THE BHARATIYA SAKSHYA ADHINIYAM, 2023

ORAL EVIDENCE

[SECTION 54-55]

- Oral evidence is a crucial aspect of the law of evidence, forming the foundation of courtroom testimonies and witness statements. It refers to the verbal statements made by witnesses in a judicial proceeding regarding facts they have directly perceived. Governed by the principle that facts must be proven by the best available evidence, oral evidence allows the court to assess the credibility and reliability of witnesses through their firsthand accounts. **Under the Bharatiya Sakshya Adhiniyam, 2023, oral evidence is admissible only if it directly relates to the matter at issue, providing an opportunity for the opposing party to cross-examine the witness.** While oral evidence plays a vital role in unfolding the truth, it is subject to certain limitations like human error, memory lapses, or bias, making corroboration and careful judicial scrutiny essential to its evaluation.

PROOF OF FACTS BY ORAL EVIDENCE: SECTION 54

Section 54: Proof of facts by oral evidence.

All facts, except the contents of documents may be proved by oral evidence.

- **Corresponding Provision:** Section 54 BSA corresponds to Section 59 IEA
- **Oral evidence is governed by Sections 54 and 55 of the Bharatiya Sakshya Adhiniyam, 2023 (BSA).** As per Section 2(1)(e)(i) of the BSA, oral evidence is defined as "all statements, including those given electronically, that the Court permits or requires to be made before it by witnesses in relation to matters of fact under inquiry." These statements, made by witnesses during the trial, are referred to as oral evidence.
- The term "oral" itself means something spoken or expressed by mouth. Therefore, any statements or testimonies given by witnesses in court regarding the facts under inquiry are categorized as oral evidence. Importantly, **According to Section 125 BSA, even if a**

witness is unable to speak, they can still convey their knowledge through signs or writing. In such cases, these communications are also treated as oral evidence.

- Section 54 emphasizes that any fact that is relevant to a case and needs to be established can be proven through oral testimony. This rule underlines the importance of witness statements in the judicial process, where individuals who have directly perceived the facts in question can provide their accounts to the court. Oral evidence is considered valid and admissible, provided it complies with the general principles of admissibility under the law. Oral evidence, if credible and reliable, is sufficient on its own to prove a fact or claim, without the need for documentary evidence.
- **The section explicitly excludes the contents of documents from being proven by oral evidence. The rationale behind this exception is that written documents are considered to be the best evidence of their contents.** Therefore, when a document exists, its contents must be proved by producing the document itself or secondary evidence in circumstances where the original is unavailable, as prescribed under other provisions of the BSA, such as Section 59 (primary evidence) and Section 60 (secondary evidence).
- **While oral evidence is an essential component of the trial process, it is not without limitations.** Oral testimonies can be influenced by factors such as memory lapses, misunderstanding, or intentional falsehoods. Additionally, human perception can sometimes be flawed or biased. Therefore, oral evidence is often supplemented or corroborated by other types of evidence, such as documentary or material evidence, to strengthen its probative value.
- **The terms "oral" and "verbal" have distinct meanings, though they are often confused. This distinction was clarified in the case of *Queen Empress v. Abdullah* (27 February 1885), where the Hon'ble Chief Justice of Allahabad, W.C. Petheram, elaborated on the difference.** "Oral" refers specifically to something expressed by mouth or spoken. It implies that communication is done through spoken words. On the other hand, "verbal" has a broader meaning—it refers to communication through words, whether written or spoken. Therefore, when something is described as verbal, it is not limited to speech; it can also include written communication. In his judgment, Chief Justice Petheram noted that if the word used in the section had been "oral," it would imply that the statement must be confined to words spoken by the mouth. However, the term "verbal" has a wider scope, encompassing both spoken and written words. This distinction is important in legal context, as it determines the form of communication that may be admissible as evidence in a court of law.
- It is true that in election cases oral evidence has to be examined with great deal of care because of the partisan atmosphere continuing even after the election. But it will be wrong on the part of courts to just brush aside the oral evidence even when the

evidence is highly probable and the same is corroborated by unimpeachable documentary evidence. ***[P.C. Purushothama Reddiar vs S. Perumal (1972) SC]***

- Evidentiary value of oral testimony of an alleged eyewitness cannot be diluted by reason of non-production of any documents in support of a claim. contrary to the oral testimony. ***[Anil Sharma vs State of Jharkhand (2004) SC]***
- Even if the witnesses are not shown in the site plan, their testimony cannot be discarded. ***[CBI VS Mohd. Parvez Abdul Kayuum (2019) SC]***
- Whenever there is a conflict between medical evidence and ocular testimony, normally, ocular testimony should be preferred unless it belies fundamental facts. ***[State of Punjab vs Hakam Singh (2005) SC]***
- Proof of electronic record is a special provision introduced by the IT Act amending various provisions under the Indian Evidence Act. The very caption of Section 65-A IEA, now Section 62 BSA, read with Sections 59 and 65-B IEA, now Sections 54 and 63 BSA, is sufficient to hold that the special provisions on evidence relating to electronic record shall be governed by the procedure prescribed under Section 65-B IEA, now Section 63 BSA. ***[Anvar P.V. vs P.K. Basheer (2014) SC]***
- The testimony of an advocate carries no extra weight. ***[Pratima Chowdhury vs Kalpana Mukherjee (2014) SC]***
- ***Neeraj Dutta v. State (Govt. of N.C.T. of Delhi) AIR 2023 SC 330:*** Oral evidence means testimony of living persons including deaf and dumb – Section 59 of the Evidence Act [now 54 BSA] states that all facts, except the contents of documents or electronic records, may be proved by oral evidence. Oral evidence means the testimony of living persons examined in the presence of the court or commissioners appointed by the court. Deaf and dumb persons may also adduce evidence by signs or through interpretation or by writing, it they are literate.
- ***Anvar P.V. v. P. K. Basheer AIR 2015 SC 180:*** Admissibility of electronic record by way of secondary evidence - Evidence relating to electronic record, being a special provision, general law on secondary evidence under Section 63 [now Section 58 BSA] read with Section 65 of Evidence Act [now Section 60 BSA] shall yield to same. An electronic record by way of secondary evidence shall not be admitted in evidence unless requirements under Section 65B [now Section 63 BSA] are satisfied. Thus, in case of CD, VCD, chip, etc., same shall be accompanied by certificate in terms of Section 65B [now Section 63 BSA] obtained at time of taking document, without which, secondary evidence pertaining to that electronic record, is inadmissible.

ORAL EVIDENCE TO BE DIRECT: SECTION 55

Section 55. Oral evidence to be direct.

Oral evidence shall, in all cases whatever, be direct; if it refers to,-

(i) a fact which could be seen, it must be the evidence of a witness who says he saw it;

(ii) a fact which could be heard, it must be the evidence of a witness who says he heard it;

(iii) a fact which could be perceived by any other sense or in any other manner, it must be the evidence of a witness who says he perceived it by that sense or in that manner;

(iv) an opinion or to the grounds on which that opinion is held, it must be the evidence of the person who holds that opinion on those grounds:

Provided that the opinions of experts expressed in any treatise commonly offered for sale, and the grounds on which such opinions are held, may be proved by the production of such treatises if the author is dead or cannot be found, or has become incapable of giving evidence, or cannot be called as a witness without an amount of delay or expense which the Court regards as unreasonable:

Provided further that, if oral evidence refers to the existence or condition of any material thing other than a document, the Court may, if it thinks fit, require the production of such material thing for its inspection.

- **Corresponding Provision:** Section 55 BSA corresponds to Section 60 IEA
- **Section 55 of the Bharatiya Sakshya Adhiniyam, 2023 (BSA), mandates that oral evidence must always be direct.** The provision outlines specific requirements regarding how facts must be proven through oral testimony, ensuring that the evidence presented is based on the witness's personal perception or experience. The section promotes the reliability of oral evidence by ensuring that only those with firsthand knowledge of the facts can testify about them.

❖ KEY PROVISIONS OF SECTION 55

1. **Oral Evidence Must Be Direct: The core principle of Section 55 is that oral evidence must be direct, meaning it must come from a witness who has personally experienced or perceived the fact in question.** This ensures that the testimony is based on the witness's own knowledge, reducing the likelihood of inaccuracies that could arise from hearsay or secondhand information. The section categorizes oral evidence based on the type of fact being proven, providing guidelines for how such facts should be testified to in court.

2. **Types of Facts and Corresponding Oral Evidence:**

→ **Facts that Can Be Seen:** If the fact relates to something that could be observed, such as a physical event or an action, the witness giving oral evidence must have personally seen the event. For example, if a witness is testifying about a crime they saw take place, they must have directly witnessed it.

→ **Facts that Can Be Heard:** If the fact pertains to something that can be heard, such as a conversation or a sound, the witness must have personally heard it. For instance, if a witness testifies about a statement made by someone, they must have been present to hear that statement firsthand.

→ **Facts Perceived Through Other Senses:** For facts that could be perceived by any sense other than sight or hearing, such as smell or touch, or in any other manner, the witness must have personally experienced the fact through the relevant sense. For example, if a witness testifies about the smell of something during an event, they must have smelled it themselves.

→ **Opinions or Grounds for Opinions:** If the fact being testified to is an opinion or the grounds for holding that opinion, the witness must be the person who holds the opinion. For example, if an expert gives an opinion about a medical condition, the expert must be the one who formed that opinion based on their knowledge and expertise.

3. **Expert Opinion and Treatises: The first proviso of Section 55 allows for an exception when it comes to expert opinions.** If an expert's opinion is documented in a treatise commonly available for sale, and the author is either dead, cannot be found, has become incapable of testifying, or cannot be called as a witness without unreasonable delay or expense, the treatise itself may be produced as evidence. This ensures that expert knowledge remains available to the court, even when the expert cannot personally testify.

4. **Production of Material Evidence: The second proviso addresses situations where oral evidence relates to the existence or condition of a material thing, such as an object.** In such cases, the court has the discretion to require the actual production of the material object for its inspection. This provision ensures that when the condition of an object is relevant to the case, the court may directly examine the object, rather than relying solely on oral descriptions of it.

❖ HEARSAY EVIDENCE

- The term hearsay refers to information that a person hears from others, rather than something they have directly observed or experienced. It encompasses statements—either oral or written—made by individuals who are not called as witnesses in the court. **This type of evidence is often regarded as unreliable because it is based**

on second-hand information and not subject to cross-examination. Essentially, hearsay evidence refers to anything repeated from another person rather than observed firsthand by the witness.

→ **DEFINITION AND NATURE OF HEARSAY EVIDENCE**

- **Hearsay evidence generally refers to statements made outside of court by someone other than the witness who is testifying. It could include statements made orally, in writing, or by other means that are not based on the personal knowledge of the person giving evidence in court.** Under this rule, the evidence becomes inadmissible because the person who originally made the statement is not available for cross-examination to verify the truthfulness of what was said.
- **For instance,** in a murder case, if a witness testifies, "I saw X stabbing Y," this would be considered direct evidence. However, if the same witness says, "Z told me that he saw X stabbing Y," this becomes hearsay evidence since the witness did not directly observe the stabbing and is merely relaying what someone else (Z) allegedly said. The accuracy and reliability of Z's statement cannot be cross-examined, making it inadmissible in most cases.

→ **SECTION 55 BSA**

- **Section 55 of the Bharatiya Sakshya Adhiniyam (BSA) aims to prevent the admission of hearsay evidence by mandating that oral evidence must always be direct.** The section ensures that only firsthand knowledge or observations are considered reliable for judicial purposes, excluding second-hand information or gossip.
- **The fundamental test to distinguish between direct evidence and hearsay evidence is as follows:**

a) Direct evidence requires the court to rely solely on the testimony of the witness who has personal knowledge of the fact in question.
b) Hearsay evidence requires the court to rely not only on the witness but also on some other person who relayed the information to the witness.

