

# INDIAN EVIDENCE ACT, 1872

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## 1.1. Section 8 of the Evidence Act

### 1.1.1 Explanation of Section 8 of the Evidence Act

Section 8 of the Indian Evidence Act, 1872 (and similar provisions in other evidence acts modeled after it) states that any fact is relevant which shows or constitutes a  **motive, preparation, or conduct** (previous or subsequent) for any fact in issue or relevant fact.

- **Motive (A):** The reason why a person commits an act. For example, if A is tried for the murder of B, the fact that B knew a secret about A and was using it to extort money provides a "motive" and is relevant.
- **Preparation (B):** The steps taken to facilitate the commission of an act. For example, if A is accused of poisoning B, the fact that A purchased a specific poison shortly before B's death is relevant as "preparation."
- **Conduct (C):** The behavior of the parties involved, either before or after the event. This includes the conduct of any party to the suit, their agent, or the victim of an offense, provided such conduct influences or is influenced by a fact in issue. For instance, if a person runs away immediately after being told the police are coming, that "conduct" is relevant.

Because all three elements are explicitly mentioned as relevant under Section 8, all of the above is the most comprehensive and correct choice.

#### Section 8 of Evidence Act | Motive, Preparation & Conduct

This [video](#) provides a detailed breakdown of Section 8, explaining how motive, preparation, and conduct are applied in legal proceedings with practical illustrations.

<https://youtu.be/MMf09acwAjA>

### **1.2 Section 47, Indian Evidence Act-Prescribes the method of proving the signature**

While several sections deal with opinions, **Section 47** specifically prescribes the method of proving handwriting or signatures by someone who is familiar with the person's writing.

#### **Methods of Proving Signatures under the Evidence Act**

The law provides three primary ways to prove a signature or handwriting. Interestingly, your options include two of the most common methods:

- **Section 47 (Opinion as to handwriting):** This allows a person "acquainted" with the handwriting of the person in question to give their opinion. You are considered "acquainted" if you have seen that person write, received letters from them, or habitually seen their signature in the ordinary course of business.
- **Section 45 (Opinion of Experts):** This allows a professional Handwriting Expert (a calligraphist) to give an opinion based on scientific comparison of the disputed signature with admitted signatures.
- **Section 73 (Comparison by Court):** This allows the Judge themselves to compare the disputed signature with one known to be genuine to form their own conclusion.

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#### **1.2.1 Understanding Section 47**

The question asks for the "method" by which a signature can be proved. While Section 45 is about *expert* opinion, Section 47 is the standard procedural method used in daily court business where a clerk, family member, or business partner identifies a signature because they know it.

#### **1.2.2 Breakdown of the Options**

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#### **Proving a Will vs. Proving a Signature**

Since we were just discussing Wills, it is important to note a special rule: Under Section 68 of the Evidence Act, if a document is required by law to be attested (like a Will), it cannot be used as

evidence until at least one attesting witness has been called to prove its execution, regardless of whether the signature is proved via **Section 47 or 45**.

### 1.3 Section 82 of the Indian Evidence Act

#### 1.3.1 Understanding Section 82

Section 82 of the **Indian Evidence Act, 1872** deals with the presumption as to documents admissible in England without proof of seal or signature. It is a "shall presume" provision, meaning the Court is **bound** to take the fact as proved unless and until it is disproved.

The law states that when any document is produced before an Indian Court which would be admissible in a Court of Justice in England or Ireland without proof of the seal, stamp, or signature:

1. **Authenticity of markings:** The Court **must** presume that the seal, stamp, or signature is genuine (Option A).
2. **Official Status:** The Court **must** presume that the person who signed it actually held the judicial or official character they claimed at that time (Option B).

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#### 1.3.2 The Logic of "Shall Presume"

In the Evidence Act, presumptions are divided into **three categories**. **Section 82** falls into the middle category, which is the strongest form of rebuttable presumption.

Category	Meaning	Examples
May Presume	Court has discretion to presume or ask for proof.	Section 114 (Regularity of acts).
Shall Presume	Court <b>must</b> presume unless disproved.	<b>Section 82</b> , Section 79, Section 89.
Conclusive Proof	Court will not allow any evidence to disprove it.	Section 112 (Birth during marriage).

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#### 1.3.3 Why is Section 82 specific to England/Ireland?

This is a colonial-era provision. It was designed to allow documents authenticated in the United Kingdom to be accepted in Indian courts without the need for expensive and time-consuming "formal proof" (like flying a witness from London to Delhi just to say, "Yes, that is my signature").

Even though India is independent, this section remains in the Act to facilitate the recognition of certain international legal documents.

Under the **Indian Evidence Act**, the term "**Shall Presume**" is a directive to the Court. It means the Court **must** take a fact as proved unless and until it is disproved by the opposing party. The Court has no discretion here; it cannot ask for proof until the presumption is successfully challenged.

Here are the **most critical "Shall Presume" sections** you should know for exams:

#### 1. Presumptions as to Documents (Chapter V)

These sections allow the Court to accept official documents without calling witnesses to verify every signature.

- **Section 79:** Presumption as to the genuineness of certified copies.

- **Section 80:** Presumption as to documents produced as a record of evidence (depositions).
- **Section 82:** Presumption as to documents admissible in England without proof of seal or signature (the one we just discussed!).
- **Section 85:** Presumption as to **Powers of Attorney**.
- **Section 89:** Presumption as to due execution, etc., of documents not produced (if a party refuses to produce a document after notice).

## 2. Presumptions as to Crimes (The "Heavy" Ones)

In criminal law, these sections often shift the **Burden of Proof** onto the accused, which is an exception to the rule "innocent until proven guilty."

- **Section 111A:** Presumption as to certain offenses (like waging war against the Government) in disturbed areas.
- **Section 113A:** Presumption as to **Abetment of Suicide** by a married woman (if it happens within 7 years of marriage and she was subjected to cruelty).
- **Section 113B:** Presumption as to **Dowry Death**. If it is shown that soon before her death the woman was subjected to cruelty for dowry, the Court *shall* presume the person caused the death.
- **Section 114A:** Presumption as to **absence of consent** in certain prosecutions for rape.

### 1.3.4 Comparison: May vs. Shall vs. Conclusive

Term	Court's Power	Burden of Proof
<b>May Presume</b>	Discretionary (Can ask for proof).	On the person who wants the Court to believe it.
<b>Shall Presume</b>	Mandatory (Must believe it).	Shifts to the other party to <b>disprove</b> it.
<b>Conclusive Proof</b>	Absolute (Cannot be challenged).	No evidence allowed to contradict it.

### 1.3.5 Why does this matter for your 105 Question?

Since Section 82 is a "Shall Presume" section, the judge **cannot** say "I don't believe this British seal is real, prove it to me." The judge **must** accept it as genuine unless the other side brings evidence showing the seal is a forgery.

## 1.4. Section 45 of the Indian Evidence Act, 1872

### 1.4.1 Understanding Section 45

The general rule in the law of evidence is that witnesses should only testify to **facts** they have personally perceived. However, **Section 45** is an exception to this rule. It allows the Court to seek the opinion of skilled professionals (experts) when it has to form an opinion on specific technical subjects.

Under **Section 45**, the Court can take expert opinions on the following five subjects:

1. Foreign Law

2. Science
3. Art
4. Identity of Handwriting
5. Finger Impressions

### 1.4.2 Comparison of the Sections

While all these sections (45–48) deal with "Opinions," they apply to different scenarios. This is a common area for exam confusion:

Section	Scope of Opinion	Who gives the opinion?
Section 45	Expert Opinion (Science, Art, etc.)	A person specially skilled in the field.
Section 46	Facts bearing upon opinions of experts	Any fact that supports or contradicts an expert's opinion.
Section 47	Opinion as to Handwriting	Anyone acquainted with the person's handwriting.
Section 48	Opinion as to Existence of Right or Custom	Persons likely to know about such a general custom.

### Key Points about Expert Testimony

- **Advisory Nature:** The opinion of an expert is **not binding** on the judge. It is merely "corroborative" evidence meant to assist the Court.
- **Who is an Expert?** The Act doesn't define "expert" strictly, but the person must have "special skill" or experience in the field. 1.4.3
- **The "Why" Matters:** Under Section 51, the **grounds** (reasons) on which an expert bases their opinion are also relevant. A conclusion without a reason has very little evidentiary value.

### 1.4.3 Important Distinction: Section 45 vs. Section 47

- If a **forensic scientist** compares two signatures under a microscope, it falls under **Section 45**.
- If a **son** identifies his father's signature because he sees it every day, it falls under **Section 47** (Opinion of a person acquainted with handwriting), and he is not considered an "expert."

## 1.5 Section 61 of the Indian Evidence Act. 1872

### 1.5.1 Understanding Section 61

**Section 61** of the Indian Evidence Act actually states:

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

The "Best Evidence Rule" found in **Section 64** mandates that documents **must** be proved by primary evidence except in specific cases (like when the original is lost).

### 1.5.2 Breakdown of Proof of Documents

The Indian Evidence Act divides evidence for documents into two tiers:

1. **Primary Evidence (Section 62):** This refers to the document itself produced for the inspection of the Court. If a document is executed in several parts, each part is primary evidence.
2. **Secondary Evidence (Section 65):** This includes certified copies, copies made from the original by mechanical processes (like photocopies), or oral accounts of the contents of a document.

### 1.5.3 When is Secondary Evidence Allowed?

Under **Section 65**, you can only use **secondary evidence** if:

- The original is in the possession of the opposing party who refuses to produce it.
- The original has been destroyed or lost.
- The original is of such a nature that it cannot be easily moved (like an inscription on a rock or wall).
- The original is a public document.

