

# Law of Evidence (BSA)

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# Law of Evidence tells us about

- What are facts-in-issue.
- What facts are relevant.
- What facts are admissible.
- What kind of evidence may be given of a fact which is to be proved.
- Who is to produce such evidence.
- How it is to be given.

# Law of Evidence= An Intro

- What is the enactment that touches almost every other law?
- What is the difference between evidence and proof?
- Suppose A denies the ownership of B over a piece of land. B produces his title-deed for the inspection of the court and two witnesses having knowledge of B gaining ownership over the piece of land. The title-deed and the statements of the witnesses are evidence.
- Evidence is adduced or given or produced to prove
- Evidence means all the legal means, which tend to prove or disprove any fact, the truth of which is submitted for judicial determination

## Evidence + Proof

- Evidence includes arguments because arguments tend to prove or disprove a fact [True/False].
- As a matter of rule, evidence includes opinions of witnesses [True/False].
- Proof means the establishment of facts to the satisfaction of court (True/False).
- Proof signifies the belief of the Court in the existence of a fact (True/False).
- The statements "Do you have proof?"/"I have proof" are correct (True/False)

# Applicability of the BSA

- The BSA is applicable to proceedings before courts martial convened under the Army Act, Air Force Act and the Naval Discipline Act (True/False).
- The BSA does not strictly apply to Proceedings before an Administrative Tribunal (True/False).
- The BSA applies to Proceedings before Arbitrators (True/False).
- The BSA applies to Proceedings before Lok Adalat (True/False).
- The BSA applies to Departmental Disciplinary Proceedings (True/False).

# Oral Evidence

- Investigating PO
- A witness who is dumb gives his answers by writing on a piece of paper for the questions asked during cross-examination. Does his evidence constitute documentary evidence?
- Oral evidence does not always mean words coming from the lips of the witnesses (True/False).
- Can all facts be proved by oral evidence?
- All facts can be proved by oral evidence except the contents of a document (True/False).
- A particular number of witnesses are required for proof of a fact (T/F)
- Evidence has to be weighed but not counted/ so quality not quantity(T/F)

# Documentary Evidence

- “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, and includes electronic and digital records intended to be used, or which may be used, as evidence of that matter.
- Tattoo mark on a human body is a document (True/False).
- Documentary evidence is sub classified into primary and secondary evidence (True/False).

## Direct & Circumstantial

- When the evidence is given of the very fact in issue, i.e. of the matter in controversy, it is called direct evidence (True/False).
- Circumstantial evidence means the evidence of circumstances (True/False).

# Original (Direct) & Hearsay

- Original Evidence relates to the source of knowledge of the witness. If the knowledge is acquired using his or her own senses (by sight/smell touch/taste/hearing) the evidence is original evidence (True/False).
- However, if the knowledge is acquired through some other person, evidence based on such knowledge is called hearsay or derivative or second-hand evidence (True/False).
- The rule that “hearsay evidence is not admissible” does not apply with respect to admission or confession or dying declaration (True/False).

- Caselet 1: Ravi and Pramod, who are cousins, find themselves in a tragic incident when Ravi, in a secluded area, shoots Pramod, seizes Pramod's briefcase, and flees the scene. Shortly after, Pankaj, driving by, notices Pramod lying in blood-stained clothes. He successfully revives Pramod, who, before passing away, asks to be taken to a hospital and tells Pankaj that his cousin, Ravi, shot him and stole his briefcase containing cash. Unfortunately, before Pankaj can transport Pramod to safety, he succumbs to his injuries. The question arises regarding the admissibility of Pankaj's evidence. Is Pankaj's Evidence admissible as it is hearsay since Pankaj has not witnessed Ravi shooting Pramod?

- In the above example, Ravi confesses to his friend Sucharitha about his conduct towards Pramod and also tells that he is responsible for the death of Pramod. Is Sucharitha's evidence about the acknowledgment made by Ravi to Sucharitha, admissible as evidence? If so, does that evidence constitute **ORIGINAL [DIRECT] EVIDENCE OR HEARSAY EVIDENCE?**
- In the example discussed, Pankaj takes Pramod to an hospital and Pramod is safe even after 3 months after the incident. Does the statement made by Pankaj that "Ravi, my cousin tried to kill me and has also taken away my brief case containing cash" constitute Dying Declaration?

