



New

Criminal Laws

For All Judiciary Exams

Volume - 1

Bharatiya Sakshya Adhiniyam (BSA)

INDEX

The Bharatiya Sakshya Adhiniyam, 2023

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THE BHARATIYA SAKSHYA ADHINIYAM, 2023

Corresponding Section Table of BSA with Repealed Act

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List of cases [BSA]

Presumption & Burden of Proof

- **Kali Ram v. State of Himachal Pradesh (1973) SC**
 - ✓ **Rule:** If two views are possible on evidence, the one favorable to the accused **must be accepted**.
 - ✓ Innocence is presumed until proven guilty.
- **Woolmington v. DPP (1935)**
 - ✓ Famous UK case, often quoted in India.
 - ✓ **Rule:** Prosecution must prove its case **beyond reasonable doubt**. The burden never shifts in criminal trials.
- **State of U.P. v. Krishna Gopal (1988) SC**
 - ✓ **Rule:** Proof beyond reasonable doubt does **not mean absolute certainty**. Courts can convict if evidence inspires confidence.
- **State of Maharashtra v. Wasudeo Ramchandra (2008) SC**
 - ✓ **Rule:** Presumption of innocence is a human right under Article 21 of the Constitution.
- **Shambhu Nath Mehra v. State of Ajmer (1956) SC**
 - ✓ **Rule:** Section 106 applies when **facts are especially within the knowledge** of the accused. But it does not relieve prosecution of its primary burden.

Admissions & Confessions

- **Pakala Narayan Swamy v. Emperor (1939) SC**
 - ✓ **Rule:** A confession must either admit the offence or substantially all facts which constitute the offence.
- **State of U.P. v. Deoman Upadhyaya (1960) SC**
 - ✓ **Rule:** Extra-judicial confessions are **not unreliable per se**. They can form the basis of conviction if truthful and voluntary.
- **Nishi Kant Jha v. State of Bihar (1969) SC**
 - ✓ **Rule:** Extra-judicial confession needs corroboration but **can be the sole basis of conviction** if found reliable.
- **State of Punjab v. Gurdeep Singh (1999) SC**
 - ✓ **Rule:** Confession to police is not admissible under Section 25, except under Section 27 for **discovery of facts**.

Dying Declaration

- **Khushal Rao v. State of Bombay (1958) SC**
 - ✓ **Rule:** Dying declaration can be sole basis of conviction if it is **truthful and voluntary**. No need for corroboration.
- **Laxman v. State of Maharashtra (2002) SC**
 - ✓ **Rule:** Certification of mental fitness by a doctor is **desirable but not mandatory** for dying declaration.
- **P.V. Radhakrishna v. State of Karnataka (2003) SC**
 - ✓ **Rule:** Dying declarations should be recorded carefully, but minor contradictions do **not make them unreliable**.

Documentary Evidence

- **Hira Lal v. State of Bihar (1977) SC**
 - ✓ **Rule:** Contents of a document must be proved by **primary evidence**, i.e., the document itself, unless secondary evidence is allowed.
- **State of Rajasthan v. Khemraj (2000) SC**
 - ✓ **Rule:** Certified copies of public documents are **admissible without calling the original document**.

Oral Evidence

- **Bhagwan Singh v. State of M.P. (2003) SC**
 - ✓ **Rule:** Evidence must be **direct** unless exceptions exist, like in dying declarations.

Circumstantial Evidence

- **Hanumant v. State of Madhya Pradesh (1952) SC**
 - ✓ **Rule:** Circumstantial evidence must:
 - Fully establish guilt
 - Be consistent with guilt only
 - Exclude every other hypothesis except guilt
- **Sharad Birdhichand Sarda v. State of Maharashtra (1984)**
 - ✓ **Rule:** Laid down the “**five golden principles**” for circumstantial evidence:
 1. Circumstances must be fully established.
 2. Facts established must be consistent only with guilt.
 3. Circumstances must be conclusive.
 4. Must exclude every hypothesis except guilt.
 5. Chain of evidence must be complete.

Test Identification Parade (TIP)

- **Rameshwar Singh v. State of J&K (1972) SC**
 - ✓ **Rule:** TIPs are only aids to investigation, **not substantive evidence**.
- **Malkhan Singh v. State of M.P. (2003) SC**
 - ✓ **Rule:** Identification parades should be held at the **earliest possible opportunity**.

Expert Opinion

- **State of H.P. v. Jai Lal (1999) SC**
 - ✓ **Rule:** Expert opinion is only **advisory**. Court is not bound by it.