### 1.5.3 Quick Reference Table

Section	Topic	Key takeaway
<b>Section 61</b>	Proof of Contents	Can be proved by Primary OR Secondary evidence.
<b>Section 62</b>	Primary Evidence	The "Original" document (The Best Evidence).
<b>Section 63</b>	Secondary Evidence	Copies, oral accounts, or translations.
<b>Section 64</b>	General Rule	Documents <b>must</b> be proved by primary evidence first.

Since **Section 64** acts as the "command," it forces the "permission" of **Section 61** toward **Primary Evidence**.

**Section 65B** of the Indian Evidence Act is arguably the most important provision for modern litigation. It was introduced via the **Information Technology Act, 2000**, to create a "special procedure" for admitting electronic records (like emails, WhatsApp chats, or CCTV footage) as evidence.

### 1.5.4 The "Non-Obstante" Rule

**Section 65B** starts with the phrase "**Notwithstanding anything contained in this Act...**" This means it overrides the general rules of evidence (Sections 61 to 65) when it comes to digital data. You cannot simply apply the "**Primary vs. Secondary**" evidence rules to a computer printout; you *must* follow Section 65B.

### 1.5.5 The 4 Mandatory Conditions (Section 65B(2))

For a digital record (like a printout or a CD) to be admissible, these four conditions must be met:

1. **Regular Use:** The computer that produced the record was used regularly to store or process information during that period.
2. **Ordinary Course:** The information was regularly fed into the computer in the ordinary course of activities.

3. **Proper Operation:** Throughout the material part of that period, the computer was operating properly.
4. **Accuracy:** The duplicate (printout/copy) must correctly reproduce the information fed into the computer.

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### 1.5.6 The Mandatory Certificate (Section 65B(4))

This is the most litigated part of the section. If you want to submit a copy of a digital record, you **must** provide a certificate.

- **Who signs it?** A person occupying a "responsible official position" in relation to the operation of the device.
- **What does it do?** It identifies the record, describes the manner in which it was produced, and gives particulars of the device to show it was produced by a computer.

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### 1.5.7 Landmark Shift: Arjun Panditrao Khotkar vs. Kailash Kushanrao (2020)

Before this case, there was confusion about whether the certificate was always mandatory. The Supreme Court settled it:

- **Certificate is Mandatory:** If you are producing "secondary" electronic evidence (like a printout, a CD, or a Pendrive), the Section 65B certificate is a **condition precedent**. Without it, the evidence is inadmissible.
- **The "Original" Exception:** If you bring the **original device** itself (e.g., the actual laptop or the original mobile phone) to the witness box, you do **not** need a 65B certificate. That would be considered "Primary Evidence."
- **The "Impossible" Rule:** If a party cannot get a certificate (e.g., a person refuses to give it), the Court can step in and order the person/entity to produce it.

**Note for Exam Prep:** Under the new **Bharatiya Sakshya Adhiniyam (BSA), 2023**, which replaces the Evidence Act, these rules have been slightly reorganized (specifically under **Section 63 of BSA**), but the core principle of the certificate remains largely the same.

## 1.6 Section 115 -Doctrine of Estoppel

**1.6.1 Understanding Doctrine of Estoppel:** Section 115 of the **Indian Evidence Act, 1872** is a rule of equity that prevents a person from "denying the truth of a statement he previously made" if another person acted upon that statement and changed their position.

### The Three Pillars of Estoppel

To successfully invoke this doctrine in a court of law, all the conditions mentioned in your question must be present:

1. **Representation (Option A):** A person must make a statement (by words, conduct, or even silence where there is a duty to speak) that leads another to believe a certain thing is true.
2. **Reliance/Action (Option B):** The person to whom the representation was made must believe it and **act upon it**. If they didn't believe the statement or didn't change their behavior because of it, there is no estoppel.
3. **Detriment (Option C):** As a result of that action, the person must have suffered a loss or a change in position that would be **detrimental** (harmful) if the first person were now allowed to deny the original statement.

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### 1.6.2 A Simple Example

Imagine **Person A** tells **Person B** that a certain piece of land belongs to A, and encourages B to build a house on it. B spends money and builds the house. Later, A cannot come to court and say, "Actually, the land wasn't mine, so B must leave."

- A made a **representation**.
- B **acted** on it.
- Denying the truth now would be **detrimental** to B. **A is "estopped" from telling the truth.**

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### 1.6.3 Key Exceptions (Where Estoppel Does Not Apply)

It's equally important to know where this rule fails:

- **No Estoppel against Statute:** You cannot use estoppel to override a law passed by Parliament.
- **No Estoppel against Sovereign Acts:** Generally, the government cannot be stopped from performing its sovereign duties even if a previous official made a representation.
- **Knowledge of Truth:** If the person to whom the representation was made already knew the truth, they cannot claim estoppel.
- **Points of Law:** Estoppel applies to **facts**, not to interpretations of law.

**1.6.4 Promissory Estoppel** is an extension of the general doctrine of estoppel, but it specifically deals with **promises made for the future**, rather than just statements of existing facts.

In India, this doctrine is most frequently used as a shield by citizens against the government. It prevents a person (or the State) from backing out of a promise that another party has relied upon to their detriment.

#### The Core Essentials

To claim Promissory Estoppel, the following must be proven:

1. **A Clear Promise:** There must be a clear and unequivocal promise intended to create a legal relationship.
2. **Acted Upon:** The person to whom the promise was made must have altered their position based on that promise (e.g., spent money, started a business).
3. **Inequitable to Retreat:** It would be unfair or "unconscionable" to allow the promisor to go back on their word.

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### 1.6.5 Promissory Estoppel vs. The Government

This is the most common application in Indian law. If the government promises a tax holiday or a subsidy to attract industries to a backward area, and a company spends crores setting up a factory there, the government cannot suddenly withdraw the subsidy midway through the promised period.

### 1.6.6 Landmark Cases

1. **Motilal Padampat Sugar Mills vs. State of Uttar Pradesh (1979):** The Supreme Court held that the government is bound by its promise even if there is no formal contract, provided the citizen has acted upon it.

2. **Pournami Oil Mills vs. State of Kerala:** The court ruled that if the government grants an exemption for a specific period to encourage new industries, it cannot withdraw that exemption prematurely.

### 1.6.7 Important Limitations (The "No-Go" Zones)

Promissory Estoppel is powerful, but it is not absolute. It **cannot** be used in these situations:

- **Against the Law:** The government cannot be forced to do something that is prohibited by an Act of Parliament. (There is no estoppel against the law).
- **Public Interest:** If the government can prove that the "larger public interest" outweighs the individual's loss (e.g., a sudden national security crisis or a total change in economic policy), the court may allow them to retract the promise.
- **Ultra Vires:** If an officer makes a promise they had no legal authority to make, the government is not bound by it.

### 1.6.8 Quick Comparison

Feature	General Estoppel (Sec. 115)	Promissory Estoppel
Focus	Statements about <b>Existing Facts</b> .	Promises about <b>Future Conduct</b> .
Legal Basis	Rule of Evidence.	Rule of Equity / Contract.
Requirement	Representation must be of a past/present fact.	A promise is sufficient.

**1.6.9 Section 116** of the Indian Evidence Act is a **specific application of the doctrine of estoppel**. It deals with the relationship between a **landlord and tenant** and a licensor and licensee.

The core principle is simple: **Once a tenant, always a tenant.** ### 1. The Rule for Tenants

**1. Section 116** states that no tenant of immovable property (or person claiming through such tenant) shall be permitted to deny that the landlord had a title to the property **at the beginning of the tenancy**.

- **The Duration:** This estoppel applies as long as the tenant is in possession of the property.
- **The Logic:** If you accepted a person as your landlord and entered the property because of them, you cannot later refuse to pay rent or refuse to vacate by claiming, "You aren't actually the owner."

#### 2. The Rule for Licensees

The second part of the section applies to a **licensee** (someone permitted to use a property without a formal lease). A person who comes upon any immovable property by the license of the person in possession cannot deny that such person had a title to such possession at the time when the license was given.

### 3. Key Limitations of Section 116

It is important to understand what this section *doesn't* cover:

- **Only at the "Beginning":** The tenant is only estopped from denying the landlord's title at the time the lease *started*. If the landlord sells the property to someone else during the lease, or loses the title later, the tenant *can* challenge the landlord's current right to the property.
- **After Surrendering Possession:** Once the tenant gives up the keys and moves out, they are free to challenge the landlord's title in a separate legal battle. The "estoppel" only lasts while they are enjoying the property.
- **Fraud or Coercion:** If the tenant was forced into the lease through fraud, misrepresentation, or coercion, Section 116 does not apply.

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### 1.6.10 Summary Table: Section 116 Essentials

Subject	Estoppel Target	Time Constraint
Tenant	Landlord's Title	At the <b>commencement</b> of tenancy.
Licensee	Licensors's Title	At the <b>time</b> license was granted.
Possession	Must be in possession	Ends once possession is surrendered.

**1.6.11 Legal Maxim:** This is often associated with the principle that a person cannot "**approbate and reprobate**" (you cannot blow hot and cold at the same time by accepting the benefit of the lease while denying the status of the giver).

### 1.7 Section 3, Indian Evidence Act, 1872

#### 1.7.1 Understanding the Definition (Section 3)

According to **Section 3** of the Indian Evidence Act, the term "Court" is defined very broadly to ensure that the rules of evidence apply wherever a formal legal determination is being made. It includes:

1. **All Judges.**
2. **All Magistrates.**
3. **All persons (except Arbitrators) legally authorized to take evidence.**

#### 1.7.2 The "Arbitrator" Exception

The most important thing to remember for exams is that **Arbitrators are excluded** from the definition of "Court" under the Evidence Act.

- **Reason:** Arbitration is meant to be a less formal, speedier process. While arbitrators follow the principles of "Natural Justice," they are not strictly bound by the technical rules of the Evidence Act (though they often use them as a guide).

