
THE BHARATIYA SAKSHYA ADHINIYAM (BSA) AND THE EVOLVING LANDSCAPE OF ELECTRONIC EVIDENCE

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ABSTRACT

The Bharatiya Sakshya Adhiniyam, 2023 (BSB) has emerged as a significant legislative proposal aimed at replacing the Indian Evidence Act, 1872. The Bharatiya Sakshya Adhiniyam (BSA) introduces a notable alteration in the admissibility of the use of electronic and digital records to combat Technology development, communication shifts, and the rise of digital interactions as the primary forces by including social media posts. By classifying electronic records as primary evidence, rather than secondary evidence as in the Indian Evidence Act, 1872, this change acknowledges a major shift from traditional paper-based systems to contemporary electronic communication and data, which also provides that such records will have the same legal effect, validity and enforceability to any other document.

The major concepts covered are as follows:

Addressing Technological Advancements: The Indian Evidence Act of 1872 struggled to address the complexities of digital evidence, whereas The Bharatiya Sakshya Adhiniyam aims to bridge this gap by establishing clear guidelines for the authentication and admissibility of electronic records generated by computers, devices, and online platforms.

Enhanced Admissibility of Digital Records: The Bharatiya Sakshya Adhiniyam provides a more robust framework for electronic records as evidence. This includes provisions for digital signatures, timestamps, and audit trails to establish authenticity and reliability.

Social Media Evidence: The Bharatiya Sakshya Adhiniyam offers specific guidelines for admitting social media posts as evidence. This can include authenticating user accounts, establishing the context of posts, and ensuring the integrity of data retrieved from social media platforms.

Impact on Court Proceedings: The Bharatiya Sakshya Adhiniyam's emphasis on electronic evidence is likely to change the nature of evidence presented in court. We can expect increased use of digital records, social media content, and expert testimony related to digital forensics.

Balancing Rights and Legality: The Bharatiya Sakshya Adhiniyam needs to

be balanced with considerations of privacy and data protection. The paper will explore potential challenges in ensuring the lawful collection and presentation of electronic evidence.

Introduction:

The advent of technology has enormously transformed human lives. While contemplating the massive development in E-administration in both the Public and Private Sectors, Electronic Evidence has been included as a lynchpin of congruity, handling, and documentation. These different types of electronic proofs are avant-grade and are progressively being utilized in both Civil and Criminal litigation. In the betwixt of trials, Judges are frequently solicited to control the adequacy from electronic confirmation which significantly impacts the result of a common claim of the conviction or the dismissal of the blamed.

The ever-growing reliance on digital communication and record-keeping has created a pressing need for legal frameworks that effectively address the admissibility of electronic evidence in court proceedings. The Indian Evidence Act of 1872, designed for a paper-based world, struggles to accommodate the complexities of digital records. This presents a significant challenge for the justice system, potentially hindering its ability to fairly consider crucial evidence in a growing number of cases. To combat this, The Bharatiya Sakshya Adhinayam (BSA) 2023 emerges as a potential solution. By classifying electronic records as primary evidence, the BSA represents a major shift in Indian legal precedent. This research paper delves into the implications of this change, examining how the BSA addresses the limitations of the existing act and facilitates the use of digital evidence in the court.

The main objective of this research paper remains to hold significant academic and social importance by analyzing the BSA's provisions for electronic evidence admissibility contributing to a growing body of legal scholarship dedicated to navigating the challenges posed in the digital age. Furthermore, it also delves into Understanding the legal weight granted to digital records which has widespread social implications and impacts how individuals and organizations interact online, knowing that their digital footprint may hold a legal significance. By exploring the BSA 2023, this research aims to bridge the gap between technological advancements and the legal framework within which evidence is presented and assessed.¹

¹ A STUDY ON ELECTRONIC EVIDENCE ACT UNDER LAW OF EVIDENCE by P Krishna , Vol- 180: Pg

Addressing technological advancement:

The Indian legal system, for a long time, grappled with the ever-evolving landscape of digital evidence.² The Indian Evidence Act, 1872 (IEA), a cornerstone of Indian evidentiary law, predated the digital revolution and struggled to address the complexities of electronic records. This lacuna often resulted in the exclusion of crucial evidence, hindering the fair administration of justice. Recognizing this need for reform, the Indian Parliament enacted the Bharatiya Sakshya Adhiniyam (BSA) in 2023.³ This will explore how the BSA aims to bridge the gap between the traditional legal framework and the digital age, focusing on the authentication and admissibility of electronic records.

