

# The Bharatiya Sakshya Adhiniyam, 2023

## Objective of the course:

- To develop understanding of fundamental concept of Evidence and substantive and procedural provisions of Law of Evidence (Bharat Sakshya Adhiniyam).
- To define and clarify the role of Law of Evidence (Bharat Sakshya Adhiniyam) in civil and criminal proceedings.
- To state the relevancy and admissibility of facts.
- To explain the concept of proof and burden of proof.
- To explain the concept of proof and burden of proof. To describe the order of examinations, privileged communication and witnesses.

## Syllabus:

### 1. Introduction:

- 1.1 The main features of the Bharatiya Sakshya Adhiniyam, 2023.
- 1.2 Other acts which deal with evidence (special reference to CPC, Bharatiya Nagarik Suraksha Sanhita, 2023)
- 1.3 Definitions (Sec. 2)

### 2. Facts: Relevancy (Sec. 3 to 14)

- 2.1 The Doctrine of *res gestae*
- 2.2 Evidence of common intention
- 2.3 The problems of relevancy of "Otherwise" irrelevant facts
- 2.4 Relevant facts for proof of custom
- 2.5 Facts concerning bodies & mental state
- 2.6 Existence of course of business when relevant

### 3. Admissions and confessions

- 3.1 General principles concerning admission (Sec. 15, 21)
- 3.2 Differences between "admission" and "confession"
- 3.3 Admissions in relation of parties to the suit (Sec. 16 to 18)
- 3.4 Proof of admissions against persons making them, and by or on their behalf (Sec. 19)
- 3.5 When oral admissions as to contents of documents are relevant (Sec. 20)
- 3.6 The problems of non-admissibility of confessions caused by "any inducement, threat of promise" (Sec. 22)
- 3.7 Confession to police officer (Sec. 23)
- 3.8 Consideration of proved confession affecting person making it and others jointly under trial for same offence (Sec. 24)
- 3.9 Admissions not conclusive proof, but may estop (Sec. 25)

#### **4. Statements by persons who cannot be called as witnesses**

- 4.1 The justification for relevance on dying declarations (Sec. 26)
- 4.2 The judicial standards for appreciation of evidentiary value of dying declarations.
- 4.3 Relevancy of certain evidence for proving, in subsequent proceeding, truth of facts therein stated (Sec. 27)

#### **5. Statements made under special circumstances (Sec. 28 to 33)**

#### **6. Relevance of Judgments (Sec. 34 to 38)**

#### **7. Expert Testimony**

- 7.1 General principles
- 7.2 Who is an expert? : Types of expert evidence
- 7.3 The problem of judicial defence to expert testimony.
- 7.4 Opinions of experts (Sec. 39)
- 7.5 Facts bearing upon opinions of experts (Sec. 40)
- 7.6 Opinion as to handwriting and signature, when relevant (Sec. 41)
- 7.7 Opinion as to existence of general custom or right, when relevant (Sec. 42)
- 7.8 Opinion as to usages, tenets, etc., when relevant (Sec. 43)
- 7.9 Opinion on relationship, when relevant (Sec. 44)
- 7.10 Grounds of opinion, when relevant (Sec. 45)

#### **8. Character when relevant**

- 8.1. In civil cases character to prove conduct imputed, irrelevant (Sec. 46)
- 8.2. In criminal cases previous good character relevant (Sec. 47)
- 8.3. Evidence of character or previous sexual experience not relevant in certain cases (Sec. 48)
- 8.4. Previous bad character not relevant, except in reply (Sec. 49)
- 8.5. Character as affecting damages (Sec. 50)

#### **9. Facts Which Need Not Be Proved (Sec. 51 to 53)**

#### **10. Oral and Documentary Evidence**

- 10.1 General principles concerning oral evidence (Sec. 54 — 55)
- 10.2 General principles concerning Documentary Evidence (Sec. 56 to 93)
  - Types of Documentary Evidence (Sec. 56 to 73)
  - Public Documents (Sec. 74 to 77)
  - Presumptions as to Documents (Sec. 78 to 93)
- 10.3 General Principles Regarding Exclusion of Oral by Documentary Evidence (Sec. 94 to 103)
- 10.4 Improper Admission and Rejection of Evidence (Sec. 169)

#### **11. Burden of Proof**

- 8.1. General Principles concerning Burden of Proof (Sec. 104 to 114)

## 8.2. Presumptions as to Burden of Proof (Sec. 115 to 120)

### 12. Estoppel

12.1. Estoppel (Sec. 121)

12.2. Estoppel, *res judicata* and waiver and presumption

12.3. Estoppel of tenant and of licensee of person in possession (Sec. 122)

12.4. Estoppel of acceptor of bill of exchange, bailee or licensee (Sec. 123)

### 13. Witnesses (Ss. 124 to 139)

#### 14. Examination and Cross Examination

14.1. General principles of examination and cross examination (Sec. 140-168)

14.2. Leading questions (Sec. 146)

14.3. Lawful questions in cross-examination (Sec. 149)

14.4. Compulsion and Non-compulsion to answer questions put to witness (Sec. 150 to 155)

14.5. Hostile witness (Sec. 157)

14.6. Impeaching of the standing or credit of witness (Sec. 158)

### 15. Repeal and Savings (Sec. 170)

### Suggested Readings:

1. M. Monir, Textbook on The Bharatiya Sakshya Adhiniyam, 2023, Lexis Nexis
2. Adv. Saurabh Kansal & Prof. Vageshwari Deswal, Taxmann's Bharatiya Sakshya Adhiniyam 2023 | Law & Practice, Taxmann's Editorial Board, 2024
3. Sarkar and Manohar, Law of Evidence, Wadhwa & Co. Nagpur
4. Sir John Wood Roffe & Syed S. Amir Ali's Law of Evidence Vol.1-4
5. India Evidence Act, (Amendment up to date)
6. Ratanlal & Dhirajlal Law of Evidence, LexisNexis – Butterworth, Wadhwa, Nagpur
7. Albert S. Osborn, The Problem of Proof, Universal Publication, Delhi.
8. Avtar Singh, Principles of the Law of Evidence, Central Law Agency, New Delhi
9. Batuklal, The Law of Evidence, Central Law Agency