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Emergence And Evolution Of Digital Evidence And Examination Of Witnesses-A Comparative Study Of The Bharatiya Sakshya Adhiniyam, 2023 And The Indian Evidence Act, 1872.

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Abstract

Modern society's collection, evaluation, and presentation of evidence are subjected to rapid transformation owing partly to digitization, while the Countryside doesn't see much change on its own. The lndian Evidence Act of 1872, an instrument straight out of the colonial era, describes one that was imagined to operate in a pre-digital environment, where the two greatest forms of proof were oral testimony and physical documents. Thus, with the rise of the cyber world-that is, transactions and communications being carried out through means of digital records-the very shortcomings of this Act have slowly now been coming into the limelight. In the counterparts of the current reforms aimed at wholesale changes to Indian Law, the 2023 Bharatiya Sakshya Adhiniyam seeks to infuse the evidentiary law with the modern spirit through explicit inclusion of digital evidence, simplification of the procedures for bringing it to court, and reformed ways of examination of witnesses. This paper does a comparative analysis of the two statutes, focusing on the life cycle of digital evidence and modes of witness examination. It addresses the legislative intent, judicial interpretation, and implementation challenges where it draws the inference that BSA 2023 is heralded as a landmark reform, but it would depend on how well the changes are accepted by the judiciary in terms of technology.

Keywords: Digital evidence; witness examination; Bharatiya Sakshya Adhiniyam; Indian Evidence Act; admissibility; technology and law; procedural changes.

1. Introduction

The legal technology intersection makes new definitions on how truth is set up in the courts. The Indian Evidence Act of 1872 drafted by Sir James Fitzjames Stephen was one huge step toward codifying rules regarding relevancy, admissibility, and proof. But it was framed in an arena where predominantly oral testaments and tangible documents framed the understanding of evidence. The turn of the century — characterized by a growing explosion of digital data: emails, social media, encrypted communications, and blockchain records — has inevitably raised the dimension of statutory pressure.

This Act, i.e. the Bharatiya Sakshya Adhiniyam, 2023, is the latest addition to the Bharatiya Nyaya Sanhita and Bharatiya Nagarik Suraksha Sanhita, which are named after the revolutionary change in legal architecture from colonialism to a truly Indian Technology-driven regime. This paper investigates how the BSA 2023 affects evidentiary laws related to a digital medium and the examination of witnesses when compared with the provisions of the year 1872 Act.

2. Literature Review:

The last two decades have witnessed a rather keen academic interest in the evolution that has occurred in digital evidence law. Early debates under the Indian Evidence Act, 1872, were focused towards the admissibility of electronic records with the coming into effect of the Information Technology Act, 2000. Scholars such as P.K. Basheer and V. Natarajan have pointed out the confusion caused by Section 65B, particularly after the conflicting verdicts in Anvar P.V. v. P.K. Basheer on one side and Shafhi Mohammad v. State of Himachal Pradesh on the other. Internationally, these scenarios have been addressed under Rule 901 of the U.S. Federal Rules of Evidence and, of course, U.K. Civil Evidence Act, 1995. Some of the new avenues created, such as virtual hearings and electronic affidavits initiated during the COVID-19 era, have provided a fresh perspective for discussing issues surrounding the credibility, chain of custody, and privacy of digital evidence. Recent comment on the Bharatiya Sakshya Adhiniyam, 2023 (BSA) indicates that the Act seeks to enrich evidential processes through technological realities, positioning India's law in the international digital jurisprudential framework.

3. Research Methodology:

This research employs the doctrinal and comparative methods of legal analysis. Primary sources comprise statutes, case law as well as government reports while secondary sources encompass books, journal articles, and academic commentary. The apparent statutory language and judicial reasoning are interpreted qualitatively to see how the BSA changes the evidentiary norms in what seemed to be a digitally modified reality.

4. Historical Background:

Indian Evidence Act, 1872 The Act of 1872 was very much revolutionary for bringing together in one code rules for evidence in the courts of India; it reflected well the reality of pre-digital age. In the year 2000, by enacting the Information Technology Act, the Evidence Act was amended with the inclusion of Sections 65A and 65B which recognized electronic records as admissible evidence[1].

