



REPORT NO.

248

**PARLIAMENT OF INDIA
RAJYA SABHA**

**DEPARTMENT-RELATED PARLIAMENTARY STANDING COMMITTEE
ON HOME AFFAIRS**

**TWO HUNDRED FORTY EIGHTH REPORT
ON
THE BHARATIYA SAKSHYA BILL, 2023**

**(PRESENTED TO THE CHAIRMAN, RAJYA SABHA ON 10TH NOVEMBER, 2023)
(FORWARDED TO THE SPEAKER, LOK SABHA ON 10TH NOVEMBER, 2023)**

**(PRESENTED TO RAJYA SABHA ON 4TH DECEMBER, 2023)
(LAID ON THE TABLE OF LOK SABHA ON 4TH DECEMBER, 2023)**



**Rajya Sabha Secretariat, New Delhi
November, 2023/Kartika, 1945 (Saka)**

Hindi version of this publication is also available



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**DEPARTMENT-RELATED PARLIAMENTARY STANDING
COMMITTEE ON HOME AFFAIRS
(re-constituted *w.e.f.* 13th September, 2022)**

1. **Shri Brij Lal** - **Chairman**
RAJYA SABHA
2. Shri Biplab Kumar Deb
3. Shri N. R. Elango
4. Dr. Anil Jain
5. Shri Sujeet Kumar
6. Shri Neeraj Shekhar
7. Shri Digvijaya Singh
8. Shri Rakesh Sinha
9. *Shri Derek O'Brien
10. †Shri P. Chidambaram
LOK SABHA
11. Shri Sanjay Bhatia
12. Shri Adhir Ranjan Chowdhury
13. Dr. (Shrimati) Kakoli Ghosh Dastidar
14. Shri Dilip Ghosh
15. Shri Dulal Chandra Goswami
16. Shrimati Kirron Kher
17. Thiru Dayanidhi Maran
18. Shri Raja Amareshwara Naik
19. Shri Ranjeetsingh Naik Nimbalkar
20. Shri Jamyang Tsering Namgyal
21. Shri Gajendra Singh Patel
22. Shri Lalubhai Babubhai Patel
23. Shri R. K. Singh Patel
24. Shri Vishnu Dayal Ram
25. Shrimati Sarmistha Kumari Sethi
26. ≠Shri Rahul Ramesh Shewale
27. Shri Ravneet Singh
28. Dr. Satya Pal Singh
29. Shrimati Geetha Viswanath Vanga
30. Shri Dinesh Chandra Yadav
31. ¥Vacant

*Shri Derek O'Brien, MP, Rajya Sabha nominated *w.e.f.* 23rd August, 2023.

† Shri P. Chidambaram, MP, Rajya Sabha nominated *w.e.f.* 28th August, 2023 in place of Shri P. Bhattacharya, who retired from the membership of Rajya Sabha on the 18th August, 2023.

≠ Shri Rahul Ramesh Shewale, MP, Lok Sabha nominated *w.e.f.* 19th October, 2022 in place of Shri Gajanan Chandrakant Kirtikar, MP, Lok Sabha.

¥ Consequent upon disqualification of Shri Faizal P. P. Mohammed from the Membership of Lok Sabha *w.e.f.* 11th January, 2023 in terms of the provisions of Article 102(1)(e) of the Constitution of India read with Section 8 of the Representation of the People Act, 1951, he ceases to be a Member of the Committee.

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14. ‡Dr. Nishikant Dubey
15. Shri Dilip Ghosh
16. Shri Dulal Chandra Goswami
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29. Shrimati Geetha Viswanath Vanga
30. Shri Dinesh Chandra Yadav
31. Vacant

‡ Dr. Nishikant Dubey, MP, Lok Sabha nominated *w.e.f.* 5th October, 2023 in place of Shrimati Kirron Kher, MP, Lok Sabha.

SECRETARIAT

Shri S. Jason, Joint Secretary

Shri Ravinder Kumar, Director

Shri Sreejith V., Deputy Secretary

Smt Neelam Bhatt, Under Secretary

Shri V Summinlun, Committee Officer

ACRONYMS

BNS	Bharatiya Nyaya Sanhita
BNSS	Bharatiya Nagarik Suraksha Sanhita
BSB	Bharatiya Sakshya Bill
IEA	Indian Evidence Act
IPC	Indian Penal Code
NLU	National Law University

PREFACE

I, the Chairman of the Department-related Parliamentary Standing Committee on Home Affairs, having been authorised by the Committee to present the Report on its behalf, present this Two Hundred Forty Eighth Report of the Committee on The Bharatiya Sakshya Bill, 2023 (**Annexure – I**).

2. In pursuance of Rule 270 of the Rules of Procedure and Conduct of Business in the Council of States relating to the Department-related Parliamentary Standing Committees, the Hon'ble Chairman, Rajya Sabha in consultation with the Hon'ble Speaker, Lok Sabha had on 18th August, 2023 referred The Bharatiya Sakshya Bill, 2023, as introduced in the Lok Sabha on 11th August, 2023 and pending therein to the Department-related Parliamentary Standing Committee on Home Affairs for examination and report within three months.

3. The Committee held 12 meetings during the course of examination of the Bill. In its first sitting held on 24th August, 2023, the Home Secretary made a presentation on the Bill. Thereafter, in the meetings held on 25th and 26th August, 2023, the views and opinions of the Members of the Committee were gathered. On the 11th, 12th, 13th, 22nd, 23rd September, 2023 and 3rd October, 2023, the Committee heard the views of domain experts. A list of domain experts who appeared before the Committee is at **Annexure- II**. The Committee held a clause-by-clause consideration of the Bill on 4th and 5th October, 2023. Further, on 27th October, 2023, the Members of the Committee again expressed their views on the Bill.

4. The Committee in its sitting held on 6th November, 2023, considered the draft 248th Report on the Bill and adopted the same.

5. The Committee relied on the following documents in finalising its Report:-

- (i) The Bharatiya Sakshya Bill, 2023;
- (ii) The Indian Evidence Act, 1872;
- (iii) Background Note on the Bill received from the Ministry of Home Affairs;
- (iv) Presentation, clarifications and oral evidence of Home Secretary and senior officials of Ministry of Home Affairs and Ministry of Law and Justice;
- (v) The Constitution of India;
- (vi) Suggestions received on the Bill from serving and former Members of Parliament, various private individuals/associations/organisations/experts, State Governments and replies of the Ministry on such suggestions;

(vii) Oral evidence and written submissions by various stakeholders/experts on the Bill; and

(viii) Replies received from the Ministry of Home Affairs to the questions/queries raised by Members and the domain experts during the meetings on the Bill.

6. On behalf of the Committee, I would like to acknowledge with thanks the contributions made by those who deposed before the Committee and also those who gave their valuable suggestions to the Committee through their written submissions.

7. For facility of reference and convenience, the observations and recommendations of the Committee have been printed in bold letters in the body of the Report.

6th November, 2023
New Delhi
Kartika, 1945 (Saka)

Brij Lal
Chairman
Department-related Parliamentary
Standing Committee on Home Affairs

REPORT
CHAPTER-I
INTRODUCTION

1.1 The criminal justice system in its current procedural and substantive construction has run its course and is in dire need of a ubiquitous reset. The need for such reset is evidenced by the delayed justice dispensation systems, appellate Courts overburdened with appeals, victims waiting years on end for much deserved justice and undertrial prisoners languishing in jails for offences for which they have not yet been convicted. Further, the current policing system as well as the system of dispensation of justice has not embraced the advancements of 21st century technology that has transformed investigation and criminology in other countries. The Indian criminal justice system has struggled to keep pace with the profound technological changes in the Indian socio-economic milieu that have radically re-imagined the way in which crimes manifest in the society. The Indian Evidence Act, 1872 is a relic of the past, a puzzling solution to problems of an era gone by.

1.2 The Indian Evidence Act (IEA), which was enacted in the year 1872, provides for laws relating to evidence and assist Courts in establishing facts of the case brought before it and pronouncing judgments based on such facts. It falls within the category of ‘adjective law’ and it defines the pleading and methodology by which the substantive and procedural law are operationalised.

1.3 The experience of more than seven decades of democratic governance highlighted that the Act has not kept pace with the evolving criminal activities as it has not imbibed the best practices that have developed in the field of criminology in recent times. Attempts have been made to bridge the gap in the Act by way of amendments. However, such piece-meal approach though repeated amendments has been found to be inadequate to comprehensively address the issues in the Act and it was clear that an overhaul of the Act was required.

THE BHARATIYA SAKSHYA BILL, 2023

1.4 The Bharatiya Sakshya Bill, 2023 was introduced in the Lok Sabha on 11th August, 2023 to replace the outdated Indian Evidence Act, 1872. The Bill seeks to consolidate and provide general rules and principles of evidence for fair trial. The Bill, as introduced, has omitted four sections which contain colonial references and other outdated procedures, from the earlier Act of 1872. It has also included various forward looking provisions such as expansion of the definition of evidence to include electronic and digital records, expansion of definition of primary evidence, provision for admissibility of electronic or digital records as evidence, exclusion of privileged communication between the

Ministers and the President of India from the purview of Courts, provision of certificate for handling of electronic and digital evidence, etc. The Bill now contains 170 clauses as compared to 167 sections in the IEA, 1872.

CHAPTER-II

SUBMISSION BY THE MINISTRY OF HOME AFFAIRS

2.1 The Ministry of Home Affairs informed that the proposed legislation seeks to address the problems in the present legal system which includes – complex nature of the legal system; huge pendency of cases in the courts; low conviction rate; imposition of meagre fine not commensurate with the crime; overcrowding of undertrial prisoners in prisons; scanty adoption of modern technology in the legal system; delay in investigation, complicated investigation/pending hearing process; inadequate use of forensic evidence; and delay in getting justice to the poor, etc.

2.2 The Bill was drafted with utmost care keeping in mind their implications on the citizenry for the years to come. During the drafting process, suggestions were sought from all Governors, Chief Ministers, Lieutenant Governors/Administrators of States and Union Territories. The views and inputs of the Chief Justice of India, Chief Justices of all High Courts, Bar Councils, Law Universities/Institutions and Members of Parliament were also solicited. Further, the Central Bureau of Investigation (CBI), Intelligence Bureau (IB), Bureau of Police Research and Development (BPR&D), Central Police Organisations (CPOs) and more than 1000 police officers from various states also submitted their suggestions.

2.3 A Committee under the Chairpersonship of the Vice Chancellor, National Law University (NLU), Delhi was constituted on 2nd March, 2020 to examine and suggest reforms in criminal laws. The Committee had invited suggestions from various quarters including public and considered suggestions from High Courts, experts, research centres, academicians, lawyers, civil societies, Law Universities, etc. from across the country. The suggestions received from States, Union Territories, the Supreme Court, High Courts, Judicial Academies, Law Universities and Members of Parliament were also forwarded to the Committee.

2.4 The Committee under the Chairpersonship of the Vice Chancellor, NLU, Delhi after extensive consultation with stakeholders and in-depth research submitted its Report in February, 2022 containing its recommendations. A total of more than 3,200 suggestions were received by the Committee which were consolidated in the Report submitted by it.

2.5 The Ministry then reviewed these 3,200 consolidated suggestions received along with the officers from the Ministry of Law and Justice. After exhaustive deliberations, the three new Bills were drafted to bring about comprehensive amendments to the Indian Evidence Act, 1872 (IEA) along with the Indian Penal Code, 1860 (IPC) and the Code of Criminal Procedure, 1973 (CrPC).

2.6 The stakeholders who appeared before the Committee apprised that the Ministry has undertaken an extensive exercise of modernisation of the laws of

evidence. They were also of the view that the Bill has been updated to reflect the modern legislative intent by consolidating progressive judgment and amendments, and removing provisions that are no longer useful.

2.7 The Committee takes note of the efforts of the Ministry of Home Affairs and the Ministry of Law & Justice in undertaking the mammoth task of drafting new legislations in an attempt to have comprehensive criminal laws. The extensive consultations and threadbare discussions undertaken in the drafting process have been reflected in the Bills that have imbibed Indian thought process and the Indian soul. A comprehensive review of India's legal system was the need of the hour to bring it on par with the contemporary aspirations of the people. Having taken a citizen-centric approach, these Bills serve as a reassurance to the Indian citizens. The Committee appreciates the combined efforts of the Ministries in reviewing 3,200 suggestions and thereby drafting comprehensive amendments to the Indian Penal Code, 1860, Code of Criminal Procedure, 1973 and the Indian Evidence Act, 1872.

CHAPTER-III

MAJOR CHANGES INTRODUCED IN THE BILL

3.1 The Home Secretary, during his presentation, has highlighted the major changes that have been introduced in the Bill *vis-à-vis* the Indian Evidence Act, 1872 which are as follows:

1. **Deletion of British Legacy References**

The words like ‘Parliament of the United Kingdom’, ‘Provincial Act’, ‘notification by the Crown Representative’, ‘London Gazette’, ‘any Dominion, colony or possession of his Majesty’, ‘Jury’, ‘Lahore’, ‘United Kingdom of Great Britain and Ireland’, ‘Commonwealth,’ ‘Her Majesty or by the Privy Council,’ ‘Her Majesty’s Government,’ ‘copies or extracts contained in the London Gazette, or purporting to be printed by the Queen’s Printer.’ ‘possession of the British Crown,’ ‘Court of Justice in England’, ‘Her Majesty’s Dominions’, ‘Barrister’ have been deleted. Further, the words ‘Vakil’, ‘Pleader’ and ‘Barrister’ have been replaced with the word ‘Advocate’. Section 166 relating to power of Jury to put question, etc. has been deleted as jury system has already been abolished in India. The terms like lunatic, unsound mind, etc. have been brought in line with the modern terms.

2. **Use of Technology and Digital Means in Processing Evidence**

The definition of 'documents' has been expanded to include electronic or digital records on emails, server logs, documents on computers, laptop or smartphone, messages, websites, locational evidence and voice mail messages stored on digital devices. The definition of ‘evidence’ has been expanded to include any information given electronically which will enable the appearance of witnesses, accused, experts and victims through electronic means.

3. **Confession affecting person making it and others jointly under trial for same offence**

An explanation has been added to provide for a joint trial in situations where accused has absconded or fails to comply with a proclamation issued under section 84 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

4. **Judicial Notice of Extra Territorial Jurisdiction**

A provision has been inserted for Courts to take judicial notice of international treaty, agreement or convention with countries or decision made at international associations or other bodies.

5. **Primary Evidence**

The definition of primary evidence has been expanded to include electronic or digital record which is created or stored, electronic or digital record produced from proper custody, video recording simultaneously stored in

electronic form and transmitted or broadcast to another; and electronic or digital record stored in multiple storage spaces in a computer resource.

6. Secondary Evidence

The scope of secondary evidence has been expanded to include copies made from original by mechanical processes, copies made from or compared with the original, counterparts of documents as against the parties who did not execute them and oral accounts of the contents of a document given by some person who has himself seen it. It will also include oral admission when genuineness of the document itself is in question. Further, secondary evidence may be given when the existence, condition or content of the original is admitted in writing.

7. Admissibility of Electronic or Digital Record

A new section has been added to provide for admissibility of electronic or digital record.

8. Electronic Records- Provisions relating to Certificate

A certificate has been added in the schedule to authenticate and verify the contents of electronic records with riders that the conditions that computer must be regularly in use for regular activities by person having lawful control over it, data was regularly fed in it, computer was working properly, etc. A proposal has been made to recognise matching of Hash# value of original record as proof of evidence to ensure the integrity of specific file and not the entire storage medium.

9. Court not to inquire into privileged communication between Ministers and President

A proviso has been added to bar Courts from inquiring into any privileged communication between Ministers and the President of India.

CHAPTER-IV

RECOMMENDATIONS ON CLAUSES

4.1 During the course of the examination of the Bill, the Committee received a number of suggestions from various law firms, Members of Parliament, advocates, domain experts and other stakeholders. Further, the Committee also interacted with a wide range of domain experts who have made their submission before the Committee and also furnished written inputs and suggestions on various clauses of the Bill. The written views of all the State Governments were sought on the Bill. The inputs and suggestions received from such stakeholders and State Governments were forwarded to the Ministry of Home Affairs for its response. Upon in-depth examination of the Bill, the Committee is of the view that certain provisions need to be relooked and certain errors have to be rectified to serve the intended purpose of the Bill better. The Committee's observations and recommendations contained in the Report reflect an extensive scrutiny of submissions and all the viewpoints put forth before it by various organisations/experts/State Governments. The Committee in its meeting held on 4th and 5th October, 2023 took up clause-by-clause discussion of the Bill. Various amendments to the Bill have been suggested by the Committee on clauses of the Bill which are discussed in the succeeding paragraphs.

CLAUSE 1 - Short title, application and commencement

4.2 Clause 1(1) reads as under:

This Act may be called the Bharatiya Sakshya Adhiniyam, 2023.

4.2.1 Members of the Committee raised concerns over the Bill being given a Hindi name. Concerns have been expressed that the Hindi name may be in violation of the Article 348 of the Constitution of India. The MHA in its response has mentioned that the Article 348 of the Constitution of India *inter alia* says that the authoritative texts of all Acts passed by the Parliament shall be in English language. As the text of the proposed law is in English, it is not in violation of Article 348 of the Constitution of India.

4.2.2 The Committee notes the wording of Article 348 of the Constitution of India which says that language to be used in the Supreme Court and in the High Courts, as well as for acts, bills and other legal documents shall be in English language. The Committee finds that as the text of the Bill is in English, it does not violate the provisions of Article 348 of the Constitution. The Committee is satisfied with the response of the Ministry and holds that the name given to the proposed legislation is not in violation of Article 348 of the Constitution of India.

4.2.3 Clause 1(3) reads as under:

It shall come into force on such date as the Central Government may, by notification, appoint.

4.2.4 It was suggested by stakeholders that the words “in the Official Gazette” should be added after the word “notification” under clause 1(3) of the Bill.

4.2.5 The Committee takes note of the submission of stakeholders and is of the opinion that the addition of the words “in the Official Gazette” in this clause will make the provision in tune with similar provisions in all other legislations. The Committee, therefore, recommends that the words “in the Official Gazette” may be inserted after the word “notification” in this clause.

CLAUSE 2 - Definitions

4.3 Clause 2(1)(e) reads as under:

"evidence" means and includes-

- (i) statements or any information given electronically which the Court permits or requires to be made before it by witnesses in relation to matters offact under inquiry and such statements or information are called oral evidence;*
- (ii) documents including electronic or digital records produced for theinspection of the Court and such documents are called documentary evidence;*

4.3.1 During deliberations of the Committee, it was brought to the attention of the Committee thatinclusion of the words "any information" within the meaning of evidence could cause serious complications in its interpretations. It was further apprised that the word "information" is different from statements.

4.3.2 The Committee deliberated at length regarding the inclusion of the words "any information" in the definition of evidence.The Committee opines thatinclusion of “any information” along with “statement” in the same line may cause complications in its interpretation. The Committee, therefore, recommends that the words “any information” may be deleted in this clause to avoid such complications.

CLAUSE 3 - Evidence may be given of facts in issue and relevant facts

4.4 Clause 3 of the Bill reads as under:

Evidence may be given in any suit or proceeding of the existence or non-existence of every fact in issue and of such other facts as are hereinafter declared to be relevant, and of no others.

Explanation - This section shall not enable any person to give evidence of a fact which he is disentitled to prove by any provision of the law for the time being in force relating to Civil Procedure.

Illustrations

(a) *A is tried for the murder of B by beating him with a club with the intention of causing his death.*

At A's trial the following facts are in issue:—

A's beating B with the club;

A's causing B's death by such beating;

A's intention to cause B's death.

(b) *A suitor does not bring with him, and have in readiness for production at the first hearing of the case, a bond on which he relies. This section does not enable him to produce the bond or prove its contents at a subsequent stage of the proceedings, otherwise than in accordance with the conditions prescribed by the Bharatiya Nagarik Suraksha Sanhita 2023.*

4.4.1 It was brought to the attention of the Committee during interaction with stakeholders that the term “the Bharatiya Nagarik Suraksha Sanhita 2023” used in *illustration (b)* is irrelevant under this clause as the parallel illustration under section 5 of the Indian Evidence Act, 1872 uses the term “Code of Civil Procedure”. It was suggested that the term "the Bharatiya Nagarik Suraksha Sanhita 2023" in *illustration (b)* should be replaced with "Code of Civil Procedure".

4.4.2 The Committee examined the text of this clause along with the corresponding section of the Indian Evidence Act, 1872 and it observes that the particular reference made in *illustration (b)* pertains to the “Code of Civil Procedure” and not the Bharatiya Nagarik Suraksha Sanhita 2023. The Committee, therefore, recommends that "the Bharatiya Nagarik Suraksha Sanhita 2023" in *illustration (b)* may be replaced with "Code of Civil Procedure".

CLAUSE 26 - Cases in which statement of facts in issue or relevant fact by person who is dead or cannot be found, etc., is relevant

4.5 *Clause 26* relates to the cases in which statement of facts in issue or relevant fact by person who is dead or cannot be found, etc., is relevant.

4.5.1 The clause, *inter alia*, deals with statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which under the circumstances of the case appears to the Court unreasonable, are themselves facts in issue or relevant

facts, in case of statement of a person, resulted in his death; in the ordinary course of business; against the pecuniary or proprietary interest of the person; the opinion of any such person, as to the existence of any public right or custom or matters of public or general interest; the existence of any relationship by blood, marriage or adoption between persons.

4.5.2 It was brought to the attention of the Committee that the insertion of "facts in issue" in this particular clause is erroneous and has to be deleted as the corresponding sections in the old Act, i.e. Chapter II, section 5 to 55 of the Indian Evidence Act, 1872 is called "Of the Relevancy of Facts" or in general, they used to be called as *res gestae*. Further, Chapter II of the Bill, i.e. clause 3 to 50 is also called "Relevance of Facts". It was further mentioned that the particular clause is not "facts in issue" because the chapter is only talking about the relevancy of facts. The "facts in issue" and "relevant facts" are different.

4.5.3 The Committee examined in detail the submission made before the Committee and it observes that the parallel section of clause 26 in the Indian Evidence Act, 1872 i.e., section 32 has no mention of "facts in issue" and only uses "relevant facts". The Committee also notes that "facts in issue" and "relevant facts" have a distinct connotation in judicial parlance and cannot be used interchangeably. The Committee opines that the use of "facts in issue" in this particular clause is erroneous. The Committee, therefore, recommends the Ministry to delete the words "facts in issue" in this clause.

CLAUSE 48 - Evidence of character or previous sexual experience not relevant in certain cases

4.6 Clause 48 states as under:

In a prosecution for an offence under section 64, section 65, section 67, section 68, section 70, section 71, section 73, section 74, section 75, section 76 or section 77 of the Bharatiya Nagarik Suraksha Sanhita, 2023 or for attempt to commit any such offence, where the question of consent is in issue, evidence of the character of the victim or of such person's previous sexual experience with any person shall not be relevant on the issue of such consent or the quality of consent.

4.6.1 The Committee analysed the text of the clause and notes that section 376A of the Indian Penal Code, 1860 corresponds with section 66 of the Bharatiya Nyaya Sanhita, 2023. Further, section 53A of the Indian Evidence Act, 1872 corresponds with section 48 of the Bharatiya Sakshya Bill, 2023. Upon undertaking a comparative analysis of the two corresponding sections, the Committee observes that section 376A of the IPC which was referred to in section 53A of the IEA has been omitted from section 48 of the BSB. The Committee is of the opinion that "section 66" of the BNS should also be included in the offences referred to in this clause.

The Committee, therefore, recommends that "section 66" is inserted after "section 65" to cover all the corresponding offences referred to in the BNS.

4.6.2 The Committee further observes that the term “Bharatiya Nagarik Suraksha Sanhita, 2023” used in clause 48 of the Bill is incongruous since the offences referred under this clause are provided in the Bharatiya Nyaya Sanhita, 2023. The Committee, therefore, recommends that the words “the Bharatiya Nagarik Suraksha Sanhita, 2023” in clause 48 be replaced with "the Bharatiya Nyaya Sanhita, 2023" as it has been erroneously mentioned.

CLAUSE 57 - Primary evidence

4.7 Clause 57 of the Bill reads as under:

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.

4.7.1 Explanation 5 to this clause provides for treating electronic and digital records produced from proper custody, as primary evidence. It was submitted before the Committee that the Bill has no mention about ensuring the maintenance of a proper chain of custody of digital and electronic records acquired during investigations. The provision of maintaining proper chain of

custody has already been incorporated within the ambit of criminal laws in developed countries such as United States of America (USA) and United Kingdom (UK). It was suggested to the Committee that such provision may be included in the Bill in view of the susceptibility of electronic and digital records to tampering during the handling of evidence.

4.7.2 The Committee is of the opinion that safeguarding the authenticity and integrity of electronic and digital records acquired during the course of investigation is crucial due to the fact that such evidences are prone to tampering. The Committee takes into account the suggestion submitted before the Committee and recommends that a provision may be inserted to mandate that all electronic and digital records acquired as evidence during the course of investigation are securely handled and processed through proper chain of custody. Appropriate provision in this regard may be made in the Bharatiya Nagarik Suraksha Sanhita, 2023.

CLAUSE 62 - Special provisions as to evidence relating to electronic record

4.8 Clause 62 reads as:

The contents of electronic records may be proved in accordance with the provisions of section 59.

4.8.1 The Committee was informed that clause 62 of the Bill corresponds to section 65A of the Indian Evidence Act, 1872. Section 59 mentioned under this clause deals with proof of documents by primary evidence which is not applicable under this provision. On comparing clause 62 of the Bill to section 65A of the IEA, it can be inferred that section 65B so mentioned in the text of section 65A of the Act, which deals with admissibility of electronic records and it co-relates with clause 63 instead of clause 59 of the new Bill.

4.8.2 The Committee notes that “section 59” of the Bill relates to the documents to be proved by primary evidence while “section 63” of the Bill relates to admissibility of electronic records. The Committee agrees with the submission of stakeholders and observes that the appropriate reference in this clause should be “section 63”. The Committee, therefore, recommends that "section 59" may be replaced with "section 63" to rectify error in cross-referencing.

CLAUSE 77 - Proof of other official documents

4.9 Clause 77(f) reads as under:

Public documents of any other class in a foreign country, by the original or by a copy certified by the legal keeper thereof, with a certificate under the seal of a Notary Public, or of an Indian Consul or diplomatic agent, that the

copy is duly certified by the officer the legal custody of the original, and upon proof of the character of the document according to the law of the foreign country.

4.9.1 The Committee observes that the sentence construction of this clause is incomplete as the word “officer” and the words “the legal custody” in fourth line are not appropriately connected. The Committee recommends that the word "having" may be inserted after the word "officer" to make the sentence grammatically correct.

CLAUSE 138–Accomplice

4.10 Clause 138 of the Bill reads as under:

An accomplice shall be a competent witness against an accused person; and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice.

4.10.1 The Committee was informed that clause 138 is in conflict with *illustration (b)* to clause 119(1) which reads as under:

“an accomplice is unworthy of credit, unless he is corroborated in material particulars”

4.10.2 It was further informed that that clause 138 and *illustration (b)* to clause 119(1) gives contradictory meanings which may create confusion in application of the two clauses. The testimony of an accomplice is applied in a conflicting manner in the two afore-mentioned clauses. It was suggested that clause 138 may be deleted so as to set right the contradictions between the two clauses in the Bill.

4.10.3 The Committee undertook a nuanced analysis of clause 138 and it observes that the original text of section 133, which is the corresponding section to this clause in the Indian Evidence Act, 1872 has been retained in this clause. However, a closer scrutiny of clause 138 and cross-analysing it with *illustration (b)* to clause 119(1) highlights evident contradiction between the two clauses which has not been rectified in the IEA. Clause 138 considers an accomplice as a competent witness against an accused person and uncorroborated testimony of an accomplice is made admissible in conviction. However, *illustration (b)* to clause 119(1) states otherwise and treats uncorroborated testimony of an accomplice as unworthy of credit. The Committee is of the opinion that such contradictions between clauses in the Bill may jeopardise efficacy of the Bill in its application. The Committee, therefore, recommends that suitable amendments in clause 138 may be made.

CLAUSE 168 - Judge's power to put questions or order production

4.11 Clause 168 reads as:

The Judge may, in order to discover or obtain proof of relevant facts, ask any question he considers necessary, in any form, at any time, of any witness, or of the parties about any fact; and may order the production of any document or thing; and neither the parties nor their representatives shall be entitled to make any objection to any such question or order, nor, without the leave of the Court, to cross-examine any witness upon any answer given in reply to any such question:

Provided that the exercise of the powers conferred herein must be based upon facts declared by this Act to be relevant, and duly proved:

Provided further that this section shall not authorise any Judge to compel any witness to answer any question, or to produce any document which such witness would be entitled to refuse to answer or produce under sections 136 to 140, both inclusive, if the question were asked or the document were called for by the adverse party; nor shall the Judge ask any question which it would be improper for any other person to ask under section 157 or 158; nor shall he dispense with primary evidence of any document, except in the cases hereinbefore excepted.

4.11.1 The Committee recommends that the word "Act" in the first proviso may be replaced with "Adhiniyam" as is already used in preceding portions of the Bill.

THE SCHEDULE CERTIFICATE

4.12 Part A and Part B deals with the certificate to be filled by person in-charge of the computer or communication device and by an expert.

32.2 The Committee was informed by stakeholders that the certificates in the schedule would assist all litigants and investigating agencies as most of the police personnel do not have any set pattern to produce certificates with regard to electronic evidence. However, concerns were raised regarding Part A of the schedule wherein it was informed that the certificate does not meet the requirements specified under *sub-clause 2* of clause 63 as it does not give declaration with regard to the lawful control of the person presenting the record and no declaration about the condition of the device, etc.

4.12.1 The Committee observes that the certificate in Part A of the schedule does not conform to the requirements prescribed in *sub-clause (2)* of clause 63. The Committee opines that such shortcomings may jeopardise the authenticity, reliability and integrity of the electronic and digital records submitted as evidence in the court of law and will be susceptible to

tampering during handling of evidence. The Committee, therefore, recommends that the certificate in Part A may be amended to meet the requirements prescribed in clause 63, *sub-clause (2)(a)* to *sub-clause (2)(d)*.

4.13 The Committee also undertook a detailed examination of the text of each clause and noted that the Bill contains some cross-referencing errors. The Committee, therefore, recommends the Ministry to rectify such errors.

4.14 The Committee agrees with the remaining clauses of the Bill without any changes. The Committee strongly believes that the changes brought in the Bill would reflect the growing importance of digital evidence and the need for a more comprehensive legal framework in line with 21st century technological advancements and societal changes.

OBSERVATIONS/RECOMMENDATIONS- AT A GLANCE

The Committee takes note of the efforts of the Ministry of Home Affairs and the Ministry of Law & Justice in undertaking the mammoth task of drafting new legislations in an attempt to have comprehensive criminal laws. The extensive consultations and threadbare discussions undertaken in the drafting process have been reflected in the Bills that have imbibed Indian thought process and the Indian soul. A comprehensive review of India's legal system was the need of the hour to bring it on par with the contemporary aspirations of the people. Having taken a citizen-centric approach, these Bills serve as a reassurance to the Indian citizens. The Committee appreciates the combined efforts of the Ministries in reviewing 3,200 suggestions and thereby drafting comprehensive amendments to the Indian Penal Code, 1860, Code of Criminal Procedure, 1973 and the Indian Evidence Act, 1872.

(Para 2.7)

The Committee notes the wording of Article 348 of the Constitution of India which says that language to be used in the Supreme Court and in the High Courts, as well as for acts, bills and other legal documents shall be in English language. The Committee finds that as the text of the Bill is in English, it does not violate the provisions of Article 348 of the Constitution. The Committee is satisfied with the response of the Ministry and holds that the name given to the proposed legislation is not in violation of Article 348 of the Constitution of India.

(Para 4.2.2)

The Committee takes note of the submission of stakeholders and is of the opinion that the addition of the words "in the Official Gazette" in this clause will make the provision in tune with similar provisions in all other legislations. The Committee, therefore, recommends that the words "in the Official Gazette" may be inserted after the word "notification" in this clause.

(Para 4.2.5)

The Committee deliberated at length regarding the inclusion of the words "any information" in the definition of evidence. The Committee opines that inclusion of "any information" along with "statement" in the same line may cause complications in its interpretation. The Committee, therefore, recommends that the words "any information" may be deleted in this clause to avoid such complications.

(Para 4.3.2)

The Committee examined the text of this clause along with the corresponding section of the Indian Evidence Act, 1872 and it observes that the particular reference made in *illustration (b)* pertains to the “Code of Civil Procedure” and not the Bharatiya Nagarik Suraksha Sanhita 2023. The Committee, therefore, recommends that "the Bharatiya Nagarik Suraksha Sanhita 2023" in *illustration (b)* may be replaced with "Code of Civil Procedure".

(Para 4.4.2)

The Committee examined in detail the submission made before the Committee and it observes that the parallel section of clause 26 in the Indian Evidence Act, 1872 i.e., section 32 has no mention of “facts in issue” and only uses “relevant facts”. The Committee also notes that “facts in issue” and “relevant facts” have a distinct connotation in judicial parlance and cannot be used interchangeably. The Committee opines that the use of “facts in issue” in this particular clause is erroneous. The Committee, therefore, recommends the Ministry to delete the words "facts in issue" in this clause.

(Para 4.5.3)

The Committee analysed the text of the clause and notes that section 376A of the Indian Penal Code, 1860 corresponds with section 66 of the Bharatiya Nyaya Sanhita, 2023. Further, section 53A of the Indian Evidence Act, 1872 corresponds with section 48 of the Bharatiya Sakshya Bill, 2023. Upon undertaking a comparative analysis of the two corresponding sections, the Committee observes that section 376A of the IPC which was referred to in section 53A of the IEA has been omitted from section 48 of the BSB. The Committee is of the opinion that "section 66" of the BNS should also be included in the offences referred to in this clause. The Committee, therefore, recommends that "section 66" is inserted after "section 65" to cover all the corresponding offences referred to in the BNS.

(Para 4.6.1)

The Committee further observes that the term “Bharatiya Nagarik Suraksha Sanhita, 2023” used in clause 48 of the Bill is incongruous since the offences referred under this clause are provided in the Bharatiya Nyaya Sanhita, 2023. The Committee, therefore, recommends that the words “the Bharatiya Nagarik Suraksha Sanhita, 2023" in clause 48 be replaced with "the Bharatiya Nyaya Sanhita, 2023" as it has been erroneously mentioned.

(Para 4.6.2)

The Committee is of the opinion that safeguarding the authenticity and integrity of electronic and digital records acquired during the course of investigation is crucial due to the fact that such evidences are prone to tampering. The Committee takes into account the suggestion submitted before the Committee and recommends that a provision may be inserted to mandate that all electronic and digital records acquired as evidence during the course of investigation are securely handled and processed through proper chain of custody. Appropriate provision in this regard may be made in the Bharatiya Nagarik Suraksha Sanhita, 2023.

(Para 4.7.2)

The Committee notes that “section 59” of the Bill relates to the documents to be proved by primary evidence while “section 63” of the Bill relates to admissibility of electronic records. The Committee agrees with the submission of stakeholders and observes that the appropriate reference in this clause should be “section 63”. The Committee, therefore, recommends that "section 59" may be replaced with "section 63" to rectify error in cross-referencing.

(Para 4.8.2)

The Committee observes that the sentence construction of this clause is incomplete as the word “officer” and the words “the legal custody” in fourth line are not appropriately connected. The Committee recommends that the word "having" may be inserted after the word "officer" to make the sentence grammatically correct.

(Para 4.9.1)

The Committee undertook a nuanced analysis of clause 138 and it observes that the original text of section 133, which is the corresponding section to this clause in the Indian Evidence Act, 1872 has been retained in this clause. However, a closer scrutiny of clause 138 and cross-analysing it with *illustration (b)* to clause 119(1) highlights evident contradiction between the two clauses which has not been rectified in the IEA. Clause 138 considers an accomplice as a competent witness against an accused person and uncorroborated testimony of an accomplice is made admissible in conviction. However, *illustration (b)* to clause 119(1) states otherwise and treats uncorroborated testimony of an accomplice as unworthy of credit. The Committee is of the opinion that such contradictions between clauses in the Bill may jeopardise efficacy of the Bill in its application. The Committee, therefore, recommends that suitable amendments in clause 138 may be made.

(Para 4.10.3)

The Committee recommends that the word "Act" in the first proviso may be replaced with "Adhiniyam" as is already used in preceding portions of the Bill.

(Para 4.11.1)

The Committee observes that the certificate in Part A of the schedule does not conform to the requirements prescribed in *sub-clause (2)* of clause 63. The Committee opines that such shortcomings may jeopardise the authenticity, reliability and integrity of the electronic and digital records submitted as evidence in the court of law and will be susceptible to tampering during handling of evidence. The Committee, therefore, recommends that the certificate in Part A may be amended to meet the requirements prescribed in clause 63, *sub-clause (2)(a)* to *sub-clause (2)(d)*.

(Para 4.12.1)

The Committee also undertook a detailed examination of the text of each clause and noted that the Bill contains some cross-referencing errors. The Committee, therefore, recommends the Ministry to rectify such errors.

(Para 4.13)

The Committee agrees with the remaining clauses of the Bill without any changes. The Committee strongly believes that the changes brought in the Bill would reflect the growing importance of digital evidence and the need for a more comprehensive legal framework in line with 21st century technological advancements and societal changes.

(Para 4.14)

NOTES OF DISSENT

अधीर रंजन चौधरी

संसद सदस्य

नेता, लोक सभा (कांग्रेस संसदीय दल)

ADHIR RANJAN CHOWDHURY

MEMBER OF PARLIAMENT

LEADER OF CONGRESS PARTY

IN THE LOK SABHA

To

The Chairperson

Standing Committee on Home Affairs

Rajya Sabha

Parliament House

New Delhi



सत्यमेव जयते

अध्यक्ष

लोक लेखा समिति

भारतीय संसद, नई दिल्ली

CHAIRPERSON

PUBLIC ACCOUNTS COMMITTEE

PARLIAMENT HOUSE

NEW DELHI

DISSENT NOTE ON THE PROPOSED (1) BHARATIYA NYAYA SANHITA BILL, 2023 ('BNS'), (2) BHARATIYA NAGARIK SURAKSHA SANHITA BILL, 2023 ('BNSS') AND (3) THE BHARATIYA SAKSHYA BILL, 2023 ('BSB').

Without any prior intimation and consultation, the Modi Government introduced three new Bills on August 11th, 2023 in the Lok Sabha, namely;

S. NO	EXISTING ACT	PROPOSED ACT TO REPLACE THE EXISTING ACT
1.	Indian Penal Code, 1860 – 511 Sections (Including Amendments and Additions)	Bharatiya Nyaya Sanhita (BNS) – 356 total Sections, 174 Sections changed, 8 new Sections added and 22 Sections repealed
2.	Code of Criminal Procedure, 1973 – 528 Sections (Including Amendments and Additions)	Bharatiya Nagarik Suraksha Sanhita (BNSS) – 533 total Sections, 160 Sections changed, 9 New Sections and 9 Sections repealed
3.	Indian Evidence Act, 1872–185 Sections (Including Amendments and Additions)	Bharatiya Sakshya (BSB) – 170 total Sections. 23 Sections changed, 1 new Section added, and 5 Sections repealed.

The three captioned criminal law Bills cannot be supported in good conscience.

* * *

I. The following key issues arise from a reading of the Draft Bills:

1. **The Law is vastly the same. Only renumbered and re-arranged;** –Far from being novel, or an intuitive re-evaluation of legal provisions, practices and offences, the bills are significantly identical in both language and content to the Acts that they seek to replace. The proposed bills have largely reproduced the laws as they exist presently. Arguably, the biggest "change" has been here numbering of Sections. This exercise, experts opine, would be responsible for large scale confusion resulting in unnecessary delay in the functioning of courts and the policing agencies.

Furthermore, changing the positioning of the provisions within the statutes does not make a law more effective or better in any way.

* * *

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Office of the Chairman
Standing Committee on Home Affairs
Dy. Secy. 208
Date 27/10/2023
Rajya Sabha, Parliament of India

2. **HM's Speech in the Parliament dated 11.08.2023** – The Hon'ble HM himself highlighted the substantive changes in his speech on the floor of Parliament (dated 2023).

The sum total of these changes which the HM himself has chosen to highlight is 25. Even by the most verbose of standards, these could have been introduced to the existing law through a simple five page amendment bill. There was thus no need to carry out such a comprehensive and unnecessary reform for merely 12 substantive amendments (by the HM's own examples). In fact, even in the statements put out by the Government, it is these examples that are being reiterated.

Even the statement of objects and reasons appended to the Bills fails to provide a satisfactory justification.

3. **Imposition of Hindi** – Parliament represents all of us. Not just the Hindi Speakers. Using language which is deliberately exclusionary for the title cannot be justified especially when a Hindi version of the Bill is always published officially and simultaneously. The usage of sanskritised Hindi in these bills goes against the spirit of Article 348 of the Indian Constitution which states that the text of all Bills introduced in Parliament must be in English, a necessary requirement for a country as diverse as India.
4. **Essentially Colonial** – While the Government has hailed the Bills as a move towards shedding the colonial nature of criminal laws, the Bills still retain the colonial spirit of the current laws. For example, most punishments for offences under the IPC have been retained. Further, punishments for some offences have been made harsher and the death penalty has been added for at least four new crimes such as mob lynching, organised crime, terrorism and rape of a minor. The removal of law on sedition was a mere symbolic gesture as it is replaced by a Clause 150 BNS which is much more tyrannical and colonial in its essence. Ultimately, there has been no shift towards a rehabilitative approach to criminal laws. The proposed law retains the retributive nature of the colonial laws. In other words, aside from empty rhetoric about shedding the colonial spirit there is no clear illustration of how the Bills seek to actually do so.
5. **Poorly Drafted Laws** – The version of the Bills that have been released to the public is rife with substantive errors that alter the very meaning of the law to the extent of rendering the law absurd and otiose. For example, Clause 23 of 'The Bharatiya Nyaya Sanhita Bill' states "**Nothing** is an offence which is done by a person who, at the time of doing it, is, by reason of

intoxication, incapable of knowing the nature of the act, or that he is doing what is either wrong, or contrary to law; **unless** that the thing which intoxicated him was administered to him without his knowledge or against his will." In other words, the law exempts offences committed by persons who are under a voluntary state of intoxication and at the same time punishes acts that are done in an involuntary state of intoxication. Such serious infirmities is clear evidence of lack of research and a proper consultation process.

6. **Lack of Public Consultation** – The manner, timing and secrecy with which the exercise has been carried out reeks of legislative mala fides. Law making, especially on a subject of such wide-ranging importance, has to be done in the full light of day with the widest possible consultation amongst stakeholders. **The Pre-Legislative Consultation Policy 2014 expressly prescribes a thirty-day consultation period with the public at large before it may be cleared by Cabinet for introduction in Parliament. This consultation, done through a sharing of the draft in the public domain, must be accompanied by (i) justifications for its enactment, (ii) financial implications and (iii) estimation of the laws' impact. Finally, comments received through the consultation must be published on the website of the nodal ministry.** In this case, a committee was constituted, its members and mandate shielded from public scrutiny, and its recommendations not even subject to peer-review, were taken as gospel. No justification is given for why such a large-scale reform was effected to make changes to a handful of sections, by the Home Ministers own statement in Parliament.

7. **Enhances the Union Government's policing powers without any checks and balances** – The changes that have been made to the existing laws also enhance the coercive powers of State and its instrumentalities which allow for the exercise of its powers at a hitherto unknown scale at which these powers can be exercised by the State. *For example, the laws in general have expanded the scope of police's power without introducing measures to keep its activities in check. From the data of the Government, provided as a response to Unstarred Question No. 1459 for 26.07.2022 raised in parliament, one can see that 4484 persons were victims of Custodial Deaths in India between 2020-2022. While the Bill seeks to enhance the time for which a person can be kept in police custody, there exists no protective measures to provide safety to the accused persons under police custody which is bound to adversely affect the safety of detainees.*

II.

TABLE DETAILING SUBSTANTIVE CHANGES IN THE NEWLY INTRODUCED BILLS ALONG WITH THEIR CORRESPONDING POTENTIAL ISSUES

S. NO	TITLE OF CLAUSE	TEXT OF RELEVANT CLAUSE	POTENTIAL ISSUES
1.	Proviso of Clause 18 of BNSS on 'Public Prosecutors'	<i>Provided that for National Capital Territory of Delhi, the Central Government shall, after consultation with the High Court of Delhi, appoint the Public Prosecutor or Additional Public Prosecutors for the purposes of this sub-section.</i>	This provision dilutes the powers of administration of the elected government in Delhi by allowing for centralisation of power and violating the federal structure that the Constitution provides for.
2.	Exception 2 to Clause 63 of BNS on 'Rape'	<i>Exception 2 – Sexual intercourse or sexual acts by a man with his own wife, the wife not being under eighteen years of age, is not rape.</i>	Despite claiming that the New Bills were drafted keeping in mind the issue of women's safety, the Government continues to exempt acts of Marital Rape from the ambit of rape laws. The recognition of Marital Rape as an offence has been a long-standing demand from Indian women across the board.
3.	Clause 69 of the BNS on 'Sexual intercourse by employing	<i>69. Whoever, by deceitful means or making by promise to marry to a woman without any intention of fulfilling the same, and has sexual intercourse with her, such sexual intercourse not amounting to the offence of</i>	The criterion of "deceitful means" proposed under the new Bill is too broad and provides ample scope for misuse. "Suppression of

	<p>deceitful means, etc.'</p>	<p><i>rape, shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.</i></p> <p><i>Explanation – “deceitful means” shall include the false promise of employment or promotion, inducement or marrying after suppressing identity.</i></p>	<p>Identity” can be misused by ill-interested parties to harass inter-faith and inter-caste couples.</p>
<p>4.</p>	<p>Clause 43 (3) of the BNSS on ‘Arrest how made’</p>	<p><i>(3) The police officer may, keeping in view the nature and gravity of the offence, use handcuff while effecting the arrest of a person who is a habitual, repeat offender who escaped from custody, who has committed offence of organised crime, offence of terrorist act, drug related crime, or offence of illegal possession of arms and ammunition, murder, rape, acid attack, counterfeiting of coins and currency notes, human trafficking, sexual offences against children, offences against the State, including acts endangering sovereignty, unity and integrity of India or economic offences.</i></p>	<p>The Supreme Court, in Prem Shanker Shukla v. Delhi Administration (1980) 3 SCC 526 has categorically held that the use of handcuffs is an anathema on human dignity and a violation of Article 21 of the Indian Constitution.</p> <p>This section is more in line with the colonial mindset of punitive control of the state as opposed to the citizen first, justice centric approach the Government claims these laws were envisioned to champion. Therefore, the purported colonial mindset that the laws intended to do away with fails and the Bills continue to</p>

			retain the colonial character of the current laws
5.	Clause 187 (2) and 187 (3) of the BNSS on 'Procedure when investigation cannot be completed in twenty-four hours'	<p>(3) The Magistrate may authorise the detention of the accused person, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this sub-section for a total period exceeding –</p> <p>(i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;</p> <p>(ii) sixty days, where the investigation relates to any other offence, and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed to be so released under the provisions of Chapter XXXIV for the purposes of that Chapter.</p>	<p>The enhancement of the period for which a detenu can be kept in police custody from 15 days contrasts with the decision of the Hon'ble Supreme Court in CBI v. Anupam J. Kulkarni, (1992) 3 SCC 141 where it was held that police custody after a period of 15 days would be impermissible. By increasing the period of detention under police custody, the new laws have left detenues exposed to probability of threat, torture or inducement by the police. The safeguard of judicial custody i.e where the police have to take the Magistrate's permission to interrogate an accused has been completely ignored and undone by the new laws.</p>
6.	Clause 262 of the BNSS on 'When accused shall be discharged'	262 (1) The accused may prefer an application for discharge within a period of sixty days from the date of framing of charges.	As per sub-section 1 of Clause 262, an application for discharge can be moved within 60 days of 'framing of charges'. A discharge application

		<p><i>(2) If, upon considering the police report and the documents sent with it under section 293 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing.</i></p>	<p>is filed under Section 227 or Section 239 and the same is granted if it is evident that there is no basis on which a trial against the accused can be proceeded with.</p> <p>The proposed law is flawed and renders the purpose of a discharge application otiose since a discharge is the right of an accused to avoid frivolous litigation against him if the offence is not even prima facie made out.</p>
7.	<p>Clause 63 of the BSB on 'Admissibility of electronic records'</p>	<p><i>63. (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</i></p>	<p>Clause 63 of the BSB conflicts with Clause 61 and 62 of the BSB. As per Clause 61, all electronic records are to be treated at par with paper records with respect to their admissibility before courts when proved in accordance to Clause 59 of the BSB (as per Clause 62). However, Clause 63 of the BSB lists the conditions that must be satisfied for electronic evidence to be admissible under the act. Clause 63 is largely an exact reproduction of Section 65B of the Indian Evidence Act.</p>

25th October 2023

		<i>any contents of the original or of any fact stated therein of which direct evidence would be admissible....</i>	Clause 61 is a new provision introduced by the BSB. However, given that Clause 63 has a non-obstante clause, it overrides Clause 61, thus making it redundant.
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III.

POINT BY POINT REBUTTAL TO HM'S SPEECH DATED 11.08.2023 IN PARLIAMENT, ON THE CRIMINAL LAW REFORMS ACTS

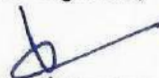
S NO.	CLAIMS	RESPONSE
1.	HM claims that Zero FIR being introduced for the first time.	The Ministry of Home Affairs during the UPA Government, vide Orders dated 10.05.2013 had made it mandatory for all Police Stations to register 'zero FIRs' irrespective of their territorial jurisdiction.
2.	HM claims that concept of E-FIR introduced for the first time	In a Nationwide DGP Conference, Shri Sushil Kumar Shinde inaugurated the CCTNS (Crime & Criminals Tracking Network and Systems) system at Vigyan Bhawan, New Delhi on 04.01.2013 The same CCTNS system (Digital Police Portal) was also relaunched by Shri Amit Shah's Senior Colleague – Shri Rajnath Singh on 21.08.2017.
3.	Lauding the new Bill, HM asserted that 'Compulsory Information' about Arrest to Family Members, being introduced for the first time. Refer to Section 36 of the Draft Bharatiya Nagarik Suraksha Sanhita, 2023	Landmark Constitution Bench Judgement in D.K. Basu Vs. State of West Bengal {1997 (1) SCC 416} dated 18.12.1996. Para 35 - "(2) That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest a such memo shall be attested by atleast one witness who may be either a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be counter signed by the arrestee and shall contain the time and date of arrest."

