
EVIDENCE IN THE BHARATIYA SAKSHYA ADHINIYAM 2023: PRACTICE, PRESUMPTION AND DIGITAL TRANSFORMATION UNDER INDIAN CRIMINAL CODE

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ABSTRACT

The enactment of the Bharatiya Sakshya Adhiniyam (BSA) 2023 is a key development that represents the first time in Indian criminal justice reform that the 151 year old Indian Evidence Act was repealed. The study critically examines the BSA 2023 addressing its provisions pertaining to digital transformation, presumptions of evidence and procedural reforms. The paper identifies how the BSA rethinks the value of “document” to include electronic and digital records, gives them parity with traditional evidence and provides established processes for admissibility, authentication and verification. The provision concerning digital signatures, electronic correspondence and expert certification is a big step in realizing the reality of being a data-dependent society. Based on a series of historical background, investigations and discussion of the main terms, and comparisons of BSA and jurisdictions including the UK and US, this paper assesses how the BSA navigates the trade-off between efficiency and fairness preservation. The Act promotes digitalization of evidence law and it will embed itself within overall criminal reforms in India including under the Bharatiya Nyaya Sanhita (BNS) and Bharatiya Nagarik Suraksha Sanhita (BNSS), however difficulties persist in infrastructure, digital literacy, and capacity upskilling. The study argues, therefore, that the BSA 2023 is a legislative innovation, but also a force multiplier for reforming India’s criminal justice ecosystem and to transform evidentiary practices across the board, aligning them with current technology requirements without compromising constitutional protections.

Keywords: Bharatiya Sakshya Adhiniyam 2023 (BSA), Indian Evidence Act 1872, criminal justice reform, digital evidence, electronic records, admissibility of evidence, presumption of evidence, digital signatures, authentication and verification, procedural safeguards, chain of custody, Information Technology Act 2000, comparative evidence law, cybercrime, digital transformation in judiciary.

1. INTRODUCTION

The Bharatiya Sakshya Adhiniyam (BSA) 2023 is the first major piece in the Indian criminal justice reform process, replacing the 151 year old Indian Evidence Act of 1872. As part of these broad reforms to India's criminal law architecture, it will rest on two foundational legislations, the Bharatiya Nyaya Sanhita (BNS) and Bharatiya Nagarik Suraksha Sanhita (BNSS), that bring the law up to date and contextualize it in an ever-changing context¹. The significance of evidence law is highly pivotal to the justice process; it defines what facts are presented in a court of law and how truth is established during an adversarial process. The colonial-era Indian Evidence Act served as an essential bedrock for adjudication for more than a century and a half, but the systems are now struggling with digital communications, electronic commerce, cybercrime, and big data technologies². Disputes frequently erupted between courts, prosecutors, and investigators who took nineteenth-century ideas and applied them to twenty- first-century issues, specifically in relation to electronic documents, cloud storage, metadata, blockchain transactions, and encrypted communications. Judicial interpretation (as in landmark cases with Section 65B certificates) tried to narrow the gap, but the variance in application and technology bottlenecks reinforced the need for legislation³. The BSA 2023 introduces a detailed framework with regard to how it can overcome these obstacles by expanding the definition of evidence, defining and elaborating the rules pertaining to the admissibility of electronic documents, and establishing the presumptions for new modes of communication and storage. The approach centres on the digital authentication of data, mandates robust anti-tampering processes, and brings the evidential requirements into conformity with the Information Technology Act of 2000. Digital evidence provisions are intended to balance speed and fairness and to respect the rights of persons under the Constitution. The present article provides a review of the practice, presupposition, and digitalization in respect of BSA 2023 in its current form. It explores further whether the structural innovations proposed by the new law can effectively address the multifaceted nature of new technologies arising from the law, as well as the implications for the future of India's criminal justice system. This report seeks to provide a full analysis of the Act regarding conceptual design, impact, and doctrinal fit. It aims to assess the BSA

¹ The Bharatiya Nyaya Sanhita, 2023 (No. 45 of 2023); The Bharatiya Nagarik Suraksha Sanhita, 2023 (No. 46 of 2023)

² Law Commission of India, Report No. 185 on Review of the Indian Evidence Act, 1872 (2003)

