Corrosive attitude in regard to honour of the

national sentiment is totally impermissible. The dramatisation of the national anthem is against the constitutional philosophy.

Obviously, factual premise of the present case is totally different. 40. In Ramanlal Lalbhai Desai v. Central Board of Film Certification MANU/MH/0352/1988 : AIR1988Bom278 , writ was filed against the Censor Board for deleting few scenes. While writ was partly allowed, in respect of the following scene the refusal was upheld:

7. To recapitulate, the refusal of the Board and justified by the Tribunal to certify the film for public exhibition, on the ground of its being based on superstition and depicting superstitious practices, is contrary to the statute inclusive of the guidelines. In so far as the certification is declined on the ground of unduly long exposure of the female body outside a swimming tank, inside the bathroom in a bath-tub, three prolonged rape and attempted rape sequences and the passionate love scenes between Roma and Ravi are concerned, the refusal is upheld. Also upheld is the refusal in so far as it depicts erotic movements of Roma's body while being sexually assaulted by an invisible spirit. These scenes will be deleted or suitably altered and the film will be represented for certification to the Board. The Board shall rule upon the request within four weeks of the presentation of the altered film. Rule in the above terms is made absolute, with parties being left to bear their own costs.

In the present case the learned Counsel for the plaintiffs had in the beginning of the case itself, accepted that there is no vulgarity in the film.

41. Last case referred and relied upon by the plaintiffs' counsel was K.V. Mallikarjuna Rao and Anr. v. Deptt. Of Home and Ors. MANU/AP/0064/1995 : AIR1995AP359 . The offending scene in the said film was depicting the currency notes in the scale of Goddess of Justice and the Judge rising when the Chief Minister comes and salutes him. The Court

found these scenes as derogatory to the high office of a Judge holding the Court because of the following reasons:

4. ...The Goddess of Justice holding even scales connotes the fair and equal justice administered by the Court, but the currency notes placed in the said scales means otherwise and that too glaringly that the Court is corrupt and that justice is not administered on facts of the case and the law governing the same, but for money considerations. This is derogatory to the cause of justice denigrating the courts. It is nothing but scandalizing the Court as a corrupt institution, corrupting the minds of our cine-goers that the justice in the Court can be purchased. Equally the other scene, Judge rising when a Chief Minister comes into the Court in connection with the case tried by him and wishing him Namaskars is also highly objectionable. No doubt, cinema is a fiction and it may have flashbacks and several other scenes relating to the story and events, but it cannot distort with regard to court procedure. A Judge presiding over a Court never rises no matter how big a person is or the position held by him.... It certainly creates an impression in the minds of the cine-goers that a Judge presiding over a Court of law is a subordinate to the executive government held by the Chief Minister. Such an impression is dangerous to the independence of judiciary as the people will lose faith in the institution of Justice and justice delivery system itself.

5. The judiciary is one of the important pillars of democracy erected by Rule of law, which is designed to protect the value of human rights. It is needless to mention that democracy should conform to Rule of law. Freedom of free society does not mean that anything and everything can be done by the citizens or the State as they please. If the freedom is not regulated, it will turn out to be gall and wormwood to the people who gave their representatives the power to rule, this is sought to be achieved by appointing a guardian of the Constitution and the laws and the task of this guardian is to keep the law-making

and the executive limbs of Government from breaking through the bounds of the people's will. The name of this guardian is Judiciary. Such a judiciary can never be humbled and humiliated and the offending scenes mentioned supra tend to do so and as such, have got to be deleted. It is the duty of the constitutional court like this, if invited to do so, to make known the people that Rule of law means the supremacy of the Constitution and the laws and that none is above the law and whenever any act is invalid on the touchstone of the Constitution, the same shall be declared as guilty of transgression of fundamental laws, and that it is essential to our free society that the people, lay and professional alike hold the Judgeship in the highest esteem that they regard it as a symbol of impartial, fair and equal justice under law and to cherish the Courts of law as respectable institutions.

42. Drawing parallel learned Counsel for the plaintiffs had argued that if the objectionable scenes in this film are permitted and the defendants are allowed to distort the history in this heinous manner and introduce such part of fiction which is far from truth in the name of dramatisation, the filmmakers may cross the limits in the name of free speech and there may not be any end to such a right of the filmmakers. Argument is more in terrorem. The judgment of the Andhra Pradesh High Court cited by the plaintiffs themselves, is a sufficient indicator that wherever, in the name of free society, freedom of speech, limits are crossed, the Courts have put the reins.

43. Having discussed the matter in its length and breadth, one aspect which still lingers on in the mind is that Mangal Pandey was a bachelor. Though avowed objective of 'sindoor scene' may be different, it can also be perceived as Mangal Pandey marrying Heera. Further, not a certain character but main character like Heera is introduced in his life in the form of fiction. As it is done in a historical fiction more for the purpose of dramatisation and without, in any way, compromising with the strength of Mangal Pandey's heroic character and compromising with the central theme and without, in any

manner, denigrating him, it is permissible. At the same time it would also be necessary to give clarification by informing the public at large to remove all possible guess work, that Heera's character was fictionalised. Therefore, I am of the opinion that the grievance of the plaintiffs can be taken care of by making the following statement/announcement at the end of the movie in English as well as in Hindi:

The character of Heera is fictionalised. There was no such Heera in the life of Mangal Pandey. Mangal Pandey died a bachelor.

is is disposed of with aforesaid direction and rejecting other prayers made therein.

44. The entire matter is examined on the basis of averments made in the plaint and on the assumption that the plaintiffs are the descendants of Mangal Pandey and have locus standi to file this suit. The averments made in the plaint are treated as correct on their face value and on that basis legal position is examined. Therefore, it is not even necessary to set down the case for trial as even if the factual averments are ultimately established, my conclusion would be same as recorded above. I find no merit in the grievance of the plaintiffs. Thus it is not necessary to go into the preliminary objections raised to the maintainability of the suit. Therefore, entire dispute raised in the suit stands decided. While dismissing the suit of the plaintiffs, it is directed that the defendants shall immediately incorporate the above quoted statement at the end of the movie and shall show the movie with the aforesaid insertion.

45. The suit as well as the is stand disposed of. No costs.

MANU/SC/0034/1953

Back to Section 53 of Indian Evidence Act, 1872

IN THE SUPREME COURT OF INDIA

Criminal Appeal No. 43 of 1952

Decided On: 05.10.1953

Habeeb Mohammad Vs. The State of Hyderabad

Hon'ble Judges/Coram:

B. Jagannadhadas, B.K. Mukherjea and M.C. Mahajan, JJ.

JUDGMENT

M.C. Mahajan, J.

1. This is an appeal by special leave from the judgment of the High Court of Judicature of Hyderabad upholding the conviction of the appellant by the Special Judge, Warangal, appointed under Regulation X of 1939-F., under sections 243, 248, 368, 282 and 174 of the Hyderabad Penal Code (corresponding to sections 302, 307, 436, 342 and 148, Indian Penal Code) and the respective sentences passed under these section against him.

2. The case for the prosecution which has been substantially accepted by the Special Judge and by the majority of the High Court is that the appellant was in the year 1947 the Subedar of Warangal within the State of Hyderabad, that on the 9th December, 1947, he proceeded to the village of Gurtur situate within his jurisdiction at about 10 a.m. along with a number of police officials and a posse of police force ostensibly to raid the village in order to arrest certain bad characters, that when a party of villagers, 60 or 70 in number,

came out to meet him in order to make representations, he ordered the policemen to open fire on the unarmed and inoffensive villagers, as a result of which tailor Venkayya and Yelthuri Rama died of bullet wounds on the spot, Yelthuri Eradu and Pilli Malladu received bullet wounds and died subsequently, five others received bullet wounds but they recovered, that the appellant gave match boxes and directed the policemen to go into the village and set fire to the houses as a result of which 191 houses were burnt down; that about 70 of the villagers were tied up under the orders of the appellant and taken to Varadhanapeth and were kept under wrongful confinement for some time and thereafter some were released and others were taken to Warangal jail and lodged there; that these acts were done by the appellant without legal authority or legal justification and that he and the two absconding accused were therefore guilty of the offenses of murder, attempt to murder, arson, etc.

3. The prosecution produced 21 witnesses in support of their case, while the accused examined a solitary witness in defence. The firing by the police, the death of the persons concerned, the arrest of some of the villagers and the burning down of the village houses on the date and the time in question are facts which were not disputed. But what was alleged by the defense was that the appellant did not give the order to fire, that the villagers were violent and attempted to attack the officials and the police by force and therefore whatever was done was done in self-defence. It was said that the raiders were arrested in due course of law and that the destruction of their houses by fire was committed by the villagers them selves, and that the appellant had gone to the village only to arrest congress mischief-mongers and to maintain and enforce law and order.

4. The Special Judge on the materials before him came to the conclusion that the accused was guilty of the offenses with which he stood charged. On appeal to the High Court of Hyderabad, a bench of two Judges (Sripatrao and Siadat Ali Khan JJ.) delivered differing

judgments, Sripatrao J. taking the view that the appeal should be dismissed and the other learned Judge being of the opinion that the appeal ought to be allowed and the accused acquitted. The case was then referred to a third Judge (Manohar Prasad J.) who by a judgment dated 11th December, 1950, agreed with the opinion of Sripatrao J. and dismissed the appeal. The present appeal has been preferred against the judgment of the majority of the High Court by our leave.

5. This appeal was in the first instance heard by the Constitution Bench (See MANU/SC/0080/1953 : [1953] S.C.R. 661.) and at the stage the hearing was confined to certain constitutional points which had been raised by the appellant attacking the legality of the entire trial which resulted in his conviction on the ground that the procedure for trial laid down in Regulation X of 1359-F. became void after the 26th January, 1950, by reason of its conflict with the equal protection clause embodied in article 14 of Constitution. The constitutional points raised by the appellant failed and the application preferred by him under article of 32 of the Constitution was rejected, and the case was directed to be posted in the usual course for being heard on its merits and it is now before us.

6. To appreciate the contentions raised on behalf of the appellant, it is necessary to give a short narrative of the incident and the events following thereupon which led to the prosecution of the appellant.

7. In the first information report lodged against the appellant on the 29th January, 1949, it was said that the following persons accompanied the Subedar that morning :-

1. Moulvi Ghulam Afzal Biabani, Deputy Commissioner, District Police, Warangal.

2. Abdul Lateef Khan, Circle Inspector of Police, Warangal (absconding accused).

3. Military Assistant.

4. Naseem Ahmed, Sub-Inspector, Vardhanapeth.

5. Head-Constables of Police, Vardhanapeth.

6. Abdul Waheed Girdavar.

7. Abdul Aleem Sahib, Vakil of Hanamkonda.

8. 70 military men, 10 policemen and 11 razakars.

8. It appears that another person Abdul Wahid, Assistant D.S.P., also went with this party. He submitted a diary of the happenings at Gurtur on the same day. It was briefly stated therein that the people rebelled, that they had to open fire and that 70 persons were arrested. Abdul Lateef Khan, the absconding accused and who was the Circle Inspector of Police, also submitted a diary the same day of the happenings of the 9th December. According to him, a crowd of 5,000, pursued the two persons who had been sent to the

village and fired at the policemen, threw stones by the slings by which Kankiah the jamedar was injured, that one bullet fell in front of the Nayeb Nazim, that the unlawful assembly shouting slogans against the Government tried to surround the policemen; that the police tried to make understand but they did not listen, that the crowd was armed with guns, spears, lathis, axes, sickles and slings and that seeing the delicate circumstances the above mentioned high officers ordered the police to open fire in self-defence. Turab Ali, Sub-Inspector of Police, and Station-House Officer, Vardhanapeth, on this information recorded the first information report under section 155 of the Hyderabad Penal Code on 9th December, 1947, against Narsivan Reddy, Congress leader of Mango Banda, and several others under sections 124, 248, 272 and 82 of the Hyderabad Penal Code. In this report the facts stated by Abdul Lateef, Circle Inspector, were reiterated. Turab Ali also prepared a panchnama on the same date, the panchas being Khaja Ahmed Wali Hyder, revenue Inspector, residing at Vardhanapeth and Md. Abdul Wahid, special Girdavar of the same place. The narrative of events given in the report of Abdul Lateef was recited in the panchnama. Annexed to this panchnama was a list of the articles and weapons recovered from the individuals arrested on the 9th December, 1947. The list mentions a number of lathis, spears, sickles, chairs, a muzzle-loader and some axes. On the 11th December the appellant sent his report of the incident at Gurtur to Government and in this demi-official letter substantially the account given by Abdul Lateef, Circle Inspector, was repeated and the justification for the firing was fully set out. Whether Monlvi Afzal Biabani, Deputy Commissioner of Police, Warangal, also submitted a report giving his version of the incident to Government or to the Inspector-General of Police is a debatable point. The Government replied to the D.O. letter on 21st January, 1948, and called for a report from the Subedar as to how much collective fine was to be imposed on the villages mentioned in the D.O. letter. He was also asked to submit a resolution for the appointment of penal police soon so that sanction might be taken according to the procedure. On 13 March, 1948, a challan was presented against 70 persons arrested on the 9th December, 1947, by the police for offenses under sections 124, 248 etc. in the Court of the Special District Judge of Hyderabad. The accused were remanded to the Central

Jail, Warangal, and it was ordered that if there were any material objects in the case the police should bring them at the next hearing, viz., 31st March, 1948. On that date the special magistrate committed to the court of session 22 persons to be tried under sections 124, 293 and 248 of the Hyderabad Penal Code. The rest of the persons arrested were discharged. The Special Judge fixed the case for hearing on 18th May, 1948. On that date or some subsequent date in May the police put in an application withdrawing the case. The court accordingly acquitted all the accused and the proceedings initiated on the first information report of Abdul Lateef, Circle Inspector, thus terminated. On what grounds the case against these accused persons was withdrawn by the police is a matter which has been left unexplained on the record. Between the date of the withdrawal of this case and the police action in Hyderabad taken by the Government of India in September, 1948, whether any investigation was made as to the incidents at Gurtur by the Government is not known, but it appears that soon after the police action was over, in November, 1948, a statement was recorded of one Ranganathaswami who is prosecution witness in the present case by one B. J. Dora Raj, Deputy Collector, on 5th November, 1948, in which Ranganathaswami said as follows :-

"On 9th December, 1947, at about 10.30 a.m. Habeeb Mohammad the Subedar, Biabani the D.S.P., Naseem the Sub-Inspector, Abdul Wahid, Special Girdavar and about 70 persons, State Police, Razakars and Abdul Aleem, Vakil, had come to the village Gurtur, taluqa Mahaboobad, dist. Warangal. Policemen burnt nearly 200 houses by the order of the D.S.P. It caused damage to the extent of Rs. 1 lakh. Policemen fired the tailor Ramulu, two dheds, on the order of Biabani, the D.S.P. I do not know the names of the dheds. Five or six persons were injured. They were injured by the bullets. I do not know their names. At that time there was doing the work of teaching. They arrested 70 persons saying that they are Congressmen and carried them forcibly to the Warangal jail. They snatched gold ornaments of 8 tolas valuing Rs. 400 from the women of Apana Raju and Narsivan Raju. I incurred lass of Rs. 600 as the house in which I was staying was burnt. The school peon

incurred loss of Rs. 300 as his house was also burnt. When these above events were happening Subedar was present. They left the 70 persons who were put into the jail, after taking Rs. 600 bribe. I myself have been the above events. I have read the statement. It is correct."

9. The statement bears an endorsement of the Deputy Collector to the effect that it was taken before him, and was read over and admitted to be correct. It also appears that the Assistant Civil Administrator examined 76 villagers on the 28th November, 1948, and their statement is to the following effect :

"On 9-12-47 at 9.30 a.m. the Subedar of Warangal, the Deputy Commissioner of Police, Biabani (who has a kanti on his neck), Military Assistant, Circle Inspector of Warangal, Sub-Inspector of Police of Vardhanapeth, Head-Constable of Police of Vardhanapeth, Girdavar, in the company of military police and 40 persons came to our village. Came from Okal and stayed out of the city on the west side. Nearly 100 or 150 persons of the village went to them. They fired the guns by which Olsuri Eriah, Olsuri Ramiah and Kota Konda Venkiah died. Batula Veriah, Basta Pali Maliah, Olsuri Veriah Yeliah, Ladaf Madar Dever Konda Lingiah and Beara Konda Peda Balraju were injured by the bullets. After this they entered into the village and after taking round in the bazar they got into the houses and looted. They looted money and clothes. Then they surrounded the village and gathering the village people took them out of the village. Made them lie down with face downwards and tied their hands, and kept them in the same condition from 10 a.m. to 3 p.m. the Subedar gave match boxes to his men and told them to burn the houses. On this they burnt the houses. The Subedar made us stand and said 'see the Lanka Dahan of your village.' The Deputy Commissioner also said the same thing. After this they beat us and took us to Mailaram. From there they carried us in a car to the police station, Vardhanapeth..... The whole household utensils of the houses were looted, due to which the damage amounted to one lakh. It was also learnt that they outraged the

modesty of 4 women. They felt ashamed to state their names before the public. The women are ashamed to expose the names of the persons concerned. The names of these women are with State Congress."

10. On the basis of these two statements the Inspector of C.I.D. District Police, one Md. Ibrahim Ghori, wrote to the Sub-Inspector of Police of Nalikadur, district. Warangal, to issue the first information report for offenses committed under sections 248, 312, 331 and 368 of the Hyderabad Penal Code against the Subedar and it was directed that the two sheets of original statements of the complainants should be sent to the court with the first information report and that he would himself investigate the case. On receipt of this letter the Sub-Inspector of Police recorded the first information report for the offenses mentioned above on 29th January, 1949, in terms of the above letter. Though this first information report was recorded on 29th January, 1949, the investigation of the case against the appellant did not start till the 8th August, 1949. What happened in this interval and why the investigation was delayed by a period of over seven months is again a matter on which no explanation has been furnished on the record and the learned Advocate-General who appeared on behalf of the State before us was unable to explain the cause of this delay in the investigation of the crimes alleged to have been committed by the appellant.

11. On 28th August, 1949, there was an order in terms of section 3 of the Special Tribunal Regulation V of 1358-F., which was in force at that time directing the appellant to be tried by Special Tribunal (A). The Military Governor gave sanction for the prosecution of the appellant on 20th September, 1949. On 13th December, 1949, a new Regulation, Regulation X of 1359-F., was passed by the Hyderabad Government which ended the Special Tribunals created under the previous regulation and upon such termination, provided for the appointment, powers and procedure of the Special Judge. On 5th January, 1950, the case of the appellant was made over to Dr. Laxman Rao, Special Judge,

who was appointed the above regulation under an order of the Civil Administrator, Warangal, to whom power under section 5 of the Regulation was delegated and on the same day the Special Judge took cognizance of the office with the result already indicated.

12. Mr. MeKenna, who argued the appeal on behalf of the Subedar, contended that his client was considerably prejudiced by certain grave irregularities and illegalities committed in the course of the trial by the Special Judge and that three had been a grievous disregard of the proper forms of legal process and violation of principles of criminal jurisprudence in such a fashion as amounted to a denial of justice and that injustice of a serious and substantial character has occurred. The first ground of attack in this respect was that a number of material witnesses, including Moulvi Afzal Biabani, Deputy Commissioner of Police, who accompanied the Subedar and witnessed the occurrence and who could give a narrative of the events of the 9th December, 1947, were not produced by the prosecution, though some of them were alive and available, that these witnesses were essential for unfolding the narrative on which the prosecution was based and should have been called by the prosecution, no matter whether in the result the effect of their testimony would have been for or against the case for the prosecution. The facts relating to Biabani are these :

13. Admittedly he was a member of the party that visited village Gurtur on the fateful morning of the 9th December, 1947. There can be no doubt that he was a witness of this occurrence and could give a narrative of the incidents that happened there on that day. In the statement of Ranganathaswami cited above which accompanied the first information report against the appellant it was asserted that the firing took place under the orders of Biabani and the houses were burnt by his order. In the challan that was prepared on the first information report lodged under the directions contained in the letter of Md. Ibrahim Ghori, Inspector of C.I.D., District Police, against the appellant and

the two absconding accused it was alleged that the accused merely on the pretext that the village Gurtur was the headquarters of the communists raided the village with the aid of the armed police force, that the villagers appeared before the accused, but accused 1 (the appellant) in view of the general policy of the Ittehad-ul-Muslimeen that the Hindus might be killed and be forced to run away from Hyderabad and to achieve this object opened fire on them, that as a result of the firing two villagers were killed on the spot, two of them died in the hospital, five others badly injured, that when the villagers took to their heels the appellant distributed match boxes amongst the police constables and ordered them to go into the village habitation, loot and burn the houses and molest the villagers. In this challan the whole burden for the crimes committed on 9th December was thrown on Habeeb Mohammad in spite of the fact that in the documents accompanying the first information report this burden had been thrown on Biabani, the Deputy Commissioner of Police, P.W. 21, the investigating officer, was questioned on this point and he deposed that in the course of the investigation the offence was only proved against the appellant and the two absconding accused and that it was not proved that Ghulam Afzal Biabani, Deputy Inspector-General of District Police, or Nasim Ahmad, Sub-Inspector of Police, or Jamedar of Police, Vardhanapeth, Abdul Wahib, Revenue Inspector, or Abdul Alim, pleader, or the military police had committed any crimes or aided or abetted and for this reason their names were not mentioned therein. The prosecution in these circumstances in the list of prosecution witnesses mentioned the name of Biabani as P.W. 2, but for some unexplained reason it did not produce him as a witness during the trial. No explanation has been given by the prosecution for withholding this material witness from the court who was the most responsible officer next to the Subedar present at the time of the occurrence and who was at the time of the trial holding an important office under Government and who presumably would have given the court an accurate and true version of what took place.

14. On 24th March, 1950, the appellant made an application to the Special Judge alleging, inter alia, that though a number of police officers and other officials were present at the scene of occurrence including Ghulam Afzal Biabani, Kankiah, Abdul Wahib, Girdawar who was then confined in Warangal jail, Naseem Ahmad, Sub-Inspector of Police, Vardhanapeth, Khaja Moinuddin, Police Jamedar, Abdul Ghaffar Khan, Reserve District Police Inspector, Turab Ali, Sub-Inspector, Vardhanapeth, and Shaik Chand, Police Inspector, they were neither arrested nor any action taken against any of them, that the investigating officer Ibrahim Ghori and Sub-Inspector of Nallikudur police station were not produced in court, that though Kankiah Jamedar was presented to give evidence, Ghulam Afzal Biabani, ex-Deputy District Police Commissioner, was not produced. It was alleged in this application that when this objection was raised on behalf of the accused, the Government Pleader said that they could not produce him, and if the honorable court so desired, it may summon him. It was further alleged therein that the conduct of the prosecution showed that they were endeavouring to incriminate the accused who was not guilty and on the other hand were trying to shield the police constables and officers, and that the Government Pleader had refused to produce the best evidence that could be produced in the case. It was stated that in those circumstances it would be in conformity with justice that the court should inquire into the facts and summon the persons mentioned above under section 507 of the Code of Criminal Procedure and record their statements in order to find out the real facts. It was said further that Ghulam Afzal Biabani, ex-Deputy District Police Commissioner, who was then in service in the Police Training School, had sent a report with regard to the incident to the Inspector-General of Police and to the Secretary to Government, Home Department. On this application the learned Judge recorded the following order :-

"The application of the accused is not worth consideration because neither the complainant nor the accused can persuade the court in this way. This right can be exercised only to settle a defect in the evidence. Otherwise it is not to be exercised at all.

The right should be exercised only to rectify the defects of any of the parties. The accused has full right to adduce defense witnesses. Even after producing the defense evidence, if anything is omitted, the court by itself, will settle it. This application is filed beforehand."

15. Order was, however, made to summon the report, if any, made by Ghulam Afzal Biabani. In his judgment convicting the appellant, regarding Biabani the learned Judge made the following observations :

"I regret to learn from Kesera Singh, investigating officer, that such a man is in service, i.e., in the capacity of Principal of Police Training School. 'Will he impart to the would-be subordinate officers the same lesson of protection of life and property of royts.' And this case the said Biabani is not challenged only because he is a police officer. This should not be construed in this sense that as the police left Biabani scot-free because they favored him, so also the court should leave Habeeb Mohamed. A strange logic that 'you left one, therefore I leave the other' will continue."

16. It is difficult to support such observations made behind the back of a person. Such observations could only be made after giving an opportunity to Biabani to explain his conduct. Before the High Court Mr. Walford who argued the case stressed the point that the police ought to have produced Ghulam Afzal Biabani to prove the fact that it was the appellant who ordered firing and in the alternative, the court should have summoned him as a court witness. This argument was disposed of by reference to the decision of their Lordships of the Privy Council in Adel Mohammad v. Attorney-General of Palestine A.I.R. 1945 P.C. 42, wherein it was observed that there was no obligation on the prosecution to tender witnesses whose names were upon the information but who were not called to give evidence by the prosecution, for cross-examination by the defense, and that the prosecutor has a discretion as to what witnesses should be called for the prosecution and the court will not interfere with the exercise of that discretion unless it can be shown that the prosecutor has been influenced by some oblique motive. It was

held that in view of these observations it could not be said that the prosecution committed any mistake in not producing Afzal Biabani or that it had been influenced by some oblique motive. It was a further held that no occasion arose for interfering with the discretion exercised by the Special Judge under section 507, Hyderabad Criminal Procedure Code, and that the evidence of this witness could not be regarded as essential for the just decision of the case. The dissenting Judge, Siadat Ali Khan J., took the view that Biabani was the second top-ranking officer at the occurrence and as his report was not forthcoming, there was a lacuna in the record and that it was the duty of the court to call him as a witness. In the judgment of the third Judge, Manohar Prasad J., it is stated that Mr. Murtuza Khan who appeared for the accused did in course of his arguments concede that from the documents filed in appeared that the order of fire was given by the appellant. Mr. Murtuza Khan who is a retired Judge of the Hyderabad High Court has filed an affidavit contesting the correctness of this observation. On the question therefore whether the order to fire was given by the appellant we have the solitary testimony of P.W. 10, Kankiah, the police jamedar, contrary to the statements contained in the document accompanying the first information report; and even in his deposition it is said that the police officer took instructions from Biabani before carrying out the orders of the appellant. In this situation it seems to us that Biabani who was a top-ranking police officer present at the scene was a material witness in the case and it was the bounded duty of the prosecution to examine him, particularly when no allegation was made that if produced, he would not speak the truth; and, in any case, the court would have been well advised to exercise its discretionary powers to examine that witness. The witness was at the time of the trial in charge of the Police Training School and was certainly available. In our opinion, not only does an adverse inference arise against the prosecution case from his non-production as a witness in view of illustration (g) to section 114 of the Indian Evidence Act, but the circumstance of his being withheld from court casts a serious reflection on the fairness of the trial. It seems to us that the appellant was considerably prejudiced in his defense by reason of this omission on the part of the prosecution and on the part of the court. The reason given by the learned Judge for refusing to summon

Biabani do not show that the Judge seriously applied his mind either to the provisions of the section or to the effects of omitting to examine such an important witness. the terms in which the order of the Special Judge is couched exhibit lack of judicial balance in a matter which required serious consideration. The reliance placed on the decision of their Lordships of the Privy Council in Adel Mohammad v. Attorney-General of Palestine (A.I.R. 1945 P.C. 42.) is again misplaced. That decision has no bearing on the question that arises in the present case. The case came from Palestine and the decision was given under the provisions of the Palestine Criminal Code Ordinance, 1936. The contention there raised was that the accused had a right to have the witnesses whose names were upon the information, but were not called to give evidence for the prosecution, tendered by the Crown for cross-examination by the defense. The learned Chief Justice of Palestine ruled that there was no obligation on the prosecution to call them. The court of criminal appeal held that the strict position in law was that it was not necessary legally for the prosecution to put forward these witnesses. They, however, pointed out that in their opinion the better practice was that the witnesses should be so tendered at the close of the case for the prosecution so that the defense may cross-examine them if they so wish. Their Lordships observed that there was no obligation on the part of the prosecution to tender those witnesses. They further observed that it was doubtful whether the rule of practice as a expressed by the court of criminal appeal sufficiently recognised that the prosecutor had a discretion as to what witnesses should be called for the prosecution, and the court would not interfere with the exercise of that discretion, unless, perhaps, it could be shown that the prosecutor was influenced by some oblique motive. No such suggestion was made in that case. The point considered by their Lordships of the Privy Council there was somewhat different from the point raised in the present case, but it is difficult to hold on this record that there was no oblique motive of the prosecution in the present case for not producing Biabani as a witness. The object clearly was to shield him, who possibly might be a co-accused in the case, and also to shield the other police officers and men who formed the raiding party. In our opinion, the true rule applicable in this country on the question whether it is the duty of the prosecution to produce material witnesses has been

laid down by the Privy Council in the case of Stephen Senivaratne v. The King A.I.R. 1936 P.C. 289, and it is in these terms :-

"It is said that the state of things above described arose because of a supposed obligation on the prosecution to call every available witness on the principle laid down in such a case as Ram Ranjan Roy v. Emperor (I.L.R. 42 Ca. 422.), to the effect that all available eye-witnesses should be called by the prosecution even though, as in the case cited, their names were on the list of defense witnesses. Their Lordships do not desire to lay down any rules to fetter discretion on a matter such as this which is so dependent on the particular circumstances of each case. Still less do they desire to discourage the utmost candour and fairness on the part of those conducting prosecutions; but at the same time they cannot, speaking generally, approve of an idea that a prosecution must call witnesses irrespective of considerations of number and of reliability, or that a prosecution ought to discharge the functions both of prosecution and defense. If it does so confusion is very apt to result, and never is it more likely to result than if the prosecution calls witnesses and then proceeds almost automatically to discredit them by cross-examination. Witnesses essential to the unfolding of the narrative on which the prosecution is based, must, of course, be called by the prosecution, whether in the result the effect of their testimony is for or against the case for the prosecution."

17. In a long series of decisions the view taken in India was, as was expressed by Jenkins C.J. in Ram Ranjan Roy v. Emperor I.L.R. 43 Cal. 422, that the purpose of a criminal trial is not to support at all costs a theory but to investigate the offence and to determine the guilt or innocence of the accused and the duty of a public prosecutor is to represent not the police but the Crown, and this duty should be discharged fairly and fearlessly with full sense of the responsibility attaching to his position and that he should in a capital case place before the court the testimony of all the available eye-witnesses, though brought to the court by the defense and though they give different accounts, and that the

rule is not a technical one, but founded on common sense and humanity. This view so widely expressed was not fully accepted by their Lordships of the Privy Council in Stephen Senaviratne v. The King A.I.R. 1936 P.C. 289., that came from Ceylon, but at the same time their Lordships affirmed the preposition that it was the duty of the prosecution to examine all material witnesses who could give an account of the narrative of the events on which the prosecution is essentially based and that the question depended on the circumstances of each case. In our opinion, the appellant was considerably prejudiced by the omission on the part of the prosecution to examine Biabani and the other officer in the circumstances of this case and his conviction merely based on the testimony of the police jamedar, in the absence of Biabani and other witnesses admitted present on the scene, cannot be said to have been arrived at after a fair trial, particularly when no satisfactory explanation has been given or even attempted for this omission.

18. Another grave irregularity vitiating the trial and on which Mr. McKenna laid great emphasis concerns the refusal of the Special Judge to summon six defense witnesses whom the appellant wished to call. The facts relating to this matter are these : On the 24th March, 1950, the appellant filed a list of defense witnesses containing the following names :-

1. Moulvi Syed Hussain Sahib Zaidi, Ex-District Superintendent of Police, Warangal, who was then special officer, Bahawalpur State, Pakistan.

2. Moulvi Abdul Hamid Khan, Ex-Secretary, Revenue Department, at present Minister for Sarf-e-Khas Mubarak.

3. Nawab Deen-Yar-Jung Bahadur, Ex-Inspector-General of Police, Districts and City.

4. Moulvi Abdul Rahim, Ex-Railways Minister.

5. Rai Raj Mohan Lal, Ex-law Minister.

6. Moulvi Zahir Ahmed, Ex-Secretary to Government, Home Department, at present residing at London.

19. The first witness was called to prove that the inhabitants of Gurtur committed destructive activities and threw stones on the police and that the police fired in self-defence by the order of the Deputy Police Commissioner of the District. It was said that he would also reveal many other facts. Regarding the second witness, it was said that he would depose as to what happened to the D.O. letter sent by the accused and he would also reveal other facts. Regarding the third witness, it was said that he would confirm the report of Ghulam Afzal Biabani the Deputy Commissioner of Police and would reveal other facts about Gurtur incidents. About the fourth and fifth witnesses, it was said that they would depose about the accused's efficiency and his behavior towards ryots and they would also reveal other facts. On 14th April, 1950, an application was made by the pleader for the accused that instead of sending for syed Hussain Zaidi, Superintendent of Police, residing at Pakistan, Abdur Rasheed Khan Sahib, former Assistant Superintendent of Police, Warangal district, may be sent for. The learned Judge on this made the following order :

"This request is improper. The application of the accused dated 24th March, 1950, about the list of the defense witnesses may be referred. In it the first name is of Zaidi, the Superintendent of Police. It is written in it by the accused himself that Mr. Zaidi will say whatever he has heard from the other policemen. Now I cannot understand when it is written so in the list, how can Abdur Rasheed be called for instead of Zaidi, and what evidence he will give. So the application to call for Abdur Rasheed Khan Sahib is disallowed."

20. Regarding witness No. 2, Abdul Hammed Khan, the learned Judge made the following order :-

"It is stated that he will speak about the efficiency of the accused and also about his behavior towards his subjects. Efficiency and behavior is neither a point at issue in this case, nor a relevant fact, (section 216, Criminal Procedure Code, and section 110, sections 3 and 4 of the Evidence Act may be referred). It is also written below it that he will state what action was taken on the D.O. letter of the accused. No such paper is produced to show as to what has happened to the proceedings, for which Abdul Hameed Khan can be summoned to prove. Besides this the statement of the accused is in regard to something and witness Abdul Hameed Khan is being summoned for some other thing."

21. Regarding the third witness the Judge said as follows :-

"Nawab Deen-Yar-Jung Bahadur, former Inspector-General of Police, is called to certify the report of Ghulam Afzal Biabani, Deputy Director of Police. The report of Ghulam Afzal Biabani was called for from the office of the Inspector-General of Police, Home Secretary, and from the office of the Civil Administrator, Warangal. But from all these offices, we have received replies stating that there is no report of Ghulam Afzal Biabani.

In the light of these replies it is unnecessary to summon Deen-Yar-Jung Bahadur. When there is no report, what can Deen-Yar-Jung testify."

22. Regarding witnesses 4 and 5, the Judge observed as follows :-

"These witnesses are called for to state about the efficiency and behavior of the accused. It is not a point at issue nor a relevant fact."

23. Regarding witness 6, the Judge thought that there was no procedure to summon a witness residing in London. Finally it was observed that "by seeing the list of witnesses and the defense statement of the accused which are many pages, it appears that these applications are given only to prolong the case unjustifiably and to disturb the justice. These are not worthy to be allowed. So the said application dated 24th March, 1950, is disallowed." Section 257 Criminal Procedure Code, which corresponds to section 216 of the Hyderabad Criminal Procedure Code is in these terms :-

"If the accused, after he has entered upon his defense, applies to the Magistrate to issue any process for compelling the attendance of any witness for the purpose of examination or cross-examination, or the production of any document or other thing, the Magistrate shall issue such process unless he considers that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice. Such ground shall be recorded by him in writing."

24. We have not been able to appreciate the view of the learned Judge that the application to summon defense witnesses who were available in Hyderabad was of a vexatious character and its object was to delay or defeat the ends of justice. There was controversy in the case between the prosecution and the defense about the motive of the accused which was stated by the prosecution to be that in pursuance of the policy of the Ittehad-ul-Muslimeen, and with the common object of destroying the Hindus and turning them

out of Hyderabad the appellant went to this village to achieve that object with the help of the police. The accused was entitled to disprove the allegations and prove his version that the village was in a state of rebellion, that the people who came out in a crowd did not come with peaceful motives but they were aggressive and were armed with weapons, that he was not inimical to the Hindus, that his behavior towards them had always been good and his state of mind was not inimical to them and the idea of exterminating them was far from his mind. Under the provisions of section 53 of the Evidence Act evidence as to the character of an accused is always relevant in a criminal case. So is the evidence as to the state of his mind. Evidence as to disturbed condition prevailing at Gurtur and of the destructive activates of its inhabitants was also a relevant fact. Whatever may be said about the other witnesses, three of the witnesses named in that list were certainly material witnesses for the purpose of the defense. In criminal proceedings a man's character is often a matter of importance in explaining his conduct and in judging his innocence or criminality. Many acts of an accused person would be suspicious or free from all suspicion when we come to know the character of the person by whom they are done. Even on the question of punishment an accused is allowed to prove general good character. When the allegation against the appellant was that he was acting in pursuance of the policy of the Ittehad-ul-Muslimeen that his state of mind was to exterminate the Hindus, he was entitled to lead evidence to show that he did not possess that state of mind; but that on the other hand, his behavior towards the Hindus throughout his official career had been very good and he could not possibly think of exterminating them. But even if the judge was right in thinking that the evidence of character in this particular case would not have affected materially the result, the evidence of other witnesses who would have deposed as to whether Biabani had submitted a report, and what version he had given, or of those who were able to depose as to the condition of things at Gurtur where the incident took place, or who were in a position to depose from reports already submitted to the Home Department and the Inspector-General of Police about the behavior of the villagers of the Gurtur, would have very materially assisted the defense if those witnesses were able to speak in favour of the appellant's contention. In our

opinion, the trial before the Special Judge was vitiated by his failure in summoning the defense witnesses who were available at Hyderabad and who might have materially helped to prove the defense version. The first witness or his substitute may well have been able to depose as to what happened to the arms that were alleged to have been captured from the villagers on the 9th December, 1947, and regarding which a panchnama was prepared and as to whether they existed in fact or not. That would have thrown a flood of light on the character of the mob that was fired upon and it may well have transpired from that evidence that the firing was ordered the instance of Biabani and not at the instance of the accused as alleged in the first instance by Ranganathaswamy. In the result we are constrained to hold that the accused has been denied the fullest opportunity to defend himself.

25. Another point that was stressed by the learned counsel for the appellant is that the police investigation into the offenses with which the appellant has been charged, after the first information report has been lodged in January, 1949, has been not only of a perfunctory nature but that there has been an unexplained delay of more than six months in making it and this has considerably prejudiced the defense. It was suggested that during this period most likely the police was cooking evidence against the accused without making any entries in the case diaries of statements made by the villagers. On this question it is necessary to set out a part of the statement of P.W. 21, the investigating officer, on which reliance was placed to support this contention. In cross-examination the witness said as follows :-

"I went for investigation in the month of Mehir 1358-F. (August, 1949) ..... Union officers did not investigate prior to my investigation; not even any collector undertook my investigation ..... Mohd. Ibrahim Ghori, Inspector, C.I.D., informed Sub-Inspector of Nallikadur through a D.O. dated the 29th Isfandar, 1358-F., to issue an information

report ..... I have no knowledge which officer ordered Mohd. Ibrahim Ghori to investigate and who signed on it. Superintendent of C.I.D. Police whose name I do not remember now gave order to Mohd. Ibrahim Ghori to investigate the facts. Now the case diary is not with me ..... The names of Mohd. Ibrahim and Achal Singh are not mentioned in the witnesses lists of A & B ..... Charges under sections 312 and 331 are mentioned in the report, but during my investigation, these offenses were not proved ..... The Superintendent of C.I.D. Police gave me a order to investigate but I do not remember the date of that order now ..... I prepared panchnamas on 8th Mehar, 1338-F. Probably I reached Gurtur one or two days earlier. I finished circumstantial investigation within eight days. Afterwards proceedings for permission were continued. At last on 20th August, 1949, the Civil Administrator gave order to file a challan ..... In the course of my investigation, it was proved that accused Habeeb Mohammad, Abdul Latif Khan and Abdul Wahid had committed crimes. It was not proved during the course of my investigation that Ghulam Afzal Biabani, Deputy I.G. of District Police, Assistant of Force, Nasim Ahmad Sahib, Sub-Inspector of Police, Vardhanapeth, jamedar of Police, Vardhanapeth, Abdul Wahid, Revenue Inspector, Abdul Alim Saheb, pleader, Hanamkonda, 70 military men and police and Razakars had committed crimes or aided and abetted. Therefore their names were not mentioned in the challan. The crimes against them are not proved means that they are not identified; the witnesses are not acquainted with them; so they are not prosecuted. Though in the information report 70 military men were mentioned I found in the course of my investigation 70 policemen only. I could not make out the identity of these policemen but I came to know that they belonged to Warangal district police force. I do not know how many of them were Hindus and how many were Muslims. But the names Kankiah, police jamedar (head-constable) and Abdul Latif Khan, Circle Inspector, were evident from the diary; therefore it is produced as evidence. On enquiry, Kankiah said to me that he could not identify them now and that he could not recollect the number of policemen who went along with him (Kankiah) to Vardhanapeth. I could not see the register at Superintendent's office to ascertain who went there because it was destroyed during the police action. When I asked the line

Inspector in this connection he replied that he could not even say whether the register was destroyed and that he could not remember the names now. As I could not gather any information from them, I did not refer their names in the case diary. I had not even mentioned about line Inspector in the case diary because I considered it unnecessary. From other source also, I could not make out the identity of these 70 men. Ghulam Afzal Biabani, Deputy Inspector General of Police, is alive and in service and I heard that he is now the Principal of the Police Training School. I cannot tell who was assistant of Force. I do not know the whereabouts of Nasim Ahmad as well as about his post. I did not make enquiries about Police Jamedar of Vardhanapeth who was mentioned in the information report, in regard to his identity and whether he is alive or dead because I could not find out his name from my witnesses. Further I do not know who was Shaik Chand. But I came to know from Kankiah that Shaik Chand was present on the scene of occurrence. Now I do not know about the whereabouts of Shaik Chand or about his job. None of the other witnesses recognised Shaik Chand and that I had not paraded him before the witnesses because I do not know his whereabouts. Though Jamedar Kankiah deposed that Abdul Ghaffar, Police Inspector, was present on the scene of occurrence the other witnesses were not acquainted with him. Whether Abdul Majid, Revenue Inspector, was on the place of occurrence or not, I could not make out and further whether he is alive or dead, too, I could not make out. Except Ghulam Afzal Biabani, I did not examine any of the other men, i.e., Assistant of Force, Nasim Ahmad, Police Jamedar of Vardhanapeth, Abdul Wahid, Revenue Inspector and others. I remember that after circumstantial investigation at Gurtur, I went to Hyderabad and enquired the facts to Ghulam Afzal Biabani orally; I did not take any statement from him. Whatever I enquired from him I entered in the case diary. I do not know what Ghulam Afzal Biabani reported to the high authority and whether yet reported it or not reported at all. I did not question him about it..... I do not remember the name of the police petal of Gurtur village. I did not take his statement and he did not give any report in regard to his occurrence. Guns were not recovered because the incident occurred one year ago and persons were not identified."

26. It is apparent from this statement that the investigation conducted by P.W. 21 was of a very perfunctory character. Apart from P. W. 10 Kankiah, none of the policemen or other officers or panches present at the scene of occurrence were examined and even their whereabouts were not investigated. This is all due to the circumstance that though the depositions of the villagers were recorded in November, 1948, against the conduct of the appellant and though the first information report against him was lodged in January, 1949, for some reason of which no plausible or satisfactory explanation has been suggested, the matter was not investigated and relevant evidence as to this incident, whether for or against the appellant, was not recorded for a period of over six months. It is not unreasonable to presume that during this period of seven or eight months that evidence became either unavailable or the villagers after this delay in investigation were not able to satisfactorily identify any of the persons who were present on the occasion. It seems to us that there is force in the contention that a good deal of material evidence was lost and considerable material that might have been helpful to the case of the defence or which would have fully established the part played by the accused, was in the meantime lost. In this situation the learned counsel in the courts below as well as in this court laid emphasis on the point that the case diaries were not brought into court till after the close of the case and they were withheld to avoid any controversy of this nature and this omission had also resulted in a trial which has perfunctory and prejudicial to the accused. During the examination of the investigating officer the question was put to him whether he had the case diaries. The cross-examining counsel wanted to elicit from him certain materials about the conduct of the investigation after he had refreshed his memory from those diaries, but P.W. 21 deposed that he had not the diaries with him and the matter was closed at that stage. On 12th April, 1950, an application was made to the court asking for copies of statements of P.Ws. recorded by the police. This application was obviously a belated one as the accused had no right to get the copies after the statements of those witnesses had been recorded by the Judge. The diaries were brought into court on 18th April, 1950. The learned Special Judge in his judgment on this point said as follows :-

"I have sent for the case diary relating to Superintendent of C.I.D. in confidential on the prayer of the accused. I have seen it intently. Statements therein are almost the same as are deposed in the court. The statements of witnesses would not become unreliable even in view of the entries made in the case diary."

27. Section 162, Criminal Procedure Code, which concerns police diaries and the use that can be made of them, is in these terms :-

"No statement made by any person to a police officer in the course of an investigation under this Chapter shall, if reduced to writing, be signed by the person making it; nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record, be used for any purpose (save as hereinafter provided) at any inquiry or trial in respect of any offence under investigation at the time when such statement was made :

Provided that, when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, the Court shall on the request of the accused refer to such writing and direct that the accused be furnished with a copy thereof, in order that any part of such statement, if duly proved, may be used to contradict such witness in the manner provided by section 145 of the Indian Evidence Act, 1872. When any part of such statement is so used, any part thereof, may also be used in the re-examination of such witness, but for the purpose only of explaining any method referred to in his cross-examination."

28. Section 172 provides that any criminal court may send for the police diaries of a case under inquiry or trial in such court and may use such diaries, not as evidence in the case but to aid it in such inquiry or trial. It seems to us that the learned Judge was in error in making use of the police diaries at all in his judgment and in seeking confirmation of his opinion on the question of appreciation of evidence from statements contained in those diaries. The only proper use he could make of these diaries was the one allot by section 172, Criminal Procedure Code, i.e., during the trial he could get assistance from them by suggesting means of further elucidating points which needed clearing up and which might be material for the purpose of doing justice between the State and the accused. This he did not do because the diaries were not before him. It was pointed out in Rex v. Mannu I.L.R. 19 All. 390 by a full court that a special diary may be used by the court to assist in an inquiry or trial by suggesting means of further elucidating points which need clearing up and which are material for the purpose of doing justices between the Crown and the accused but not as containing entries which can by themselves be taken to be evidence of any date, fact or statement therein contained. The police officer who made the diary may be furnished with it but not any other witness. The Judge made improper use of the diary by referring to it in his judgment and by saying that he intently perused it and the statements of witnesses taken in court were not inconsistent with those that were made by the witnesses before the police officer. It is difficult to say to what extent the perusal of the case diaries at that stage influenced the mind of the judge in the decision of the case. It may well be that perusal strengthened the view of the judge on the evidence against the appellant and operated to his prejudice. If there was any case in which it was necessary to derive assistance from the case diary during the trial it was this case and the investigating officer who appeared in the witness box instead of giving unsatisfactory answers to the question put to him might well have given accurate answers by refreshing his memory from those diaries and cleared up the lacunae that appeared in the prosecution case.

29. It was next contended that a number of documents that the accused wanted for his defence were not produced by the prosecution and were intentionally withheld. Reference in this connection may be made to an application submitted by the accused to the court on the 20 April, 1950. It reads thus :-

"As many documents were called for in defence of the accused, it was replied from the police or from the Home Department that the documents in question were either destroyed in the course of the police action, or as they are confidential, could not be sent. You are requested to review the excuses put forth by the police or other departments. In Warangal proper neither any firing took place nor any offices were burnt. I and Taluqdar Sahib lived in the headquarters for many months after the police action. Taluqdar Sahib lived for four months after the police action, and I lived there for nearly one month after the police action. Each and every document of my office in Taluqdar's office are safe and which can be ascertained by the Civil Administrator, Warangal, himself. This is my last prayer to you to send immediately today for summary of intelligence of second, third and fourth weeks of the month of Bahman, 1357-F., from the office of the Peshi of Mr. Obal Reddy, the District Superintendent of Police, Warangal. These weekly reviews are confidential which are prepared at the C.I.D. branch of the office of the Inspector-General of Police, and dispatched to the districts. The District Superintendents of Police used to send these reviews to the Deputy Commissioner of Police, Subedars and Taluqdars. The Gurtur incident was mentioned in them. If they are not available from the office of the District Superintendent of Police, Warangal, they may be called for from the office of the Inspector-General of Police, C.I.D., and they may be filed in the record."

30. On this application the court recorded the following order :-

"The way in which the accused Habeeb Mohamed remarked on the higher office that documents are either not received or that they are destroyed is not the proper way of

remarking. Investigation against officers cannot be conducted. Besides this, in this file all other things are decided and the accused was given sufficient time. Filing of an application on every hearing is not to be tolerated."

31. The appellant's counsel produced before us a list of the documents which were asked for, some of which were brought into court and regarding some the report was that they were destroyed or were not available. We cannot accede to the contention of the learned counsel that the court was called upon to make investigation into the question whether the replies from different officers as to what documents were destroyed or were not available were correct or not. It was open to the counsel for the accused, whenever any such report came, to challenge the statement and at that stage the court might have been in a position to ask the prosecution to support their replies by affidavits or otherwise. It, however, does appear somewhat curious that important documents which were required by the defence to establish the appellant's version of the incident are stated to have been destroyed or not available. Such bald assertions do not create much confidence in the mind of the court and it does not appear that there was any occasion during police action for the officer responsible for it to destroy records made by police officers and submitted to the Inspector-General of Police or to the Home Secretary. The appellant to certain extent was justified in such circumstances to ask the court to raise the inference that if these documents were produced they would not have supported the prosecution story.

32. The learned Advocate-General appearing for the State contended that assuming that the failure of the prosecution to examine Biabani has caused serious prejudice to the accused or that the denial of opportunity to him to examine certain witnesses in defence has also caused him serious prejudice, this court may direct the High Court to summon the witnesses and record their statement and transmit them to this court and that the appeal may be decided after that evidence has been taken. In our opinion, this course would not be proper in the peculiar circumstances of the present case. It is not possible

without setting aside the conviction of the appellant to reopen the case and allow the prosecution to examine a material witness or witnesses that ought to have produced and allow the defence also to lead defence evidence. A conviction arrived at without affording opportunity to the defence to lead whatever relevant evidence it wanted to produce cannot be sustained. The only course open to us in this situation is to set aside the conviction. The next question for consideration is whether in the result we should order a retrial of the appellant. After a careful consideration of the matter we have reached the conclusion that this course will not be conducive to the ends of justice. The appellant was in some kind of detention even before he was arrested. Since January, 1949, up to this date he has either been in detention or undergoing rigorous imprisonment and since the last three years he has been a condemned prisoner. The events regarding which evidence will have to be taken afresh took place on the 9th December, 1947, and after the lapse of six years it will be unfair and contrary to settled practice to order a fresh trial. In our opinion, as in substance there has been no fair and proper trial in this case, we are constrained to allow this appeal, set aside the conviction of the appellant under the different sections of the Hyderabad Penal Code and direct that he be set at liberty forthwith. It may well be pointed out that if there had been mere mistakes on the part of the court below of a technical character which had not occasioned any failure of justice or if the question was purely one of this court talking a difference view of the evidence given in the case, there would have been no interference by us under the provisions of article 136 of the Constitution. Such questions are as a general rule treated as being for the final decision of the courts below. In these circumstances it is unnecessary to examine the merits of the case on which both the learned counsel addressed us at some length.

33. Before concluding, however, it may be mentioned that Mr. McKenna apart from the points above mentioned raised a few other points of a technical character but on those points we did not call upon the learned Advocate-General in reply. It was contended that the court did not examine the accused under section 256, Criminal Procedure Code, after

further cross-examination of the witnesses. In our opinion, this omission was not material as nothing further appeared from the cross-examination which the court could ask the accused to explain. The accused had given a full statement on all the matters which required explanation in the case. Then it was argued that under the Hyderabad law at least two witnesses are necessary in a murder trial for a conviction in such a case. In this case more than two witnesses were produced who directly or indirectly implicated the appellant with the commission of the murder. The section of the Code referred to does not lay down that there should be two eye-witnesses of the occurrence before a conviction can be reached as regards the offence. Further it was argued that the Special Judge had no jurisdiction because H. E. H. the Nizam had not given his assent to the law as contained in Ordinance X of 1359-F. In our opinion, there is no substance in this contention because the Nizam under a fireman had delegated all his powers of administration including power of legislation to the Military Governor and that being so, no further reference to the Nizam was necessary and the Military Governor was entitled to issue the Ordinance in question. Lastly it was argued that the sanction for the prosecution of the appellant under the provisions of section 207 of the Hyderabad Code of Criminal Procedure (corresponding to section 197 of the Criminal Procedure Code) was given after the Judge had taken cognizance of the case. We see no force in this point as well. Before the trial started the court was fully seized of the case and by then the sanction had been given.

34. Appeal allowed.

35. Conviction set aside.

Agent for the appellant : Rajinder Narain.

Agent for the respondent : G. H. Rajadhyaksha.

MANU/SC/0268/2003

Back to Section 65A of Indian Evidence Act, 1872

Back to Section 65B of Indian Evidence Act, 1872

IN THE SUPREME COURT OF INDIA

Criminal Appeal Nos. 476 and 477 of 2003

Decided On: 01.04.2003

The State of Maharashtra and P.C. Singh Vs. Praful B. Desai and Ors.,

Hon'ble Judges/Coram:

S.N. Variava and B.N. Agrawal, JJ.

Counsels:

For Appellant/Petitioner/Plaintiff: Indira Jaising, Sr. Adv., V.B. Joshi, S.S. Shinde and V.N. Raghupathy, Advs. and Party in perso

For Respondents/Defendant: Ashok H. Desai, Sr. Adv., Shridhar Y. Chitale, Rashmi D. Chandrachud, Minakshi Nag and Abhijat P. Medh, Advs.

JUDGMENT

S.N. Variava, J.

1. Leave granted.

2. Heard parties.

3. These Appeals are against a Judgment of the Bombay High Court dated 23rd/24th April 2001. The question for consideration is whether in a criminal trial, evidence can be recorded by video conferencing. The High Court has held, on an interpretation of Section 273, Criminal Procedure Code, that it cannot be done. Criminal Appeal (arising out of SLP (Criminal) No. 6814 of 2001) is filed by the State of Maharashtra. Criminal Appeal (arising out of SLP (Criminal) No. 6815 of 2001 is filed by Mr. P.C. Singh, who was the complainant. As the question of law is common in both these Appeals, they are being disposed of by this common Judgment. In this Judgment parties will be referred to in their capacity in the Criminal Appeal (arising out of SLP (criminal) No. 6814 of 2001). Mr. P.C. Singh will be referred to as the complainant.

4. Briefly stated the facts are as follows:

The complainant's wife was suffering from terminal cancer. It is the case of the prosecution that the complainant's wife was examined by Dr. Ernest Greenberg of Sloan Kettering Memorial Hospital, New York, USA, who opined that she was inoperable and should be treated only with medication. Thereafter the complainant and his wife consulted the Respondent, who is a consulting surgeon practising for the last 40 years. In spite of being made aware of Dr. Greenberg's opinion the Respondent suggested surgery to remove the uterus. It is the case of the prosecution that the complainant and his wife agreed to the operation on the condition that it would be performed by the Respondent. It is the case of the prosecution that on 22nd December 1987 one Dr. A.K. Mukherjee operated on the complainant's wife. It is the case of the prosecution that when the stomach was opened ascetic fluids oozed out of the abdomen. It is the case of the prosecution that Dr. A.K. Mukherjee contacted the Respondent who advised closing up the stomach. It is the case of the prosecution that Dr. A.K. Mukherjee accordingly closed

the stomach and this resulted in intestinal fistula. It is the case of the prosecution that whenever the complainant's wife ate or drank the same would come out of the wound. It is the case of the prosecution that the complainant's wife required 20/25 dressings a day for more than 3 1/2 months in the hospital and thereafter till her death. It is the case of the prosecution that the complainant's wife suffered terrible physical torture and mental agony. It is the case of the prosecution that the Respondent did not once examine the complainant's wife after the operation. It is the case of the prosecution that the Respondent claimed that the complainant's wife was not his patient. It is the case of the prosecution that the bill sent by the Bombay Hospital belied the Respondent case that the complainant's wife was not his patient. The bill sent by the Bombay Hospital showed the fees charged by the Respondent. It is the case of the prosecution that the Maharashtra Medical Council has, in an inquiry, held the Respondent guilty of negligence and strictly warned him.

5. On a complaint by the complainant a case under Section 338 read with sections 109 and 114 of the Indian Penal Code was registered against the Respondent and Dr. A.K. Mukherjee. Process was issued by the Metropolitan Magistrate, 23rd Court, Esplanade, Mumbai. The Respondent challenged the issue of process and carried the challenge right up to this Court. The Special Leave Petitions filed by the Respondent was dismissed by this Court on 8th July, 1996. This Court directed the Respondent to face trial. We are told that evidence of six witnesses, including that of the complainant and the investigating officer, has been recorded.

6. On 29th June 1998 the prosecution made an application to examine Dr. Greenberg through video-conferencing. The trial court allowed that application on 16th August 1999. The Respondent challenged that order in the High Court. The High Court has by the impugned order allowed the Criminal Application filed by the Respondent. Hence these two Appeals.

7. At this stage it is appropriate to mention that Dr. Greenberg has expressed his willingness to give evidence, but has refused to come to India for that purpose. It is an admitted position that, in the Criminal Procedure Code there is no provision by which Dr. Greenberg can be compelled to come to India to give evidence. Before us a passing statement was made that the Respondent did not admit that the evidence of Dr. Greenberg was relevant or essential. However, on above-mentioned facts, it prima-facie appears to us that the evidence of Dr. Greenberg would be relevant and essential to the case of the prosecution.

8. Mr. Jaisingh, senior counsel argued for the State of Maharashtra. The complainant, except for pointing out a few facts, adopted her arguments. On behalf of the respondent submissions were made by Senior Counsels Mr. Sundaram and Mr. Ashok Desai.

9. It is submitted on behalf of the Respondents, that the procedure governing a criminal trial is crucial to the basis right of the Accused under Articles 14 and 21 of the Constitution of India. It was submitted that the procedure for trial of a criminal case is expressly laid down, in India, in the Code of Criminal Procedure. It was submitted that the Code of Criminal Procedure lays down specific and express provisions governing the procedure to be followed in a criminal trial. It was submitted that the procedure laid down in the Code of Criminal Procedure was the "procedure established by law". It was submitted that the Legislature alone had the power to change the procedure by enacting a law amending it, and that when the procedure was so changed, that became "the procedure established by law". It was submitted that any departure from the procedure laid down by law should be contrary to Article 21. In support of this submission reliance was placed on the cases of A.K. Gopalan v. State of Madras reported in MANU/SC/0012/1950 : 1950CriLJ1383 Nazir Ahmed v. Emperor reported in MANU/PR/0020/1936 and Siva

Kumar Chadda v. Municipal Corporation of Delhi. There can be no dispute with these propositions. However if the existing provisions of the Criminal Procedure Code permit recording of evidence by video conferencing then it could not be said that "procedure established by law" has not been followed.

10. This Court was taken through various sections of the Criminal Procedure Code. Emphasis was laid on Section 273, Criminal Procedure Code. It was submitted that Section 273, Criminal Procedure Code does not provide for the taking of evidence by video conferencing. Emphasis was laid on the words "Except as otherwise provided" in Section 273 and it was submitted that unless there is an express provision to the contrary, the procedure laid down in Section 273 has to be followed as it is mandatory. It was submitted that Section 273 mandates that evidence "shall be taken in the presence of the accused". It is submitted that the only exceptions, which come within the ambit of the words "except as otherwise provided" are Sections 284 to 290 (those dealing with issue of Commissions); Section 295 (affidavit in proof of conduct of public servant) and Section 296 (evidence of formal character on affidavit). It is submitted that the term "presence" in Section 273 must be interpreted to mean physical presence in flesh and blood in open Court. It was submitted that the only instances in which evidence may be taken in the absence of the Accused, under the Criminal Procedure Code are Sections 317 (provision for inquiries and trial being held in the absence of accused in certain cases) and 299 (record of evidence in the absence of the accused). it was submitted that as Section 273 is mandatory, the Section is required to be interpreted strictly. It was submitted that Section 273 must be given its contemporary meaning. (Contemporanea exposition est (SIC) fortissimo - The contemporaneous exposition is the best and the strongest in law). It was submitted that video conferencing was not known and did not exist when the Criminal Procedure Code was enacted/amended. It was submitted that presence on a screen and recording of evidence by video conferencing was not contemplated by the Parliament at the time of drafting/amending the Criminal Procedure Code. It was submitted that when

the Legislature intended to permit video conferencing, it has expressly provided for it, as is evident from the Ordinance passed by the State of Andhra Pradesh in December 2000 permitting the use of video conferencing under Section 167(2) Criminal Procedure Code in remand applications. It is pointed out that a similar amendment is being considered in Maharashtra. It is submitted that Section 273 is analogous to the Confrontation Clause set out in the VIth Amendment to the US Constitution. It is submitted that Courts in USA have held that video conferencing does not satisfy the requirements of the Confrontation Clause.

11. This argument found favour with the High Court. The High Court has relied on judgment of various High Courts which have held that Section 273 is mandatory and that evidence must be recorded in the presence of the accused. To this extant no fault can be found with the Judgment of the High Court. The High Court has then considered what Courts in foreign countries, including Courts in USA, have done. The High Court then based its decision on the meaning of the term "presence" in various dictionaries and held that the term "presence" in Section 273 means actual physical presence in Court. We are unable to agree with this. We have to consider whether evidence can be led by way of video-conferencing on the provisions of Criminal Procedure Code and the Indian Evidence Act. Therefore, what view has been taken by Courts in other countries is irrelevant. However, it may only be mentioned that the Supreme Court of USA, in the case of Maryland v. Santra Sun Craig [497 US 836], has held that recording of evidence by video-conferencing was not a violation of the Sixth Amendment (Confrontation Clause).

12. Consideration the question on the basis of Criminal Procedure Code, we are of the view that the High Court has failed to read Section 273 properly. One does not have to

consider dictionary meanings when a plain reading of the provision brings out what was intended. Section 273 reads as follows:

"Section 273 : Evidence to be taken in presence of accused. Except as otherwise expressly provided, all evidence taken in the course of the trial or other proceeding shall be taken in the presence of the accused, or, when his personal attendance is dispensed with, in the presence of his pleader.

Explanation : In this section, "accused" includes a person in relation to whom any proceeding under Chapter VIII has been commenced under this Code.

Thus Section 273 provides for dispensation from personal attendance. In such cases evidence can be recorded in the presence of the pleader. The presence of the pleader is thus deemed to be presence of the Accused. Thus Section 273 contemplates constructive presence. This shows that actual physical presence is not a must. This indicates that the terms "presence", as used in this Section, is not used in the sense of actual physical presence. A plain reading of Section 273 does not support the restrictive meaning sought to be placed by the Respondent on the word "presence". One must also take note of the definition of the term 'Evidence' as defined in the Indian Evidence Act. Section 3 of the Indian Evidence Act reads as follows:

"Evidence--Evidence means and includes--

(1) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters, of fact under inquiry;

such statements are called oral evidence.

(2) all documents including electronic records produced for the inspection of the Court;

such documents are called documentary evidence"

Thus evidence can be both oral and documentary and electronic records can be produced as evidence. This means that evidence, even in criminal matters, can also be by way of electronic records. This would include video-conferencing.

13. One needs to set out the approach which a Court must adopt in deciding such questions. It must be remembered that the first duty of the Court is to do justice. As has been held by this Court in the case of Sri Krishna Gobe v. State of Maharashtra MANU/SC/0182/1972 : 1973CriLJ235 Courts must endeavour to find the truth. It has been held that there would be failure of justice not only by an unjust conviction but also by acquittal of the guilty for unjustified failure to produce available evidence. Of course the rights of the Accused have to be kept in mind and safeguarded, but they should not be over emphasized to the extent of forgetting that the victims also have rights.

14. It must also be remembered that the Criminal Procedure Code is an ongoing statute. The principles of interpreting an ongoing statute have been very succinctly set out by the leading jurist Francis Bennion in his commentaries titled "Statutory Interpretation", 2nd Edition page 617:

"It is presumed the Parliament intends the Court to apply to an ongoing Act a construction that continuously updates its wordings to allow for changes sine the Act was initially framed. While it remains law, it has to be treated as always speaking. This means that in its application on any day, the language of the Act though necessarily embedded in its own time, is nevertheless to be construed in accordance with the need to treat it as a current law.

.....

In construing an ongoing Act, the interpreter is to presume that Parliament intended the Act to be applied at any future time in such a way as to give effect to the original intention. Accordingly, the interpreter is to make allowances for any relevant changes that have occurred since the Act's passing, in law, in social conditions, technology, the meaning of words and other matters. .....That today's construction involves the supposition that Parliament was catering long ago for a state of affairs that did not then exist is no argument against that construction. Parliament, in the wording of an enactment, is expected to anticipate temporal developments. The drafter will foresee the future and allow for it in the wording.

.....

An enactment of former days is thus to be read today, in the light of dynamic processing received over the years, with such modification of the current meaning of its language as will now give effect to the original legislative intention. The reality and effect of dynamic processing provides the gradual adjustment. It is constituted by judicial interpretation, year in and year out. It also comprises processing by executive officials."

15. At this stage the words of Justice Bhagwati in the case of National Textile Workers' Union v. P.R. Ramakrishnan, MANU/SC/0025/1982 : (1983)ILLJ45SC , at page 256, need to be set out. They are:

"We cannot allow the dead hand of the past to stifle the growth of the living present. Law cannot stand still; it must change with the changing social concepts and values. If the bark that protects the tree fails to grow and expand along with the tree. It will either choke the tree or if it is a living tree, it will shed that bark and grow a new living bark for itself. Similarly, if the law fails to respond to the needs of changing society, then either it will stifle the growth of the society and choke its progress or if the society is vigorous enough, it will cast away the law which stands in the way of its growth. Law must therefore constantly be on the more adapting itself to the fast changing society and not lag behind.

16. This Court has approved the principle of updating construction as enunciated by Francis Bennion, in a number of decisions. These principles were quoted with approval in the case of Commissioner of Income Tax, Bombay v. Podar Cement Pvt. Ltd. MANU/SC/0649/1997 : [1997]226ITR625(SC) . They were also cited with approval in the case of State v. S.J. Chowdhury : . In this case it was held that the Evidence Act was an ongoing Act and the word "handwriting" in Section 45 of that Act was construed to include "typewriting". These principles were also applied in the case of SIL Import USA

v. Exim Aides Silk Exporters MANU/SC/0312/1999 : 1999CriLJ2276 . In this case the words "notice in writing", in Section 138 of the Negotiable Instruments Act, were construed to include a notice by fax. On the same principle Courts have interpret, over a period of time, various terms and phrases. To take only a few examples:- "stage carriage" has been interpreted to include "electric tramcar"; "steam tricycle" to include "locomotive"; "telegraph" to include "telephone"; "bankers books" to include "microfilm"; "to take note" to include "use of tape recorder"; "documents" to include "computer database's".