→ **WHY HEARSAY EVIDENCE IS GENERALLY INADMISSIBLE**

- Hearsay evidence is excluded from the judicial process for several reasons:

a) **Lack of Cross-Examination:** Since the person who originally made the statement is not in court, they cannot be cross-examined to verify the truthfulness of their statement.
b) **Second-hand Information:** Hearsay is not the best evidence; it is second-hand and lacks direct reliability. The person relaying the information does not have a direct sense of responsibility for its accuracy.
c) **Distortion of Facts:** There is a risk that with each repetition, the truth gets diluted or distorted, and it opens the door to potential fraud or misinformation.

d) **Extended Litigation:** Allowing hearsay evidence could unnecessarily prolong litigation, as more time would be required to examine second-hand statements and verify their accuracy.

Even if no objections are raised or the parties consent, hearsay evidence is still inadmissible because courts have no discretion to admit such evidence except in exceptional circumstances.

→ **EXCEPTIONS TO THE HEARSAY RULE**

Although the general rule excludes hearsay evidence, there are several well-recognized exceptions where hearsay can be admissible:

a) **Res Gestae (Section 4, BSA):** Statements that are part of the very occurrence or transaction in question can be admitted as evidence, even if made by someone who is not a witness. For example, statements made by victims or bystanders during the commission of a crime may be considered part of the res gestae and admitted as evidence.
b) **Admissions and Confessions:** Statements where a party admits liability or confesses guilt to someone else, and the testimony of the person to whom the admission or confession was made, can be considered as exceptions to the hearsay rule.
c) **Statements Relevant Under Section 26 BSA (Dying Declarations):** Section 26 primarily deals with statements made by persons who are no longer available to testify, such as dying declarations. Statements made by a person who is on the verge of death regarding the cause of their death are admissible, even though they are technically hearsay.
d) **Entries in Books of Account (Section 28 BSA):** Entries made in the regular course of business in books of account are considered an exception to hearsay if it is shown that the books were kept regularly and the entries were made contemporaneously with the transactions.
e) **Entries in Public Registers (Section 29 BSA):** Entries in official public records, such as birth or death registries, are exceptions to hearsay since they are maintained by public officers in the course of their duties and carry an inherent presumption of authenticity.
f) **Statements of Experts in Treatises:** As per the first proviso to Section 55, the opinions of experts documented in treatises can be admitted in court, provided the expert cannot testify due to unavailability or other valid reasons. This exception allows the court to benefit from specialized knowledge without the need for the expert to appear personally.
g) **Third-Party Slanderous Statements:** Sometimes, slanderous statements made by a third person and overheard by a witness can be admitted as evidence—not to prove the truth of the statements, but to show that such a statement was made.

❖ SOME RELEVANT CASE LAWS:

1) ***Sharda Birdichand v. State (AIR 1984 SC 1622):*** In this case, the court allowed the testimony of witnesses who observed the poor condition of a woman at her in-laws' house before her death. This testimony was considered relevant and admissible even though it did not constitute direct evidence. The case demonstrated that in certain situations, hearsay evidence may be admissible to prove circumstantial facts when direct evidence is unavailable.
2) ***D. Sailu v. State of A.P. AIR 2008 SC 505:*** Eye-witnesses account would require a careful independent assessment and evaluation for its credibility - It would be erroneous to accord undue primacy to the hypothetical answers of medical witnesses to exclude the eye-witnesses account which had to be tested independently and not treated as the "variable" keeping the medical evidence as the "constant". It is trite that where the eye-witnesses account is found credible and trustworthy, medical opinion pointing to alternative possibilities is not accepted as conclusive. Witnesses, as Bentham said, are the eyes and ears of justice. Hence the importance and primacy of the quality of the trial process. Eye-witnesses account would require a careful independent assessment and evaluation for its credibility which should not be adversely prejudged making any other evidence, including medical evidence, as the sole touchstone for the test of such credibility.
3) ***Neeraj Dutta v. State (Govt. of N.C.T. of Delhi) AIR 2023 SC 330***: In section 60 of Evidence Act, 1872 word "direct" is used in juxtaposition to derivative or hearsay evidence - Section 60 of the Evidence Act requires that oral evidence must be direct or positive. Direct evidence is when it goes straight to establish the main fact in issue. The word "direct" is used in juxtaposition to derivative or hearsay evidence where a witness gives evidence that he received information from some other person. If that person does not, himself, state such information, such evidence would be inadmissible being hearsay evidence. On the other hand, forensic procedure as circumstantial or inferential evidence or presumptive evidence (Section 3) is indirect evidence. It means proof of other facts from which the existence of the fact in issue may be logically inferred. In this context, the expression 'circumstantial evidence' is used in a loose sense as, sometimes, circumstantial evidence may also be direct. Although the expression "hearsay evidence" is not defined under the Evidence Act, it is, nevertheless, in constant use in the courts. However, hearsay evidence is inadmissible to prove a fact which is deposed to on hearsay, but it does not necessarily preclude evidence as to a statement having been made upon which certain action was taken or certain results followed such as evidence of an informant of the crime. At this stage, it must be distinguished that even with regard to oral evidence, there are subcategories - primary evidence and secondary

evidence. Primary evidence is an oral account of the original evidence i.e. of a person who saw what happened and gives an account of it recorded by the Court, or the original document itself, or the original thing when produced in Court. Secondary evidence is a report or an oral account of the original evidence or a copy of a document or a model of the original thing.

DOCUMENTARY EVIDENCE

[SECTION 56 – 93]

- **Documentary evidence refers to any evidence presented in written, printed, or recorded form, which is used to establish facts in legal proceedings.** Unlike oral evidence, which relies on witness testimony, documentary evidence derives its strength from tangible documents, such as contracts, letters, emails, public records, and more. This form of evidence is critical because it provides an objective and often verifiable source of information, reducing the risk of human error or memory lapses associated with oral testimony.
- **Under the Indian legal framework, the Bharatiya Sakshya Adhiniyam, 2023, specifically addresses documentary evidence in Chapter V, laying down the rules regarding its admissibility, proof, and authenticity. Key provisions, such as Sections 50 to 55, deal with the manner in which documents are to be proved and recognized in courts.** The importance of documentary evidence lies in its ability to provide concrete and sometimes conclusive evidence, making it a cornerstone in both civil and criminal trials.

PROOF OF CONTENTS OF DOCUMENTS: SECTION 56

Section 56. Proof of contents of documents.

The contents of documents may be proved either by primary or by secondary evidence.

- **Corresponding Provision:** Section 56 BSA corresponds to Section 61 IEA
- **Documentary evidence are defined under Section 2(1)(e)(ii) which states that, "all documents including electronic or digital records produced for the inspection of the Court and such documents are called documentary evidence."** This definition encompasses both traditional paper-based documents and modern forms of records, such as electronic or digital data. It reflects the evolving nature of evidence in legal

proceedings, where not only written documents but also emails, digital contracts, video recordings, or any other digital information can be presented in court. In simpler terms, any document—whether physical or stored electronically—that is presented to a court to help establish facts is considered documentary evidence. These documents must be relevant to the case and can take various forms, including letters, contracts, certificates, and electronic records like emails, scanned documents, or even social media posts. The inclusion of electronic or digital records ensures that modern methods of communication and record-keeping are recognized in legal proceedings, thereby broadening the scope of what can be considered evidence.

- **Documentary evidence refers to all documents produced for the inspection of the Court. Unlike witnesses, who are considered "living proofs," documents are often referred to as "dead proofs."** Documentary evidence holds a superior position compared to oral evidence due to its permanence and, in many cases, greater trustworthiness.
- **There are only two recognized methods for proving the contents of a document**—either through primary evidence (the original document) or secondary evidence (a permissible substitute when the original is unavailable). There is no third method for proving the contents of a document.
- Importantly, the contents of a document do not necessarily need to be proven by the author of the document. They can be established through other admissible forms of evidence, further enhancing the flexibility and reliability of documentary evidence in judicial proceedings.

PRIMARY EVIDENCE: SECTION 57

Section 57: Primary Evidence.

Primary evidence means the document itself produced for the inspection of the Court.

Explanation 1.-Where a document is executed in several parts, each part is primary evidence of the document.

Explanation 2.-Where a document is executed in counterpart, each counterpart being executed by one or some of the parties only, each counterpart is primary evidence as against the parties executing it.

Explanation 3.-Where a number of documents are all made by one uniform process, as in the case of printing, lithography or photography, each is primary evidence of the contents of the rest; but, where they are all copies of a common original, they are not primary evidence of the contents of the original.

Explanation 4.-Where an electronic or digital record is created or stored, and such storage occurs simultaneously or sequentially in multiple files, each such file is primary evidence.

Explanation 5.-Where an electronic or digital record is produced from proper custody, such electronic and digital record is primary evidence unless it is disputed.

Explanation 6.-Where a video recording is simultaneously stored in electronic form and transmitted or broadcast or transferred to another, each of the stored recordings is primary evidence.

Explanation 7.-Where an electronic or digital record is stored in multiple storage spaces in a computer resource, each such automated storage, including temporary files, is primary evidence.

Illustration.

A person is shown to have been in possession of a number of placards, all printed at one time from one original. Any one of the placards is primary evidence of the contents of any other, but no one of them is primary evidence of the contents of the original.

- Corresponding Provision: Section 57 BSA corresponds to Section 62 IEA
- The concept of primary evidence, as explained in Section 57 of the Bharatiya Sakshya Adhiniyam, refers to the original document or record that is presented to the court for inspection. It is considered the best and most reliable form of evidence in legal proceedings. The section includes several explanations to cover different scenarios of what qualifies as primary evidence, especially in cases involving digital or electronic records. Let's go through each explanation with examples to understand them better:

❖ EXPLANATION 1: PARTS OF A DOCUMENT

"Where a document is executed in several parts, each part is primary evidence of the document."

- **Explanation 1 of Section 57 of the Bharatiya Sakshya Adhiniyam (BSA) states that when a document is executed in several parts, each part is considered primary evidence of the entire document.** This means that when a single document is divided into multiple parts, typically for the convenience of the parties involved, each part holds the same legal weight as the other parts. In other words, any one part can be presented in court as evidence of the full document.

- **For example,** in a property sale agreement, there may be two identical parts of the same contract, one signed by the seller and the other by the buyer. Since both parts represent the same agreement, either the part in the possession of the seller or the one in the possession of the buyer can be submitted as primary evidence. Both parts are treated equally in the eyes of the law, even though they are separate physical documents. This provision ensures that each part of a multi-part document can independently serve as evidence of the entire agreement, providing flexibility in legal proceedings where one part may be missing or inaccessible.

❖ EXPLANATION 2: COUNTERPARTS OF A DOCUMENT

"Where a document is executed in counterpart, each counterpart being executed by one or some of the parties only, each counterpart is primary evidence as against the parties executing it."