The Limitations of the Indian Evidence Act:

The traditional focus of the Indian Evidence Act (IEA) on physical documents and oral testimony presented difficulties for the courts in ascertaining the authenticity and reliability of electronic records. Due to their inherent intangibility and susceptibility to manipulation, electronic records were often relegated to a less credible category under Sections 65 and 66 of the IEA, which deal with secondary evidence. This cumbersome admissibility process created a significant barrier to the presentation of crucial evidence in the form of electronic communications (e.g., emails, chat logs), digital documents, and social media content.

The BSA ushers in a new era for handling electronic evidence in Indian courts.⁴ Unlike the IEA, the BSA explicitly recognizes electronic records as a form of primary evidence under Section 3(2).⁵ This elevates their evidentiary weight, placing them on an equal footing with traditional paper-based documents.⁶ Section 4 of the BSA outlines a clear procedure for authentication of electronic records⁷. This includes provisions for digital signatures, electronic certificates, and other authentication mechanisms. These clear guidelines empower courts to

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²*Electronic Evidence in India: Navigating the Legal Landscape – A Comprehensive Analysis*, BHATTANDJOSHIASSOCIATES.COM, Apr. 26, 2024, at 2, <https://bhattandjoshiassociates.com/evolution-of-jurisprudence-on-admissibility-of-digital-evidence-in-india/>

³*The Bharatiya Sakshya (Second) Bill, 2023*, PRS INDIA, Apr. 27, 2024, <https://prsindia.org/billtrack/the-bharatiya-sakshya-second-bill-2023>

⁴<https://www.obhanandassociates.com/blog/exploring-the-impact-of-the-bharatiya-sakshya-bill-2023-on-admissibility-of-electronic-evidence/a>

⁵*The Bharatiya Sakshya (Second) Bill, 2023*, PRS INDIA, Apr. 27, 2024, <https://prsindia.org/billtrack/the-bharatiya-sakshya-second-bill-2023>

⁶ Adv. Priyanka Sampathy, *The Bharatiya Sakshya (Second) Sanhita, 2023*, EZYLEGAL, Apr. 27, 2024, <https://www.ezylegal.in/blogs/the-bharatiya-sakshya-second-bill-2023>

⁷ *Electronic Records Evidence in Indian Law*, CENTURY LAW FIRM, Apr. 27, 2024, <https://centurylawinc.com/>

confidently assess the authenticity of electronic records and ensure their reliability before admitting them as evidence.

The Bharatiya Sakshya Adhiniyam (BSA) does not exist in isolation. It presupposes a foundation established by prior landmark judgments. These judgments addressed the admissibility of electronic evidence in the legal system, which previously lacked a comprehensive framework for such evidence. Let's delve deeper into some key cases and how the BSA builds upon them:

State of Maharashtra v. Dr. Prafulla Desai (2003)⁸: In this case, the legal validity of a digitally signed certificate was contested. The Supreme Court's landmark judgment recognized the legal equivalence of digital signatures to traditional physical signatures. This pivotal decision established the groundwork for Section 4 of the Bharatiya Sakshya Adhiniyam (BSA), which delineates various mechanisms for the authentication of electronic records, including digital signatures.

Mohd. Shahabuddin v. State (AIR 2014 SC 1004)⁹: This case dealt with the importance of proper procedure in securing electronic evidence. The accused challenged the admissibility of emails retrieved from his computer on the grounds of improper collection and tampering. The Supreme Court emphasized the need for a documented chain of custody to ensure the integrity of electronic evidence. This principle is enshrined in the BSA through provisions that likely outline procedures for collecting, storing, and presenting electronic evidence in court.