# Substantive & Corroborative Evidence

- An item (one) of substantive evidence can form the basis of the decision(T/F)
- Even 10 items of corroborative evidence cannot form the basis of a decision(T/F)

# Corroborative Evidence

**Substantive: one item is enough for a judgment**

**Corroborative: Even 10 items not enough**

1. FIR
2. (Dying Declaration) Statement by a person who survived
3. Statements recorded by Police in the course of investigation
4. Test Identification Parade Evidence
5. Sniffer dog's evidence
6. Admissions in criminal cases
7. Inquest Report by PO/JM/EM/
8. Expert's opinion
9. Confession of a Co-accused

# MOTIVE

- Is motive a determining factor in fixing liability under civil law or criminal law?
- Evidence pertaining to motive can be adduced (True/False).

# Relevancy & Admissibility

# Logical Relevancy & Legal Relevancy

- Relevancy means *connection between one fact and another.*
- There are two kinds of relevancy; *(1) Logical Relevancy, and (2) Legal Relevancy.*
- *Relevancy* (literally) *is identified with logical relevancy*
- *Admissibility* (literally) *is identified with legal relevancy*

# Confession to a Police officer [S.23(1)]

- A confession made to a Police officer *is logically relevant* but *not legally relevant (not admissible)*

# Confession made in Police Custody [S.23(2)]

- Confession made to anyone in police custody is inadmissible.
- However, a confession made in the immediate presence of a magistrate is not affected by Section 23.
- If it is made to a police officer, it would come within section 23 (1) and will be **totally inadmissible even though it is made in the presence of a magistrate** and section 23 (2) would not apply.

# Privileged communications (Competency & Compellability)

- A communication made by an husband to his wife or a communication made by a client to his lawyer **are logically relevant** but are **not legally relevant (not admissible)**
- Can the spouse (wife/husband) of the party be a competent witness?
- Can a wife or husband be compelled to disclose communication made by the other spouse?
- What in case communication made by the spouse (wife or husband) revealed voluntarily—can it be taken on record by the Court?

# Presumption as to legitimacy

- W married HB on 2-3-2020. HB is a businessman, and his business does not allow him to leave their place, Hyderabad and his wife has been with him all the time except for a few days occasionally. On 6-6-2023, W gives birth to a child, who does not resemble HB, but resembles his neighbor. **HB does not want to be treated as a father of the child and wishes to challenge paternity** of the child by adducing evidence that he is not the true father. **Is HB permitted to adduce evidence that he is not the true father?**

# Relevancy of character

- The word 'character' includes both reputation and disposition. Reputation means the general credit of the person among the public but disposition means the inherent qualities of a person.
- *In criminal cases, previous good character relevant*  
**(Section 47)**
- *Previous bad character not relevant, except in reply*  
**(S.49)**

# Relevancy of character in civil proceedings irrelevant(S 46)

- In civil cases, the fact that the character of any person concerned is such as to render probable or improbable any character imputed to him, is irrelevant.
- **Character evidence admissible if character itself is in issue: In a suit for libel, if the libel consisted in attributing bad qualities**, to the plaintiff and the defendant justifies the existence of these qualities, this would be a fact in issue and evidence of character may be led. **The character of a female chastity has been received in evidence in action for breach of promise for marriage.** (Divorce-cruelty)

## Character as a Fact in Issue:

- In certain legal scenarios, particularly under the Bharatiya Sakshya Adhiniyam (BSA), an individual's character can transcend its usual evidentiary limitations and become a central fact in issue, thereby gaining direct relevance to the case. This principle is most prominently observed in defamation cases, where the plaintiff's character often forms a crucial element of the dispute.

# Relevancy & Admissibility

- **Relevancy** (literally) **is identified with logical relevancy** because by using logic, it is said that a fact is connected to another fact.
- **Admissibility** (literally) **is identified with legal relevancy** because it is law which decides whether a fact is admissible as evidence in courts or not.
- ***This difference prevails in other systems but not in our system.***
- ***According to our Indian Evidence Act, what is admissible is relevant and what is relevant is admissible.***

# ADMISSIONS & CONFESSIONS

## Underlying Principles

1. Confession or Admission *reduces the burden of proof of other party.*
2. *None makes a false statement against his own interest.*
3. An Admission or Confession made is a good piece of *evidence against the maker.*

That part which leads to the discovery is admissible

- **EXAMPLE:** An accused in police custody stated to the police officer that *“I stabbed Kamal with a knife. I hid the knife in the tamarind box”*
- The first sentence of the statement i.e. *“ I stabbed Kamal with a knife”*. **Must be omitted and cannot be proved**. The sentence *“I hid the knife in the tamarind box”* will be admissible if on *the basis of the information the knife is recovered.*

# Confession of a co-accused

- The court takes into consideration the confession of a co-accused if the following conditions are satisfied:-
  1. There must be **joint trial of two or more persons.**
  2. The joint trial must be for the **same offence.**
  3. The **statement must amount to confession.**
  4. The confession **must affect himself and any other accused** person or persons.