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#### 1.7.3 Summary of what constitutes a "Court"

Category	Included?	Legal Basis
Judges	Yes	Section 3, Evidence Act
Magistrates	Yes	Section 3, Evidence Act

Category	Included?	Legal Basis
Commissioners	Yes	Authorized to take evidence
Arbitrators	No	Specifically excluded
Consumer Forums	No	Usually follow "Summary Procedure"

## 1.8 Section 63, Indian Evidence Act 1872

### 1.8.1 Quick Breakdown of the Indian Evidence Act

Under the Indian Evidence Act, 1872, the law distinguishes between primary and secondary evidence to ensure the most reliable information is presented in court.

- **Section 61:** Lays down the general rule that the contents of documents may be proved either by primary or by secondary evidence.
- **Section 62:** Defines **Primary Evidence** (the document itself produced for the inspection of the Court).
- **Section 63:** Defines **Secondary Evidence**, which includes:
  1. Certified copies.
  2. Copies made from the original by mechanical processes (like photography or lithography).
  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.
- **Section 64:** Establishes that documents must be proved by primary evidence except in cases mentioned later in the Act.
- Since you're interested, Section 65 is the "gatekeeper" section. While Section 63 defines what secondary evidence is, Section 65 dictates when you are actually allowed to use it instead of the original document.
- Under the "Best Evidence Rule," the court always prefers the original. However, you can bring in secondary evidence in these specific scenarios:

### 1.8.2 When Secondary Evidence is Admissible

Situation	Type of Secondary Evidence Allowed
Original is with the adversary (or someone out of reach) who won't produce it after notice.	Any secondary evidence of the contents.
Existence/Contents are admitted in writing by the person against whom it is proved.	The written admission itself.
Original is destroyed or lost (and not through the fault of the party wanting to use it).	Any secondary evidence of the contents.
Original is not easily movable (e.g., an inscription on a wall or a heavy monument).	Any secondary evidence of the contents.

Situation	Type of Secondary Evidence Allowed
Original is a public document (under Section 74).	A certified copy of the document (and no other kind).
Original consists of numerous accounts or documents that cannot be conveniently examined in court.	Evidence of the general result by a person skilled in examining them.

### 1.8.3 Key Takeaway

Think of it as a hierarchy. The law doesn't want "hearsay" or "copies of copies" unless there is a very good reason the original isn't available. If you can't prove one of the conditions in Section 65, the court will likely reject your secondary evidence entirely.

### 1.9 Section 6,7,8,9- Relevance of Motions of preparation and conduct

Section 8 of the Indian Evidence Act (and the corresponding Section 6 of the Bharatiya Sakshya Adhinyam) deals specifically with three critical elements that help prove a person's involvement in a crime or transaction: **Motive, Preparation, and Conduct**.

#### 1.9.1 Breaking Down Section 8

This section makes facts relevant if they show or constitute the following:

- **Motive:** The reason *why* someone committed an act (e.g., extreme debt, revenge, or financial gain).
- **Preparation:** Acts done *before* the crime to arrange the means or opportunity (e.g., buying a weapon, scouting a location, or purchasing poison).
- **Conduct:** The behavior of the parties *before or after* the event (e.g., the accused running away when they see the police, or a victim making a complaint).

#### 1.9.2 Comparison with Other Sections

Quick look at the other options provided:

Section	Focus Area	Why it differs from Preparation/Conduct
Section 6	<i>Res Gestae</i>	Deals with facts that are part of the <b>same transaction</b> (things said or done during the act).
Section 7	Occasion, Cause, or Effects	Deals with the <b>state of things</b> under which an event happened (e.g., the opportunity to commit the crime).
Section 8	<b>Motive, Preparation, Conduct</b>	Specifically covers the <b>actions and intentions</b> of the person involved.
Section 9	Explanatory/Introductory Facts	Used for <b>identifying</b> people or things (e.g., Test Identification Parades).

#### 1.9.3 Important Legal Distinction: Preparation vs. Attempt

In criminal law, "Preparation" is generally not punishable by itself (with a few exceptions like dacoity or waging war), but under the Evidence Act, it is highly **relevant** to prove that the person intended to commit the act.

**Example of Preparation:** If a man is accused of murder by poisoning, the fact that he was seen purchasing that specific poison the day before is relevant as "Preparation" under Section 8.

This is a classic "trap" in the Evidence Act because **Section 8** focuses on what a person **does** (conduct), not just what they **say** (statements).

Here is the **key distinction** that often appears in judicial exams:

### 1. Conduct vs. Statement

- **Conduct:** Physical actions, behavior, or gestures (e.g., running away, trembling, or handing over a weapon). This is **always relevant** under Section 8.
- **Statement:** Mere words spoken. A statement is **not** relevant as conduct under Section 8 **unless** it accompanies and explains an act.

**The Rule of Explanatory Statements:** If a man runs away (Conduct) and shouts "The police are coming!" (Statement), the shout is relevant because it explains why he is running. If he just sits still and says "I killed him," that is a **Confession**, not "Conduct" under Section 8.

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### 2. Complaints vs. Statements

There is a very specific distinction regarding victims under **Illustration (j) and (k)** of Section 8:

Scenario	Legal Classification	Relevancy
A "Complaint"	The victim goes to the police or a friend specifically to seek redress/help.	Relevant as <b>Conduct</b> under Section 8.
A "Statement"	The victim merely mentions what happened in a casual conversation without seeking help.	<b>Not Conduct.</b> (May be relevant as a Dying Declaration or Corroboration elsewhere, but not under Sec 8).

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#### 1.9.4 Summary of Section 8 Elements

##### Why this matters in a trial:

If the prosecution can prove that:

1. The accused had a **Motive** (e.g., they owed the victim money),
2. The accused made **Preparation** (e.g., they bought a knife the day before), and
3. The accused showed suspicious **Conduct** (e.g., they were seen washing blood off their clothes immediately after the crime),

...then the "chain of circumstances" becomes incredibly strong, even without an eyewitness.

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**1.9.5** The case of **Queen-Empress v. Abdullah (1885)** is the definitive authority on this subject. It involved a woman named Dulari whose throat had been slit, rendering her unable to speak.

##### The Facts of the Case

- **The Victim:** Dulari was dying and could not talk.
- **The Inquiry:** A Magistrate and several witnesses asked her questions. They asked if "X" did it, "Y" did it, and finally, if **Abdullah** did it.

- **The "Conduct":** When Abdullah's name was mentioned, Dulari made a distinctive **sign/gesture** with her hand, pointing toward him or nodding.

### The Legal Debate

The court had to decide: Was this gesture a **"Statement"** (which might be hearsay or a dying declaration) or was it **"Conduct"** under Section 8?

- **The Defense argued:** It was a statement made by signs and therefore not "conduct."
- **The Prosecution argued:** Her physical movement (the gesture) was conduct influenced by the crime.

### The Decision

The Full Bench of the Allahabad High Court ruled:

1. **Not Conduct:** The gestures were **not** relevant as "conduct" under Section 8 because they were merely responses to questions (essentially a "statement" by signs).
2. **Relevant as a Dying Declaration:** However, the gestures **were admissible** under **Section 32** (Dying Declaration).

### 1.9.6 Why this is a "Golden Rule" for Law Students

This case taught us that:

- If a person acts **spontaneously** (e.g., screams and runs away upon seeing a murderer), it is **Conduct (Section 8)**.
- If a person acts **in response to a question** (e.g., points at someone because a cop asked "Who hit you?"), it is a **Statement**, even if no words are spoken.

### 1.9.7 Summary Table: Spontaneous vs. Responsive

Action	Category	Relevant Under
Running away when the police arrive.	<b>Conduct</b>	Section 8
Pointing at a suspect during a lineup.	<b>Statement</b>	Section 9 or 32
Crying "He killed me!" while dying.	<b>Statement</b>	Section 32
Buying a gun two days before a shooting.	<b>Preparation</b>	Section 8

### 1.10 Section 65B of the Evidence Act

**Admissibility of electronic record** has been prescribed under Section 65B of the Evidence Act.

While **Section 65A** provides the general "roadmap" for using electronic records as evidence, it is **Section 65B** that contains the specific **admissibility** conditions and the requirement for a certificate that makes a digital document valid in a court of law.

#### 1.10.1 The Breakdown of Sections

- **Section 65A:** Acts as an enabling provision. It simply states that the contents of electronic records shall be proved in accordance with the provisions of Section 65B.
- **Section 65B (The Star of the Show):** This is a "non-obstante" clause, meaning it overrides other general rules of evidence. It says that any information contained in an electronic record (like a printout, a CD, or a WhatsApp chat) shall be deemed to be a **document** and is admissible without further proof of the original, provided certain conditions are met.
- **Section 65:** Deals with the general cases in which **secondary evidence** (like a photocopy) relating to physical documents may be given.
- **Section 66:** Lays down the rules as to the **notice** required to produce a document.

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### 1.10.2 The 4 Essential Conditions of Section 65B

For a computer output to be admissible, the following must be true at the time of the record's creation:

1. **Lawful Control:** The computer was used regularly to store or process information by someone having lawful control over it.
2. **Regular Input:** Information of that kind was regularly fed into the computer in the ordinary course of activities.
3. **Proper Operation:** The computer was operating properly (or if it was out of order, that didn't affect the data integrity).
4. **Reproduction:** The information in the electronic record reproduces the information fed into the computer accurately.

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### The "Certificate" Requirement

The most famous part of Section 65B is the **Certificate (Section 65B(4))**. This is a written statement signed by a person in a responsible official position, identifying the electronic record and describing the manner in which it was produced.

**1.10.3 Crucial Legal Update:** In the landmark case of *Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal (2020)*, the Supreme Court clarified that the Section 65B certificate is a **mandatory prerequisite** for the admissibility of electronic records. You cannot skip it if the "original" device (like the actual server or the phone) is not brought to court.

