

THE BHARATIYA SAKSHYA ADHINIYAM 2023

Secondary Stage: Phase 2
Classes XI And XII



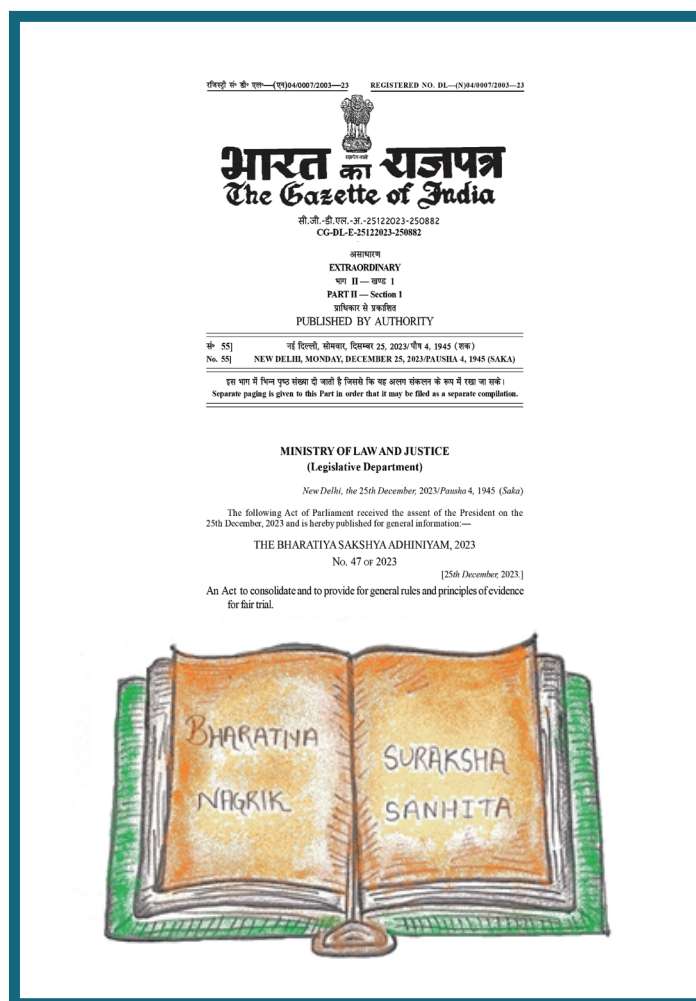
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THE BHARATIYA SAKSHYA ADHINIYAM, 2023



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राष्ट्रीय शैक्षिक अनुसंधान और प्रशिक्षण परिषद्
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You might have heard of the incidents of fraud, robbery and about the various proceedings through which legal cases are solved. Did you wonder what must have helped to solve the cases? How the evidences are gathered or how are these linked to different aspects of theft or robbery? You will learn about Bharatiya Sakshya Adhiniyam (BSA) and its different provisions and facts. This will also help you to understand what constitutes as “evidences”. Let us learn and act responsibly, particularly in the present digital era.

Learning outcomes



- Understand *Bharatiya Sakshya Adhiniyam*, (BSA) 2023 and its salient features.
- Understand the basics of evidence law, including types of evidence like direct, circumstantial, and hearsay.
- Explores how technology influences evidence collection, preservation, and presentation in legal settings.
- Practice applying evidence law knowledge to analyse cases and assess the admissibility of evidence.
- When the reader is caught in a situation where they are a witness to or victim of a crime, the knowledge of this module will be a major guiding factor in strengthening their case with the help of appropriate evidence so collected.



Evolution of Evidence Law in India



The word “evidence” is derived from the Latin word *evidens* or *evidere*, which means “to show clearly; to make clear to the sight; to discover clearly; to make plainly certain; to ascertain; to prove”.

The Indian Evidence Act (IEA), originally passed by the Imperial Legislative Council in 1872, during the British Raj, provides for laws relating to evidence and assist courts in establishing facts of the case brought before it and pronouncing judgments based on such facts. It falls within the category of ‘adjective law’ and it defines the pleading and methodology by which the substantive and procedural law are operationalised. The Act governed all court processes in India, both civil and criminal.

