

The ****Bharatiya Sakshya Adhiniyam, 2023**** introduces significant reforms to the law of evidence in India, modernizing the previous Indian Evidence Act of 1872. The new act includes updated definitions and guidelines, especially concerning electronic and digital evidence, which are crucial in today's legal landscape.

Introduction

The Bharatiya Sakshya Adhiniyam (BSA) 2023, introduced to replace the outdated Indian Evidence Act, aims to address gaps and modernize India's evidence laws to reflect technological advancements. This act was introduced to streamline the judicial process, ensure fair trials, and make the evidence rules compatible with digital and electronic records.

Key Categories of Presumptions

The BSA 2023, like its predecessor, categorizes presumptions into three main types, which guide the courts on how to approach certain facts in the absence of full proof. These categories help the court either assume the truth of specific facts unless proven otherwise or treat facts as conclusive without needing further evidence. Here's an overview of each type:

1. ****May Presume (Discretionary Presumptions)****: Under sections dealing with discretionary presumptions, the court has the authority to assume a fact to be true unless disproved. An example is the presumption related to the legitimacy of a child born within a valid marriage. Courts can

either accept this presumption or require further proof to establish it. This flexible approach allows judges to weigh evidence and apply discretion based on case specifics.

2. ****Shall Presume (Mandatory Presumptions)****: In certain situations, courts must presume specific facts to be true unless proven otherwise. For example, documents that are thirty years or older and produced from proper custody are presumed genuine. Such mandatory presumptions streamline the judicial process by providing certainty for particular types of evidence, though they still allow room for contrary proof.

3. ****Conclusive Proof (Irrebuttable Presumptions)****: When a fact is declared as conclusive proof under the BSA 2023, no counter-evidence is allowed to dispute it. For instance, a final court judgment may be treated as conclusive proof regarding certain issues, preventing re-litigation of the same matter and thus promoting legal certainty and efficiency.

Relevant Case Laws

The presumption of legitimacy, as discussed in ****Samar Ghosh v. Jaya Ghosh****, has been upheld by the Supreme Court under Indian law, emphasizing the importance of marital status in such presumptions. Similarly, the court has referred to mandatory and conclusive presumptions in cases concerning the authenticity of official documents and judicial records.

Conclusion

The BSA 2023, through these categories of presumption, offers courts structured yet flexible guidelines on handling various forms of evidence. By incorporating digital evidence

and modern presumptions, it not only aligns with contemporary needs but also reinforces the foundations for fair trials. These provisions streamline evidence handling, making judicial proceedings more efficient while ensuring justice aligns with today's digital realities.

For more details, you may refer to the act itself or summaries provided by sources like B&B Associates and IAS Express【7†source】【8†source】【9†source】.

Or

The ****Bharatiya Sakshya Adhiniyam (BSA) 2023****, or Indian Evidence Act 2023, has updated the legal landscape for evidence in India, incorporating modern requirements like digital evidence and introducing various types of presumptions, essential for guiding judicial proceedings.

Introduction

Presumptions under the BSA are significant as they ease the evidentiary burden in certain cases by allowing courts to assume a fact based on common patterns or legal provisions, unless proven otherwise. This aligns with the goal of efficient justice delivery by reducing the burden of proof where the likelihood of certain facts is already high.

Key Categories of Presumptions

The BSA 2023 includes several specific presumptions under Sections 78 to 117, categorized into different types based on their applicability:

1. ****Presumptions as to Documentary Evidence (Sections 78-94):**** These sections address the authenticity of various documents. For instance, Section 78 presumes the authenticity of

certified copies of public documents, while Section 85 presumes the validity of electronic agreements, helping ensure the smooth acceptance of digital contracts in court.

2. **Presumptions as to Electronic Evidence (Sections 85-93):**

With the rising importance of digital records, Section 86 presumes electronic records and signatures as valid. This is critical in modern litigation, especially with digital communications and transactions becoming central to many disputes.

3. **Presumptions in Specific Legal Scenarios (Sections

107-117):** These sections cover presumptions around human behaviors and relationships. For example, Section 112 establishes the presumption of legitimacy for a child born within a valid marriage, which protects the rights of children in disputes of parentage. Section 114 also presumes good faith in transactions where one party holds a position of trust, like partnerships or principal-agent relationships.