17. These principles have also been applied by this Court whilst considering an analogous provision of the Criminal Procedure Code. In the case of Basavaraj R. Patil v. State of Karnataka MANU/SC/0632/2000 : 2000CriLJ4604 the question was whether an Accused needs to be physically present in Court to answer the questions put to him by Court whilst recording his statement under Section 313. To be remembered that under Section 313 the words are "for the purpose of enabling the accused personality to explain" (emphasis supplied).The term "personally" if given a strict and restrictive interpretation would mean that the Accused had to be physically present in Court. In fact the minority Judgment in this case so holds. It has however been held by the majority that the Section had to be considered in the light of the revolutionary changes in technology of communication and transmission and the marked improvement in facilities for legal aid in the country. It was held by the majority, that it was not necessary that in all cases the Accused must answer by personally remaining present in Court.

18. Thus the law is well settled. The doctrine "Contemporany exposition est optima et fortissimo" has no application when interpreting a provision of an on-going statute/act like the Criminal Procedure Code.

19. At this stage we must deal with a submission made by Mr. Sundaram. It was submitted that video-conferencing could not be allowed as the rights of an accused, under Article 21 of the Constitution of India, cannot be subjected to a procedure involving "virtual reality". Such an argument displays ignorance of the concept of virtual reality and also of video conferencing. Virtual reality is a state where one is made to feel, hear or imagine what does not really exists. In virtual reality one can be made to feel cold when one is sitting in a hot room, one can be made to hear the sound of ocean when one is sitting in the mountains, one can be made to imaging that he is taking part in a Grand Prix race whilst one is relaxing on one sofa etc. Video conferencing has nothing to do with virtual reality. Advances in science and technology have now, so to say, shrunk the world. They now enable one to see and hear events, taking place far away, as they are actually taking place. To take an example today one does not need to go to South Africa to watch World Cup matches. One can watch the game, live as it is going on, on one's TV. If a person is a sitting in the stadium and watching the match, the match is being played in his sight/presence and he/she is in the presence of the players. When a person is sitting in his drawing-room and watching the match of TV, it cannot be said that he is in presence of the players but at the same time, in a broad sense, it can be said that the match is being played in his presence. Both, the person sitting in the stadium and the person in the drawing-room, are watching what is actually happening as it is happening. This is not virtual reality, it is actual reality. One is actually seeing and hearing what is happening. Video conferencing is an advancement in science and technology which permits one to see, hear and talk with someone far away, with the same facility and ease as if he is present before you i.e. in your presence. In fact he/she is present before you on a screen. Except for touching one can see, hear and observe as if the party is in the same room. In video conferencing both parties are in presence of each other. The submissions of Respondents counsel are akin to an argument that a person seeing through binoculars or telescope is not actually seeing what is happening. It is akin to submitting that a person seen through binoculars or telescope is not in the "presence" of the person observing. Thus it is clear that so long as the Accused and/or his pleader are present when evidence

is recorded by video conferencing that evidence is being recorded in the "presence" of the accused and would thus fully need the requirements of Section 273, Criminal Procedure Code. Recording of such evidence would be as per "procedure established by law".

Recording the evidence by video conferencing also satisfies the object of providing, in Section 273, that evidence be recorded in the presence of the Accused. The Accused and his pleader can see the witness as clearly as if the witness was actually sitting before them. In fact the Accused may be able to see the witness better than he may have been able to if he was sitting in the dock in a crowded Court room. They can observe his or her demeanour. In fact the facility to play back would enable better observation of demeanour. They can hear and rehear the deposition of the witness. The Accused would be able to instruct his pleader immediately and thus cross-examination of the witness is as effective if not better. The facility of play back would give an added advantage whilst cross-examining the witness. The witness can be confronted with documents or other material or statement in the same manner as if he/she was in Court. All these objects would be fully met when evidence is recorded by video conferencing. Thus no prejudice, of whatsoever nature, is caused to the Accused. Of course, as set out hereinafter, evidence by Video Conferencing has to be on some conditions.

Reliance was then placed on Sections 274 and 275 of the Criminal Procedure Code which require that evidence be taken down in writing by the Magistrate himself or by his dictation in open Court. It was submitted that video conferencing would have to take place in the studio of VSNL. It was submitted that that this would violate the right of the Accused to have the evidence recorded by the Magistrate or under his dictation in open Court. The advancement of science and technology is such that now it is possible to set up video conferencing equipment in the Court itself. In that case evidence would be recorded by the Magistrate or under his dictation in open Court. If that is done then the

requirements of these Sections would be fully met. To this method there is however a draw back. As the witness is now in Court there may be difficulties if he commits Contempt of Court or perjures himself and it is immediately noticed that he has perjured himself. Therefore as a matter of prudence evidence by video-conferencing in open Court should be only if the witness is in a country which has an extradition treaty with India and under whose laws Contempt of Court and perjury are also punishable.

20. However even if the equipment cannot be set up in Court the Criminal Procedure Code contains provisions for examination of witnesses on commissions. Section 284 to 289 deal with examination of witnesses on commissions. For our purposes Sections 284 and 285 are relevant. They read as under:

"284. WHEN ATTENDANCE OF WITNESS MAY BE DISPENSED WITH AND COMMISSION ISSUED.

(1) Whenever, in the course of any inquiry, trial or other proceeding under this Code, it appears to a Court or Magistrate that the examination of a witness is necessary for the ends of justice, and that the attendance of such witness cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable, the Court or Magistrate may dispense with such attendance and may issue a commission for the examination of the witness in accordance with the provisions of this Chapter;

Provided that where the examination of the President or the Vice-President of India or the Governor of a State or the Administrator of a Union Territory as a witness is necessary for the ends of justice, a commission shall be issued for the examination of such a witness.

(2) The Court may, when issuing a commission for the examination of a witness for the prosecution, direct that such amount as the Court considers reasonable to meet the expenses of the accused, including the pleader's fees, be paid by the prosecution.

285. COMMISSION TO WHOM TO BE ISSUED.

(1) If the witness is within the territories to which this Code extends the commission shall be directed to the Chief Metropolitan Magistrate or Chief Judicial Magistrate, as the case may be, within whose local jurisdiction the witness is to, be found.

(2) If the witness is in India, but in a State or an area to which this Code does not extend, the commission shall be directed to such Court or officer as the Central Government may, by notification, specify in this behalf.

(3) If the witness is in a country or place outside India and arrangements have been made by the Central Government with the Government of such country or place for taking the evidence of witnesses in relation to criminal matters, the commission shall be issued in such form, directed to such Court or officer, and sent to such authority for transmission, as the Central Government may, by notification, prescribe in this behalf."

Thus in cases where the witness is necessary for the ends of justice and the attendance of such witness cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case would be unreasonable, the Court may dispense with such attendance and issue a commission for examination of the witness. As indicated earlier Dr. Greenberg has refused to come to India to give evidence. His evidence appears to be necessary for the ends of Justice. Courts in India cannot procure his attendance. Even otherwise to procure attendance of a witness from a far of country like USA would generally involve delay, expense and/or inconvenience. In such cases commissions could be issued for recording evidence. Normally a commission would involve recording evidence at the place where the witness is. However advancement in science and technology has now made it possible to record such evidence by way of video conferencing in the town/city where the Court is. Thus in case where the attendance of a witness cannot be procured without an amount of delay, expense or inconvenience the Court could consider issuing a commission to record the evidence by way of video conferencing.

21. It was however submitted that India has no arrangement with the Government of United States of America and therefore commission cannot be issued for recording evidence of a witness who is in USA. Reliance was placed on the case of Ratilal Bhanji Mithani v. State of Maharashtra MANU/SC/0219/1972 : 1972CriLJ1055 . In this case a commission was issued for examination of witnesses in Germany. The time for recording evidence on commission had expired. An application for extension of time was made. It was then noticed that India did not have any arrangement with Germany for recording evidence on commission. At page 798 this Court observed as follows:

"25. The provisions contained in Sections 504 and 508-A of the Code of Criminal Procedure contain complimentary provisions for reciprocal arrangements between the

Government of our country and the Government of a foreign country for Commission from Courts in India to specified courts in the foreign country for examination of witnesses in the foreign country and similarly for Commissions from specified courts in the foreign country for examination of witnesses residing in our country. Notifications Nos. SRO 2161, SRO 2162, SRO 2163 and SRO 2164 all, dated November 18, 1953, published in the Gazette of India Part II, Section 3 on November 28, 1953, illustrate the reciprocal arrangements between the Government of India and the Government of the United Kingdom and the Government of Canada for examination of witness in the United Kingdom, Canada and the examination of witnesses residing in India.

26. In the present case, no notification under Section 508-A of the Code of Criminal Procedure has been published specifying the courts in the Federal Republic of West Germany by whom commissions for examination of witnesses residing in India may be issued. The notification, dated September 9, 1969, in the present case under Section 504 of the Code of Criminal Procedure is not based upon any existing complete arrangement between the Government of India and the Government of the Federal Republic of West Germany for examination of witness residing in West Germany . The notification, dated September 9, 1969, is ineffective for two reasons. First, there is no reciprocal arrangement between the Government of India and the Government of the Federal Republic of West Germany as contemplated in Sections 504 and 508-A of the Code of Criminal Procedure. Secondly, the notification under Section 504 is nullified and repelled by the affidavit evidence adduced on behalf of the State that no agreement between the two countries has yet been made.

27. In the present case, extension of time was granted in the past to enable the State for examination of witnesses in West Germany and return of the commission to this country. The State could not obtain the return of the commission. Now, a question has arisen as to

whether any extension of time should be made when it appears that reciprocal arrangements within the contemplation of Sections 504 and 508-A of the Code of Criminal Procedure are not made. The courts do not make orders in vain. When this Court finds that there are no arrangements in existence within the meaning of Sections 504 and 508-A of the Code of Criminal Procedure this Court is not inclined to make any order."

This authority, which is of a Constitution Bench of this Court, does suggest that no commission can be issued if there is no arrangement between the Government of India and the country where the commission is proposed to be issued. This authority would have been binding on this Court if the facts were identical. Ms. Jaising had submitted that notwithstanding this authority a difference would have to be drawn in cases where a witness was not willing to give evidence and in cases where the witness was willing to give evidence. She submitted that in the second class of cases commissions could be issued for recording evidence even in a country where there is no arrangement between the Government of India and that country.

22. In this case we are not required to consider this aspect and therefore express no opinion thereon. The question whether commission can be issued for recording evidence in a country where there is no arrangement, is academic so far as this case is concerned. In this case we are considering whether evidence can be recorded by Video-Conferencing. Normally when a Commission is issued, the recording would have to be at the place where the witness is. Thus Section 285 provides to whom the Commission is to be directed. If the witness is outside India, arrangements are required between India and that country because the services of an official of the country (mostly a Judicial Officer) would be required to record the evidence and to ensure/compel attendance. However new advancement of science and technology permit officials of the Court, in the city where video conferencing is to take place, to record the evidence. Thus where a witness

is willing to give evidence an official of the Court can be deported to record evidence on commission by way of video-conferencing. The evidence will be recorded in the studio/hall where the video-conferencing takes place. The Court in Mumbai would be issuing commission to record evidence by video conferencing in Mumbai. Therefore the commission would be addressed to the Chief Metropolitan Magistrate, Mumbai who would depute a responsible officer (preferably a Judicial Officer) to proceed to the office of VSNL and record the evidence of Dr. Greenberg in the presence of the Respondent. The officer shall ensure that the Respondent and his counsel are present when the evidence is recorded and that they are able to observe the demeanour and hear the deposition of Dr. Greenberg. The officers shall also ensure that the Respondent has full opportunity to cross-examine Dr. Greenberg. It must be clarified that adopting such a procedure may not be possible if the witness is out of India and not willing to give evidence.

23. It was then submitted that there would be practical difficulties in recording evidence by video conferencing. It was submitted that there is a time difference between India and U.S.A. It was submitted that a question would arise as to how and who would administer the oath to Dr. Greenberg. It was submitted that there could be a video image/audio interruptions/distortions which might make the transmission inaudible/indecipherable. It was submitted that there would be no way of ensuring that the witnesses is not being coached/tutored/prompted whilst evidence was being recorded. It is submitted that the witness sitting in USA would not be subject to any control of the Court in India. It is submitted that the witness may commit perjury with impunity and also insult the Court without fear of punishment since he is not amenable to the jurisdiction of the Court. It is submitted that the witness may not remain present and may also refuse to answer questions. It is submitted that commercial studios place restrictions on the number of people who can remain present and may restrict the volume of papers that may be brought into the studio. It was submitted that it would be difficult to place textbooks and

other materials to the witness for the purpose of cross-examination him. Lastly, it was submitted that the cost of video conferencing, if at all permitted, must be borne by the State.

24. To be remembered that what is being considered is recording evidence on commission. Fixing of time for recording evidence on commission is always the duty of the officer who has been deputed to so record evidence. Thus the officer recording the evidence would have the discretion to fix up the time in consultation with VSNL, who are experts in the field and who, will know which is the most convenient time for video conferencing with a person in USA. The Respondent and his counsel will have to make it convenient to attend at the time fixed by the concerned officer. If they do not remain present the Magistrate will take action, as provided in law, to compel attendance. We do not have the slightest doubt that the officer who will be deputed would be one who has authority to administer oaths. That officer will administer the oath. By now science and technology has progressed enough to not worry about a video image/audio interruptions/distortions. Even if there are interruptions they would be of temporary duration. Undoubtedly an officer would have to be deputed, either from India or from the Consulate/Embassy in the country where the evidence is being recorded who would remain present when the evidence is being recorded and who will ensure that there is no other person in the room where the witness is sitting whilst the evidence is being recorded. That officer will ensure that the witness is not coached/tutored/prompted. It would be advisable, though not necessary, that the witness be asked to give evidence in a room in the Consulate/Embassy. As the evidence is being recorded on commission that evidence will subsequently be read into Court. Thus no question arises of the witness insulting the Court. If on reading the evidence the Court finds that the witness has perjured himself, just like in any other evidence on commission, the Court will ignore or disbelieve the evidence. It must be remembered that there have been cases where evidence is recorded on commission and by the time it is read in Court the witness has

given evidence in a Court in India and that then gone away abroad. In all such cases Court would not have been able to take any action in perjury as by the time the evidence was considered, and it was ascertained that there was perjury, the witness was out of the jurisdiction of the Court. Even in those cases the Court could only ignore or disbelieve the evidence. The officer deputed will ensure that the Respondent, his counsel and one assistant are allowed in the studio when the evidence is being recorded. The officer will also ensure that the Respondent is not prevented from bringing into the studio the papers/documents which may be required by him or his counsel. We see no substance in this submission that it would be difficult to put documents or written material to the witness in cross-examination. It is now possible, to show to a party, with whom video conferencing is taking place, any amount of written material. The concerned officer will ensure that once video conferencing commences, as far as possible, it is proceeded with without any adjournments. Further if it is found that Dr Greenberg is not attending at the time/s fixed, without any sufficient cause, then it would be open for the Magistrate to disallow recording of evidence by video conferencing. If the officer finds that Dr. Greenberg is not answering questions, the officer will make a memo of the same. Finally when the evidence is read in Court, this is an aspect which will be taken into consideration for testing the veracity of the evidence. Undoubtedly the costs of video conferencing would have to be borne by the State.

25. Accordingly the impugned judgment is set aside. The Magistrate will now proceed to have the evidence of Dr. Greenberg recorded by way of video conferencing. As the trial has been pending for a long time the trial court is requested to dispose off the case as early as possible and in any case within one year from today. With these directions the Appeals stand disposed of. The Respondent shall pay to the State and the complainant the costs of these Appeals.

MANU/SC/0521/2020

Neutral Citation: 2020/INSC/453

Back to Section 65B of Indian Evidence Act, 1872

IN THE SUPREME COURT OF INDIA

Civil Appeal Nos. 20825-20826 of 2017, 2407 and 3696 of 2018

Decided On: 14.07.2020

Arjun Panditrao Khotkar Vs. Kailash Kushanrao Gorantyal and Ors.

Hon'ble Judges/Coram:

Rohinton Fali Nariman, S. Ravindra Bhat and V. Ramasubramanian, JJ.

Counsels:

For Appearing Parties: Meenakshi Arora, Pravin M. Shah, Sr. Advs., Ravindra Keshavrao Adsure, Haribhau Damodar Zol, Pratik Arvind Bhosle, Prashant R. Katneshwarkar, Ajit B. Kale, Sagar N. Pahune Patil, Shashibhushan P. Adgaonkar, Aditya Sikchi, Jakalwar, Gagan Deep Sharma, Gautam Talukdar, Vikas Upadhyay and Ashwin Kumar Nair, Advs.

JUDGMENT

Authored By : Rohinton Fali Nariman, V. Ramasubramanian

Rohinton Fali Nariman, J.

1. I.A. No. 134044 of 2019 for intervention in C.A. Nos. 20825-20826 of 2017 is allowed.

2. These Civil Appeals have been referred to a Bench of three honourable Judges of this Court by a Division Bench reference order dated 26.07.2019, dealing with the interpretation of Section 65B of the Indian Evidence Act, 1872 ("Evidence Act") by two judgments of this Court. In the reference order, after quoting from Anvar P.V. v. P.K. Basheer and Ors. MANU/SC/0834/2014 : (2014) 10 SCC 473 (a three Judge Bench decision of this Court), it was found that a Division Bench judgment in SLP (Crl.) No. 9431 of 2011 reported as Shafhi Mohammad v. State of Himachal Pradesh MANU/SC/0058/2018 : (2018) 2 SCC 801 may need reconsideration by a Bench of a larger strength.

3. The brief facts necessary to appreciate the controversy in the present case, as elucidated in Civil Appeals 20825-20826 of 2017, are as follows:

i. Two election petitions were filed by the present Respondents before the Bombay High Court Under Sections 80 and 81 of the Representation of the People Act, 1951, challenging the election of the present Appellant, namely, Shri Arjun Panditrao Khotkar (who is the Returned Candidate [hereinafter referred to as the "RC"] belonging to the Shiv Sena party from 101-Jalna Legislative Assembly Constituency) to the Maharashtra State Legislative Assembly for the term commencing November, 2014. Election Petition No. 6 of 2014 was filed by the defeated Congress (I) candidate Shri Kailash Kishanrao Gorantyal, whereas Election Petition No. 9 of 2014 was filed by one Shri Vijay Chaudhary, an elector in the

said constituency. The margin of victory for the RC was extremely narrow, namely 296 votes-the RC having secured 45,078 votes, whereas Shri Kailash Kishanrao Gorantyal secured 44,782 votes.

ii. The entirety of the case before the High Court had revolved around four sets of nomination papers that had been filed by the RC. It was the case of the present Respondents that each set of nomination papers suffered from defects of a substantial nature and that, therefore, all four sets of nomination papers, having been improperly accepted by the Returning Officer of the Election Commission, one Smt. Mutha, (hereinafter referred to as the "RO"), the election of the RC be declared void. In particular, it was the contention of the present Respondents that the late presentation of Nomination Form Nos. 43 and 44 by the RC-inasmuch as they were filed by the RC after the stipulated time of 3.00 p.m. on 27.09.2014 - rendered such nomination forms not being filed in accordance with the law, and ought to have been rejected.

iii. In order to buttress this submission, the Respondents sought to rely upon video-camera arrangements that were made both inside and outside the office of the RO. According to the Respondents, the nomination papers were only offered at 3.53 p.m. (i.e. beyond 3.00 p.m.), as a result of which it was clear that they had been filed out of time. A specific complaint making this objection was submitted by Shri Kailash Kishanrao Gorantyal before the RO on 28.09.2014 at 11.00 a.m., in which it was requested that the RO reject the nomination forms that had been improperly accepted. This request was rejected by the RO on the same day, stating that the nomination forms had, in fact, been filed within time.

4. Given the fact that allegations and counter allegations were made as to the time at which the nomination forms were given to the RO, and that videography was available, the High Court, by its order dated 16.03.2016, ordered the Election Commission and the concerned officers to produce the entire record of the election of this Constituency, including the original video recordings. A specific order was made that this electronic record needs to be produced along with the 'necessary certificates'.

5. In compliance with this order, such video recordings were produced by the Election Commission, together with a certificate issued with regard to the CDs/VCDs, which read as follows:

Certificate

This is to certify that the CDs in respect of video recording done on two days of filing nomination forms of date 26.9.2014 and 27.9.2014 which were present in the record are produced.

Sd/-

Asst. Returning Officer

101 Jalna Legislative Assembly

Constituency/Tahsildar

Jalna

Sd/-

Returning Officer

101 Jalna Legislative Assembly

Constituency/Tahsildar

Jalna

6. Transcripts of the contents of these

CDs/VCDs were prepared by the High Court itself. Issue Nos. 6 and 7 as framed by the High Court (and its answers to these issues) are important, and are set out in the impugned judgment dated 24.11.2017, and extracted hereinbelow:

Issues

6. Whether the Petitioner proves that the nomination papers at Sr. Nos. 43 and 44 were not presented by Respondent/Returned candidate before 3.00 p.m. on 27/09/2014?

Findings

Affirmative. (nomination papers at Sr. Nos. 43 and 44 were not presented by RC before 3.00 p.m. of 27.9.2014.)

7. Whether the Petitioner proves that the Respondent/Returned candidate submitted original forms A and B along with nomination paper only on 27/09/2014 after 3.00 p.m. and along with nomination paper at Sr. No. 44?

Affirmative. (A, B forms were presented after 3.00 p.m. of 27.9.2014)

7. In answering issues 6 and 7, the High Court recorded:

60. Many applications were given by the Petitioner of Election Petition No. 6/2014 to get the copies of electronic record in respect of aforesaid incidents with certificate as provided in Section 65-B of the Evidence Act. The correspondence made with them show that even after leaving of the office by Smt. Mutha, the Government machinery, incharge of the record, intentionally avoided to give certificate as mentioned in Section 65-B of the Evidence Act. After production of the record in the Court in this regard, this Court had

allowed to Election Commission by order to give copies of such record to applicants, but after that also the authority avoided to give copies by giving lame excuses. It needs to be kept in mind that the RC is from political party which has alliance with ruling party, BJP, not only in the State, but also at the center. It is unfortunate that the machinery which is expected to be fair did not act fairly in the present matter. The circumstances of the present matter show that the aforesaid two officers tried to cover up their mischief. However the material gives only one inference that nomination forms Nos. 43 and 44 with A, B forms were presented before the RO by RC after 3.00 p.m. of 27.9.2014 and they were not handed over prior to 3.00 p.m. In view of objection of the learned Counsels of the RC to using the information contained in aforesaid VCDs, marked as Article A1 to A6, this Court had made order on 11.7.2017 that the objections will be considered in the judgment itself. This VCDs are already exhibited by this Court as Exhs. 70 to 75. Thus, if the contents of the aforesaid VCDs can be used in the evidence, then the Petitioners are bound to succeed in the present matters.

8. The High Court then set out Sections 65-A and 65-B of the Evidence Act, and referred to this Court's judgment in Anvar P.V. (supra). The Court held in paragraph 65 of the impugned judgment that the CDs that were produced by the Election Commission could not be treated as an original record and would, therefore, have to be proved by means of secondary evidence. Finding that no written certificate as is required by Section 65-B(4) of the Evidence Act was furnished by any of the election officials, and more particularly, the RO, the High Court then held:

69. In substantive evidence, in the cross examination of Smt. Mutha, it is brought on the record that there was no complaint with regard to working of video cameras used by the office. She has admitted that the video cameras were regularly used in the office for recording the aforesaid incidents and daily VCDs were collected of the recording by her

office. This record was created as the record of the activities of the Election Commission. It is brought on the record that on the first floor of the building, arrangement was made by keeping electronic gazettes like VCR players etc. and arrangement was made for viewing the recording. It is already observed that under her instructions, the VCDs were marked of this recording. Thus, on the basis of her substantive evidence, it can be said that the conditions mentioned in Section 65-B of the Evidence Act are fulfilled and she is certifying the electronic record as required by Section 65-B(4) of the Evidence Act. It can be said that Election Commission, the machinery avoided to give certificate in writing as required by Section 65-B(4) of the Evidence Act. But, substantive evidence is brought on record of competent officer in that regard. When the certificate expected is required to be issued on the basis of best of knowledge and belief, there is evidence on oath about it of Smt. Mutha. Thus, there is something more than the contents of certificate mentioned in Section 65-B(4) of the Evidence Act in the present matters. Such evidence is not barred by the provisions of Section 65-B of the Evidence Act as that evidence is only on certification made by the responsible official position like RO. She was incharge of the management of the relevant activities and so her evidence can be used and needs to be used as the compliance of the provision of Section 65-B of the Evidence Act. This Court holds that there is compliance of the provision of Section 65-B of the Evidence Act in the present matter in respect of aforesaid electronic record and so, the information contained in the record can be used in the evidence.

Based, therefore, on "substantial compliance" of the requirement of giving a certificate Under Section 65B of the Evidence Act, it was held that the CDs/VCDs were admissible in evidence, and based upon this evidence it was found that, as a matter of fact, the nomination forms by the RC had been improperly accepted. The election of the RC was therefore was declared void in the impugned judgment.

9. Shri Ravindra Adsure, learned advocate appearing on behalf of the Appellant, submitted that the judgment in Anvar P.V. (supra) covered the case before us. He argued that without the necessary certificate in writing and signed Under Section 65B(4) of the Evidence Act, the CDs/VCDs upon which the entirety of the judgment rested could not have been admitted in evidence. He referred to Tomaso Bruno and Anr. v. State of Uttar Pradesh MANU/SC/0057/2015 : (2015) 7 SCC 178, and argued that the said judgment did not notice either Section 65B or Anvar P.V. (supra), and was therefore per incuriam. He also argued that Shafhi Mohammad (supra), being a two-Judge Bench of this Court, could not have arrived at a finding contrary to Anvar P.V. (supra), which was the judgment of three Hon'ble Judges of this Court. In particular, he argued that it could not have been held in Shafhi Mohammad (supra) that whenever the interest of justice required, the requirement of a certificate could be done away with Under Section 65B(4). Equally, this Court's judgment dated 03.04.2018, reported as MANU/SC/0331/2018 : (2018) 5 SCC 311, which merely followed the law laid down in Shafhi Mohammad (supra), being contrary to the larger bench judgment in Anvar P.V. (supra), should also be held as not having laid down good law. He further argued that the Madras High Court judgment in K. Ramajyam v. Inspector of Police MANU/TN/0112/2016 : (2016) Crl. LJ 1542, being contrary to Anvar P.V. (supra), also does not lay down the law correctly, in that it holds that evidence aliunde, that is outside Section 65B, can be taken in order to make electronic records admissible. In the facts of the present case, he contended that since it was clear that the requisite certificate had not been issued, no theory of "substantial compliance" with the provisions of Section 65B(4), as was held by the impugned judgment, could possibly be sustained in law.

10. Ms. Meenakshi Arora, learned Senior Advocate appearing on behalf of the Respondents, has taken us in copious detail through the facts of this case, and has argued that the High Court has directed the Election Commission to produce before the Court the original CDs/VCDs of the video-recording done at the office of the RO, along with

the necessary certificate. An application dated 16.08.2016 was also made to the District Election Commission and RO as well as the Assistant RO for the requisite certificate Under Section 65B. A reply was given on 14.09.2016, that this certificate could not be furnished since the matter was sub-judice. Despite this, later on, on 26.07.2017 her client wrote to the authorities again requesting for issuance of certificate Under Section 65B, but by replies dated 31.07.2017 and 02.08.2017, no such certificate was forthcoming. Finally, after having run from pillar to post, her client applied on 26.08.2017 to the Chief Election Commissioner, New Delhi, stating that the authorities were refusing to give her client the necessary certificate Under Section 65B and that the Chief Election Commissioner should therefore ensure that it be given to them. To this communication, no reply was forthcoming from the Chief Election Commissioner, New Delhi. Given this, the High Court at several places had observed in the course of the impugned judgment that the authorities deliberately refused, despite being directed, to supply the requisite certificate Under Section 65B, as a result of which the impugned judgment correctly relied upon the oral testimony of the RO herself. According to Ms. Arora, such oral testimony taken down in the form of writing, which witness statement is signed by the RO, would itself amount to the requisite certificate being issued Under Section 65B(4) in the facts of this case, as was correctly held by the High Court. Quite apart from this, Ms. Arora also stated that-independent of the finding given by the High Court by relying upon CDs/VCDs-the High Court also relied upon other documentary and oral evidence to arrive at the finding that the RC had not handed over nomination forms directly to the RO at 2.20 p.m. (i.e. before 3 pm). In fact, it was found on the basis of this evidence that the nomination forms were handed over and accepted by the RO only after 3.00 p.m. and were therefore improperly accepted, as a result of which, the election of the Appellant was correctly set aside.

11. On law, Ms. Arora argued that it must not be forgotten that Section 65B is a procedural provision, and it cannot be the law that even where a certificate is impossible to get, the

absence of such certificate should result in the denial of crucial evidence which would point at the truth or falsehood of a given set of facts. She, therefore, supported the decision in Shafhi Mohammad (supra), stating that Anvar P.V. (supra) could be considered to be good law only in situations where it was possible for the party to produce the requisite certificate. In cases where this becomes difficult or impossible, the interest of justice would require that a procedural provision be not exalted to such a level that vital evidence would be shut out, resulting in manifest injustice.

12. Shri Vikas Upadhyay, appearing on behalf of the Intervenor, took us through the various provisions of the Information Technology Act, 2000 along with Section 65B of the Evidence Act, and argued that Section 65B does not refer to the stage at which the certificate Under Section 65B(4) ought to be furnished. He relied upon a judgment of the High Court of Rajasthan as well as the High Court of Bombay, in addition to Kundan Singh v. State of the Delhi High Court, to argue that the requisite certificate need not necessarily be given at the time of tendering of evidence but could be at a subsequent stage of the proceedings, as in cases where the requisite certificate is not forthcoming due to no fault of the party who tried to produce it, but who had to apply to a Judge for its production. He also argued that Anvar P.V. (supra) required to be clarified to the extent that Sections 65A and 65B being a complete code as to admissibility of electronic records, the "baggage" of Primary and Secondary Evidence contained in Sections 62 and 65 of the Evidence Act should not at all be adverted to, and that the drill of Section 65A and 65B alone be followed when it comes to admissibility of information contained in electronic records.

13. It is now necessary to set out the relevant provisions of the Evidence Act and the Information Technology Act, 2000. Section 3 of the Evidence Act defines "document" as follows:

Document.-- "Document" means any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter.

"Evidence" in Section 3 is defined as follows:

"Evidence."-- "Evidence" means and includes--(1) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry;

such statements are called oral evidence;

(2) all documents including electronic records produced for the inspection of the Court; such documents are called documentary evidence.

The Evidence Act also declares that the expressions "Certifying Authority", "electronic signature", "Electronic Signature Certificate", "electronic form", "electronic records", "information", "secure electronic record", "secure digital signature" and "subscriber" shall have the meanings respectively assigned to them in the Information Technology Act.

14. Section 22-A of the Evidence Act, which deals with the relevance of oral admissions as to contents of electronic records, reads as follows:

22A. When oral admission as to contents of electronic records are relevant. -- Oral admissions as to the contents of electronic records are not relevant, unless the genuineness of the electronic record produced is in question.

15. Section 45A of the Evidence Act, on the opinion of the Examiner of Electronic Evidence, then states:

45A. Opinion of Examiner of Electronic Evidence.--When in a proceeding, the court has to form an opinion on any matter relating to any information transmitted or stored in any computer resource or any other electronic or digital form, the opinion of the Examiner of Electronic Evidence referred to in Section 79A of the Information Technology Act, 2000 (21 of 2000), is a relevant fact.

Explanation.-- For the purposes of this section, an Examiner of Electronic Evidence shall be an expert.

16. Sections 65-A and 65-B of the Evidence Act read as follows:

65A. Special provisions as to evidence relating to electronic record.--The contents of electronic records may be proved in accordance with the provisions of Section 65B.

65B. Admissibility of electronic records.- (1) Notwithstanding anything contained in this Act, any information contained in an electronic record which is printed on a paper,

stored, recorded or copied in optical or magnetic media produced by a computer (hereinafter referred to as the computer output) shall be deemed to be also a document, if the conditions mentioned in this Section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence or any contents of the original or of any fact stated therein of which direct evidence would be admissible.

(2) The conditions referred to in Sub-section (1) in respect of a computer output shall be the following, namely:

(a) the computer output containing the information was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;

(b) during the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer in the ordinary course of the said activities;

(c) throughout the material part of the said period, the computer was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents; and

(d) the information contained in the electronic record reproduces or is derived from such information fed into the computer in the ordinary course of the said activities.

(3) Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in Clause (a) of Sub-section (2) was regularly performed by computers, whether-

(a) by a combination of computers operating over that period; or

(b) by different computers operating in succession over that period; or

(c) by different combinations of computers operating in succession over that period; or

(d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers,

all the computers used for that purpose during that period shall be treated for the purposes of this Section as constituting a single computer; and references in this Section to a computer shall be construed accordingly.

(4) In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say, -

(a) identifying the electronic record containing the statement and describing the manner 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;

(c) dealing with any of the matters to which the conditions mentioned in Sub-section (2) relate,

and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this 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.

(5) For the purposes of this section,

(a) information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment; --

(b) whether in the course of activities carried on by any official, information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;

(c) a computer output shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.

Explanation. -- For the purposes of this Section any reference to information being derived from other information shall be a reference to its being derived therefrom by calculation, comparison or any other process.

17. The following definitions as contained in Section 2 of the Information Technology Act, 2000 are also relevant:

(i) "computer" means any electronic, magnetic, optical or other high-speed data processing device or system which performs logical, arithmetic, and memory functions by manipulations of electronic, magnetic or optical impulses, and includes all input, output, processing, storage, computer software or communication facilities which are connected or related to the computer in a computer system or computer network;

(j) "computer network" means the inter-connection of one or more computers or computer systems or communication device through- (i) the use of satellite, microwave, terrestrial line, wire, wireless or other communication media; and (ii) terminals or a complex consisting of two or more interconnected computers or communication device whether or not the inter-connection is continuously maintained;

(l) "computer system" means a device or collection of devices, including input and output support devices and excluding calculators which are not programmable and capable of being used in conjunction with external files, which contain computer programmes, electronic instructions, input data and output data, that performs logic, arithmetic, data storage and retrieval, communication control and other functions;

(o) "data" means a representation of information, knowledge, facts, concepts or instructions which are being prepared or have been prepared in a formalised manner, and is intended to be processed, is being processed or has been processed in a computer system or computer network, and may be in any form (including computer printouts magnetic or optical storage media, punched cards, punched tapes) or stored internally in the memory of the computer;

(r) "electronic form", with reference to information, means any information generated, sent, received or stored in media, magnetic, optical, computer memory, micro film, computer generated micro fiche or similar device;

(t) "electronic record" means data, record or data generated, image or sound stored, received or sent in an electronic form or micro film or computer generated micro fiche;

18. Sections 65A and 65B occur in Chapter V of the Evidence Act which is entitled "Of Documentary Evidence". Section 61 of the Evidence Act deals with the proof of contents of documents, and states that the contents of documents may be proved either by primary or by secondary evidence. Section 62 of the Evidence Act defines primary evidence as meaning the document itself produced for the inspection of the court. Section 63 of the Evidence Act speaks of the kind or types of secondary evidence by which documents may be proved. Section 64 of the Evidence Act then enacts that documents must be proved by primary evidence except in the circumstances hereinafter mentioned. Section 65 of the Evidence Act is important, and states that secondary evidence may be given of "the existence, condition or contents of a document in the following cases...".

19. Section 65 differentiates between existence, condition and contents of a document. Whereas "existence" goes to "admissibility" of a document, "contents" of a document are to be proved after a document becomes admissible in evidence. Section 65A speaks of "contents" of electronic records being proved in accordance with the provisions of Section 65B. Section 65B speaks of "admissibility" of electronic records which deals with "existence" and "contents" of electronic records being proved once admissible into evidence. With these prefatory observations let us have a closer look at Sections 65A and 65B.

20. It will first be noticed that the subject matter of Sections 65A and 65B of the Evidence Act is proof of information contained in electronic records. The marginal note to Section 65A indicates that "special provisions" as to evidence relating to electronic records are laid down in this provision. The marginal note to Section 65B then refers to "admissibility of electronic records".

21. Section 65B(1) opens with a non-obstante clause, and makes it clear that any information that is contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer shall be deemed to be a document, and shall be admissible in any proceedings without further proof of production of the original, as evidence of the contents of the original or of any facts stated therein of which direct evidence would be admissible. The deeming fiction is for the reason that "document" as defined by Section 3 of the Evidence Act does not include electronic records.

22. Section 65B(2) then refers to the conditions that must be satisfied in respect of a computer output, and states that the test for being included in conditions 65B(2(a)) to 65(2(d)) is that the computer be regularly used to store or process information for purposes of activities regularly carried on in the period in question. The conditions mentioned in Sub-sections 2(a) to 2(d) must be satisfied cumulatively.

23. Under Sub-section (4), a certificate is to be produced that identifies the electronic record containing the statement and describes the manner in which it is produced, or gives particulars of the device involved in the production of the electronic record to show that the electronic record was produced by a computer, by either a person occupying a responsible official position in relation to the operation of the relevant device; or a person who is in the management of "relevant activities" - whichever is appropriate. What is also of importance is that it shall be sufficient for such matter to be stated to the "best of the knowledge and belief of the person stating it". Here, "doing any of the following things..." must be read as doing all of the following things, it being well settled that the expression "any" can mean "all" given the context (see, for example, this Court's judgments in Bansilal Agarwalla v. State of Bihar (1962) 1 SCR 331 and Om Parkash v. Union of India

MANU/SC/0092/2010 : (2010) 4 SCC 172). This being the case, the conditions mentioned in Sub-section (4) must also be interpreted as being cumulative.

24. It is now appropriate to examine the manner in which Section 65B was interpreted by this Court. In Anvar P.V. (supra), a three Judge Bench of this Court, after setting out Sections 65A and 65B of the Evidence Act, held:

14. Any documentary evidence by way of an electronic record under the Evidence Act, in view of Sections 59 and 65-A, can be proved only in accordance with the procedure prescribed Under Section 65-B. Section 65-B deals with the admissibility of the electronic record. The purpose of these provisions is to sanctify secondary evidence in electronic form, generated by a computer. It may be noted that the Section starts with a non obstante clause. Thus, notwithstanding anything contained in the Evidence Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer shall be deemed to be a document only if the conditions mentioned Under Sub-section (2) are satisfied, without further proof or production of the original. The very admissibility of such a document i.e. electronic record which is called as computer output, depends on the satisfaction of the four conditions Under Section 65-B(2). Following are the specified conditions Under Section 65-B(2) of the Evidence Act:

(i) The electronic record containing the information should have been produced by the computer during the period over which the same was regularly used to store or process information for the purpose of any activity regularly carried on over that period by the person having lawful control over the use of that computer;

(ii) The information of the kind contained in electronic record or of the kind from which the information is derived was regularly fed into the computer in the ordinary course of the said activity;

(iii) During the material part of the said period, the computer was operating properly and that even if it was not operating properly for some time, the break or breaks had not affected either the record or the accuracy of its contents; and

(iv) The information contained in the record should be a reproduction or derivation from the information fed into the computer in the ordinary course of the said activity.

15. Under Section 65-B(4) of the Evidence Act, if it is desired to give a statement in any proceedings pertaining to an electronic record, it is permissible provided the following conditions are satisfied:

(a) There must be a certificate which identifies the electronic record containing the statement;

(b) The certificate must describe the manner in which the electronic record was produced;

(c) The certificate must furnish the particulars of the device involved in the production of that record;

(d) The certificate must deal with the applicable conditions mentioned Under Section 65-B(2) of the Evidence Act; and

(e) The certificate must be signed by a person occupying a responsible official position in relation to the operation of the relevant device.

16. It is further clarified that the person need only to state in the certificate that the same is to the best of his knowledge and belief. Most importantly, such a certificate must accompany the electronic record like computer printout, compact disc (CD), video compact disc (VCD), pen drive, etc., pertaining to which a statement is sought to be given in evidence, when the same is produced in evidence. All these safeguards are taken to ensure the source and authenticity, which are the two hallmarks pertaining to electronic record sought to be used as evidence. Electronic records being more susceptible to tampering, alteration, transposition, excision, etc. without such safeguards, the whole trial based on proof of electronic records can lead to travesty of justice.

17. Only if the electronic record is duly produced in terms of Section 65-B of the Evidence Act, would the question arise as to the genuineness thereof and in that situation, resort can be made to Section 45-A--opinion of Examiner of Electronic Evidence.

18. The Evidence Act does not contemplate or permit the proof of an electronic record by oral evidence if requirements Under Section 65-B of the Evidence Act are not complied with, as the law now stands in India.

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20. Proof of electronic record is a special provision introduced by the IT Act amending various provisions under the Evidence Act. The very caption of Section 65-A of the Evidence Act, read with Sections 59 and 65-B is sufficient to hold that the special provisions on evidence relating to electronic record shall be governed by the procedure prescribed Under Section 65-B of the Evidence Act. That is a complete code in itself. Being a special law, the general law Under Sections 63 and 65 has to yield.

21. In State (NCT of Delhi) v. Navjot Sandhu a two-Judge Bench of this Court had an occasion to consider an issue on production of electronic record as evidence. While considering the printouts of the computerised records of the calls pertaining to the cellphones, it was held at para 150 as follows: (SCC p. 714)

150. According to Section 63, "secondary evidence" means and includes, among other things, 'copies made from the original by mechanical processes which in themselves insure the accuracy of the copy, and copies compared with such copies'. Section 65 enables secondary evidence of the contents of a document to be adduced if the original is of such a nature as not to be easily movable. It is not in dispute that the information contained in the call records is stored in huge servers which cannot be easily moved and produced in the court. That is what the High Court has also observed at para 276. Hence, printouts taken from the computers/servers by mechanical process and certified by a responsible official of the service-providing company can be led in evidence through a witness who can identify the signatures of the certifying officer or otherwise speak of the facts based on his personal knowledge. Irrespective of the compliance with the requirements of Section 65-B, which is a provision dealing with admissibility of electronic

records, there is no bar to adducing secondary evidence under the other provisions of the Evidence Act, namely, Sections 63 and 65. It may be that the certificate containing the details in Sub-section (4) of Section 65-B is not filed in the instant case, but that does not mean that secondary evidence cannot be given even if the law permits such evidence to be given in the circumstances mentioned in the relevant provisions, namely, Sections 63 and 65.

It may be seen that it was a case where a responsible official had duly certified the document at the time of production itself. The signatures in the certificate were also identified. That is apparently in compliance with the procedure prescribed Under Section 65-B of the Evidence Act. However, it was held that irrespective of the compliance with the requirements of Section 65-B, which is a special provision dealing with admissibility of the electronic record, there is no bar in adducing secondary evidence, Under Sections 63 and 65, of an electronic record.

22. The evidence relating to electronic record, as noted hereinbefore, being a special provision, the general law on secondary evidence Under Section 63 read with Section 65 of the Evidence Act shall yield to the same. Generalia specialibus non derogant, special law will always prevail over the general law. It appears, the court omitted to take note of Sections 59 and 65-A dealing with the admissibility of electronic record. Sections 63 and 65 have no application in the case of secondary evidence by way of electronic record; the same is wholly governed by Sections 65-A and 65-B. To that extent, the statement of law on admissibility of secondary evidence pertaining to electronic record, as stated by this Court in Navjot Sandhu case, does not lay down the correct legal position. It requires to be overruled and we do so. An electronic record by way of secondary evidence shall not be admitted in evidence unless the requirements Under Section 65-B are satisfied. Thus, in the case of CD, VCD, chip, etc., the same shall be accompanied by the certificate in

terms of Section 65-B obtained at the time of taking the document, without which, the secondary evidence pertaining to that electronic record, is inadmissible.

23. The Appellant admittedly has not produced any certificate in terms of Section 65-B in respect of the CDs, Exts. P-4, P-8, P-9, P-10, P-12, P-13, P-15, P-20 and P-22. Therefore, the same cannot be admitted in evidence. Thus, the whole case set up regarding the corrupt practice using songs, announcements and speeches fall to the ground.

24. The situation would have been different had the Appellant adduced primary evidence, by making available in evidence, the CDs used for announcement and songs. Had those CDs used for objectionable songs or announcements been duly got seized through the police or Election Commission and had the same been used as primary evidence, the High Court could have played the same in court to see whether the allegations were true. That is not the situation in this case. The speeches, songs and announcements were recorded using other instruments and by feeding them into a computer, CDs were made therefrom which were produced in court, without due certification. Those CDs cannot be admitted in evidence since the mandatory requirements of Section 65-B of the Evidence Act are not satisfied. It is clarified that notwithstanding what we have stated herein in the preceding paragraphs on the secondary evidence of electronic record with reference to Sections 59, 65-A and 65-B of the Evidence Act, if an electronic record as such is used as primary evidence Under Section 62 of the Evidence Act, the same is admissible in evidence, without compliance with the conditions in Section 65-B of the Evidence Act.

25. Shri Upadhyay took exception to the language of paragraph 24 in this judgment. According to the learned Counsel, primary and secondary evidence as to documents,

referred to in Sections 61 to Section 65 of the Evidence Act, should be kept out of admissibility of electronic records, given the fact that Sections 65A and 65B are a complete code on the subject.

26. At this juncture, it is important to note that Section 65B has its genesis in Section 5 of the Civil Evidence Act 1968 (UK), which reads as follows:

Admissibility of statements produced by computers.

(1) In any civil proceedings a statement contained in a document produced by a computer shall, subject to Rules of court, be admissible as evidence of any fact stated therein of which direct oral evidence would be admissible, if it is shown that the conditions mentioned in Sub-section (2) below are satisfied in relation to the statement and computer in question.

(2) The said conditions are--

(a) that the document containing the statement was produced by the computer during a period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period, whether for profit or not, by anybody, whether corporate or not, or by any individual;

(b) that over that period there was regularly supplied to the computer in the ordinary course of those activities information of the kind contained in the statement or of the kind from which the information so contained is derived;

(c) that throughout the material part of that period the computer was operating properly or, if not, that any respect in which it was not operating properly or was out of operation during that part of that period was not such as to affect the production of the document or the accuracy of its contents; and

(d) that the information contained in the statement reproduces or is derived from information supplied to the computer in the ordinary course of those activities.

(3) Where over a period the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in Sub-section (2)(a) above was regularly performed by computers, whether-

(a) by a combination of computers operating over that period; or

(b) by different computers operating in succession over that period; or

(c) by different combinations of computers operating in succession over that period; or

(d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers,

all the computers used for that purpose during that period shall be treated for the purposes of this Part of this Act as constituting a single computer; and references in this Part of this Act to a computer shall be construed accordingly.

(4) In any civil proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say--

(a) identifying the document 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 document as may be appropriate for the purpose of showing that the document was produced by a computer;

(c) dealing with any of the matters to which the conditions mentioned in Sub-section (2) above relate,

and purporting to be signed by a person occupying a responsible position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and

for the purposes of this 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.

(5) For the purposes of this Part of this Act--

(a) information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;

(b) where, in the course of activities carried on by any individual or body, information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;

(c) a document shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.

(6) Subject to Sub-section (3) above, in this Part of this Act "computer " means any device for storing and processing information, and any reference to information being derived from other information is a reference to its being derived therefrom by calculation, comparison or any other process."

27. It may be noticed that Sub-sections (2) to (5) of Section 65B of the Evidence Act are a reproduction of Sub-sections (2) to (5) of Section 5 of the Civil Evidence Act, 1968, with minor changes3. The definition of "computer" Under Section 5(6) of the Civil Evidence Act, 1968 was not, however, adopted by Section 2(i) of the Information Technology Act, 2000, which as noted above, is a 'means and includes' definition of a much more complex and intricate nature. It is also important to note Section 6(1) and (5) of the Civil Evidence Act, 1968, which state as follows:

(1) Where in any civil proceedings a statement contained in a document is proposed to be given in evidence by virtue of Section 2, 4 or 5 of this Act it may, subject to any Rules of court, be proved by the production of that document or (whether or not that document is still in existence) by the production of a copy of that document, or of the material part thereof, authenticated in such manner as the court may approve.

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(5) If any person in a certificate tendered in evidence in civil proceedings by virtue of Section 5(4) of this Act wilfully makes a statement material in those proceedings which he knows to be false or does not believe to be true, he shall be liable on conviction on indictment to imprisonment for a term not exceeding two years or a fine or both.

28. Section 6(1), in essence, maintains the dichotomy between proof by 'primary' and 'secondary' evidence-proof by production of the 'document' itself being primary evidence, and proof by production of a copy of that document, as authenticated, being secondary evidence. Section 6(5), which gives teeth to the person granting the certificate

mentioned in Section 5(4) of the Act, by punishing false statements wilfully made in the certificate, has not been included in the Indian Evidence Act. These Sections have since been repealed by the Civil Evidence Act of 1995 (UK), pursuant to a UK Law Commission Report published in September, 1993 (Law Com. No. 216), by which the strict Rule as to hearsay evidence was relaxed, and hearsay evidence was made admissible in the circumstances mentioned by the Civil Evidence Act of 1995. Sections 8, 9 and 13 of this Act are important, and are set out hereinbelow:

8. Proof of statements contained in documents.

(1) Where a statement contained in a document is admissible as evidence in civil proceedings, it may be proved--

(a) by the production of that document, or

(b) whether or not that document is still in existence, by the production of a copy of that document or of the material part of it,

authenticated in such manner as the court may approve.

(2) It is immaterial for this purpose how many removes there are between a copy and the original.

9. Proof of records of business or public authority.

(1) A document which is shown to form part of the records of a business or public authority may be received in evidence in civil proceedings without further proof.

(2) A document shall be taken to form part of the records of a business or public authority if there is produced to the court a certificate to that effect signed by an officer of the business or authority to which the records belong. For this purpose--

(a) a document purporting to be a certificate signed by an officer of a business or public authority shall be deemed to have been duly given by such an officer and signed by him; and

(b) a certificate shall be treated as signed by a person if it purports to bear a facsimile of his signature.

(3) The absence of an entry in the records of a business or public authority may be proved in civil proceedings by affidavit of an officer of the business or authority to which the records belong.

(4) In this section--

"records" means records in whatever form;

"business" includes any activity regularly carried on over a period of time, whether for profit or not, by anybody (whether corporate or not) or by an individual;

"officer" includes any person occupying a responsible position in relation to the relevant activities of the business or public authority or in relation to its records; and

"public authority" includes any public or statutory undertaking, any government department and any person holding office under Her Majesty.

(5) The court may, having regard to the circumstances of the case, direct that all or any of the above provisions of this Section do not apply in relation to a particular document or record, or description of documents or records.

Section 13 of this Act defines "document" as follows:

"document" means anything in which information of any description is recorded, and "copy", in relation to a document, means anything onto which information recorded in the document has been copied, by whatever means and whether directly or indirectly;

29. Section 15(2) of this Act repeals enactments mentioned in Schedule II therein; and Schedule II repeals Part I of the Civil Evidence Act, 1968 - of which Sections 5 and 6 were a part. The definition of "records" and "document" in this Act would show that electronic

records are considered to be part of "document" as defined, needing no separate treatment as to admissibility or proof. It is thus clear that in UK law, as at present, no distinction is made between computer generated evidence and other evidence either qua the admissibility of, or the attachment of weight to, such evidence.

30. Coming back to Section 65B of the Indian Evidence Act, Sub-section (1) needs to be analysed. The Sub-section begins with a non-obstante clause, and then goes on to mention information contained in an electronic record produced by a computer, which is, by a deeming fiction, then made a "document". This deeming fiction only takes effect if the further conditions mentioned in the Section are satisfied in relation to both the information and the computer in question; and if such conditions are met, the "document" shall then be admissible in any proceedings. The words "...without further proof or production of the original..." make it clear that once the deeming fiction is given effect by the fulfilment of the conditions mentioned in the Section, the "deemed document" now becomes admissible in evidence without further proof or production of the original as evidence of any contents of the original, or of any fact stated therein of which direct evidence would be admissible.

31. The non-obstante Clause in Sub-section (1) makes it clear that when it comes to information contained in an electronic record, admissibility and proof thereof must follow the drill of Section 65B, which is a special provision in this behalf-Sections 62 to 65 being irrelevant for this purpose. However, Section 65B(1) clearly differentiates between the "original" document-which would be the original "electronic record" contained in the "computer" in which the original information is first stored-and the computer output containing such information, which then may be treated as evidence of the contents of the "original" document. All this necessarily shows that Section 65B differentiates

between the original information contained in the "computer" itself and copies made therefrom - the former being primary evidence, and the latter being secondary evidence.

32. Quite obviously, the requisite certificate in Sub-section (4) is unnecessary if the original document itself is produced. This can be done by the owner of a laptop computer, a computer tablet or even a mobile phone, by stepping into the witness box and proving that the concerned device, on which the original information is first stored, is owned and/or operated by him. In cases where "the computer", as defined, happens to be a part of a "computer system" or "computer network" (as defined in the Information Technology Act, 2000) and it becomes impossible to physically bring such network or system to the Court, then the only means of proving information contained in such electronic record can be in accordance with Section 65B(1), together with the requisite certificate Under Section 65B(4). This being the case, it is necessary to clarify what is contained in the last sentence in paragraph 24 of Anvar P.V. (supra) which reads as "...if an electronic record as such is used as primary evidence Under Section 62 of the Evidence Act...". This may more appropriately be read without the words "Under Section 62 of the Evidence Act,...". With this minor clarification, the law stated in paragraph 24 of Anvar P.V. (supra) does not need to be revisited.

33. In fact, in Vikram Singh and Anr. v. State of Punjab and Anr. MANU/SC/0758/2017 : (2017) 8 SCC 518, a three-Judge Bench of this Court followed the law in Anvar P.V. (supra), clearly stating that where primary evidence in electronic form has been produced, no certificate Under Section 65B would be necessary. This was so stated as follows:

25. The learned Counsel contended that the tape-recorded conversation has been relied on without there being any certificate Under Section 65-B of the Evidence Act, 1872. It was contended that audio tapes are recorded on magnetic media, the same could be established through a certificate Under Section 65-B and in the absence of the certificate, the document which constitutes electronic record, cannot be deemed to be a valid evidence and has to be ignored from consideration. Reliance has been placed by the learned Counsel on the judgment of this Court in Anvar P.V. v. P.K. Basheer. The conversation on the landline phone of the complainant situate in a shop was recorded by the complainant. The same cassette containing conversation by which ransom call was made on the landline phone was handed over by the complainant in original to the police. This Court in its judgment dated 25-1-2010 has referred to the aforesaid fact and has noted the said fact to the following effect:

5. The cassette on which the conversations had been recorded on the landline was handed over by Ravi Verma to SI Jiwan Kumar and on a replay of the tape, the conversation was clearly audible and was heard by the police.

26. The tape-recorded conversation was not secondary evidence which required certificate Under Section 65-B, since it was the original cassette by which ransom call was tape-recorded, there cannot be any dispute that for admission of secondary evidence of electronic record a certificate as contemplated by Section 65-B is a mandatory condition.4

34. Despite the law so declared in Anvar P.V. (supra), wherein this Court made it clear that the special provisions of Sections 65A and 65B of the Evidence Act are a complete Code in themselves when it comes to admissibility of evidence of information contained in electronic records, and also that a written certificate Under Section 65B(4) is a sine qua

non for admissibility of such evidence, a discordant note was soon struck in Tomaso Bruno (supra). In this judgment, another three Judge Bench dealt with the admissibility of evidence in a criminal case in which CCTV footage was sought to be relied upon in evidence. The Court held:

24. With the advancement of information technology, scientific temper in the individual and at the institutional level is to pervade the methods of investigation. With the increasing impact of technology in everyday life and as a result, the production of electronic evidence in cases has become relevant to establish the guilt of the Accused or the liability of the Defendant. Electronic documents stricto sensu are admitted as material evidence. With the amendment to the Evidence Act in 2000, Sections 65-A and 65-B were introduced into Chapter V relating to documentary evidence. Section 65-A provides that contents of electronic records may be admitted as evidence if the criteria provided in Section 65-B is complied with. The computer generated electronic records in evidence are admissible at a trial if proved in the manner specified by Section 65-B of the Evidence Act. Sub-section (1) of Section 65-B makes admissible as a document, paper printout of electronic records stored in optical or magnetic media produced by a computer, subject to the fulfilment of the conditions specified in Sub-section (2) of Section 65-B. Secondary evidence of contents of document can also be led Under Section 65 of the Evidence Act. PW 13 stated that he saw the full video recording of the fateful night in the CCTV camera, but he has not recorded the same in the case diary as nothing substantial to be adduced as evidence was present in it.

25. The production of scientific and electronic evidence in court as contemplated Under Section 65-B of the Evidence Act is of great help to the investigating agency and also to the prosecution. The relevance of electronic evidence is also evident in the light of Mohd. Ajmal Amir Kasab v. State of Maharashtra [MANU/SC/0681/2012 : (2012) 9 SCC 1],

wherein production of transcripts of internet transactions helped the prosecution case a great deal in proving the guilt of the Accused. Similarly, in State (NCT of Delhi) v. Navjot Sandhu, the links between the slain terrorists and the masterminds of the attack were established only through phone call transcripts obtained from the mobile service providers.

35. What is clear from this judgment is that the judgment of Anvar P.V. (supra) was not referred to at all. In fact, the judgment in State v. Navjot Sandhu MANU/SC/0465/2005 : (2005) 11 SCC 600 was adverted to, which was a judgment specifically overruled by Anvar P.V. (supra). It may also be stated that Section 65B(4) was also not at all adverted to by this judgment. Hence, the declaration of law in Tomaso Bruno (supra) following Navjot Sandhu (supra) that secondary evidence of the contents of a document can also be led Under Section 65 of the Evidence Act to make CCTV footage admissible would be in the teeth of Anvar P.V., (supra) and cannot be said to be a correct statement of the law. The said view is accordingly overruled.

36. We now come to the decision in Shafhi Mohammad (supra). In this case, by an order dated 30.01.2018 made by two learned Judges of this Court, it was stated:

21. We have been taken through certain decisions which may be referred to. In Ram Singh v. Ram Singh [Ram Singh v. Ram Singh, MANU/SC/0176/1985 : 1985 Supp SCC 611], a three-Judge Bench considered the said issue. English judgments in R. v. Maqsud Ali [R. v. Maqsud Ali, MANU/UKCR/0026/1965 : (1966) 1 QB 688] and R. v. Robson [R. v. Robson, (1972) 1 WLR 651] and American Law as noted in American Jurisprudence 2d (Vol. 29) p. 494, were cited with approval to the effect that it will be wrong to deny to the law of evidence advantages to be gained by new techniques and new devices, provided

the accuracy of the recording can be proved. Such evidence should always be regarded with some caution and assessed in the light of all the circumstances of each case. Electronic evidence was held to be admissible subject to safeguards adopted by the Court about the authenticity of the same. In the case of tape-recording, it was observed that voice of the speaker must be duly identified, accuracy of the statement was required to be proved by the maker of the record, possibility of tampering was required to be ruled out. Reliability of the piece of evidence is certainly a matter to be determined in the facts and circumstances of a fact situation. However, threshold admissibility of an electronic evidence cannot be ruled out on any technicality if the same was relevant.

22. In Tukaram S. Dighole v. Manikrao Shivaji Kokate [MANU/SC/0086/2010 : (2010) 4 SCC 329], the same principle was reiterated. This Court observed that new techniques and devices are the order of the day. Though such devices are susceptible to tampering, no exhaustive Rule could be laid down by which the admission of such evidence may be judged. Standard of proof of its authenticity and accuracy has to be more stringent than other documentary evidence.

23. In Tomaso Bruno v. State of U.P. [MANU/SC/0057/2015 : (2015) 7 SCC 178], a three-Judge Bench observed that advancement of information technology and scientific temper must pervade the method of investigation. Electronic evidence was relevant to establish facts. Scientific and electronic evidence can be a great help to an investigating agency. Reference was made to the decisions of this Court in Mohd. Ajmal Amir Kasab v. State of Maharashtra [MANU/SC/0681/2012 : (2012) 9 SCC 1] and State (NCT of Delhi) v. Navjot Sandhu.

24. We may, however, also refer to the judgment of this Court in Anvar P.V. v. P.K. Basheer, delivered by a three-Judge Bench. In the said judgment in para 24 it was observed that electronic evidence by way of primary evidence was covered by Section 62 of the Evidence Act to which procedure of Section 65-B of the Evidence Act was not admissible. However, for the secondary evidence, procedure of Section 65-B of the Evidence Act was required to be followed and a contrary view taken in Navjot Sandhu that secondary evidence of electronic record could be covered Under Sections 63 and 65 of the Evidence Act, was not correct. There are, however, observations in para 14 to the effect that electronic record can be proved only as per Section 65-B of the Evidence Act.

25. Though in view of the three-Judge Bench judgments in Tomaso Bruno and Ram Singh [MANU/SC/0176/1985 : 1985 Supp SCC 611], it can be safely held that electronic evidence is admissible and provisions Under Sections 65-A and 65-B of the Evidence Act are by way of a clarification and are procedural provisions. If the electronic evidence is authentic and relevant the same can certainly be admitted subject to the Court being satisfied about its authenticity and procedure for its admissibility may depend on fact situation such as whether the person producing such evidence is in a position to furnish certificate Under Section 65-B(4).

26. Sections 65-A and 65-B of the Evidence Act, 1872 cannot be held to be a complete code on the subject. In Anvar P.V., this Court in para 24 clarified that primary evidence of electronic record was not covered Under Sections 65-A and 65-B of the Evidence Act. Primary evidence is the document produced before the Court and the expression "document" is defined in Section 3 of the Evidence Act to mean any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter.

27. The term "electronic record" is defined in Section 2(1) (t) of the Information Technology Act, 2000 as follows:

2.(1)(t) "electronic record" means data, record or data generated, image or sound stored, received or sent in an electronic form or micro film or computer generated micro fiche;

28. The expression "data" is defined in Section 2(1)(o) of the Information Technology Act as follows:

2.(1)(o) "data" means a representation of information, knowledge, facts, concepts or instructions which are being prepared or have been prepared in a formalised manner, and is intended to be processed, is being processed or has been processed in a computer system or computer network, and may be in any form (including computer printouts magnetic or optical storage media, punched cards, punched tapes) or stored internally in the memory of the computer;

29. The applicability of procedural requirement Under Section 65-B(4) of the Evidence Act of furnishing certificate is to be applied only when such electronic evidence is produced by a person who is in a position to produce such certificate being in control of the said device and not of the opposite party. In a case where electronic evidence is produced by a party who is not in possession of a device, applicability of Sections 63 and 65 of the Evidence Act cannot be held to be excluded. In such case, procedure under the said Sections can certainly be invoked. If this is not so permitted, it will be denial of justice to the person who is in possession of authentic evidence/witness but on account of

manner of proving, such document is kept out of consideration by the court in the absence of certificate Under Section 65-B(4) of the Evidence Act, which party producing cannot possibly secure. Thus, requirement of certificate Under Section 65-B(4) is not always mandatory.

30. Accordingly, we clarify the legal position on the subject on the admissibility of the electronic evidence, especially by a party who is not in possession of device from which the document is produced. Such party cannot be required to produce certificate Under Section 65-B(4) of the Evidence Act. The applicability of requirement of certificate being procedural can be relaxed by the court wherever interest of justice so justifies.

37. It may be noted that the judgments referred to in paragraph 21 of Shafhi Mohammed (supra) are all judgments before the year 2000, when Amendment Act 21 of 2000 first introduced Sections 65A and 65B into the Evidence Act and can, therefore, be of no assistance on interpreting the law as to admissibility into evidence of information contained in electronic records. Likewise, the judgment cited in paragraph 22, namely Tukaram S. Dighole v. Manikrao Shivaji Kokate MANU/SC/0086/2010 : (2010) 4 SCC 329 is also a judgment which does not deal with Section 65B. In fact, paragraph 20 of the said judgment states the issues before the Court as follows:

20. However, in the present case, the dispute is not whether a cassette is a public document but the issues are whether:

(i) the finding by the Tribunal that in the absence of any evidence to show that the VHS cassette was obtained by the Appellant from the Election Commission, the cassette placed on record by the Appellant could not be treated as a public document is perverse; and

(ii) a mere production of an audio cassette, assuming that the same is a certified copy issued by the Election Commission, is per se conclusive of the fact that what is contained in the cassette is the true and correct recording of the speech allegedly delivered by the Respondent or his agent?

The second issue was answered referring to judgments which did not deal with Section 65B at all.

38. Much succour was taken from the three Judge Bench decision in Tomaso Bruno (supra) in paragraph 23, which, as has been stated hereinabove, does not state the law on Section 65B correctly. Anvar P.V. (supra) was referred to in paragraph 24, but surprisingly, in paragraph 26, the Court held that Sections 65A and 65B cannot be held to be a complete Code on the subject, directly contrary to what was stated by a three Judge Bench in Anvar P.V. (supra). It was then "clarified" that the requirement of a certificate Under Section 64B(4), being procedural, can be relaxed by the Court wherever the interest of justice so justifies, and one circumstance in which the interest of justice so justifies would be where the electronic device is produced by a party who is not in possession of such device, as a result of which such party would not be in a position to secure the requisite certificate.

39. Quite apart from the fact that the judgment in Shafhi Mohammad (supra) states the law incorrectly and is in the teeth of the judgment in Anvar P.V. (supra), following the judgment in Tomaso Bruno (supra) - which has been held to be per incuriam hereinabove-the underlying reasoning of the difficulty of producing a certificate by a party who is not in possession of an electronic device is also wholly incorrect.

40. As a matter of fact, Section 165 of the Evidence Act empowers a Judge to order production of any document or thing in order to discover or obtain proof of relevant facts. Section 165 of the Evidence Act states as follows:

Section 165. Judge's power to put questions or order production.- The Judge may, in order to discover or to obtain proper proof of relevant facts, ask any question he pleases, in any form, at any time, of any witness, or of the parties about any fact relevant or irrelevant; and may order the production of any document or thing; and neither the parties nor their agents shall be entitled to make any objection to any such question or order, nor, without the leave of the Court, to cross-examine any witness upon any answer given in reply to any such question.

Provided that the judgment must be based upon facts declared by this Act to be relevant, and duly proved:

Provided also that this Section shall not authorize any Judge to compel any witness to answer any question or to produce any document which such witness would be entitled to refuse to answer or produce Under Sections 121 to 131, both inclusive, if the question were asked or the document were called for by the adverse party; nor shall the Judge ask

any question which it would be improper for any other person to ask Under Section 148 or 149; nor shall he dispense with primary evidence of any document, except in the cases hereinbefore excepted.

41. Likewise, Under Order XVI of the Code of Civil Procedure, 1908 ("CPC") which deals with 'Summoning and Attendance of Witnesses', the Court can issue the following orders for the production of documents:

6. Summons to produce document.--Any person may be summoned to produce a document, without being summoned to give evidence; and any person summoned merely to produce a document shall be deemed to have complied with the summons if he causes such document to be produced instead of attending personally to produce the same.

7. Power to require persons present in Court to give evidence or produce document.--Any person present in Court may be required by the Court to give evidence or to produce any document then and there in his possession or power.

xxx xxx xxx

10. Procedure where witness fails to comply with summons.--(1) Where a person has been issued summons either to attend to give evidence or to produce a document, fails to attend or to produce the document in compliance with such summons, the Court-- (a) shall, if the certificate of the serving officer has not been verified by the affidavit, or if

service of the summons has affected by a party or his agent, or (b) may, if the certificate of the serving officer has been so verified, examine on oath the serving officer or the party or his agent, as the case may be, who has effected service, or cause him to be so examined by any Court, touching the service or non-service of the summons.