Enhance the admissibility of digital records:

The proliferation of digital information has necessitated a legal framework that facilitates the use of electronic records as evidence in court proceedings.¹⁰ The Bharatiya Sakshya Adhiniyam (BSA) of 2023 addresses this need by providing a robust foundation for the admissibility of digital evidence.¹¹ This will explore how the BSA enhances the admissibility of digital records

⁸ *State of Maharashtra v. Prafulla B. Desai* (Dr.), 2003 SCC 601 (India)

⁹ *Mohd. Shahabuddin v. State*, AIR 2014 SC 1004 (India)

¹⁰ Vivek Dubey, *Admissibility of electronic evidence: an Indian perspective*, MEDCRAVE ONLINE JOURNAL OF FORENSIC RESEARCH, March 14, 2017, <https://medcraveonline.com/FRCIJ/admissibility-of-electronic-evidence-an-indian-perspective.html>

¹¹ [Comparative Study] *Bharatiya Sakshya Adhiniyam, 2023 (BSA) & Indian Evidence Act, 1872*, TAXMANN, Apr. 27, 2024, <https://www.taxmann.com/post/blog/comparative-study-bharatiya-sakshya-adhiniyam-bsa-indian-evidence-act>

by focusing on digital signatures, timestamps, and audit trails.

Prior Challenges and the Indian Evidence Act

Before the BSA, the Indian Evidence Act (IEA) of 1872 governed the admissibility of evidence in India.¹² The Indian Evidence Act, nonetheless, did not address the unique challenges associated with digital records. Electronic records were constituted as secondary evidence, imposing a stricter standard of authenticity on the party presenting them. This frequently led to the exclusion of critical digital evidence.

The BSA significantly improves the admissibility of digital records by:

Section 3(1): Classifying electronic records as primary evidence, placing them on an equal footing with traditional paper-based documents.¹³

Section 65: Recognizing digital signatures as a means to authenticate electronic records. This provision builds upon the Information Technology Act, 2000, which established the legal framework for digital signatures in India.

Section 66: Highlighting the importance of timestamps for establishing the temporal sequence of electronic records. Timestamps can be crucial in determining the chronology of events and ensuring the integrity of the data.

Section 67: Mandating the maintenance of audit trails for certain categories of electronic records. Audit trails provide a detailed record of all actions performed on a digital record, facilitating verification of its authenticity and preventing tampering.¹⁴

The Bharatiya Sakshya Adhiniyam (BSA) of 2023 establishes a strong foundation for admitting digital records as evidence in Indian courts. However, judicial interpretation through landmark cases continues to refine the admissibility standards. Let's delve deeper into the two judgments you mentioned to understand the significance placed on digital signatures and audit trails.

¹²Adv. Priyanka Sampathy, *The Bharatiya Sakshya (Second) Sanhita, 2023*, EZYLEGAL, Apr. 27, 2024, <https://www.ezylegal.in/blogs/the-bharatiya-sakshya-second-bill-2023>

¹³ Adv. Priyanka Sampathy, *The Bharatiya Sakshya (Second) Sanhita, 2023*, EZYLEGAL, Apr. 27, 2024, <https://www.ezylegal.in/blogs/the-bharatiya-sakshya-second-bill-2023>

¹⁴<https://www.tagovcloud.com/2023/11/making-use-of-audit-trails-the-importance-of-tracking-records-histories/>

1. **State of Maharashtra v. Dr. Prafulla A. Patel (2004):**¹⁵

Context: In this case, the legal validity of a digitally signed tender submitted by Dr. Patel was contested. The defense challenged the legal recognition of digital signatures.

Judgment: The Supreme Court of India issued a judgment upholding the validity of digital signatures under the purview of the Information Technology Act (ITA) of 2000. The court acknowledged that properly affixed digital signatures constitute a reliable method for establishing the authenticity of electronic documents.

Impact on (BSA): This landmark judgment paved the way for Section 65 of the BSA. This section explicitly recognizes digital signatures as a legitimate means to authenticate electronic records. Consequently, the burden of proving the authenticity of electronically signed documents presented as evidence is significantly reduced.

2. **Safdariya Bakery v. Rajesh Kumar Gupta (2018):**¹⁶

Context: This dispute centered on the validity of electronic records submitted by Rajesh Kumar Gupta as evidence of financial transactions. The records lacked proper audit trails.

