

Important Features of the Bharatiya Sakshya Adhiniyam, 2023

The Bharatiya Sakshya Adhiniyam aims to simplify legal language, remove colonial terminology, and make the law more suitable for present-day technological developments. Although many provisions are substantially similar to the Indian Evidence Act, 1872, the new Act introduces significant changes relating to electronic records, digital evidence, and procedural efficiency.

Brief History of the Bharatiya Sakshya Adhiniyam, 2023

The law of evidence in India was previously governed by the Indian Evidence Act, 1872, drafted mainly by Sir James Fitzjames Stephen during British rule. The 1872 Act consolidated and codified the rules relating to admissibility, relevancy, and proof of facts in judicial proceedings. Despite several amendments over the years, the old Act remained largely colonial in structure and language.

With rapid technological advancement and increasing use of electronic communication, the need for modernization of evidence law became essential. To address these issues and to reform the criminal justice system, Parliament enacted the Bharatiya Sakshya Adhiniyam, 2023. The Act received Presidential assent in 2023 and replaced the Indian Evidence Act, 1872, introducing updated provisions suitable for the digital age.

Important Features of the Bharatiya Sakshya Adhiniyam, 2023

1. Recognition of Electronic and Digital Evidence

One of the most important features of the BSA is the extensive recognition of electronic records as evidence. Emails, SMS, digital documents, CCTV footage, server logs, electronic messages, and other digital records are expressly recognized as admissible evidence.

2. Equal Status to Electronic Records

The Act gives electronic records the same legal status as paper documents. This is a major step toward adapting the law to modern technological realities.

3. Simplified and Modern Language

The BSA replaces many outdated colonial expressions with simpler and modern terminology, making the law more understandable and accessible.

4. Retention of Fundamental Principles

The Act retains important principles of evidence law such as:

- Relevancy of facts
- Admissions and confessions
- Dying declaration
- Burden of proof
- Estoppel
- Competency of witnesses
- Examination and cross-examination of witnesses

Thus, the basic structure of evidence law remains preserved.

5. Direct Oral Evidence

The BSA continues the rule that oral evidence must be direct. Hearsay evidence remains generally inadmissible except in recognized exceptional circumstances.

6. Recognition of Secondary Evidence in Electronic Form

The Act broadens the scope of secondary evidence and includes electronic and digital copies among admissible forms of secondary evidence.

7. Improved Provisions Relating to Documents

The BSA modernizes provisions relating to documentary evidence and electronic records to facilitate quicker and more efficient judicial proceedings.

8. Protection of Witnesses and Fair Trial

The Act continues safeguards relating to examination of witnesses, cross-examination, impeachment of credit, and protection against unfair evidence, thereby ensuring fair trial principles.

9. Inclusive Approach to Witness Competency

The BSA adopts an inclusive approach by allowing children, mentally ill persons, speech-impaired persons, and accomplices to testify if they are capable of understanding questions and giving rational answers.

10. Adaptation to Technological Developments

The Act recognizes the growing role of technology in modern crimes and legal disputes. It provides legal validity to electronic communication and digital transactions, which are increasingly important in contemporary society.

Conclusion

The Bharatiya Sakshya Adhiniyam, 2023 is an important reform in Indian evidence law aimed at modernizing and simplifying the legal framework governing admissibility and proof of facts. While preserving the core principles of the Indian Evidence Act, 1872, the new Act introduces significant improvements relating to electronic records, digital evidence, and procedural efficiency. By recognizing technological advancements and adopting modern legal standards, the BSA strengthens the administration of justice and makes the law of evidence more suitable for the needs of present-day India.

What do you understand by Circumstantial Evidence?

Under the BSA 2023, evidence is mainly classified into direct evidence and circumstantial evidence. Direct evidence directly proves a fact in issue, such as the testimony of an eyewitness who personally saw the occurrence. Circumstantial evidence, on the other hand, consists of a series of surrounding facts and circumstances from which the court may infer the existence of the principal fact. In many criminal cases, especially where no eyewitness is available, circumstantial evidence becomes highly important for determining the guilt or innocence of the accused.

Circumstantial evidence is based upon inference and logical reasoning. The court examines various connected circumstances which, when taken together, form a chain pointing toward the guilt of the accused. The law recognizes that even in the absence of direct evidence, a conviction may be based entirely on circumstantial evidence if the chain of circumstances is complete and excludes every reasonable hypothesis except the guilt of the accused.

Meaning of Circumstantial Evidence

Circumstantial evidence means evidence of facts and circumstances from which the existence of another fact may reasonably be inferred. It does not directly prove the fact in issue but establishes surrounding circumstances that lead the court to conclude the existence of the principal fact.

For example, if a person is seen running away from the scene of crime with a bloodstained weapon, had motive to commit the crime, and the weapon is recovered at

their instance, these circumstances together may point toward guilt even though nobody directly witnessed the offence.

Principles Governing Circumstantial Evidence

The BSA follows the well-established judicial principles regarding circumstantial evidence. A conviction based solely on circumstantial evidence is permissible only when the chain of circumstances is complete and reliable.

Five Golden Principles (Panchsheel)

1. Circumstances Must Be Fully Established

Each circumstance relied upon by the prosecution must be clearly and firmly proved.