Hostile Witness

- **Sat Paul v. Delhi Administration (1976) SC**
 - ✓ **Rule:** A witness declaring hostility does **not become unreliable entirely**. His evidence can still be used for corroboration.

Accomplice Evidence

- **R. v. Baskerville (1916) SC**
 - ✓ UK case, often quoted in India.
 - ✓ **Rule:** Conviction can rest on accomplice evidence **if there is sufficient corroboration**.
- **Suresh Chandra Bahri v. State of Bihar (1994) SC**
 - ✓ **Rule:** An approver's testimony **must be reliable and corroborated** on material particulars.

Res Gestae

➤ **Sukhar v. State of U.P. (1999) SC**

- ✓ **Rule:** Statements made at or near the time of the incident can be admitted under **res gestae**.

Relevancy of Character

➤ **Ghulam Moinuddin v. State of Maharashtra (1971) SC**

- ✓ **Rule:** Character evidence is generally **irrelevant** in criminal cases unless specifically relevant under Sections 53-55 IEA/ 47-5 BSA.

Presumptions under Evidence Act/ BSA

➤ **Bharat Barrel v. Amin Chand (1975) SC**

- ✓ **Rule:** Presumption under Section 119 BNS/ 114 IEA can be drawn depending on the **natural course of human conduct**.

Estoppel

➤ **Indira Bai v. Nand Kishore (1990) SC**

- ✓ **Rule:** Estoppel applies only if one person **makes the other believe something** and the latter acts on it.

Evidence of Child Witness

➤ **Ratan Singh v. State of H.P. (1997) SC**

- ✓ **Rule:** Evidence of a child witness is **acceptable if found reliable**. Court must ensure the child understands the duty of speaking the truth.

Electronic Evidence

➤ **Anvar P.V. v. P.K. Basheer (2014) SC**

- ✓ **Rule:** Electronic records under Section 65B IEA/ 63 BSA are **admissible only if conditions are satisfied**. Certificate under Section 65B (4) IEA / 63 BSA is mandatory.

➤ **Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal (2020) SC**

- ✓ **Rule:** Confirmed that **Section 65B IEA/63 BSA certificate is mandatory** unless the original electronic device itself is produced in court.

Foundational Doctrines and Maxims of Evidence

1. Facta probanda and facta probantia
 - ✓ Facta probanda: Facts in issue (must be pleaded).
 - ✓ Facta probantia: Evidence proving those facts.
2. Lex Fori
 - ✓ Law of the forum (court) where the case is tried.
3. Cardinal Rule of Evidence
 - ✓ Evidence must relate to the matter in issue.
 - ✓ Best evidence should be produced; hearsay is generally inadmissible.
4. Relevant Facts
 - ✓ Evidence is confined to facts in issue and relevant facts only.

Circumstantial Evidence & Res Gestae

5. Panchsheel Rule
 - ✓ Five principles to test circumstantial evidence.
6. Res Gestae (Sec. 4)
 - ✓ “Things done” forming part of same transaction.
 - ✓ Exception to hearsay rule.
7. Hearsay Evidence
 - ✓ Information received from others, not based on personal knowledge.
 - ✓ Not admissible unless an exception applies (e.g., dying declaration, res gestae).

Identification, Confession, and Police Evidence

8. Test Identification Parade (TIP) – (Sec. 7)
 - ✓ Used to identify the accused; important supporting evidence.
9. Res Inter Alios Acta (Sec. 40)
 - ✓ Acts between others neither harm nor benefit third parties.
 - ✓ Section 8 is an exception.
10. Plea of Alibi (Sec. 9)
 - ✓ Alibi means “elsewhere”; burden of proof on accused.
11. Fruits of Poisonous Tree Doctrine (Sec. 22-23)
 - ✓ Evidence obtained illegally (e.g., confessions to police) is inadmissible unless confirmed by judicial processes.
12. Doctrine of Confirmation by Subsequent Events (Sec. 23)
 - ✓ Information by accused is admissible if later confirmed by fact-finding.

Dying Declaration and Related Principles

13. Nemo moriturus praesumitur mentire (Sec. 26(a))
 - ✓ “A man will not meet his maker with a lie in his mouth.”
14. Doctrine of Necessity (Sec. 26(a))
 - ✓ Dying declarations are admitted even if hearsay, due to necessity.

Judicial Decisions & Estoppel

15. Judgment in Rem (Sec. 35)
 - ✓ Judgment binding on the world, not just parties.
16. Doctrine of Estoppel (Sec. 121)
 - ✓ One who induces belief in another cannot deny it later.