These provisions were poorly handled by betraying conflicting judicial interpretation. The Supreme Court had taken the stance that the certificate under Section 65B is a condition precedent to offer electronic records in the famous decision of Anvar P.V. v. P.K. Basheer[2].The Shafhi Mohammad v. State of Himachal Pradesh[3] brought the same condition relaxed for the case of Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal which reversed Anvar P.V. and made it very clear that unless the original device is produced, the certification is needed. These conflicting judgments have been characterized as signifying the inadequacy of this ancient framework to adapt effectively to the digital realities.

5. Rationality for Reform

The impetus for reforms originates from multiple system pressures that include:

- Technological change: Explosion of digital communication and data-based proof.
- Judicial dismay: Repeated issues in litigation over Section 65B compliance.
- Pandemic accelerated digitization: With the coming of COVID-19, online hearings and electronic filings became the new norm.

[1] *The Indian Evidence Act, 1872*, No. 1, Acts of Parliament, 1872 (India).
[2] Ministry of Home Affairs, "Press Release on New Criminal Laws, 2023," Govt. of India (2023).
[3] Law Commission of India, *185th Report on Review of the Indian Evidence Act, 1872* (2003).

- It is against this background that the Government of India has come up with the Bharatiya Sakshya Adhiniyam, 2023-in the aftermath of recognizing these phenomena-to modernize and bench mark evidence law with contemporary practices.

6. Reform Rationale

Several systemic pressures gave rise to the need for reform:

- Changes brought about by technology: The sprawl of digital communication and data-based evidence.
- Judicial confusion: Dunn and out-of-court settlements concerning section 65B compliance.[4]
- Digitized trials and e-filing gained momentum during the pandemic owing to Covid.
- Considering the present realities and challenges, the Government of India has enacted the Bharatiya Sakshya Adhiniyam, 2023, which primarily intends in modernization and simplification of evid evidentiary laws.[5]

7. Visualize the Bharatiya Sakshya Adhiniyam, 2023.

The Bharatiya Sakshya Adhiniyam (BSA), 2023, being the substitute from the Indian Evidence Act, consists of 170 provisions and is enacted with a clear and contemporary perspective.
The threefold objectives of the BSA are:

- Integrating digital and electronic evidence as core aspects of proof;
- Simplifying the processes of admissibility and authentication; and
- Facilitating the electronic manner of examination of witnesses.

By putting in place a new lexicon replacing the archaic vocabulary and defining the term "document" to embrace the digital form, the BSA presents a law that recognizes the present-day reality.

[4] *The Information Technology Act, 2000*, No. 21, Acts of Parliament, 2000 (India)
[5] Ministry of Home Affairs, supra note 2

8. Comparative Analysis: Digital Evidence

8.1 Statutory Regime

Aspect	Indian Evidence act, 1872	Bharatiya Sakshya Adhiniyam, 2023
Definition of "Document"	Included after IT Act amendment; limited focus.	Explicitly includes "electronic and digital records" (Section 2(1)(b)).
Admissibility	Sections 65A–65B required certification; rigid technical standards.	Simplified authentication based on reliability and technological integrity
Scope	Primarily static digital records (emails, CDs, etc.).	Broader: includes cloud data, blockchain records, digital logs.
Judicial Power	Limited discretion under Section 65B.	Wider judicial discretion to assess technological credibility.
Definition of "Document"	Included after IT Act amendment; limited focus.	Explicitly includes "electronic and digital records" (Section 2(1)(b)).
Admissibility	Sections 65A–65B required certification; rigid technical standards.	Simplified authentication based on reliability and technological integrity

Thus, the BSA mainstreams the digital evidence treating it as always inherently legitimate, or non-exceptional.

8.2 Chain of Custody and Authenticity

The BSA maintains a digital chain of custody in the maintenance of evidence which cannot be manipulated. Such practice incorporates best international practice such as Rule 901 of the US

Federal Rules of Evidence, which has insisted on authentication through technology rather than on mere certification.

9. Judicial Evolution

Judicial pronouncements, such as **Anvar P.V., Shafhi Mohammad v. State of Himachal Pradesh[6],** and **Arjun Panditrao Khotkar[7]**, reflect evolving judicial culture toward digital evidence. The BSA resolves the frictions by empowering courts to consider digital evidence when reasonably satisfied as to the authenticity and reliability thereof.