³ Anvar P.V. v. P.K. Basheer (2014) 10 SCC 473

2023 on historical, comparative, and technological dimensions, putting it in a legal instrument as well as a promoter of digital transformation in India.⁴

2. HISTORICAL BACKGROUND

The Indian Evidence Act, 1872, under the jurisdiction of Sir James Fitzjames Stephen under colonial rule was a highly extensive statute relating to the admissibility, relevance, and test for evidence in Indian courts⁵. That was among the most progressive pieces of law that was ever written at the time of its adoption, a single law which included all the diverse customary practices and judicial precedent. It expanded to include notions such as relevancy of facts, examination of witnesses, confessions, documentary evidence and presumptions and thus gave the basis for modern evidentiary adjudication in India. The legacy of the Act is undeniable. It was a bulwark against the turmoil of a volatile change for over 150 years, offering a measure of certainty, structure and predictability to India's criminal, civil and administrative courts. Its guidelines for evidence were woven deeply into judicial training, advocacy and investigative procedures that enabled India's legal system to adapt and grow even following independence. Yet by the late twentieth and early twenty first centuries, the inadequacies of the colonial-era law became glaringly evident. The Act was written in the 19th century and did not consider electronic communications, forensic technologies or cyber-based transactions. The lack of mention of digital evidence caused inconsistent interpretation. Courts had to heavily depend on judicial creativity to integrate new forms of records (emails, digital signatures, CCTV footage) into outdated categories of "documents" or "primary evidence."⁶ This proved often laborious and confusing. It was framed in colonial contexts, whose provisions couldn't come to terms with India's constitutional, democratic and technological realities. This was illustrated by the notorious controversies over Section 65B certification for electronic records, as evidentiary rules proved a roadblock to speedy justice. Although the Indian Evidence Act also contributed to the rule of law, it could not adapt to transformative technological changes dynamically and thus necessitated rethinking of the evidentiary frameworks.⁷

⁴ G Mohan Gopal, "Reimagining Evidence Law in the Digital Age" (2024) Indian Journal of Law & Technology

⁵ The Indian Evidence Act, 1872 (Act No. 1 of 1872); James Fitzjames Stephen, *The Indian Evidence Act: With an Introduction on the Principles of Judicial Evidence* (Thacker, Spink & Co 1872)

⁶ *State (NCT of Delhi) v. Navjot Sandhu alias Afsan Guru* (2005) 11 SCC 600

⁷ PRS Legislative Research, "The Bharatiya Sakshya Bill, 2023" (PRS, August 2023) <https://prsindia.org/> accessed 30 September 2025

3. KEY PROVISIONS OF BHARATIYA SAKSHYA ADHINIYAM (BSA) 2023

Bharatiya Sakshya Adhiniyam (BSA) 2023 is a new law that seeks to harmonize and modernize India's evidentiary laws. Case names are grouped into discrete sub-sections in the Act which were amended, repealed or expanded following the Indian Evidence Act of 1872⁸. BSA 2023 amalgamated key components of the prior legislation, namely the rules on confession and the burden of proof, but transformed, extended, and updated them to fit current needs. The Act also brings digital evidence and electronic records into the primary construction of the body, rather than treating these as exceptions or supplement parts. We are now looking at court cases, investigations, and records in support of the technology reality, and thereby applying them across, and across, courts and legal practice in uniform manner. The widening sense of the word "document" in the BSA 2023 is one of the key changes. That now encompasses electronic and digital records, in other words, anything stored on computers or cell phones or servers or other electronic devices is a legally recognized document. Original electronic documents, emails, voice messages, as well as video recordings that were kept simultaneously, are now accepted as primary evidence. Secondary sources of evidence are oral and written admissions, testimony from document examiners, and even digital replicas of originals, which can still lead to evidence even if the original record is lost or destroyed⁹. We then use technical terms with examples of semiconductor memory, optical & magnetic data storage and information generated/stored in any communications device to bring more clarity and visibility within digital documents.