	<b>Accused as Witness</b>	<b>Accused as Accused</b>
1	Oath is administered	Oath is not administered
2	Subject to Witnesses Examinations including Cross-Examination	Not Subject to Witnesses Examinations including Cross-Examination
3	Liable for giving False Evidence if gives False Evidence	Not Liable for giving False Evidence if gives False Evidence

## Example 1:

- Consider a case where A, B, C, and D are accused of murdering Sheena. If B provides evidence against himself and the other accused, his testimony can fall into any of these three categories based on his position at the time of giving evidence.
- **Co-accused's Evidence:** When an accused, like B, gives evidence against himself and others during the trial proceedings while still in the capacity of an accused, this constitutes co-accused's evidence.
- **Accomplice's Evidence:** If B chooses to become a witness and testifies against himself and the others in this capacity, his evidence is classified as accomplice's evidence.
- **Approver's Evidence:** If B turns approver and provides evidence against himself and the other accused, his testimony is considered approver's evidence.
- Co-accused= capacity of accused
- Accomplice= capacity of a witness=Defence Witness
- Approver= capacity of a witness=Prosecution Witness

# Kashmira Singh v. State of M.P. (1952):

- Kashmira, a former Assistant Food Procurement Inspector, was implicated in the murder of a Food Officer's child following his termination from service. The prosecution alleged that Kashmira, motivated by vengeance, orchestrated the kidnapping and murder of the officer's five-year-old son with the help of his nephew Pritipal and friend Gurbachan. All three were charged, but the case pivoted on Gurbachan's confession, which implicated both himself and Kashmira. Based primarily on this confession, both men were convicted and sentenced to death. While Gurbachan did not appeal and was subsequently executed, Kashmira's appeal reached the Supreme Court. In a landmark decision, the Court acquitted Kashmira, highlighting a crucial distinction in evidence law: while Gurbachan's confession was substantive evidence against himself, it constituted only corroborative evidence against Kashmira as a co-accused. The Court emphasized that a conviction cannot be sustained solely on an uncorroborated confession of a co-accused, underscoring the need for additional supporting evidence.

	<b>Admission</b>	<b>Confession</b>
1	An admission is a general term which suggests an inference as to any fact in issue or a relevant fact.	A confession is a statement made by an accused person that he committed an offence.
2	Admissions are generally used in civil proceedings. Yet they may also be used in criminal proceedings.	Confession finds place in criminal proceedings only.
3	An admission may be self-harming or self-serving.	A confession always goes against the person making it, so confession is always self-harming.
4	Admission need not necessarily be made by a party to a case. It can be made by any person mentioned u/Ss 16 to 18.	A confession can be only by the accused.
5	An admission is not a conclusive proof of the matter admitted but may operate as an estoppel.	A confession is conclusive in itself of the matter confessed.
6	An admission is admissible even if it is not made voluntarily, in certain cases.	A confession must always be voluntary.
7	An admission of one of the several co-plaintiffs or co-defendants is no evidence against others.	A confession of co-accused can be taken into consideration against other co-accused.

- **Pakala Narayana Swamy v Emperor (1939):** In the case of Pakala Narayana Swamy Vs. Emperor (1939), P.N. Swamy was charged with the murder of Kurri Nuka Raju, whose body was discovered in a steel trunk in a third-class compartment at Puri Railway Station on March 23, 1937. Prior to his death, on March 20, K.N. Raju, who lived in Pitapuram, received a letter from P.N. Swamy's wife inviting him to Berhampuram to collect a payment owed to him. K.N. Raju shared this letter with his wife, informing her of his intention to visit P.N. Swamy to receive the money. A key question in the case was whether K.N. Raju's statement to his wife about going to P.N. Swamy for the payment could be considered a dying declaration. The court ruled that this statement was admissible as a dying declaration, as it provided important context regarding the circumstances leading to K.N. Raju's death.