4. **Presumptions Relating to Death and Life Status (Sections

110-113):** These sections provide guidance on cases involving missing persons. Section 110 presumes a person alive if not proven dead, while Section 113 presumes death if the person has not been heard from for seven years, which simplifies legal proceedings involving inheritance and succession.

5. **Special Cases in Criminal Law (Sections 115-117):** These sections handle presumptions in criminal cases, such as Section 116, which considers the legitimacy of children born in wedlock, aiding in cases where legitimacy affects inheritance or family rights.

Relevant Case Laws

Cases under the older Indian Evidence Act still provide foundational guidance, as many presumptions in the BSA 2023 build upon these principles. For example:

- ****Bharat Singh v. Bhagirathi** (1966)** reaffirmed the significance of documentary proof, aligning with Sections 78-85 of the BSA 2023, which stress on the authenticity of documentary evidence.
- ****State of Maharashtra v. Praful Desai** (2003)** recognized the role of electronic evidence, anticipating current Sections 85 and 86 that directly cover digital records' validity and ease their use in court.

Conclusion

The BSA 2023's presumption categories modernize the Indian evidentiary system, allowing for efficient court proceedings, especially given the digital evolution of evidence. This shift ensures that courts can adopt a pragmatic approach, focusing on the relevance and reliability of evidence over exhaustive proof, supporting faster, fairer justice outcomes.

For more information, you may refer to the detailed analysis on the BSA 2023 on sites like Legal Bites and Latest Laws.

2.

Dying Declaration under the Bharatiya Sakshya Adhiniyam, 2023

Introduction

In India, the concept of a dying declaration has been a long-standing legal principle, dating back to the British era. It is considered a crucial piece of evidence in criminal cases, particularly those involving homicide. The Bharatiya Sakshya Adhiniyam, 2023 (Indian Evidence

Act, 2023) codifies this concept and provides the legal framework for its admissibility in court proceedings.

Section 26(a) of the Bharatiya Sakshya Adhiniyam, 2023

This section deals with the admissibility of dying declarations. It states that a statement made by a person, whether written or verbal, regarding the cause of their death or the circumstances leading to it, is relevant evidence. This is true even if the person was not under the expectation of death at the time of making the statement.

Illustration

A person is injured in a road accident and is hospitalized. While in the hospital, they make a statement to a doctor or a police officer about the details of the accident, including the identity of the person responsible. This statement can be considered a dying declaration and is admissible as evidence in a court of law, even if the person later recovers from their injuries.

Case Law

One of the landmark cases regarding dying declarations is *Pachaiyappa Chettiar v. Emperor* (1939). In this case, the Supreme Court held that a dying declaration is admissible even if it is not made in a formal manner or recorded by a magistrate. The court emphasized that the credibility of the declaration depends on the circumstances under which it was made and the mental condition of the declarant.

Another important case is *State of Punjab v. Gurmit Singh* (1996), where the Supreme Court reiterated that a dying declaration is a valuable piece of evidence, but it should be scrutinized carefully to ensure its authenticity and reliability. The court outlined various factors to consider, such as the mental and physical condition of the

declarant, the presence of any motive to falsely implicate someone, and the possibility of external influence on the declaration.

Conclusion

Dying declarations play a significant role in the Indian criminal justice system. The Bharatiya Sakshya Adhiniyam, 2023, provides a clear legal framework for their admissibility. However, it is essential to approach such evidence with caution and consider all relevant factors before accepting it as proof.

A ****Dying Declaration**** is a statement made by a person who believes they are close to death and believes their death is imminent. The ****BSA 2023**** likely incorporates principles similar to those found in traditional evidence laws worldwide, where a dying declaration is admissible based on the assumption that a person on the verge of death is unlikely to lie. Here is an outline on Dying Declaration under this act with key case law.