As per BSA, “evidence” means and includes—

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

The definitions of document and evidence have become wider to include electronic record and digital records. Anything done in electronic or digital mode will be considered as document and will be recognised as evidence. The definition of ‘Evidence’ empowers the courts to examine witnesses during trial by way of video conference.



Fig.1. Why do we need Evidence Law?



Bharatiya Sakshya Adhiniyam, 2023

The aim of BSA is to consolidate and to provide general rules and principles as evidence for fair trial. The Act includes various forward-looking provisions, such as, expansion of the definition of evidence to include electronic and digital records, expansion of definition of primary evidence, provision for admissibility of electronic or digital records as evidence, exclusion of privileged communication between the Ministers and the President of India from the purview of Courts, provision of certificate for handling of electronic and digital evidence, etc. In BSA, there are total 170 sections whereas there were a total of 167 sections in the Indian Evidence Act (IEA).



Rationale



The law of evidence is a fundamental part of our legal system which is primarily based on the principle that an accused person is presumed to be innocent until proven guilty. It provides the rules and guidelines for determining what evidence can be presented in court, how it should be presented, and how it should be evaluated. Here are several reasons why evidence law is essential:

Relevant, authentic, and obtained legally, evidence law promotes the reliability and accuracy of the information presented in court. This helps to ensure that judicial decisions are based on trustworthy and verifiable facts.

- **Ensures Fairness in Legal Proceedings:** Evidence law ensures that both parties in a legal dispute have a fair opportunity to present their case. By establishing clear rules for what can be considered as evidence, it helps to prevent biased or irrelevant information from influencing the outcome of a trial.



- **Protects the Rights of Individuals:** The law of evidence protects the rights of individuals by setting standards for how evidence must be obtained and presented. For example, it prohibits the use of evidence obtained through coercion or illegal means, ensuring that the legal process respects the rights of all parties involved.
- **Promotes Reliability and Accuracy:** By requiring that evidence be relevant, authentic, and obtained legally, evidence law promotes the reliability and accuracy of the information presented in court. This helps to ensure that judicial decisions are based on trustworthy and verifiable facts.
- **Enhances Efficiency in the Judicial System:** Clear rules of evidence streamline the judicial process by setting out what is admissible and what is not. This helps to avoid unnecessary delays and ensures that trials proceed in an orderly and efficient manner.
- **Balances Competing Interests:** In legal proceedings, there are often competing interests at play. Evidence law helps to balance these interests by ensuring that the rights of the accused are protected while also allowing the prosecution to present a compelling case. This balance is crucial for maintaining justice and fairness.
- **Adapts to Technological Advances:** As technology evolves, so does the nature of evidence. Evidence law should be designed to adapt to these changes by incorporating rules for new types of evidence, such as electronic records and digital communications. This adaptability ensures that the legal system can effectively handle modern forms of evidence.

Highlights of BSA



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



- It seeks to put limits on the facts which are admissible and its certification as such in the Courts.
- It includes electronic and digital signature.
- In BSA the references to colonial terms, such as, 'Parliament of the United Kingdom', 'Provincial Act', 'London Gazette', 'Commonwealth', 'Privy Council', 'Queen's Printer', 'Her Majesty', colonial proclamations and orders have been removed. Archaic terms like '*vakil*', 'pleader', 'barrister' have been replaced with 'advocate'. Terms like 'lunatic' have also been replaced with more sensitive terminologies, like 'person of unsound mind'.