2. Consistency with Guilt of Accused

The proved facts must be consistent only with the hypothesis that the accused is guilty.

3. Conclusive Nature of Circumstances

The circumstances must be definite and conclusive in nature.

4. Exclusion of Every Other Hypothesis

The chain of evidence must exclude every possible hypothesis except the guilt of the accused.

5. Complete Chain of Evidence

There must be a complete and unbroken chain of circumstances which leaves no reasonable ground for innocence.

Important Links in Circumstantial Evidence

1. Motive

Motive explains why the accused may have committed the offence. Though motive alone is insufficient, it becomes an important circumstance.

2. Preparation

Acts showing preparation for committing the offence, such as purchasing poison or weapons, strengthen the prosecution case.

3. Conduct

The conduct of the accused before and after the crime, such as absconding or giving false explanations, may be relevant under Section 6 of the BSA.

4. Last Seen Theory

If the accused was last seen with the deceased shortly before death and fails to explain the circumstances, it becomes a strong incriminating circumstance.

5. Discovery of Facts

Under Section 23 of the BSA, recovery of weapons, stolen property, or other incriminating objects based on information given by the accused is an important link in the chain of evidence.

Difference Between Direct and Circumstantial Evidence

Basis	Direct Evidence	Circumstantial Evidence
Nature	Directly proves the fact	Proves related circumstances
Example	Eyewitness account	Motive, conduct, recovery
Requirement	Immediate proof	Inference from facts
Standard	Direct perception	Complete chain necessary

Evidentiary Value of Circumstantial Evidence

The BSA does not treat circumstantial evidence as inferior to direct evidence. In many cases, circumstantial evidence may be more reliable because circumstances generally cannot lie, though witnesses may sometimes be mistaken or dishonest. However, courts

exercise great caution before convicting a person solely on circumstantial evidence. If any important link in the chain is missing, the accused is entitled to the benefit of doubt.

Conclusion

Thus, circumstantial evidence refers to evidence of surrounding facts and circumstances from which the guilt of the accused may be inferred. Under the Bharatiya Sakshya Adhiniyam, 2023, circumstantial evidence is a valid and important form of evidence capable of forming the sole basis of conviction if the chain of circumstances is complete, conclusive, and consistent only with the guilt of the accused. The law requires that all circumstances must be fully established and must exclude every possible hypothesis of innocence. Therefore, circumstantial evidence plays a vital role in the administration of criminal justice, particularly in cases where direct evidence is unavailable.

What do u understand by substantive law and adjective law? In what class would you place the law of evidence? Justify your answer

Substantive Law and Adjective (Procedural) Law

Substantive Law and Procedural or Adjective Law are the two important branches of law.

Substantive Law

Substantive Law is the branch of law which defines and determines the rights, duties, liabilities and obligations of individuals and the State. It lays down the legal relationship between persons and also determines what acts are crimes or civil wrongs. It is concerned with the subject matter of the case and provides remedies and punishments.

According to **Salmond**, substantive law is the law which deals with the ends which the administration of justice seeks to achieve.

Substantive Law includes both Civil and Criminal Law. In civil matters, it defines rights relating to contracts, property, succession and trusts. In criminal matters, it defines offences and punishments.

For example, the law declaring murder as an offence and prescribing punishment for it is substantive law.

Thus, substantive law creates legal rights and liabilities and forms the foundation of the legal system.

Examples of Substantive Law are:

- *Bharatiya Nyaya Sanhita 2023 (Indian Penal Code)* — defines offences like murder, theft, rape, assault.
- *Indian Contract Act, 1872* — defines rights and duties in contracts.
- *Transfer of Property Act, 1882* — regulates transfer of property.
- *Specific Relief Act* — provides civil remedies.

Procedural or Adjective Law

Adjective Law, also known as Procedural Law, is the branch of law which lays down the procedure for enforcing rights and liabilities. It regulates the machinery and process through which justice is administered by courts.

It does not create rights or duties, but provides the method by which substantive law is applied and enforced. It deals with procedures relating to filing of suits, investigation, arrest, bail, evidence, trial, appeal and execution of judgments.

According to **Holland**, adjective law provides the method of aiding and protecting legal rights.

For example, while substantive law defines murder as an offence, procedural law explains how the police will investigate the offence and how the court will conduct the trial.

Thus, adjective law acts as the machinery of justice and helps in the enforcement of substantive law.

Examples of Procedural Law are:

- *Code of Civil Procedure, 1908*
- *Bharatiya Nagarik Suraksha Sanhita 2023 (Code of Criminal Procedure, 1973)*
- *Bharatiya Sakshya Adhiniyam 2023 (Indian Evidence Act, 1872)*
- *Limitation Act, 1963*

In the case of **Thirumalai Chemicals Ltd. v. Union of India and others (2011)**, the Supreme Court ruled that **substantive laws** are a body of rules that “creates, defines and regulates rights and liabilities”. On the other hand, **procedural laws** establish “a mechanism for determining those rights and liabilities and a machinery for enforcing them”

Basic Distinction Between Substantive Law and Adjective (Procedural) Law -

Substantive Law deals with rights and liabilities, whereas Procedural Law deals with the method of enforcing those rights. Substantive Law relates to the subject matter of the case, while Procedural Law relates to the machinery of justice.