- **Explanation 2 of Section 57 of the Bharatiya Sakshya Adhiniyam (BSA) addresses the situation where a document is executed in counterparts, meaning that multiple copies of the same document are signed separately by different parties.** In such cases, each counterpart is considered primary evidence, but only against the parties who have signed that particular copy. This explanation ensures that even when parties sign different physical copies of a document, each counterpart holds legal validity as primary evidence for the parties who executed it.
- A photostat copy of a document can be admissible as secondary evidence if it is proven to be genuine. To admit such evidence, it must be demonstrated under what circumstances the photostat copy was created and who had possession of the original document at the time its photograph was taken. This form of secondary evidence is allowed when it is shown that the original document was in the possession of the adversary, as held in ***Ashok vs Madho Lal (1975) SC and Govt. of A.P. vs Karri Chinna Venkata Reddy (1994) SC***.
- However, an uncertified photocopy of a government order cannot be admitted as secondary evidence, as emphasized in ***Union of India vs Nirmal Singh (1987)***. Generally, "a copy of a copy" is not admissible as secondary evidence. The exception to this rule is when the copies are made through a mechanical process or when the copies of a copy have been compared with the original. In such cases, they may qualify as secondary evidence.
- **For example,** in a partnership agreement involving three partners, each partner might sign a different copy of the agreement. Partner A signs one copy, Partner B signs another, and Partner C signs the third. According to this explanation, the copy signed by Partner A is primary evidence against Partner A, the copy signed by Partner B is primary

evidence against Partner B, and so on. If a dispute arises in court, the counterpart signed by a particular partner can be presented as primary evidence to prove the terms of the agreement against that partner. This provision is especially useful in cases where multiple parties are involved, ensuring that the legal standing of the document remains intact even if different parties hold different signed copies.

❖ EXPLANATION 3: UNIFORM PROCESS

"*Where a number of documents are all made by one uniform process, as in the case of printing, lithography or photography, each is primary evidence of the contents of the rest; but, where they are all copies of a common original, they are not primary evidence of the contents of the original.*"

- **Explanation 3 of Section 57 of the Bharatiya Sakshya Adhiniyam (BSA) refers to situations where multiple documents are created through a uniform process, such as printing, lithography, or photography. In such cases, each document produced by this process is considered primary evidence of the contents of the others.** This means that if multiple identical copies are created through a consistent, mechanical process, any one of those copies can be used as primary evidence of what is contained in the others. However, these documents do not serve as primary evidence of the original from which they were copied. If there is an original document from which these identical copies were made, the original itself is the primary evidence, and the mechanically reproduced copies are only secondary evidence of the original.
- **For example**, imagine a scenario where a company prints 1,000 identical copies of a promotional pamphlet using a printing machine. Since all of these pamphlets were created through the same uniform printing process, any one of them can be presented in court as primary evidence of the content of the other 999 pamphlets. If one of the pamphlets is lost, another can be used as primary evidence to prove the content of the rest.
- However, if these pamphlets were all printed from a master document, such as an original hand-written manuscript or a digital design file, the printed pamphlets would not be primary evidence of the original manuscript or design. To prove the contents of the original, the actual master document would need to be presented, as it is the primary evidence of itself, while the printed copies are secondary evidence of the original's content. This distinction is crucial in maintaining the integrity of the original document as the most reliable source of information in legal proceedings.

❖ EXPLANATION 4: SIMULTANEOUS OR SEQUENTIAL STORAGE IN MULTIPLE FILES

"Where an electronic or digital record is created or stored, and such storage occurs simultaneously or sequentially in multiple files, each such file is primary evidence."

- **Explanation 4 of Section 57 of the Bharatiya Sakshya Adhiniyam (BSA) addresses situations involving electronic or digital records. It states that when an electronic or digital record is created or stored, and this storage happens either simultaneously or sequentially in multiple files, each of these files is considered primary evidence.** This means that if an electronic record (such as a document, video, or database) is saved or replicated in different files across a system, each of those files can independently serve as primary evidence of the content. The explanation recognizes the nature of digital data, where information can exist in multiple forms and locations, all retaining equal evidentiary value.
- **For example,** consider a company storing an important contract in its database. The contract might be automatically saved in several locations—on the company's server, in a cloud backup, and in individual employees' computers. If a legal issue arises regarding this contract, any one of these files can be presented in court as primary evidence of the content of the contract, regardless of where it is stored. Whether the file is retrieved from the server, the cloud, or an employee's computer, it holds the same evidentiary weight as primary evidence, as long as it was stored as part of the original creation or replication process.
- This explanation ensures that even in the digital age, where records are often duplicated and stored in various places, the integrity of electronic evidence remains intact and each copy can serve as reliable primary evidence.

❖ EXPLANATION 5: PROPER CUSTODY OF DIGITAL RECORDS

"Where an electronic or digital record is produced from proper custody, such electronic and digital record is primary evidence unless it is disputed."

- **Explanation 5 of Section 57 of the Bharatiya Sakshya Adhiniyam (BSA) provides that an electronic or digital record, when produced from proper custody, is considered primary evidence unless its authenticity or accuracy is disputed.** This means that as long as an electronic record, such as a document, video, or email, is retrieved from a reliable source—such as a secure database, authorized institution, or a system with proper control—it is treated as primary evidence in legal proceedings. The presumption is that a record from proper custody is genuine unless someone challenges it, in which case the court may need to examine its authenticity further.

- **For example,** if a company's financial records, stored in a secure accounting software system, are presented in court to verify transactions, these records would be considered primary evidence because they are produced from a trustworthy source (the company's official financial database). The court would accept them as primary evidence unless a party contests their accuracy or argues that they have been tampered with. If no one disputes authenticity, the electronic financial records can be relied upon as valid evidence. However, if someone does raise concerns, the court may require further verification of the record's integrity.
- This explanation emphasizes the importance of proper custody in ensuring the reliability of electronic evidence while also allowing room for dispute if doubts about authenticity arise. It acknowledges that in the digital world, properly maintained records are as credible as traditional paper records, provided they come from a legitimate source.

❖ EXPLANATION 6: VIDEO RECORDING STORAGE AND TRANSMISSION

"Where a video recording is simultaneously stored in electronic form and transmitted or broadcast or transferred to another, each of the stored recordings is primary evidence."

- **Explanation 6 of Section 57 of the Bharatiya Sakshya Adhiniyam (BSA) addresses the situation where a video recording is simultaneously stored in electronic form and transmitted, broadcast, or transferred to another location.** It states that each of these stored recordings, whether they remain in the original location or is transmitted elsewhere, is considered primary evidence. This means that if a video is recorded and then saved in multiple locations or transmitted to another system (such as during live streaming, broadcasting, or sharing over the internet), every version of that stored recording is regarded as primary evidence, regardless of where it is accessed or stored.
- **For example,** imagine a live news broadcast being recorded and simultaneously stored in different locations—on the broadcasting company's central server, on a backup cloud server, and on the servers of the channels that rebroadcast the video. Each of these recordings, whether it's the one stored by the original broadcaster or the copies stored in various locations, would be treated as primary evidence of the event captured in the video. If a legal dispute arises about the content of the broadcast, any one of these stored versions could be presented as primary evidence, as they all capture the same original content.
- This explanation ensures that in cases of simultaneous storage and transmission of video recordings, each copy remains equally valid as primary evidence, reflecting the reality of how digital media is often shared and stored across multiple platforms. It helps ensure that even if one version of the video is unavailable or corrupted, other versions can still be used as primary evidence in court.

❖ EXPLANATION 7: AUTOMATED STORAGE IN MULTIPLE SPACES

"Where an electronic or digital record is stored in multiple storage spaces in a computer resource, each such automated storage, including temporary files, is primary evidence."

- **Explanation 7 of Section 57 of the Bharatiya Sakshya Adhiniyam (BSA) pertains to the storage of electronic or digital records across multiple storage spaces within a computer resource. It states that each instance of automated storage, including temporary files, is considered primary evidence.** This means that if a digital record is saved in various locations within a computer system—such as the main hard drive, external storage devices, or even temporary files created during processing, each of these storage instances is recognized as primary evidence of the record's content.
- **For example,** consider a situation where an employee is working on a Word document that contains crucial information. As they work, the document is saved in several locations: a temporary file on their computer, a saved copy on the local hard drive, and a backup version on a cloud storage service. If a dispute arises regarding the content of that document, any one of these stored versions can be presented in court as primary evidence of what the document contains. This provision ensures that even if the original file on the hard drive becomes corrupted or inaccessible, the temporary file or the cloud backup can still serve as valid primary evidence.
- This explanation highlights the flexibility and reliability of electronic records in legal contexts, acknowledging that digital information can exist in multiple forms and locations. It provides assurance that each storage instance maintains its evidentiary value, thereby facilitating access to the necessary information even if one or more versions become compromised.

❖ ILLUSTRATION

A person is shown to have been in possession of a number of placards, all printed at one time from one original. Any one of the placards is primary evidence of the contents of any other, but no one of them is primary evidence of the contents of the original.

- The illustration highlights a scenario where a person is in possession of several placards, all printed at the same time from one original document. In such a case, each placard is considered primary evidence of the contents of the others because they were created through a uniform process, such as printing. This means that if one placard is presented in court, it can serve as primary evidence of what is written on the other placards, as they are identical copies made at the same time.
- However, none of these placards can be considered primary evidence of the original document from which they were printed. The original document, which served as the

basis for printing the placards, is the actual primary evidence of itself. If the court needed to verify the contents of the original, it would not suffice to present one of the placards as evidence. In this case, the placard would only serve as secondary evidence of the original document, and the original itself would need to be produced as primary evidence.

- This distinction emphasizes that while identical copies made through a uniform process can be treated as primary evidence of each other, they cannot substitute for the original document when it comes to proving the original content.

SECONDARY EVIDENCE: SECTION 58

Section 58: Secondary Evidence

Secondary evidence includes-

(i) certified copies given under the provisions hereinafter contained;

(ii) copies made from the original by mechanical processes which in themselves ensure the accuracy of the copy, and copies compared with such copies; (iii) copies made from or compared with the original;

(iv) counterparts of documents as against the parties who did not execute them;

(v) oral accounts of the contents of a document given by some person who has himself seen it;

(vi) oral admissions;

(vii) written admissions;

(viii) evidence of a person who has examined a document, the original of which consists of numerous accounts or other documents which cannot conveniently be examined in Court, and who is skilled in the examination of such documents.

Illustrations

(a) A photograph of an original is secondary evidence of its contents, though the two have not been compared, if it is proved that the thing photographed was the original.

(b) A copy compared with a copy of a letter made by a copying machine is secondary evidence of the contents of the letter, if it is shown that the copy made by the copying machine was made from the original.

(c) A copy transcribed from a copy, but afterwards compared with the original, is secondary evidence; but the copy not so compared is not secondary evidence of the original, although the copy from which it was transcribed was compared with the original.

(d) Neither an oral account of a copy compared with the original, nor an oral account of a photograph or machine-copy of the original, is secondary evidence of the original.

- **Corresponding Provision:** Section 58 BSA corresponds to Section 63 IEA
- **Section 58 of the Bharatiya Sakshya Adhiniyam (BSA) deals with the concept of secondary evidence, which refers to evidence that is not the original document but is admissible in certain circumstances to prove the contents of that original document.** Secondary evidence is crucial when the original document is unavailable or inaccessible, provided that its absence is justified. The section outlines various forms of secondary evidence, including certified copies, mechanically produced copies, oral and written admissions, and evidence based on a person's examination of complex documents.

❖ FORMS OF SECONDARY EVIDENCE:

(i) **Certified copies:** These are copies provided under provisions hereinafter contained, such as those issued by government or judicial authorities, which certify that they are accurate reproductions of the original.

(ii) **Copies made by mechanical processes:** These include copies made using methods such as printing, photocopying, or scanning, where the process itself guarantees the accuracy of the copy. Such copies are considered secondary evidence if they ensure that the copy faithfully replicates the original.