4.	Compulsory video recording of statement of rape victims Section 176 of the Draft Bharatiya Nagarik Suraksha Sanhita, 2023 provides that the statement of a victim of sexual assault “may” also be videographer.	Proviso to Section 164 of the CrPC, 1973: “Provided further that if the person making the statement is temporarily or permanently mentally or physically disabled, the statement made by the person, with the assistance of an interpreter or a special educator, shall be video graphed.”
5.	The HM claimed that the new Bill makes it mandatory for a Court to pronounce Judgement within 30 days. Section 258 of the Bharatiya Nagarik Suraksha Sanhita, 2023: 258. (1) After hearing arguments and points of law (if any), the Judge shall give a judgment in the case, as soon as possible, within a period of thirty days from the date of completion of arguments, which may for specific reasons extend to a period of sixty days	Order XX Rule 1(1) of the CPC: “Provided that where the judgment is not pronounced at once, every endeavour shall be made by the Court to pronounce the judgment within thirty days from the date on which the hearing of the case was concluded but, where it is not practicable so to do on the ground of the exceptional and extraordinary circumstances of the case, the Court shall fix a future day for the pronouncement of the judgment, and such day shall not ordinarily be a day beyond sixty days from the date on which the hearing of the case as concluded”
6.	SANCTION OF PUBLIC SERVANTS HM asserted that through the present Bills, the Government is making it mandatory to sanction/deny prosecution of Public Servants within 120 days of application or the same would amount to deemed approval.	Vineet Narain Vs. UOI {1998 (1) SCC 226} SCC; Para 15 - “Time limit of three months for grant of sanction for prosecution must be strictly adhered to. However, additional time of one month may be allowed where consultation is required with the Attorney General (AG) or any other law officer in the AG's office.” Proviso to Section 19 of the Prevention of Corruption Act, 1988- “Provided also that the

		appropriate Government or any competent authority shall, after the receipt of the proposal requiring sanction for prosecution of a public servant under this sub-section endeavour to convey the decision on such proposal within a period of three months from the date of its receipt”
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9.	HM also said that the 2023 Criminal Law Amendments also criminalizes ‘Sexual Intercourse with Women under False Identity’	Section 376 of the IPC 1860 “Fourthly. —With her consent, when the man knows that he is not her husband and that her consent is

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11.	It was staunchly claimed by the HM that Sedition is being repealed to protect Freedom of Speech.	Section 150 of the draft Bharatiya Nyaya Sanhita,2023: “150. Whoever, purposely or knowingly, by words, either spoken or written, or by signs, or by visible representation, or by electronic communication or by use of financial mean,or otherwise, excites or attempts to excite, secession or armed rebellion or subversive activities, or encourages feelings of separatist activities or endangers sovereignty or unity and integrity of India; or indulges in or commits any such act shall be punished with imprisonment for life or with imprisonment which may extend to seven years and shall also be liable to fine.
12.	The HM claimed that terrorists like Dawood Ibrahim, may be absconding but now Government Is creating provisions to punish them in absentia.	Section 299 of the CrPC, 1973 already provides for trial,evidence etc. in absence of the Accused.

With regards,


(Adhir Ranjan Chowdhury)

RAVNEET SINGH

Member of Parliament (Lok Sabha)

CHAIRPERSON

Committee on Absence of Members from
the Sittings of the House

MEMBER

- Committee on Public Undertakings
- Standing Committee on Home Affairs
- General Purposes Committee
- Consultative Committee, Ministry of
Micro, Small and Medium Enterprises



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27th October 2023

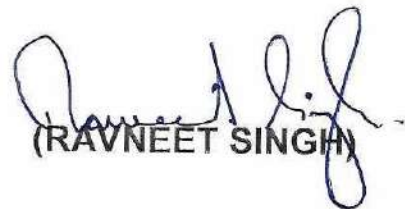
Respected Shri Brijlal jee,

Kindly find enclosed my dissent note on the draft reports of the Committee on Home Affairs on the proposed (i) Bharatiya Nyaya Sanhita Bill, 2023 (BNS), (ii) Bharatiya Nagarik Suraksha Sanhita Bill, 2023 (BNSS) and (iii) The Bharatiya Sakshya Bill, 2023 (BSB).

I request your good self to take the above mentioned dissent note from myself into active consideration please.

With warm regards,

Yours sincerely,


(RAVNEET SINGH)

**Shri Brijlal,
Hon'ble Chairperson,
Committee on Home Affairs,
Parliament House Annexe Extension Building,
New Delhi.**

25th October 2023

DISSENT NOTE ON THE PROPOSED (1) BHARATIYA NYAYA SANHITA BILL, 2023 ('BNS'), (2) BHARATIYA NAGARIK SURAKSHA SANHITA BILL, 2023 ('BNSS') AND (3) THE BHARATIYA SAKSHYA BILL, 2023 ('BSB')

Without any prior intimation and consultation, the Modi Government introduced three news Bills on August 11th, 2023 in the Lok Sabha, namely;

S. NO	EXISTING ACT	PROPOSED ACT TO REPLACE THE EXISTING ACT
1.	Indian Penal Code, 1860 – 511 Sections (Including Amendments and Additions)	Bharatiya Nyaya Sanhita (BNS) – 356 total Sections, 174 Sections changed, 8 new Sections added and 22 Sections repealed
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3.	Indian Evidence Act, 1872 – 185 Sections (Including Amendments and Additions)	Bharatiya Sakshya (BSB) – 170 total Sections. 23 Sections changed, 1 new Section added, and 5 Sections repealed.

The three captioned criminal law Bills cannot be supported in good conscience.

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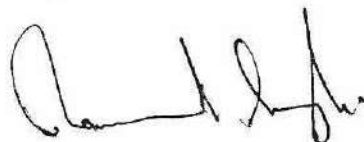
I.

The following key issues arise from a reading of the Draft Bills;

1. **The Law is vastly the same. Only renumbered and re-arranged;** – Far from being novel, or an intuitive re-evaluation of legal provisions, practices and offences, the bills are significantly identical in both language and content to the Acts that they seek to replace. The proposed bills have largely reproduced the laws as they exist presently. Arguably, the biggest “change” has been the renumbering of Sections. This exercise, experts opine, would be responsible for large scale confusion resulting in unnecessary delay in the functioning of courts and the policing agencies.

Furthermore, changing the positioning of the provisions within the statues does not make a law more effective or better in any way.

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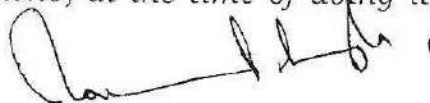
2. **HM's Speech in the Parliament dated 11.08.2023** – The Hon'ble HM himself highlighted the substantive changes in his speech on the floor of Parliament (dated 2023).

The sum total of these changes which the HM himself has chosen to highlight is 25. Even by the most verbose of standards, these could have been introduced to the existing law through a simple five page amendment bill. There was thus no need to carry out such a comprehensive and unnecessary reform for merely 12 substantive amendments (by the HM's own examples). In fact, even in the statements put out by the Government, it is these examples that are being reiterated.

* * *

Even the statement of objects and reasons appended to the Bills fails to provide a satisfactory justification.

3. **Imposition of Hindi** – Parliament represents all of us. Not just the Hindi Speakers. Using language which is deliberately exclusionary for the title cannot be justified especially when a Hindi version of the Bill is always published officially and simultaneously. The usage of sanskritised Hindi in these bills goes against the spirit of Article 348 of the Indian Constitution which states that the text of all Bills introduced in Parliament must be in English, a necessary requirement for a country as diverse as India.
4. **Essentially Colonial** – While the Government has hailed the Bills as a move towards shedding the colonial nature of criminal laws, the Bills still retain the colonial spirit of the current laws. For example, most punishments for offences under the IPC have been retained. Further, punishments for some offences have been made harsher and the death penalty has been added for at least four new crimes such as mob lynching, organised crime, terrorism and rape of a minor. The removal of law on sedition was a mere symbolic gesture as it is replaced by a Clause 150 BNS which is much more tyrannical and colonial in its essence. Ultimately, there has been no shift towards a rehabilitative approach to criminal laws. The proposed law retains the retributive nature of the colonial laws. In other words, aside from empty rhetoric about shedding the colonial spirit there is no clear illustration of how the Bills seek to actually do so.
5. **Poorly Drafted Laws** – The version of the Bills that have been released to the public is rife with substantive errors that alter the very meaning of the law to the extent of rendering the law absurd and otiose. *For example, Clause 23 of 'The Bharatiya Nyaya Sanhita Bill' states "Nothing is an offence which is done by a person who, at the time of doing it, is, by reason of*

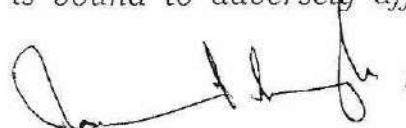


intoxication, incapable of knowing the nature of the act, or that he is doing what is either wrong, or contrary to law; **unless** that the thing which intoxicated him was administered to him without his knowledge or against his will." In other words, the law exempts offences committed by persons who are under a voluntary state of intoxication and at the same time punishes acts that are done in an involuntary state of intoxication. Such serious infirmities is clear evidence of lack of research and a proper consultation process.

6. **Lack of Public Consultation** – The manner, timing and secrecy with which the exercise has been carried out reeks of legislative mala fides. Law making, especially on a subject of such wide-ranging importance, has to be done in the full light of day with the widest possible consultation amongst stakeholders. **The Pre-Legislative Consultation Policy 2014 expressly prescribes a thirty-day consultation period with the public at large before it may be cleared by Cabinet for introduction in Parliament. This consultation, done through a sharing of the draft in the public domain, must be accompanied by (i) justifications for its enactment, (ii) financial implications and (iii) estimation of the laws' impact. Finally, comments received through the consultation must be published on the website of the nodal ministry.** In this case, a committee was constituted, its members and mandate shielded from public scrutiny, and its recommendations not even subject to peer-review, were taken as gospel. No justification is given for why such a large-scale reform was effected to make changes to a handful of sections, by the Home Ministers own statement in Parliament.

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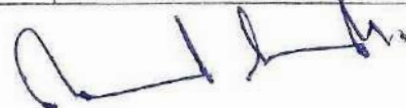
7. **Enhances the Union Government's policing powers without any checks and balances** – The changes that have been made to the existing laws also enhance the coercive powers of State and its instrumentalities which allow for the exercise of its powers at a hitherto unknown scale at which these powers can be exercised by the State. *For example, the laws in general have expanded the scope of police's power without introducing measures to keep its activities in check. From the data of the Government, provided as a response to Unstarred Question No. 1459 for 26.07.2022 raised in parliament, one can see that 4484 persons were victims of Custodial Deaths in India between 2020-2022. While the Bill seeks to enhance the time for which a person can be kept in police custody, there exists no protective measures to provide safety to the accused persons under police custody which is bound to adversely affect the safety of detainees.*



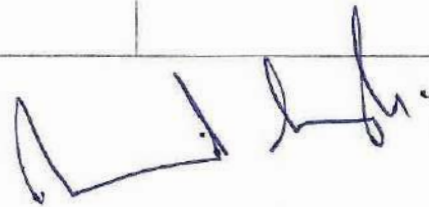
II.

TABLE DETAILING SUBSTANTIVE CHANGES IN THE NEWLY INTRODUCED BILLS ALONG WITH THEIR CORRESPONDING POTENTIAL ISSUES

S. NO	TITLE OF CLAUSE	TEXT OF RELEVANT CLAUSE	POTENTIAL ISSUES
1.	Proviso of Clause 18 of BNSS on ' Public Prosecutors '	<i>Provided that for National Capital Territory of Delhi, the Central Government shall, after consultation with the High Court of Delhi, appoint the Public Prosecutor or Additional Public Prosecutors for the purposes of this sub-section.</i>	This provision dilutes the powers of administration of the elected government in Delhi by allowing for centralisation of power and violating the federal structure that the Constitution provides for.
2.	Exception 2 to Clause 63 of BNS on ' Rape '	<i>Exception 2 – Sexual intercourse or sexual acts by a man with his own wife, the wife not being under eighteen years of age, is not rape.</i>	Despite claiming that the New Bills were drafted keeping in mind the issue of women's safety, the Government continues to exempt acts of Marital Rape from the ambit of rape laws. The recognition of Marital Rape as an offence has been a long-standing demand from Indian women across the board.
3.	Clause 69 of the BNS on ' Sexual intercourse by employing	<i>69. Whoever, by deceitful means or making by promise to marry to a woman without any intention of fulfilling the same, and has sexual intercourse with her, such sexual intercourse not amounting to the offence of</i>	The criterion of "deceitful means" proposed under the new Bill is too broad and provides ample scope for misuse. "Suppression of

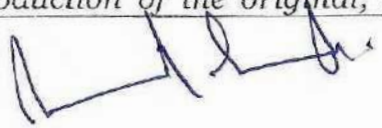


	<i>deceitful means, etc.'</i>	<p><i>rape, shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.</i></p> <p><i>Explanation - "deceitful means" shall include the false promise of employment or promotion, inducement or marrying after suppressing identity.</i></p>	<p>Identity" can be misused by ill-interested parties to harass inter-faith and inter-caste couples.</p>
4.	Clause 43 (3) of the BNSS on ' Arrest how made '	<p><i>(3) The police officer may, keeping in view the nature and gravity of the offence, use handcuff while effecting the arrest of a person who is a habitual, repeat offender who</i></p> <p><i>escaped from custody, who has committed offence of organised crime, offence of terrorist act, drug related crime, or offence of illegal possession of arms and ammunition, murder,</i></p> <p><i>rape, acid attack, counterfeiting of coins and currency notes, human trafficking, sexual offences against children, offences against the State, including acts endangering sovereignty, unity and integrity of India or economic offences.</i></p>	<p>The Supreme Court, in <i>Prem Shanker Shukla v. Delhi Administration (1980) 3 SCC 526</i> has categorically held that the use of handcuffs is an anathema on human dignity and a violation of Article 21 of the Indian Constitution.</p> <p>This section is more in line with the colonial mindset of punitive control of the state as opposed to the citizen first, justice centric approach the Government claims these laws were envisioned to champion. Therefore, the purported colonial mindset that the laws intended to do away with fails and the Bills continue to</p>



			retain the colonial character of the current laws
5.	Clause 187 (2) and 187 (3) of the BNSS on 'Procedure when investigation cannot be completed in twenty-four hours'	<p>(3) The Magistrate may authorise the detention of the accused person, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this sub-section for a total period exceeding –</p> <p>(i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;</p> <p>(ii) sixty days, where the investigation relates to any other offence, and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed to be so released under the provisions of Chapter XXXIV for the purposes of that Chapter.</p>	The enhancement of the period for which a detenue can be kept in police custody from 15 days contrasts with the decision of the Hon'ble Supreme Court in <i>CBI v. Anupam J. Kulkarni</i> , (1992) 3 SCC 141 where it was held that police custody after a period of 15 days would be impermissible. By increasing the period of detention under police custody, the new laws have left detenues exposed to probability of threat, torture or inducement by the police. The safeguard of judicial custody i.e where the police have to take the Magistrate's permission to interrogate an accused has been completely ignored and undone by the new laws.
6.	Clause 262 of the BNSS on 'When accused shall be discharged'	262 (1) The accused may prefer an application for discharge within a period of sixty days from the date of framing of charges.	As per sub-section 1 of Clause 262, an application for discharge can be moved within 60 days of 'framing of charges'. A discharge application

		<p><i>(2) If, upon considering the police report and the documents sent with it under section 293 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing.</i></p>	<p>is filed under Section 227 or Section 239 and the same is granted if it is evident that there is no basis on which a trial against the accused can be proceeded with.</p> <p>The proposed law is flawed and renders the purpose of a discharge application otiose since a discharge is the right of an accused to avoid frivolous litigation against him if the offence is not even prima facie made out.</p>
<p>7.</p>	<p>Clause 63 of the BSB on 'Admissibility of electronic records'</p>	<p><i>63. (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</i></p>	<p>Clause 63 of the BSB conflicts with Clause 61 and 62 of the BSB. As per Clause 61, all electronic records are to be treated at par with paper records with respect to their admissibility before courts when proved in accordance to Clause 59 of the BSB (as per Clause 62). However, Clause 63 of the BSB lists the conditions that must be satisfied for electronic evidence to be admissible under the act. Clause 63 is largely an exact reproduction of Section 65B of the Indian Evidence Act.</p>



25th October 2023

		<p><i>any contents of the original or of any fact stated therein of which direct evidence would be admissible....</i></p>	<p>Clause 61 is a new provision introduced by the BSB. However, given that Clause 63 has a non-obstante clause, it overrides Clause 61, thus making it redundant.</p>
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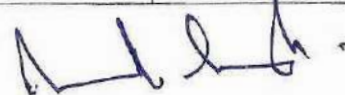
III.

POINT BY POINT REBUTTAL TO HM'S SPEECH DATED 11.08.2023 IN PARLIAMENT, ON THE CRIMINAL LAW REFORMS ACTS

S NO.	CLAIMS	RESPONSE
1.	HM claims that Zero FIR being introduced for the first time.	The Ministry of Home Affairs during the UPA Government, vide Orders dated 10.05.2013 had made it mandatory for all Police Stations to register 'zero FIRs' irrespective of their territorial jurisdiction.
2.	HM claims that concept of E-FIR introduced for the first time	In a Nationwide DGP Conference, Shri Sushil Kumar Shinde inaugurated the CCTNS (Crime & Criminals Tracking Network and Systems) system at Vigyan Bhawan, New Delhi on 04.01.2013 The same CCTNS system (Digital Police Portal) was also relaunched by Shri Amit Shah's Senior Colleague - Shri Rajnath Singh on 21.08.2017.
3.	Lauding the new Bill, HM asserted that 'Compulsory Information' about Arrest to Family Members, being introduced for the first time. Refer to Section 36 of the Draft Bharatiya Nagarik Suraksha Sanhita, 2023	Landmark Constitution Bench Judgement in D.K. Basu Vs. State of West Bengal {1997 (1) SCC 416} dated 18.12.1996. Para 35 - "(2) That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest a such memo shall be attested by atleast one witness who may be either a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be counter signed by the arrestee and shall contain the time and date of arrest."

4.	Compulsory video recording of statement of rape victims Section 176 of the Draft Bharatiya Nagarik Suraksha Sanhita, 2023 provides that the statement of a victim of sexual assault "may" also be videographer.	Proviso to Section 164 of the CrPC, 1973: "Provided further that if the person making the statement is temporarily or permanently mentally or physically disabled, the statement made by the person, with the assistance of an interpreter or a special educator, shall be video graphed."
5.	The HM claimed that the new Bill makes it mandatory for a Court to pronounce Judgement within 30 days. Section 258 of the Bharatiya Nagarik Suraksha Sanhita, 2023: 258. (1) After hearing arguments and points of law (if any), the Judge shall give a judgment in the case, as soon as possible, within a period of thirty days from the date of completion of arguments, which may for specific reasons extend to a period of sixty days	Order XX Rule 1(1) of the CPC: "Provided that where the judgment is not pronounced at once, every endeavour shall be made by the Court to pronounce the judgment within thirty days from the date on which the hearing of the case was concluded but, where it is not practicable so to do on the ground of the exceptional and extraordinary circumstances of the case, the Court shall fix a future day for the pronouncement of the judgment, and such day shall not ordinarily be a day beyond sixty days from the date on which the hearing of the case as concluded"
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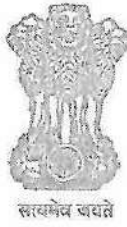
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At Sub.

Digvijaya Singh
Member of Parliament
(Rajya Sabha)



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Tel.: 011-24628655

E-mail : digvijaya.singh@sansad.nic.in
dysofficebhopal@gmail.com

No. 1820 /2023
Date 25/10 /2023

Dear, Shri Brijlal Ji,

I am enclosing a detailed Dissenting note on the proposed:

1. BHARATIYA NYAYA SANHITA BILL, 2023 ('BNS')
2. BHARATIYA NAGARIK SURAKSHA SANHITA BILL, 2023 ('BNSS')
3. THE BHARATIYA SAKSHYA BILL, 2023 ('BSB').

There was an urgent need to call Eminent Lawyers and Judges to depose before the Committee. But it appeared that Hon. Chairman was in a tearing hurry to submit the report.

Kindly include my Dissenting Note in the Report to be submitted to the Parliament.

With regards,

Yours Sincerely,


(Digvijaya Singh)

Shri Brijlal Ji
Hon'ble Chairman,
Parliamentary Standing Committee,
Home Ministry, New Delhi

DISSENT NOTE ON THE PROPOSED (1) BHARATIYA NYAYA SANHITA BILL, 2023 ('BN'), (2) BHARATIYA NAGARIKSURAKSHA SANHITA BILL, 2023 ('BNSS') AND (3) THE BHARATIYA SAKSHYA BILL, 2023 ('BS')

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The three captioned criminal law Bills cannot be supported in good conscience.

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- 1. The Law is vastly the same. Only renumbered and re-arranged;** - Far from being novel, or an intuitive re-evaluation of legal provisions, practices and offences, the bills are significantly identical in both language and content to the Acts that they seek to replace. The proposed bills have largely reproduced the laws as they exist presently. Arguably, the biggest "change" has been the renumbering of Sections. This exercise, experts opine, would be responsible for large scale confusion resulting in unnecessary delay in the functioning of courts and the policing agencies.

*** Expunged as per Rule 90(7)(i) of Rules of Procedure and Conduct of Business in Rajya Sabha

Furthermore, changing the positioning of the provisions within the statutes does not make a law more effective or better in any way. ***.

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The sum total of these changes which the HM himself has chosen to highlight is 25. Even by the most verbose of standards, these could have been introduced to the existing law through a simple five page amendment bill. There was thus no need to carry out such a comprehensive and unnecessary reform for merely 12 substantive amendments (by the HM's own examples). In fact, even in the statements put out by the Government, it is these examples that are being reiterated. *** . Even the statement of objects and reasons appended to the Bills fails to provide a satisfactory justification.

3. **Imposition of Hindi** - Parliament represents all of us. Not just the Hindi Speakers. Using language which is deliberately exclusionary for the title cannot be justified especially when a Hindi version of the Bill is always published officially and simultaneously. The usage of sanskritised Hindi in these bills goes against the spirit of Article 348 of the Indian Constitution which states that the text of all Bills introduced in Parliament must be in English, a necessary requirement for a country as diverse as India.
4. **Essentially Colonial** - While the Government has hailed the Bills as a move towards shedding the colonial nature of criminal laws, the Bills still retain the colonial spirit of the current laws. For example, most punishments for offences under the IPC have been retained. Further, punishments for some offences have been made harsher and the death penalty has been added for at least four new crimes such as mob lynching, organised crime, terrorism and rape of a minor. The removal of law on sedition was a mere symbolic gesture as it is replaced by a Clause 150 BNS which is much more tyrannical and colonial in its essence. Ultimately, there has been no shift towards a rehabilitative approach to criminal laws. The proposed law retains the retributive nature of the colonial laws. In other words, aside from empty rhetoric about shedding the colonial spirit there is no clear illustration of how

*** Expunged as per Rule 90(7)(i) of Rules of Procedure and Conduct of Business in Rajya Sabha

the Bills seek to actually do so.

5. **Poorly Drafted Laws** - The version of the Bills that have been released to the public is rife with substantive errors that alter the very meaning of the law to the extent of rendering the law absurd and otiose. *For example, Clause 23 of 'The Bharatiya Nyaya Sanhita Bill' states "Nothing is an offence which is done by a person who, at the time of doing it, is, by reason of intoxication, incapable of knowing the nature of the act, or that he is doing what is either wrong, or contrary to law; unless that the thing which intoxicated him was administered to him without his knowledge or against his will."* In other words, the law exempts offences committed by persons who are under a voluntary state of intoxication and at the same time punishes acts that are done in an involuntary state of intoxication. Such serious infirmities is clear evidence of lack of research and a proper consultation process.

6. **Lack of Public Consultation** - The manner, timing and secrecy v.rith which the exercise has been carried out reeks of legislative mala fides. Law making, especially on a subject of such wide-ranging importance, has to be on done in the full light of day with the widest possible consultation amongst stakeholders. **The Pre-Legislative Consultation Policy 2014 expressly prescribes a thirty-day consultation period with the public at large before it may be cleared by Cabinet for introduction in Parliament. This consultation, done through a sharing of the draft in the public domain, must be accompanied by (i) justifications for its enactment, (ii) financial implications and (iii) estimation of the laws' impact. Finally, comments received through the consultation must be published on the website of the nodal ministry.** In this case, a committee was constituted, its members and mandate shielded from public scrutiny, and its recommendations not even subject to peer-review, were taken as gospel. No justification is given for why such a large-scale reform was effected to make changes to a handful of sections, by the Home Ministers own statement in Parliament.
*** .

7. **Enhances the Union Government's policing powers without any checks and balances** - The changes that have been made to the existing laws also enhance the coercive powers of State and its instrumentalities which allow for the exercise of its powers at a hitherto unknown scale at which these powers can be exercised by the State. *For example, the laws in general have*

*** Expunged as per Rule 90(7)(i) of Rules of Procedure and Conduct of Business in Rajya Sabha

expanded the scope of police's power without introducing measures to keep its activities in check. From the data of the Government, provided as a response to Unstarred Question No. 1459 for 26.07.2022 raised in parliament, one can see that 4484 persons were victims of Custodial Deaths in India between 20 2 0 -20 2 2 . While the Bill seeks to enhance the time for which a person can be kept in police custody, there exists no protective measures to provide safety to the accused persons under police custody which is bound to adversely affect the safety of detainees.

II.

TABLE DETAILING SUBSTANTIVE CHANGES IN THE NEWLY INTRODUCED BILLS ALONG WITH THEIR CORRESPONDING POTENTIAL ISSUES

S. NO	TITLE OF CLAUSE	TEXT OF RELEVANT CLAUSE	POTENTIAL ISSUES
1.	Proviso of Clause 18 of BNSS on ' Public Prosecutors '	<i>Provided that for National Capital Territory of Delhi, the Central Government shall, after consultation with the High Court of Delhi, appoint the Public Prosecutor or Additional Public Prosecutors for the purposes of this sub-section.</i>	This provision dilutes the powers of administration of the elected government in Delhi by allowing for centralisation of power and violating the federal structure that the Constitution provides for.
2.	Exception 2 to Clause 63 of BNS on ' Rape '	<i>Exception 2 – Sexual intercourse or sexual acts by a man with his own wife, the wife not being under eighteen years of age, is not rape.</i>	Despite claiming that the New Bills were drafted keeping in mind the issue of women's safety, the Government continues to exempt acts of Marital Rape from the ambit of rape laws. The recognition of Marital Rape as an offence has been a long-standing demand from Indian women across the board.
3.	Clause 69 of the BNS on ' Sexual intercourse by employing	<i>69. Whoever, by deceitful means or making by promise to marry to a woman without any intention of fulfilling the same, and has sexual intercourse with her, such sexual intercourse not amounting to the offence of</i>	The criterion of "deceitful means" proposed under the new Bill is too broad and provides ample scope for misuse. "Suppression of

	deceitful means, etc.’	<p>rape, shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.</p> <p>Explanation – “deceitful means” shall include the false promise of employment or promotion, inducement or marrying after suppressing identity.</p>	Identity” can be misused by ill-interested parties to harass inter-faith and inter-caste couples.
4.	Clause 43 (3) of the BNSS on ‘Arrest how made’	<p>(3) The police officer may, keeping in view the nature and gravity of the offence, use handcuff while effecting the arrest of a person who is a habitual, repeat offender who escaped from custody, who has committed offence of organised crime, offence of terrorist act, drug related crime, or offence of illegal possession of arms and ammunition, murder, rape, acid attack, counterfeiting of coins and currency notes, human trafficking, sexual offences against children, offences against the State, including acts endangering sovereignty, unity and integrity of India or economic offences.</p>	<p>The Supreme Court, in Prem Shanker Shukla v. Delhi Administration (1980) 3 SCC 526 has categorically held that the use of handcuffs is an anathema on human dignity and a violation of Article 21 of the Indian Constitution.</p> <p>This section is more in line with the colonial mindset of punitive control of the state as opposed to the citizen first, justice centric approach the Government claims these laws were envisioned to champion. Therefore, the purported colonial mindset that the laws intended to do away with fails and the Bills continue to</p>

			retain the colonial character of the current laws
5.	Clause 187 (2) and 187 (3) of the BNSS on 'Procedure when investigation cannot be completed in twenty-four hours'	<p>(3) The Magistrate may authorise the detention of the accused person, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this sub-section for a total period exceeding –</p> <p>(i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;</p> <p>(ii) sixty days, where the investigation relates to any other offence, and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed to be so released under the provisions of Chapter XXXIV for the purposes of that Chapter.</p>	<p>The enhancement of the period for which a detenu can be kept in police custody from 15 days contrasts with the decision of the Hon'ble Supreme Court in <i>CBI v. Anupam J. Kulkarni, (1992) 3 SCC 141</i> where it was held that police custody after a period of 15 days would be impermissible. By increasing the period of detention under police custody, the new laws have left detenues exposed to probability of threat, torture or inducement by the police. The safeguard of judicial custody i.e where the police have to take the Magistrate's permission to interrogate an accused has been completely ignored and undone by the new laws.</p>
6.	Clause 262 of the BNSS on 'When accused shall be discharged'	262 (1) <i>The accused may prefer an application for discharge within a period of sixty days from the date of framing of charges.</i>	As per sub-section 1 of Clause 262, an application for discharge can be moved within 60 days of 'framing of charges'. A discharge application

		<p><i>(2) If, upon considering the police report and the documents sent with it under section 293 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing.</i></p>	<p>is filed under Section 227 or Section 239 and the same is granted if it is evident that there is no basis on which a trial against the accused can be proceeded with.</p> <p>The proposed law is flawed and renders the purpose of a discharge application otiose since a discharge is the right of an accused to avoid frivolous litigation against him if the offence is not even prima facie made out.</p>
7.	<p>Clause 63 of the BSB on 'Admissibility of electronic records'</p>	<p><i>63. (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</i></p>	<p>Clause 63 of the BSB conflicts with Clause 61 and 62 of the BSB. As per Clause 61, all electronic records are to be treated at par with paper records with respect to their admissibility before courts when proved in accordance to Clause 59 of the BSB (as per Clause 62). However, Clause 63 of the BSB lists the conditions that must be satisfied for electronic evidence to be admissible under the act. Clause 63 is largely an exact reproduction of Section 65B of the Indian Evidence Act.</p>

		<p><i>any contents of the original or of any fact stated therein of which direct evidence would be admissible....</i></p>	<p>Clause 61 is a new provision introduced by the BSB. However, given that Clause 63 has a non-obstante clause, it overrides Clause 61, thus making it redundant.</p>
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III.

POINT BY POINT REBUTTAL TO HM'S SPEECH DATED 11.08.2023 IN PARLIAMENT, ON THE CRIMINAL LAW REFORMS ACTS

S NO.	CLAIMS	RESPONSE
1.	HM claims that Zero FIR being introduced for the first time.	The Ministry of Home Affairs during the UPA Government, vide Orders dated 10.05.2013 had made it mandatory for all Police Stations to register 'zero FIRs' irrespective of their territorial jurisdiction.
2.	HM claims that concept of E-FIR introduced for the first time	In a Nationwide DGP Conference, Shri Sushil Kumar Shinde inaugurated the CCTNS (Crime & Criminals Tracking Network and Systems) system at Vigyan Bhawan, New Delhi on 04.01.2013 The same CCTNS system (Digital Police Portal) was also relaunched by Shri Amit Shah's Senior Colleague – Shri Rajnath Singh on 21.08.2017.
3.	Lauding the new Bill, HM asserted that 'Compulsory Information' about Arrest to Family Members, being introduced for the first time. Refer to Section 36 of the Draft Bharatiya Nagarik Suraksha Sanhita, 2023	Landmark Constitution Bench Judgement in D.K. Basu Vs. State of West Bengal {1997 (1) SCC 416} dated 18.12.1996. Para 35 - "(2) That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest a such memo shall be attested by atleast one witness who may be either a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be counter signed by the arrestee and shall contain the time and date of arrest."

4.	Compulsory video recording of statement of rape victims Section 176 of the Draft Bharatiya Nagarik Suraksha Sanhita, 2023 provides that the statement of a victim of sexual assault “may” also be videographer.	Proviso to Section 164 of the CrPC, 1973: “Provided further that if the person making the statement is temporarily or permanently mentally or physically disabled, the statement made by the person, with the assistance of an interpreter or a special educator, shall be video graphed.”
5.	The HM claimed that the new Bill makes it mandatory for a Court to pronounce Judgement within 30 days. Section 258 of the Bharatiya Nagarik Suraksha Sanhita, 2023: 258. (1) After hearing arguments and points of law (if any), the Judge shall give a judgment in the case, as soon as possible, within a period of thirty days from the date of completion of arguments, which may for specific reasons extend to a period of sixty days	Order XX Rule 1(1) of the CPC: “Provided that where the judgment is not pronounced at once, every endeavour shall be made by the Court to pronounce the judgment within thirty days from the date on which the hearing of the case was concluded but, where it is not practicable so to do on the ground of the exceptional and extraordinary circumstances of the case, the Court shall fix a future day for the pronouncement of the judgment, and such day shall not ordinarily be a day beyond sixty days from the date on which the hearing of the case as concluded”
6.	SANCTION OF PUBLIC SERVANTS HM asserted that through the present Bills, the Government is making it mandatory to sanction/ deny prosecution of Public Servants within 120 days of application or the same would amount to deemed approval.	Vineet Narain Vs. UOI {1998 (1) SCC 226} SCC; Para 15 - “Time limit of three months for grant of sanction for prosecution must be strictly adhered to. However, additional time of one month may be allowed where consultation is required with the Attorney General (AG) or any other law officer in the AG's office.” Proviso to Section 19 of the Prevention of Corruption Act, 1988- “Provided also that the

		appropriate Government or any competent authority shall, after the receipt of the proposal requiring sanction for prosecution of a public servant under this sub-section endeavour to convey the decision on such proposal within a period of three months from the date of its receipt”
7.	The HM claimed that now onwards the Criminal Law Reforms enable the authorities to Auction the Assets of Proclaimed Offender.	Section 83 of the CrPC, 1973 “83. Attachment of property of person absconding.— (1) The Court issuing a proclamation under section 82 may, for reasons to be recorded in writing, at any time after the issue of the proclamation, order the attachment of any property, movable or immovable, or both, belonging to the proclaimed person.”
8.	Gang rape 20 years or life imprisonment	Section 376D, IPC 1860: 376D. Gang rape - Where a woman is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to life which shall mean imprisonment for the remainder of that person's natural life, and with fine:
9.	HM also said that the 2023 Criminal Law Amendments also criminalizes ‘Sexual Intercourse with Women under False Identity’	Section 376 of the IPC 1860 “Fourthly. —With her consent, when the man knows that he is not her husband and that her consent is

		given because she believes that he is another man to whom she is or believes herself to be lawfully married.”
10.	HM also argued that Snatching is being made an offence for the first time	Section 378, 379 (theft) of the IPC already covers snatching as an offence.
11.	It was staunchly claimed by the HM that Sedition is being repealed to protect Freedom of Speech.	Section 150 of the draft Bharatiya Nyaya Sanhita, 2023: “150. Whoever, purposely or knowingly, by words, either spoken or written, or by signs, or by visible representation, or by electronic communication or by use of financial mean, or otherwise, excites or attempts to excite, secession or armed rebellion or subversive activities, or encourages feelings of separatist activities or endangers sovereignty or unity and integrity of India; or indulges in or commits any such act shall be punished with imprisonment for life or with imprisonment which may extend to seven years and shall also be liable to fine.
12.	The HM claimed that terrorists like Dawood Ibrahim, may be absconding but now Government is creating provisions to punish them in absentia.	Section 299 of the CrPC, 1973 already provides for trial, evidence etc. in absence of the Accused.



सत्यमेव जयते

N.R.ELANGO
MEMBER OF PARLIAMENT
(RAJYA SABHA)
TAMILNADU

TO :

7th November 2023

The Hon'ble Chairman and the Hon'ble Members,
Parliamentary Standing Committee on
Home Affairs.

Sir, Vanakkam,

Subject: The Draft report on Bharatiya Nyaya Sanhita Bill 2023,
The Bharatiya Nagarika Suraksha Sanhita Bill, 2023 and
The Bharatiya Sakshaya Bill, 2023

Ref : My letter dated 27/10/2023.

Please refer to my letter cited in the reference. I have given my dissent note in that letter as the committee was convened to adopt the draft report on 27/10/2023. However, the adoption was postponed to 06/11/2013. As the dissent note is to be given after the adoption of the draft report, I am once again giving this dissent note once again, to comply with the procedure. Please consider the same.

1. At the outset i concur with the opinion of the Hon'ble Members Mr. P.Chidambaram, Mr.Dayanidhi Maran and Mr.Derik O'beran that
 - a. These Bills shall not be rushed by this Committee in this undesirable speed.
 - b. These Bills require more consultation with State Governments, Judges, Police Authorities, Bar Council of India, State Bar Councils, Advocate Association, Bar Associations, Senior Advocates, Advocates, Women Lawyers' Association, Eminent Jurists, Academicians, various luminaries and other stakeholders etc.

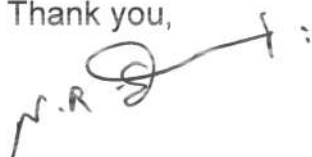
- c. The naming of these Bills in Hindi/Sanskrit will amount to undermining the Federalism, in as much it goes against the linguistic feelings of the non-Hindi speaking Indians. In spite of various objections and suggestions the Committee is not considering the violation of Article 348 of the Constitution of India.
2. It is very obvious that, various valuable suggestions of the domain experts who were examined by the Committee are not at all considered in the draft report.
 3. Suggestions regarding the abolition of death sentence is not at all considered in the draft report. I urge the Committee to deliberate on this issue alone for at least three days. Views of the stakeholders, experts to be obtained on this issue. This is the golden opportunity to consider, to do away with the death penalty. Humanism will be ever grateful to us if we deliberate and abolish the death penalty.
 4. I am of the strong view that this Committee should not stop with consulting the domain experts but also have a wide consultation with the State Governments, Judges, Police Authorities, Bar Council of India, State Bar Councils, Advocate Association, Bar Associations, Senior Advocates, Advocates, Women Lawyers' Association, Eminent Jurists and the Academicians.
 5. As these three Bills will have a large implication on the everyday life of the millions of Indians, I request the Committee to have a balanced and slow approach in its recommendations.
 6. The Parliament and its Committees are meant for People and not the vice versa. What the Parliament by its majority wants to be the law is not correct approach to the democracy. The Parliament and its members have to think, deliberate, consult and enact laws which are serving best interest of the citizens of our country. I am of the view that this is completely overlooked by the Committee and rushing of these Bills is the evidence of it.
 7. However, I am here with enclosing my dissent note to the draft reports Bharatiya Nyaya Sanhita Bill 2023, The Bharatiya Nagarika Suraksha Sanhita Bill, 2023. I am also enclosing a separate suggestion to clause 187

N.R.S.T.

of The Bharatiya Nagarika Suraksha Sanhita Bill, 2023 which is equivalent to section 167 of the Code of Criminal Procedure 1973.

8. I have no suggestions to the draft report on The Bharatiya Sakshaya Bill, 2023 as I note three of my suggestions were taken into consideration by the Committee in the draft report. How ever my strong dissent may be recorded in naming the Bill as The Bharatiya Sakshaya Bill, 2023 and I request the Committee to recommend the Parliament to name it as The Indian Evidence Act 2023.

Thank you,

A handwritten signature in black ink, appearing to be 'N.R. Elango', with a long horizontal stroke extending to the right.

(N.R.ELANGO)

ENCL:

1. Dissent note to the draft report on Bharatiya Nyaya Sanhita Bill 2023
2. Dissent note to the draft report on The Bharatiya Nagarika Suraksha Sanhita Bill, 2023
3. Suggestions to clause 187 of The Bharatiya Nagarika Suraksha Sanhita Bill, 2023 which is equivalent to section 167 of the Code of Criminal Procedure 1973.



सत्यमेव जयते

DEREK O'BRIEN

Member of Parliament, Rajya Sabha

Leader, All India Trinamool Congress Parliamentary Party, Rajya Sabha

8 November, 2023

To,
Shri Brij Lal,
Hon'ble Chairperson,
Parliamentary Standing Committee on Home Affairs

Note of dissent on BNS, 2023 and BNSS, 2023.

Respected Chairperson,

As a member of the Home Affairs Parliamentary Standing Committee that is deliberating on the three proposed bills, I vehemently express my dissent regarding two of these Bills; the new Penal Code (BNS) and the new Criminal Procedure Code (BNNS).

The feedback regarding the problems with the Sakshya (Evidence) Bill was well taken and problems with the bill are covered by the report of the Committee.

There are multiple reasons for this strong dissent.

A. METHODOLOGY AND PROCEDURE OF THIS COMMITTEE IN DRAFTING THESE REPORTS

B. DEMERITS OF THE DRAFT REPORT

As per precedent, A and B to please be included as part of the committee's dissent note.

Sincerely,

Derek O'Brien

Enclosed: As above (81 page dissent note)

DISSENT ON CRIMINAL LAW BILLS

DRAFT REPORT OF PARLIAMENTARY
STANDING COMMITTEE ON HOME A
FFAIRS

DEREK O'BRIEN

General statutes of criminal law are here for the ages. They will affect the lives of the whole population of India including the economically weaker Sections and the marginalized. General statutes of criminal law have to be crafted with utmost care, it is imperative to scrutinize and dissent when necessary. The following is an examination of the Criminal Law Bills, aiming to shed light on their potential ramifications and stimulate critical discussion. In an effort to ensure that the principles of justice and fairness remain at the heart of our legal system, this dissent seeks to address concerns, ensure due process is followed, spark debate, and advocate for a more equitable and balanced approach to the new criminal legislations under consideration of the Parliamentary Standing Committee on Home Affairs.

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A. METHODOLOGY AND PROCEDURE OF THIS COMMITTEE IN DRAFTING THESE REPORTS

I. NO NEED FOR NEW BILLS WHICH ARE 93% COPY PASTE LEGISLATION

The fact that approximately 93% of the existing Criminal Law remains unaltered, 18 out of 22 chapters have been copy pasted in these new bills implies that the pre-existing legislation could have been effortlessly modified to incorporate these specific changes. It appears that there was no requirement for an entirely new legislative framework, mostly for the purpose of renumbering and reorganizing the existing legal provisions. *** . Suspicion is generated whether the effort is in vain and malafide.

II. * COMMITTEE PROCEDURE AND AVOIDING QUALITY STAKEHOLDER CONSULTATION**

I would like to highlight the glaring gaps in the methodology of drafting this report. The current process lacked inclusivity in stakeholder consultations required for legislation of such magnitude. ***. Many of the people called to testify had strong leanings or were associated with the ruling dispensation. Multiple verbal and written requests made by the undersigned to invite experts and practitioners to testify before this committee were, unfortunately, ***. (See Annexure- E, F, G, H, J)

Also, a broader spectrum of opinions, especially from those directly impacted, must be sought to ensure a comprehensive understanding and representation of diverse perspectives. *** Yet again, important legislation is being *** and imposed.

In 2020, the Ministry of Home Affairs established a committee led by Prof. Ranbir Singh, the former Vice Chancellor of the National Law University,

*** Expunged as per Rule 90(7)(i) of Rules of Procedure and Conduct of Business in Rajya Sabha

Delhi, to undertake a comprehensive review of the three codes of criminal law. However, it is essential to note that this committee was marked by a striking lack of diversity. All its members were male, and what's more, they shared not only a common gender but also a similar social identity, professional background, and experience.

Regrettably, the committee lacked representation from various marginalized groups, including women, Dalits, religious minorities, adivasis, LGBTQ individuals, and those with disabilities. The absence of such diverse perspectives is a significant concern, particularly when addressing matters of such magnitude and societal impact.

In a country as diverse as India, where a wide range of perspectives, interests, and concerns need to be addressed, diverse and extensive stakeholder consultation is essential to ensure that laws are fair, effective, and capable of addressing the complex and multifaceted challenges facing the nation. It not only enhances the quality of legislation but also promotes a more inclusive and accountable democratic process.*** .

Lakhs of stakeholders including judges, lawyers, students, paralegals, will have to relearn the laws. Relearning new laws can disrupt established legal practices and procedures, potentially causing confusion and delays in the legal system. Significant resources may be required to update educational materials, provide training, and ensure stakeholders are adequately prepared to work with the new laws. Relearning new laws can be a complex and resource-intensive process that has a significant impact on the legal community, potentially affecting the delivery of legal services and the consistency of legal decisions.

In any case, the government has only sought inputs after the introduction of this bill. By seeking input before introducing a bill, the government can involve a broader range of perspectives, including those of experts,

*** Expunged as per Rule 90(7)(i) of Rules of Procedure and Conduct of Business in Rajya Sabha

affected communities, and the general public. This would have ensured that diverse voices are considered in the lawmaking process, promoting inclusivity and democratic values.

I strongly recommended some consultations due to their critical importance. (Please refer Annexure A)

III. NAMES OF THESE BILLS SHOULD BE IN ENGLISH AS WELL AS HINDI.

The names of these Bills being in Hindi is not suitable for the whole of the country. This can not only be called Hindi imposition but is also unconstitutional. Article 348 of the Constitution mandates that English language be used in Acts and Bills. It reads-

"348. Language to be used in the Supreme Court and in the High Courts and for Acts, Bills, etc

...

(b) the authoritative texts

(i) of all Bills to be introduced or amendments thereto to be moved in either House of Parliament or in the House or either House of the Legislature of a State,

(ii) of all Acts passed by Parliament or the Legislature of a State and of all Ordinances promulgated by the President or the Governor of a State, and

(iii) of all orders, rules, regulations and bye laws issued under this Constitution or under any law made by Parliament or the Legislature of a State, shall be in the English language."

But the report still considers it to be constitutional. In fact it even goes on to propose use of Hindi in more places by saying- *"The Committee recommends that the word "Act" in the first proviso may be replaced with "Adhiniyam" as is already used in preceding portions of the Bill."* This goes against the letter and

spirit of Article 348 of the Constitution.

Funnily enough, the report of the committee in Hindi only came a night before the adoption.

Suggestion: *NAMES SHOULD BE IN ENGLISH AS WELL AS HINDI. When translated into English, the titles of these bills would be: the Indian Justice Code, 2023, the Indian Citizen's Protection Code, 2023 and the Indian Evidence Bill, 2023. If the new law is titled the Indian Citizen's Protection Code, 2023. It will reflect the idea of a procedural shield for citizens against the State in the criminal process.*

Use of these laws in local languages is also essential to enhance understanding and engagement, ensuring that information is accessible to a broader audience and fostering a deeper connection with the content, thereby promoting effective communication and inclusivity.

IV. LACK OF DISCUSSION AMONGST MEMBERS OF THE COMMITTEE AND LIMITING THE MEANINGFUL PARTICIPATION OF THE OPPOSITION.

It is clear that a consultation process unfolded, with ***. The urgency to conclude discussions on bills that could significantly alter our nation's safety and law and order regulations raises concerns about the democratic and informed nature of the decision-making process. General statutes of criminal law are here for the ages. General statutes of criminal law will affect the lives of the poor. General statutes of criminal law have to be crafted with utmost care.

Furthermore, ***. As a result, meetings were scheduled during the festive season and when members had prior constituency engagements, programs and events. ***. Allowing the opposition only a meager hour to scrutinize and critique these bills is far from an exhaustive exercise in

*** Expunged as per Rule 90(7)(i) of Rules of Procedure and Conduct of Business in Rajya Sabha

scrutiny, which is vital to ensuring that such consequential legislation is thoroughly examined and rigorously debated.

V. * TO ADOPT REPORT RIDICULES LEGISLATIVE SCRUTINY- ONLY A STUNT BEFORE ELECTION 2024.**

Given the far-reaching consequences associated with these bills, they necessitate a meticulous examination of every provision. Basic drafting errors require close scrutiny, and various aspects, including the rationale behind specific provisions and their potential impact on the public, demand thorough examination and extensive discussion. Hasty passage of these bills may result in unintended consequences and contribute to public dissatisfaction.

The urgency with which these bills are being pushed through stands in stark contrast to the deliberative process observed by the same Home Affairs Committee in discussing Police Training, Modernization, and Reforms. It is worth noting that the committee, initially constituted in September 2020 and later reconstituted in September 2021, took approximately three years to deliberate on that subject, underscoring the importance of careful consideration and comprehensive evaluation in the legislative process.

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VI. A RESULT OF RUSHING AND *- NUMEROUS DRAFTING ERRORS**

It is imperative to emphasize the presence of basic drafting errors within these bills, as these errors can have a profound impact on the interpretation and implementation of the proposed laws. Correcting these errors is not just a matter of procedural correctness; it is crucial for ensuring the clarity and effectiveness of the legislation.

My colleagues Shri N. R. Elango and P. Chidambaram have diligently pointed out a multitude of drafting errors, underscoring the need for thorough revisions. However, the rushed nature of this legislation has left limited room for addressing these critical concerns.

Furthermore, it is regrettable that the committee did not allow for more extensive consultations, *** . The absence of such deliberation and due process further compounds the risk of perpetuating these drafting errors, ultimately diminishing the quality and efficacy of the proposed laws.

VII. ABSENCE OF PUBLIC ENGAGEMENT

The manner in which this legislative process has been conducted raises legitimate concerns about lack of transparent and honest legislative intent. Crafting laws, especially those bearing such extensive significance, should ideally be carried out with utmost transparency and inclusive consultation among all concerned parties.

The Pre-Legislative Consultation Policy of 2014, which is designed to ensure a fair and open process, mandates a thirty-day consultation period with the general public before a law can be approved by the Cabinet for introduction in Parliament. This consultation process, which involves sharing the draft with the public, must be accompanied by (i) explanations for its enactment,

*** Expunged as per Rule 90(7)(i) of Rules of Procedure and Conduct of Business in Rajya Sabha

(ii) financial considerations, and (iii) an evaluation of the law's potential impact. Moreover, the comments received during the consultation should be made available on the ministry's website.

In the present case, however, a committee was formed with its members and objectives *** There exists a notable absence of a clear and compelling rationale for why such a substantial reform was undertaken, especially considering that, according to the Home Minister's own statement in Parliament, the primary objective appeared to involve alterations to a few specific Sections of the law. This lack of transparency and insufficient justification raises questions about the intentions behind the legislative process.

In addition to these concerns, while these bills claim to be decolonised, the retention of certain provisions contradicts this narrative. A more comprehensive effort towards decolonisation is needed to truly reflect the evolving needs of our society. There are many concerns still arising from these Bills and I will once again point out some of the major concerns.

*** Expunged as per Rule 90(7)(i) of Rules of Procedure and Conduct of Business in Rajya Sabha

B. DEMERITS OF THE DRAFT REPORT

PENAL CODE (BNS)

I. Clause 5 Commutation of a sentence

The clause gives the executive the powers to commute an offender's sentence punishment for any other punishment. Allowing the executive to commute sentences can blur the separation of powers in a government. It gives the executive branch, which is responsible for enforcing the law, a role in altering or mitigating the legal punishments determined by the judiciary. This could potentially lead to an imbalance of power and an infringement on the judiciary's independence. Executive decisions might be swayed by electoral or popularity concerns rather than solely focusing on justice and the merits of individual cases.

Commutations can be seen as undermining the authority and decisions of the judiciary. It may give the impression that the executive branch can override or second-guess the judiciary's determinations, eroding trust in the legal system.

II. Clause 11 Solitary Confinement

This clause should be reconsidered as solitary confinement is inhumane. Research has shown that solitary confinement is not an effective tool for deterrence or rehabilitation. It does not reduce recidivism or promote positive behaviour change; instead, it can increase aggression and antisocial behaviour. It has been shown to have serious detrimental effects on individuals' mental and physical well-being, and it raises ethical and human rights concerns. The characterization of solitary confinement as a brutal type of incarceration by the Supreme Court of India in the case of *Kishore Singh Ravinder Dev v. State of Rajasthan* highlights the court's recognition of the severe and adverse effects of solitary confinement on individuals.

III. Clause 69 - Promise to Marry

Relationships and decisions about marriage are deeply personal matters that should be left to the individuals involved, subject to only some basic safeguards that may be consensually instituted by the society. Criminalizing a Promise to Marry can be seen as an undue intrusion into individuals' Right to Privacy and autonomy. Determining whether a promise to marry has been made can be subjective and challenging to prove. Intentions can change over time, and proving that a promise was genuinely made with the intention to marry can be difficult.

Defining what constitutes a legally binding Promise to Marry can be vague and open to interpretation. This lack of clarity can lead to inconsistencies in enforcement and judgments.

Criminalizing a Promise to Marry can be viewed as an unwarranted intrusion into the fundamental Right to Privacy and personal autonomy, which are cherished principles in a democratic society. In this context, a more nuanced and rights-based approach to addressing matters related to promises to marry would be both pragmatic and respectful of individual freedoms and choices.

IV. Kidnapping and begging- Clause 137

The clause should exclude the exception of lawful guardian of such child. Even guardians who wrongfully push children into begging should be rigorously punished. Excluding the exception of lawful guardians in a clause punishing those who wrongfully push children into begging is essential to safeguard the rights and well-being of vulnerable children. It sends a strong message that all individuals, regardless of their legal relationship with the child, will be held accountable for such harmful actions, acting as a powerful deterrent against child exploitation. This approach prioritizes the child's best interests, prevents potential legal loopholes, and aligns with international human rights standards, fostering a child-centered and protective legal

framework that leaves no room for evading responsibility in cases of child exploitation.