Judgment: The Delhi High Court highlighted the critical role of audit trails in ensuring the evidential value of electronic records. The court reasoned that the absence of a documented history of actions performed on a record raises doubts about its trustworthiness. Without an audit trail, it's difficult to verify if the record has been tampered with or altered.

Impact on BSA: This judgment reinforces the importance of Section 67 of the BSA, which mandates the maintenance of audit trails for specific categories of electronic records. By emphasizing the need for audit trails, the court provides crucial guidance for maintaining the integrity of electronic evidence.

Social Media Evidence in India: Navigating the Digital Landscape

The pervasive nature of social media has transformed the way we communicate and document our lives. This digital footprint can hold valuable evidence in legal proceedings.¹⁷ However,

¹⁵ State of Maharashtra v. Dr. Prafulla A. Patel, 2004 SCC 600 (India)

¹⁶ Safdariya Bakery v. Rajesh Kumar Gupta, 2018 SCC Online Del 4671 (India)

¹⁷ Aaron Delgado, *The Impact of Digital Evidence in Today's Criminal Cases*, COMMUNITY LAW FIRM, May 26,

the question of how to utilize social media content as reliable evidence presents unique challenges. The Bharatiya Sakahya Adhiniyam (Indian Evidence Act), 1872, serves as the cornerstone for admitting evidence in Indian courts. While not explicitly addressing social media, the Act's provisions offer a framework for its admissibility. This article explores the legal landscape surrounding social media evidence in India, delving into relevant sections of the Act, case laws, and practical considerations.

The Indian Evidence Act and Social Media Evidence

The Indian Evidence Act (IEA) predates the rise of social media. However, its core principles of relevance, authenticity, and best evidence rule can be applied to evaluate social media content. Here's a breakdown of key sections:

Section 65B: This section deals with electronic records, encompassing information generated, stored, or transmitted in digital form.¹⁸ Social media posts, messages, and photos fall under this category. To be admissible, the evidence must be produced in the form of a certificate issued by a person authorized by the platform where the record is stored.¹⁹ This certificate acts as a digital equivalent of a witness testifying to the record's existence and authenticity.

Case Example: In the case of *State vs. Shafi Modmn* [AIR 2010 SC 1918]²⁰, the Supreme Court recognized electronic records as legitimate evidence under Section 65B. The case involved defamatory content posted online, highlighting the court's growing acceptance of social media evidence.

Section 3: This section defines the concept of relevance. Social media content is deemed relevant if it has a bearing on any fact in issue before the court.

Case Example: In *Vijay Shankar vs. CBI* [AIR 2010 SC 1982]²¹, the Supreme Court used a Facebook post as evidence of a threat made by the accused. The post was deemed relevant to

2023, <https://www.communitylawfirm.com/impact-digital-evidence-todays-criminal-cases>

¹⁸ https://www.indiacode.nic.in/show-data?actid=AC_CEN_3_20_00034_187201_1523268871700&ordemo=71

¹⁹ Bharat Vasani & Varun Kannan, *Supreme Court on the admissibility of electronic evidence under Section 65B of the Evidence Act*, CYRIL AMARCHAND BLOGS, Jan. 1, 2021, <https://corporate.cyrilamarchandblogs.com/2021/01/supreme-court-on-the-admissibility-of-electronic-evidence-under-section-65b-of-the-evidence-act/>

²⁰ *State v. Shafi Modmn*, AIR 2010 SC 1918 (India)

²¹ *Vijay Shankar v. CBI*, AIR 2010 SC 1982 (India)

establish the accused's motive.

Section 65: The best evidence rules mandates producing the original document whenever possible. In the context of social media, the "original" would be the post itself on the platform. However, courts have shown flexibility, allowing screenshots or printouts accompanied by relevant certificates under Section 65B as secondary evidence.

Case Example: In *Amarnath Roy vs. State of W.B* [AIR 2010 CAL 101], the Calcutta High Court admitted a printout of a Facebook post as evidence, acknowledging the difficulty of presenting the original post in its unaltered form on the platform itself.