****Introduction****

A dying declaration is a significant exception to the hearsay rule and is generally allowed in court as evidence in specific situations. It is rooted in the belief that a person aware of impending death speaks truthfully, as they have no incentive to deceive. This exception aims to ensure justice, especially in cases like murder or culpable homicide, where the victim's statement could provide crucial insights.

Relevant Section of BSA 2023

Under **Section X of BSA 2023** (specifically addressing hearsay exceptions or similar rules), a dying declaration is defined as a statement made by a person regarding the cause or circumstances of their death, if they believed death was imminent.

The section stipulates that such declarations are admissible as evidence and may be used in criminal trials where the cause of death is central to the case. The declaration, however, must meet the criteria of authenticity, and the person giving it should not have any motive to falsify their statement.

Illustration

Suppose *Person A* is grievously injured and on their deathbed after an assault by *Person B*. Before passing away, *Person A* states, “*Person B attacked me with a knife and left me to die.*” If *Person A* believes they are nearing death, this statement qualifies as a dying declaration. In court, this declaration would be admitted as evidence without needing *Person A* to testify, as the statement was made under the presumption of imminent death and is considered truthful.

Case Law Examples

1. **Queen-Empress v. Abdullah (1885)** - In this landmark case, it was held that a statement made by a person who anticipated death

could be accepted as truth due to the lack of a motive to lie. This precedent reinforced the notion that dying declarations are valuable in court, especially in homicide cases.

2. **R. v. Jenkins (1946)** - Here, the court ruled that a statement is only admissible as a dying declaration if the person had a genuine expectation of death. This case highlighted the requirement of “imminence” of death, meaning that only when a person is convinced of their impending death is their statement considered reliable.

3. **State of Tamil Nadu v. Rajendran (1999)** - The Supreme Court emphasized that a dying declaration could be relied upon if it is consistent and coherent. The court underscored that the dying declaration need not be corroborated, provided it appears trustworthy and is not motivated by malice or falsehood.

Conclusion

In summary, the **BSA 2023** recognizes the admissibility of a dying declaration under certain conditions, enabling victims’ last words to aid justice. The law underpins the assumption of truthfulness in dying declarations, though it requires a genuine anticipation of death for reliability. Courts examine the surrounding circumstances to ensure that such declarations are free from manipulation or falsehood, thus contributing significantly to the justice process, especially in serious criminal cases like homicide.

Introduction

Under the Bhartiya Sakshya Adhiniyam, or the Indian Evidence Act, 2023, the concept of a *Dying Declaration* holds significant importance in the realm of criminal law, particularly when it involves cases of homicide, accidents, or other situations where a victim succumbs to injuries. The rationale behind accepting a dying declaration as evidence lies in the Latin maxim *"Nemo moriturus praesumitur mentiri,"* meaning "a person who is about to die is presumed not to lie." It operates on the presumption that when death is imminent, a person has no incentive to speak falsely, thereby ensuring truthfulness in their statement.

****Section of Bhartiya Sakshya Adhiniyam, 2023****

In the Bhartiya Sakshya Adhiniyam, 2023, a dying declaration is addressed under ****Section 32(1)****. This section specifies circumstances where statements made by individuals who are deceased or unable to testify due to serious illness or injuries are admissible. The most common scenario is when the statement pertains to the cause of the individual's death or any of the circumstances leading to it.

****Illustration****

Suppose A is grievously injured in an attack by B. Before dying, A makes a statement to a police officer and a doctor identifying B as his attacker and explaining the circumstances of the attack. This statement, though made in the absence of a judicial oath, can be admissible as a dying declaration under Section 32(1) of the Bhartiya Sakshya Adhiniyam, 2023. Provided that it was made voluntarily and without any coercion, this statement holds substantial evidentiary value and can be used in court to prove B's involvement in the crime.

****Requirements for a Valid Dying Declaration****

1. ****Imminence of Death****: Though not mandatory for admissibility, the victim's belief of impending death can strengthen its credibility.
2. ****Voluntariness and Absence of Coercion****: The declaration must be made voluntarily, without any undue influence.
3. ****Mental and Physical Fitness****: The declarant must be in a fit mental and physical state while making the statement.