V. Sedition law- Clause 150

I would like to include a passage from the report. *“The Committee compliments the Government in deleting the term ‘sedition’ from criminal law by rephrasing it without compromising the security of the state. The Committee finds it as a very progressive development.”*

The Report acknowledges the fact that the Sedition law has just been paraphrased and retained. The 22nd Law Commission suggested that sedition should be well defined. The Union government decided to do the opposite of that. The provision in the new bill gives it such a broad definition that it can encompass any act in the name of endangering the unity and integrity of India. It leaves a lot of room for discretion which is the opposite of what was advised by the law commission. Clause 150 talks about Acts endangering sovereignty, unity and integrity of India. Sedition gets a sinister backfoot entry in the proposed legal regime. This broad definition could potentially infringe on individuals' rights to free expression and peaceful dissent.

The broad and vaguely worded sedition provisions can create a chilling effect on free speech and peaceful protest. Individuals may self-censor their opinions and criticisms, fearing legal consequences, which can undermine democratic values and civil liberties.

Our concerns are rooted in the potential for misuse and abuse of the redefined sedition law. Such broad and discretionary provisions can be employed to stifle legitimate dissent and criticism, limiting freedom of expression and potentially infringing on individuals' rights.

VI. The problem with not defining community service.

The introduction of Community Service ‘under clause 4(f) of the BNS is a welcome step. In criminal justice systems that emphasize rehabilitation, community service provides an opportunity for offenders to make amends for

their actions and demonstrate their commitment to positive change. It can help them develop a sense of responsibility and contribute positively to society and aligns with the principles of restorative justice. But the same is nothing without giving a proper definition to it. A clear definition will outline the objectives and goals of Community Service, ensuring that both offenders and those responsible for overseeing its execution understand the intended outcomes. It will specify the nature and scope of the service, such as the types of activities, the duration, and the target beneficiaries.

VII. Clarity in definition of life sentence

The current definition of "imprisonment for life" within the BNS is not explicitly clear. It appears to be using the term "imprisonment for the remainder of a person's natural life." However, in the Indian Penal Code (IPC), Section 53, the term "imprisonment for life" is used without specifying whether it means "imprisonment for the remainder of a person's natural life" or if it is equivalent to a "whole life sentence."

There needs to be clarity about whether the convicts are expected to remain in prison for the entirety of their natural life or are eligible for release. The proposed definition of "imprisonment for life" in the BNS is not explicitly clear, and it differs from how "imprisonment for life" is generally understood in the context of the Indian Penal Code. To avoid confusion and ensure legal clarity, the definition in the BNS be aligned with the understanding that "imprisonment for life" means a "whole life sentence" unless otherwise specified. This would help in harmonizing the definitions and interpretations across different legal contexts in India.

VIII. Offences Relating to Elections

One of the general patterns in contemporary India's criminal law is that offences that are particularly difficult to regulate and especially elaborate in their organisation internally while having a large-scale impact on society are addressed by 'special statutes'. These special statutes while being harsh in

punishment are rigorous in the procedural safeguards, they offer the accused. The emphasis being that there are checks and balances present in the quest of the state to prosecute and the efforts of the accused to defend herself. Any detraction from the procedural protections that general criminal law offers, will have checks in place in these special statutes. Offences related to elections should be on Representation of People Act. Similarly with UAPA, the special legislation should remain and amended if need be. But it should not be subsumed in the IPC.

IX. Clause 264- Defamation

There should be a limitation on filing cases for defamation. Imposing a time limitation on defamation claims helps protect the fundamental principle of free speech. Without such limitations, individuals or organizations could potentially bring defamation claims many years after an alleged defamatory statement was made. This could have a chilling effect on free expression and public discourse, as people may become reluctant to express their opinions or engage in critical discussions for fear of facing legal action at any time in the future.

X. Clause 282- Conveying person by water for hire in unsafe or overloaded vessel

Looking at the gravity of the offence, punishment should be increased that from 6 months to 3 years.

XI. Clause 277- Fouling water of public spring or reservoir.

Looking at the gravity of the offence, punishment should be increased.

XII. Clause 275- Sale of adulterated drugs.

Looking at the gravity of the offence, punishment should be increased.

XIII. Clause 275 and 276- Sale of adulterated drugs.

Looking at the gravity of the offence, punishment should be increased.

XIV. 104(1)- Death by negligence

In medical negligence cases, the standard of care expected of healthcare professionals is crucial. Punishment should be based on whether the healthcare provider's actions or decisions deviated from the accepted standard of care within the medical community. Not all adverse outcomes in medicine are the result of negligence. Hence the punishment should be reduced from 7 years to 5 years

XV. Clause 213- Refusing to sign statement

Requiring individuals to sign statements under the threat of imprisonment or fines can be seen as coercive and may result in individuals signing statements against their will. This can undermine the voluntariness of the statement and potentially lead to false or coerced confessions. Hence this provision should be reconsidered.

Criminal Procedure- BNSS

XVI. Impact on the Digital Ecosystem- BNSS

Clause 94 of the Bharatiya Nagarik Suraksha Sanhita, 2023, which deals with powers to summon for evidence, explicitly includes summoning of “digital evidence,” and covers any electronic communication such as messages, call recordings, and emails, as well as electronic communication devices such as mobile phones, laptops, cameras, and any other electronic device that may be specified by the government through notification in the future. A court also has the right to order search and seizure of such evidence for various reasons, including if the person in possession of the evidence is not expected to produce the same.

A mobile device or a laptop contains a lot of information which might not be relevant to the case because electronic devices in today's age contain all information pertinent to an individual's general existence. So, there's a question about the invasion of the Right to Privacy

because of the scope of information that's in these devices. Secondly, the collection of such devices might also go against the Right against self-incrimination.

XVII. Non-Inclusion of trans-women in definition of rape- BNS

The Sanhita also leaves the question of inclusivity answered as the provision of rape is strictly limited to a woman and does not include a transgender woman. The Transgender Persons Act, 2019 only recognizes 'sexual abuse' for which the maximum punishment is two years. The law on rape should also bring transgender woman within its purview.

XVIII. Different punishments for murder depending on the number of people convicted.- BNS

As per Clause 101 of the BNS, when a man commits murder, punishment is life imprisonment or death. No other option. But if a group of 5+ men acting in concert commits murder on grounds mentioned in this clause, there is an option to give a punishment of 7+ years imprisonment.

XIX. Report suggests criminalizing adultery- BNS

The Supreme Court found that Section 497 acknowledged the Right to Privacy as a fundamental right. The court held that the state should not interfere in the private matters of consenting adults and that their choices in matters of personal relationships should be protected. Moreover, one of the factors that influenced the decriminalization of adultery in India was that there were already civil remedies available for addressing adultery, and it was also considered grounds for divorce under Indian family laws. The Report insists on including a gender-neutral provision criminalizing adultery even after the Supreme Court has already decriminalized it.

XX. Expansion of powers granted to the Police- BNSS

Clause 172 of the BNSS seeks to expand the powers of the police while taking preventive action. The police officer “*may detain or remove any person resisting, refusing, ignoring or disregarding to conform to any direction*” under Chapter XII. The Indian Criminal Justice System is based on a due-process model, but giving the Police such wide and discretionary powers during preventive action is essentially pushing us towards a crime- control model. ***.

XXI. Expansion of Police powers- BNSS

Clause 187 (2) and 187 (3) of the BNSS on ‘Procedure when investigation cannot be completed in twenty four hours.’

The extension of the duration for which a detainee can be held in police custody beyond 15 days contradicts the Supreme Court's ruling in *CBI v. Anupam J. Kulkarni*, (1992) 3 SCC 141, which deemed police custody beyond this period impermissible. By elongating the detention period under police custody, the new laws expose detainees to potential threats, abuse, or coercion by the police. The protection of judicial custody, where police require the Magistrate's permission to interrogate a suspect, has been entirely disregarded and nullified by the new laws. Another telling signature of intensifying police raj is the name of reforms!

XXII. Clause 43(3) on ‘Arrest how made.’ - BNSS In the case of *Prem Shanker Shukla v. Delhi Administration* (1980) 3 SCC 526, the Supreme Court unequivocally stated that employing handcuffs is abhorrent to human dignity and infringes upon Article 21 of the Indian Constitution. However, this clause seeks to exert punitive control and is highly indicative of a ‘crime-control model’ than a ‘due-process one.’

Bringing legislation without proper scrutiny is making a *** and the integrity of these institutions are of utmost importance for democratic functioning. Hence, I strongly oppose these Bills.

XXIII. Reconsideration of Death penalty

The following is a glimpse of the statistics about the individuals that get sentenced to death penalty (Source: Project 39A)

1. Economic Background

Based on national statistics, it can be observed that 74.1% of individuals on death row in India come from economically disadvantaged backgrounds, as determined by their occupation and land ownership status. This highlights how the death penalty disproportionately affects the marginalized and disadvantaged in society. Abolishing the death penalty can be seen as a step toward rectifying this social injustice.

2. Educational Background

Among those sentenced to death, 23% had never attended school, while an additional 9.6% had minimal attendance and did not even complete their primary education. It is evident that these groups are disproportionately affected by the provision of death penalty. Abolishing capital punishment can help mitigate this disparity, promote social equity, and protect the rights of minority and marginalized communities.

3. Socio-economic Background

A significant majority, or 76% (279 individuals), of those sentenced to death in India belong to backward classes and religious minority groups.

Death penalty is more than just a form of punishment. Aforementioned data makes it imperative that these aspects are incorporated in our purview. The

*** Expunged as per Rule 90(7)(i) of Rules of Procedure and Conduct of Business in Rajya Sabha

high prevalence of socioeconomic vulnerability and limited education among death row prisoners raises concerns about the potential for wrongful convictions. It emphasizes the importance of ensuring a fair and just legal system to prevent innocent individuals from facing the ultimate punishment. In its 262nd Report from August 2015, the Law Commission of India recommended the abolition of the death penalty for all crimes, with the exception of cases related to terrorism and acts of war.

Abolition of death penalty has not been considered in this report. Such abolition carries several merits that resonate with principles of justice, human rights, and the advancement of society. Foremost, it eliminates the risk of executing innocent individuals, as errors in the criminal justice system can have irreversible consequences. Abolition also upholds the fundamental Right to Life, recognizing that every individual, regardless of their actions, possesses inherent dignity. Moreover, it aligns with the evolving global consensus that values restorative justice over retribution, focusing on

rehabilitation and the potential for redemption. Abolishing the death penalty allows the criminal justice system to focus on rehabilitation and reintegration of offenders into society, rather than permanently ending their lives. This approach aligns with principles of restorative justice and offers a chance for individuals to reform and make amends for their actions. Many countries like Canada, Australia, United Kingdom, New Zealand, Norway, Portugal, South Africa have already done so because of the fact that it can lead to a more humane and enlightened approach to addressing crime and it is disappointing to see a lack of concrete suggestions on the same by the Committee.

The increasing scepticism of the Supreme Court in death row trials is indicative of the fact that this requires institutional redressal. There is a stark contrast between the trial courts and the Supreme Court, as there have been a significant number of acquittals of death row prisoners. When a large-scale institutional reform is required, the death penalty provision should be looked at in context and reconsidered accordingly.

In conclusion, the issue of the death penalty is one that merits careful reconsideration in India and across the globe. The statistics highlighting socioeconomic disparities and the disproportionate impact on marginalized groups, along with the potential for wrongful convictions, underscore the need for a more just and equitable criminal justice system. It is essential to engage in open and informed discussions on this matter to ensure that our legal systems reflect the principles of justice, fairness, and compassion that underpin the values of a modern, progressive society. In sum, broad-based social discussions are warranted on the subject.

XXIV. Accused's Right to File for Discharge

Unlike Section 227 of the Criminal Procedure Code (CrPC), Clause 250(1) of the BNSS expressly acknowledges the accused's right to file an

application for discharge. It also sets a sixty-day time limit for filing this application from the date of committal to the Sessions Court. While this timeline may seem like a step toward reducing trial delays, it overlooks systemic challenges in our pre-trial processes. Accused individuals often lack timely access to their case papers and may not have legal representation during this stage. Moreover, there can be a significant delay between the Magistrate's committal of the case to the Sessions Court and its assignment to a Sessions Judge. This gap affects the production of the accused and the receipt of necessary records. When courts consider whether to grant discharge or frame charges, they must evaluate whether there exists a "strong suspicion" supported by material that the accused committed the offense. Addressing issues related to the timely provision of case papers and ensuring early access to legal representation is crucial for making this opportunity to file for discharge meaningful.

XXV. Pre-trial Incarceration

The challenge of challenging forensic reports under Clause 329 is further complicated by Clause 330, which mirrors Section 294 of the CrPC. It eliminates the requirement of formal proof for documents whose genuineness is uncontested by the opposing party. Clause 330(1) necessitates that parties admit or deny the genuineness of documents within thirty days of their supply, with the possibility of extending this time limit at the Magistrate's discretion upon providing reasons. Notably, a new proviso in Clause 330(1) states that an expert cannot be summoned to appear before the court unless their report is disputed by a party. This proviso applies to all experts, unlike Clause 329. Clause 330, like Section 294 of the CrPC, applies to the pre-trial stage of criminal proceedings, where parties have the opportunity to challenge the genuineness of documents relied upon by the opposing party, ensuring the documents are free from forgery or fabrication.

However, there is a difference of opinion among courts regarding whether expert reports, such as medical or post-mortem reports, can be admitted as evidence without the testimony of the experts who prepared them, in cases where the genuineness of such reports remains unchallenged.

XXVI. Police Custody vs. Judicial Custody

Clause 187 of the BNSS retains the established timelines of sixty or ninety days and the concept of default bail, as found in the CrPC. However, unlike Section 167 of the CrPC, Clause 187(2) additionally allows for detention in custody, whether police or judicial, for a total of fifteen days, which can be imposed at any time during the initial forty or sixty days of the respective sixty or ninety-day period. Consistent with the CrPC, Clause 187(2) grants any magistrate the authority to authorize detention, regardless of their jurisdiction to try the case. In contrast, Clause 187(3) requires a jurisdictional Magistrate. Furthermore, Clause 187(3) permits detention in custody to be authorized beyond the fifteen-day period, without the stipulation that it must be "otherwise than in police custody," implying that police custody can also be used during this extended period. The legislation extends police/judicial custody from 15 to 90 days. This would put tremendous pressure and mental torture on the accused.

XXVII. Removal of References to Metropolitan Magistrates and Assistant Sessions Judge

All references to the posts and powers of Metropolitan Magistrates and Assistant Sessions Judges have been eliminated from the BNSS.

XXVIII. Clause 254

Clause 254 outlines the process for taking evidence in support of the prosecution. It mandates that on the specified date, the Judge must proceed

to collect all evidence presented by the prosecution. Notably, this clause allows the recording of a witness's testimony through audio-video electronic means under sub-Section (1). Sub-Section (2) of Clause 254 permits the deposition of evidence of any police officer or public servant through audio-video electronic means.

This restructured format should make the information more organized and accessible. If you have any specific changes or further details to add, please let me know.

XXIX. Clause 254 - Concerns and Open Court Requirement

While Clause 254 delineates the process for taking evidence in support of the prosecution, it introduces a provision that may raise concerns. Sub-Section (1) of Clause 254 permits the recording of a witness's testimony through audio-video electronic means. This allowance for remote testimony recording might give rise to issues related to transparency, fairness, and the fundamental principle of an "open court." An open court system provides transparency and public scrutiny, allowing for a fair and impartial trial. Recording evidence through audio-video electronic means could potentially undermine this principle by limiting public access to the trial process and raising questions about the integrity of the proceedings. It's essential to strike a balance between leveraging technology for efficiency and ensuring the preservation of fundamental legal principles, such as open court proceedings, to maintain public trust in the justice system.

**DEREK O'BRIEN INTERVENTION- PARLIAMENTARY
STANDING COMMITTEE ON HOME AFFAIRS**

PART I

General statutes of criminal law are here for the ages. General statutes of criminal law will affect the lives of the poor. General statutes of criminal law have to be crafted with utmost care. No rushing through. Let every one of us on this committee commit ourselves to these.

When translated into english, the titles of these bills would be: the Indian Justice Code, 2023, the Indian Citizen's Protection Code, 2023 and the Indian Evidence Bill, 2023. The three bills have since been referred to us on the Parliamentary Standing Committee.

If the new law is titled the Indian Citizen's Protection Code, 2023, it will reflect the idea of a procedural shield for citizens against the State in the criminal process.

□ **Negatives:**

1. Authorises detention in police custody upto 90-day for offences punishable with death, life imprisonment and imprisonment for a term not less than 10 years. Also authorises police custody for upto 60 days for offences where imprisonment is less than the above mentioned offences. This dilutes the Right to life, health (physical and mental) and fair trial.
2. Enables trial in absentia if the judge finds the attendance of the accused in court not necessary "in the interests of justice" or if the accused "persistently" disturbs proceedings in court.

Where did this law come from?

- *The Ministry of Home Affairs in 2020, constituted a committee headed by Prof. Ranbir Singh, former Vice Chancellor of National Law University, Delhi to review the three codes of criminal law.*
- *The committee was constituted of only men. Moreover, they were from similar social identity as well as professional background and experience.*
- *There were no women, Dalits, religious minorities, adivasis, LGBTQ persons, or persons with disabilities on the Committee.*
- *The committee has hardly any full time members unlike previous committees that had been assigned reforms of such magnitude.*

1. METHODOLOGY

A. Contents from letter to Chairman of Home Affairs Committee:

I.First, considering the significance of these three Bills, it is imperative that multiple bipartisan discussions are held at length. It is my earnest request that members of this committee are not rushed and are given multiple opportunities to express themselves. Choice of domain experts, choice of witnesses from across disciplines and the methodology used must always take into consideration the "sense of the house". In the spirit of federalism, it is imperative that the committee must also travel to multiple states to meet stakeholders. Sir, please create an atmosphere for scrutiny, debate and detailed discussion. This will embellish the quality of our output as a committee.

II.Second, the minutes of the meetings must be recorded with due diligence and provide a true reflection of the proceedings. Key points raised by members must reflect in the minutes. (Verbatim records are not a substitute for minutes.) For example, in the meeting that was held on 24 August 2023, Dayanidhi Maran (DMK) had submitted a letter stating objections on how the titles of the said bills are in Hindi. The submission of this letter making multiple points, the summary of its contents, and his intervention does not reflect all in the minutes of the meeting. Recording of such views is an integral part of the democratic process. Please ensure this is done for future meetings. III.Third, considering that the Special Session of the Parliament has been called from 18 September to 22 September 2023, the Members have made multiple commitments in their constituencies and other parts of their State including programs and meetings immediately (one week) after the session. This is a request to schedule the next committee meeting at least one week after the session concludes.

B. Who should the standing committee consult? What is the time frame?

<p><i>Consultations to be done</i></p>
<p>1. <i>Senior practitioners of criminal law who have domain knowledge accumulated over decades of litigation practice and expertise in the area.</i></p>
<p>2. <i>Bar Council of all states in India.</i></p> <p><i>(At least 23 state bar councils)</i></p> <p><i>(30 days)</i></p>
<p>3. <i>The judges of the Supreme Court and high courts.</i></p> <p><i>(Supreme Court- Chief Justice and 33 other Judges appointed by the President of India. High Court- Working Strength of at least 785 judges across 25 high courts)</i></p> <p><i>(6 months)</i></p>
<p>4. <i>The Bar Council of India Supreme Court Bar associations</i></p> <p><i>(At least 20 office bearers)</i></p> <p><i>(20 days)</i></p>

5. *Members of parliament, legislative assemblies, and local councils* play a role in passing laws. Their input can help ensure that proposed reforms align with legislative goals.

(Lok Sabha - 539 members +

Rajya Sabha- 238 members +

State legislative assemblies)

(6 months)

6. *International Organisations:* Collaboration with international bodies like the United Nations and regional human rights organisations can help align reforms with international standards and best practices. ***(100 days)***

7. *Media:* Journalists and media organisations can play a role in raising public awareness about the need for criminal justice reform and can provide insights into public sentiment. ***(100 days)***

8. *Ethnic and Religious Leaders:* Considering the diverse cultural and religious landscape of India, involving leaders from various communities can help ensure that reforms are sensitive to different perspectives. ***(50 days)***

<p>9. <i>Experts on Juvenile Justice:</i> Specialists in juvenile justice can provide insights into how reforms could better address the needs and rights of young offenders. (5 days)</p>
<p>10. <i>Experts on Cybercrime and Technology:</i> Given the rise of cybercrime, involving experts in technology and cyber law is crucial when considering reforms in this domain. (5 days)</p>
<p>11. <i>Prison Officials and Reform Advocates:</i> Individuals working within the prison system and advocates for prison reform can contribute perspectives on conditions, rehabilitation, and the treatment of inmates. (1319 prisons in the country and their officials) (4 months)</p>
<p>12. <i>Inclusive Consultation from the general public</i> including women, Dalits, religious minorities, adivasis, LGBTQ persons, or persons with disabilities etc. (1 month)</p>
<p>13. <i>Governors, chief ministers of states, lieutenant governors and administrators of Union territories.</i> (60-70 officials approx.) (1 month)</p>
<p>14. <i>Legal Scholars and academic institutes</i> (5 days)</p>
<p>15. <i>Law Enforcement Agencies:</i> Representatives from police departments can offer insights into issues related to investigation, evidence collection, and law enforcement procedures. (10 days)</p>

16. *Human Rights Organizations:* NGOs and advocacy groups focused on human rights can provide critical perspectives on how proposed reforms might impact human rights, due process, and individual freedoms.
(5 days)

A total of 1.5 years

C. Domain Experts who must be invited as witnesses

I.U.U.Lalit

He was designated Senior Advocate at the Supreme Court in April 2004. He aided the Court as an *amicus curiae* in many important matters pertaining to forests, vehicular pollution and pollution of the Yamuna river. In 2011, he was appointed as the Special Public Prosecutor in the 2G Spectrum scam case. He also served as the 49th Chief Justice of India.

II. Madan Lokur

He was appointed as Additional Solicitor General of India in 1998. Functioned as Chief Justice of Gauhati High Court from 2010 to 2011, and Chief Justice of High Court of Andhra Pradesh from 2011 to 2012. Has vast experience in Civil, Criminal, Constitutional, Revenue and Service laws.

III. Fali Nariman

Fali Sam Nariman is an Indian jurist. He is a senior advocate to the Supreme Court of India since 1971 and was the President of the Bar Association of India from 1991 to 2010.

IV. Menaka Guruswamy Sr Adv:

Menaka Guruswamy is a senior advocate at the Supreme Court of India. She is known for having played a significant role in many landmark cases before the Supreme Court, including the Section 377 case, the bureaucratic reforms case, the Agustawestland bribery case, the Salwa Judum case, and the Right to Education case.

V. Mr Sidharth Luthra, Sr Adv:

Senior Advocate at the Supreme Court. He was appointed the Additional Solicitor General of the Supreme Court from 2012-2014, during which he represented Union and State Governments in matters such as fundamental rights, environment laws, electoral reform, criminal law, juvenile rights, education and policy issues. Mr Luthra also appeared as the Special Public Prosecutor for the State of NCT of Delhi in the Nirbhaya gang-rape case.

VI. Mr Hariharan, Sr. Adv.

Hariharan N enrolled at the Delhi Bar in 1987 and over the last 34 years, has cemented a presence on the Criminal side of legal practice. For contributions to the practice and development of Criminal Law, he was designated as a Senior Advocate by the Delhi High Court in 2013.

VII. Ms Rebecca John, Sr. Adv.

Rebecca Mammen John has been practising exclusively on the criminal side in the Supreme Court of India, High Court of Delhi and in the Trial Courts of Delhi for more than three decades. She has conducted a wide range of criminal trials and argued appeals dealing with offences under the Indian Penal Code, Unlawful Activities (Prevention) Act, Prevention of Corruption Act and other special statutes. Sriram Panchu

- VIII. Sylendra Babu
- IX. Amit Desai
- X. Rajeev Dhavan
- XI. Siddharth Dave
- XII. Adit Pujari
- XIII. Aditya Sondhi
- XIV. Vrinda Grover
- XV. Professor Faizan Mustafa

II. INPUT NOTE - REFORMING CRIMINAL LAW: Menaka Guruswamy

You might ask why? Because when you have been detained, being questioned and are surrounded by police officers – it's the Code of Criminal Procedure that protects you, limits your detention period in police custody, enables you to access a lawyer, who in turn can push for bail and even ask for quashing of the FIR or Chargesheet against you. Therefore, I particularly like that

Welcome reforms:

There's plenty of welcome reform to our existing criminal procedure. Some of it draws on the technological innovations that have made it into our everyday life. For instance, the entire life of a new case, commencing from the FIR (first information report) leading to a case diary on its way to a chargesheet and culminating in a judgment is now to be maintained online – via digitized recordkeeping. This will make immensely safer the record of the case proceedings and enable quicker access when necessary. Significantly, when our homes are searched and seizure affected on items found, then such proceedings must be accompanied by mandatory video recording. This is a hugely important reform since this is protection against planting of evidence and can be used by the defense to contest alleged seizures.

The Protection Code also provides for the registration of a 'Zero FIR'. This kind of FIR is registered when a police station receives a complaint regarding an alleged offence committed in the jurisdiction of another police station. Here, the original police station registers the FIR and then transfers it to the relevant police station for further investigation.

The Protection Code now makes it mandatory for a forensic expert to visit the crime scene and collect forensic evidence for information relating to an offence that is punishable by imprisonment for at least seven years. Continuing pandemic-era change, the Protection Code allows trials, inquiries and proceedings including examination and recording of evidence to be conducted by an electronic or online mode. This makes it infinitely more convenient for accused and witnesses to participate in and complete these requirements of the processes of a trial.

Another welcome reform pertains to the grant of sanction to prosecute a public servant. The Protection Code now provides that the decision to grant or reject sanction to prosecute a public servant must be reached by the government within 120 days of receiving the request. If the government fails to do so, sanction shall be deemed to be accorded. Additionally, no sanction shall be required in cases involving public servants when accused of sexual offences or trafficking of human beings. More reform comes in the form of a provision that mandates that no person can be arrested without prior permission of an officer of the minimum rank of a Deputy Superintendent of Police for offences punishable with less than three years imprisonment if the accused is above the age of sixty years.

Areas of concern

The most dangerous part of the Protection Code is that it permits the magistrate to authorize detention in police custody for a period beyond the

current 15-day limit, extending up to ninety days. Such detention extending to ninety days is for offences punishable with death, life imprisonment and imprisonment for a term of not less than ten years. The Protection Code enables detention in police custody beyond the current 15-day mandate and up to sixty days for ‘any other offence’ (with imprisonment terms less than the ninety-day detention offences). This is a constitutionally burdensome provision that will impinge on the rights of an accused. Spending ninety days with the police having unimpeded access to an accused is debilitating from the point of view of rights to life, health (including mental well-being) and fair trial. At present for any period beyond the 15-day limit for police custody means that the judge can have the accused detained in judicial custody or order other custodial arrangements.

While there are many reforms that should be welcomed in the Protection Code, 2023- all of that will be rendered meaningless if an accused can be detained to long periods of time in police custody – three months of uninterrupted police custody will render any accused extremely vulnerable to coercion and intimidation. This move must be thought afresh, and members of the parliamentary committee must ask themselves – what if that accused was me?

III. UNDOING CRIMINAL LAW: MAKING HARSH SPECIAL STATUTES THE NORM: Menaka Guruswamy

One of the general patterns in contemporary India’s criminal law is that offences that are particularly difficult to regulate and especially elaborate in their organisation internally while having a large-scale impact on society are addressed by ‘special statutes’. These special statutes while being harsh in punishment are rigorous in the procedural safeguards they offer the accused. The emphasis being that there are checks and balances present in the quest of

the state to prosecute and the efforts of the accused to defend herself. Any detraction from the procedural protections that general criminal law offers, will have checks in place in these special statutes. This general pattern has been deviated from with the introduction on 11.8.2023 of three bills in the Lok Sabha by the Central Government. These bills are intended to dramatically change criminal law.

The BNS, 2023 to replace the Indian Penal Code, 1860, the BNSS, 2023 to replace the Code of Criminal Procedure, 1973 and the Bharatiya Sakshya Bill, 2023 to replace the Indian Evidence Act, 1872 have been tabled in the lower house of parliament.

This law reform effort by the State is at odds with established legislative practice of having separate and distinct harsh ‘special statutes’ with procedural checks and balances. This current effort shows that special laws are being absorbed into general criminal law – without any of the necessary procedural safeguards. This will make it impossible for the accused to defend herself and will bring within the criminal process many innocent people, for whom the process will be punishment and for which very few convictions will be returned. This is a particularly worrying effort – for the purpose of criminal law is not to persecute, but to prosecute ably while affording the accused a fair chance to prove their innocence.

Let me give you one example. Special legislation includes statutes like the Prevention of Money Laundering Act, 2002 (PMLA) and the Maharashtra Control of Organised Crime Act, 1999 (MCOCA, models of which are applicable in other states). Both statutes are illustrations of special legislation intended to combat alleged offences that are elaborate in how they are planned and fulfilled. While the punishments are harsh, both attempt to have some balance in the form of the procedural safeguards they offer. PMLA law has many deficiencies.

Now let's come to 'organised crime'. Provisions that have been introduced into general criminal law statute like the BNS, 2023. . At present, organized crime is principally dealt by the Maharashtra Control of Organised Crime Act, 1999 (MCOCA), which is applicable in both Maharashtra and the National Capital Territory of Delhi. Other states have their own versions of MCOCA. However, the BNS brings it into general criminal law by having provisions that define and punish organized crime within this statute.

The BNS brings organized crime within Chapter VI of the Code that pertains to 'offences affecting the human body.' In the Indian Penal Code, 1860, the equivalent chapter that pertains to 'offences against the body' included classic criminal offences like murder and culpable homicide not amounting to murder. Within this classical framework is introduced the rather elaborate offence of 'organised crime syndicates.' Per the BNS, an organized crime syndicate means 'a criminal organization or group of three or more persons, who acting singly or collectively in concert, as a syndicate, gang, mafia or crime ring indulging in commission of one or more serious offences or are involved in gang criminality, racketeering and syndicated organized crime'.

BNS provides that a definition of 'organized crime' as being 'any continuing unlawful activity including kidnapping, robbery, land grabbing, contract killing, economic offences, drug or human trafficking, weapons or prostitution either as a member of an organized crime syndicate or on behalf of such syndicate, by use of violence, threat of violence, intimidation, coercion, corruption or related activities or other unlawful means to obtain direct or indirect material benefit including a financial benefit shall constitute organized crime'.

Also included within this fold are economic offences which includes criminal breach of trust, forgery, counterfeiting of currency and valuable securities, financial scams, running Ponzi schemes, mass marketing fraud or multi-level

marketing schemes with a view to defraud people at large for obtaining the monetary benefits or large-scale organized betting, any forms, offences of money laundering and hawala transactions.

It's like the drafters thought of all the possible offences that can exist when three or more accused are involved and stuffed them into one unwieldy definition and pasted them into the bill. It is vague, poorly worded, and unwieldy. Everything that definitions should not be. While the punishment is stringent - for anyone 'who conspires or organizes the commission of an organized crime' shall be punishable with imprisonment for a minimum of five years to life in prison. There are no safeguards that criminal law affords, at present.

MCOCA has procedural safeguards that prevent abuse of such a 'special law with stringent and deterrent provisions' as per its statement of objects. For instance, Section 23 presently provides that no information about the commission of an offence of organized crime shall be recorded by a police officer without the prior approval of an officer below the rank of Assistant Commissioner of Police (ACP). Further, no investigation shall be carried out by a police officer below the rank of ACP. No 'Special Court' shall take cognizance of any offence under this Act without the sanction of a police officer of the rank of ACP and above.

MCOCA also has 'Special Courts' that are staffed by judges specially appointed by Government with the concurrence of the Chief Justice of the Delhi High Court. Such a judge should have had experience as an Assistant Sessions or Sessions court judge previously. Importantly, authorization for interception of wire, electronic or oral communication shall be allowed only after an officer not below the rank of Deputy Commissioner of Police, who is supervising the investigation of organised crime, submits an application to the Competent Authority. A Review committee consisting of the Principal

Secretary of Delhi, Law Secretary and Home Secretary shall review orders of the Competent Authority.

In essence, MCOCA an example of a special statute intended to combat an elaborate offence (organized crime), balances the stringency of not only the punishment it mandates, but also the invasion of privacy by wire taps to further enhance the investigation along with procedural safeguards. Great care has been taken by the legislature in the constitution of 'special courts', and the qualifications in terms of prior experience of the judges who will hear such cases. All of this is absent in the reforms that are proposed. What is being weakened are principals of criminal law – and it is the general public that will suffer by way of lack of procedural protections and absence of checks and balances. The right of fair trial and rule of law are also the casualties in the process.

**DEREK O'BRIEN INTERVENTION- PARLIAMENTARY
STANDING COMMITTEE ON HOME AFFAIRS**

PART-II

SOME OTHER ISSUES WITH THESE BILLS

I. **No reasoning as to the requirement of a new legislation.** The old act could easily have been amended to include these changes.

II. **Name of these Bills is in Hindi**

- This name being in Hindi is not suitable for the whole of the country.
- Firstly, it is unconstitutional. Article 348 of the Constitution mandates that English language be used in Acts and Bills.

"348. Language to be used in the Supreme Court and in the High Courts and for Acts, Bills, etc

(1) Notwithstanding anything in the foregoing provisions of this Part, until Parliament by law otherwise provides

(a) all proceedings in the Supreme Court and in every High Court,

(b) the authoritative texts

(i) of all Bills to be introduced or amendments thereto to be moved in either House of Parliament or in the House or either House of the Legislature of a State,

(ii) of all Acts passed by Parliament or the Legislature of a State and of all Ordinances promulgated by the President or the Governor of a State, and

(iii) of all orders, rules, regulations and bye laws issued under this Constitution or under any law made by Parliament or the Legislature of a State, shall be in the English language.

- This constitutes as Hindi imposition.
- NAMES IN ENGLISH AS WELL AS HINDI. When translated into English, the titles of these bills would be: the Indian Justice Code, 2023, the Indian Citizen’s Protection Code, 2023 and the Indian Evidence Bill, 2023.
- If the new law is titled the Indian Citizen’s Protection Code, 2023. It will reflect the idea of a procedural shield for citizens against the State in the criminal process.

SPECIFIC INPUTS ON BNS 2023 (Penal Code)

III. Sedition law

In the new Bill, sedition has NOT been removed, *it has been altered*.

Section 124A (The old sedition law) is part of the IPC. Its use had been kept in abeyance following a Supreme Court order in May 2022. The court had given the government time to re-look the sedition law. This was in lieu of several advocates urging the apex court to strike down sedition as an offence in any form.

*** claimed that sedition has been removed from the list of offences. What happened in fact was its reintroduction in a more draconian manner which can even encroach on the right to protest.

Though the Bharatiya Nyaya Sanhita Bill does not explicitly have a Section 124A in it, it has Section 150. This proposed provision in the new Bill avoids using the term ‘sedition’, but describes the offence as “endangering sovereignty, unity and integrity of India”.

*** Expunged as per Rule 90(7)(i) of Rules of Procedure and Conduct of Business in Rajya Sabha

The 22nd Law Commission suggested that sedition should be well defined. The Union government decided to do the opposite of that. The provision in the new bill gives it a very broad definition. The Bharatiya Nyaya Sanhita, 2023 Section 150 talks about Acts endangering sovereignty, unity and integrity of India. It reads-

“Whoever, purposely or knowingly, by words, either spoken or written, or by signs, or by visible representation, or by electronic communication or by use of financial mean, or otherwise, excites or attempts to excite, secession or armed rebellion or subversive activities, or encourages feelings of separatist activities or endangers sovereignty or unity and integrity of India; or indulges in or commits any such act shall be punished with imprisonment for life or with imprisonment which may extend to seven years and shall also be liable to fine”

This makes it so broad that it can encompass any act in the name of endangering the unity and integrity of India. It leaves a lot of room for discretion which is the opposite of what was advised by the law commission.

IV. Definition of Terrorist

Section 111 (6) (a) of the BNS says that a “terrorist” refers to any person who “develops, manufactures, possesses, acquires, transports, supplies or uses weapons, explosives, or releases nuclear, radiological or other dangerous substance, or cause fire, floods or explosions.” - The addition of ‘floods’ is ambiguous and bizarre. Moreover these definitions continue to be so vague that it ends up giving the police unreasonably wide powers of arrest.

V. Section 69 - Promise to Marry-

Subjectivity and Intent: Determining whether a promise to marry has been made can be subjective and challenging to prove. Intentions can change over

time, and proving that a promise was genuinely made with the intention to marry can be difficult.

Privacy and Autonomy: Critics argue that relationships and decisions about marriage are deeply personal matters that should be left to the individuals involved. Criminalising a promise to marry can be seen as an undue intrusion into individuals' private lives and autonomy.

Lack of Clear Parameters: Defining what constitutes a legally binding promise to marry can be vague and open to interpretation. This lack of clarity can lead to inconsistencies in enforcement and judgments.

Cultural and Social Dynamics: In many cultures, pre-marital relationships and commitments are complex and can involve various factors beyond just legal obligations. Criminalising such promises might not take into account cultural or social norms.

Enforcement Challenges: Proving the existence of a promise to marry, especially if it was made verbally and without any evidence, can present significant challenges in terms of evidence collection and enforcement.

Gender Dynamics: Depending on how the law is applied, there is a risk that such laws could disproportionately affect certain genders or reinforce harmful gender stereotypes.

SPECIFIC INPUTS ON BNSS 2023 (CRIMINAL PROCEDURE)

- I. **The recently introduced Procedure Bill allows the possibility of requesting a 90-day police custody** period for crimes that carry a sentence of ten years or more. This situation could potentially lead to significant infringements on human rights, particularly if these cases result in a not-guilty verdict.

The Bill permits the magistrate to authorise detention in police custody for a period beyond the current 15-day limit, extending up to 90 days.

- **90-day police custody** - for crimes that carry a sentence of ten years or more
- **60-day police custody** - for “any other offence” with imprisonment terms less than the 90-day detention offences

This could lead to:

Violation of Human Rights: Increasing the period of police custody without proper safeguards could lead to human rights violations, including the risk of torture, coerced confessions, and abuse of detainees. This is particularly concerning given the history of custodial violence and abuse in India.

Denial of Legal Rights: Extending police custody could potentially lead to a denial of basic legal rights, such as the right to a speedy trial and the right to consult with legal counsel. Prolonged detention without proper oversight can undermine due process.

Overburdened Judicial System: According to the Prison Statistics India 2020 report, three in four prisoners in our country’s jails are under trial. This is the highest share of undertrial detainees in prison since 1995. Of these, 49% of the prisoners are between 18 and 30 years of age. Considering that a staggering percentage of such prisoners have spent over a year in prison awaiting trial, these inmates suffer due to our overwhelmingly slow legal process. The very judicial system that is intended to redress and deliver justice pushes them toward greater injustice since courts might face challenges in timely adjudicating cases, leading to potential delays in the delivery of justice.

Risk of False Confessions: Prolonged custody can increase the risk of suspects giving false confessions due to pressure, intimidation, or exhaustion. This can lead to wrongful convictions and miscarriages of justice.

Impact on Marginalised Communities: Lengthening the period of police custody might disproportionately affect marginalised communities and individuals who may not have access to legal representation or resources to challenge their detention.

Data also shows that two in three prisoners under trial belong to the SC, ST and OBC communities. Two in five of inmates from this category were educated below grade X and more than a quarter were illiterate.

Erosion of Trust in Law Enforcement: Instances of abuse, torture, or mishandling of suspects during extended custody periods could further erode public trust in law enforcement agencies.

II. **Clause 356 of the BNSS enables trial in absentia** if the judge is satisfied that “personal **attendance of the accused** before the Court is not necessary in the interests of justice” or if the accused “persistently disturbs the proceedings in Court.” This **gives the Judge wide discretionary powers** to abuse this provision and not give the accused a fair hearing.

III. **Addition of provisions that are demeaning and against human dignity-**

The CrPC has no provision of handcuffs. In *D.K. Basu versus State of West Bengal* (1996), the Supreme Court set guidelines on rights of accused while being arrested or in custody. As per the guidelines, handcuffing violates all standards of decency. Handcuffing is the last resort and should not be followed as a custom.

The BNSS, in Section 43(3), explicitly states that: “The police officer may, keeping in view the nature and gravity of the offence, use handcuff while effecting the arrest of a person who is a habitual, repeat offender who escaped from custody, who has committed offence of organised crime, offence of terrorist act, drug related crime, or offence of illegal possession of arms and ammunition, murder, rape, acid attack, counterfeiting of coins

and currency notes, human trafficking, sexual offences against children, offences against the State, including acts endangering sovereignty, unity and integrity of India or economic offences.”

IV. Expansion of powers granted to the Police-

Section 172 of the BNSS seeks to expand the powers of the police while taking preventive action. The police officer “*may detain or remove any person resisting, refusing, ignoring or disregarding to conform to any direction*” under Chapter XII. The Indian Criminal Justice System is based on a due-process model, but giving the Police such wide and discretionary powers during preventive action is essentially pushing us towards a crime-control model.

SPECIFIC INPUTS ON BSB 2023 (EVIDENCE ACT)

I. Section 19:

The provision in Indian Evidence Act 1872 which was similar to Section 19 of Bharatiya Sakshya Bill was Section 21. Section 21(1) referred to Section 32 of Indian Evidence Act 1872 (Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant). However, Section 19(1) of Bharatiya Sakshya Bill 2023 instead of referring Section 26, which is replication of Section 32 of Indian Evidence Act 1872, makes a reference to sub-Section (2) of Section 23 of Bharatiya Sakshya Bill, which deals with confession to a police officer. It has no relevance in this Section. Instead, reference should have been made to Section 26 itself (just like Section 32 of Indian Evidence Act) or maybe Section 26(2) of Bharatiya Sakshya Bill.

The same discrepancy can be found in the illustrations (b) and (c) of this Section. Instead of referring to Section 23(2), it should have made a reference to Section 26(2) of Bharatiya Sakshya Bill.

II. Section 36:

There is an error in this Section. This Section was Section 42 in the Indian Evidence Act 1872, and the words used in Section 42 were “other than those mentioned in Section 41”. Section 41 of Indian Evidence Act 1872 was dealing with “Relevancy of certain judgements in probate, etc, jurisdiction.” However, Section 36 of Bharatiya Sakshya bill states “other than those mentioned in Section 31.” Section 31 has no relevance here as it talks about “Relevancy of statement as to fact of public nature contained in certain Acts or notifications” while Section 35 of Bharatiya Sakshya Bill discusses “Relevancy of certain judgements in probate, etc., jurisdiction” and is similar to the Section 41 of Indian Evidence Act 1872.

III. Section 50 of BSB:

This Section was Section 55 in the Indian Evidence Act 1872, and the words used in explanation of Section 55 were “except as provided in Section 54”. Section 54 of Indian Evidence Act 1872 was “Previous bad character not relevant, except in reply”. However, Section 59 of Bharatiya Sakshya Bill is “Proof of documents by Primary evidence” and Section 49 of Bharatiya Sakshya Bill is about “Previous bad character not relevant, except in reply” and it is Section 49 which is similar to Section 54 of the Indian Evidence Act 1872. Use of words “Section 59” here seems erroneous, and it has no relevance in Section 50 of Bharatiya Sakshya Bill.

IV. Section 62 of BSB:

As per it, the manner of proving electronic evidence is mentioned in Section 65B and Section 65B discusses the admissibility of electronic records. In other words, how an electronic record can be made admissible before the court of law is mentioned in Section 65B. It mentions certain requirements which must be fulfilled and then only electronic evidence can be made admissible.

It is Section 63 (Admissibility of electronic records) of Bhartiya Sakshya Bill which replaces Section 65B (Admissibility of electronic records) of Indian Evidence Act 1872 and not Section 59 (Proof of documents by primary evidence.) Mentioning Section 59 in Section 62 appears to be a discrepancy because now the definition of document as per Section of Bhartiya Sakshya Bill 2023 includes “electronic and digital records.” Hence, they can be admitted as primary evidence under Section 59. But Section 62 of Bhartiya Sakshya Bill 2023 is a special provision for the succeeding Section 63, which talks about the manner which is to be followed (“may be proved in accordance with”) for proving electronic evidence. It is Section 63 of Bhartiya Sakshya Bill 2023 which has provisions discussing in detail the manner for proving electronic evidence and not Section 59.

If Section 62 is to be considered correct, then there is no point of having Section 63 because if all electronic records may be proved in accordance with the provisions of Section 59, then what is the purpose of having Section 63 altogether? Hence, this seems to be a discrepancy which may be rectified by replacing Section 59 with Section 63 in Section 62 of the Bhartiya Sakshya Bill 2023.

V. Section 81 of BSB:

This provision was Section 81A in the Indian Evidence Act 1872, and there was no explanation in this Section. However, Section 90A (Presumption as to electronic records five year old) of Indian Evidence Act 1872 (which is now Section 93 of Bharatiya Sakshya Bill) had an explanation which was made applicable to Section 81A. The same explanation has now been removed from Section 93 of Bharatiya Sakshya Bill and now added in Section 81 and it has been made applicable to Section 93 of Bharatiya Sakshya Bill. Some words in the explanation have been changed from “and under the care of the person with whom, they naturally be;” to “and looked after by the person with whom such document is required to be kept;”.

The explanation in Section 81 has incorrectly been made applicable to Section 96 (Exclusion of evidence to explain or amend ambiguous document). It has no application there as there is no reference to any electronic record or custody of documents.

VI. Section 93 BSB

It has been mentioned in this Section that “Explanation to Section 84 shall also apply to this Section.” Section 84, however, has no explanation.

Section 93 of Bharatiya Sakshya Bill was Section 90A of Indian Evidence Act, 1872. Section 90A of Indian Evidence Act, 1872 is reproduced.

VII. Section 81 BSB

Now, Section 81A of Indian Evidence Act, 1872 had no explanation but Section 81 of Bharatiya Sakshya Bill has an explanation, which is being made applicable to Section 96 (Exclusion of evidence to explain or amend ambiguous document) of Bharatiya Sakshya Bill. This seems to be erroneous on two counts, firstly, explanation of Section 81 of Bharatiya Sakshya Bill is specifically stating that its explanation is applicable to Section 96, whereas

Section 96 has no relevance here. Section 81 needs to be rectified by replacing the word Section 96 with “Section 93.” Secondly, it is the explanation of Section 81 of Bharatiya Sakshya Bill which needs to be made applicable here and not that of Section 84, which has no explanation at all.

VIII. Section 108 BSB

There is an error in illustration (c) of Section 108. Bharatiya Nyaya Sanhita, 2023 has replaced Section 325 with Section 115 and Section 335 with Section 120. These changes should be made in the first part of illustration (c).

SOME OTHER ISSUES WORTH CONSIDERING?

I. The provision legalising marital rape has been retained.

The colonial laws did not recognise men and women as equals and merged the identity of women with their husbands. Under Section 375 of the Indian penal code deals with the offence of rape provides for an exception - ‘Sexual intercourse by man with his own wife, the wife not being under 15 years of age, is not rape.’ The Report of the 42nd Report of the Law Commission (1971) suggested removal of this exception. The Bharatiya Sakshya Bill does not make any significant changes to the ‘colonial’ Indian Evidence Act, even though the Law Commission report of 2003 had suggested so many changes in the form of amendment and substitution of provisions.

II. Section 112 of Evidence Act speaks about 'Birth during marriage conclusive proof of legitimacy except in certain cases'. It reads as follows:

"The fact that any person was born during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the legitimate child of that man, unless it can be

shown that the parties to the marriage had no access to each other at any time when he could have been begotten." One must notice that there was no DNA paternity test at the time when this legal presumption got introduced in 1872. Why is that this bill which is meant to decolonize the existing law, has made no changes to the provision, apart from simply renumbering it as Section 116?

The Law Commission report had recommended an amendment to this Section:

The fact that any child was born during the continuance of a valid marriage between its mother and any man, or within two hundred and eighty days, (i) after the marriage was declared nullity, the mother remaining unmarried, or (ii) after the marriage was avoided by dissolution, the mother remaining unmarried, shall be conclusive proof that such person is the legitimate child of that man, unless (a) it can be shown that the parties to the marriage had no access to each other at any time when the child could have been begotten; or (b) *it is conclusively established, by tests conducted at the expense of that man, namely, (i) medical tests, that, at the relevant time, that man was impotent or sterile, and is not the father of the child; or (ii) blood tests conducted with the consent of that man and his wife and in the case of the child, by permission of the Court, that that man is not the father of the child; or (iii) DNA genetic printing tests conducted with the consent of that man and in the case of the child, by permission of the Court, that that man is not the father of the child.*

III. Absence of provision similar to Section 377 IPC in the Bharatiya Nyaya Sanhita- The Supreme Court in *Navtej Singh Johar* case had struck down Section 377 IPC but *only to the extent it criminalizes consensual sex*. However, Section 377 IPC can still be invoked when there is a non-consensual sex/rape of a man by another man. A woman can also initiate

proceedings against her husband for unnatural sex under Section 377 IPC. If, as per the Nyaya Sanhita, these acts are not offences, it means that the victims of sodomy, buggery etc. will have no remedy available under it. So if a man is 'raped' by another man, what is his remedy?

IV. Non-Inclusion of trans-women in definition of rape

The Sanhita also leaves the question of inclusivity answered as the provision of rape is strictly limited to a woman and does not include a transgender woman. The Transgender Persons Act, 2019 only recognizes 'sexual abuse' for which the maximum punishment is two years. The law on rape should also bring transgender woman within its purview.

V. Impact on the Digital Ecosystem- Section 94 of the Bharatiya Nagarik Suraksha Sanhita, 2023 which deals with powers to summon for evidence, explicitly includes summoning of "digital evidence," and covers any electronic communication such as messages, call recordings, and emails, as well as electronic communication devices such as mobile phones, laptops, cameras, and any other electronic device that may be specified by the government through notification in the future. A court also has the right to order search and seizure of such evidence for various reasons, including if the person in possession of the evidence is not expected to produce the same.

A mobile device or a laptop contains a lot of information which might not be relevant to the case because electronic devices in today's age contain all information pertinent to an individual's general existence. So, there's a question about the invasion of the right to privacy because of the scope of information that's in these devices. And the second thing is that collection of such devices might also go against the right to protect yourself from self-incrimination. And now with it being codified in law, it just makes it easier

for the law enforcement and for courts to justify whatever collection that they're doing.

VI. Basic Drafting and Spelling Errors

There is no Sec. 498A in BNS. But BNSS mentions it as so in the index. It should have been Section 84 instead. Explanation to Section 150 BNS (which modifies S124A IPC) does not make any sense. It is incomplete.

VIII. Illogical provisions - As per Section 101 of the BNS, when a man commits murder, punishment is life imprisonment or death. No other option. But if a group of 5+ men acting in concert commits murder on grounds mentioned in this clause, there is an option to give a punishment of 7+ years imprisonment.

IX. The provisions display an astounding ignorance of the law. For instance, as per S. 262. (1), the accused may prefer an application for discharge within a period of sixty days from the date of framing of charges.

X. No congruence between the three bills. For instance, the definition of "Document" in the Sakshya Bill and under Nyaya Sanhita. Nyaya Sanhita doesn't include electronic and digital records as Document while the amended Sakshya Bill does.

XI. In Sessions Trial court can frame charge even when accused is present by electronic means u/s 251(2) BNSS but same has NOT been provided in Magistrate triable case u/s 263 BNSS.

INPUTS FROM DOMAIN EXPERTS

I.Siddharth Luthra- Summary on ‘It’s Still Colonial’

- The existing Penal Code, which originated in 1860, is still in use in 34 countries.
- It has seen only minor amendments in India previously, such as the inclusion of laws related to sedition, cruelty to women, dowry death, and some deletions over the years.