Hence, the BSA mainstreams digital evidence and postures as if it were always legitimate or, at least, non-exceptional.

10. In spite of this positive aspect, some hurdles are practically encountered.

- Technological gaps: Some courts are not up to date with the required digital infrastructure.
- Cybersecurity threats: Possible hacking, tampering, and manipulation of electronic evidence is glaringly high.
- Judicial training: A great proportion of the class of judicial officers' lack training in digital forensics.
- Privacy conflict: The use of private digital communication as evidence may violate the right to privacy (Justice K.S. Puttaswamy v. Union of India[8]).
- Uniform compliance: The certification processes and standard operating protocols must be uniformly followed in the country.

11. A Global Comparative Perspective

Today, every evidence system across the globe has incorporated such realities within the ambits of its system. The Civil Evidence Act (1995) has accepted electronic records as on par with other forms of evidence and allows verification for authenticity within its consideration forms. Along similar lines, the BSA symbolizes India's adaptation towards the jurisdiction, preparing itself for developing international digital jurisprudence as it aligns itself with the foregoing jurisdictions.

[6] Anvar P.V. v. P.K. Basheer (2014) 10 SCC 473.
[7] Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal, (2020) 7 SCC 1.
[8] Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1.

In effect, all evidence systems around the world have now incorporated these realities in their fabric. The Civil Evidence Act (1995) in the UK and the U.S. Federal Rules of Evidence defines electronic records along the same lines of other physical forms of evidence, subject, of course, to verification for authenticity. By a 2012 bill, Singapore clarifies the acceptance of computer output as evidence within the scope of the Evidence Act. The BSA thereby represents India aligning itself to these jurisdictions as it gears up for the consideration of international digital jurisprudence.[9]

12. Similar new derivatives/discoveries with the comparative analysis:

1. BSA 2023 implicitly assumes that digital records exist within the same rigorous certification paradigm imposed by Section 65B.
2. Jurisprudential introduction of digital chain of custody in accordance with international standards-Rule 901 of the U.S. Federal Rules of Evidence.
3. This means that judicial discretion under BSA also goes to the existence or absence of the technical integrity in the evidence rather than purely on compliance or not with the procedures.
4. Virtual witness examination supported by the blankets of statutory recognition creates a paradigm shift into a future of justice that is technologically enabled.
5. The BSA has begun development towards a data-centric justice model with increasing emphasis on frosty feature avoidance and enhancement of authenticity, integrity, and accessibility over formality.

13. Some considerations are presented below:

1. Setting up national digital repositories for standardized storage and retrieval of evidence will be immensely beneficial.
2. Cyber forensic training programs ought to be established for judges and lawyers.
3. Judges need to develop guidelines on evaluating metadata, encryption, and blockchain records.
4. Boost cross-border cooperation to allow for evidence to be obtained from foreign servers.
5. Human interfaces should always be retained so that automation does not encroach on judicial discretion.

[9] Federal Rules of Evidence, Rule 901 (United States).

14. Conclusion

The Bharatiya Sakshya Adhiniyam of 2023 actually expresses a legal Renaissance of India. Unlike the colonial Evidence Act, it affirms that law must adapt to the rapidly changing environment of technology. The Act's provisions for electronic evidence and virtual examination of witnesses testify to the justice delivery system's preparedness for the future.

However, modernization should be done with caution. The challenge lies not only in reforming laws but also in conditioning an entire judiciary around reliable technology and ethics for the same. Judiciary, bar and state institutions would surely take establishing the much envisaged digital, efficient and transparent regimes of evidence under the BSA.

At the same time, this is really not the legal modernization of the Indian Evidence Act into a Bharatiya Sakshya Adhiniyam-it is a constitutional commitment to truth in these digital times. The need for much-anticipated digital, effective, and transparent modes of evidence contained in the BSA will only be realized once the judiciary, the bar, and the state institutions play their collective roles.

This is not just legal modernization of Indian Evidence Act into Bharatiya Sakshya Adhiniyam. This has the connotation of constitutional commitment to truth in these digital times.

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