(iii) **Copies compared with the original:** A copy made directly from or compared to the original document is also secondary evidence. This ensures that the copy's contents match those of the original.

(iv) **Counterparts of documents:** A counterpart of a document is secondary evidence, but only in relation to the parties who did not execute it. For example, if two parties sign a duplicate contract and only one party signs each version, the unsigned version can be used against the other party as secondary evidence.

(v) **Oral accounts by someone who has seen the document:** If a person has directly seen the original document and testifies its contents, their oral account can be considered secondary evidence.

(vi) **Oral admissions:** Statements made orally by one party about the contents of a document can also be secondary evidence, provided the circumstances justify such reliance.

(vii) **Written admissions:** A party's written acknowledgment of a document's contents is another form of secondary evidence.

(viii) **Examination of numerous documents:** In complex cases involving numerous accounts or documents, a person skilled in examining such documents may provide secondary evidence based on their review of the original, which would be difficult to present in court due to their volume.

❖ ILLUSTRATIONS:

a) **A photograph of an original document is considered secondary evidence of the original's contents, even if the photograph and the original haven't been directly compared, as long as it is established that the photographed object was the original.** For example, a photograph of a contract can be used in court if it can be proven that the contract was the object being photographed.

b) **A copy produced by a copying machine and then compared with another copy is considered secondary evidence of the contents of the original letter, if it is shown that the copy was made directly from the original.** For example, if a letter is copied using a photocopier, and the photocopied version is compared with another copy made from the same machine, it can serve as secondary evidence.

c) **A copy transcribed from another copy and then compared with the original document is treated as secondary evidence. However, if the transcribed copy is not compared to the original, it does not qualify as secondary evidence.** For instance, if a contract is manually copied from another copy, but this new copy is later compared with the original contract, it becomes secondary evidence.

d) **An oral account of a copy, even if the copy was compared with the original, is not regarded as secondary evidence. Similarly, an oral description of a photograph or machine-copy of the original document is not accepted as secondary evidence.** For example, someone describing the contents of a copy or photograph of an original document is not sufficient for it to be treated as secondary evidence.

⍰ PROOF OF DOCUMENTS BY PRIMARY EVIDENCE: SECTION 59

Section 59: Proof of documents by primary evidence.

Documents shall be proved by primary evidence except in the cases hereinafter mentioned.

- **Corresponding Provision:** Section 59 BSA corresponds to Section 64 IEA
- **Section 59 of the Bharatiya Sakshya Adhiniyam (BSA) establishes the principle that documents must be proved by primary evidence, except in certain specific situations where secondary evidence is permitted. Primary evidence refers to the original document itself, which is considered the most reliable and authentic proof of its contents.** This section emphasizes that, as a general rule, the best form of evidence should be produced in court to verify the contents of a document.
- The underlying idea of this section is that the original document provides the most direct proof and leaves little room for dispute about its accuracy or authenticity. The original is the actual document that was created, signed, or executed, and thus is seen as the strongest form of evidence. Courts prefer primary evidence because it minimizes the risk of errors or alterations that might arise in the course of copying or reproducing documents.
- **However, Section 59 acknowledges that there may be exceptional situations where primary evidence is not available or practical to produce.** In such cases, the law allows secondary evidence, which includes certified copies, mechanically produced copies, oral accounts, or other forms of evidence, as long as the absence of the original is justified. These exceptions are outlined in later sections of the BSA, which detail the conditions under which secondary evidence may be admitted.
- **Example:** Consider a scenario where a person is trying to prove the contents of a contract in court. The best way to do this is by presenting the original contract (primary evidence). However, if the original contract has been lost or destroyed, the party may be allowed to provide a certified copy or oral testimony regarding the contract's contents as secondary evidence, provided they can explain the unavailability of the original.
- In essence, Section 59 enforces the principle that primary evidence should always be used to prove documents whenever possible, ensuring the highest standard of proof in legal proceedings, but it also offers flexibility for cases where the original document cannot be produced.

? CASES IN WHICH SECONDARY EVIDENCE RELATING TO DOCUMENTS MAY BE GIVEN: SECTION 60

Section 60. Cases in which secondary evidence relating to documents may be given.

Secondary evidence may be given of the existence, condition, or contents of a document in the following cases, namely:-

(a) when the original is shown or appears to be in the possession or power-

(i) of the person against whom the document is sought to be proved; or

(ii) of any person out of reach of, or not subject to, the process of the Court; or

(iii) of any person legally bound to produce it, and when, after the notice mentioned in section 64 such person does not produce it;

(b) when the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest;

(c) when the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time;

(d) when the original is of such a nature as not to be easily movable;

(e) when the original is a public document within the meaning of section 74;

(f) when the original is a document of which a certified copy is permitted by this Adhiniyam, or by any other law in force in India to be given in evidence;

(g) when the originals consist of numerous accounts or other documents which cannot conveniently be examined in Court, and the fact to be proved is the general result of the whole collection.

Explanation.-For the purposes of-

(i) clauses (a), (c) and (d), any secondary evidence of the contents of the document is admissible;

(ii) clause (b), the written admission is admissible;

(iii) clause (e) or (f), a certified copy of the document, but no other kind of secondary evidence, is admissible;

(iv) clause (g), evidence may be given as to the general result of the documents by any person who has examined them, and who is skilled in the examination of such document.

- **Corresponding Provision:** Section 60 BSA corresponds to Section 65 IEA
- Section 60 of the Bharatiya Sakshya Adhiniyam (BSA) outlines specific situations where secondary evidence regarding the existence, condition, or contents of a document may be provided in court. **The general rule is that documents should be proved by primary evidence, which means producing the original document itself. However, this section**

acknowledges that there are circumstances where the original document cannot be produced, and secondary evidence becomes admissible. The section provides a clear framework for when such evidence may be allowed.

(a) WHEN THE ORIGINAL IS IN POSSESSION OR POWER OF ANOTHER PERSON:

- **Secondary evidence can be given when the original document is in possession of:**

1. **The person against whom the document is to be proved:** If the person you are trying to prove the document against holds the original, and despite a notice (under Section 64), they fail to produce it, secondary evidence can be used.
2. **A person beyond the court's jurisdiction:** If the original is with someone who is out of the court's reach, secondary evidence is permissible.
3. **A person legally bound to produce it:** If someone who is required by law to produce the document fails to do so after due notice, secondary evidence is allowed.

- For example, if a party holds the original contract in their possession and refuses to produce it, the other party can submit secondary evidence, such as a copy or testimony regarding the contract's contents.

(b) WHEN THE EXISTENCE, CONDITION, OR CONTENTS OF THE ORIGINAL HAVE BEEN ADMITTED IN WRITING:

- **If the person against whom the document is being proved (or their representative) has admitted the existence or contents of the document in writing, then secondary evidence is allowed.**
- For instance, if a party admits in a letter that they have signed a contract, but the original contract is unavailable, the written admission serves as secondary evidence.

(c) WHEN THE ORIGINAL IS DESTROYED, LOST, OR UNAVAILABLE FOR A VALID REASON:

- **If the original document has been destroyed, lost, or cannot be produced for some reason not arising from the party's own fault or neglect, secondary evidence can be admitted.**
- For example, if a will was destroyed in a fire, secondary evidence, such as a copy or testimony from a person who has seen the will, can be provided in court.

(d) WHEN THE ORIGINAL IS NOT EASILY MOVABLE:

- **If the original document is bulky or difficult to move, secondary evidence may be given.**

- For example, large engineering blueprints or heavy archives stored in a faraway location might not be practically brought to court, so copies or other forms of secondary evidence are permitted.

(e) WHEN THE ORIGINAL IS A PUBLIC DOCUMENT:

- **If the original document is a public record under Section 74 of the BSA, a certified copy of it can be given as secondary evidence.**
- For instance, a certified copy of a birth certificate from government records can be presented as secondary evidence instead of the actual public record.

(f) WHEN A CERTIFIED COPY IS PERMITTED BY LAW:

- **If the law allows for certified copies of specific types of documents, such copies are admissible as secondary evidence.**
- For example, certified copies of documents from the Registrar of Companies may be accepted in court without producing the original.

(g) WHEN THE ORIGINALS CONSIST OF NUMEROUS ACCOUNTS OR DOCUMENTS:

- **When the original consists of multiple documents that cannot be practically examined in court, secondary evidence can be given. The person who has examined all these documents and is skilled in analyzing them can give evidence about the general outcome or result.**
- For example, if a company's financial records consist of numerous ledgers, an accountant who has reviewed all the documents can testify about the overall financial standing of the company without producing each individual ledger in court.

❖ EXPLANATION:

→ **Clauses (a), (c), and (d)** allow any form of secondary evidence of the document's contents.
→ **Clause (b)** requires the admission in writing to be admissible as secondary evidence.
→ **Clauses (e) and (f)** specify that only certified copies are admissible as secondary evidence.
→ **Clause (g)** allows a person skilled in document examination to testify about the overall result of numerous documents, simplifying the process of proof.

- **It is important to note that secondary evidence of the contents of a written instrument cannot be provided unless there is a legal excuse for not producing the original (primary evidence).** Secondary evidence is only permissible when the primary evidence, or the document itself, is admissible. If the original document is found to be

inadmissible, no secondary evidence of that document can be allowed. For example, if a deed of gift is inadmissible due to lack of proper registration, secondary evidence of that deed cannot be presented in a suit to recover the gifted property.

- Where the original document is in the possession of a party who, despite receiving notice, fails to produce it, or where the original has been lost, destroyed, or is too bulky to be moved, secondary evidence of its contents can be given. Additionally, when the contents of a document are admitted by the party against whom it is to be proved, their written admission can serve as secondary evidence of the document. For public documents, however, only certified copies are admissible as secondary evidence.
- For example, call records from cellular phones are typically stored on large servers, which cannot be easily moved or produced in court. In such cases, secondary evidence of these records is permissible under Sections 58 and 60 of the Bharatiya Sakshya Adhiniyam, as upheld in ***State (NCT of Delhi) v. Navjot Sandhu [2005) 11 SCC 600]***.
- Objection to Secondary Evidence and When It Can Be Raised

  An objection to the admissibility of secondary evidence must be raised at the time the evidence is introduced, not at a later stage in the proceedings. This principle was established in ***Dayamathi Bai v. K.M. Shaffi [(2004) 7 SCC 107]***. Objections to secondary evidence can be categorized into two types:

1. Objection regarding the admissibility of the document itself: This type of objection can be raised even after the document has been marked as an exhibit or during an appeal or revision. For instance, if a document is inadmissible because it lacks proper authentication or registration, this objection can be raised at any stage.
2. Objection regarding the mode of proof: This objection relates to irregularities or insufficiencies in the method by which the evidence is presented. Such an objection must be raised at the time the evidence is tendered, not after the document has been admitted and marked as an exhibit.