Bharatiya Nyaya Sanhita (BNS) - The New Penal Code:

- Notable additions include the concept of community service, but it excludes the inclusion of open prisons.
- New offences like fake news terrorism, organised crime, and corruption have been added.
- However, it does not repeal the existing special laws that cover these offences.

Inconsistencies Between Codes

- While terrorism, organised crime, and corruption are addressed in the new Penal Code, the corresponding amendments needed in the Bharatiya Sakshya Sanhita (Evidence Code) are lacking.
- This omission creates inconsistencies and gaps in the legal framework.

Enhancement of Sentences:

- The new Codes enhance sentences for acts of rashness and negligence leading to death.

- This change has implications for medical professionals, potentially increasing their legal exposure.

Punishment for Mob Lynching

- The new Codes introduce punishment for mob lynching as a distinct offense.
- However, the severity of punishment for mob lynching does not align with that for murder or intentional culpable homicide.

Reorganization and Reduction of Provisions

- The new Codes reorganize provisions and reduce the number of Sections.
- This effort includes compiling definitions and updating illustrations while grouping similar provisions.
- However, these changes do not fundamentally alter the core of the 1860 Penal Code.

Sedition Repealed and Reintroduced:

- Sedition (Section 124A IPC) has been repealed but reintroduced as Section 150 in the new Bharatiya Nyaya Sanhita (BNS).
- The new provision requires an intention similar to sedition, raising concerns about freedom of speech and possible misuse against dissent.
- Questions arise about the necessity of retaining a relic from the era of monarchs in a democratic republic.

Right to Life and Liberty (Article 21):

- Article 21, protecting the right to life and liberty, is crucial in safeguarding individuals against state action.
- The 1973 Criminal Procedure Code (CPC) contains provisions related to arrest, the right to seek bail, and procedural safeguards, putting Article 21 into action.

- The new law, Bharatiya Nagarik Suraksha Sanhita (BNSS), introduces reforms like video conference trials and e-filing of FIRs but falls short in providing adequate protection to detainees.

Plea Bargaining and Custody Period:

- The plea bargaining chapter remains untouched in BNSS and is limited to sentence bargaining, missing an opportunity to allow pleading guilty to a lesser offence.
- BNSS increases police options to seek custody (PC) for 40/60 days, which curtails the right to bail.
- This contradicts the goal of breaking from the colonial past and hampers BNSS's objective of improving forensic and scientific investigations for quicker and better-quality results.
- The government should have considered reducing the 15-day PC period, as even colonial-era rules frowned upon it and discouraged obtaining confessions.

New Evidence Law (Bharatiya Sakshya Adhinyam):

- The new evidence law updates digital and electronic evidence provisions and incorporates principles developed by courts.
- It Indianizes illustrations but doesn't bring substantial changes.

Disappointment with New Laws:

- The introduction of three new laws was expected to bring significant improvements but reiterated existing colonial-era laws.
- These new laws emphasise increased criminalization, harsher sentences, and expanded police powers, which don't align with the nation's constitutional objectives.

The Need for Comprehensive Legal Reform:

- Instead of piecemeal changes, an actual break from the colonial past should involve compiling and rationalizing central laws into substantive codes for a more efficient criminal justice system.
- This reform should consider rationalisation and decriminalisation, introducing new criminal laws where necessary, regulating arrest powers, implementing bail and sentencing guidelines, and ensuring alignment with fundamental rights and victims' rights.

Presumption of Innocence and Fair Trial:

- A break from the colonial legacy should strengthen the presumption of innocence and the right to a fair trial for the accused while protecting victims' participatory rights.

Urgency for Deep Review

- The hope lies with the Standing Committee responsible for reviewing these proposed legislations, recognising that criminal law significantly impacts everyone's daily lives.
- A thorough study is needed to ensure these laws align with the nation's constitutional principles, especially the paramount right to life and liberty established in 1950.

II. Inputs from Justice Madan B Lokur: ‘Is this a Necessary Overhauling?’

- Fails to address implementation concerns.
- IPC: 150 years and is still in existence in some form or other in about 30 countries. Evidence Act is 140 years old, CrPC is 50 years old since its revision in 1973.
- Proposed laws do not address the important issue of judicious implementation by police and prosecution. Eg: Broadening rather than curtailing of sedition laws has led to further misuse.
- *** .
- No redressal in case of errant officials where *** is unjustified.
- In case of Zero FIR, issues with its implementation persist. Eg: The events recorded in the horrific video ***.
- The legislation extends police/judicial custody from 15 to 90 days. This would put tremendous pressure and mental torture on the accused.
- Purpose of the laws is to expedite justice delivery system. This cannot be done when appointments of judges to high courts and local courts take years.

9. WHY THE RUSH ON THIS REFORM? ELECTION 2024?

The law you are passing will stay for 100 years. Let each one of us rise above narrow partisan interests. Let us create laws to better the lives of our children and our childrens’ children.

We are all for reform. Who can be against reform. But in the name of reform let us not become more repressive than the colonisers.

While there is an undeniable need to reform colonial era criminal framework,

*** Expunged as per Rule 90(7)(i) of Rules of Procedure and Conduct of Business in Rajya Sabha

the current criminal law bills are more draconian than the colonisers law-treating citizens worse than ‘native subjects’ of the Raj.



DEREK O'BRIEN
Member Of Parliament, Rajya Sabha

Leader, All India Trinamool Congress Parliamentary Party, Rajya Sabha

MP/2023/20

19 August, 2023

To,
Shri Brijlal,
Hon'ble Chairperson,
Parliamentary Standing Committee on Home Affairs

Subject: Request to reschedule the meeting for discussion on Criminal Law Bills in September.

Respected Chairperson,

Further to my conversation with you on the telephone this morning, I write to you concerning notice (LAFEAS-HAI2011/1/2023-Comm Sec (HA)-RSS) dated 18 August 2023. The Bharatiya Nyaya Sanhita, 2023; the Bharatiya Nagarik Suraksha Sanhita, 2023; and the Bharatiya Sakshya Bill, 2023, as introduced in Lok Sabha have been referred to the Department-related Parliamentary Standing Committee on Home Affairs for examination and report. I have just received the news that the meeting of the committee with respect to this is scheduled on the 24, 25 and 26 of August 2023. That's a few days away.

The notice given to us on the 16th August stated that a meeting will be held on 24th August 11 AM to adopt the draft report on Prison- Condition, Infrastructure and Reforms. In accordance with that and the fact that monsoon session recently ended, the Members have made multiple commitments in their constituency and other parts of their State including programs and meetings.

Sir, this is too short a notice (a few days only) for discussion of a Bill with implications of this magnitude.

Please revise the dates and schedule it in the month of September, considering that many members of the committee are present for these meetings.

Awaiting a response on the same at the earliest.

Sincerely,

Derek O'Brien

P.S. May I suggest you reschedule after the tour. Thank you again



DEREK O'BRIEN
Member Of Parliament, Rajya Sabha

Leader, All India Trinamool Congress Parliamentary Party, Rajya Sabha

MP/2023/28

11 September, 2023

To,
Shri Brijlal,
Hon'ble Chairperson,
Parliamentary Standing Committee on Home Affairs

Subject: Concerns regarding discussion on Criminal Law Bills and suggestions for way forward.

Respected Chairperson,

The first four meetings on this subject have been held. I am looking forward to attending more meetings (5th and 6th meetings) on 12 and 13 September. These are my observations and suggestions.

First, considering the significance of these three Bills, it is imperative that multiple bipartisan discussions are held at length. It is my earnest request that members of this committee are not rushed and are given multiple opportunities to express themselves. Choice of domain experts, choice of witnesses from across disciplines and the methodology used must always take into consideration the "sense of the house". In the spirit of federalism, it is imperative that the committee must also travel to multiple states to meet stakeholders. Sir, please create an atmosphere for scrutiny, debate and detailed discussion. This will embellish the quality of our output as a committee.

Second, the minutes of the meetings must be recorded with due diligence and provide a true reflection of the proceedings. Key points raised by members must reflect in the minutes. (Verbatim records are not a substitute for minutes.)



DEREK O'BRIEN
Member Of Parliament, Rajya Sabha

Leader, All India Trinamool Congress Parliamentary Party, Rajya Sabha

For example, in the meeting that was held on 24 August 2023, Dayanidhi Maran (DMK) had submitted a letter stating objections on how the titles of the said bills are in Hindi. The submission of this letter making multiple points, the summary of its contents, and his intervention does not reflect at all in the minutes of the meeting. Recording of such views is an integral part of the democratic process. Please ensure this is done for future meetings.

Third, considering that the Special Session of the Parliament has been called from 18 September to 22 September 2023, the Members have made multiple commitments in their constituencies and other parts of their State including programs and meetings immediately (one week) after the session. This is a request to schedule the next committee meeting at least one week after the session concludes.

I am sure that you will accept these concrete suggestions in the spirit that they have been made.

Sincerely,

Derek O'Brien

13 September, 2023

To,
Shri Brijlal,
Hon'ble Chairperson,
Parliamentary Standing Committee on Home Affairs

Subject: Suggested consultation methodology for the Criminal Law Bills.

Respected Chairperson,

This is with regard to the consultation methodology suggested at the meeting held on 13.09.2023 to discuss the Criminal Law Bills.

As mentioned during the meeting, general statutes of criminal law are for ages to come. These laws will affect the lives of the poor, and therefore must be crafted with utmost care. To that end, we are reproducing below for your careful consideration the organizations the Committee must consult with along with a projected timeline.

<i>Consultations to be done</i>
<p><i>1. Senior practitioners of criminal law who have domain knowledge accumulated over decades of litigation practice and expertise in the area.</i></p>
<p><i>2. Bar Council of all states in India.</i></p> <p><i>(At least 23 state bar councils)</i></p> <p><i>(30 days)</i></p>
<p><i>3. The judges of the Supreme Court and High Courts.</i></p> <p>(Supreme Court- Chief Justice and 33 other Judges appointed by the President of India. High Court- Working Strength of at least 785 judges across 25 high courts)</p> <p><i>(6 months)</i></p>

4. *The Bar Council of India Supreme Court Bar associations*

(At least 20 office bearers)

(20days)

5. *Members of parliament, legislative assemblies, and local councils play a role in passing laws. Their input can help ensure that proposed reforms align with legislative goals.*

(Lok Sabha - 539 members +

Rajya Sabha- 238 members +

State legislative assemblies)

(6 months)

6. *International Organizations:* Collaboration with international bodies like the United Nations and others can help align reforms with international standards and best practices. *(100 days)*

7. *Media:* Journalists and media organizations can play a role in raising public awareness about the need for criminal justice reform and can provide insights into public sentiment. *(100 days)*

8. *Ethnic and Religious Leaders:* Considering the diverse cultural and religious landscape of India, involving leaders from various communities can help ensure that reforms are sensitive to different perspectives. *(50 days)*

9. *Experts on Juvenile Justice:* Specialists in juvenile justice can provide insights into how reforms could better address the needs and rights of young offenders. *(5 days)*

10. *Experts on Cybercrime and Technology:* Given the rise of cybercrime, involving experts in technology and cyber law is crucial when considering reforms in this domain. *(5 days)*

<p><i>11. Prison Officials and Reform Advocates:</i> Individuals working within the prison system and advocates for prison reform can contribute perspectives on conditions, rehabilitation, and the treatment of inmates. (1319 prisons in the country and their officials) (4 months)</p>
<p><i>12. Inclusive Consultation from the general public</i> including women, Dalits, religious minorities, adivasis, LGBTQ persons, or persons with disabilities etc. (1 month)</p>
<p><i>13. Governors, chief ministers of states, lieutenant governors and administrators of Union territories.</i> (60-70 officials approx.) (1 month)</p>
<p><i>14. Legal Scholars and academic institutes</i> (5 days)</p>
<p><i>15. Law Enforcement Agencies:</i> Representatives from police departments can offer insights into issues related to investigation, evidence collection, and law enforcement procedures. (10 days)</p>
<p><i>16. Human Rights Organizations:</i> NGOs and advocacy groups focused on human rights can provide critical perspectives on how proposed reforms might impact human rights, due process, and individual freedoms. (5 days)</p>
<p><i>A total of 1.5 years</i></p>

We are sure that you will accept these concrete suggestions in the spirit that they have been made.

Sincerely,



P. Chidambaram



Derek O'Brien

14 September, 2023

To,
Shri Brijlal,
Hon'ble Chairperson,
Parliamentary Standing Committee on Home Affairs

Subject: Suggested witnesses for consultation on the Criminal Law Bills.

Respected Chairperson,

Further to our letter dated September 13, 2023, and the interventions made during the Committee meeting held on the same day, we are reproducing below for your careful consideration the witnesses the Committee must call as experts for consultation.

As mentioned during the meeting, general statutes of criminal law are for ages to come. These laws will affect the lives of the poor, and therefore must be crafted with utmost care.

1. Former CJI U.U.Lalit

He was designated Senior Advocate at the Supreme Court in April 2004. He aided the Court as an *amicus curiae* in many important matters pertaining to forests, vehicular pollution and pollution of the Yamuna river. In 2011, he was appointed as the Special Public Prosecutor in the 2G Spectrum scam case. He also served as the 49th Chief Justice of India.

2. Justice Madan Lokur

He was appointed as Additional Solicitor General of India in 1998 . Functioned as Chief Justice of Gauhati High Court from 2010 to 2011, and Chief Justice of High Court of Andhra Pradesh from 2011 to 2012. Has vast experience in Civil, Criminal, Constitutional, Revenue and Service laws.

3. Fali Nariman

Fali Sam Nariman is an Indian jurist. He is a senior advocate to the Supreme Court of India since 1971 and was the President of the Bar Association of India from 1991 to 2010.

4. Adv. Maneka Guruswamy

Maneka Guruswamy is a senior advocate at the Supreme Court of India. She is known for having played a significant role in many landmark cases before the Supreme Court, including the Section 377 case, the bureaucratic reforms case, the Agustawestland bribery case, the Salwa Judum case, and the Right to Education case.

5. Sr. Adv. Sidharth Luthra:

Advocate Sidarth Luthra is a Senior Advocate at the Supreme Court. He was appointed the Additional Solicitor General of the Supreme from 2012-2014, during which he represented Union and State Governments in matters such as fundamental rights, environment laws, electoral reform, criminal law, juvenile rights, education and policy issues. Mr Luthra also appeared as the Special Public Prosecutor for the State of NCT of Delhi in the Nirbhaya gang-rape case.

6. Sr. Adv. Hariharan

Hariharan N enrolled at the Delhi Bar in 1987 and over the last 34 years, has cemented a presence on the Criminal side of legal practice. For contributions to the practice and development of Criminal Law, he was designated as a Senior Advocate by the Delhi High Court in 2013.

7. Sr. Adv. Rebecca John

Rebecca Mammen John has been practicing exclusively on the criminal side in the Supreme Court of India, High Court of Delhi and in the Trial Courts of Delhi for more than three decades. She has conducted a wide range of criminal trials and argued appeals dealing with offenses under the Indian Penal Code, Unlawful Activities (Prevention) Act, Prevention of Corruption Act and other special statutes.

8. Dr. Sylendra Babu
9. Sr. Adv. Amit Desai
10. Sr. Adv. Rajeev Dhavan
11. Sr. Adv. Siddharth Dave
12. Adit Pujari
13. Sr. Adv. Aditya Sondhi
14. N. Dinakar
15. Justice R. Balasubramaniam
16. Sr. Adv. Vrinda Grover
17. Sr. Adv. Meenakshi Arora

We are sure that you will accept these concrete suggestions in the spirit that they have been made.

Sincerely,



P. Chidambaram



Derek O'Brien



D E R E K O ' B R I E N

Member of Parliament, Rajya Sabha

Leader, All India Trinamool Congress Parliamentary Party, Rajya Sabha

MP/2023/33

22 September 2023

To,
Shri Brijlal,
Hon'ble Chairperson,
Parliamentary Standing Committee on Home Affairs

Respected Chairperson,

With reference to your letter **D.O. No.-IMP/DLI/BL/RS/2023/397** dated 15th September 2023 please note the following:

1. The stakeholders that you wrote to, comprise a very small part of the list of stakeholders we suggested. As mentioned during the meeting, these statutes of criminal law are for ages to come. These laws will affect the lives of the poor, and therefore must be crafted with utmost care. Hence, I reiterate what I said in the last letter.
2. The minutes of the meeting, although a summary, should provide a true reflection of the proceedings. The point that Mr Dayanidhi Maran made was a very important one. A summary must at least reflect the most important points made during the meeting in order to safeguard the health of the democratic process.

Sincerely,

Derek O'Brien



D E R E K O ' B R I E N

Member of Parliament, Rajya Sabha

Leader, All India Trinamool Congress Parliamentary Party, Rajya Sabha

MP/2023/34

27 September 2023

To,
Shri Brijlal,
Hon'ble Chairperson,
Parliamentary Standing Committee on Home Affairs

Subject: Concerns regarding rushing the scrutiny of Criminal Law Bills.

Respected Chairperson,

I am writing to you regarding your letter **IMP/DLI/BL/RS/2023/407** dated 23rd September 2023 and Committee Notice **LAFEAS-HA12011/2/2023- Comm Sec (HA)-RSS** dated 25th September 2023. I am once again compelled to express my concerns regarding the discussion on Criminal Laws under consideration in this Committee. The methodology of the deliberations leaves a lot to be desired. Many issues are still unaddressed.

One cannot ignore the *** and the rushed nature of this process of consideration of Bills.

The Committee which recommended these reforms, Prof. Ranbir Singh Committee, was constituted of only men from similar social identities as well as professional backgrounds and experiences. This makes it even more important to consult a diverse group of stakeholders. It is imperative that we expand the pool of witnesses who come and present their views to the Committee.

*** Expunged as per Rule 90(7)(i) of Rules of Procedure and Conduct of Business in Rajya Sabha

Leaving out important stakeholders from the conversation undermines the legitimacy of the process. It is our responsibility to ensure that any new law is well-reasoned, well-informed, and thoroughly debated to prevent any unintended negative consequences.

The Committee should reconsider the approach to this discussion and take the necessary steps to ensure that the Bill undergoes proper consultation and scrutiny. It is in the best interest of our democracy.

I am enclosing once again for your perusal a list of people who should be called as witnesses. They have impeccable credentials. The Committee will benefit from their wise counsel and insights. I once again urge you to invite those mentioned in the list (enclosed once again) to share their expert opinions in the future.

Awaiting a response on the same at the earliest.

Sincerely,



Derek O'Brien

Enclosed: As above

Consultations to be done

1. *Senior practitioners of criminal law who have domain knowledge accumulated over decades of litigation practice and expertise in the area.*

2. *Bar Council of all states in India.*
(At least 23 state bar councils)

3. *The judges of the Supreme Court and High Courts.*

(Supreme Court- Chief Justice and 33 other Judges appointed by the President of India. High Court- Working Strength of at least 785 judges across 25 high courts)

4. *The Bar Council of India Supreme Court Bar associations*

(At least 20 office bearers)

5. *Members of parliament, legislative assemblies, and local councils play a role in passing laws. Their input can help ensure that proposed reforms align with legislative goals.*

(Lok Sabha - 539 members+ Rajya Sabha- 238 members+ State legislative assemblies)

6. *International Organizations:* Collaboration with international bodies like the United Nations and others can help align reforms with international standards and best practices.

7. *Media:* Journalists and media organizations can play a role in raising public awareness about the need for criminal justice reform and can provide insights into public sentiment.

8. *Ethnic and Religious Leaders:* Considering the diverse cultural and religious landscape of India, involving leaders from various communities can help ensure that reforms are sensitive to different perspectives.

9. *Experts on Juvenile Justice:* Specialists in juvenile justice can provide insights into how reforms could better address the needs and rights of young offenders.

10. *Experts on Cybercrime and Technology:* Given the rise of cybercrime, involving experts in technology and cyber law is crucial when considering reforms in this domain.

11. *Prison Officials and Reform Advocates:* Individuals working within the prison system and advocates for prison reform can contribute perspectives on conditions, rehabilitation, and the treatment of inmates. (1319 prisons in the country and their officials)

12. *Inclusive Consultation from the general public* including women, Dalits, religious minorities, adivasis, LGBTQ persons, or persons with disabilities etc.

13. *Governors, chief ministers of states, lieutenant governors and administrators of Union territories.* (60-70 officials approx.)

14. *Legal Scholars and academic institutes.*

15. *Law Enforcement Agencies:* Representatives from police departments can offer insights into issues related to investigation, evidence collection, and law enforcement procedures.

16. *Human Rights Organizations:* NGOs and advocacy groups focused on human rights can provide critical perspectives on how proposed reforms might impact human rights, due process, and individual freedoms.

Additional recommendations:

1. Former CJI U.U.Lalit

He was designated Senior Advocate at the Supreme Court in April 2004. He aided the Court as an *amicus curiae* in many important matters pertaining to forests, vehicular pollution and pollution of the Yamuna river. In 2011, he was appointed as the Special Public Prosecutor in the 2G Spectrum scam case. He also served as the 49th Chief Justice of India.

2. Justice Madan Lokur

He was appointed as Additional Solicitor General of India in 1998 . Functioned as Chief Justice of Gauhati High Court from 2010 to 2011, and Chief Justice of High Court of Andhra Pradesh from 2011 to 2012. Has vast experience in Civil, Criminal, Constitutional, Revenue and Service laws.

3. Fali Nariman

Fali Sam Nariman is an Indian jurist. He is a senior advocate to the Supreme Court of India since 1971 and was the President of the Bar Association of India from 1991 to 2010.

4. Adv. Menaka Guruswamy

Menaka Guruswamy is a senior advocate at the Supreme Court of India. She is known for having played a significant role in many landmark cases before the Supreme Court, including the Section 377 case, the bureaucratic reforms case, the Agustawestland bribery case, the Salwa Judum case, and the Right to Education case.

5. Sr. Adv. Sidharth Luthra:

Advocate Sidarth Luthra is a Senior Advocate at the Supreme Court. He was appointed the Additional Solicitor General of the Supreme from 2012-2014, during which he represented Union and State Governments in matters such as fundamental rights, environment laws, electoral reform, criminal law, juvenile rights, education and policy issues. Mr Luthra also appeared as the Special Public Prosecutor for the State of NCT of Delhi in the Nirbhaya gang-rape case.

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Rebecca Mammen John has been practicing exclusively on the criminal side in the Supreme Court of India, High Court of Delhi and in the Trial Courts of Delhi for more than three decades. She has conducted a wide range of criminal trials and argued appeals dealing with offenses under the Indian Penal Code, Unlawful Activities (Prevention) Act, Prevention of Corruption Act and other special statutes.

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13. Sr. Adv. Aditya Sondhi
14. N. Dinakar
15. Justice R. Balasubramaniam
16. Sr. Adv. Vrinda Grover
17. Sr. Adv. Meenakshi Arora



DEREK O'BRIEN

Member of Parliament, Rajya Sabha

Leader, All India Trinamool Congress Parliamentary Party, Rajya Sabha

MP/2023/35

3 October 2023

**To,
Shri Brijlal,
Hon'ble Chairperson,
Parliamentary Standing Committee on Home Affairs**

Respected Chairperson,

I am writing to you regarding the Notice [LAFEAS-HA12011/2/2023- Comm Sec (HA)- RSS] from the Committee dated 25th September 2023 calling for a clause-by-clause discussion on the Criminal Law Bills.

First, *** and the rushed nature of this process of consideration of Bills. The Committee which recommended these reforms, Prof. Ranbir Singh Committee, was constituted of only men from similar social identities as well as professional backgrounds and experiences. Leaving out important stakeholders from the conversation undermines the legitimacy of the process. It is our responsibility to ensure that any new law is well-reasoned, well-informed, and thoroughly debated to prevent any unintended negative consequences.

Second, it is imperative that every member of the committee contributes to the discussion for a comprehensive deliberation. Only some members have voiced their opinions. The members who have spoken haven't been able to express their views. Proceeding to clause-by-clause amendments would be premature and counterproductive. A fruitful discussion requires the active participation of all committee members so that diverse perspectives are considered before making informed decisions. The essence of a committee lies in collaborative efforts, and only through the thoughtful contributions of each member can we achieve the purpose and effectiveness of our committee deliberations.

Considering the significance of these three Bills, it is imperative that multiple bipartisan discussions are held at length. I earnestly request that members of this committee are not rushed and are given multiple opportunities to express themselves.

Due to the above-mentioned reasons, a clause-by-clause discussion is out of question till we thoroughly consult the stakeholders and members are given ample opportunity to express their views on the same. I request that the consultation process is not rushed and more time be granted for discussions and stakeholder consultations. Please consider pushing the date of the clause-by-clause amendment discussion.

Awaiting a response on the same at the earliest.

Sincerely,

A handwritten signature in blue ink, appearing to read "Derek O'Brien", with a long horizontal flourish extending to the right.

Derek O'Brien



DEREK O'BRIEN
Member Of Parliament, Rajya Sabha

Leader, All India Trinamool Congress Parliamentary Party, Rajya Sabha

MP/2023/42

23 October 2023

To,
Shri Brijlal,
Hon'ble Chairperson,
Parliamentary Standing Committee on Home Affairs

Respected Chairperson,

With reference to Home Affairs Committee Notice LAFEAS-HA12011/2/2023- Comm Sec (HA)- RSS dated 20 October 2023 regarding the consideration and adoption of draft Reports on Criminal Law Bills on 27 October 2023. In my earlier letters to you, I have flagged the undue haste and *** of these Bills without due diligence and meaningful scrutiny by this Committee. In the last few months this has become a trend.

*** adoption of such an important report will have negative implications and will turn out counterproductive. Hastily rushing through the process is not doing justice to this important proposed legislation.

Allow me to elucidate.

1. The Draft reports were only sent about 8.30 pm on 21 October 2023. Which leaves only 5 days to read and analyse the three reports. This is too short a notice for discussion of a Bill with implications of this magnitude. There are so many drafting errors pointed out by my colleagues Shri N. R. Elango and Shri P. Chidambaram.
2. *** and rush in the nature of this process of consideration of Bills. The laws that are being examined are going to last over 100 years and such a hasty adoption of the reports without consultation of stakeholders would be premature and counterproductive. I am enclosing once again for your perusal a list of people who should be called as witnesses. They have impeccable credentials. The Committee will benefit from their wise counsel and insights. I once again urge you to invite those mentioned in the list (enclosed once again) to share their expert opinions in the future.

Page 1 of 2

*** Expunged as per Rule 90(7)(i) of Rules of Procedure and Conduct of Business in Rajya Sabha

3. Members of this Committee have made multiple commitments in their constituencies during the festive season. In Bengal, much is lined up on 27 and 28 October. The United Nations Educational, Scientific and Cultural Organization (UNESCO) has included Kolkata's famous Durga Puja in its Intangible Cultural Heritage of Humanity list (ICH). The carnival is on the 27 October and Lakshmi Pujo is on the 28 October, for which the preparations start at least a day in advance. ***

Respected Chairperson, I humbly urge you not to hurriedly rush through this legislation. We will be doing a grave disservice to a large section of the population, especially those who are marginalised or economically challenged. This consultative process needs us to rise above narrow partisan interest or short term electoral stunts. Kindly assess all this in the interest of 140 crore Indians who look up to Parliament to legislate with wisdom.

Awaiting a response on the same at the earliest.

Sincerely,



Derek O'Brien

Leader, AITC Parliamentary Party, Rajya Sabha

Enclosed: As Above

Consultations to be done

1. Senior practitioners of criminal law who have domain knowledge accumulated over decades of litigation practice and expertise in the area.
2. Bar Council of all states in India. (At least 23 state bar councils)
3. The judges of the Supreme Court and High Courts.

(Supreme Court- Chief Justice and 33 other Judges appointed by the President of India.
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4. The Bar Council of India Supreme Court Bar associations (At least 20 office bearers)
5. Members of parliament, legislative assemblies, and local councils play a role in passing laws. Their input can help ensure that proposed reforms align with legislative goals.

(Lok Sabha - 539 members + Rajya Sabha- 238 members + State legislative assemblies)

6. International Organizations: Collaboration with international bodies like the United Nations and others can help align reforms with international standards and best practices.
7. Media: Journalists and media organizations can play a role in raising public awareness about the need for criminal justice reform and can provide insights into public sentiment.
8. Ethnic and Religious Leaders: Considering the diverse cultural and religious landscape of India, involving leaders from various communities can help ensure that reforms are sensitive to different perspectives.
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12. Inclusive Consultation from the general public including women, Dalits, religious minorities, adivasis, LGBTQ persons, or persons with disabilities etc.
13. Governors, chief ministers of states, lieutenant governors and administrators of Union territories. (60-70 officials approx.)
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16. Human Rights Organizations: NGOs and advocacy groups focused on human rights can provide critical perspectives on how proposed reforms might impact human rights, due process, and individual freedoms.

Additional recommendations:

1. Former CJI U.U.Lalit

He was designated Senior Advocate at the Supreme Court in April 2004. He aided the Court as an amicus curiae in many important matters pertaining to forests, vehicular pollution and pollution of the Yamuna river. In 2011, he was appointed as the Special Public Prosecutor in the 2G Spectrum scam case. He also served as the 49th Chief Justice of India.

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Menaka Guruswamy is a senior advocate at the Supreme Court of India. She is known for having played a significant role in many landmark cases before the Supreme Court, including the Section 377 case, the bureaucratic reforms case, the AgustaWestland bribery case, the Salwa Judum case, and the Right to Education case.

5. Sr. Adv. Sidharth Luthra:

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13. Sr. Adv. Aditya Sondhi

14. N. Dinakar

15. Justice R.Balasubramaniam

16. Sr. Adv. Vrinda Grover

17. Sr. Adv. Meenakshi Arora



D EREK O ' B RIEN

Member of Parliament, Rajya Sabha
Leader, All India Trinamool Congress Parliamentary Party, Rajya Sabha

MP/2023/44

30 October, 2023

To,
Shri Brij Lal,
Hon'ble Chairperson,
Parliamentary Standing Committee on Home Affairs

Respected Chairperson,

I recently received a memorandum from the Indian Police Foundation, accompanied by their comprehensive clause-by-clause analysis of the recently proposed three Criminal Law bills. It is imperative that we pay heed to their views and engage them in the ongoing discussions, as inputs from domain experts are essential for bills of such profound significance.

The Indian Police Foundation (IPF), renowned for its expertise in police reform and policing standards, should be called upon to participate in the stakeholder consultation for these bills. IPF conducts comprehensive research, offers capacity building, and actively engages in policy advocacy, all centered around advancing policing standards and contributing to the enhancement of law enforcement practices. The foundation is overseen by a coalition of progressive police professionals and engaged citizen stakeholders, all of whom recognise the potential for positive transformation within the Indian Police. Their board comprises eminent members, including active and retired police officers and civil servants.

I strongly recommend that IPF be called for a consultation in early November. Their participation will provide invaluable insights and ensure a thorough examination of these bills.

Sincerely,

Derek O'Brien

P.S. We have hardly called any stakeholders to testify. Please refer to my earlier letters. For the sake of the millions of marginalised who these bills will affect, please do not rush this bill.

November 8, 2023

To,
Shri Brij Lal,
Hon'ble Chairperson,
Parliamentary Standing Committee on Home Affairs

Subject: Note of Dissent on Bharatiya Nyaya Sanhita, 2023, and Bharatiya Nagrik Suraksha Sanhita, 2023

Respected Chairperson,

I write to express my strong dissent regarding the proposed bills, namely Bharatiya Nyaya Sanhita, 2023, and Bharatiya Nagrik Suraksha Sanhita, 2023, currently under deliberation by the Departmentally Related Standing Committee on Home Affairs. My concerns are as follows:

I. NO NEED FOR NEW BILLS WHICH ARE 93% COPY PASTE LEGISLATION

The introduction of new legislation *** raises concerns about the efficient use of legislative resources. The bills mostly mirror existing criminal laws, making it more sensible to amend them instead.

II. * COMMITTEE PROCEDURE AND AVOIDING QUALITY STAKEHOLDER CONSULTATION**

Moreover, the drafting process lacks inclusive stakeholder consultations, which are crucial for legislation of this magnitude. The committee responsible for reviewing these laws lacks diversity, excluding representation from marginalized groups.

III. LIMITING THE MEANINGFUL PARTICIPATION OF THE OPPOSITION.

The *** scheduling of discussions during the festive season, ***, restricts meaningful opposition participation. Adequate scrutiny and debate are indispensable for such consequential legislation. *** with far-reaching implications is insufficient and disconcerting. Rushed passage may result in unintended consequences and public dissatisfaction.

IV. RESULT OF RUSHING AND *- NUMEROUS DRAFTING ERRORS**

*** Expunged as per Rule 90(7)(i) of Rules of Procedure and Conduct of Business in Rajya Sabha

Basic drafting errors have been identified, necessitating comprehensive revisions. The hurried nature of the legislation leaves minimal room for addressing these concerns, imperilling the clarity and effectiveness

These bills *** for new legislation, inclusive stakeholder consultations, meaningful opposition participation, and transparency in the legislative process. Rushing their adoption may lead to unintended consequences and public dissatisfaction. *** and ensure that our legislative process is thorough, transparent, and representative of all stakeholders.

V. NAMES OF THESE BILLS SHOULD BE IN ENGLISH AS WELL AS HINDI.

The bills in question have names in Hindi. This is seen as not just Hindi imposition but also unconstitutional, as Article 348 of the Constitution specifically mandates the use of the English language in Acts and Bills. However, a report maintains that the use of Hindi names for bills is constitutional and even suggests expanding the use of Hindi in these contexts, which seemingly contradicts the constitutional provision.

VI. CRITIQUE OF SEDITION LAW-BNS

Regarding the Sedition Law, the report commends the government for rephrasing it while supposedly safeguarding state security. However, the law has been retained with a broader definition that can encompass a wide range of actions under the pretext of endangering India's unity and integrity. This expansion of the law provides authorities with significant discretion, contrary to the recommendation of the 22nd Law Commission, which called for a well-defined sedition law. The Bharatiya Nyaya Sanhita, 2023, specifically Clause 150, deals with acts that endanger the sovereignty, unity, and integrity of India, indicating the broad scope of the revised sedition law.

***. Simply delaying it by a day or a week won't solve our problem. ***. Pushing the committee's work forward hastily would be a severe detriment to the legislative process. What we truly need is an extension of no less than three months, making the new deadline March 2024 an absolute necessity.

VII. DEATH PENALTY PROVISIONS

The statistics provided by Project 39A reveal troubling disparities in the application of the death penalty in India, with a significant majority of death row inmates coming from economically disadvantaged backgrounds, lacking proper education, and belonging to marginalized communities. This data underscores the urgent need for re-evaluating the death penalty in the country. Such re-evaluation is a means to rectify these social injustices, prevent potential wrongful convictions, and promote principles of justice and human rights. A more humane approach to addressing crime, focusing on rehabilitation and reintegration, is necessary, as many other countries have already done. The disparities between trial courts and the Supreme Court, as well as the increasing scepticism surrounding death row trials, highlight the need for institutional reform in the criminal justice system. In sum, broad-based social discussions are warranted on the subject.

VIII. 90-DAY POLICE CUSTODY

The Bill permits the magistrate to authorise detention in police custody for a period beyond the current 15-day limit, extending up to 90 days.

90-day police custody - for crimes that carry a sentence of ten years or more

60-day police custody - for "any other offence" with imprisonment terms less than the 90-day detention offences

Increasing the period of police custody without proper safeguards could lead to human rights violations, including the risk of torture, coerced confessions, and abuse of detainees. This is particularly concerning given the history of custodial violence and abuse in India.

I firmly believe that these issues deserve our utmost attention and consideration. In hope that the principles of justice and constitution will prevail in shaping the future of our legislative endeavours, I express my dissent.

Sincerely,



Dr Kakoli Ghosh Dastidar
(Member of Parliament, Lok Sabha)



07.11.2023

Dear Chairman, Vanakkam!

Subject **Dissent Note on Draft 246th Report on The Bharatiya Nyaya Sanhita Bill 2023, 247th report on The Bharatiya Nagarika Suraksha Sanhita Bill, 2023, 248th report on The Bharatiya Sakshaya Bill, 2023**

Through my letters dt. 26.10.2023 & 23.08.2023 to the Chairman & members of the Department Related Parliamentary Standing Committee on Home Affairs, I had apprised the Committee as to how the titles of The Bharatiya Nyaya Sanhita Bill, 2023; The Bharatiya Nagarika Suraksha Sanhita Bill, 2023 and The Bharatiya Sakshaya Bill, 2023 are violative of Article 348 of the Constitution and that the clauses of these three Bills need extensive consultation with all the stakeholders such as the State Governments, Judges, Police Authorities, Bar Council of India, State Bar Councils, Advocate Association, Bar Associations, Senior Advocates, Advocates, Women Lawyers' Association, Eminent Jurists, Academicians etc. Furthermore, I had submitted my objections highlighting that we have a golden opportunity in our hands to conduct an effective exercise in bringing changes to our criminal justice delivery system as The Indian Penal Code, 1860, The Code of Criminal Procedure, 1973, The Indian Evidence Act, 1872 were largely untouched before. While examining the above three Bills, it must be considered whether we can amend the existing Bills either by deleting or incorporating new provisions thereby bringing actual reforms to make the criminal justice delivery system more efficient and user friendly instead of thrusting old wine in a new bottle.

However, I am deeply saddened by the fact that *** . There is no specific reason stated so as to justify the non-consideration of the recommendations/suggestions made by the stakeholders.

DAYANIDHI MARAN

Member of Parliament, Lok Sabha
Chennai Central Constituency



3, First Avenue,
Boat Club,
R.A. Puram, Chennai - 600 028.
Ph : (044) 2437 1515
E_mail : dmaranoffice@gmail.com

These Bills will further change the federal relationship and structure between the Union and the State. As you are aware, India is a Union of States - states which speak different languages i.e., languages other than Hindi. On the other hand, except for a few words, the body of these Bills is in English, but the title of the Bill is in Hindi which is violative of Article 348. The Article 348 of the Constitution puts a complete embargo on a Bill having any other language in its text other than English. Therefore, the titles of the Bills ought to be changed to their English translation. The usage of a Sanskrit / Hindi title and words in some clauses is imposition of Sanskrit (a language used by less than 10,000 people as per the 2011 census) and Hindi on non-Hindi speaking states. I make it clear that we are not opposed to Hindi, but we are opposed to imposition of Hindi on non-Hindi speaking states. If these bills turn into Act's, the people in non-Hindi speaking states will find difficulty in pronouncing and handling these Acts. At the grass root level they will not be able to understand the texture, character, tenor, and nature of the act if the title remains in Hindi and implementation will be very difficult including filing of FIR's.

Therefore, I humbly request you to change the titles from Sanskrit / Hindi to English translations for The Bharatiya Nyaya Sanhita Bill, 2023; The Bharatiya Nagarika Suraksha Sanhita Bill, 2023 and The Bharatiya Sakshya Bill, 2023 and to consider revising the contents of the bills to bring about the much needed reforms in our laws, instead of the mere superficial attempt of this bill.

Thanking you,

Yours sincerely,

(Dayanidhi Maran)

Member, Parliamentary Standing Committee on Home Affairs

To
Shri. Brij Lal,
The Hon'ble Chairman,
The Department Related Parliamentary Standing Committee on Home Affairs
C-1/9, Pandara Park,
New Delhi - 110 003



सत्यमेव जयते

P. Chidambaram
Member of Parliament. (RS)
Former Union Finance Minister

08 November 2023

The Chairman
Standing Committee on Home Affairs
Parliament House
New Delhi

Dear Mr Chairman,

Bills No. 121, 122 and 123 of 2023

I enclose my Note of Dissent to each of the three Bills (total 3 notes).

Kindly acknowledge receipt.

With regards,

Yours sincerely,

P. Chidambaram MP (RS)

✓ copy to:
Joint Secretary
Rajya Sabha Secretariat
Parliament House
New Delhi

DISSENT NOTE SUBMITTED BY P CHIDAMBARAM

At the outset, I wish to register three fundamental objections to the three Bills:

(i) Under Article 348 of the Constitution, all Acts shall be in the English language which is also the language of the Supreme Court and the High Courts. Laws are, and will be, translated into other Indian languages. It is therefore correct that the three Bills, *first* drafted in English, have been translated into Hindi. In due course, the Bills will be translated into other Indian languages and such translated Bills will be used in the proceeding before the Courts subordinate to the High Courts. The name of the Bill must, therefore, be in English and translated into Hindi and also translated into other Indian languages. To have a *Hindi only* name to the Bill irrespective of the language of the Bill is highly objectionable, unconstitutional, an affront to the non-Hindi speaking people (e.g. Tamils, Gujaratis or Bengalis) and opposed to federalism.

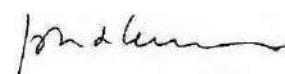
(ii) The three Bills are largely a *copy and paste* of the existing Laws. There was absolutely no need to draft so-called new Bills. All that the Bills have done is to make a few amendments (some acceptable, some not acceptable), re-arrange the sections of the existing Laws, and merge different sections into one section with many sub-sections. This is a wasteful exercise that will have many undesirable consequences. To locate a familiar section - e.g. Section 302 of IPC, punishment for murder - one has to search the Bill and find the equivalent Clause 101.

Hundreds of thousands of judges, lawyers, police officers - and even the general public - will be put to enormous trouble and inconvenience without any benefit at all. They will have to "re-learn" the laws which will take years before the new provisions are used extensively. This seems to be an exercise in self-glorification rather than a scholarly exercise to improve the laws.

(iii) *** . Besides, State governments, Bar Associations, State and Central Police organizations, the Indian Police Foundation, the National Law School Universities, judges of the subordinate judiciary who apply the laws every day, eminent retired judges of the Supreme Court and the High Courts, eminent senior advocates and legal scholars were not consulted at the consideration stage by circulating the draft Bills and inviting them to comment. ***. We strongly object to the process followed on the grounds of insufficiency, non-inclusionary, non-scholarly and lack of adequate time for consideration by the Members.

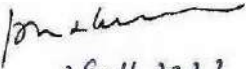
Bill to replace the Indian Evidence Act, 1872 (Bill No. 123 of 2023)

This Bill is the most striking example of 'much ado about nothing'. Every one of the 170 clauses of the Bill is a *copy and paste* of the provisions of the Indian Evidence Act, 1872. The extent of the copying and pasting is estimated to be 99 per cent. The sections in the Indian Evidence Act have been re-arranged and a word added or deleted



here and there, but to what purpose? The unfortunate consequence is the new Bill will confuse the judges, lawyers, legal scholars and students of law and oblige them re-learn the new numbers of the old provisions. For example, everyone knows that Section 115 of the Indian Evidence Act deals with 'estoppel'. Now, judges, lawyers, legal scholars and students of law have to re-learn the new number which is Clause 121.

2. I am, therefore, of the view that the Indian Evidence Act, 1872 must be retained. The very few changes that have been made while drafting the Bill (e.g. relating to the certificate included in the Schedule) could have been introduced by way of amendments. There is absolutely no need to bring a Bill and replace the Indian Evidence Act, 1872.


08.11.2023

MINUTES

RAJYA SABHA

**MINUTES OF MEETING OF DEPARTMENT-RELATED
PARLIAMENTARY STANDING COMMITTEE
ON HOME AFFAIRS**

XIV

FOURTEENTH MEETING

The DRSC on Home Affairs met at 11:00 a.m. on Thursday, the 24th August, 2023 in Committee Room '2', PHA-Extension, New Delhi

MEMBERS PRESENT

RAJYA SABHA

1. **Shri Brij Lal** - **Chairman**
2. Shri Biplab Kumar Deb
3. Dr. Anil Jain
4. Shri Neeraj Shekhar
5. Shri Digvijaya Singh
6. Shri Rakesh Sinha
7. Shri Derek O'Brien

LOK SABHA

8. Shri Sanjay Bhatia
9. Shri Dilip Ghosh
10. Shri Dulal Chandra Goswami
11. Thiru Dayanidhi Maran
12. Shri Raja Amareshwara Naik
13. Shri Ranjitsingh Naik Nimbalkar
14. Shri Vishnu Dayal Ram
15. Shri Rahul Ramesh Shewale
16. Shri Ravneet Singh
17. Dr. Satya Pal Singh
18. Smt. Geeta Viswanath Vanga
19. Shri Dinesh Chandra Yadav

5. The Chairman further informed that he would write to the Members of the Committee to give suggestions in respect of the Bills. Thereafter, the Committee decided to invite written suggestions on the three bills from all the State Governments. It also decided to hear the views Chief Secretaries, if they wish to appear before the Committee. In this regard, the Committee authorised the Chairman of the Committee to seek the permission of Hon'ble Chairman, Rajya Sabha. Going further, the Chairman informed that the Home Secretary and his team of officials were present to give a detailed presentation on the Bills.

(On arrival of witnesses)

6. The Chairman welcomed the officers of the Ministry of Home Affairs and the Ministry of Law & Justice and asked the Home Secretary to make his presentation on the three Bills. Home Secretary started his presentation beginning with the 'The Bharatiya Nyaya Sanhita, 2023' followed by 'The Bharatiya Sakshya Bill, 2023' and 'The Bharatiya Nagarik Suraksha Sanhita, 2023'.

7. xxx xxx xxx. The Government had consultation with various stakeholders like Governor, Chief Ministers, Lt. Governors/Administrators of States and Union Territories, Chief Justice of India, Chief Justices of all High Courts, Bar Councils and Law Universities/Institutions, Members of Parliament, Bureau of Police Research & Development (BPR&D) in preparing the draft bills. MHA reviewed about 3,200 suggestions received from the stakeholders. He also explained about the problems in the present legal system such as huge pendency of cases in courts, low conviction rate, overcrowding of under trial prisoners, etc.

8. xxx xxx xxx

9. As regards the Bhartiya Sakshya Bill, 2023, Home Secretary informed that the draft bill inter alia contains major changes like – deleting British legacy references, use of technology and digital means, confession affecting person making it and others jointly under trial form same offence, judicial notice - extra territorial jurisdiction, documentary evidence - primary evidence, documentary evidence - secondary evidence, admissibility of electronic or digital record, provisions relating to certificate - electronic records, court not to inquire into file notes - privileged communication between Ministers and President, etc.

10. xxx xxx xxx

xxx Relates to other matters

11. After the presentation on the bills concluded, the Chairman and Members raised some queries to which Home Secretary replied. On other queries, the representatives from the Ministry of Home Affairs and Ministry of Law & Justice were asked to furnish written replies to the Secretariat within 3 days.

(The witnesses then withdrew)

12. A Verbatim record of the proceedings of the meeting of the Committee was kept.

13. The meeting was adjourned at 3:45 p.m.

New Delhi
24th August, 2023

RAVINDER KUMAR
DIRECTOR

RAJYA SABHA

**MINUTES OF MEETING OF DEPARTMENT-RELATED
PARLIAMENTARY STANDING COMMITTEE
ON HOME AFFAIRS**

XV

FIFTEENTH MEETING

The Committee met at 11:00 a.m. on Friday, the 25th August, 2023 in Committee Room '2', PHA-Extension, New Delhi

MEMBERS PRESENT

RAJYA SABHA

1. **Shri Brij Lal** - **Chairman**
2. Shri Biplab Kumar Deb
3. Shri N. R. Elango
4. Dr. Anil Jain
5. Shri Sujeet Kumar
6. Shri Neeraj Shekhar
7. Shri Digvijaya Singh
8. Shri Rakesh Sinha

LOK SABHA

9. Shri Sanjay Bhatia
10. Shri Dilip Ghosh
11. Shri Dulal Chandra Goswami
12. Shri Thiru Dayanidhi Maran
13. Shri Raja Amareshwara Naik
14. Shri Ranjeetsingh Naik Nimbalkar
15. Shri R.K. Singh Patel
16. Shri Vishnu Dayal Ram
17. Shri Rahul Ramesh Shewale
18. Shri Ravneet Singh
19. Dr. Satya Pal Singh
20. Smt Geetha Viswanath Vanga

21. Shri Dinesh Chandra Yadav

SECRETARIAT

Shri Swarabji B., Joint Secretary
Shri Ravinder Kumar, Director
Shri Sreejith V., Deputy Secretary
Smt. Neelam Bhatt, Under Secretary

Shri Rajesh N. Naik, OSD to Vice-President of India

WITNESSES

Representatives of the Ministry of Home Affairs

- i. Shri Ajay Kumar Bhalla, Home Secretary
- ii. Shri Satpal Chouhan, DG Awards
- iii. Shri Sri Prakash, JS (Judicial)

Representatives of Ministry of Law & Justice

- i. Shri Diwakar Singh, JS & Legislative Counsel (Parl.)
- ii. Shri R.K. Pattanayak, Addl. Legislative Counsel

2. At the outset, the Chairman welcomed the Members to the meeting of the Committee and as per the agenda, instructed the Members to raise their queries and seek clarifications regarding all the three Bills from the officials of the Ministry of Home Affairs.

(On arrival of witnesses)

3. The Chairman welcomed the officers of the Ministry of Home Affairs and the Ministry of Law & Justice and requested them to answer the queries and provide clarifications that the Members are going to raise on the three Bills referred to the Committee.

4. xxx xxx xxx

5. xxx xxx xxx

xxx Relates to other matters

6. As regards The Bharatiya Sakshya Bill (BNB), 2023, it was suggested that Section 2(e) has to be further deliberated upon in view of the wide implication it can have in interpretation of the said clause. Further, Section 23 should be thoroughly re-examined and confession made before police officer not below the rank of Superintendent of Police (SP) should also be made admissible in courts. It was also suggested that the term 'Magistrate' in clause (2) of Section 23 should be clarified whether it points to a 'Judicial Magistrate' or an 'Executive Magistrate'. The Members also opined that more clarity needs to be given on whether loose sheets would be considered as evidence in law courts.

7. The representative of the Ministry of Home Affairs replied to some queries. On other queries, the representatives from the Ministry of Home Affairs and the Ministry of Law & Justice were asked to furnish written replies to the Secretariat within 3 days.

(The witnesses then withdrew)

8. A Verbatim record of the proceedings of the meeting of the Committee was kept.

9. The meeting was adjourned at 2:56 p.m.

New Delhi
25th August, 2023

RAVINDER KUMAR
DIRECTOR

RAJYA SABHA

**MINUTES OF THE MEETING OF DEPARTMENT-RELATED
PARLIAMENTARY STANDING COMMITTEE
ON HOME AFFAIRS**

XVI

SIXTEENTH MEETING

The Committee met at 11:00 a.m. on Saturday, the 26th August, 2023 in Committee Room '2', PHA-Extension, New Delhi.

MEMBERS PRESENT

RAJYA SABHA

1. **Shri Brij Lal** - **Chairman**
2. Shri Biplab Kumar Deb
3. Shri N. R. Elango
4. Dr. Anil Jain
5. Shri Sujeet Kumar
6. Shri Neeraj Shekhar
7. Shri Digvijaya Singh
8. Shri Rakesh Sinha

LOK SABHA

9. Shri Sanjay Bhatia
10. Shri Dilip Ghosh
11. Shri Dulal Chandra Goswami
12. Shri Ranjeetsingh Naik Nimbalkar
13. Shri R.K. Singh Patel
14. Shri Vishnu Dayal Ram
15. Shri Rahul Ramesh Shewale
16. Shri Ravneet Singh
17. Dr. Satya Pal Singh
18. Shri Dinesh Chandra Yadav

SECRETARIAT

Shri Swarabji B., Joint Secretary
Shri Ravinder Kumar, Director
Shri Sreejith V., Deputy Secretary
Smt. Neelam Bhatt, Under Secretary

Shri Rajesh N. Naik, OSD to Vice-President of India

WITNESSES

Representatives of the Ministry of Home Affairs

- i. Shri Ajay Kumar Bhalla, Home Secretary
- ii. Shri Satpal Chouhan, DG Awards
- iii. Shri Sri Prakash, JS (Judicial)

Representatives of the Ministry of Law & Justice

- i. Shri Diwakar Singh, JS & Legislative Counsel (Parl.)
- ii. Shri R.K. Pattanayak, Addl. Legislative Counsel

2. At the outset, the Chairman welcomed the Members to the meeting of the Committee and, as per the agenda, informed the Members that they may present their views/comments on all the three Bills referred to the Committee.