Documentary & Best Evidence

17. Best Evidence Rule (Sec. 59, 94)
 - ✓ Primary/original documents must be produced.
18. Doctrine of Mutuality (Sec. 95)
 - ✓ Both parties are equally bound by document interpretations.

Burden of Proof & Presumptions

19. Actori incumbit onus probandi (Sec. 104)
 - ✓ Burden lies on the party asserting a fact.
20. Incumbit probatio qui dicit, non qui negat
 - ✓ The burden lies on one who affirms, not denies.
21. Onus Probandi (Sec. 109)
 - ✓ The duty to prove lies on the party asserting a fact.

Legal Fictions and Presumptions

22. Falsus in Uno, Falsus in Omnibus
 - ✓ False in one, false in all – Not accepted in Indian law, only a cautionary rule.
 - ✓ Gangadhar Behera vs. State of Orissa, AIR 2002 SC 3633
23. Omnia praesumuntur rite esse acta (Sec. 119)
 - ✓ All acts are presumed to be properly done unless proved otherwise.
 - ✓ Nangyan Gavate vs. State of Maharashtra, AIR 1977 SC 183
24. Presumption of Life and Death (Sec. 110, 111)
 - ✓ A person not heard of for 7 years is presumed dead.
25. Possession Follows Title (Sec. 113)
 - ✓ Presumption that person with title has possession unless shown otherwise.
26. Salus populi est suprema lex (Sec. 129)
 - ✓ Welfare of the people is the supreme law.
27. Salus populi suprema lex esto (Sec. 129)
 - ✓ Let the welfare of the people be the supreme law.
28. Exceptio Probat Regulam
 - ✓ Exception proves the rule.
29. Res Ipsa Loquitur (Sec. 109)
 - ✓ The thing speaks for itself – used in negligence cases.

Introduction

ACT NO: 47 OF 2023

Date of enactment: 25th December, 2023

Date of commencement: 1st July, 2024

Introduction:

The main purpose of any court case is to decide someone's rights or responsibilities.

- In criminal cases, the aim is to find out whether the accused (person charged with an offence) is guilty or not, and what punishment should be given.
- In civil cases, the aim is to decide about things like property, family rights, agreements, or personal disputes between people or organizations.

To make sure these cases are handled fairly and properly, we need rules. These rules help to:

1. Understand what rights and duties people have, and
2. Know how to prove those rights or duties in court.

To do this, law is divided into two main parts:

1. Substantive Law (What the Law Is)

Substantive law is the part of law that tells us:

- ✓ What is right or wrong,
- ✓ What is allowed or not allowed, and
- ✓ What happens if someone breaks the rules.

It defines the actual rights and duties of people in society.

Examples of Substantive Law:

- ✓ *Indian Contract Act* – deals with agreements and promises.
- ✓ *Transfer of Property Act* – deals with buying/selling property.
- ✓ *Bharatiya Nyaya Sanhita* – new criminal law that defines crimes and punishments.

Substantive law tells you what you can or cannot do, and what punishment or remedy you will face if you break the law.

It applies to areas like:

- ✓ Criminal law (e.g., murder, theft),
- ✓ Civil law (e.g., contract disputes, property matters),
- ✓ Family law (e.g., marriage, divorce).

2. Procedural Law (How the Law Works)

Procedural law tells us how to bring a case to court and how courts will deal with it.

It includes all the steps and rules that must be followed in a legal case – from filing a case to getting a judgment.

Examples of Procedural Law:

- ✓ *Code of Civil Procedure (CPC)* – used in civil cases.
- ✓ *Code of Criminal Procedure (CrPC)* – used in criminal cases.
- ✓ *Bharatiya Nagarik Suraksha Sanhita* – new criminal procedure law.
- ✓ *Evidence (Bharatiya Sakshya Adhiniyam)*.

Procedural law tells you how to go to court, how the trial will run, and how decisions will be enforced.

It covers:

- ✓ Jurisdiction (which court will hear the case),
- ✓ How to file a complaint or suit,
- ✓ What evidence is allowed,
- ✓ How the trial and appeals are done,
- ✓ How to enforce the judgment.

"The Law of Evidence is the Lex Fori"

What is "Lex Fori"

Lex fori is a Latin term meaning "the law of the forum"—i.e., the law of the country where the court is situated.