(2) Where the Court sees reason to believe that such evidence or production is material, and that such person has, without lawful excuse, failed to attend or to produce the document in compliance with such summons or has intentionally avoided service, it may issue a proclamation requiring him to attend to give evidence or to produce the document at a time and place to be named therein; and a copy of such proclamation shall be affixed on the outer door or other conspicuous part of the house in which he ordinarily resides.

(3) In lieu of or at the time of issuing such proclamation, or at any time afterwards, the Court may, in its discretion, issue a warrant, either with or without bail, for the arrest of such person, and may make an order for the attachment of his property to such amount as it thinks fit, not exceeding the amount of the costs of attachment and of any fine which may be imposed Under Rule 12:

Provided that no Court of Small Causes shall make an order for the attachment of immovable property.

42. Similarly, in the Code of Criminal Procedure, 1973 ("CrPC"), the Judge conducting a criminal trial is empowered to issue the following orders for production of documents:

91. Summons to produce document or other thing.--

(1) Whenever any Court or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.

(2) Any person required under this Section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same.

(3) Nothing in this Section shall be deemed-- (a) to affect Sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), or the Bankers' Books Evidence Act, 1891 (13 of 1891), or (b) to apply to a letter, postcard, telegram or other document or any parcel or thing in the custody of the postal or telegraph authority.

349. Imprisonment or committal of person refusing to answer or produce document.--If any witness or person called to produce a document or thing before a Criminal Court refuses to answer such questions as are put to him or to produce any document or thing in his possession or power which the Court requires him to produce, and does not, after a reasonable opportunity has been given to him so to do, offer any reasonable excuse for such refusal, such Court may, for reasons to be recorded in writing, sentence him to

simple imprisonment, or by warrant under the hand of the Presiding Magistrate or Judge commit him to the custody of an officer of the Court for any term not exceeding seven days, unless in the meantime, such person consents to be examined and to answer, or to produce the document or thing and in the event of his persisting in his refusal, he may be dealt with according to the provisions of Section 345 or Section 346.

43. Thus, it is clear that the major premise of Shafhi Mohammad (supra) that such certificate cannot be secured by persons who are not in possession of an electronic device is wholly incorrect. An application can always be made to a Judge for production of such a certificate from the requisite person Under Section 65B(4) in cases in which such person refuses to give it.

44. Resultantly, the judgment dated 03.04.2018 of a Division Bench of this Court reported as MANU/SC/0331/2018 : (2018) 5 SCC 311, in following the law incorrectly laid down in Shafhi Mohammed (supra), must also be, and is hereby, overruled.

45. However, a caveat must be entered here. The facts of the present case show that despite all efforts made by the Respondents, both through the High Court and otherwise, to get the requisite certificate Under Section 65B(4) of the Evidence Act from the authorities concerned, yet the authorities concerned wilfully refused, on some pretext or the other, to give such certificate. In a fact-circumstance where the requisite certificate has been applied for from the person or the authority concerned, and the person or authority either refuses to give such certificate, or does not reply to such demand, the party asking for such certificate can apply to the Court for its production under the provisions aforementioned of the Evidence Act, Code of Civil Procedure or Code of Criminal Procedure. Once such application is made to the Court, and the Court then orders or

directs that the requisite certificate be produced by a person to whom it sends a summons to produce such certificate, the party asking for the certificate has done all that he can possibly do to obtain the requisite certificate. Two Latin maxims become important at this stage. The first is lex non cogit ad impossibilia i.e. the law does not demand the impossible, and impotentia excusat legem i.e. when there is a disability that makes it impossible to obey the law, the alleged disobedience of the law is excused. This was well put by this Court in Re: Presidential Poll MANU/SC/0047/1974 : (1974) 2 SCC 33 as follows:

14. If the completion of election before the expiration of the term is not possible because of the death of the prospective candidate it is apparent that the election has commenced before the expiration of the term but completion before the expiration of the term is rendered impossible by an act beyond the control of human agency. The necessity for completing the election before the expiration of the term is enjoined by the Constitution in public and State interest to see that the governance of the country is not paralysed by non-compliance with the provision that there shall be a President of India.

15. The impossibility of the completion of the election to fill the vacancy in the office of the President before the expiration of the term of office in the case of death of a candidate as may appear from Section 7 of the 1952 Act does not rob Article 62(1) of its mandatory character. The maxim of law impotentia excusat legam is intimately connected with another maxim of law lex non cogit ad impossibilia. Impotentia excusat legam is that when there is a necessary or invincible disability to perform the mandatory part of the law that impotentia excuses. The law does not compel one to do that which one cannot possibly perform. "Where the law creates a duty or charge, and the party is disabled to perform it, without any default in him, and has no remedy over it, there the law will in general excuse him." Therefore, when it appears that the performance of the formalities

prescribed by a statute has been rendered impossible by circumstances over which the persons interested had no control, like the act of God, the circumstances will be taken as a valid excuse. Where the act of God prevents the compliance of the words of a statute, the statutory provision is not denuded of its mandatory character because of supervening impossibility caused by the act of God. (See Broom's Legal Maxims 10th Edn. at pp. 162-163 and Craies on Statute Law 6th Edn. at p. 268).

It is important to note that the provision in question in Re Presidential Poll (supra) was also mandatory, which could not be satisfied owing to an act of God, in the facts of that case. These maxims have been applied by this Court in different situations in other election cases - see Chandra Kishore Jha v. Mahavir Prasad and Ors. MANU/SC/0594/1999 : (1999) 8 SCC 266 (at paragraphs 17 and 21); Special Reference 1 of 2002 MANU/SC/0891/2002 : (2002) 8 SCC 237 (at paragraphs 130 and 151) and Raj Kumar Yadav v. Samir Kumar Mahaseth and Ors. MANU/SC/0194/2005 : (2005) 3 SCC 601 (at paragraphs 13 and 14).

46. These Latin maxims have also been applied in several other contexts by this Court. In Cochin State Power and Light Corporation v. State of Kerala MANU/SC/0220/1965 : (1965) 3 SCR 187, a question arose as to the exercise of an option of purchasing an undertaking by the State Electricity Board Under Section 6(4) of the Indian Electricity Act, 1910. The provision required a notice of at least 18 months before the expiry of the relevant period to be given by such State Electricity Board to the State Government. Since this mandatory provision was impossible of compliance, it was held that the State Electricity Board was excused from giving such notice, as follows:

Sub-section (1) of Section 6 expressly vests in the State Electricity Board the option of purchase on the expiry of the relevant period specified in the license. But the State Government claims that Under Sub-section (2) of Section 6 it is now vested with the option. Now, Under Sub-section (2) of Section 6, the State Government would be vested with the option only "where a State Electricity Board has not been constituted, or if constituted, does not elect to purchase the undertaking". It is common case that the State Electricity Board was duly constituted. But the State Government claims that the State Electricity Board did not elect to purchase the undertaking. For this purpose, the State Government relies upon the deeming provisions of Sub-section (4) of Section 6, and contends that as the Board did not send to the State Government any intimation in writing of its intention to exercise the option as required by the Sub-section, the Board must be deemed to have elected not to purchase the undertaking. Now, the effect of Sub-section (4) read with Sub-section (2) of Section 6 is that on failure of the Board to give the notice prescribed by Sub-section (4), the option vested in the Board Under Sub-section (1) of Section 6 was liable to be divested. Sub-section (4) of Section 6 imposed upon the Board the duty of giving after the coming into force of Section 6 a notice in writing of its intention to exercise the option at least 18 months before the expiry of the relevant period. Section 6 came into force on September 5, 1959, and the relevant period expired on December 3, 1960. In the circumstances, the giving of the requisite notice of 18 months in respect of the option of purchase on the expiry of December 2, 1960, was impossible from the very commencement of Section 6. The performance of this impossible duty must be excused in accordance with the maxim, lex non cogit ad impossibilia (the law does not compel the doing of impossibilities), and Sub-section (4) of Section 6 must be construed as not being applicable to a case where compliance with it is impossible. We must therefore, hold that the State Electricity Board was not required to give the notice Under Sub-section (4) of Section 6 in respect of its option of purchase on the expiry of 25 years. It must follow that the Board cannot be deemed to have elected not to purchase the undertaking Under Sub-section (4) of Section 6. By the notice served upon the Appellant, the Board duly elected to purchase the undertaking on the expiry of 25 years.

Consequently, the State Government never became vested with the option of purchasing the undertaking Under Sub-section (2) of Section 6. The State Government must, therefore, be restrained from taking further action under its notice, Ex. G, dated November 20, 19595.5

47. In Raj Kumar Dubey v. Tarapada Dey and Ors. MANU/SC/0018/1987 : (1987) 4 SCC 398, the maxim non cogit ad impossibilia was applied in the context of the applicability of a mandatory provision of the Registration Act, 1908, as follows:

6. We have to bear in mind two maxims of equity which are well settled, namely, actus curiae neminem gravabit -- An act of the Court shall prejudice no man. In Broom's Legal Maxims, 10th Edn., 1939 at page 73 this maxim is explained that this maxim was founded upon justice and good sense; and afforded a safe and certain guide for the administration of the law. The above maxim should, however, be applied with caution. The other maxim is lex non cogit ad impossibilia (Broom's Legal Maxims -- page 162) -- The law does not compel a man to do that which he cannot possibly perform. The law itself and the administration of it, said Sir W. Scott, with reference to an alleged infraction of the revenue laws, must yield to that to which everything must bend, to necessity; the law, in its most positive and peremptory injunctions, is understood to disclaim, as it does in its general aphorisms, all intention of compelling impossibilities, and the administration of laws must adopt that general exception in the consideration of all particular cases.

7. In this case indisputably during the period from 26-7-1978 to December 1982 there was subsisting injunction preventing the arbitrators from taking any steps. Furthermore, as noted before the award was in the custody of the court, that is to say, 28-1-1978 till the return of the award to the arbitrators on 24-11-1983, arbitrators or the parties could not

have presented the award for its registration during that time. The award as we have noted before was made on 28-11-1977 and before the expiry of the four months from 28-11-1977, the award was filed in the court pursuant to the order of the court. It was argued that the order made by the court directing the arbitrators to keep the award in the custody of the court was wrong and without jurisdiction, but no arbitrator could be compelled to disobey the order of the court and if in compliance or obedience with court of doubtful jurisdiction, he could not take back the award from the custody of the court to take any further steps for its registration then it cannot be said that he has failed to get the award registered as the law required. The aforesaid two legal maxims -- the law does not compel a man to do that which he cannot possibly perform and an act of the court shall prejudice no man would, apply with full vigour in the facts of this case and if that is the position then the award as we have noted before was presented before the Sub-Registrar, Arambagh on 25-11-1983 the very next one day of getting possession of the award from the court. The Sub-Registrar pursuant to the order of the High Court on 24-6-1985 found that the award was presented within time as the period during which the judicial proceedings were pending that is to say, from 28-1-1978 to 24-11-1983 should be excluded in view of the principle laid down in Section 15 of the Limitation Act, 1963. The High Court, therefore, in our opinion, was wrong in holding that the only period which should be excluded was from 26-7-1978 till 20-12-1982. We are unable to accept this position. 26-7-1978 was the date of the order of the learned Munsif directing maintenance of status quo and 20-12-1982 was the date when the interim injunction was vacated, but still the award was in the custody of the court and there is ample evidence as it would appear from the narration of events hereinbefore made that the arbitrators had tried to obtain the custody of the award which the court declined to give to them.

48. These maxims have also been applied to tenancy legislation - see M/s. B.P. Khemka Pvt. Ltd. v. Birendra Kumar Bhowmick and Anr. MANU/SC/0783/1987 : (1987) 2 SCC 401 (at paragraph 12), and have also been applied to relieve authorities of fulfilling their

obligation to allot plots when such plots have been found to be un-allottable, owing to the contravention of Central statutes - see Hira Tikoo v. U.T., Chandigarh and Ors. MANU/SC/0337/2004 : (2004) 6 SCC 765 (at paragraphs 23 and 24).

49. On an application of the aforesaid maxims to the present case, it is clear that though Section 65B(4) is mandatory, yet, on the facts of this case, the Respondents, having done everything possible to obtain the necessary certificate, which was to be given by a third-party over whom the Respondents had no control, must be relieved of the mandatory obligation contained in the said Sub-section.

50. We may hasten to add that Section 65B does not speak of the stage at which such certificate must be furnished to the Court. In Anvar P.V. (supra), this Court did observe that such certificate must accompany the electronic record when the same is produced in evidence. We may only add that this is so in cases where such certificate could be procured by the person seeking to rely upon an electronic record. However, in cases where either a defective certificate is given, or in cases where such certificate has been demanded and is not given by the concerned person, the Judge conducting the trial must summon the person/persons referred to in Section 65B(4) of the Evidence Act, and require that such certificate be given by such person/persons. This, the trial Judge ought to do when the electronic record is produced in evidence before him without the requisite certificate in the circumstances aforementioned. This is, of course, subject to discretion being exercised in civil cases in accordance with law, and in accordance with the requirements of justice on the facts of each case. When it comes to criminal trials, it is important to keep in mind the general principle that the Accused must be supplied all documents that the prosecution seeks to rely upon before commencement of the trial, under the relevant Sections of the Code of Criminal Procedure.

51. In a recent judgment, a Division Bench of this Court in State of Karnataka v. M.R. Hiremath MANU/SC/0807/2019 : (2019) 7 SCC 515, after referring to Anvar P.V. (supra) held:

16. The same view has been reiterated by a two-Judge Bench of this Court in Union of India v. Ravindra v. Desai [MANU/SC/0404/2018 : (2018) 16 SCC 273]. The Court emphasised that non-production of a certificate Under Section 65-B on an earlier occasion is a curable defect. The Court relied upon the earlier decision in Sonu v. State of Haryana [MANU/SC/0835/2017 : (2017) 8 SCC 570], in which it was held:

32. ... The crucial test, as affirmed by this Court, is whether the defect could have been cured at the stage of marking the document. Applying this test to the present case, if an objection was taken to the CDRs being marked without a certificate, the court could have given the prosecution an opportunity to rectify the deficiency.

17. Having regard to the above principle of law, the High Court erred in coming to the conclusion that the failure to produce a certificate Under Section 65-B(4) of the Evidence Act at the stage when the charge-sheet was filed was fatal to the prosecution. The need for production of such a certificate would arise when the electronic record is sought to be produced in evidence at the trial. It is at that stage that the necessity of the production of the certificate would arise.

52. It is pertinent to recollect that the stage of admitting documentary evidence in a criminal trial is the filing of the charge-sheet. When a criminal court summons the Accused to stand trial, copies of all documents which are entered in the charge-

sheet/final report have to be given to the Accused. Section 207 of the Code of Criminal Procedure, which reads as follows, is mandatory6. Therefore, the electronic evidence, i.e. the computer output, has to be furnished at the latest before the trial begins. The reason is not far to seek; this gives the Accused a fair chance to prepare and defend the charges levelled against him during the trial. The general principle in criminal proceedings therefore, is to supply to the Accused all documents that the prosecution seeks to rely upon before the commencement of the trial. The requirement of such full disclosure is an extremely valuable right and an essential feature of the right to a fair trial as it enables the Accused to prepare for the trial before its commencement.

53. In a criminal trial, it is assumed that the investigation is completed and the prosecution has, as such, concretised its case against an Accused before commencement of the trial. It is further settled law that the prosecution ought not to be allowed to fill up any lacunae during a trial. As recognised by this Court in Central Bureau of Investigation v. R.S. Pai MANU/SC/0246/2002 : (2002) 5 SCC 82, the only exception to this general Rule is if the prosecution had 'mistakenly' not filed a document, the said document can be allowed to be placed on record. The Court held as follows:

7. From the aforesaid Sub-sections, it is apparent that normally, the investigating officer is required to produce all the relevant documents at the time of submitting the charge-sheet. At the same time, as there is no specific prohibition, it cannot be held that the additional documents cannot be produced subsequently. If some mistake is committed in not producing the relevant documents at the time of submitting the report or the charge-sheet, it is always open to the investigating officer to produce the same with the permission of the court.

54. Therefore, in terms of general procedure, the prosecution is obligated to supply all documents upon which reliance may be placed to an Accused before commencement of the trial. Thus, the exercise of power by the courts in criminal trials in permitting evidence to be filed at a later stage should not result in serious or irreversible prejudice to the Accused. A balancing exercise in respect of the rights of parties has to be carried out by the court, in examining any application by the prosecution Under Sections 91 or 311 of the Code of Criminal Procedure or Section 165 of the Evidence Act. Depending on the facts of each case, and the Court exercising discretion after seeing that the Accused is not prejudiced by want of a fair trial, the Court may in appropriate cases allow the prosecution to produce such certificate at a later point in time. If it is the Accused who desires to produce the requisite certificate as part of his defence, this again will depend upon the justice of the case-discretion to be exercised by the Court in accordance with law.

55. The High Court of Rajasthan in Paras Jain v. State of Rajasthan, decided a preliminary objection that was raised on the applicability of Section 65B to the facts of the case. The preliminary objection raised was framed as follows:

3. (i) Whether transcriptions of conversations and for that matter CDs of the same filed alongwith the charge-sheet are not admissible in evidence even at this stage of the proceedings as certificate as required Under Section 65-B of the Evidence Act was not obtained at the time of procurement of said CDs from the concerned service provider and it was not produced alongwith charge-sheet in the prescribed form and such certificate cannot be filed subsequently.

After referring to Anvar P.V. (supra), the High Court held:

15. Although, it has been observed by Hon'ble Supreme Court that the requisite certificate must accompany the electronic record pertaining to which a statement is sought to be given in evidence when the same is produced in evidence, but in my view it does not mean that it must be produced alongwith the charge-sheet and if it is not produced alongwith the charge-sheet, doors of the Court are completely shut and it cannot be produced subsequently in any circumstance. Section 65-B of the Evidence Act deals with admissibility of secondary evidence in the form of electronic record and the procedure to be followed and the requirements be fulfilled before such an evidence can be held to be admissible in evidence and not with the stage at which such a certificate is to be produced before the Court. One of the principal issues arising for consideration in the above case before Hon'ble Court was the nature and manner of admission of electronic records.

16. From the facts of the above case it is revealed that the election of the Respondent to the legislative assembly of the State of Kerala was challenged by the Appellant-Shri Anwar P.V. by way of an election petition before the High Court of Kerala and it was dismissed vide order dated 16.11.2011 by the High Court and that order was challenged by the Appellant before Hon'ble Supreme Court. It appears that the election was challenged on the ground of corrupt practices committed by the Respondent and in support thereof some CDs were produced alongwith the election petition, but even during the course of trial certificate as required Under Section 65-B of the Evidence Act was not produced and the question of admissibility of the CDs as secondary evidence in the form of electronic record in absence of requisite certificate was considered and it was held that such electronic record is not admissible in evidence in absence of the certificate. It is clear from the facts of the case that the question of stage at which such electronic record is to be produced was not before the Hon'ble Court.

17. It is to be noted that it has been clarified by Hon'ble Court that observations made by it are in respect of secondary evidence of electronic record with reference to Sections 59, 65-A and 65-B of the Evidence Act and if an electronic record as such is used as primary evidence Under Section 62 of the Evidence Act, the same is admissible in evidence without compliance with the conditions in Section 65-B of the Evidence Act.

18. To consider the issue raised on behalf of the Petitioners in a proper manner, I pose a question to me whether an evidence and more particularly evidence in the form of a document not produced alongwith the charge-sheet cannot be produced subsequently in any circumstances. My answer to the question is in negative and in my opinion such evidence can be produced subsequently also as it is well settled legal position that the goal of a criminal trial is to discover the truth and to achieve that goal, the best possible evidence is to be brought on record.

19. Relevant portion of Sub-section (1) of Section 91 Code of Criminal Procedure provides that whenever any Court considers that the production of any document is necessary or desirable for the purposes of any trial under the Code by or before such Court, such Court may issue a summons to the person in whose possession or power such document is believed to be, requiring him to attend and produce it or to produce it, at the time and place stated in the summons. Thus, a wide discretion has been conferred on the Court enabling it during the course of trial to issue summons to a person in whose possession or power a document is believed to be requiring him to produce before it, if the Court considers that the production of such document is necessary or desirable for the purposes of such trial. Such power can be exercised by the Court at any stage of the proceedings before judgment is delivered and the Court must exercise the power if the production of such document is necessary or desirable for the proper decision in the case. It cannot be disputed that such summons can also be issued to the complainant/informer/victim of

the case on whose instance the FIR was registered. In my considered view when under this provision Court has been empowered to issue summons for the producement of document, there can be no bar for the Court to permit a document to be taken on record if it is already before it and the Court finds that it is necessary for the proper disposal of the case irrespective of the fact that it was not filed along with the charge-sheet. I am of the further view that it is the duty of the Court to take all steps necessary for the production of such a document before it.

20. As per Section 311 Code of Criminal Procedure, any Court may, at any stage of any trial under the Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall or re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case. Under this provision also wide discretion has been conferred upon the Court to exercise its power and paramount consideration is just decision of the case. In my opinion under this provision it is permissible for the Court even to order production of a document before it if it is essential for the just decision of the case.

21. As per Section 173(8) Code of Criminal Procedure carrying out a further investigation and collection of additional evidence even after filing of charge-sheet is a statutory right of the police and for that prior permission of the Magistrate is not required. If during the course of such further investigation additional evidence, either oral or documentary, is collected by the Police, the same can be produced before the Court in the form of supplementary charge-sheet. The prime consideration for further investigation and collection of additional evidence is to arrive at the truth and to do real and substantial justice. The material collected during further investigation cannot be rejected only because it has been filed at the stage of the trial.

22. As per Section 231 Code of Criminal Procedure, the prosecution is entitled to produce any person as a witness even though such person is not named in the charge-sheet.

23. When legal position is that additional evidence, oral or documentary, can be produced during the course of trial if in the opinion of the Court production of it is essential for the proper disposal of the case, how it can be held that the certificate as required Under Section 65-B of the Evidence Act cannot be produced subsequently in any circumstances if the same was not procured alongwith the electronic record and not produced in the Court with the charge-sheet. In my opinion it is only an irregularity not going to the root of the matter and is curable. It is also pertinent to note that certificate was produced alongwith the charge-sheet but it was not in a proper form but during the course of hearing of these Petitioners, it has been produced on the prescribed form.

56. In Kundan Singh (supra), a Division Bench of the Delhi High Court held:

50. Anwar P.V. (supra) partly overruled the earlier decision of the Supreme Court on the procedure to prove electronic record(s) in Navjot Sandhu (supra), holding that Section 65B is a specific provision relating to the admissibility of electronic record(s) and, therefore, production of a certificate Under Section 65B(4) is mandatory. Anwar P.V. (supra) does not state or hold that the said certificate cannot be produced in exercise of powers of the trial court Under Section 311 Code of Criminal Procedure or, at the appellate stage Under Section 391 Code of Criminal Procedure. Evidence Act is a procedural law and in view of the pronouncement in Anwar P.V. (supra) partly overruling Navjot Sandhu (supra), the prosecution may be entitled to invoke the aforementioned provisions, when justified and required. of course, it is open to the

court/presiding officer at that time to ascertain and verify whether the responsible officer could issue the said certificate and meet the requirements of Section 65B.

57. Subject to the caveat laid down in paragraphs 50 and 54 above, the law laid down by these two High Courts has our concurrence. So long as the hearing in a trial is not yet over, the requisite certificate can be directed to be produced by the learned Judge at any stage, so that information contained in electronic record form can then be admitted, and relied upon in evidence.

58. It may also be seen that the person who gives this certificate can be anyone out of several persons who occupy a 'responsible official position' in relation to the operation of the relevant device, as also the person who may otherwise be in the 'management of relevant activities' spoken of in Sub-section (4) of Section 65B. Considering that such certificate may also be given long after the electronic record has actually been produced by the computer, Section 65B(4) makes it clear that it is sufficient that such person gives the requisite certificate to the "best of his knowledge and belief" (Obviously, the word "and" between knowledge and belief in Section 65B(4) must be read as "or", as a person cannot testify to the best of his knowledge and belief at the same time).

59. We may reiterate, therefore, that the certificate required Under Section 65B(4) is a condition precedent to the admissibility of evidence by way of electronic record, as correctly held in Anvar P.V. (supra), and incorrectly "clarified" in Shafhi Mohammed (supra). Oral evidence in the place of such certificate cannot possibly suffice as Section 65B(4) is a mandatory requirement of the law. Indeed, the hallowed principle in Taylor v. Taylor (1876) 1 Ch.D. 426, which has been followed in a number of the judgments of this Court, can also be applied. Section 65B(4) of the Evidence Act clearly states that

secondary evidence is admissible only if lead in the manner stated and not otherwise. To hold otherwise would render Section 65B(4) otiose.

60. In view of the above, the decision of the Madras High Court in K. Ramajyam (supra), which states that evidence aliunde can be given through a person who was in-charge of a computer device in the place of the requisite certificate Under Section 65B(4) of the Evidence Act is also an incorrect statement of the law and is, accordingly, overruled.

61. While on the subject, it is relevant to note that the Department of Telecommunication's license conditions [i.e. under the 'License for Provision of Unified Access Services' framed in 2007, as also the subsequent 'License Agreement for Unified License' and the 'License Agreement for provision of internet service'] generally oblige internet service providers and providers of mobile telephony to preserve and maintain electronic call records and records of logs of internet users for a limited duration of one year7. Therefore, if the police or other individuals (interested, or party to any form of litigation) fail to secure those records-or secure the records but fail to secure the certificate-within that period, the production of a post-dated certificate (i.e. one issued after commencement of the trial) would in all probability render the data unverifiable. This places the Accused in a perilous position, as, in the event the Accused wishes to challenge the genuineness of this certificate by seeking the opinion of the Examiner of Electronic Evidence Under Section 45A of the Evidence Act, the electronic record (i.e. the data as to call logs in the computer of the service provider) may be missing.

62. To obviate this, general directions are issued to cellular companies and internet service providers to maintain CDRs and other relevant records for the concerned period (in tune with Section 39 of the Evidence Act) in a segregated and secure manner if a

particular CDR or other record is seized during investigation in the said period. Concerned parties can then summon such records at the stage of defence evidence, or in the event such data is required to cross-examine a particular witness. This direction shall be applied, in criminal trials, till appropriate directions are issued under relevant terms of the applicable licenses, or Under Section 67C of the Information Technology Act, which reads as follows:

67C. Preservation and retention of information by intermediaries.- (1) Intermediary shall preserve and retain such information as may be specified for such duration and in such manner and format as the Central Government may prescribe.

(2) any intermediary who intentionally or knowingly contravenes the provisions of Sub-section (1) shall be punished with an imprisonment for a term which may extend to three years and also be liable to fine.

63. It is also useful, in this context, to recollect that on 23 April 2016, the conference of the Chief Justices of the High Courts, chaired by the Chief Justice of India, resolved to create a uniform platform and guidelines governing the reception of electronic evidence. The Chief Justices of Punjab and Haryana and Delhi were required to constitute a committee to "frame Draft Rules to serve as model for adoption by High Courts". A five-Judge Committee was accordingly constituted on 28 July, 20188. After extensive deliberations, and meetings with several police, investigative and other agencies, the Committee finalised its report in November 2018. The report suggested comprehensive guidelines, and recommended their adoption for use in courts, across several categories of proceedings. The report also contained Draft Rules for the Reception, Retrieval, Authentication and Preservation of Electronic Records. In the opinion of the Court, these

Draft Rules should be examined by the concerned authorities, with the object of giving them statutory force, to guide courts in regard to preservation and retrieval of electronic evidence.

64. We turn now to the facts of the case before us. In the present case, by the impugned judgment dated 24.11.2017, Election Petition 6/2014 and Election Petition 9/2014 have been allowed and partly allowed respectively, the election of the RC being declared to be void Under Section 100 of the Representation of the People Act, 1951, inter alia, on the ground that as nomination papers at serial numbers 43 and 44 were not presented by the RC before 3.00 p.m. on 27.09.2014, such nomination papers were improperly accepted.

65. However, by an order dated 08.12.2017, this Court admitted the Election Appeal of the Appellant, and stayed the impugned judgment and order.

66. We have heard this matter after the five year Legislative Assembly term is over in November 2019. This being the case, ordinarily, it would be unnecessary to decide on the merits of the case before us, as the term of the Legislative Assembly is over. However, having read the impugned judgment, it is clear that the learned Single Judge was anguished by the fact that the Election Commission authorities behaved in a partisan manner by openly favouring the Appellant. Despite the fact that the reason given of "substantial compliance" with Section 65B(4) in the absence of the requisite certificate being incorrect in law, yet, considering that the Respondent had done everything in his power to obtain the requisite certificate from the appropriate authorities, including directions from the Court to produce the requisite certificate, no such certificate was forthcoming. The horse was directed to be taken to the water to drink-but it refused to drink, leading to the consequence pointed out in paragraph 49 of this judgment (supra).

67. Even otherwise, apart from evidence contained in electronic form, the High court arrived at the following conclusion:

48. The evidence in cross examination of Smt. Mutha shows that when Labade was sent to the passage for collecting nomination forms, she continued to accept the nomination forms directly from intending candidates and their proposers in her office. Her evidence shows that on 27.9.2014 the last nomination form which was directly presented to her was form No. 38 of Anand Mhaske. The time of receipt of this form was mentioned in the register of nomination forms as 2.55 p.m. In respect of subsequent nomination forms from Sr. Nos. 39 to 64, the time of acceptance is mentioned as 3.00 p.m. Smt. Mutha admits that the candidates of nomination form Nos. 39 to 64 (form No. 64 was the last form filed) were not present before her physically at 3.00 p.m. At the cost of repetition, it needs to be mentioned here that form numbers of RC are 43 and 44. The oral evidence and the record like register of nomination forms does not show that form Nos. 43 and 44 were presented to RO at 2.20 p.m. of 27.9.2014. As per the evidence of Smt. Mutha and the record, one Arvind Chavan, a candidate having form Nos. 33, 34 and 35 was present before her between 2.15 p.m. and 2.30 p.m. In nomination form register, there is no entry showing that any nomination form was received at 2.20 p.m. Form Nos. 36 and 37 of Sunil Khare were entered in the register at 2.40 p.m. Thus, according to Smt. Mutha, form No. 38, which was accepted by her directly from the candidate was tendered to her at 2.55 p.m. of 27.9.2014 and after that she had done preliminary examination of form No. 38 and check list was given by her to that candidate. Thus, it is not possible that form Nos. 43 and 44 were directly handed over to Smt. Mutha by RC at 2.20 p.m. or even at 3.00 p.m. of 27.9.2014.

50. Smt. Mutha (PW 2) did not show the time as 2.20 p.m. of handing over the check list to RC and she showed the time as 3.00 p.m., but this time was shown in respect of all forms starting from Sr. Nos. 39 to 64. Thus, substantive evidence of Smt. Mutha and the aforesaid record falsifies the contention of the RC made in the pleading that he had handed over the nomination forms (form Nos. 43 and 44) directly to RO prior to 3.00 p.m., at 2.20 p.m.

68. Thus, it is clear that apart from the evidence in the form of electronic record, other evidence was also relied upon to arrive at the same conclusion. The High Court's judgment therefore cannot be faulted.

69. Shri Adsure, however, attacked the impugned judgment when it held that the improper acceptance of the nomination form of the RC himself being involved in the matter, no further pleadings and particulars on whether the election is "materially affected" were required, as it can be assumed that if such plea is accepted, the election would be materially affected, as the election would then be set aside. He cited a Division Bench judgment of this Court in Rajendra Kumar Meshram v. Vanshmani Prasad Verma MANU/SC/1163/2016 : (2016) 10 SCC 715, wherein an election petition was filed against the Appellant, inter alia, on the ground that as the Appellant-the returned candidate-was a Government servant, his nomination had been improperly accepted. The Court held that the requirement of Section 100(1)(d) of the Representation of People Act, 1951, being that the election can be set aside only if such improper acceptance of the nomination has "materially affected" the result of the election, and there being no pleading or evidence to this effect, the election petition must fail. This Court stated:

9. As Issues 1 and 2 extracted above, have been answered in favour of the returned candidate and there is no cross-appeal, it is only the remaining issues that survive for consideration. All the said issues centre round the question of improper acceptance of the nomination form of the returned candidate. In this regard, Issue 6 which raises the question of material effect of the improper acceptance of nomination of the returned candidate on the result of the election may be specifically noticed.

10. Under Section 100(1)(d), an election is liable to be declared void on the ground of improper acceptance of a nomination if such improper acceptance of the nomination has materially affected the result of the election. This is in distinction to what is contained in Section 100(1)(c) i.e. improper rejection of a nomination which itself is a sufficient ground for invalidating the election without any further requirement of proof of material effect of such rejection on the result of the election. The above distinction must be kept in mind. Proceeding on the said basis, we find that the High Court did not endeavour to go into the further question that would be required to be determined even if it is assumed that the Appellant returned candidate had not filed the electoral roll or a certified copy thereof and, therefore, had not complied with the mandatory provisions of Section 33(5) of the 1951 Act.

11. In other words, before setting aside the election on the above ground, the High Court ought to have carried out a further exercise, namely, to find out whether the improper acceptance of the nomination had materially affected the result of the election. This has not been done notwithstanding Issue 6 framed which is specifically to the above effect. The High Court having failed to determine the said issue i.e. Issue 6, naturally, it was not empowered to declare the election of the Appellant returned candidate as void even if we are to assume that the acceptance of the nomination of the returned candidate was improper.

70. On the other hand, Ms. Meenakshi Arora cited a Division Bench judgment in Mairembam Prithviraj v. Pukhrem Sharatchandra Singh MANU/SC/1361/2016 : (2017) 2 SCC 487. In this judgment, several earlier judgments of this Court were cited on the legal effect of not pleading or proving that the election had been "materially affected" by the improper acceptance of a nomination Under Section 100(1)(d)(i) of the Representation of People Act, 1951. After referring to Durai Muthuswami v. N. Nachiappan and Ors. MANU/SC/0246/1973 : 1973(2) SCC 45 and Jagjit Singh v. Dharam Pal Singh MANU/SC/0929/1995 : 1995 Supp (1) SCC 422, this Court then referred to a three-Judge Bench judgment in Vashist Narain Sharma v. Dev Chandra MANU/SC/0101/1954 : 1955 (1) SCR 509 as under:

25. It was held by this Court in Vashist Narain Sharma v. Dev Chandra [MANU/SC/0101/1954 : (1955) 1 SCR 509] as under:

9. The learned Counsel for the Respondents concedes that the burden of proving that the improper acceptance of a nomination has materially affected the result of the election lies upon the Petitioner but he argues that the question can arise in one of three ways:

(1) where the candidate whose nomination was improperly accepted had secured less votes than the difference between the returned candidate and the candidate securing the next highest number of votes,

(2) where the person referred to above secured more votes, and

(3) where the person whose nomination has been improperly accepted is the returned candidate himself.

It is agreed that in the first case the result of the election is not materially affected because if all the wasted votes are added to the votes of the candidate securing the highest votes, it will make no difference to the result and the returned candidate will retain the seat. In the other two cases it is contended that the result is materially affected. So far as the third case is concerned it may be readily conceded that such would be the conclusion...

This Court then concluded:

26. Mere finding that there has been an improper acceptance of the nomination is not sufficient for a declaration that the election is void Under Section 100(1) (d). There has to be further pleading and proof that the result of the election of the returned candidate was materially affected. But, there would be no necessity of any proof in the event of the nomination of a returned candidate being declared as having been improperly accepted, especially in a case where there are only two candidates in the fray. If the returned candidate's nomination is declared to have been improperly accepted it would mean that he could not have contested the election and that the result of the election of the returned candidate was materially affected need not be proved further...

71. None of the earlier judgments of this Court referred to in Mairembam Prithviraj (supra) have been adverted to in Rajendra Kumar Meshram (supra) cited by Shri Adsure. In particular, the judgment of three learned Judges of this Court in Vashist Narain

Sharma (supra) has specifically held that where the person whose nomination has been improperly accepted is the returned candidate himself, it may be readily conceded that the conclusion has to be that the result of the election would be "materially affected", without there being any necessity to plead and prove the same. The judgment in Rajendra Kumar Meshram (supra), not having referred to these earlier judgments of a larger strength binding upon it, cannot be said to have declared the law correctly. As a result thereof, the impugned judgment of the High Court is right in its conclusion on this point also.

72. The reference is thus answered by stating that:

(a) Anvar P.V. (supra), as clarified by us hereinabove, is the law declared by this Court on Section 65B of the Evidence Act. The judgment in Tomaso Bruno (supra), being per incuriam, does not lay down the law correctly. Also, the judgment in SLP (Crl.) No. 9431 of 2011 reported as Shafhi Mohammad (supra) and the judgment dated 03.04.2018 reported as MANU/SC/0331/2018 : (2018) 5 SCC 311, do not lay down the law correctly and are therefore overruled.

(b) The clarification referred to above is that the required certificate Under Section 65B(4) is unnecessary if the original document itself is produced. This can be done by the owner of a laptop computer, computer tablet or even a mobile phone, by stepping into the witness box and proving that the concerned device, on which the original information is first stored, is owned and/or operated by him. In cases where the "computer" happens to be a part of a "computer system" or "computer network" and it becomes impossible to physically bring such system or network to the Court, then the only means of providing information contained in such electronic record can be in accordance with Section 65B(1),

together with the requisite certificate Under Section 65B(4). The last sentence in Anvar P.V. (supra) which reads as "...if an electronic record as such is used as primary evidence Under Section 62 of the Evidence Act..." is thus clarified; it is to be read without the words "Under Section 62 of the Evidence Act,..." With this clarification, the law stated in paragraph 24 of Anvar P.V. (supra) does not need to be revisited.

(c) The general directions issued in paragraph 62 (supra) shall hereafter be followed by courts that deal with electronic evidence, to ensure their preservation, and production of certificate at the appropriate stage. These directions shall apply in all proceedings, till Rules and directions Under Section 67C of the Information Technology Act and data retention conditions are formulated for compliance by telecom and internet service providers.

(d) Appropriate Rules and directions should be framed in exercise of the Information Technology Act, by exercising powers such as in Section 67C, and also framing suitable Rules for the retention of data involved in trial of offences, their segregation, Rules of chain of custody, stamping and record maintenance, for the entire duration of trials and appeals, and also in regard to preservation of the meta data to avoid corruption. Likewise, appropriate Rules for preservation, retrieval and production of electronic record, should be framed as indicated earlier, after considering the report of the Committee constituted by the Chief Justice's Conference in April, 2016.

73. These appeals are dismissed with costs of INR One Lakh each to be paid by Shri Arjun Panditrao Khotkar (i.e. the Appellant in C.A. Nos. 20825-20826 of 2017) to both Shri Kailash Kushanrao Gorantyal and Shri Vijay Chaudhary.

V. Ramasubramanian, J.

74. While I am entirely in agreement with the opinion penned by R.F. Nariman, J. I also wish to add a few lines about (i) the reasons for the acrimony behind Section 65B of the Indian Evidence Act, 1872 (hereinafter "Evidence Act") (ii) how even with the existing Rules of procedure, the courts fared well, without any legislative interference, while dealing with evidence in analogue form, and (iii) how after machines in analogue form gave way to machines in electronic form, certain jurisdictions of the world changed their legal landscape, over a period of time, by suitably amending the law, to avoid confusions and conflicts.

I. Reasons for the acrimony behind Section 65B

75. Documentary evidence, in contrast to oral evidence, is required to pass through certain check posts, such as (i) admissibility (ii) relevancy and (iii) proof, before it is allowed entry into the sanctum. Many times, it is difficult to identify which of these check posts is required to be passed first, which to be passed next and which to be passed later. Sometimes, at least in practice, the sequence in which evidence has to go through these three check posts, changes. Generally and theoretically, admissibility depends on relevancy. Under Section 136 of the Evidence Act, relevancy must be established before admissibility can be dealt with. Therefore if we go by Section 136, a party should first show relevancy, making it the first check post and admissibility the second one. But some documents, such as those indicated in Section 68 of the Evidence Act, which pass the first check post of relevancy and the second check post of admissibility may be of no value unless the attesting witness is examined. Proof of execution of such documents, in a

manner established by law, thus constitutes the third check post. Here again, proof of execution stands on a different footing than proof of contents.

76. It must also be noted that whatever is relevant may not always be admissible, if the law imposes certain conditions. For instance, a document, whose contents are relevant, may not be admissible, if it is a document requiring stamping and registration, but had not been duly stamped and registered. In other words, if admissibility is the cart, relevancy is the horse, under Section 136. But certain provisions of law place the cart before the horse and Section 65B appears to be one of them.

77. Section 136 which confers a discretion upon the Judge to decide as to the admissibility of evidence reads as follows:

136. Judge to decide as to admissibility of evidence. --

When either party proposes to give evidence of any fact, the Judge may ask the party proposing to give the evidence in what manner the alleged fact, if proved, would be relevant; and the Judge shall admit the evidence if he thinks that the fact, if proved, would be relevant, and not otherwise.

If the fact proposed to be proved is one of which evidence is admissible only upon proof of some other fact, such last-mentioned fact must be proved before evidence is given of the fact first-mentioned, unless the party undertakes to give proof of such fact, and the Court is satisfied with such undertaking.

If the relevancy of one alleged fact depends upon another alleged fact being first proved, the Judge may, in his discretion, either permit evidence of the first fact to be given before the second fact is proved, or require evidence to be given of the second fact before evidence is given of the first fact.

78. There are three parts to Section 136. The first part deals with the discretion of the Judge to admit the evidence, if he thinks that the fact sought to be proved is relevant. The second part of Section 136 states that 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. But this Rule is subject to a small concession, namely, that if the party undertakes to produce proof of the last mentioned fact later and the Court is satisfied about such undertaking, the Court may proceed to admit evidence of the first mentioned fact. The third part of Section 136 deals with the relevancy of one alleged fact, which depends upon another alleged fact being first proved. The third part of Section 136 has no relevance for our present purpose.

79. Illustration (b) Under Section 136 provides an easy example of the second part of Section 136. Illustration (b) reads as follows:

(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.

80. What is laid down in Section 65B as a precondition for the admission of an electronic record, resembles what is provided in the second part of Section 136. For example, if a fact is sought to be proved through the contents of an electronic record (or information contained in an electronic record), the Judge is first required to see if it is relevant, if the first part of Section 136 is taken to be applicable.

81. But Section 65B makes the admissibility of the information contained in the electronic record subject to certain conditions, including certification. The certification is for the purpose of proving that the information which constitutes the computer output was produced by a computer which was used regularly to store or process information and that the information so derived was regularly fed into the computer in the ordinary course of the said activities.

82. In other words, if we go by the requirements of Section 136, the computer output becomes admissible if the fact sought to be proved is relevant. But such a fact is admissible only upon proof of some other fact namely, that it was extracted from a computer used regularly etc. In simple terms, what is contained in the computer output can be equated to the first mentioned fact and the requirement of a certification can be equated to the last mentioned fact, referred to in the second part of Section 136 read with Illustration (b) thereunder.

83. But Section 65B(1) starts with a non-obstante Clause excluding the application of the other provisions and it makes the certification, a precondition for admissibility. While doing so, it does not talk about relevancy. In a way, Sections 65A and 65B, if read together, mix-up both proof and admissibility, but not talk about relevancy. Section 65A refers to

the procedure prescribed in Section 65B, for the purpose of proving the contents of electronic records, but Section 65B speaks entirely about the preconditions for admissibility. As a result, Section 65B places admissibility as the first or the outermost check post, capable of turning away even at the border, any electronic evidence, without any enquiry, if the conditions stipulated therein are not fulfilled.

84. The placement by Section 65B, of admissibility as the first or the border check post, coupled with the fact that a number of 'computer systems' (as defined in Section 2(l) of the Information Technology Act, 2000) owned by different individuals, may get involved in the production of an electronic record, with the 'originator' (as defined in Section 2(za) of the Information Technology Act, 2000) being different from the recipients or the sharers, has created lot of acrimony behind Section 65B, which is evident from the judicial opinion swinging like a pendulum.

II. How the courts dealt with evidence in analogue form without legislative interference and the shift

85. It is a matter of fact and record that courts all over the world were quick to adapt themselves to evidence in analogue form, within the framework of archaic, centuries old Rules of evidence. It was not as if evidence in analogue form was incapable of being manipulated. But the courts managed the show well by applying time tested Rules for sifting the actual from the manipulated.

86. It is no doubt true that the felicity with which courts adapted themselves to appreciating evidence in analogue form was primarily due to the fact that in analogue

technology, one is able to see and/or perceive something that is happening. In analogue technology, a wave is recorded or used in its original form. When someone speaks or sings, a signal is taken directly by the microphone and laid onto a tape, if we take the example of an analogue tape recorder. Both, the wave from the microphone and the wave on the tape, are analogue and the wave on the tape can be read, amplified and sent to a speaker to produce the sound. In digital technology, the analogue wave is sampled at some interval and then turned into numbers that are stored in a digital device. Therefore, what are stored, are in terms of numbers and they are, in turn, converted into voltage waves to produce what was stored.

87. The difference between something in analogue form and the same thing in digital form and the reason why digital format throws more challenges, was presented pithily in an Article titled 'Electronic evidence and the meaning of "original"',9 by Stephen Mason (Barrister and recognised authority on electronic signatures and electronic evidence). Taking the example of a photograph in both types of form, the learned author says the following:

For instance, a photograph taken with an analogue camera (that is, a camera with a film) can only remain a single object. It cannot be merged into other photographs, and split off again. It remains a physical object. A photograph taken with a digital camera differs markedly. The digital object, made up of a series of zeros and the number one, can be, and frequently is, manipulated and altered (especially in fashion magazines and for advertisements). Things can be taken out and put in to the image, in the same way the water droplets can merge and form a single, larger droplet. The new, manipulated digital image can also be divided back into its constituent parts.

Herein lies the interesting point: when three droplets of water fuse and then separate into three droplets, it is to be questioned whether the three droplets that merge from the bigger droplet were the identical droplets that existed before they merged. In the same way, consider a digital object that has been manipulated and added to, and the process is then reversed. The original object that was used remains (unless it was never saved independently, and the changes made to the image were saved in the original file), but another object, with the identical image (or near identical, depending on the system software and application software) now exists. Conceptually, it is possible to argue that the two digital images are different: one is the original, the other a copy of the original that was manipulated and returned to its original state (whatever "original" means). But both images are identical, apart from some additional meta data that might, or might not be conclusive. However, it is apparent that the images, if viewed together, are identical - will be identical, and the viewer will not be able to determine which is the original, and which image was manipulated. In this respect, the digital images are no different from the droplets of rain that fall, merge, then divide: there is no telling whether the droplets that split are identical to the droplets that came together to form the larger droplet.

88. That courts did not have a problem with the evidence in analogue form is established by several judicial precedents, in U.K., which were also followed by our courts. A device used to clandestinely record a conversation between two individuals was allowed in Harry Parker v. Mason [1940] 2 KB 590 in proving fraud on the part of the Plaintiff. While Harry Parker was a civil proceeding, the principle laid down therein found acceptance in a criminal trial in R. v. Burr and Sullivan [1956] Crim LR 442. The High Court of Judiciary in Scotland admitted in evidence, the tape record of a conversation between the complainant and a black mailer, in Hopes and Lavery v. H.M. Advocate [1960] Crim LR 566. A conversation recorded in police cell overheard without any deception, beyond setting up a tape recorder without warning, was admitted in evidence in R. v. Mills [1962] 3 All ER 298.

89. Then came R. v. Maqsud Ali MANU/UKCR/0026/1965 : [1965] 2 All ER 464 where Marshall J. drew an analogy between tape-recordings and photographs and held that just as evidence of things seen through telescopes or binoculars have been admitted, despite the fact that those things could not be picked up by the naked eye, the devices used for recording conversations could also be admitted, provided the accuracy of the recording be proved and the voices recorded properly identified.

90. Following the above precedents, this Court also held in S. Pratap Singh v. State of Punjab MANU/SC/0272/1963 : (1964) 4 SCR 753, Yusaffalli Esmail Nagree v. State of Maharashtra MANU/SC/0092/1967 : (1967) 3 SCR 720, N. Sri Rama Reddy v. V.V. Giri MANU/SC/0333/1970 : AIR 1972 SC 1162, R.M. Malkani v. State of Maharashtra MANU/SC/0204/1972 : AIR 1973 SC 157, Ziyauddin Burhanuddin Bukhari v. Brijmohan Ramdass Mehra MANU/SC/0277/1975 : (1976) 2 SCC 17, Ram Singh v. Col. Ram Singh MANU/SC/0176/1985 : AIR 1986 SC 3, Tukaram S. Dighole v. Manikrao Shivaji Kokate MANU/SC/0086/2010 : (2010) 4 SCC 329, that tape records of conversations and speeches are admissible in evidence under the Indian Evidence Act, subject to certain conditions. In Ziyauddin Burhanuddin Bukhari and Tukaram S. Dighole, this Court further held that tape records constitute "document" within the meaning of the expression Under Section 3 of the Evidence Act. Thus, without looking up to the law makers to come up with necessary amendments from time to time, the courts themselves developed certain rules, over a period of time, to test the authenticity of these documents in analogue form and these Rules have in fact, worked well.

91. There was also an important question that bothered the courts while dealing with evidence in analogue form. It was as to whether such evidence was direct or hearsay. In The Statute of Liberty, Sapporo Maru M/S. (Owners) v. Steam Tanker Statute of Liberty

(Owners) [1968] 2 All ER 195, the film recording of a radar set of echoes of ships within its range was held to be real evidence. The court opined that there was no distinction between a photographer operating a camera manually and the observations of a barometer operator or its equivalent operation by a recording mechanism. The Judge rejected the contention that the evidence was hearsay.

92. But when it comes to a computer output, one of the earliest of cases where the Court of Appeal had to deal with evidence in the form of a printout from a computer was in R. v. Pettigrew [1980] 71 Cr. App. R. 39. In that case, the printout from a computer operated by an employee of the Bank of England was held to be hearsay. But the academic opinion about the correctness of the decision was sharply divided. While Professor Smith10 considered the evidence in this case as direct and not hearsay, Professor Tapper11 took the view that the printout was partly hearsay and partly not. Professor Seng12 thought that both views were plausible.

93. But the underlying theory on the basis of which academicians critiqued the above judgment is that wherever the production of the output was made possible without human intervention, the evidence should be taken as direct. This is how the position was explained in Castle v. Cross [1984] 1 WLR 1372, in which the printout from the Intoximeter was held to be direct and not hearsay, on the ground that the breath alcohol value in the printout comprised information produced by the Intoximeter without the data being processed through a human brain.

94. In R v. Robson Mitchell and Richards [1991] Crim LR 360, a printout of telephone calls made on a mobile telephone was taken as evidence of the calls made and received in association with the number. The Court held "where a machine observes a fact and

records it, that record states a fact. It is evidence of what the machine recorded and this was printed out. The record was not the fact but the evidence of the fact".

95. But the facility of operating in anonymity in the cyber space, has made electronic records more prone to manipulation and consequently to a greater degree of suspicion. Therefore, law makers interfered, sometimes making things easy for courts and sometimes creating a lot of confusion. But over a period of time, certain jurisdictions have come up with reasonably good solutions. Let us now take a look at them.

III. Legislative developments in U.S.A., U.K. and Canada on the admissibility of electronic records

POSITION IN USA

96. The Federal Rules of Evidence (FRE) of the United States of America as amended with effect from 01.12.2017 recognise the availability of more than one option to a person seeking to produce an electronic record. Under the amended rules, a person can follow either the traditional route Under Rule 901 or the route of self-authentication Under Rule 902 whereunder a certificate of authenticity will elevate its status. Rules 901 and 902 of FRE read as follows:

Rule 901. Authenticating or Identifying Evidence

(a) In General. To satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is.

(b) Examples. The following are examples only--not a complete list--of evidence that satisfies the requirement:

(1) Testimony of a Witness with Knowledge. Testimony that an item is what it is claimed to be.

(2) Non expert Opinion About Handwriting. A non expert's opinion that handwriting is genuine, based on a familiarity with it that was not acquired for the current litigation.

(3) Comparison by an Expert Witness or the Trier of Fact. A comparison with an authenticated specimen by an expert witness or the trier of fact.

(4) Distinctive Characteristics and the Like. The appearance, contents, substance, internal patterns, or other distinctive characteristics of the item, taken together with all the circumstances.

(5) Opinion About a Voice. An opinion identifying a person's voice--whether heard firsthand or through mechanical or electronic transmission or recording--based on

hearing the voice at any time under circumstances that connect it with the alleged speaker.

(6) Evidence About a Telephone Conversation. For a telephone conversation, evidence that a call was made to the number assigned at the time to:

(A) a particular person, if circumstances, including self-identification, show that the person answering was the one called; or

(B) a particular business, if the call was made to a business and the call related to business reasonably transacted over the telephone.

(7) Evidence About Public Records. Evidence that:

(A) a document was recorded or filed in a public office as authorized by law; or

(B) a purported public record or statement is from the office where items of this kind are kept.

(8) Evidence About Ancient Documents or Data Compilations. For a document or data compilation, evidence that it:

(A) is in a condition that creates no suspicion about its authenticity;

(B) was in a place where, if authentic, it would likely be; and

(C) is at least 20 years old when offered.

(9) Evidence About a Process or System. Evidence describing a process or system and showing that it produces an accurate result.

(10) Methods Provided by a Statute or Rule. Any method of authentication or identification allowed by a federal statute or a Rule prescribed by the Supreme Court.

Rule 902. Evidence That Is Self-Authenticating

The following items of evidence are self-authenticating; they require no extrinsic evidence of authenticity in order to be admitted:

(1) Domestic Public Documents That Are Sealed and Signed. A document that bears:

(A) a seal purporting to be that of the United States; any state, district, commonwealth, territory, or insular possession of the United States; the former Panama Canal Zone; the

Trust Territory of the Pacific Islands; a political subdivision of any of these entities; or a department, agency, or officer of any entity named above; and

(B) a signature purporting to be an execution or attestation.

(2) Domestic Public Documents That Are Not Sealed but Are Signed and Certified. A document that bears no seal if:

(A) it bears the signature of an officer or employee of an entity named in Rule 902(1)(A); and

(B) another public officer who has a seal and official duties within that same entity certifies under seal--or its equivalent--that the signer has the official capacity and that the signature is genuine.

(3) Foreign Public Documents. A document that purports to be signed or attested by a person who is authorized by a foreign country's law to do so. The document must be accompanied by a final certification that certifies the genuineness of the signature and official position of the signer or attester--or of any foreign official whose certificate of genuineness relates to the signature or attestation or is in a chain of certificates of genuineness relating to the signature or attestation. The certification may be made by a secretary of a United States embassy or legation; by a consul general, vice consul, or consular agent of the United States; or by a diplomatic or consular official of the foreign country assigned or accredited to the United States. If all parties have been given a

reasonable opportunity to investigate the document's authenticity and accuracy, the court may, for good cause, either:

(A) order that it be treated as presumptively authentic without final certification; or

(B) allow it to be evidenced by an attested summary with or without final certification.

(4) Certified Copies of Public Records. A copy of an official record--or a copy of a document that was recorded or filed in a public office as authorized by law--if the copy is certified as correct by:

(A) the custodian or another person authorized to make the certification; or

(B) a certificate that complies with Rule 902(1), (2), or (3), a federal statute, or a Rule prescribed by the Supreme Court.

(5) Official Publications. A book, pamphlet, or other publication purporting to be issued by a public authority.

(6) Newspapers and Periodicals. Printed material purporting to be a newspaper or periodical.

(7) Trade Inscriptions and the Like. An inscription, sign, tag, or label purporting to have been affixed in the course of business and indicating origin, ownership, or control.

(8) Acknowledged Documents. A document accompanied by a certificate of acknowledgment that is lawfully executed by a notary public or another officer who is authorized to take acknowledgments.

(9) Commercial Paper and Related Documents. Commercial paper, a signature on it, and related documents, to the extent allowed by general commercial law.

(10) Presumptions Under a Federal Statute. A signature, document, or anything else that a federal statute declares to be presumptively or prima facie genuine or authentic.

(11) Certified Domestic Records of a Regularly Conducted Activity. The original or a copy of a domestic record that meets the requirements of Rule 803(6)(A)-(C), as shown by a certification of the custodian or another qualified person that complies with a federal statute or a Rule prescribed by the Supreme Court. Before the trial or hearing, the proponent must give an adverse party reasonable written notice of the intent to offer the record--and must make the record and certification available for inspection --so that the party has a fair opportunity to challenge them.

(12) Certified Foreign Records of a Regularly Conducted Activity. In a civil case, the original or a copy of a foreign record that meets the requirements of Rule 902(11), modified as follows: the certification, rather than complying with a federal statute or

Supreme Court rule, must be signed in a manner that, if falsely made, would subject the maker to a criminal penalty in the country where the certification is signed. The proponent must also meet the notice requirements of Rule 902(11).

(13) Certified Records Generated by an Electronic Process or System. A record generated by an electronic process or system that produces an accurate result, as shown by a certification of a qualified person that complies with the certification requirements of Rule 902(11) or (12). The proponent must also meet the notice requirements of Rule 902(11).

(14) Certified Data Copied from an Electronic Device, Storage Medium, or File. Data copied from an electronic device, storage medium, or file, if authenticated by a process of digital identification, as shown by a certification of a qualified person that complies with the certification requirements of Rule 902(11) or (12). The proponent also must meet the notice requirements of Rule 902(11).

97. An important decision in the American jurisprudence on this issue was delivered by Chief Magistrate Judge of District of Maryland in Lorraine v. Markel American Insurance Co. 241 FRD 534 (2007). In this case, Paul Grimm, J. while dealing with a challenge to an arbitrator's decision in an insurance dispute, dealt with the issue whether emails discussing the insurance policy in question, were admissible as evidence. The Court, while extending the applicability of Rules 901 and 902 of FRE to electronic evidence, laid down a broad test for admissibility of electronically stored information.13 This decision was rendered in 2007 and the FRE were amended in 2017.

98. Sub-rules (13) and (14) were incorporated in Rule 902 under the amendment of the year 2017. Until then, a person seeking to produce electronic records had to fall back mostly upon Rule 901 (except in few cases covered by sub-rules (11) and (12) of Rule 902). It means that the benefit of self-authentication was not available until then [until the advent of sub-rules (13) and (14), except in cases covered by sub-rules (11) and (12)]. Nevertheless, the introduction of sub-rules (13) and (14) in Rule 902 did not completely exclude the application of the general provisions of Rule 901.

99. Rule 901 applies to all evidence across the board. It is a general provision. But Rule 902 is a special provision dealing with evidence that is self-authenticating. Records generated by an electronic process or system and data copied from an electronic device, storage medium or file, are included in sub-rules (13) and (14) of Rule 902 of the Federal Rules of Evidence.

100. But FRE 902 does not exclude the application of FRE 901. It is only when a party seeks to invoke the benefit of self-authentication that Rule 902 applies. If a party chooses not to claim the benefit of self-authentication, he is free to come Under Rule 901, even if the evidence sought to be adduced is of an electronically stored information (ESI).

101. In an Article titled 'E-Discovery: Authenticating Common Types of ESI Chart', authored by Paul W. Grimm (the Judge who delivered the verdict in Lorraine) and co-authored by Gregory P. Joseph and published by Thomson Reuters (2017), the learned authors have given a snapshot of the different methods of authentication of various types of ESI (electronically stored information). In a subsequent Article (2018) titled 'Admissibility of Electronic Evidence' published under the caption 'Grimm-Brady Chart' (referring to Paul W. Grimm and Kevin F. Brady) on the website

"complexdiscovery.com", a condensed chart is provided which throws light on the different methods of authentication of ESI. The chart is reproduced in the form of a table, with particular reference to the relevant sub-rules of Rules 901 and 902 of the Federal Rules of Evidence as follows:

S. No.

Type of ESI

Potential Authentication Methods

Email, Text Messages, and Instant Messages

- Witness with personal knowledge (901(b)(1))

- Expert testimony or comparison with authenticated examples (901(b)(3))

- Distinctive characteristics including circumstantial evidence (901(b)(4))

- System or process capable of proving reliable and dependable result (901(b)(9))

- Trade inscriptions (902(7))

- Certified copies of business record (902(11))

- Certified records generated by an electronic process or system (902(13))

- Certified data copied from an electronic device, storage medium, or file (902(14))

2.

Chat Room Postings, Blogs, Wikis, and Other Social Media Conversations

- Witness with personal knowledge (901(b)(1))

- Expert testimony or comparison with authenticated examples (901(b)(3))

- Distinctive characteristics including circumstantial evidence (901(b)(4))

- System or process capable of proving reliable and dependable result (901(b)(9))

- Official publications (902(5))

- Newspapers and periodicals (902(6))

- Certified records generated by an electronic process or system (902(13))

- Certified data copied from an electronic device, storage medium, or file (902(14))

3.

Social Media Sites (Facebook, LinkedIn, Twitter, Instagram, and Snapchat)

- Witness with personal knowledge (901(b)(1))

- Expert testimony or comparison with authenticated examples (901(b)(3))

- Distinctive characteristics including circumstantial evidence (901(b)(4))

- Public records (901(b)(7))

- System or process capable of proving reliable and dependable result (901(b)(9))

- Official publications (902(5))

- Certified records generated by an electronic process or system (902(13))

- Certified data copied from an electronic device, storage medium, or file (902(14))

4.

Digitally Stored Data and Internet of Things

- Witness with personal knowledge (901(b)(1))

- Expert testimony or comparison with authenticated examples (901(b)(3))

- Distinctive characteristics including circumstantial evidence (901(b)(4))

- System or process capable of proving reliable and dependable result (901(b)(9))

- Certified records generated by an electronic process or system (902(13))

- Certified data copied from an electronic device, storage medium, or file (902(14))

5.

Computer Processes, Animations, Virtual Reality, and Simulations

- Witness with personal knowledge (901(b)(1))

- Expert testimony or comparison with authenticated examples (901(b)(3))

- System or process capable of proving reliable and dependable result (901(b)(9))

- Certified records generated by an electronic process or system (902(13))

6.

Digital Photographs

- Witness with personal knowledge (901(b)(1))

- System or process capable of providing reliable and dependable result (901(b)(9))

- Official publications (902(5))

- Certified records generated by an electronic process or system (902(13))

- Certified data copied from an electronic device, storage medium, or file (902(14))

102. It is interesting to note that while the Indian Evidence Act is of the year 1872, the Federal Rules of Evidence were adopted by the order of the Supreme Court of the United States exactly 100 years later, in 1972 and they were enacted with amendments made by the Congress to take effect on 01.07.1975. Yet, the Rules were found inadequate to deal with emerging situations and hence, several amendments were made, including the one made in 2017 that incorporated specific provisions relating to electronic records Under Sub-rules (13) and (14) of FRE 902. After this amendment, a lot of options have been made available to litigants seeking to rely upon electronically stored information, one among them being the route provided by sub-rules (13) and (14) of FRE 902. This development

of law in the US demonstrates that, unlike in India, law has kept pace with technology to a great extent.

POSITION IN UK

103. As pointed out in the main opinion, Section 65B, in its present form, is a poor reproduction of Section 5 of the UK Civil Evidence Act, 1968. The language employed in Sub-sections (2), (3), (4) and (5) of Section 65B is almost in pari materia (with minor differences) with Sub-sections (2) to (5) of Section 5 of the UK Civil Evidence Act, 1968. However, Sub-section (1) of Section 65B is substantially different from Sub-section (1) of Section 5 of the UK Civil Evidence Act, 1968. But it also contains certain additional words in Sub-section (1) namely "without further proof or production of the original". For easy comparison and appreciation, Sub-section (1) of Section 65B of the Indian Evidence Act and Sub-section (1) of Section 5 of UK Civil Evidence Act, 1968 are presented in a tabular form as follows:

Section 65B(1), Indian Evidence Act, 1872

Section 5(1), Civil Evidence Act, 1968 [UK]

Notwithstanding anything contained in this Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer (hereinafter referred to as the computer output) shall be deemed to be also a document, if the conditions mentioned in this section are

satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.

In any civil proceedings a statement contained in a document produced by a computer shall, subject to rules of court, be admissible as evidence of any fact stated therein of which direct oral evidence would be admissible, if it is shown that the conditions mentioned in Sub-section (2) below are satisfied in relation to the statement and computer in question.

104. But the abovementioned Section 5 of the U.K. Act of 1968 was repealed by the Civil Evidence Act, 1995. Section 15(2) of the Civil Evidence Act, 1995 repealed the enactments specified in Schedule II therein. Under Schedule II of the 1995 Act, Part I of the 1968 Act containing Sections 1-10 were repealed. The effect is that when Section 65B was incorporated in the Indian Evidence Act, by Act 21 of 2000, by copying Sub-sections (2) to (5) of Section 5 of the UK Civil Evidence Act, 1968, Section 5 itself was not there in the U.K. statute book, as a result of its repeal under the 1995 Act.

105. The repeal of Section 5 under the 1995 Act was a sequel to the recommendations made by the Law Commission in September 1993. Part III of the Law Commission's report titled 'The Hearsay Rule in Civil Proceedings' noted the problems with the 1968 Act, one of which concerned computer records. Paragraphs 3.14 to 3.21 in Part III of the Law Commission's report read as follows:

Computer records

3.14 A fundamental mistrust and fear of the potential for error or mechanical failure can be detected in the elaborate precautions governing computer records in Section 5 of the 1968 Act. The Law Reform Committee had not recommended special provisions for such records, and Section 5 would appear to have been something of an afterthought with its many safeguards inserted in order to gain acceptance of what was then a novel form of evidence. Twenty-five years later, technology has developed to an extent where computers and computer-generated documents are relied on in every area of business and have long been accepted in banking and other important record-keeping fields. The conditions have been widely criticised, and it has been said that they are aimed at operations based on the type of mainframe operations common in the mid 1960s, which were primarily intended to process in batches thousands of similar transactions on a daily basis.

3.15 So far as the statutory conditions are concerned, there is a heavy reliance on the need to prove that the document has been produced in the normal course of business and in an uninterrupted course of activity. It is at least questionable whether these requirements provide any real safeguards in relation to the reliability of the hardware or software concerned. In addition, they are capable of operating to exclude wide categories of documents, particularly those which are produced as the result of an original or a "one off" piece of work. Furthermore, they provide no protection against the inaccurate inputting of data.

3.16 We have already referred to the overlap between Sections 4 and 5. If compliance with Section 5 is a prerequisite, then computer-generated documents which pass the

conditions setout in Section 5(2) "shall" be admissible, notwithstanding the fact that they originated from a chain of human sources and that it has not been established that the persons in the chain acted under a duty. In other words, the record provisions of Section 4, which exist to ensure the reliability of the core information, are capable of being disapplied. In the context of our proposed reforms, we do not consider that this apparent discrepancy is of any significance, save that it illustrates the fact that Section 5 was something of an afterthought.

3.17 Computer-generated evidence falls into two categories. First, there is the situation envisaged by the 1968 Act, where the computer is used to file and store information provided to it by human beings. Second, there is the case where the record has itself been produced by the computer, sometimes entirely by itself but possibly with the involvement of some other machine. Examples of this situation are computers which are fed information by monitoring devices. A particular example is automatic stock control systems, which are now in common use and which allow for purchase orders to be automatically produced. Under such systems evidence of contract formation will lie solely in the electronic messages automatically generated by the seller's and buyer's computers. It is easy to see how uncertainty as to how the courts may deal with the proof and enforceability of such contracts is likely to stifle the full development and effective use of such technology. Furthermore, uncertainty may deter parties from agreeing that contracts made in this way are to be governed by English law and litigated in the English courts.