(On arrival of witnesses)

3. The Chairman welcomed the officers of the Ministry of Home Affairs and the Ministry of Law & Justice. He requested the Members to proceed with presenting their views/comments and seek clarifications from the Ministry officials, if required.

4. xxx xxx xxx
5. xxx xxx xxx

xxx Relates to other matters

6. Regarding The Bharatiya Sakshya Bill (BSB), 2023, one of the Members pointed out that the word 'trial' being miss pelt as 'trail' in the cover page of the BSB, 2023 which requires correction; one of the Members observed that the burden of proof under the Section 106 of BSB is always on the accused and suggested that the word 'unless' need to be replaced with 'provided that' in Section 106 as the word 'unless' shifts the burden of proof on to the prosecution which is not in line with the provision of that Section. Besides, the Members generally appreciated the efforts of the Government in drafting the new laws to replace the existing laws of the colonial era completely; xxx xxx xxx

7. The officials from the Ministry of Home Affairs and the Ministry of Law & Justice replied to the queries raised and clarifications sought by the Chairman and the Members. With regard to the queries that remained unanswered, the officials of the Ministries were asked to furnish written replies to the Secretariat within 3 days.

(The witnesses then withdrew)

8. A Verbatim record of the proceedings of the meeting of the Committee was kept.

9. The meeting was adjourned at 12:53 p.m.

**New Delhi
26th August, 2023**

**RAVINDER KUMAR
DIRECTOR**

RAJYA SABHA

**MINUTES OF THE MEETING OF DEPARTMENT-RELATED
PARLIAMENTARY STANDING COMMITTEE
ON HOME AFFAIRS**

XVII

SEVENTEENTH MEETING

The Committee met at 3:00 p.m. on Monday, the 11th September, 2023 in Committee Room '2', PHA-Extension, New Delhi.

MEMBERS PRESENT

RAJYA SABHA

1. **Shri Brij Lal** - **Chairman**
2. Shri P. Chidambaram
3. Shri Biplab Kumar Deb
4. Shri N. R. Elango
5. Dr. Anil Jain
6. Shri Sujeet Kumar
7. Shri Derek O' Brien
8. Shri Neeraj Shekhar
9. Shri Rakesh Sinha

LOK SABHA

10. Shri Dilip Ghosh
11. Shri Jamyang Tsering Namgyal
12. Shri Lalubhai Babubhai Patel
13. Shri R.K. Singh Patel
14. Shri Vishnu Dayal Ram
15. Shri Rahul Ramesh Shewale
16. Shri Ravneet Singh
17. Dr. Satya Pal Singh
18. Shrimati Geetha Viswanath Vanga

SECRETARIAT

Shri Swarabji B., Joint Secretary
Shri Ravinder Kumar, Director
Shri Goutam Kumar, Deputy Secretary
Shri Sreejith V., Deputy Secretary
Smt. Neelam Bhatt, Under Secretary

Shri Rajesh N. Naik, OSD to Vice-President of India

WITNESSES

Domain Experts

- i. Shri Praveen Sinha, Ex-Spl. Director, CBI
- ii. Dr. Padmini Singh, JS, Department of Legal Affairs.
- iii. Smt. Anupama Nilekar Chandra, ADG, BPR&D.

Representatives of the Ministry of Law & Justice

- i. Shri Diwakar Singh, JS & Legislative Counsel (Parl.)
- ii. Shri R.K. Pattanayak, Addl. Legislative Counsel

2. xxx xxx xxx. He informed the Members that the Committee has invited three domain experts to hear their views on the three Bills, namely, The Bharatiya Nyaya Sanhita, 2023; The Bharatiya Nagarik Suraksha Sanhita, 2023; and The Bharatiya Sakshya Bill, 2023.

(On arrival of witness)

3. The Chairman welcomed Shri Praveen Sinha, former Special Director, CBI. He asked him to present his views on the implications that the three proposed laws are going to have on the criminal justice system.

4. xxx xxx xxx.

5. xxx xxx xxx

6. xxx xxx xxx

7. xxx xxx xxx

xxx Relates to other matters

8. Certain Members also pointed out not to rush the Bills, enough time to be provided for discussion. Then, Chairman replied that the Committee runs not on one person's convenience but on the convenience of the whole Committee...xxx
xxx xxx

(The witness then withdrew)

9. Thereafter, the Chairman welcomed Dr. Padmini Singh, Joint Secretary, Department of Legal Affairs. He asked to present her views on the implications that the three proposed laws are going to have on the criminal justice system.

10. xxx xxx xxx

11. xxx xxx xxx

12. xxx xxx xxx

13. xxx xxx xxx

(The witness then withdrew)

14. Thereafter, the Chairman welcomed Smt. Anupama Nilekar Chandra, Additional Director General, Bureau of Police Research & Development (BPR&D) and asked to make her presentation.

15. xxx xxx xxx

16. xxx xxx xxx

17. xxx xxx xxx...The witness replied to some of the queries and on other queries, she was asked to furnish written replies to the Secretariat within three days.

(The witness then withdrew)

18. A Verbatim record of the proceedings of the meeting of the Committee was kept.

20. The meeting then adjourned at 06:26 p.m.

**New Delhi
11th September, 2023**

**RAVINDER KUMAR
DIRECTOR**

xxx Relates to other matters

RAJYA SABHA

**MINUTES OF THE MEETING OF DEPARTMENT-RELATED
PARLIAMENTARY STANDING COMMITTEE
ON HOME AFFAIRS**

XVIII

EIGHTEENTH MEETING

The Committee met at 11:00 a.m. on Tuesday, the 12th September, 2023 in Main Committee Room, Ground Floor, Parliament House Annexe, New Delhi.

MEMBERS PRESENT

RAJYA SABHA

1. **Shri Brij Lal** - **Chairman**
2. Shri P. Chidambaram
3. Shri N. R. Elango
4. Dr. Anil Jain
5. Shri Sujeet Kumar
6. Shri Derek O' Brien
7. Shri Neeraj Shekhar
8. Shri Rakesh Sinha

LOK SABHA

9. Shri Sanjay Bhatia
10. Shri Dilip Ghosh
11. Shri Dulal Chandra Goswami
12. Shri Raja Amareshwara Naik
13. Shri Ranjeetsingh Naik Nimbalkar
14. Shri Jamyang Tsering Namgyal
15. Shri Lalubhai Babubhai Patel
16. Shri R.K. Singh Patel
17. Shri Vishnu Dayal Ram
18. Shri Rahul Ramesh Shewale
19. Shri Ravneet Singh
20. Dr. Satya Pal Singh

SECRETARIAT

Shri Swarabji B., Joint Secretary
Shri Ravinder Kumar, Director
Shri Goutam Kumar, Deputy Secretary
Shri Sreejith V., Deputy Secretary
Smt. Neelam Bhatt, Under Secretary

Shri Rajesh N. Naik, OSD to Vice-President of India

WITNESSES

Domain Experts

- i. Shri Vikram Singh, Former Director General of Police.
- ii. Prof. Naveen Chaudhary, National Forensic Sciences, University, Gandhinagar, Gujarat.
- iii. Ms. Sonia Mathur, Sr. Advocate.

Representatives of the Ministry of Law & Justice

- i. Shri Diwakar Singh, JS & Legislative Counsel (Parl.)
- ii. Shri R.K. Pattanayak, Addl. Legislative Counsel

2. At the outset, the Chairman welcomed the Members to the meeting of the Committee. He informed the Members that the Committee will hear the views of three domain experts Dr. Vikram Singh, former Director-General of Police, Prof. Naveen Chaudhary, National Forensic Sciences University and Ms. Sonia Mathur, Senior Advocate on the three Bills, namely, The Bharatiya Nyaya Sanhita, 2023; The Bharatiya Nagarik Suraksha Sanhita, 2023; and The Bharatiya Sakshya Bill, 2023. xxx xxx xxx

(On arrival of witness)

3. The Chairman welcomed Dr. Vikram Singh, former Director-General of Police and asked him to present his views on the implications that the three proposed laws are going to have on the criminal justice system.

4. xxx xxx xxx

xxx Relates to other matters

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10. The Chairman and Members also raised some queries on xxx xxx
xxx confession made before police officer under 26 of the Evidence Act should be
admissible; etc. The witness replied to the queries. He was requested to send the
additional information, if any, and the replies to the queries that remain
unanswered in three days.

(The witness then withdrew)

11. The Chairman welcomed Prof. Naveen Chaudhury, National Forensic
Sciences University and requested him to present his views on the proposed Bills
and the implications they are going to have on the criminal justice system.

12. Prof. Naveen Chaudhury informed the Committee that he will present his
view on “The Bharatiya Sakshya Bill, 2023”. At first he apprised the Committee
about the overview of existing laws relating to electronic evidence in India. He
informed that Section 65B of the Indian Evidence Act 1872 deals with the
admissibility of electronic records along with paper based documents. It classifies
evidence into oral and documentary categories. Evidence is also classified into
primary and secondary evidence. Primary evidence means presenting the original
electronic record before the court, whereas secondary evidence includes the
computer output content of the electronic record and its digital copies. Whenever
any digital record or electronic evidence is presented as secondary evidence, it
requires a certificate in this regard. The new bill has format for certificate. In this,
the format of the certificate should be a uniform format, so that the scholars and
legal experts associated with this field do not face any problem in the admissibility
of secondary evidence. The new Bill has provisions to take data from emails, logs,
laptops, data centers, clouds, digital platforms etc.

13. He informed that apart from computers, all those devices which can
communicate, which have storage and processing power, all these new platforms
of technologies such as drones, mobile phones, laptops, CCTV, DVR (Digital
Video Recorder) should be brought under this Section, which will help in

xxx Relates to other matters

RAJYA SABHA

**MINUTES OF THE MEETING OF DEPARTMENT-RELATED
PARLIAMENTARY STANDING COMMITTEE
ON HOME AFFAIRS**

I

FIRST MEETING

The Committee met at 11:00 a.m. on Wednesday, the 13th September, 2023 in Main Committee Room, Ground Floor, Parliament House Annexe, New Delhi.

MEMBERS PRESENT

RAJYA SABHA

1. **Shri Brij Lal** - **Chairman**
2. Shri P. Chidambaram
3. Shri Biplab Kumar Deb
4. Shri N. R. Elango
5. Dr. Anil Jain
6. Shri Sujeet Kumar
7. Shri Derek O' Brien
8. Shri Neeraj Shekhar
9. Shri Digvijaya Singh
10. Shri Rakesh Sinha

LOK SABHA

11. Shri SanjayBhatia
12. Shri Dilip Ghosh
13. Shri Dulal Chandra Goswami
14. Shri Raja Amareshwara Naik
15. Shri Ranjeetsingh Naik Nimbalkar
16. Shri Gajendra Singh Patel
17. Shri Lalubhai Babubhai Patel
18. Shri Vishnu Dayal Ram
19. Shri Rahul Ramesh Shewale
20. Shri Ravneet Singh

21. Dr. Satya Pal Singh

SECRETARIAT

Shri Swarabji B., Joint Secretary
Shri Ravinder Kumar, Director
Shri Goutam Kumar, Deputy Secretary
Shri Sreejith V., Deputy Secretary
Smt. Neelam Bhatt, Under Secretary

WITNESSES

Domain Experts

- i. Shri Jagdish Rana, Advocate
- ii. Shri Anand Dey, Advocate
- iii. Dr. Pinky Anand, Sr. Advocate and Former Addl. Solicitor General of India.
- iv. General of India.

Representatives of the Ministry of Law & Justice

Shri R.K. Pattanayak, Addl. Legislative Counsel

2. At the outset, the Chairman welcomed the Members to the meeting of the Committee. He informed the Members that as per agenda, the Committee has invited three domain experts *i.e.* Shri Jagdish Rana, Advocate; Shri Anand Dey, Advocate; and Dr. Pinky Anand, Sr. Advocate and former Addl. Solicitor General of India to hear their views on the three Bills, namely, The Bharatiya Nyaya Sanhita, 2023; The Bharatiya Nagarik Suraksha Sanhita, 2023; and The Bharatiya Sakshya Bill, 2023.

3. Before, calling the witness, the Chairman requested some Members of the Committee to present their views on the proposed Bills who have requested to do so. One of the Committee members mentioned that general statutes of criminal laws have to be crafted with utmost care and views of the experts from varied fields may be heard while examining the three Criminal Laws Bills. He expressed his views on the various aspects of the Bills. He mentioned that there are some positive changes in the proposed Bills, however there are negative aspects too. He is of the view that the title of the Bills could be in English. He had also pointed out that in the Committee constituted by the Ministry of Home Affairs to review the 3 Bills, there were no women, Dalits, Advasis, LGBTQ, Minorities, persons with disabilities. He had also commented that the special laws are being absorbed into

general criminal law without necessary procedural safeguards. He further mentioned that the Committee may call domain experts like Judges from Supreme Court and High Courts, Bar Council of States, Supreme Court Bar Association, Senior practitioners of criminal law, legal scholars, experts in juvenile justice, prison officials and reform advocates, etc. The Committee could also hear the views of International organizations, ethnic and religious groups, regional human rights organizations and media. He also provided names of the some domain experts who could be invited to appear before the Committee to express their views on the proposed Bills

(On arrival of witness)

4. The Chairman welcomed Shri Jagdish Rana, Advocate and requested him to present his views on the proposed Bills and the implications they are going to have on the criminal justice system.

5. Shri Jagdish Rana informed the Committee that he will present his views and suggestions on 'The Bharatiya Sakshya Bill, 2023' (BSB) which has been proposed to replace Indian Evidence Act, 1872. He informed that this Bill is a huge step, it is for the greater good and it also widens the scope of secondary evidence by including evidences in electronic form and soft copy. He discussed about the various clauses of the Bill and suggested his views on these clauses. In respect of Clause 2(1) (c) he informed that illustrations covers a vast range of electronic documents which intends to remove the difficulty faced at trial level and in Clause 2(1)(e) - Scope of 'evidence' has been enlarged; He informed further in Clause 31, some colonial terms deserved to be omitted which are unnecessary and redundant in present day.

6. He expressed his views on Clause 32 and opines that addition of words such as "including in electronic or digital form under the authority of the Government", "including in electronic or digital form" is a step forward to match the present advanced digital era. Regarding Clause 57 which pertains to primary evidence, he informed that new explanations have been added which are insufficient and need more illustrations to better explain the wish of the Bill. In Clause 58, new Sub clauses have been included which will facilitate the adjudication and the courts will be relieved of keeping and maintaining bulky records. He is of the view that Clause 61 will bring a drastic change in the dispensation of justice. By this provision, the electronic or digital record has been brought at par with the paper record. Explanation added to the Clause 81 is relevant for that Clause. Schedule Part B in the Bill is for the Expert and is a good addition as it would make it easy for the Experts to produce all the required and important information about the device and the evidence or record it contains.

7. He also suggested changes in some other Clauses which inter-alia included that in Clause 3(b), instead of words ‘Bharatiya Nagarika Suraksha Sanhita, 2023’ it should be ‘Code of Civil Procedure’; in Clause 36, instead of Section 31, the proper Section should be Section 35 as Section 35 deals with relevancy of certain judgments; in Clause 50 instead of Section 59 the proper Section should be Section 49 as Section 49 deals with previous bad character not relevant, except in reply; in Clause 62 instead of Section 59, the proper Section should be Section 63 which pertains to admissibility of electronic records. He further suggested that in Clause 93 “Explanation to Section 84 shall also apply to this Section” can be omitted as there is no Explanation to the Section 84.

8. He informed that Clause 63 which corresponds to Section 65B of Indian Evidence Act, 1872 has some major changes and a more modern approach. Addition of word communication device along with computer all over the Clause helps including every digital device which can be used for communication as computer is a very specific term and leaves a lot of loopholes and hindrances for the investigating authorities as many of the crimes are committed through various small communication devices.

9. He also informed that Schedule Part A of the Bill would be of a great help to all the litigants and the investigating agencies as it is seen that most of the police personnel do not have any set pattern to produce certificates regarding electronic evidence. However Part A does not fulfill the desire of Section 63 as the certificate does not meet the requirements of Sub Clause 2 as it does not give any declaration as to the lawful control of the person presenting the record and no declaration about the condition of the device etc.

10. The witness replied to the queries raised and clarifications sought by the Chairman and the Members. With regard to the queries that remained unanswered, the witness was asked to furnish written replies to the Secretariat within 3 days.

(The witness then withdrew)

11. The Chairman welcomed Shri Anand Dey, Advocate and requested him to present his views on the proposed Bills and the implications they are going to have on the criminal justice system.

12. Shri Anand Dey informed the Chairman and Members of the Committee that these bills may form the foundation for Criminal Justice Administration and would be imperative for smooth and transparent functioning of the democracy. He informed that however, some corrections and changes are required in the proposed Bills.

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17. xxx xxx xxx

(The witness then withdrew)

18. Thereafter, the Chairman welcomed Dr. Pinky Anand, Sr. Advocate and former Addl. Solicitor General of India and asked to make her presentation on the proposed Bills.

19. xxx xxx xxx
20. xxx xxx xxx
21. xxx xxx xxx

22. She also presented her views on Bhartiya Sakshya Bill, 2023, (BSB). She informed that in this Bill electronic evidence and digital records have been incorporated, it has provisions for expanding the scope of secondary evidence, and joint trials for the absconding accused.

23. xxx xxx xxx

The witness replied to the queries. With regard to additional information, the witness was asked to furnish written inputs to the Secretariat within 3 days.

(The witnesses then withdrew)

24. A Verbatim record of the proceedings of the meeting of the Committee was kept.

25. The meeting was adjourned at 03:23 p.m.

New Delhi
13th September, 2023

RAVINDER KUMAR
DIRECTOR

RAJYA SABHA

**MINUTES OF THE MEETING OF DEPARTMENT-RELATED
PARLIAMENTARY STANDING COMMITTEE
ON HOME AFFAIRS**

II

SECOND MEETING

The Committee met at 03:00 p.m. on Friday, the 22nd September, 2023 in Committee Room '2', Parliament House Annexe Extension, New Delhi.

MEMBERS PRESENT

RAJYA SABHA

1. **Shri Brij Lal** - **Chairman**
2. Shri Sujeet Kumar
3. Shri Derek O' Brien
4. Shri Neeraj Shekhar
5. Shri Digvijaya Singh
6. Shri Rakesh Sinha

LOK SABHA

7. Shri Adhir Ranjan Chowdhury
8. Shri Dilip Ghosh
9. Shri Dulal Chandra Goswami
10. Shri Raja Amareshwara Naik
11. Shri Jamyang Tsering Namgyal
12. Shri Gajendra Singh Patel
13. Shri Vishnu Dayal Ram
14. Shri Rahul Ramesh Shewale
15. Shri Ravneet Singh
16. Dr. Satya Pal Singh
17. Shrimati Geetha Viswanath Vanga
18. Shri Dinesh Chandra Yadav

SECRETARIAT

Shri Swarabji B., Joint Secretary
Shri Ravinder Kumar, Director
Shri Goutam Kumar, Deputy Secretary
Shri Sreejith V., Deputy Secretary
Smt. Neelam Bhatt, Under Secretary

WITNESSES

Domain Experts

- i. Justice Ritu Raj Awasthi, Chairman, Law Commission of India.
- ii. Dr. Adish C. Aggarwala, (Sr. Advocate), President, Supreme Court Bar Association.

Representatives of the Ministry of Law & Justice

- i. Shri Vinay Kumar Mishra, Deputy Legislative Counsel.
- ii. Shri Shanti Bhushan, Deputy Legislative Counsel.

2. At the outset, the Chairman welcomed the Members to the meeting of the Committee. He informed the Members that as per agenda, the Committee has invited two domain experts to hear their views on the three Bills, namely, The Bharatiya Nyaya Sanhita, 2023; The Bharatiya Nagarik Suraksha Sanhita, 2023; and The Bharatiya Sakshya Bill, 2023.

(On arrival of witness)

3. The Chairman welcomed Justice Ritu Raj Awasthi, Chairman, Law Commission of India and requested him to present his views on the proposed Bills and the implications they are going to have on the criminal justice system.

4. Justice Ritu Raj Awasthi informed the Committee that the proposed Bills are need of the hour and amendments of the existing criminal laws are required. He mentioned that he will present his views and suggestions on all the three Bills. As

regards, ‘The Bharatiya Sakshya Bill, 2023’ (BSB) which has been proposed to replace Indian Evidence Act, 1872, he informed that there is not much change in the new Bill, except electronic evidence and the new technology has been incorporated. He mentioned that there are some typographical and cross referencing errors in the Bill that *inter alia* included in Clause 1(2), instead of word ‘applies’, word ‘apply’ should be used; in Clause 1(3), the words ‘in the Official Gazette’ should be added after the word ‘notification’; in illustration (b) of Clause 3, the term Bharatiya Nagarik Suraksha Sanhita 2023 to be replaced by Code of Civil Procedure; in Clause 19(1), reference of Clause 23 needs to be replaced with Clause 26 and the same applies to the illustration also; in Clause 36, referring of Clause 31 needs to be replaced with Clause 35; in Explanation part of Clause 50, instead of Clause 59, references should be made to Clause 49; in Clause 62 instead of referring to Clause 59, reference should be made to Clause 63; in illustration (c) of Clause 108, Clause 325 should be replaced by Clause 115 of BNS and Clause 335 should be replaced by Clause 120 of BNS.

5. Apart from above, he also suggested changes in Explanation part of Clause 120, and proviso to Clause 149, in both the cases he suggested that the term Bharatiya Nagarik Suraksha Sanhita 2023 should be replaced by Bharatiya Nyaya Sanhita, 2023. In explanation part of Clause 124, he suggested that the term ‘mental illness’ should either be replaced by the words, ‘unsound mind’ or ‘lunatic’ or otherwise the term ‘mental illness’ needs to be defined clearly under Clause 124 of the Bill.

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- 9. xxx xxx xxx
- 10. xxx xxx xxx
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12. The Chairman and the Members raised queries and sought clarification on various Clauses of the Billsxxx xxx xxx.
The witness replied to the queries. He was requested to furnish any other information to the Secretariat within 3 days.

xxx Relates to other matters

(The witness then withdrew)

13. The Chairman welcomed Shri Adish C. Agarwala, Senior Advocate, President, Supreme Court Bar Association and requested him to present his views on the proposed Bills and the implications they are going to have on the criminal justice system.

14. Shri Adish C. Agarwala informed the Chairman and Members of the Committee that these Bills have brought some good changes. Provisions that are no longer relevant and which were being criticized by the general public have been removed. With these amendments people will be getting justice at the earliest even though the legal fraternity might face some problems.....xxx xxx
xxx.

15. The Chairman and Members sought clarifications and also made some suggestions xxx xxx xxx...The witness replied to the queries. With regard to additional information, the witness was asked to furnish written inputs to the Secretariat within 3 days.

(The witness then withdrew)

16. A Verbatim record of the proceedings of the meeting of the Committee was kept.

17. The meeting was adjourned at 05:38 p.m.

New Delhi
22nd September, 2023

RAVINDER KUMAR
DIRECTOR

RAJYA SABHA

**MINUTES OF THE MEETING OF DEPARTMENT-RELATED
PARLIAMENTARY STANDING COMMITTEE
ON HOME AFFAIRS**

III

THIRD MEETING

The Committee met at 11:00 a.m. on Saturday, the 23rd September, 2023 in Committee Room '2', Parliament House Annexe- Extension, New Delhi.

MEMBERS PRESENT

RAJYA SABHA

1. **Shri Brij Lal** - **Chairman**
2. Shri P. Chidambaram
3. Shri Biplab Kumar Deb
4. Shri Neeraj Shekhar

LOK SABHA

5. Shri Sanjay Bhatia
6. Shri Dilip Ghosh
7. Shri Dulal Chandra Goswami
8. Shri Jamyang Tsering Namgyal
9. Shri Gajendra Singh Patel
10. Shri Vishnu Dayal Ram
11. Dr. Satya Pal Singh
12. Shrimati Geetha Viswanath Vanga
13. Shri Dinesh Chandra Yadav

SECRETARIAT

Shri Swarabji B., Joint Secretary

Shri Ravinder Kumar, Director
Shri Goutam Kumar, Deputy Secretary
Shri Sreejith V., Deputy Secretary
Smt. Neelam Bhatt, Under Secretary

WITNESSES

Domain Experts

- i. Justice (Retd.) Satish Chandra
- ii. Shri Utkarsh Sharma, Advocate
- iii. Shri K. L. Janjani, Senior Advocate
- iv. Shri Sanjeev Deshpande, Senior Advocate

Representatives of the Ministry of Law & Justice

- i. Shri Vinay Kumar Mishra, Deputy Legislative Counsel.
- ii. Shri Shanti Bhushan, Deputy Legislative Counsel.

2. At the outset, the Chairman welcomed the Members to the meeting of the Committee. He informed the Members that as per agenda four domain experts have been invited to hear their views on the three Bills, namely, The Bharatiya Nyaya Sanhita, 2023; The Bharatiya Nagarik Suraksha Sanhita, 2023; and The Bharatiya Sakshya Bill, 2023.

(On arrival of witnesses)

3. The Chairman welcomed Justice (Retd.) Satish Chandra and Shri Utkarsh Sharma, Advocate to the meeting of the Committee and requested them to present their views on the proposed Bills and the implications they are going to have on the criminal justice system.

- 4. xxx xxx xxx
- 5. xxx xxx xxx
- 6. xxx xxx xxx
- 7. xxx xxx xxx

xxx Relates to other matters

8. He informed that in Bhartiya Sakshya Bill, 2023 (BSB) there are now 170 Section while in existing Evidence Act, there are 167 Sections, amendments are made in 23 Sections, repeal in 5 Sections and only one Section has been added.

9. The Chairman and the Members raised queries and seek clarification on some Clauses of the Bills..... xxx xxx xxx.....
The witness replied to the queries. He was requested to furnish any other information to the Secretariat within 3 days.

(The witnesses then withdrew)

10. Thereafter, the Chairman welcomed Shri K. L. Janjani, Senior Advocate, and requested him to present his views on the proposed Bills and the implications they are going to have on the criminal justice system.

11. xxx xxx xxx

12. xxx xxx xxx

13. xxx xxx xxx

14. The Chairman and the Members raised queries and sought clarification on various Clauses of the Bill. The witness replied to the queries He was requested to furnish any other information to the Secretariat within 3 days.

(The witness then withdrew)

15. The Chairman welcomed Shri Sanjeev Deshpande, Senior Advocate, and requested him to present his views on the proposed Bills and the implications they are going to have on the criminal justice system.

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20. The Chairman and the Members raised some queries and sought clarification on some of his observations and suggestions on the Clauses of the Bill. The

xxx Relates to other matters

witness replied to the queries. He was requested to furnish any other information to the Secretariat within 3 days.

(The witness then withdrew)

21. A Verbatim record of the proceedings of the meeting of the Committee was kept.

22. The meeting was adjourned at 04:29 p.m.

New Delhi
23rd September, 2023

RAVINDER KUMAR
DIRECTOR

**MINUTES OF THE MEETING OF DEPARTMENT-RELATED
PARLIAMENTARY STANDING COMMITTEE
ON HOME AFFAIRS**

IV

FOURTH MEETING

The Committee met at 11:00 a.m. on Tuesday, the 3rd October, 2023 in Committee Room '2', Parliament House Annexe- Extension, New Delhi.

MEMBERS PRESENT

RAJYA SABHA

- 1. Shri Brij Lal - Chairman**
2. Shri P. Chidambaram
3. Shri Biplab Kumar Deb
4. Shri N.R. Elango
5. Dr. Anil Jain
6. Shri Derek O'Brien
7. Shri Neeraj Shekhar
8. Shri Rakesh Sinha

LOK SABHA

9. Shri Sanjay Bhatia
10. Dr. (Smt.) Kakoli Ghosh Dastidar
11. Shri Dilip Ghosh
12. Shri Dulal Chandra Goswami
13. Shri Ranjeetsingh Naik Nimbalkar
14. Shri Lalubhai Babubhai Patel
15. Shri R.K. Singh Patel
16. Shri Vishnu Dayal Ram

SECRETARIAT

Shri S. Jason, Joint Secretary
Shri Ravinder Kumar, Director
Shri Goutam Kumar, Deputy Secretary
Shri Sreejith V., Deputy Secretary
Smt Neelam Bhatt, Under Secretary

WITNESSES

Domain Experts

- i. Prof. (Dr.) Faizan Mustafa, Former Vice-Chancellor, NALSAR
- ii. Dr. Aditya Sondhi, Sr. Advocate
- iii. Shri Amit Desai, Sr. Advocate
- iv. Shri Priyank Kanoongo, Chairperson, National Commission for Protection of Child Rights

Representatives of the Ministry of Law & Justice

- i. Shri Vinay Kumar Mishra, Deputy Legislative Counsel.
- ii. Shri Shanti Bhushan, Deputy Legislative Counsel.

2. At the outset, the Chairman welcomed the Members to the meeting of the Committee. He informed the Members that as per today's agenda the Committee will hear the views of four domain experts on the three Bills, namely, The Bharatiya Nyaya Sanhita, 2023; The Bharatiya Nagarik Suraksha Sanhita, 2023; and The Bharatiya Sakshya Bill, 2023. He also apprised the Members that before the Committee proceeds with the agenda, Shri P. Chidambaram will present his views on Bhartiya Nyaya Sanhita, 2023 (BNS) as requested by him.

3. Some of the Members had also expressed their wish to present their views on the proposed Bills. The Chairman acceded to their request and informed them that they may present their views in the next meeting of the Committee.

4. xxx xxx xxx

(On arrival of witness)

5. The Chairman welcomed Prof. Faizan Mustafa, Former Vice-Chancellor National Academy of Legal Studies and Research (NALSAR), Hyderabad to the meeting of the Committee and requested him to present his views on the proposed Bills and the implications they are going to have on the criminal justice system.

6. xxx xxx xxx

7. xxx xxx xxx

8. xxx xxx xxx

9. He informed that not much has been done in Bhartiya Sakshya Bill, 2023 (BSB). He stated that definitions given in the Evidence Act, 1872 of terms like 'Proved', 'Disproved', 'Not Proved', 'evidence' have not been improved and no change has been made in 'Dying Declaration' and burden of proof. There is no provision for witness protection scheme in this Bill, it should not be left on the States to bring law on it. He also informed that proof of preponderance of probabilities has not been included in the Bill.

10. The witness replied to the queries raised and clarifications sought by the Chairman and the Members. He was requested to furnish any other information to the Secretariat within 3 days.

(The witness then withdrew)

11. The Chairman welcomed Shri Aditya Sondhi, Sr. Advocate and requested him to present his views on the proposed Bills and the implications they are going to have on the criminal justice system.

12. xxx xxx xxx

13. xxx xxx xxx

14. The Chairman and Members raised some queries related to completely removing the death penalty from the penal code and are of the view that it can be retained in rarest of rare case. The witness replied to the queries. He was requested to furnish any other information to the Secretariat within 3 days.

(The witness then withdrew)

xxx Relates to other matters

15. The Chairman welcomed Shri Amit Desai, Sr. Advocate and requested him to present his views on the proposed Bills and the implications they are going to have on the criminal justice system.

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18. xxx xxx xxx

19. xxx xxx xxx

20. The Chairman and Members raised some queries, the witness replied to them. With regard to additional information, the witness was asked to furnish written inputs to the Secretariat within 3 days.

(The witness then withdrew)

21. The Chairman welcomed Shri Priyank Kanoongo, Chairperson, Chairperson, National Commission for Protection of Child Rights and requested him to present his views on the proposed Bills and the implications they are going to have on the criminal justice system.

22. xxx xxx xxx

23. xxx xxx xxx

24. The Chairman and the Members raised some queries and sought clarification on some of the suggestions made on the Clauses of the Bill. The witness replied to the queries. He was requested to furnish any other information to the Secretariat within 3 days.

(The witness then withdrew)

25. A Verbatim record of the proceedings of the meeting of the Committee was kept.

26. The meeting was adjourned at 04:22 p.m.

New Delhi
3rd October, 2023

RAVINDER KUMAR
DIRECTOR

**MINUTES OF THE MEETING OF DEPARTMENT-RELATED
PARLIAMENTARY STANDING COMMITTEE
ON HOME AFFAIRS**

V

FIFTH MEETING

The Committee met at 11:00 a.m. on Wednesday, the 4th October, 2023 in Committee Room '2', Parliament House Annexe- Extension, New Delhi.

MEMBERS PRESENT

RAJYA SABHA

1. **Shri Brij Lal** - **Chairman**
2. Shri P. Chidambaram
3. Shri Biplab Kumar Deb
4. Shri N.R. Elango
5. Dr. Anil Jain
6. Shri Derek O'Brien
7. Shri Neeraj Shekhar
8. Shri Rakesh Sinha

LOK SABHA

9. Shri Sanjay Bhatia
10. Dr. (Smt.) Kakoli Ghosh Dastidar
11. Shri Dilip Ghosh
12. Shri Dulal Chandra Goswami
13. Shri Ranjeetsingh Naik Nimbalkar
14. Shri Jamyang Tsering Namgyal
15. Shri Lalubhai Babubhai Patel
16. Shri R.K. Singh Patel
17. Shri Vishnu Dayal Ram

SECRETARIAT

Shri S. Jason, Joint Secretary
Shri Ravinder Kumar, Director
Shri Goutam Kumar, Deputy Secretary
Shri Sreejith V., Deputy Secretary
Smt. Neelam Bhatt, Under Secretary
Smt. Prabita Khoyumthem, Deputy Director

WITNESSES

Representatives of the Ministry of Home Affairs

- i Shri Ajay Kumar Bhalla, Home Secretary
- ii Shri Satpal Chouhan, DG (Awards)
- iii Shri Shri Prakash, Joint Secretary (Judicial)

Representatives of the Ministry of Law & Justice

- i. Shri Diwakar Singh, JS & Legislative Counsel.
- ii. Shri R. K. Pattanayak, Addl. Legislative Counsel.

2. At the outset, the Chairman welcomed the Members to the meeting of the Committee. He informed the Members that as per agenda the Committee will take up Clause-by-Clause discussion on the three Bills, namely, the Bharatiya Nyaya Sanhita, 2023; the Bharatiya Nagarik Suraksha Sanhita, 2023; and the Bharatiya Sakshya Bill, 2023. He also informed that before proceeding, the Committee will hear the views of some members who wished to express their views on the Bills or with regard to any Clause of the Bills. Then, he requested Shri Derek O'Brien to express his views on the Bills, followed by Shri P. Chidambaram and Shri N.R. Elango.

3. Shri Derek O'Brien expressed that there is a need to hear more domain experts and stakeholders on the proposed criminal law Bills to have valuable inputs on these Bills. He suggested names of stakeholders whose views could be heard on the proposed Bills. He stated that Clause by clause consideration of the Bills needs

to be deferred as there are numerous drafting errors.....xxx xxx xxx. He stated that the titles of the English version of the Bills should be in English.....xxx xxx xxx.

4. Thereafter, Shri P. Chidambaram also expressed that Clause-by-Clause consideration should be postponed.....xxx xxx xxx. He pointed out flaws in Clause 63 of the Bharatiya Sakshya Bill, 2023 (BSB) which has been brought in place of Section 65B of The Indian Evidence Act, 1872.....xxx xxx xxx.

5. Thereafter, Shri N.R. Elango expressed that no major new provisions and reforms have been introduced in the proposed criminal law Bills. The fundamental rights whether those of the accused or of the victim, are not taken care of in these Bills. He informed that there are a lot of drafting mistakes in these Bills and there is a need to have larger discussion with Bar associations, judges, stakeholders etc. to have better understanding on them. He observed that these Bills are bringing more stringent laws than what is already there, provision of death penalty is still there, it has not been removed.

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8. xxx xxx xxx

9. xxx xxx xxx

10. Thereafter, he touched upon some Clause of the BSB. He informed that the addition of the words 'any information' in the definition of evidence in Clause 2(1)(e) makes the interpretation very confusing and needs to be omitted. In Clause 26, the earlier law states that the statements so given are themselves relevant facts, but in BSB it is either facts-in-issue or relevant facts. They are two different and diametrically opposite concepts, therefore, facts in issue should be deleted. He informed in Clause 63 there is provision for Part A certificate. He suggested that instead of this, the chain of custody of relevant documents or relevant gadgets should be explored as being done in various developed countries and it should be made mandatory in this Bill.

(On arrival of witnesses)

xxx Relates to other matters

11. The Chairman welcomed the officers of the Ministry of Home Affairs and the Ministry of Law and Justice to this meeting. He requested Home Secretary to assist the Committee in Clause-by-Clause discussion on the three Bills and to clarify and solve the queries raised by the Members of the Committee on Clauses of the Bills, if so required.

12. He informed that the Committee has received many representations and suggestions from private individuals and organisations, Members of Parliament, ex-Member of Parliament and State Governments, which were taken up with the Ministry of Home Affairs for their comments. Based on the number of suggestions received on these Bills, the Ministry has prepared a statement containing Clause-wise suggestions along with their comments which has been circulated to the Members for reference.

13. The Home Secretary informed the Committee that the Ministry looked at all the suggestions from Members as well as experts and the typographical mistakes which were pointed out and has prepared their response. Before taking up clause-by-clause consideration, he stated that regarding the names of the Bills, the Ministry will suggest that the names will be retained as has been proposed by the Ministry. The texts of the Bills are in English, it does not violate the provisions of article 348 of the Constitution, however, the Committee could take a final view in this regard.

14. xxx xxx xxx

15. xxx xxx xxx

16. xxx xxx xxx

17. xxx xxx xxx

18. Thereafter, Bharatiya Sakshya Bill was taken up for Clause by Clause discussion. The Home Secretary stated that in Clause 1(2) there is a suggestion that instead of the word ‘applies’ the word ‘apply’ should be used, which will be accordingly corrected. In Clause 1(3), certain suggestions were given with respect to notification and he agreed to it. In Clause 2(1)(c) which relates to definition of ‘document’, suggestion was to include the verification of the source of electronic and digital records, since definition has already been expanded, it was not accepted. In Clause 2(1) (e) which relates to definition of ‘evidence’ there was a suggestion that the words "any information" are not required, for which the Ministry agreed to look into it. In Clause 3 which deals with relevance of facts, suggestions were there to make corrections in cross-references, similarly, in Clause

xxx Relates to other matters

19 and it was agreed to. In Clause 23 which deals with confession to police officer, there were suggestions to make it admissible if it is made before a certain level of officer, however, the Ministry did not agree with it.

19. Apart from these, changes were suggested in some other clauses of the Bill. In Clause 24, there was suggestion that the provision of joint trial in the absence of the absconding person can increase the probability of multitude of challenges as charges would be framed against a person in absentia. It was explained by the Ministry that an explanation has been inserted to facilitate evidence in respect of the proclaimed offender. In Clause 26 which deals with statement of facts in issue or relevant fact, there was a suggestion that fact in issue is different from relevant facts, therefore, it should be only relevant facts and the Ministry agreed to it. In Clause 36 which deals with relevancy and effect of judgments, orders, decrees, etc., there were suggestions to make corrections in cross-references of sections and which was agreed to by the Ministry. In Clause 57 which pertains to primary evidence, there was a suggestion that Explanations under the Clause are insufficient and need more illustrations to better explain the wish of the Bill. The Home Secretary informed that Ministry felt there is no need for further illustration. However, a Member of the Committee suggested that chain of custody of relevant documents or relevant gadgets should be proved from the date of seizure to the production as being done in various developed countries, rules and laws have to be framed for that, otherwise it can be misused on a very large scale. Considering the suggestion, the Ministry agreed to work on it. In Clause 61 which relates to admissibility of electronic records, there was a suggestion to add a proviso to this clause in line with the amended section 63 of the Adhinyam, the Ministry felt that no change is required in this Clause. There was a suggestion to re-look the Certificate as provided in Clause 63 which corresponds to Section 65(B) of The Indian Evidence Act, 1872 as some necessary elements of Section 65(B) have not been incorporated in this Clause. The Home Secretary agreed to relook into the issue. There were some other minor suggestions pertaining to cross references errors and typographical errors in Clauses 50, 62, 81, 92, 93, 108, 120, 149 etc. which was agreed to by the Ministry. It was also suggested by a Member to consider deleting Clause 138 as it is contradictory to Clause 119 which was also agreed by the Ministry.

20. The Members of the Committee raised queries and sought clarifications from the Home Secretary on the Bill. He replied to them. Thereafter, the Chairman informed that the Clause by Clause discussion on the remaining Bill will be taken up in the next meeting.

(The witnesses then withdrew)

21. A Verbatim record of the proceedings of the meeting of the Committee was kept.

22. The meeting was adjourned at 04:04 p.m.

New Delhi
4th October, 2023

RAVINDER KUMAR
DIRECTOR

RAJYA SABHA

**MINUTES OF THE MEETING OF DEPARTMENT-RELATED
PARLIAMENTARY STANDING COMMITTEE
ON HOME AFFAIRS**

VI

SIXTH MEETING

The Committee met at 12:00 p.m. on Thursday, the 5th October, 2023 in Committee Room '2', Parliament House Annexe Extension, New Delhi.

MEMBERS PRESENT

RAJYA SABHA

1. **Shri Brij Lal** - **Chairman**
2. Shri P. Chidambaram
3. Shri Biplab Kumar Deb
4. Shri N. R. Elango
5. Dr. Anil Jain
6. Shri Neeraj Shekhar
7. Shri Rakesh Sinha

LOK SABHA

8. Shri SanjayBhatia
9. Shri Dilip Ghosh
10. Shri Dulal Chandra Goswami
11. Shri Jamyang Tsering Namgyal
12. Shri Lalubhai Babubhai Patel
13. Shri R.K. Singh Patel
14. Shri Vishnu Dayal Ram
15. Dr. Satya Pal Singh

SECRETARIAT

Shri S. Jason, Joint Secretary
Shri Ravinder Kumar, Director
Shri Goutam Kumar, Deputy Secretary
Shri Sreejith V., Deputy Secretary
Smt. Neelam Bhatt, Under Secretary
Smt. Prabita Khoyumthem, Deputy Director

Shri Rajesh N. Naik, OSD to Vice-President of India

WITNESSES

Representatives of the Ministry of Home Affairs

- i Shri Ajay Kumar Bhalla, Home Secretary
- ii Shri Satpal Chouhan, DG (Awards)
- iii Shri Shri Prakash, Joint Secretary (Judicial)

Representatives of the Ministry of Law & Justice

- i. Shri Diwakar Singh, JS & Legislative Counsel.
- ii. Shri R. K. Pattanayak, Addl. Legislative Counsel.

2. At the outset, the Chairman welcomed the Members to the meeting of the Committee and informed them that the Committee will take up Clause-by-Clause discussion.....xxx xxx xxx.

(On arrival of witnesses)

- 3. xxx xxx xxx
- 4. xxx xxx xxx
- 5. xxx xxx xxx. He stated that as regards the name of the Bill, it had been informed earlier, that the Ministry will retain it as has been proposed by it. The texts of the Bill are in English, it does not violate the

xxx Relates to other matters

provisions of article 348 of the Constitution, however, the Committee could take a final view in this regard.

- 6. xxx xxx xxx
- 7. xxx xxx xxx
- 8. xxx xxx xxx
- 9. xxx xxx xxx
- 10. xxx xxx xxx
- 11. xxx xxx xxx

12. The Members of the Committee raised some queries on various aspects of the Bill.....xxx xxx xxx. The Home Secretary replied to the queries of the Members and also clarified the stand of the Ministry with regard to suggestions of the Members and other speakers on various Clauses of the Bill.

(The witnesses then withdrew)

13. A Verbatim record of the proceedings of the meeting of the Committee was kept.

14. The meeting was adjourned at 04:23 p.m.

New Delhi
5th October, 2023

RAVINDER KUMAR
DIRECTOR

RAJYA SABHA

**MINUTES OF THE MEETING OF DEPARTMENT-RELATED
PARLIAMENTARY STANDING COMMITTEE
ON HOME AFFAIRS**

VII

SEVENTH MEETING

The Committee met at 12:00 noon on Friday, the 27th October, 2023 in Committee Room '2', Parliament House Annexe Extension, New Delhi.

MEMBERS PRESENT

RAJYA SABHA

1. **Shri Brij Lal** - **Chairman**
2. Shri Biplab Kumar Deb
3. Shri N. R. Elango
4. Dr. Anil Jain
5. Shri Sujeet Kumar
6. Shri Derek O'Brien
7. Shri Neeraj Shekhar
8. Shri Rakesh Sinha

LOK SABHA

9. Shri Sanjay Bhatia
10. Shri Adhir Ranjan Chowdhury
11. Dr. (Smt) Kakoli Ghosh Dastidar
12. Dr. Nishikant Dubey
13. Shri Dilip Ghosh
14. Shri Raja Amareshwara Naik
15. Shri Jamyang Tsering Namgyal
16. Shri Gajendra Singh Patel
17. Shri Lalubhai Babubhai Patel
18. Shri R.K. Singh Patel
19. Shri Vishnu Dayal Ram
20. Shri Rahul Ramesh Shewale
21. Shri Ravneet Singh

SECRETARIAT

Shri S. Jason, Joint Secretary
Shri Ravinder Kumar, Director
Shri Goutam Kumar, Deputy Secretary
Shri Sreejith V., Deputy Secretary
Smt. Neelam Bhatt, Under Secretary
Smt. Prabita Khoyumthem, Joint Director

2. At the outset, the Chairman welcomed the Members to the meeting of the Committee. xxx xxx Proceeding further, he informed the Members that the Committee was scheduled to consider and adopt the draft xxx xxx 248th Reports on the proposed criminal laws Bills. However, on the request received from some members to allow more time for the Members to go through the three draft Reports, he proposed that the consideration and adoption of the reports be postponed to November 6, 2023. The Committee, accordingly, agreed.

3. xxx xxx xxx

4. Thereafter, few Members made certain suggestions on some of the recommendations in the three draft Reports. xxx xxx xxx

5. xxx xxx xxx

6. xxx xxx xxx

7. As regards, Bharatiya Sakshya Bill (BSB), 2023 it was submitted before the Committee that there is a need to amend the clause 23(1) to make confession made by an accused before the police officer admissible in court; and there is no need to exhibit police documents like FIR, seizure memo, recovery memo, disclosure statement of the accused under section 27 of the Indian Evidence Act, 1872.

8. Some of the general observations made before the Committee *inter alia* included - the criminal law Bills should not be hastily taken up for consideration; more deliberation is required on the Bills; views of the High Courts, Bar Council of India, State Bar Councils, Advocate Associations, Bar Associations, Senior Advocates, Women Lawyers Associations and eminent jurists need to be sought; need to consult more stakeholders before preparing any report on the Bills; request

xxx Relates to other matters

to extend the deadline for presenting the Reports; and to request to provide sufficient time for submitting dissent notes.

9. With respect to extension of time for submission of Reports, the Chairman clarified that on 7th September, 2019, the Ministry of Home Affairs wrote letters to all the Governments, Governors, Chief Ministers, Lieutenant Governors, Administrators of the States and Union Territories, requesting them to send their suggestions on comprehensive amendment to the criminal laws. Further, on 6th January, 2020 and on 9th January, 2020, suggestions were also sought from Chief Justice of India, Chief Justices of all High Courts, Bar Councils and Law Universities/institutions and on 31st December, 2021, the Ministry also requested Members of Parliament, both Lok Sabha and Rajya Sabha to give their suggestions. This clearly shows an elaborate exercise had been undertaken by the Ministry before drafting the Bills. Moreover, the Secretariat also wrote to all the Chief Secretaries inviting suggestions from the respective State Governments on the three Bills.

10. A Verbatim record of the proceedings of the meeting of the Committee was kept.

11. The meeting was adjourned at 01:02 p.m.

New Delhi
27th October, 2023

RAVINDER KUMAR
DIRECTOR

RAJYA SABHA

**MINUTES OF THE MEETING OF DEPARTMENT-RELATED
PARLIAMENTARY STANDING COMMITTEE
ON HOME AFFAIRS**

VIII

EIGHTH MEETING

The Committee met at 12:00 noon on Monday, the 06th November, 2023 in Committee Room '2', Parliament House Annexe Extension, New Delhi.

MEMBERS PRESENT

RAJYA SABHA

1. **Shri Brij Lal** - **Chairman**
2. Shri P. Chidambaram
3. Shri Biplab Kumar Deb
4. Shri N. R. Elango
5. Dr. Anil Jain
6. Shri Derek O'Brien
7. Shri Neeraj Shekhar
8. Shri Rakesh Sinha

LOK SABHA

9. Shri Sanjay Bhatia
10. Dr. Nishikant Dubey
11. Shri Dilip Ghosh
12. Thiru Dayanidhi Maran
13. Shri Raja Amareshwara Naik
14. Shri Ranjeetsingh Naik Nimbalkar
15. Shri Jamyang Tsering Namgyal
16. Shri Lalubhai Babubhai Patel
17. Shri R.K. Singh Patel
18. Shri Vishnu Dayal Ram
19. Shri Rahul Ramesh Shewale
20. Shri Ravneet Singh
21. Dr. Satya Pal Singh

SECRETARIAT

Shri S. Jason, Joint Secretary
Shri Ravinder Kumar, Director
Shri Goutam Kumar, Deputy Secretary
Shri Sreejith V., Deputy Secretary
Smt. Neelam Bhatt, Under Secretary

2. At the outset, the Chairman welcomed the Members to the meeting of the Committee and informed the Members that the draft 246th, 247th, and 248th Reports on The Bharatiya Nyaya Sanhita (BNS), 2023; The Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023; and The Bharatiya Sakshya Bill (BSB), 2023 respectively would be considered and adopted in the meeting.

3. Before taking up the agenda, the Chairman briefly mentioned the chronology of the three Bills which *inter alia* included - introduction of the Bills in Lok Sabha on 11th August, 2023; referral of the Bills to the DRSC on Home Affairs on 18th August, 2023; Committee's deliberations on the Bills; presentations made by Home Secretary on the Bills; expression of views/suggestions by Members on the Bills; Committee hearing the views of 19 domain experts on the Bills; and Committee holding 12 meetings for examination of the Bills.

4. He also informed the Committee that on 4th and 5th October, 2023, clause-wise comments prepared by the Ministry of Home Affairs (MHA) on the suggestions received by the Committee were discussed. The draft reports were prepared based on the suggestions & deliberations in the Committee, and that the same have been circulated to Members. xxx xxx xxx

5. xxx xxx xxx

6. xxx xxx xxx

7. xxx xxx xxx

8. xxx xxx xxx

9. Continuing the discussions further, some of the Members appreciated the holistic approach of the Government to decolonize the Indian mind and the deliberations of the Committee made on the Bills. The Members also opined that

xxx Relates to other matters

many of the stakeholders have been consulted by the Committee which included academicians, lawyers, judges, etc. It was also suggested that keeping these Bills pending for more time is not desirable and that the Committee Reports on these Bills need to be adopted as soon as possible.

10. xxx xxx xxx

11. xxx xxx xxx

12. xxx xxx xxx

13. Thereafter, the 246th, 247th, and 248th Reports of the Committee were adopted with the broad consensus of the Members. The Committee authorised the Chairman to carry out corrections of typographical/factual errors, if any. The Committee also authorised him to present the Reports to the Hon'ble Chairman, Rajya Sabha, and to forward a copy to the Hon'ble Speaker, Lok Sabha, during the current inter-Session period as both the Houses of Parliament are not in session. The Committee also authorised the Chairman to finalise the date of presentation/laying the Reports in the ensuing Session of Parliament and nominate Members for presentation/laying of Reports in the Rajya Sabha/Lok Sabha.

14. The Chairman then thanked all the Members of the Committee for keenly taking part in the discussions on the Bills and for giving various suggestions on the Bills for streamlining, strengthening, simplifying, and enhancing the efficiency of the criminal justice system. He remarked that the cooperation and contribution of the Members has been indispensable for the successful completion of the examination of the three criminal law Bills, and the preparation of the Reports. He also congratulated the Members for successfully completing the task in a time-bound manner and concluded the meeting.