Explanation of the Passage:

- Law of Evidence = Part of Procedural Law:
 - ✓ The law of evidence governs *how* facts are proved in a courtroom.
 - ✓ Since it deals with procedure, it falls under procedural law (not substantive law).
- Indian Courts Apply Indian Evidence Law:
 - ✓ Indian courts only apply the Indian Evidence Act, regardless of where the cause of action or facts originated.
- Competency of Witness and Proof = Lex Fori:
 - ✓ Whether a witness is competent or a fact is proved is decided by the law of the country where the court is sitting, not where the incident happened.
 - ✓ Example: If a trial is in an Indian court, Indian law decides these questions.
- Illustration — Foreign Proceedings, Indian Recording:
 - ✓ Suppose a case is going on in Russia, but evidence is recorded in India (via commission or court assistance).
 - ✓ In such a case, Russia Law of Evidence applies — because the main proceeding is in Russia.

What is Proof? How Does it Differ from Evidence?

Meaning of Proof:

- Proof is a broad term.
- It refers to everything that can convince a person (or court) that a statement or allegation is true or false.
- Proof involves legal reasoning, facts, and submissions that persuade the court to accept a claim.

Meaning of Evidence:

- Evidence is narrower than proof.
- It refers specifically to the materials (like documents, objects, testimony) that are admissible in court to support proof.
- Evidence is the means through which proof is attempted.

Key Differences:

Aspect	Proof	Evidence
Scope	Broad term	Narrow term
Nature	Convincing the court about truth/falsity of a claim	Facts/documents/testimony used to support proof
Function	Final satisfaction of the court	Tools used to reach that satisfaction
Legal Use	Outcome	Means to an outcome

Facts

Types of Facts

- Physical and Psychological Facts
 - ✓ Physical Facts (Illustrations a to c)
 - ✓ Psychological Facts (Illustrations d and e)
- Positive and Negative Facts
 - ✓ Positive Facts: The existence of a certain state of things.
 - ✓ Negative Facts: The non-existence of a certain state of things.
- Matter of Fact
 - ✓ Anything that is the subject of testimony and can be proved by evidence.
- Matter of Law
 - ✓ The general law of the land, of which the court will take judicial notice.
 - ✓ It does not need to be proved by evidence.

Relevance

Definition of 'Relevant'

The term "relevant" has two meanings:

1. As admissible (i.e., legally acceptable as evidence).
2. As connected (i.e., having a logical or factual link to the case).
 - ✓ The word 'relevant' means that any two facts to which it is applied are so related to each other that, according to the common course of events, one, either by itself or in connection with other facts, proves or renders probable the past, present, or future existence or non-existence of the other.
 - ✓ Strictly speaking, 'relevant' means admissible in evidence.

Fact in Issue

- Facts in issue are those facts from which some legal right, liability, or disability arises in the inquiry.
- The decision in a case must be based upon these facts.

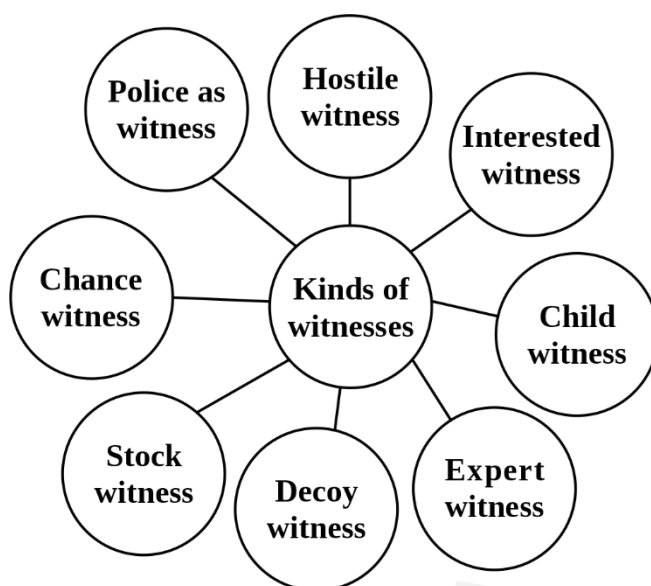
In Criminal Cases

- The charge itself constitutes and includes "facts in issue".

In Civil Cases

- Facts in issue are determined through the process of framing issues.

Kinds of Witnesses



Hostile Witness

A hostile witness is one who:

- Is antagonistic to the party that called him.
- Is unwilling to tell the truth.
- Has been won over by the opposite party and may not testify truthfully.