3.18 It is interesting to compare the technical manner in which the admissibility of computer-generated records has developed, compared with cases concerning other forms of sophisticated technologically produced evidence, for example radar records (See Sapporo Maru (Owners) v. Statue of Liberty (Owners) [1968] 1 W.L.R. 739). In the Statue

of Liberty case radar records, produced without human involvement and reproduced in photographic form, were held to be admissible to establish how a collision of two ships had occurred. It was held that this was "real" evidence, no different in kind from a monitored tape recording of a conversation. Furthermore, in these cases, no extra tests of reliability need be met and the common law rebuttable presumption is applied, that the machine was in order at the material time. The same presumption has been applied to intoximeter printouts (Castle v. Cross [1984] 1 W.L.R. 1372).

3.19 There are a number of cases which establish the way in which courts have sought to distinguish between types of computer-generated evidence, by finding in appropriate cases that the special procedures are inapplicable because the evidence is original or direct evidence. As might be expected, case law on computer-generated evidence is more likely to be generated by criminal cases of theft or fraud, where the incidence of such evidence is high and the issue of admissibility is more likely to be crucial to the outcome and hence less liable to be agreed. For example, even in the first category of cases, where human involvement exists, a computer-generated document may not be considered to be hearsay if the computer has been used as a mere tool, to produce calculations from data fed to it by humans, no matter how complex the calculations, or how difficult it may be for humans to reproduce its work, provided the computer was not "contributing its own knowledge" (R v. Wood (1983) 76 Cr. App. R 23).

3.20 There was no disagreement with the view that the provisions relating to computer records were outdated and that there was no good reason for distinguishing between different forms of record keeping or maintaining a different regime for the admission of computer-generated documents. This is the position in Scotland under the 1988 Act. Furthermore, we were informed of fears that uncertainty over the treatment of such

records in civil litigation in the United Kingdom was a significant hindrance to commerce and needed reform.

3.21 Consultees considered that the real issue for concern was authenticity that this was a matter which was best dealt with by a vigilant attitude that concentrated upon the weight to be attached to the evidence, in the circumstances of the individual case, rather than by reformulating complex and inflexible conditions as to admissibility.

106. In Part IV of the 1993 Report, titled 'Recommendations for Reform', Paragraph 4.43 dealt with the recommendations of the Law Commission in relation to computer records. Paragraph 4.43 of the Law Commission's report along with Recommendation Nos. 13, 14 and 15 are reproduced for easy reference:

(b) Computerised records

4.43 In the light of the criticisms of the present provisions and the response on consultation, we have decided to recommend that no special provisions be made in respect of computerised records. This is the position in Scotland under the 1988 Act and reflects the overwhelming view of commentators, practitioners and others. That is not to say that we do not recognise that, as familiarity with and confidence in the inherent reliability of computers has grown, so has concern over the potential for misuse, through the capacity to hack, corrupt, or alter information, in manner which is undetectable. We do not underestimate these dangers. However the current provisions of Section 5 do not afford any protection and it is not possible to legislate protectively. Nothing in our proposals will either encourage abuse, or prevent a proper challenge to the admissibility

of computerised records, where abuse is suspected. Security and authentication are problems that experts in the field are constantly addressing and it is a fast evolving area. The responses from experts in this field, such as the C.B.I., stressed that, whilst computer-generated information should be treated similarly to other records, such evidence should be weighed according to its reliability, with parties being encouraged to provide information as to the security of their systems. We have proposed a wide definition for the word "document". This will cover documents in any form and in particular will be wide enough to cover computer-generated information.

We therefore recommend that:

13. Documents, including those stored by computer, which form part of the records of a business or public authority should be admissible as hearsay evidence under Clause 1 of our draft Bill and the ordinary notice and weighing provisions should apply.

14. The current provisions governing the manner of proof of business records should be replaced by a simpler regime which allows, unless the court otherwise directs, for a document to be taken to form part of the records of a business or public authority, if it is certified as such, and received in evidence without being spoken to in court. No special provisions should be made in respect of the manner of proof of computerized records.

15. The absence of an entry should be capable of being formally proved by affidavit of an officer of the business or authority to which the records belong.

107. The above recommendations of the Law Commission (U.K.) made in 1993, led to the repeal of Section 5 of the 1968 Act, under the 1995 Act. The Rules of evidence in civil cases, in so far as electronic records are concerned, thus got liberated in U.K. in 1995 with the repeal of Section 5 of the U.K. Civil Evidence Act, 1968.

108. But there is a separate enactment in the U.K., containing the Rules of evidence in criminal proceedings and that is the Police and Criminal Evidence Act, 1984. Section 69 of the said Act laid down Rules for determining when a statement in a document produced by a computer shall not be admissible as evidence of any fact stated therein. Section 69 of the said Act laid down three conditions (there are too many negatives in the language employed in Section 69). In simple terms, they require that it must be shown (i) that there are no reasonable grounds for believing that the statement is not inaccurate because of improper use of the computer; (ii) that at all material times the computer was operating properly and (iii) that the additional conditions specified in the Rules made by the court are also satisfied.

109. The abovementioned Section 69 of the Police and Criminal Evidence Act, 1984 (PACE) was repealed by Section 60 of the Youth Justice and Criminal Evidence Act, 1999. This repeal was also a sequel to the recommendations made by the Law Commission in June 1997 under its report titled "Evidence in Criminal Proceedings: Hearsay and Related Topics". Part 13 of the Law Commission's Report dealt with computer evidence in extenso. The problems with Section 69 of the 1984 Act, the response during the Consultative Process and the eventual recommendations of the U.K. Law Commission are contained in paragraphs 13.1 to 13.23. They are usefully extracted as follows:

13.1 In Minors (MANU/UKCR/0010/1988 : [1989] 1 WLR 441, 443D-E.) Steyn J summed up the major problem posed for the Rules of evidence by computer output:

Often the only record of the transaction, which nobody can be expected to remember, will be in the memory of a computer... If computer output cannot relatively readily be used as evidence in criminal cases, much crime (and notably offences involving dishonesty) would in practice be immune from prosecution. On the other hand, computers are not infallible. They do occasionally malfunction. Software systems often have "bugs". ...Realistically, therefore, computers must be regarded as imperfect devices.

13.2 The legislature sought to deal with this dilemma by Section 69 of PACE, which imposes important additional requirements that must be satisfied before computer evidence is adduced - whether it is hearsay or not (Shephard [1993] AC 380).

13.3 In practice, a great deal of hearsay evidence is held on computer, and so Section 69 warrants careful attention. It must be examined against the requirement that the use of computer evidence should not be unnecessarily impeded, while giving due weight to the fallibility of computers.

PACE, SECTION 69

13.4 In the consultation paper we dealt in detail with the requirements of Section 69: in essence it provides that a document produced by a computer may not be adduced as evidence of any fact stated in the document unless it is shown that the computer was

properly operating and was not being improperly used. If there is any dispute as to whether the conditions in Section 69 have been satisfied, the court must hold a trial within the trial to decide whether the party seeking to rely on the document has established the foundation requirements of Section 69.

13.5 In essence, the party relying on computer evidence must first prove that the computer is reliable - or, if the evidence was generated by more than one computer, that each of them is reliable (Cochrane [1993] Crim LR 48). This can be proved by tendering a written certificate, or by calling oral evidence. It is not possible for the party adducing the computer evidence to rely on a presumption that the computer is working correctly (Shephard [1993] AC 380, 384E). It is also necessary for the computer records themselves to be produced to the court (Burr v. DPP [1996] Crim LR 324).

The problems with the present law

13.6 In the consultation paper we came to the conclusion that the present law was unsatisfactory, for five reasons.

13.7 First, Section 69 fails to address the major causes of inaccuracy in computer evidence. As Professor Tapper has pointed out, "most computer error is either immediately detectable or results from error in the data entered into the machine".

13.8 Secondly, advances in computer technology make it increasingly difficult to comply with Section 69: it is becoming "increasingly impractical to examine (and therefore certify)

all the intricacies of computer operation". These problems existed even before networking became common.

13.9 A third problem lies in the difficulties confronting the recipient of a computer-produced document who wishes to tender it in evidence: the recipient may be in no position to satisfy the court about the operation of the computer. It may well be that the recipient's opponent is better placed to do this.

13.10 Fourthly, it is illogical that Section 69 applies where the document is tendered in evidence (Shephard [1993] AC 380), but not where it is used by an expert in arriving at his or her conclusions (Golizadeh [1995] Crim LR 232), nor where a witness uses it to refresh his or her memory (Sophocleous v. Ringer [1988] RTR 52). If it is safe to admit evidence which relies on and incorporates the output from the computer, it is hard to see why that output should not itself be admissible; and conversely, if it is not safe to admit the output, it can hardly be safe for a witness to rely on it.

13.11 At the time of the publication of the consultation paper there was also a problem arising from the interpretation of Section 69. It was held by the Divisional Court in McKeown v. DPP ([1995] Crim LR 69) that computer evidence is inadmissible if it cannot be proved that the computer was functioning properly - even though the malfunctioning of the computer had no effect on the accuracy of the material produced. Thus, in that case, computer evidence could not be relied on because there was a malfunction in the clock part of an Intoximeter machine, although it had no effect on the accuracy of the material part of the printout (the alcohol reading). On appeal, this interpretation has now been rejected by the House of Lords: only malfunctions that affect the way in which a

computer processes, stores or retrieves the information used to generate the statement are relevant to Section 69 (DPP v. McKeown; DPP v. Jones [1997] 1 WLR 295).

13.12 In coming to our conclusion that the present law did not work satisfactorily, we noted that in Scotland, some Australian states, New Zealand, the United States and Canada, there is no separate scheme for computer evidence, and yet no problems appear to arise. Our provisional view was that Section 69 fails to serve any useful purpose, and that other systems operate effectively and efficiently without it.

13.13 We provisionally proposed that Section 69 of PACE be repealed without replacement. Without Section 69, a common law presumption comes into play (Phipson, para 23-14, approved by the Divisional Court in Castle v. Cross [1984] 1 WLR 1372, 1377B):

In the absence of evidence to the contrary, the courts will presume that mechanical instruments were in order at the material time.

13.14 Where a party sought to rely on the presumption, it would not need to lead evidence that the computer was working properly on the occasion in question unless there was evidence that it may not have been - in which case the party would have to prove that it was (beyond reasonable doubt in the case of the prosecution, and on the balance of probabilities in the case of the defence). The principle has been applied to such devices as speedometers (Nicholas v. Penny [1950] 2 KB 466) and traffic lights (Tingle Jacobs & Co. v. Kennedy MANU/UKWA/0088/1964 : [1964] 1 WLR 638), and in the consultation paper we saw no reason why it should not apply to computers.

The response on consultation

13.15 On consultation, the vast majority of those who dealt with this point agreed with us.

A number of those in favour said that Section 69 had caused much trouble with little benefit.

13.16 The most cogent contrary argument against our proposal came from David Ormerod. In his helpful response, he contended that the common law presumption of regularity may not extend to cases in which computer evidence is central. He cites the assertion of the Privy Council in Dillon v. R ([1982] AC 484) that "it is well established that the courts will not presume the existence of facts which are central to an offence". If this were literally true it would be of great importance in cases where computer evidence is central, such as Intoximeter cases (R v. Medway Magistrates' Court, exp Goddard MANU/SCCN/0037/1995 : [1995] RTR 206). But such evidence has often been permitted to satisfy a central element of the prosecution case. Some of these cases were decided before Section 69 was introduced (Castle v. Cross [1984] 1 WLR 1372); others have been decided since its introduction, but on the assumption (now held to be mistaken) (Shephard [1993] AC 380) that it did not apply because the statement produced by the computer was not hearsay (Spiby (1990) 91 Cr App R. 186; Neville [1991] Crim LR 288). The presumption must have been applicable; yet the argument successfully relied upon in Dillon does not appear to have been raised.

13.17 It should also be noted that Dillon was concerned not with the presumption regarding machines but with the presumption of the regularity of official action. This latter presumption was the analogy on which the presumption for machines was originally based; but it is not a particularly close analogy, and the two presumptions are now clearly distinct.

13.18 Even where the presumption applies, it ceases to have any effect once evidence of malfunction has been adduced. The question is, what sort of evidence must the defence adduce, and how realistic is it to suppose that the defence will be able to adduce it without any knowledge of the working of the machine? On the one hand the concept of the evidential burden is a flexible one: a party cannot be required to produce more by way of evidence than one in his or her position could be expected to produce. It could therefore take very little for the presumption to be rebutted, if the party against whom the evidence was adduced could not be expected to produce more. For example, in Cracknell v. Willis ([1988] AC 450) the House of Lords held that a Defendant is entitled to challenge an Intoximeter reading, in the absence of any signs of malfunctioning in the machine itself, by testifying (or calling others to testify) about the amount of alcohol that he or she had drunk.

13.19 On the other hand it may be unrealistic to suppose that in such circumstances the presumption would not prevail. In Cracknell v. Willis Lord Griffiths ([1988] AC 450 at p. 468C-D) said:

If Parliament wishes to provide that either there is to be an irrebuttable presumption that the breath testing machine is reliable or that the presumption can only be challenged by a particular type of evidence then Parliament must take the responsibility of so deciding

and spell out its intention in clear language. Until then I would hold that evidence which, if believed, provides material from which the inference can reasonably be drawn that the machine was unreliable is admissible.

But his Lordship went on:

I am myself hopeful that the good sense of the magistrates and the realisation by the motoring public that approved breath testing machines are proving reliable will combine to ensure that few Defendants will seek to challenge a breath analysis by spurious evidence of their consumption of alcohol. The magistrates will remember that the presumption of law is that the machine is reliable and they will no doubt look with a critical eye on evidence such as was produced by Hughes v. McConnell (MANU/UKWQ/0038/1985 : [1985] RTR 244) before being persuaded that it is not safe to rely upon the reading that it produces ([1988] AC 450, 468D-E).

13.20 Lord Goff did not share Lord Griffiths' optimism that motorists would not seek to challenge the analysis by spurious evidence of their consumption of alcohol, but did share his confidence in

the good sense of magistrates who, with their attention drawn to the safeguards for Defendants built into the Act ..., will no doubt give proper scrutiny to such defences, and will be fully aware of the strength of the evidence provided by a printout, taken from an approved device, of a specimen of breath provided in accordance with the statutory procedure ([1988] AC 450 at p. 472B-C).

13.21 These dicta may perhaps be read as implying that evidence which merely contradicts the reading, without directly casting doubt on the reliability of the device, may be technically admissible but should rarely be permitted to succeed. However, it is significant that Lord Goff referred in the passage quoted to the safeguards for Defendants which are built into the legislation creating the drink-driving offences. In the case of other kinds of computer evidence, where (apart from Section 69) no such statutory safeguards exist, we think that the courts can be relied upon to apply the presumption in such a way as to recognise the difficulty faced by a Defendant who seeks to challenge the prosecution's evidence but is not in a position to do so directly. The presumption continues to apply to machines other than computers (and until recently was applied to non-hearsay statements by computers) without the safeguard of Section 69; and we are not aware of any cases where it has caused injustice because the evidential burden cast on the defence was unduly onerous. Bearing in mind that it is a creature of the common law, and a comparatively modern one, we think it is unlikely that it would be permitted to work injustice.

13.22 Finally it should not be forgotten that Section 69 applies equally to computer evidence adduced by the defence. A Rule that prevents a Defendant from adducing relevant and cogent evidence, merely because there is no positive evidence that it is reliable, is in our view unfair.

Our recommendation

13.23 We are satisfied that Section 69 serves no useful purpose. We are not aware of any difficulties encountered in those jurisdictions that have no equivalent. We are satisfied that the presumption of proper functioning would apply to computers, thus throwing an

evidential burden on to the opposing party, but that that burden would be interpreted in such a way as to ensure that the presumption did not result in a conviction merely because the defence had failed to adduce evidence of malfunction which it was in no position to adduce. We believe, as did the vast majority of our Respondents, that such a regime would work fairly. We recommend the repeal of Section 69 of PACE. (Recommendation 50)

110. Based on the above recommendations of the U.K. Law Commission, Section 69 of the PACE, 1984, was declared by Section 60 of the Youth Justice and Criminal Evidence Act, 1999, to have ceased to have effect. Section 60 of the 1999 Act reads as follows:

Section 69 of the Police and Criminal Evidence Act, 1984 (evidence from computer records inadmissible unless conditions relating to proper use and operation of computer shown to be satisfied) shall cease to have effect.

111. It will be clear from the above discussion that when our lawmakers passed the Information Technology Bill in the year 2000, adopting the language of Section 5 of the UK Civil Evidence Act, 1968 to a great extent, the said provision had already been repealed by the UK Civil Evidence Act, 1995 and even the Police and Criminal Evidence Act, 1984 was revamped by the 1999 Act to permit hearsay evidence, by repealing Section 69 of PACE, 1984.

POSITION IN CANADA

112. Pursuant to a proposal mooted by the Canadian Bar Association hundred years ago, requesting all Provincial Governments to provide for the appointment of Commissioners to attend conferences organised for the purpose of promoting uniformity of legislation among the provinces, a meeting of the Commissioners took place in Montreal in 1918. In the said meeting, a Conference of Commissioners on Uniformity of Laws throughout Canada was organised. In 1974, its name was changed to Uniform Law Conference of Canada. The objective of the Conference is primarily to achieve uniformity in subjects covered by existing legislations. The said Conference recommended a model law on Uniform Electronic Evidence in September 1998.

113. The above recommendations of the Uniform Law Conference later took shape in the form of amendments to the Canada Evidence Act, 1985. Section 31.1 of the said Act deals with authentication of electronic documents and it reads as follows:

Authentication of electronic documents

31.1 Any person seeking to admit an electronic document as evidence has the burden of proving its authenticity by evidence capable of supporting a finding that the electronic document is that which it is purported to be.

114. Section 31.2 deals with the application of 'best evidence rule' in relation to electronic documents and it reads as follows:

Application of best evidence Rule -- electronic documents

31.2(1) The best evidence Rule in respect of an electronic document is satisfied

(a) on proof of the integrity of the electronic documents system by or in which the electronic document was recorded or stored; or

(b) if an evidentiary presumption established Under Section 31.4 applies.

Printouts

(2) Despite Sub-section (1), in the absence of evidence to the contrary, an electronic document in the form of a printout satisfies the best evidence Rule if the printout has been manifestly or consistently acted on, relied on or used as a record of the information recorded or stored in the printout.

115. Section 31.3 indicates the method of proving the integrity of an electronic documents system, by or in which an electronic document is recorded or stored. Section 31.3 reads as follows:

Presumption of integrity

31.3 For the purposes of Sub-section 31.2(1), in the absence of evidence to the contrary, the integrity of an electronic documents system by or in which an electronic document is recorded or stored is proven

(a) by evidence capable of supporting a finding that at all material times the computer system or other similar device used by the electronic documents system was operating properly or, if it was not, the fact of its not operating properly did not affect the integrity of the electronic document and there are no other reasonable grounds to doubt the integrity of the electronic documents system;

(b) if it is established that the electronic document was recorded or stored by a party who is adverse in interest to the party seeking to introduce it; or

(c) if it is established that the electronic document was recorded or stored in the usual and ordinary course of business by a person who is not a party and who did not record or store it under the control of the party seeking to introduce it.

116. Section 31.5 is an interesting provision which permits evidence to be presented in respect of any standard, procedure, usage or practice concerning the manner in which electronic documents are to be recorded or stored. This is for the purpose of determining under any Rule of law whether an electronic document is admissible. Section 31.5 reads as follows:

Standards may be considered

31.5 For the purpose of determining under any Rule of law whether an electronic document is admissible, evidence may be presented in respect of any standard, procedure, usage or practice concerning the manner in which electronic documents are to be recorded or stored, having regard to the type of business, enterprise or endeavour that used, recorded or stored the electronic document and the nature and purpose of the electronic document.

117. Under Section 31.6(1), matters covered by Section 31.2(2), namely the printout of an electronic document, the matters covered by Section 31.3, namely the integrity of an electronic documents system, and matters covered by Section 31.5, namely evidence in respect of any standard, procedure, usage or practice, may be established by affidavit. Section 31.6 reads as follows:

Proof by affidavit

31.6(1) The matters referred to in Sub-section 31.2(2) and Sections 31.3 and 31.5 and in Regulations made Under Section 31.4 may be established by affidavit.

Cross-examination

(2) A party may cross-examine a deponent of an affidavit referred to in Sub-section (1) that has been introduced in evidence

(a) as of right, if the deponent is an adverse party or is under the control of an adverse party; and

(b) with leave of the court, in the case of any other deponent.

118. Though a combined reading of Sections 31.3 and 31.6(1) of the Canada Evidence Act, 1985, gives an impression as though a requirement similar to the one Under Section 65B of Indian Evidence Act, 1872 also finds a place in the Canadian law, there is a very important distinction found in the Canadian law. Section 31.3(b) takes care of a contingency where the electronic document was recorded or stored by a party who is adverse in interest to the party seeking to produce it. Similarly, Section 31.3(c) gives leverage for the party relying upon an electronic document to establish that the same was recorded or stored in the usual and ordinary course of business by a person who is not a party and who did not record or store it under the control of the party seeking to introduce it.

IV. Conclusion

119. It will be clear from the above discussion that the major jurisdictions of the world have come to terms with the change of times and the development of technology and fine-tuned their legislations. Therefore, it is the need of the hour that there is a relook at Section 65B of the Indian Evidence Act, introduced 20 years ago, by Act 21 of 2000, and which has created a huge judicial turmoil, with the law swinging from one extreme to the

other in the past 15 years from Navjot Sandhu14 to Anvar P.V.15 to Tomaso Bruno16 to Sonu17 to Shafhi Mohammad.18

120. With the above note, I respectfully agree with conclusions reached by R.F. Nariman, J. that the appeals are to be dismissed with costs as proposed.

13. The first contention is based on an assumption that the word "any one" in Section 76 means only "one of the directors, and only one of the shareholders". This question as regards the interpretation of the word "any one" in Section 76 was raised in Criminal Appeals Nos. 98 to 106 of 1959 (Chief Inspector of Mines, etc.) and it has been decided there that the word "any one" should be interpreted there as "every one". Thus Under Section 76 everyone of the shareholders of a private company owning the mine, and every one of the directors of a public company owning the mine is liable to prosecution. No question of violation of Article 14 therefore arises.

270. Perusal of the opinion of the Full Bench in B.R. Gupta-I [Balak Ram Gupta v. Union of India MANU/DE/0593/1987 : AIR 1987 Del 239] would clearly indicate with regard to interpretation of the word "any" in Explanation 1 to the first proviso to Section 6 of the Act which expands the scope of stay order granted in one case of landowners to be automatically extended to all those landowners, whose lands are covered under the notifications issued Under Section 4 of the Act, irrespective of the fact whether there was any separate order of stay or not as regards their lands. The logic assigned by the Full Bench, the relevant portions whereof have been reproduced hereinabove, appear to be reasonable, apt, legal and proper.

(emphasis added)

3Section 69 of the UK Police and Criminal Evidence Act, 1984 dealt with evidence from computer records in criminal proceedings. Section 69 read thus:

69.-(1) In any proceedings, a statement in a document produced by a computer shall not be admissible as evidence of any fact stated therein unless it is shown-

(a) that there are no reasonable grounds for believing that the statement is inaccurate because of improper use of that computer;

(b) that at all material times the computer was operating properly, or if not, that any respect in which it was not operating properly or was out of operation was not such as to affect the production of the document or the accuracy of its contents; and

(c) that any relevant conditions specified in Rules of court Under Sub-section (2) below are satisfied.

(2) Provision may be made by Rules of court requiring that in any proceedings where it is desired to give a statement in evidence by virtue of this Section such information concerning the statement as may be required by the Rules shall be provided in such form and at such time as may be so required.

By Section 70, Sections 68 and 69 of this Act had to be read with Schedule 3 thereof, the provisions of which had the same force in effect as Sections 68 and 69. Part I of Schedule 3 supplemented Section 68. Notwithstanding the importance of Part I of Schedule 3, we propose to refer to only two provisions of it, namely:

1. Section 68(1) above applies whether the information contained in the document was supplied directly or indirectly but, if it was supplied indirectly, only if each person through whom it was supplied was acting under a duty; and applies also where the person compiling the record is himself the person by whom the information is supplied.

"6. Any reference in Section 68 above or this Part of this Schedule to a person acting under a duty includes a reference to a person acting in the course of any trade, business,

profession or other occupation in which he is engaged or employed or for the purposes of any paid or unpaid office held by him.

Part II supplemented Section 69 in important respects. Two provisions of it are relevant, namely-

8. In any proceedings where it is desired to give a statement in evidence in accordance with Section 69 above, a certificate -

(a) identifying the document 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 document as may be appropriate for the purpose of showing that the document was produced by a computer;

(c) dealing with any of the matters mentioned in Section 69(1) above; and

(d) purporting to be signed by a person occupying a reasonable position in relation to the operation of the computer, shall be evidence of anything stated in it; and for the purposes of this paragraph it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

9. Notwithstanding paragraph 8 above, a court may require oral evidence to be given of anything of which evidence could be given by a certificate under that paragraph.

4The definition of "data", "electronic form" and "electronic record" under the Information Technology Act, 2000 (as set out hereinabove) makes it clear that "data" and "electronic form" includes "magnetic or optical storage media", which would include the audio tape/cassette discussed in Vikram Singh (supra).

5MANU/SC/0220/1965 : (1965) 3 SCR 187, at 193.

6Section 207. Supply to the Accused of copy of police report and other documents.- In any case where the proceeding has been instituted on a police report, the Magistrate shall without delay furnish to the Accused, free of costs, a copy of each of the following:

(i) the police report;

(ii) the first information report recorded Under Section 154;

(iii) the statements recorded Under Sub-section (3) of Section 161 of all persons whom the prosecution proposes to examine as its witnesses, excluding therefrom any part in regard to which a request for such exclusion has been made by the police officer Under Sub-section (6) of Section 173;

(iv) the confessions and statements, if any, recorded Under Section 164;

(v) any other document or relevant extract thereof forwarded to the Magistrate with the police report Under Sub-section (5) of Section 173:

Provided that the Magistrate may, after perusing any such part of a statement as is referred to in Clause (iii) and considering the reasons given by the police officer for the request, direct that a copy of that part of the statement or of such portion thereof as the Magistrate thinks proper, shall be furnished to the Accused:

Provided further that if the Magistrate is satisfied that any document referred to in Clause (v) is voluminous, he shall, instead of furnishing the Accused with a copy thereof, direct that he will only be allowed to inspect it either personally or through pleader in Court.

7See, Clause 41.17 of the 'License Agreement for Provision of Unified Access Services': "The LICENSEE shall maintain all commercial records with regard to the communications exchanged on the network. Such records shall be archived for at least one year for scrutiny by the Licensor for security reasons and may be destroyed thereafter unless directed otherwise by the licensor"; Clause 39.20 of the 'License Agreement for Unified License': "The Licensee shall maintain all commercial records/Call Detail Record

(CDR)/Exchange Detail Record (EDR)/IP Detail Record (IPDR) with regard to the 39 communications exchanged on the network. Such records shall be archived for at least one year for scrutiny by the Licensor for security reasons and may be destroyed thereafter unless directed otherwise by the Licensor. Licensor may issue directions/instructions from time to time with respect to CDR/IPDR/EDR.

8The Committee comprised of Rajesh Bindal, S. Muralidhar, Rajiv Sahai Endlaw, Rajiv Narain Raina and R.K. Gauba, JJ.

9Stephen Mason, Electronic evidence and the meaning of "original", 79 Amicus Curiae 26 (2009)

10Professor Smith was a well-known authority on criminal law and law of evidence; J.C. Smith, The admissibility of statements by computer, Crim LR 387, 388 (1981).

11Professor Tapper is a well-known authority on law of evidence; Colin Tapper, Reform of the law of evidence in relation to the output from computers, 3 Intl. J L & Info Tech 87 (1995).

12Professor Seng is an Associate Professor at the National University of Singapore; Daniel K B Seng, Computer output as evidence, Sing JLS 139 (1997).

13Paragraph 2: "Whenever ESI is offered as evidence, either at trial or in summary judgment, the following evidence Rules must be considered: (1) is the ESI relevant as determined by Rule 401 (does it have any tendency to make some fact that is of consequence to the litigation more or less probable than it otherwise would be); (2) if relevant under 401, is it authentic as required by Rule 901(a) (can the proponent show that the ESI is what it purports to be); (3) if the ESI is offered for its substantive truth, is it hearsay as defined by Rule 801, and if so, is it covered by an applicable exception (Rules 803, 804 and 807); (4) is the form of the ESI that is being offered as evidence an original or duplicate under the original writing rule, of if not, is there admissible secondary evidence to prove the content of the ESI (Rules 1001-1008); and (5) is the probative value of the ESI

substantially outweighed by the danger of unfair prejudice or one of the other factors identified by Rule 403, such that it should be excluded despite its relevance.

14State (NCT of Delhi) v. Navjot Sandhu, MANU/SC/0465/2005 : (2005) 11 SCC 600

15Anvar P.V. v. P.K. Basheer, MANU/SC/0834/2014 : (2014) 10 SCC 473

16Tomaso Bruno v. State of UP, MANU/SC/0057/2015 : (2015) 7 SCC 178

17Sonu v. State of Haryana, MANU/SC/0835/2017 : (2017) 8 SCC 570

18Shafhi Mohammad v. The State of Himachal Pradesh, MANU/SC/0058/2018 : (2018) 2 SCC 801

MANU/SC/0834/2014

Neutral Citation: 2014/INSC/645

Back to Section 65B of Indian Evidence Act, 1872

IN THE SUPREME COURT OF INDIA

Civil Appeal No. 4226 of 2012

Decided On: 18.09.2014

Anvar P.V. Vs. P.K. Basheer, MANU/SC/0834/2014

Hon'ble Judges/Coram:

R.M. Lodha, C.J.I., Kurian Joseph and Rohinton Fali Nariman, JJ.

Counsels:

For Appellant/Petitioner/Plaintiff: Vivek Chib, Asif Ahmed and Neeraj Shekhar, Advs.

For Respondents/Defendant: Kapil Sibal, Sr. Adv., Haris Beeran, Mushtaq Salim and Radha Shyam Jena, Advs.

JUDGMENT

Kurian Joseph, J.

1. Construction by Plaintiff, destruction by Defendant. Construction by pleadings, proof by evidence; proof only by relevant and admissible evidence. Genuineness, veracity or

reliability of the evidence is seen by the court only after the stage of relevancy and admissibility. These are some of the first principles of evidence. What is the nature and manner of admission of electronic records, is one of the principal issues arising for consideration in this appeal.

2. In the general election to the Kerala Legislative Assembly held on 13.04.2011, the first Respondent was declared elected to 034 Eranad Legislative Assembly Constituency. He was a candidate supported by United Democratic Front. The Appellant contested the election as an independent candidate, allegedly supported by the Left Democratic Front. Sixth Respondent was the chief election agent of the first Respondent. There were five candidates. Appellant was second in terms of votes; others secured only marginal votes. He sought to set aside the election Under Section 100(1)(b) read with Section 123(2)(ii) and (4) of The Representation of the People Act, 1951 (hereinafter referred to as 'the RP Act') and also sought for a declaration in favour of the Appellant. By order dated 16.11.2011, the High Court held that the election petition to set aside the election on the ground Under Section 123(2)(a)(ii) is not maintainable and that is not pursued before us either. Issues (1) and (2) were on maintainability and those were answered as preliminary, in favour of the Appellant. The contested issues read as follows:

1) xxx

2) xxx

3) Whether Annexure A was published and distributed in the constituency on 12.4.2011 as alleged in paragraphs 4 and 5 of the election petition and if so whether Palliparamban Aboobacker was an agent of the first Respondent?

4) Whether any of the statements in Annexure A publication is in relation to the personal character and conduct of the Petitioner or in relation to the candidature and if so whether its alleged publication will amount to commission of corrupt practice Under Section 123(4) of The Representation of the People Act?

xxx

6) Whether the Flex Board and posters mentioned in Annexures D, E and E1 were exhibited on 13.4.2011 as part of the election campaign of the first Respondent as alleged in paragraphs 6 and 7 of the election petition and if so whether the alleged exhibition of Annexures D, E and E1 will amount to commission of corrupt practice Under Section 123(4) of The Representation of the People Act?

7) Whether announcements mentioned in paragraph 8 of the election petition were made between 6.4.2011 and 11.4.2011, as alleged in the above paragraph, as part of the election propaganda of the first Respondent and if so whether the alleged announcements mentioned in paragraph 8 will amount to commission of corrupt practice as contemplated Under Section 123(4) of The Representation of the People Act?

8) Whether the songs and announcements alleged in paragraph 9 of the election petition were made on 8.4.2011 as alleged, in the above paragraph, as part of the election propaganda of the first Respondent and if so whether the publication of the alleged announcements and songs will amount to commission of corrupt practice Under Section 123(4) of The Representation of People Act?

9) Whether Mr. Mullan Sulaiman mentioned in paragraph 10 of the election petition did make a speech on 9.4.2011 as alleged in the above paragraph as part of the election propaganda of the first Respondent and if so whether the alleged speech of Mr. Mullan Sulaiman amounts to commission of corrupt practice Under Section 123(4) of The Representation of the People Act?

10) Whether the announcements mentioned in paragraph 11 were made on 9.4.2011, as alleged in the above paragraph, as part of the election propaganda of the first Respondent and if so whether the alleged announcements mentioned in paragraph 11 of the election petition amount to commission of corrupt practice Under Section 123(4) of The Representation of the People Act?

11) Whether the announcements mentioned in paragraph 12 of the election petition were made, as alleged in the above paragraph, as part of the election propaganda of the first Respondent and if so whether the alleged announcements mentioned in paragraph 12 of the election petition amount to commission of corrupt practice Under Section 123(4) of The Representation of the People Act?

12) Whether the alleged announcements mentioned in paragraph 13 of the election petition were made as alleged and if so whether it amounts to commission of corrupt practice Under Section 123(4) of The Representation of the People Act?

13) Whether the alleged announcements mentioned in paragraph 14 of the election petition were made as alleged and if so whether it amounts to commission of corrupt practice Under Section 123(4) of The Representation of the People Act.

14) Whether the election of the first Respondent is liable to be set aside for any of the grounds mentioned in the election petition?

3. By the impugned judgment dated 13.04.2012, the High Court dismissed the election petition holding that corrupt practices pleaded in the petition are not proved and, hence, the election cannot be set aside Under Section 100(1)(b) of the RP Act; and thus the Appeal.

4. Heard Shri Vivek Chib, learned Counsel appearing for the Appellant and Shri Kapil Sibal, learned Senior Counsel appearing for the first Respondent.

5. The evidence consisted of three parts - (i) electronic records, (ii) documentary evidence other than electronic records, and (iii) oral evidence. As the major thrust in the arguments was on electronic records, we shall first deal with the same.

6. Electronic record produced for the inspection of the court is documentary evidence Under Section 3 of The Indian Evidence Act, 1872 (hereinafter referred to as 'Evidence Act'). The Evidence Act underwent a major amendment by Act 21 of 2000 [The Information Technology Act, 2000 (hereinafter referred to as 'IT Act')]. Corresponding amendments were also introduced in The Indian Penal Code (45 of 1860), The Bankers Books Evidence Act, 1891, etc.

7. Section 22A of the Evidence Act reads as follows:

22A. When oral admission as to contents of electronic records are relevant.- Oral admissions as to the contents of electronic records are not relevant, unless the genuineness of the electronic record produced is in question.

8. Section 45A of the Evidence Act reads as follows:

45A. Opinion of Examiner of Electronic Evidence.-When in a proceeding, the court has to form an opinion on any matter relating to any information transmitted or stored in any computer resource or any other electronic or digital form, the opinion of the Examiner of Electronic Evidence referred to in Section 79A of the Information Technology Act, 2000 (21 of 2000)., is a relevant fact.

Explanation.--For the purposes of this section, an Examiner of Electronic Evidence shall be an expert.

9. Section 59 under Part II of the Evidence Act dealing with proof, reads as follows:

59. Proof of facts by oral evidence.--All facts, except the contents of documents or electronic records, may be proved by oral evidence.

10. Section 65A reads as follows:

65A. Special provisions as to evidence relating to electronic record: The contents of electronic records may be proved in accordance with the provisions of Section 65B.

11. Section 65B reads as follows:

65B. Admissibility of electronic records:

(1) Notwithstanding anything contained in this Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer (hereinafter referred to as the computer output) shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.

(2) The conditions referred to in Sub-section (1) in respect of a computer output shall be the following, namely:

(a) the computer output containing the information was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;

(b) during the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer in the ordinary course of the said activities;

(c) throughout the material part of the said period, the computer was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents; and

(d) the information contained in the electronic record reproduces or is derived from such information fed into the computer in the ordinary course of the said activities.

(3) Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in Clause (a) of Sub-section (2) was regularly performed by computers, whether -

(a) by a combination of computers operating over that period; or

(b) by different computers operating in succession over that period; or

(c) by different combinations of computers operating in succession over that period; or

(d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers, all the computers used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer; and references in this section to a computer shall be construed accordingly.

(4) In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say, -

(a) identifying the electronic record containing the statement and describing the manner 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;

(c) dealing with any of the matters to which the conditions mentioned in Sub-section (2) relate, and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant

activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this 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.

(5) For the purposes of this section, -

(a) information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;

(b) whether in the course of activities carried on by any official, information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;

(c) a computer output shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.

Explanation: For the purposes of this section any reference to information being derived from other information shall be a reference to its being derived therefrom by calculation, comparison or any other process.

These are the provisions under the Evidence Act relevant to the issue under discussion.

12. In the Statement of Objects and Reasons to the IT Act, it is stated thus:

New communication systems and digital technology have made drastic changes in the way we live. A revolution is occurring in the way people transact business.

In fact, there is a revolution in the way the evidence is produced before the court. Properly guided, it makes the systems function faster and more effective. The guidance relevant to the issue before us is reflected in the statutory provisions extracted above.

13. Any documentary evidence by way of an electronic record under the Evidence Act, in view of Sections 59 and 65A, can be proved only in accordance with the procedure prescribed Under Section 65B. Section 65B deals with the admissibility of the electronic record. The purpose of these provisions is to sanctify secondary evidence in electronic form, generated by a computer.

It may be noted that the Section starts with a non obstante clause. Thus, notwithstanding anything contained in the Evidence Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer shall be deemed to be a document only if the conditions mentioned Under Sub-section (2) are satisfied, without further proof or production of the original. The very admissibility of such a document, i.e., electronic record which is called as computer output, depends on the satisfaction of the four conditions Under Section 65B(2). Following are the specified conditions Under Section 65B(2) of the Evidence Act:

(i) The electronic record containing the information should have been produced by the computer during the period over which the same was regularly used to store or process information for the purpose of any activity regularly carried on over that period by the person having lawful control over the use of that computer;

(ii) The information of the kind contained in electronic record or of the kind from which the information is derived was regularly fed into the computer in the ordinary course of the said activity;

(iii) During the material part of the said period, the computer was operating properly and that even if it was not operating properly for some time, the break or breaks had not affected either the record or the accuracy of its contents; and

(iv) The information contained in the record should be a reproduction or derivation from the information fed into the computer in the ordinary course of the said activity.

14. Under Section 65B(4) of the Evidence Act, if it is desired to give a statement in any proceedings pertaining to an electronic record, it is permissible provided the following conditions are satisfied:

(a) There must be a certificate which identifies the electronic record containing the statement;

(b) The certificate must describe the manner in which the electronic record was produced;

(c) The certificate must furnish the particulars of the device involved in the production of that record;

(d) The certificate must deal with the applicable conditions mentioned Under Section 65B(2) of the Evidence Act; and

(e) The certificate must be signed by a person occupying a responsible official position in relation to the operation of the relevant device.

15. It is further clarified that the person need only to state in the certificate that the same is to the best of his knowledge and belief. Most importantly, such a certificate must accompany the electronic record like computer printout, Compact Disc (CD), Video Compact Disc (VCD), pen drive, etc., pertaining to which a statement is sought to be given in evidence, when the same is produced in evidence. All these safeguards are taken to ensure the source and authenticity, which are the two hallmarks pertaining to electronic record sought to be used as evidence. Electronic records being more susceptible to tampering, alteration, transposition, excision, etc. without such safeguards, the whole trial based on proof of electronic records can lead to travesty of justice.

16. Only if the electronic record is duly produced in terms of Section 65B of the Evidence Act, the question would arise as to the genuineness thereof and in that situation, resort can be made to Section 45A - opinion of examiner of electronic evidence.

17. The Evidence Act does not contemplate or permit the proof of an electronic record by oral evidence if requirements Under Section 65B of the Evidence Act are not complied with, as the law now stands in India.

18. It is relevant to note that Section 69 of the Police and Criminal Evidence Act, 1984 (PACE) dealing with evidence on computer records in the United Kingdom was repealed by Section 60 of the Youth Justice and Criminal Evidence Act, 1999. Computer evidence hence must follow the common law rule, where a presumption exists that the computer producing the evidential output was recording properly at the material time. The presumption can be rebutted if evidence to the contrary is adduced. In the United States of America, under Federal Rule of Evidence, reliability of records normally go to the weight of evidence and not to admissibility.

19. Proof of electronic record is a special provision introduced by the IT Act amending various provisions under the Evidence Act. The very caption of Section 65A of the Evidence Act, read with Sections 59 and 65B is sufficient to hold that the special provisions on evidence relating to electronic record shall be governed by the procedure prescribed Under Section 65B of the Evidence Act. That is a complete code in itself. Being a special law, the general law Under Sections 63 and 65 has to yield.

20. In State (NCT of Delhi) v. Navjot Sandhu alias Afsan Guru MANU/SC/0465/2005 : (2005) 11 SCC 600, a two-Judge Bench of this Court had an occasion to consider an issue on production of electronic record as evidence. While considering the printouts of the computerized records of the calls pertaining to the cell phones, it was held at Paragraph-150 as follows:

150. According to Section 63, secondary evidence means and includes, among other things, "copies made from the original by mechanical processes which in themselves insure the accuracy of the copy, and copies compared with such copies". Section 65 enables secondary evidence of the contents of a document to be adduced if the original is of such a nature as not to be easily movable. It is not in dispute that the information contained in the call records is stored in huge servers which cannot be easily moved and produced in the court. That is what the High Court has also observed at para 276. Hence, printouts taken from the computers/servers by mechanical process and certified by a responsible official of the service-providing company can be led in evidence through a witness who can identify the signatures of the certifying officer or otherwise speak of the facts based on his personal knowledge. Irrespective of the compliance with the requirements of Section 65-B, which is a provision dealing with admissibility of electronic records, there is no bar to adducing secondary evidence under the other provisions of the Evidence Act, namely, Sections 63 and 65. It may be that the certificate containing the details in Sub-section (4) of Section 65-B is not filed in the instant case, but that does not mean that secondary evidence cannot be given even if the law permits such evidence to be given in the circumstances mentioned in the relevant provisions, namely, Sections 63 and 65.

21. It may be seen that it was a case where a responsible official had duly certified the document at the time of production itself. The signatures in the certificate were also identified. That is apparently in compliance with the procedure prescribed Under Section 65B of the Evidence Act. However, it was held that irrespective of the compliance with the requirements of Section 65B, which is a special provision dealing with admissibility of the electronic record, there is no bar in adducing secondary evidence, Under Sections 63 and 65, of an electronic record.

22. The evidence relating to electronic record, as noted herein before, being a special provision, the general law on secondary evidence Under Section 63 read with Section 65 of the Evidence Act shall yield to the same. Generalia special bus non derogant, special law will always prevail over the general law. It appears, the court omitted to take note of Sections 59 and 65A dealing with the admissibility of electronic record. Sections 63 and 65 have no application in the case of secondary evidence by way of electronic record; the same is wholly governed by Sections 65A and 65B. To that extent, the statement of law on admissibility of secondary evidence pertaining to electronic record, as stated by this Court in Navjot Sandhu case (supra), does not lay down the correct legal position. It requires to be overruled and we do so. An electronic record by way of secondary evidence shall not be admitted in evidence unless the requirements Under Section 65B are satisfied. Thus, in the case of CD, VCD, chip, etc., the same shall be accompanied by the certificate in terms of Section 65B obtained at the time of taking the document, without which, the secondary evidence pertaining to that electronic record, is inadmissible.

23. The Appellant admittedly has not produced any certificate in terms of Section 65B in respect of the CDs, Exhibits-P4, P8, P9, P10, P12, P13, P15, P20 and P22. Therefore, the same cannot be admitted in evidence. Thus, the whole case set up regarding the corrupt practice using songs, announcements and speeches fall to the ground.

24. The situation would have been different had the Appellant adduced primary evidence, by making available in evidence, the CDs used for announcement and songs. Had those CDs used for objectionable songs or announcements been duly got seized through the police or Election Commission and had the same been used as primary evidence, the High Court could have played the same in court to see whether the allegations were true. That is not the situation in this case. The speeches, songs and announcements were recorded using other instruments and by feeding them into a

computer, CDs were made therefrom which were produced in court, without due certification. Those CDs cannot be admitted in evidence since the mandatory requirements of Section 65B of the Evidence Act are not satisfied. It is clarified that notwithstanding what we have stated herein in the preceding paragraphs on the secondary evidence on electronic record with reference to Section 59, 65A and 65B of the Evidence Act, if an electronic record as such is used as primary evidence Under Section 62 of the Evidence Act, the same is admissible in evidence, without compliance of the conditions in Section 65B of the Evidence Act.

25. Now, we shall deal with the ground on publication of Exhibit-P1-leaflet which is also referred to as Annexure-A. To quote relevant portion of Paragraph-4 of the election petition:

4. On the 12th of April, 2011, the day previous to the election, one Palliparamban Aboobacker, S/o Ahamedkutty, Palliparamban House, Kizhakkechathalloor, Post Chathalloor, who was a member of the Constituency Committee of the UDF and the Convenor of Kizhakkechathalloor Ward Committee of the United Democratic Front, the candidate of which was the first Respondent, falling within the Eranad Mandalam Election Committee and was thereby the agent of the first Respondent, actively involved in the election propaganda of the first Respondent with the consent and knowledge of the first Respondent, had got printed in the District Panchayat Press, Kondotty, at least twenty five thousand copies of a leaflet with the heading "PP Manafinte Rakthasakshidhinam - Nam Marakkathirikkuka April 13" (Martyr Day of P.P. Manaf- let us not forget April 13) and in the leaflet there is a specific reference to the Petitioner who is described as the son of the then President of the Edavanna Panchayat Shri P V. Shaukat Ali and the allegation is that he gave leadership to the murder of Manaf in Cinema style. The name of the Petitioner is specifically mentioned in one part of the leaflet which had

been highlighted with a black circle around it specifically making the allegation that it was the Petitioner under whose leadership the murder was committed. Similarly in another part of the leaflet the name of the Petitioner is specifically mentioned with a black border in square. The leaflet comprises various excerpts from newspaper reports of the year 1995 highlighting the comments in big letters, which are the deliberate contribution of the publishers. The excerpts of various newspaper reports was so printed in the leaflet to expose the Petitioner as a murderer, by intentionally concealing the fact that Petitioner was honourably acquitted by the Honourable Court....

26. The allegation is that at least 25,000 copies of Exhibit-P1-leaflet were printed and published with the consent of the first Respondent. Exhibit-P1, it is submitted, contains a false statement regarding involvement of the Appellant in the murder of one Manaf on 13.04.1995 and the same was made to prejudice the prospects of the Appellant's election. Evidently, Exhibit-P1 was got printed through Haseeb by PW-4-Palliparamban Aboobakar and published by Kudumba Souhrida Samithi (association of the friends of the families), though PW-4 denied the same. The same was printed at District Panchayat Press, Kondotty with the assistance of one V. Hamza.

27. At Paragraph-4 of the election petition, it is further averred as follows:

4...Since both the said Aboobakar and V. Hamza are agents of the first Respondent, who had actively participated in the election campaign, the printing, publication and distribution of annexure-A was made with the consent and knowledge of the first Respondent as it is gathered from Shri P V. Mustafa a worker of the Petitioner that the expenses for printing have been shown in the electoral return of the first Respondent....

At Paragraph-18 of the election petition, it is stated thus:

18...As far as the printing and publication of annexure-A leaflet is concerned, the same was not only done with the knowledge and connivance of the 1st Respondent, it was done with the assistance of the his official account agent Sri V. Hamza, who happened to be the General Manager of the Press in which the said leaflets were printed....

28. PW-4-Palliparamban Aboobakar has completely denied the allegations. Strangely, Shri Mustafa and Shri Hamza, referred to above, have not been examined. Therefore, evidence on printing of the leaflets is of PW-4-Aboobakar and PW-42. According to PW-4, he had not seen Exhibit-P1-leaflet before the date of his examination. He also denied that he was a member of the election committee. According to PW-42, who was examined to prove the printing of Exhibit-P1, the said Hamza was never the Manager of the Press. Exhibit-X4-copy of the order form, based on which the leaflet was printed, shows that the order was placed by one Haseeb only to print 1,000 copies of a supplement and the order was given in the name of PW-4 in whose name Exhibit-P1 was printed, Exhibit-X5-receipt for payment of printing charges shows that the same was made by Haseeb. The said Haseeb also was not examined. Still further, the allegation was that at least 25,000 copies were printed but it has come out in evidence that only 1,000 copies were printed.

29. It is further contended that Exhibit-P1 was printed and published with the knowledge and consent of the first Respondent. Mere knowledge by itself will not imply consent, though, the vice-versa may be true. The requirement Under Section 123(4) of the RP Act is not knowledge but consent. For the purpose of easy reference, we may quote the relevant provision:

123. Corrupt practices.--The following shall be deemed to be corrupt practices for the purposes of this Act:

(1) xxx

(2) xxx

(3) xxx

(4) The publication by a candidate or his agent or by any other person with the consent of a candidate or his election agent, of any statement of fact which is false, and which he either believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate, or in relation to the candidature, or withdrawal, of any candidate, being a statement reasonably calculated to prejudice the prospects of that candidate's election.

30. In the grounds for declaring election to be void Under Section 100(1)(b), the court must form an opinion "that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent". In other words, the corrupt practice must be committed by (i) returned candidate, (ii) or his election agent (iii) or any other person acting with the consent of the returned candidate or his election agent. There are further requirements as well. But we do not think it necessary to deal with the same since there is no evidence to prove that the printing and publication of Exhibit-P1-leaflet was made with the consent of the first Respondent or his election agent, the sixth Respondent. Though it was vehemently contended by the Appellant that the printing and publication was made with the connivance of the first Respondent and hence consent should be inferred, we are afraid, the same cannot be appreciated. 'Connivance' is different from 'consent'.

According to the Concise Oxford English Dictionary, 'connive' means to secretly allow a wrong doing where as 'consent' is permission. The proof required is of consent for the publication and not connivance on publication. In Charan Lal Sahu v. Giani Zail Singh and Anr. MANU/SC/0204/1983 : (1984) 1 SCC 390, this Court held as under:

30...'Connivance' may in certain situations amount to consent, which explains why the dictionaries give 'consent' as one of the meanings of the word 'connivance'. But it is not true to say that 'connivance' invariably and necessarily means or amounts to consent, that is to say, irrespective of the context of the given situation. The two cannot, therefore, be equated. Consent implies that parties are ad idem. Connivance does not necessarily imply that parties are of one mind. They may or may not be, depending upon the facts of the situation....

31. Learned Counsel for the Appellant vehemently contends that consent needs to be inferred from the circumstances. No doubt, on charges relating to commission of corrupt practices, direct proof on consent is very difficult. Consent is to be inferred from the circumstances as held by this Court in Sheopat Singh v. Harish Chandra and Anr. MANU/SC/0161/1958 : AIR 1960 SC 1217. The said view has been consistently followed thereafter. However, if an inference on consent from the circumstances is to be drawn, the circumstances put together should form a chain which should lead to a reasonable conclusion that the candidate or his agent has given the consent for publication of the objectionable material. Question is whether such clear, cogent and credible evidence is available so as to lead to a reasonable conclusion on the consent of the first Respondent on the alleged publication of Exhibit-P1-leaflet. As we have also discussed above, there is no evidence at all to prove that Exhibit-P1-leaflet was printed at the instance of the first Respondent. One Haseeb, who placed the order for printing of Exhibit-P1 is not examined. Shri Hamza, who is said to be the Manager of the Press at the relevant time, was not examined. Shri Mustafa, who is said to have told the Appellant that the expenses

for the printing of Exhibit-P1 were borne by the first Respondent and the same have been shown in the electoral return of the first Respondent is also not examined. No evidence of the electoral returns pertaining to the expenditure on printing of Exhibit-P1 by the first Respondent is available. The allegation in the election petition is on printing of 25,000 copies of Exhibit-P1. The evidence available on record is only with regard to printing of 1,000 copies. According to PW-24-Sajid, 21 bundles of Exhibit-P1 were kept in the house of first Respondent as directed by wife of the first Respondent. She is also not examined. It is significant to note that Sajid's version, as above, is not the case pleaded in the petition; it is an improvement in the examination. There is further allegation that PW-7-Arjun and PW-9-Faizal had seen bundles of Exhibit-P1 being taken in two jeeps bearing registration Nos. KL 13B 3159 and KL 10J 5992 from the residence of first Respondent. For one thing, it has to be seen that PW-7-Arjun was an election worker of the Appellant and Panchayat Secretary of DYFI, the youth wing of CPI(M) and the member of the local committee of the said party of Edavanna and Faizal is his friend. PW-29 is one Joy, driver of jeep bearing registration No. KL 10J 5992. He has completely denied of any such material like Exhibit-P1 being transported by him in the jeep. It is also significant to note that neither PW-7-Arjun nor PW-9-Faizal has a case that the copies of Exhibit-P1 were taken from the house of the first Respondent. Their only case is that the vehicles were coming from the house of the first Respondent and PW-4- Palliparamban Aboobakar gave them the copies. PW-4 has denied it. It is also interesting to note that PW-9-Faizal has stated in evidence that he was disclosing the same for the first time in court regarding the receipt of notice from PW-4. It is also relevant to note that in Annexure-P3-complaint filed by the chief electoral agent of the Appellant on 13.04.2011, there is no reference to the number of copies of Exhibit-P1-leaflet, days when the same were distributed and the people who distributed the same, etc., and most importantly, there is no allegation at all in Annexure-P3 that the said leaflet was printed by the first Respondent or with his consent. The only allegation is on knowledge and connivance on the part of the first Respondent. We have already held that knowledge and connivance is different from consent. Consent is the requirement for constituting corrupt practice Under Section 123(4) of the RP Act. In such

circumstances, it cannot be said that there is a complete chain of circumstances which would lead to a reasonable inference on consent by the first Respondent with regard to printing of Exhibit-P1-leaflet. Not only that there are missing links, the evidence available is also not cogent and credible on the consent aspect of first Respondent.

32. Now, we shall deal with distribution of Exhibit-P1-leaflet. Learned Counsel for the Appellant contends that consent has to be inferred from the circumstances pertaining to distribution of Exhibit-P1. Strong reliance is placed on the evidence of one Arjun and Faizal. According to them, bundles of Exhibit-P1-leaflet were taken in two jeeps and distributed throughout the constituency at around 08.00 p.m. on 12.04.2011. To quote the relevant portion from Paragraph-5 of the election petition:

5...Both the first Respondent and all his election agents and other persons who were working for him knew that the contents of Annexure A which was got printed in the manner stated above are false and false to their knowledge and though the Petitioner was falsely implicated in the Manaf murder case he has been honourably acquitted in the case and declared not guilty. True copy of the judgment in S.C. No. 453 of 2001 of the Additional Sessions Court (Ad hoc No. 2), Manjeri, dated 24.9.2009 is produced herewith and marked as Annexure B. Though this fact is within the knowledge of the first Respondent, his agents referred to above and other persons who were working for him in the election on the 12th of April, 2011 at about 8 AM bundles of Annexure A which were kept in the house of the first Respondent at Pathapiriyam, within the constituency were taken out from that house in two jeeps bearing Nos. KL13-B 3159 and KL10-J 5992 which were seen by two electors, Sri V. Arjun aged 31 years, Kottoor House, S/o Narayana Menon, Pathapiriyam Post, Edavanna and C.P. Faizal aged 34 years, S/o Muhammed Cheeniyampurathu Pathapiriyam P.O., who are residing in the very same locality of the first Respondent and the jeeps were taken around in various parts of the

Eranad Assembly Constituency and Annexure A distributed throughout the constituency from the aforesaid jeeps by the workers and agents of the first Respondent at about 8 PM that night. The aforesaid publication also amounted to undue influence as the said expression is understood in Section 123(2)(a)(ii) of The Representation of the People Act, in that it amounted to direct or indirect interference or attempt to interfere on the part of the first Respondent or his agent and other persons who were his agents referred to below with the consent of the first Respondent, the free exercise of the electoral right of the voters of the Eranad Constituency and is also a corrupt practice falling Under Section 123(4) of The Representation of the People Act, 1951....

33. The allegation is on distribution of Exhibit-P1 at about 08.00 p.m. on 12.04.2011. But the evidence is on distribution of Exhibit-P1 at various places at 08.00 a.m., 02.00 p.m., 05.00 p.m., 06.30 p.m., etc. by the UDF workers. No doubt, the details on distribution are given at Paragraph-5 (extracted above) of the election petition at different places, at various timings. The Appellant as PW-1 stated that copies of Exhibit-P1 were distributed until 08.00 p.m. Though the evidence is on printing of 1,000 copies of Exhibit-P1, the evidence on distribution is of many thousands. In one panchayat itself, according to PW-22-KV Muhammed around 5,000 copies were distributed near Areakode bus stand. Another allegation is that two bundles were entrusted with one Sarafulla at Areakode but he is not examined. All this would show that there is no consistent case with regard to the distribution of Exhibit-P1 making it difficult for the Court to hold that there is credible evidence in that regard.

34. All that apart, the definite case of the Appellant is that the election is to be declared void on the ground of Section 100(1)(b) of the RP Act and that too on corrupt practice committed by the returned candidate, viz., the first Respondent and with his consent. We have already found that on the evidence available on record, it is not possible to infer consent on the part of the first Respondent in the matter of printing and publication of

Exhibit-P1-leaflet. There is also no evidence that the distribution of Exhibit-P1 was with the consent of first Respondent. The allegation in the election petition that bundles of Exhibit-P1 were kept in the house of the first Respondent is not even attempted to be proved. The only connecting link is of the two jeeps which were used by the UDF workers and not exclusively by the first Respondent. It is significant to note that there is no case for the Appellant that any corrupt practice has been committed in the interest of the returned candidate by an agent other than his election agent, as per the ground Under Section 100(1)(d)(ii) of the RP Act. The definite case is only of Section 100(1)(b) of the RP Act.

35. In Ram Sharan Yadav v. Thakur Muneshwar Nath Singh and Ors. MANU/SC/0164/1984 : (1984) 4 SCC 649, a two-Judge Bench of this Court while dealing with the issue on appreciation of evidence, held as under:

9. By and large, the Court in such cases while appreciating or analysing the evidence must be guided by the following considerations:

(1) the nature, character, respectability and credibility of the evidence,

(2) the surrounding circumstances and the improbabilities appearing in the case,

(3) the slowness of the appellate court to disturb a finding of fact arrived at by the trial court who had the initial advantage of observing the behaviour, character and demeanour of the witnesses appearing before it, and

(4) the totality of the effect of the entire evidence which leaves a lasting impression regarding the corrupt practices alleged.

On the evidence available on record, it is unsafe if not difficult to connect the first Respondent with the distribution of Exhibit-P1, even assuming that the allegation on distribution of Exhibit-P1 at various places is true.

36. Now, we shall deal with the last ground on announcements. The attack on this ground is based on Exhibit-P10-CD. We have already held that the CD is inadmissible in evidence. Since the very foundation is shaken, there is no point in discussing the evidence of those who heard the announcements. Same is the fate of the speech of PW-4-Palliparamban Aboobakar and PW-30-Mullan Sulaiman.

37. We do not think it necessary to deal with the aspect of oral evidence since the main allegation of corrupt practice is of publication of Exhibit-P1-leaflet apart from other evidence based on CDs. Since there is no reliable evidence to reach the irresistible inference that Exhibit-P1-leaflet was published with the consent of the first Respondent or his election agent, the election cannot be set aside on the ground of corrupt practice Under Section 123(4) of the RP Act.

38. The ground of undue influence Under Section 123(2) of the RP Act has been given up, so also the ground on publication of flex boards.

39. It is now the settled law that a charge of corrupt practice is substantially akin to a criminal charge. A two-Judge Bench of this Court while dealing with the said issue in Razik Ram v. Jaswant Singh Chouhan and Ors. MANU/SC/0284/1975 : (1975) 4 SCC 769, held as follows:

15...The same evidence which may be sufficient to regard a fact as proved in a civil suit, may be considered insufficient for a conviction in a criminal action. While in the former, a mere preponderance of probability may constitute an adequate basis of decision, in the latter a far higher degree of assurance and judicial certitude is requisite for a conviction. The same is largely true about proof of a charge of corrupt practice, which cannot be established by mere balance of probabilities, and, if, after giving due consideration and effect to the totality of the evidence and circumstances of the case, the mind of the Court is left rocking with reasonable doubt -- not being the doubt of a timid, fickle or vacillating mind -- as to the veracity of the charge, it must hold the same as not proved.

The same view was followed by this Court P.C. Thomas v. P.M. Ismail and Ors. MANU/SC/1606/2009 : (2009) 10 SCC 239, wherein it was held as follows:

42. As regards the decision of this Court in Razik Ram and other decisions on the issue, relied upon on behalf of the Appellant, there is no quarrel with the legal position that the charge of corrupt practice is to be equated with criminal charge and the proof required in support thereof would be as in a criminal charge and not preponderance of probabilities, as in a civil action but proof "beyond reasonable doubt". It is well settled that if after balancing the evidence adduced there still remains little doubt in proving the charge, its benefit must go to the returned candidate. However, it is equally well settled that while insisting upon the standard of proof beyond a reasonable doubt, the courts are not required to extend or stretch the doctrine to such an extreme extent as to make it well-nigh impossible to prove any allegation of corrupt practice. Such an approach would

defeat and frustrate the very laudable and sacrosanct object of the Act in maintaining purity of the electoral process. (please see S. Harcharan Singh v. S. Sajjan Singh)

40. Having regard to the admissible evidence available on record, though for different reasons, we find it extremely difficult to hold that the Appellant has founded and proved corrupt practice Under Section 100(1)(b) read with Section 123(4) of the RP Act against the first Respondent. In the result, there is no merit in the appeal and the same is accordingly dismissed.

41. There is no order as to costs.

MANU/UP/0260/1980

Back to Section 90 of Indian Evidence Act, 1872

Back to Section 90A of Indian Evidence Act, 1872

IN THE HIGH COURT OF ALLAHABAD (LUCKNOW BENCH)

FULL BENCH

First Civil Appeal No. 30 of 1966

Decided On: 28.01.1980

Ram Jas and Ors. Vs. Surendra Nath and Ors., MANU/UP/0260/1980

Hon'ble Judges/Coram:

Hari Swarup, K.N. Goyal and S.C. Mathur, JJ.

Counsels:

For Appellant/Petitioner/Plaintiff: H.N. Tilbari, Adv.

For Respondents/Defendant: S.D. Misra and K.N. Misra, Advs.

JUDGMENT

Hari Swarup, J.

1. The following question of law has been referred to us for our opinion :--

"Whether Sub-section (2) of Section 90-A of the Evidence Act as amended by the U. P. Civil Laws (Reforms and Amendment) Act controls the operation of Section 90(1) and (2) of the Evidence Act as amended by the said U. P. Civil Laws (Reforms and Amendment) Act, 1954."

The question arose in the following circumstances :--

A certified copy of a registered will was pressed in evidence in the case and a presumption about its execution, attestation and writing was sought to be raised by reason of Section 90(2) of the Evidence Act. The Civil Judge did not accept the plea on the ground that the provisions of Section 90 were not attracted. The learned single Judge before whom the appeal came up for hearing was of the opinion that in the circumstances of the case the presumption could be raised, meaning thereby that the conditions contemplated by Section 90 of the Act were present. The other objection which was taken before learned single Judge was that because the document was the basis of the suit no presumption about its due execution could be raised by reason of Sub-section (2) of Section 90-A of the Evidence Act. As a Division Bench in Om Prakash v. Bhagwan, MANU/UP/0093/1974 : AIR1974All389 had taken a different view the learned single Judge referred the question to a Division Bench. The Division Bench, finding that the decision in Om Prakash's case (supra) needed reconsideration and the question was of general importance, referred the question for the opinion of a larger Bench. It is how the question has come before us.

2. Section 90 of the Evidence Act was amended by the U. P. Civil Laws (Reforms and Amendment) Act 34 of 1954, in two ways. The existing section was renumbered as Section 90(1) and for the words "thirty years" the words "twenty years" were substituted and Sub-section (2) was added which was in the following terms:--

"(2) Where any such document as is referred to in Sub-section (.1) was registered in accordance with the law relating to registration of documents and a duly certified copy thereof is produced, 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 person by whom it purports to have been executed or attested."

3. After Section 90 Section 90-A was added which runs as under:--

"90-A (1) Where any registered document or a duly certified copy thereof or any certified copy of any document which is part of the record of a court of justice, is produced from any custody which the court in the particular case considers proper, the court may presume that the original was executed by the person by whom it purports to have been executed.

(2) This presumption shall not be made in respect of any document which is the basis of a suit or of a defence or is relied upon in the plaint or written statement.

The explanation to Sub-section (1) of Section 90 will also apply to this section."

4. The controversy has arisen because this particular document can fall both under Sub-section (2) of Section 90 and Sub-section (1) of Section 90-A, it being a duly certified copy of a registered document. Section 90(2) deals with documents more than 20 years old.

Section 90-A. makes no such distinction between the documents. It is urged that because Section 90-A makes no distinction between an old and new document it will cover even the documents more than 20 years old and if such a document falls in the exception contained in Sub-section (2) of Section 90-A the presumption either under Section 90(2) or 90-A(1) will not be available. The contention of the other side is that Sub-section (2) does not apply to documents falling under Section 90 and that the presumption available in Section 90 being independent of the presumption under Section 90-A would not be nullified by Sub-section (2) of Section 90-A.

5. Sub-section (2) opens with the words "this presumption" which normally would mean the presumption permitted by Section 90-A and not the presumption available in any other section including Section 90. The further provision in Section 90-A to the effect that the explanation to Sub-section (1) of Section 90 will also apply to this section, makes it further clear that Section 90-A is a section independent of Section 90 of the Act.

6. In Om Prakash v. Bhagwan MANU/UP/0093/1974 : AIR1974All389 the document produced was more than 20 years old but it formed the basis of the defence. Considering Ss. 90 and 90-A of the Evidence Act the Court observed:--

"It is not disputed by the learned counsel for the defendants-appellants that the sale deed in question was the basis of the defence and was relied upon by the defendants in their written statement. Nothing therefore in Section 90 or Section 90-A of the Evidence Act as amended by the U. P. Civil Laws (Amendment) Act 1954 will come to the assistance of the defendants-appellants and the Courts will not draw a legal presumption in favour of the defendants-appellants that it was executed by Smt. Reoti Devi.

7. Except for this conclusion contained in the judgment there is no discussion from which we may benefit for making an interpretation of Sections 90 and 90-A of the Evidence Act.

