
COMPARATIVE ANALYSIS OF THE BHARATIYA SAKSHYA ADHINIYAM, 2023 AND THE INDIAN EVIDENCE ACT, 1872

Mohd Uwais Saifi, Amity University Noida

ABSTRACT

This paper compares the Indian Evidence Act of 1872 with the Bharatiya Sakshya Adhiniyam, 2023, emphasizing the latter's advancements and distinctions. The inclusion of digital forms in the classifications of evidence and the establishment of clear criteria for the admission of electronic data are two significant changes. The Bharatiya Sakshya Adhiniyam also reassesses how confessions are handled, shifting toward a more nuanced strategy that strikes a compromise between the requirement for efficient law enforcement and individual rights¹. The Indian Evidence Act's provisions 25, 26, and 27 are grouped together to provide a logical structure for the admission of confessions. This framework emphasises protections against coercion while allowing exceptions under certain circumstances. This research emphasises how legal systems must adapt to new developments in technology and society to maintain the accessibility and equity of justice. All things considered, the Bharatiya Sakshya Adhiniyam is a step in the right direction toward India's more flexible and all-encompassing legal system.

¹ The Bharatiya Sakshya Bill, 2023. (n.d.). PRS Legislative Research. <https://prsindia.org/billtrack/the-bharatiya-sakshya-bill-2023>

1. Introduction

The Indian Evidence Act of 1872, which proved important guidelines for the admission and assessment of evidence, has long been regarded as the cornerstone of evidentiary law in India². However, change has become urgently necessary with the emergence of digital technologies and changing social dynamics. By updating evidence norms and procedures, the Bharatiya Sakshya Adhiniyam, 2023, tackles these issues. This new law looks to improve accessibility and procedural efficiency by incorporating provisions for digital evidence. The main distinctions between the Indian Evidence Act and the Bharatiya Sakshya Adhiniyam will be examined in this essay, with an emphasis on the latter's improvements in terms of justice, flexibility, and clarity. It will also look at the consequences of sections 25, 26, and 27 of the Indian Evidence Act, analyzing the reasons behind their grouping and the ways in which the advent of digital evidence affects the way confessions are handled. We want to understand the relevance of these legal changes in the context of modern India through this research³.

2. Historical Context

Studying evidence law in India is essential to comprehending the nation's larger legal system. A major legislative endeavour during British colonial control was the Indian Evidence Act of 1872, which tried to codify and harmonise the regulations governing the admissibility and assessment of evidence in court cases. Its main goal was to provide evidence a systematic approach, which was necessary for the British judiciary in India to run properly. With its roots in English common law, this Act looked to bring some uniformity to the legal procedures used in different Indian states.

Colonial Period

British India saw a wave of legal changes in the late 19th century because of the necessity for effective government and the development of a strong legal framework. From this background, the Indian Evidence Act was born, signifying a move towards codified legal frameworks and a reflection of British ambitions in keeping authority over the subcontinent. The Act reshaped the

² Government of India. (2020). THE INDIAN EVIDENCE ACT, 1872. In ARRANGEMENT OF SECTIONS. https://www.indiacode.nic.in/bitstream/123456789/15351/1/iea_1872.pdf

³ Rai, D. (2021, October 8). Relationship between Section 25 and 27 of the Indian Evidence Act - iPlaers. iPlaers. <https://blog.ipleaders.in/relationship-between-section-25-and-27-of-the-indian-evidence-act/>

Indian legal system by emphasizing concepts like relevance, admissibility, and the burden of proof.

Post Independence Reforms

There was a major movement to change the legal system to consider Indian values, social conventions, and the country's rich cultural terrain when India gained independence in 1947. This resulted in the Bharatiya Sakshya Adhiniyam (BSA) being enacted in 2022. Its purpose was to tackle modern legal issues and simplify evidentiary rules to suit the requirements of Indian society. The original Evidence Act was important historically, but it was often ill-suited to deal with the complexity of contemporary Indian culture, which led to the creation of the BSA. The new Act aimed to make it more relevant to the Indian people by incorporating ideas from other legal traditions inside India, such as customary practices and regional laws.