15. A Verbatim record of the proceedings of the meeting of the Committee was kept.

16. The meeting was adjourned at 02:06 p.m.

New Delhi
06th November, 2023

RAVINDER KUMAR
DIRECTOR

ANNEXURES

AS INTRODUCED IN LOK SABHA

Bill No. 123 of 2023

THE BHARATIYA SAKSHYA BILL, 2023

ARRANGEMENT OF CLAUSES

PART I

CHAPTER I

PRELIMINARY

CLAUSES

1. Short title, application and commencement.
2. Definitions.

PART II

CHAPTER II

RELEVANCY OF FACTS

3. Evidence may be given of facts in issue and relevant facts.
Closely connected facts
4. Relevancy of facts forming part of same transaction.
5. Facts which are the occasion, cause or effect of facts in issue or relevant facts.
6. Motive, preparation and previous or subsequent conduct.
7. Facts necessary to explain or introduce fact in issue or relevant facts.
8. Things said, done by conspirator in reference to common design.
9. When facts not otherwise relevant become relevant.
10. Facts tending to enable Court to determine amount are relevant in suits for damages.
11. Facts relevant when right or custom is in question.
12. Facts showing existence of state of mind, or of body of bodily feeling.
13. Facts bearing on question whether act was accidental or intentional.
14. Existence of course of business when relevant.

Admissions

15. Admission defined.
16. Admission by party to proceeding or his agent.
17. Admissions by persons whose position must be proved as against party to suit.
18. Admissions by persons expressly referred to by party to suit.
19. Proof of admissions against persons making them, and by or on their behalf.
20. When oral admissions as to contents of documents are relevant.
21. Admissions in civil cases when relevant.

(ii)

CLAUSES

22. Confession caused by inducement, threat, coercion or promise, when irrelevant in criminal proceeding.
23. Confession to police officer.
24. Consideration of proved confession affecting person making it and others jointly under trial for same offence.
25. Admissions not conclusive proof, but may estop.

Statements by persons who cannot be called as witnesses

26. Cases in which statement of facts in issue or relevant fact by person who is dead or cannot be found, etc., is relevant.
27. Relevancy of certain evidence for proving, in subsequent proceeding, the truth of facts therein stated.

Statements made under special circumstances

28. Entries in books of account when relevant.
29. Relevancy of entry in public record or an electronic record made in performance of duty.
30. Relevancy of statements in maps, charts and plans.
31. Relevancy of statement as to fact of public nature contained in certain Acts or notifications.
32. Relevancy of statements as to any law contained in law books including electronic or digital form.
33. What evidence to be given when statement forms part of a conversation, document, electronic record, book or series of letters or papers.

Judgments of Courts when relevant

34. Previous judgments relevant to bar a second suit or trial.
35. Relevancy of certain judgments in probate, etc., jurisdiction.
36. Relevancy and effect of judgments, orders or decrees, other than those mentioned in section 35.
37. Judgments, etc., other than those mentioned in sections 34, 35 and 36 when relevant.
38. Fraud or collusion in obtaining judgment, or incompetency of Court, may be proved.

Opinions of third persons when relevant

39. Opinions of experts.
40. Facts bearing upon opinions of experts.
41. Opinion as to hand-writing and digital signature, when relevant.
42. Opinion as to existence of general custom or right, when relevant.
43. Opinion as to usages, tenets, etc., when relevant.
44. Opinion on relationship, when relevant.
45. Grounds of opinion, when relevant.

Character when relevant

46. In civil cases character to prove conduct imputed, irrelevant.

(iii)

CLAUSES

47. In criminal cases previous good character relevant.
48. Evidence of character or previous sexual experience not relevant in certain cases.
49. Previous bad character not relevant, except in reply.
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PART III

ON PROOF

CHAPTER III

FACTS WHICH NEED NOT BE PROVED

51. Fact judicially noticeable need not be proved.
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CHAPTER IV

OF ORAL EVIDENCE

54. Proof of facts by oral evidence.
55. Oral evidence to be direct.

CHAPTER V

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56. Proof of contents of documents.
57. Primary evidence.
58. Secondary evidence.
59. Proof of documents by primary evidence.
60. Cases in which secondary evidence relating to documents may be given.
61. Admissibility of electronic or digital record.
62. Special provisions as to evidence relating to electronic record.
63. Admissibility of electronic records.
64. Rules as to notice to produce.
65. Proof of signature and handwriting of person alleged to have signed or written document produced.
66. Proof as to electronicsignature.
67. Proof of execution of document required by law to be attested.
68. Proof where no attesting witness found.
69. Admission of execution by party to attested document.
70. Proof when attesting witness denies the execution.
71. Proof of document not required by law to be attested.
72. Comparison of signature, writing or seal with others admitted or proved.
73. Proof as to verification of digital signature.

CLAUSES

Public documents

74. Public and private documents.
75. Certified copies of public documents.
76. Proof of documents by production of certified copies.
77. Proof of other official documents.

Presumptions as to documents

78. Presumption as to genuineness of certified copies
79. Presumption as to documents produced as record of evidence, etc.
80. Presumption as to Gazettes, newspapers, and other documents.
81. Presumption as to Gazettes in electronic or digital record.
82. Presumption as to maps or plans made by authority of Government.
83. Presumption as to collections of laws and reports of decisions.
84. Presumption as to powers-of-attorney.
85. Presumption as to electronic agreements.
86. Presumption as to electronic records and electronic signatures.
87. Presumption as to Electronic Signature Certificates.
88. Presumption as to certified copies of foreign judicial records.
89. Presumption as to books, maps and charts.
90. Presumption as to electronic messages.
91. Presumption as to due execution, etc., of documents not produced.
92. Presumption as to documents thirty years old.
93. Presumption as to electronic records five years old.

CHAPTER VI

OF THE EXCLUSION OF ORAL EVIDENCE BY DOCUMENTARY EVIDENCE

94. Evidence of terms of contracts, grants and other dispositions of property reduced to form of document.
95. Exclusion of evidence of oral agreement.
96. Exclusion of evidence to explain or amend ambiguous document.
97. Exclusion of evidence against application of document to existing facts.
98. Evidence as to document unmeaning reference to existing facts.
99. Evidence as to application of language which can apply to one only of several persons.
100. Evidence as to application of language to one of two sets of facts, to neither of which the whole correctly applies.
101. Evidence as to meaning of illegible characters, etc.
102. Who may give evidence of agreement varying terms of document.
103. Saving of provisions of Indian Succession Act relating to Wills.

(v)

PART IV

PRODUCTION AND EFFECT OF EVIDENCE

CHAPTER VII

OF THE BURDEN OF PROOF

CLAUSES

104. Burden of proof.
105. On whom burden of proof lies.
106. Burden of proof as to particular fact.
107. Burden of proving fact to be proved to make evidence admissible.
108. Burden of proving that case of accused comes within exceptions.
109. Burden of proving fact especially within knowledge.
110. Burden of proving death of person known to have been alive within thirty years.
111. Burden of proving that person is alive who has not been heard of for seven years.
112. Burden of proof as to relationship in the cases of partners, landlord and tenant, principal and agent.
113. Burden of proof as to ownership.
114. Proof of good faith in transactions where one party is in relation of active confidence.
115. Presumption as to certain offences.
116. Birth during marriage, conclusive proof of legitimacy.
117. Presumption as to abetment of suicide by a married woman.
118. Presumption as to dowry death.
119. Court may presume existence of certain facts.
120. Presumption as to absence of consent in certain prosecution for rape.

CHAPTER VIII

ESTOPPEL

121. Estoppel.
122. Estoppel of tenants and of licensee of person in possession.
123. Estoppel of acceptor of bill of exchange, bailee or licensee.

CHAPTER IX

OF WITNESSES

124. Who may testify.
125. Witness unable to communicate verbally.
126. Competency of husband and wife as witnesses in certain cases.
127. Judges and Magistrates.
128. Communications during marriage.
129. Evidence as to affairs of State.
130. Official communications.

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131. Information as to commission of offences.
132. Professional communications.
133. Privilege not waived by volunteering evidence.
134. Confidential communication with legal advisers.
135. Production of title-deeds of witness not a party.
136. Production of documents or electronic records which another person, having possession, would refuse to produce.
137. Witness not excused from answering on ground that answer will criminate.
138. Accomplice.
139. Number of witnesses.

CHAPTER X

OF EXAMINATION OF WITNESSES

140. Order of production and examination of witnesses.
141. Judge to decide as to admissibility of evidence.
142. Examination of witnesses.
143. Order of examinations.
144. Cross-examination of person called to produce a document.
145. Witnesses to character.
146. Leading questions.
147. Evidence as to matters in writing.
148. Cross-examination as to previous statements in writing.
149. Questions lawful in cross-examination.
150. When witness to be compelled to answer.
151. Court to decide when question shall be asked and when witness compelled to answer.
152. Question not to be asked without reasonable grounds.
153. Procedure of Court in case of question being asked without reasonable grounds.
154. Indecent and scandalous questions.
155. Questions intended to insult or annoy.
156. Exclusion of evidence to contradict answers to questions testing veracity.
157. Question by party to his own witness.
158. Impeaching credit of witness.
159. Questions tending to corroborate evidence of relevant fact, admissible.
160. Former statements of witness may be proved to corroborate later testimony as to same fact.
161. What matters may be proved in connection with proved statement relevant under section 32 or 33.
162. Refreshing memory.

CLAUSES

163. Testimony to facts stated in document mentioned in section 159.
164. Right of adverse party as to writing used to refresh memory.
165. Production of documents.
166. Giving, as evidence, of document called for and produced on notice.
167. Using, as evidence, of document production of which was refused on notice.
168. Judge's power to put questions or order production.

CHAPTER XI

OF IMPROPER ADMISSION AND REJECTION OF EVIDENCE

169. No new trial for improper admission or rejection of evidence.
170. Repeal and savings.

THE SCHEDULE.

Bill No. 123 of 2023

THE BHARATIYA SAKSHYA BILL, 2023

A

BILL

to consolidate and to provide for general rules and principles of evidence for fair trial.

BE it enacted by Parliament in the Seventy-fourth Year of the Republic of India as follows:—

PART I

CHAPTER I

PRELIMINARY

5

1. (1) This Act may be called the Bharatiya *Sakshya* Adhiniyam, 2023.

(2) It shall apply to all judicial proceedings in or before any Court, including Courts-martial, but not to affidavits presented to any Court or officer, nor to proceedings before an arbitrator.

Short title,
application and
commencement.

(3) It shall come into force on such date as the Central Government may, by notification, appoint.

Definitions.

2. (1) In this Adhiniyam, unless the context otherwise requires,—

(a) "Court" includes all Judges and Magistrates, and all persons, except arbitrators, legally authorised to take evidence; 5

(b) "conclusive proof" means when one fact is declared by this Adhiniyam to be conclusive proof of another, the Court shall, on proof of the one fact, regard the other as proved, and shall not allow evidence to be given for the purpose of disproving it;

(c) "document" means any matter expressed or described or otherwise recorded upon any substance by means of letters, figures or marks or any other means or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter and includes electronic and digital records. 10

Illustrations.

(i) A writing is a document. 15

(ii) Words painted, lithographed or photographed are documents.

(iii) A map or plan is a document.

(iv) An inscription on a metal plate or stone is a document.

(v) A caricature is a document.

(vi) An electronic record on emails, server logs, documents on computers, laptop or smartphone, messages, websites, locational evidence and voice mail messages stored on digital devices are documents; 20

(d) "disproved" in relation to a fact, means when, after considering the matters before it, the Court either believes that it does not exist, or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist; 25

(e) "evidence" means and includes—

(i) statements or any information given electronically which the Court permits or requires to be made before it by witnesses in relation to matters of fact under inquiry and such statements or information are called oral evidence; 30

(ii) documents including electronic or digital records produced for the inspection of the Court and such documents are called documentary evidence;

(f) "fact" means and includes—

(i) anything, state of things, or relation of things, capable of being perceived by the senses; 35

(ii) any mental condition of which any person is conscious.

Illustrations.

(a) That there are certain objects arranged in a certain order in a certain place, is a fact.

(b) That a person heard or saw something, is a fact. 40

(c) That a person said certain words, is a fact.

(d) That a person holds a certain opinion, has a certain intention, acts in good faith, or fraudulently, or uses a particular word in a particular sense, or is or was at a specified time conscious of a particular sensation, is a fact;

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

10 *Explanation.*—Whenever, under the provisions of the law for the time being in force relating to Civil Procedure, any Court records an issue of fact, the fact to be asserted or denied in the answer to such issue is a fact in issue.

Illustrations.

(i) A is accused of the murder of B.

(ii) At his trial, the following facts may be in issue.

(iii) That A caused B's death.

15 (iv) That A intended to cause B's death.

(v) That A had received grave and sudden provocation from B.

(vi) That A, at the time of doing the act which caused B's death, was, by reason of mental illness, incapable of knowing its nature;

20 (i) "may presume".—Whenever it is provided by this Adhinyam that the Court may presume a fact, it may either regard such fact as proved, unless and until it is disproved or may call for proof of it;

(j) "not proved".—A fact is said to be not proved when it is neither proved nor disproved;

25 (k) "proved".—A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists;

30 (l) "relevant".—A fact is said to be relevant to another when it is connected with the other in any of the ways referred to in the provisions of this Adhinyam relating to the relevancy of facts;

(m) "shall presume".—Whenever it is directed by this Adhinyam that the Court shall presume a fact, it shall regard such fact as proved, unless and until it is disproved

21 of 2000. (2) Words and expressions used herein and not defined but defined in the Information
35 Sanhita, 2023 shall have the same meanings as assigned to them in the said Act and Sanhita.

PART II

CHAPTER II

RELEVANCY OF FACTS

40 **3.** Evidence may be given in any suit or proceeding of the existence or non-existence of every fact in issue and of such other facts as are hereinafter declared to be relevant, and of no others.

Explanation.—This section shall not enable any person to give evidence of a fact which he is disentitled to prove by any provision of the law for the time being in force relating to Civil Procedure.

Evidence may be given of facts in issue and relevant facts.

Illustrations.

(a) A is tried for the murder of B by beating him with a club with the intention of causing his death.

At A's trial the following facts are in issue:—

A's beating B with the club;

5

A's causing B's death by such beating;

A's intention to cause B's death.

(b) A suitor does not bring with him, and have in readiness for production at the first hearing of the case, a bond on which he relies. This section does not enable him to produce the bond or prove its contents at a subsequent stage of the proceedings, otherwise than in accordance with the conditions prescribed by the Bharatiya Nagarik Suraksha Sanhita 2023.

10

Closely connected facts

Relevancy of facts forming part of same transaction.

4. Facts which, though not in issue, are so connected with a fact in issue or a relevant fact as to form part of the same transaction, are relevant, whether they occurred at the same time and place or at different times and places.

15

Illustrations.

(a) A is accused of the murder of B by beating him. Whatever was said or done by A or B or the bystanders at the beating, or so shortly before or after it as to form part of the transaction, is a relevant fact.

(b) A is accused of waging war against the Government of India by taking part in an armed insurrection in which property is destroyed, troops are attacked and jails are broken open. The occurrence of these facts is relevant, as forming part of the general transaction, though A may not have been present at all of them.

20

(c) A sues B for a libel contained in a letter forming part of a correspondence. Letters between the parties relating to the subject out of which the libel arose, and forming part of the correspondence in which it is contained, are relevant facts, though they do not contain the libel itself.

25

(d) The question is, whether certain goods ordered from B were delivered to A. The goods were delivered to several intermediate persons successively. Each delivery is a relevant fact.

30

Facts which are the occasion, cause or effect of facts in issue or relevant facts.

5. Facts which are the occasion, cause or effect, immediate or otherwise, of relevant facts, or facts in issue, or which constitute the state of things under which they happened, or which afforded an opportunity for their occurrence or transaction, are relevant.

Illustrations.

(a) The question is, whether A robbed B. The facts that, shortly before the robbery, B went to a fair with money in his possession, and that he showed it, or mentioned the fact that he had it, to third persons, are relevant.

35

(b) The question is, whether A murdered B. Marks on the ground, produced by a struggle at or near the place where the murder was committed, are relevant facts.

(c) The question is, whether A poisoned B. The state of B's health before the symptoms ascribed to poison, and habits of B, known to A, which afforded an opportunity for the administration of poison, are relevant facts.

40

Motive, preparation and previous or subsequent conduct.

6. (1) Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact.

(2) The conduct of any party, or of any agent to any party, to any suit or proceeding, in reference to such suit or proceeding, or in reference to any fact in issue therein or relevant thereto, and the conduct of any person, an offence against whom is the subject of any proceeding, is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto.

Explanation 1.—The word "conduct" in this section does not include statements, unless those statements accompany and explain acts other than statements; but this *Explanation* is not to affect the relevancy of statements under any other section of this Adhiniyam.

Explanation 2.—When the conduct of any person is relevant, any statement made to him or in his presence and hearing, which affects such conduct, is relevant.

Illustrations.

(a) A is tried for the murder of B. The facts that A murdered C, that B knew that A had murdered C, and that B had tried to extort money from A by threatening to make his knowledge public, are relevant.

(b) A sues B upon a bond for the payment of money, B denies the making of the bond. The fact that, at the time when the bond was alleged to be made, B required money for a particular purpose, is relevant.

(c) A is tried for the murder of B by poison. The fact that, before the death of B, A procured poison similar to that which was administered to B, is relevant.

(d) The question is, whether a certain document is the will of A. The facts that, not long before, the date of the alleged will, A made inquiry into matters to which the provisions of the alleged will relate; that he consulted advocates in reference to making the will, and that he caused drafts of other wills to be prepared, of which he did not approve, are relevant.

(e) A is accused of a crime. The facts that, either before, or at the time of, or after the alleged crime, A provided evidence which would tend to give to the facts of the case an appearance favourable to himself, or that he destroyed or concealed evidence, or prevented the presence or procured the absence of persons who might have been witnesses, or suborned persons to give false evidence respecting it, are relevant.

(f) The question is, whether A robbed B. The facts that, after B was robbed, C said in A's presence—"the police are coming to look for the person who robbed B", and that immediately afterwards A ran away, are relevant.

(g) The question is, whether A owes B ten thousand rupees. The facts that A asked C to lend him money, and that D said to C in A's presence and hearing—"I advise you not to trust A, for he owes B ten thousand rupees", and that A went away without making any answer, are relevant facts.

(h) The question is, whether A committed a crime. The fact that A absconded, after receiving a letter, warning A that inquiry was being made for the criminal, and the contents of the letter, are relevant.

(i) A is accused of a crime. The facts that, after the commission of the alleged crime, A absconded, or was in possession of property or the proceeds of property acquired by the crime, or attempted to conceal things which were or might have been used in committing it, are relevant.

(j) The question is, whether A was raped. The fact that, shortly after the alleged rape, A made a complaint relating to the crime, the circumstances under which, and the terms in which, the complaint was made, are relevant. The fact that, without making a complaint, A said that A had been raped is not relevant as conduct under this section, though it may be relevant as a dying declaration under clause (I) of section 26, or as corroborative evidence under section 160.

(k) The question is, whether A was robbed. The fact that, soon after the alleged robbery, A made a complaint relating to the offence, the circumstances under which, and the terms in which, the complaint was made, are relevant. The fact that A said he had been robbed, without making any complaint, is not relevant, as conduct under this section, though it may be relevant as a dying declaration under clause (I) of section 26, or as corroborative evidence under section 157. 5

Facts
necessary to
explain or
introduce fact
in issue or
relevant facts.

7. Facts necessary to explain or introduce a fact in issue or relevant fact, or which support or rebut an inference suggested by a fact in issue or a relevant fact, or which establish the identity of anything, or person whose identity, is relevant, or fix the time or place at which any fact in issue or relevant fact happened, or which show the relation of parties by whom any such fact was transacted, are relevant insofar as they are necessary for that purpose. 10

Illustrations.

(a) The question is, whether a given document is the will of A. The state of A's property and of his family at the date of the alleged will may be relevant facts. 15

(b) A sues B for a libel imputing disgraceful conduct to A; B affirms that the matter alleged to be libellous is true. The position and relations of the parties at the time when the libel was published may be relevant facts as introductory to the facts in issue. The particulars of a dispute between A and B about a matter unconnected with the alleged libel are irrelevant, though the fact that there was a dispute may be relevant if it affected the relations between A and B. 20

(c) A is accused of a crime. The fact that, soon after the commission of the crime, A absconded from his house, is relevant under section 6, as conduct subsequent to and affected by facts in issue. The fact that, at the time when he left home, A had sudden and urgent business at the place to which he went, is relevant, as tending to explain the fact that he left home suddenly. The details of the business on which he left are not relevant, except insofar as they are necessary to show that the business was sudden and urgent. 25

(d) A sues B for inducing C to break a contract of service made by him with A. C, on leaving A's service, says to A—"I am leaving you because B has made me a better offer". This statement is a relevant fact as explanatory of C's conduct, which is relevant as a fact in issue. 30

(e) A, accused of theft, is seen to give the stolen property to B, who is seen to give it to A's wife. B says as he delivers it—"A says you are to hide this". B's statement is relevant as explanatory of a fact which is part of the transaction.

(f) A is tried for a riot and is proved to have marched at the head of a mob. The cries of the mob are relevant as explanatory of the nature of the transaction. 35

Things said,
done by
conspirator in
reference to
common
design.

8. Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it. 40

Illustration.

Reasonable ground exists for believing that A has joined in a conspiracy to wage war against the State. 45

The facts that B procured arms in Europe for the purpose of the conspiracy, C collected money in Kolkata for a like object, D persuaded persons to join the conspiracy in Mumbai, E published writings advocating the object in view at Agra, and F transmitted from Delhi to

G at Singapore the money which C had collected at Kolkata, and the contents of a letter written by H giving an account of the conspiracy, are each relevant, both to prove the existence of the conspiracy, and to prove A's complicity in it, although he may have been ignorant of all of them, and although the persons by whom they were done were strangers to him, and although they may have taken place before he joined the conspiracy or after he left it.

9. Facts not otherwise relevant are relevant—

(1) if they are inconsistent with any fact in issue or relevant fact;

(2) if by themselves or in connection with other facts they make the existence or non-existence of any fact in issue or relevant fact highly probable or improbable.

When facts not otherwise relevant become relevant.

Illustrations.

(a) The question is, whether A committed a crime at Chennai on a certain day. The fact that, on that day, A was at Ladakh is relevant. The fact that, near the time when the crime was committed, A was at a distance from the place where it was committed, which would render it highly improbable, though not impossible, that he committed it, is relevant.

(b) The question is, whether A committed a crime. The circumstances are such that the crime must have been committed either by A, B, C or D. Every fact which shows that the crime could have been committed by no one else, and that it was not committed by either B, C or D, is relevant.

10. In suits in which damages are claimed, any fact which will enable the Court to determine the amount of damages which ought to be awarded is relevant.

Facts tending to enable Court to determine amount are relevant in suits for damages.

11. Where the question is as to the existence of any right or custom, the following facts are relevant—

(a) any transaction by which the right or custom in question was created, claimed, modified, recognised, asserted or denied, or which was inconsistent with its existence;

(b) particular instances in which the right or custom was claimed, recognised or exercised, or in which its exercise was disputed, asserted or departed from.

Facts relevant when right or custom is in question.

Illustration.

The question is, whether A has a right to a fishery. A deed conferring the fishery on A's ancestors, a mortgage of the fishery by A's father, a subsequent grant of the fishery by A's father, irreconcilable with the mortgage, particular instances in which A's father exercised the right, or in which the exercise of the right was stopped by A's neighbours, are relevant facts.

12. Facts showing the existence of any state of mind such as intention, knowledge, good faith, negligence, rashness, ill-will or goodwill towards any particular person, or showing the existence of any state of body or bodily feeling, are relevant, when the existence of any such state of mind or body or bodily feeling is in issue or relevant.

Facts showing existence of state of mind, or of body or bodily feeling.

Explanation 1.—A fact relevant as showing the existence of a relevant state of mind must show that the state of mind exists, not generally, but in reference to the particular matter in question.

Explanation 2.—But where, upon the trial of a person accused of an offence, the previous commission by the accused of an offence is relevant within the meaning of this section, the previous conviction of such person shall also be a relevant fact.

Illustrations.

(a) A is accused of receiving stolen goods knowing them to be stolen. It is proved that he was in possession of a particular stolen article. The fact that, at the same time, he was in possession of many other stolen articles is relevant, as tending to show that he knew each and all of the articles of which he was in possession to be stolen. 5

(b) A is accused of fraudulently delivering to another person a counterfeit currency which, at the time when he delivered it, he knew to be counterfeit. The fact that, at the time of its delivery, A was possessed of a number of other pieces of counterfeit currency is relevant. The fact that A had been previously convicted of delivering to another person as genuine a counterfeit currency knowing it to be counterfeit is relevant. 10

(c) A sues B for damage done by a dog of B's, which B knew to be ferocious. The fact that the dog had previously bitten X, Y and Z, and that they had made complaints to B, are relevant.

(d) The question is, whether A, the acceptor of a bill of exchange, knew that the name of the payee was fictitious. The fact that A had accepted other bills drawn in the same manner before they could have been transmitted to him by the payee if the payee had been a real person, is relevant, as showing that A knew that the payee was a fictitious person. 15

(e) A is accused of defaming B by publishing an imputation intended to harm the reputation of B. The fact of previous publications by A respecting B, showing ill-will on the part of A towards B is relevant, as proving A's intention to harm B's reputation by the particular publication in question. The facts that there was no previous quarrel between A and B, and that A repeated the matter complained of as he heard it, are relevant, as showing that A did not intend to harm the reputation of B. 20

(f) A is sued by B for fraudulently representing to B that C was solvent, whereby B, being induced to trust C, who was insolvent, suffered loss. The fact that, at the time when A represented C to be solvent, C was supposed to be solvent by his neighbours and by persons dealing with him, is relevant, as showing that A made the representation in good faith. 25

(g) A is sued by B for the price of work done by B, upon a house of which A is owner, by the order of C, a contractor. A's defence is that B's contract was with C. The fact that A paid C for the work in question is relevant, as proving that A did, in good faith, make over to C the management of the work in question, so that C was in a position to contract with B on C's own account, and not as agent for A. 30

(h) A is accused of the dishonest misappropriation of property which he had found, and the question is whether, when he appropriated it, he believed in good faith that the real owner could not be found. The fact that public notice of the loss of the property had been given in the place where A was, is relevant, as showing that A did not in good faith believe that the real owner of the property could not be found. The fact that A knew, or had reason to believe, that the notice was given fraudulently by C, who had heard of the loss of the property and wished to set up a false claim to it, is relevant, as showing that the fact that A knew of the notice did not disprove A's good faith. 40

(i) A is charged with shooting at B with intent to kill him. In order to show A's intent, the fact of A's having previously shot at B may be proved.

(j) A is charged with sending threatening letters to B. Threatening letters previously sent by A to B may be proved, as showing the intention of the letters. 45

(k) The question is, whether A has been guilty of cruelty towards B, his wife. Expressions of their feeling towards each other shortly before or after the alleged cruelty are relevant facts.

(l) The question is whether A's death was caused by poison. Statements made by A during his illness as to his symptoms are relevant facts. 50

(m) The question is, what was the state of A's health at the time when an assurance on his life was effected. Statements made by A as to the state of his health at or near the time in question are relevant facts.

5 (n) A sues B for negligence in providing him with a car for hire not reasonably fit for use, whereby A was injured. The fact that B's attention was drawn on other occasions to the defect of that particular car is relevant. The fact that B was habitually negligent about the cars which he let to hire is irrelevant.

(o) A is tried for the murder of B by intentionally shooting him dead. The fact that A on other occasions shot at B is relevant as showing his intention to shoot B. The fact that A
10 was in the habit of shooting at people with intent to murder them is irrelevant.

(p) A is tried for a crime. The fact that he said something indicating an intention to commit that particular crime is relevant. The fact that he said something indicating a general disposition to commit crimes of that class is irrelevant.

15 **13.** When there is a question whether an act was accidental or intentional, or done with a particular knowledge or intention, the fact that such act formed part of a series of similar occurrences, in each of which the person doing the act was concerned, is relevant.

Facts bearing on question whether act was accidental or intentional.

Illustrations.

20 (a) A is accused of burning down his house in order to obtain money for which it is insured. The facts that A lived in several houses successively each of which he insured, in each of which a fire occurred, and after each of which fires A received payment from a different insurance company, are relevant, as tending to show that the fires were not accidental.

25 (b) A is employed to receive money from the debtors of B. It is A's duty to make entries in a book showing the amounts received by him. He makes an entry showing that on a particular occasion, he received less than he really did receive. The question is, whether this false entry was accidental or intentional. The facts that other entries made by A in the same book are false, and that the false entry is in each case in favour of A, are relevant.

30 (c) A is accused of fraudulently delivering to B, a counterfeit currency. The question is, whether the delivery of the rupee was accidental. The facts that, soon before or soon after the delivery to B, A delivered counterfeit rupees to C, D and E are relevant, as showing that the delivery to B was not accidental.

14. When there is a question whether a particular act was done, the existence of any course of business, according to which it naturally would have been done, is a relevant fact.

Existence of course of business when relevant.

Illustrations.

35 (a) The question is, whether a particular letter was dispatched. The facts that it was the ordinary course of business for all letters put in a certain place to be carried to the post, and that particular letter was put in that place are relevant.

(b) The question is, whether a particular letter reached A. The facts that it was posted in due course, and was not returned through the Return Letter Office, are relevant.

40 *Admissions*

15. An admission is a statement, oral or documentary or contained in electronic form, which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons, and under the circumstances, hereinafter mentioned.

Admission defined.

45 **16.** (1) Statements made by a party to the proceeding, or by an agent to any such party, whom the Court regards, under the circumstances of the case, as expressly or impliedly authorised by him to make them, are admissions.

Admission by party to proceeding or his agent.

(2) Statements made by—

(i) parties to suits suing or sued in a representative character, are not admissions, unless they were made while the party making them held that character;

(ii) persons who have any proprietary or pecuniary interest in the subject matter of the proceeding, and who make the statement in their character of persons so interested; or 5

(iii) persons from whom the parties to the suit have derived their interest in the subject matter of the suit,

are admissions, if they are made during the continuance of the interest of the persons making the statements. 10

Admissions by persons whose position must be proved as against party to suit.

17. Statements made by persons whose position or liability, it is necessary to prove as against any party to the suit, are admissions, if such statements would be relevant as against such persons in relation to such position or liability in a suit brought by or against them, and if they are made whilst the person making them occupies such position or is subject to such liability. 15

Illustration.

A undertakes to collect rents for B. B sues A for not collecting rent due from C to B. A denies that rent was due from C to B. A statement by C that he owed B rent is an admission, and is a relevant fact as against A, if A denies that C did owe rent to B.

Admissions by persons expressly referred to by party to suit.

18. Statements made by persons to whom a party to the suit has expressly referred for information in reference to a matter in dispute are admissions. 20

Illustration.

The question is, whether a horse sold by A to B is sound.

A says to B—"Go and ask C, C knows all about it". C's statement is an admission.

Proof of admissions against persons making them, and by or on their behalf.

19. Admissions are relevant and may be proved as against the person who makes them, or his representative in interest; but they cannot be proved by or on behalf of the person who makes them or by his representative in interest, except in the following cases, namely:— 25

(1) An admission may be proved by or on behalf of the person making it, when it is of such a nature that, if the person making it were dead, it would be relevant as between third persons under sub-section (2) of section 23; 30

(2) An admission may be proved by or on behalf of the person making it, when it consists of a statement of the existence of any state of mind or body, relevant or in issue, made at or about the time when such state of mind or body existed, and is accompanied by conduct rendering its falsehood improbable; 35

(3) An admission may be proved by or on behalf of the person making it, if it is relevant otherwise than as an admission.

Illustrations.

(a) The question between A and B is whether a certain deed is or is not forged. A affirms that it is genuine, B that it is forged. A may prove a statement by B that the deed is genuine, and B may prove a statement by A that deed is forged; but A cannot prove a statement by himself that the deed is genuine, nor can B prove a statement by himself that the deed is forged. 40

(b) A, the captain of a ship, is tried for casting her away. Evidence is given to show that the ship was taken out of her proper course. A produces a book kept by him in the ordinary course of his business showing observations alleged to have been taken by him 45

from day to day, and indicating that the ship was not taken out of her proper course. A may prove these statements, because they would be admissible between third parties, if he were dead, under sub-section (2) of section 23.

(c) A is accused of a crime committed by him at Kolkata. He produces a letter written
5 by himself and dated at Chennai on that day, and bearing the Chennai post-mark of that day. The statement in the date of the letter is admissible, because, if A were dead, it would be admissible under sub-section (2) of section 23.

(d) A is accused of receiving stolen goods knowing them to be stolen. He offers to
10 prove that he refused to sell them below their value. A may prove these statements, though they are admissions, because they are explanatory of conduct influenced by facts in issue.

(e) A is accused of fraudulently having in his possession counterfeit currency which
he knew to be counterfeit. He offers to prove that he asked a skilful person to examine the
currency as he doubted whether it was counterfeit or not, and that person did examine it
and told him it was genuine. A may prove these facts for the reasons specified in
15 *Illustration (e)*.

20. Oral admissions as to the contents of a document are not relevant, unless and until the party proposing to prove them shows that he is entitled to give secondary evidence of the contents of such document under the rules hereinafter contained, or unless the genuineness of a document produced is in question.

When oral admissions as to contents of documents are relevant.

21. In civil cases no admission is relevant, if it is made either upon an express condition that evidence of it is not to be given, or under circumstances from which the Court can infer that the parties agreed together that evidence of it should not be given.

Admissions in civil cases when relevant.

Explanation.—Nothing in this section shall be taken to exempt any advocate from giving evidence of any matter of which he may be compelled to give evidence under
25 sub-sections (1) and (2) of section 132.

22. A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the Court to have been caused by any inducement, threat, coercion or promise having reference to the charge against the accused person, proceeding from a person in authority and sufficient, in the opinion of the Court, to give the
30 accused person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him:

Confession caused by inducement, threat, coercion or promise, when irrelevant in criminal proceeding.

Provided that if the confession is made after the impression caused by any such inducement, threat, coercion or promise has, in the opinion of the Court, been fully removed,
35 it is relevant:

Provided further that if such a confession is otherwise relevant, it does not become irrelevant merely because it was made under a promise of secrecy, or in consequence of a deception practised on the accused person for the purpose of obtaining it, or when he was drunk, or because it was made in answer to questions which he need not have answered,
40 whatever may have been the form of those questions, or because he was not warned that he was not bound to make such confession, and that evidence of it might be given against him.

23. (1) No confession made to a police officer shall be proved as against a person accused of any offence.

Confession to police officer.

(2) No confession made by any person while he is in the custody of a police officer,
45 unless it is made in the immediate presence of a Magistrate shall be proved against him:

Provided that when any fact is proved to be discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact discovered, may be proved.

Consideration of proved confession affecting person making it and others jointly under trial for same offence.

24. When more persons than one is being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other person as well as against the person who makes such confession. 5

Explanation I.—"Offence", as used in this section, includes the abetment of, or attempt to commit, the offence. 10

Explanation II.—A trial of more persons than one held in the absence of the accused who has absconded or who fails to comply with a proclamation issued under section 82 of the Bharatiya Nagarik Suraksha Sanhita, 2023 shall be deemed to be a joint trial for the purpose of this section.

Illustrations. 15

(a) A and B are jointly tried for the murder of C. It is proved that A said "B and I murdered C". The Court may consider the effect of this confession as against B.

(b) A is on his trial for the murder of C. There is evidence to show that C was murdered by A and B, and that B said "A and I murdered C". This statement may not be taken into consideration by the Court against A, as B is not being jointly tried. 20

Admissions not conclusive proof, but may estop.

25. Admissions are not conclusive proof of the matters admitted but they may operate as estoppels under the provisions hereinafter contained.

Statements by persons who cannot be called as witnesses

Cases in which statement of facts in issue or relevant fact by person who is dead or cannot be found, etc., is relevant.

26. Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which under the circumstances of the case appears to the Court unreasonable, are themselves facts in issue or relevant facts in the following cases, namely:— 25

(1) When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question. Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question. 30

(2) When the statement was made by such person in the ordinary course of business, and in particular when it consists of any entry or memorandum made by him in books kept in the ordinary course of business, or in the discharge of professional duty; or of an acknowledgement written or signed by him of the receipt of money, goods, securities or property of any kind; or of a document used in commerce written or signed by him; or of the date of a letter or other document usually dated, written or signed by him. 35 40

(3) When the statement is against the pecuniary or proprietary interest of the person making it, or when, if true, it would expose him or would have exposed him to a criminal prosecution or to a suit for damages.

(4) When the statement gives the opinion of any such person, as to the existence of any public right or custom or matters of public or general interest, of the existence of which, if it existed, he would have been likely to be aware, and when such statement was made before any controversy as to such right, custom or matter had arisen. 45

(5) When the statement relates to the existence of any relationship by blood, marriage or adoption between persons as to whose relationship by blood, marriage or adoption the person making the statement had special means of knowledge, and when the statement was made before the question in dispute was raised.

5 (6) When the statement relates to the existence of any relationship by blood, marriage or adoption between persons deceased, and is made in any will or deed relating to the affairs of the family to which any such deceased person belonged, or in any family pedigree, or upon any tombstone, family portrait or other thing on which such statements are usually made, and when such statement was made before the
10 question in dispute was raised.

(7) When the statement is contained in any deed, will or other document which relates to any such transaction as is specified in clause (a) of section 11.

(8) When the statement was made by a number of persons, and expressed feelings or impressions on their part relevant to the matter in question.

15 *Illustrations.*

(a) The question is, whether A was murdered by B; or A die of injuries received in a transaction in the course of which she was ravished. The question is whether she was ravished by B; or the question is, whether A was killed by B under such circumstances that a suit would lie against B by A's widow. Statements made by A as to the cause of his or her
20 death, referring respectively to the murder, the rape and the actionable wrong under consideration, are relevant facts.

(b) The question is as to the date of A's birth. An entry in the diary of a deceased surgeon regularly kept in the course of business, stating that, on a given day he attended A's mother and delivered her of a son, is a relevant fact.

25 (c) The question is, whether A was in Nagpur on a given day. A statement in the diary of a deceased solicitor, regularly kept in the course of business that on a given day the solicitor attended A at a place mentioned, in Nagpur, for the purpose of conferring with him upon specified business, is a relevant fact.

(d) The question is, whether a ship sailed from Mumbai harbour on a given day. A
30 letter written by a deceased member of a merchant's firm by which she was chartered to their correspondents in Chennai, to whom the cargo was consigned, stating that the ship sailed on a given day from Mumbai port, is a relevant fact.

(e) The question is, whether rent was paid to A for certain land. A letter from A's deceased agent to A, saying that he had received the rent on A's account and held it at A's
35 orders is a relevant fact.

(f) The question is, whether A and B were legally married. The statement of a deceased clergyman that he married them under such circumstances that the celebration would be a crime is relevant.

(g) The question is, whether A, a person who cannot be found, wrote a letter on a
40 certain day. The fact that a letter written by him is dated on that day is relevant.

(h) The question is, what was the cause of the wreck of a ship. A protest made by the captain, whose attendance cannot be procured, is a relevant fact.

(i) The question is, whether a given road is a public way. A statement by A, a deceased Sarpanch of the Panchayat of the village, that the road was public, is a relevant fact.

45 (j) The question is, what was the price of grain on a certain day in a particular market. A statement of the price, made by a deceased businessperson in the ordinary course of his business, is a relevant fact.

(k) The question is, whether A, who is dead, was the father of B. A statement by A that B was his son, is a relevant fact.

(l) The question is, what was the date of the birth of A. A letter from A's deceased father to a friend, announcing the birth of A on a given day, is a relevant fact.

(m) The question is, whether, and when, A and B were married. An entry in a memorandum book by C, the deceased father of B, of his daughter's marriage with A on a given date, is a relevant fact. 5

(n) A sues B for a libel expressed in a painted caricature exposed in a shop window. The question is as to the similarity of the caricature and its libellous character. The remarks of a crowd of spectators on these points may be proved. 10

Relevancy of certain evidence for proving, in subsequent proceeding, the truth of facts therein stated.

27. Evidence given by a witness in a judicial proceeding, or before any person authorised by law to take it, is relevant for the purpose of proving, in a subsequent judicial proceeding, or in a later stage of the same judicial proceeding, the truth of the facts which it states, when the witness is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or if his presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable: 15

Provided that the proceeding was between the same parties or their representatives in interest; that the adverse party in the first proceeding had the right and opportunity to cross-examine and the questions in issue were substantially the same in the first as in the second proceeding. 20

Explanation.—A criminal trial or inquiry shall be deemed to be a proceeding between the prosecutor and the accused within the meaning of this section.

Statements made under special circumstances

Entries in books of account when relevant.

28. Entries in the books of account, including those maintained in an electronic form, regularly kept in the course of business are relevant whenever they refer to a matter into which the Court has to inquire, but such statements shall not alone be sufficient evidence to charge any person with liability. 25

Illustration.

A sues B for one thousand rupees, and shows entries in his account book showing B to be indebted to him to this amount. The entries are relevant, but are not sufficient, without other evidence, to prove the debt. 30

Relevancy of entry in public record or an electronic record made in performance of duty.

29. An entry in any public or other official book, register or record or an electronic record, stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register or record or an electronic record, is kept, is itself a relevant fact. 35

Relevancy of statements in maps, charts and plans.

30. Statements of facts in issue or relevant facts, made in published maps or charts generally offered for public sale, or in maps or plans made under the authority of the Central Government or any State Government, as to matters usually represented or stated in such maps, charts or plans, are themselves relevant facts. 40

Relevancy of statement as to fact of public nature contained in certain Acts or notifications.

31. When the Court has to form an opinion as to the existence of any fact of a public nature, any statement of it, made in a recital contained in any Central Act or State Act or in a Central Government or State Government notification appearing in the respective Official Gazette or in any printed paper or in electronic or digital form purporting to be such Gazette, is a relevant fact. 45

5 **32.** When the Court has to form an opinion as to a law of any country, any statement of such law contained in a book purporting to be printed or published including in electronic or digital form under the authority of the Government of such country and to contain any such law, and any report of a ruling of the Courts of such country contained in a book including in electronic or digital form purporting to be a report of such rulings, is relevant.

Relevancy of statements as to any law contained in law books including electronic or digital form.

How much of a statement is to be proved

10 **33.** When any statement of which evidence is given forms part of a longer statement, or of a conversation or part of an isolated document, or is contained in a document which forms part of a book, or is contained in part of electronic record or of a connected series of letters or papers, evidence shall be given of so much and no more of the statement, conversation, document, electronic record, book or series of letters or papers as the Court considers necessary in that particular case to the full understanding of the nature and effect of the statement, and of the circumstances under which it was made.

What evidence to be given when statement forms part of a conversation, document, electronic record, book or series of letters or papers.

Judgments of Courts when relevant

15 **34.** The existence of any judgment, order or decree which by law prevents any Court from taking cognizance of a suit or holding a trial, is a relevant fact when the question is whether such Court ought to take cognizance of such suit or to hold such trial.

Previous judgments relevant to bar a second suit or trial.

20 **35.** (1) A final judgment, order or decree of a competent Court or Tribunal, in the exercise of probate, matrimonial, admiralty or insolvency jurisdiction, which confers upon or takes away from any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing, not as against any specified person but absolutely, is relevant when the existence of any such legal character, or the title of any such person to any such thing, is relevant.

Relevancy of certain judgments in probate, etc., jurisdiction.

(2) Such judgment, order or decree is conclusive proof that—

25 (i) any legal character, which it confers accrued at the time when such judgment, order or decree came into operation;

(ii) any legal character to which it declares any such person to be entitled, accrued to that person at the time when such judgment order or decree declares it to have accrued to that person;

30 (iii) any legal character which it takes away from any such person ceased at the time from which such judgment, order or decree declared that it had ceased or should cease; and

35 (iv) anything to which it declares any person to be so entitled was the property of that person at the time from which such judgment, order or decree declares that it had been or should be his property.

36. Judgments, orders or decrees other than those mentioned in section 31 are relevant if they relate to matters of a public nature relevant to the enquiry; but such judgments, orders or decrees are not conclusive proof of that which they state.

Relevancy and effect of judgments, orders or decrees, other than those mentioned in section 31.

Illustration.

40 A sues B for trespass on his land. B alleges the existence of a public right of way over the land, which A denies. The existence of a decree in favour of the defendant, in a suit by A against C for a trespass on the same land, in which C alleged the existence of the same right of way, is relevant, but it is not conclusive proof that the right of way exists.

Judgments, etc., other than those mentioned in sections 34, 35 and 36 when relevant.

37. Judgments or orders or decrees, other than those mentioned in sections 34, 35 and 36 are irrelevant, unless the existence of such judgment or order or decree is a fact in issue, or is relevant under some other provision of this Adhinyam.

Illustrations.

(a) A and B separately sue C for a libel which reflects upon each of them. C in each case says that the matter alleged to be libellous is true, and the circumstances are such that it is probably true in each case, or in neither. A obtains a decree against C for damages on the ground that C failed to make out his justification. The fact is irrelevant as between B and C. 5

(b) A prosecutes B for adultery with C, A's wife. B denies that C is A's wife, but the Court convicts B of adultery. Afterwards, C is prosecuted for bigamy in marrying B during A's lifetime. C says that she never was A's wife. The judgment against B is irrelevant as against C. 10

(c) A prosecutes B for stealing a cow from him. B is convicted. A afterwards sues C for the cow, which B had sold to him before his conviction. As between A and C, the judgment against B is irrelevant. 15

(d) A has obtained a decree for the possession of land against B. C, B's son, murders A in consequence. The existence of the judgment is relevant, as showing motive for a crime.

(e) A is charged with theft and with having been previously convicted of theft. The previous conviction is relevant as a fact in issue.

(f) A is tried for the murder of B. The fact that B prosecuted A for libel and that A was convicted and sentenced is relevant under section 8 as showing the motive for the fact in issue. 20

Fraud or collusion in obtaining judgment, or incompetency of Court, may be proved.

38. Any party to a suit or other proceeding may show that any judgment, order or decree which is relevant under sections 34, 35 and 36, and which has been proved by the adverse party, was delivered by a Court not competent to deliver it, or was obtained by fraud or collusion. 25

Opinions of third persons when relevant

Opinions of experts.

39. (1) When the Court has to form an opinion upon a point of foreign law or of science or art, or any other field, or as to identity of handwriting or finger impressions, the opinions upon that point, of persons specially skilled in such foreign law, science or art, or any other field, or in questions as to identity of handwriting or finger impressions are relevant facts and such persons are called experts. 30

Illustrations.

(a) The question is, whether the death of A was caused by poison. The opinions of experts as to the symptoms produced by the poison by which A is supposed to have died, are relevant. 35

(b) The question is, whether A, at the time of doing a certain act, was, by reason of unsoundness of mind, incapable of knowing the nature of the act, or that he was doing what was either wrong or contrary to law. The opinions of experts upon the question whether the symptoms exhibited by A commonly show unsoundness of mind, and whether such unsoundness of mind usually renders persons incapable of knowing the nature of the acts which they do, or of knowing that what they do is either wrong or contrary to law, are relevant. 40

(c) The question is, whether a certain document was written by A. Another document is produced which is proved or admitted to have been written by A. The opinions of experts 45

on the question whether the two documents were written by the same person or by different persons, are relevant.

(2) When in a proceeding, the court has to form an opinion on any matter relating to any information transmitted or stored in any computer resource or any other electronic or digital form, the opinion of the Examiner of Electronic Evidence referred to in section 79A of the Information Technology Act, 2000, is a relevant fact.

Explanation.—For the purposes of this sub-section, an Examiner of Electronic Evidence shall be an expert.

40. Facts, not otherwise relevant, are relevant if they support or are inconsistent with the opinions of experts, when such opinions are relevant.

Facts bearing upon opinions of experts.

Illustrations.

(a) The question is, whether A was poisoned by a certain poison. The fact that other persons, who were poisoned by that poison, exhibited certain symptoms which experts affirm or deny to be the symptoms of that poison, is relevant.

(b) The question is, whether an obstruction to a harbour is caused by a certain sea-wall. The fact that other harbours similarly situated in other respects, but where there were no such sea-walls, began to be obstructed at about the same time, is relevant.

41. (1) When the Court has to form an opinion as to the person by whom any document was written or signed, the opinion of any person acquainted with the handwriting of the person by whom it is supposed to be written or signed that it was or was not written or signed by that person, is a relevant fact.

Opinion as to handwriting and digital signature, when relevant.

Explanation.—A person is said to be acquainted with the handwriting of another person when he has seen that person write, or when he has received documents purporting to be written by that person in answer to documents written by himself or under his authority and addressed to that person, or when, in the ordinary course of business, documents purporting to be written by that person have been habitually submitted to him.

Illustration.

The question is, whether a given letter is in the handwriting of A, a merchant in Itanagar. B is a merchant in Bengaluru, who has written letters addressed to A and received letters purporting to be written by him. C, is B's clerk whose duty it was to examine and file B's correspondence. D is B's broker, to whom B habitually submitted the letters purporting to be written by A for the purpose of advising with him thereon. The opinions of B, C and D on the question whether the letter is in the handwriting of A are relevant, though neither B, C nor D ever saw A write.

(2) When the Court has to form an opinion as to the electronic signature of any person, the opinion of the Certifying Authority which has issued the Electronic Signature Certificate is a relevant fact.

42. When the Court has to form an opinion as to the existence of any general custom or right, the opinions, as to the existence of such custom or right, of persons who would be likely to know of its existence if it existed, are relevant.

Opinion as to existence of general custom or right, when relevant.

Explanation.—The expression "general custom or right" includes customs or rights common to any considerable class of persons.

Illustration.

The right of the villagers of a particular village to use the water of a particular well is a general right within the meaning of this section.

43. When the Court has to form an opinion as to—

(i) the usages and tenets of any body of men or family;

Opinion as to usages, tenets, etc., when relevant.

(ii) the constitution and governance of any religious or charitable foundation; or

(iii) the meaning of words or terms used in particular districts or by particular classes of people;

(iv) the opinions of persons having special means of knowledge thereon, are relevant facts. 5

Opinion on relationship, when relevant.

44. When the Court has to form an opinion as to the relationship of one person to another, the opinion, expressed by conduct, as to the existence of such relationship, of any person who, as a member of the family or otherwise, has special means of knowledge on the subject, is a relevant fact: 10

Provided that such opinion shall not be sufficient to prove a marriage in proceedings under the Divorce Act, 1869, or in prosecutions under section of the Bharatiya Nyaya Sanhita, 2023. 4 of 1869.

Illustrations.

(a) The question is, whether A and B were married. The fact that they were usually received and treated by their friends as husband and wife, is relevant. 15

(b) The question is, whether A was the legitimate son of B. The fact that A was always treated as such by members of the family, is relevant.

Grounds of opinion, when relevant.

45. Whenever the opinion of any living person is relevant, the grounds on which such opinion is based are also relevant. 20

Illustration.

An expert may give an account of experiments performed by him for the purpose of forming his opinion.

Character when relevant

In civil cases, character to prove conduct imputed, irrelevant.

46. In civil cases, the fact that the character of any person concerned is such as to render probable or improbable any conduct imputed to him, is irrelevant, except insofar as such character appears from facts otherwise relevant. 25

In criminal cases, previous good character relevant.

47. In criminal proceedings, the fact that the person accused is of a good character, is relevant.

Evidence of character or previous sexual experience not relevant in certain cases.

48. In a prosecution for an offence under section 64, section 65, section 67, section 68, section 70, section 71, section 73, section 74, section 75, section 76 or section 77 of the Bharatiya Nagarik Suraksha Sanhita, 2023 or for attempt to commit any such offence, where the question of consent is in issue, evidence of the character of the victim or of such person's previous sexual experience with any person shall not be relevant on the issue of such consent or the quality of consent. 30 35

Previous bad character not relevant, except in reply.

49. In criminal proceedings, the fact that the accused has a bad character, is irrelevant, unless evidence has been given that he has a good character, in which case it becomes relevant.