Both Substantive and Procedural Law are interdependent. Without Substantive Law there would be no rights to enforce, and without Procedural Law those rights could not be effectively protected by courts.

In What Class Would You Place the Law of Evidence? Justify Your Answer.

The Law of Evidence is generally classified as Adjective or Procedural Law because it does not create legal rights or duties. Instead, it provides the method by which rights and liabilities created under substantive law are proved before a court of law. Its main function is to regulate the process of judicial proceedings and help courts arrive at the truth.

Adjective or procedural law refers to the branch of law that lays down the machinery and procedure for the enforcement of rights and obligations. It governs matters such as admissibility of evidence, burden of proof, examination of witnesses, and relevancy of facts. Thus, the Law of Evidence acts as a guide for courts in determining how facts are to be established during trials.

However, although the Law of Evidence is mainly procedural in nature, some of its rules have substantive effects. Rules relating to privilege, presumptions, and exclusion of evidence may directly affect the rights and liabilities of parties. Therefore, the Law of Evidence is primarily procedural law, but it also possesses certain substantive characteristics, making it a unique or hybrid branch of law.

Why the Law of Evidence is Procedural Law

1. It Does Not Create Rights

The Law of Evidence does not create rights, duties, or liabilities. It only lays down the rules regarding how facts are to be proved before the court.

For example, the law of contract creates contractual rights, while the Law of Evidence only explains how those rights can be proved in court.

2. It Helps in Administration of Justice

The main purpose of evidence law is to assist the court in discovering the truth and applying substantive law correctly. It regulates admissibility, relevancy, burden of proof, and examination of witnesses.

3. It Operates Only During Judicial Proceedings

Rules of evidence apply mainly in courts and tribunals during trials and hearings. Outside judicial proceedings, these rules generally do not operate independently.

4. Supported by Jurists

Jurists like John Salmond and Jeremy Bentham classified the Law of Evidence as adjective law because it is ancillary to substantive law and provides the machinery for enforcement of rights.

Substantive Elements in Evidence Law

Although evidence law is mainly procedural, some of its rules have substantive effects.

1. Rules of Privilege

Privileges such as legal professional privilege and privilege against self-incrimination protect important rights of individuals.

2. Presumptions Affect Rights

Presumptions like the presumption of innocence or presumption of legitimacy directly affect the rights and liabilities of parties.

3. Exclusionary Rules

Certain evidence may be excluded by law, and this may determine the final outcome of the case. Therefore, evidentiary rules sometimes influence substantive justice.

Case Laws

In ***Nani Gopal Mitra v. State of Bihar***, the Supreme Court held that laws relating to procedure generally operate retrospectively unless a contrary intention appears. This shows that the law of evidence, being procedural, usually applies retrospectively.

In ***Hitendra Vishnu Thakur v. State of Maharashtra***, the Supreme Court observed that procedural laws are generally retrospective, whereas substantive laws are

prospective. The Court also clarified that procedural law relates to machinery and method of enforcing rights

These decisions support the view that the Law of Evidence belongs mainly to the field of Procedural Law.

Conclusion

Therefore, the Law of Evidence is primarily classified as Procedural or Adjective Law because it governs the mode of proving facts and conducting trials. Nevertheless, some of its provisions substantially affect rights and liabilities, giving it certain characteristics of substantive law. Hence, it is mainly procedural but partly substantive in nature.

Define evidence? What are the different kinds of evidence? Discuss the main features of BSA 2023.

1. Define Evidence (4 Marks)

The word “evidence” is derived from the Latin words *Evidens* and *Evidere*, meaning “to show clearly” or “to prove.” Evidence helps the Court discover the truth and decide the rights and liabilities of parties.

According to Section 2(1)(e) of the , evidence means and includes:

1. All statements, including statements given electronically, which the Court permits or requires witnesses to make before it regarding facts under inquiry. This is called **oral evidence**.
2. All documents, including electronic and digital records, produced before the Court for inspection. This is called **documentary evidence**.

2. What are the Six Different Kinds of Evidence? (6 Marks)

1. Oral Evidence

Oral evidence means statements made by witnesses before the Court regarding facts in issue. It includes anything spoken by a witness in Court and may also be given electronically under the BSA 2023.

Direct oral evidence is considered the best form of oral evidence because the witness personally saw, heard, or perceived the fact.

Example:

A witness states that he saw the accused committing murder.

2. Documentary Evidence

Documentary evidence includes all documents produced before the Court for inspection. It includes written documents as well as electronic and digital records such as emails, photographs, CCTV footage, WhatsApp chats, and computer records.

Documentary evidence is generally considered more reliable than oral evidence because documents do not easily change.

Example:

Sale deed, contract, FIR, birth certificate, email records.

3. Primary Evidence

Primary evidence means the original document itself produced before the Court. It is regarded as the best evidence because it gives the most accurate information about the contents of the document.

The law prefers primary evidence over secondary evidence.

Example:

Original agreement, original photograph, original will.

4. Secondary Evidence

Secondary evidence means copies or substitutes of original documents. It is allowed only when the original document is lost, destroyed, or cannot be produced before the Court within a reasonable time.

Secondary evidence includes certified copies, photocopies, oral accounts of contents, etc.