8. It may be relevant to quote the objects and reasons as contained in the Report of the U. P. Judicial Reforms Committee 1950-51, on the basis of which Section 90 was amended and Section 90-A was introduced. It runs as under:--

"As it has been held by the Privy Council in 1935 ALJ 847 that the presumption of Section 90 of the Evidence Act does not apply to certified copies of documents which are over thirty years old and considerable difficulty is experienced by parties to a suit to prove such old, documents as witnesses in such cases are either dead or cannot be found it is proposed that the presumption of Section 90 may be extended to certified copies of registered documents, the originals of which are over thirty years old. It is necessary to rely on copies when the originals are not traceable or are lost. Section 90 may, therefore be amended by adding the words "or a duly certified copy of registered document purporting to be thirty years old" after the words 'thirty years old" and before the words "is produced".

It is felt that a good deal of the time of courts is wasted in recording evidence called to prove formally registered documents ana other documents of which duly certified copies have been filed, even if there is no real contest with regard to the execution of these documents e. g., in suits based on custom quite a number of transfer deeds have to be filed to establish a custom and formal proof of these documents has to be adduced before the documents are admitted into evidence. It is, therefore, desired that courts may be empowered to apply the presumption mentioned in Section 90 to such documents to a limited extent, i.e., formal execution of these documents may be presumed and need not be proved. A new section as Section 90-A may be added in the following form or in some other words carrying out the intention referred to above." In Dalsingar v. Sita Ram (1969

AWR (HC) 188) a learned single Judge considered the matter and held that the two sections were independent of each other and Section 90 was not controlled by Section 90-A and accordingly Sub-section (2) of Section 90-A could not bar the raising of the presumption if the case was covered by Section 90. The reason given by the learned single Judge was as under:--

"Before considering the section it would not be improper to see the purpose for which the U. P. Act 24 of 1954 was enacted. Under Section 90 of the Evidence Act a document which was more than thirty years old was not required to be proved. In order to extend the presumption available under Section 90, the committee which was appointed to enquire into the system of administration of justice in the State recommended that the presumption should be extended to a certified copy of the document as well. If the purpose of the committee was to enlarge the presumption in respect of certified copies, Section 90-A(2) would have the effect of curtailing the presumption in cases where the document is the basis of the suit or of defence."

9. The principle which has been applied by the learned single Judge in this case also becomes evident from the following example. If a document optionally registrable under Section 18 of the Registration Act and so registered, which is more than 20 years old is produced in original it may be hit by Sub-section (2) of Section 90-A, but if the same document was unregistered then it will not be hit by Sub-section (2) of Section 90-A. This could not be the intention of law as that will make the Court raise presumptions in respect of an unregistered document and not to raise the same presumptions if the document is registered. Registration of a document gives it greater authenticity and it would not be reasonable to expect that the legislature will place a registered document at a lower level than a similar unregistered document when it comes for proof in a Court.

10. In Risal v. Deputy Director of Consolidation, U. P., Lucknow (1970 AWR (HC) 634) another learned Judge took the view that Sections 90 and 90-A are independent provisions, and the document which is more than 20 years old cannot be hit by Sub-section (2) of Section 90-A. The same view was taken by another learned Judge in Deo Chand v. Deputy Director of Consolidation (1971 ALJ 992).

11. The interpretation of law has to take into consideration the purpose of law, and if it is a law relating to procedure then also the impact it is calculated to have on the course of litigation and decision making.

"Law is commonly divided into substantive law, which defines rights, duties and liabilities; and adjective law, which defines the procedure, pleading and proof by which the substantive law is applied in practice.

The rules of procedure regulate the general conduct of litigation; the object of pleading is to ascertain for the guidance of the parties and the court the material facts in issue in each particular case; proof is the establishment of such facts by proper legal means to the satisfaction of the court, and in this sense includes disproof. The first mentioned term is, however, often used to include the other two.

'The province of the law of evidence is therefore twofold, viz. to lay down rules as to what matter is or is not admissible for the purpose of establishing facts in dispute and as to the manner in which such matter may be placed before the court. Whether any proof is required or not is a question of law, (Phipson on Evidence, Twelfth Edn. Para 1)". The law of evidence does not affect substantive rights of parties, but only lays down the law

for facilitating the course of justice. The Evidence Act lays down the rules of evidence for purposes of the guidance of the Court. It is procedural law which provides, inter alia, how a fact is to be proved.

12. Section 4 of the Evidence Act deals with presumption.

"Section 4 -- 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.

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, When one fact is declared by this Act to be conclusive proof of another, the Court shall, on proof of the one fact, regard the other as proved and shall not allow evidence to be given for the purpose of disproving it".

13. Part I of the Evidence Act deals with relevancy of facts and Part II deals with proof. Chapter V of Part II deals with documentary evidence and one of its sub-chapters concerns presumptions as to documents. It contains Sections 79 to 90-A. Sections 79 to 90-A deal with different conditions and circumstances in which a particular type of presumption can be raised. If the circumstances exist for the raising of a presumption under any of the provisions of the Evidence Act the Court becomes entitled or bound to raise that presumption.

"Presumptions are either of law or fact. Presumptions of law are arbitrary consequences expressly annexed by law to particular facts; and may be either conclusive, as that a child under a certain age is incapable of committing any crime; or rebuttable, as that a person not heard of for seven years is dead or that a bill of exchange has been given for value.

"Presumptions of fact are inferences which the mind naturally and logically draws from given facts, irrespective of their legal effect. Not only are they always rebuttable, but the trier of fact may refuse to make the usual or natural inference notwithstanding that there is no rebutting evidence."

(Phipson on Evidence, Twelfth Edition Para 9),

14. The presumptions under the Evidence Act are only the inferences which a logical and reasonable mind normally draws. Facts and circumstances (from) which certain inferences follow are indicated in various provisions of the Evidence Act running from Sections 79 to 90-A. As already seen the sections of the Evidence Act Lay down different circumstances in which a presumption is to be raised. Whenever the law permits the raising of a presumption the Court can by reason of Section 4 of the Evidence Act raise the presumption for purpose of proof of a fact. If the presumption is available in one section it can raise it under that section. If it is not available in one section and is available in another section, then the Court can raise presumption under that section. It all depends upon the circumstances available in the case as applicable to a particular document. Hence, even if the case falls under Section 90-A and sub-section (2) thereof is applicable and no presumption can be drawn under Section 90-A(1) it will not exclude the Court from drawing the presumption, if the circumstances permit it to be drawn, under any other provision of the Evidence Act including Section 90 of the Act. The presumption, if

available under Section 90, can, therefore, be raised by the Court even after coming to the conclusion that a presumption under Section 90-A is not available.

15. The presumptions available under Sections 90 and 90-A are also not similar. Section 90(2) permits the raising of the presumption in respect of the signature, handwriting, execution and attestation, while Section 90 permits a presumption only in respect of execution. Section 90 deals with documents which are more than 20 years old while Section 90-A places no such restriction and includes also documents from judicial record Neither of the two sections, therefore, can be said to be occupying a field which the other exclusively occupies. They deal with different fields and different circumstances and permit different types of presumptions to be raised.

16. For the reasons given above it is not possible to hold that Sub-section (2) of Section 90-A will override and nullify Section 90 if the document, though more than twenty years old, is the basis of the suit or the defence or is relied upon in the plaint or written statement. We are, therefore, of opinion that Om Prakash v. Bhagwan MANU/UP/0093/1974 : AIR1974All389 does not lay down the correct law.

17. For the reasons given above we answer the question in the negative. Let this opinion be laid before the learned single Judge dealing with the appeal.

MANU/SC/0276/2003

Back to Section 91 of Indian Evidence Act, 1872

Back to Section 92 of Indian Evidence Act, 1872

IN THE SUPREME COURT OF INDIA

Civil Appeal No. 2631 of 2003

Decided On: 02.04.2003

Roop Kumar Vs. Mohan Thedani

Hon'ble Judges/Coram:

Shivaraj V. Patil and Dr. Arijit Pasayat, JJ.

Counsels:

For Appellant/Petitioner/Plaintiff: Yogeshwar Prasad, Sr. Adv., Anuvrat Sharma and Rachna Gupta, Advs

For Respondents/Defendant: K.R. Nagaraja and Anand P. Jain, Advs.

JUDGMENT

Arijit Pasayat, J.

1. Leave granted.

2. This case is a classic example of a just cause getting defeated by a sitting up dubious pleas and depriving a party of what is legally due to him. It is one of those innumerable cases where course of justice has been attempted to be deflected by factual and legal red herrings.

3. Appellant is the defendant in a suit filed by respondent-plaintiff No. 1 for recovery of consolidated and expected commission/rendition of accounts and possession of Premises No. 15A/16-I, Ajmal Khan Road, Karol Bagh, New Delhi.

4. As per suit averments respondent-plaintiff No. 1 was a tenant in respect of the aforesaid premises on a monthly rent w.e.f. 15.8.1962. The shop was registered under the Shops and Commercial Establishments Act, (in short the 'Establishment Act') in the name of M/s. Esquire, of which respondent-plaintiff No. 1 was the proprietor. Later on, the name of the concern was changed to M/s. Purshotams. For all intents and purposes there was no change of proprietorship. Plaintiff No. 2, Tahil Ram is the father of respondent-plaintiff No. 1 and his power of attorney holder. Tahil Ram entered into an agency-cum-deed of licence with the appellant-defendant on 15.5.1975 and the terms of such agency-cum-licence agreement was incorporated in an agreement dated 15.5.1975. Earlier, the appellant-defendant was having his business as tailors and drapers at A-7. Prahlad Market, Deshbandhu Gupta Road, New Delhi. He had approached respondent-plaintiff No. 1 for use of his premises in question under his tenancy as a show room on license-cum-agency basis. As per the agreement, plaintiffs were to receive their commission @ 12% on tailoring business and @ 3% commission on the sale of materials of all kinds as conducted by the appellant-defendant. Possession of the shop continued with the

plaintiffs along with the tenancy rights. The agreement was initially for a period of five years, with option of extension by mutual consent. The agreement expired on 14.5.1980 and was never renewed thereafter. In terms of Clause 5 of the agreement, the appellant-defendant was to keep separate accounts of the tailoring and cloth materials; and therefore, he was an accounting party. The agreement was duly acted upon and at no point of time possession was delivered to the defendant and as noted above, remained with the plaintiffs. Later on, for his own convenience, defendant brought his tailors for tailoring business. Defendant has trespassed by destroying all traces of evidence of possession and has started displaying the signboards and other advertisement materials, as if M/s. Roop Tailors and Drapers are conducting business in the suit premises. Accounts were rendered up to 30.6.1976. Payments were made by cheques and by other modes. Accounts were also rendered up to 31.3.1978 by the defendant under his own hand and signatures. After that date, defendant neither rendered accounts nor made any payment in spite of repeated reminders and requests. Legal notice was served through registered post for payment of commission, and a demand was made for true and faithful rendition of accounts. After 14.5.1980, defendant was asked to vacate the premises, but he forcibly continued to occupy the premises. This led to initiation of proceedings under Section 145 of the Code of Criminal Procedure, 1973 (in short the 'Cr.P.C.'). Defendant to frustrate the legal demands of the plaintiffs filed a suit for injunction. Though, the period of the agency-cum-licence deed expired on 15.5.1975, the defendant continued to remain in possession. On the ground of limitation, the plaintiffs claimed what is due from 1.10.1977 to 31.3.1978 which came to be Rs. 7,000/- and from 1.4.1978 to 14.5.1980 the commission was estimated to be about Rs. 70,000/-. Claim of damages at Rs. 6,000/- from 14.5.1980 to 14.10.1980 was made for a period of five months. Plaintiffs also claimed a decree for possession of the shop along with a decree for damages and for payment of the commission and rendition of accounts.

5. Primary stand of the defendant in reply was that he was in lawful occupation and possession as tenant under the plaintiffs. Some documents on false representation had been obtained from his giving the wrong impression that they were to be produced for fixing of standard rent in a case of eviction, and these documents were never intended to be acted upon otherwise. The purported agreement was not acted upon, and was a sham document and there was no agreement relating to commission and, therefore, the question of rendition of any accounts did not arise. It was further stated that due to litigation between plaintiff No. 1 and his landlords, the defendant was made a victim though with a spirit of good faith and to help the plaintiffs, he had signed some documents which were not intended to be acted upon, but have been maliciously relied upon to his disadvantage. There was no relationship of principal and agent as claimed. A suit for injunction had been filed and the same is pending adjudication. Additional plea was taken that as per averments in the plaint, defendant is alleged to have committed act of criminal trespass on 2.5.1980 after surrendering possession to the plaintiffs, so the suit on the basis of agreement dated 15.5.1975 or on the basis of termination of agency-cum-licence deed is not maintainable.

6. Initially 11 issues were framed on 17.2.1981. Subsequently, an additional issue was framed on 6.4.1993. Nine witnesses were examined to further the plaintiffs' case, while defendant examined seven witnesses. Several documents were exhibited and proved. Some other documents were marked, but were not proved.

7. The Trial court decreed the suit in favour of the plaintiffs and against the appellant-defendant. The judgment and decree came to be assailed in Regular First Appeal before the Delhi High Court.

8. Before the High Court the parties agreed that the basic question which required consideration was whether relationship between the respondent and the appellant was that of licensor and licensee or it was that of lessor or lessee. The Trial Judge had been held that the transaction between the respondent and appellant evidenced by an agreement dated 15.5.1975 amounts to licence and nor sub- letting. There was a finding recorded by the Trial Court to the effect that the appellant was a party to earlier ejectment proceedings which was not factually correct. Since the Trial Court nurtured this wrong notion which runs through the entire judgment, it was held that the reasoning given by the Trial Court in support of its findings on various issues and particularly issues Nos. 1, 6, 7 and 10 cannot be sustained. The High Court with consent of parties exercised powers conferred by Order 41 Rules 30, 32 and 33 of the Code of Civil Procedure, 1908 (in short the 'Code'). Arguments were heard on the merit of the issues framed in the suit. On consideration of the rival stands, the High Court came to hold that the conclusions arrived at by the Trial Court were correct, though the reasoning in support of the conclusions were different. That being the position, reasoning were recorded in support of the conclusions by the High Court. On consideration of the rival stands, it held that the agreement dated 15.5.1975 was entered into between them with mutual consent and the appellant-defendant signed the same voluntarily and out of his free will; it was not a sham document; was in fact acted upon; the appellant- defendant was an accounting party in terms of the agreement referred to above; in terms of that agreement accounts had been rendered up to March 1978 and payment of commission was made up to June 1976: the appellant-defendant did not criminally trespass in the disputed shop; he was in unlawful possession of the shop as the licence came to end on expiry of the period as contained in the agreement dated 15.5.1975; the appellant-defendant was only a licensee and not the lessee and, therefore, the Civil Court i.e. the Trial Judge had jurisdiction to entertain the suit. The commission charges for the period from 14.10.1977 to 31.3.1978 fixed at Rs. 7,000/- was affirmed. For the period from 1.4.1978 and 1.4.1980 the appellant-defendant had not rendered accounts and, therefore, taking into account the average monthly commission for which the accounts were rendered, a decree for Rs. 25,500/- was

passed in favour of the plaintiffs and against the defendant in respect of the commission charges for the period from 1.4.1978 to 14.5.1980 and subject to payment of court fees by the plaintiffs. As the appellant-defendant was in unauthorised occupation of the premises in question at the rate of Rs. 1200/- p.m., the Trial Court was not justified in fixing at the rate of Rs. 500/-. The commission for the period for which accounts were rendered was more than Rs. 1200/- in the normal course and, therefore, the appellant would have paid Rs. 1200/- p.m. even if he was continuing in possession in terms of the agreement. The rentals in the area have increased by leaps and bounds after 1980 and the claim of Rs. 1200/- p.m. was very reasonable. Therefore, respondent-plaintiff No. 1 would be entitled to damages for use and occupation of the premises by the appellant-defendant at the rate of Rs. 1200/- p.m. A decree of Rs. 6,000/- was accordingly passed for the period from 15.5.1980 to 14.10.1980 subject to payment of court fees by the respondent-plaintiff No. 1. Decree for possession was passed. The respondent-plaintiff No. 1 was entitled to damages for use and occupation of the premises at the rate of Rs. 1200/- p.m. from the date of suit till delivery of possession subject to payment of proper court fee. Costs were awarded. The appeal was dismissed with costs.

9. In appeal, learned counsel for the appellant has taken various pleas. Essentially they are as follows: The High Court was not justified in hearing the appeal as if it was the Trial Court having come to the conclusion that the premises on which the Trial Court proceeded were erroneous. That amounts to denial of a forum of appeal which was statutorily provided and in essence amounted to deprivation of such a right. Reliance was placed on a decision of this Court in A.R. Antulay v. R.S. Nayak and Ors. MANU/SC/0002/1988 : AIR 1988 SC 1531. The High Court has not considered the true import of Sections 91 and 92 of the Indian Evidence Act. 1872 (in short the 'Evidence Act') in its proper perspective. It is not as if a party is not entitled to lead oral evidence to show that the agreement was not intended to be acted upon and the terms were really not reflective of intention of the parties. In fact, the agreement was not acted upon. The High

Court proceeded on an erroneous basis as if some of the issues were not pressed before the Trial Court and the High Court. The clauses of the agreement on which the Trial Court and the High Court placed reliance do not prove the essence of the transactions and/or intention and should not have been given undue importance. Some of the basic issues like Issue No. 12 were not adjudicated by the Trial Court and the High Court. Though reference was placed on the objections filed to the application under Section 145 of the Cr.P.C. stand of the appellant was not taken note of. In fact, an application had been filed for taking note of the objections which unfortunately the High Court treated to have become infructuous as it was listed on the day the judgment was delivered. While considering a plea that the agreement was not intended to be acted upon, veil has to be lifted by considering the evidence and the surrounding circumstances in their proper perspective. Though the Trial Court had granted Rs. 500/- p.m. as damages, the High Court suo moto without even any challenge thereto by the respondent raised the same to Rs. 1200/- p.m. The specific stand of the appellant was that the agreement was executed as a devise to protect the plaintiffs in the suit for ejectment or/and that relating to fixation of standard rent in the disputes between the plaintiffs and their landlords. The High Court erroneously came to hold that payments were made as commissions for various periods. As the Trial Court proceeded on the basis as if the appellant was a party in proceedings earlier, the foundation of its conclusions was shaken. The High Court should have remitted the matter back to it for fresh adjudication after having found that the conclusions were contrary to records and materials; instead it adjudicated the matter acting as a Trial Court which is not permissible. The High Court erroneously proceeded to do so as if the appellant had conceded to such a course being adopted while in reality there was no concession.

10. Per contra, learned counsel for the respondent submitted that after having agreed before the High Court that it may take up the whole matter for adjudication on merits, on consideration of the evidence on record, it is not open to the appellant to take a stand

that there was no such concession when in fact the High Court has specifically recorded about such concession in detail. The stand that the appellant was a sub-tenant, being a tenant under the plaintiffs is clearly untenable in view of the documentary evidence to which the High Court has referred in detail. The scope and ambit of Sections 91 and 92 of the Evidence Act have been rightly considered by the High Court. The stand that the agreement was intended to be a protection of the plaintiffs in proceedings between plaintiffs and their landlords is falsified because of the fact that the suit for eviction was filed after about 7 months of the execution of the agreement. There is no dispute that the agreement was executed. Therefore, the appellant was bound by it. In any event, there is no question of sub-tenancy in view of the clear bar provided under Section 16 of the Delhi Rent Control Act, 1958 (in short the 'Rent Control Act') which prohibits sub-tenancy without a consent of the original landlord. It has not been shown that the original landlord had consented to the sub-tenancy. The High Court has rightly therefore discarded the plea. Not only issue No. 12 but also several other issues were given up before the Trial Court and the High Court and it is not open to the appellant to make a grievance that these issues were not considered. So far as enhancement of the damages is concerned, the High Court had exercised powers under Order 41 Rule 33 with the consent of the parties and when the claim was for damages, it was open for the High Court to accept the claim as made by the respondent-plaintiff No. 1 in the Trial Court by fixing damages at Rs. 1200/- p.m.

11. It would be logical to first deal with the plea relating to absence of forum of appeal. It is to be noted that the parties agreed before the High Court that instead of remanding the matter of trial Court, it should consider materials on record and render a verdict. After having done so, it is not open to the appellant to turn round or take a plea that no concession was given. This is clearly a case of sitting on the fence, and is not to be encouraged. If really there was no concession, the only course open to the appellant was to move the High Court in line with what has been said in State of Maharashtra v. Ramdas

Shrinivas Nayak and Anr. MANU/SC/0117/1982 : 1982 (2) SCC 463. In a recent decision Bhavnagar University v. Palitana Sugar Mills Pvt. Ltd. and Ors. MANU/SC/1092/2002 : 2002 AIR SCW 4939 the view in the said case was reiterated by observing that statements of fact as to what transpired at the hearing, recorded in the judgment of the Court, are conclusive of the facts so stated and no one can contradict such statements by affidavit or other evidence. If a party thinks that he happenings in Court have been wrongly recorded in a judgment, it is incumbent upon the party, while the matter is still fresh in the minds of the Judges, to call the attention of the very Judges who have made the record. That is the only way to have the record corrected. If no such step is taken, the matter must necessarily end there. It is not open to the appellant to contend before this Court to the contrary.

12. Before we deal with the factual aspects, it would be proper to deal with the plea relating to scope and ambit of Sections 91 and 92 of the Evidence Act.

13. Section 91 relates to evidence of terms of contract, grants and other disposition of properties reduced to form of document. This section merely forbids proving the contents of a writing otherwise than by writing itself; it is covered by the ordinary rule of law of evidence, applicable not merely to solemn writings of the sort named but to others known some times as the "best evidence rule". It is in really declaring a doctrine of the substantive law, namely, in the case of a written contract, that of all proceedings and contemporaneous oral expressions of the thing are merged in the writing or displaced by it. (See Thaver's Preliminary Law on Evidence p. 397 and p. 398; Phipson Evidence 7th Edn. p. 546; Wigmore's Evidence p. 2406.) It has been best described by Wigmore stating that the rule is no sense a rule of evidence but a rule of substantive law. It does not exclude certain data because they are for one or another reason untrustworthy or undesirable means of evidencing some fact to be proved. It does not concern a probative mental

process - the process of believing one fact on the faith of another. What the rule does is to declare that certain kinds of facts are legally ineffective in the substantive law; and this of course (like any other ruling of substantive law) results in forbidding the fact to be proved at all. But this prohibition of providing it is merely the dramatic aspect of the process of applying the rule of substantive law. When a thing is not to be proved at all the rule of prohibition does not become a rule of evidence merely because it comes into play when the counsel offers to "prove" it or "give evidence" of it; otherwise any rule of law whatever might reduced to a rule of evidence. It would become the legitimate progeny of the law of evidence. For the purpose of specific varieties of jural effects - sale, contract etc. there are specific requirements varying according to the subject. On contrary there are also certain fundamental elements common to all and capable of being generalised. Every jural act may have the following four elements:

(a) the enaction or creation of the act.

(b) its integration or embodiment in a single memorial when desired;

(c) its solemnization on fulfilment of the prescribed form, if any; and

(d) the interpretation or application of the act to the external objects affected by it.

14. The first and fourth are necessarily involved in every jural act, and second and third may or may not become practically important, but are always possible elements.

15. The enaction or creation of an act is concerned with the question whether any jural act of the alleged tenor has been consummated; or, if consummated, whether the circumstances attending its creation authorise its avoidance or annulment. The integration of the act consists in embodying it in a single utterance or memorial commonly, of course, a written one. This process of integration may be required by law,

or it may be adopted voluntarily by the actor or actors and in the latter case, either wholly or partially. Thus, the question in its usual form is whether the particular document was intended by the parties to cover certain subjects of transaction between them and, therefore, to deprive of legal effect all other utterances.

16. The practical consequence of integration is that its scattered parts, in their former and inchoate shape, have no longer any jural effect; they are replaced by a single embodiment of the act. In other words, when a jural act is embodied in a single memorial all other utterances of the parties on the topic are legally immaterial for the purpose of determining what are the terms of their act. This rule is based upon an assumed intention on the part of the contracting parties, evidenced by the existence of the written contract, to place themselves above the uncertainties of oral evidence and on a disinclination of the Courts to defeat this object. When persons express their agreement in writing, it is for the express purpose of getting rid of any indefiniteness and to put their ideas in such shape that there can be no misunderstanding, which so often occurs when reliance is placed upon oral statements. Written contracts presume deliberation on the part of the contracting parties and it is natural they should be treated with careful consideration by the Courts and with a disinclination to disturb the conditions of matters as embodied in them by the act of the parties. (see Mc Kelvey's Evidence p. 294). As observed in Greenlea's Evidence page 563, one of the most common and important of the concrete rules presumed under the general notion that the best evidence must be produced and that one with which the phrase "best evidence" is now exclusively associated is the rule that when the contents of a writing are to be proved, the writing itself must be produced before the Court or its absence accounted for before testimony to its contents is admitted.

17. It is likewise a general and most inflexible rule that wherever written instrument are appointed, either by the requirement of law or by the contract of the parties, to be the

repositories and memorials of truth, any other evidence is excluded from being used either as a substitute for such instruments, or to contradict or alter them. This is a matter both of principle and policy. It is of principle because such instruments are in their own nature and origin, entitled to a much higher degree of credit than parol evidence. It is of policy because it would be attended with great mischief if those instruments, upon which men's rights depended, were liable to be impeached by loose collateral evidence. (See Strake on Evidence p. 648).

18. In Section 92 the legislature has prevented oral evidence being adduced for the purpose of varying the contract as between the parties to the contract; but, no such limitations are imposed under Section 91. Having regard to the jural position of Sections 91 and 92 and deliberate omission from Section 91 of such words of limitation, it must be taken note of that even a third party if he wants to establish a particular contract between certain others, either when such contract has been reduced to in a document or where under the law such contract has to be in writing, can only prove such contract by the production of such writing.

19. Sections 91 and 92 apply only when the document on the face of it contains or appears to contain all the terms of the contract. Section 91 is concerned solely with the mode of proof of a document with limitation imposed by Section 92 relates only to the parties to the document. If after the document has been produced to prove its terms under Section 91, provisions of Section 92 come into operation for the purpose of excluding evidence of any oral agreement or statement for the purpose of contradiction, varying, adding or subtracting from its terms. Sections 91 and 92 in effect supplement each other. Section 91 would be inoperative without the aid of Section 92, and similarly Section 92 would be inoperative without the aid of Section 91.

20. The two sections are, however, differ in some material particulars. Section 91 applies to all documents, whether they purport to dispose of rights or not, whereas Section 91 applies to documents which can be described as dispositive. Section 91 applies to documents which are both bilateral and unilateral, unlike Section 92 the application of which is confined to only to bilateral documents. (See: Bai Hira Devi and Ors. v. Official Assignee of Bombay MANU/SC/0001/1958 : AIR 1958 SC 448). Both these provisions are based on "best evidence rule". In Bacon's Maxim Regulation 23, Lord Bacon said "The law will not couple and mingle matters of speciality, which is of the higher account with matter of averment which is of inferior account in law". It would be inconvenient that matters in writing made by advice and on consideration, and which finally import the certain truth of the agreement of parties should be controlled by averment of the parties to be proved by the uncertain testimony of slipper memory.

21. The grounds of exclusion of extrinsic evidence are (1) to admit inferior evidence when law requires superior would amount to nullifying the law, (ii) when parties have deliberately put their agreement into writing, it is conclusively presumed, between themselves and their privies, that they intended the writing to form a full and final statement of their intentions, and one which should be paced beyond the reach of future controversy, bad faith and treacherous memory.

22. This Court in Smt. Gangabai v. Smt. Chhabibai MANU/SC/0385/1981 : AIR 1982 SC 20 and Ishwar Dass Jain (dead) thr. Lrs. v. Sohan Lal (dead) by Lrs. MANU/SC/0747/1999 : AIR 2000 SC 426 with reference to Section 92(1) held that it is permissible to a party to a dead to contend that the deed was not intended to be acted upon, but was only a sham document. The bar arises only when the document is relied upon and its terms are sought to be varied and contradicted. Oral evidence is admissible to show that document executed was never intended to operate as an agreement but that

some other agreement altogether, not recorded in the document, was entered into between the parties.

23. But the question is whether on the facts of the present case, the reasons given by the defendant-appellant in his evidence for claiming the agreements as sham document can be accepted.

24. As noticed by the High Court, the respondent-plaintiff No. 1 had proved on record that the appellant-defendant had acted upon the agreement by himself, submitting the statements giving the account of tailoring and sale of materials as well as payment of commission on the basis of statements as per the terms of an agreement.

25. The High Court also referred to certain exhibited documents to hold that the appellant was paying commission at the rate of 12% on the tailoring business, and 3% on the sale of materials of all kinds. Reference has been made to Exhibits PWs 6/4, 6/5, 6/6, 6/9. It was noted that cheque dated 12th August, 1975 for Rs. 963.43 has been paid which corresponds to the commission for the month of July 1975 payable on the sale of cloth as well as tailoring. The cheque is exhibited as PW 2/3.

26. On a reference to Exhibit PW 6/4 and Ex. PW6/5, it appears that in respect of the sale of cloth and on commission of tailoring the amounts payable for the month of July 1975 are Rs. 454.95 and Rs. 513.48 respectively. Adding up, the total comes to Rs. 968.43 for which cheque dated 12.8.1975 has been issued. Similarly, for the month of August 1975, the amounts are Rs. 401.85 and Rs. 513.72, and cheque dated 19.9.1975 is for an amount of Rs. 915.57, which tallies with the commission of Rs. 401.85 and Rs. 513.72 respectively.

Some instances were also noticed by the High Court. It was highlighted that in many instances amounts in round figures have been paid. It does not help in furthering his case. No explanation has been offered as to why cheques for amounts tallying with commissions, upto even paise were issued.

27. It is to be noticed that though no label attached to the agreement, it does not specify any monthly amount to be paid by the appellant to respondent. Therefore, the question of any fixed monthly rent does not arise. The High Court has also taken note of several other instances to conclude that the agreement was one of licence and not of lease. That being the position, the conclusions of the High Court are in order and do not warrant interference.

28. Admittedly, there was no consent of the original landlord to create sub-tenancy in terms of Section 16(2) of the Rent Control Act as noted above. Since there is no consent of the landlord, something which is forbidden by law could not be pleaded. That being the position, the High Court was justified in rejecting the plea of sub-tenancy.

29. In almost similar situation, this Court in Waman Shriniwas Kini v. Ratilal Bhagwandas and Co. MANU/SC/0171/1959 : AIR 1959 SC 689 while considering corresponding provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 held that subletting without previous consent is unlawful and if such plea of subletting is accepted, it would be enforcing an illegal agreement.

30. In Delta International Ltd. v. Shyam Sundar Ganeriwalla and Anr. MANU/SC/0258/1999 : AIR 1999 SC 2607 several principles were culled put by this

Court in relation to disputes on the issue whether the agreement was for one lease or licence in a particular case. Six conclusions are recorded in paragraph 15. Conclusion No. 5 reads as follows:

"Prima facie, in absence of a sufficient title or interest to carve out or to create a similar tendency by the sitting tenant, in favour of a third person, the person in possession to whom the possession is handed over cannot claim that the sub-tenancy was created in his favour, because a person having no right cannot confer any title of tenancy or sub-tenancy. A tenant protected under statutory provisions with regard to occupation of the premises having no right to sublet or transfer the premises, cannot confer any better title. But, this question is not required to be finally determined in this matter."

31. In the background of Section 16(2) of the Rent Control Act, the principles set out above clearly negate the appellant's case.

32. One plea which is urged with some amount of emphasis was increase of the damages from Rs. 500/- p.m. to Rs. 1200/- p.m. As noted supra, with the consent of the parties, the High Court had exercised powers under Order 41, Rule 30, 32 and 33. It took note of the ground realities which are not disputed before us. High Court recorded a positive finding that to the normal course the appellant would have paid as least Rs. 1200/- p.m. though the amount payable was more than, even for the period for which accounts were rendered or were to be rendered. It was fairly accepted by learned counsel for the appellant before that the rentals in the area have increased lease and bounds after 1980. That being so, the specious plea that there was no scope for enhancement of the quantum of damages fixed by the trial Court is indefensible. Judge from any angle, the appeal is devoid of merit and deserves dismissal with costs which we direct. In a case of this nature, waiver of costs would be acting with leniency on a person who deserves none. Costs fixed at Rs. 25,000/-.

MANU/SC/0343/2021

Neutral Citation: 2021/INSC/288

Back to Section 92 of Indian Evidence Act, 1872

Back to Section 95 of Indian Evidence Act, 1872

IN THE SUPREME COURT OF INDIA

Civil Appeal No. 10827 of 2010

Decided On: 07.05.2021

Mangala Waman Karandikar (D) tr. L.Rs. Vs. Prakash Damodar Ranade,
MANU/SC/0343/2021

Hon'ble Judges/Coram:

N.V. Ramana, C.J.I., Surya Kant and Aniruddha Bose, JJ.

Counsels:

For Appellant/Petitioner/Plaintiff: Abha R. Sharma, AOR

For Respondents/Defendant: Rajendra V. Pai, Sr. Adv., Bina R. Pai, Aloukik R. Pai, Akshay R. Pai, Nikita K. Dharamshi, Apurva Bhat, Vitthal Devkhile, Advs. and Anand Dilip Landge, AOR

JUDGMENT

N.V. Ramana, C.J.I.

1. This appeal is filed against the judgment of the Bombay High Court, in Second Appeal No. 537 of 1991, wherein the second appeal was allowed in favour of the Respondent and the decree in favour of the Appellant herein was set aside.

2. This case arises out of a contract entered into between the Appellant (since deceased represented through Legal Heirs) and the Respondent. Initially Appellant's husband was running a business of stationary in the name of "Karandikar Brothers" before his untimely demise in the year 1962. After his demise, she continued the business for some time. After a while, she was unable to run the business and accordingly decided to let the Respondent run the same for some time. She entered into an agreement dated 07.02.1963, wherein following terms were reduced in writing:

2. For the last about 24 to 25 years, a stationary shop by the name Karandikar Brothers belonging to you of the stationary, note books and books is being run in the premises situated in City Survey No. 196/66 (New House No. 1643) at Sadashiv Peth, Pune. I request to you to give the said shop to me for running the same. Accordingly, you agreed for the same. Accordingly, an agreement was reached between us. The terms and conditions whereof are as follows:

A. The stationary shop by name "Karandikar Brothers" belonging to you of the stationary materials which is situated in the premises described in Para 1(a) above and in which the furniture etc. as described in Para 1(b) above belonging to you is existing is being taken by me for conducting by an agreement for a period of two years beginning from 1st February 1963 to 31st January 1965.

B. The rent of the shop described in Para 1(a) above is to be given by you only to the owner and I am not responsible therefor. I am to pay a royalty amount of Rs. 90/- (Rupees Ninety only) for taking the said shop for conducting, for every month which is to be paid before the 5th day of every month.

3. Time after time, the contract was duly extended. In 1980s, desiring to start her husband's business again, Appellant herein issued a notice dated 20.12.1980 requesting the Respondent herein to vacate the suit premises by 31.01.1981. The Respondent replied to the aforesaid notice claiming that the sale of business was incidental rather the contract was a rent agreement stricto sensu. Aggrieved by the Respondent's reply, the Appellant herein filed a civil suit being RCS. No. 764 of 1981 before the Court of Joint Civil Judge, Junior Division, Pune. During the course of the trial, one of the important questions that the Trial Court framed, which is relevant for our purpose can be observed hereunder:

Does the Defendant prove that from the year 1963 he is licensee in the said suit premises as contended in para 7 of the plaint? And thereby on the date of suit he became tenant of the suit premises Under Section 15A of the Bombay Rent Act?

The Trial Court by judgment dated 30.08.1988, decreed the Suit in favor of the Appellant herein and held that the purport of the Agreement was to create a transaction for sale of business rather than to rent the aforesaid premises to the Respondent herein. The Court while negating the contention of the Respondent, that the shop premises was given to him on license basis held as under:

8. The Defendant does not deny the fact that originally the husband of deceased Mangala Karandikar namely Waman Karandikar used to conduct the business of the suit shop. The business of stationary, books and notebooks was being run by him. Same business has been handed over to him. ... The suit shop and the said business came to deceased Mangala Karandikar after the death of her husband. It has come in the evidence 50 that because of death of her husband and after the death of her husband, she was unable to continue the business. In the meantime, the Defendant approached to her. Thereupon she agreed to hand over the running business to the Defendant. This fact has been denied by the Defendant. The Defendant raises the contention that the Plaintiff never had the shop of stationary, but she had the grocery shop. After the death of her husband, it was lying closed for years together. In the year 1963 the Defendant approached the Plaintiff and thereupon the Plaintiff agreed to give the suit shop. On licence basis to him. This plea of the Defendant is negativated by the terms and conditions of the agreement deed itself. The heavy burden was lying on the Defendant to prove that there was licence agreement. He has not discharged the same. Therefore, the document became much relevant, and it has got material importance. If the conditions as enumerated in this document Exh. 33 are carefully scrutinized, it will become significant that the deceased Plaintiff had the sole intention to hand over' the running business of the suit shop to the Defendant. There had been no intention to create the leave and licence in respect of the suit premises. The deceased Plaintiff had very specifically and by taking at most case and precaution excluded the word premises of shop in the agreement. But all the while the word ù "shop" was used with reference to business only. Nextly she has also excluded the word rent to be used. She had specifically made the recital of imposing the royalty on the Defendant. The word licence, for the purpose of Bombay Rent Act always refers to premises. The Defendant has to seek the benefit under the provisions of Bombay Rent Act. Here the Plaintiff had never intended to create the leave and licence in respect of the suit shop. The Defendant has relied upon the receipt Exhibit-40. This is the document produced by the Plaintiff. It discloses that the word "rent" has been shown in this respect. The Defendant is taking benefit of this fact and alleging that the rent was being recovered and not the

royalty. Here it is worth to be noted that the Plaintiff had at all no intention to recover the rent. All the while, it has been the case of the Plaintiff that the royalty was being recovered. Therefore, I am unable to hold that the rent was being recovered by the Plaintiff. ...

14. Issue Nos. 5 and 6.-The Defendant has alleged that he is the tenant in the suit shop. Initially, the premises were given to him on licence basis but by virtue of amendment to Bombay Rent Act and by virtue of insertion of Section 15(A) all the licensees have become the tenants. Learned advocate appearing on behalf of the Defendant places his reliance on Case Law reported in MANU/SC/0531/1986 : A.I.R. 1987 Supreme Court page 117. No doubt there can be no dispute regarding the principles of law. In the instant suit, the Defendant has utterly failed to prove that the shop premises were given to him on licence basis. Therefore, no question of his tenancy can arise at any time. ...

(emphasis supplied)

4. Accordingly, the Trial Court ordered the Respondent to hand over the suit property to the Appellant herein including the furniture and other articles.

5. Aggrieved by the Trial Court judgment, the Respondent filed an Appeal before the Court of Additional District Judge, Pune in Civil Appeal No. 979 of 1988. On 29.07.1991, the Additional District Judge rendered a judgment dismissing the appeal filed by the Respondent herein. Aggrieved by the dismissal the Respondent herein filed a Second Appeal before the High Court of Bombay in Second Appeal No. 537 of 1991.

6. By impugned order dated 07.11.2009 the High Court of Bombay allowed the Second Appeal and set aside the Trial Court's Order as well as the First Appellate Court's Order and held that the Respondent had entered into a license agreement which is covered Under Section 15A of the Bombay Rent Act. Further the Court held that the Trial Court did not have the Jurisdiction to try the cases under the Bombay Rent Act, the appropriate Court should have been Small Causes Court established under the Provincial Small Causes Court Act. The Second Appellate Court also observed on the merits of the case and held as under.

22. Thus, considering the entirety of the case, in my view, both the Courts below have incorrectly interpreted the document and the surrounding circumstances which, in my view, indicate that the parties had in fact agreed that the premises were transferred to the Appellant on a leave and license basis.

7. Aggrieved by the same, the Appellant herein filed this appeal.

8. The counsel for the Appellant contended that the impugned order of the High Court erred in appreciating the language of the contract, which clearly points towards the intention of the parties to create a license for continuing existing business, which was run by late husband of the Appellant. On the other hand, the counsel for the Respondent has supported the judgment by stating that there is extrinsic evidence which shows that the contract entered into between the parties was a license to use the shop, which is covered under Bombay Rent Act. In this light, he supports the impugned order to state that the trial court did not have jurisdiction in the first place.

9. Having heard both the parties at some length, at the outset before we analyse this case, we need to observe some principles on contractual interpretation. Unlike a statutory interpretation, which is even more difficult due to assimilation of individual intention of law makers, contractual interpretation depends on the intentions expressed by the parties and dredging out the true meaning is an 'iterative process' for the Courts. In any case, the first tool for interpreting, whether it be a law or contract is to read the same.

10. It is usual that businessmen often do not sit over nitty-gritty in a contract. In a document the language used by the parties may have more than one meaning. It is ultimately the responsibility of the Courts to decipher the meaning of the words used in a contract, having regards to a meaning reasonable in the line of trade as understood by parties.1 It may not be out of context to state that the development of Rules of contractual interpretation has been gradual and has taken place over century. Without going into extensive study of precedents, in short, we may only state that the path and development of law of interpretation has been a progress from a stiff formulism to a strict rationalism.2

11. It is clear from the reading of the contract that the parties had intended to transfer business from Appellant to Respondent during the contractual period. This agreement was not meant as a lease or license for the Respondent to conduct business. However, the Respondent contends that the meaning of the document should not be culled solely with reference to the language used in the document, rather extrinsic evidence needs to be utilized before adducing proper meaning to the contract. In this regard he submits that on consideration of all the extrinsic evidence, the contract should be read as a leave and license agreement, which is covered under the Bombay Rent Act. He draws his support from Section 95 of the Indian Evidence Act to state that the document needs to be interpreted having regard to external evidence such as receipts of payment under the contract addressed as rent receipts etc.

12. It may be noticed that the High Court had appropriately identified the question of law in the following manner:

15. The debate therefore revolves around the question as to whether the agreement of 7th February, 1963 was a license to conduct a business in the premises or was a license to run the existing business which was being run by the Respondents in the suit premises. Does the document create an interest in the premises or in the business?

13. The High Court in order to answer the question utilized Section 95 of the Evidence Act, which reads as under:

95. 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 Calcutta". A had no house in Calcutta, but it appears that he had a house at Howrah, of which B had been in possession since the execution of the deed. These facts may be proved to show that the deed related to the house of Howrah.

Aforesaid Section is part of Chapter VI, which deals with 'Of the exclusion of Oral by documentary evidence' containing Section 91 to 100. Section 92 reads as under:

92. Exclusion of evidence of oral agreement.--When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms:...

Proviso (6).--Any fact may be proved which shows in what manner the language of a document is related to existing facts.

14. It is manifest from these two Sections that it is only in cases where the terms of the document leave the question in doubt, then resort could be had to the proviso. But when a document is a straightforward one and presents no difficulty in construing it, the proviso does not apply. In this regard, we may state that Section 95 only builds on the proviso 6 of Section 92.

15. If the contrary view is adopted as correct it would render Section 92 of the Evidence Act, otiose and also enlarge the ambit of proviso 6 beyond the main Section itself. Such interpretation, provided by the High Court violates basic tenants of legal interpretation.3 Section 92 specifically prohibits evidence of any oral agreement or statement which would contradict, vary, add to or subtract from its terms. If, as stated by the learned Judge, oral evidence could be received to show that the terms of the document were really different from those expressed therein, it would amount to according permission to give evidence to contradict or vary those terms and as such it comes within the inhibitions of

Section 92. It could not be postulated that the legislature intended to nullify the object of Section 92 by enacting exceptions to that section.

16. In line with the law laid down, it is clear that the contract mandated continuation of the business in the name of 'Karandikar Brothers' by paying royalties of Rs. 90 per month. Once the parties have accepted the recitals and the contract, the Respondent could not have adduced contrary extrinsic parole evidence, unless he portrayed ambiguity in the language. It may not be out of context to note that the extension of the contract was on same conditions.

17. On consideration of the matter, the High Court erred in appreciating the ambit of Section 95, which led to consideration of evidence which only indicates breach rather than ambiguity in the language of contract. The evidence also points that the license was created for continuation of existing business, rather than license/lease of shop premises. If the meaning provided by the High Court is accepted, then it would amount to Courts substituting the bargain by the parties. The counsel for Respondent has emphasized much on the receipt of payment, which mentions the term 'rent received'. However, in line with the clear unambiguous language of the contract, such evidence cannot be considered in the eyes of law.

18. Moreover, the contention that the aforesaid situation is covered by the Bombay Rent Act is misplaced. Once we have determined that the impugned agreement was a license for continuing existing business, Bombay Rent Act does not cover such arrangements. Therefore, the jurisdiction of the trial court is accordingly not ousted.

19. In light of the above, the impugned order of the High Court cannot be sustained, and is accordingly, set aside. The decree of the trial court is restored. The appeal is allowed in the above terms and there shall be no order as to costs.

1 Investors Compensation Scheme v. West Bromwich Building Society, MANU/UKHL/0054/1997 : [1998] 1 WLR 896

2 Wigmore JH, "Wigmore on Evidence, Vol. 4" (1915) 25 The Yale Law Journal 163.

3 Rohitash Kumar v. Om Prakash Sharma, MANU/SC/0936/2012 : (2013) 11 SCC 451 at pg. 459

MANU/SC/0060/1960

Back to Section 101 of Indian Evidence Act, 1872

IN THE SUPREME COURT OF INDIA

Criminal Appeal No. 1 of 1960

Decided On: 06.05.1960

State of U.P. Vs. Deoman Upadhyaya

Hon'ble Judges/Coram:

J.C. Shah, J.L. Kapur, K. Subba Rao, M. Hidayatullah and S.K. Das, JJ.

Counsels:

For Appellant/Petitioner/Plaintiff: H.N. Sanyal, Additional Solicitor-General of India, G.G. Mathur and C.P. Lal, Advs.

For Respondents/Defendant: H.J. Umrigar, O.P. Rana and D. Goburdhan, Advs., C.K. Daphtary, Solicitor-General of India and H.N. Sanyal, Additional Solicitor-General of India, B.R.L. Iyengar and T.M. Sen, Advs. for Intervener

JUDGMENT

Authored By : J.C. Shah, K. Subba Rao, M. Hidayatullah

J.C. Shah, J.

1. The Civil and Sessions Judge, Gyanpur, convicted Deoman Upadhyaya - respondent to this appeal - of intentionally causing the death of one Sukhdei in the early hours of June 19, 1958, at village Anandadih, District Varanasi, and sentenced him to death subject to confirmation by the High Court. The order of conviction and sentence was set aside by the High Court of Judicature at Allahabad. Against that order of acquittal, the State of Uttar Pradesh has appealed to this court with a certificate granted by the High Court.

2. Deoman was married to one Dulari. Dulari's parents had died in her infancy and she was brought up by Sukhdei, her cousin. Sukhdei gifted certain agricultural lands inherited by her from her father to Dulari. The lands gifted to Dulari and the lands of Sukhdei were cultivated by Mahabir, uncle of Deoman. Mahabir and Deoman entered into negotiations for the sale of some of these lands situated at village Anandadih, but Sukhdei refused to agree to the proposed sale. According to the case of the prosecution, in the evening of June 18, 1958, there was an altercation between Deoman and Sukhdei. Deoman slapped Sukhdei on her face and threatened that he would smash her face. Early in the morning of June 19, Deoman made a murderous assault with a gandasa (which was borrowed by him from one Mahesh) upon Sukhdei who was sleeping in the courtyard near her house and killed her on the spot and thereafter, he threw the gandasa into the village tank, washed himself and absconded from the village. He was arrested in the afternoon of the 20th near the village Manapur. On June 21, he offered to hand over the gandasa which he said, he had thrown in the village tank, and in the presence of the investigating officer and certain witnesses, he waded into the tank and took out a gandasa, which, on examination by the Serologist, was found to be stained with human blood.

3. Deoman was tried for the murder of Sukhdei before the Court of Session at Gyanpur. The trial Judge, on a consideration of the evidence led by the prosecution, held the following facts proved :-

(a) In the evening of June 18, 1958, there was an altercation between Sukhdei and Deoman over the proposed transfer of lands in village Anandadih and in the course of the altercation, Deoman slapped Sukhdei and threatened her that he would smash her "mouth" (face).

(b) In the evening of June 18, 1958, Deoman borrowed a gandasa (Ex. 1) from one Mahesh.

(c) Before day-break on June 19, 1958, Deoman was seen by a witness for the prosecution hurrying towards the tank and shortly thereafter he was seen by another witness taking his bath in the tank.

(d) Deoman absconded immediately thereafter and was not to be found at Anandadih on June 19, 1958.

(e) That on June 21, 1958, Deoman, in the presence of the investigating officer and two witnesses, offered to hand over the gandasa which he said he had thrown into a tank, and thereafter he led the officer and the witnesses to the tank at Anandadih and in their presence waded into the tank and fetched the gandasa (Ex. 1) out of the water. This gandasa was found by the Chemical Examiner and Serologist to be stained with human blood.

4. In the view of the Sessions Judge, on the facts found, the 'only irresistible conclusion' was that Deoman had committed the murder of Sukhdei early in the morning of June 19, 1958, at Anandadih. He observed,

"The conduct of the accused (Deoman) as appearing from the movements disclosed by him, when taken in conjunction with the recovery at his instance of the gandasa stained with human blood, which gandasa had been borrowed only in the evening preceding the brutal hacking of Sukhdei, leaves no room for doubt that Deoman and no other person was responsible for this calculated and cold-blooded murder".

At the hearing of the reference made by the court of Session for confirmation of sentence and the appeal filed by Deoman before the High Court at Allahabad, it was contended that the evidence that Deoman made a statement before the police and two witnesses on June 21, 1958, that he had thrown the gandasa into the tank and that he would take it out and hand it over, was inadmissible in evidence, because s. 27 of the Indian Evidence Act which rendered such a statement admissible, discriminated between persons in custody and persons not in custody and was therefore void as violative of Art. 14 of the Constitution. The Division Bench hearing the appeal referred the following two questions for opinion of a Full Bench of the court :-

1. Whether s. 27 of the Indian Evidence Act is void because it offends against the provisions of Art. 14 of the Constitution ? and

2. Whether sub-s. (2) of s. 162 of the Code of Criminal Procedure in so far as it relates to s. 27 of the Indian Evidence Act is void ?

5. The reference was heard by M. C. Desai, B. Mukherjee and A. P. Srivastava, JJ. Mukherjee, J., and Srivastava, J., opined on the first question, that "s. 27 of the Indian Evidence Act creates an unjustifiable discrimination between "persons in custody" and "persons out of custody", and in that it offends against Art. 14 of the Constitution and is unenforceable in its present form", and on the second question, they held that sub-s. (2) of s. 162 of the Code of Criminal Procedure "in so far as it relates to s. 27 of the Indian Evidence Act is void". Desai, J., answered the two questions in the negative.

6. The reference for confirmation of the death sentence and the appeal filed by Deoman were then Heard by another Division Bench. In the light of the opinion of the Full Bench, the learned Judges excluded from consideration the statement made by Deoman in the presence of the police officer and the witnesses offering to point out the gandasa which he had thrown in the village tank. They held that the story that Deoman had borrowed a gandasa in the evening of June 18, 1958, from Mahesh was unreliable. They accepted the conclusions of the Sessions Judge on points (a), (c) and (d) and also on point (e) in so far as it related to the production by Deoman in the presence of the police officer and search witnesses of the gandasa after wading into the tank, but as in their view, the evidence was insufficient to prove the guilt of Deoman beyond reasonable doubt, they acquitted him of the offence of murder. At the instance of the State of Uttar Pradesh, the High Court granted a certificate that "having regard to the general importance of the question as to the constitutional validity of s. 27 of the Indian Evidence Act", the case was fit for appeal to this court.

7. Section 27 of the Indian Evidence Act is one of a group of sections relating to the relevancy of certain forms of admissions made by persons accused of offences. Sections 24 to 30 of the Act deal with admissibility of confessions, i.e., of statements made by a

person stating or suggesting that he has committed a crime. By s. 24, in a criminal proceeding against a person, a confession made by him is inadmissible if it appears to the court to have been caused by inducement, threat or promise having reference to the charge and proceeding from a person in authority. By s. 25, there is an absolute ban against proof at the trial of a person accused of an offence, of a confession made to a police officer. The ban which is partial under s. 24 and complete under s. 25 applies equally whether or not the person against whom evidence is sought to be led in a criminal trial was at the time of making the confession in custody. For the ban to be effective the person need not have been accused of an offence when he made the confession. The expression, "accused person" in s. 24 and the expression "a person accused of any offence" have the same connotation, and describe the person against whom evidence is sought to be led in a criminal proceeding.

As observed in Pakala Narayan Swamy v. Emperor (1939) L.R. 66 IndAp 66 by the Judicial Committee of the Privy Council, "s. 25 covers a confession made to a police officer before any investigation has begun or otherwise not in the course of an investigation". The adjectival clause "accused of any offence" is therefore descriptive of the person against whom a confessional statement made by him is declared not provable, and does not predicate a condition of that person at the time of making the statement for the applicability of the ban. Section 26 of the Indian Evidence Act by its first paragraph provides "No confession made by any person whilst he is in the custody of a police officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against a person accused of any offence." By this section, a confession made by a person who is in custody is declared not provable unless it is made in the immediate presence of a Magistrate. Whereas s. 25 prohibits proof of a confession made by a person to a police officer whether or not at the time of making the confession, he was in custody, s. 26 prohibits proof of a confession by a person in custody made to any person unless the confession is made in the immediate presence of a Magistrate. Section 27 which is in form

of a proviso states "Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved." The expression, "accused of any offence" in s. 27, as in s. 25, is also descriptive of the person concerned, i.e., against a person who is accused of an offence, s. 27 renders provable certain statements made by him while he was in the custody of a police officer. Section 27 is founded on the principle that even though the evidence relating to confessional or other statements made by a person, whilst he is in the custody of a police officer, is tainted and therefore inadmissible, if the truth of the information given by him is assured by the discovery of a fact, it may be presumed to be untainted and is therefore declared provable in so far as it distinctly relates to the fact thereby discovered.

Even though s. 27 is in the form of a proviso to s. 26, the two sections do not necessarily deal with the evidence of the same character. The ban imposed by s. 26 is against the proof of confessional statements. Section 27 is concerned with the proof of information whether it amounts to a confession or not, which leads to discovery of facts. By s. 27, even if a fact is deposed to as discovered in consequence of information received, only that much of the information is admissible as distinctly relates to the fact discovered. By s. 26, a confession made in the presence of a Magistrate is made provable in its entirety.

8. Section 162 of the Code of Criminal Procedure also enacts a rule of evidence. This section in so far as it is material for purposes of this case, prohibits, but not so as to affect the admissibility of information to the extent permissible under s. 27 of the Evidence Act, use of statements by any person to a police officer in the course of an investigation under Ch. XIV of the Code, in any enquiry or trial in which such person is charged for any offence, under investigation at the time when the statement was made.

9. On an analysis of Sections 24 to 27 of the Indian Evidence Act, and s. 162 of the Code of Criminal Procedure, the following material propositions emerge :-

(a) Whether a person is in custody or outside, a confession made by him to a police officer or the making of which is procured by inducement, threat or promise having reference to the charge against him and proceeding from a person in authority, is not provable against him in any proceeding in which he is charged with the commission of an offence.

(b) A confession made by a person whilst he is in the custody of a police officer to a person other than a police officer is not provable in a proceeding in which he is charged with the commission of an offence unless it is made in the immediate presence of a Magistrate.

(c) That part of the information given by a person whilst in police custody whether the information is confessional or otherwise, which distinctly relates to the fact thereby discovered but no more, is provable in a proceeding in which he is charged with the commission of an offence.

(d) A statement whether it amounts to a confession or not made by a person when he is not in custody, to another person such latter person not being a police officer may be proved if it is otherwise relevant.

(e) A statement made by a person to a police officer in the course of an investigation of an offence under Ch. XIV of the Code of Criminal Procedure, cannot except to the extent permitted by s. 27 of the Indian Evidence Act, be used for any purpose at any enquiry or

trial in respect of any offence under investigation at the time when the statement was made in which he is concerned as a person accused of an offence.

10. A confession made by a person not in custody is therefore admissible in evidence against him in a criminal proceeding unless it is procured in the manner described in s. 24, or is made to a police officer. A statement made by a person, if it is not confessional, is provable in all proceedings unless it is made to a police officer in the course of an investigation, and the proceeding in which it is sought to be proved is one for the trial of that person for the offence under investigation when he made that statement. Whereas information given by a person in custody is to the extent to which it distinctly relates to a fact thereby discovered is made provable, by s. 162 of the Code of Criminal Procedure, such information given by a person not in custody to a police officer in the course of the investigation of an offence is not provable. This distinction may appear to be somewhat paradoxical. Sections 25 and 26 were enacted not because the law presumed the statements to be untrue, but having regard to the tainted nature of the source of the evidence, prohibited them from being received in evidence. It is manifest that the class of persons who needed protection most where those in the custody of the police and persons not in the custody of police did not need the same degree of protection. But by the combined operation of s. 27 of the Evidence Act and s. 162 of the Code of Criminal Procedure, the admissibility in evidence against a person in a criminal proceeding of a statement made to a police officer leading to the discovery of a fact depends for its determination on the question whether he was in custody at the time of making the statement. It is provable if he was in custody at the time when he made it, otherwise it is not.

11. Are persons in custody, by this distinction deprived of "equality before the law, or the equal protection of the laws" within the meaning of Art. 14 of the Constitution ? By the

equal protection of the laws guaranteed by Art. 14 of the Constitution, it is not predicated that all laws must be uniform and universally applicable; the guarantee merely forbids improper or invidious distinctions by conferring rights or privileges upon a class of persons arbitrarily selected from out of a larger group who are similarly circumstanced, and between whom and others not so favoured, no distinction reasonably justifying different treatment exists : it does not give a guarantee of the same or similar treatment to all persons without reference to the relevant differences. The State has a wide discretion in the selection of classes amongst persons, things or transactions for purposes of legislation. Between persons in custody and persons not in custody, distinction has evidently been made by the Evidence Act in some matters and they are differently treated. Persons who were, at the time when the statements sought to be proved were made, in custody have been given in some matters greater protection compared to persons not in custody. Confessional or other statements made by persons not in custody may be admitted in evidence, unless such statements fall within Sections 24 and 25 whereas all confessional statements made by persons in custody except those in the presence of a Magistrate are not provable. This distinction between persons in custody and persons not in custody, in the context of admissibility of statements made by them concerning the offence charged cannot be called arbitrary, artificial or evasive : the legislature had made a real distinction between these two classes, and has enacted distinct rules about admissibility of statements confessional or otherwise made by them.

12. There is nothing in the Evidence Act which precludes proof of information given by a person not in custody, which relates to the facts thereby discovered; it is by virtue of the ban imposed by s. 162 of the Code of Criminal Procedure, that a statement made to a police officer in the course of the investigation of an offence under Ch. XIV by a person not in police custody at the time it was made even if it leads to the discovery of a fact is not provable against him at the trial for that offence. But the distinction which it may be remembered does not proceed on the same lines as under the Evidence Act, arising in the

matter of admissibility of such statements made to the police officer in the course of an investigation between persons in custody and persons not in custody, has little practical significance. When a person not in custody approaches a police officer investigating an offence and offers to give information leading to the discovery of a fact, having a bearing on the charge which may be made against him he may appropriately be deemed to have surrendered himself to the police. Section 46 of the Code of Criminal Procedure does not contemplate any formality before a person can be said to be taken in custody : submission to the custody by word or action by a person in sufficient. A person directly giving to a police officer by word of mouth information which may be used as evidence against him, may be deemed to have submitted himself to the "custody" of the police officer within the meaning of s. 27 of the Indian Evidence Act : Legal Remembrancer v. Lalit Mohan Singh I.L.R. (1921) Cal.167 Santokhi Beldar v. King Emperor I.L.R. (1933) Pat. 241 Exceptional cases may certainly be imagined in which a person may give information without presenting himself before a police officer who is investigating an offence. For instance, he may write a letter and give such information or may send a telephonic or other message to the police officer. But in considering whether a statute is unconstitutional on the ground that the law has given equal treatment to all persons similarly circumstanced, it must be remembered that the legislature has to deal with practical problems; the question is not to be judged by merely enumerating other theoretically possible situations to which the statute might have been but is not applied. As has often been said in considering whether there has been a denial of the equal protection of the laws, a doctrinaire approach is to be avoided. A person who has committed an offence, but who is not in custody, normally would not without surrendering himself to the police give information voluntarily to a police officer investigating the commission of that offence leading to the discovery of material evidence supporting a charge against him for the commission of the offence. The Parliament enacts laws to deal with practical problems which are likely to arise in the affairs of men. Theoretical possibility of an offender not in custody because the police officer investigating the offence has not been able to get at any evidence against him giving

information to the police officer without surrendering himself to the police, which may lead to the discovery of an important fact by the police, cannot be ruled out; but such an occurrence would indeed be rare. Our attention has not been invited to any case in which it was even alleged that information leading to the discovery of a fact which may be used in evidence against a person was given by him to a police officer in the course of investigation without such person having surrendered himself. Cases like Deonandan Dusadh v. King Emperor I.L.R. (1928) Pat.411 Santokhi Beldar v. King Emperor I.L.R. (1933) Pat. 241 Durlav Namasudra v. Emperor I.L.R. (1932) Cal. 1040 In re Mottai Thevar MANU/TN/0235/1952 : AIR1952Mad586 , In re Peria Guruswami I.L.R. 1942 Mad. 77 Bharosa Ramdayal v. Emperor I.L.R. 1940 Nag. 679 and Jalla v. Emperor A.I.R. 1931 Lah. 278 and others to which our attention was invited are all cases in which the accused persons who made statements leading to discovery of facts were either in the actual custody of police officers or had surrendered themselves to the police at the time of, or before making the statements attributed to them, and do not illustrate the existence of a real and substantial class of persons not in custody giving information to police officers in the course of investigation leading to discovery of facts which may be used as evidence against those persons.

13. In that premise and considered in the background that "persons in custody" and "persons not in custody" do not stand on the same footing nor require identical protection, is the mere theoretical possibility of some degree of inequality of the protection of the laws relating to the admissibility of evidence between persons in custody and persons not in custody by itself a ground of striking down a salutary provision of the law of evidence ?

14. Article 14 of the Constitution of India is adopted from the last clause of s. 1 of the 14th Amendment of the Constitution of the United States of America, and it may reasonably

be assumed that our Constituent Assembly when it enshrined the guarantee of equal protection of the laws in our Constitution, was aware of its content delimited by judicial interpretation in the United States of America. In considering the authorities of the superior courts in the United States, we would not therefore be incorporating principles foreign to our Constitution, or be proceeding upon the slippery ground of apparent similarity of expressions or concepts in an alien jurisprudence developed by a society whose approach to similar problems on account of historical or other reasons differs from ours. In West Coast Hotel Company v. Parrish (1937) 300 U.S. 379 : 81 L. Ed. 703 in dealing with the content of the guarantee of the equal protection of the laws, Hughes, C.J., observed at p. 400 :-

"This court has frequently held that the legislative authority, acting within its proper field, is not bound to extend its regulation to all cases which it might possibly reach. The legislature "is free to recognise degree of harm and it may confine its restrictions to those classes of cases where the need is deemed to be clearest". If "the law presumably hits the evil where it is most felt, it is not to be overthrown because there are other instances to which it might have been applied". There is no "doctrinaire requirement" that the legislation should be couched in all embracing terms".

15. Holmes, J., in Weaver v. Palmer Bros. Co. (1926) 270 U.S. 402 : 70 L. Ed. 654, in his dissenting judgment observed :-

"A classification is not to be pronounced arbitrary because it goes on practical grounds and attacks only those objects that exhibit of or foster an evil on a large scale. It is not required to be mathematically precise and to embrace every case that theoretically is capable of doing the same harm. "if the law presumably hits the evil, where it is most felt, it is not to be overthrown because there are other instances to which it might have been applied." Miller v. Wilson (1915) 236 U.S. 373; 59 L. Ed. 628

16. McKenna, J., in Health and Milligan Mfg. Co. v. Worst (1907) 207 U.S. 338; 52 L. Ed. 236 observed :

"Classification must have relation to the purpose of the legislature. But logical appropriateness of the inclusion or exclusion of objects or persons is not required. A classification may not be merely arbitrary, but necessarily there must be great freedom of discretion, even though it result in ' ill-advised unequal, and oppressive legislation'.... Exact wisdom and nice adoption of remedies are not required by the 14th Amendment, nor the crudeness nor the impolicy nor even the injustice of state laws redressed by it."

17. Section 25 and 26 are manifestly intended to hit at an evil, viz., to guard against the danger of receiving in evidence testimony from tainted sources about statements made by persons accused of offences. But these sections form part of a statute which codifies the law relating to the relevancy of evidence and proof of facts in judicial proceedings. The State is as much concerned with punishing offenders who may be proved guilty of committing offences as it is concerned with protecting persons who may be compelled to give confessional statements. If s. 27 renders information admissible on the ground that the discovery of a fact pursuant to a statement made by a person in custody is a guarantee of the truth of the statement made by him, and the legislature has chosen to make on that ground an exception to the rule prohibiting proof of such statement, that rule is not to be deemed unconstitutional, because of the possibility of abnormal instances to which the legislature might have, but has not extended the rule. The principle of admitting evidence of statements made by a person giving information leading to the discovery of facts which may be used in evidence against him is manifestly reasonable. The fact that the principle is restricted to persons in custody will not by itself be a ground for holding that there is an attempted hostile discrimination because the rule of admissibility of evidence is not extended to a possible, but an uncommon or abnormal class of cases.

18. Counsel for the defence contended that in any event Deoman was not at the time when he made the statement, attributed to him, accused of any offence and on that account also apart from the constitutional plea the statement was not provable. This contention is unsound. As we have already observed, the expression "accused of any offence" is descriptive of the person against whom evidence relating to information alleged to be given by him is made provable by s. 27 of the Evidence Act. It does not predicate a formal accusation against him at the time of making the statement sought to be proved, as a condition of its applicability.

19. In that view, the High Court was in error in holding that s. 27 of the Indian Evidence Act and s. 162, sub-s. (2), of the Code of Criminal Procedure in so far as 'that section relates to s. 27 of the Indian Evidence Act' are void as offending Art. 14 of the Constitution.

20. The High Court acquitted Deoman on the ground that his statement which led to the discovery of the gandasa is inadmissible. As we differ from the High Court on that question, we must proceed to review the evidence in the light of that statement in so far as it distinctly relates to the fact thereby discovered being admissible.