4. RECOGNITION AND PRACTICE OF DIGITAL EVIDENCE

In this regard the 2023 Bharatiya Sakshya Adhiniyam (BSA) is a landmark in the Indian legal systems of handling electronic and digital data. The BSA recognizes digital documents as the primary evidence for providing the court with evidence through proper custody, and can provide them with suitable certificates instead of the need for complex certificates as per Indian Evidence Act¹⁰. These could be emails, server logs, chat transcripts, digital photos, video recordings, and other digitally created evidence, all being acknowledged by the present reality where a large portion of critical information is stored or disclosed digitally. Sections

⁸ The Indian Evidence Act, 1872 (Act No. 1 of 1872); see also Law Commission of India, Report No. 185 on Review of the Indian Evidence Act, 1872 (2003)

⁹ Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal (2020) 7 SCC 1

¹⁰ The Indian Evidence Act, 1872 (Act No. 1 of 1872), s 65B (certificate requirement for electronic evidence)

57 and 61 of the BSA state that electronic and digital records, such as those produced by computers, smartphones or other connected devices can be turned into primary evidence if the records are properly authenticated. This shift removes the assumption that digital evidence is by definition unreliable, raising these items up to parity with hard copy papers and thus smoothing and providing a more predictable system for the use of digital evidence in court proceedings.¹¹

5. PRESUMPTION UNDER BHARATIYA SAKSHYA ADHINIYAM (BSA) 2023

For easier proving of facts in courts, Sections 78 to 93 of Bharatiya Sakshya Adhiniyam, 2023 (BSA) provide an extensive basis for the judgment of presumption of judicial discretion. Provisions such as these are intended to facilitate proceedings and accommodate the facts of physical and cyber- simplified evidence by permitting courts to regard certain facts for the time being, unless proven differently¹². The validity of certificates or certified copies issued by a government officer is presumed under section 78. This significantly lightens the record proving burden of papers submitted in the prescribed form. Court may infer the correctness of judicial recordings, such as statements or confessions in compliance with law, in order to expedite the proving process in contentious or criminal matters (Section 79). Sections 80 to 81 make presumptions on authenticity of Official Gazettes, periodicals and legally-preserved documents, provided they exist in the correct custody. Special Provisions: Emails, Signatures, SMS. BSA 2023 sets out explicit presumptions for digital documents, signatures and electronic correspondence, a departure from the Indian Evidence Act. Section 61 guarantees that the mere inclusion of digital or electronic evidence in a case does not make it inadmissible and that the results are the same if they are legal instruments and do not contradict the legal standard. Section 87 Generates a presumption in Electronic Signature Certificates that are automatically believable of those certified signatures unless proven otherwise. Older Electronic Records (more than five years old): If the default in BSA Section 93 for papers that go back 5 or more years was made on paper, it is now the case with electronic records, so the issue of authenticity will be resolved more easily with electronic documents, particularly if they have been used for a lengthy period of time and stored safely. Positives in Disturbed Areas and Other Special Situations. The general statutory conditions are satisfied for certain conditions in certain facts - including: guilt, involvement in cases of

¹¹ Anvar P.V. v. P.K. Basheer (2014) 10 SCC 473; reaffirmed in Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal (2020) 7 SCC 1

¹² Ratanlal & Dhirajlal, *The Law of Evidence* (LexisNexis, 26th edn 2023) 341–344

"disturbed areas" offences, legitimacy, abetments of suicide and dowry deaths¹³. Relevant for the Burden of Proof on a practical level. By treating certified digital materials, electronic signatures, and electronically maintained records as prima facie genuine the Act shifts the burden of proof back onto the opposing party to demonstrate the authenticity or reliability of the records which in turn, leads to much faster resolution of most conflicts in court and also much more judicial efficiency in areas where electronic communication is king or where digital documents hold sway. There are still central principles to evidence balance; the former is based on requiring a party proving fact, and therefore the first presumption of the BSA is the burden of proof for party counting on government records, certified signatures and electronic evidence, unless evidence against it is brought to the test. These shifts demonstrate greater trust in technical methods of authentication while preserving procedural safeguards, such as rebuttal and cross-examination.¹⁴