Example:

Certified copy of a registered sale deed.

5. Direct Evidence

Direct evidence directly proves a fact without requiring any inference or assumption. It is based on personal knowledge or observation of the witness.

This type of evidence immediately establishes the fact in issue.

Example:

An eyewitness stating that he saw the accused stabbing the victim.

6. Circumstantial Evidence

Circumstantial evidence does not directly prove the fact in issue but proves surrounding circumstances from which the Court may infer the existence of a fact.

For conviction based on circumstantial evidence, all circumstances must form a complete chain pointing only toward the guilt of the accused.

Example:

Fingerprints of the accused on the weapon, motive for crime, and blood-stained clothes.

Main Features of the Bharatiya Sakshya Adhiniyam, 2023

The Bharatiya Sakshya Adhiniyam, 2023 is a modern and technology-oriented legislation enacted to replace the Indian Evidence Act, 1872. The Act aims to reform the law of evidence in accordance with contemporary legal and technological developments. It recognizes digital evidence, strengthens forensic investigation, and ensures fair and efficient trials. The main features of the Act are as follows:

1. Recognition of Electronic and Digital Evidence

The recognizes electronic and digital records such as emails, SMS, WhatsApp chats, CCTV footage, cloud data, and call records as admissible evidence. Data stored in smartphones, laptops, and computers is also included within documentary evidence.

2. Expansion of Secondary Evidence

The BSA expands the scope of secondary evidence by allowing digital copies and reproductions when the original document is lost, destroyed, inaccessible, or its genuineness is questioned. This helps courts deal with modern electronic records effectively.

3. Legal Validity of Electronic Records

The Act gives legal validity to electronic records, digital contracts, electronic agreements, and electronic signatures. Electronic records are treated equally with paper documents in legal proceedings.

4. Chain of Custody and Documentation

The BSA introduces rules regarding the “chain of custody” of evidence. Proper documentation of collection, storage, handling, and transfer of evidence is necessary to maintain authenticity and integrity.

5. Importance of Forensic and Expert Evidence

The Act gives importance to forensic science and expert testimony. Forensic experts and cyber specialists may examine and verify electronic evidence in technology-related cases.

6. Clearer Provisions Regarding Hearsay Evidence

The BSA provides clearer provisions regarding hearsay evidence to reduce confusion and misuse. It also preserves certain legal exceptions where hearsay evidence may be admissible.

7. Protection of Vulnerable Witnesses

The Act provides special safeguards for children, elderly persons, disabled persons, and other vulnerable witnesses. Their privacy, confidentiality, and dignity are protected during legal proceedings.

Conclusion

Evidence is the foundation of every judicial proceeding because it helps the Court discover the truth and deliver justice. Different kinds of evidence such as oral,

documentary, primary, secondary, direct, and circumstantial evidence play an important role in proving or disproving facts before the Court. The Bharatiya Sakshya Adhiniyam, 2023 modernizes the law of evidence by recognizing electronic and digital records, strengthening forensic investigation, and introducing technology-friendly procedures. Thus, the Act makes the Indian legal system more efficient, transparent, and suitable for the needs of the digital age.

Hearsay evidence is no evidence". Explain the statement with exception, if any.

The rule that "Hearsay evidence is no evidence" is one of the fundamental principles of the law of evidence. Under the , oral evidence must generally be direct in nature. Section 59 of the BSA provides that oral evidence must, in all cases, be direct. Therefore, a witness can testify only about facts which they personally saw, heard, or perceived through their own senses. If a witness merely repeats what another person told them, such evidence is called hearsay evidence.

Hearsay evidence is generally inadmissible because it is considered weak, unreliable, and incapable of being properly tested by cross-examination. However, the law recognizes certain exceptional situations where hearsay statements become admissible due to necessity or reliability. Therefore, although hearsay evidence is generally excluded, the BSA provides several important exceptions to this rule.

Meaning of Hearsay Evidence

Hearsay evidence means evidence given by a witness who has no personal knowledge of the fact in issue but only repeats what they heard from another person.

For example, if A says in court, "B told me that C committed murder," then A's statement is hearsay because A did not personally see the incident.

Thus, hearsay is indirect or second-hand evidence.

Why Hearsay Evidence is Excluded

Hearsay evidence is generally inadmissible for the following reasons:

1. Absence of Oath

The original person who made the statement is not before the court and was not under oath.

2. No Opportunity for Cross-Examination

The opposite party cannot cross-examine the actual person who saw or heard the fact.

3. Possibility of Falsehood or Distortion

Facts may become exaggerated, misunderstood, or altered when repeated from one person to another.

4. Lack of Reliability

Hearsay evidence is considered less trustworthy than direct evidence.

5. Prevention of Rumors and Gossip

The rule prevents courts from relying on rumors, gossip, or unverified statements.

Exceptions to the Rule Against Hearsay

Although hearsay evidence is generally inadmissible, the BSA recognizes several important exceptions.

1. Res Gestae (Section 4)

Statements which form part of the same transaction are relevant.

Example:

A person cries for help during an assault. The statement is admissible because it was made spontaneously during the occurrence.

2. Dying Declaration (Section 26)

A statement made by a person regarding the cause of their death or circumstances leading to it is admissible after their death.