Classification of BSA

1

Relevancy of Facts
Sections 3–50

2

Facts which need not be
proved Sections 51–103

3

Production and effect of
evidence Sections 104–170



Important procedures under BNSS



- **Use of Technology and Digital Means in Processing Evidence:** The definition of 'documents' has been expanded to include electronic or digital records on emails, server logs, documents on computers, laptop or Smartphone, messages, websites, location evidence and voice mail messages stored on digital devices. Further, the definition of 'evidence' has been expanded to include any information given electronically which will enable the appearance of witnesses, accused, experts and victims through electronic means.
- **Primary Evidence:** The definition of primary evidence has been expanded to include electronic or digital record which is created or stored, electronic or digital record produced from proper custody, video recording simultaneously stored in electronic form and transmitted or broadcast to another; and electronic or digital record stored in multiple storage spaces in a computer resource.
- **Secondary Evidence:** The scope of secondary evidence has been expanded to include copies made from original by mechanical processes, copies made from or compared with the original, counterparts of documents as against the parties who did not execute them and oral accounts of the contents of a document given by some person who has himself seen it. It will also include oral admission when genuineness of the document itself is in question.

Did you know that certain communications are considered privileged communication and cannot be disclosed in court? For example, communication between a lawyer and their client, or between spouses, are protected. This ensures confidentiality and trust in sensitive relationships.

Primary Evidence is the highest quality of evidence and is considered the most reliable. It refers to the original documents or materials produced before the court for inspection. This type of evidence is directly presented to the court without any intermediaries. Example: The original contract signed between two parties in a business deal is primary evidence.

Secondary evidence, as the name suggests, is used when primary evidence is unavailable. It includes copies or substitutes of the original documents or materials. Secondary evidence is acceptable in court under specific circumstances when primary evidence cannot be obtained. Example: A photocopy of the original contract, when the original document is lost or destroyed, is considered secondary evidence.



Further, secondary evidence may be given when the existence, condition or content of the original is admitted in writing.

Evidence is admissible when it is deemed proper to be received by the court of law.

- **Admissibility of Electronic or Digital Record:** A new section has been added to provide for admissibility of electronic or digital record.
- **Electronic Records:** A certificate has been added in the schedule to authenticate and verify the contents of electronic records with riders that the conditions that computer must be regularly in use for regular activities by person having lawful control over it, data was regularly fed in it, computer was working properly, etc.
- **Privileged communication between Ministers and President:** A *proviso* has been added to bar Courts from inquiring into any privileged communication between Ministers and the President of India.
- **Experts:** BSA enlarges the definition of the experts by adding “foreign law, science or art” and “or any other field” to the definition who may give their opinion by adding to “foreign law, science or art.”

Fact, Fact in Issue and Relevant Fact

FACTS

As per BSA, “fact” means and includes—

- anything, state of things, or relation of things, capable of being perceived by the senses;
- any mental condition of which any person is conscious.

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

Did you know that the doctrine of estoppel prevents a person from contradicting what they have previously stated or agreed to if someone else has relied on that statement? For example, if a landlord acknowledges a person as a tenant and then tries to deny it in court, the landlord is estopped [is this ok?] from doing so.



A fact is considered relevant to another fact when they are connected in a way that matters according to the rules in the Act about relevant facts. Relevancy means there's a connection, and this connection helps the judge decide if the fact is true or not in the case being discussed.

Example- Imagine a legal case where a person is accused of stealing a valuable item from a store. In this case:

- The “fact” in question would be the presence of the stolen item in the accused person’s possession.
- The “fact in issue” would be whether the accused person actually stole the item.
- The “relevancy” of the fact that the item was found in the accused person’s possession is determined by how it connects to the overall case. If there is evidence that the accused person was seen taking the item without permission or if the item was found hidden in their belongings, this fact becomes relevant to establishing their guilt or innocence in the theft case.

Proved, Disproved and Not Proved Facts

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

A fact is said to be “disproved” when, after considering the matters before it, the court either believed 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.

A fact is said to be “not proved” when it is neither proved nor disproved.” It means neither the fact is proved with certainty nor the fact is believed to exist. In other words, the man of ordinary prudence neither believes that the fact exists nor he believes that the fact does not exist.



Burden of Proof

As per BSA any person who wants a court to make a decision in their favour regarding any legal right or liability must prove the facts they are asserting. This obligation to prove the existence of these facts is known as the burden of proof.