6. ADMISSIBILITY AND VERIFICATION OF ELECTRONIC EVIDENCE

The Bharatiya Sakshya Adhiniyam (BSA) 2023 establishes strict and modern rules for admitting electronic evidence based on the foundation set by the Information Technology Act of 2000¹⁵. The Act acknowledges the increasingly significant and unavoidable role of electronic records in judicial proceedings and removes legal obstacles that such evidence faced under the colonial-era Indian Evidence Act of 1872. A crucial aspect of the BSA strategy is the dual certification process outlined in BSA section 63. Instead of requiring certification from a single party, which was the standard before this regulation, the BSA requires qualifications from both: the person responsible for managing the instrument or system that created the electronic record, and an external technical expert, typically a forensic specialist or other trained expert, who validates the authenticity and integrity of the record. This two-tier authentication system enhances the credibility and integrity of digital evidence and reduces the risk of digital evidence tampering, data alteration, and false or fraudulent content.¹⁶ Certificates must clearly state the technical methods used to produce records, hash numbers, metadata, and custody details to establish an unbroken chain of custody.

¹³ Law Commission of India, *Report No. 185 on Review of the Indian Evidence Act, 1872* (2003) 45–47

¹⁴ Anvar P.V. v. P.K. Basheer (2014) 10 SCC 473; Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal (2020) SCC 1.

¹⁵ Information Technology Act, 2000 (Act No. 21 of 2000)

¹⁶ Aparna Chandra, "Technology and Evidence in India's Courts" (2021) 34(2) National Law School Review 47

Furthermore, the BSA aligns legal definitions and rules of evidence with the IT Act and incorporates concepts such as digital signatures, electronic contracts, cryptographic protocols, and cybersecurity strategies. Such harmonization clarifies any ambiguity in processing digital evidence with actual evidence and eliminates unnecessary procedural restrictions. Strict procedures are required to ensure traceability from creation to courtroom presentation¹⁷. This ensures the security of the evidence at each stage of the court process.

7. PROCEDURAL REFORMS AND SAFEGUARDS

BSA 2023 also adds to the provisions of the Act making substantial changes to the processes that regulate the examination and presentation of evidence to suit in line with the realities of modern technology and trials¹⁸. The Act modernizes how we question witnesses and consider documentary evidence in court. It does indeed expressly authorise and regulate the application of digital and distant testimony, taking into account the challenges and realities of the cost/technical barriers that have emerged as physical witnesses and massive electronic evidence. This flexibility reduces downtime and bottlenecks caused by physical limitations. The courts can take oral witness data digitally via technologies like video conferencing, virtual depositions and audio-video connections. Such transformation is beneficial notably in cases where the witness is distant, handicapped, old, or otherwise at-risk, since it improves witness protection, reduces intimidation, and expedites judicial proceedings. As cybercrime continues to grow, the BSA streamlines evidence-handling procedures within electronic crime investigations. Digital footprints, server logs, encrypted communications records, and data retrieved from devices are admissible with proper authentication mechanisms and standards. These rules improve law enforcement's ability to rapidly use digital forensic evidence, which leads to stronger convictions without compromising procedural fairness.¹⁹

8. DIGITAL TRANSFORMATION OF INDIA'S CRIMINAL JUSTICE SYSTEM

Fundamentally, the BSA promotes a wider digital transformation agenda for India's criminal justice system. The Act encourages the digitalisation of court documents, electronic filing of evidence and the use of technology-enabled case management systems. In this approach, the process of case processing is improved, as less paper filing is needed, which in turn creates

¹⁷ U. Baxi, *The Crisis of the Indian Legal System* (Vikas Publishing 1982) 103

¹⁸ Bharatiya Sakshya Adhiniyam, 2023 (No. 47 of 2023), Statement of Objects and Reasons

¹⁹ PRS Legislative Research, "The Bharatiya Sakshya Bill, 2023" (PRS, August 2023) <https://prsindia.org/> accessed 30 September 2025.

transparency as auditable record keeping and electronic audit trails can be established. Police and courts must utilize integrated digital evidence management²⁰, in order to collect, store, transfer and share data and perform analysis of evidence in the digital age, fostering interaction with other related agencies and evidence-based prosecutions. Still, the transition of law enforcement and courts will face challenges including a level of digital illiteracy among some of the sectors, urban-rural distributional disparities in infrastructure and risks of cyber crimes like data breaches or unauthorized access²¹. The procedural safeguards, certification measures and focus on expert testimony in the Act are designed to prevent these problems, yet also to prevent the loss of legal certainty. The BSA is closely integrated with other existing criminal codes i.e., the Bharatiya Nyaya Sanhita (BNS) and the Bharatiya Nagarik Suraksha Sanhita (BNSS), to promote an integrated, tech-enabled legal ecosystem. This convergence enables integration of digital evidence between procedural and substantive laws, radically streamlining the justice delivery landscape. Early evidence suggests a strengthening impact of these measures through better evidence and reduced case backlogs through accelerated digital processes and increased judicial transparency through more accessible digital documentation.²²