In modern litigation, nearly every case involves some digital footprint—whether it's a WhatsApp message, an email, or a CCTV clip. Because digital data is so easy to manipulate, the court is very strict about how it enters the record.

Here is how the **"Big Three" of digital evidence**—WhatsApp, Emails, and CCTV—are handled under **Section 65B**.

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#### 1. WhatsApp Messages

WhatsApp chats are considered "virtual verbal communications." While they are admissible, the courts treat them with caution.

- **Admissibility:** A printout or screenshot of a WhatsApp chat is **Secondary Evidence**. To be admissible, it **must** be accompanied by a Section 65B Certificate.

- **The "Blue Tick" Rule:** In some cases (like *SBI Cards v. Rohidas Yadav*), courts have accepted "Blue Ticks" as valid proof that a legal notice sent via WhatsApp was "served" and read by the recipient.
- **Probative Value:** Even if the chat is admitted, the court may give it low weight if you can't prove who exactly was using the phone at that moment.

## 2. Emails

Emails are often the backbone of commercial litigation.

- **The Requirement:** If you print an email from your Gmail or Outlook to show in court, you are the "person in lawful control" of that computer output.
- **The Certificate:** You must sign a certificate stating that the computer used to print the email was working properly and that the email was received in the "ordinary course of business."
- **Primary vs. Secondary:** If you bring the actual laptop to court and open the email inbox in front of the judge, it is **Primary Evidence**, and a Section 65B certificate is technically not required (as per the *Arjun Panditrao* case).

## 3. CCTV and Audio Recordings

- **The Source:** If you are providing a CD or Pen Drive containing CCTV footage, you need a certificate from the person who extracted the footage from the DVR (Digital Video Recorder).
- **Integrity:** The court looks for a "Chain of Custody"—proof that the footage wasn't edited or "doctored" between the time of recording and its presentation in court.

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### Section 65B Certificate: A Mandatory Requirement

The Supreme Court clarified in 2020 that for any electronic record (secondary evidence), the Section 65B certificate is **not optional**—it is a condition precedent. Without it, the evidence is simply inadmissible.

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### Comparison: Different Types of Digital Evidence

Type of Evidence	Classification	Key Requirement
WhatsApp Screenshot	Secondary	65B Certificate + Metadata (Phone number/Time).
Email Printout	Secondary	65B Certificate + Proof of email address ownership.
Original Mobile Phone	Primary	No 65B needed (if produced in court).
CCTV on Pen Drive	Secondary	65B Certificate from the DVR administrator.

#### 1.10.4 A Note on 2026 Legal Changes

With the implementation of the **Bharatiya Sakshya Adhiniyam (BSA)**, which replaced the Evidence Act, the provisions of Section 65B have been carried forward into **Section 63** of the new Act. The requirement for a certificate remains the same, but the formatting has been modernized to include "digital signatures" and "hash values" for better security.

In 2026, the standard for digital evidence has moved beyond simple printouts. With the enactment of the **Bharatiya Sakshya Adhiniyam (BSA), 2023** (which replaced the Evidence Act), the legal

requirement for a "Hash Value" has become central to ensuring that digital evidence hasn't been tampered with.

### 1. What is a Hash Value?

Think of a Hash Value as a **digital fingerprint**. It is a unique alphanumeric string (e.g., 5d41402abc...) generated by a mathematical algorithm (like SHA-256 or MD5) based on the contents of a file.

- **The Golden Rule:** If you change even one comma in a 100-page document or one pixel in a 4K video, the Hash Value will change completely.
- **The Purpose:** By recording the Hash Value at the time of evidence collection and comparing it when the evidence is presented in court, you can scientifically prove that the file is **identical** and has not been "doctored."

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### 2. The New Mandatory Certificate (Section 63 BSA)

While Section 65B was the old standard, the new **Section 63 of the BSA** now requires a more detailed certificate. In 2026, this certificate is divided into two parts:

- **Part A (The Owner/User):** To be filled by the person who has lawful control of the device (e.g., the person who took the photo or received the email).
- **Part B (The Expert):** This is a new, stricter requirement. A technical expert must now also sign off, certifying the **Hash Value** and the algorithm used to generate it.

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### 3. Why this matters in 2026

With the rise of **Deepfakes** and advanced AI editing, simply saying "I took this screenshot" is no longer enough. The court now relies on the "Hash" to provide a **Chain of Custody**.

Step	Action	Legal Significance
Seizure	Police seize a phone and generate a Hash Value of the storage.	Sets the "Original" fingerprint.
Storage	Evidence is kept in a digital locker.	Any unauthorized access will change the hash.
Trial	The expert generates the hash again in front of the judge.	If the hashes match, the evidence is <b>Authentic</b> .

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### 4. How to generate a Hash Value?

You don't need to be a hacker to do this. Most forensic tools do it automatically, but even common software can generate them:

- **Windows:** Using the command `certutil -hashfile [filename] SHA256`.
- **Mobile:** Various apps can "hash" a file before you share it with your lawyer.

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#### 1.10.5 Quick Summary

In the old days (pre-2024), you just needed a signature. In **2026**, if your electronic evidence (WhatsApp, Email, CCTV) doesn't have a **Hash Value** in its Section 63 certificate, it is highly likely to be rejected by the court as "non-compliant."

## 1.11. Section 74 of the Evidence Act-Public Documents

### 1.11.1 Understanding Section 74 of the Evidence Act.

Under the Indian Evidence Act, 1872, documents are classified into two categories: **Public** and **Private**. Section 74 provides the legal definition and criteria for what constitutes a "Public Document."

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#### 1. What is a Public Document? (Section 74)

According to Section 74, the following are public documents:

- **Acts or Records of Acts:** Documents that form the acts or records of the acts of:
  - Sovereign authority (e.g., Acts of Parliament).
  - Official bodies and tribunals (e.g., Court judgments, FIRs).
  - Public officers (Legislative, Judicial, or Executive) of India, the Commonwealth, or a foreign country.
- **Public Records of Private Documents:** Private documents that are kept as records in a public office (e.g., a **Registered Will** or a **Sale Deed** kept in the Sub-Registrar's office).

#### 2. What is a Private Document? (Section 75)

Section 75 is a "residual" section. It simply states that **all other documents** (those not covered under Section 74) are private documents. Examples include personal letters, contracts between individuals, and unrecorded memos.

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### 1.11.2 Comparison of Evidence Act Sections (72–75)

Section	Subject Matter	Key Role
Section 72	Proof of document not required by law to be attested.	Deals with how to prove a document that doesn't need witnesses.
Section 73	Comparison of signature, writing, or seal.	Allows the Court to compare a person's writing with a known sample.
Section 74	<b>Public Documents</b>	Defines which documents are "Public."
Section 75	<b>Private Documents</b>	States that everything else is "Private."

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### 1.11.3 Why the distinction matters in Court:

1. **Presumption of Genuineness:** Under Section 79, the court **presumes** that a certified copy of a public document is genuine. No such presumption exists for private documents.

2. **Mode of Proof:** Public documents are usually proved by producing **certified copies** (Section 77), whereas private documents generally require the **original** to be produced (Primary Evidence).
3. **Right to Inspect:** Any person generally has a right to inspect public documents and obtain copies upon payment of a fee (Section 76).

#### 1.11.4 Differences between Public and Private Documents

This video explains the crucial differences in evidentiary value and the specific legal definitions provided in **Sections 74 and 75** of the Evidence Act.

To get a certified copy of a public document, you don't just ask for a photocopy. There is a specific statutory procedure under **Section 76** of the Evidence Act that must be followed for the document to be legally valid in court.

#### 1.11.5 The Legal Requirements for Certification

According to **Section 76**, a document only qualifies as a "certified copy" if it contains these five elements at the "foot" (bottom) of the copy:

1. **The "True Copy" Statement:** A written certificate stating that it is a true copy of the original document or a specific part of it.
2. **Date of Issue:** The exact date the copy was prepared and certified.
3. **Name and Official Title:** The name of the officer and their designation (e.g., "Registrar," "Sub-Registrar," or "Tehsildar").
4. **Official Seal:** The stamp of the office that has custody of the document.
5. **Signature:** The handwritten signature of the authorized officer.

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### The Step-by-Step Procedure

#### Step 1: Identify the Custodian

Find the public officer who has "lawful custody" of the document.

- **Court Judgments:** The Court Registry/Copying Agency.
- **Land Records/Sale Deeds:** The Sub-Registrar's Office.
- **Birth/Death Certificates:** The Municipal Corporation.
- **FIRs/Charge Sheets:** The concerned Police Station or Magistrate's Court.

#### Step 2: Establish the "Right to Inspect"

Under Section 76, you can only get a certified copy if you have a **legal right to inspect** the original.

- Some documents (like an Act of Parliament) can be inspected by anyone.
- Others (like a private Sale Deed kept in public records) may require you to show you have a "substantial interest" in the matter.

#### Step 3: Formal Application and Fees

You must submit a written application (often on a prescribed form) along with the **legal fees**. This fee covers the cost of searching the records and the clerical work of preparing the copy.

#### Step 4: Verification and Issuance

The officer verifies the original, prepares the copy, and affixes the certificate mentioned above. Once these steps are complete, the document becomes **Secondary Evidence** that a court **must presume** to be genuine under **Section 79**.

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### 1.11.6 Why use Section 76 instead of RTI?

While you can get documents via the **Right to Information (RTI) Act**, they are not always automatically accepted as "certified copies" in court. A Section 76 certificate is specifically designed for judicial evidence, meaning you don't have to call a witness to prove the document—the certificate speaks for itself.

Feature	Standard Photocopy	Certified Copy (Sec 76)
Court Admissibility	Generally rejected.	Admissible as Secondary Evidence.
Presumption	No presumption of truth.	Presumed genuine under Sec 79.
Officer's Role	Clerical.	Certifies authenticity with a signature and seal.