- In ***R.V. Venkatachala Gounder v. A. Viswearaswami [(2003) 8 SCC 752],*** the Supreme Court clarified that objections based on the mode of proof cannot be raised after the document has been admitted as evidence. However, objections relating to the admissibility of the document itself can be raised even later.
- A document in terms of this section is to be proved by a per-son who is acquainted with the handwriting of the author thereof. ***[Rameshwar Dass v, State of Punjab, (2007) 14 SCC 696: (2009) 3 SCC (Cri) 237]***
- A certified copy of the registered deed, in absence of the original document, cannot be relied upon unless such absence is duly accounted for. ***[Gurmukh Ram Madan v. Bhagwan Das Madan, (1998) 7 SCC 367]***
- In order to bring his case within the purview of clause (a) of this section, the appellant filed applications before Respondent 1 was examined as a witness, praying that the said

respondent be ordered to produce the original manuscript of which, according to the appellant, he had filed photostat copy. Prayer was also made by the appellant that in case Respondent 1 denied that the said manuscript had been written by him, the photostat copy might be examined by a handwriting expert. It was, however, nowhere stated in the affidavit that the original document of which the photostat copy had been filed by the appellant was in the possession of Respondent 1. The appellant further failed to explain as to what were the circumstances under which the photostat copy was prepared and who was in possession of the original document at the time its photograph was taken. The photostat copy appeared to the High Court to be not above suspicion and it came to the conclusion that no foundation had been laid by the appellant for leading secondary evidence in the shape of the photostat copy. The Supreme Court declined to interfere. ***[Ashok Dulichand v. Madahavlal Dube, (1975) 4 SCC 664; U. Sree v. U. Srinivas, (2013) 2 SCC 114: (2013) 1 SCC (Cri) 858]***

- The secondary evidence must be authenticated by foundational evidence that the alleged copy is in fact a true copy of the original. It should be emphasised that the exceptions to the rule requiring primary evidence are designed to provide relief in a case where a party is genuinely unable to produce the original through no fault of that party. ***[M. Chandra v. M. Thangamuthu, (2010) 9 SCC 712]***
- When the appellant-defendant admitted the document, despite the fact that it was a photocopy and did not deny the plaintiff's argument that the original of that document was with the purchaser, it was held that the photocopy may be relied upon. ***[Fair Communication & Consultants v. Surendra Kerdile, (2020) 16 SCC 411]***
- When the acceptance and marking of a document is not opposed in the trial court, it cannot be done at the appellate stage. ***[Lachhmi Narain Singh v. Sarjug Singh, (2022) 13 SCC 746].***
- Under clause (c) of this section, when the original has been lost or destroyed, secondary evidence of the contents of the document is admissible. Clause (c) is independent of clause (f). Secondary evidence can be led, even of a public document, if the conditions as laid down under clause (c) are fulfilled. Thus, the ordinary copy of the earlier judgment is admissible in evidence. ***[Marwari Kumhar vs Bhagwanpuri Guru Ganeshpuri (2000) SC]***

ELECTRONIC OR DIGITAL RECORD: SECTION 61

Section 61. Electronic or digital record.

Nothing in this Adhiniyam shall apply to deny the admissibility of an electronic or digital record in the evidence on the ground that it is an electronic or digital record and such

record shall, subject to section 63, have the same legal effect, validity and enforceability as other document.

- **Section 61 of the Bharatiya Sakshya Adhiniyam, 2023 (BSA), addresses the admissibility of electronic or digital records as evidence in legal proceedings.** It establishes that an electronic or digital record cannot be rejected solely on the ground that it exists in electronic form. This ensures that such records are treated equally with traditional paper documents when presented as evidence in court. The provision highlights that electronic records will carry the same legal effect, validity, and enforceability as any other document, provided they comply with the necessary conditions under the Act.
- **Furthermore, Section 61 specifies that the admissibility of electronic records is subject to the conditions laid down in Section 63, which likely provides guidelines to ensure the authenticity and reliability of such records.** This safeguard ensures that while electronic evidence is accepted, it must meet certain criteria to prevent misuse or tampering. The inclusion of this section is significant in today's digital era, where electronic transactions and communications are increasingly common. By granting electronic records the same legal status as physical documents, Section 61 facilitates their use in judicial proceedings and supports the transition to digital processes, without compromising the principles of justice, such as reliability and authenticity.

❖ TAPE RECORDED CONVERSATION

- In the modern age, technology has become an indispensable tool in the pursuit of justice. With advancements such as tape recordings, video films, DNA tests, and polygraph tests, the accuracy of evidence has reached unprecedented levels, enabling courts to establish the truth with a higher degree of certainty. The law of evidence, while rooted in age-old principles, has evolved to accommodate these technological innovations, ensuring that justice remains relevant and responsive to contemporary needs. By allowing such forms of evidence, the courts have embraced a more comprehensive approach to uncovering the truth, while maintaining safeguards against manipulation and misuse.
- A tape-recorded conversation is a form of electronic evidence that can play a significant role in both civil and criminal proceedings. Its admissibility and evidentiary value depend on fulfilling certain legal criteria to ensure authenticity, reliability, and relevance. Over the years, the Indian judiciary has developed a nuanced framework for admitting tape-recorded conversations into evidence, ensuring their probative value without compromising legal safeguards.

→ **PROCEDURE FOR PRESENTING TAPE-RECORDED EVIDENCE:**

- When presenting a tape-recorded conversation as evidence, the following steps are typically followed:

1. **Certification under Section 63 BSA**: As discussed earlier, a certificate under Section 63 BSA must accompany the tape recording, detailing how the recording was made, stored, and retrieved.
2. **Authentication**: The person who recorded the conversation or maintained the recording device may be called upon to testify regarding the authenticity of the tape.
3. **Expert Examination**: If the authenticity or integrity of the recording is in doubt, forensic experts may be called upon to examine the tape for signs of tampering or to verify the identity of the voices on the recording.

→ **ADMISSIBILITY OF TAPE-RECORDED CONVERSATIONS:**

1. **Electronic Evidence**: Tape recordings are classified as electronic records under Indian law. With advancements in technology, courts have recognized the importance of accepting electronic forms of evidence like audio tapes, provided certain legal standards are met.
2. **Authenticity and Proof**: The most crucial aspect of admitting a tape-recorded conversation is proving its authenticity. This includes establishing:

a) Genuineness: The tape must accurately capture the conversation, with no alterations, deletions, or additions. The device used for recording should be in proper working condition, and the chain of custody of the recording must be demonstrated.
b) Identification of Voice: The voices recorded on the tape must be clearly identifiable. Witnesses or experts may be called upon to verify the identity of the speaker, ensuring that the person heard on the tape is the person involved in the case.
c) Integrity of the Recording: The recording should not have been tampered with, edited, or altered in any way. Courts may require expert analysis to verify the integrity of the tape, and this is often done by forensic labs that examine the audio for any signs of manipulation.

3. **Section 63 BSA**: The admissibility of electronic evidence, including tape-recorded conversations, is governed by Section 63 BSA. This section outlines the procedure for admitting electronic records into evidence. To ensure the reliability of such evidence, a certificate under Section 63(4) must be produced. The certificate must:

- Describe the manner in which the electronic record was produced.
- Provide details about the device involved in producing the recording.
- Certify that the record is authentic and unaltered.
- Be signed by a person in control of the device or responsible for the recording.

4. **Relevance**: For a tape-recorded conversation to be admissible, it must be relevant to the case. The conversation should have a direct bearing on the issues being litigated. Irrelevant or collateral conversations, even if recorded, will not be admitted as evidence.
5. **Competence of the Person Recording**: The person who made the recording must be able to testify about the circumstances under which the recording was made. They must confirm that the device was functioning properly and that the recording accurately reflects what was said.
6. **Clarity and Audibility**: The recorded conversation must be clear and audible. If the recording is unclear, garbled, or contains background noise that affects comprehension, the court may reject it as unreliable. Additionally, the court must be able to distinguish the voices on the tape to ensure that the recorded statements are attributed to the correct individuals.
7. **Consent and Legality**: Although consent is not always required for the admissibility of tape-recorded conversations, the manner in which the tape was obtained may be scrutinized by the court. If the recording was made unlawfully (such as through illegal wiretapping or invasion of privacy), the court may choose to exclude it, even if it is otherwise relevant and reliable.

→ **TAPE-RECORDED CONVERSATIONS AS EVIDENCE**

- **Tape recordings can be used in court to corroborate a witness's statement.** For instance, if a person claims to have had a conversation with another, a tape-recorded conversation can support this claim. Additionally, prior statements recorded on tape can be used to test the veracity of a witness or challenge their impartiality.
- In ***Yusufalli v State of Maharashtra (1967 Bom LR 76 (SC)),*** the Supreme Court ruled that an accurate tape-recording of a relevant statement is admissible in evidence. However, to be admitted, the recording's time, place, and accuracy must be proven by a competent witness, and the voice must be properly identified. Due to the possibility of tampering, the court must ensure beyond reasonable doubt that the tape has not been altered.
- ***Ziyauddin Burhanuddin Bukhari v. Brijmohan Ramdass Mehra (1976)****:* The court observed that a tape-recorded conversation is admissible if it is proved to be authentic,

relevant, and accurate. The court ruled that tape recordings can be treated as direct evidence if all necessary conditions of admissibility are met.

- In ***Mahabir Prasad v Surinder Kaur (AIR 1982 SC 1043),*** the court stated that tape-recorded conversations could only be used as corroborative evidence if one of the parties to the conversation testifies to it. If there is no such testimony, the tape cannot serve as standalone evidence.
- **Leading Case:** ***R.M. Malkani v State of Maharashtra (AIR 1973 SC 157)***

  In this landmark case, the Supreme Court addressed the issue of tape-recorded conversations as evidence. The case involved the prosecution relying solely on a tape-recorded conversation to prove the appellant's intent to receive a bribe. The appellant argued that such recordings were inadmissible under the Indian Evidence Act and were procured unlawfully.

  The Supreme Court held that tape-recorded conversations are admissible under the following conditions:

1. Relevance: The conversation must be relevant to the issue at hand, the voices must be identified, and there should be no possibility of tampering.
2. Contemporaneous Recording: If the recording is made simultaneously with the events in question, it is a relevant fact under Section 4 (res gestae) and admissible under Section 5 of the BSA. The tape is also considered a 'document' under Section 2(1)(d) BSA and can be admitted under Sections 6, 7, 8, or 9 BSA.
3. Caution in Admission: The tape must be free from tampering, and the court must ensure its accuracy before admitting it into evidence.
4. Unlawful Procurement: Even if the tape is obtained unlawfully, it can still be admissible. The court noted that “detection by deception” is a valid police procedure.

- In ***Magraj Patodia v R.K. Birla (1970 2 SCC 889),*** the court reiterated that even documents obtained through illegal means can be admitted into evidence if their relevance and genuineness are established.
- Various High Courts have further clarified the conditions under which tape recordings may be used as evidence. In ***R. Venkatesan v State (1980 Cr LJ 41),*** the Madras High Court dealt with a situation where the tape-recorded conversation was inaudible at crucial points, and the recording's accuracy could not be proven. The court ruled that it would not be safe to rely on such recordings as corroborative evidence.
- The Bombay High Court in ***C.R. Mehta v State of Maharashtra (1993 Cr LJ 2863)*** emphasized that tape recordings must be sealed immediately after being made and should only be opened under the court’s order to maintain their integrity.

→ **CUSTODY AND HANDLING OF TAPE-RECORDED EVIDENCE**

- In ***Ram Singh v Col. Ram Singh (1985 Supp SCC 611),*** the Supreme Court laid down stringent guidelines regarding the custody of tape-recorded evidence. The court stressed that the tape must be kept in proper custody after recording to prevent tampering. In this case, the tape left with a stenographer was deemed compromised, affecting its admissibility.
- In ***Quammaral Islam v S.K. Kanta (AIR 1994 SC 1733),*** the court rejected tape-recorded evidence of an election speech because the police officer who prepared the tape could not explain his actions. Additionally, the candidate denied that the voice on the tape was his, which further diminished its reliability.

→ **PHOTOGRAPHS AND OTHER FORMS OF TECHNOLOGICAL EVIDENCE**

- Similarly, photographs can be admitted as evidence if the court is convinced there is no manipulation involved, as held in ***Abdul Razak v State of Maharashtra (AIR 1970 SC 283)***. However, the court must exercise caution and ensure the authenticity of such evidence.

