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307. Language of Courts:

The State Government may determine what shall be, for purposes of this Sanhita, the language of each Court within the State other than the High Court.

308. Evidence to be taken in presence of accused:

Except as otherwise expressly provided, all evidence taken in the course of the trial or other proceeding shall be taken in the presence of the accused, or, when his personal attendance is dispensed with, in the presence of his advocate including through audio-video electronic means at the designated place to be notified by the State Government:

Provided that where the evidence of a woman below the age of eighteen years who is alleged to have been subjected to rape or any other sexual offence, is to be recorded, the Court may take appropriate measures to ensure that such woman is not confronted by the accused while at the same time ensuring the right of cross-examination of the accused.

Explanation.--In this section, "accused" includes a person in relation to whom any proceeding under Chapter IX has been commenced under this Sanhita.

309. Record in summons-cases and inquiries:

(1) In all summons-cases tried before a Magistrate, in all inquiries under sections 164 to 167 (both inclusive), and in all proceedings under section 491 otherwise than in the course of a trial, the Magistrate shall, as the examination of each witness proceeds, make a memorandum of the substance of the evidence in the language of the Court:

Provided that if the Magistrate is unable to make such memorandum himself, he shall, after recording the reason of his

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inability, cause such memorandum to be made in writing or from his dictation in open Court.

(2) Such memorandum shall be signed by the Magistrate and shall form part of the record.

**310. Record in warrant-cases:**

(1) In all warrant-cases tried before a Magistrate, the evidence of each witness shall, as his examination proceeds, be taken down in writing either by the Magistrate himself or by his dictation in open Court or, where he is unable to do so owing to a physical or other incapacity, under his direction and superintendence, by an officer of the Court appointed by him in this behalf:

Provided that evidence of a witness under this sub-section may also be recorded by audio-video electronic means in the presence of the advocate of the person accused of the offence.

(2) Where the Magistrate causes the evidence to be taken down, he shall record a certificate that the evidence could not be taken down by himself for the reasons referred to in sub-section (1).

(3) Such evidence shall ordinarily be taken down in the form of a narrative; but the Magistrate may, in his discretion take down, or cause to be taken down, any part of such evidence in the form of question and answer.

(4) The evidence so taken down shall be signed by the Magistrate and shall form part of the record.

**311. Record in trial before Court of Session:**

(1) In all trials before a Court of Session, the evidence of each witness shall, as his examination proceeds, be taken down in writing either by the presiding Judge himself or by his dictation

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in open Court, or under his direction and superintendence, by an officer of the Court appointed by him in this behalf.

(2) Such evidence shall ordinarily be taken down in the form of a narrative, but the presiding Judge may, in his discretion, take down, or cause to be taken down, any part of such evidence in the form of question and answer.

(3) The evidence so taken down shall be signed by the presiding Judge and shall form part of the record.

### **312. Language of record of evidence:**

In every case where evidence is taken down under section 310 or section 311,--

(a) if the witness gives evidence in the language of the Court, it shall be taken down in that language;

(b) if he gives evidence in any other language, it may, if practicable, be taken down in that language, and if it is not practicable to do so, a true translation of the evidence in the language of the Court shall be prepared as the examination of the witness proceeds, signed by the Magistrate or presiding Judge, and shall form part of the record;

(c) where under clause (b) evidence is taken down in a language other than the language of the Court, a true translation thereof in the language of the Court shall be prepared as soon as practicable, signed by the Magistrate or presiding Judge, and shall form part of the record:

Provided that when under clause (b) evidence is taken down in English and a translation thereof in the language of the Court is not required by any of the parties, the Court may dispense with such translation.

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313. Procedure in regard to such evidence when completed:

(1) As the evidence of each witness taken under section 310 or section 311 is completed, it shall be read over to him in the presence of the accused, if in attendance, or of his advocate, if he appears by an advocate, and shall, if necessary, be corrected.

(2) If the witness denies the correctness of any part of the evidence when the same is read over to him, the Magistrate or presiding Judge may, instead of correcting the evidence, make a memorandum thereon of the objection made to it by the witness and shall add such remarks as he thinks necessary.

(3) If the record of the evidence is in a language different from that in which it has been given and the witness does not understand that language, the record shall be interpreted to him in the language in which it was given, or in a language which he understands.

314. Interpretation of evidence to accused or his advocate:

(1) Whenever any evidence is given in a language not understood by the accused, and he is present in Court in person, it shall be interpreted to him in open Court in a language understood by him.

(2) If he appears by an advocate and the evidence is given in a language other than the language of the Court, and not understood by the advocate, it shall be interpreted to such advocate in that language.