2.1. The Indian Evidence Act, 1872- To unify and modify India's evidence-related legislation, the Indian Evidence Act was passed. By outlining concepts like relevance, admissibility, and the burden of proof, it created a framework for the admissibility of evidence. Particularly, Sections 25, 26, and 27 deal with the admission of confessions and the circumstances under which they are deemed credible⁴.

2.2. Bharatiya Sakshya Adhiniyam- The Bharatiya Sakshya Adhiniyam, 2023, was enacted to tackle modern legal issues. It presents several novel ideas, such as the use of video testimony, digital evidence, and artificial intelligence in evidentiary processes. The purpose of this act is to modernise evidentiary processes so that they are more open, easily available, and compliant with global norms.

3. Need for the Shift

It becomes clear that the Bharatiya Sakshya Adhiniyam, 2023, is a proper and essential answer to the shortcomings of the Indian Evidence Act, 1872. The new law puts India's evidentiary law in a position to meet the needs of the twenty-first century by addressing changes in society, technology, and criminal environments⁵. This change is indicative of a larger dedication to

⁴ Rai, D. (2021a, June 12). Relevancy and admissibility of admissions - iPlaaders. iPlaaders. <https://blog.ipleaders.in/relevancy-admissibility-admissions/>

⁵ India Foundation. (2024, September 2). India's Criminal Justice Overhaul: A Deep Dive into the New Laws. <https://indiafoundation.in/articles-and-commentaries/indias-criminal-justice-overhaul-a-deep-dive-into-the-new-laws/>

efficiency, fairness, and the defence of rights within the judicial system. Sustained assessment and modification will be essential to guarantee that the Act achieves its goals and successfully meets the requirements of the community it regulates.

- **Technological Progress** The speed at which technology is developing, especially in the fields of information and communication, has changed how evidence is gathered and presented. Updates to evidentiary rules were required due to the growing amount of digital evidence, including emails, social media chats, and electronic documents. The Bharatiya Sakshya Adhiniyam, 2023, addresses issues like digital authentication and cybercrime and acknowledges the significance of these new types of evidence by offering a framework for their acceptance.
- **Comparative Law and Globalisation** The need of harmonising domestic laws with international norms has increased as India interacts with foreign legal standards more often. To adapt to changing circumstances, several nations have updated their evidence laws. The goal of the Bharatiya Sakshya Adhiniyam, 2023, is to improve the legitimacy and effectiveness of India's legal system by incorporating best practices from other countries⁶.
- **Changes in Society** Evidence standards have been reevaluated in response to changes in cultural norms, particularly with relation to topics like gender-based violence and privacy rights. The new Act includes measures intended to address specific crimes, such those against women and children, and to better protect witnesses who are at risk of harm. This proves a more general dedication to guaranteeing equity and justice throughout the judicial system.
- **Courtroom Effectiveness** Delays in justice and backlogs have been problems for the Indian court. The goal of the Bharatiya Sakshya Adhiniyam, 2023, is to improve the efficiency and streamlining of the evidential process. The Act aims to hasten court procedures by streamlining the laws about digital evidence and witness testimony, therefore mitigating procedural delays.
- **Put Justice and Fairness First** More people are realizing that justice in the courts must be improved. The 2023 Act adds stronger protections against coercive techniques as well as procedures for the protection of witnesses. In doing so, it acknowledges the complexity of modern criminal cases and attempts to strike a balance between the rights of the accused and

⁶ Editor_4. (2024, April 29). Shift in India's criminal justice System : Bharatiya Sakshya Adhiniyam, 2023 | SCC Times. SCC Times. <https://www.scconline.com/blog/post/2024/04/29/paradigm-shift-in-india-criminal-justice-system-bharatiya-sakshya-adhiniyam-2023/>

the need for victims' justice⁷.