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Would you like me to explain **Section 77**, which tells you exactly how to "produce" these copies in court to win your case?

### 1.11.7 [Section 76 & 77 of Evidence Act | Certified copy of Public Documents](#)

This **video** provides a structured explanation of **Sections 76 and 77**, including charts and case laws to help visualize the process of obtaining and using certified copies.

## 1.12 Section 11 of the Evidence Act- Alibi

### 1.12.1 Why Section 11?

The plea of **Alibi** (meaning "elsewhere" in Latin) is a rule of evidence where a person charged with an offense claims they were in a different place at the time the crime was committed, making it physically impossible for them to be the perpetrator.

While the Indian Evidence Act doesn't explicitly use the word "Alibi," it falls under **Section 11**, which deals with "When facts not otherwise relevant become relevant." Specifically, it fits under clause (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**."

### 1.12.2 Quick Breakdown of Other Sections:

- **Section 6:** Deals with *Res Gestae* (facts forming part of the same transaction).
- **Section 8:** Relates to **Motive, Preparation, and Previous/Subsequent Conduct**.
- **Section 12:** Pertains to facts tending to enable the court to determine the **amount of damages** in civil suits.

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**1.12.3 Important Note on Burden of Proof:** Under **Section 103** of the Evidence Act, the burden of proving an alibi lies squarely on the person asserting it (the accused). Since the plea is a "special fact" within their knowledge, they must prove it to the satisfaction of the court.

### 1.12.4 Alibi Under Evidence Act

To understand how a plea of **Alibi** works in a legal setting, it is helpful to look at how courts evaluate it. Because an alibi is a "plea of innocence" based on physical impossibility, the standards for proving it are quite rigorous.

### 1.12.5 Landmark Cases on Alibi

The judiciary has established several key principles through various judgments:

- **Dudh Nath Pandey v. State of Uttar Pradesh (1981):** The Supreme Court clarified that an alibi is not an exception (like self-defense) but a rule of evidence under Section 11. The court noted that for an alibi to succeed, it must be proved with **absolute certainty**, making the presence of the accused at the crime scene impossible.
- **Binay Kumar Singh v. State of Bihar (1997):** The court held that the plea of alibi must be taken at the earliest opportunity (usually during the framing of charges or the initial statement). If it is brought up very late in the trial, the court may view it with suspicion.

### 1.12.6 The "Burden of Proof" Workflow

Stage	Responsibility	Legal Standard
Step 1	<b>Prosecution</b> must first prove the case against the accused beyond a reasonable doubt.	<i>Onus Probandi</i>
Step 2	<b>The Accused</b> must then prove the Alibi (that they were elsewhere).	Section 103 (Special Knowledge)
Step 3	<b>Court</b> evaluates if the evidence makes the accused's presence "highly improbable."	Section 11 (Relevancy)

### 1.12.7 Key Takeaways for the Exam

1. **Strict Proof:** A "half-baked" alibi is often worse than no alibi at all. If the defense fails to prove the alibi, it doesn't automatically mean the accused is guilty, but it can weaken their overall credibility.
2. **Physical Impossibility:** The distance between the crime scene and the alleged location of the accused must be such that they could not have traveled between them in the given timeframe.

### 1.13 Section 6, Indian Evidence Act - Relevancy of facts forming part of same transaction

The Indian Evidence Act, Section 6 deals with the **relevancy of facts forming part of the same transaction**. This is a legal principle often referred to as the doctrine of *Res Gestae*.

#### 1.13.1 Why Section 6?

Section 6 states that facts which, though not in issue, are so connected with a fact in issue 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.

#### 1.13.2 Quick Breakdown of the Other Options:

To give you the full picture, here is what the other sections mentioned actually cover:

Section	Topic	Brief Description

Section	Topic	Brief Description
Section 4	"May presume", "Shall presume", & "Conclusive proof"	Defines the different levels of judicial presumption.
Section 8	Motive, preparation, and previous or subsequent conduct	Deals with why a person acted and their behavior surrounding the event.
Section 10	Things said or done by conspirator in reference to common design	Focuses on acts and statements made by people involved in a conspiracy.

### 1.13.3 Indian Evidence Act: Section 6

To understand **Section 6 (Res Gestae)**, it helps to think of it as the "spontaneous link" rule. Normally, hearsay (something someone else said) is not admissible in court. However, Section 6 allows it if the statement was made so close to the event that there was no time for fabrication.

#### A Classic Example: The "Cry of the Victim"

Imagine a scenario where a passerby hears a woman screaming, "Help! Ramesh is killing me!" The passerby runs into the house and finds the woman dead and Ramesh holding a knife.

- The passerby didn't see the actual stabbing.
- However, the woman's scream is **part of the same transaction** as the murder.
- Even though the woman cannot testify, the passerby can testify about what she heard because the statement was made spontaneously during the event.

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#### The "Same Transaction" Test

For a fact to be relevant under Section 6, it generally needs to meet these criteria:

- **Proximity of Time:** It must happen almost simultaneously with the act. If there is a long gap, it's just a narrative of the past, not part of the transaction.
- **Proximity of Place:** It usually happens at the same location.
- **Continuity of Action:** There should be a logical link connecting the facts.
- **Spontaneity:** The statement or act must be a natural reaction to the event, not a calculated or planned story.

### 1.13.4 Landmark Case: *Rattan Singh v. State of Himachal Pradesh*

In this case, the victim's statement identifying her assailant right before she was shot was held to be relevant under Section 6. The court reasoned that her shout was so closely connected to the act of shooting that it formed part of the "same transaction."

It is a common point of confusion, but there is a very important distinction between **Section 6 (Res Gestae)** and **Section 32 (Dying Declaration)**.

While they both often deal with the last words of a victim, they are treated differently by the law:

### 1.13.5 Res Gestae (Section 6) vs. Dying Declaration (Section 32)

Feature	Res Gestae (Section 6)	Dying Declaration (Section 32)

Feature	Res Gestae (Section 6)	Dying Declaration (Section 32)
Timing	Must be <b>contemporaneous</b> (happening at the same time) with the act.	Can be made <b>after</b> the event, as long as it relates to the cause of death.
Condition	The person can be alive or dead.	The person <b>must be dead</b> for the statement to be used.
Logic	Admissible because it is part of the "transaction" itself.	Admissible because a person is unlikely to lie on their deathbed.
Scope	Includes acts, gestures, and statements.	Specifically focuses on statements regarding the cause of death.

### 1.13.6 The "Gap" Rule

If a victim is injured, and an hour later they tell a friend who did it, that is usually **not** Section 6 because the "transaction" has ended. However, it **is** a Dying Declaration under Section 32 if the victim later passes away from those injuries.

### 1.13.7 Key Case Difference: *R v. Bedingfield*

In this famous (though older) English case, a woman came out of a room with her throat cut and said, "Oh, aunt, see what Bedingfield has done to me!"

- The court initially ruled this **was not** *Res Gestae* because the act was already completed when she spoke.
- Modern Indian law is generally more flexible, but this shows how strictly "proximity of time" can be interpreted.

## 1.14. Section 83 of the Indian Evidence Act- Presumption as to accuracy of maps and plans

### 1.14.1 Understanding Section 83

Section 83 of the **Indian Evidence Act, 1872** (now replaced by the *Bharatiya Sakshya Adhiniyam* in newer legal contexts) creates a specific **presumption of accuracy**.

The law states 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.

### 1.14.2 Key Distinctions:

- **Government Maps (B):** These enjoy a "Shall Presume" status. The court starts with the assumption that they are correct unless someone proves otherwise. This typically applies to survey maps or maps used for official administrative purposes.
- **Private Maps (A):** Maps made for a specific private case (like a boundary dispute between neighbors) or by a private surveyor **must be proved** to be accurate. There is no automatic legal presumption in their favor.

### 1.14.3 The Burden of Proof Comparison

Type of Map	Legal Presumption	Requirement for Evidence

Type of Map	Legal Presumption	Requirement for Evidence
Government Authored	Shall Presume	Accuracy is assumed; opponent must disprove it.
Private/Individual	No Presumption	The creator or surveyor must be called to prove accuracy.

**Note:** Even for government maps, the presumption only applies if they were made for **public purposes**. If the government hires a surveyor to make a map specifically for a single court case, the presumption of accuracy may not apply in the same way.

## 1.15. Section 32 of the Indian Evidence Act- Dying Declaration

### 1.15.1 Why the Prosecution Bears the Burden

In criminal law, the foundational principle is that the accused is presumed innocent until proven guilty. Therefore, the **burden of proof** rests on the party bringing the charge—the State (the Prosecution).

When it comes to a **Dying Declaration (Section 32 of the Indian Evidence Act)**, the prosecution must prove two things before the court can rely on it:

1. **The Fact of the Statement:** That the deceased actually made the statement.
2. **The Circumstances:** That the declarant was in a "fit state of mind" (compos mentis) to make such a statement at the time.

### 1.15.2 The Legal Logic

- **Section 101 of the Evidence Act:** This section states that whoever desires a court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove those facts. Since the prosecution wants the court to believe the victim's last words to convict the accused, they must prove them.
- **Admissibility:** A dying declaration is an exception to the "Hearsay Rule." Because the person who made the statement cannot be cross-examined, the court views it with great care. The prosecution usually fulfills this burden by examining the doctor who certified the victim's fitness or the magistrate who recorded the statement.

### 1.15.3 Key Requirements for a Valid Dying Declaration

For the prosecution to successfully discharge this burden, the declaration usually needs to meet these criteria:

Requirement	Description
Cause of Death	The statement must relate to the cause of the declarant's death or the transaction resulting in death.
Fit State of Mind	A medical certificate or testimony confirming the person was conscious and coherent.
Consistency	If there are multiple declarations, they should not contradict each other significantly.
No Tutoring	The prosecution must show the statement was voluntary and not influenced by relatives or police.