The law presumes that a dying person is unlikely to lie.

3. Statements Made in Ordinary Course of Business

Entries made in books of account, business records, diaries, or professional records by a person who is dead or unavailable may be admissible.

4. Admissions and Confessions (Sections 15–23)

Statements made by a party against their own interest are admissible.

For example, a confession made by an accused person may be proved through witnesses who heard it.

5. Public Documents and Official Records (Section 30)

Entries made by public servants in official records during discharge of official duty are relevant and admissible.

6. Evidence Given in Previous Judicial Proceedings (Section 27)

Evidence given by a witness in a previous proceeding may be admissible if the witness is dead, missing, or incapable of giving evidence, provided the parties and issues are substantially the same.

7. Expert Treatises (Section 60)

Published works and professional treatises relied upon by experts may sometimes be admitted as evidence.

Hearsay and Electronic Evidence

The BSA, 2023 modernizes evidence law by recognizing electronic and digital records as evidence. Electronic communications, digital logs, CCTV recordings, emails, and electronic records may be admissible if properly authenticated according to the provisions relating to electronic evidence. Thus, modern electronic records may sometimes avoid traditional hearsay objections when legal requirements are fulfilled.

Difference Between Direct and Hearsay Evidence

Basis	Direct Evidence	Hearsay Evidence
Source	Personal knowledge	Information from others
Admissibility	Admissible	Generally inadmissible
Reliability	More reliable	Less reliable
Cross-examination	Possible	Not possible

Conclusion

Thus, the rule that “Hearsay evidence is no evidence” means that indirect or second-hand statements are generally inadmissible because they lack reliability and cannot be tested through

cross-examination. Section 59 of the Bharatiya Sakshya Adhiniyam, 2023 emphasizes that oral evidence must be direct. However, the law recognizes several important exceptions such as res gestae, dying declarations, admissions, confessions, public documents, and evidence from previous proceedings where hearsay statements become admissible due to necessity, reliability, or public policy. Therefore, while hearsay evidence is ordinarily excluded, the BSA carefully balances the need for reliable evidence with practical necessities of justice

What do you mean by Extra judicial confession? What are the grounds it is accepted or rejected describe with case laws.

The word “confession” appears for the first time in Section 22 of the Bharatiya Sakshya Adhiniyam, 2023. According to Justice Stephen, confession means an admission made by a person charged with a crime stating or suggesting the inference that he committed that crime.

Extra-judicial confession means a confession made by an accused person to any person other than a Magistrate or Court. It is made outside judicial proceedings and may be given to a friend, relative, village headman, or any private person. It is different from judicial confession, which is recorded before a Magistrate or Court.

An extra-judicial confession is admissible in evidence if it is voluntary and free from inducement, threat, coercion, or promise. If the Court finds that the confession was made voluntarily and is truthful, it may rely upon it. A confession may still remain relevant even if it was made under promise of secrecy, by deception, while drunk, or in question-answer form.

However, extra-judicial confession is considered weak evidence because it can easily be fabricated or misunderstood. Therefore, courts usually seek corroboration from other evidence before basing conviction upon it.

For example, if an accused tells his friend that he committed theft or murder, such statement amounts to an extra-judicial confession.

In **Sahadevan v. State of Tamil Nadu (2012) 6 SCC 403**, the Supreme Court held that an extra-judicial confession can form the basis of conviction if it is voluntary, reliable, and inspires confidence.

Thus, extra-judicial confession is an important form of evidence, but courts examine it carefully before accepting it as proof of guilt.

Grounds on Which Extra-Judicial Confession is Accepted

An extra-judicial confession is accepted by the Court when it appears voluntary, truthful, and reliable. The following are the main grounds on which it is accepted:

1. Voluntary in Nature

The confession must be made voluntarily and not under inducement, threat, coercion, or promise.

2. Truthful and Reliable

The Court must be satisfied that the confession is genuine and inspires confidence.

3. Clear and Unambiguous

The confession should clearly admit the offence or substantially all facts constituting the offence.

4. Made Before a Trustworthy Person

The confession should be made before a person who is impartial and reliable.

5. Corroborated by Other Evidence

Courts generally prefer corroboration from surrounding circumstances or other evidence before relying upon extra-judicial confession.

Case Law

In **Sahadevan v. State of Tamil Nadu (2012) 6 SCC 403**, the Supreme Court held that although an extra-judicial confession is considered a weak form of evidence, it can form the basis of conviction if it is made voluntarily, is truthful and trustworthy, inspires confidence, and is corroborated by other reliable evidence and surrounding circumstances.

Grounds on Which Extra-Judicial Confession is Rejected

The Court may reject an extra-judicial confession if it appears doubtful, unreliable, or involuntary. The following are the main grounds for rejection:

1. Obtained by Threat, Coercion, or Promise

If the confession is caused by inducement, threat, coercion, or promise, it becomes inadmissible.

2. Lack of Voluntariness

If the accused did not make the confession freely, the Court will reject it.

3. Contradictory or Ambiguous Statement

If the confession is vague, inconsistent, or incomplete, it loses evidentiary value.

4. Absence of Corroboration

Where no independent evidence supports the confession, courts become cautious in relying upon it.