4. Comparative Analysis

4.1. Key Differences

| Difference | IEA, 1872 | BSA, 2023 |
|--------------------------------------|--|---|
| Definition and Scope | emphasizes documentary, oral, and physical evidence as the primary types of evidence. | Expands the term to encompass digital evidence, electronic records, and smart contracts, reflecting the digital change of society ⁸ |
| Admissibility of Digital Evidence | Although there were no explicit rules, digital evidence was implicitly covered by basic principles. | Explicitly acknowledges and offers precise standards for the admission of digital evidence, providing clarity and simplicity of use in courts. |
| Confessions and Relevant Sections | The admissibility of confessions given to police personnel is expressly limited by sections 25, 26, and 27, with section 27 permitting admissions that result in the discovery of facts. | reconsiders how confessions are handled, adding more complex clauses that take the setting and conditions of evidence collection into account. |
| Procedure and Technology Integration | Does not provide provisions for using technology into evidentiary processes. | Includes provisions for using technology to increase efficiency and accessibility, such as video conferencing for testimony and electronic evidence filing. |

5. Improvements in the Bharatiya Sakshya Adhiniyam, 2023:

⁷ Editor. (2024, April 10). Key Highlights of the three new criminal laws introduced in 2023 | SCC Times. SCC Times. <https://www.scconline.com/blog/post/2023/12/31/key-highlights-of-the-three-new-criminal-laws-introduced-in-2023/>

⁸ Legal, A. (2024, July 15). Digital transformation in the Indian legal framework: Bharatiya Sakshya Adhiniyam, 2023. ACM Legal. <https://www.acmlegal.org/blog/digital-transformation-in-the-indian-legal-framework-bharatiya-sakshya-adhiniyam-2023->
bsa/#:~:text=The%20Bharatiya%20Sakshya%20Adhiniyam%2C%202023%20is%20a%20recent%20law%20in,evidence%20in%20the%20digital%20age.

The Indian Evidence Act, 1872 is improved upon by the Bharatiya Sakshya Adhiniyam, 2023, which raises the general effectiveness and applicability of evidentiary legislation in India.

These enhancements fall under the following categories:

- **Inclusion of Digital Evidence-** The explicit acknowledgment and control of digital evidence is the most noteworthy development. The new law ensures that information from digital sources is given the same legal weight as evidence from conventional sources by setting up explicit rules for the admission of electronic documents. In an era where electronic communication is pervasive, safeguarding the integrity and authenticity of digital evidence is crucial. This provides rules for doing just that.
- **Streamlined Procedures-** The goal of the Bharatiya Sakshya Adhiniyam is to hasten and simplify the process of evidential law. Using measures like electronic document submissions and video conferencing for witness testimony, the legislation promotes a more effective legal system. This facilitates access to the judicial system and hastens trial times, particularly for those who would find it impossible to appear in person.
- **Greater Emphasis on Fairness and Justice-** The preservation of individual rights is emphasised under the new law, especially about confessions. Its aim is to guarantee that evidentiary processes do not violate basic rights by reconsidering the way confessions are handled. The goal is to improve the fairness of the judicial system by striking a balance between the rights of the accused and efficient law enforcement⁹.
- **Clarity and Precision in Definitions-** The Bharatiya Sakshya Adhiniyam reduces uncertainty and confusion by giving better explanations of key terminology connected to evidence. For judges, attorneys, and law enforcement organizations to implement the law more successfully, there must be clarity. Accurate definitions ease comprehension of the extent and constraints of various forms of evidence, guaranteeing uniform utilisation in various legal contexts.
- **Provisions for Expert Testimony-** Acknowledging the increasing significance of specialist ability in judicial procedures, the new Act incorporates regulations for the admission of expert witness. Because of this, the quality of the evidence that is presented in court is improved when

⁹ Editor. (2024b, April 10). Key Highlights of the three new criminal laws introduced in 2023 | SCC Times. SCC Times. <https://www.scconline.com/blog/post/2023/12/31/key-highlights-of-the-three-new-criminal-laws-introduced-in-2023/>

experts' opinions on technological subjects—like scientific assessments or digital forensics—are considered.