**Note:** Contrary to popular belief, a dying declaration doesn't *have* to be recorded by a Magistrate to be valid, but one recorded by a Magistrate carries much higher evidential value in the eyes of the court.

## 1.16 Section 26 of the Indian Evidence Act, 1872

A 'confession' made by an accused while he is in the custody of a police officer, can be proved against him if made **in the immediate presence of a Judicial Magistrate**.

### 1.16.1 The Legal Reasoning

This rule is found in **Section 26** of the **Indian Evidence Act, 1872** (now replaced by **Section 23(2)** of the **Bharatiya Sakshya Adhiniyam, 2023**).

The law is extremely skeptical of confessions made in police custody because of the high risk of coercion, torture, or "third-degree" methods. Here is how the law treats these statements:

- **General Rule:** A confession made to a police officer or while in police custody is **inadmissible** (it cannot be used as evidence in court).
- **The Exception:** The *only* way such a confession becomes valid evidence is if it is made in the **immediate presence of a Magistrate**. The Magistrate acts as a neutral safeguard to ensure the statement is being made voluntarily.

### 1.16.2 Why the other options are incorrect:

- **Presence of a doctor:** While a doctor might be present for a medical check-up, their presence does not give the confession legal "sanctity." The law only trusts the judicial oversight of a Magistrate for this purpose.
- **Presence of a senior police officer:** It doesn't matter if the officer is a Constable or a Director General of Police; the law views all police custody with the same level of suspicion regarding confessions

### 1.16.3 Key Related Sections

To get the full picture, you should know these three "levels" of confessions:

Section	Scenario	Status
Section 25	Confession made directly to a police officer.	<b>Not Proved</b> (Inadmissible).
Section 26	Confession made while in custody (to anyone).	<b>Not Proved</b> (Unless before a Magistrate).
Section 27	Information leading to the <b>discovery of a fact</b> (e.g., "I hid the weapon under the bridge").	<b>Proved</b> (Only the part that led to the discovery).

### 1.16.4 Practical Tip

When a Magistrate records a confession, they must follow **Section 164 of the CrPC** (now Section 183 of the BNSS). They are legally required to tell the accused: "*You are not bound to make a confession, and if you do, it will be used as evidence against you.*"

The **Discovery Rule** (formerly **Section 27** of the Indian Evidence Act, now **Section 23** of the Bharatiya Sakshya Adhinyam) is often called the "Silver Bullet" for investigators. It is the most frequent way police statements actually make it into a courtroom.

### 1. The Logic: "Facts Don't Lie"

As we discussed, the law doesn't trust what an accused says to the police because it might be coerced. However, the law **does** trust physical reality.

If an accused says, "*I killed him and hid the knife in the well,*" and the police actually find a blood-stained knife in that specific well, the discovery of the knife **confirms** that the accused had special knowledge.

### 2. The "Filter" System

Section 27 acts as a filter. It divides a statement into two parts:

- **The Inadmissible Part (The Confession):** "I killed him." (This is deleted).
- **The Admissible Part (The Information):** "...the knife is in the well." (This is allowed in court).

**Key Rule:** Only the exact information that leads **directly** to the discovery of a distinct fact is admissible.

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### 3. The 4 Essential Ingredients for a "Discovery"

For the police to use this in court, they must prove:

- **A fact was discovered:** A physical object (weapon, body, stolen jewelry) must be found.
  - **Based on information from the accused:** The police didn't already know where it was.
  - **Accused was in custody:** The person must be under police control.
  - **Confirmation by the find:** The object found must match the description given.
- 

### 4. Real-World Example

Statement by Accused	Can it be used in Court?
"I murdered my neighbor with a hammer."	<b>No.</b> (Pure confession to police).
"The hammer I used is buried under the mango tree."	<b>Partial.</b> The part "buried under the mango tree" is allowed if the hammer is found there.
"I hid the stolen car in the mall parking lot," but the car was already towed by police.	<b>No.</b> No new fact was "discovered" based on the statement.

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### 5. Why is this controversial?

Critics argue that Section 27 gives the police a "loophole" to use force. They worry police might plant an object and then force the accused to "reveal" its location to make a weak case look strong. This is why the **panchnama** (witnessing of the recovery by independent members of the public) is so important in Indian trials.

The **D.K. Basu Guidelines** (1997) are a set of 11 mandatory "commandments" issued by the Supreme Court of India. They were created because the court realized that while laws like the Evidence Act protect you *during the trial*, there were very few protections for a person the moment they are picked up by the police.

These guidelines are designed to make the arrest process transparent so that people don't simply "disappear" in custody.

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### 1. The Key Commandments

If these are not followed, the police officers involved can face contempt of court and disciplinary action.

- **Clear Identification:** Every officer carrying out the arrest must wear visible, clear, and accurate **identification and name tags** with their designation.
  - **The Arrest Memo:** At the time of arrest, the officer must prepare a "Memo of Arrest." It must be signed by at least one witness (a family member or a respectable person from the locality) and countersigned by the person arrested.
  - **Right to Inform:** The person arrested has the right to have a **friend or relative informed** of their arrest and the location of custody as soon as possible.
  - **Entry in the Diary:** An entry must be made in the case diary regarding who was informed of the arrest and which police officers are in charge of the custody.
  - **Right to a Lawyer:** The person arrested may be permitted to meet their **attorney** during interrogation (though not throughout the entire interrogation).
- 

### 2. Medical Safeguards

These were specifically designed to prevent "third-degree" torture:

- **Inspection Memo:** If the arrested person has any minor or major injuries on their body at the time of arrest, these must be recorded in an "Inspection Memo" signed by both the officer and the prisoner. This prevents police from claiming old injuries were caused during custody.
  - **Medical Examination:** The person must undergo a medical examination by a trained doctor every **48 hours** while in custody.
- 

### 3. The "Control Room" Requirement

The guidelines mandated that a **Police Control Room (PCR)** must be established in all district and state headquarters. The names of the persons arrested and the place of their custody must be displayed on a notice board at the PCR within 12 hours of the arrest.

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#### 1.16.6 Why this matters for the Evidence Act

If the police violate the D.K. Basu guidelines (e.g., they don't record the arrest or allow a lawyer), any "discovery" made under Section 27 or any "confession" made before a Magistrate becomes highly suspicious. A defense lawyer can argue that the evidence was obtained through illegal detention, potentially getting the case thrown out.

#### 1.16.7 Summary of Arrest Rights

Step	Legal Requirement
Identification	Police must wear name tags.
Documentation	Arrest Memo must be prepared and witnessed.
Notification	Relative/Friend must be told within 8–12 hours.
Health	Medical check-up every 48 hours.

### 1.17. Section 90 of the Indian Evidence Act- "30-year rule"

Based on the law of evidence (specifically **Section 90 of the Indian Evidence Act** or its equivalents in various common law jurisdictions), to prove a document which is 30 years old, it is sufficient to prove that it is produced from proper custody.

#### 1.17.1 Understanding "30-year rule"

The "30-year rule" is a legal presumption regarding **ancient documents**. For a court to presume that the signatures, handwriting, and execution of a document are authentic without calling witnesses, two primary conditions must be met:

1. **Age:** The document must be 30 years old or older.
2. **Proper Custody:** It must be produced from a place where it would naturally be kept. For example, a 30-year-old land deed found in the possession of the current owner's family is "proper custody," whereas the same deed found lying in a random park would not be.

#### 1.17.2 Why the others aren't the primary requirement:

- **Original Form:** While the presumption usually applies to the original document, "original form" alone doesn't prove authenticity—the *source* (custody) is what the law looks at to prevent fraud.
- **Registered:** A document does not need to be registered to be "ancient." Many valid 30-year-old documents (like old letters or private agreements) are never registered.

#### 1.17.3 Summary Table

Requirement	Importance
30 Years Old	The threshold for the "Ancient Document" rule.
Proper Custody	Proves the document hasn't been tampered with or "planted."
Presumption	The court assumes signatures and handwriting are genuine.

#### 1.17.4 Ancient Document: Proper Custody Rule

In legal terms, "**Proper Custody**" doesn't mean the safest possible place (like a bank vault); rather, it means the **natural or probable** place where such a document would be kept.

Section 90 of the Indian Evidence Act (and similar laws globally) defines it this way:

"Documents are said to be in proper custody if they are in the place in which, and under the care of the person with whom, they would **naturally** be."

### 1. The "Natural & Probable" Test

The court doesn't look for the "best" custody, but for "logical" custody. If the origin of the possession can be explained legitimately, it is considered proper.

### 2. Practical Examples of Proper Custody

To help visualize how this works in a courtroom, here are three classic scenarios:

- **Land Deeds:** If a person has been living on a piece of land for 40 years and produces the original title deeds from their own drawer, that is **proper custody**. It is natural for a landowner to keep their own deeds.
- **Mortgage Papers:** If a bank or a moneylender (the mortgagee) produces a 30-year-old loan document related to a property they hold as collateral, even if the owner is still living there, the bank's possession is **proper custody**.
- **Safe Deposit by a Friend:** If Person A left their important papers with Person B (a trusted relative or friend) for safekeeping 30 years ago, and Person B now produces them in court, this is **proper custody** because the origin of the possession is legitimate and explained.

### 3. What is Improper Custody?

Custody becomes "improper" when the person holding the document has no logical reason to have it.

- **Example:** If a stranger finds a 30-year-old "Will" in a public park or a trash can and tries to present it in court, the court will likely reject the presumption of authenticity because the custody is suspicious and unnatural.

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#### 1.17.5 Key Legal Nuances

- **Discretionary Power:** The court "may" presume the document is genuine, but it isn't forced to. If the document looks like it was tampered with (e.g., fresh ink on old paper), the judge can still demand further proof.
- **The 30-Year Clock:** This period is usually calculated from the date the document was **executed** (signed) to the date it is **produced in court** (not when the suit was filed).
- **Originals Only:** Generally, this presumption applies only to **original documents**. You cannot usually use the "30-year rule" for a photocopy unless you first prove the original is lost and the copy is a certified one.