5. Untrustworthy Witness

If the person before whom the confession was made is unreliable or interested in the case, the confession may be rejected.

Case Law

In **Balwinder Singh v. State of Punjab (1995 Supp (4) SCC 259)**, the Supreme Court held that extra-judicial confession is a weak type of evidence and cannot be relied upon when it appears suspicious or lacks corroboration.

Conclusion

Extra-judicial confession is a confession made by an accused person to any person other than a Magistrate or Court. Though it is considered weaker evidence than judicial confession, it is admissible if it is voluntary, truthful, reliable, and corroborated by other evidence. However, courts reject such confession when it is obtained by coercion, appears doubtful, uncorroborated, or is made before an unreliable witness. Therefore, courts examine extra-judicial confession with great caution before relying upon it for conviction.

Relevancy and Admissibility of Character in Civil and Criminal Cases under the Bharatiya Sakshya Adhiniyam

Introduction

Under the Bharatiya Sakshya Adhiniyam, 2023, character evidence means evidence relating to the reputation, conduct, disposition, or moral qualities of a person. Generally, character evidence is considered weak evidence because a person should be judged based on facts of the case and not merely on personal reputation. However, in certain circumstances, character becomes relevant and admissible both in civil and criminal proceedings.

The provisions relating to character under BSA are mainly similar to the principles previously contained in the Indian Evidence Act, 1872.

Meaning of Character

Character includes:

- Moral reputation of a person
- Conduct and disposition
- Previous criminal or good behaviour
- Social reputation in society

Character may be:

1. Good character
2. Bad character

Character in Civil Cases

General Rule

In civil cases, character is generally **irrelevant**.

The reason is that civil disputes are mainly concerned with rights, liabilities, property, contracts, or obligations, and not with the moral character of parties.

Example:

In a suit for recovery of money, the honesty or dishonesty of the defendant is usually irrelevant.

Exception: When Character Itself is in Issue

Character becomes relevant in civil cases when it directly affects the matter in dispute.

Examples:

- Defamation suits
- Divorce cases
- Child custody matters
- Compensation for loss of reputation
- Breach of promise to marry

In such cases, the character of a person is itself a fact in issue.

Illustration

If A files a defamation suit against B claiming that B damaged his reputation, evidence regarding A's character becomes relevant because the extent of reputation affects damages.

Character in Criminal Cases

In criminal cases, character becomes more important because punishment and criminal liability may be affected by the accused's conduct and reputation.

The BSA distinguishes between:

1. Good character of accused
2. Bad character of accused

Good Character of Accused Relevant and Admissible

Evidence of good character of the accused is relevant in criminal proceedings.

The law gives benefit to the accused because a person with a good reputation is presumed less likely to commit an offence.

Illustration

If a person is accused of theft and witnesses testify that he is known to be honest and law-abiding, such evidence is admissible.

Bad Character of Accused General Rule

Evidence of bad character is generally not relevant.

The prosecution cannot initially argue that the accused is guilty merely because he is a bad person or has criminal tendencies.

This protects the accused from prejudice and ensures fair trial principles.

Exceptions Where Bad Character Becomes Relevant

1. When Accused Gives Evidence of Good Character

If the accused first produces evidence of good character, the prosecution may rebut it by proving bad character.

2. Previous Convictions

Previous convictions may become relevant in certain situations, especially:

- Habitual offender cases
- Sentencing
- Enhanced punishment provisions

3. Character Itself is in Issue

In offences such as:

- Defamation
- Sexual offences involving consent in limited contexts
- Cases where intention or conduct is directly connected

character may become relevant.

Character of Victim

In some criminal cases, character of the victim may also arise.

However, modern evidence law provides protection to victims, especially in sexual offences.

In rape cases, immoral character or previous sexual history of the victim is generally irrelevant to prove consent.

This principle protects dignity and privacy of victims.

Distinction Between Civil and Criminal Cases

Basis	Civil Cases	Criminal Cases
General Rule	Character irrelevant	Character partly relevant
Good Character	Usually irrelevant	Relevant for accused
Bad Character	Usually irrelevant	Generally irrelevant unless exception applies
Reason	Focus on civil rights and liabilities	Liberty and punishment involved
Character in Issue	Relevant	Relevant

Important Case Laws

Makin v. Attorney-General for New South Wales

The court held that prosecution cannot use evidence merely showing criminal tendency unless it is directly connected with the offence.

State of Punjab v. Gurmit Singh

The Supreme Court emphasized that the character of the victim in sexual offences should not be unnecessarily attacked.

Conclusion

Under the Bharatiya Sakshya Adhiniyam, 2023, character evidence has limited admissibility. In civil cases, character is generally irrelevant unless it is directly in issue. In criminal cases, evidence of good character of the accused is relevant, while bad character is generally inadmissible except in special circumstances. These rules ensure fairness, prevent prejudice, and help courts focus on relevant facts rather than personal reputation alone.

Evidentiary Value of Good Character of an Accused Person

The law of evidence generally provides that facts relating to the character of a person are irrelevant in judicial proceedings. However, an important exception exists in criminal cases regarding the good character of an accused person. Under the , Sections 51 to 55 deal with the relevancy of character evidence. Section 51 specifically states that in criminal proceedings, the fact that the accused person is of good character is a relevant fact. The principle behind this rule is that a person with a good moral reputation and lawful conduct is less likely to commit a criminal offence.