SPECIAL PROVISIONS AS TO EVIDENCE RELATING TO ELECTRONIC RECORD: SECTION 62

Section 62: Special provisions as to evidence relating to electronic record

The contents of electronic records may be proved in accordance with the provisions of section 63.

- **Corresponding Provision:** Section 62 BSA corresponds to Section 65-A IEA
- **Section 62 of the Bharatiya Sakshya Adhiniyam, 2023 (BSA) provides special provisions for proving the contents of electronic records. It allows electronic records to be proven in accordance with the provisions of Section 63, which deals with secondary evidence.** In general, the law of evidence adheres to the best evidence rule, requiring the original document to be presented in court. However, in cases where the original electronic record is unavailable, Section 63 permits the use of secondary evidence, such as printouts or certified copies of the electronic document, provided they are properly authenticated.
- Electronic records, which include data stored digitally—such as emails, databases, and other forms of digital content—are easily susceptible to alteration or manipulation. Therefore, Section 62 ensures that secondary forms of these records can be admitted into evidence through specific legal procedures. This allows for copies or reproductions

of electronic records to be used in court, as long as the accuracy and authenticity of the records can be demonstrated.

- In essence, Section 62 ensures that electronic records can be treated similarly to physical documents in legal proceedings, making them admissible as evidence through the guidelines of Section 63, thereby balancing the need for reliable digital evidence with the realities of modern technology.

ADMISSIBILITY OF ELECTRONIC RECORDS: SECTION 63

Section 63. Admissibility of electronic records.

(1) Notwithstanding anything contained in this Adhiniyam, any information contained in an electronic record which is printed on paper, stored, recorded or copied in optical or magnetic media or semiconductor memory which is produced by a computer or any communication device or otherwise stored, recorded or copied in any electronic form (hereinafter referred to as the computer output) shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence or any contents of the original or of any fact stated therein of which direct evidence would be admissible.

(2) The conditions referred to in sub-section (1) in respect of a computer output shall be the following, namely:-

(a) the computer output containing the information was produced by the computer or communication device during the period over which the computer or communication device was used regularly to create, store or process information for the purposes of any activity regularly carried on over that period by the person having lawful control over the use of the computer or communication device;

(b) during the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer or communication device in the ordinary course of the said activities;

(c) throughout the material part of the said period, the computer or communication device was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents; and

(d) the information contained in the electronic record reproduces or is derived from such information fed into the computer or communication device in the ordinary course of the said activities.

(3) Where over any period, the function of creating, storing or processing information for the purposes of any activity regularly carried on over that period as mentioned in clause (a) of sub-section (2) was regularly performed by means of one or more computers or communication device, whether-

(a) in standalone mode; or

(b) on a computer system; or

(c) on a computer network; or

(d) on a computer resource enabling information creation or providing information processing and storage; or

(e) through an intermediary, all the computers or communication devices used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer or communication device; and references in this section to a computer or communication device shall be construed accordingly.

(4) In any proceeding where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things shall be submitted along with the electronic record at each instance where it is being submitted for admission, namely:-

(a) identifying the electronic record containing the statement and describing the manner in which it was produced;

(b) giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer or a communication device referred to in clauses (a) to (e) of sub-section (3);

(c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate, and purporting to be signed by a person in charge of the computer or communication device or the management of the relevant activities (whichever is appropriate) and an expert shall be evidence of any matter stated in the certificate; and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it in the certificate specified in the Schedule.

(5) For the purposes of this section,-

(a) information shall be taken to be supplied to a computer or communication device if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;

(b) a computer output shall be taken to have been produced by a computer or communication device whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment or by other electronic means as referred to in clauses (a) to (e) of sub-section (3).

- **Corresponding Provision:** Section 63 BSA corresponds to Section 65-B IEA
- **Section 63 of the Bharatiya Sakshya Adhiniyam, 2023 (BSA) provides a comprehensive framework for the admissibility of electronic records as evidence.** It addresses the conditions under which electronic records can be presented in legal proceedings and lays down specific requirements to ensure that these records are reliable and authentic. Below is a detailed explanation of each sub-section:

❖ SUB-SECTION (1): ADMISSIBILITY OF ELECTRONIC RECORDS

- **This section establishes that any information contained in an electronic record that is printed on paper, stored, recorded, or copied in optical or magnetic media (e.g., CDs, USB drives), semiconductor memory (e.g., chips), or any other electronic form will be deemed a "document" if certain conditions are met.** Once these conditions are satisfied, the electronic record can be admitted as evidence in legal proceedings without requiring further proof or the production of the original. This is significant because it allows for the use of electronic data in place of physical documents, which can streamline legal procedures, especially in a digital world.
- For example, an email printed on paper can be submitted as evidence without needing to produce the original digital email, provided that the conditions in this section are met.

❖ SUB-SECTION (2): CONDITIONS FOR ADMISSIBILITY

- **This sub-section lists the four conditions that must be satisfied for an electronic record (referred to as a "computer output") to be admissible as evidence:**

a) **Regular Use of the Computer or Device:** The electronic record must have been produced by a computer or communication device that was regularly used during the period in question for activities carried out by a person who had lawful control over the device. This ensures that the device generating the data was legitimately used, eliminating concerns over unauthorized access or tampering. For example, a company

regularly using a computer to process orders can rely on records produced by that computer as long as the company had control over it.

b) **Regular Input of Information:** The information stored in the electronic record or the kind from which it was derived must have been regularly input into the computer in the normal course of activities. This condition ensures that the data was part of the routine functioning of the system and not something unusual or manipulated for specific purposes. For example, if a company regularly records sales transactions in a database, that database will meet this condition.

c) **Proper Functioning of the Computer:** The computer or communication device should have been functioning properly during the relevant period. If the computer was not operating correctly for a certain period, that malfunction should not have affected the accuracy or integrity of the electronic record. This condition ensures the reliability of the data. For example, if the computer had some technical issues but they did not affect the recorded data, the records are still valid.

d) **Accuracy of the Information:** The information contained in the electronic record must accurately reflect the data that was fed into the computer in the ordinary course of business or activities. This condition ensures that the data has not been altered or corrupted and remains faithful to the original input. For example, if a digital ledger reflects exactly what was entered as sales data, it will satisfy this condition.

❖ SUB-SECTION (3): USE OF MULTIPLE DEVICES

- **This sub-section explains that if multiple computers or communication devices were used to create, store, or process information over a certain period, all of these devices shall be treated as one single system.** This means that the admissibility of the electronic record applies even if different devices were used, as long as they operated together for the same purpose.

a) **Standalone Mode:** The system may consist of a single, isolated computer.

b) **Computer System:** Multiple computers connected in a system can also be considered a single source.

c) **Computer Network:** The electronic record could have been created, stored, or processed on a computer network.

d) **Computer Resource:** Any infrastructure that facilitates the creation, storage, and processing of information will be treated as part of a unified system.

e) **Intermediary:** Even if intermediaries (such as cloud service providers or third-party data processors) were involved, the system will still be considered one unified computer for the purpose of this section.

For example, if a company uses multiple computers or servers in different locations that work together to process data, all these computers will be treated as one for proving the electronic record.

❖ SUB-SECTION (4): CERTIFICATE OF AUTHENTICITY

- **This sub-section mandates that a certificate must accompany any electronic record submitted as evidence. The certificate must do the following:**

a) Identify the electronic record and describe how it was produced, which helps trace the source of the information and ensures authenticity.

b) Provide details of the device involved in creating the electronic record to show that the record was indeed produced by a computer or communication device as referred to in sub-section (3). This ensures the court knows how the information was generated and from which machine.

c) Address the conditions mentioned in sub-section (2), which ensures that the certificate verifies the proper functioning of the computer or device and compliance with the conditions for admissibility. This certificate should be signed by the person responsible for the operation of the computer or device or by a person managing the relevant activities.

- **The certificate serves as evidence that the electronic record is accurate, authentic, and reliable.** It is sufficient if the certificate is made "to the best of the knowledge and belief" of the person signing it, which means they must affirm the record's authenticity based on their knowledge.
- For example, if an electronic record is presented as evidence in a court case, a person responsible for managing the system can submit a certificate confirming that the computer was properly functioning and the data is authentic.

❖ SUB-SECTION (5): ADDITIONAL DEFINITIONS AND CLARIFICATIONS

- **This sub-section provides further clarifications about the technical processes involved in handling electronic records:**

a) **Information fed into a computer:** Information will be considered "supplied" to a computer if it is input in any appropriate form, whether directly or through equipment, with or without human intervention. This means that even if the data is input automatically by machines, it will still count as valid information supplied to the computer.

b) **Computer output:** The output (e.g., a printout or a file) from the computer or communication device will be considered as produced by the computer, whether directly

or with the aid of other equipment, or through electronic means. This ensures that as long as the output is generated through a valid process, it is admissible, even if other tools were used.

- For example, if a report is generated by a software program on a server, the printout of this report can be considered the "computer output," even if the report was automatically generated by the software without direct human input.

PROOF OF SIGNATURE AND HANDWRITING OF PERSON ALLEGED TO HAVE SIGNED OR WRITTEN DOCUMENT PRODUCED: SECTION 65

Section 65. Proof of signature and handwriting of person alleged to have signed or written document produced.

If a document is alleged to be signed or to have been written wholly or in part by any person, the signature or the handwriting of so much of the document as is alleged to be in that person's handwriting must be proved to be in his handwriting.

- **Corresponding Provision:** Section 65 BSA corresponds to Section 67 IEA
- **Section 65 of the Bharatiya Sakshya Adhiniyam, 2023 (BSA) addresses the procedure for proving the signature or handwriting of a person alleged to have signed or written a document.** According to this section, if a document is presented in a legal proceeding and it is claimed that the document or a part of it has been signed or written by a particular person, then the party relying on that document must provide evidence to prove that the signature or handwriting indeed belongs to the person in question.
- In essence, the burden of proof lies on the party who is making the claim that the document was signed or written by a specific individual. It is not enough to simply present the document; the authenticity of the signature or handwriting must be verified through appropriate means.
- This section is particularly important in preventing the use of forged or fraudulent documents. To prove the authenticity of a signature or handwriting, several methods can be used, including:

1. **Expert Testimony:** A handwriting expert may be called to compare the disputed signature or handwriting with known samples of the person's handwriting and provide an opinion on whether they match.
2. **Testimony of a Witness:** Someone who is familiar with the person's handwriting or signature (such as a friend, colleague, or family member) may testify in court that the handwriting or signature is genuine.

3. **Comparison by the Court:** In some cases, the court itself may compare the handwriting or signature with other verified documents signed or written by the same person to determine its authenticity.

- The purpose of this section is to ensure that the authenticity of critical documents is verified, protecting the legal process from manipulation through forged or fraudulent documentation. Without such proof, the document in question may be disregarded as unreliable or invalid.
- The party seeking to prove a deed must not only prove that the alleged executant has signed that deed, but he must also prove that the executant had signed the same with the knowledge of its contents. What facts and circumstances have to be established to prove the execution of a document depend on the pleas put forward. If the only plea taken is that the executant has not signed the document and that the document is a forgery, the party seeking to prove the execution of a document need not adduce evidence to show that the party who signed the document knew the contents of the document. Ordinarily, no one is expected to sign a document without knowing its contents, but if it is pleaded that the party who signed the document did not know the contents of the document, then it may in certain circumstances be necessary for the party seeking to prove the document to place material before the court to satisfy it that the party who signed the document had the knowledge of its contents. ***[Rao Saheb vs Rangnath Gopalrao Kawathekar (1972) SC]***
- When a document is alleged to be forged and fabricated, it would be incumbent upon the prosecution to prove the handwriting and signature of the executant thereon by sending it to the handwriting expert. ***[Pawan Kumar vs State of Haryana (2003) SC]***
- Evidence of a former employee of the accused as to handwriting of the accused is admissible. ***[Hema vs State (2013) SC]***
- Admission of a document in evidence does not amount to its proof. ***[Rakesh Mohindra vs Anita Beri (2016) SC]***

PROOF AS TO ELECTRONIC SIGNATURE: SECTION 66

Section 66. Proof as to Electronic signature.