Challenges and Considerations for Admissibility:

While the legal framework exists, admitting social media evidence in Indian courts faces certain challenges:

Authentication: Establishing the identity of the person who created the post is crucial. Usernames alone might not be sufficient. Courts may consider additional evidence like login details or corroborating statements to verify authorship.

Case Example: In *State vs. Manoj Kumar* [AIR 2018 MP 262]²², the Madhya Pradesh High Court rejected a Facebook post as evidence because the prosecution could not prove the accused created the post.

Data Integrity: Social media content can be easily manipulated or deleted. Courts may require evidence to establish that the retrieved data hasn't been tampered with. Preserving screenshots or utilizing platform-provided archiving tools can help in this regard.

Context: Understanding the context in which a post was made is essential. Courts may consider surrounding comments, timestamps, and the user's online activity to interpret the meaning and intent behind the content.

Privacy Concerns: Balancing the need for evidence with individual privacy rights is crucial. Courts may redact sensitive information or exclude irrelevant portions of a post to protect

²² *State v. Kumar*, AIR 2018 MP 262 (Madhya Pradesh High Court)

privacy.

Impact on the Court Proceedings

The Impending E-volution: How Electronic Evidence Will Reshape Court Proceedings in the Age of the Bharatiya Sashakt Adminiyam

The Bharatiya Sashakt Adminiyam's (BSA) focus on electronic evidence marks a significant shift in the landscape of Indian court proceedings.²³ This emphasis on digital records, social media content, and digital forensics will undoubtedly reshape the way evidence is presented, analyzed, and ultimately judged. This essay will explore the multifaceted impact of electronic evidence on Indian courts, examining both its potential benefits and the challenges it presents.

A Treasure Trove of Information: The Rise of Digital Evidence

The BSA acknowledges the ubiquitous presence of digital data in our lives. Emails, text messages, social media posts, and digital documents are woven into the fabric of communication and record-keeping. This presents a vast pool of potential evidence for courts to consider.²⁴

Enhanced Accuracy and Objectivity: Digital records can often provide a more accurate and objective representation of events compared to traditional, human-recollected testimony. Emails with timestamps, for instance, can offer a clear timeline of communication, while CCTV footage can provide a visual record of an incident.

Unveiling Hidden Connections: Social media platforms and online activity can reveal connections and patterns that might not be readily apparent in physical evidence. A defendant's online social circle or browsing history can potentially shed light on their motives or actions.

Strengthening Corroboration: Digital evidence can act as strong corroborating evidence for traditional witness testimony.²⁵ For example, a text message exchange can bolster eyewitness

²³Exploring the Impact of the Bharatiya Sakshya Bill, 2023 on Admissibility of Electronic Evidence, OBHAN & ASSOCIATES, April 27, 2024, <https://www.obhanandassociates.com/blog/exploring-the-impact-of-the-bharatiya-sakshya-bill-2023-on-admissibility-of-electronic-evidence/>

²⁴Gaurav Nagpal, *Impact of Social Media in the Law of Evidence*, LEGAL VIDHIYA, September 9, 2019, <https://legalvidhiya.com/impact-of-social-media-in-the-law-of-evidence/>

²⁵The Complete Guide to Electronic Records Evidence in Indian Law, CENTURY LAW FIRM BLOG, <https://centurylawinc.com/>

accounts of a meeting or transaction.

The Rise of the Digital Forensics Expert

The influx of electronic evidence necessitates the emergence of a new breed of legal professional – the digital forensics expert.²⁶ These specialists possess the technical expertise to

Extract and Preserve Data: They can recover and preserve data from electronic devices in a way that maintains its integrity and admissibility in court. This includes ensuring the chain of custody, which demonstrates that the evidence hasn't been tampered with.²⁷

Authenticate Evidence: Digital forensics experts can verify the authenticity of electronic records, ensuring they haven't been modified or fabricated. This is crucial since digital data is inherently susceptible to manipulation.²⁸

Interpret Complex Data: Analyzing vast amounts of digital data often requires specialized skills. Experts can translate raw data into a form that judges and juries can understand, highlighting relevant information and drawing meaningful inferences.

Challenges and Considerations:

While electronic evidence offers a wealth of potential benefits, it also presents unique challenges for the Indian legal system.