21. The evidence discloses that Deoman and his uncle, Mahabir, were anxious to dispose of the property of Sukhdei and of Dulari and Sukhdei obstructed such disposal. In the evening of June 18, 1958, there was an altercation between Sukhdei and Deoman over the proposed disposal of the property, in the presence of witnesses, Shobhnath and Mahesh, and Deoman slapped Sukhdei and threatened that he would "smash her mouth". In the morning of June 19, 1958, the dead body of Sukhdei with several incised injuries caused by a gandasa was found lying in her court-yard. Deoman was seen in the village on that

day early in the morning hurrying towards the village tank and 'taking a bath', but thereafter he absconded from the village and was not found till sometime in the afternoon of the 20th. In his examination by the court, he has stated that he had left Anandadih early in the morning of June 19, on business and that he was not absconding, but there is no evidence in support of that plea. The evidence discloses that in the presence of witnesses, Shobhnath and Raj Bahadur Singh, Deoman waded into the village tank and "fetched the gandasa" which was lying hidden in the mud at the bottom of the tank and that gandasa was found by the Serologist on examination to be stained with human blood. The High Court has agreed with the findings of the Trial Court on this evidence. The evidence that Deoman had in the presence of the witnesses, Shobhnath and Raj Bahadur Singh offered to point out the gandasa which he said he had thrown into tank was accepted by the Trial Court and the High Court has not disagreed with that view of the Trial Court, though it differed from the Trial Court as to its admissibility. The evidence relating to the borrowing of the gandasa from witness, Mahesh, in the evening of June 18, 1958, by Deoman has not been accepted by the High Court and according to the settled practice of this Court, that evidence, may be discarded. It was urged that Deoman would not have murdered Sukhdei, because by murdering her, he stood to gain nothing as the properties which belonged to Sukhdei could not devolve upon his wife Dulari in the normal course of inheritance. But the quarrels between Deoman and Sukhdei arose not because the former was claiming that Dulari was heir presumptive to Sukhdei's estate, but because Sukhdei resisted attempts on Deoman's part to dispose of the property belonging to her and to Dulari. The evidence that Deoman slapped Sukhdei and threatened her that he would "smash her face" coupled with the circumstances that on the morning of the murder of Sukhdei, Deoman absconded from the village after washing himself in the village tank and after his arrest made a statement in the presence of witnesses that he had thrown the gandasa in the village tank and produced the same, establishes a strong chain of circumstances leading to the irresistible inference that Deoman killed Sukhdei early in the morning of June 19, 1958. The learned trial Judge held on the evidence that Deoman was proved to be the offender. That conclusion is, in our

view, not weakened because the evidence relating to the borrowing of the gandasa from witness Mahesh in the evening of June 18, 1958, may not be used against him. The High Court was of the view that the mere fetching of the gandasa from its hiding place did not establish that Deoman himself had put it in the tank, and an inference could legitimately be raised that somebody else had placed it in the tank, or that Deoman had seen someone placing that gandasa in the tank or that someone had told him about the gandasa lying in the tank. But for reasons already set out the information given by Deoman is provable in so far as it distinctly relates to the fact thereby discovered : and his statement that he had thrown the gandasa in the tank is information which distinctly relates to the discovery of the gandasa. Discovery from its place of hiding, at the instance of Deoman of the gandasa stained with human blood in the light of the admission by him that he had thrown it in the tank in which it was found therefore acquires significance, and destroys the theories suggested by the High Court.

22. The quarrel between Deoman and Sukhdei and the threat uttered by him that he would smash Sukhdei's "mouth" (face) and his absconding immediately after the death of Sukhdei by violence, lend very strong support to the case for the prosecution. The evidence, it is true, is purely circumstantial but the facts proved establish a chain which is consistent only with his guilt and not with his innocence. In our opinion therefore the Sessions Judge was right in his view that Deoman had caused the death of Sukhdei by striking her with the gandasa produced before the court.

23. On the evidence of the medical officer who examined the dead body of Sukhdei, there can be no doubt that the offence committed by accused Deoman is one of murder. The Trial Judge convicted the accused of the offence of murder and in our view, he was right in so doing. Counsel for Deoman has contended that in any event, the sentence of death should not be imposed upon his client. But the offence appears to have been brutal,

conceived and executed with deliberation and not in a moment of passion, upon a defenceless old woman who was the benefactress of his wife. The assault with a dangerous weapon was made only because the unfortunate victim did not agree to the sale of property belonging to her and to her foster child. Having carefully considered the circumstances in which the offence is proved to have been committed, we do not think that any case is made out for not restoring the order imposing the death sentence. We accordingly set aside the order passed by the High Court and restore the order passed by the Court of Session.

24. It may be observed that the sentence of death cannot be executed unless it is confirmed by the High Court. The High Court has not confirmed the sentence, but in exercise of our powers under Art. 136 of the Constitution, we may pass the same order of confirmation of sentence as the High Court is, by the Code of Criminal Procedure, competent to pass. We accordingly confirm the sentence of death.

K. Subba Rao, J.

25. I have had the advantage of, perusing the judgment of my learned brother, Shah, J. I regret my inability to agree with his reasoning or conclusion in respect of the application of Art. 14 of the Constitution to the facts of the case. The facts have been fully stated in the judgment of my learned brother and they need not be restated here.

26. Article 14 of the Constitution reads :

"The State shall not deny to any person equality before the law or equal protection of the laws within the territories of India."

27. Das, C.J., in Basheshar Nath v. The Commissioner Income-tax MANU/SC/0064/1958 : (1959) Supp. (1) S.C.R. 528 explains the scope of the equality clause in the following terms :

"The underlying object of this Article is undoubtedly to secure to all persons, citizen or non-citizens, the equality of status and of opportunity referred to in the glorious preamble of our Constitution. It combines the English doctrine of the rule of law and the equal protection clause of the 14th Amendment to the American Federal Constitution which enjoins that no State shall "deny to any person within its jurisdiction the equal protection of the laws". There can, therefore, be no doubt or dispute that this Article is founded on a sound public policy recognised and valued in all civilised States ..... The command of the Article is directed to the State and the reality of the obligation thus imposed on the State is the measure of the fundamental right which every person within the territory of India is to enjoy."

28. This subject has been so frequently and recently before this Court as not to require an extensive consideration. The doctrine of equality may be briefly stated as follows : All persons are equal before the law is fundamental of every civilised constitution. Equality before law is a negative concept; equal protection of laws is a positive one. The former declares that every one is equal before law, that no one can claim special privileges and that all classes are equally subjected to the ordinary law of the land; the latter postulates an equal protection of all alike in the same situation and under like circumstances. No discrimination can be made either in the privileges conferred or in the liabilities imposed. But these propositions conceived in the interests of the public, if logically stretched too far, may not achieve the high purpose behind them. In a society of unequal basic structure, it is well nigh impossible to make laws suitable in their application to all the

persons alike. So, a reasonable classification is not only permitted but is necessary if society should progress. But such a classification cannot be arbitrary but must be based upon differences pertinent to the subject in respect of and the purpose for which it is made.

29. Das C.J., in Shri Ram Krishna Dalmia v. Shri Justice S. R. Tendolkar MANU/SC/0024/1958 : [1959]1SCR279 culled out the rules of construction of the equality clause in the context of the principle of classification from the various decisions of this Court and those of the Supreme Court of the United States of America and restated the settled law in the form of the following propositions at pp. 297-298 :

"(a) that a law may be constitutional even though it relates to a single individual if, on account of some special circumstances or reasons applicable to him and not applicable to others, that single individual may be treated as a class by himself;

(b) that there is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles;

(c) that it must be presumed that the legislature understands and correctly appreciates the need of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds;

(d) that the legislature is free to recognise degrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest;

(e) that in order to sustain the presumption of constitutionality the court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation; and

(f) that while good faith and knowledge of the existing conditions on the part of a legislature are to be presumed, if there is nothing on the face of the law or the surrounding circumstances brought to the notice of the court on which the classification may reasonably be regarded as based, the presumption of constitutionality cannot be carried to the extent of always holding that there must be some undisclosed and unknown reasons for subjecting certain individuals or corporations to hostile or discriminating legislation."

30. In view of this clear statement of law, it would be unnecessary to cover the ground over again except to add the following caution administered by Brewer, J., in Gulf, Colorada and Santa Fe Rly. Co. v. Ellis [1897] 165 U.S. 150; 41 L. Ed. 666 :

"While good faith and a knowledge of existing conditions on the part of a Legislature is to be presumed, yet to carry that presumption to the extent of always holding that there must be some undisclosed and unknown reason for subjecting certain individuals or Corporations to hostile and discriminating Legislation is to make the protecting clauses of the 14th Amendment a mere rope of sand, in no manner restraining state action."

31. It will be seen from the said rules that a weightage is given to the State as against an individual and a heavy burden is thrown on the latter to establish his fundamental right. If the caution administered by Brewer, J., in Gulf, Colorada and Santa Fe Rly. Co. v. Ellis [1897] 165 U.S. 150; 41 L. Ed. 666 and restated by Das, C.J., in Shri Ram Krishna Dalmia's case MANU/SC/0024/1958 : [1959]1SCR279 were to be ignored, the burden upon a citizen would be an impossible one, the rules intended to elucidate the doctrine of equality would tend to exhaust the right itself, and in the words of Brewer, J., the said concept becomes "a mere rope of sand, in no manner restraining state action". While the Court may be justified to assume certain facts to sustain a reasonable classification, it is not permissible to rest its decision on some undisclosed and unknown reasons; in that event, a Court would not be enforcing a fundamental right but would be finding out some excuse to support the infringement of that right.

32. It will be convenient at the outset to refer to the relevant sections. Under s. 25 of the Evidence Act, no confession made to a police-officer shall be proved as against a person accused of an offence. Section 26 says that 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 as against such person. Section 27, which is in the form of a proviso, enacts that "when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police-officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved." Section 162 of the Code of Criminal Procedure lays down that no statement made by any person to a police-officer in the course of an investigation shall be used for any purpose at any inquiry or trial in respect of any offence under investigation at the time when such statement was made. Sub-s. (2) of s. 162 of the said Code which was amended by s. 2 of the Code of Criminal procedure (Second Amendment) Act, 1941 (Act XV of 1941), provides that the said section shall not effect the provisions of s. 27 of the Indian Evidence Act.

33. A combined effect of the said provisions relevant to the present enquiry may be stated thus : (1) No confession made to a police-officer by an accused can be proved against him; (2) no statement made by any person to a police-officer during investigation can be used for any purpose at any inquiry or trial; (3) a confession made by any person while he is in the police custody to whomsoever made, such as a fellow-prisoner, a doctor or a visitor, can be proved against him if it is made in the presence of a Magistrate; and (4) if a person accused of an offence is in the custody of a police-officer, any information given by him, whether it is a statement or a confession, so much of it as relates distinctly to the fact thereby discovered may be proved. Shortly stated, the section divided the accused making confessions or statements before the police into two groups : (i) accused not in custody of the police, and (ii) accused who are in the custody of the police. In the case of the former there is a general bar against the admissibility of any confessions or statements made by them from being used as evidence against them; in the case of the latter, so much of such statements or confessions as relates distinctly to the fact thereby discovered is made admissible.

34. Shorn of the verbiage, let us look at the result brought about by the combined application of s. 27 of the Evidence Act and s. 162 of the Code of Criminal Procedure. A and B stabbed C with knives and hid them in a specified place. The evidence against both of them is circumstantial. One of the pieces of circumstantial evidence is that both of them gave information to the police that each of them stabbed C with a knife and hid it in the said place. They showed to the police the place where they had hidden the knives and brought them out and handed them over to the police; and both the knives were stained with human blood. Excluding this piece of evidence, other pieces of circumstantial evidence do not form a complete chain. If it was excluded, both the accused would be acquitted; if included, both of them would be convicted for murder. But A, when he gave

the information was in the custody of police, but B was not so. The result is that on the same evidence A would be convicted for murder but B would be acquitted : one would lose his life or liberty and the other would be set free. This illustration establishes that prima facie the provisions of s. 27 of the Evidence Act accord unequal and uneven treatment to persons under like circumstances.

35. Learned Additional Solicitor General tries to efface this apparent vice in the sections by attempting to forge a reasonable basis to sustain the different treatment given to the two groups of accused. His argument may be summarized thus : Accused are put in two categories, namely, (1) accused in custody; and (2) accused not in custody. There are intelligible differentia between these two categories which have reasonable relation to the objects sought to be achieved by the legislature in enacting the said provisions. The legislature has two objects, viz., (i) to make available to the Court important evidence in the nature of confessions to enable it to ascertain the truth; and (ii) to protect the accused in the interest of justice against coercive methods that may be adopted by the police. The differences between the two categories relating to the objects sought to be achieved are the following : (a) while extra-judicial confessions in the case of an accused not in custody are admissible in evidence, they are excluded from evidence in the case of accused in custody; (b) compared with the number of accused in the custody of the police who make confessions or give information to them, the number of accused not in custody giving such information or making confessions would be insignificant; (c) in the case of confession to a police-officer by an accused not in custody, no caution is given to him before the confession is recorded, whereas in the case of an accused in custody, the factum of custody itself amounts to a caution to the accused and puts him on his guard; and (d) protection by the imposition of a condition for the admissibility of confessions is necessary in the case of accused in custody; whereas no such protection for accused not in custody is called for. Because of these differences between the two categories, the

argument proceeds, the classification made by the legislature is justified and takes the present case out of the operation of Art. 14 the Constitution.

I shall now analyse each of the alleged differences between the two categories of accused to ascertain whether they afford a reasonable and factual basis for the classification.

Re. (a) : Whether the accused is in custody or not in custody, the prosecution is not prevented from collecting the necessary evidence to bring home the guilt to the accused. Indeed, as it often happens, if the accused is not in custody and if he happens to be an influential person there is a greater likelihood of his retarding and obstructing the progress of investigation and the collection of evidence. Nor all the extra-judicial confessions are excluded during the trial after a person is put in custody. The extra-judicial confession made by an accused before he is arrested or after he is released on bail is certainly relevant evidence to the case. Even after a person is taken into custody by a police-officer, nothing prevents that person from making a confession to a third-party and the only limitation imposed by s. 26 of the Evidence Act is that he shall make it only in the presence of a Magistrate. The confession made before a Magistrate after compliance with all the formalities prescribed has certainly greater probative force than that made before outsiders. On the other hand, though extra judicial confessions are relevant evidence, they are received by Courts with great caution. That apart, it is a pure surmise that the legislature should have thought that the confession of an accused in custody to a police-officer with a condition attached would be a substitute for an extra-judicial confession that he might have made if he was free. Broadly speaking, therefore, there is no justification for the suggestion that the prosecution is in a better position in the matter of establishing its case when the accused is out of custody than when he is in custody. Moreover, this circumstance has not been relied upon by the State in the High Court but is relied upon for the first time by learned counsel during his arguments. In my view,

there is no practical difference at all in the matter of collecting evidence between the two categories of persons and that the alleged difference cannot reasonably sustain a classification.

Re. (b) : The second circumstance relied upon by the learned counsel leads us to realms of fancy and imagination. It is said that the number of persons not in custody making confessions to the police is insignificant compared with those in custody and, therefore, the legislature may have left that category out of consideration. We are asked to draw from out experience and accept the said argument. No such basis was suggested in the High Court. The constitutional validity has to be tested on the facts existing at the time the section or its predecessor was enacted but not on the consequences flowing from its operation. When a statement made by accused not in the custody of police is statutorily made inadmissible in evidence, how can it be expected that many such instances will fall within the ken of Courts. If the ban be removed for a short time it will be realized how many such instances will be pouring in the same way as confessions of admissible type have become the common feature of almost every criminal case involving grave offence. That apart, it is also not correct to state that such confessions are not brought to the notice of Courts.

36. In re Mottai Thevar MANU/TN/0235/1952 : AIR1952Mad586 deals with a case where the accused immediately after killing the deceased goes to the police station and makes a clear breast of the offence. In Durlav Namasudra v. King Emperor I.L.R. (1932) Cal. 1040 the information received from an accused not in the custody of a police-officer which led to the discovery of the dead-body was sought to be put in evidence. Before a division bench of the Patna High Court in Deonandan Dusadh v. King Emperor I.L.R. (1928) Pat. 411 the information given to the Sub-Inspector of Police by a husband who had fatally assaulted his wife which led to the discovery of the corpse of the woman was

sought to be admitted in evidence. In Santokhi Beldar v. King Emperor I.L.R. (1933) Pat. 241 a full bench of the Patna High Court was considering whether one of the pieces of evidence which led to the discovery of blood-stained knife and other articles by the Sub-Inspector of Police at the instance of the accused was admissible against the informant. A statement made by an accused to a responsible police-officer voluntarily confessing that he had committed an act of crime was considered by a division bench of the Nagpur High Court in Bharosa Ramdayal v. Emperor A.I.R. 1941 Nag. 86 The Lahore High Court in Jalla v. Emperor A.I.R. 1931 Lah. 278 had before it a statement made by an accused to the police which led to the discovery of the dead-body. In re Peria Guruswamy and Another A.I.R. 1941 Mad. 765 is a decision of a division bench of the Madras High Court wherein the question of admissibility of a confession made by a person to a police-officer before he came into his custody was considered.

37. I have cited the cases not for considering the validity of the questions decided therein, namely, when a person can be described as an accused and when he can be considered to have come into the custody of the police, but only to controvert the argument that such confessions are in practice non-existent. I have given only the representative decisions of various High Courts and I am sure if a research is made further instances will be forthcoming.

38. The historical background of s. 27 also does not warrant any assumption that the legislature thought that cases of persons not in custody of a police-officer making confessions before him would be very few and, therefore, need not be provided for. Sections 25, 26, and 27 of the Indian Evidence Act correspond to Sections 148, 149 and 150 of the Code of Criminal Procedure of 1861. Section 148 of the Code prohibited the use as evidence of confessions or admissions of guilt made to a police-officer. Section 149 provided :

"No confession or admission of guilt made by any person while he is in the custody of a police officer unless it be made in the immediate presence of a Magistrate shall be used as evidence against such person."

39. Section 150 stated :

"When any fact is deposed to by a police officer as discovered by him in consequence of information received from a person accused of any offence, so much of such information, whether it amounts to a confession or admission of guilt or not, as relates distinctly to the fact discovered by it, may be received in evidence."

40. Section 150 of the Code of 1861 was amended by Act VIII of 1869 and the amended section read as follows :

"Provided that when any fact is deposed to in evidence as discovered in consequence of information received from a person accused of any offence, or in the custody of a police officer, so much of such information, whether it amounts to a confession or admission of guilt, or not, as relates distinctly to the fact thereby discovered, may be received in evidence."

41. It would be seen from the foregoing sections that there was an absolute bar against the admissibility of confessions or admissions made by any person to a police-officer and that the said bar was partially lifted in a case where such information, whether it amounted to a confession or admission of guilt, related distinctly to the fact discovered. The proviso introduced by Act VIII of 1869 was in pari materia with the provisions of s. 27 of the Evidence Act with the difference that in the earlier section the phrase "a person accused of any offence" and the phrase "in the custody of a police officer" were connected

by the disjunctive "or". The result was that no discrimination was made between a person in custody or out of custody making a confession to a police-officer. Section 150 of the Code before amendment also, though it was couched in different terms, was similar in effect. It follows that, at any rate till the year 1872, the intention of the legislature was to provide for all confessions made by persons to the police whether in custody of the police or not. Can it be said that in 1872 the legislature excluded confessions or admissions made by a person not in custody to a police-officer from the operation of s. 27 of the Evidence Act on the ground that such cases would be rare ? Nothing has been placed before us to indicate the reasons for the omission of the word "or" in s. 27 of the Evidence Act. If that be the intention of the legislature, why did it enact s. 25 of the Evidence Act imposing a general ban on the admissibility of all confessions made by accused to a police-officer ? Section 27 alone would have served its purpose. On the other hand, s. 25 in express terms provides for the genus, i.e., accused in general, and s. 27 provides for the species out of the genus, namely, accused who are in custody. A general ban is imposed by one section and it is lifted only in favour of a section of accused of the same class. The omission appears to be rather by accident than by design. In the circumstances it is not right to speculate and hold that the legislature consciously excluded from the operation of s. 27 of the Act accused not in custody on the ground that they were a few in number.

42. During the course of the arguments of the learned counsel for the respondent, to the question put from the Bench whether an accused who makes a confession of his guilt to a police-officer would not by the act of confession submit himself to his custody, the learned counsel answered that the finding of the High Court was in his favour, namely, that such a confession would not bring about that result. Learned Additional Solicitor-General in his reply pursued this line of thought and contended that in that event all possible cases of confession to a police-officer would be covered by s. 27 of the Indian Evidence Act. The governing section is s. 46 of the Code of Criminal Procedure, which reads :

"(1) In making an arrest the police-officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action. ...".

43. It has been held in some decisions that "when a person states that he has done certain acts which amount to an offence, he accuses himself of committing the offence, and if he makes the statement to a police-officer, as much, he submits to the custody of the officer within the meaning of clause (1) of this section, and is then in the custody of a police-officer within the meaning of s. 27 of the Indian Evidence Act". But other cases took a contrary view. It is not possible to state as a proposition of law what words or what kind of action bring about submission to custody; that can only be decided on the facts of each case. It may depend upon the nature of the information, the circumstances under, the manner in, and the object for, which it is made, the attitude of the police-officer concerned and such other facts. It is not, therefore, possible to predicate that every confession of guilt or statement made to a police-officer automatically brings him into his custody. I find it very difficult to hold that in fact that there would not be any appreciable number of accused making confessions or statements outside the custody of a police-officer. Giving full credit to all the suggestions thrown out during the argument, the hard core of the matter remains, namely, that the same class, i.e., accused making confessions to a police-officer, is divided into two groups - one may be larger than the other - on the basis of a distinction without difference.

44. Let me now consider whether there is any textual or decided authority in support of the contention that the legislature can exclude from the operation of s. 27 accused not in custody on the ground that they are a few in number.

45. In support of this contention learned counsel for the appellant cited a decision of this Court and some decisions of the Supreme Court of the United States of America. The decision of this Court relied upon is that in Sakhawat Ali v. The State of Orissa MANU/SC/0093/1954 : [1955]1SCR1004 . In that case, Bhagwati, J., observed at p. 1010 thus :

"The simple answer to this contention is that legislation enacted for the achievement of a particular object or purpose need not be all embracing. It is for the Legislature to determine what categories it would embrace within the scope of legislation and merely because certain categories which would stand on the same footing as those which are covered by the legislation are left out would not render legislation which has been enacted in any manner discriminatory and violative of the fundamental right guaranteed by article 14 of the Constitution."

46. These observations, though at first sight appear to support the appellant, if understood in the context of the facts and the points decided in that case, would not in any way help him. By the provisions of s. 16(1)(x) of the Orissa Municipal Act, 1950, a paid legal practitioner on behalf of or against the Municipality is disqualified for election to a seat in such Municipality. One of the question raised was that the said section violates the fundamental right of the appellant under Art. 14 of the Constitution. The basis of that argument was that the classification made between legal practitioners who are employed on payments on behalf of the Municipality or who act against the Municipality and those legal practitioners who are not so employed was not reasonable. Bhagwati, J., speaking for the Court, stated the well-settled principles of classification and gave reasons justifying the classification in the context of the object sought to be achieved thereby. But it was further argued in that case that the legislature should have also disqualified other persons, like clients, as even in their case there would be conflict between interest and duty. Repelling that contention the learned Judge made the aforesaid observations. The

said observations could only mean that, if there was intelligible differentia between the species carved out of the genus for the purpose of legislation, in the context of the object sought to be achieved, the mere fact that the legislation could have been extended to some other persons would not make the legislation constitutionally void. On the other hand, if the passage be construed in the manner suggested by learned counsel for the appellant, it would be destructive of not only the principle of classification but also of the doctrine of equality.

47. Nor do the American decisions lay down any such wide proposition. In John A. Watson v. State of Maryland (1910) 218 U.S. 173; 54 L. Ed. 987 the constitutional validity of Maryland Code of 1904 which made it a misdemeanor for any doctor to practise medicine without registration, was challenged. The said Code exempted from its operation physicians who were then practising in that State and had so practised prior to January 1, 1898, and could prove that within one year of the said date they had treated at least twelve persons in their professional capacity. The Supreme Court of America affirmed the validity of the provision. The reason for the classification is stated at p. 989 thus :

"Dealing, as its followers do, with the lives and health of the people, and requiring for its successful practice general education and technical skill, as well as good character, it is obviously one of those vocations where the power of the state may be exerted to see that only properly qualified persons shall undertake its responsible and difficult duties."

48. Then the learned Judge proceeded to state :

"Such exceptions proceeds upon the theory that those who have acceptably followed the profession in the community for a period of years may be assumed to have the

qualifications which others are required to manifest as a result of an examination before a board of medical experts."

49. The classification is, therefore, not sustained upon any mathematical calculation but upon the circumstance that the groups excluded were experienced doctors whereas those included were not. In Jeffrey Manufacturing Company v. Harry O. Blagg (1915) 235 U.S. 571 : 59 L. Ed. 364 the Supreme Court of America justified a classification under Ohio Workmen's compensation Act which made a distinction between employers of shops with five or more employees and employers of shops having a lesser number of employees. Employers of the former class had to pay certain premiums for the purpose of establishing a fund to provide for compensation payable under the said Act. If an employer did not pay the premium, he would be deprived of certain defences in a suit filed by his employee for compensation. It was contended that this discrimination offended the provisions of the 14th Amendment of the Constitution. Day, J., sustained the classification on the ground that the negligence of a fellow servant is more likely to be a cause of injury in the large establishments, employing many in their service, than in smaller ones. It was also conceded that the State legislature was not guilty of arbitrary classification. It is, therefore, manifest that the classification was not based upon numerical strength but on the circumstance that the negligence of a fellow servant is more likely to happen in the case of larger establishments. The passage at p. 369 must be understood in the light of the facts and the concession made in that case. The passage runs thus :

"..... having regard to local conditions, of which they (State legislature) must be presumed to have better knowledge than we can have, such regulation covered practically the whole field which needed it, and embraced all the establishments of the state of any size, and that those so small as to employ only four or less might be regarded

as a negligible quantity, and need not be assessed to make up the guaranty fund, or covered by the methods of compensation which are provided by this legislation."

50. The passage presupposes the existence of a classification and cannot, in my view, support the argument that an arbitrary classification shall be sustained on the ground that the legislature in its wisdom covered the field where the protection, in its wisdom covered the field where the protection, in its view, was needed. Nor the observations of McKenna, J., in St. Louis, Iron Mountain & Southern Railway Company v. State of Arkansas (1916) 240 U.S. 518; 60 L. Ed. 776 advance the case of the appellant. The learned Judge says at p. 779 thus :

"We have recognized the impossibility of legislation being all-comprehensive, and that there may be practical groupings of objects which will as a whole fairly present a class of itself, although there may exceptions in which the evil aimed at is deemed not so flagrant."

51. In that case the State legislature made an exemption in favour of railways less than 100 miles in length from the operation of the statute forbidding railway companies with yards or terminals in cities of the state to conduct switching operations across public crossings in cities of the first or second class with a switching crew of less than one engineer, a fireman, a foreman, and three helpers. McKenna, J., sustained its constitutional validity holding that the classification was not arbitrary. The observations cited do not in any way detract from the well-established doctrine of classification, but only lay down that the validity of a classification must be judged not on abstract theories but on practical considerations. Where the legislature prohibited the use of shoddy, new or old, even when sterilized, in the manufacture of comfortable for beds, the Supreme Court of America held in Weaver v. Palmer Brothers Co. (1976) 270 U.S. 402; 70 L. Ed. 654 that the prohibition was not reasonable. It was held that constitutional guaranties may

not be made to yield to mere convenience. Holmes, J., in his dissenting judgment observed at p. 659 thus :

"A classification is not to be pronounced arbitrary because it goes on practical grounds and attacks only those objects that exhibit or foster an evil on a large scale. It is not required to be mathematically precise and to embrace every case that theoretically is capable of doing the same harm."

52. Even this dissenting opinion says nothing more than that, in ascertaining the reasonableness of a classification, it shall be tested on practical grounds and not on theoretical considerations. In West Coast Hotel Company v. Parrish (1937) 300 U.S. 379; 81 L. Ed. 703 a state statute authorized the fixing of reasonable minimum wages for women and minors by state authority, but did not extend it to men. In that context, Hughes, C.J., observed at p. 713 thus :

"This Court has frequently held that the legislative authority, acting within its proper field, is not bound to extend its regulation to all cases which it might possibly reach."

53. These observations assume a valid classification and on that basis state that a legislation is not bound to cover all which it might possibly reach.

54. A neat summary of the American law on the subject is given in "The Constitution of the United States of America", prepared by the Legislative Reference Service, Library of Congress (1952 Edn.) at p. 1146 thus :

"The legislature is free to recognize degrees of harm; a law which hits the evil where it is most felt will not be overthrown because there are other instances to which it might have been applied. The State may do what it can to prevent what is deemed an evil and stop short of those cases in which the harm to the few concerned is thought less important than the harm to the public that would ensue if the rules laid down were made mathematically exact. Exceptions of specified classes will not render the law unconstitutional unless there is no fair reason for the law that would not equally require its extension to the excepted classes."

55. These observations do not cut across the doctrine of classification, but only afford a practical basis to sustain it. The prevalence of an evil in one field loudly calling for urgent mitigation may distinguish it from other field where the evil is incipient. So too, the deleterious effect of a law on the public, if it is extended to the excluded group, marks it off from the included group. Different combination of facts with otherwise apparently identical groups may so accentuate the difference as to sustain a classification. But if the argument of the learned counsel, namely, that the legislature can in its discretion exclude some and include others from the operation of the Act in spite of their identical characteristics on the ground only of numbers be accepted, it will be destructive of the doctrine of equality itself.

56. Therefore, the said and similar decisions do not justify classification on the basis of numbers or enable the legislature to include the many in and exclude the few from the operation of law without there being an intelligible differentia between them. Nor do they support the broad contention that a legislature in its absolute discretion may exclude some instances of identical characteristics from an Act on alleged practical considerations. Even to exclude one arbitrarily out of a class is to offend against Art. 14 of the Constitution.

57. Let us now apply the said principles to the facts of the present case. Assuming for a moment that the ratio between the accused in the context of confessions is 1000 in custody and 5 out of custody, how could that be conceivably an intelligible ground for classification ? Assuming again that the legislature thought - such an exemption is unwarranted - that such cases would not arise at all and need not be provided for, could that be a reasonable assumption having regard to the historical background of s. 27 of the Evidence Act and factual existence of such instances disclosed by decisions cited supra ? As I have already stated that such an exemption is an unwarranted flight into the realms of imagination in the teeth of expressed caution administered by Das, C. J., in Shri Ram Krishna Dalmia's Case MANU/SC/0024/1958 : [1959]1SCR279 and by Brewer, J., in Gulf, Colorada and Santa Fe Rly. Co. v. Ellis [1897] 165 U.S. 150; 41 Ed. 666

Re. (c) : Nor can I find any intelligible differentia in the caution alleged to be implied by accused being taken into custody. The argument is that under s. 163 of the Code of Criminal Procedure

"no police-officer or other person shall prevent, by any caution or otherwise, any person from making in the course of any investigation under this Chapter any statement which he may be disposed to make of his own free will,"

and as an accused is allowed to make any statement he chooses without his being placed on guard by timely caution, no statement made by him is permitted to be proved; whereas by the accused being taken into custody, the argument proceeds, by the said act itself the accused gets sufficient warning that his statement may be used in evidence and that this difference affords a sufficient basis for the classification. I am not satisfied that taking into custody amounts to a statutory or implied caution. If that be the basis for the distinction, there is no justification that an accused once taken into custody but later

released on bail should not be brought in within the meaning of s. 27 of the Indian Evidence Act.

Re. (d) : The fourth item of differentia furnishes an ironical commentary on the argument advanced. The contention is that an accused in custody needs protection in the matter of his confession and therefore a condition is imposed before the confession is made admissible. There is an obvious fallacy underlying this argument. The classification is made between accused not in custody making a confession and accused in custody making a confession to a police-officer : the former is inadmissible and the latter is admissible subject to a condition. The point raised is why should there be this discrimination between these two categories of accused ? It is no answer to this question to point out that in the case of an accused in custody a condition has been imposed on the admissibility of his confession. The condition imposed may be to some extent affording a guarantee for the truth of the statement, but it does not efface the clear distinction made between the same class of confessions. The vice lies not in the condition imposed, but in the distinction made between these two in the matter of admissibility of a confession. The distinction can be wiped out only when confessions made by all accused are made admissible subject to the protective condition imposed.

58. Not only the alleged differentia are not intelligible or germane to the object sought to be achieved, the basis for the distinction is also extremely arbitrary. There is no acceptable reason why a confession made by an accused in custody to a police-officer is to be admitted when that made by an accused not in custody has to be rejected. The condition imposed in the case of the former may, to some extent, soften the rigour of the rule, but it is irrelevant in considering the question of reasonableness of the classification. Rankin, J., in Durlav Namasudra v. Emperor (1932) 59 Cal. 1040 in a strongly worded passage criticised the anomaly underlying s. 27 thus at p. 1045 :

"..... in a case like the present where the confession was made to the police, if the man was at liberty at the time he was speaking, what he said should not be admitted in evidence even though something was discovered as a result of it ..... It cannot be admitted in evidence, because the man was not in custody, which of course is thoroughly absurd. There might be reason in saying that, if a man is in custody, what he may have said cannot be admitted; but there can be none at all in saying that it is inadmissible in evidence against him because he is not in custody."

59. In the present case, the self-same paradox is sought to be supported as affording a reasonable basis for the classification.

60. The only solution is for the legislature to amend the section suitably and not for this Court to discover some imaginary ground and sustain the classification. I, therefore, hold that s. 27 of the Indian Evidence Act is void as violative of Art. 14 of the Constitution.

61. If so, the question is whether there is any scope for interference with the finding of the High Court. The High Court considered the entire evidence and found the following circumstances to have been proved in the case :

(a) "that in the evening of June 18, 1958, there was an altercation between Sukhdei and Deoman, accused, over the proposed transfer of property in Anandadih, in the presence of Shobh Nath (P. W. 5) and Mahesh (P.W. 7), and that in the course of this altercation Deoman slapped her and threatened that he would smash her mouth";

(b) "that at about dawn on June 19, 1958, the accused was seen by Khusai (P.W. 8) hurrying towards a tank, and shortly afterwards was seen by Mata Dihal (P.W. 11) actually bathing in that tank, before it was fully light";

(c) "that the accused absconded immediately afterwards and was not to be found at Anandadih on June 19, 1958"; and

(d) "that on June 21, 1958, the accused in the presence of the investigating officer (P.W. 14), Shobh Nath (P.W. 5) and Raj Bahadur Singh (P.W. 6) stated that he could hand over the "gandasa" which he had thrown into a tank; that he was then taken to that tank and in the presence of the same witnesses waded in and fetched the "gandasa" Ex. 1 out of the water; and that this "gandasa" was found by the Chemical Examiner and Serologist to be stained with human blood".

The High Court held that the said circumstances are by no means sufficient to prove the guilt of the accused-appellant beyond reasonable doubt. On that finding, the High Court gave the benefit of doubt to the accused and acquitted him of the offence. The finding is purely one of fact and there are no exceptional circumstances in the case to disturb the same.

62. In the result, the appeal fails and is dismissed.

M. Hidayatullah, J.

63. The facts of the case have been stated in full by Shah, J., in the judgment which he has delivered, and which I had the advantage of reading. I have also had the advantage of reading the judgment of Subba Rao, J. I respectfully agree generally with the conclusions and the reasons, therefore of Shah, J. I wish, however, to make a few observations.

64. Section 27 of the Indian Evidence Act is in the Chapter on admissions, and forms part of a group of sections which are numbered 24 to 30, and these sections deal with confessions of persons accused of an offence. They have to be read with Sections 46 and 161-164 of the Code of Criminal Procedure.

65. Section 24 makes a confession irrelevant if the making of it appears to the Court to have been caused by inducement, threat or promise having reference to the charge against the accused person, from a person in authority and by which the accused person hopes that he would gain some advantage or avoid some evil of a temporal nature in reference to the proceedings against him. Section 25 makes a confession to a police officer inadmissible against a person accused of any offence. Section 26 says that no confession made by a person whilst he is the custody of a police-officer shall be proved unless it be made in the immediate presence of a Magistrate. Section 27 then provides :

"Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved."

66. Section 161 of the Code of Criminal Procedure empowers a police officer of stated rank to examine orally any person supposed to be acquainted with the facts and circumstances of the case. Such person is bound to answer all questions relating to the

case but not questions which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture. The police officer may make a written record of the statement. Section 163 of the Code then lays down the rule that no police officer or other person in authority shall offer or make, or cause to be offered or made, any inducement, threat or promise as is mentioned in the Indian Evidence Act, s. 24 and further that no police officer or other person shall prevent, by any caution or otherwise, any person from making in the course of any investigation any statement which he may be disposed to make of his own free will. Section 162 of the Code then makes statements reduced into writing inadmissible for any purpose except those indicated, but leaves the door open for the operation of s. 27 of the Indian Evidence Act. Section 164 confers the power of record confessions, on Magistrates of stated rank during investigation or at any time afterwards before the commencement of the enquiry or trial. Such confessions are to be recorded after due caution to the person making the confession and only if there is reason to believe that they are voluntary. Section 46 of the Code provides that in making an arrest the police officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action.

67. When an offence is committed and investigation starts, the police have two objects in view. The first is the collection of information, and the second is the finding of the offender. In this process, the police question a number of persons, some of whom may be only witnesses and some who may later figure as the person or persons charged. While questioning such persons, the police may not caution them and the police must leave the persons free to make whatever statements they wish to make. There are two checks at this stage. What the witnesses or the suspects say is not be used at the trial, and a person cannot be compelled to answer a question, which answer may incriminate him. It is to be noticed that at that stage though the police may have suspicion against the offender, there is no difference between him and other witnesses, who are questioned. Those who turn

out to be witnesses and not accused are expected to give evidence at the trial and their former statements are not evidence. In so far as those ultimately charged are concerned, they cannot be witnesses, save exceptionally, and their statements are barred under s. 162 of the Code and their confessions, under s. 24 of the Indian Evidence Act. Their confessions are only relevant and admissible, if they are recorded as laid down in s. 164 of the Code of Criminal Procedure after due caution by the Magistrate and it is made clear that they are voluntary. These rules are based upon the maxim : Nemo tenetur prodere seipsum (no one should be compelled to incriminate himself). In an address to Police Constables on their duties, Hawkins, J., (later, Lord Brampton), observed :

"Neither Judge, magistrate nor juryman, can interrogate an accused person ..... or require him to answer the questions tending to incriminate himself. Much less, then ought a constable to do so, whose duty as regards that person is simply to arrest and detain him in safe custody."

68. In English law, the statement of an accused person can be tendered in evidence, provided he has been cautioned and the exact words of the accused are deposed to. Says Lord Brampton :

"There is, however, no objection to a constable listening to any mere voluntary statement which a prisoner desires to make, and repeating such statement in evidence, nor is there any objection to his repeating in evidence any conversation he may have heard between the prisoner and any other person. But he ought not, by anything he says or does, to invite or encourage an accused person to make any statement, without first cautioning him, that he is not bound to say anything tending to criminate himself, and that anything he says may be used against him. Perhaps the best maxim with respect to an accused person is 'Keep your ears and eyes open, and your mouth shut'".

69. See Sir Howard Vincent's "Police Code".

70. In Ibrahim v. Emperor [1914] A.C. 599 Lord Sumner gave the history of rules of common law relating to confessions, and pointed out that they were "as old as Lord Hale". Lord Sumner observed that in Reg. v. Thompson [1893] 2 Q.B. 12 and earlier in The King v. Jane Warrickshall (1783) 1 Leach 263; 168 E.R. 234 it was ruled (to quote from the second case) :

"A confession forced from the mind by the flattery of hope, or by the torture of fear, comes in so questionable a shape, when it is to be considered as the evidence of guilt, that no credit ought to be given to it."

Lord Sumner added :

"It is not that the law presumes such statements to be untrue but from the danger of receiving such evidence Judges have thought it better to reject it for the due administration of justice : Reg. v. Baldry (1852) 5 Cox C.C. 523 Accordingly when hope or fear were not in question, such statements were long regularly admitted as relevant, though with some reluctance, and subject to strong warnings as to their weight."

71. Even so, in the judgment referred to by Lord Sumner, Parke, B., bewailed that the rule had been carried too far out of "too much tenderness towards prisoners in this matter", and observed :

"I confess that I cannot look at the decisions without some shame, when I consider what objections have prevailed to prevent the reception of confessions in evidence ..... Justice and commonsense have too frequently been sacrificed at the shrine of mercy."

72. Whatever the views of Parke, B., Lord Sumner points out that "when Judges excluded such evidence, it was rather explained by their observations on the duties of policemen than justified by their reliance on rules of law."

73. Lord Sumner has then traced the history of the law in subsequent years. In 1905, Channel, J., in Reg v. Knight and Thavre (1905) 20 Cox C.C. 711 referred to the position of an accused in custody thus :

"When he has taken any one into custody ..... he ought not to question the prisoner ..... I am not aware of any distinct rule of evidence that, if such improper questions are asked, the answers to them are inadmissible, but there is clear authority for saying that the Judge at the trial may in his discretion refuse to allow the answers to be given in evidence."

74. Five years later, the same learned Judge in Rex v. Booth and Jones (1910) 5 Cr. App. Rep. 177 observed :

"The moment you have decided to charge him and practically got him into custody, then, inasmuch as a Judge cannot ask a question or a Magistrate, it is ridiculous to suppose that a policeman can. But there is no actual authority yet, that if a policeman does ask a question it is inadmissible; what happens is that the Judge says it is not advisable to press the matter."

75. It is to be noticed that Lord Sumner noted the difference of approach to the question by different Judges, and observed that :

"Logically these objections all go to the weight and not to the admissibility of the evidence. What a person having knowledge about the matter in issue says of it is itself relevant to the issue as evidence against him. That he made the statement under circumstances of hope, fear, interest or otherwise strictly goes only to its weight ..... Even the rule which excludes evidence of statements made by a prisoner, when they are induced by hope in authority, is a rule of policy."

76. The Judicial Committee did not express any opinion as to what the law should be. The state of English law in 1861 when these rules became a part of the Indian law in a statutory form was thus that the police could question any person including a suspect. The statements of persons who turned out to be mere witnesses were entirely inadmissible, they being supposed to say what they could, on oath, in Court. Statements of suspects after caution were admissible but not before the caution was administered or they were taken in custody; but confessions were, as a rule, excluded if they were induced by hope, fear, threat, etc.

77. When the Indian law was enacted in 1861, it is commonplace that the statute was drafted in England. Two departures were made, and they were (1) that no statement made to a police officer by any person was provable at the trial which included the accused person, and (2) that no caution was to be given to a person making a statement.

78. In so far as the accused was concerned, he was protected from his own folly in confessing to a charge both after and before his custody unless he respectively did so in the immediate presence of a Magistrate, or his confession was recorded by a Magistrate.

In either event, the confession had to be voluntary and free from taint of threat, promise, fear, etc. The law was framed to protect a suspect against too much garrulity before he knew that he was in danger which sense would dawn on his when arrested and yet left the door open to voluntary statements which might clear him if made but which might not be made if a caution was administered. Without the caution an innocent suspect is not a position to know his danger, while a person arrested knows his position only too well. Without the caution, the line of distinction ceased, and the law very sensibly left out the statements altogether. Thus, before arrest all suspects, whether rightly suspected or wrongly, were on par. Neither the statements of the one nor of the other were provable, and there was no caution at all.

79. The English law then was taken as a model for accused in custody. Section 27 which is framed as an exception has rightly been held as an exception to Sections 24 to 26 and not only to s. 26. The words of the section were taken bodily from The King v. Lockhart (1785) 1 Leach 386 : 168 E.R. 295 and footnote to (1783) I Leach 263 where it was said :

"But it should seem that so much of the confession as relates strictly to the fact discovered by it may be given in evidence, for the reason of rejecting extorted confessions is the apprehension that the prisoner may have been thereby induced to say what is false; but the fact discovered shews that so much of the confession as immediately relates to it is true."

80. That case followed immediately after Warrickshall's case (1783) I Leach 263 : 168 E.R. 234 and summarised the law laid down in the earlier case. The accused in that case had made a confession which was not receivable, as it was due to promise of favour. As a result of the confession, the goods stolen were found concealed in a mattress. It was contended that the evidence of the finding of the articles should not be admitted. Nares. J., with Mr. Baron Eyre observed :

"It is a mistaken notion, that the evidence of confessions and facts which have been obtained from prisoners by promises or threats, is to be rejected from a regard to public faith; no such rule ever prevailed. The idea is novel in theory, and would be as dangerous in practice as it is repugnant to the general principles of criminal law. Confessions are received in evidence, or rejected as inadmissible, under a consideration whether they are or are not entitled to credit ..... This principle respecting confessions has no application whatever as to the admission or rejection of facts, whether the knowledge of them be obtained in consequence of an extorted confession, or whether arises from any other source; for a fact, if it exists at all, must exist invariably in the same manner, whether the confession from which it is derived be in other respects true of false."

81. Another case is noted in the footnote in the English Report Series. In February Session, 1784, Dorothy Mosey was tried for shop-lifting and a confession had been made by her and goods found in consequence of it, as in the above case. Buller, J., (present Mr. Baron Perryn, who agreed), said :

"A prisoner was tried before me (Buller, J.) where the evidence was just as it is here. I stopped all the witnesses when they came to the confession. The prisoner was acquitted. There were two learned Judges on the bench, who told me, that although what the prisoner said was not evidence, yet that any facts arising afterwards may be given in evidence, though they were done in consequence of the confession. This point, though it did not affect the prisoner at the bar, was stated to all the Judges; and the line drawn was, that although confessions improperly obtained cannot be received in evidence, yet that the acts done afterwards may be given in evidence, though they were done in consequence of the confession."

82. Where, however, no fact was discovered, the statement was not held admissible. See Rex v. Richard Griffin (1809) Rus. & Ry. 151 : 168 E.R. 732 and Rex v. Francis Jones (1809) Russ. & Ry. 152

83. In Rex v. David Jenkins (1822) Russ. & Ry. 492 : 168 E.R. 914 the prisoner was convicted before Bayley, J., (present Park, J.), of stealing certain gowns and other articles. He was induced by a promise from the prosecutor to confess his guilt, and after that confession, he carried the officer to a particular house, but the property was not found. The evidence of the confession was not received; the evidence of his carrying the officer to the house as abovementioned was. But Bayley, J., referred the point for consideration of the Judges. The Judges were of opinion that,

"the evidence was not admissible and the conviction was therefore wrong. The confession was excluded, being made under the influence of a promise it could not be relied upon, and the acts of the prisoner, under the same influence, not being confirmed by the finding of the property, were open to the same objection. The influence which might produce a groundless confession might also produce a groundless conduct."

84. It would appear from this that s. 27 of the Indian Evidence Act has been taken bodily from the English law. In both the laws there is greater solicitude for a person who makes a statement at a stage when the danger in which he stands has not been brought home to him than for one who knows of the danger. In English law, the caution gives him the necessary warning, and in India the fact of his being in custody takes the place of caution which is not to be given. There is, thus, a clear distinction made between a person not accused of an offence nor in the custody of a police officer and one who is.

85. It remains to point out that in 1912 the Judges of the King's Bench Division framed rules for the guidance of the police. These rules, though they had no force of law, laid down the procedure to be followed. At first, four rules were framed, but later, five more were added. They are reproduced in Halsbury's Laws of England, 3rd Edn., Vol. 10 p. 470, para. 865. These rules also clearly divide persons suspected of crime into those who are in police custody and those who are not. It is assumed that a person in the former category knows his danger while the person in the latter may not. The law is tender towards the person who may not know of his danger, because in his cases there is less chance of fairplay than in the case of one who has been warned.

86. It is to be noticed that in the Royal Commission on Police Powers and Procedure 1928-29) CMD 3297 nothing is said to show that there is anything invidious in making statements leading to the discovery of a relevant fact admissible in evidence, when such statements are made by persons in custody. The suggestions and recommendations of the Commission are only designed to protect questioning of persons not yet taken in custody or taken in custody on a minor charge and the use of statements obtained in those circumstances.

87. The law has thus made a classification of accused persons into two : (1) those who have the danger brought home to them by detention on a charge; and (2) those who are yet free. In the former category are also those persons who surrender to the custody by words or action. The protection given to these two classes is different. In the case of persons belonging to the second category the law has ruled that their statements are not admissible, and in the case of the first category, only that portion of the statement is admissible as is guaranteed by the discovery of a relevant fact unknown before the statement to the investigating authority. That statement may even be confessional in nature, as when the person in custody says; "I pushed him down such and such

mineshaft", and the body of the victim is found as a result, and it can be proved that his death was due to injuries received by a fall down the mineshaft.

88. It is argued that there is denial of equal protection of the law, because if the statement were made before custody began, it would be inadmissible. Of course, the making of the statement as also the stage at which it is made, depends upon the person making it. The law is concerned in seeing fairplay, and this is achieved by insisting that an unguarded statement should not be receivable. The need for caution is there, and this caution is very forcefully brought home to an accused, when he is accused of an offence and is in the custody of the police. There is thus a classification which is reasonable as well as intelligible, and it subserves a purpose recognised now for over two centuries. When such an old and time-worn rule is challenged by modern notions, the basis of the rule must be found. When this is done, as I have attempted to do, there is no doubt left that the rule is for advancement of justice with protection both to a suspect not yet arrested and to an accused in custody. There is ample protection to an accused, because only that portion of the statement is made admissible against him which has resulted in the discovery of a material fact otherwise unknown to the police. I do not, therefore, regard this as evidence of unequal treatment.

89. Before leaving the subject, I may point out that the recommendation of the Royal Commission was :

"(xlviii) A rigid instruction should be issued to the Police that no questioning of a prisoner, or a 'person in custody', about any crime or offence with which he is, or may be charged, should be permitted. This does not exclude questions to remove elementary and obvious ambiguities in voluntary statements, under No. (7) of the Judges' Rules but the

prohibition should cover all persons who, although not in custody, have been charged and are out on bail while awaiting trial."

90. This is a matter for the legislature to consider.

91. In view of what I have said above and the reasons given by Shah, J., I agree that the appeal be allowed, as proposed by him.

92. BY COURT : In accordance with the opinion of the majority the appeal is allowed. Section 27 of the Indian Evidence Act and s. 162, sub-s. (2), of the Code of Criminal Procedure in so far as "that section relates to s. 27 of the Indian Evidence Act", are intra vires and do not offend Art. 14 of the Constitution. The order of the High Court acquitting the respondent is also set aside and the order of the Court of Sessions convicting the accused (respondent) under s. 302 of the Indian Penal Code and sentencing him to death is restored.

93. Appeal allowed.

MANU/SC/0147/1961

Back to Section 105 of Indian Evidence Act, 1872

IN THE SUPREME COURT OF INDIA

Criminal Appeal No. 195 of 1960

Decided On: 24.11.1961

K.M. Nanavati Vs. State of Maharashtra

Hon'ble Judges/Coram:

K. Subba Rao, Raghubar Dayal and S.K. Das, JJ.

JUDGMENT

K. Subba Rao, J.

1. This appeal by special leave arises out of the judgment of the Bombay High Court sentencing Nanavati, the appellant, to life imprisonment for the murder of Prem Bhagwandas Ahuja, a businessman of Bombay.

2. This appeal presents the commonplace problem of an alleged murder by an enraged husband of a paramour of his wife : but it aroused considerable interest in the public mind by reason of the publication it received and the important constitutional point it had given rise to at the time of its admission.

3. The appellant was charged under s. 302 as well as under s. 304, Part I, of the Indian Penal Code and was tried by the Sessions Judge, Greater Bombay, with the aid of special jury. The jury brought in a verdict of "not guilty" by 8 : 1 under both the sections; but the Sessions Judge did not agree with the verdict of the jury, as in his view the majority verdict of the jury was such that no reasonable body of men could, having regard to the evidence, bring in such a verdict. The learned Sessions Judge submitted the case under s. 307 of the Code of Criminal Procedure to the Bombay High Court after recording the grounds for his opinion. The said reference was heard by a division bench of the said High Court consisting of Shelat and Naik, JJ. The two learned Judges gave separate judgments, but agreed in holding that the accused was guilty of the offence of murder under s. 302 of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for life. Shelat, J., having held that there were misdirections to the jury, reviewed the entire evidence and came to the conclusion that the accused was clearly guilty of the offence of murder, alternatively, he expressed the view that the verdict of the jury was perverse, unreasonable and, in any event, contrary to the weight of evidence. Naik, J., preferred to base his conclusion on the alternative ground, namely, that no reasonable body of persons could have come to the conclusion arrived at by the jury. Both the learned Judges agreed that no case had been made out to reduce the offence from murder to culpable homicide not amounting to murder. The present appeal has been preferred against the said conviction and sentence.

4. The case of the prosecution may be stated thus : This accused, at the time of the alleged murder, was second in command of the Indian Naval Ship "Mysore". He married Sylvia in 1949 in the registry office at Portsmouth, England. They have three children by the marriage, a boy aged 9 1/2 years a girl aged 5 1/2 years and another boy aged 3 years. Since the time of marriage, the couple were living at different places having regard to the exigencies of service of Nanavati. Finally, they shifted to Bombay. In the same city the deceased Ahuja was doing business in automobiles and was residing, along with his

sister, in a building called "Shreyas" till 1957 and thereafter in another building called "Jivan Jyot" in Setalvad Road. In the year 1956, Agniks, who were common friends of Nanavatis and Ahujas, introduced Ahuja and his sister to Nanavatis. Ahuja was unmarried and was about 34 years of age at the time of his death, Nanavati, as a Naval Officer, was frequently going away from Bombay in his ship, leaving his wife and children in Bombay. Gradually, friendship developed between Ahuja and Sylvia, which culminated in illicit intimacy between them. On April 27, 1959, Sylvia confessed to Nanavati of her illicit intimacy with Ahuja. Enraged at the conduct of Ahuja, Nanavati went to his ship, took from the stores of the ship a semi-automatic revolver and six cartridges on a false pretext, loaded the same, went to the flat of Ahuja entered his bed-room and shot him dead. Thereafter, the accused surrendered himself to the police. He was put under arrest and in due course he was committed to the Sessions for facing a charge under s. 302 of the Indian Penal code.

5. The defence version, as disclosed in the statement made by the accused before the Sessions Court under s. 342 of the Code of Criminal Procedure and his deposition in the said Court, may be briefly stated : The accused was away with his ship from April 6, 1959, to April 18, 1959. Immediately after returning to Bombay, he and his wife went to Ahmednagar for about three days in the company of his younger brother and his wife. Thereafter, they returned to Bombay and after a few days his brother and his wife left them. After they had left, the accused noticed that his wife was behaving strangely and was not responsive or affectionate to him. When questioned, she used to evade the issue. At noon on April 27, 1959, when they were sitting in the sitting-room for the lunch to be served, the accused put his arm round his wife affectionately, when she seemed to go tense and unresponsive. After lunch, when he questioned her about her fidelity, she shook her head to indicate that she was unfaithful to him. He guessed that her paramour was Ahuja. As she did not even indicate clearly whether Ahuja would marry her and look after the children, he decided to settle the matter with him. Sylvia pleaded with him

not go to Ahuja's house, as he might shoot him. Thereafter, he drove his wife, two of his children and a neighbour's child in his car to a cinema, dropped them there and promised to come and pick them up at 6 P.M. when the show ended. He then drove his car to his ship, as he wanted to get medicine for his sick dog, he represented to the authorities in the ship, that he wanted to draw a revolver and six rounds from the stores of the ship as he was going to drive alone to Ahmednagar by night, though the real purpose was to shoot himself. On receiving the revolver and six cartridges, and put it inside a brown envelope. Then he drove his car to Ahuja's office, and not finding him there, he drove to Ahuja's flat, range the door bell, and, when it was opened by a servant, walked to Ahuja's bed-room, went into the bed-room and shut the door behind him. He also carried with him the envelope containing the revolver. The accused saw the deceased inside the bed-room, called him a filthy swine and asked him whether he would marry Sylvia and look after the children. The deceased retorted, "Am I to marry every woman I sleep with ?" The accused became enraged, put the envelope containing the revolver on a cabnit nearby, and threatened to thrash the deceased. The deceased made a sudden move to grasp at the envelope, when the accused whipped out his revolver and told him to get back. A struggle ensued between the two and during that struggle two shots went off accidentally and hit Ahuja resulting in his death. After the shooting the accused went back to his car and drove it to the police station where he surrendered himself. This is broadly, omitting the details, the case of the defence.

6. It would be convenient to dispose of at the outset the questions of law raised in this case.

7. Mr. G. S. Pathak, learned counsel for the accused, raised before us the following points : (1) Under s. 307 of the Code of Criminal Procedure, the High Court should decide whether a reference made by a Sessions Judge was competent only on a perusal of the

order of reference made to it and it had no jurisdiction to consider the evidence and come to a conclusion whether the reference was competent or not. (2) Under s. 307(3) of the said Code, the High Court had no power to set aside the verdict of a jury on the ground that there were misdirections in the charge made by the Sessions Judge. (3) There were no misdirections at all in the charge made by the Sessions Judge; and indeed his charge was fair to the prosecution as well to the accused. (4) The verdict of the jury was not perverse and it was such that a reasonable body of persons could arrive at it on the evidence placed before them. (5) In any view, the accused shot at the deceased under grave and sudden provocation, and therefore even if he had committed an offence, it would not be murder but only culpable homicide not amounting to murder.

8. Mr. Pathak elaborates his point under the first heading thus : Under s. 307 of the Code of Criminal Procedure, the High Court deals with the reference in two stages. In the first stage, the High Court has to consider, on the basis of the referring order, whether a reasonable body of persons could not have reached the conclusion arrived at by the jury; and, if it is of the view that such a body could have come to that opinion the reference shall be rejected as incompetent. At this stage, the High Court cannot travel beyond the order of reference, but shall confine itself only to the reasons given by the Sessions Judge. If, on a consideration of the said reasons, it is of the view that no reasonable body of persons could have come to that conclusion, it will then have to consider the entire evidence to ascertain whether the verdict of the jury is unreasonable. If the High Court holds that the verdict of the jury is not unreasonable, in the case of a verdict of "not guilty", the High Court acquits the accused, and in the case where the verdict is one of "guilty" it convicts the accused. In case the High Court holds that the verdict of "not guilty", is unreasonable, it refers back the case to the Sessions Judge, who convicts the accused; thereafter the accused will have a right of appeal wherein he can attack the validity of his conviction on the ground that there were misdirections in the charge of the jury. So too, in the case of a verdict of "guilty" by the jury, the High Court, if it holds that

the verdict is unreasonable, remits the matter to the Sessions Judge, who acquits the accused, and the State, in an appeal against that acquittal, may question the correctness of the said acquittal on the ground that the charge to the jury was vitiated by misdirections. In short, the argument may be put in three propositions, namely, (i) the High Court rejects the reference as incompetent, if on the face of the reference the verdict of the jury does not appear to be unreasonable, (ii) if the reference is competent, the High Court can consider the evidence to come to a definite conclusion whether the verdict is unreasonable or not, and (iii) the High Court has no power under s. 307 of the Code of Criminal Procedure to set aside the verdict of the jury on the ground that it is vitiated by misdirections in the charge to the jury.

9. The question raised turns upon the construction of the relevant provisions of the Code of Criminal Procedure. The said Code contains two fascicule of sections dealing with two different situations. Under s. 268 of the Code, "All trials before a Court of Session shall be either by jury, or by the Judge himself." Under s. 297 thereof :

"In cases tried by jury, when the case for the defence and the prosecutor's reply, if any, are concluded, the Court shall proceed to charge the jury, summing up the evidence for the prosecution and defence, and laying down the law by which the jury are to be guided....."

10. Section 298 among other imposes a duty on a judge to decide all questions of law arising in the course of the trial, and especially all questions as to the relevancy of facts which it is proposed to be proved, and the admissibility of evidence or the propriety of questions asked by or on behalf of the parties, and to decide upon all matters of fact which it is necessary to prove in order to enable evidence of particular matter to be given. It is the duty of the jury "to decide which view of the facts is true and then to return the verdict which under such view ought, according to the directions of the Judges, to be returned."

After charge to the jury, the jury retire to consider their verdict and, after due consideration, the foreman of the jury informs the Judge what is their verdict or what is the verdict of the majority of the jurors.

11. Where the Judge does not think it necessary to disagree with the verdict of the jurors or of the majority of them, he gives judgment accordingly. If the accused is acquitted, the Judge shall record a verdict of acquittal; if the accused is convicted, the Judge shall pass sentence on him according to law. In the case of conviction, there is a right of appeal under s. 410 of the Code, and in a case of acquittal, under s. 417 of the Code, to the High Court. But s. 418 of the Code provides :

"(1) An appeal may lie on a matter of fact as well as a matter of law except where the trial was by jury, in which case the appeal shall lie on a matter of law only."

12. Sub-section (2) thereof provides for a case of a person sentenced to death, with which we are not now concerned. Section 423 confers certain powers on an appellate Court in the matter of disposing of an appeal, such as calling for the record, hearing of the pleaders, and passing appropriate orders therein. But sub-s. (2) of s. 423 says :

"Nothing herein contained shall authorise the Court to alter or reverse the verdict of the jury, unless it is of opinion that such verdict is erroneous owning to a misdirection by the Judge, or to a misunderstanding on the part of the jury of the law as laid down by him."

13. It may be noticed at this stage, as it will be relevant in considering one of the arguments raised in this case, that sub-s. (2) does not confer any power on an appellate court, but only saves the limitation on the jurisdiction of an appellate court imposed

under s. 418 of the Code. It is, therefore, clear that in an appeal against conviction or acquittal in a jury trial, the said appeal is confined only to a matter of law.

14. The Code of Criminal Procedure also provides for a different situation. The Sessions Judge may not agree with the verdict of the jurors or the majority of them; and in that event s. 307 provides for a machinery to meet that situation. As the argument mainly turns upon the interpretation of the provisions of this section, it will be convenient to read the relevant clauses thereof.

15. Section 307 : (1) If in any such case the Judge disagrees with the verdict of the jurors, or of a majority of the jurors, on all or any of the charges on which any accused person has been tried, and is clearly of opinion that it is necessary for the ends of justice to submit the case in respect of such accused person to the High Court, he shall submit the case accordingly, recording the grounds of his opinion, and, when the verdict is one of acquittal, stating the offence which he considers to have been committed, and in such case, if the accused is further charged under the provisions of section 310, shall proceed to try him on such charge as if such verdict had been one of conviction.

16. (3) In dealing with the case so submitted the High Court may exercise any of the powers which it may exercise on an appeal, and subject thereto it shall, after considering the entire evidence and after giving due weight to the opinions of the Sessions Judge and the jury, acquit or convict such accused of any offence of which the jury could have convicted him upon the charge framed and placed before it; and, if it convicts him, may pass such sentence as might have been passed by the Court of Session.

17. This section is a clear departure from the English law. There are good reasons for its enactment. Trial by jury outside the Presidency Towns was first introduced in the Code of Criminal Procedure of 1861, and the verdict of the jury was, subject to re-trial on certain events, final and conclusive. This led to miscarriage of justice through jurors returning erroneous verdicts due to ignorance and inexperience. The working of the system was reviewed in 1872, by a Committee appointed for that purpose and on the basis of the report of the said Committee, s. 262 was introduced in the Code of 1872. Under that section, where there was difference of view between the jurors and the judge, the Judge was empowered to refer the case to the High Court in the ends of justice, and the High Court dealt with the matter as an appeal. But in 1882 the section was amended and under the amended section the condition for reference was that the High Court should differ from the jury completely; but in the Code of 1893 the section was amended practically in terms as it now appears in the Code. The history of the legislation shows that the section was intended as a safeguard against erroneous verdicts of inexperienced jurors and also indicates the clear intention of the Legislature to confer on a High Court a separate jurisdiction, which for convenience may be described as "reference jurisdiction". Section 307 of the Code of Criminal Procedure, while continuing the benefits of the jury system to persons tride by a Court of Session, also guards against any possible injustice, having regard to the conditions obtaining in India. It is, therefore clear that there is an essential difference between the scope of the jurisdiction of the High Court in disposing of an appeal against a conviction or acquittal, as the case may be, in a jury trial, and that in a case submitted by the Sessions Judge when he differs from the verdict of the jury : in the former the acceptance of the verdict of the jury by the Sessions Judge is considered to be sufficient guarantee against its perversity and therefore an appeal is provided only on questions of law, whereas in the latter the absence of such agreement necessitated the conferment of a larger power on the High Court in the matter of interfering with the verdict of the jury.

18. Under s. 307(1) of the Code, the obligation cast upon the Sessions Judge to submit the case to the High Court is made subject to two conditions, namely, (1) the Judge shall disagree with the verdict of the jurors, and (2) he is clearly of the opinion that it is necessary in the ends of justice to submit the case to the High Court. If the two conditions are complied with, he shall submit the case, recording the grounds of his opinion. The words "for the ends of justice" are comprehensive, and coupled with the words "is clearly of opinion", they give the Judge a discretion to enable him to exercise his power under different situations, the only criterion being his clear opinion that the reference is in the ends of justice. But the Judicial Committee, in Ramanugrah Singh v. King Emperor (1946) L.R. 173, IndAp 174, construed the words "necessary for the ends of justice" and laid down that the words mean that the Judge shall be of the opinion that the verdict of the jury is one which no reasonable body of men could have reached on the evidence. Having regard to that interpretation, it may be held that the second condition for reference is that the Judge shall be clearly of the opinion that the verdict is one which no reasonable body of men could have reached on the evidence. It follows that if a Judge differs from the jury and is clearly of such an opinion, he shall submit the case to the High Court recording the grounds of his opinion. In that event, the said reference is clearly competent. If on the other hand, the case submitted to the High Court does not ex facie show that the said two conditions have been complied with by the Judge, it is incompetent. The question of competency of the reference does not depend upon the question whether the Judge is justified in differing from the jury or forming such an opinion on the verdict of the jury. The argument that though the Sessions Judge has complied with the conditions necessary for making a reference, the High Court shall reject the reference as incompetent without going into the evidence if the reasons given do not sustain the view expressed by the Sessions Judge, is not supported by the provisions of sub-s. (1) of s. 307 of the Code. But it is said that it is borne out of the decision of the Judicial Committee in Ramanugrah Singh's case [(1946) L.R. 73, I.A. 174, 182, 186]. In that case the Judicial Committee relied upon the words "ends of justice" and held that the verdict was one which no reasonable body of men could have reached on the evidence and further laid down that the

requirements of the ends of justice must be the determining factor both for the Sessions Judge in making the reference and for the High Court in disposing of it. The Judicial Committee observed :

"In general, if the evidence is such that it can properly support a verdict either of guilty or not guilty, according to the view taken of it by the trial court, and if the jury take one view of the evidence and the judge thinks that they should have taken the other, the view of the jury must prevail, since they are the judges of fact. In such a case a reference is not justified, and it is only by accepting their view that the High Court can give due weight to the opinion of the jury. If, however, the High Court considers that on the evidence no reasonable body of men could have reached the conclusion arrived at by the jury, then the reference was justified and the ends of justice require that the verdict be disregarded."

19. The Judicial Committee proceeded to state :

"In their Lordships' opinion had the High Court approached the reference on the right lines and given due weight to the opinion of the jury they would have been bound to hold that the reference was not justified and that the ends of justice did not require any interference with the verdict of the jury."

20. Emphasis is laid on the word "justified", and it is argued that the High Court should reject the reference as incompetent if the reasons given by the Sessions Judge in the statement of case do not support his view that it is necessary in the ends of the justice to refer the case to the High Court. The Judicial Committee does not lay down any such proposition. There, the jury brought in a verdict of not "guilty" under s. 302, Indian Penal Code. The Sessions Judge differed from the jury and made a reference to the High Court. The High Court accepted the reference and convicted the accused and sentenced him to transportation for life. The Judicial Committee held, on the facts of that case, that the High

Court was not justified in the ends of justice to interfere with the verdict of the jury. They were not dealing with the question of competency of a reference but only with that of the justification of the Sessions Judge in making the reference, and the High Court in accepting it. It was also not considering a case of any disposal of the reference by the High Court on the basis of the reasons given in the reference, but were dealing with a case where the High Court on a consideration of the entire evidence accepted the reference and the Judicial Committee held on the evidence that there was no justification for the ends of justice to accept it. This decision, therefore, has no bearing on the competency of a reference under s. 307(1) of the Code of Criminal Procedure.