Procedure for Dealing with Hostile Witnesses:

- The party calling the witness may request permission from the court to cross-examine the witness, including:
 - ✓ Leading questions (Section 143). IEA/Section 146 BSA
 - ✓ Questions about previous statements in writing (Section 145). IEA/Section 148 BSA
 - ✓ Questions to test the veracity of the witness (Section 146). IEA/Section 149 BSA
 - ✓ Impeaching the credit of the witness (Section 155). IEA/Section 158 BSA

Court's Approach:

- Merely because part of the statement from a witness is unfavorable to the calling party, the court should not readily conclude that the witness is suppressing the truth.
- The court must attempt to separate the truth from falsehood carefully, while being cautious in accepting the evidence.
- It is important to approach hostile witness testimony with great care to ensure justice.

Case Law: **Govindaraju v. State of Srirampuram 2012 SC**

- Prosecution case does not fail if a witness turns hostile.
- The supporting part of the testimony from a hostile witness can still be considered.
- Conviction is possible if the testimony is corroborated by other evidence.
- The court must act with great caution and accept the evidence with a higher degree of care.

Case: State Tr.P.S. Lodhi Colony v. Sanjeev Vanda (2012 SC)

- The Supreme Court held that the evidence of a hostile witness cannot be discarded entirely. Courts should rely on the portion of the testimony that is credible and corroborated by other evidence.
- The Court recognized that witnesses often turn hostile due to fear or influence, especially in high-profile cases. It emphasized the need for a strong witness protection mechanism. Judges must carefully scrutinize hostile testimony and extract the truth.

Interested Witness

- An interested witness is one who has a personal interest in the outcome of a case (e.g., relative of the victim).

Evidentiary Value:***State of Rajasthan v. Teja Ram, AIR 1999 SC 1776.***

- The Supreme Court has held that evidence of an interested witness is not inadmissible, but must be examined with greater caution.
- If the testimony is credible, consistent, and corroborated, it can form the basis of conviction.
- The court must assess whether the witness is truthful despite being interested.
- Mere relationship with the victim does not disqualify a witness.

Child Witness

Competency: There is no law that automatically rejects child witnesses. A child is competent to testify if their statements are:

- Reliable.
- Truthful.
- Corroborated by other prosecution evidence.

1. K. Venkateshwarlu v. State of A.P. (2012 SC):

- ✓ A child witness is pliable due to their tender age.
- ✓ They can be influenced by threats, inducements, or coercion.
- ✓ Great caution must be exercised, and the child's testimony should be taken with care and scrutiny.

2. P. Ramesh v. State Rep. by Inspector of Police (2019 SC):

- ✓ The court must determine if the child has the intellectual and cognitive skills to recollect and narrate the incident of the crime.
- ✓ The judge has the liberty to test the child's capacity to understand and testify.

Decoy Witness

A decoy witness is a person who acts as an agent for the prosecution with the aim of discovering and exposing the commission of a crime.

- This can happen either before association with wrongdoers or before the actual preparation of the offense.
- A decoy is not an accomplice but rather a spy, detective, or decoy for law enforcement.
- Such witness is commonly used in **trap cases** involving **bribery or corruption**

Example: Suppose a public servant demands a bribe from a citizen for clearing a file. The citizen informs the **Anti-Corruption Bureau (ACB)**. The ACB arranges a **trap** and sends a person (often the complainant himself or another person) with marked currency notes to hand over the bribe. This person who goes to pay the bribe—**under the supervision of ACB officers**—acts as a **decoy witness**.

Testimony of a Decoy Witness

C.M. Girish Babu v. CBI, (2009) 3 SCC 779, the Supreme Court held that the **testimony of a decoy witness is admissible**, provided it is **credible and corroborated** by other evidence such as chemical tests or recovery.

Stock Witness

Definition:

A stock witness is a person who is repeatedly used by investigating agencies in multiple cases, often to falsely support the prosecution's version. Such witnesses are not genuine or natural witnesses but are "on call" to give pre-planned or fabricated testimony.

Evidentiary Value:

- **State of Rajasthan v. Kishore (1996)**, the Supreme Court warned that evidence of a stock witness must be carefully scrutinized, and conviction should not rest solely on such testimony without independent corroboration.

Chance Witness

Definition:

- A chance witness is someone who happens to be present at the scene of an incident purely by chance, without any prior knowledge of the event.

Evidentiary Value:

- Chance witnesses must justify their presence at the scene to establish the credibility of their testimony.
- Their testimony should be scrutinized with great caution to ensure that their presence is genuine and not fabricated.