The BSA further clarifies that the burden of proof lies upon the person who would lose the case if no evidence were presented. In other words, the burden of proof falls on the party that initiates a lawsuit or any legal proceeding.

Example: If a person files a lawsuit claiming that their neighbour damaged their property, the burden of proof is on the person who filed the lawsuit. They must provide evidence to support their claim. If they cannot provide sufficient evidence, the court will not rule in their favour.

Motive, Preparation and Conduct

Motive: Motive is the driving force that pushes someone to act. It's what encourages or persuades them to do something. Evidence of motive is crucial because people usually don't act without a reason. This evidence becomes especially important when a case relies heavily on indirect clues or circumstantial evidence. For example, in a burglary case where valuable items were stolen from a house, the motive of the accused—such as financial distress or revenge—can help establish why the crime occurred.

Did you know that the **character of a person** is generally not admissible to prove their conduct? However, there are certain exceptions. For instance, in cases of defamation, the character of the person defamed can be relevant, and in criminal cases, the accused can introduce evidence of good character as part of their defence.

Preparation: When someone plans to commit a crime, they often take certain steps or actions to prepare for it. This preparation can include acquiring tools or substances needed to carry out the crime. For example, if an individual intends to poison someone (let's call them Y) with a toxic substance, they would need to obtain that poison beforehand.

Now, in legal terms, evidence of preparation refers to the actions or steps taken by the person before committing the actual crime. It becomes crucial in criminal investigations because it helps establish a connection



between the planning phase and the execution of the crime. In our example, if Y is found in possession of the poison or evidence that they acquired it, it strengthens the case against them for planning and carrying out the crime.

Conduct: Under BSA, the conduct of specific individuals holds crucial importance in legal proceedings. For instance, in a case involving financial fraud, the conduct of the accused party's authorized agent, such as their financial advisor, becomes relevant. The advisor's conduct, including their advice, transactions, and communication with the accused, can provide insights into the alleged fraud and the extent of the agent's involvement. Similarly, the conduct of the victim, like their response to the fraud, interactions with the accused, and efforts to address the issue, helps in understanding the impact and circumstances surrounding the crime.

Admissibility of Evidence

Admissibility of evidence refers to whether something can be accepted or used as evidence in a court of law. Evidence includes documents, testimony, or physical objects presented to prove or disprove facts in a trial. Not all evidence is allowed in court; only reliable and relevant evidence is considered admissible. This means that the evidence must be trustworthy and directly related to the case being tried. The court carefully evaluates the admissibility of evidence to ensure that only appropriate and credible information is used to make legal decisions.

For example, in a theft case, if the prosecution wants to submit security camera footage showing the accused at the crime scene, the court will assess whether the footage meets certain criteria. This includes verifying the authenticity of the footage, ensuring it is relevant to the case (i.e., shows the accused committing the theft), and confirming that it was legally obtained. If the court determines that the footage meets these criteria and is reliable, it will be deemed admissible and can be used as evidence during the trial.

Did you know that a **dying declaration**— a statement made by a person who believes they are about to die, is considered strong evidence under the Indian Evidence Act? The rationale is that a person on their deathbed is unlikely to lie.

Did you know that statements made as part of the same transaction as the crime are admissible as evidence? This principle, known as “res gestae” allows statements that are spontaneous and contemporaneous with the event to be considered reliable. For example, a cry for help during an attack can be used as evidence in court.



Admissions and Confessions



Admission is defined as a statement made by witnesses, which shows inference to any fact in issue or relevant fact in a case. Admission can be in the form of a document, oral statement or may be contained in an electronic form. Statements made by party to the proceeding, or by an agent to any such party, whom the Court regards, under the circumstances of the case, as expressly or impliedly authorized by him to make them, are admissions.

Did you know that confessions made to police officers are generally not admissible in court under the Indian Evidence Act? This is to prevent coercion and ensure that confessions are given voluntarily. However, if a confession leads to the discovery of a fact, that fact can be used as evidence.