21. Now, coming to sub-s. (3) of s. 307 of the Code, it is in two parts. The first part says that the High Court may exercise any of the powers which it may exercise in an appeal. Under the second part, after considering the entire evidence and after giving due weight to the opinions of the Sessions Judge and the jury, the High Court shall acquit or convict the accused. These parts are combined by the expression "and subject thereto". The words "subject thereto" were added to the section by an amendment in 1896. This expression gave rise to conflict of opinion and it is conceded that it lacks clarity. That may be due to the fact that piecemeal amendments have been made to the section from time to time to meet certain difficulties. But we cannot ignore the expression, but we must give it a reasonable construction consistent with the intention of the Legislature in enacting the said section. Under the second part of the section, special jurisdiction to decide a case referred to it is conferred on the High Court. It also defines the scope of its jurisdiction and its limitations. The High Court can acquit or convict an accused of an offence of which the jury could have convicted him, and also pass such sentence as might have been passed by the Court of Session. But before doing so, it shall consider the entire evidence and give due weight to the opinions of the Sessions Judge and the jury. The second part does not confer on the High Court any incidental procedural powers necessary to exercise the said jurisdiction in a case submitted to it, for it is neither an appeal nor a revision. The

procedural powers are conferred on the High Court under the first part. The first part enables the High Court to exercise any of the powers which it may exercise in appeal, for without such powers it cannot exercise its jurisdiction effectively. But the expression "subject to" indicates that in exercise of its jurisdiction in the manner indicated by the second part, it can call in aid only any of the powers of an appellate court, but cannot invoke a power other than that conferred on an appellate court. The limitation on the second part implied in the expression "subject thereto" must be confined to the area of the procedural powers conferred on a appellate court. If that be the construction, the question arises, how to reconcile the provisions of s. 423(2) with those of s. 307 of the Code ? Under sub-s. (2) of s. 423 :

"Nothing herein contained shall authorise the Court to alter or reverse the verdict of a jury, unless it is of opinion that such verdict is erroneous owing to a misdirection by the Judge, or to a misunderstanding on the part of the jury of the law as laid down by him."

22. It may be argued that, as an appellate court cannot alter or reverse the verdict of a jury unless such a verdict is erroneous owing to a misdirection by the Judge, or to a misunderstanding on the part of the jury of the law as laid down by him, the High Court, in exercise of its jurisdiction under s. 307 of the Code, likewise could not do so except for the said reasons. Sub-section (2) of s. 423 of the Code does not confer any power of the High Court; it only restates the scope of the limited jurisdiction conferred on the court under s. 418 of the Code, and that could not have any application to the special jurisdiction conferred on the High Court under s. 307. That apart, a perusal of the provisions of s. 423(1) indicates that there are powers conferred on an appellate court which cannot possibly be exercised by courts disposing of a reference under s. 307 of the Code, namely, the power to order commitment etc. Further s. 423(1)(a) and (b) speak of conviction, acquittal, finding and sentence, which are wholly inappropriate to verdict of a jury. Therefore, a reasonable construction will be that the High Court can exercise any

of the powers conferred on an appellate court under s. 423 or under other sections of the Code which are appropriate to the disposal of a reference under s. 307. The object is to prevent miscarriage of the justice by the jurors returning erroneous or perverse verdict. The opposite construction defeats this purpose, for it equates the jurisdiction conferred under s. 307 with that of an appellate court in a jury trial. That construction would enable the High Court to correct an erroneous verdict of a jury only in a case of misdirection by the Judge but not in a case of fair and good charge. This result effaces the distinction between the two types of jurisdiction. Indeed, learned counsel for the appellant has taken a contrary position. He would say that the High Court under s. 307(3) could not interfere with the verdict of the jury on the ground that there were misdirections in the charge to the jury. This argument is built upon the hypothesis that under the Code of Criminal Procedure there is a clear demarcation of the functions of the jury and the Judge, the jury dealing with facts and the Judge with law, and therefore the High Court could set aside a verdict on the ground of misdirection only when an appeal comes to it under s. 418 and could only interfere with the verdict of the jury for the ends of justice, as interpreted by the Privy Council, when the matter comes to it under s. 307(3). If this interpretation be accepted, we would be attributing to the Legislature an intention to introduce a circuitous method and confusion in the disposal of criminal cases. The following illustration will demonstrate the illogical result of the argument. The jury brings in a verdict of "guilty" on the basis of a charge replete with misdirections; the Judge disagrees with that verdict and states the case to the High Court; the High Court holds that the said verdict is not erroneous on the basis of the charge, but is of the opinion that the verdict is erroneous because of the misdirections in the charge; even so, it shall hold that the verdict of the jury is good and reject the reference thereafter, the Judge has to accept the verdict and acquit the accused; the prosecution then will have to prefer an appeal under s. 417 of the Code on the ground that the verdict was induced by the misdirections in the charge. This could not have been the intention of the Legislature. Take the converse case. On similar facts, the jury brings in a verdict of "guilty"; the Judge disagrees with the jury and makes a reference to the High Court; even though it finds misdirections in the charge to the jury,

the High Court cannot set aside the conviction but must reject the reference; and after the conviction, the accused may prefer an appeal to the High Court. This procedure will introduce confusion in jury trials, introduce multiplicity of proceedings, and attribute ineptitude to the Legislature. What is more, this construction is not supported by the express provisions of s. 307(3) of the Code. The said sub-section enables the High Court to consider the entire evidence, to give due weight to the opinions of the Sessions Judge and the jury, and to acquit or convict the accused. The key words in the sub-section are "giving due weight to the opinions of the Sessions Judge and the jury". The High Court shall give weight to the verdict of the jury; but the weight to be given to a verdict depends upon many circumstances - it may be one that no reasonable body of persons could come to; it may be a perverse verdict; it may be a divided verdict and may not carry the same weight as the united one does; it may be vitiated by misdirections or non-directions. How can a Judge give any weight to a verdict if it is induced and vitiated by grave misdirections in the charge ? That apart, the High Court has to give due weight to the opinion of the Sessions Judge. The reasons for the opinion of the Sessions Judge are disclosed in the case submitted by him to the High Court. If the case stated by the Sessions Judge discloses that there must have been misdirections in the charge, how can the High Court ignore them in giving due weight to his opinion ? What is more, the jurisdiction of the High Court is couched in very wide terms in sub-s. (3) of s. 307 of the Code : it can acquit or convict an accused. It shall take into consideration the entire evidence in the case; it shall give due weight to the opinions of the Judge and the jury; it combines in itself the functions of the Judge and jury; and it is entitled to come to its independent opinion. Tee phraseology used does not admit of an expressed or implied limitation on the jurisdiction of the High Court.

23. It appears to us that the Legislature designedly conferred a larger power on the High Court under s. 307(3) of the Code than that conferred under s. 418 thereof, as in the former case the Sessions Judge differs from the jury while in the latter he agrees with the jury.

24. The decisions cited at the Bar do not in any way sustain in narrow construction sought to be placed by learned counsel on s. 307 of the Code. In Ramanugrah Singh's case [(1945-46) L.R. 73 I.A. 174, 182], which has been referred to earlier, the Judicial Committee described the wide amplitude of the power of the High Court in the following terms :

"The Court must consider the whole case and give due weight to the opinions of the Sessions Judge and jury, and then acquit or convict the accused."

25. The Judicial Committee took care to observe :

".....the test of reasonableness on the part of the jury may not be conclusive in every case. It is possible to suppose a case in which the verdict was justified on the evidence placed before the jury, but in the light of further evidence placed before the High Court the verdict is shown to be wrong. In such a case the ends of justice would require the verdict to be set aside though the jury had not acted unreasonably."

26. This passage indicates that the Judicial Committee did not purport to lay down exhaustively the circumstances under which the High Court could interfere under the said sub-section with the verdict of the jury. This Court in Akhlakali Hayatalli v. The State of Bombay MANU/SC/0137/1953 : 1954CriLJ451 accepted the view of the Judicial Committee on the construction of s. 307 of the Code of Criminal Procedure, and applied it to the facts of that case. But the following passage of this Court indicates that it also does not consider the test of reasonableness as the only guide in interfering with the verdict of the jury :

"The charge was not attacked before the High Court nor before us as containing any misdirections or non-directions to the jury such as to vitiate the verdict."

27. This passage recognizes the possibility of interference by the High Court with the verdict of the jury under the said sub-section if the verdict is vitiated by misdirections or non-directions. So too, the decision of this Court in Ratan Rai v. State of Bihar [1957] S.C.R. 273 assumes that such an interference is permissible if the verdict of the jury was vitiated by misdirections. In that case, the appellants were charged under Sections 435 and 436 of the Indian Penal Code and were tried by a jury, who returned a majority verdict of "guilty". The Assistant Sessions Judge disagreed with the said verdict and made a reference to the High Court. At the hearing of the reference the counsel for the appellants contended that the charge to the jury was defective, and did not place the entire evidence before the Judges. The learned Judges of the High Court considered the objections as such and nothing more, and found the appellants guilty and convicted them. This Court, observing that it was incumbent on the High Court to consider the entire evidence and the charge as framed and placed before the jury and to come to its own conclusion whether the evidence was such that could properly support the verdict of guilty against the appellants, allowed the appeal and remanded the matter to the High Court for disposal in accordance with the provisions of s. 307 of the Code of Criminal Procedure. This decision also assumes that a High Court could under s. 307(3) of the Code of Criminal Procedure interfere with the verdict of the jury, if there are misdirections in the charge and holds that in such a case it is incumbent on the court to consider the entire evidence and to come to its own conclusion, after giving due weight to the opinions of the Sessions Judge, and the verdict of the jury. This Court again in Sashi Mohan Debnath v. The State of West Bengal [1958] S.C.R. 960, held that where the Sessions Judge disagreed with the verdict of the jury and was of the opinion that the case should be submitted to the High Court, he should submit the whole case and not a part of it. There, the jury returned a verdict of "guilty" in respect of some charges and "not guilty" in respect of others. But the Sessions Judge recorded his judgment of acquittal in respect of

the latter charges in agreement with the jury and referred the case to the High Court only in respect of the former. This Court held that the said procedure violated sub-s. (2) of s. 307 of the Code of Criminal Procedure and also had the effect of preventing the High Court from considering the entire evidence against the accused and exercising its jurisdiction under sub-s. (3) of s. 307 of the said Code. Imam, J., observed that the reference in that case was incompetent and that the High Court could not proceed to exercise any of the powers conferred upon it under sub-s. (3) of s. 307 of the Code, because the very foundation of the exercise of that power was lacking, the reference being incompetent. This Court held that the reference was incompetent because the Sessions Judge contravened the express provisions of sub-s. (2) of s. 307 of the Code, for under that sub-section whenever a Judge submits a case under that section, he shall not record judgment of acquittal or of conviction on any of the charges on which such accused has been tried, but he may either remand such accused to custody or admit him to bail. As in that case the reference was made in contravention of the express provisions of sub-s. (2) of s. 307 of the Code and therefore the use of the word 'incompetent' may not be inappropriate. The decision of a division bench of the Patna High Court in Emperor v. Ramadhar Kurmi A.I.R. 1948 Pat. 79 may usefully be referred to as it throws some light on the question whether the High Court can interfere with the verdict of the jury when it is vitiated by serious misdirections and non-directions. Das, J., observed :

"Where, however, there is misdirection, the principle embodied in s. 537 would apply and if the verdict is erroneous owing to the misdirection, it can have no weight on a reference under s. 307 as on an appeal."

28. It is not necessary to multiply decisions. The foregoing discussion may be summarized in the form of the following propositions : (1) The competency of a reference made by a Sessions Judge depends upon the existence of two conditions, namely, (i) that he disagrees with the verdict of the jurors, and (ii) that he is clearly of the opinion that

the verdict is one which no reasonable body of men could have reached on the evidence, after reaching that opinion, in the case submitted by him he shall record the grounds of his opinion. (2) If the case submitted shows that the conditions have not been complied with or that the reasons for the opinion are not recorded, the High Court may reject the reference as incompetent : the High Court can also reject it if the Sessions Judge has contravened sub-s. (2) of s. 307. (3) If the case submitted shows that the Sessions Judge has disagreed with the verdict of the jury and that he is clearly of the opinion that no reasonable body of men could have reached the conclusion arrived at by the jury, and he discloses his reasons for the opinion, sub-s. (3) of s. 307 of the Code comes into play, and thereafter the High Court has an obligation to discharge its duty imposed thereunder. (4) Under sub-s. (3) of s. 307 of the Code, the High Court has to consider the entire evidence and, after giving due weight to the opinions of the Sessions Judge and the jury, acquit or convict the accused. (5) The High Court may deal with the reference in two ways, namely, (i) if there are misdirections vitiating the verdict, it may, after going into the entire evidence, disregard the verdict of the jury and come to its own conclusion, and (ii) even if there are no misdirections, the High Court can interfere with the verdict of the jury if it finds the verdict "perverse in the sense of being unreasonable", "manifestly wrong", or "against the weight of evidence", or, in other words, if the verdict is such that no reasonable body of men could have reached on the evidence. (6) In the disposal of the said reference, the High Court can exercise any of the procedural powers appropriate to the occasion, such as, issuing of notice, calling for records, remanding the case, ordering a retrial, etc. We therefore, reject the first contention of learned counsel for the appellant.

29. The next question is whether the High Court was right in holding that there were misdirections in the charge to the jury. Misdirection is something which a judge in his charge tells the jury and is wrong or in a wrong manner tending to mislead them. Even an omission to mention matters which are essential to the prosecution or the defence case in order to help the jury to come to a correct verdict may also in certain circumstances

amount to a misdirection. But, in either case, every misdirection or non-direction is not in itself sufficient to set aside a verdict, but it must be such that it has occasioned a failure of justice.

30. In Mushtak Hussein v. The State of Bombay MANU/SC/0026/1953 : [1953]4SCR809 , this Court laid down :

"Unless therefore it is established in a case that there has been a serious misdirection by the judge in charging the jury which has occasioned a failure of justice and has misled the jury in giving its verdict, the verdict of the jury cannot be set aside."

31. This view has been restated by this Court in a recent decision, viz., Smt. Nagindra Bala Mitra v. Sunil Chandra Roy MANU/SC/0074/1960 : 1960CriLJ1020 .

32. The High Court in its judgment referred to as many as six misdirections in the charge to the jury which in its view vitiated the verdict, and it also stated that there were many others. Learned counsel for the appellant had taken each of the said alleged misdirections and attempted to demonstrate that they were either no misdirections at all, or even if they were, they did not in any way affect the correctness of the verdict.

33. We shall now take the first and the third misdirections pointed out by Shelat, J., as they are intimately connected with each other. They are really omissions. The first omission is that throughout the entire charge there is no reference to s. 105 of the Evidence Act or to the statutory presumption laid down in that section. The second omission is that the Sessions Judge failed to explain to the jury the legal ingredients of s. 80 of the Indian Penal code, and also failed to direct them that in law the said section was not applicable

to the facts of the case. To appreciate the scope of the alleged omissions, it is necessary to read the relevant provisions.

34. Section 80 of the Indian Penal Code.

"Nothing is an offence which is done by accident or misfortune, and without any criminal intention or knowledge in the doing of a lawful act in a lawful manner by lawful means and with proper care and caution. "

35. Evidence Act.

36. Section 103 : "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. "

37. Section 105 : "When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Indian Penal Code (XLV of 1860) or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances. "

38. Section 3 : "In this Act the following words and expressions are used in the following senses, unless a contrary intention appears from the context :-

39. A fact is said to be disproved when, after considering the matters before it, the Court either believes that it does not exist, or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist.

40. Section 4 : ..... "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."

41. The legal impact of the said provisions on the question of burden of proof may be stated thus : In India, as it is in England, there is a presumption of innocence in favour of the accused as a general rule, and it is the duty of the prosecution to prove the guilt of the accused; to put it in other words, the accused is presumed to be innocent until his guilt is established by the prosecution. But when an accused relies upon the General Exceptions in the Indian Penal Code or on any special exception or proviso contained in any other part of the Penal Code, or in any law defining an offence, s. 105 of the Evidence Act raises a presumption against the accused and also throws a burden on him to rebut the said presumption. Under that section the Court shall presume the absence of circumstances bringing the case within any of the exceptions, that is, the Court shall regard the non-existence of such circumstances as proved till they are disproved.

An illustration based on the facts of the present case may bring out the meaning of the said provision. The prosecution alleges that the accused intentionally shot the deceased; but the accused pleads that, though the shots emanated from his revolver and hit the deceased, it was by accident, that is, the shots went off the revolver in the course of a struggle in the circumstances mentioned in s. 80 of the Indian Penal Code and hit the deceased resulting in his death. The Court then shall presume the absence of

circumstances bringing the case within the provisions of s. 80 of the Indian Penal Code, that is, it shall presume that the shooting was not by accident, and that the other circumstances bringing the case within the exception did not exist; but this presumption may be rebutted by the accused by adducing evidence to support his plea of accident in the circumstances mentioned therein. This presumption may also be rebutted by admissions made or circumstances elicited by the evidence led by the prosecution or by the combined effect of such circumstances and the evidence adduced by the accused. But the section does not in any way affect the burden that lies on the prosecution to prove all the ingredients of the offence with which the accused is charged : that burden never shifts. The alleged conflict between the general burden which lies on the prosecution and the special burden imposed on the accused under s. 105 of the Evidence Act is more imaginary than real. Indeed, there is no conflict at all. There may arise three different situations : (1) A statute may throw the burden of proof of all or some of the ingredients of an offence on the accused : (see Sections 4 and 5 of the Prevention of Corruption Act). (2) The special burden may not touch the ingredients of the offence, but only the protection given on the assumption of the proof of the said ingredients : (see Sections 77, 78, 79, 81 and 88 of the Indian Penal Code). (3) It may relate to an exception, some of the many circumstances required to attract the exception if proved affecting the proof of all or some of the ingredients of the offence : (see s. 80 of the Indian Penal Code). In the first case the burden of proving the ingredients or some of the ingredients of the offence, as the case may be, lies on the accused. In the second case, the burden of bringing the case under the exception lies on the accused. In the third case, though the burden lies on the accused to bring his case within the exception, the facts proved may not discharge the said burden, but may affect the proof of the ingredients of the offence. An illustration may bring out the meaning. The prosecution has to prove that the accused shot dead the deceased intentionally and thereby committed the offence of murder within the meaning of s. 300 of the Indian Penal Code; the prosecution has to prove the ingredients of murder, and one of the ingredients of that offence is that the accused intentionally shot the deceased; the accused pleads that he shot at the deceased by accident without any

intention or knowledge in the doing of a lawful act in a lawful manner by lawful means with proper care and caution; the accused against whom a presumption is drawn under s. 105 of the Evidence Act that the shooting was not by accident in the circumstances mentioned in s. 80 of the Indian Penal Code, may adduce evidence to rebut that presumption. That evidence may not be sufficient to prove all the ingredients of s. 80 of the Indian Penal Code, but may prove that the shooting was by accident or inadvertence, i.e., it was done without any intention or requisite state of mind, which is the essence of the offence, within the meaning of s. 300, Indian Penal Code, or at any rate may throw a reasonable doubt on the essential ingredients of the offence of murder. In that event though the accused failed to bring his case within the terms of s. 80 of the Indian Penal Code, the Court may hold that the ingredients of the offence have not been established or that the prosecution has not made out the case against the accused. In this view it might be said that the general burden to prove the ingredients of the offence, unless there is a specific statute to the contrary, is always on the prosecution, but the burden to prove the circumstances coming under the exceptions lies upon the accused. The failure on the part of the accused to establish all the circumstances bringing his case under the exception does not absolve the prosecution to prove the ingredients of the offence; indeed, the evidence, though insufficient to establish the exception, may be sufficient to negative one or more of the ingredients of the offence.

42. The English decisions relied upon by Mr. Pathak, learned counsel for the accused, may not be of much help in construing the provisions of s. 105 of the Indian Evidence Act. We would, therefore, prefer not to refer to them, except to one of the leading decisions on the subject, namely, Woolmington v. The Director of Public Prosecutions L.R. (1935) A.C. 462. The headnote in that decision gives its gist, and it read :

"In a trial for murder the Crown must prove death as the result of a voluntary act of the prisoner and malice of the prisoner. When evidence of death and malice has been given,

the prisoner is entitled to show by evidence or by examination of the circumstances adduced by the Crown that the act on his part which caused death was either unintentional or provoked. If the jury are either satisfied with his explanation or, upon a review of all the evidence, are left in reasonable doubt whether, even if his explanation be not accepted, the act was unintentional or provoked, the prisoner is entitled to be acquitted. "

43. In the course of the judgment Viscount Sankey, L.C., speaking for the House, made the following observations :

"But while the prosecution must prove the guilt of the prisoner, there is no such burden laid on the prisoner to prove his innocence and it is sufficient for him to raise a doubt as to his guilt; he is not bound to satisfy the jury of his innocence..... Throughout the web of the English Criminal Law one golden thread is always to be seen that it is the duty of the prosecution to prove the prisoner's guilt subject to what I have already said as to the defence of insanity and subject also to any statutory exception. If, at the end of and on the whole of the case, there is a reasonable doubt, created by the evidence given by either the prosecution or the prisoner, as to whether the prisoner killed the deceased with a malicious intention, the prosecution has not made out the case and the prisoner is entitled to an acquittal."

44. These passages are not in conflict with the opinion expressed by us earlier. As in England so in India, the prosecution must prove the guilt of the accused, i.e., it must establish all the ingredients of the offence with which he is charged. As in England so also in India, the general burden of proof is upon the prosecution; and if, on the basis of the evidence adduced by the prosecution or by the accused, there is a reasonable doubt whether the accused committed the offence, he is entitled to the benefit of doubt. In India if an accused pleads an exception within the meaning of s. 80 of the Indian Penal Code, there is a presumption against him and the burden to rebut that presumption lies on him.

In England there is no provision similar to s. 80 of the Indian Penal Code, but Viscount Sankey, L.C., makes it clear that such a burden lies upon the accused if his defence is one of insanity and in a case where there is a statutory exception to the general rule of burden of proof. Such an exception we find in s. 105 of the Indian Evidence Act. Reliance is placed by learned counsel for the accused on the decision of the Privy Council in Attygalle v. Emperor A.I.R. 1936 P.C. 169 in support of the contention that notwithstanding s. 105 of the Evidence Act, the burden of establishing the absence of accident within the meaning of s. 80 of the Indian Penal Code is on the prosecution. In that case, two persons were prosecuted, one for performing an illegal operation and the other for abetting him in that crime. Under s. 106 of the Ordinance 14 of 1895 in the Ceylon Code, which corresponds to s. 106 of the Indian Evidence Act, it was enacted that when any fact was especially within the knowledge of any person, the burden of proving that fact was upon him. Relying upon that section, the Judge in his charge to the jury said :

"Miss Maye - that is the person upon whom the operation was alleged to have been performed - was unconscious and what took place in that room that three-quarters of an hour that she was under chloroform is a fact specially within the knowledge of these two accused who were there. The burden of proving that fact, the law says, is upon him, namely that no criminal operation took place but what took place was this and this speculum examination."

45. The Judicial Committee pointed out :

"It is not the law of Ceylon that the burden is cast upon an accused person of proving that no crime has been committed. The jury might well have thought from the passage just quoted that that was in fact a burden which the accused person had to discharge. The summing-up goes on to explain the presumption of innocence in favour of accused

persons, but it again reiterates that the burden of proving that no criminal operation took place is on the two accused who were there."

46. The said observations do not support the contention of learned counsel. Section 106 of Ordinance 14 of 1895 of the Ceylon Code did not cast upon the accused a burden to prove that he had not committed any crime; nor did it deal with any exception similar to that provided under s. 80 of the Indian Penal Code. It has no bearing on the construction of s. 105 of the Indian Evidence Act. The decisions of this Court in The State of Madras v. A. Vaidyanatha Iyer MANU/SC/0108/1957 : 1958CriLJ232 , which deals with s. 4 of the Prevention of Corruption Act, 1947, and C.S.D. Swami v. The State MANU/SC/0025/1959 : 1960CriLJ131 , which considers the scope of s. 5(3) of the said Act, are examples of a statute throwing the burden of proving and even of establishing the absence of some of the ingredients of the offence on the accused; and this Court held that notwithstanding the general burden on the prosecution to prove the offence, the burden of proving the absence of the ingredients of the offence under certain circumstances was on the accused. Further citations are unnecessary as, in our view, the terms of s. 105 of the Evidence Act are clear and unambiguous.

47. Mr. Pathak contends that the accused did not rely upon any exception within the meaning of s. 80 of the Indian Penal Code and that his plea all through has been only that the prosecution has failed to establish intentional killing on his part. Alternatively, he argues that as the entire evidence has been adduced both by the prosecution and by the accused, the burden of proof became only academic and the jury was in a position to come to one conclusion or other on the evidence irrespective of the burden of proof. Before the Sessions Judge the accused certainly relied upon s. 80 of the Indian Penal Code, and the Sessions Judge dealt with the defence case in his charge to the jury. In paragraph 6 of the charge, the learned Sessions Judge stated :

"Before I proceed further I have to point out another section which is section 80. You know by now that the defence of the accused is that the firing of the revolver was a matter of accident during a struggle for possession of the revolver. A struggle or a fight by itself does not exempt a person. It is the accident which exempts a person from criminal liability because there may be a fight, there may be a struggle and in the fight and in the struggle the assailant may over-power the victim and kill the deceased so that a struggle or a fight by itself does not exempt an assailant. It is only an accident, whether it is in struggle or a fight or otherwise which can exempt an assailant. It is only an accident, whether it is in a struggle or a fight of otherwise which can exempt a prisoner from criminal liability. I shall draw your attention to section 80 which says : ..... (section 80 read). You know that there are several provisions which are to be satisfied before the benefit of this exception can be claimed by an accused person and it should be that the act itself must be an accident or misfortune, there should be no criminal intention or knowledge in the doing of that act, that act itself must be done in a lawful manner and it must be done by lawful means and further in the doing of it, you must do it with proper care and caution. In this connection, therefore, even while considering the case of accident, you will have to consider all the factors, which might emerge from the evidence before you, whether it was proper care and caution to take a loaded revolver without a safety catch to the residence of the person with whom you were going to talk and if you do not get an honourable answer you were prepared to thrash him. You have also to consider this further circumstance whether it is an act with proper care and caution to keep that loaded revolver in the hand and thereafter put it aside, whether that is taking proper care and caution. This is again a question of fact and you have to determine as Judges of fact, whether the act of the accused in this case can be said to be an act which was lawfully done in a lawful manner and with proper care and caution. If it is so, then and only then can you call it accident or misfortune. This is a section which you will bear in mind when you consider the evidence in this case."

48. In this paragraph the learned Sessions Judge mixed up the ingredients of the offence with those of the exception. He did not place before the jury the distinction in the matter of burden of proof between the ingredients of the offence and those of the exception. He did not tell the jury that where the accused relied upon the exception embodied in s. 80 of the Indian Penal Code, there was a statutory presumption against him and the burden of proof was on him to rebut that presumption. What is more, he told the jury that it was for them to decide whether the act of the accused in the case could be said to be an act which was lawfully done in a lawful manner with proper care and caution. This was in effect abdicating his functions in favour of the jury. He should have explained to them the implications of the terms "lawful act", "lawful manner", "lawful means" and "with proper care and caution" and pointed out to them the application of the said legal terminology to the facts of the case. On such a charge as in the present case, it was not possible for the jury, who were laymen, to know the exact scope of the defence and also the circumstances under which the plea under s. 80 of the Indian Penal Code was made out. They would not have also known that if s. 80 of the Indian Penal Code applied, there was a presumption against the accused and the burden of proof to rebut the presumption was on him. In such circumstances, we cannot predicate that the jury understood the legal implications of s. 80 of the Indian Penal Code and the scope of the burden of proof under s. 105 of the Evidence Act, and gave their verdict correctly. Nor can we say that the jury understood the distinction between the ingredients of the offence and the circumstances that attract s. 80 of the Indian Penal Code and the impact of the proof of some of the said circumstances on the proof of the ingredients of the offence. The said omissions therefore are very grave omissions which certainly vitiated the verdict of the jury.

49. The next misdirection relates to the question of grave and sudden provocation. On this question, Shelat, J., made the following remarks :

"Thus the question whether a confession of adultery by the wife of accused to him amounts to grave and sudden provocation or not was a question of law. In my view, the learned Session Judge was in error in telling the jury that the entire question was one of fact for them to decide. It was for the learned Judge to decide as a question of law whether the sudden confession by the wife of the accused amounted to grave and sudden provocation as against the deceased Ahuja which on the authorities referred to hereinabove it was not. He was therefore in error in placing this alternative case to the jury for their determination instead of deciding it himself."

50. The misdirection according to the learned Judge was that the Sessions Judge in his charge did not tell the jury that the sudden confession of the wife to the accused did not in law amount to sudden and grave provocation by the deceased, and instead he left the entire question to be decided by the jury. The learned judge relied upon certain English decisions and textbooks in support of his conclusion that the said question was one of law and that it was for the Judge to express his view thereon. Mr. Pathak contends that there is an essential difference between the law of England and that of India in the matter of the charge to the jury in respect of grave and sudden provocation. The House of Lords in Holmes v. Director of Public Prosecution L.R. (1946) A.C. 588 laid down the law in England thus :

"If there is no sufficient material, even on a view of the evidence most favourable to the accused, for a jury (which means a reasonable jury) to form the view that a reasonable person so provoked could be driven, through transport of passion and loss of self-control, to the degree and method and continuance of violence which produces the death it is the duty of the judge as matter of law to direct the jury that the evidence does not support a verdict of manslaughter. If, on the other hand, the case is one in which the view might fairly be taken (a) that a reasonable person, in consequence of the provocation received, might be so rendered subject to passion or loss of control as to be led to use the violence

with fatal results, and (b) that the accused was in fact acting under the stress of such provocation, then it is for the jury to determine whether on its view of the facts manslaughter or murder is the appropriate verdict."

51. Viscount Simon brought out the distinction between the respective duties of the judge and the jury succinctly by formulating the following questions :

"The distinction, therefore, is between asking 'Could the evidence support the view that the provocation was sufficient to lead a reasonable person to do what the accused did ?' (which is for the judge to rule), and, assuming that the judge's ruling is in affirmative, asking the jury : 'Do you consider that, on the facts as you find them from the evidence, the provocation was in fact enough to lead a reasonable person to do what the accused did ?' and, if so, 'Did the accused act under the stress of such provocation' ?"

52. So far as England is concerned the judgment of the House of Lords is the last word on the subject till it is statutorily changed or modified by the House of Lords. It is not, therefore, necessary to consider the opinions of learned authors on the subject cited before us to show that the said observations did not receive their approval.

53. But Mr. Pathak contends that whatever might be the law in England, in India we are governed by the statutory provisions, and that under the explanation to Exception I to s. 300 of the Indian Penal Code, the question "whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is one of fact", and therefore, unlike in England, in India both the aforesaid questions fall entirely within the scope of the jury and they are for them to decide. To put it in other words, whether a reasonable person in the circumstances of a particular case committed the offence under provocation which was grave and sudden is a question of fact for the jury to decide. There is force in this argument, but it is not necessary to express our final opinion thereon, as

the learned Attorney-General has conceded that there was no misdirection in regard to this matter.

54. The fourth misdirection found by the High Court is that the learned Sessions Judge told the jury that the prosecution relied on the circumstantial evidence and asked them to apply the stringent rule of burden of proof applicable to such cases, whereas in fact there was direct evidence of Puransingh in the shape of extra-judicial confession. In paragraph 8 of the charge the Sessions Judge said :

"In this case the prosecution relies on what is called circumstantial evidence that is to say there is no witness who can say that he saw the accused actually shooting and killing deceased. There are no direct witnesses, direct witnesses as they are called, of the event in question. Prosecution relies on certain circumstances from which they ask you to deduce an inference that it must be the accused and only the accused who must have committed this crime. That is called circumstantial evidence. It is not that prosecution cannot rely on circumstantial evidence because it is not always the case or generally the case that people who go out to commit crime will also take witnesses with them. So that it may be that in some cases the prosecution may have to rely on circumstantial evidence. Now when you are dealing with circumstantial evidence you will bear in mind certain principles, namely, that the facts on which the prosecution relies must be fully established. They must be fully and firmly established. These facts must lead to one conclusion and one only namely the guilt of the accused and lastly it must exclude all reasonable hypothesis consistent with the innocence of the accused, all reasonable hypothesis consistent with the innocence of the accused should be excluded. In other words you must come to the conclusion by all the human probability, it must be the accused and the accused only who must have committed this crime. That is the standard of proof in a case resting on circumstantial evidence."

55. Again in paragraph 11 the learned Sessions Judge observed that the jury were dealing with circumstantial evidence and graphically stated :

"It is like this, take a word, split it up into letters, the letters, may individually mean nothing but when they are combined they will form a word pregnant with meaning. That is the way how you have to consider the circumstantial evidence. You have to take all the circumstances together and judge for yourself whether the prosecution have established their case."

56. In paragraph 18 of the charge, the learned Sessions Judge dealt with the evidence of Puransingh separately and told the jury that if his evidence was believed, it was one of the best forms of evidence against the man who made the admission and that if thy accepted that evidence, then the story of the defence that it was an accident would become untenable. Finally he summarized all the circumstances on which the prosecution relied in paragraph 34 and one of the circumstances mentioned was the extra-judicial confession made to Puransingh. In that paragraph the learned Sessions Judge observed as follows :

"I will now summarize the circumstances on which the prosecution relies in this case. Consider whether the circumstances are established beyond all reasonable doubt. In this case you are dealing with circumstantial evidence and therefore consider whether they are fully and firmly established and consider whether they lead to one conclusion and only one conclusion that it is the accused alone who must have shot the deceased and further consider that it leaves no room for any reasonable hypothesis consistent with the innocence of the accused regard being had to all the circumstances in the case and the conclusion that you have to come to should be of this nature and by all human probability it must be the accused and the accused alone who must have committed this crime."

57. Finally the learned Sessions Judge told them :

"If on the other hand you think that the circumstances on which the prosecution relies are fully and firmly established, that they lead to one and the only conclusion and one only, of the guilt of the accused and that they exclude all reasonable hypothesis of the innocence of the accused then and in that case it will be your duty which you are bound by the oath to bring verdict accordingly without any fear or any favour and without regard being had to any consequence that this verdict might lead to."

58. Mr. Pathak contends that the learned Sessions Judge dealt with the evidence in two parts, in one part he explained to the jury the well settled rule of approach to circumstantial evidence, whereas in another part he clearly and definitely pointed to the jury the great evidentiary value of the extra-judicial confession of guilt by the accused made to Puransingh, if that was believed by them. He therefore, argues that there was no scope for any confusion in the minds of the jurors in regard to their approach to the evidence or in regard to the evidentiary value of the extra-judicial confession. The argument proceeds that even if there was a misdirection, it was not such as to vitiate the verdict of the jury. It is not possible to accept this argument. We have got to look at the question from the standpoint of the possible effect of the said misdirection in the charge on the jury, who are laymen. In more than one place the learned Sessions Judge pointed out that the case depended upon circumstantial evidence and that the jury should apply the rule of circumstantial evidence settled by decisions. Though at one place he emphasized upon evidentiary value of a confession he later on included that confession also as one of the circumstances and again directed the jury to apply the rule of circumstantial evidence. It is not disputed that the extra-judicial confession made to Puransingh is direct piece of evidence and that the stringent rule of approach to circumstantial evidence does not apply to it. If that confession was true, it cannot be disputed that the approach of the jury to the evidence would be different from that if that

was excluded. It is not possible to predicate that the jury did not accept that confession and therefore applied the rule of circumstantial evidence. It may well have been that the jury accepted it and still were guided by the rule of circumstantial evidence as pointed out by the learned Sessions Judge. In these circumstances we must hold, agreeing with the High Court, that this is a grave misdirection affecting the correctness of the verdict.

59. The next misdirection relied upon by the High Court is the circumstance that the three letters written by Sylvia were not read to the jury by the learned Sessions Judge in his charge and that the jury were not told of their effect on the credibility of the evidence of Sylvia and Nanavati. Shelat, J., observed in regard to this circumstance thus :

"It cannot be gainsaid that these letters were important documents disclosing the state of mind of Mrs. Nanavati and the deceased to a certain extent. If these letters had been read in juxtaposition of Mrs. Nanavati's evidence they would have shown that her statement that she felt that Ahuja had asked her not to see him for a month for the purpose of backing out of the intended marriage was not correct and that they had agreed not to see each other for the purpose of giving her and also to him an opportunity to coolly think out the implications of such a marriage and then to make up her own mind on her own. The letters would also show that when the accused asked her, as he said in his evidence, whether Ahuja would marry her, it was not probable that she would fence that question. On the other hand, she would, in all probability, have told him that they had already decided to marry. In my view, the omission to refer even once to these letters in the charge especially in view of Mrs. Nanavati's evidence was a non-direction amounting to misdirection."

60. Mr. Pathak contends that these letters were read to the jury by counsel on both sides and a reference was also made to them in the evidence of Sylvia and, therefore the jury clearly knew the contents of the letters, and that in the circumstances the non-mention of

the contents of the letters by the Sessions Judge was not a misdirection and even if it was it did not affect the verdict of the jury. In this context reliance is placed upon two English decisions, namely, R. v. Roberts [1942] 1 All. E.R. 187 and R. v. Attfield [1961] 3 All. E.R. 243. In the former case the appellant was prosecuted for the murder of a girl by shooting her with a service rifle and he pleaded accident as his defence. The Judge in his summing-up, among other defects, omitted to refer to the evidence of certain witnesses; the jury returned a verdict of "guilty" not the charge of murder and it was accepted by the judge, it was contended that the omission to refer to the evidence of certain witnesses was a misdirection. Rejecting that plea, Humphreys, J., observed :

"The jury had the Dagduas before them. They had the whole of the evidence before them, and they had, just before the summing up, comments upon those matters from counsel for the defence, and from counsel for the prosecution. It is incredible that they could have forgotten them or that they could have misunderstood the matter in any way, or thought, by reason of the fact that the judge did not think it necessary to refer to them, that they were not to pay attention to them. We do not think there is anything in that point at all. A judge, in summing-up, is not obliged to refer to every witness in the case, unless he thinks it necessary to do so. In saying this, the court is by no means saying that it might not have been more satisfactory if the judge had referred to the evidence of the two witnesses, seeing that he did not think it necessary to refer to some of the Dagduas made by the accused after the occurrence. No doubt it would have been more satisfactory from the point of view of the accused. All we are saying is that we are satisfied that there was no misdirection in law on the part of judge in omitting those statements, and it was within his discretion."

61. This passage does not lay down as a proposition of law that however important certain documents or pieces of evidence may be from the standpoint of the accused or the prosecution, the judge need not refer to or explain them in his summing-up to the jury,

and, if he did not, it would not amount to misdirection under any circumstances. In that case some Dagduas made by witnesses were not specifically brought to the notice of the jury and the Court held in the circumstances of that case that there was no misdirection. In the latter case the facts were simple and the evidence was short; the judge summed up the case directing the jury as to the law but did not deal with evidence except in regard to the appellant's character. The jury convicted the appellant. The court held that, "although in a complicated and lengthy case it was incumbent on the court to deal with the evidence in summing-up, yet where, as in the present case, the issues could be simply and clearly stated, it was not fatal defect for the evidence not to be reviewed in the summing-up." This is also a decision on the facts of that case. That apart, we are not concerned with a simple case here but with a complicated one. This decision does not help us in deciding the point raised. Whether a particular omission by a judge to place before the jury certain evidence amounts to a misdirection or not falls to be decided on the facts of each case.

62. These letters show the exact position of Sylvia in the context of her intended marriage with Ahuja, and help to test the truthfulness or otherwise of some of the assertions made by her to Nanavati. A perusal of these letters indicates that Sylvia and Ahuja were on intimate terms, that Ahuja was willing to marry her, that they had made up their minds to marry, but agreed to keep apart for a month to consider coolly whether they really wanted to marry in view of the serious consequences involved in taking such a step. Both Nanavati and Sylvia gave evidence giving an impression that Ahuja was backing out of his promise to marry Sylvia and that was the main reason for Nanavati going to Ahuja's flat for an explanation. If the Judge had read these letters in his charge and explained the implication of the contents thereof in relation to the evidence given by Nanavati and Sylvia, it would not have been possible to predicate whether the jury would have believed the evidence of Nanavati and Sylvia. If the marriage between them was a settled affair and if the only obstruction in the way was Nanavati, and if Nanavati had expressed

his willingness to be out of the way and even to help them to marry, their evidence that Sylvia did not answer the direct question about the intentions of Ahuja to marry her, and the evidence of Nanavati that it became necessary for him to go to Ahuja's flat to ascertain the latter's intentions might not have been believed by the jury. It is no answer to say that the letters were read to the jury at different stages of the trial or that they might have read the letters themselves for in a jury trial, especially where innumerable documents are filed, it is difficult for a lay jury, unless properly directed, to realise the relative importance of specified documents in the context of different aspects of a case. That is why the Code of Criminal Procedure, under s. 297 thereof, imposes a duty on the Sessions Judge to charge the jury after the entire evidence is given, and after counsel appearing for the accused and counsel appearing for the prosecution have addressed them. The object of the charge to the jury by the Judge is clearly to enable him to explain the law and also to place before them the facts and circumstances of the case both for and against the prosecution in order to help them in arriving at a right decision. The fact that the letters were read to the jury by prosecution or by the counsel for the defence is not of much relevance, for they would place the evidence before the jury from different angles to induce them to accept their respective versions. That fact in itself cannot absolve the Judge from his clear duty to put the contents of the letters before the jury from the correct perspective. We are in agreement with the High Court that this was a clear misdirection which might have affected the verdict of the jury.

63. The next defect pointed out by the High Court is that the Sessions Judge allowed the counsel for the accused to elicit from the police officer, Phansalkar, what Puransingh is alleged to have stated to him orally, in order to contradict the evidence of Puransingh in the court, and the Judge also dealt with the evidence so elicited in paragraph 18 of his charge to the jury. This contention cannot be fully appreciated unless some relevant facts are stated. Puransingh was examined for the prosecution as P.W. 12. He was a watchman of "Jivan Jyot". He deposed that when the accused was leaving the compound of the said

building, he asked him why he had killed Ahuja, and the accused told him that he had a quarrel with Ahuja as the latter had "connections" with his wife and therefore he killed him. At about 5-5 P.M. on April 27, 1959, this witness reported this incident to Gamdevi Police Station. On that day Phansalkar (P.W. 13) was the Station House Duty Officer at that station from 2 to 8 P.M. On the basis of the statement of Puransingh, Phansalkar went in a jeep with Puransingh to the place of the alleged offence. Puransingh said in his evidence that he told Phansalkar in the jeep what the accused had told him when he was leaving the compound of "Jivan Jyot". After reaching the place of the alleged offence, Phansalkar learnt from a doctor that Ahuja was dead and he also made enquiries from Miss Mammie, the sister of the deceased. He did not record the statement made by Puransingh. But latter on between 10 and 10-30 P.M. on the same day, Phansalkar made a statement to Inspector Mokashi what Puransingh had told him and that statement was recorded by Mokashi. In the statement taken by Mokashi it was not recorded that Puransingh told Phansalkar that the accused told him why he had killed Ahuja. When Phansalkar was in the witness-box to a question put to him in cross-examination he answered that Puransingh did not tell him that he had asked Nanavati whey he killed Ahuja and that the accused replied that he had a quarrel with the deceased as the latter had "connections" with his wife and that he had killed him. The learned Sessions Judge not only allowed the evidence to go in but also, in paragraph 18 of his charge to the jury, referred to that statement. After giving the summary of the evidence given by Puransingh, the learned Sessions Judge proceeded to state in his charge to the jury :

"Now the conversation between him and Phansalkar (Sub-Inspector) was brought on record in which what the chowkidar told Sub-Inspector Phansalkar was, the servants of the flat of Miss Ahuja had informed him that a Naval Officer was going away in the car. He and the servants had tried to stop him but the said officer drove away in the car saying that he was going to the Police Station and to Sub-Inspector Phansalkar he did not state about the admission made by Mr. Nanavati to him that he killed the deceased as the

deceased had connections with his wife. The chowkidar said that he had told this also to sub-Inspector Phansalkar. Sub-Inspector Phansalkar said the Puransingh had not made this statement to him. You will remember that this chowkidar went to the police station at Gamdevi to give information about this crime and while coming back he was with Sub-Inspector Phansalkar and Sub-Inspector Phansalkar in his own statement to Mr. Mokashi has referred to the conversation which he had between him and this witness Puransingh and that had been brought on record as a contradiction."

64. The learned Sessions Judge then proceeded to state other circumstances and observed, "Consider whether you will accept the evidence of Puransingh or not." It is manifest from the summing-up that the learned Sessions Judge not only read to the jury the evidence of Phansalkar wherein he stated that Puransingh did not tell him that the accused told him why he killed Ahuja but also did not tell the jury that the evidence of Phansalkar was not admissible to contradict the evidence of Puransingh. It is not possible to predicate what was the effect of the alleged contradiction on the mind of the jury and whether they had not rejected the evidence of Puransingh because of that contradiction. If the said evidence was not admissible, the placing of that evidence before the jury was certainly a grave misdirection which must have affected their verdict. The question is whether such evidence is legally admissible. The alleged omission was brought on record in the cross-examination of Phansalkar, and, after having brought it in, it was sought to be used to contradict the evidence of Puransingh. Learned Attorney-General contends that the statement made by Phansalkar to Inspector Mokashi could be used only to contradict the evidence of Phansalkar and not that of Puransingh under s. 162 of the Code of Criminal Procedure; and the statement made by Puransingh to Phansalkar, it not having been recorded, could not be used at all to contradict the evidence of Puransingh under the said section. He further argues that the alleged omission not being a contradiction, it could in no event be used to contradict Puransingh. Learned counsel for the accused, on the other hand, contends that the alleged statement was made to a police officer before the investigation commenced and, therefore, it was not hit by s. 162 of the Code of Criminal

Procedure, and it could be used to contradict the evidence of Puransingh. Section 162 of the Code of Criminal Procedure reads :

(1) No statement made by any person to a Police officer in the course of an investigation under this Chapter shall, if reduced into writing be signed by the person making it; nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record, be used for any purpose, save as hereinafter provided, at any inquiry or trial in respect of any offence under investigation at the time when such statement was made :

Provided that when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, any part of his statement, if duly proved, may be used by the accused, and with the permission of the Court, by the prosecution, to contradict such witness in the manner provided by section 145 of the Indian Evidence Act, 1872 (1 of 1872), and when any part of such statement is so used, any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination.

65. The preliminary condition for the application of s. 162 of the Code is that the statement should have been made to a police-officer in the course of an investigation under Chapter XIV of the Code. If it was not made in the course of such investigation, the admissibility of such statement would not be governed by s. 162 of the Code. The question, therefore, is whether Puransingh made the statement to Phansalkar in the course of investigation. Section 154 of the Code says that every information relating to the commission of a cognizable offence if given orally to an officer in charge of a police-station shall be reduced to writing by him or under his direction; and section 156(1) is to the effect that any officer in charge of a police-station may, without the order of a Magistrate, investigate any cognizable case which a court having jurisdiction over the local area within the limits

of such station would have power to inquire into or try under the provisions of Chapter XIV relating to the place of inquiry or trial. The evidence in the case clearly establishes that Phansalkar, being the Station House Duty Officer at Gamdevi Police-station on April 27, 1959, from 2 to 8 P.M., was an officer in charge of the Police-station within the meaning of the said sections. Puransingh in his evidence says that he went to Gamdevi Police-station and gave the information of the shooting incident to the Gamdevi Police. Phansalkar in his evidence says that on the basis of the information he went along with Puransingh to the place of the alleged offence. His evidence also discloses that he had questioned Puransingh, the doctor and also Miss Mammie in regard to the said incident. On this uncontradicted evidence there cannot be any doubt that the investigation of the offence had commenced and Puransingh made the statement to the police officer in the course of the said investigation. But it is said that, as the information given by Puransingh was not recorded by Police Officer Phansalkar as he should do under s. 154 of the Code of Criminal Procedure, no investigation in law could have commenced with the meaning of s. 156 of the Code. The question whether investigation had commenced or not is a question of fact and it does not depend upon any irregularity committed in the matter of recording the first information report by the concerned police officer. If so, s. 162 of the Code is immediately attracted. Under s. 162(1) of the Code, no statement made by any person to a Police-officer in the course of an investigation can be used for any purpose at any inquiry or trial in respect of any offence under investigation at the time when such statement was made. But the proviso lifts the ban and says that when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing, any part of his statement, if duly proved, may be used by the accused to contradict such witness. The proviso cannot be invoked to bring in the statement made by Phansalkar to Inspector Mokashi in the cross-examination of Phansalkar, for the statement made by him was not used to contradict the evidence of Phansalkar. The proviso cannot obviously apply to the oral statement made by Puransingh to Phansalkar, for the said statement of Puransingh has not been reduced into writing. The faint argument of learned counsel for the accused that the statement of Phansalkar recorded

by Inspector Mokashi can be treated as a recorded statement of Puransingh himself is to be stated only to be rejected, for it is impossible to treat the recorded statement of Phansalkar as the recorded statement of Puransingh by a police-officer. If so, the question whether the alleged omission of what the accused told Puransingh in Puransingh's oral statement to Phansalkar could be used to contradict Puransingh, in view of the decision of this Court in Tahsildar Singh's case MANU/SC/0053/1959 : [[1959] Supp. (2) S.C.R. 875], does not arise for consideration. We are, therefore, clearly of the opinion that not only the learned Sessions Judge acted illegally in admitting the alleged omission in evidence to contradict the evidence of Puransingh, but also clearly misdirected himself in placing the said evidence before the jury for their consideration.

66. In addition to the misdirections pointed out by the High Court, the learned Attorney-General relied upon another alleged misdirection by the learned Sessions Judge in his charge. In paragraph 28 of the charge, the learned Sessions Judge stated thus :

"No one challenges the marksmanship of the accused but Commodore Nanda had come to tell you that he is a good shot and Mr. Kandalawala said that here was a man and good marksman, would have shot him, riddled him with bullets perpendicularly and not that way and he further said that as it is not done in this case it shows that the accused is a good marksman and a good shot and he would not have done this thing, this is the argument."

67. The learned Attorney-General points out that the learned Sessions Judge was wrong in saying that no one challenged the marksmanship of the accused, for Commodore Nanda was examined at length on the competency of the accused as a marksman. Though this is a misdirection, we do not think that the said passage, having regard to the other circumstances of the case, could have in any way affected the verdict of the jury. It is, therefore, clear that there were grave misdirections in this case, affecting the verdict of

the jury, and the High Court was certainly within its rights to consider the evidence and come to its own conclusion thereon.

68. The learned Attorney-General contends that if he was right in his contention that the High Court could consider the evidence afresh and come to its own conclusion, in view of the said misdirection, this Court should not, in exercise of its discretionary jurisdiction under Art. 136 of the Constitutions interfere with the findings of the High Court. There is force in this argument. But, as we have heard counsel at great length, we propose to discuss the evidence.

69. We shall now proceed to consider the evidence in the case. The evidence can be divided into three parts, namely, (i) evidence relating to the conduct of the accused before the shooting incident, (ii) evidence in regard to the conduct of the accused after the incident, and (iii) evidence in regard to the actual shooting in the bed-room of Ahuja.

70. We may start with the evidence of the accused wherein he gives the circumstances under which he came to know of the illicit intimacy of his wife Sylvia with the deceased Ahuja, and the reasons for which he went to the flat of Ahuja in the evening of April 27, 1959. After his brother and his brother's wife, who stayed with him for a few days, had left, he found his wife behaving strangely and without affection towards him. Though on that ground he was unhappy and worried, he did not suspect of her unfaithfulness to him. On the morning of April 27, 1959, he and his wife took out their sick dog to the Parel Animal Hospital. On their way back, they stopped at the Metro Cinema and his wife bought some tickets for the 3-30 show. After coming home, they were sitting in the room for the lunch to be served when he put his arm around his wife affectionately and she seemed to go tense and was very unresponsive. After lunch, when his wife was reading

in the sitting room, he told her "Look, we must get these things straight" or something like that, and "Do you still love me ?" As she did not answer, he asked her "Are you in love with some one else ?", but she gave no answer. At that time he remembered that she had not been to a party given by his brother when he was away on the sea and when asked why she did not go, she told him that she had a previous dinner engagement with Miss Ahuja. On the basis of this incident, he asked her "Is it Ahuja ?" and she said "Yes." When he asked her "Have you been faithful to me ?", she shook her head to indicate "No." Sylvia in her evidence, as D.W. 10, broadly supported this version. It appears to us that this is clearly a made-up conversation and an unnatural one too. Is it likely that Nanavati, who says in his evidence that prior to April 27, 1959, he did not think that his wife was unfaithful to him, would have suddenly thought that she had a lover on the basis of a trivial circumstance of her being unresponsive when he put his arm around her affectionately ? Her coldness towards him might have been due to many reasons. Unless he had a suspicion earlier or was informed by somebody that she was unfaithful to him, this conduct of Nanavati in suspecting his wife on the basis of the said circumstance does not appear to be the natural reaction of a husband. The recollection of her preference to attend the dinner given by Miss Mammie to that of his brother, in the absence of an earlier suspicion or information, could not have flashed on his mind the image of Ahuja as a possible lover of his wife. There was nothing extraordinary in his wife keeping a previous engagement with Mis Mammie and particularly when she could rely upon her close relations not to misunderstand her. The circumstances under which the confession of unfaithfulness is alleged to have been made do not appear to be natural. This inference is also reinforced by the fact that soon after the confession, which is alleged to have upset him so much, he is said to have driven his wife and children to the cinema. If the confession of illicit intimacy between Sylvia and Ahuja was made so suddenly at lunch time, even if she had purchased the tickets, it is not likely that he would have taken her and the children to the cinema. Nanavati then proceeds to say in his evidence : on his wife admitting her illicit intimacy with Ahuja, he was absolutely stunned; he then got up and said that he must go and settle the matter with the swine; he asked her what were

the intentions of Ahuja and whether Ahuja was prepared to marry her and look after the children; he wanted an explanation from Ahuja for his caddish conduct. In the cross-examination he further elaborated on his intentions thus : He thought of having the matters settled with Ahuja; he would find out from him whether he would take an honourable way out of the situation; and he would thrash him if he refused to do so. The honourable course which he expected of the deceased was to marry his wife and look after the children. He made it clear further that when he went to see Ahuja the main thing in his mind was to find out what Ahuja's intentions were towards his wife and children and to find out the explanation for his conduct. Sylvia in her evidence says that when she confessed her unfaithfulness to Nanavati, the latter suddenly got up rather excitedly and said that he wanted to go to Ahuja's flat and square up the things. Briefly stated, Nanavati, according to him, went to Ahuja's flat to ask for an explanation for seducing his wife and to find out whether he would marry Sylvia and take care of the children. Is it likely that a person, situated as Nanavati was, would have reacted in the manner stated by him ? It is true that different persons react, under similar circumstances, differently. A husband to whom his wife confessed of infidelity may kill his wife, another may kill his wife as well as her paramour, the third, who is more sentimental, may commit suicide, and the more sophisticated one may give divorce to her and marry another. But it is most improbable, even impossible, that a husband who has been deceived by his wife would voluntarily go to the house of his wife's paramour to ascertain his intentions, and, what is more, to ask him to take charge of his children. What was the explanation Nanavati wanted to get from Ahuja ? His wife confessed that she had illicit intimacy with Ahuja. She is not a young girl, but a woman with three children. There was no question of Ahuja seducing an innocent girl, but both Ahuja and Sylvia must have been willing parties to the illicit intimacy between them. That apart, it is clear from the evidence that Ahuja and Sylvia had decided to marry and, therefore, no further elucidation of the intention of Ahuja by Nanavati was necessary at all. It is true that Nanavati says in his evidence that when he asked her whether Ahuja was prepared to marry her and look after the children, she did not give any proper rely; and Sylvia also in her evidence says that when her

husband asked her whether Ahuja was willing to marry her and look after the children she avoided answering that question as she was too ashamed to admit that Ahuja was trying to back out from the promise to marry her. That this version is not true is amply borne out by the letters written by Sylvia to Ahuja. The first letter written by Sylvia is dated May 24, 1958, but that was sent to him only on March 19, 1959, along with another letter. In that letter dated May 24, 1958, she stated :

"Last night when you spoke about your need to marry and about the various girls you may marry, something inside me snapped and I know that I could not bear the thought of your loving or being close to someone else."

71. Reliance is placed upon these words by learned counsel for the accused in support of his contention that Ahuja intended to marry another girl. But this letter is of May 1958 and by that time it does not appear that there was any arrangement between Sylvia and Ahuja to marry. It may well have been that Ahuja was telling Sylvia about his intentions to marry another girl to make her jealous and to fall in for him. But as days passed by, the relationship between them had became very intimate and they began to love each other. In the letter dated March 19, 1959, she said : "Take a chance on our happiness, my love. I will do my best to make you happy; I love you, I want you so much that everything is bound to work out well." The last sentence indicates that they had planned to marry. Whatever ambiguity there may be in these words, the letter dated April 17, 1959, written ten days prior to the shooting incident, dispels it; therein she writes.

"In any case nothing is going to stop my coming to you. My decision is made and I do not change my mind. I am taking this month so that we may afterwards say we gave ourselves every chance and we know what we are doing. I am torturing myself in every possible way as you asked, so that, there will be no surprise afterwards."

72. This letter clearly demonstrates that she agreed not to see Ahuja for a month, not because that Ahuja refused to marry her, but because it was settled that they should marry, and that in view of the far-reaching effects of the separation from her husband on her future life and that of her children, the lovers wanted to live separately to judge for themselves whether they really loved each other so much as to marry. In the cross-examination she tried to wriggle out of these letters and sought to explain them away; but the clear phraseology of the last letter speaks for itself, and her oral evidence, contrary to the contents of the letters, must be rejected. We have no doubt that her evidence, not only in regard to the question of marriage but also in regard to other matters, indicates that having lost her lover, out of necessity or out of deep penitence for her past misbehavior, she is out to help her husband in his defence. This correspondence belies the entire story that Sylvia did not reply to Nanavati when the latter asked her whether Ahuja was willing to marry her and that that was the reason why Nanavati wanted to visit Ahuja to ask him about his intentions. We cannot visualize Nanavati as a romantic lover determined to immolate himself to give opportunity to his unfaithful wife to start a new life of happiness and love with her paramour after convincing him that the only honourable course open to him was to marry her and take over his children. Nanavati was not ignorant of the ways of life or so gullible as to expect any chivalry or honour in a man like Ahuja. He is an experienced Naval Officer and not a sentimental hero of a novel. The reason therefore for Nanavati going to Ahuja's flat must be something other than asking him for an explanation and to ascertain his intention about marrying his wife and looking after the children.

73. Then, according to Nanavati, he drove his wife and children to cinema, and promising them to come and pick them up at the end of the show at about 6 P.M., he drove straight to his ship. He would say that he went to his ship to get medicine for his sick dog. Though ordinarily this statement would be insignificant, in the context of the conduct of Nanavati, it acquires significance. In the beginning of his evidence, he says that on the

morning of the day of the incident he and his wife took out their sick dog to the Parel Animal Hospital. It is not his evidence that after going to the hospital he went to his ship before returning home. It is not even suggested that in the ship there was a dispensary catering medicine for animals. This statement, therefore, is not true and he did not go to the ship for getting medicine for his dog but for some other purpose, and that purpose is clear from his subsequent evidence. He met Captain Kolhi and asked for his permission to draw a revolver and six rounds because he was going to drive to Ahmednagar by night. Captain Kolhi gave him the revolver and six rounds, he immediately loaded the revolver with all the six rounds and put the revolver inside an envelope which was lying in his cabin. It is not the case of the accused that he really wanted to go to Ahmednagar and he wanted the revolver for his safety. Then why did he take the revolver ? According to him, he wanted to shoot himself after driving far away from his children. But he did not shoot himself either before or after Ahuja was shot dead. The taking of the revolver on a false pretext and loading it with six cartridges indicate the intention on his part to shoot somebody with it.

74. Then the accused proceeded to state that he put the envelope containing the revolver in his car and found himself driving to Ahuja's office. At Ahuja's office he went in keeping the revolver in the car, and asked Talaja, the Sales Manager of Universal Motors of which Ahuja was the proprietor whether Ahuja was inside. He was told that Ahuja was not there. Before leaving Ahuja's office, the accused looked for Ahuja in the Show Room, but Ahuja was not there. In the cross-examination no question was put to Nanavati in regard to his statement that he kept the revolver in the car when he entered Ahuja's office. On the basis of this statement, it is contended that if Nanavati had intended to shoot Ahuja he would have taken the revolver inside Ahuja's office. From this circumstance it is not possible to say that Nanavati's intention was not to shoot Ahuja. Even if his statement were true, it might well have been that he would have gone to Ahuja's office not to shoot him there but to ascertain whether he had left the office for his flat. Whatever it may be,

from Ahuja's office he straightway drove to the flat of Ahuja. His conduct at the flat is particularly significant. His version is that he parked his car in the house compound near the steps, went up the steps, but remembered that his wife had told him that Ahuja might shoot him and so he went back to his car, took the envelope containing the revolver, and went up to the flat. He rang the doorbell; when a servant opened the door, he asked him whether Ahuja was in. Having ascertained that Ahuja was in the house, he walked to his bedroom, opened the door and went in shutting the door behind him. This conduct is only consistent with his intention to shoot Ahuja. A person, who wants to seek an interview with another in order to get an explanation for his conduct or to ascertain his intentions in regard to his wife and children, would go and sit in the drawing-room and ask the servant to inform his master that he had come to see him. He would not have gone straight into the bed-room of another with a loaded revolver in hand and closed the door behind. This was the conduct of an enraged man who had gone to wreak vengeance on a person who did him a grievous wrong. But it is said that he had taken the loaded revolver with him as his wife had told him that Ahuja might shoot him. Earlier in his cross-examination he said that when he told her that he must go and settle the matter with the "swine" she put her hand upon his arm and said, "No, No, you must not go there, don't go there, he may shoot you." Sylvia in her evidence corroborates his evidence in this respect : But Sylvia has been cross-examined and she said that she knew that Ahuja had a gun and she had seen it in Ashoka Hotel in New Delhi and that she had not seen any revolver at the residence of Ahuja at any time. It is also in evidence that Ahuja had not licence for a revolver and no revolver of his was found in his bed-room. In the circumstances, we must say that Sylvia was only attempting to help Nanavati in his defence. We think that the evidence of Nanavati supported by that of Sylvia was a collusive attempt on their part to explain away the otherwise serious implication of Nanavati carrying the loaded revolver into the bed-room of Ahuja. That part of the version of the accused in regard to the manner of his entry into the bed-room of Ahuja, was also supported by the evidence of Anjani (P.W. 8), the bearer, and Deepak, the Cook. Anjani opened the door of the flat to Nanavati at about 4-20 P.M. He served tea to his

master at about 4-15 P.M. Ahuja then telephoned to ascertain the correct time and then went to his bed-room. About five minutes thereafter this witness went to the bed-room of his master to bring back the tea-tray from there, and at that time his master went into the bathroom for his bath. Thereafter, Anjani went to the kitchen and was preparing tea when he heard the door-bell. He then opened the door to Nanavati. This evidence shows that at about 4-20 P.M. Ahuja was taking his bath in the bathroom and immediately thereafter Nanavati entered the bed-room. Deepak, the cook of Ahuja, also heard the ringing of the door-bell. He saw the accused opening the door of the bed-room with a brown envelope in his hand and calling the accused by his name "Prem"; he also saw his master having a towel wrapped around his waist and combing his hair standing before the dressing-table, when the accused entered the room and closed the door behind him. These two witnesses are natural witnesses and they have been examined by the police on the same day and nothing has been elicited against them to discredit their evidence. The small discrepancies in their evidence do not in any way affect their credibility. A few seconds thereafter, Mammie, the sister of the deceased, heard the crack of the window pane. The time that elapsed between Nanavati entering the bed-room of Ahuja and her hearing the noise was about 15 to 20 seconds. She describes the time that elapsed between the two events as the time taken by her to take up her saree from the door of her dressing-room and her coming to the bed-room door. Nanavati in his evidence says that he was in the bed-room of Ahuja for about 30 to 60 seconds. Whether it was 20 seconds, as Miss Mammie says, or 30 to 60 seconds, as Nanavati deposes, the entire incident of shooting took place in a few seconds.

75. Immediately after the sounds were heard, Anjani and Miss Mammie entered the bed-room and saw the accused.

76. The evidence discussed so far discloses clearly that Sylvia confessed to Nanavati of her illicit intimacy with Ahuja; that Nanavati went to his ship at about 3.30 P.M. and took a revolver and six rounds on a false pretext and loaded the revolver with six rounds; that thereafter he went to the office of Ahuja to ascertain his whereabouts, but was told that Ahuja had left for his house; that the accused then went to the flat of the deceased at about 4-20 P.M.; that he entered the flat and then the bed-room unceremoniously with the loaded revolver, closed the door behind him and a few seconds thereafter sounds were heard by Miss Mammie, the sister of the deceased, and Anjani, a servant; that when Miss Mammie and Anjani entered the bed-room, they saw the accused with the revolver in his hand, and found Ahuja lying on the floor of the bathroom. This conduct of the accused to say the least, is very damaging for the defence and indeed in itself ordinarily sufficient to implicate him in the murder of Ahuja.

77. Now we shall scrutinize the evidence to ascertain the conduct of the accused from the time he was found in the bed-room of Ahuja till he surrendered himself to the police. Immediately after the shooting, Anjani and Miss Mammie went into the bed-room of the deceased. Anjani says in his evidence that he saw the accused facing the direction of his master who was lying in the bathroom.; that at that time the accused was having a "pistol" in his hand; that when he opened the door, the accused turned his face towards this witness and saying that nobody should come in his way or else he would shoot at them, he brought his "pistol" near the chest of the witness; and that in the meantime Miss Mammie came there, and said that the accused had killed her brother.

78. Miss Mammie in her evidence says that on hearing the sounds, she went into the bed-room of her brother, and there she saw the accused nearer to the radiogram than to the door with a gun in his hand; that she asked the accused "what is this ?" but she did not hear the accused saying anything.