	<b>English Law</b>	<b>Indian Law</b>
1	Expectation of Death: Requires the declaration to be made under the expectation of imminent death.	Does not necessitate an expectation of death for the declaration to be valid.
2	Timing of Declaration: Must be made after the cause of death has occurred.	Can be made even before the cause of death, allowing for a broader range of admissible statements.
3	Declarant's Belief in Impending Death: The declarant must believe their death is imminent when making the statement.	No requirement for the declarant to believe in their imminent death.
4	Applicability in Legal Proceedings: Dying declarations are admissible only in criminal cases.	Allows for the use of dying declarations in both civil and criminal proceedings.
5	Competency of the Declarant: The person making the declaration must be competent.	Does not strictly require the declarant to be legally competent.

# Burden of Proof in Civil & Criminal cases

1. In criminal cases, the burden of proof is on the prosecution. In civil cases it is on both the parties.
2. In criminal cases, the guilt must be proved beyond reasonable doubt. In civil cases proof is enough.
3. In civil cases, the matter is decided by preponderance of probabilities. But in criminal cases proof beyond reasonable doubt is required.

# He who wishes to prove the dependent fact must prove the main fact (Sec. 107)

If the existence of a fact is dependent on the existence of another fact, that another fact must also be proved by 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 document which is lost. A must first prove that the document has been lost.

# He who claims exception has to prove (Sec.108)

When an accused claims that his case comes within an exception like insanity, intoxication, private defence etc., the burden of proving such exception is on the accused.

## Illustration :

- (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 proving his unsoundness at that time is on A.

# He who has special knowledge of a fact must prove(S.109)

Section 109 deals with the burden of proving a fact within the special knowledge of a particular person. It says that when any fact is specially within the knowledge of a person then the burden of proving that fact is upon him.

## **Illustration :**

- (a) A is charged with travelling on a train without a ticket. The burden of proving that he had a ticket lies upon A for it is a matter within A's special knowledge.

# PRESUMPTIONS

- Presumptions of fact = May Presume
- Presumptions of Law:-
  - (a) Rebuttable presumptions of law = Shall Presume
  - (b) Irrebuttable presumptions of law = Conclusive proof

## May Presume

- Discretion to presume or not to presume
- Discretion to presume in favour of this party or that party

## Shall Presume/ Conclusive Proof

- Obligated to presume
- No discretion but to presume in the way directed by law

**May  
Presume/Shall  
Presume**

**Rebuttable=**  
**Disprovable**  
**(Presumption**  
**drawn can be**  
**disproved)**

**Conclusive  
Proof**

**Irrebuttable=**  
**Cannot be**  
**disproved**

# Distinction Between an Expert and an Ordinary Witness

- The distinction between an expert and an ordinary witness lies primarily in the nature of their testimony. An ordinary witness is required to testify solely about what they personally observed or experienced, whereas an expert's evidence extends beyond mere observation; they are permitted to provide informed opinions on the facts at hand. For example, a medical professional may offer their expert opinion regarding the cause of an individual's death. In a case where the question is whether the death of individual A was caused by the administration of Potassium Cyanide, the opinions of medical experts regarding the symptoms associated with Potassium Cyanide poisoning, which are believed to have contributed to A's death, are considered highly relevant. This ability to provide expert opinions allows for a deeper understanding of complex issues that may not be readily apparent to ordinary witnesses.

# Lie-Detector Test / Narco-Analysis/ Brain-Mapping

- The use of advanced investigative techniques such as lie detector tests, narco-analysis, and brain mapping represents a complex intersection of science, ethics, and law in the realm of criminal investigations. These methods, while potentially offering insights into an individual's knowledge or involvement in a crime, occupy a contentious position in the Indian legal system. Crucially, the results obtained from these tests are not admissible as evidence in Indian courts, reflecting concerns about their reliability and the potential infringement on an individual's rights against self-incrimination. This legal stance underscores the principle that evidence must be obtained through means that respect both the rights of the accused and the integrity of the judicial process. Furthermore, the Indian legal framework mandates that these tests cannot be conducted without the explicit consent of the accused or suspect, emphasizing the importance of voluntary participation and personal autonomy.