Generally speaking, an admission by the accused in a criminal case admitting his guilt is known as confession. The inference that the statement should suggest should be that he is guilty of the crime.

For example, in a theft case, Jhuma is accused of stealing a valuable item. During the trial, a person who was there at the time of the theft, makes a statement saying, "Yes, I saw this girl (referring to Jhuma) taking the item from the store." This statement is an admission because it directly relates to the fact in question, which is whether Jhuma committed the theft.

Now, if Jhuma herself says, "Yes, I took the item," that would be a confession. It's an admission of guilt and is considered strong evidence against her in the case.

Witness



A *witness* is someone who has personally seen or experienced an event, such as a crime, accident, or any significant occurrence.

Types of Witness

- **Prosecution Witness:** This witness is brought in by the prosecution to support their case. For example, a person who saw the crime and can describe what happened.
- **Defence Witness:** This witness is brought in by the defence to help prove the accused innocent.



- **Eye Witness:** Someone who was present at the scene and saw the event firsthand.
- **Expert Witness:** A specialist with professional, educational, or technical knowledge about a particular subject relevant to the case. For example, a forensic scientist who can explain DNA evidence.
- **Hostile Witness:** A witness whose statements suggest they are not truthful or are reluctant to reveal the truth. For example, a witness who keeps changing their story under oath.
- **Child Witness:** A child who understands the questions asked by the court and can give rational answers.
- **Chance Witness:** A person who was at the crime scene by coincidence. For example, someone passing by who happened to see the event unfold.
- **Accomplice Witness:** A person involved in the crime who testifies about it. For example, a thief who cooperates with the police and testifies against their partners in crime.

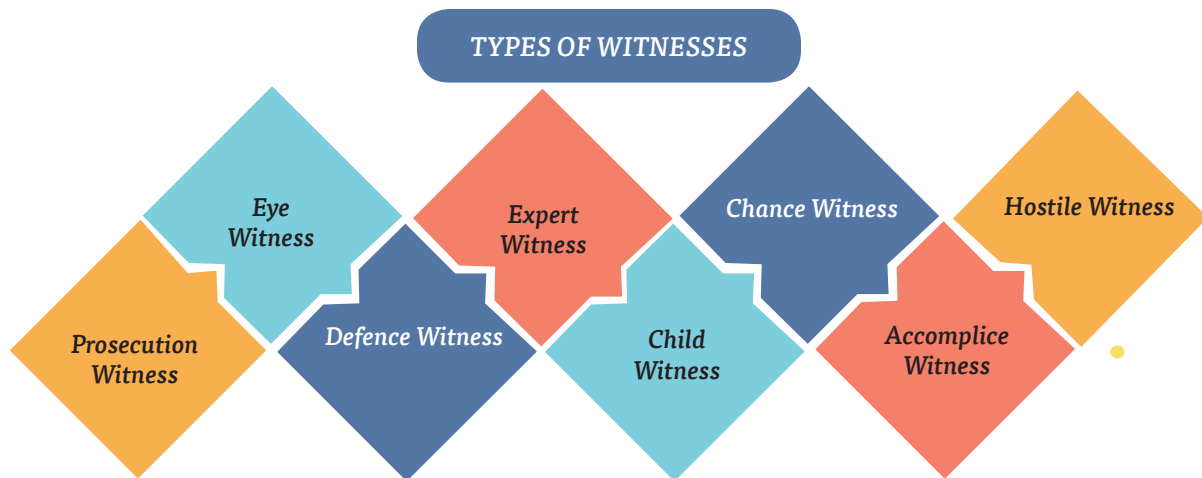


Fig 2: Types of Witnesses



Expert evidence



An **expert witness** is someone who has specialized knowledge or skills in a particular field that is not directly related to the case but can help the court understand complex issues. These experts provide their professional opinions to give the court a broader perspective and assist in delivering justice.