Case Law: **Rena Pratap Singh v. State of Haryana (AIR 1983 SC)**

Key Points:

- Murders are not committed with previous notice to witnesses, and such witnesses cannot be expected to be present deliberately.
- If a murder occurs in a dwelling house, the inmates of the house are considered natural witnesses.
- Similarly, if a murder occurs in a brothel, prostitutes there are considered natural witnesses.
- If the murder happens on the street, passersby can be considered natural witnesses.
- The testimony of such witnesses should not be brushed aside or viewed with suspicion just because they are chance witnesses.

CHAPTER I

Section 1-2 [Preliminary]

Section 1: Short title, application and commencement

"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."

This clause specifies where the Act applies:

- All judicial proceedings in courts,
- Courts-martial (military courts),

But it does not apply to:

- Affidavits submitted to courts or officers (as affidavits are usually treated as self-contained evidence unless challenged),
- Proceedings before arbitrators (who follow different rules, typically as per Arbitration and Conciliation Act).

Affidavits - Not Evidence under the Evidence Act (BSA)

1. Affidavits are not "evidence" under Section 3 of the Indian Evidence Act unless specifically allowed by law. (Now section 2(e) BSA)
2. They are governed by Order 19 of the Civil Procedure Code (CPC), 1908.
3. An affidavit is acceptable as evidence only if the court permits it under Order 19 Rule 1 or 2 CPC and there is sufficient reason to do so.
4. An affidavit filed voluntarily (suo motu) or in one's own favour is not enough to prove facts or obtain relief.
5. The main reason affidavits are not accepted as normal evidence is that the person who made the affidavit cannot be cross-examined unless directed by the court.

Conclusion:

- The Indian Evidence Act does not apply to affidavits and arbitration.
- Affidavits are not evidence unless:
 - ✓ The court permits it by a specific order under CPC, and
 - ✓ The law expressly allows proof by affidavit.
- Therefore, affidavits alone cannot prove facts in court unless supported by legal authority or further oral evidence

Section 2: Definitions

"Means" and "Includes" in Legal Definitions

- Whenever the words "mean" and "includes" are used in a definition, it indicates that the definition is exhaustive and strictly binding.
- No other meaning can be assigned to the expression apart from what is specifically laid down in the definition.
- It provides an exhaustive explanation of the meaning, which must be strictly applied for the purpose of the Act.

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

Clause (a) – “Court”

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

This definition is an inclusive one—meaning it adds to the ordinary meaning of the term “Court”, rather than restricting it.

It clarifies that for the purposes of this Act:

➤ **“Court” includes:**

- ✓ All Judges (including District Judges, Civil Judges, Sessions Judges, etc.),
- ✓ All Magistrates (Judicial Magistrates, Executive Magistrates where relevant),
- ✓ All persons legally authorised to take evidence, such as:
 - Commissioners appointed under CPC to record evidence,
 - Officers conducting inquiries under specific statutory powers,
 - Commissions of inquiry or tribunals, if they are legally empowered to take evidence.

➤ But expressly excludes:

- ✓ Arbitrators, even though they may take evidence during arbitration proceedings.

Why arbitrators are excluded?

Because arbitration proceedings are not considered judicial proceedings under the Act. Arbitrators function under the Arbitration and Conciliation Act, 1996, and follow a different evidentiary standard, often flexible and not bound by strict rules of evidence under this Act.

Clause (b) – “Conclusive proof”

(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;"

This clause defines what is meant by “conclusive proof” in the context of the law of evidence.

1. Conclusive Proof = Legal Finality
2. When the law declares that fact A is conclusive proof of fact B, then:
 - ✓ Once fact A is proved,
 - ✓ The Court must accept that fact B is also proved,
 - ✓ No contrary evidence is allowed to challenge fact B.
3. Binding on Court: The Court has no discretion to question or permit any rebuttal against the second fact once the first is proved.

Example:

Suppose the law says:

"A registered birth certificate is conclusive proof of the date of birth."

Then:

- Once the registered birth certificate is produced in court,
 - The date of birth stated in it must be accepted as final truth,
 - No party can introduce evidence to show a different date of birth
- Conclusive proof = Irrebuttable presumption.

Clause (c) – “Disproved”

“‘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.”

This clause defines what it means to say a fact is “disproved” in legal proceedings.

There are two ways a fact can be ‘disproved’:

1. The Court positively believes the fact does not exist, OR
2. The Court finds the non-existence of the fact so probable that:
 - ✓ A prudent person (a reasonable person using ordinary care and judgment),
 - ✓ In similar circumstances, would act on the assumption that the fact does not exist.

Example:

Suppose a person claims: "He was present at the place of incident."