**1.17.6** To dive deeper into the legal practicalities, here are **two landmark cases** where the "Proper Custody" of a 30-year-old document was central to the court's decision.

#### 1. Shital Das v. Sant Ram (AIR 1954 SC 306)

- This is a classic Supreme Court case involving a religious institution (a *Thakardwara*).
- **The Dispute:** A 1911 "Will" was presented as evidence of succession for a new Mahant (spiritual leader).
- **The Challenge:** The original document was not produced; instead, a translation of a copy was provided.
- **The Ruling:** The Court emphasized that **Section 90** requires the **original** document to be produced from proper custody. The Court held that even if a document is 30 years old, the presumption of authenticity does not automatically apply to a copy unless the absence of the

original is legally explained. This case reinforced that **custody of the original** is the gold standard.

## 2. Kotiswar Mukherjee v. Paresh Nath Mukherjee (AIR 1956 Cal 205)

- This case dealt with an unregistered deed of gift from 1854.
- **The Dispute:** The plaintiffs tried to prove their ownership using a certified copy of a deed that was over 100 years old, found in the records of a previous 1880 lawsuit.
- **The Challenge:** Was the record room of a court "proper custody" for a private deed?
- **The Ruling:** The Calcutta High Court noted that while a court's record room is a "safe" place, it is only "proper custody" if it's shown how the document got there in the first place (e.g., as part of a previous legitimate trial). If the origin of that possession is logical and explained, the court can accept it.

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### 1.17.7 Key Takeaways from Case Law

- Based on these and other rulings, "**Proper Custody**" is evaluated by judges using these filters:

• <b>Criteria</b>	• <b>Court's Perspective</b>
• <b>Logic over Safety</b>	• Is this where a person would <i>naturally</i> keep this paper? (e.g., keeping a 1920 family tree in a family Bible).
• <b>Legitimate Origin</b>	• Even if the custody is unusual, can you prove how it started? (e.g., "I found it in my late grandfather's safe" vs "I found it in a street market").
• <b>The "May Presume" Rule</b>	• Section 90 says the court <i>may</i> presume. If the judge sees fresh ink, modern paper, or suspicious circumstances, they can ignore the 30-year rule entirely.

### 1.17.8 A Quick Note on "Copies"

- A common "trap" in legal exams or practice is assuming the 30-year rule applies to **photocopies**. It generally **does not**. As seen in *Shital Das*, the presumption of due execution (that the person actually signed it) applies only to the **original**. If you only have a copy, you must first prove the "Proper Custody" of the copy and then prove why the original is missing.

## 1.18 Section 44 of the Indian Evidence Act

Deals with fraud or collusion in obtaining judgement or incompetence of Court, which may be proved.

### 1.18.1 Understanding Section 44

In the context of the Indian Evidence Act, Section 44 is a powerful tool used to challenge the validity of a judgment that would otherwise be considered conclusive.

While judgments are generally binding on the parties involved (under the principle of *res judicata*), Section 44 provides specific exceptions where a party can show that a judgment, order, or decree was:

- **Delivered by an incompetent Court:** The court lacked the legal authority or jurisdiction to hear the case.

- **Obtained by fraud:** One party used deceit to influence the court's decision.
- **Obtained by collusion:** Both parties secretly cooperated to deceive the court or a third party.

### 1.18.2 Comparison of the Options

To give you the full picture, here is what the other sections mentioned in your question cover:

Section	Topic/Subject Matter
Section 39	How much of a statement is to be proved when it forms part of a conversation, document, electronic record, book, or series of letters.
Section 43	Judgments, orders, or decrees, other than those mentioned in Sections 40, 41, and 42, are irrelevant unless the existence of such judgment is a fact in issue.
Section 44	<b>Fraud or collusion in obtaining judgment, or incompetence of Court, may be proved.</b>
Section 48	Opinion as to existence of right or custom, when relevant.

In legal terms, both fraud and collusion undermine the integrity of a judgment, but they differ primarily in who is involved and who is being deceived.

#### 1. Fraud

Fraud involves **one-sided deceit**. It occurs when one party misleads the court or the opposing party through trickery, concealment of facts, or intentional misrepresentation to secure a favorable outcome.

- **The Victim:** Usually the opposing party and the Court.
- **Action:** Active concealment or misstatement.
- **Example:** A party presents a forged sale deed to the court, claiming it is original, to win a property dispute.

#### 2. Collusion

Collusion is a "**secret agreement**" or a "shammed fight" between two parties who appear to be adversaries but are actually working together to achieve a specific legal result that affects someone else.

- **The Victim:** A third party or the law itself.
- **Action:** Cooperation between the plaintiff and defendant.
- **Example:** A debtor allows a "friendly" creditor to get a fake court decree against his property so that his actual creditors cannot seize it to recover their debts.

### 1.18.3 Key Differences at a Glance

Feature	Fraud	Collusion
Participation	Committed by one party against	Committed by both parties acting together.

Feature	Fraud	Collusion
	another.	
Nature	Deceit and trickery.	Secret cooperation or "pretend" litigation.
Target	To gain an unfair advantage over the opponent.	To deprive a third party of their rights or bypass a law.
Consent	One party is unaware of the deception.	Both parties are "in on the secret."

#### 1.18.4 Why Section 44 Matters

Under **Section 44**, if you can prove that a previous judgment (which is being used against you) was the result of either fraud or collusion, that judgment loses its binding effect (*res judicata*). This ensures that the court's process is not used as a shield for dishonesty.

To understand how Section 44 functions in the real world, the case of **Lazarus Estates Ltd. v. Beasley** (though an English case, it is the foundation for Indian interpretation) and the Indian Supreme Court case of **S.P. Chengalvaraya Naidu v. Jagannath** are essential.

The core philosophy is often quoted from Lord Denning:

*"No judgment of a Court, no order of a Minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything."*

#### 1.18.5 Landmark Case: S.P. Chengalvaraya Naidu v. Jagannath (1994)

In this case, the Supreme Court of India took a very strict stand against "fraud on the court."

- **The Facts:** A person obtained a preliminary decree for partition of property. However, he had **deliberately withheld** a vital document (a release deed) that showed he no longer had any rights to that property.
- **The Argument:** The party who committed the fraud argued that once the decree was passed, it couldn't be questioned later in the same proceedings.
- **The Ruling:** The Supreme Court disagreed. It held that:
  1. **Fraud is an act of deliberate deception** with the design of securing something which is otherwise not due.
  2. A judgment or decree obtained by playing fraud on the court is a **nullity** and can be challenged even in collateral proceedings (using Section 44).
  3. A person whose case is based on falsehood has no right to approach the court and can be thrown out at any stage.

#### 1.18.6 How Section 44 Changes the Trial

Normally, when a judgment is produced in court, the judge must accept it as a finished fact. **Section 44** acts as a "**backdoor**" to let in new evidence to kill that judgment.

Step	Standard Procedure	Under Section 44
Evidence	Court looks at the merits of the new	Court looks at <b>how</b> the old judgment was obtained.

Step	Standard Procedure	Under Section 44
	case.	
<b>Focus</b>	Rights of the parties.	The <b>integrity</b> of the Court that gave the first judgment.
<b>Result</b>	A new decision is reached.	The old decision is declared void/irrelevant.

### 1.18.7 A Note on "Incompetence of Court"

While fraud and collusion involve "bad faith," **incompetence** is about a lack of legal power. For example, if a Rent Controller (who only handles landlord-tenant disputes) tries to pass a decree for a murder trial, that judgment is a nullity under Section 44 because the court was "incompetent" in terms of subject-matter jurisdiction.

In family property disputes, collusion is most frequently seen in "friendly suits." These are cases where family members pretend to be at odds to get a court-stamped decree that helps them bypass taxes, avoid creditors, or cheat another relative out of their share.

### 1.18.8 The Classic Example: The "Sham" Partition

Imagine a scenario involving three brothers (A, B, and C) and a creditor (D) to whom Brother A owes a massive debt.

1. **The Setup:** Brother A knows that Creditor D is about to sue him and seize his share of the ancestral property.
2. **The Collusion:** Brother A and Brother B enter into a secret agreement. Brother B files a partition suit against Brother A in court.
3. **The "Pretend" Fight:** In court, Brother A immediately "concedes" or enters into a compromise, agreeing that the entire property actually belongs to Brother B (or a minor son) and he has no share in it.
4. **The Decree:** The Court, seeing both parties agree, passes a consent decree.
5. **The Result:** When Creditor D arrives to seize the property, Brother A points to the court decree and says, "Sorry, the Court says I own nothing!"

### 1.18.9 How Section 44 Intervenes

Under Section 44 of the Indian Evidence Act, Creditor D (the victim of the collusion) does not have to file a separate long-winded appeal to set aside that decree.

In his own suit for recovery of money, D can produce evidence to show:

- There was no real dispute between A and B.
- The suit was a "shadow-play" intended to defraud him.
- Therefore, the decree is a **nullity** and should be ignored by the current Court.

### 1.18.10 Landmark Case on Collusion: *Nagubai Ammal v. B. Shama Rao (1956)*

The Supreme Court clarified a very important distinction here between a "**fictitious**" suit and a "**collusive**" suit:

- **Fictitious Suit:** A suit where the claim is totally fake, and there is no real contest. This is a clear case of collusion.
- **Collusive Suit:** A suit where there might be a real claim, but the parties have joined hands to use the court's machinery for an ulterior motive (like avoiding a third party's legal right).

**1.18.11 Key Takeaway:** For Section 44 to apply in cases of collusion, you must prove that the parties were "acting in concert" to defeat the rights of a third person or to deceive the court.