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(3) When documents are put for the purpose of formal proof, it shall be in the discretion of the Court to interpret as much thereof as appears necessary.

### **315. Remarks respecting demeanour of witness:**

When a presiding Judge or Magistrate has recorded the evidence of a witness, he shall also record such remarks (if any) as he thinks material respecting the demeanour of such witness whilst under examination.

### **316. Record of examination of accused:**

(1) Whenever the accused is examined by any Magistrate, or by a Court of Session, the whole of such examination, including every question put to him and every answer given by him, shall be recorded in full by the presiding Judge or Magistrate himself or where he is unable to do so owing to a physical or other incapacity, under his direction and superintendence by an officer of the Court appointed by him in this behalf.

(2) The record shall, if practicable, be in the language in which the accused is examined or, if that is not practicable, in the language of the Court.

(3) The record shall be shown or read to the accused, or, if he does not understand the language in which it is written, shall be interpreted to him in a language which he understands, and he shall be at liberty to explain or add to his answers.

(4) It shall thereafter be signed by the accused and by the Magistrate or presiding Judge, who shall certify under his own hand that the examination was taken in his presence and hearing and that the record contains a full and true account of the statement made by the accused:

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Provided that where the accused is in custody and is examined through electronic communication, his signature shall be taken within seventy-two hours of such examination.

(5) Nothing in this section shall be deemed to apply to the examination of an accused person in the course of a summary trial.

### **317. Interpreter to be bound to interpret truthfully:**

When the services of an interpreter are required by any Criminal Court for the interpretation of any evidence or statement, he shall be bound to state the true interpretation of such evidence or statement.

### **318. Record in High Court:**

Every High Court may, by general rule, prescribe the manner in which the evidence of witnesses and the examination of the accused shall be taken down in cases coming before it, and such evidence and examination shall be taken down in accordance with such rule.

### **319. When attendance of witness may be dispensed with and commission issued:**

(1) Whenever, in the course of any inquiry, trial or other proceeding under this Sanhita, it appears to a Court or Magistrate that the examination of a witness is necessary for the ends of justice, and that the attendance of such witness cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable, the Court or Magistrate may dispense with such attendance and may issue a commission for the examination of the witness in accordance with the provisions of this Chapter:

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Provided that where the examination of the President or the Vice-President of India or the Governor of a State or the Administrator of a Union territory as a witness is necessary for the ends of justice, a commission shall be issued for the examination of such a witness.

(2) The Court may, when issuing a commission for the examination of a witness for the prosecution, direct that such amount as the Court considers reasonable to meet the expenses of the accused, including the advocate's fees, be paid by the prosecution.

320. Commission to whom to be issued:

(1) If the witness is within the territories to which this Sanhita extends, the commission shall be directed to the Chief Judicial Magistrate within whose local jurisdiction the witness is to be found.

(2) If the witness is in India, but in a State or an area to which this Sanhita does not extend, the commission shall be directed to such Court or officer as the Central Government may, by notification, specify in this behalf.

(3) If the witness is in a country or place outside India and arrangements have been made by the Central Government with the Government of such country or place for taking the evidence of witnesses in relation to criminal matters, the commission shall be issued in such form, directed to such Court or officer, and sent to such authority for transmission as the Central Government may, by notification, prescribe in this behalf.

321. Execution of commissions:

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Upon receipt of the commission, the Chief Judicial Magistrate or such Magistrate as he may appoint in this behalf, shall summon the witness before him or proceed to the place where the witness is, and shall take down his evidence in the same manner, and may for this purpose exercise the same powers, as in trials of warrant-cases under this Sanhita.

### **322. Parties may examine witnesses:**

(1) The parties to any proceeding under this Sanhita in which a commission is issued may respectively forward any interrogatories in writing which the Court or Magistrate directing the commission may think relevant to the issue, and it shall be lawful for the Magistrate, Court or officer to whom the commission, is directed, or to whom the duty of executing it is delegated, to examine the witness upon such interrogatories.

(2) Any such party may appear before such Magistrate, Court or Officer by an advocate, or if not in custody, in person, and may examine, cross-examine and re-examine the said witness.

### **323. Return of commission:**

(1) After any commission issued under section 319 has been duly executed, it shall be returned, together with the deposition of the witness examined thereunder, to the Court or Magistrate issuing the commission; and the commission, the return thereto and the deposition shall be open at all reasonable times to inspection of the parties, and may, subject to all just exceptions, be read in evidence in the case by either party, and shall form part of the record.

(2) Any deposition so taken, if it satisfies the conditions specified by section 27 of the Bharatiya Sakshya Adhiniyam, 2023, may

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also be received in evidence at any subsequent stage of the case before another Court.