To disprove this, the opposing party may produce:

- CCTV footage showing he was elsewhere,
- Travel logs,
- Witnesses testifying, he was not there.

If the Court:

- Believes he was not there, or
- Finds it highly probable that he was not there to the extent that a prudent man would act on that assumption, then the fact “he was present at the scene” is said to be disproved

Clause (d) – “Document”

“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.”

This clause provides a broad and inclusive definition of what constitutes a “document” for the purposes of evidence law.

Essential Elements:

A document means:

1. Any matter (information, idea, communication),
2. That is:
 - ✓ Expressed (clearly stated),
 - ✓ Described, or
 - ✓ Otherwise recorded
3. On any physical or non-physical substance (like paper, digital media, etc.),
4. By:
 - ✓ Letters (e.g., written text),
 - ✓ Figures (e.g., numbers, codes),
 - ✓ Marks (e.g., signatures, symbols),
 - ✓ Or any other means (e.g., biometric records, QR codes),
 - ✓ Or a combination of these,
5. With the purpose or possibility of being used to record that matter.

Inclusion of Modern Records:

- The definition expressly includes:
 - ✓ Electronic records (e.g., emails, PDFs, scanned copies, Word files),
 - ✓ Digital records (e.g., blockchain entries, cloud data, mobile messages, CCTV footage, etc.).

Clause (e) – “Evidence”

“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.

Inclusive Definition:

The phrase “means and includes” shows that this is an inclusive definition—broad enough to encompass both traditional and modern forms of evidence.

Sub-clause (i): Oral Evidence

- All statements made by witnesses in Court,
- These may be given physically or electronically (e.g., via video conferencing),
- Must be permitted or required by the Court,
- Must relate to matters of fact under judicial inquiry.

Such statements are termed as: *Oral Evidence*.

Example: A witness testifying in court about what they saw during a crime, or testifying remotely via video call.

Sub-clause (ii): Documentary Evidence

- All documents, including:
 - ✓ Physical (paper-based) documents,
 - ✓ Electronic records (emails, PDFs, audio files),
 - ✓ Digital records (cloud documents, blockchain entries, chat transcripts),
- These must be produced before the Court for inspection.

Such materials are termed as: *Documentary Evidence*.

Example: A sale deed, a WhatsApp chat screenshot, CCTV footage, or a digital invoice presented to the Court

Evidence

- Evidence means testimony (whether oral, documentary, or real) that may be legally received to prove or disprove some facts in dispute.
- It also includes the content of that testimony.

What Does NOT Constitute Legal Evidence?

- The result of an investigation is not legal evidence.
- FIR is not a substantive piece of evidence.
- Confession of a co-accused is not considered evidence.

-
- Statement recorded under Section 313 CrPC/351 BNSS is not evidence.
 - Evidence given in one case cannot be used in another case if different issues are involved. However, parties may agree that evidence taken in one suit shall be treated as evidence in another suit.
 - Affidavit is not evidence unless specifically permitted by law.

Case Laws on Definition of Evidence

- **State of Maharashtra v. Prafull B. Desai (2003 SC)** – The Supreme Court held that the words "means and includes" suggest that the definition of evidence is exhaustive.
- **Nardeep Singh v. State of Punjab (2014 SC)** – The Court reaffirmed that the definition of evidence is exhaustive.

Circumstantial Evidence

- One of the established principles of law is that a witness may lie, but circumstances do not.
- Direct ocular (eye-witness) evidence is not necessary to prove the identity of the person behind a crime.
- Guilt can be proved through circumstantial evidence as well.

Distinction Between Direct and Circumstantial Evidence

- There is no fundamental difference between direct evidence and circumstantial evidence.
- The only difference lies in the mode of proof:
 - ✓ Direct evidence directly establishes the commission of the offense.
 - ✓ Circumstantial evidence establishes the offense indirectly by presenting circumstances that lead to an irresistible inference of guilt.
- However, conviction based purely on circumstantial evidence requires a cautious approach.

Case: Sharad Birdhichand Sarda v. State of Maharashtra (AIR 1984 SC 1622)

Justice S.M. Fazal Ali laid down the conditions that must be fulfilled before a case based on circumstantial evidence can be fully established:

Five Golden Principles:

- The circumstances must be fully proved.
 - ✓ Each fact or circumstance used against the accused must be clearly established.
- All the facts must point only to the guilt of the accused.
 - ✓ The chain of evidence must lead to one conclusion only – that the accused is guilty.
- The circumstances must be conclusive in nature.
 - ✓ The evidence must be strong enough to rule out any other possibility.
- All other possible explanations must be ruled out.
 - ✓ If there is any other reasonable explanation, then the accused cannot be convicted.
- The chain of evidence must be complete.
 - ✓ There should be no missing links in the chain of evidence — it must connect the accused with the crime without any gaps

Definition of Circumstantial Evidence

- Circumstantial evidence is evidence that tends to prove a fact by proving other events or circumstances that provide a reasonable basis for inferring the occurrence of the fact in issue.
- In other words, circumstantial evidence consists of facts from which the court can draw conclusions.