Explanation 1.—This section does not apply to cases in which the bad character of any person is itself a fact in issue. 40

Explanation 2.—A previous conviction is relevant as evidence of bad character.

50. In civil cases, the fact that the character of any person is such as to affect the amount of damages which he ought to receive, is relevant. Character as affecting damages.

Explanation.—In this and sections 46, 47 and 49, the word "character" includes both reputation and disposition; but, except as provided in section 59, evidence may be given only of general reputation and general disposition, and not of particular acts by which reputation or disposition has been shown.

PART III

ON PROOF

CHAPTER III

10

FACTS WHICH NEED NOT BE PROVED

51. No fact of which the Court will take judicial notice need be proved.

Fact judicially noticeable need not be proved.

52. (1) The Court shall take judicial notice of the following facts, namely:—

Facts of which Court shall take judicial notice.

(a) all laws in force in the territory of India including laws having extra-territorial operation;

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(b) international treaty, agreement or convention with country or countries by India, or decisions made by India at the international associations or other bodies;

(c) the course of proceeding of the Constituent Assembly of India, of Parliament of India and of the State Legislatures;

(d) the seals of all Courts and Tribunals;

20

(e) the seals of Courts of Admiralty and Maritime Jurisdiction, Notaries Public, and all seals which any person is authorised to use by the Constitution, or by an Act of Parliament or State Legislatures, or Regulations having the force of law in India;

25

(f) the accession to office, names, titles, functions, and signatures of the persons filling for the time being any public office in any State, if the fact of their appointment to such office is notified in any Official Gazette;

(g) the existence, title and national flag of every country or sovereign recognised by the Government of India;

(h) the divisions of time, the geographical divisions of the world, and public festivals, fasts and holidays notified in the Official Gazette;

30

(i) the territory of India;

(j) the commencement, continuance and termination of hostilities between the Government of India and any other country or body of persons;

35

(k) the names of the members and officers of the Court, and of their deputies and subordinate officers and assistants, and also of all officers acting in execution of its process, and of advocates and other persons authorised by law to appear or act before it;

(l) the rule of the road or land or at sea.

(2) In the cases referred to in sub-section (1) and also on all matters of public history, literature, science or art, the Court may resort for its aid to appropriate books or documents of reference and if the Court is called upon by any person to take judicial notice of any fact, it may refuse to do so unless and until such person produces any such book or document as it may consider necessary to enable it to do so.

Facts admitted need not be proved.

53. No fact need to be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings:

Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions. 5

CHAPTER IV

OF ORAL EVIDENCE

Proof of facts by oral evidence.

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

Oral evidence to be direct.

55. Oral evidence shall, in all cases whatever, be direct; if it refers to,— 10

(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; 15

(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: 20

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. 25

CHAPTER V

OF DOCUMENTARY EVIDENCE

Proof of contents of documents.

56. The contents of documents may be proved either by primary or by secondary evidence. 30

Primary evidence.

57. 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. 35

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. 40

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.

5 *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.

10 *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
15 any other, but no one of them is primary evidence of the contents of the original.

58. Secondary evidence includes—

Secondary evidence.

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

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

20 (3) copies made from or compared with the original;

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

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

25 (6) oral admissions;

(7) written admissions;

(8) 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.

30 *Illustration.*

(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.

35 (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.

40 (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.

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

Proof of documents by primary evidence.

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

60. 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;

(h) when the genuineness of the document itself is in question.

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) clauses (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 documents.

Admissibility of electronic or digital record.

61. Nothing in the 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 have the same legal effect, validity and enforceability as paper records.

Special provisions as to evidence relating to electronic record.

62. The contents of electronic records may be proved in accordance with the provisions of section 59.

Admissibility of electronic records.

63. (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 of any contents of the original or of any fact stated therein of which direct evidence would be admissible.

5 (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 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
10 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 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
15 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
20 from such information fed into the computer 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—

25 (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

30 (e) through an intermediary.

Explanation.—All the computers used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer; and references in this section to a computer shall be construed accordingly.

(4) In any proceeding where it is desired to give a statement in evidence by virtue of
35 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
40 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 and an expert (whichever is appropriate) shall be
45 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 form 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;

5

(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).

Rules as to notice to produce.

64. Secondary evidence of the contents of the documents referred to in clause (a) of section 60, shall not be given unless the party proposing to give such secondary evidence has previously given to the party in whose possession or power the document is, or to his advocate or representative, such notice to produce it as is prescribed by law; and if no notice is prescribed by law, then such notice as the Court considers reasonable under the circumstances of the case:

15

Provided that such notice shall not be required in order to render secondary evidence admissible in any of the following cases, or in any other case in which the Court thinks fit to dispense with it: —

(a) when the document to be proved is itself a notice;

(b) when, from the nature of the case, the adverse party must know that he will be required to produce it;

20

(c) when it appears or is proved that the adverse party has obtained possession of the original by fraud or force;

(d) when the adverse party or his agent has the original in Court;

(e) when the adverse party or his agent has admitted the loss of the document;

25

(f) when the person in possession of the document is out of reach of, or not subject to, the process of the Court.

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

65. 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.

30

Proof as to electronic signature.

66. 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.

Proof of execution of document required by law to be attested.

67. 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:

35

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.

40 16 of 1908.

Proof where no attesting witness found.

68. 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.

- 69.** 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. Admission of execution by party to attested document.
- 70.** If the attesting witness denies or does not recollect the execution of the document, its execution may be proved by other evidence. Proof when attesting witness denies the execution.
- 71.** An attested document not required by law to be attested may be proved as if it was unattested. Proof of document not required by law to be attested.
- 72.** (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. Comparison of signature, writing or seal with others admitted or proved.
- (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.
- 73.** 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— Proof as to verification of digital signature.
- (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.
- Public documents*
- 74.** (1) The following documents are public documents:— Public and private documents.
- (a) documents forming the acts, or records of the acts—
- (i) of the sovereign authority;
- (ii) of official bodies and tribunals; and
- (iii) of public officers, legislative, judicial and executive of India or of a foreign country;
- (b) public records kept in any State or Union territory of private documents.
- (2) All other documents except the documents referred to in sub-section (1) are private.
- 75.** Every public officer having the custody of a public document, which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees therefor, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title, and shall be sealed, whenever such officer is authorised by law to make use of a seal; and such copies so certified shall be called certified copies. Certified copies of public documents.

Explanation.—Any officer who, by the ordinary course of official duty, is authorised to deliver such copies, shall be deemed to have the custody of such documents within the meaning of this section.

Proof of documents by production of certified copies.
Proof of other official documents.

76. Such certified copies may be produced in proof of the contents of the public documents or parts of the public documents of which they purport to be copies. 5

77. The following public documents may be proved as follows:—

(a) Acts, orders or notifications of the Central Government in any of its Ministries and Departments or of any State Government or any Department of any State Government or Union territory Administration,—

(i) by the records of the Departments, certified by the head of those Departments respectively; or 10

(ii) by any document purporting to be printed by order of any such Government;

(b) the proceedings of Parliament or a State Legislative Assembly, by the journals of those bodies respectively, or by published Acts or abstracts, or by copies purporting to be printed by order of the Government concerned; 15

(c) proclamations, orders or regulations issued by the President of India or the Governor of a State or the Administrator or Lieutenant Governor of a Union territory, by copies or extracts contained in the Official Gazette;

(d) the Acts of the Executive or the proceedings of the Legislature of a foreign country, by journals published by their authority, or commonly received in that country as such, or by a copy certified under the seal of the country or sovereign, or by a recognition thereof in some Central Act; 20

(e) the proceedings of a municipal or local body in a State, by a copy of such proceedings, certified by the legal keeper thereof, or by a printed book purporting to be published by the authority of such body; 25

(f) public documents of any other class in a foreign country, by the original or by a copy certified by the legal keeper thereof, with a certificate under the seal of a Notary Public, or of an Indian Consul or diplomatic agent, that the copy is duly certified by the officer the legal custody of the original, and upon proof of the character of the document according to the law of the foreign country. 30

Presumptions as to documents

Presumption as to genuineness of certified copies.

78. (1) The Court shall presume to be genuine every document purporting to be a certificate, certified copy or other document, which is by law declared to be admissible as evidence of any particular fact, and which purports to be duly certified by any officer of the Central Government or of a State Government: 35

Provided that such document is substantially in the form and purports to be executed in the manner directed by law in that behalf.

(2) The Court shall also presume that any officer by whom any such document purports to be signed or certified, held, when he signed it, the official character which he claims in such paper. 40

Presumption as to documents produced as record of evidence, etc.

79. Whenever any document is produced before any Court, purporting to be a record or memorandum of the evidence, or of any part of the evidence, given by a witness in a judicial proceeding or before any officer authorised by law to take such evidence or to be a statement or confession by any prisoner or accused person, taken in accordance with law, 45

and purporting to be signed by any Judge or Magistrate, or by any such officer as aforesaid, the Court shall presume that—

(i) the document is genuine;

5 (ii) any statements as to the circumstances under which it was taken, purporting to be made by the person signing it, are true; and

(iii) such evidence, statement or confession was duly taken.

10 **80.** The Court shall presume the genuineness of every document purporting to be the Official Gazette, or to be a newspaper or journal, and of every document purporting to be a document directed by any law to be kept by any person, if such document is kept substantially in the form required by law and is produced from proper custody. Presumption as to Gazettes, newspapers, and other documents.

15 *Explanation.*—For the purposes of this section and section 92, document is said to be in proper custody if it is in the place in which, and looked after by the person with whom such document is required to be kept; but no custody is improper if it is proved to have had a legitimate origin, or if the circumstances of the particular case are such as to render that origin probable.

20 **81.** The Court shall presume the genuineness of every electronic or digital record purporting to be the Official Gazette, or purporting to be electronic or digital record directed by any law to be kept by any person, if such electronic or digital record is kept substantially in the form required by law and is produced from proper custody. Presumption as to Gazettes in electronic or digital record.

Explanation.— For the purposes of this section and section 96 electronic records are said to be in proper custody if they are in the place in which, and looked after by the person with whom such document is required to be kept; but no custody is improper if it is proved to have had a legitimate origin, or the circumstances of the particular case are such as to render that origin probable.

25 **82.** The Court shall presume that maps or plans purporting to be made by the authority of the Central Government or any State Government were so made, and are accurate; but maps or plans made for the purposes of any cause must be proved to be accurate. Presumption as to maps or plans made by authority of Government.

30 **83.** The Court shall presume the genuineness of, every book purporting to be printed or published under the authority of the Government of any country, and to contain any of the laws of that country, and of every book purporting to contain reports of decisions of the Courts of such country. Presumption as to collections of laws and reports of decisions.

35 **84.** The Court shall presume that every document purporting to be a power-of-attorney, and to have been executed before, and authenticated by, a Notary Public, or any Court, Judge, Magistrate, Indian Consul or Vice-Consul, or representative of the Central Government, was so executed and authenticated. Presumption as to powers-of-attorney.

85. The Court shall presume that every electronic record purporting to be an agreement containing the electronic or digital signature of the parties was so concluded by affixing the electronic or digital signature of the parties. Presumption as to electronic agreements.

40 **86. (1)** In any proceedings involving a secure electronic record, the Court shall presume unless contrary is proved, that the secure electronic record has not been altered since the specific point of time to which the secure status relates. Presumption as to electronic records and electronic signatures.

(2) In any proceedings, involving secure digital signature, the Court shall presume unless the contrary is proved that—

45 (a) the secure electronic signature is affixed by subscriber with the intention of signing or approving the electronic record;

(b) except in the case of a secure electronic record or a secure electronic signature, nothing in this section shall create any presumption, relating to authenticity and integrity of the electronic record or any electronic signature.

Presumption as to Electronic Signature Certificates.

87. The Court shall presume, unless contrary is proved, that the information listed in an Electronic Signature Certificate is correct, except for information specified as subscriber information which has not been verified, if the certificate was accepted by the subscriber.

Presumption as to certified copies of foreign judicial records.

88. (1) The Court may presume that any document purporting to be a certified copy of any judicial record of any country beyond India is genuine and accurate, if the document purports to be certified in any manner which is certified by any representative of the Central Government, in or for such country, to be the manner commonly in use in that country for the certification of copies of judicial records. 5

(2) An officer who, with respect to any territory or place outside India is a Political Agent therefor, as defined in clause (43) of section 3 of the General Clauses Act, 1897, shall, for the purposes of this section, be deemed to be a representative of the Central Government in and for the country comprising that territory or place. 10 10 of 1897.

Presumption as to books, maps and charts.

89. The Court may presume that any book to which it may refer for information on matters of public or general interest, and that any published map or chart, the statements of which are relevant facts, and which is produced for its inspection, was written and published by the person, and at the time and place, by whom or at which it purports to have been written or published. 15

Presumption as to electronic messages.

90. The Court may presume that an electronic message, forwarded by the originator through an electronic mail server to the addressee to whom the message purports to be addressed corresponds with the message as fed into his computer for transmission; but the Court shall not make any presumption as to the person by whom such message was sent. 20

Presumption as to due execution, etc., of documents not produced.

91. The Court shall presume that every document, called for and not produced after notice to produce, was attested, stamped and executed in the manner required by law.

Presumption as to documents thirty years old.

92. Where any document, purporting or proved to be thirty years old, is produced from any custody which the Court in the particular case considers proper, the Court may presume that the signature and every other part of such document, which purports to be in the handwriting of any particular person, is in that person's handwriting, and, in the case of a document executed or attested, that it was duly executed and attested by the persons by whom it purports to be executed and attested. 25

Explanation to section 83 shall also apply to this section. 30

Illustration.

(a) A has been in possession of landed property for a long time. He produces from his custody deeds relating to the land showing his titles to it. The custody shall be proper.

(b) A produces deeds relating to landed property of which he is the mortgagee. The mortgagor is in possession. The custody shall be proper. 35

(c) A, a connection of B, produces deeds relating to lands in B's possession, which were deposited with him by B for safe custody. The custody shall be proper.

Presumption as to electronic records five years old.

93. Where any electronic record, purporting or proved to be five years old, is produced from any custody which the Court in the particular case considers proper, the Court may presume that the electronic signature which purports to be the electronic signature of any particular person was so affixed by him or any person authorised by him in this behalf. 40

Explanation to section 84 shall also apply to this section.

CHAPTER VI

OF THE EXCLUSION OF ORAL EVIDENCE BY DOCUMENTARY EVIDENCE

94. When the terms of a contract, or of a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant or other disposition of property, or of such matter, except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained.

Evidence of terms of contracts, grants and other dispositions of property reduced to form of document.

Exception 1.—When a public officer is required by law to be appointed in writing, and when it is shown that any particular person has acted as such officer, the writing by which he is appointed need not be proved.

Exception 2.—Wills admitted to probate in India may be proved by the probate.

Explanation 1.—This section applies equally to cases in which the contracts, grants or dispositions of property referred to are contained in one document, and to cases in which they are contained in more documents than one.

Explanation 2.— Where there are more originals than one, one original only need be proved.

Explanation 3.— The statement, in any document whatever, of a fact other than the facts referred to in this section, shall not preclude the admission of oral evidence as to the same fact.

Illustration.

(a) If a contract be contained in several letters, all the letters in which it is contained must be proved.

(b) If a contract is contained in a bill of exchange, the bill of exchange must be proved.

(c) If a bill of exchange is drawn in a set of three, one only need be proved.

(d) A contracts in writing with B, for the delivery of indigo upon certain terms. The contract mentions the fact that B had paid A the price of other indigo contracted for verbally on another occasion. Oral evidence is offered that no payment was made for the other indigo. The evidence is admissible.

(e) A gives B a receipt for money paid by B. Oral evidence is offered of the payment. The evidence is admissible.

95. When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms:

Exclusion of evidence of oral agreement.

Provided that any fact may be proved which would invalidate any document, or which would entitle any person to any decree or order relating thereto; such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, want or failure of consideration, or mistake in fact or law:

Provided further that the existence of any separate oral agreement as to any matter on which a document is silent, and which is not inconsistent with its terms, may be proved. In considering whether or not this proviso applies, the Court shall have regard to the degree of formality of the document:

Provided also that the existence of any separate oral agreement, constituting a condition precedent to the attaching of any obligation under any such contract, grant or disposition of property, may be proved:

Provided also that the existence of any distinct subsequent oral agreement to rescind or modify any such contract, grant or disposition of property, may be proved, except in

cases in which such contract, grant or disposition of property is by law required to be in writing, or has been registered according to the law in force for the time being as to the registration of documents:

Provided also that any usage or custom by which incidents not expressly mentioned in any contract are usually annexed to contracts of that description, may be proved: 5

Provided also that the annexing of such incident would not be repugnant to, or inconsistent with, the express terms of the contract:

Provided also that any fact may be proved which shows in what manner the language of a document is related to existing facts.

Illustration. 10

(a) A policy of insurance is effected on goods "in ships from Kolkata to Vishakhapatnam". The goods are shipped in a particular ship which is lost. The fact that particular ship was orally excepted from the policy, cannot be proved.

(b) A agrees absolutely in writing to pay B one thousand rupees on the 1st March, 2023. The fact that, at the same time, an oral agreement was made that the money should not be paid till the 31st March, 2023, cannot be proved. 15

(c) An estate called "the Rampur tea estate" is sold by a deed which contains a map of the property sold. The fact that land not included in the map had always been regarded as part of the estate and was meant to pass by the deed cannot be proved.

(d) A enters into a written contract with B to work certain mines, the property of B, upon certain terms. A was induced to do so by a misrepresentation of B's as to their value. This fact may be proved. 20

(e) A institutes a suit against B for the specific performance of a contract, and also prays that the contract may be reformed as to one of its provisions, as that provision was inserted in it by mistake. A may prove that such a mistake was made as would by law entitle him to have the contract reformed. 25

(f) A orders goods of B by a letter in which nothing is said as to the time of payment, and accepts the goods on delivery. B sues A for the price. A may show that the goods were supplied on credit for a term still unexpired.

(g) A sells B a horse and verbally warrants him sound. A gives B a paper in these words: "Bought of A a horse for thirty thousand rupees". B may prove the verbal warranty. 30

(h) A hires lodgings of B, and gives B a card on which is written—"Rooms, ten thousand rupees a month." A may prove a verbal agreement that these terms were to include partial board. A hires lodging of B for a year, and a regularly stamped agreement, drawn up by an advocate, is made between them. It is silent on the subject of board. A may not prove that board was included in the term verbally. 35

(i) A applies to B for a debt due to A by sending a receipt for the money. B keeps the receipt and does not send the money. In a suit for the amount, A may prove this.

(j) A and B make a contract in writing to take effect upon the happening of a certain contingency. The writing is left with B who sues A upon it. A may show the circumstances under which it was delivered. 40

96. When the language used in a document is, on its face, ambiguous or defective, evidence may not be given of facts which would show its meaning or supply its defects.

Exclusion of evidence to explain or amend ambiguous document.

Illustrations.

(a) A agrees, in writing, to sell a horse to B for "one lakh rupees or one lakh fifty thousand rupees". Evidence cannot be given to show which price was to be given. 45

(b) A deed contains blanks. Evidence cannot be given of facts which would show how they were meant to be filled.

97. When language used in a document is plain in itself, and when it applies accurately to existing facts, evidence may not be given to show that it was not meant to apply to such facts.

Exclusion of evidence against application of document to existing facts.

Illustration.

5 A sells to B, by deed, "my estate at Rampur containing one hundred bighas". A has an estate at Rampur containing one hundred bighas. Evidence may not be given of the fact that the estate meant to be sold was one situated at a different place and of a different size.

98. When language used in a document is plain in itself, but is unmeaning in reference to existing facts, evidence may be given to show that it was used in a peculiar sense.

Evidence as to document unmeaning reference to existing facts.

Illustration.

10 A sells to B, by deed, "my house in Kolkata". A had no house in Kolkata, but it appears that he had a house at Howrah, of which B had been in possession since the execution of the deed. These facts may be proved to show that the deed related to the house at Howrah.

15 **99.** When the facts are such that the language used might have been meant to apply to any one, and could not have been meant to apply to more than one, of several persons or things, evidence may be given of facts which show which of those persons or things it was intended to apply to.

Evidence as to application of language which can apply to one only of several persons.

Illustration.

20 (a) A agrees to sell to B, for one thousand rupees, "my white horse". A has two white horses. Evidence may be given of facts which show which of them was meant.

(b) A agrees to accompany B to Ramgarh. Evidence may be given of facts showing whether Ramgarh in Rajasthan or Ramgarh in Uttarakhand was meant.

25 **100.** When the language used applies partly to one set of existing facts, and partly to another set of existing facts, but the whole of it does not apply correctly to either, evidence may be given to show to which of the two it was meant to apply.

Evidence as to application of language to one of two sets of facts, to neither of which the whole correctly applies.

Illustration.

30 A agrees to sell to B "my land at X in the occupation of Y". A has land at X, but not in the occupation of Y, and he has land in the occupation of Y but it is not at X. Evidence may be given of facts showing which he meant to sell.

101. Evidence may be given to show the meaning of illegible or not commonly intelligible characters, of foreign, obsolete, technical or local and regional expressions, of abbreviations and of words used in a peculiar sense.

Evidence as to meaning of illegible characters, etc.

Illustration.

35 A, sculptor, agrees to sell to B, "all my mods". A has both models and modelling tools. Evidence may be given to show which he meant to sell.

102. Persons who are not parties to a document, or their representatives in interest, may give evidence of any facts tending to show a contemporaneous agreement varying the terms of the document.

Who may give evidence of agreement varying terms of document.

Illustration.

40 A and B make a contract in writing that B shall sell A certain cotton, to be paid for on delivery. At the same time, they make an oral agreement that three months credit shall be given to A. This could not be shown as between A and B, but it might be shown by C, if it affected his interests.

45 **103.** Nothing in this Chapter contained shall be taken to affect any of the provisions of the Indian Succession Act, 1925 as to the construction of Wills.

Saving of provisions of Indian Succession Act relating to Wills.

PART IV

PRODUCTION AND EFFECT OF EVIDENCE

CHAPTER VII

OF THE BURDEN OF PROOF

Burden of proof. **104.** Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist, and when a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person. 5

Illustration.

(a) A desires a Court to give judgment that B shall be punished for a crime which A says B has committed. A must prove that B has committed the crime. 10

(b) A desires a Court to give judgment that he is entitled to certain land in the possession of B, by reason of facts which he asserts, and which B denies, to be true. A must prove the existence of those facts.

On whom burden of proof lies. **105.** The burden of proof in a suitor proceeding lies on that person who would fail if no evidence at all were given on either side. 15

Illustration.

(a) A sues B for land of which B is in possession, and which, as A asserts, was left to A by the Will of C, B's father. If no evidence were given on either side, B would be entitled to retain his possession. Therefore, the burden of proof is on A. 20

(b) A sues B for money due on a bond. The execution of the bond is admitted, but B says that it was obtained by fraud, which A denies. If no evidence were given on either side, A would succeed, as the bond is not disputed and the fraud is not proved. Therefore, the burden of proof is on B.

Burden of proof as to particular fact. **106.** The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person. 25

Illustration.

(a) A prosecutes B for theft, and wishes the Court to believe that B admitted the theft to C. A must prove the admission. 30

(b) B wishes the Court to believe that, at the time in question, he was elsewhere. He must prove it.

Burden of proving fact to be proved to make evidence admissible. **107.** The burden of proving any fact necessary to be proved in order to enable any person to give evidence of any other fact is on the person who wishes to give such evidence. 35

Illustration.

(a) A wishes to prove a dying declaration by B. A must prove B's death.

(b) A wishes to prove, by secondary evidence, the contents of a lost document. A must prove that the document has been lost.

Burden of proving that case of accused comes within exceptions. **108.** When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Bharatiya Nyaya Sanhita, 2023 or within any special exception or proviso contained in any other part of the said Sanhita, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances. 40

Illustration.

(a) A, accused of murder, alleges that, by reason of unsoundness of mind, he did not know the nature of the act. The burden of proof is on A.

5 (b) A, accused of murder, alleges that, by grave and sudden provocation, he was deprived of the power of self-control. The burden of proof is on A.

10 (c) Section 325 of the Bharatiya Nyaya Sanhita, 2023 provides that whoever, except in the case provided for by section 335, voluntarily causes grievous hurt, shall be subject to certain punishments. A is charged with voluntarily causing grievous hurt under section 115. The burden of proving the circumstances bringing the case under said section 120 lies on A.

109. When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

Burden of proving fact especially within knowledge.

Illustration.

15 (a) When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.

(b) A is charged with travelling on a railway without a ticket. The burden of proving that he had a ticket is on him.

20 **110.** When the question is whether a man is alive or dead, and it is shown that he was alive within thirty years, the burden of proving that he is dead is on the person who affirms it.

Burden of proving death of person known to have been alive within thirty years.

111. When the question is whether a man is alive or dead, and it is proved that he has not been heard of for seven years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is shifted to the person who affirms it.

Burden of proving that person is alive who has not been heard of for seven years.

25 **112.** When the question is whether persons are partners, landlord and tenant, or principal and agent, and it has been shown that they have been acting as such, the burden of proving that they do not stand, or have ceased to stand, to each other in those relationships respectively, is on the person who affirms it.

Burden of proof as to relationship in the cases of partners, landlord and tenant, principal and agent.

30 **113.** When the question is whether any person is owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner.

Burden of proof as to ownership.

114. Where there is a question as to the good faith of a transaction between parties, one of whom stands to the other in a position of active confidence, the burden of proving the good faith of the transaction is on the party who is in a position of active confidence.

Proof of good faith in transactions where one party is in relation of active confidence.

Illustration.

35 (a) The good faith of a sale by a client to an advocate is in question in a suit brought by the client. The burden of proving the good faith of the transaction is on the advocate.

(b) The good faith of a sale by a son just come of age to a father is in question in a suit brought by the son. The burden of proving the good faith of the transaction is on the father.

Presumption as to certain offences.

115. (1) Where a person is accused of having committed any offence specified in sub-section (2), in—

(a) any area declared to be a disturbed area under any enactment for the time being in force, making provision for the suppression of disorder and restoration and maintenance of public order; or 5

(b) any area in which there has been, over a period of more than one-month, extensive disturbance of the public peace,

and it is shown that such person had been at a place in such area at a time when firearms or explosives were used at or from that place to attack or resist the members of any armed forces or the forces charged with the maintenance of public order acting in the discharge of their duties, it shall be presumed, unless the contrary is shown, that such person had committed such offence. 10

(2) The offences referred to in sub-section (1) are the following, namely:—

(a) an offence under section 145, section 146, section 147 or section 148 of the Bharatiya Nyaya Sanhita, 2023; 15

(b) criminal conspiracy or attempt to commit, or abetment of, an offence under section 147 or section 148 of the Bharatiya Nyaya Sanhita, 2023.

Birth during marriage, conclusive proof of legitimacy.

116. The fact that any person was born during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the legitimate child of that man, unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten. 20

Presumption as to abetment of suicide by a married woman.

117. When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband. 25

Explanation.—For the purposes of this section, "cruelty" shall have the same meaning as in section 84 of the Bharatiya Nyaya Sanhita, 2023. 30

Presumption as to dowry death.

118. When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death, such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the court shall presume that such person had caused the dowry death.

Explanation.—For the purposes of this section, "dowry death" shall have the same meaning as in section 79 of the Bharatiya Nyaya Sanhita, 2023. 35

Court may presume existence of certain facts.

119. (1) The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

Illustration. 40

The Court may presume that—

(a) a man who is in possession of stolen goods soon, after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession;

(b) an accomplice is unworthy of credit, unless he is corroborated in material particulars; 45

(c) a bill of exchange, accepted or endorsed, was accepted or endorsed for good consideration;

(d) a thing or state of things which has been shown to be in existence within a period shorter than that within which such things or states of things usually cease to exist, is still in existence;

(e) judicial and official acts have been regularly performed;

(f) the common course of business has been followed in particular cases;

(g) evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it;

(h) if a man refuses to answer a question which he is not compelled to answer by law, the answer, if given, would be unfavourable to him;

(i) when a document creating an obligation is in the hands of the obligor, the obligation has been discharged.

(2) The Court shall also have regard to such facts as the following, in considering whether such maxims do or do not apply to the particular case before it: —

(i) as to *Illustration.. (a)*—*a shop-keeper has in his bill a marked rupee soon after it was stolen, and cannot account for its possession specifically, but is continually receiving rupees in the course of his business;*

(ii) as to *Illustration.. (b)*—*A, a person of the highest character, is tried for causing a man's death by an act of negligence in arranging certain machinery. B, a person of equally good character, who also took part in the arrangement, describes precisely what was done, and admits and explains the common carelessness of A and himself;*

(iii) as to *Illustration.. (b)*—*a crime is committed by several persons. A, B and C, three of the criminals, are captured on the spot and kept apart from each other. Each gives an account of the crime implicating D, and the accounts corroborate each other in such a manner as to render previous concert highly improbable;*

(iv) as to *Illustration.. (c)*—*A, the drawer of a bill of exchange, was a man of business. B, the acceptor, was a young and ignorant person, completely under A's influence;*

(v) as to *Illustration.. (d)*—*it is proved that a river ran in a certain course five years ago, but it is known that there have been floods since that time which might change its course;*

(vi) as to *Illustration.. (e)*—*a judicial act, the regularity of which is in question, was performed under exceptional circumstances;*

(vii) as to *Illustration.. (f)*—*the question is, whether a letter was received. It is shown to have been posted, but the usual course of the post was interrupted by disturbances;*

(viii) as to *Illustration.. (g)*—*a man refuses to produce a document which would bear on a contract of small importance on which he is sued, but which might also injure the feelings and reputation of his family;*

(ix) as to *Illustration.. (h)*—*a man refuses to answer a question which he is not compelled by law to answer, but the answer to it might cause loss to him in matters unconnected with the matter in relation to which it is asked;*

(x) as to *Illustration.. (i)*—*a bond is in possession of the obligor, but the circumstances of the case are such that he may have stolen it.*

120. In a prosecution for rape under clause (a), clause (b), clause (c), clause (d), clause (e), clause (f), clause (g), clause (h), clause (i), clause (j), clause (k), clause (l), clause (m) or clause (n) of sub-section (2) of section 64 of the *Bharatiya Nyaya Sanhita, 2023*, where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and such

Presumption as to absence of consent in certain prosecution for rape.

woman states in her evidence before the court that she did not consent, the court shall presume that she did not consent.

Explanation.—In this section, "sexual intercourse" shall mean any of the acts mentioned in clauses (a) to (d) of section 63 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

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CHAPTER VIII

ESTOPPEL

Estoppel. **121.** When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing. 10

Illustration.

A intentionally and falsely leads B to believe that certain land belongs to A, and thereby induces B to buy and pay for it. The land afterwards becomes the property of A, and A seeks to set aside the sale on the ground that, at the time of the sale, he had no title. He must not be allowed to prove his want of title. 15

Estoppel of tenants and of licensee of person in possession. **122.** No tenant of immovable property, or person claiming through such tenant, shall, during the continuance of the tenancy or any time thereafter, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property; and no person who came upon any immovable property by the licence of the person in possession thereof shall be permitted to deny that such person had a title to such possession at the time when such licence was given. 20

Estoppel of acceptor of bill of exchange, bailee or licensee. **123.** No acceptor of a bill of exchange shall be permitted to deny that the drawer had authority to draw such bill or to endorse it; nor shall any bailee or licensee be permitted to deny that his bailor or licensor had, at the time when the bailment or licence commenced, authority to make such bailment or grant such licence. 25

Explanation 1.—The acceptor of a bill of exchange may deny that the bill was really drawn by the person by whom it purports to have been drawn.

Explanation 2.—If a bailee delivers the goods bailed to a person other than the bailor, he may prove that such person had a right to them as against the bailor. 30

CHAPTER IX

OF WITNESSES

Who may testify. **124.** All persons shall be competent to testify unless the Court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind. 35

Explanation.—A person with mental illness is not incompetent to testify, unless he is prevented by his mental illness from understanding the questions put to him and giving rational answers to them.

Witness unable to communicate verbally. **125.** A witness who is unable to speak may give his evidence in any other manner in which he can make it intelligible, as by writing or by signs; but such writing must be written and the signs made in open Court and evidence so given shall be deemed to be oral evidence: 40

Provided that if the witness is unable to communicate verbally, the Court shall take the assistance of an interpreter or a special educator in recording the statement, and such statement shall be video graphed. 45

126. (1) In all civil proceedings the parties to the suit, and the husband or wife of any party to the suit, shall be competent witnesses. Competency of husband and wife as witnesses in certain cases.

(2) In criminal proceedings against any person, the husband or wife of such person, respectively, shall be a competent witness.

5 **127.** No Judge or Magistrate shall, except upon the special order of some Court to which he is subordinate, be compelled to answer any questions as to his own conduct in Court as such Judge or Magistrate, or as to anything which came to his knowledge in Court as such Judge or Magistrate; but he may be examined as to other matters which occurred in his presence whilst he was so acting. Judges and Magistrates.

10 *Illustration.*

(a) A, on his trial before the Court of Session, says that a deposition was improperly taken by B, the Magistrate. B cannot be compelled to answer questions as to this, except upon the special order of a superior Court.

15 (b) A is accused before the Court of Session of having given false evidence before B, a Magistrate. B cannot be asked what A said, except upon the special order of the superior Court.

(c) A is accused before the Court of Session of attempting to murder a police-officer whilst on his trial before B, a Sessions Judge. B may be examined as to what occurred.

20 **128.** No person who is or has been married, shall be compelled to disclose any communication made to him during marriage by any person to whom he is or has been married; nor shall he be permitted to disclose any such communication, unless the person who made it, or his representative in interest, consents, except in suits between married persons, or proceedings in which one married person is prosecuted for any crime committed against the other. Communications during marriage.

25 **129.** No one shall be permitted to give any evidence derived from unpublished official records relating to any affairs of State, except with the permission of the officer at the head of the department concerned, who shall give or withhold such permission as he thinks fit. Evidence as to affairs of State.

130. No public officer shall be compelled to disclose communications made to him in official confidence, when he considers that the public interests would suffer by the disclosure. Official communications.

30 **131.** No Magistrate or police-officer shall be compelled to say when he got any information as to the commission of any offence, and no revenue-officer shall be compelled to say when he got any information as to the commission of any offence against the public revenue. Information as to commission of offences.

35 *Explanation.*—"revenue-officer" means any officer employed in or about the business of any branch of the public revenue.

132. (1) No advocate, shall at any time be permitted, unless with his client's express consent, to disclose any communication made to him in the course and for the purpose of his service as such advocate, by or on behalf of his client, or to state the contents or condition of any document with which he has become acquainted in the course and for the purpose of his professional service, or to disclose any advice given by him to his client in the course and for the purpose of such service: Professional communications.

Provided that nothing in this section shall protect from disclosure of—

(a) any such communication made in furtherance of any illegal purpose;

45 (b) any fact observed by any advocate, in the course of his service as such, showing that any crime or fraud has been committed since the commencement of his service.

(2) It is immaterial whether the attention of such advocate referred to in the proviso to sub-section (1), was or was not directed to such fact by or on behalf of his client.

Explanation.—The obligation stated in this section continues after the professional service has ceased.

Illustration.

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(a) A, a client, says to B, an advocate—"I have committed forgery, and I wish you to defend me." As the defence of a man known to be guilty is not a criminal purpose, this communication is protected from disclosure.

(b) A, a client, says to B, an advocate—"I wish to obtain possession of property by the use of a forged deed on which I request you to sue." This communication, being made in furtherance of a criminal purpose, is not protected from disclosure. 10

(c) A, being charged with embezzlement, retains B, an advocate, to defend him. In the course of the proceedings, B observes that an entry has been made in A's account book, charging A with the sum said to have been embezzled, which entry was not in the book at the commencement of his professional service. This being a fact observed by B in the course of his service, showing that a fraud has been committed since the commencement of the proceedings, it is not protected from disclosure. 15

(3) The provisions of this section shall apply to interpreters, and the clerks or employees of advocates.

Privilege not waived by volunteering evidence.

133. If any party to a suit gives evidence therein at his own instance or otherwise, he shall not be deemed to have consented thereby to such disclosure as is mentioned in section 132; and, if any party to a suit or proceeding calls any such advocate, as a witness, he shall be deemed to have consented to such disclosure only if he questions such advocate, on matters which, but for such question, he would not be at liberty to disclose. 20

Confidential communication with legal advisers.

134. No one shall be compelled to disclose to the Court any confidential communication which has taken place between him and his legal adviser, unless he offers himself as a witness, in which case he may be compelled to disclose any such communications as may appear to the Court necessary to be known in order to explain any evidence which he has given, but no others. 25

Production of title-deeds of witness not a party.

135. No witness who is not a party to a suit shall be compelled to produce his title-deeds to any property, or any document in virtue of which he holds any property as pledge or mortgagee or any document the production of which might tend to criminate him, unless he has agreed in writing to produce them with the person seeking the production of such deeds or some person through whom he claims. 30

Production of documents or electronic records which another person, having possession, would refuse to produce.

136. No one shall be compelled to produce documents in his possession or electronic records under his control, which any other person would be entitled to refuse to produce if they were in his possession or control, unless such last-mentioned person consents to their production. 35

Witness not excused from answering on ground that answer will criminate.

137. A witness shall not be excused from answering any question as to any matter relevant to the matter in issue in any suit or in any civil or criminal proceeding, upon the ground that the answer to such question will criminate, or may tend directly or indirectly to criminate, such witness, or that it will expose, or tend directly or indirectly to expose, such witness to a penalty or forfeiture of any kind: 40

Provided that no such answer, which a witness shall be compelled to give, shall subject him to any arrest or prosecution, or be proved against him in any criminal proceeding, except a prosecution forgiving false evidence by such answer. 45

138. An accomplice shall be a competent witness against an accused person; and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice. Accomplice.

139. No particular number of witnesses shall in any case be required for the proof of any fact. Number of witnesses.

CHAPTER X

OF EXAMINATION OF WITNESSES

140. The order in which witnesses are produced and examined shall be regulated by the law and practice for the time being relating to civil and criminal procedure respectively, and, in the absence of any such law, by the discretion of the Court. Order of production and examination of witnesses.

141. (1) When either party proposes to give evidence of any fact, the Judge may ask the party proposing to give the evidence in what manner the alleged fact, if proved, would be relevant; and the Judge shall admit the evidence if he thinks that the fact, if proved, would be relevant, and not otherwise. Judge to decide as to admissibility of evidence.

(2) If the fact proposed to be proved is one of which evidence is admissible only upon proof of some other fact, such last mentioned fact must be proved before evidence is given of the fact first mentioned, unless the party undertakes to give proof of such fact, and the Court is satisfied with such undertaking.

(3) If the relevancy of one alleged fact depends upon another alleged fact being first proved, the Judge may, in his discretion, either permit evidence of the first fact to be given before the second fact is proved, or require evidence to be given of the second fact before evidence is given of the first fact.

Illustration.

(a) It is proposed to prove a statement about a relevant fact by a person alleged to be dead, which statement is relevant under section 32. The fact that the person is dead must be proved by the person proposing to prove the statement, before evidence is given of the statement.

(b) It is proposed to prove, by a copy, the contents of a document said to be lost. The fact that the original is lost must be proved by the person proposing to produce the copy, before the copy is produced.

(c) A is accused of receiving stolen property knowing it to have been stolen. It is proposed to prove that he denied the possession of the property. The relevancy of the denial depends on the identity of the property. The Court may, in its discretion, either require the property to be identified before the denial of the possession is proved, or permit the denial of the possession to be proved before the property is identified.

(d) It is proposed to prove a fact (A) which is said to have been the cause or effect of fact in issue. There are several intermediate facts (B, C and D) which must be shown to exist before the fact (A) can be regarded as the cause or effect of the fact in issue. The Court may either permit A to be proved before B, C or D is proved, or may require proof of B, C and D before permitting proof of A.

142. (1) The examination of witness by the party who calls him shall be called his examination-in-chief. Examination of witnesses.

(2) The examination of a witness by the adverse party shall be called his cross-examination.

(3) The examination of a witness, subsequent to the cross-examination, by the party who called him, shall be called his re-examination.

Order of examinations.

143. (1) Witnesses shall be first examined-in-chief, then (if the adverse party so desires) cross-examined, then (if the party calling him so desires) re-examined.

(2) The examination-in-chief and cross-examination must relate to relevant facts, but the cross-examination need not be confined to the facts to which the witness testified on his examination-in-chief.

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(3) The re-examination shall be directed to the explanation of matters referred to in cross-examination; and, if new matter is, by permission of the Court, introduced in re-examination, the adverse party may further cross-examine upon that matter.

Cross-examination of person called to produce a document.

144. A person summoned to produce a document does not become a witness by the mere fact that he produces it, and cannot be cross-examined unless and until he is called as a witness.

10

Witnesses to character.

145. Witnesses to character may be cross-examined and re-examined.

Leading questions.

146. (1) Any question suggesting the answer which the person putting it wishes or expects to receive, is called a leading question.

(2) Leading questions must not, if objected to by the adverse party, be asked in an examination-in-chief, or in a re-examination, except with the permission of the Court.

15

(3) The Court shall permit leading questions as to matters which are introductory or undisputed, or which have, in its opinion, been already sufficiently proved.

(4) Leading questions may be asked in cross-examination.

Evidence as to matters in writing.

147. Any witness may be asked, while under examination, whether any contract, grant or other disposition of property, as to which he is giving evidence, was not contained in a document, and if he says that it was, or if he is about to make any statement as to the contents of any document, which, in the opinion of the Court, ought to be produced, the adverse party may object to such evidence being given until such document is produced, or until facts have been proved which entitle the party who called the witness to give secondary evidence of it.

20

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Explanation.—A witness may give oral evidence of statements made by other persons about the contents of documents if such statements are in themselves relevant facts.

Illustration.

The question is, whether A assaulted B. C deposes that he heard A say to D—"B wrote a letter accusing me of theft, and I will be revenged on him." This statement is relevant, as showing A's motive for the assault, and evidence may be given of it, though no other evidence is given about the letter.

30

Cross-examination as to previous statements in writing.

148. A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.

35

Questions lawful in cross-examination.

149. When a witness is cross-examined, he may, in addition to the questions hereinbefore referred to, be asked any questions which tend—

40

(a) to test his veracity;

(b) to discover who he is and what is his position in life; or

(c) to shake his credit, by injuring his character, although the answer to such questions might tend directly or indirectly to criminate him, or might expose or tend directly or indirectly to expose him to a penalty or forfeiture:

45

Provided that in a prosecution for an offence under section 64, section 65, section 67, section 68, section 70, or section 71 of the Bharatiya Nagarik Suraksha Sanhita, 2023 or for attempt to commit any such offence, where the question of consent is an issue, it shall not be permissible to adduce evidence or to put questions in the cross-examination of the victim as to the general immoral character, or previous sexual experience, of such victim with any person for proving such consent or the quality of consent.

150. If any such question relates to a matter relevant to the suit or proceeding, the provisions of section 137 shall apply thereto.

When witness to be compelled to answer.

151. (1) If any such question relates to a matter not relevant to the suit or proceeding, except in so far as it affects the credit of the witness by injuring his character, the Court shall decide whether or not the witness shall be compelled to answer it, and may, if it thinks fit, warn the witness that he is not obliged to answer it.

Court to decide when question shall be asked and when witness compelled to answer.

(2) In exercising its discretion, the Court shall have regard to the following considerations, namely:—

(a) such questions are proper if they are of such a nature that the truth of the imputation conveyed by them would seriously affect the opinion of the Court as to the credibility of the witness on the matter to which he testifies;

(b) such questions are improper if the imputation which they convey relates to matters so remote in time, or of such a character, that the truth of the imputation would not affect, or would affect in a slight degree, the opinion of the Court as to the credibility of the witness on the matter to which he testifies;

(c) such questions are improper if there is a great disproportion between the importance of the imputation made against the witness's character and the importance of his evidence;

(d) the Court may, if it sees fit, draw, from the witness's refusal to answer, the inference that the answer if given would be unfavourable.

152. No such question as is referred to in section 151 ought to be asked, unless the person asking it has reasonable grounds for thinking that the imputation which it conveys is well-founded.

Question not to be asked without reasonable grounds.

Illustration.

(a) An advocate is instructed by another advocate that an important witness is a dacoit. This is a reasonable ground for asking the witness whether he is a dacoit.

(b) An advocate is informed by a person in Court that an important witness is a dacoit. The informant, on being questioned by the advocate, gives satisfactory reasons for his statement. This is a reasonable ground for asking the witness whether he is a dacoit.

(c) A witness, of whom nothing whatever is known, is asked at random whether he is a dacoit. There are here no reasonable ground for the question.

(d) A witness, of whom nothing whatever is known, being questioned as to his mode of life and means of living, gives unsatisfactory answers. This may be a reasonable ground for asking him if he is a dacoit.

153. If the Court is of opinion that any such question was asked without reasonable grounds, it may, if it was asked by any advocate, report the circumstances of the case to the High Court or other authority to which such advocate, is subject in the exercise of his profession.

Procedure of Court in case of question being asked without reasonable grounds.

Indecent and
scandalous
questions.

154. The Court may forbid any questions or inquiries which it regards as indecent or scandalous, although such questions or inquiries may have some bearing on the questions before the Court, unless they relate to facts in issue, or to matters necessary to be known in order to determine whether or not the facts in issue existed.

Questions
intended to
insult or
annoy.

155. The Court shall forbid any question which appears to it to be intended to insult or annoy, or which, though proper in itself, appears to the Court needlessly offensive in form. 5

Exclusion of
evidence to
contradict
answers to
questions
testing
veracity.

156. When a witness has been asked and has answered any question which is relevant to the inquiry only in so far as it tends to shake his credit by injuring his character, no evidence shall be given to contradict him; but, if he answers falsely, he may afterwards be charged with giving false evidence. 10

Exception 1.—If a witness is asked whether he has been previously convicted of any crime and denies it, evidence may be given of his previous conviction.

Exception 2.—If a witness is asked any question tending to impeach his impartiality, and answers it by denying the facts suggested, he may be contradicted. 15

Illustration.

(a) A claim against an underwriter is resisted on the ground of fraud. The claimant is asked whether, in a former transaction, he had not made a fraudulent claim. He denies it. Evidence is offered to show that he did make such a claim. The evidence is inadmissible.

(b) A witness is asked whether he was not dismissed from a situation for dishonesty. He denies it. Evidence is offered to show that he was dismissed for dishonesty. The evidence is not admissible. 20

(c) A affirms that on a certain day he saw B at Goa. A is asked whether he himself was not on that day at Varanasi. He denies it. Evidence is offered to show that A was on that day at Varanasi. The evidence is admissible, not as contradicting A on a fact which affects his credit, but as contradicting the alleged fact that B was seen on the day in question in Goa. In each of these cases, the witness might, if his denial was false, be charged with giving false evidence. 25

(d) A is asked whether his family has not had a blood feud with the family of B against whom he gives evidence. He denies it. He may be contradicted on the ground that the question tends to impeach his impartiality. 30

Question by
party to his
own witness.

157. (1) The Court may, in its discretion, permit the person who calls a witness to put any questions to him which might be put in cross-examination by the adverse party.

(2) Nothing in this section shall disentitle the person so permitted under sub-section (1), to rely on any part of the evidence of such witness. 35

Impeaching
credit of
witness.

158. The credit of a witness may be impeached in the following ways by the adverse party, or, with the consent of the Court, by the party who calls him—

(a) by the evidence of persons who testify that they, from their knowledge of the witness, believe him to be unworthy of credit;

(b) by proof that the witness has been bribed, or has accepted the offer of a bribe, or has received any other corrupt inducement to give his evidence; 40

(c) by proof of former statements inconsistent with any part of his evidence which is liable to be contradicted;

Explanation.—A witness declaring another witness to be unworthy of credit may not, upon his examination-in-chief, give reasons for his belief, but he may be asked his reasons in cross-examination, and the answers which he gives cannot be contradicted, though, if they are false, he may afterwards be charged with giving false evidence. 45

Illustration.

(a) A sues B for the price of goods sold and delivered to B. C says that he delivered the goods to B. Evidence is offered to show that, on a previous occasion, he said that he had not delivered goods to B. The evidence is admissible.

5 (b) A is accused of the murder of B. C says that B, when dying, declared that A had given B the wound of which he died. Evidence is offered to show that, on a previous occasion, C said that B, when dying, did not declare that A had given B the wound of which he died. The evidence is admissible.

10 **159.** When a witness whom it is intended to corroborate gives evidence of any relevant fact, he may be questioned as to any other circumstances which he observed at or near to the time or place at which such relevant fact occurred, if the Court is of opinion that such circumstances, if proved, would corroborate the testimony of the witness as to the relevant fact which he testifies.

Questions tending to corroborate evidence of relevant fact, admissible.

Illustration.

15 A, an accomplice, gives an account of a robbery in which he took part. He describes various incidents unconnected with the robbery which occurred on his way to and from the place where it was committed. Independent evidence of these facts may be given in order to corroborate his evidence as to the robbery itself.

20 **160.** In order to corroborate the testimony of a witness, any former statement made by such witness relating to the same fact, at or about the time when the fact took place, or before any authority legally competent to investigate the fact, may be proved.

Former statements of witness may be proved to corroborate later testimony as to same fact.

25 **161.** Whenever any statement, relevant under section 26 or 27, is proved, all matters may be proved either in order to contradict or to corroborate it, or in order to impeach or confirm the credit of the person by whom it was made, which might have been proved if that person had been called as a witness and had denied upon cross-examination the truth of the matter suggested.

What matters may be proved in connection with proved statement relevant under section 26 or 27.

30 **162.** (1) A witness may, while under examination, refresh his memory by referring to any writing made by himself at the time of the transaction concerning which he is questioned, or so soon afterwards that the Court considers it likely that the transaction was at that time fresh in his memory:

Refreshing memory.

Provided that the witness may also refer to any such writing made by any other person, and read by the witness within the time aforesaid, if when he read it, he knew it to be correct.

35 (2) Whenever a witness may refresh his memory by reference to any document, he may, with the permission of the Court, refer to a copy of such document:

Provided that the Court be satisfied that there is sufficient reason for the non-production of the original:

Provided further that an expert may refresh his memory by reference to professional treatises.

40 **163.** A witness may also testify to facts mentioned in any such document as is mentioned in section 162, although he has no specific recollection of the facts themselves, if he is sure that the facts were correctly recorded in the document.

Testimony to facts stated in document mentioned in section 162.

Illustration.

A book-keeper may testify to facts recorded by him in books regularly kept in the course of business, if he knows that the books were correctly kept, although he has forgotten the particular transactions entered.

Right of adverse party as to writing used to refresh memory. **164.** Any writing referred to under the provisions of the two last preceding sections must be produced and shown to the adverse party if he requires it; such party may, if he pleases, cross-examine the witness thereupon. 5

Production of documents. **165. (1)** A witness summoned to produce a document shall, if it is in his possession or power, bring it to Court, notwithstanding any objection which there may be to its production or to its admissibility: 10

Provided that the validity of any such objection shall be decided on by the Court.

(2) The Court, if it sees fit, may inspect the document, unless it refers to matters of State, or take other evidence to enable it to determine on its admissibility.

(3) If for such a purpose it is necessary to cause any document to be translated, the Court may, if it thinks fit, direct the translator to keep the contents secret, unless the document is to be given in evidence and, if the interpreter disobeys such direction, he shall be held to have committed an offence under section 196 of the Bharatiya Nyaya Sanhita, 2023: 15

Provided that no Court shall require any privilege communication between the Ministers and the President of India to be produced before it. 20

Giving, as evidence, of document called for and produced on notice. **166.** When a party calls for a document which he has given the other party notice to produce, and such document is produced and inspected by the party calling for its production, he is bound to give it as evidence if the party producing it requires him to do so.

Using, as evidence, of document production of which was refused on notice. **167.** When a party refuses to produce a document which he has had notice to produce, he cannot afterwards use the document as evidence without the consent of the other party or the order of the Court. 25

Illustration.