Evidentiary Value of Good Character

1. Relevant Fact in Criminal Cases

Section 51 of the BSA provides that evidence of the good character of the accused is relevant in criminal proceedings. The accused may produce

witnesses to prove their honesty, peaceful nature, or good social reputation.

2. Creates Presumption of Improbability of Crime

The law assumes that a person who has maintained a good reputation throughout life is less likely to commit a criminal act. Therefore, evidence of good character creates a probability in favor of the innocence of the accused.

3. Corroborative Evidence

Good character is not conclusive proof of innocence. It only acts as corroborative evidence supporting the defence case and must be weighed together with other evidence on record.

4. Useful in Doubtful Cases

Evidence of good character becomes highly valuable in cases where the prosecution evidence is weak, doubtful, or purely circumstantial. In such situations, it may create reasonable doubt in the mind of the court and benefit the accused.

5. Limited Value Against Strong Evidence

If the prosecution produces direct, reliable, and convincing evidence proving guilt, good character evidence carries little weight and cannot override clear evidence of guilt.

6. General Reputation and Disposition

The law permits evidence regarding the general reputation and disposition of the accused rather than specific acts of good conduct. Character includes both public reputation and personal disposition.

7. Risk of Rebuttal by Prosecution

When the accused leads evidence of good character, the prosecution gets the right to rebut it by producing evidence of bad character. Thus, the accused “opens the door” for such rebuttal evidence.

Distinction Between Civil and Criminal Cases

In criminal cases, good character is always relevant because it helps determine the probability of the accused committing the offence. However, in civil cases, character is generally irrelevant unless it directly affects the amount of damages, such as in cases of defamation or matrimonial disputes.

Conclusion

Thus, under the Bharatiya Sakshya Adhiniyam, 2023, evidence of the good character of an accused person is a relevant fact in criminal proceedings because it helps the court assess the probability or improbability of the accused committing the offence. Although such evidence is not conclusive proof of innocence, it serves as an important corroborative circumstance, particularly in doubtful and circumstantial cases. At the same time, good character cannot outweigh clear and reliable evidence of guilt. Therefore, the evidentiary value of good character lies in assisting the court in reaching a fair and just conclusion while ensuring that the accused receives the benefit of reasonable doubt where appropriate.

Principles Governing Oral Evidence under the Bharatiya Sakshya Adhiniyam, 2023

Oral evidence is one of the most important forms of evidence recognized under the . It consists of statements made before the court by witnesses regarding facts under inquiry. Oral evidence plays a crucial role in judicial proceedings because it helps the court understand the facts, circumstances, and conduct connected with a case. Although documentary and electronic evidence have become increasingly significant in modern times, oral testimony continues to be the foundation for proving many facts in both civil and criminal trials.

The Bharatiya Sakshya Adhiniyam, 2023 lays down specific principles governing oral evidence under Chapter IV, mainly Sections 56 to 60. The law emphasizes that oral evidence must be direct and reliable. The purpose of these rules is to ensure authenticity, prevent falsehood, and allow proper cross-examination of witnesses. The Act also adapts these traditional principles to modern technological developments by recognizing electronic records and digital evidence.

Principles Governing Oral Evidence

1. Proof of Facts by Oral Evidence

Under Section 56 of the BSA, all facts except the contents of documents and electronic records may be proved by oral evidence. Thus, witnesses may testify regarding facts they personally know or perceive through their senses.

2. Oral Evidence Must Be Direct

The most important principle is contained in Section 59, which provides that oral evidence must always be direct.

- If the fact could be seen, the witness must state that they personally saw it.
- If the fact could be heard, the witness must state that they personally heard it.
- If the fact could be perceived through any other sense, the witness must have directly perceived it.
- If the evidence relates to an opinion, it must be given by the person holding that opinion.

This principle ensures reliability and authenticity in judicial proceedings.

3. Exclusion of Hearsay Evidence

Since oral evidence must be direct, hearsay evidence is generally inadmissible. Hearsay means information received from another person rather than from personal knowledge.

Hearsay evidence is excluded because:

- The original speaker is not under oath.
- The person cannot be cross-examined.
- There is a risk of misunderstanding or distortion of facts.

However, certain exceptions to the hearsay rule are recognized under the BSA, such as:

- **Res Gestae (Section 4)**
- **Dying Declaration (Section 26)**
- **Expert Opinion (Section 39)**

4. Credibility and Weight of Oral Evidence

The court evaluates oral evidence based on quality rather than quantity. The evidentiary value of oral testimony depends upon:

- Credibility and conduct of the witness
- Consistency of statements
- Performance during cross-examination
- Corroboration with documentary or circumstantial evidence

Even the testimony of a single reliable witness may be sufficient to prove a fact.

5. Hostile Witness

If a witness turns against the party who called them, they are known as a hostile witness. The testimony of a hostile witness is not automatically rejected; rather, the court carefully scrutinizes which part of the testimony is trustworthy and reliable.

6. Relationship Between Oral and Documentary Evidence

Under Section 94 of the BSA, oral evidence cannot be used to contradict, vary, add to, or subtract from the terms of a written document or contract proved according to law. This rule protects the certainty and reliability of written agreements.