### 1.18.12 Summary Checklist for Section 44

If you are trying to use this section in a mock trial or an exam, remember it applies to:

- **Any Party:** Even a party to the original suit can claim fraud (though it's harder for them if they were part of the collusion!).
- **Any Court:** You can challenge the judgment of a higher court in a lower court if you are proving it was obtained by fraud.
- **Civil & Criminal:** It applies to both types of judgments.

## 1.19 Section 68 of the Evidence Act

### 1.19.1 Understanding Section 68

Section 68 of the Indian Evidence Act establishes a specific, strict procedure for proving documents that the law requires to be "attested" (such as a Will or certain types of Mortgages).

If a document is required by law to be attested, it cannot be used as evidence until **at least one** attesting witness has been called to prove its execution. This is a mandatory rule, provided the witness is alive and capable of giving evidence.

### 1.19.2 Key Requirements of Section 68

- **The "At Least One" Rule:** You don't need to bring every person who signed the document; one witness is sufficient to satisfy the legal requirement.
- **Availability:** This rule only applies if there is an attesting witness alive, subject to the process of the Court, and capable of giving evidence.
- **The Exception (Proviso):** For documents **other than a Will** (like a registered Mortgage or Gift Deed), you don't need to call a witness if the execution has not been specifically denied by the person who signed it.
  - *Note:* For a **Will**, you must almost always call a witness, even if the other side doesn't deny it.

### 1.19.3 Comparison of the Options

Option	Status	Reason
(A) Both witnesses	<b>Incorrect</b>	The law is satisfied with just one to avoid unnecessary delays.
<b>(B) At least one</b>	<b>Correct</b>	This is the specific requirement of Section 68.
(C) None / Other	<b>Incorrect</b>	Secondary evidence or third-party testimony is only allowed if no

Option	Status	Reason
person		witnesses are alive (Section 69).
(D) All of the above	<b>Incorrect</b>	Only (B) follows the statutory command.

#### 1.19.4 What if no witnesses are alive?

If all attesting witnesses are dead or cannot be found, the law moves to **Section 69**. In that case, you must prove:

1. The signature of at least one attesting witness is in their handwriting.
2. The signature of the person who executed the document is in their handwriting.

#### 1.19.5 Summary Checklist for Section 68

- **Is it a Will?** You must call at least one witness.
- **Is it another attested document?** Call one witness **ONLY IF** the execution is denied.
- **Is the witness alive?** If yes, they must come to court.

This is one of the most interesting "emergency" provisions in the Evidence Act. **Section 71** acts as a safety net for when a witness turns hostile or their memory fails.

#### 1.19.6 The "Memory Lapse" or "Hostile Witness" Scenario

Imagine you bring a witness to court to prove a Will. You expect them to say, "Yes, I saw the deceased sign this." Instead, they say:

- "I don't remember signing this."
- "That isn't my signature."
- "I signed it, but I didn't see the deceased sign it."

If the law ended at Section 68, your case would die right there. However, **Section 71** allows the execution of the document to be proved by **other evidence**.

#### 1.19.7 How Section 71 Works

When an attesting witness denies or does not recollect the execution of the document, you can use:

1. **Handwriting Experts:** To prove the signatures belong to the deceased and the witness.
2. **Circumstantial Evidence:** Witnesses who saw the parties together or heard them talking about the document.
3. **Other Witnesses:** People who were in the room but didn't actually sign as "attesting witnesses."

#### 1.19.8 Key Legal Distinction: Section 68 vs. Section 71

It is important to remember the order of operations:

- **Step 1 (Section 68):** You **must** try the attesting witness first. This is a mandatory requirement.

- **Step 2 (Section 71):** You can only use "other evidence" if the Section 68 witness fails you. You cannot skip Section 68 and go straight to other evidence just because it's easier.

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### 1.19.9 Summary of Document Proof

Situation	Applicable Section	What to do?
Normal Case	Section 68	Call at least one attesting witness.
Witness is Dead	Section 69	Prove handwriting of the witness and the maker.
Witness Denies it	Section 71	Use any other evidence (experts, other people).
No Attestation required	Section 67	Simply prove the maker's signature.

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### 1.19.10 A Real-World Warning

Courts are very suspicious of Section 71. If you use it, you must prove to the judge that you made a **sincere effort** to bring the original witnesses and that their denial is either a lie or a genuine lapse of memory.

## 1.20 Section 45 of the Indian Evidence Act- Opinions of Experts

### 1.20.1 Understanding Section 45

In the Indian Evidence Act, **Section 45** governs the "Opinions of Experts." Since a judge isn't expected to be a specialist in every field, the law allows them to seek help from professionals.

When it comes to handwriting, here are the essential rules and how they work in practice:

#### 1. The Expert is Not the "Final Word"

An expert's opinion is **corroborative**, not conclusive. The judge is the "Expert of Experts."

- The expert's job is to provide the judge with the necessary scientific criteria for testing the accuracy of their conclusion.
- The judge is not bound to accept the report; they can compare the handwriting themselves using **Section 73**.

#### 2. What an Expert Actually Analyzes

Handwriting experts don't just look at how a signature "looks." They look at the **internal characteristics** of the writing, which are much harder to forge than the outward shape:

- **Pen Pressure:** How hard the person presses on the paper.
- **Line Quality:** Is the line smooth or shaky (tremors)?
- **Slant and Alignment:** The angle of the letters relative to the baseline.
- **Terminal Strokes:** How a person ends a letter (flicks, blunts, or curves).

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### 3. Requirements for a Valid Expert Opinion

To make an expert opinion "admissible" in court:

1. **Special Study:** The witness must have special skill, formal training, or extensive experience in handwriting analysis.
2. **Comparison Material:** The expert must be provided with "**Admitted**" or "**Proved**" handwriting samples (called **Exemplars**) to compare against the "**Disputed**" writing.
3. **Reasons for Opinion:** An expert must explain *why* they reached a conclusion. A report that simply says "it matches" without showing the similarities in loops or curves will be rejected.

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#### 4. Handwriting Expert vs. Layperson (Section 47)

While Section 45 deals with **Experts**, Section 47 deals with people **acquainted** with the handwriting.

Feature	Section 45 (Expert)	Section 47 (Layperson)
<b>Basis</b>	Scientific analysis and comparison.	Personal familiarity (saw them write, received letters).
<b>Who is it?</b>	A professional (Forensic Scientist).	A friend, family member, or business partner.
<b>Weight</b>	Highly persuasive if scientifically backed.	Lower weight, based on memory and recognition.

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#### 5. The Role of the Court (Section 73)

This is a "power" section. Under **Section 73**, the Court can:

- Directly compare the disputed signature with an admitted signature.
- **Command** any person present in court to write any words or figures for the purpose of comparison.

**Important Note:** Forcing a person to provide a handwriting sample in court does **not** violate the "Right against Self-Incrimination" (Article 20(3)), because handwriting is considered "physical evidence," not "testimony."

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#### 1.20.2 Summary Checklist for Evidence

- If you have a witness who saw the signing: **Direct Evidence** (Best).
  - If the witness is dead: **Section 69** (Handwriting proof).
  - If you need scientific certainty: **Section 45** (Expert Opinion).
  - If you have a relative who knows the signature: **Section 47** (Acquaintance).
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In the digital age, the Indian Evidence Act had to evolve to recognize that a "signature" isn't always ink on paper. **Section 47A** was inserted (along with other IT-related amendments in 2000) to provide a specific rule for proving digital identities.

#### 1.20.3 What is Section 47A?

Section 47A states that when the Court has to form an opinion regarding the **electronic signature** of a person, the opinion of the **Certifying Authority** which has issued the Electronic Signature Certificate is a relevant fact.

Think of it as the digital version of Section 47. While Section 47 relies on a friend's memory of your handwriting, Section 47A relies on the technical verification of the authority that issued your digital key.

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#### 1.20.4 How the Evidence is Presented

To prove an electronic signature, the court usually follows a three-step verification process:

1. **The Certificate:** The party must produce the Electronic Signature Certificate issued by a licensed Certifying Authority (CA).
2. **The Expert (Section 45A):** If there is a dispute about the signature's authenticity, the court may call an **Examiner of Electronic Evidence** (usually from a government lab like CFSL).
3. **The Compliance (Section 65B):** This is the most critical part. Any electronic record (including the signature) must be accompanied by a **Section 65B Certificate**, which confirms that the computer/system used to produce the record was operating properly.

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#### 1.20.5 Key Presumptions (The "Shortcut" Rules)

The law makes it easier for courts to accept digital signatures through "Presumptions." Under **Section 85B** of the Evidence Act:

- **Integrity:** The court presumes that a "Secure Electronic Record" has not been altered since the specific point in time to which the signature relates.
- **Identity:** If a "Secure Electronic Signature" is used, the court presumes that the signature was affixed by the person to whom it belongs with the intention of signing/approving the record.

**Note:** These presumptions only apply to "Secure" signatures (those using asymmetric crypto-systems like RSA). A simple scanned image of a signature or a typed name at the bottom of an email does not get these legal benefits easily.

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#### 1.20.6 Comparison: Manual vs. Electronic Proof

Feature	Manual Signature (Sec. 47)	Electronic Signature (Sec. 47A)
Proof of Identity	Opinion of someone who knows the handwriting.	Opinion of the <b>Certifying Authority</b> .
Scientific Help	Handwriting Expert (Sec. 45).	Examiner of Electronic Evidence (Sec. 45A).
Core Requirement	Witness/Comparison of ink.	<b>Section 65B Certificate</b> for the digital record.

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#### 1.20.7 The Reality in Court

If you are trying to prove an email or a signed PDF, the court will almost always demand the **Section 65B Certificate**. Without it, the electronic signature—no matter how authentic it looks—is generally considered **inadmissible** (as per the Supreme Court in *Arjun Panditrao Khotkar v. Kailash Kushanshao Gorantyal*).

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