Examples of Circumstantial Evidence

- Evidence that establishes a motive.
- Proof that the accused was preparing for the crime.

Real Evidence

- Definition: Section 3 of the Evidence Act/Section 2 BSA does not explicitly refer to "real evidence."
- Real evidence consists of material objects produced in court, such as:
 - ✓ Blood-stained clothes
 - ✓ Weapons used in the crime
 - ✓ Any physical object relevant to the case

Legal Reference

- Proviso to Section 60 of the Evidence Act/Section 55 BSA states that:
 - ✓ If oral evidence refers to the existence or condition of a material object (other than a document), the court may require the production of that material thing for inspection.
- Such material objects are what we call "real evidence."

Classification of Evidence

Evidence can be classified into the following categories:

- **Direct and Circumstantial Evidence**
 - ✓ Direct Evidence: Evidence that directly proves a fact without requiring inference (e.g., an eyewitness testimony).
 - ✓ Circumstantial Evidence: Evidence that indirectly proves a fact by establishing circumstances that lead to a reasonable inference (e.g., motive, preparation, or presence at the crime scene).
- **Real and Personal Evidence**
 - ✓ Real Evidence: Material objects presented in court (e.g., a murder weapon, blood-stained clothes).
 - ✓ Personal Evidence: Testimony of witnesses (either oral or written statements).
- **Original and Unoriginal Evidence**
 - ✓ Original Evidence: The primary or firsthand source of information (e.g., an original document or the direct testimony of a witness).
 - ✓ Unoriginal Evidence: Hearsay evidence or copies of original documents that may not be admissible unless permitted by law.
- **Substantive and Non-Substantive Evidence**
 - ✓ Substantive Evidence: Evidence that is independently sufficient to prove a fact (e.g., direct testimony of an eyewitness).
 - ✓ Non-Substantive Evidence: Evidence that supports or corroborates substantive evidence but cannot independently prove a fact (e.g., a dying declaration without corroboration).

➤ **Positive and Negative Evidence**

- ✓ Positive Evidence: Evidence that asserts the existence of a fact (e.g., a witness testifying that they saw the accused at the crime scene).
- ✓ Negative Evidence: Evidence that denies the existence of a fact (e.g., a witness stating that the accused was not present at the scene).

➤ **Prosecution Evidence and Defense Evidence**

- ✓ Prosecution Evidence: Evidence presented by the prosecution to establish the guilt of the accused.
- ✓ Defense Evidence: Evidence presented by the defense to prove the innocence or counter the claims of the prosecution.

Aspect	Direct Evidence (DE)	Circumstantial Evidence (CE)
Definition	Based on personal knowledge or direct observation.	Involves an inference drawn from facts.
Inference Requirement	No reasoning is required; it proves the fact directly.	Requires logical reasoning to establish a fact.
Nature	Standalone evidence that directly proves the fact.	Needs multiple supporting facts to prove a point.
Verification Requirement	Does not require independent verification; it is final.	Requires additional supporting evidence.
Objectivity	Highly objective; observation either proves or disproves a point directly.	Subjective; may or may not have occurred based on the situation.
Examples	Eyewitness testimony, video footage, audio recording.	Fingerprints, forensic reports, confessions, or supporting evidence.
Strength of Proof	Considered strongest form of evidence in court.	Provides an approximate level of proof and must be corroborated.

Clause 2(f) – “Fact”

“‘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.”

Explanation:

This is a comprehensive and inclusive definition that covers both:

- Physical facts (objective and observable), and
- Psychological facts (subjective mental conditions).

Sub-clause (i): Physical / Objective Facts

“Anything, state of things, or relation of things, capable of being perceived by the senses”

This includes all facts that are:

- Tangible or perceivable by senses, i.e., can be seen, heard, touched, smelled, or tasted,
- Including:
 - ✓ Physical objects (e.g., a knife, a letter),
 - ✓ Situations (e.g., it was raining, the car was parked outside),
 - ✓ Relations (e.g., A was talking to B, the door was locked from inside).