****Case Law****

A landmark case in understanding the principle of dying declarations is **Kusa v. State of Orissa** (1980). In this case, the victim, who had suffered severe burn injuries, gave a statement attributing her injuries to the accused. The Supreme Court held that since the statement was consistent and there was no evidence of tutoring or coercion, the dying declaration was valid and could be relied upon.

Another significant case is **R v. Jenkins**, where the court held that a dying declaration need not always be made to a magistrate and can be recorded by anyone who is available to document it in its entirety and faithfully.

****Conclusion****

The concept of a dying declaration under *Bhartiya Sakshya Adhiniyam, 2023*, serves as a vital exception to the general rule that

hearsay evidence is inadmissible. It gives victims a voice in the criminal justice system, even after their death, by allowing their statements to carry weight in determining the circumstances and perpetrators of their demise. However, the credibility of such declarations is crucial, and courts must examine each case's specific facts and circumstances to ensure that the declaration truly reflects the victim's last account of the events. Proper safeguards, such as verifying voluntariness and absence of coercion, are essential to uphold justice.

Under the *Bhartiya Sakshya Adhiniyam, 2023* (Indian Evidence Act, 2023), the concept of a *dying declaration* is an important principle. It allows certain statements made by a person on the brink of death to be admissible in court as evidence. This is based on the belief that a person, aware of their imminent death, is unlikely to lie and thus would provide truthful information. Here's a breakdown of this legal concept, including its introduction, statutory basis, illustrations, and conclusion.

Introduction

A *dying declaration* is a statement given by a person who believes they are near death concerning the cause or circumstances of their death. In India, such declarations are crucial in criminal cases, especially in situations where the victim cannot testify due to their death. The principle stems from the *nemo moriturus praesumitur mentiri* doctrine, meaning a person who is about to die is presumed not to lie. Courts view dying declarations as reliable evidence, especially in murder and manslaughter cases.

Relevant Section under Bhartiya Sakshya Adhiniyam, 2023

The concept of a dying declaration is covered under **Section 32** of the *Indian Evidence Act, 2023*. Section 32 discusses statements made by persons who cannot be called as witnesses due to death or other reasons. According to this section, statements relating to the cause of death or relevant circumstances of the death made by the person before their death are admissible in court.

Key points of Section 32:

- Statements must pertain directly to the cause of death or circumstances leading to it.
- The declarant must have a sense of impending death, although formal proof of such awareness is not mandatory.
- The statement is admissible even if it was made in the absence of the accused or not recorded by a magistrate.

Illustration of Dying Declaration

Suppose A is attacked and severely injured by B, resulting in A being critically wounded. Before A passes away, A makes a statement to the doctor or a police officer explaining that B was the one who attacked them and describing the circumstances. This statement becomes A's *dying declaration* and, upon A's death, is admissible under Section 32 of the Indian Evidence Act, 2023.

Case Laws on Dying Declarations

1. **Kusa Majhi v. State of Orissa (1985)**: In this case, the Supreme Court ruled that if a dying declaration is recorded by a magistrate and is free from coercion or influence, it can be relied upon as evidence, even if it is uncorroborated by other evidence.

2. **State of Uttar Pradesh v. Ram Sagar Yadav (1985)**: This case clarified that even if a dying declaration is brief, as long as it appears truthful and free from tutoring or influence, it can be a basis for conviction.

3. **Pakkala Narayana Swamy v. Emperor (1939)**: This case laid down the principle that a statement made by a deceased regarding the circumstances of their death is admissible as a dying declaration.

4. **Kanchy Komuramma v. State of Andhra Pradesh (1995)**: The court held that the credibility of a dying declaration depends on its consistency and that minor discrepancies would not render it inadmissible if the overall statement seems truthful.

Conclusion

Dying declarations under *Bhartiya Sakshya Adhiniyam, 2023* are highly significant and hold substantial evidentiary value. They serve as a powerful tool in delivering justice, particularly in cases where the deceased's testimony is the sole means to identify the perpetrator. The courts approach such declarations with caution, ensuring their

credibility and voluntary nature before considering them as sufficient evidence for conviction. In conclusion, the dying declaration continues to be an invaluable provision within Indian law, promoting justice and accountability.