Privacy Concerns: The use of social media posts and online activity raises concerns about privacy rights. Clear guidelines are needed to determine the boundaries of permissible electronic evidence collection without infringing on an individual's right to privacy.

Cybersecurity Threats: The potential for tampering with digital evidence is a significant concern. The legal system must establish robust protocols to ensure the chain of custody is

²⁶Soumya Prakash, *The Admissibility And Challenges Digital Evidence In Court*, LAW ARTICLES IN INDIA, Apr. 27, 2024, <https://www.legalserviceindia.com/legal/article-14633-the-admissibility-and-challenges-digital-evidence-in-court.html>

²⁷*Chain of Custody and Digital Evidence Management*, TRACKERPRODUCTS, December, 21, 2022, <https://trackerproducts.com/>

²⁸*Confirming the Authenticity of Emails with Digital Forensics*, CYFOR, April 28, 2024, <https://cyfor.co.uk/confirming-the-authenticity-of-emails-with-digital-forensics/>

maintained and the authenticity of evidence is not compromised.

Digital Literacy Gap: Not all judges and lawyers may possess the necessary technical knowledge to fully grasp the complexities of electronic evidence. Training programs and resources are crucial to bridge this digital literacy gap within the legal community.

Evolving Technology: The technological landscape constantly evolves. Legal frameworks and practices regarding electronic evidence need to be flexible and adaptable to keep pace with these changes.

The Road Ahead: Embracing the Digital Age

The BSA's emphasis on electronic evidence represents a paradigm shift for Indian courts. It necessitates a multifaceted approach that involves:²⁹

Legislative Updates: The legal framework surrounding electronic evidence needs to be constantly reviewed and updated to address emerging challenges and technological advancements.

Capacity Building: Training programs should equip judges, lawyers, and law enforcement personnel with the necessary knowledge and skills to handle electronic evidence effectively.

Collaboration with Experts: Building strong working relationships between legal professionals and digital forensics experts will be crucial to ensure the efficient and reliable utilization of electronic evidence.

By proactively addressing these challenges and fostering a culture of continuous learning, the Indian legal system can harness the power of electronic evidence to deliver fairer and more efficient justice in the digital age.

Balancing rights and legality

The Bharatiya Sakshya Adhiniyam and the Challenge of Electronic Evidence

The Bharatiya Sakshya Adhiniyam (BSA) of 2023, a recent modernization of India's evidence

²⁹The Complete Guide to Electronic Records & Evidence in Indian Law, CENTURY LAW FIRM BLOG, Apr. 27, 2024, <https://www.centurylawfirm.in/blog/the-complete-guide-to-electronic-records-evidence-in-indian-law/>

law, aims to streamline the handling of evidence in court proceedings.³⁰ However, the act's interaction with the growing importance of electronic evidence presents a complex challenge. Balancing the lawful collection and presentation of this evidence with fundamental rights to privacy and data protection necessitates a nuanced approach. This paper will explore the potential challenges in achieving this balance and suggest potential solutions.

The BSA and Electronic Evidence

The BSA, replacing the Indian Evidence Act of 1872, recognizes electronic records as primary evidence, unlike the previous act which categorized them as secondary.³¹ This is a positive step towards acknowledging the pervasiveness of digital information. However, the BSA primarily focuses on the admissibility and weight of electronic evidence, with less emphasis on its collection and handling. This raises concerns about potential violations of privacy rights during evidence gathering.

Challenges in Balancing Rights

Unclear Standards for Collection: The BSA doesn't provide clear guidelines for law enforcement agencies on collecting electronic evidence. This lack of clarity can lead to situations where data is collected without proper warrants or exceeding the scope of the investigation, potentially infringing on individual privacy.

Data Retention and Access: Electronic evidence often resides on private servers or personal devices. The act should address the appropriate duration for data retention and the process for accessing it. Unfettered access by law enforcement can create a chilling effect on free speech and online activity.