A sues B on an agreement and gives B notice to produce it. At the trial, A calls for the document and B refuses to produce it. A gives secondary evidence of its contents. B seeks to produce the document itself to contradict the secondary evidence given by A, or in order to show that the agreement is not stamped. He cannot do so. 30

Judge's power to put questions or order production. **168.** The Judge may, in order to discover or obtain proof of relevant facts, ask any question he considers necessary, in any form, at any time, of any witness, or of the parties about any fact; and may order the production of any document or thing; and neither the parties nor their representatives shall be entitled to make any objection to any such question or order, nor, without the leave of the Court, to cross-examine any witness upon any answer given in reply to any such question: 35

Provided that the exercise of the powers conferred herein must be based upon facts declared by this Act to be relevant, and duly proved:

Provided further that this section shall not authorise any Judge to compel any witness to answer any question, or to produce any document which such witness would be entitled to refuse to answer or produce under sections 136 to 140, both inclusive, if the question were asked or the document were called for by the adverse party; nor shall the Judge ask any question which it would be improper for any other person to ask under section 157 or 158; nor shall he dispense with primary evidence of any document, except in the cases hereinbefore excepted. 40 45

CHAPTER XI

OF IMPROPER ADMISSION AND REJECTION OF EVIDENCE

5 **169.** The improper admission or rejection of evidence shall not be ground of itself for a new trial or reversal of any decision in any case, if it shall appear to the Court before which such objection is raised that, independently of the evidence objected to and admitted, there was sufficient evidence to justify the decision, or that, if the rejected evidence had been received, it ought not to have varied the decision.

No new trial for improper admission or rejection of evidence.

1 of 1872.

170. (1) The Indian Evidence Act, 1872 is hereby repealed.

Repeal and savings.

10 (2) Notwithstanding such repeal, if, immediately before the date on which this Act comes into force, there is any trial, application, trial, inquiry, investigation, proceeding or appeal pending, then, such application, trial, inquiry, investigation, proceeding or appeal shall be dealt with under the provisions of the Evidence Act, 1872, as in force immediately before such commencement, as if this Act had not come into force.

1 of 1872.

THE SCHEDULE

CERTIFICATE

[See Section 63(4)]

PART A

(To be filled by the Party)

1. I, _____ (name), Son/daughter/
spouse of _____ residing _____/
employed at _____

do hereby solemnly affirm and sincerely state and submit as follows:—

2. I state that I have produced the output of the digital record taken from the following device
or the source (tick mark):

Computer / Storage Media DVR Mobile

Flash Drive CD/DVD Server

Cloud Other

Other:

(specify)

Make & Model: _____ Color: _____

Serial Number: _____

IMEI/UIN/UID/MAC/Cloud ID _____ (as applicable)

and any other relevant information, if any, about the device or the
source _____.

3. The device or the source was in such a state wherein digital record could be retrieved.

The digital device is:

Owned Maintained Managed

Operated

by me (select as applicable).

PART B

(To be filled by the Expert)

1. I, _____ (name), Son/daughter/
spouse of _____ residing _____/
employed at _____

do hereby solemnly affirm and sincerely state and submit as follows:—

2. I state that I have produced the output of the digital record taken from the following device
or the source (tick mark):

Computer / Storage Media DVR Mobile

Flash Drive CD/DVD Server

Cloud Other

Other:

(specify)

Make & Model: _____ Color: _____

Serial Number: _____

IMEI/UIN/UID/MAC/Cloud ID _____ (as applicable)

and any other relevant information, if any, about the device or the
source _____.

3. The device or the source was in such a state wherein digital record could be retrieved.

The digital device is:

Owned Maintained Managed

Operated

by me (select as applicable).

4. I state that while taking the digital record/output of the digital record the device was
operating properly without affecting the contents of the electronic record or its accuracy or
its contents and the hash value of the digital record is reproduced below in a sealed or
packed cover in storage media as below:

Make and Model: _____

Serial Number: _____

Hash Value:

Hashing Algorithm:

SHA1:

SHA256:

MD5:

Other: _____ (Legally applicable standard)

Date (DD/MM/YYYY) : _____

Time (IST): _____ hours (In 24 hours format)

Place: _____

(Hash report to be enclosed with the certificate)

Seal:

(Name, Designation, Signature)

Place:

Date:

Note :

1. Box to be ticked mark if applicable or crossed if not applicable .
2. IMEI : International Mobile Equipment Identity can be found from any mobile device using Dial *#06#
3. UIN: Unique Identification Number issued by the Directorate General of Civil Aviation, Government of India (Only applicable in the case of Drone).
4. UID: Unique Identification numbers - This could be Serial number of Mobile, Computer, Laptop, Storage Media, CCTV, Flash Drive or any Hardware.

STATEMENT OF OBJECTS AND REASONS

The Evidence Act was enacted in the year 1872 with a view to consolidate the law relating to evidence on which the court could come to the conclusion about the fact of the case and then pronounce judgment thereupon and it came into force on 1st September, 1872.

2. The experience of seven decades of Indian democracy calls for comprehensive review of our criminal laws including Indian Evidence Act and adopt them in accordance with the contemporary needs and aspirations of people. The law of evidence (not being substantive or procedural law), falls in the category of 'adjective law', that defines the pleading and methodology by which the substantive or procedural laws are operationalised. The existing law does not address the technological advancement undergone in the country during the last few decades.

3. The proposed legislation, namely "Bhartiya Sakshya Adhiniyam", *inter alia*, provides as under,—

(i) it provides that 'evidence' includes any information given electronically, which would permit appearance of witnesses, accused, experts and victims through electronic means;

(ii) it provides for admissibility of an electronic or digital record as evidence and it shall have the same legal effect, validity and enforceability as paper records;

(iii) it seeks to expand the scope of secondary evidence to include copies made from original by mechanical processes, copies made from or compared with the original, counterparts of documents as against the parties who did not execute them and oral accounts of the contents of a document given by some person who has himself seen it and giving matching hash # value of original record will be admissible as proof of evidence in the form of secondary evidence;

(iv) it seeks to put limits on the facts which are admissible and its certification as such in the courts. The proposed Bill introduces more precise and uniform rules of practice of courts in dealing with facts and circumstances of the case by means of evidence.

4. The Notes on Clauses explains the various provisions of the Bill.

5. The Bill seeks to achieve the above objectives.

NEW DELHI;
The 9th August, 2023.

AMIT SHAH.

Notes on clauses

Clause 1 of the Bill seeks to provide for short title, application and commencement.

Clause 2 of the Bill seeks to provide definitions. This clause seeks to provide for definition of certain expressions used in the proposed Legislation.

Clause 3 of the Bill relates to evidence given of facts in issue and relevant facts.

This clause seeks to provide evidence may be given in any suit or proceeding of the existence or non-existence of every fact in issue and of such other facts declared to be relevant, and of no others.

Clause 4 of the Bill relates to relevancy of facts forming part of same transaction.

This clause seeks to provide that facts which, though not in issue, are so connected with a fact in issue or a relevant fact as to form part of the same transaction, are relevant, whether they occurred at the same time and place or at different times and places.

Clause 5 of the Bill relates to facts which are the occasion, cause or effect of facts in issue or relevant facts.

This clause seeks to provide that facts which are the occasion, cause or effect, immediate or otherwise, of relevant facts, or facts in issue, or which constitute the state of things under which they happened, or which afforded an opportunity for their occurrence or transaction, are relevant.

Clause 6 of the Bill relates to motive, preparation and previous or subsequent conduct.

This clause seeks to provides that any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact.

It is proposed that the conduct of any party, or of any agent to any party, to any suit or proceeding, in reference to such suit or proceeding, or in reference to any fact in issue therein or relevant thereto, and the conduct of any person, an offence against whom is the subject of any proceeding, is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto. It is further proposed to insert *Explanation 1* and *2* so as to explain the expression of the word "conduct".

Clause 7 of the Bill relates to facts necessary to explain or introduce fact in issue or relevant facts.

This clause seeks to provides that facts necessary to explain or introduce a fact in issue or relevant fact, or which support or rebut an inference suggested by a fact in issue or a relevant fact, or which establish the identity of anything, or person whose identity, is relevant, or fix the time or place at which any fact in issue or relevant fact happened, or which show the relation of parties by whom any such fact was transacted, are relevant insofar as they are necessary for that purpose.

Clause 8 of the Bill relates to things said, done by conspirator in reference to common design.

This clause seeks to provide that there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it.

Clause 9 of the Bill relates to facts not otherwise relevant become relevant.

This clause seeks to facts not otherwise relevant are relevant that if they are inconsistent with any fact in issue or relevant fact and if by themselves or in connection with other facts they make the existence or non-existence of any fact in issue or relevant fact highly probable or improbable.

Clause 10 of the Bill relates to facts tending to enable Court to determine amount are relevant in suits for damages.

This clause, *inter alia*, provides that suits in which damages are claimed, any fact which will enable the Court to determine the amount of damages which ought to be awarded is relevant.

Clause 11 of the Bill relates to facts relevant when right or custom is in question.

This clause deals with the question of the existence of any right or custom, the facts are relevant that any transaction by which the right or custom in question was created, claimed, modified, recognised, asserted or denied, or which was inconsistent with its existence and particular instances in which the right or custom was claimed, recognised or exercised, or in which its exercise was disputed, asserted or departed from.

Clause 12 of the Bill relates to facts showing existence of state of mind, or of body of bodily feeling.

This clause seeks to provide that facts showing the existence of any state of mind such as intention, knowledge, good faith, negligence, rashness, ill-will or goodwill towards any particular person, or showing the existence of any state of body or bodily feeling, are relevant, when the existence of any such state of mind or body or bodily feeling is in issue or relevant.

It is further proposed to insert *Explanation 1* and *2* so as to explain the relevant state of mind and previous commission by the accused of an offence is relevant fact.

Clause 13 of the Bill relates to facts bearing on question whether act was accidental or intentional.

This clause seeks to provide that there is a question whether an act was accidental or intentional, or done with a particular knowledge or intention, the fact that such act formed part of a series of similar occurrences, in each of which the person doing the act was concerned, is relevant.

Clause 14 of the Bill relates to existence of course of business when relevant.

This clause seeks to provide that there is a question whether a particular act was done, the existence of any course of business, according to which it naturally would have been done, is a relevant fact.

Clause 15 of the Bill defined the term "Admission".

This clause defined that an admission is a statement, oral or documentary or contained in electronic form, which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons, and under the circumstances, hereinafter mentioned.

Clause 16 of the Bill relates to Admission by party to proceeding or his agent.

This clause, *inter alia*, provides that the statements made by a party to the proceeding, or by an agent to any such party, whom the Court regards, under the circumstances of the case, as expressly or impliedly authorised by him to make them, are admissions.

It is further proposed that statements made in suits in a representative character, are not admissions, unless they were made while the party making them held that character and further persons who have any proprietary or pecuniary interest in the subject matter of the proceeding, and who make the statement in their character of persons so interested, or

persons from whom the parties to the suit have derived their interest in the subject matter of the suit, are admissions, if they are made during the continuance of the interest of the persons making the statements.

Clause 17 of the Bill relates to admissions by persons whose position must be proved as against party to suit.

This clause seeks to provide that the statements made by persons whose position or liability, it is necessary to prove as against any party to the suit, are admissions, if such statements would be relevant as against such persons in relation to such position or liability in a suit brought by or against them, and if they are made whilst the person making them occupies such position or is subject to such liability.

Clause 18 of the Bill relates to admissions by persons expressly referred to by party to suit.

This clause deals with the statements made by persons to whom a party to the suit has expressly referred for information in reference to a matter in dispute are admissions.

Clause 19 of the Bill relates to admissibility of proof of admissions against persons making them, and by or on their behalf.

This clause provides that the admissions are relevant and may be proved as against the person who makes them, or his representative in interest; but they cannot be proved by or on behalf of the person who makes them or by his representative in interest.

This clause further provides exception in certain cases in which statement of facts in issue or relevant fact by person who is dead or cannot be found. It is also exempted that where an admission may be proved by or on behalf of the person making it when it consists of a statement of the existence of any state of mind or body, relevant or in issue, made at or about the time when such state of mind or body existed, and is accompanied by conduct rendering its falsehood improbable and if it is relevant otherwise than as an admission.

Clause 20 of the Bill deals when an oral admissions as to contents of documents are relevant.

This clause provides that oral admissions as to the contents of a document are not relevant, unless and until the party proposing to prove them shows that he is entitled to give secondary evidence of the contents of such document under the rules hereinafter contained, or unless the genuineness of a document produced is in question.

Clause 21 of the Bill deals as to admissions in civil cases when relevant.

This clause provides that in civil cases no admission is relevant, if it is made either upon an express condition that evidence of it is not to be given, or under circumstances from which the Court can infer that the parties agreed together that evidence of it should not be given.

Clause 22 of the Bill relates to confession caused by inducement, threat, coercion or promise, when irrelevant in criminal proceeding.

This clause provides that confession made by an accused person is irrelevant in a criminal proceeding, have been caused by any inducement, threat, coercion or promise having reference to the charge against the accused person, proceeding from a person in authority and sufficient, in the opinion of the Court, to give the accused person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.

Clause 23 of the Bill deals with the confession to police officer.

This clause explains that no confession made to a police officer shall be proved as against a person accused of any offence, unless it is made in the immediate presence of a Magistrate shall be proved against him:

Further it is also provided to insert a proviso that when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.

Clause 24 of the Bill relates to consideration of proved confession affecting person making it and others jointly under trial for same offence.

This clause provides that when more persons than one is being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other person as well as against the person who makes such confession. It is further proposed to insert *Explanation I* for the term "Offence" and *Explanation II* for the trial conducted in the absence of an accused under section 82 of the Code of Criminal Procedure, 1973 is deemed to be a joint trial.

Clause 25 of the Bill deals that admissions not conclusive proof, but may estop.

This clause provides that admissions are not conclusive proof of the matters admitted but they may operate as estoppels.

Clause 26 of the Bill relates to the cases in which statement of facts in issue or relevant fact by person who is dead or cannot be found, etc., is relevant.

This clause provides, *inter alia*, deals with statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which under the circumstances of the case appears to the Court unreasonable, are themselves facts in issue or relevant facts, in case of statement of a person, resulted in his death; in the ordinary course of business; against the pecuniary or proprietary interest of the person; the opinion of any such person, as to the existence of any public right or custom or matters of public or general interest; the existence of any relationship by blood, marriage or adoption between persons.

Clause 27 of the Bill deals with the relevancy of certain evidence for proving, in subsequent proceeding.

This clause provides that evidence given by a witness in a judicial proceeding, or before any person authorised by law to take it, is relevant for the purpose of proving, in a subsequent judicial proceeding, the proceeding was between the same parties or their representatives in interest; that the adverse party in the first proceeding had the right and opportunity to cross-examine and the questions in issue were substantially the same in the first as in the second proceeding.

Clause 28 of the Bill relates to entries in books of account when relevant.

This clause provides that the entries in the books of account, including those maintained in an electronic form, regularly kept in the course of business are relevant whenever they refer to a matter into which the Court has to inquire, but such statements shall not alone be sufficient evidence to charge any person with liability.

Clause 29 of the Bill relates to relevancy of entry in public record or an electronic record made in performance of duty.

This clause provides that an entry made in any public or other official book, register or record or an electronic record, stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register or record or an electronic record, is kept, is itself a relevant fact.

Clause 30 of the Bill relates to relevancy of statements in maps, charts and plans.

This clause provides that the Statements of facts in issue or relevant facts, made in published maps or charts generally offered for public sale, or in maps or plans made under the authority of the Central Government or any State Government, as to matters usually represented or stated in such maps, charts or plans, are themselves relevant facts.

Clause 31 of the Bill relates to relevancy of statement as to fact of public nature contained in certain Acts or notifications.

This clause provides that when the Court has to form an opinion as to the existence of any fact of a public nature, any statement of it, made in a recital contained in any Central Act or State Act or in a Central Government or State Government notification appearing in the respective Official Gazette or in any printed paper or in electronic or digital form purporting to be such Gazette, is a relevant fact.

Clause 32 of the Bill relates to relevancy of statements as to any law contained in law books including electronic or digital form.

This clause provides that when the Court has to form an opinion as to a law of any country, any statement of such law contained in a book purporting to be printed or published including in electronic or digital form under the authority of the Government of such country and to contain any such law, and any report of a ruling of the Courts of such country contained in a book including in electronic or digital form purporting to be a report of such rulings, is relevant.

Clause 33 of the Bill relates to evidence to be given when statement forms part of a conversation, document, electronic record, book or series of letters or papers.

This clause provides that any statement of which evidence is given forms part of a longer statement, or of a conversation or part of an isolated document, or is contained in a document which forms part of a book, or is contained in part of electronic record or of a connected series of letters or papers, evidence shall be given of so much and no more of the statement, conversation, document, electronic record, book or series of letters or papers as the Court considers necessary in that particular case to the full understanding of the nature and effect of the statement, and of the circumstances under which it was made.

Clause 34 of the Bill relates to previous judgments relevant to bar a second suit or trial.

This clause provides that the existence of any judgment, order or decree which by law prevents any Court from taking cognizance of a suit or holding a trial, is a relevant fact when the question is whether such Court ought to take cognizance of such suit or to hold such trial.

Clause 35 of the Bill relates to relevancy of certain judgements in exercise of jurisdiction in execution of probate, etc.

This clause, *inter alia*, provide relevancy of final judgment, order or decree of a competent Court or Tribunal, in the exercise of probate, matrimonial, admiralty or insolvency jurisdiction, which confers upon or takes away from any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing, not as against any specified person but absolutely, is relevant when the existence of any such legal character, or the title of any such person to any such thing, is relevant and the said judgment, order, decree is conclusive proof.

Clause 36 of the Bill relates to relevancy and effect of judgements, orders or decrees, other those mentioned in clause 35.

This clause provides that Judgments, orders or decrees other than those mentioned in clause 35 are relevant if they relate to matters of a public nature relevant to the enquiry; but such judgments, orders or decrees are not conclusive proof of that which they state.

Clause 37 of the Bill relates to Judgments, orders or decrees, other than those mentioned in clauses 34, 35 and 36 when relevant.

This clause provides that the judgments or orders or decrees, other than those mentioned in clauses 34, 35 and 36 are irrelevant, unless the existence of such judgment or order or decree is a fact in issue, or is relevant under some other provision of this Adhiniyam.

Clause 38 of the Bill relates to Fraud or collusion in obtaining judgment, or incompetency of Court, may be proved.

This clause provides that any party to a suit or other proceeding may show that any judgment, order or decree which is relevant under clauses 34, 35 and 36, and which has been proved by the adverse party, was delivered by a Court not competent to deliver it, or was obtained by fraud or collusion.

Clause 39 of the Bill relates to opinions of experts.

This clause provides that the Court has to form an opinion of the experts upon a point of foreign law or of science, or art, or any other field, or as to identity of handwriting or finger impressions are relevant facts and such persons are called experts, and matters relating to any information transmitted or stored in any computer resource or any other electronic or digital form, the opinion of the Examiner of Electronic Evidence referred to in section 79A of the Information Technology Act, 2000, is a relevant fact.

Clause 40 of the Bill relates to the facts bearing upon opinions of experts.

This clause provides that the facts, not otherwise relevant, are relevant if they support or are inconsistent with the opinions of experts, when such opinions are relevant.

Clause 41 of the Bill relates to the opinion as to hand-writing and digital signature, when relevant.

This clause provides that the Court has to form an opinion as to the person by whom any document was written or signed, the opinion of any person acquainted with the handwriting of the person by whom it is supposed to be written or signed that it was or was not written or signed by that person and electronic signature of any person, is a relevant fact.

Clause 42 of the Bill relates to relevancy of opinion as to existence of general custom or right.

This clause provides that the Court has to form an opinion as to the existence of any general custom or right, the opinions, as to the existence of such custom or right, of persons who would be likely to know of its existence if it existed, are relevant.

Clause 43 of the Bill relates to relevancy of opinion as to usage, tenets, etc.

This clause provides that the Court has to form an opinion as to the usages and tenets, the constitution and governance of any religious or charitable foundation, or the meaning of words or terms used in particular districts or by particular classes of people, and the opinions of persons having special means of knowledge thereon, are relevant facts.

Clause 44 of the Bill relates to relevancy of opinion on relationship.

This clause provides that the Court has to form an opinion as to the relationship of persons on the opinion, expressed by conduct, as to the existence of such relationship, of any person who, as a member of the family or otherwise, has special means of knowledge on the subject, is a relevant fact, provided that such opinion shall not be sufficient to prove a marriage in proceedings under the Divorce Act, 1869, or in prosecutions under section 81 of 83 of the Bharatiya Nyaya Sanhita, 2023.

Clause 45 of the Bill relates to relevancy of grounds of opinion.

This clause provides that opinion of any living person is relevant, the grounds on which such opinion is based are also relevant.

Clause 46 of the Bill relates to civil cases character to prove conduct imputed, irrelevant.

This clause provides that in civil cases, the fact that the character of any person concerned is such as to render probable or improbable any conduct imputed to him, is irrelevant, except insofar as such character appears from facts otherwise relevant.

Clause 47 of the Bill relates to criminal cases previous good character relevant.

This clause provides that in criminal proceedings, the fact that the person accused is of a good character, is relevant.

Clause 48 of the Bill relates to the evidence of character or previous sexual experience not relevant in certain cases.

This clause provides that in a prosecution for an offence under section 64, section 65, section 67, section 66, section 67, section 70, section 71, section 73, section 74, section 75, section 76 or section 77 of the Bharatiya Jan Suraksha Avam Garima Sanhita, 2023 or for attempt to commit any such offence, where the question of consent is in issue, evidence of the character of the victim or of such person's previous sexual experience with any person shall not be relevant on the issue of such consent or the quality of consent.

Clause 49 of the Bill relates to relevancy of previous bad character not relevant, except in reply.

This clause provides that in criminal proceedings, the fact that the accused has a bad character, is irrelevant, unless evidence has been given that he has a good character, in which case it becomes relevant.

Clause 50 of the Bill relatesto character of any person is such as to affect the amount of damages which he ought to receive, is relevant in civil cases.

Clause 51 of the Bill provides that no fact of which the Court will take judicial notice need to be proved.

Clause 52 of the Bill relates to the facts of which Court shall take judicial notice.

This clause provides that the Court shall take judicial notice all laws in force in the territory of India including laws having extra-territorial operation; international treaty, agreement or convention with country or countries by India, or decisions made by India at the international associations or other bodies; the course of proceeding of the Constituent Assembly of India, of Parliament of India and of the State Legislatures; the seals of all Courts and Tribunals; the seals of Courts of Admiralty and Maritime Jurisdiction, Notaries Public, and all seals which any person is authorised to use by the Constitution, or by an Act of Parliament or State Legislatures, or Regulations having the force of law in India; the accession to office, names, titles, functions, and signatures of the persons filling for the time being any public office in any State, if the fact of their appointment to such office is notified in any Official Gazette; the existence, title and national flag of every country or sovereign recognised by the Government of India; the divisions of time, the geographical divisions of the world, and public festivals, fasts and holidays notified in the Official Gazette; the territory of India; the commencement, continuance and termination of hostilities between the Government of India and any other country or body of persons; the names of the members and officers of the Court, and of their deputies and subordinate officers and assistants, and also of all officers acting in execution of its process, and of advocates and other persons authorised by law to appear or act before it and the rule of the road or land or at sea.

This clause further provides that on all matters of public history, literature, science or art, the Court may resort for its aid to appropriate books or documents of reference and if the Court is called upon by any person to take judicial notice of any fact, it may refuse to do so unless and until such person produces any such book or document.

Clause 53 of the Bill relates to the facts admitted need not be proved.

This clause provides that no fact need be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree

to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings, subject to the condition that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions.

Clause 54 of the Bill relates to all facts, except the contents of documents may be proved by oral evidence.

Clause 55 of the Bill relates to the oral evidence to be direct.

This clause provides that Oral evidence shall, in all cases whatever, be direct; if it refers to a fact which could be seen, it must be the evidence of a witness who says he saw it; a fact which could be heard, it must be the evidence of a witness who says he heard it; 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; 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, subject to 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 and 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.

Clause 56 of the Bill relates to the contents of documents may be proved either by primary or by secondary evidence.

Clause 57 of the Bill relates to the primary evidence.

This clause provides that the primary evidence means the document itself produced for the inspection of the Court.

Clause 58 of the Bill relates to the secondary evidence.

This clause provides that the secondary evidence includes certified copies; copies made from the original by mechanical processes which in themselves ensure the accuracy of the copy, and copies compared with such copies; copies made from or compared with the original; counterparts of documents as against the parties who did not execute them; oral accounts of the contents of a document given by some person who has himself seen it; oral admissions; written admissions and 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.

Clause 59 of the Bill relates to the documents shall be proved by primary evidence except in the cases hereinafter mentioned.

Clause 60 of the Bill relates to Cases in which secondary evidence may be given of the existence, condition, or contents of a document.

Clause 61 of the Bill relates to the admissibility of electronic or digital record.

This clause provides that nothing in the Adhinyam 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 have the same legal effect, validity and enforceability as paper records.

Clause 62 of the Bill relates to special provisions as to evidence relating to electronic record.

This clause provides that the contents of electronic records may be proved in accordance with the provisions of clause 64.

Clause 63 of the Bill relates to admissibility of electronic records.

This clause provides that 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 shall be deemed to be also a document 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.

Clause 64 of the Bill relates to rules as to notice to produce.

This clause provides that the secondary evidence of the contents of the documents, shall not be given unless the party proposing to give such secondary evidence has previously given to the party in whose possession or power the document is, or to his advocate or representative, such notice to produce it as is prescribed by law; and if no notice is prescribed by law, then such notice as the Court considers reasonable under the circumstances of the case, subject to the condition such notice shall not be required in order to render secondary evidence admissible.

Clause 65 of the Bill relates to proof of signature and handwriting of person alleged to have signed or written document produced.

This clause provides that the 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.

Clause 66 of the Bill relates to proof as to electronic signature.

This clause provides that the electronic signature of any subscriber is alleged to have been affixed to an electronic record, such electronic signature is the electronic signature of the subscriber must be proved.

Clause 67 of the Bill relates to proof of execution of document required by law to be attested.

This clause provides that the 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, subject to the 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.

Clause 68 of the Bill relates to proof where no attesting witness found.

This clause provides that 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.

Clause 69 of the Bill relates to admission of execution by party to attested document.

This clause provides that 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.

Clause 70 of the Bill relates to the attesting witness denies or does not recollect the execution of the document, its execution may be proved by other evidence.

Clause 71 of the Bill relates to an attested document not required by law to be attested may be proved as if it was unattested.

Clause 72 of the Bill relates to the comparison of signature, writing or seal with others admitted or proved.

This clause provides to ascertain a 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. It further provides that 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 and applies with any necessary modifications, to finger impressions.

Clause 73 of the Bill relates to proof as to verification of digital signature.

This clause provides that to ascertain a digital signature is that of the person by whom it purports to have been affixed, the Court may direct the person or the Controller or the Certifying Authority to produce the Digital Signature Certificate and 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.

Clause 74 of the Bill relates to public and private documents.

This clause provides public documents includes documents forming the acts, or records of the acts of the sovereign authority; official bodies and tribunals; public officers, legislative, judicial and executive of India or of a foreign country; and public records kept in any State or Union territory of private documents. Except all the above others are private documents.

Clause 75 of the Bill relates to the certified copies of public documents.

This clause provides that public officer having the custody of a public document shall be called certified copies.

Clause 76 of the Bill relates to the proof of documents by production of certified copies.

This clause provides that certified copies may be produced in proof of the contents of the public documents or parts of the public documents of which they purport to be copies.

Clause 77 of the Bill relates to the proof of other official documents.

Clause 78 of the Bill relates to the presumption as to genuineness of certified copies.

This clause provides that the Court shall presume to be genuine every document purporting to be a certificate, certified copy or other document, which is by law declared to be admissible as evidence of any particular fact, and which purports to be duly certified by any officer of the Central Government or of a State Government, subject to the document is substantially in the form and purports to be executed in the manner directed by law in that behalf and the Court shall also presume that any officer by whom any such document purports to be signed or certified, held, when he signed it, the official character which he claims in such paper.

Clause 79 of the Bill relates to presumption as to documents produced as record of evidence, etc.

This clause provides that the any document is produced before any Court, purporting to be a record or memorandum of the evidence, or of any part of the evidence, given by a witness in a judicial proceeding or before any officer authorised by law to take such evidence or to be a statement or confession by any prisoner or accused person, taken in accordance with law, and purporting to be signed by any Judge or Magistrate, or by any such officer as aforesaid, the Court shall presume that the document is genuine; any statements as to the circumstances under which it was taken, purporting to be made by the person signing it, are true; and such evidence, statement or confession was duly taken.

Clause 80 of the Bill relates to presumption as to Gazettes, newspapers, and other documents.

This clause provides that the Court shall presume the genuineness of every document purporting to be the Official Gazette, or to be a newspaper or journal, and of every document purporting to be a document directed by any law to be kept by any person, if such document is kept substantially in the form required by law and is produced from proper custody.

Clause 81 of the Bill relates to the presumption as to Gazettes in electronic or digital record.

This clause provides that the Court shall presume the genuineness of every electronic or digital record purporting to be the Official Gazette, or purporting to be electronic or digital record directed by any law to be kept by any person, if such electronic or digital record is kept substantially in the form required by law and is produced from proper custody.

Clause 82 of the Bill relates to the presumption as to maps or plans made by authority of Government.

This clause provides that the Court shall presume that maps or plans purporting to be made by the authority of the Central Government or any State Government were so made, and are accurate; but maps or plans made for the purposes of any cause must be proved to be accurate.

Clause 83 of the Bill relates to the presumption as to collections of laws and reports of decisions.

This clause provides that the Court shall presume the genuineness of, every book purporting to be printed or published under the authority of the Government of any country, and to contain any of the laws of that country, and of every book purporting to contain reports of decisions of the Courts of such country.

Clause 84 of the Bill relates to the presumption as to powers-of-attorney.

This clause provides that the Court shall presume that every document purporting to be a power-of-attorney, and to have been executed before, and authenticated by, a Notary Public, or any Court, Judge, Magistrate, Indian Consul or Vice-Consul, or representative of the Central Government, was so executed and authenticated.

Clause 85 of the Bill relates to the presumption as to electronic agreements.

This clause provides that the Court shall presume that every electronic record purporting to be an agreement containing the electronic or digital signature of the parties was so concluded by affixing the electronic or digital signature of the parties.

Clause 86 of the Bill relates to the presumption as to electronic records and electronic signatures.

This clause provides that any proceedings involving a secure electronic record, the Court shall presume unless contrary is proved, that the secure electronic record has not been altered since the specific point of time to which the secure status relates.

Further provides that the case involving secure digital signature, the Court shall presume secure electronic signature is affixed by subscriber with the intention of signing or approving the electronic record and nothing in this section shall create any presumption, relating to authenticity and integrity of the electronic record or any electronic signature.

Clause 87 of the Bill relates to presumption as to Electronic Signature Certificates.

This clause provides that the information listed in an Electronic Signature Certificate is correct, except for information specified as subscriber information which has not been verified, if the certificate was accepted by the subscriber.

Clause 88 of the Bill relates to presumption as to certified copies of foreign judicial records.

This clause provides that the Court may presume that any document purporting to be a certified copy of any judicial record of any country beyond India is genuine and accurate, if the document purports to be certified in any manner which is certified by any representative of the Central Government, in or for such country, to be the manner commonly in use in that country for the certification of copies of judicial records.

Clause 89 of the Bill relates to presumption as to books, maps and charts.

This clause provides that the Court may presume that any book to which it may refer for information on matters of public or general interest, and that any published map or chart, the statements of which are relevant facts, and which is produced for its inspection, was written and published by the person, and at the time and place, by whom or at which it purports to have been written or published.

Clause 90 of the Bill relates to presumption as to electronic messages.

This clause provides that the Court may presume that an electronic message, forwarded by the originator through an electronic mail server to the addressee to whom the message purports to be addressed corresponds with the message as fed into his computer for transmission; but the Court shall not make any presumption as to the person by whom such message was sent.

Clause 91 of the Bill relates to presumption as to due execution of documents not produced.

This clause provides that the Court shall presume that every document, called for and not produced after notice to produce, was attested, stamped and executed in the manner required by law.

Clause 92 of the Bill relates to presumption as to documents thirty years old.

This clause provides that any document, purporting or proved to be thirty years old, is produced from any custody which the Court in the particular case considers proper, the Court may presume that the signature and every other part of such document, which purports to be in the handwriting of any particular person, is in that person's handwriting, and, in the case of a document executed or attested, that it was duly executed and attested by the persons by whom it purports to be executed and attested.

Clause 93 of the Bill relates to presumption as to electronic records five years old.

This clause provides that any electronic record, purporting or proved to be five years old, is produced from any custody which the Court in the particular case considers proper, the Court may presume that the electronic signature which purports to be the electronic signature of any particular person was so affixed by him or any person authorised by him in this behalf.

Clause 94 of the Bill relates to evidence of terms of contracts, grants and other dispositions of property reduced to form of document.

This clause provides that the terms of a contract, or of a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant or other disposition of property, or of such matter, except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions and with few exceptions.

Clause 95 of the Bill relates to exclusion of evidence of oral agreement.

This clause provides that no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from the proved evidence.

Clause 96 of the Bill relates to exclusion of evidence to explain or amend ambiguous document.

This clause provides that the language used in a document is, on its face, ambiguous or defective, evidence may not be given of facts which would show its meaning or supply its defects.

Clause 97 of the Bill relates to exclusion of evidence against application of document to existing facts.

This clause provides that the language used in a document is plain in itself, and when it applies accurately to existing facts, evidence may not be given to show that it was not meant to apply to such facts.

Clause 98 of the Bill relates to evidence as to document unmeaning reference to existing facts.

This clause provides that the language used in a document is plain in itself, but is unmeaning in reference to existing facts, evidence may be given to show that it was used in a peculiar sense.

Clause 99 of the Bill relates to evidence as to application of language which can apply to one only of several persons.

This clause provides that the facts are such that the language used might have been meant to apply to any one, and could not have been meant to apply to more than one, of several persons or things, evidence may be given of facts which show which of those persons or things it was intended to apply to.

Clause 100 of the Bill relates to evidence as to application of language to one of two sets of facts, to neither of which the whole correctly applies.

This clause provides that the language used applies partly to one set of existing facts, and partly to another set of existing facts, but the whole of it does not apply correctly to either, evidence may be given to show to which of the two it was meant to apply.

Clause 101 of the Bill relates to evidence as to meaning of illegible characters.

This clause provides that evidence may be given to show the meaning of illegible or not commonly intelligible characters, of foreign, obsolete, technical or local and regional expressions, of abbreviations and of words used in a peculiar sense.

Clause 102 of the Bill relates to the person give evidence of agreement varying terms of document.

This clause provides that persons who are not parties to a document, or their representatives in interest, may give evidence of any facts tending to show a contemporaneous agreement varying the terms of the document.

Clause 103 of the Bill relates to saving of provisions of Indian Succession Act relating to Wills

Clause 104 of the Bill relates to burden of proof.

This clause provides that person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

Clause 105 of the Bill relates to the person with whom burden of proof lies.

This clause provides that the burden of proof in a suitor proceeding lies on that person who would fail if no evidence at all were given on either side.

Clause 106 of the Bill relates to the burden of proof as to particular fact.

This clause provides that the burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

Clause 107 of the Bill relates to the burden of proving fact to be proved to make evidence admissible.

This clause provides that the burden of proving any fact necessary to be proved in order to enable any person to give evidence of any other fact is on the person who wishes to give such evidence.

Clause 108 of the Bill relates to the burden of proving that case of accused comes within exceptions.

This clause provides that the accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the general exceptions in the Bharatiya Nyaya Sanhita, 2023 or within any special exception or proviso contained in any other part of the said Sanhita, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances.

Clause 109 of the Bill relates to burden of proving fact especially within knowledge.

This clause provides that any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

Clause 110 of the Bill relates to burden of proving death of person known to have been alive within thirty years.

This clause provides that the question is whether a man is alive or dead, and it is shown that he was alive within thirty years, the burden of proving that he is dead is on the person who affirms it.

Clause 111 of the Bill relates to burden of proving that person is alive who has not been heard of for seven years.

This clause provides that a man is alive or dead, and it is proved that he has not been heard of for seven years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is shifted to the person who affirms it.

Clause 112 of the Bill relates to burden of proof as to relationship in the cases of partners, landlord and tenant, principal and agent.

This clause provides that the persons are partners, landlord and tenant, or principal and agent, and it has been shown that they have been acting as such, the burden of proving that they do not stand, or have ceased to stand, to each other in those relationships respectively, is on the person who affirms it.

Clause 113 of the Bill relates to burden of proof as to ownership.

This clause provides that any person is owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner.

Clause 114 of the Bill relates to proof of good faith in transactions where one party is in relation of active confidence.

This clause provides that the good faith of a transaction between parties, one of whom stands to the other in a position of active confidence, the burden of proving the good faith of the transaction is on the party who is in a position of active confidence.

Clause 115 of the Bill relates to presumption as to certain offences.

Clause 116 of the Bill relates to birth during marriage, conclusive proof of legitimacy.

This clause provides that the fact that any person was born during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the legitimate child of that man.

Clause 117 of the Bill relates to presumption as to abetment of suicide by a married woman.

This clause provides that a woman committed suicide had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.

Clause 118 of the Bill relates to presumption as to dowry death.

This clause provides that a person has committed the dowry death of a woman and it is shown that soon before her death, such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the court shall presume that such person had caused the dowry death.

Clause 119 of the Bill relates to Court may presume existence of certain facts.

This clause provides that the Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

Clause 120 of the Bill relates to presumption as to absence of consent in certain prosecution for rape.

This clause provides that the prosecution for rape, where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and such woman states in her evidence before the court that she did not consent, the court shall presume that she did not consent.

Clause 121 of the Bill relates to Estoppel.

This clause provides that one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing.

Clause 122 of the Bill relates to Estoppel of tenants and of licensee of person in possession.

This clause provides that no tenant of immovable property, or person claiming through such tenant, shall, during the continuance of the tenancy or any time thereafter, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property; and no person who came upon any immovable property by the licence of the person in possession thereof shall be permitted to deny that such person had a title to such possession at the time when such licence was given.

Clause 123 of the Bill relates to Estoppel of acceptor of bill of exchange, bailee or licensee.

This clause provides that acceptor of a bill of exchange shall be permitted the drawer had authority to draw such bill or to endorse it; nor shall any bailee or licensee be permitted to deny that his bailor or licensor had, at the time when the bailment or licence commenced, authority to make such bailment or grant such licence.

Clause 124 of the Bill relates to the person who may testify.

This clause provides that all persons shall be competent to testify unless the Court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind.

Clause 125 of the Bill relates to witness unable to communicate verbally.

This clause provides that a witness who is unable to speak may give his evidence in any other manner in which he can make it intelligible, as by writing or by signs; but such writing must be written and the signs made in open Court and evidence so given shall be deemed to be oral evidence, subject to the assistance of interpreter.

Clause 126 of the Bill relates to competency of husband and wife as witnesses in certain cases.

This clause provides that in all civil proceedings the parties to the suit, and the husband or wife of any party to the suit, shall be competent witnesses and in criminal proceedings against any person, the husband or wife of such person, respectively, shall be a competent witness.

Clause 127 of the Bill relates to Judges and Magistrates.

This clause provides that the no Judge or Magistrate shall, except upon the special order of some Court to which he is subordinate, be compelled to answer any questions as to his own conduct in Court as such Judge or Magistrate, or as to anything which came to his knowledge in Court as such Judge or Magistrate; but he may be examined as to other matters which occurred in his presence whilst he was so acting.

Clause 128 of the Bill relates to communications during marriage.

This clause provides that the no person who is or has been married, shall be compelled to disclose any communication made to him during marriage by any person to whom he is or has been married; nor shall he be permitted to disclose any such communication, unless the person who made it, or his representative in interest, consents, except in suits between married persons, or proceedings in which one married person is prosecuted for any crime committed against the other.

Clause 129 of the Bill relates to evidence as to affairs of State.

This clause provides that no one shall be permitted to give any evidence derived from unpublished official records relating to any affairs of State, except with the permission of the officer at the head of the department concerned, who shall give or withhold such permission as he thinks fit.

Clause 130 of the Bill relates to the official communications.

This clause provides that no public officer shall be compelled to disclose communications made to him in official confidence, when he considers that the public interests would suffer by the disclosure.

Clause 131 of the Bill relates to the information as to commission of offences.

This clause provides that no Magistrate or police-officer shall be compelled to say when he got any information as to the commission of any offence, and no revenue-officer shall be compelled to say when he got any information as to the commission of any offence against the public revenue.

Clause 132 of the Bill relates to professional communications.

This clause provides that no advocate, shall at any time be permitted, unless with his client's express consent, to disclose any communication made to him in the course and for the purpose of his service as such advocate, by or on behalf of his client, or to state the contents or condition of any document with which he has become acquainted in the course and for the purpose of his professional service, or to disclose any advice given by him to his client in the course and for the purpose of such service.

Clause 133 of the Bill relates to privilege not waived by volunteering evidence.

This clause provides that any party to a suit gives evidence therein at his own instance or otherwise, he shall not be deemed to have consented thereby to such disclosure as is

mentioned in section 132; and, if any party to a suit or proceeding calls any such advocate, as a witness, he shall be deemed to have consented to such disclosure only if he questions such advocate, on matters which, but for such question, he would not be at liberty to disclose.

Clause 134 of the Bill relates to confidential communication with legal advisers.

This clause provides that no one shall be compelled to disclose to the Court any confidential communication which has taken place between him and his legal adviser, unless he offers himself as a witness, in which case he may be compelled to disclose any such communications as may appear to the Court necessary to be known in order to explain any evidence which he has given, but no others.

Clause 135 of the Bill relates to production of title-deeds of witness not a party.

This clause provides that no witness who is not a party to a suit shall be compelled to produce his title-deeds to any property, or any document in virtue of which he holds any property as pledge or mortgagee or any document the production of which might tend to criminate him, unless he has agreed in writing to produce them with the person seeking the production of such deeds or some person through whom he claims.

Clause 136 of the Bill relates to production of documents or electronic records which another person, having possession, would refuse to produce.

This clause provides that no one shall be compelled to produce documents in his possession or electronic records under his control, which any other person would be entitled to refuse to produce if they were in his possession or control, unless such last-mentioned person consents to their production.

Clause 137 of the Bill relates to witness not excused from answering on ground that answer will criminate.

This clause provides that the witness shall not be excused from answering any question as to any matter relevant to the matter in issue in any suit or in any civil or criminal proceeding, upon the ground that the answer to such question will criminate, or may tend directly or indirectly to criminate, such witness, or that it will expose, or tend directly or indirectly to expose, such witness to a penalty or forfeiture of any kind:

Clause 138 of the Bill relates to accomplice.

This clause provides that the accomplice shall be a competent witness against an accused person; and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice.

Clause 139 of the Bill relates to number of witnesses.

This clause provides that no particular number of witnesses shall in any case be required for the proof of any fact.

Clause 140 of the Bill relates to order of production and examination of witnesses.

This clause provides that the order in which witnesses are produced and examined shall be regulated by the law and practice for the time being relating to civil and criminal procedure respectively, and, in the absence of any such law, by the discretion of the Court.

Clause 141 of the Bill relates to Judge to decide as to admissibility of evidence.

This clause provides that the Judge shall admit the evidence if he thinks that the fact, if proved, would be relevant, and not otherwise and the fact proposed to be proved is one of which evidence is admissible only upon proof of some other fact, such last mentioned fact must be proved before evidence is given of the fact first mentioned, unless the party undertakes to give proof of such fact, and the Court is satisfied with such undertaking.

It further provides that if the relevancy of one alleged fact depends upon another

alleged fact being first proved, the Judge may, in his discretion, either permit evidence of the first fact to be given before the second fact is proved, or require evidence to be given of the second fact before evidence is given of the first fact.

Clause 142 of the Bill relates to examination of witnesses.

This clause provides that the examination of witness as examination-in-chief and the examination of a witness by the adverse party shall be called his cross-examination and subsequent to the cross-examination, by the party who called him, shall be called his re-examination.

Clause 143 of the Bill relates to order of examinations.

This clause provides that the witnesses shall be first examined-in-chief, then cross-examined on the relevant facts and then re-examined, but the cross-examination need not be confined to the facts to which the witness testified on his examination-in-chief.

It further provides that re-examination shall be directed to the explanation of matters referred to in cross-examination; and, if new matter is, by permission of the Court, introduced in re-examination, the adverse party may further cross-examine upon that matter.

Clause 144 of the Bill relates to cross-examination of person called to produce a document.

This clause provides that a person summoned to produce a document does not become a witness by the mere fact that he produces it, and cannot be cross-examined unless and until he is called as a witness.

Clause 145 of the Bill relates to witnesses to character may be cross-examined and re-examined.

Clause 146 of the Bill relates to leading questions.

This clause provides that the definition for leading questions and when it raise it can be raised in the examination of witness and the circumstances court may permit for leading questions.

Clause 147 of the Bill relates to evidence as to matters in writing.

This clause provides that any witness may be asked, while under examination, whether any contract, grant or other disposition of property, as to which he is giving evidence, was not contained in a document, and if he says that it was, or if he is about to make any statement as to the contents of any document, which, in the opinion of the Court, ought to be produced, the adverse party may object to such evidence being given until such document is produced, or until facts have been proved which entitle the party who called the witness to give secondary evidence of it.

Clause 148 of the Bill relates to cross-examination as to previous statements in writing.

This clause provides that a witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.

Clause 149 of the Bill relates to questions lawful in cross-examinations.

This clause provides for testing the veracity of the witness during cross-examination and to discover his position in life and to say his credit and it is not permissible for cross-examination of prosecutrix in cases filed under 64 of the Bharatiya Nyaya Sanhita, 2023.

Clause 150 of the Bill relates to circumstances when witness to compel to answer.

Clause 151 of the Bill relates to Court to decide when question shall be asked and when witness compelled to answer.

Clause 152 of the Bill relates to question not to be asked without reasonable grounds.

Clause 153 of the Bill relates to procedure of Court in case of question being asked without reasonable grounds.

This clause provides that the Court is of opinion that any question was asked without reasonable grounds, it may, if it was asked by any advocate, report the circumstances of the case to the High Court or other authority to which such advocate, is subject in the exercise of his profession.

Clause 154 of the Bill relates to indecent and scandalous questions.

This clause provides that the Court may forbid any questions or inquiries which it regards as indecent or scandalous, although such questions or inquiries may have some bearing on the questions before the Court, unless they relate to facts in issue, or to matters necessary to be known in order to determine whether or not the facts in issue existed.

Clause 155 of the Bill relates to questions intended to insult or annoy.

This clause provides that the Court shall forbid any question which appears to it to be intended to insult or annoy, or which, though proper in itself, appears to the Court needlessly offensive in form.

Clause 156 of the Bill relates to exclusion of evidence to contradict answers to questions testing veracity.

Clause 157 of the Bill relates to question by party to his own witness.

This clause provides that the Court may, in its discretion, permit the person who calls a witness to put any questions to him which might be put in cross-examination by the adverse party.

Clause 158 of the Bill relates to impeaching credit of witness.

This clause provides that the credit of a witness may be impeached in by the adverse party or with the consent of the Court.

Clause 159 of the Bill relates to questions tending to corroborate evidence of relevant fact, admissible.

This clause provides that a witness whom it is intended to corroborate gives evidence of any relevant fact, he may be questioned as to any other circumstances which he observed at or near to the time or place at which such relevant fact occurred, if the Court is of opinion that such circumstances, if proved, would corroborate the testimony of the witness as to the relevant fact which he testifies.

Clause 160 of the Bill relates to former statements of witness may be proved to corroborate later testimony as to same fact.

This clause provides that in order to corroborate the testimony of a witness, any former statement made by such witness relating to the same fact, at or about the time when the fact took place, or before any authority legally competent to investigate the fact, may be proved.

Clause 161 of the Bill relates to matters may be proved in connection with proved statement relevant under section 26 or 27.

Clause 162 of the Bill relates to refreshing memory of the witness.

This clause provides that a witness may, while under examination, refresh his memory by referring to any writing made by himself at the time of the transaction concerning which he is questioned, or so soon afterwards that the Court considers it likely that the transaction

was at that time fresh in his memory and further a witness may refresh his memory by reference to any document, he may, with the permission of the Court, refer to a copy of document.

Clause 163 of the Bill relates to testimony to facts stated in document mentioned in clause 162.

This clause provides that a witness may also testify to facts mentioned in any such document as is mentioned in clause 162, although he has no specific recollection of the facts themselves, if he is sure that the facts were correctly recorded in the document.

Clause 164 of the Bill relates to right of adverse party as to writing used to refresh memory.

This clause provides that any writing referred to under the provisions of the two last preceding sections must be produced and shown to the adverse party if he requires it; such party may, if he pleases, cross-examine the witness thereupon.

Clause 165 of the Bill relates to production of documents.

This clause provides that a witness summoned to produce a document in possession or power, bring it subject to the decision of the Court and further determine on its admissibility.

Clause 166 of the Bill relates to giving, as evidence, of document called for and produced on notice.

This clause provides that a party calls for a document which he has given the other party notice to produce, and such document is produced and inspected by the party calling for its production, he is bound to give it as evidence if the party producing it requires him to do so.

Clause 167 of the Bill relates to using, as evidence, of document production of which was refused on notice.

This clause provides that a party refuses to produce a document which he has had notice to produce, he cannot afterwards use the document as evidence without the consent of the other party or the order of the Court.

Clause 168 of the Bill relates to Judge's power to put questions or order production.

This clause provides that the Judge may, in order to discover or obtain proof of relevant facts, ask any question he considers necessary, in any form, at any time, of any witness, or of the parties about any fact; and may order the production of any document or thing; and neither the parties nor their representatives shall be entitled to make any objection to any such question or order, nor, without the leave of the Court, to cross-examine any witness upon any answer given in reply to any such question

Clause 169 of the Bill relates to no new trial for improper admission or rejection of evidence.

This clause provides that the improper admission or rejection of evidence shall not be ground of itself for a new trial or reversal of any decision in any case, if it shall appear to the Court before which such objection is raised that, independently of the evidence objected to and admitted, there was sufficient evidence to justify the decision, or that, if the rejected evidence had been received, it ought not to have varied the decision.

Clause 170 of the Bill relates to repeal and savings.

FINANCIAL MEMORANDUM

The Bharatiya Sakshya Bill, 2023, if enacted, is not likely to involve any expenditure, either recurring or non-recurring, from and out of the Consolidated Fund of India.

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to consolidate and to provide for general rules and principles of evidence for fair trial.

(Shri Amit Shah, Minister of Home Affairs and Cooperation)

List of Domain Experts

1.	Shri Praveen Sinha, Ex-Special Director, Central Bureau of Investigation (CBI)
2.	Dr. Padmini Singh, Joint Secretary, Department of Legal Affairs
3.	Smt. Anupama Nilekar Chandra, Additional Director General (ADG), Bureau of Police Research & Development (BPR&D)
4.	Dr. Vikram Singh, Former Director General of Police (DGP)
5.	Prof. Naveen Chaudhary, National Forensic Sciences University, Gandhinagar, Gujarat
6.	Ms. Sonia Mathur, Senior Advocate
7.	Shri Jagdish Rana, Advocate
8.	Shri Anand Dey, Advocate
9.	Dr. Pinky Anand, Senior Advocate and Former Additional Solicitor General of India
10.	Justice Ritu Raj Awasthi, Chairman, Law Commission of India
11.	Dr. Adish C. Aggarwala, Senior Advocate, President, Supreme Court Bar Association
12.	Justice (Retd.) Satish Chandra
13.	Shri Utkarsh Sharma, Advocate
14.	Shri K.L. Janjani, Senior Advocate
15.	Shri Sanjeev Deshpande, Senior Advocate
16.	Prof. (Dr.) Faizan Mustafa, Former Vice-Chancellor, National Academy of Legal Studies and Research (NALSAR)
17.	Dr. Aditya Sondhi, Senior Advocate
18.	Shri Amit Desai, Senior Advocate
19.	Shri Priyank Kanoongo, Chairperson, National Commission for Protection of Child Rights (NCPCR)