When the court needs to form an opinion on a specific topic, such as, foreign law, science, art, handwriting, or fingerprints, it relies on the opinions of experts in those areas. The opinions of these especially skilled individuals are considered relevant facts. These experts are called upon to explain technical or specialised information that is beyond the average person's understanding.

Did you know that **expert opinions** are admissible in court? For example, an expert's opinion on handwriting, fingerprints, or even a doctor's opinion on medical matters can be critical in resolving a case. This allows the court to make informed decisions based on specialised knowledge.

Electronic Records



Definition of Document: Under the BSA, the definition of “document” includes electronic and digital records. This means that emails, server logs, documents on computers, laptops, or Smartphone, messages, websites, location evidence, and voicemail messages stored on digital devices are all considered documents.

To qualify as a “document” or “documentary evidence” under the BSA, it's not necessary for the information to be expressed through letters, figures, or marks. Any information recorded by any means on any substance will qualify as a document.

Definition of Evidence: The BSA also includes electronic information as evidence. Statements given electronically by witnesses are treated as evidence, just like oral statements.

Primary Evidence: Primary evidence includes original documents and certain electronic and digital records.

Did you know that some **facts are presumed** by the court without needing proof? For instance, if a person hasn't been heard of for seven years by those who would naturally hear of them, the law presumes they are dead unless proven otherwise.



The BSA provides examples where electronic records are considered primary evidence:

1. **Multiple Files:** If an electronic record is created or stored in multiple files, each file is primary evidence.
2. **Proper Custody:** If an electronic record is produced from proper custody and is not disputed, it is primary evidence.
3. **Simultaneous Storage:** If a video recording is stored electronically and also transmitted or transferred elsewhere, each stored recording is primary evidence.
4. **Multiple Storage Spaces:** If an electronic record is stored in multiple places within a computer, each storage space, including temporary files, is primary evidence.

Admissibility of Electronic Records: The BSA provides a specified format for certificate to be submitted along with electronic evidence each time it is presented for admission in court. This certificate helps verify the authenticity of the electronic evidence.

Examination-in-chief, Re-examination and Cross Examination

The party on whom the burden of proof lies is responsible for beginning the examination of witnesses. This process is crucial in presenting and challenging evidence in court. The steps involved are as follows:

1. **Examination-in-Chief:** This is the initial examination of a witness by the party who called them. The purpose is to elicit facts that support the case of the party who bears the burden of proof.
2. **Cross-Examination:** After the Examination-in-Chief, the opposing party gets the opportunity to question the witness. The aim here is to challenge the credibility and reliability of the testimony given during the Examination-in-Chief.
3. **Re-Examination:** Following the Cross-Examination, the party who initially called the witness can conduct a Re-Examination. This step is intended to clarify or explain any answers given during the

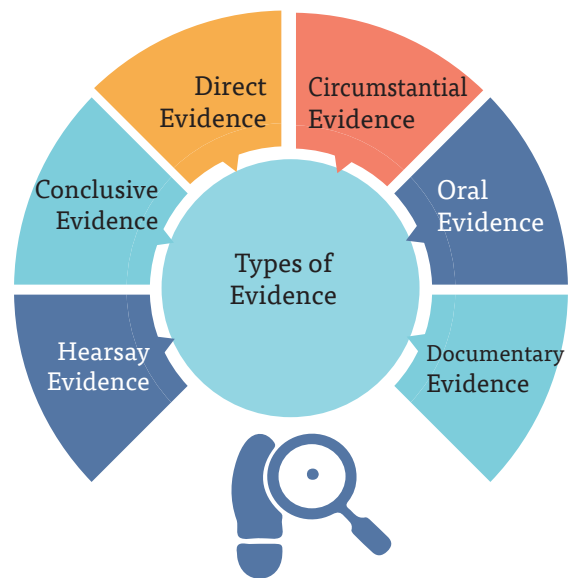
Did you know that **leading questions**, which suggest the answer, are generally not allowed during direct examination but are permitted during cross-examination? This distinction helps ensure that witnesses provide their own testimony rather than merely agreeing with suggestions from the examining lawyer.