9. COMPARATIVE PERSPECTIVES

Incorporating the principles for digital evidence into the BSA 2023 gives India the advantage of global best practice but accommodates India's specific legal and technical scenario. Similar to the laws in the United Kingdom (Civil Evidence Act) and United States (Federal Rules of Evidence) regarding the admissibility, authentication and presumption process of electronic evidence²³. Along with admissibility of digital evidence, these systems focus on certification, chain of custody, and expert testimony. India has particular challenges because of the digital divide, different technological capacity of the states and legal experience.

The BSA tackles this by developing hierarchical expert certification procedures and by promoting judicial and law enforcement capacity building in digital forensics. The lessons from international examples demonstrate the need for continued skills-building, infrastructure enhancements and a clearer set of requirements for technical experts which is

²⁰ Ministry of Law and Justice, Press Release on Bharatiya Sakshya Adhiniyam (Government of India, 2023)

²¹ Nandan Nilekani Committee, Report of the Task Force on Judicial Technology (NITI Aayog, 2020) 41–43.

²² Vidhi Centre for Legal Policy, Briefing Note on Criminal Law Reforms 2023 (Vidhi, 2023)

<https://vidhilegalpolicy.in/> accessed 30 September 2025.

²³ Civil Evidence Act 1995 (UK), s 8; Federal Rules of Evidence (US), rr 901–902

what BSA is starting to introduce into national practice ²⁴ . These pragmatic and adaptive reforms provide an evolutionary lens for the BSA that allows for the socio-legal diversity and the rapid technological evolution of India.²⁵

In terms of comparison, while the United States relies on rigorously authenticate digital evidence to standards set forth in Rule 901 of the Federal Rules of Evidence, the UK has a more adaptable standard set in the Civil Evidence Act, 1995, that relies on the evidence's probative value and integrity of electronic records. The EU, with instruments such as the eIDAS Regulation (EU) No. 910/2014²⁶, enhances this digital trust service and electronic identification tool to accept cross-border electronic evidence. India's BSA 2023 incorporates a hybrid-based framework, taking the procedural authority from the U.S. and evidentiary practices of the U.K. and EU, in order to provide a framework to its digital infrastructure that is developing. Such a comparative alignment significantly improves the evidentiary framework of India and places the BSA, as a progressive statute, within an international framework reconciling domestic law with available global digital justice systems.

10. CONCLUSION

With the replacement of the 151 year old Indian Evidence Act, 1872, by the Bharatiya Sakshya Adhiniyam (BSA) 2023, a significant change occurred in the evolution of India's criminal justice system. Alongside the two major reform measures; Bharatiya Nyaya Sanhita (BNS) and the Bharatiya Nagarik Suraksha Sanhita (BNSS)—this reform is another piece of the puzzle, part of the reform in India's criminal law reform plan—which has become imperative in a country that is advancing in the modernization of the law and is updating its content to be suitably relevant for society (with changing society). As it sets forth how truth is determined in the adversarial system of evidence, the facts of the law and what can be accepted by a court of law, and what kind of evidence is valid in a court of legal evidence, evidence law forms the cornerstone of justice administration. The first thing policymakers and lawyers should do now is to ensure that there is no confusion in their implementation of the new law. It is hoped that judges, lawyers, and investigators will have access to higher

²⁴ PRS Legislative Research, “The Bharatiya Sakshya Bill, 2023” (PRS, August 2023) <https://prsindia.org/> accessed 30 September 2025

²⁵ Aparna Chandra and Mrinal Satish, *Digital Justice in India* (Oxford University Press 2022)

²⁶ *Regulation (EU) No. 910/2014* of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market (eIDAS Regulation).

education and training courses than they did previously in digital forensics, evidence management, courtroom technology, etc.