324. Adjournment of proceeding:

In every case in which a commission is issued under section 319, the inquiry, trial or other proceeding may be adjourned for a specified time reasonably sufficient for the execution and return of the commission.

325. Execution of foreign commissions:

(1) The provisions of section 321 and so much of section 322 and section 323 as relate to the execution of a commission and its return shall apply in respect of commissions issued by any of the Courts, Judges or Magistrates hereinafter mentioned as they apply to commissions issued under section 319.

(2) The Courts, Judges and Magistrates referred to in sub-section (1) are--

(a) any such Court, Judge or Magistrate exercising jurisdiction within an area in India to which this Sanhita does not extend, as the Central Government may, by notification, specify in this behalf;

(b) any Court, Judge or Magistrate exercising jurisdiction in any such country or place outside India, as the Central Government may, by notification, specify in this behalf, and having authority, under the law in force in that country or place, to issue commissions for the examination of witnesses in relation to criminal matters.

326. Deposition of medical witness:

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(1) The deposition of a civil surgeon or other medical witness, taken and attested by a Magistrate in the presence of the accused, or taken on commission under this Chapter, may be given in evidence in any inquiry, trial or other proceeding under this Sanhita, although the deponent is not called as a witness.

(2) The Court may, if it thinks fit, and shall, on the application of the prosecution or the accused, summon and examine any such deponent as to the subject-matter of his deposition.

### **327. Identification report of Magistrate:**

(1) Any document purporting to be a report of identification under the hand of an Executive Magistrate in respect of a person or property may be used as evidence in any inquiry, trial or other proceeding under this Sanhita, although such Magistrate is not called as a witness:

Provided that where such report contains a statement of any suspect or witness to which the provisions of section 19, section 26, section 27, section 158 or section 160 of the Bharatiya Sakshya Adhiniyam, 2023, apply, such statement shall not be used under this sub-section except in accordance with the provisions of those sections.

(2) The Court may, if it thinks fit, and shall, on the application of the prosecution or of the accused, summon and examine such Magistrate as to the subject-matter of the said report.

### **328. Evidence of officers of Mint:**

(1) Any document purporting to be a report under the hand of a gazetted officer of any Mint or of any Note Printing Press or of any Security Printing Press (including the officer of the Controller of Stamps and Stationery) or of any Forensic

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Department or Division of Forensic Science Laboratory or any Government Examiner of Questioned Documents or any State Examiner of Questioned Documents as the Central Government may, by notification, specify in this behalf, upon any matter or thing duly submitted to him for examination and report in the course of any proceeding under this Sanhita, may be used as evidence in any inquiry, trial or other proceeding under this Sanhita, although such officer is not called as a witness.

(2) The Court may, if it thinks fit, summon and examine any such officer as to the subject-matter of his report:

Provided that no such officer shall be summoned to produce any records on which the report is based.

(3) Without prejudice to the provisions of sections 129 and 130 of the Bharatiya Sakshya Adhiniyam, 2023, no such officer shall, except with the permission of the General Manager or any officer in charge of any Mint or of any Note Printing Press or of any Security Printing Press or of any Forensic Department or any officer in charge of the Forensic Science Laboratory or of the Government Examiner of Questioned Documents Organisation or of the State Examiner of Questioned Documents Organisation be permitted--

(a) to give any evidence derived from any unpublished official records on which the report is based; or

(b) to disclose the nature or particulars of any test applied by him in the course of the examination of the matter or thing.

329. Reports of certain Government scientific experts:

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(1) Any document purporting to be a report under the hand of a Government scientific expert to whom this section applies, upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under this Sanhita, may be used as evidence in any inquiry, trial or other proceeding under this Sanhita.

(2) The Court may, if it thinks fit, summon and examine any such expert as to the subject-matter of his report.

(3) Where any such expert is summoned by a Court, and he is unable to attend personally, he may, unless the Court has expressly directed him to appear personally, depute any responsible officer working with him to attend the Court, if such officer is conversant with the facts of the case and can satisfactorily depose in Court on his behalf.

(4) This section applies to the following Government scientific experts, namely:--

(a) any Chemical Examiner or Assistant Chemical Examiner to Government;

(b) the Chief Controller of Explosives;

(c) the Director of the Finger Print Bureau;

(d) the Director, Haffkeine Institute, Bombay;

(e) the Director, Deputy Director or Assistant Director of a Central Forensic Science Laboratory or a State Forensic Science Laboratory;

(f) the Serologist to the Government;

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(g) any other scientific expert specified or certified, by notification, by the State Government or the Central Government for this purpose.