79. It is pointed out that there are material contradictions between what was stated by Miss Mammie and what was stated by Anjani. We do not see any material contradictions. Miss Mammie might not have heard what the accused said either because she came there after the aforesaid words were uttered or because in her anxiety and worry she did not hear the words. The different versions given by the two witnesses in regard to what Miss Mammie said to the accused is not of any importance as the import of what both of them said is practically the same. Anjani opened the door to admit Nanavati into the flat and when he heard the noise he must have entered the room. Nanavati himself admitted that he saw a servant in the room, though he did not know him by name; he also saw Miss Mammie in the room. These small discrepancies, therefore, do not really affect their credibility. In effect and substance both saw Nanavati with a fire-arm in his hand - though one said pistol and the other gun - going away from the room without explaining to Miss Mammie his conduct and even threatening Anjani. This could only be the conduct of a person who had committed a deliberate murder and not of one who had shot the deceased by accident. If the accused had shot the diseased by accident, he would have been in a depressed and apologetic mood and would have tried to explain his conduct to Miss Mammie or would have phoned for a doctor or asked her to send for one or at any rate he would not have been in a belligerent mood and threatened Anjani with his revolver. Learned counsel for the accused argues that in the circumstances in which the accused was placed soon after the accidental shooting he could not have convinced Miss Mammie with any amount of explanation and therefore there was no point in seeking to explain his conduct to her. But whether Miss Mammie would have been convinced by his explanation or not, if Nanavati had shot the deceased by accident, he would certainly have told her particularly when he knew her before and when she happened to be the sister of the man shot at. Assuming that the suddenness of the accidental shooting had so benumbed his senses that he failed to explain the circumstances of the shooting to her, the same cannot be said when he met others at the gate. After the accused had come out

of the flat of Ahuja, he got into his car and took a turn in the compound. He was stopped near the gate by Puransingh, P.W. 12, the watchman of the building. As Anjani had told him that the accused had killed Ahuja the watchman asked him why he had killed his master. The accused told him that he had a quarrel with Ahuja as the latter had "connections" with his wife and therefore he killed him. The watchman told the accused that he should not go away from the place before the police arrived, but the accused told him that he was going to the police and that if he wanted he could also come with him in the car. At that time Anjani was standing in front of the car and Deepak was a few feet away. Nanavati says in his evidence that it was not true that he told Puransingh that he had killed the deceased as the latter had "connection" with his wife and that the whole idea was quite absurd. Puransingh is not shaken in his cross-examination. He is an independent witness; though he is a watchman of Jivan Jyot, he was not an employee of the deceased. After the accused left the place, this witness, at the instance of Miss Mammie, went to Gamdevi Police Station and reported the incident to the police officer Phansalkar, who was in charge of the police-station at that time, at about 5-5 P.M. and came along with the said police-officer in the jeep to Jivan Jyot at about 7 P.M. he went along with the police-officer to the police station where his statement was recorded by Inspector Mokashi late in the night. It is suggested that this witness had conspired with Deepak and Anjani and that he was giving false evidence. We do not see any force in this contention. His statement was regarded on the night of the incident itself. It is impossible to conceive that Miss Mammie, who must have had a shock, would have been in a position to coach him up to give a false statement. Indeed, her evidence discloses that she was drugged to sleep that night. Can it be said that these two illiterate witnesses, Anjani and Deepak, would have persuaded him to make false statement that night. Though both of them were present when Puransingh questioned the accused, they deposed that they were at a distance and therefore they did not hear what the accused told Puransingh. If they had all colluded together and were prepared to speak to a false case, they could have easily supported Puransingh by stating that they also heard what the accused told Puransingh. We also do not think that these two witnesses are so intelligent as to visualize

the possible defence and beforehand coached Puransingh to make a false statement on the very night of the incident. Nor do we find any inherent improbability in his evidence if really Nanavati had committed the murder. Having shot Ahuja he was going to surrender himself to the police; he knew that he had committed a crime; he was not a hardened criminal and must have had a moral conviction that he was justified in doing what he did. It was quite natural, therefore, for him to confess his guilt and justify his act to the watchman who stopped him and asked him to wait there till the police came. In the mood in which Nanavati was soon after the shooting, artificial standards of status or position would not have weighed in his mind if he was going to confess and surrender to the police. We have gone through the evidence of Puransingh and we do not see any justification to reject his evidence.

80. Leaving Jivan Jyot the accused drove his car and came to Raj Bhavan Gate. There he met a police constable and asked him for the location of the nearest police station. The direction given by the police constable were not clear and, therefore, the accused requested him to go along with him to the police station, but the constable told him that as he was on duty, he could not follow him. This is a small incident in itself, but it only shows that the accused was anxious to surrender himself to the police. This would not have been the conduct of the accused, if he had shot another by accident, for in that event he would have approached a lawyer or a friend for advice before reporting the incident to the police. As the police constable was not able to give him clear directions in regard to the location of the nearest police station, the accused went to the house of Commander Samuel, the Naval Provost Marshal. What happened between the accused and Samuel is stated by Samuel in his evidence as P.W. 10. According to his evidence, on April 27, 1959, at about 4.45 P.M., he was standing at the window of his study in his flat on the ground floor at New Queen's Road. His window opens out on the road near the band stand. The accused came up to the window and he was in a dazed condition. The witness asked him what had happened, and the accused told him, "I do not quite know what happened, but

I think I have shot a man." The witness asked him how it happened, and the accused told him that the man had seduced his wife and he would not stand it. When the witness asked him to come inside and explain everything calmly, the accused said "No, thank you, I must go", "please tell me where I should go and report." Though he asked him again to come in, the accused did not go inside and, therefore, this witness instructed him to go to the C.I.D. Office and report to the Deputy Commissioner Lobo. The accused asked him to phone to Lobo and he telephoned to Lobo and told him that an officer by name Commander Nanavati was involved in an affair and that he was on the way to report to him. Nanavati in his evidence practically corroborates the evidence of Samuel. Nanavati's version in regard to this incident is as follows :

"I told him that something terrible had happened, that I did not know quite what had happened but I thought I had shot a man. He asked me where this had happened. I told him at Nepean Sea Road. He asked me why I had been there. I told him I went there because a fellow there had seduced my wife and I would not stand for it. He asked me many times to go inside his room. But I was not willing to do so. I was anxious to go to the police station. I told Commander Samuel that there had been a fight over a revolver. Commander Samuel asked to report to Deputy Commissioner Lobo."

81. The difference between the two versions lies in the fact that while Nanavati said that he told Samuel that something terrible had happened, Samuel did not say that; while Nanavati said that he told Samuel that there had been a fight over a revolver, Samuel did not say that. But substantially both of them say that though Samuel asked Nanavati more than once to get inside the house and explain to him everything calmly, Nanavati did not do so; both of them also deposed that the accused told Samuel, "I do not quite know what happened but I think I have shot a man." It may be mentioned that Samuel is a Provost Marshal of the Indian navy, and he and the accused are of the same rank though the accused is senior to Samuel as Commander. As Provost Marshal, Samuel discharges

police duties in the navy. It is probable that if the deceased was shot by accident, the accused would not have stated that fact to this witness ? Is it likely that he would not have stepped into his house, particularly when he requested him more than once to come in and explain to him how the accident had taken place ? Would he not have taken his advice as a colleague before he proceeded to the police station to surrender himself ? The only explanation for this unusual conduct on the part of the accused is that, having committed the murder, he wanted to surrender himself to the police and to make a clean breast of everything. What is more, when he was asked directly what had happened he told him "I do not quite know what happened but I think I have shot a man". When he was further asked how it happened, that is, how he shot the man he said that the man had seduced his wife and that he would not stand for it. In the context his two answers read along with the questions put to him by Samuel only mean that, as the deceased had seduced his wife, the accused shot him as he would not stand for it. If really the accused shot the deceased by accident, why did he not say that fact to his colleague, particularly when it would not only be his defence, if prosecuted, but it would put a different complexion to his act in the eyes of his colleague. But strong reliance is placed on what this witness stated in the cross-examination viz., "I heard the word fight from the accused", "I heard some other words from the accused but I could not make out a sense out of these words". Learned counsel for the accused contends that this statement shows that the accused mentioned to Samuel that the shooting of the deceased was in a fight. It is not possible to build upon such slender foundation that the accused explained to Samuel that he shot the deceased by accident in a struggle. The statement in the cross-examination appears to us to be an attempt on the part of this witness to help his colleague by saying something which may fit in the scheme of his defence, though at the same time he is not willing to lie deliberately in the witness-box, for he clearly says that he could not make out the sense of the words spoken along with the word "fight". This vague statement of this witness, without particulars, cannot detract from the clear evidence given by him in the examination-in-chief.

82. What Nanavati said to the question put by the Sessions Judge under s. 342 of the Code of Criminal Procedure supports Samuel's version. The following question was put to him by the learned Sessions Judge :

Q. - It is alleged against you that thereafter as aforesaid you went to Commander Samuel at about 4.45 P.M. and told him that something terrible had happened and that you did not quite know but you thought that you shot a man as he had seduced your wife which you could not stand and that on the advice of Commander Samuel you then went to Deputy Commissioner Lobo at the Head Crime Investigation Department Office. Do you wish to say anything about this ?

83. A. - This is correct.

84. Here Nanavati admits that he told Commander Samuel that he shot the man as he had seduced his wife. Learned counsel for the accused contends that the question framed was rather involved and, therefore, Nanavati might not have understood its implication. But it appears from the statement that, after the questions were answered, Nanavati read his answers and admitted that they were correctly recorded. The answer is also consistent with what Samuel said in his evidence as to what Nanavati told him. This corroborates the evidence of Samuel that Nanavati told him that, as the man had seduced his wife, he thought that he had shot him. Anyhow, the accused did not tell the Court that he told Samuel that he shot the deceased in a fight.

85. Then the accused, leaving Samuel, went to the office of the Deputy Commissioner Lobo. There, he made a statement to Lobo. At that time, Superintendent Korde and

Inspector Mokashi were also present. On the information given by him, Lobo directed Inspector Mokashi to take the accused into custody and to take charge of the articles and to investigate the case.

86. Lobo says in his evidence that he received a telephone call from Commander Samuel to the effect that he had directed Commander Nanavati to surrender himself to him as he had stated that he had shot a man. This evidence obviously cannot be used to corroborate what Nanavati told Samuel, but it would only be a corroboration of the evidence of Samuel that he telephoned to Lobo to that effect. It is not denied that the accused set up the defence of accident for the first time in the Sessions Court. This conduct of the accused from the time of the shooting of Ahuja to the moment he surrendered himself to the police is inconsistent with the defence that the deceased was shot by accident. Though the accused had many opportunities to explain himself, he did not do so; and he exhibited the attitude of a man who wreaked out his vengeance in the manner planned by him and was only anxious to make a clean breast of everything to the police.

87. Now we will consider what had happened in the bed-room and bathroom of the deceased. But before considering the evidence on this question, we shall try to describe the scene of the incident and other relevant particulars regarding the things found therein.

88. The building "Jivan Jyot" is situate in Setalvad Road, Bombay. Ahuja was staying on the first floor of that building. As one goes up the stairs, there is a door leading into the hall; as one enters the hall and walks a few feet towards the north he reaches a door leading into the bed-room of Ahuja. In the bed-room, abutting the southern wall there is a radiogram; just after the radiogram there is a door on the southern wall leading to the

bathroom, on the eastern side of the door abutting the wall there is a cupboard with a mirror thereon; in the bathroom, which is of the dimensions 9 feet x 6 feet, there is a commode in the front along the wall, above the commode there is a window with glass panes overlooking the chowk, on the east of the commode there is a bath-tub, on the western side of the bathroom there is a door leading into the hall; on the southern side of the said door there is a wash-basin adjacent to the wall.

89. After the incident the corpse of Ahuja was found in the bathroom; the head of the deceased was towards the bed-room and his legs were towards the commode. He was lying with his head on his right hand. This is the evidence of Miss Mammie, and she has not been cross-examined on it. It is also not contradicted by any witness. The top glass pane of the window in the bathroom was broken. Pieces of glass were found on the floor of the bathroom between the commode and the wash-basin. Between the bath-tub and the commode a pair of spectacles was lying on the floor and there were also two spent bullets. One chappal was found between the commode and the wash basin, and the other was found in the bedroom. A towel was found wrapped around the waist of the deceased. The floor of the bathroom was bloodstained. There was white handkerchief and bath-towel, which was bloodstained lying on the floor. The western wall was found to be bloodstained and drops of blood were trickling down. The handle of the door leading to the bathroom from the bed-room and a portion of the door adjacent to the handle were bloodstained from the inner side. The blood on the wall was little over three feet from the floor. On the floor of the bed-room there was an empty brown envelope with the words "Lt. Commander K.M. Nanavati" written on it. There was no mark showing that the bullets had hit any surface. (See the evidence of Rashmikant, P.W. 16)

90. On the dead-body the following injuries were found :

(1) A punctured would 1/4" x 1/4" x chest cavity deep just below and inside the inner end of the right collar bone with an abrasion collar on the right side of the wound.

(2) A lacerated punctured wound in the web between the ring finger and the little finger of the left hand 1/4" x 1/4" communicating with a punctured would 1/4" x 1/4" on the palmar aspect of the left hand at knuckle level between the left little and the ring finger. Both the wounds were communicating.

(3) A lacerated ellipsoid would oblique in the left parietal region with dimensions 1 1/8" x 1/4" x skull deep.

(4) A lacerated abrasion with carbonaceous tattooing 1/4" x 1/6" at the distal end of the proximal interphalangeal joint of the left index finger dorsal aspect. That means at the first joint of the crease of the index finger on its dorsal aspect, i.e., back aspect.

(5) A lacerated abrasion with carbonaceous tattooing 1/4" x 1/6" at the joint level of the left middle finger dorsal aspect.

(6) Vertical abrasion inside the right shoulder blade 3" x 1" just outside the spine.

91. On internal examination the following wounds were found by Dr. Jhala, who performed the autopsy on the dead-body. Under the first injury there was :

"A small ellipsoid wound oblique in the front of the piece of the breast bone (Sternum) upper portion right side center with dimensions 1/4" x 1/3" and at the back of the bone there was a lacerated wound accompanied by irregular chip fracture corresponding to external injury No. 1, i.e., the punctured wound chest cavity deep. Same wound continued in the contusion in area 3" x 1 1/4" in the right lung upper lobe front border middle portion front and back. Extensive clots were seen in the middle compartment upper and front part surrounding the laceration impregnated pieces of fractured bone. There was extensive echymosis and contusion around the root of the right lung in the diameter of 2 1/2" involving also the inner surface of the upper lobe. There were extensive clots of blood around the aorta. The left lung was markedly pale and showed a through and through wound in the lower lobe beginning at the inner surface just above the root opening out in the lacerated wound in the back region outer aspect at the level between 6th and 7th ribs left side not injuring the rib and injuring the space between the 6th and 7th rib left side 2" outside the junction of the spine obliquely downward and outward. Bullet was recovered from tissues behind the left shoulder blade. The wound was lacerated in the whole tract and was surrounded by contusion of softer tissues."

92. The doctor says that the bullet, after entering "the inner end, went backward, downward and then to the left" and therefore he describes the wound as "ellipsoid and oblique". He also points out that the abrasion collar was missing on the left side. Corresponding to the external injury No. 3, the doctor found on internal examination that the skull showed a haematoma under the scalp, i.e., on the left parietal region; the dimension was 2" x 2". The skull cap showed a gutter fracture of the outer table and a fracture of the inner table. The brain showed sub-arachnoid haemorrhage over the left parieto-occipital region accompanying the fracture of the vault of the skull.

93. A description of the revolver with which Ahuja was shot and the manner of its working would be necessary to appreciate the relevant evidence in that regard.

Bhanagay, the Government Criminologist, who was examined as P.W. 4, describes the revolver and the manner of its working. The revolver is a semi-automatic one and it is six-chambered. To load the revolver one has to release the chamber; when the chamber is released, it comes out on the left side. Six cartridges can be inserted in the holes of the chamber and then the chamber is pressed to the revolver. After the revolver is thus loaded, for the purpose of firing one has to pull the trigger of the revolver; when the trigger is pulled the cartridge gets cocked and the revolver being semi-automatic the hammer strikes the percussion cap of the cartridge and the cartridge explodes and the bullet goes off. For firing the second shot, the trigger has to be pulled again and the same process will have to be repeated each time it is fired. As it is not an automatic revolver, each time it is fired, the trigger has to be pulled and released. If the trigger is pulled but not released, the second round will not come in its position of firing. Pulling of the trigger has a double action - one is the rotating of the chamber and cocking, and the other, releasing of the hammer. Because of this double action, the pull must be fairly strong. A pressure of about 20 pounds is required for pulling the trigger. There is controversy on the question of pressure, and we shall deal with this at the appropriate place.

94. Of the three bullets fired from the said revolver, two bullets were found in the bathroom, and the third was extracted from the back of the left shoulder blade. Exs. F-2 and F-2a are the bullets found in the bathroom. These two bullets are flattened and the copper jacket of one of the bullets, Ex. F-2a, has been turn off. The third bullet is marked as Ex. F-3.

95. With this background let us now consider the evidence to ascertain whether the shooting was intentional, as the prosecution avers, or only accidental, as the defence suggests. Excepting Nanavati, the accused, and Ahuja, the deceased, no other person was present in the latter's bed-room when the shooting took place. Hence the only person

who can speak to the said incident is the accused Nanavati. The version of Nanavati, as given in his evidence may be stated thus : He walked into Ahuja's bed-room, shutting the door behind him. Ahuja was standing in front of the dressing-table. The accused walked towards Ahuja and said, "You are a filthy swine", and asked him, "Are you going to marry Sylvia and look after the kids ?" Ahuja became enraged and said in a nasty manner, "Do I have to marry every woman that I sleep with ?" Then the deceased said, "Get the hell out of here, otherwise, I will have you thrown out." The accused became angry, put the packet containing the revolver down on a cabinet which was near him and told him, "By God I am going to thrash you for this." The accused had his hands up to fight the deceased, but the latter made a sudden grab towards the packet containing the revolver. The accused grappled the revolver himself and prevented the deceased from getting it. He then whipped out the revolver and told the deceased to get back. The deceased was very close to him and suddenly caught with his right hand the right hand of the accused at the wrist and tried to twist it and take the revolver off it. The accused "banged" the deceased towards the door of the bathroom, but Ahuja would not let go of his grip and tried to kick the accused with his knee in the groin. The accused pushed Ahuja again into the bathroom, trying at the same time desperately to free his hand from the grip of the accused by jerking it around. The deceased had a very strong grip and he did not let go the grip. During the struggle, the accused thought that two shots went off : one went first and within a few seconds another. At the first shot the deceased just kept hanging on to the hand of the accused, but suddenly he let go his hand and slumped down. When the deceased slumped down, the accused immediately came out of the bathroom and walked down to report to the police.

96. By this description the accused seeks to raise the image that he and the deceased were face to face struggling for the possession of the revolver, the accused trying to keep it and the deceased trying to snatch it, the deceased catching hold of the wrist of the right hand of the accused and twisting it, and the accused desperately trying to free his hand from

his grip; and in the struggle two shots went off accidentally - he does not know about the third shot - and hit the deceased and caused his death. But in the cross-examination he gave negative answers to most of the relevant questions put to him to test the truthfulness of his version. The following answers illustrate his unhelpful attitude in the court :

(1) I do not remember whether the deceased had the towel on him till I left the place.

(2) I had no idea where the shots went because we were shuffling during the struggle in the tiny bathroom.

(3) I have no impression from where and how the shots were fired.

(4) I do not know anything about the rebound of shots or how the shots went off.

(5) I do not even know whether the spectacles of the deceased fell off.

(6) I do not know whether I heard the third shot. My impression is that I heard two shots.

(7) I do not remember the details of the struggle.

(8) I do not give any thought whether the shooting was an accident or not, because I wished to go to the police and report to the police.

(9) I gave no thought to this matter. I thought that something serious had happened.

(10) I cannot say how close we were to each other, we might be very close and we might be at arm's length during the struggle.

(11) I cannot say how the deceased had his grip on my wrist.

(12) I do not remember feeling any blows from the deceased by his free hand during the struggle; but he may have hit me.

97. He gives only a vague outline of the alleged struggle between him and the deceased. Broadly looked at, the version given by the accused appears to be highly improbable. Admittedly he had entered the bed-room of the deceased unceremoniously with a fully loaded revolver; within half a minute he cannot out of the room leaving Ahuja dead with bullet wounds. The story of his keeping the revolver on the cabinet is very unnatural. Even if he had kept it there, how did Ahuja come to know that it was a revolver for admittedly it was put in an envelope. Assuming that Ahuja had suspected that it might be a revolver, how could he have caught the wrist of Nanavati who had by that time the revolver in his hand with his finger on the trigger ? Even if he was able to do so, how did Nanavati accidentally pull the trigger three times and release it three times when already Ahuja was holding his wrist and when he was jerking his hand to release it from the grip of Ahuja ? It also appears to be rather curious that both the combatants did not use their left hands in the struggle. If, as he has said, there was a struggle between them and he pushed Ahuja into the bathroom, how was it that the towel wrapped around the waist of

Ahuja was intact ? So too, if there was a struggle, why there was no bruise on the body of the accused ? Though Nanavati says that there were some "roughings" on his wrist, he had not mentioned that fact till he gave his evidence in the court, nor is there any evidence to indicate such "roughings". It is not suggested that the clothes worn by the accused were torn or even soiled. Though there was blood up to three feet on the wall of the bathroom, there was not a drop of blood on the clothes of the accused. Another improbability in the version of the accused is, while he say that in the struggle two shots went off, we find three spent bullets - two of them were found in the bathroom and the other in the body of the deceased. What is more, how could Ahuja have continued to struggle after he had received either the chest injury or the head injury, for both of them were serious ones. After the deceased received either the first or the third injury there was no possibility of further struggling or pulling of the trigger by reflex action. Dr. Jhala says that the injury on the head of the victim was such that the victim could not have been able to keep standing and would have dropped unconscious immediately and that injury No. 1 was also so serious that he could not stand for more than one or two minutes. Even Dr. Baliga admits that the deceased would have slumped down after the infliction of injury No. 1 or injury No. 3 and that either of them individually would be sufficient to cause the victim to slump down. It is, therefore, impossible that after either of the said two injuries was inflicted, the deceased could have still kept on struggling with the accused. Indeed, Nanavati says in his evidence that at the first shot the deceased just kept on hanging to his hand, but suddenly he let go his grip and slumped down.

98. The only circumstance that could be relied upon to indicate a struggle is that one of the chappals of the deceased was found in the bed-room while the other was in the bathroom. But that is consistent with both intentional and accidental shooting, for in his anxiety to escape from the line of firing the deceased might have in hurry left his one chappal in the bed-room and fled with the other to the bathroom. The situation of the spectacles near the commode is more consistent with intentional shooting than with

accidental shooting, for if there had been a struggle it was more likely that the spectacles would have fallen off and broken instead of their being intact by the side of the dead-body. The condition of the bed-room as well as of the bathroom, as described by Rashmikant, the police-officer who made the inquiry, does not show any indication of struggle or fight in that place. The version of the accused, therefore, is brimming with improbabilities and is not such that any court can reasonably accept it.

99. It is said that if the accused went to the bed-room of Ahuja to shoot him he would not have addressed him by his first name "Prem" as deposed by Deepak. But Nanavati says in his evidence that he would be the last person to address the deceased as Prem. This must have been as embellishment on the part of Deepak. Assuming he said it, it does not indicate any sentiment of affection or goodwill towards the deceased - admittedly he had none towards him - but only an involuntary and habitual expression.

100. It is argued that Nanavati is a good shot - Nanda, D.W. 6, a Commodore in the Indian Navy, certifies that he is a good shot in regard to both moving and stationary targets - and therefore if he had intended to shoot Ahuja, he would have shot him perpendicularly hitting the chest and not in a haphazard way as the injuries indicate. Assuming that accused is a good shot, this argument ignores that he was not shooting at an inanimate target for practice but was shooting to commit murder; and it also ignores the desperate attempts the deceased must have made to escape. The first shot might have been fired and aimed at the chest as soon as the accused entered the room, and the other two presumably when the deceased was trying to escape to or through the bathroom.

101. Now on the question whether three shots would have gone off the revolver accidentally, there is the evidence of Bhanagay, P.W. 4, who is a Government

Criminologist. The Deputy Commissioner of Police, Bombay, through Inspector Rangnekar sent to him the revolver, three empty cartridge cases, three bullets and three live rounds for his inspection. He has examined the revolver and the bullets which are marked as Exs. F-2, F-2a and F-3. He is of the opinion that the said three empties were fired from the said revolver. He speaks to the fact that for pulling the trigger a pressure of 28 pounds is required and that for each shot the trigger has to be pulled and for another shot to be fired it must be released and pulled again. He also says that the charring around the wound could occur with the weapon of the type we are now concerned within about 2 to 3 inches of the muzzle of the weapon and the blackening around the would described as carbonaceous tattooing could be caused from such a revolver up to about 6 to 8 inches from the muzzle. In the cross examination he says that the flattening of the two damaged bullets, Exs. F-2 and F-2a, could have been caused by their hitting a flat hard surface, and that the tearing of the copper jacket of one of the bullets could have been caused by a heavy impact, such as hitting against a hard surface; it may have also been caused, according to him, by a human bone of sufficient strength provided the bullet hits the bone tangently and passes of without obstruction. These answers, if accepted - we do not see any reason why we should not accept them - prove that the bullets, Exs. F-2 and F-2a, could have been damaged by their coming into contact with some hard substance such as a bone. He says in the cross-examination that one 'struggling' will not cause three automatic firings and that even if the struggle continues he would not expect three rounds to go off, but he qualifies his statement by adding that this may happen if the person holding the revolver "co-operates so far as the reflex of his finger is concerned", to pull the trigger. He further elaborates the same idea by saying that a certain kind of reflex co-operation is required for pulling the trigger and that this reflex pull could be either conscious or unconscious. This answer is strongly relied upon by learned counsel for the accused in support of his contention of accidental firing. He argues that by unconscious reflex pull of the trigger three times by the accused three shots could have gone off the revolver. But the possibility of three rounds going off by three separate reflexes of the finger of the person holding the trigger is only a theoretical possibility, and that too only

on the assumption of a fairly long struggle. Such unconscious reflex pull of the finger by the accused three times within a space of a few seconds during the struggle as described by the accused is highly improbable, if not impossible. We shall consider the evidence of this witness on the question of ricocheting of bullets when we deal with individual injuries found on the body of the deceased.

102. This witness is not a doctor but has received training in Forensic Ballistics (Identification of Fire Arms) amongst other things in London and possesses certificates of competency from his tutors in London duly endorsed by the covering letter from the Education Department, High Commissioner's Office, and he is a Government Criminologist and has been doing this work for the last 22 years; he says that he has also gained experience by conducting experiments by firing on mutton legs. He stood the test of cross-examination exceedingly well and there is no reason to reject his evidence. He makes the following points : (1) Three used bullets, Exs. F-2, F-2a, and F-3, were shot from the revolver Ex. B. (2) The revolver can be fired only by pulling the trigger; and for shooting thrice, a person shooting will have to give a deep pull to the trigger thrice and release it thrice. (3) A pressure of 28 pounds is required to pull the trigger. (4) One "struggling" will not cause three automatic firings. (5) If the struggle continues and if the person who pulls the trigger co-operates by pulling the trigger three times, three shots may go off. (6) The bullet may be damaged by hitting a hard surface or a bone. As we have pointed out the fifth point is only a theoretical possibility based upon two hypothesis, namely, (i) the struggle continues for a considerable time, and (ii) the person holding the trigger co-operates by pulling it thrice by reflex action. This evidence, therefore, establishes that the bullets went off the revolver brought by the accused - indeed this is not disputed - and that in the course of the struggle of a few seconds as described by the accused, it is not possible that the trigger could have been accidentally pulled three times in quick succession so as to discharge three bullets.

103. As regards the pressure required to pull the trigger of Ex. B, Triloksing, who is the Master Armourer in the Army, deposing as D.W. 11, does not accept the figure given by the Bhanagay and he would put it at 11 to 14 pounds. He does not know the science of ballistics and he is only a mechanic who repairs the arms. He had not examined the revolver in question. He admits that a double-action revolver requires more pressure on the trigger than single-action one. While Major Burrard in his book on Identification of Fire-arms and Forensic Ballistics says that the normal trigger pull in double-action revolvers is about 20 pounds, this witness reduces it to 11 to 14 pounds; while Major Burrard says in his book that in all competitions no test other than a dead weight is accepted, this witness does not agree with him. His opinion is based on the experiments performed with spring balance. We would prefer to accept the opinion of Bhanagay to that of this witness. But, on the basis of the opinion of Major Burrard, we shall assume for the purpose of this case that about 20 pounds of pressure would be required to pull the trigger of the revolver Ex. B.

104. Before considering the injuries in detail, it may be convenient to ascertain from the relevant text-books some of the indications that will be found in the case of injuries caused by shooting. The following passage from authoritative text-books may be consulted :

105. Snyder's Homicide Investigation, P. 117 :

Beyond the distance of about 18 inches or 24 at the most evidence of smudging and tattooing are seldom present.

106. Merkeley on Investigation of Death, P. 82 :

"At a distance of approximately over 18" the powder grains are no longer carried forward and therefore the only effect produced on the skin surface is that of the bullet."

107. Legal Medicine Pathology and Toxicology by Gonzales, 2nd Edn., 1956 :

The powder grains may travel 18 to 24 inches or more depending on the length of barrel, calibre and type of weapon and the type of ammunition.

108. Smith and Glaister, 1939 Edn., P. 17

"In general with all types of smokeless powder some traces of blackening are to be seen but it is not always possible to recognize unburnt grains of powder even at ranges of one and a half feet."

109. Glaister in his book on Medical Jurisprudence and Toxicology, 1957 Edn., makes a statement that at a range of about 12 inches and over as a rule there will not be marks of carbonaceous tattooing or powder marks. But the same author in an earlier book from which we have already quoted puts it at 18 inches. In the book "Recent Advances in Forensic Medicine" 2nd Edn., p. 11, it is stated :

At ranges beyond 2 to 3 feet little or no trace of the powder can be observed.

110. Dr. Taylor's book, Vol. 1, 11th edn., p. 373, contains the following statement :

In revolver and automatic pistol wounds nothing but the grace ring is likely to be found beyond about two feet.

111. Bhanagay, P.W. 4, says that charring around the would could occur with the weapon of the type Ex. B within about 2 to 3 inches from the muzzle of the weapon, and the blackening round about the wound could be caused from such a weapon up to about 6 to 8 inches from the muzzle. Dr. Jhala, P.W. 18, says that carbonaceous tattooing would not appear if the body was beyond 18 inches from the mouth of the muzzle.

112. Dr. Baliga, D.W. 2, accepts the correctness of the statement found in Glaister's book, namely, "when the range reaches about 6 inches there is usually an absence of burning although there will probably be some evidence of bruising and of powder mark, at a range of about 12 inches and over the skin around the wound does not as a rule show evidence of powder marks." In the cross-examination this witness says that he does not see any conflict in the authorities cited, and tries to reconcile the various authorities by stating that all the authorities show that there would not be powder marks beyond the range of 12 to 18 inches. He also says that in the matter of tattooing, there is no difference between that caused by smokeless powder used in the cartridge in question, and black powder used in other bullets, though in the case of the former there may be greater difficulty to find out whether the marks are present or not in a wound.

113. Having regard to the aforesaid impressive array of authorities on Medical Jurisprudence, we hold, agreeing with Dr. Jhala, that carbonaceous tattooing would not be found beyond range of 18 inches from the mouth of the muzzle of the weapon. We also hold that charring around the wound would occur when it is caused by a revolver like Ex. B within about 2 or 3 inches from the muzzle of the revolver.

114. The presence and nature of the abrasion collar around the injury indicates the direction and also the velocity of the bullet. Abrasion collar is formed by the gyration of the bullet caused by the rifling of the barrel. If a bullet hits the body perpendicularly, the wound would be circular and the abrasion collar would be all around. But if the hit is not perpendicular, the abrasion collar will not be around the entire wound (See the evidence of Dr. Jhala and Dr. Baliga).

115. As regards the injuries found on the dead-body, two doctors were examined, Dr. Jhala, P.W. 18, on the side of the prosecution, and Dr. Baliga, D.W. 2, on the side of the defence. Dr. Jhala is the Police Surgeon, Bombay, for the last three years. Prior to that he was a Police Surgeon in Ahmedabad for six years. He is M.R.C.P. (Edin.), D.T.M. and H. (Lond.). He conducted the postmortem on the dead-body of Ahuja and examined both external and internal injuries on the body. He is, therefore, competent to speak with authority on the wounds found on the dead-body not only by his qualifications and experience but also by reason of having performed the autopsy on the dead-body. Dr. Baliga is an F.R.C.S. (England) and has been practising as a medical surgeon since 1933. His qualifications and antecedents show that he is not only an experienced surgeon but also has been taking interest in extra-surgical activities, social, political and educational. He says that he has studied medical literature regarding bullet injuries and that he is familiar with medico-legal aspect of wounds including bullet wounds. He was a Causality Medical Officer in the K.E.M. Hospital in 1928. He had seen bullet injuries both as Causality Medical Officer and later on as a surgeon. In the cross-examination he says :

I have never fired a revolver, nor any other fire-arm. I have not given evidence in a single case of bullet injuries prior to this occasion though I have treated and I am familiar with bullet injuries. The last that I gave evidence in Medico-legal case in a murder case was in 1949 or 1950 or thereabout. Prior to that I must have given evidence in a medico-legal

case in about 1939. I cannot off hand tell how many cases of bullet injuries I have treated till now, must have been over a dozen. I have not treated any bullet injuries case for the last 7 or 8 years. It was over 8 or 9 years ago that I have treated bullet injuries on the chest and the head. Out of all these 12 bullet injuries cases which I have treated up to now there might be 4 or 5 which were bullet injuries on the head. Out of these 4 or 5 cases probably there were three cases in which there were injuries both on the chest as well as on the head..... I must have performed about half a dozen post-mortems in all my career.

116. He further says that he was consulted about a week before he gave evidence by Mr. Khandalawala and Mr. Rajani Patel on behalf of the accused and was shows the post-mortem report of the injuries; that he did not have before him either the bullets or the skull; that he gave his opinion in about 20 minutes on the basis of the post-mortem report of the injuries that the said injuries could have been caused in a struggle between the accused and the deceased. This witness has come to the Court to support his opinion based on scanty material. We are not required in this case to decide upon the comparative qualifications or merits of these two doctors of their relative competency as surgeons, but we must say that so far as the wounds on the dead-body of the deceased are concerned, Dr. Jhala, who has made the post-mortem examination, is in a better position to help us to ascertain whether shooting was by accident or by intention than Dr. Baliga, who gave his opinion on the basis of the post-mortem report.

117. Now we shall take injury No. 1. This injury is a punctured one of dimensions 1/4" x 1/4" x chest cavity deep just below and inside the inner end of the right collar bone with an abrasion collar on the right side of the wound. The internal examination showed that the bullet, after causing the punctured wound in the chest just below the inner end of the right collor bone, struck the sternum and after striking it, it slightly deflected in its course and came behind the shoulder bone. In the course of its journey the bullet entered the

chest, impacted the soft tissues of the lung, the aorta and the left lung, and ultimately damaged the left lung and got lodged behind the scapula. Dr. Jhala describes the wound as ellipsoid and oblique and says that the abrasion collar is missing on the left side. On the injury there is neither charring nor carbonaceous tattooing. The prosecution version is that this wound was caused by intentional shooting, while the defence suggestion is that it was caused when the accused and the deceased were struggling for the possession of the revolver. Dr. Jhala, after describing injury No. 1, says that it could not have been received by the victim during a struggle in which both the victim and the assailant were in each other's grip. He gives reasons for his opinion, namely, as there was no carbonaceous tattooing on the injury, it must have been caused by the revolver being fired from a distance of over 18 inches from the tip of the mouth of the muzzle. We have earlier noticed that, on the basis of the authoritative text-books and the evidence, there would not be carbonaceous tattooing if the target was beyond 18 inches from the mouth of the muzzle. It is suggested to him in the cross-examination that the absence of tattooing may be due to the fact that the bullet might have first hit the fingers of the left palm causing all or any of injuries Nos. 2, 4 and 5, presumably when the deceased placed his left palm against the line of the bullet causing carbonaceous tattooing on the said fingers and thereafter hitting the chest. Dr. Jhala does not admit the possibility of the suggestion. He rules out this possibility because if the bullet first had an impact on the fingers, it would get deflected, lose its direction and would not be able to cause later injury No. 1 with abrasion collar. He further explains that an impact with a solid substance like bones of fingers will make the bullet lose its gyratory movement and thereafter it could not cause any abrasion collar to the wound. He adds, "assuming that the bullet first hit and caused the injury to the web between the little finger and the ring finger, and further assuming that it had not lost its gyrating action, it would not have caused the injury No. 1, i.e., on the chest which is accompanied by internal damage and the depth to which it had gone."

118. Now let us see what Dr. Baliga, D.W. 2 says about injury No. 1. The opinion expressed by Dr. Jhala is put to this witness, namely, that injury No. 1 on the chest could not have been caused during the course of a struggle when the victim and the assailant were in each other's grip, and this witness does not agree with that opinion. He further says that it is possible that even if the bullet first caused injury in the web, that is, injury No. 2, and thereafter caused injury No. 1 in the chest, there would be an abrasion collar such as seen in injury No. 1. Excepting this of the suggestion possibility, he has not controverted the reasons given by Dr. Jhala why such an abrasion collar could not be caused if the bullet had hit the fingers before hitting the chest. We will presently show in considering injuries Nos. 2, 4 and 5 that the said injuries were due to the hit by one bullet. If that be so, a bullet, which had caused the said three injuries and then took a turn through the little and the ring finger, could not have retained sufficient velocity to cause the abrasion collar in the chest. Nor has Dr. Baliga controverted the reasons given by Dr. Jhala that even if after causing the injury in the web the bullet could cause injury No. 1, it could not have caused the internal damage discovered in the post-mortem examination. We have no hesitation, therefore, to accept the well reasoned view of Dr. Jhala in preference to the possibility envisaged by Dr. Baliga and hold that injury No. 1 could not have been caused when the accused and the deceased were in close grip, but only by a shot fired from a distance beyond 18 inches from the mouth of the muzzle.

119. The third injury is a lacerated ellipsoid wound oblique in the left parietal region with dimensions 1 1/8" x 1/4" and skull deep. Dr. Jhala in his evidence says that the skull had a gutter fracture of the outer table and a fracture of the inner table and the brain showed subarachnoid haemorrhage over the left parieto-occipital region accompanying the fracture of the vault of the skull. The injury was effected in a "glancing way", that is, at a tangent, and the injury went upward and to the front. He is of the opinion that the said injury to the head must have been caused by firing of a bullet from a distance of over 18 inches from the mouth of the muzzle and must have been caused with the back of the

head of the victim towards the assailant. When it was suggested to him that the said wound could have been caused by a ricocheted bullet, he answered that though a ricocheted bullet coming from the same line of direction could have caused the said injury, it could not have caused the intracranial haemorrhage and also could not have caused the fracture of the inner table of the skull. He is definite that injury No. 3 could not have been inflicted from "front to back" as the slope of the gutter fracture was from the back to the front in the direction of the "grazing" of the bullet. He gives a further reason that as a rule the fracture would be broader in the skull where the bullet has the first impact and narrower where it emerges out, which is the case in respect of injury No. 3. He also relies upon the depth of the fracture at the two points and its slope to indicate the direction in which the bullet grazed. He further says that it is common knowledge that the fracture of both the tables accompanied by haemorrhage in the skull requires great force and a ricocheted bullet cannot cause such an injury. He opines that, though a ricocheted bullet emanating from a powerful fire-arm from a close range can cause injury to a heavy bone, it cannot be caused by a revolver of the type Ex. B.

120. Another suggestion made to him is that the bullet might have hit the glass pane of the window in the bathroom first and then ricocheted causing the injury on the head. Dr. Jhala, in his evidence, says that if the bullet had hit the glass pane first, it would have caused a hole and fallen on the other side of the window, for ricocheting is not possible in the case of a bullet directly hitting the glass. But on the other hand, if the bullet first hit a hard substance and then the glass pane, it would act like a pebble and crack the glass and would not go to the other side. In the present case, the bullet must have hit the skull first and then the glass pane after having lost its velocity, and fallen down like a pebble inside the bathroom itself. If, as the defence suggests, the bullet had directly hit the glass pane, it would have passed through it to the other side, in which case four bullets must have been fired from the revolver Ex. B, which is nobody's case.

121. The evidence, of Dr. Jhala is corroborated by the evidence of the ballistics expert Bhanagay, P.W. 4, when he says that if a bullet hits a hard substance and gets flattened and damaged like the bullets Exs. F-2 and F-2a, it may not enter the body and that even if it enters the body, the penetration will be shallow and the injury caused thereby will be much less as compared to the injury caused by a direct hit of the bullet. Dr. Baliga, on the other hand, says that injury No. 3 could be caused both ways, that is, from "front backward" as well as from "back forward". He also contradicts Dr. Jhala and says "back that in the type of the gutter fracture caused in the present case the wound is likely to be narrower at the entry than at the exit. He further says that assuming that the gutter fracture wound was caused by a ricocheted bullet and assuming further that there was enough force left after rebound, a ricocheted bullet could cause a fracture of even the inner table and give rise to intra-cranial haemorrhage. He asserts that a bullet that can cause a gutter fracture of the outer table is capable of fracturing the inner table also. In short, he contradicts every statement of Dr. Jhala; to quote his own words, "I do not agree that injury No. 3, i.e., the gutter fracture, cannot be inflicted from front to back for the reason that the slope of the gutter fracture was behind forward direction of the grazing of the bullet; I also do not agree with the proposition that if it would have been from the front then the slope of the gutter wound would have been from the front backward; I have not heard of such a rule and that at the near end of the impact of a bullet the gutter fracture is deeper than where it files off; I do not agree that the depth of the fracture at two points is more important factor in arriving at the conclusion of the point of impact of the bullet." He also contradicts the opinion of Dr. Jhala that injury No. 3 could not be caused in a struggle between the victim and the assailant. Dr. Baliga has been cross-examined at great length. It is elicited from him that he is not a ballistics expert and that his experience in the matter of direction of bullet injuries is comparatively less than his experience in other fields. His opinion that the gutter fracture injury could be and was more likely to be caused from an injury glancing front backwards is based upon a

comparison of the photograph of the skull shown to him with the figure 15 in the book "Recent Advances in Forensic Medicine" by Smith and Glaister, p. 21. The said figure is marked as Ex. Z in the case. The witness says that the figure shows that the narrower part of the gutter is on the rear and the wider part is in front. In the cross-examination he further says that the widest part of the gutter in figure Ex. Z is neither at the front and nor at the rear end, but the rear end is pointed and tailed. It is put to this witness that figure Ex. Z does not support his evidence and that he deliberately refused to see at it correctly, but he denies it. The learned Judges of the High Court, after seeing the photograph Ex. Z with a magnifying glass, expressed the view that what Dr. Baliga called the pointed and tailed part of the gutter was a crack in the skull and not a part of the gutter. This observation has not been shown to us to be wrong. When asked on what scientific principle he would support his opinion, Dr. Baliga could not give any such principle, but only said that it was likely - he puts emphasis on the word "likely" - that the striking end was likely to be narrower and little broader at the far end. He agrees that when a conical bullet hits a hard bone it means that the hard bone is protruding in the path of the projectile and also agrees that after the initial impact the bullet adjusts itself in the new direction of flight and that the damage caused at the initial point of the impact would be more than at any subsequent point. Having agreed so far, he would not agree on the admitted hypothesis that at the initial point of contract the wound should be wider than at the exist. But he admits that he has no authority to support his submission. Finally, he admits that generally the breadth and the depth of the gutter wound would indicate the extensive nature of the damage. On this aspect of the case, therefore, the witness has broken down and his assertion is not based on any principle or on sufficient data.

122. The next statement he makes is that he does not agree that the fracture of the inner table shows that the initial impact was from behind; but he admits that the fracture of the inner table is exactly below the backside of the gutter, though he adds that there is a more extensive crack in front of the anterior end of the gutter. He admits that in the case of a

gutter on the skull the bone material which dissociates from the rest of the skull is carried in the direction in which the bullet flies but says that he was not furnished with any information in that regard when he gave his opinion.

123. Coming to the question of the ricocheting, he says that a ricocheting bullet can produce depressed fracture of the skull. But when asked whether in his experience he has come across any bullet hitting a hard object like a wall and rebounding and causing a fracture of a hard bone or whether he has any text-book to support his statement, he says that he cannot quote any instance nor an authority. But he says that it is so mentioned in several books. Then he gives curious definitions of the expressions "likely to cause death", "necessarily fatal" etc. He would go to the extent of saying that in the case of injury No. 3, the chance of recovery is up to 80 per cent.; but finally he modifies that statement by saying that he made the statement on the assumption that the haemorrhage in the subarachnoid region is localised, but if the haemorrhage is extensive his answer does not hold good. Though he asserts that at a range of about 12 inches the wound does not show as a rule evidence of powder mark, he admits that he has no practical experience that beyond a distance of 12 inches no powder mark can be discovered as a rule. Though text-books and authorities are cited to the contrary, he still sticks to his opinion; but finally he admits that he is not a ballistics expert and has no experience in that line. When he is asked if after injury No. 3, the victim could have continued the struggle, he says that he could have, though he adds that it was unlikely after the victim had received both injuries Nos. 1 and 3. He admits that the said injury can be caused both ways, that is, by a bullet hitting either on the front of the head or at the back of the head. But his reasons for saying that the bullet might have hit the victim on the front of the head are neither supported by principle nor by the nature of the gutter wound found in the skull. Ex. Z relied upon by him does not support him. His theory of a ricocheted bullet hitting the skull is highly imaginary and cannot be sustained on the material available to us : firstly, there is no mark found in the bathroom wall or elsewhere indicating that the bullet struck a hard

substance before ricocheting and hitting the skull, and secondly, it does not appear to be likely that such a ricocheted bullet ejected from Ex. B could have caused such an extensive injury to the head of the deceased as found in this case.

124. Mr. Pathak finally argues that the bullet Ex. F-2a has a "process", i.e., a projection which exactly fits in the denture found in the skull and, therefore, the projection could have been caused only by the bullet coming into contract with some hard substance before it hit the head of the deceased. This suggestion was not made to any of the experts. It is not possible for us to speculate as to the manner in which the said projection was caused.

125. We, therefore, accept, the evidence of the ballistics expert, P.W. 4, and that of Dr. Jhala, P.W. 18, in preference to that of Dr. Baliga.

126. Now coming to injuries Nos. 2, 4 and 5, injury No. 4 is found on the first joint of the crease of the index finger on the back side of the left palm and injury No. 5 at the joint level of the left middle finger dorsal aspect, and injury No. 2 is a punctured wound in the web between the ring finger and the little finger of the left hand communicating with a punctured wound on the palmer aspect of the left knukle level between the left little and the ring finger. Dr. Jhala says that all the said injuries are on the back of the left palm and all have corbonaceous tattooing and that the injuries should have been caused when his left hand was between 6 and 18 inches from the muzzle of the revolver. He further says that all the three injuries could have been caused by one bullet, for, as the postmortem discloses, the three injuries are in a straight line and therefore it can clearly be inferred that they were caused by one bullet which passed through the wound on the palmer aspect. His theory is that one bullet, after causing injuries Nos. 4 and 5 passed between

the little and ring finger and caused the punctured wound on the palmar aspect of the left hand. He is also definitely of the view that these wounds could not have been received by the victim during a struggle in which both of them were in each other's grip. It is not disputed that injury No. 1 and injury No. 3 should have been caused by different bullets. If injuries Nos. 2, 4 and 5 were caused by different bullets, there should have been more than three bullets fired, which is not the case of either the prosecution or the defence. In the circumstances, the said wounds must have been caused only by one bullet, and there is nothing improbable in a bullet touching three fingers on the back of the palm and taking a turn and passing through the web between the little and ring finger. Dr. Baliga contradicts Dr. Jhala even in regard to these wounds. He says that these injuries, along with the others, indicate the probability of a struggle between the victim and the assailant over the weapon; but he does not give any reasons for his opinion. He asserts that one single bullet cannot cause injuries Nos. 2, 4 and 5 on the left hand fingers, as it is a circuitous course for a bullet to take and it cannot do so without meeting with some severe resistance. He suggests that a bullet which had grazed and caused injuries Nos. 4 and 5 could then have inflicted injury No. 3 without causing carbonaceous tattooing on the head injury. We have already pointed out that the head injury was caused from the back, and we do not see any scope for one bullet hitting the fingers and thereafter causing the head injury. If the two theories, namely, that either injury No. 1 or injury No. 3 could have been caused by the same bullets that might have caused injury No. 2 and injuries Nos. 4 and 5 were to be rejected, for the aforesaid reasons, Dr. Baliga's view that injuries Nos. 2, 4 and 5 must have been caused by different bullets should also be rejected, for to accept it, we would require more than three bullets emanating from the revolver, whereas it is the common case that more than three bullets were not fired from the revolver. That apart in the cross-examination this witness accepts that the injury on the first phalangeal joint of the index finger and the injury in the knuckle of the middle finger and the injury in the web between the little and the ring finger, but not taking into account the injury on the palmar aspect would be in a straight line. The witness admits that there can be a deflection even against a soft tissue, but adds that the soft tissue being not of much

thickness between the said two fingers, the amount of deflection is negligible. But he concludes by saying that he is not saying this as an expert in ballistics. If so, the bullet could have deflected after striking the web between the little and the ring finger. We, therefore, accept the evidence of Dr. Jhala that one bullet must have caused these three injuries.

127. Strong reliance is placed upon the nature of injury No. 6 found on the back of the deceased viz, a vertical abrasion in the right shoulder blade of dimensions 3" x 1" just outside the spine, and it is said that the injury must have been caused when the accused pushed the deceased towards the door of the bath room. Nanavati in his evidence says that he "banged" him towards the door of the bathroom, and after some struggle he again pushed the deceased into the bathroom. It is suggested that when the accused "banged" the deceased towards the door of the bathroom or when he pushed him again into the bathroom, this injury might have been caused by his back having come into contract with the frame of the door. It is suggested to Dr. Jhala that injury No. 6 could be caused by the man's back brushing against a hard substance like the edge of the door, and he admits that it could be so. But the suggestion of the prosecution case is that the injury must have been caused when Ahuja fell down in the bathroom in front of the commode and, when falling, his back may have caught the edge of the commode or the bath-tub or the edge of the door of the bathroom which opens inside the bathroom to the left of the bath-tub. Shelat, J., says in his judgment :

If the abrasion was caused when the deceased was said to have been banged against the bathroom door or its frame, it would seem that the injury would be more likely to be caused, as the deceased would be in a standing position, on the shoulder blade and not inside the right shoulder. It is thus more probable that the injury was caused when the

deceased's back came into contact either with the edge of the door or the edge of the bath-tub or the commode when he slumped.

128. It is not possible to say definitely how this injury was caused, but it could have been caused when the deceased fell down in the bathroom.

129. The injuries found on the dead-body of Ahuja are certainly consistent with the accused intentionally shooting him after entering the bed-room of the deceased; but injuries Nos. 1 and 3 are wholly inconsistent with the accused accidentally shooting him in the course of their struggle for the revolver.

130. From the consideration of the entire evidence the following facts emerge : The deceased seduced the wife of the accused. She had confessed to him of her illicit intimacy with the deceased. It was natural that the accused was enraged at the conduct of the deceased and had, therefore, sufficient motive to do away with the deceased. He deliberately secured the revolver on a false pretext from the ship, drove to the flat of Ahuja, entered his bed-room unceremoniously with a loaded revolver in hand and in about a few seconds thereafter came out with the revolver in his hand. The deceased was found dead in his bathroom with bullet injuries on his body. It is not disputed that the bullets that caused injuries to Ahuja emanated from the revolver that was in the hand of the accused. After the shooting, till his trial in the Sessions Court, he did not tell anybody that he shot the deceased by accident. Indeed, he confessed his guilt to the Chowkidar Puransingh and practically admitted the same to his colleague Samuel. His description of the struggle in the bathroom is highly artificial and is devoid of all necessary particulars. The injuries found on the body of the deceased are consistent with the intentional shooting and the main injuries are wholly inconsistent with accidental shooting when the victim and the assailant were in close grips. The other circumstances

brought out in the evidence also establish that there could not have been any fight or struggle between the accused and the deceased.

131. We, therefore, unhesitatingly hold, agreeing with the High Court, that the prosecution has proved beyond any reasonable doubt that the accused has intentionally shot the deceased and killed him.

132. In this view it is not necessary to consider the question whether the accused had discharged the burden laid on him under s. 80 of the Indian Penal Code, especially as learned counsel appearing for the accused here and in the High Court did not rely upon the defence based upon that section.

133. That apart, we agree with the High Court that, on the evidence adduced in this case, no reasonable body of persons could have come to the conclusion which the jury reached in this case. For that reason also the verdict of the jury cannot stand.

134. Even so, it is contended by Mr. Pathak that the accused shot the deceased while deprived of the power of self-control by sudden and grave provocation and, therefore, the offence would fall under Exception 1 to s. 300 of the Indian Penal Code. The said Exception reads :

Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.

135. Homicide is the killing of a human being by another. Under this exception, culpable homicide is not murder if the following conditions are complied with : (1) The deceased must have given provocation to the accused. (2) The provocation must be grave. (3) The provocation must be sudden. (4) The offender, by reason of the said provocation, shall have been deprived of his power of self-control. (5) He should have killed the deceased during the continuance of the deprivation of the power of self-control. (6) The offender must have caused the death of the person who gave the provocation or that of any other person by mistake or accident.

136. The first question raised is whether Ahuja gave provocation to Nanawati within the meaning of the exception and whether the provocation, if given by him, was grave and sudden.

137. Learned Attorney-General argues, that though a confession of adultery by a wife may in certain circumstances be provocation by the paramour himself, under different circumstances it has to be considered from the standpoint of the person who conveys it rather than from the standpoint of the person who gives it. He further contends that even if the provocation was deemed to have been given by Ahuja, and though the said provocation might have been grave, it could not be sudden, for the provocation given by Ahuja was only in the past.

138. On the other hand, Mr. Pathak contends that the act of Ahuja, namely, the seduction of Sylvia, gave provocation though the fact of seduction was communicated to the accused by Sylvia and that for the ascertainment of the suddenness of the provocation it is not the mind of the person who provokes that matters but that of the person provoked that is decisive. It is not necessary to express our opinion on the said question, for we are

satisfied that, for other reasons, the case is not covered by Exception 1 to s. 300 of the Indian Penal Code.

139. The question that the Court has to consider is whether a reasonable person placed in the same position as the accused was, would have reacted to the confession of adultery by his wife in the manner in which the accused did. In Mancini v. Director of Public Prosecutions L.R. (1942) A.C. 1, Viscount Simon, L.C., states the scope of the doctrine of provocation thus :

It is not all provocation that will reduce the crime of murder to manslaughter. Provocation, to have that result, must be such as temporarily deprives the person provoked of the power of self-control, as the result of which he commits the unlawful act which causes death..... The test to be applied is that of the effect of the provocation on a reasonable man, as was laid down by the Court of Criminal Appeal in Rex v. Lesbini [1914] 3 K.B. 1116, so that an unusually excitable or pugnacious individual is not entitled to rely on provocation which would not have led an ordinary person to act as he did. In applying the test, it is of particular importance to (a) consider whether a sufficient interval has elapsed since the provocation to allow a reasonable man time to cool, and (b) to take into account the instrument with which the homicide was effected, for to retort, in the heat of passion induced by provocation, by a simple blow, is a very different thing from making use of a deadly instrument like a concealed dagger. In short, the mode of resentment must bear a reasonable relationship to the provocation if the offence is to be reduced to manslaughter.

140. Viscount Simon again in Holmes v. Director of Public Prosecutions L.R. (1946) A.C. 588 elaborates further on this theme. There, the appellant had entertained some suspicious of his wife's conduct with regard to other men in the village. On a Saturday night there was a quarrel between them when she said, "Well, if it will ease your mind, I

have been untrue to you", and she went on, "I know I have done wrong, but I have no proof that you haven't - at Mrs. X.'s". With this appellant lost his temper and picked up the hammerhead and struck her with the same on the side of the head. As he did not like to see her lie there and suffer, he just put both hands round her neck until she stopped breathing. The question arose in that case whether there was such provocation as to reduce the offence of murder to manslaughter. Viscount Simon, after referring to Mancini's case L.R. (1942) A.C. 1, proceeded to state thus :

The whole doctrine relating to provocation depends on the fact that it causes, or may cause, a sudden and temporary loss of self-control, whereby malice, which is the formation of an intention to kill or to inflict grievous bodily harm, is negatived. Consequently, where the provocation inspires an actual intention to kill (such as Holmes admitted in the present case), or to inflict grievous bodily harm, the doctrine that provocation may reduce murder to manslaughter seldom applies.

141. Goddard, C.J., Duffy's case [[1949] 1 All. E.R. 932] defines provocation thus :

Provocation is some act, or series of acts, done by the dead man to the accused which would cause in any reasonable person, and actually causes in the accused, a sudden and temporary loss of self-control, rendering the accused so subject to passion as to make him or her for the moment not master of his mind..... What matters is whether this girl (the accused) had the time to say : 'Whatever I have suffered, whatever I have endured, I know that Thou shall not kill.' That is what matters. Similarly,.....circumstances which induce a desire for revenge, or a sudden passion of anger, are not enough. Indeed, circumstances which induce a desire for revenge are inconsistent with provocation, since the conscious formulation of a desire for revenge means that the person has had time to think, to reflect, and that would negative a sudden temporary loss of self-control which is of the essence of provocation. Provocation being,.....as I have defined it, there are two things, in

considering it, to which the law attaches great importance. The first of them is, whether there was what is sometimes called time for cooling, that is, for passing to cool and for reason to regain dominion over the mind..... Secondly in considering whether provocation has or has not been made out, you must consider the retaliation in provocation - that is to say, whether the mode of resentment bears some proper and reasonable relationship to the sort of provocation that has been given.

142. A passage from the address of Baron Parke to the jury in R. v. Thomas (1837) 7 C. & P. 817 extracted in Russell on Crime, 11th ed., Vol. I at p. 593, may usefully be quoted :

But the law requires two things : first that there should be that provocation; and secondly, that the fatal blow should be clearly traced to the influence of passion arising from that provocation.

143. The passages extracted above lay down the following principles : (1) Except in circumstances of most extreme and exceptional character, a mere confession of adultery is not enough to reduce the offence of murder to manslaughter. (2) The act of provocation which reduced the offence of murder to manslaughter must be such as to cause a sudden and temporary loss of self-control; and it must be distinguished from a provocation which inspires an actual intention to kill. (3) The act should have been done during the continuance of that state of mind, that is, before there was time for passion to cool and for reason to regain dominion over the mind. (4) The fatal blow should be clearly traced to the influence of passion arising from the provocation.

144. On the other hand, in India, the first principle has never been followed. That principle has had its origin in the English doctrine that mere words and gestures would not be in point of law sufficient to reduce murder to manslaughter. But the authors of the Indian Penal Code did not accept the distinction. They observed :

It is an indisputable fact, that gross insults by word or gesture have as great tendency to move many persons to violem passion as dangerous or painful bodily in juries; nor does it appear to us that passio-excited by insult is entitled to less indulgence than passion excited by pain. On the contrary, the circumstance that a man resents an insult more than a wound is anything but a proof that he is a man of peculiarly bad heart.

145. Indian courts have not maintained the distinction between words and acts in the application of the doctrine of provocation in a given case. The Indian law on the subject may be considered from two aspects, namely, (1) whether words or gestures unaccompanied by acts can amount to provocation and (2) what is the effect of the time lag between the act of provocation and the commission of the offence. In Empress v. Khogayi I.L.R (1879) . 2 Mad. 122, a division bench of the Madras High Court held, in the circumstances of that case, that abusive language used would be a provocation sufficient to deprive the accused of self-control. The learned Judges observed :

What is required is that it should be of a character to deprive the offender of his self-control. In determining whether it was so, it is admissible to take into account the condition of mind in which the offender was at the time of the provocation. In the present case the abusive language used was of the foulest kind and was addressed to man already enraged by the conduct of deceased's son.

146. It will be seen in this case that abusive language of the foulest kind was held to be sufficient in the case of man who was already enraged by the conduct of deceased's son. The same learned Judge in a later decision in Boya Munigadu v. The Queen I.L.R(1881) . 3 Mad. 33 upheld plea of grave and sudden provocation in the following circumstances : The accused saw the deceased when she had cohabitation with his bitter enemy; that night he had no meals; next morning he went to the ryots to get his wages from them, and at that time he saw his wife eating food along with her paramour; he killed the

paramour with a bill-hook. The learned Judges held that the accused had sufficient provocation to bring the case within the first exception to s. 300 of the Indian Penal Code. The learned Judges observed :

..... If having witnessed the act of adultery, he connected this subsequent conduct as he could not fail to connect it, with that act, it would be conduct of a character highly exasperating to him, implying as it must, that all concealment of their criminal relations and all regard for his feelings were abandoned and that they purposed continuing their course of misconduct in his house. This, we think, amounted to provocation, grave enough and sudden enough to deprive him of his self-control, and reduced the offence from murder to culpable homicide not amounting to murder.

147. The case illustrates that the state of mind of the accused, having regard to the earlier conduct of the deceased, may be taken into consideration in considering whether the subsequent act would be a sufficient provocation to bring the case within the exception. Another division bench of the Madras High Court in In re Murugian [I.L.R. [1957] Mad. 805] held that, where the deceased not only committed adultery but later on swore openly in the face of the husband that she would persist in such adultery and also abused the husband for remonstrating against such conduct, the case was covered by the first exception to s. 300 of the Indian Penal Code. The judgment of the Andhra Pradesh High Court in In re C. Narayan [A.I.R. 1958 A.P. 235] adopted the same reasoning in a case where the accused, a young man, who had a lurking suspicion of the conduct of his wife, who newly joined him, was confronted with the confession of illicit intimacy with, and consequent pregnancy by another, strangled his wife to death, and held that the case was covered by Exception 1 to s. 300 of the Indian Penal Code. These two decisions indicate that the mental state created by an earlier act may be taken into consideration in ascertaining whether a subsequent act was sufficient to make the assailant to lose his self-control.

148. Where the deceased led an immoral life and her husband, the accused, upbraided her and the deceased instead of being repentant said that she would again do such acts, and the accused, being enraged struck her and, when she struggled and beat him, killed her, the Court held the immediate provocation coming on top of all that had gone before was sufficient to bring the case within the first exception to s. 300 of the Indian Penal Code. So too, where a woman was leading a notoriously immoral life, and on the previous night mysteriously disappeared from the bedside of her husband and the husband protested against her conduct, she vulgarly abused him, whereupon the husband lost his self-control, picked up a rough stick, which happened to be close by and struck her resulting in her death, the Labour High Court, in Jan Muhammad v. Emperor I.L.R. [1929] Lah 861, held that the case was governed by the said exception. The following observations of the court were relied upon in the present case :

In the present case my view is that, in judgment the conduct of the accused, one must not confine himself to the actual moment when the blow, which ultimately proved to be fatal was struck, that is to say, one must not take into consideration only the event which took place immediately before the fatal blow was struck. We must take into consideration the previous conduct of the woman..... As stated above, the whole unfortunate affair should be looked at as one prolonged agony on the part of the husband which must have been preying upon his mind and led to the assault upon the woman, resulting in her death.

149. A division bench of the Allahabad High Court in Emperor v. Balku I.L.R. [1938] All. 789 invoked the exception in a case where the accused and the deceased, who was his wife's sister's husband, were sleeping on the same cot, and in the night the accused saw the deceased getting up from the cot and going to another room and having sexual intercourse with his (accused's) wife, and the accused allowed the deceased to return to

the cot, but after the deceased fell asleep, he stabbed him to death. The learned Judges held :

When Budhu (the deceased) came into intimate contact with the accused by lying beside him on the charpai this must have worked further on the mind of the accused and he must have reflected that 'this man now lying beside me had been dishonouring me a few minutes ago'. Under these circumstances we think that the provocation would be both grave and sudden.

150. The Allahabad High Court in a recent decision, viz., Babu Lal v. State MANU/UP/0047/1960 : AIR1960All223 applied the exception to a case where the husband who saw his wife in a compromising position with the deceased killed the latter subsequently when the deceased came, in his absence, to his house in another village to which he had moved. The learned Judges observed :

The appellant when he came to reside in the Government House Orchard felt that he had removed his wife from the influence of the deceased and there was no more any contact between them. He had lulled himself into a false security. This belief was shattered when he found the deceased at his hut when he was absent. This could certainly give him a mental jolt and as this knowledge will come all of a sudden it should be deemed to have given him a grave and sudden provocation. The fact that he had suspected this illicit intimacy on an earlier occasion also will not alter the nature of the provocation and make it any the less sudden.

151. All the said four decisions dealt with a case of a husband killing his wife when his peace of mind had already been disturbed by an earlier discovery of the wife's infidelity and the subsequent act of her operated as a grave and sudden provocation on his disturbed mind.

152. Is there any standard of a reasonable man for the application of the doctrine of "grave and sudden" provocation ? No abstract standard of reasonableness can be laid down. What a reasonable man will do in certain circumstances depends upon the customs, manners, way of life, traditional values etc.; in short, the cultural, social and emotional background of the society to which an accused belongs. In our vast country there are social groups ranging from the lowest to the highest state of civilization. It is neither possible nor desirable to lay down any standard with precision : it is for the court to decide in each case, having regard to the relevant circumstances. It is not necessary in this case to ascertain whether a reasonable man placed in the position of the accused would have lost his self-control momentarily or even temporarily when his wife confessed to him of her illicit intimacy with another, for we are satisfied on the evidence that the accused regained his self-control and killed Ahuja deliberately.

153. The Indian law, relevant to the present enquiry, may be stated thus : (1) The test of "grave and sudden" provocation is whether a reasonable man, belonging to the same class of society as the accused, placed in the situation in which the accused was placed would be so provoked as to lose his self-control. (2) In India, words and gestures may also, under certain circumstances, cause grave and sudden provocation to an accused so as to bring his act within the first Exception to s. 300 of the Indian Penal Code. (3) The mental background created by the previous act of the victim may be taken into consideration in ascertaining whether the subsequent act caused grave and sudden provocation for committing the offence. (4) The fatal blow should be clearly traced to the influence of passion arising from that provocation and not after the passion had cooled down by lapse of time, or otherwise giving room and scope for premeditation and calculation.

154. Bearing these principles in mind, let us look at the facts of this case. When Sylvia confessed to her husband that she had illicit intimacy with Ahuja, the latter was not present. We will assume that he had momentarily lost his self-control. But if his version is true - for the purpose of this argument we shall accept that what he has said is true - it shows that he was only thinking of the future of his wife and children and also of asking for an explanation from Ahuja for his conduct. This attitude of the accused clearly indicates that he had not only regained his self-control, but on the other hand, was planning for the future. Then he drove his wife and children to a cinema, left them there, went to his ship, took a revolver on a false pretext, loaded it with six rounds, did some official business there, and drove his car to the office of Ahuja and then to his flat, went straight to the bed-room of Ahuja and shot him dead. Between 1-30 P.M., when he left his house, and 4-20 P.M., when the murder took place, three hours had elapsed, and therefore there was sufficient time for him to regain his self-control, even if he had not regained it earlier. On the other hand, his conduct clearly shows that the murder was a deliberate and calculated one. Even if any conversation took place between the accused and the deceased in the manner described by the accused - though we do not believe that - it does not affect the question, for the accused entered the bed-room of the deceased to shoot him. The mere fact that before the shooting the accused abused the deceased and the abuse provoked an equally abusive reply could not conceivably be a provocation for the murder. We, therefore, hold that the facts of the case do not attract the provisions of Exception 1 to s. 300 of the Indian Penal Code.

155. In the result, conviction of the accused under s. 302 of the Indian Penal Code and sentence of imprisonment for life passed on him by the High Court are correct, and there are absolutely no grounds for interference. The appeal stands dismissed.

156. Appeal dismissed.

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