Except in the case of a secure electronic signature, if the electronic signature of any subscriber is alleged to have been affixed to an electronic record, the fact that such electronic signature is the electronic signature of the subscriber must be proved.

- **Corresponding Provision:** Section 66 BSA corresponds to Section 67-A IEA

- **Section 66 of the Bharatiya Sakshya Adhiniyam, 2023 (BSA) focuses on the proof of an electronic signature.** This section is particularly relevant in situations where the authenticity of an electronic signature is contested in legal proceedings.

❖ KEY POINTS:

1. **Electronic Signature Proof Requirement:** The section mandates that if an electronic signature is claimed to have been affixed to an electronic record by a particular subscriber, then the person making this claim must prove that the signature belongs to the subscriber. This means that the onus is on the party relying on the electronic signature to demonstrate its authenticity.
2. **Exception for Secure Electronic Signatures:** The only exception to this proof requirement is in the case of a secure electronic signature. Secure electronic signatures are those that are verified using a secure method and meet certain technical standards laid down by the law. Since these signatures are considered inherently reliable, no further proof is required to establish their authenticity.
3. **Application in Digital Transactions:** In an increasingly digital world, where electronic records and signatures are widely used in contracts, agreements, and other legal transactions, this provision ensures that electronic signatures are not misused. It emphasizes that electronic signatures must be authenticated just like traditional handwritten signatures to prevent fraud or forgery.

❖ WHAT NEEDS TO BE PROVED:

- The party must demonstrate that the electronic signature was indeed created or authorized by the subscriber (the person whose signature is being alleged).
- Proof can be provided through various methods, such as cryptographic verification, certificates issued by a certifying authority, or expert testimony regarding the creation and use of the signature.

❖ IMPORTANCE OF SECURE ELECTRONIC SIGNATURES:

- A secure electronic signature enjoys a presumption of authenticity, as it complies with stricter standards of creation and verification. These signatures often involve the use of encryption or other advanced technology, ensuring their integrity and that they have not been tampered with. Hence, no further proof is necessary once such a signature is presented.

PROOF OF EXECUTION OF DOCUMENT REQUIRED BY LAW TO BE ATTESTED: SECTION 67

Section 67: Proof of execution of document required by law to be attested.

If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence:

Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908, unless its execution by the person by whom it purports to have been executed is specifically denied.

- **Corresponding Provision:** Section 67 BSA corresponds to Section 68 IEA
- **Section 67 of the Bharatiya Sakshya Adhiniyam, 2023 (BSA) deals with the proof of execution of documents that are required by law to be attested.** This section establishes a procedural safeguard to ensure that such documents, particularly those requiring attestation (i.e., witness signatures), are properly authenticated before being used as evidence in court.

❖ KEY POINTS OF SECTION 67:

1. **Documents Requiring Attestation**: Some legal documents, such as certain deeds or agreements, are required by law to be attested by witnesses. This means that one or more witnesses must sign the document to confirm that they were present when the document was executed (signed by the party). Examples include wills, sale deeds, and mortgages.

2. **Requirement for Proof**: When such a document is presented in court, it cannot be used as evidence unless at least one attesting witness is called to testify about the execution of the document. The witness must confirm that they saw the person execute (sign) the document. This is a critical requirement to ensure that the document was signed voluntarily and in the presence of a witness, preventing fraud or forgery.

3. **Conditions for Calling an Attesting Witness**:

   → The witness must be alive.

→ The witness must be subject to the court's process, meaning they can be called to testify.

→ The witness must be capable of giving evidence, i.e., competent and available to testify in court.

If these conditions are met, the party relying on the document must call the witness to prove that the execution took place as claimed.

4. **Exception for Registered Documents:** There is a significant exception to this requirement:

→ If the document is not a will and has been registered according to the provisions of the Indian Registration Act, 1908, then it is not necessary to call an attesting witness to prove its execution, unless the execution of the document is specifically denied.

→ In simpler terms, if the document has been officially registered (like a sale deed or mortgage deed) and is not contested, the court will assume its validity, and there is no need for the attesting witness to testify.

→ The exception does not apply to wills, even if they are registered. The execution of wills requires stricter scrutiny because of the personal and sensitive nature of the document, and the possibility of disputes after the testator's death. Therefore, in cases involving wills, calling an attesting witness is still necessary unless special circumstances apply.

❖ SOME RELEVANT CASE LAWS:

1) ***Palanivelayutham Pillai vs Ramachandran (2000) SC:*** When the scribe who also witnessed the will along with two other witnesses was examined in proof of the said will before the trial court, it cannot be said that the attesting witnesses were not examined in proof of the said will.
2) ***Rosammal Issetheenammal Fernandez vs Joosa Mariyan Fernandez (2000) SC:*** The main part of this section puts an obligation on the party tendering any document that unless at least one attesting witness has been called for proving such execution, the same shall not be used in evidence. Under the proviso to Section 68, the obligation to produce at least one attesting witness stands withdrawn if the execution of any such document, not being a will which is registered, is not specifically denied. Therefore, everything hinges on the recording of this fact of such denial. If there is no specific denial, the proviso comes into play but if there is denial, the proviso will not apply. In

considering this question, whether there is any denial or not, it should not be casually considered as such finding has a very important bearing on the admissibility of a document, which has an important bearing on the rights of both parties. As for what constitutes denial it was observed that when the pleading records that Defendants 1 and 2 forged the signature of their father after influencing the Sub-Registrar, the denial cannot be more strong than what is recorded here.

3) ***Janki Narayan Bhoir vs Narayan Namdeo Kadam (2003) SC:*** On a combined reading of Section 63, Succession Act with this section, it appears that a person propounding the will has got to prove that the will was duly and validly executed. That cannot be done by simply proving that the signature on the will was that of the testator, but it must also prove that attestations were also made properly as required by clause (c) of Section 63, Succession Act. This section does not say that both or all the attesting witnesses must be examined but at least one attesting witness has to be called for proving due execution of the will. Although Section 63 of the Succession Act requires that a will has to be attested at least by two witnesses, Section 68 IEA, now Section 67 BSA, provides that a document, which is required by law to be attested, shall not be used as evidence until one attesting witness at least has been examined for the purpose of proving its due execution if such witness is alive and capable of giving evidence and subject to the process of the court. If one attesting witness can prove execution of the will in terms of clause (c) of Section 63, the examination of the other attesting witness can be dispensed with. The one attesting witness examined, in his evidence has to satisfy the attestation of a will by him and the other attesting witness in order to prove there was due execution of the will. If the attesting witness examined besides his attestation does not, in his evidence, satisfy the requirements of attestation of the will by the other witness also, it falls short of attestation of will at least by two witnesses for the simple reason that the execution of the will does not merely mean the signing of it by the testator but it means fulfilling and proof of all the formalities required under Section 63, Succession Act. Where one attesting witness examined to prove the will under Section 68 fails to prove the due execution of the will, then the other available attesting witness has to be called to supplement his evidence to make it complete in all respects. Where one attesting witness is examined and he fails to prove the attestation of the will by the other witness, there will be deficiency in meeting the mandatory requirements of Section 68 IEA, now Section 67 BSA.

4) ***Bharpur Singh vs Shamsher Singh (2009) SC:*** The propounder of a will must prove its execution by examining one or more attesting witnesses. Where, however, the validity of the will is challenged on the ground of fraud, coercion or undue influence, the burden of proof would be on the caveator. In a case where the will is surrounded by suspicious circumstances, it would not be treated as the last testamentary disposition of the testator. The propounder of a will must prove:

1. that the will was signed by the testator in a sound and disposing state of mind duly understanding the nature and effect of disposition, and he put his signature on the document of his own free will; and

2. when the evidence adduced in support of the will is disinterested, satisfactory and sufficient to prove the sound and disposing state of the testator's mind and his signature as required by law, courts would be justified in making a finding in favour of propounder; and

3. if a will is challenged as surrounded by suspicious circumstances, all such legitimate doubts have to be removed by cogent, satisfactory and sufficient evidence to dispel suspicion. In other words, the onus on the propounder can be taken to be discharged on proof of the essential facts indicated therein.

A registered will by itself would not mean that the statutory requirements of proving the will need not be complied with.

5) ***Madhukar D. Shende vs Tarabai Aba Shendage (2002) SC:*** One who propounds a will must establish the competence of the testator to make the will at the time when it was executed. The onus is discharged by the propounder adducing prima facie evidence proving the competence of the testator and execution of the will in the manner contemplated by law. There is no rule of law or evidence which requires a doctor to be kept present when a will is executed (to certify mental fitness of the testator).
6) ***Rur Singh vs Bachan Kaur (2009) SC:*** Only because one of the beneficiaries attested the will, the same would not mean that he had taken an active part in it.

PROOF WHERE NO ATTESTING WITNESS FOUND: SECTION 68

Section 68. Proof where no attesting witness found.

If no such attesting witness can be found, it must be proved that the attestation of one attesting witness at least is in his handwriting, and that the signature of the person executing the document is in the handwriting of that person.

- **Corresponding Provision:** Section 68 BSA corresponds to Section 69 IEA
- **Section 68 of the Bharatiya Sakshya Adhiniyam, 2023 (BSA) addresses situations where no attesting witness is available to testify regarding the execution of a document that requires attestation by law.** This section comes into play when, despite efforts, the attesting witnesses are either unavailable, deceased, or cannot be located. In such cases, the section provides an alternative method for proving the execution of the document.

❖ KEY POINTS:

1. **Unavailability of Attesting Witnesses:** If none of the attesting witnesses can be found to testify in court regarding the execution of the document, the burden of proof shifts to an alternative means of establishing the validity of the document.
2. **Proof of Attestation:** In the absence of a live attesting witness, it must be shown that the attestation (the act of the witness signing the document) was done in the handwriting of at least one of the attesting witnesses. This can be demonstrated by presenting evidence, such as documents or expert testimony, confirming that the handwriting matches that of one of the witnesses.
3. **Proof of Signature of the Executing Party:** Additionally, it must be established that the signature of the person who executed (signed) the document is indeed in their handwriting. This may involve producing evidence or expert analysis showing that the handwriting on the document belongs to the person who purportedly signed it.
4. **Preservation of Authenticity:** This provision ensures that even when attesting witnesses are unavailable, the execution of the document can still be proven. By allowing the attestation and signature to be verified through handwriting analysis or other means, it prevents the document from being dismissed solely due to the absence of witnesses.

❖ PRACTICAL APPLICATION:

- **For example,** if a legal document such as a sale deed or mortgage is being disputed, and none of the witnesses can be called to testify, the party relying on the document can still prove its validity by showing that the handwriting on the document matches the known handwriting of both the attesting witness and the person who executed it. This rule prevents important legal documents from being invalidated simply because witnesses are unavailable.
- Section 68 thus provides a safeguard for upholding the authenticity of documents that require attestation while allowing for flexibility in cases where attesting witnesses cannot be found, ensuring that justice is not compromised due to procedural obstacles.