- **Addressing Emerging Technologies-** Blockchain and artificial intelligence are two examples of modern technologies that the Bharatiya Sakhya Adhiniyam aggressively tackles. The law stays current in a fast- changing context by including provisions that acknowledge the evidentiary significance of modern technologies. This kind of foresight guarantees that the legal structure will not require significant changes to accommodate future advancements.
- **Protection Against Misuse of Evidence-** The new law adds protections against the improper exploitation of confessions and digital data. To ensure that electronic evidence is gathered legally and morally, it, for example, sets up stringent guidelines for its gathering and presentation. This keeps the legal system honest and shields people from being wrongfully convicted of crimes based on falsely obtained evidence.
- **Integration of International Standards-** The Bharatiya Sakhya Adhiniyam aligns more closely with international best practices in evidentiary law. By incorporating elements from global standards, it enhances the credibility of the Indian legal system and ensures that it stays coordinated with global developments. This alignment also aids in fostering international cooperation in legal matters, particularly in cases involving cross- border evidence collection.
- **Encouragement of Alternative Dispute Resolution (ADR)-** The law promotes the use of evidentiary norms in combination with alternative dispute resolution procedures like arbitration and mediation. By encouraging settlements and resolutions outside of conventional court settings, this strategy lessens the load on the legal system and gives parties more adaptable choices for settling conflicts¹⁰.
- **Focus on Judicial Training and Capacity Building-** To handle digital evidence and contemporary evidentiary procedures, judges, attorneys, and law enforcement personnel must get continual training and ability building, according to the Bharatiya Sakhya Adhiniyam. The goal of the legislation is to improve the general standard of justice administered in courts by making sure that individuals engaged in the legal system are prepared to handle the intricacies

¹⁰ Parliament. (2023c). THE BHARATIYA SAKHYA ADHINIYAM, 2023 [Legislation]. THE GAZETTE OF INDIA EXTRAORDINARY, N-O.47. https://www.mha.gov.in/sites/default/files/250882_english_01042024.pdf

of emerging technology.

6. Rationale Behind Clustering Sections 25, 26, and 27

Sections 25, 26, and 27 of the Indian Evidence Act, 1872 are grouped together to provide a coherent and all-encompassing framework that controls the admissibility of confessions¹¹. While the topics covered in each of these parts varies slightly, their goals and consequences are all related. Comprehending the reasoning for their grouping offers valuable understanding of the legal safeguards granted to persons and the guiding concepts of fairness in the Indian legal framework.

- **Protection Against Coercion**

The admissibility of confessions given to law enforcement officials is prohibited under Section 25. This clause is based on the idea that confessions made under duress or under improper influence are not trustworthy. The justification is to protect people from mistreatment by police authorities, who could coerce or threaten them into making confessions. The legislation underscores the need to safeguard the accused's rights from the outset of the inquiry by grouping this provision with the others.

The protections against coercive interrogation techniques are strengthened by Section 26, which extends this protection to confessions made while in police custody¹². These parts are grouped together to prove a unified legislative goal to make sure that all confessions—especially those made in precarious situations—are closely examined to avoid injustices.

- **Balancing Law Enforcement Needs and Individual Rights**

To preserve individual rights, Sections 25 and 26 limit the admission of confessions; nevertheless, Section 27 creates a complex exemption. It allows confessions that result in the discovery of pertinent evidence to be admitted into evidence. This clause preserves the general protective framework created by the sections before it while acknowledging the actual demands of law enforcement in conducting criminal investigations. The clustering helps to

¹¹ Discovery under Section 27 of Indian Evidence Act, 1872. (n.d.). Drishti Judiciary. <https://www.drishtijudiciary.com/current-affairs/discovery-under-section-27-of-indian-evidence-act-1872>

¹² Mohapatra, R. (2023, October 21). Confession under Indian Evidence Act: Types and Admissibility. CLATatalogue. <https://lawctopus.com/clatalogue/clat-pg/types-and-admissibility-of-confession-under-indian-evidence-act/>

provide a fair approach by allowing confessions that help unearth crucial evidence to be taken into consideration under certain circumstances, even when coerced confessions are not allowed to stop injustices. This harmony guarantees that the law will continue to be successful in punishing criminals without sacrificing the rights of the person.

- **Cohesive Legal Framework**

These parts are grouped together to provide a logical framework that makes it easier to understand and apply the evidentiary standards about confessions. These parts can be viewed by judges and attorneys as a cohesive set of guidelines for handling confessions. In complicated circumstances where the admission of evidence might have a substantial impact on trial results, this clarity is especially crucial.