# Estoppel/ Promissory Estoppel

- A is a cloth merchant selling ladies' wear in Hyderabad. He visits Surat to make purchases for his shop. He purchases cloth worth Rs. 15,65,000 from PQR Co. and takes the parcel, packed by PQR Co., to a transporter, XYZ Co., and asks them to send the parcel to Hyderabad immediately. When asked by the transporter to mention the value of the goods in the parcel, A mentions the value as Rs. 10,65,000. The parcel is lost in transit. Now A claims Rs. 15,65,000 from the transporter, saying that as the actual value of the goods lost in transit and he can adduce evidence to that effect. Can A claim Rs. 15,65,000?
- **Promissory Estoppel under Indian Law:** The principle of promissory estoppel acts as a shield to protect those who rely on promises made in good faith. Promissory estoppel prevents a promisor (the one making the promise) from going back on their word if the promisee (the one to whom the promise is made) has acted upon the promise to their detriment.

- The competition among state governments to attract new industries has led to promises of concessions and tax holidays. If an industrialist,  $T$ , establishes his industry in response to a promised tax holiday for a period of five years, the state government cannot retract its promise once the industry is established. However, while the state government can withdraw the scheme at any time, such action would only affect future industrialists and would not impact those who have already established their industries in response to the initial incentives.

# Determining a Witness as PW/DW

# Competency of a Witness

- Can a child aged 6 years be a competent witness?
- Can an accused be a competent witness?
- Can a relative/rival/enemy of a party be a competent witness?
- Can the spouse (wife/husband) of the party be a competent witness?

# Examination-in-Chief:

- Examination-in-Chief, a crucial stage in witness testimony under Indian law, refers to the initial questioning of a witness by the party who has called them to testify. This process is designed to elicit favorable testimony that supports the examining party's case. During this phase, the examining party or their advocate typically asks straightforward questions, avoiding tricky or leading inquiries, to allow the witness to present their account in a manner that establishes the case in the party's favor. The scope of questioning is limited to relevant matters, and leading questions are generally prohibited to prevent undue influence on the witness's testimony. Notably, the Code of Civil Procedure amendment in 2002 streamlined this process for civil cases by allowing the submission of witness statements through affidavits, effectively dispensing with the traditional oral examination-in-chief.

# Questions that can be asked in Cross Examination. -

- In the course of cross examination, a witness may be asked the following questions:
  1. Any leading question.
  2. Any question to test his truthfulness.
  3. Any question as to his previous written statements.
  4. Any questions to discover who he is and what his position in life is.
  5. Any relevant question which need not be confined to facts stated in the examination in chief.
  6. Any question to shake his credit by injuring his character although his answer might implicate him in a crime.

## Re-examination:

- Re-examination is the final phase of witness testimony, conducted by the party who initially called the witness and performed the examination-in-chief. This stage serves a crucial purpose in the legal process by allowing the original examining party to address and clarify any discrepancies or inconsistencies that may have emerged during cross-examination. The primary objective is to reconcile contradictions and provide explanations for any apparent inconsistencies in the witness's testimony. As a general rule, re-examination is limited to matters that arose during cross-examination, and the introduction of new topics is typically prohibited. However, the law recognizes certain exceptions to this rule: new points may be introduced either with the explicit permission of the court or with the consent of the opposing party.

## Re-cross examination

- Re-cross examination is a critical, albeit less common, phase in the witness examination process under Indian legal proceedings. This stage becomes available when new information or points are introduced during re-examination, either with the court's permission or the consent of the opposing party. The principle underlying re-cross examination is rooted in maintaining procedural fairness and ensuring that both parties have equal opportunities to scrutinize all aspects of a witness's testimony. When a new matter is brought up in re-examination, it potentially introduces elements that the opposing party hasn't had the chance to challenge or explore. Re-cross examination provides this opportunity, allowing the opposing counsel to question the witness specifically on these newly introduced points.

# HOSTILE WITNESS

- The term "hostile witness" is not explicitly defined in the BSA, but it refers to a witness whose demeanor during testimony indicates a reluctance to tell the truth. In legal terms, a hostile witness is one who is allowed by the court to be cross-examined by the party that originally called them. This permission is granted at the court's discretion under Section 157 of the BSA. When such permission is granted, the party that called the witness can pose questions typically reserved for cross-examination, thereby challenging the witness's credibility. The court's discretion in this matter is broad and should be exercised whenever the witness's behavior—such as their demeanor, attitude, or the nature of their responses—suggests that allowing cross-examination is necessary to uncover the truth and ensure justice. Importantly, the court can grant this permission at any stage of the witness's examination, even after the opposing party has completed their cross-examination.