ADMISSION OF EXECUTION BY PARTY TO ATTESTED DOCUMENT: SECTION 69

Section 69. Admission of execution by party to attested document.

The admission of a party to an attested document of its execution by himself shall be sufficient proof of its execution as against him, though it be a document required by law to be attested.

- **Corresponding Provision:** Section 69 BSA corresponds to Section 70 IEA
- **Section 69 of the Bharatiya Sakshya Adhiniyam, 2023 (BSA) provides a straightforward method for proving the execution of an attested document when the person who signed it admits to having done so.** Normally, documents that require attestation by law need to be verified by calling an attesting witness to testify about the execution. However, this section creates an exception to that requirement. If the person whose signature appears on the document acknowledges in court that they indeed signed it, this admission is considered sufficient proof of the document's execution. The admission binds the person making it, meaning that the document's execution is established against them without needing further evidence or testimony from any attesting witnesses. This provision simplifies the process in cases where the execution is admitted, ensuring that the court can accept the document as properly executed without additional procedural steps. It is important to note that this sufficiency of proof applies only to the party making the admission, streamlining legal proceedings and making it easier to establish the authenticity of documents.

PROOF WHEN ATTESTING WITNESS DENIES EXECUTION: SECTION 70

Section 70. Proof when Attesting witness denies execution.

If the attesting witness denies or does not recollect the execution of the document, its execution may be proved by other evidence.

- **Corresponding Provision:** Section 70 BSA corresponds to Section 71 IEA
- **Section 70 of the Bharatiya Sakshya Adhiniyam, 2023 (BSA) addresses situations where an attesting witness either denies the execution of a document or is unable to recall it.** Under normal circumstances, the execution of a document that requires attestation must be proven by calling an attesting witness. However, when a witness either refuses to confirm the execution or claims they do not remember it, the law provides an alternative means of proof.
- In such cases, Section 70 allows the party relying on the document to use other evidence to prove its execution. **This "other evidence" can include circumstantial evidence,**

expert testimony, handwriting analysis, or any other relevant material that demonstrates the document was indeed executed by the person in question. The provision ensures that the authenticity of a document is not entirely dependent on the memory or willingness of the attesting witness, thereby preventing the invalidation of documents simply due to the lack of cooperation or memory issues from a witness.

- Thus, Section 70 acts as a safeguard, allowing for the execution of an attested document to be proven through alternative methods when an attesting witness is either uncooperative or forgetful. It maintains the integrity of the legal process by ensuring that important documents can still be validated, even in the absence of a reliable attesting witness.
- ***Janki Narayan Bhoir vs Narayan Namdeo Kadam (2003) SC & Raj Kumari vs Surinder Pal Sharma (2021) SC:*** Section 71 IEA, now Section 70 BSA, is in the nature of a safeguard to the mandatory provisions of Section 68 IEA, now Section 67 BSA, to meet a situation where it is not possible to prove the execution of the will by calling the attesting witnesses, though alive. This section provides that if an attesting witness denies or does not recollect the execution of the will, its execution may be proved by other evidence. Aid of Section 71 can be taken only when the attesting witnesses, who have been called, deny or fail to recollect the execution of the document to prove it by other evidence. This section has no application to a case where one attesting witness, who alone had been summoned, has failed to prove the execution of the will and other attesting witnesses though are available to prove the execution of the same, for reasons best known, have not been summoned before the court. This section is permissive and an enabling section permitting a party to lead other evidence in certain circumstances. This section is meant to lend assistance and come to the rescue of a party who had done his best, but driven to a state of helplessness and impossibility, cannot be let down without any other means of proving due execution by "other evidence" as well. At the same time, this section cannot be read so as to absolve a party of his obligation under Section 68 IEA read with Section 63 IEA, now Section 58 BSA, and liberally allow him, at his will or choice to make available or not a necessary witness otherwise available and amenable to the jurisdiction of the court concerned and confer a premium upon his omission or lapse, to enable him to give a go-by to the mandate of law relating to the proof of execution of a will.
- ***Janki Narayan Bhoir v. Narayan Namdeo Kadam AIR 2003 SC 761:*** Circumstances under which aid of section 71 can be taken - Section 71 of Evidence Act is in nature of a safeguard to mandatory provisions of section 68, to meet a situation where it is not possible to prove execution of Will by calling attesting witnesses, though alive. This section provides that if an attesting witness denies or does not recollect execution of Will, its execution may be proved by other evidence. Aid of section 71 can be taken only when attesting witnesses, who have been called, deny or fail to recollect execution of

document to prove it by other evidence. Section 71 has no application to a case where one attesting witness, who alone had been summoned, has failed to prove execution of Will and other attesting witnesses though are available to prove execution of same, for reasons best known, have not been summoned before Court. It is clear from language of section 71 that if an attesting witness denies or does not recollect execution of document, its execution may be proved by other evidence.

PROOF OF DOCUMENT NOT REQUIRED BY LAW TO BE ATTESTED: SECTION 71

Section 71. Proof of document not required by law to be attested.

An attested document not required by law to be attested may be proved as if it was unattested.

- **Corresponding Provision:** Section 71 BSA corresponds to Section 72 IEA
- **Section 71 of the Bharatiya Sakshya Adhiniyam, 2023 (BSA) provides clarity regarding the proof of attested documents that do not have a legal requirement for attestation.** While many legal documents must be attested to ensure their authenticity and validity, there are instances where an attested document may not be subject to such a legal requirement. This section states that if an attested document is not mandated by law to be attested, it can be proved as if it were an unattested document.
- **This provision simplifies the evidentiary process for such documents**. Essentially, it allows the party presenting the document in court to rely on the general rules of admissibility for documents that do not require attestation, rather than adhering to the more stringent requirements for proving attested documents. As a result, the burden of proof is lighter, enabling the document's contents to be established through simpler forms of evidence.
- **For instance,** if a contract is signed and attested but does not legally require attestation, the party seeking to enforce the contract can provide the document along with other relevant evidence (such as witness testimony or supporting documents) without needing to call the attesting witness. This provision ensures that documents, even when attested, are not unnecessarily complicated in terms of proving their validity when they are not legally required to be attested. Ultimately, Section 71 facilitates smoother legal proceedings by allowing for greater flexibility in the evidentiary process for documents lacking a strict attestation requirement.

COMPARISON OF SIGNATURE, WRITING OR SEAL WITH OTHERS ADMITTED OR PROVED: SECTION 72

Section 72. Comparison of signature, writing or seal with others admitted or proved.

(1) In order to ascertain whether a signature, writing or seal is that of the person by whom it purports to have been written or made, any signature, writing, or seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing or seal has not been produced or proved for any other purpose.

(2) The Court may direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person.

(3) This section applies also, with any necessary modifications, to finger impressions.

- **Corresponding Provision:** Section 72 BSA corresponds to Section 73 IEA
- **Section 72 of the Bharatiya Sakshya Adhiniyam, 2023 (BSA) establishes guidelines for comparing signatures, writings, or seals to ascertain their authenticity and authorship.** This section is particularly important in cases where the validity of a document hinges on verifying whether a specific signature, handwriting, or seal genuinely belongs to the person it claims to represent.
- **Subsection (1)** permits the court to compare the disputed signature or writing with any known signature or writing of the individual that has been admitted or proven to the court's satisfaction, even if those known examples have not been introduced for any other purpose. This flexibility is crucial for situations where original documents may not be readily available, yet authenticity verification remains essential.
- Furthermore, **Subsection (2)** empowers the court to request any individual present in the courtroom to write specific words or figures, enabling direct comparison with the disputed writing. This provision ensures that the court can obtain a fresh sample of handwriting for analysis, facilitating a straightforward means of determining authenticity.
- Additionally, **Subsection (3)** extends the principles of comparison to include finger impressions, acknowledging the increasing relevance of biometric evidence in legal contexts.
- Overall, Section 72 enhances the judicial process by allowing courts to verify authorship through comparative analysis, thus addressing potential disputes over the authenticity of signatures, writings, or seals. By incorporating flexible comparison methods and

adapting to contemporary evidentiary practices, this provision contributes to a more efficient legal process and reinforces the integrity of judicial determinations.

- Although this section specifically empowers the court to compare the disputed writings with the specimen/admitted writings shown to be genuine, prudence demands that the court should be extremely slow in venturing an opinion on the basis of mere comparison, more so, when the quality of evidence in respect of specimen/admitted writings is not of high standard. ***[State of Maharashtra vs Sukhdev Singh (1992) SC]***
- Only the court holding the enquiry under the CrPC/BNSS or the court trying the accused person can issue a direction to the person to give his specimen writing with a view to enable it to compare the specimen writings with the writings alleged to have been written by such a person. A court which is not holding an enquiry under the CrPC/BNSS or conducting the trial is not permitted, in the plain language of Section 73 IEA, now Section72 BSA, to issue any direction of the nature contained in the second paragraph of this section. ***[Sukhvinder Singh vs State of Punjab (1994) SC]***
- In order to enable the exercise of power under this section, the pendency of a proceeding before the court is the sine qua non. The direction is to be given for the purpose of enabling the court to compare and not for the purpose of enabling the investigating or other agency "to compare" ***[State of Haryana vs Jagbir Singh (2003)]***

PROOF AS TO VERIFICATION OF DIGITAL SIGNATURE: SECTION 73

Section 73. Proof as to verification of digital signature.

In order to ascertain whether a digital signature is that of the person by whom it purports to have been affixed, the Court may direct-

(a) that person or the Controller or the Certifying Authority to produce the Digital Signature Certificate;

(b) any other person to apply the public key listed in the Digital Signature Certificate and verify the digital signature purported to have been affixed by that person.

- **Corresponding Provision:** Section 73 BSA corresponds to Section 73-A IEA
- **Section 73 of the Bharatiya Sakshya Adhiniyam, 2023 (BSA) outlines the procedures for verifying the authenticity of a digital signature, emphasizing the role of various authorities and individuals in the verification process.** This section is vital in establishing the credibility of digital signatures, which have become increasingly prevalent in electronic communications and transactions.

❖ KEY PROVISIONS EXPLAINED:

1. **Verification of Digital Signature:** The primary objective of Section 73 is to ascertain whether a digital signature is genuinely affixed by the individual it claims to represent. This is crucial in legal contexts, where the validity of documents often depends on the authenticity of signatures.
2. **Production of the Digital Signature Certificate:** Subsection (a) empowers the court to direct the individual whose digital signature is in question, or the Controller or the Certifying Authority, to produce the Digital Signature Certificate (DSC). The DSC serves as a formal document that associates a public key with the identity of the individual or entity to whom it is issued. By presenting this certificate, the court can verify the legitimacy of the digital signature and establish a link between the signature and the individual.
3. **Application of Public Key for Verification:** Subsection (b) allows the court to instruct any other person to utilize the public key listed in the Digital Signature Certificate to verify the authenticity of the digital signature. The public key is essential in the cryptographic process of digital signatures, as it is used to decrypt the information signed with the corresponding private key. By applying this public key, the designated individual can confirm whether the digital signature was created using the correct private key, thus validating its authenticity.

❖ OVERALL SIGNIFICANCE:

- Section 73 reinforces the legal framework surrounding digital signatures by providing clear guidelines for their verification. In an era where digital transactions are ubiquitous, establishing the authenticity of digital signatures is essential for maintaining trust and security in electronic communications. By involving both the signatory and relevant authorities in the verification process, this section helps ensure that digital signatures are not only valid but also legally recognized. Ultimately, Section 73 contributes to the overall integrity of digital evidence in legal proceedings, enhancing the efficacy of the judicial system in the digital age.