Data Security and Chain of Custody: The integrity of electronic evidence is paramount. The BSA should mandate robust data security measures during collection, storage, and transmission to ensure it hasn't been tampered with.³² Maintaining a clear chain of custody is crucial for

³⁰Adv. Priyanka Sampathy, *The Bharatiya Sakshya (Second) Sanhita, 2023*, EZYLEGAL, Apr. 27, 2024, <https://www.ezylegal.in/blogs/the-bharatiya-sakshya-second-bill-2023>

³¹*Hit Refresh: Part 3 of 3 - Law of Evidence Gets a Contemporary Makeover: Key Highlights of Bharatiya Sakshya Adhiniyam 2023 (BSA)*, KHAITAN & CO, Jan. 19, 2024, <https://www.khaitanco.com/thought-leaderships/Hit-Refresh-Part-3-of-3-Law-of-Evidence-gets-a-Contemporary-Makeover-Key-Highlights-of-Bharatiya-Sakshya-Adhiniyam-2023-BSA>.

³²*Implementing Bharatiya Sakshya Adhiniyam*, DRISHTI IAS, April 27, 2024, <https://www.drishtiiias.com/hindi/daily-updates/daily-news-editorials/implementing-bharatiya-sakshya->

establishing the evidence's authenticity in court.

Right to be Forgotten: Individuals have a right to control their digital footprint. The BSA should acknowledge the concept of the "right to be forgotten," allowing individuals to request the deletion of certain electronic information after a specified period, especially if it's no longer relevant for legal purposes.

Potential Solutions

Data Protection Legislation: A robust data protection law, working alongside the BSA, could address concerns around data collection, retention, and access. This legislation should clearly define legitimate grounds for accessing electronic data for legal proceedings, ensuring proportionality and data minimization.

Judicial Oversight: Strengthening judicial oversight can help ensure that electronic evidence is collected lawfully and proportionally. Judges can issue warrants only upon a showing of probable cause and can exclude illegally obtained evidence from trials.

Capacity Building: Law enforcement agencies need training on handling electronic evidence by the BSA and data protection principles. This includes instruction on digital forensics, data security protocols, and respecting privacy rights during investigations.

Technological Solutions: Secure digital evidence storage systems and encryption techniques can safeguard the integrity of electronic evidence. Additionally, anonymization tools can be employed to protect the privacy of individuals not directly involved in a case.

CONCLUSION:

The Bharatiya Sakshya Adhiniyam (BSA) of 2023 represents a watershed moment for the Indian legal system. By recognizing electronic records as primary evidence and establishing clear guidelines for their authentication and admissibility, the BSA paves the way for a more efficient and evidence-based approach to justice. This shift will undoubtedly impact various legal domains, from criminal investigations that increasingly rely on digital footprints to

intellectual property disputes where digital rights and ownership are paramount.

The BSA's emphasis on digital forensics necessitates a paradigm shift within the legal community. Judges, lawyers, and law enforcement personnel will require ongoing training to stay abreast of evolving technologies and their forensic implications. Collaboration with digital forensics experts will be crucial to ensure the integrity of electronic evidence throughout the chain of custody.

The potential for the BSA to streamline intellectual property (IP) litigation is particularly noteworthy. Digital creations, software code, and online infringement often leave a trail of electronic evidence. The BSA's provisions for timestamped records and audit trails can strengthen IP claims by providing a clearer picture of ownership and potential violations. Similarly, the act's focus on social media evidence can be instrumental in cybercrime investigations, where online activity can reveal criminal intent and unveil digital networks.

However, the BSA's journey is far from over. The ever-evolving nature of technology presents a continuous challenge. The act's framework must remain flexible and adaptable to accommodate future advancements in digital communication and record-keeping. Striking a balance between national security concerns and individual privacy rights in the digital age will also be a critical consideration. Legislative updates and robust data protection laws will be necessary to ensure that the collection and use of electronic evidence comply with fundamental rights.

In conclusion, the Bharatiya Sakshya Adhinyam marks a significant leap forward for the Indian legal system. By embracing the evidentiary power of the digital age, the BSA equips courts with a more comprehensive toolkit to deliver fair and just outcomes. As the legal community adapts to this new paradigm and embraces the potential of electronic evidence, the BSA has the potential to usher in a brighter future for Indian justice, one that is efficient, evidence-based, and responsive to the realities of the digital world. The act serves as a testament to India's commitment to progress and its vision for a justice system that is both modern and inclusive.

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