Application of Oral Evidence Principles to Digital Evidence

The BSA recognizes electronic records as an important form of evidence in modern legal proceedings. In cases involving digital evidence, the principles governing oral evidence continue to apply alongside rules relating to electronic records.

A witness giving evidence about electronic records must have direct knowledge regarding the creation, storage, transmission, or operation of the electronic device or system. Oral testimony may be used to explain the authenticity, source, or integrity of electronic records such as emails, CCTV footage, call recordings, social media messages, or digital documents. However, oral evidence alone cannot replace the requirement of proving electronic records according to the provisions relating to electronic evidence under the Act. Thus, oral evidence supplements digital evidence by helping the court understand technical and factual aspects of electronic records.

Conclusion

Thus, the Bharatiya Sakshya Adhiniyam, 2023 establishes important principles to ensure the reliability and fairness of oral evidence in judicial proceedings. The requirement that oral evidence must be direct prevents hearsay and promotes truthful testimony through cross-examination. The law also emphasizes the credibility and quality of witnesses rather than the mere number of witnesses. At the same time, the Act harmonizes traditional principles of oral evidence with modern technological developments by recognizing electronic records and digital evidence. Therefore, oral evidence continues to remain a vital component of the administration of justice while adapting itself to the needs of the digital age.

Who Can Testify as a Witness? When is the Evidence Given by a Child Admissible?

The law of evidence recognizes witnesses as one of the most important sources for proving facts before a court of law. Under the , the rules regarding competency of witnesses are based on the principle that every person who is capable of understanding questions and giving rational answers should be allowed to testify. The object of these provisions is to assist the court in discovering the truth by admitting relevant and reliable testimony from all competent persons.

Sections 124 to 126 of the BSA deal with the competency of witnesses and related matters. The Act adopts an inclusive approach by removing discrimination based on age, gender, religion, or physical disability. Even children, persons with mental illness, and speech-impaired persons may testify if they satisfy the conditions laid down by law. The admissibility of child witnesses particularly depends upon their intellectual capacity and understanding of the duty to speak the truth.

Who Can Testify as a Witness?

General Rule under Section 124

Section 124 of the BSA provides that all persons are competent to testify unless the court considers that they are incapable of understanding the questions put to them or of giving rational answers due to:

- Tender age
- Extreme old age
- Disease of body or mind
- Any other similar cause

Thus, competency depends upon the mental capacity and understanding of the witness rather than age or status.

Categories of Competent Witnesses

1. Ordinary Persons

Every ordinary person who can understand questions and answer rationally is competent to testify before the court.

2. Child Witnesses

Children are competent witnesses if they possess sufficient intelligence and understanding to answer questions properly and understand the duty of speaking the truth.

3. Persons with Mental Illness

A person suffering from mental illness is not automatically disqualified. Such a person may testify during lucid intervals or whenever they are capable of giving rational answers.

4. Speech-Impaired Witnesses

Under Section 125 of the BSA, a person unable to speak may give evidence through writing or signs. Such evidence is treated as oral evidence.

5. Accomplice

Under Section 138, an accomplice is a competent witness against the accused. A conviction based on uncorroborated accomplice evidence is not illegal, though courts generally seek corroboration as a rule of prudence.

6. Judges and Magistrates

Under Section 126, judges and magistrates may be examined regarding matters that occurred in their presence while acting judicially, subject to certain restrictions.

When is the Evidence Given by a Child Admissible?

The BSA does not prescribe any fixed minimum age for a child witness. The admissibility of a child's evidence depends upon the child's intelligence, understanding, and ability to give rational answers.

Conditions for Admissibility

1. Capacity to Understand Questions

The child must be able to understand the questions put before them and give rational answers.

2. Understanding the Duty to Speak the Truth

The child should understand the importance of telling the truth. Under the , a child below twelve years may give evidence even without taking an oath if the court believes that the child understands the duty of speaking the truth.

3. Voire Dire Test

Before recording evidence, the judge conducts a preliminary examination called the “Voire Dire” test. The judge asks simple questions to assess the intelligence, maturity, and understanding of the child witness.

4. Voluntary and Untutored Testimony

The court must ensure that the child has not been tutored, influenced, or coached by others.

5. Corroboration

Although the testimony of a child witness is legally admissible, courts usually seek corroboration from independent evidence as a rule of caution, especially in serious criminal cases.

Evidentiary Value of Child Witness

The evidence of a child witness can form the basis of conviction if the court finds it reliable, truthful, and free from tutoring. However, because children may be imaginative or easily influenced, courts examine such evidence with great care and caution.

Conclusion

Thus, under the Bharatiya Sakshya Adhiniyam, 2023, every person is competent to testify as a witness if they are capable of understanding questions and giving rational answers. The law follows an inclusive approach by permitting evidence from children, mentally ill persons, accomplices, and speech-impaired persons, subject to certain safeguards. The evidence of a child witness is admissible when the court is satisfied that the child possesses sufficient intelligence, understands the duty to speak the truth, and is capable of giving rational and voluntary answers. Therefore, the competency of a witness under the BSA is determined not by age or status but by the ability to provide reliable and truthful evidence before the court.