- **Encouraging Judicial Discretion**

The statute gives judges a thorough set of instructions for assessing the admissibility of confessions by combining these provisions into one section. Judges have the authority to consider the setting in which confessions were made, the type of evidence that was shown, and any effects on justice. To guarantee that every case is assessed on its own merits, taking into consideration the circumstances and context, this judicial discretion is crucial.

- **Precedent for Future Legislative Reforms**

These parts' organisation sets the stage for upcoming evidence law legislative amendments. The guiding ideas behind how confessions are handled by legal systems can be used as a basis for added updates or modifications. The grouping establishes a framework for further talks on evidence standards and emphasizes the continuous need to strike a balance between individual rights and law enforcement goals.

7. Implications

The Indian legal system will be significantly affected by the Bharatiya Sakhyam Adhiniyam, 2023, which replaces the Indian Evidence Act, 1872.

- **Modernisation of the Legal Framework:** The new Act promotes a more pertinent and applicable legal framework by filling in the gaps left by earlier laws on digital evidence and technological

improvements.

- Enhanced Access to Justice: The 2023 Act improves the fairness of court procedures by including safeguards for the protection of witnesses and adjusting to modern societal values.
- Difficulties in Implementation: Notwithstanding its progressive outlook, there are several obstacles that the Bharatiya Sakshya Adhiniyam may meet. These include the requirement for judicial education and understanding of the management of novel types of evidence.

8. Conclusion

The comparative comparison of the Bharatiya Sakshya Adhiniyam, 2023, and the Indian Evidence Act, 1872, shows considerable developments aimed at upgrading India's evidentiary system¹³. The 2023 Act improves the efficiency and equity of the legal system by addressing modern issues, especially those brought about by changes in society norms and technology. The Bharatiya Sakshya Adhiniyam is a progressive step forward since it protects vulnerable witnesses, expands the admissibility of digital evidence, and improves the criteria for confessions and admissions.

Sections 25, 26, and 27 are purposefully included together in both legal frameworks to prove their logical coherence with relation to confessions. Confessions given to police personnel are not admissible under Section 25, which upholds the idea of protecting people from coercive tactics. Sections 26 and 27 further delineate the parameters under which confessions can be considered admissible, with Section 26 ensuring that confessions made in police custody are scrutinised to prevent abuse, while Section 27 allows for the admissibility of confessions that lead to the discovery of new evidence. In addition to highlighting the significance of defending individual rights, this tripartite grouping proves the judiciary's dedication to making sure that evidence is collected and presented in a way that preserves the integrity of the legal system.

In the end, the Bharatiya Sakshya Adhiniyam, 2023, which combines ancient values with modern requirements, marks a substantial advancement in India's legal system. It shows a proactive approach to legal reform by trying to strike a balance between the pursuit of justice

¹³ The Bharatiya Sakshya Adhiniyam, 2023 (47 of 2023) & the Indian Evidence Act, 1872 (1 of 1872):A comparison. (n.d.). https://store.lexisnexis.in/THE-BHARATIYA-SAKSHYA-ADHINIYAM-2023-THE-INDIAN-EVIDENCE-ACT-1872-A-COMPARISON?srsltid=AfmBOooengMiDY6gQE2HWaxO4prB_onRj6eD8cetW_vGWU3RFu3prBG-

and the rights of the accused¹⁴. Future judicial systems will be shaped by the continuous conversation between the past and present, which will be essential as scholars and legal practitioners negotiate these changing frameworks. This analysis lays the groundwork for future investigations into the real-world effects of these legislative changes, especially about their implementation and wider ramifications for the Indian judicial system

¹⁴ 14 Editor_4. (2024b, April 29). Shift in India's criminal justice System : Bharatiya Sakshya Adhiniyam, 2023 | SCC Times. SCC Times. <https://www.scconline.com/blog/post/2024/04/29/paradigm-shift-in-india-criminal-justice-system-bharatiya-sakshya-adhiniyam-2023/>