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Que 1- Discuss the provis... the admissibility of electronic or digital record.

(6)

Ans- Section 61 of Bhartiya Sakshya Adhiniyam (hereafter referred as BSA) is a new provision. This Act of 2023 provides same legal effect, validity & enforceability to electronic or digital records.

→ Meaning of Electronic or digital record

Section -62 provides that contents of electronic record may be proved in accordance with provisions of sec. 63.

Section -63(1) provides for certain conditions which are to be satisfied if any information is stored in any electronic record which is printed on paper stored, recorded or copied in optical, magnatic or semiconducter media. Then only that electronic evidence would be admissible as evidence.

Conditions in 63(1)

a) 63(2) provides that any computer carrying ~~on~~ data should be used regularly by the person having lawful control on that device for a period of time

b) During that said period, the data should be regulady fed into the computer device in ordinary course of activity.

c) For material part of that period, computer was operating properly.

d) the information contained in electronic ~~device~~ record reproduces or derived from such information fed into the computer in ordinary coure of said activity.

Requirement of Certificate 63(4)

A Certificate shall be submitted along with the electronic record which ~~is~~ -is

1) identifying the electronic record containing the statement & its manner.

2) giving particulars of device involved in production of electronic record as appropriate.

3) Signed by the Person incharge of the computer

or management of related department & an expert shall be the evidence of any matter stated en certificate, ~~Cont~~ which should be best of his knowledge & belief of an expert.

Relevant Cases

Arjun PanditRao Khotkar vs Kailash Kishanrao Goradyal & other (2020) ~~SC held that~~ Supreme Court held that certificate required under sec- 63(4) is a condition precedent to admissibility of electronic record. However, certificate is unnecessary if the original document is produced.

In Case of Shafhi Mohammad vs st. of HP, that a party who is not in possession of device from which the electronic document is produced, can't be required to produce certificate under Sec-65B(4) (now 63(4) 135A) of Evidence Act.

In Anvar PK vs PK Basheer, it was observed that an electronic record by way of secondary evidence shall not be admitted in evidence unless the requirements of sec-65B (now sec-63(4)) are satisfied. The Bench overruled the decision in the case of Shafhi Mohammad vs State of HP.

→ Include the provisions of Sub-section (3) and (5) also.

→ Conclusion is missing in the answer.

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Que-2- Explain the Expression may presume, shall presume and Conclusive proof.

Ans: The term presumption is not defined in the Adhiniyam It means that an inference drawn from a proved fact. Section 2(1)h defines 'May Presume'. Section 2(1)L defines 'shall presume' and section 2(1)b defines Conclusive proof.

May Presume ~~2-(h)~~ 2(1)h

Whenever ~~the court~~ it is provided by this Adhiniyam that court 'may presume' a fact ~~as proved~~, it may either regard such fact as proved, unless or until it is disproved, or it may call for proof of it.

This presumption is known as 'presumptio Hominis' and it is a presumption of fact which is also known as ~~natural~~ presumption. It is always rebuttable Such kind of Presumption are provided in Sec-88, 89 90, 92, 93 & 119 of Bhartiya Sakshya Adhiniyam

Shall presume - 2(1)l defines shall presume as whenever it is directed by this Adhiniyam that a court shall presume a fact, it shall regard such fact as proved unless & until it is disproved.

It is a presumption of Law which is rebuttable by law & court is bound to draw it unless it is disproved by evidence to contrary. It is also know as 'Presumptio Juris' It is provided under section 78-87, 91 & 108.

Conclusive proof - 2(1)c - when one fact is declared by this Act to be conclusive proof of another, the Court shall on proof of one fact regard the other fact as proved and shall not allow evidence to be given for the purpose of disproving it. It is an irrebuttable Presumption of law which can't be rebutted by evidence to contrary & it is provided u/s 23 - Relevancy of Judgement and 116 - Paternity Test under Bhartiya Sakshya Adhiniyam.

→ Evaluate relevant laws in your answer.

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Que 3 Examine th[illegible]ning Confession

Ans: The term confession has not been defined in Bhartiya Sakshya Adhiniyam. It was defined by Lord Atkin in Pakla Narayan Swami vs Emperor. This definition ~~was approved by~~ of Privy Council was approved by Indian Court in Palvinder Kaur vs St. of Punjab. The court held that 'a confession must either admit in terms of the offences or at any rate substantially all the facts which constitute the offence.

5

Merely writing titles of the sections is not sufficient, discuss the provisions in detail

Rules Governing Confessions

I) Confession is irrelevant if -
1) If confession is caused under inducement threat or promise, coercion
2) when made to a police officer - section - 23
3) when made in police custody, except if made in presence of magistrate then relevant (sec - 23(2))

II) Confession is relevant if -
1) Confession made after removal of inducement, threat & promise - proviso 1 - sec - 22
2) Confession otherwise relevant not to become irrelevant because of promise of secrecy etc prov - 2 sec - 22

III - How much information received from accused may be proved Prov - 23(2)
- only that much information which relates distinctly to the fact discoverable is admissible.
In Aghnoo Nageshia vs state of Bihar, court held that accused had committed an offence or he had hidden the object are not admissible. Only the information about the place of hiding of object is relevant.

IV Confession of Co-Accused - 24 section
Confession of a co-accused can be used against other

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If 2 or more persons are tried jointly for same offence or for its attempt or abetment.

In Kashmira Singh vs st. of MP court held that even though the confession of co-accused is allowed, its value is very feeble.

V Confession carrying both inculpatory & exculpatory Part
Inculpatory means a statement by which the accused confesses that he has done something wrong while exculpatory statement are those which diminish the liability of accused.

In Nishi Kant Jha vs St. of Bihar, court held that there is nothing wrong in relying the confessional statement & rejecting the rest.

VI Retracted Confession - when a person having recorded a confession goes back from it at the stage of trial stating either he didn't make the confession or made in fear or misconception, it is known as Retracted Confession.

In Pyarelal vs st. of Rajasthan, it was held that it can form basis of conviction if court regards it as true However, prudence requires that retracted confession should not acted upon without corroboration

VII Judicial & Extra Judicial Confession

A Judicial confession is the one which is made to a magistrate or in court whereas the confession made to any other person than magistrate is Judicial magistrate It is considered as weak piece of evidence and can be relied only if there is some corroborative evidence supporting the same.

So there all were the rules regarding confession provided by Bharatiya Sakshya Adhiniyam 2023 and some leading case laws.

→ Evidentiary value of confession?

↑ Improve the quality of conclusion.

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