Cross-Examination that might have undermined the witness' initial testimony.

Types of Evidence

1. **Direct Evidence:** Direct evidence means the fact which without the intervention of any other fact proves the existence of a fact in issue.
2. **Oral Evidence:** Oral evidence renders to the evidence that is mainly words spoken by mouth. It is adequate to be proved without the support of any documentary evidence, provided it has credibility.
3. **Documentary Evidence:** Documentary evidence is the evidence that mentions any issue described or expressed upon any material by way of letters, figures or marks or by more than one of the ways which can be used for recording the issue. Such evidence is presented in the form of a document to prove a disputed fact in court.
4. **Circumstantial Evidence:** Circumstantial evidence is the testimony of a witness to other relevant facts from which the fact in issue may be inferred.
5. **Hearsay Evidence:** Hearsay evidence is also called derivative or second-hand evidence. It is the testimony of the witness as to statements made out of court which are offered as evidence of their own truth.
6. **Conclusive Evidence:** Refers to a type of evidence that, when presented in court, is considered to be final and conclusive.



7. Quiz

1. **Who are considered experts in Evidence Law?**

- (a) Lawyers representing the parties
- (b) Any person with knowledge of the case
- (c) Persons skilled in foreign law, science, art, or other fields
- (d) Judges presiding over the case

Answer: C

2. **What type of evidence is testimony of a witness to other relevant facts from which the fact in issue may be inferred?**

- (a) Direct evidence
- (b) Circumstantial evidence
- (c) Hearsay evidence
- (d) Oral evidence

Answer: B

3. **Which act has replaced the Indian Evidence Act, 1872?**

- (a) Bharatiya Nyaya Sanhita, 2023
- (b) Bharatiya Sakshya Adhiniyam, 2023
- (c) Bharatiya Nagarik Suraksha Sanhita, 2023
- (d) BharatiyaNagarikAdhiniyam, 2023

Answer: B

4. **What does the term 'secondary evidence' refer to in Evidence Law?**

- (a) Evidence presented by the opposing party
- (b) Evidence that is not as reliable as primary evidence
- (c) Evidence used in the absence of primary evidence
- (d) Evidence obtained through illegal means

Answer: C

5. **How does *Bharatiya Sakshya Adhiniyam, 2023*, expand the scope of primary evidence?**

- (a) By including handwritten documents
- (b) By including only physical records
- (c) By including electronic and digital records
- (d) By excluding all forms of secondary evidence

Answer: C



Activities



1. Organise a debate on the topic “The Impact of Technological Advances on Evidence Law.” Divide students into groups representing different perspectives (e.g., lawyers, judges, tech experts) and let them debate the pros and cons of incorporating electronic evidence in court proceedings.
2. Assign research projects on specific aspects of evidence law reform, such as the admissibility of digital records, the role of expert witnesses, or the use of forensic evidence. Students can present their findings through reports or presentations.
3. Invite legal professionals, forensic experts, or scholars specialising in evidence law to conduct interactive sessions with students. They can share real-world experiences, discuss recent case examples, and answer students’ questions.



The law and Us



Reflections

This module delves into the *Bharatiya Sakshya Adhiniyam, 2023*, the rulebook for presenting evidence in Indian courts. It's your guide to understanding how information is presented, analysed, and used to determine the truth in legal proceedings. Whether you're a curious student, a future legal advocate, or simply a citizen interested in the workings of the legal system, this module will equip you with the knowledge to navigate the intricate world of evidence.

Message for parents

As parents, it's beneficial to familiarise yourself with the *Bharatiya Sakshya Adhiniyam*, 2023, and its impact on evidence laws. Discuss with them the expanded scope of evidence, including electronic and digital records, and how this modernises our approach to legal proceedings. Emphasise the importance of fair trial principles, including the admissibility of evidence and protection of individual rights, as integral aspects of our legal system. By nurturing this understanding, we equip our children to appreciate the nuances of evidence law and contribute positively to a just society.



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