### **330. No formal proof of certain documents:**

(1) Where any document is filed before any Court by the prosecution or the accused, the particulars of every such document shall be included in a list and the prosecution or the accused or the advocate for the prosecution or the accused, if any, shall be called upon to admit or deny the genuineness of each such document soon after supply of such documents and in no case later than thirty days after such supply:

Provided that the Court may, in its discretion, relax the time limit with reasons to be recorded in writing:

Provided further that no expert shall be called to appear before the Court unless the report of such expert is disputed by any of the parties to the trial:

(2) The list of documents shall be in such form as the State Government may, by rules, provide.

(3) Where the genuineness of any document is not disputed, such document may be read in evidence in any inquiry, trial or other proceeding under this Sanhita without proof of the signature of the person by whom it purports to be signed:

Provided that the Court may, in its discretion, require such signature to be proved.

### **331. Affidavit in proof of conduct of public servants:**

When any application is made to any Court in the course of any inquiry, trial or other proceeding under this Sanhita, and

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allegations are made therein respecting any public servant, the applicant may give evidence of the facts alleged in the application by affidavit, and the Court may, if it thinks fit, order that evidence relating to such facts be so given.

### **332. Evidence of formal character on affidavit:**

(1) The evidence of any person whose evidence is of a formal character may be given by affidavit and may, subject to all just exceptions, be read in evidence in any inquiry, trial or other proceeding under this Sanhita.

(2) The Court may, if it thinks fit, and shall, on the application of the prosecution or the accused, summon and examine any such person as to the facts contained in his affidavit.

### **333. Authorities before whom affidavits may be sworn:**

(1) Affidavits to be used before any Court under this Sanhita may be sworn or affirmed before-

(a) any Judge or Judicial or Executive Magistrate; or

(b) any Commissioner of Oaths appointed by a High Court or Court of Session; or

(c) any notary appointed under the Notaries Act, 1952 (53 of 1952).

(2) Affidavits shall be confined to, and shall state separately, such facts as the deponent is able to prove from his own knowledge and such facts as he has reasonable ground to believe to be true, and in the latter case, the deponent shall clearly state the grounds of such belief.

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(3) The Court may order any scandalous and irrelevant matter in the affidavit to be struck out or amended.

334. Previous conviction or acquittal how proved:

In any inquiry, trial or other proceeding under this Sanhita, a previous conviction or acquittal may be proved, in addition to any other mode provided by any law for the time being in force,--

(a) by an extract certified under the hand of the officer having the custody of the records of the Court in which such conviction or acquittal was held, to be a copy of the sentence or order; or

(b) in case of a conviction, either by a certificate signed by the officer in charge of the jail in which the punishment or any part thereof was undergone, or by production of the warrant of commitment under which the punishment was suffered, together with, in each of such cases, evidence as to the identity of the accused person with the person so convicted or acquitted.

335. Record of evidence in absence of accused:

(1) If it is proved that an accused person has absconded, and that there is no immediate prospect of arresting him, the Court competent to try, or commit for trial, such person for the offence complained of may, in his absence, examine the witnesses (if any) produced on behalf of the prosecution, and record their depositions and any such deposition may, on the arrest of such person, be given in evidence against him on the inquiry into, or trial for, the offence with which he is charged, if the deponent is dead or incapable of giving evidence or cannot be found or his presence cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable.

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(2) If it appears that an offence punishable with death or imprisonment for life has been committed by some person or persons unknown, the High Court or the Sessions Judge may direct that any Magistrate of the first class shall hold an inquiry and examine any witnesses who can give evidence concerning the offence and any depositions so taken may be given in evidence against any person who is subsequently accused of the offence, if the deponent is dead or incapable of giving evidence or beyond the limits of India.

### **336. Evidence of public servants, experts, police officers in certain cases:**

Where any document or report prepared by a public servant, scientific expert or medical officer is purported to be used as evidence in any inquiry, trial or other proceeding under this Sanhita, and--

- (i) such public servant, expert or officer is either transferred, retired, or died; or
- (ii) such public servant, expert or officer cannot be found or is incapable of giving deposition; or
- (iii) securing presence of such public servant, expert or officer is likely to cause delay in holding the inquiry, trial or other proceeding, the Court shall secure presence of successor officer of such public servant, expert, or officer who is holding that post at the time of such deposition to give deposition on such document or report:

Provided that no public servant, scientific expert or medical officer shall be called to appear before the Court unless the report

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of such public servant, scientific expert or medical officer is  
disputed by any of the parties of the trial or other proceedings:

Provided further that the deposition of such successor public  
servant, expert or officer may be allowed through audio-video  
electronic means: