



The Indian Journal for Research in Law and Management

Open Access Law Journal – Copyright © 2026

Editor-in-Chief – Dr. Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

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THE WELCOMING CHANGES BROUGHT OUT IN BSA

-Aoun Ullah Khan

ABSTRACT

The enactment of the Bhartiya Sakshya Adhiniyam, 2023 (BSA), replacing the Indian Evidence Act, 1872 (IEA), represents a profound philosophical and structural shift in Indian evidentiary jurisprudence. For over fifteen decades, the analogue, document-centric design of the IEA struggled to accommodate the modern complexities of localized metadata, cloud computing, and encrypted channels. Previous interventions, such as the insertion of Sections 65A and 65B via the Information Technology Act, 2000, generated persistent procedural friction and conflicting judicial approaches regarding the admissibility of digital data. Prompted by systemic reviews from the Law Commission and parliamentary panels, the BSA establishes a decolonized, digitally native framework that balances technological integration with constitutional protections.

The core of these welcome changes lies in the comprehensive mainstreaming of electronic evidence. Section 2(1)(d)(vi) dynamically expands the definition of a "document" to include server logs, smartphone messages, emails, location trails, and voicemails. Crucially, Section 57 dismantles the historical bias against digital records by introducing Explanations 4 through 7, which elevate specific electronic data directly to the status of primary evidence. This includes records simultaneously stored across distributed servers (Explanation 4), information retrieved from proper custody (Explanation 5), simultaneous video broadcasts (Explanation 6), and automated system caches (Explanation 7). Backed by Section 61's statutory guarantee of medium neutrality, these rules provide an explicit remedy to the evidentiary hurdles seen in legacy case law.

INTRODUCTION

Beyond documentary evidence, the BSA modernizes trial logistics by legalizing electronic oral testimonies under Section 2(1)(e)(i). This systemic inclusion drastically reduces temporal and

economic inefficiencies for distant experts and witnesses, while offering a vital shield to vulnerable victims against courtroom intimidation, directly fulfilling the fair trial mandate of Article 21. Furthermore, Section 39 expands the boundaries of expert opinions to encompass any specialized field, seamlessly opening the doors to modern forensics, blockchain tracking, and psychiatric diagnostics. In civil matters, Section 122 closes a long-standing loophole by extending landlord-tenant estoppel into the post-tenancy phase.

To safeguard individual liberty against custodial overreach, Section 22 explicitly incorporates "coercion" alongside threat, promise, and inducement as a ground to invalidate confessions. This bolsters the protection against self-incrimination under Article 20(3) and guarantees due process. To combat data tampering and deepfakes, Section 63 and its accompanying Schedule institute a strict dual-signature authentication mechanism. This structural solution requires both the producing party (Part A) and an independent technical expert (Part B) to certify system integrity, correcting the volatile single-certificate issues of the past. Combined with the systematic purging of colonial-era nomenclature and offensive labels, the BSA successfully transitions Indian evidence law into an efficient, rights-centric framework built for a modern sovereign state.

For 151 years, the Indian Evidence Act, 1872, drafted primarily by Sir James Fitzjames Stephen, served as the bedrock of factual adjudication in Indian courts. While the IEA was a masterpiece of Victorian codification, its structural architecture was fundamentally anchored in an agrarian, analogue world. Despite patchwork interventions—most notably via the Information Technology Act, 2000, which introduced Sections 65A and 65B to manage electronic data—the statutory framework consistently struggled to keep pace with an era dominated by cloud computing, semiconductor memories, localized device metadata, and automated encryption algorithms. Decades of judicial commissions repeatedly highlighted the tension between static statutory text and fast-evolving technology.

The Bhartiya Sakshya Adhiniyam, 2023, which entered into full statutory force on July 1, 2024, systematically overhauls this framework. Consisting of 170 sections organized across 4 parts and 12 chapters, the BSA does not completely dismantle the classical, time-tested tenets of relevancy, burden of proof, and witness examination. Instead, it consolidates, refines, and updates these tenets as suggested by various law reform panels. The statutory intent is clear: to transition from a colonial-era, document-centric paradigm to a modern, digitally native ecosystem capable of ensuring an efficient, swift, and reliable fair trial.

THE DIGITAL RENAISSANCE: MAINSTREAMING ELECTRONIC AND DIGITAL EVIDENCE

The most profound and universally welcomed transformation under the BSA lies in its revolutionary treatment of digital footprints. Under the classical regime of the IEA, electronic data was inherently viewed with systemic suspicion, relegated to an exceptional subset of "secondary evidence" that required navigating a labyrinth of complex and shifting judicial precedents.¹

Expansion of the Definition of 'Document'

Section 2(1)(d) of the BSA significantly expands the semantic scope of a "document". Under the old Act, documents were rigidly bound to physical manifestations—writings, maps, caricatures, or inscriptions on stone or metal. The BSA adds a crucial modern dimension under Section 2(1)(d)(vi), which states that an electronic record on emails, server logs, documents on computers, laptops or smartphones, messages, websites, locational evidence and voice mail messages stored on digital devices are documents.

By explicitly listing modern digital artifacts such as server logs, smartphone messages, smartphone-generated location data (GPS trails), and voicemail messages, the legislature has eliminated judicial ambiguity. Trial courts are no longer forced to rely on expansive interpretations to fit digital interactions into archaic definitions².

Reclassifying Electronic Records as Primary Evidence

Historically, the primary evidence rule dictated that the original physical document must be presented to the court, while copies or printouts were classified as secondary³. In a digital world, where data is transient and distributed, locating an "original" server or a native flash memory chip is frequently an impossibility.

The BSA brilliantly resolves this impasse under Section 57, introducing four foundational explanations that elevate specific categories of electronic records to the status of primary evidence:

¹ Sarkar, *Law of Evidence* (20th ed. 2020).

² *Tomaso Bruno v. State of U.P.*, (2015) 7 SCC 178 (India).

³ M. Monir, *Textbook on the Law of Evidence* (12th ed. 2021).

First, under Explanation 4, where a digital record is generated or stored simultaneously or sequentially across multiple files (such as distributed server architectures or cloud mirrors), each individual file is recognized as primary evidence.

Second, under Explanation 5, when an electronic or digital record is retrieved from proper custody, that output is statutorily treated as primary evidence unless it is actively disputed by the opposing party. This significantly cuts down trial delays by bypassing redundant introductory proofs⁴.

Third, under Explanation 6, for video recordings that are simultaneously broadcast, streamed, or transferred to another medium, each stored iteration of that recording holds the status of primary evidence.

Fourth, under Explanation 7, data housed within multiple automated storage locations of a computer resource—including transient cache memory or temporary system files—is classified as primary evidence.

Parity and the Shield against Arbitrary Exclusion

To cement this digital integration, Section 61 of the BSA establishes a statutory guarantee of non-discrimination. It mandates that no court can deny the admissibility of an electronic or digital record solely on the grounds of its non-physical medium. Subject to the authentication parameters outlined in Section 63, these records possess identical legal effect, validity, and enforceability as any traditional paper document⁵. This brings a long-awaited statutory check to judicial inconsistencies that arose under the older regime.

REVOLUTIONIZING ORAL TESTIMONY: LEGALIZING ELECTRONIC DEPOSITIONS

The classical trial environment demanded the physical presence of the witness within the physical confines of the courtroom. While video conferencing became a necessity during global health crises, its application was governed by ad-hoc judicial directives and state-specific high court rules rather than explicit statutory mandates.

Electronic Oral Statements

⁴ S.R. Salkute, *Supply of Copy of Electronic Evidence - Suggested System for District Courts*, 1 Asian Indian J. Forensic Res. 45 (2026).

⁵ M. Sharma, *A Comparative Study of Old and New Electronic Evidence*, 4 Indian J. Res. Law & Mgmt. 88 (2024).

The BSA modernizes the very definition of oral evidence. Under Section 2(1)(e)(i), "evidence" now encompasses all statements including statements given electronically which the Court permits or requires to be made before it by witnesses in relation to matters of fact under inquiry.

This simple statutory insertion completely legalizes the deployment of electronic communication mediums for witness depositions, expert statements, and victim testimonies in the ordinary course of trial proceedings.

Logistical and Humanitarian Impact

The procedural institutionalization of electronic oral evidence brings significant, welcome relief across the judicial spectrum:

1. Mitigation of Cost and Time: Vulnerable witnesses, out-of-state medical experts, and non-resident victims are no longer required to undertake expensive, logistically demanding journeys simply to tender statements⁶.
2. Protection of Vulnerable Victims: In delicate criminal trials—such as those involving sexual violence or minors—electronic deposition provides a crucial buffer⁷. It shields the victim from the trauma of face-to-face confrontations with the accused, thereby ensuring compliance with the spirit of *audi alteram partem* within a safe environment under Article 21⁸.
3. Expedited Trial Timelines: Trials frequently stall due to the non-availability or delayed transit of key witnesses. Allowing digital appearance systematically addresses these systemic bottlenecks.

STRUCTURAL REFINEMENTS: EXPERT OPINIONS, ESTOPPEL, AND HUMAN RIGHTS

Beyond the digital headlines, the BSA introduces highly precise, surgical improvements to existing doctrines of evidence, fixing gaps that have plagued civil and criminal litigators for decades⁹.

⁶ Law Commission of India, *239th Report on Expeditious Investigation and Trial of Criminal Cases Against Influential Public Personalities* (2012).

⁷ *Mukesh v. State (NCT of Delhi)*, (2017) 6 SCC 1 (India).

⁸ India Const. art. 21. [7] India Const. art. 20, cl. 3.

⁹ Sarkar, *Law of Evidence* (20th ed. 2020).

Dynamic Horizon for Expert Opinions

Under Section 45 of the legacy IEA, the court could seek expert opinions only within a restrictive, explicitly enumerated list of fields: foreign law, science, art, identity of handwriting, and finger impressions. As technology and forensics rapidly diversified, this narrow wording proved highly restrictive.

The BSA completely opens this bottleneck through Section 39, which expands expert testimony admissibility to include any area where specialized expert opinion is deemed necessary by the court. This flexible drafting instantly accommodates advanced disciplines such as digital asset analysis, blockchain ledger tracking, artificial intelligence behaviour, deepfake analysis, forensic psychiatry, and modern DNA testing parameters¹⁰.

Extension of Landlord-Tenant Estoppel

The classic rule of estoppel dictates that a tenant cannot turn around and deny that their landlord had a valid title to the property at the beginning of the tenancy. However, bad-faith tenants frequently exploited a loophole under Section 116 of the IEA, arguing that once the lease period expired or was formally terminated, they were entirely free to challenge the landlord's ownership status while hanging onto physical possession.

The BSA decisively shuts down this opportunistic tactic. Section 122 extends the estoppel prohibition into the post-tenancy period, clarifying that a tenant cannot challenge the landlord's title even after the lease has run its course, provided they remain in possession of the premises. This brings immense relief to real estate operations and civil litigation speeds across the nation.

Codification of "Coercion" in Confession Frameworks

To protect individual liberty and check custodial overreach, the law has always thrown out confessions extracted via threats, promises, or unfair inducements. However, the exact word "coercion"—which encompasses systemic psychological isolation, sleep deprivation, or non-violent emotional breakdown tactics—was notably missing from the statutory text of the IEA.

The BSA rectifies this omission under Section 22 by explicitly adding "coercion" alongside inducement, threat, and promise as a disqualifying factor for confessions. This statutory upgrade provides defensive lawyers with a powerful tool to assert fundamental human rights

¹⁰ D.S. Deeksha, *Legal Challenges of DNA Evidence Adoption in Indian Courts - A Critical Examination of Evidentiary, Constitutional, and Institutional Parameters*, 6 Indian J. Legal Rev. 345 (2026).

protections under Article 20, Clause 3 (the right against self-incrimination) and Article 21¹¹, ensuring that the investigative machinery sticks strictly to scientific, non-coercive interrogation protocols¹².

DECOLONIZING NOMENCLATURE: ERADICATING CONSTITUTIONAL ANACHRONISMS

A symbolic yet highly meaningful change brought about by the BSA is the complete removal of colonial-era language that lingered within India's statute books for nearly eight decades post-independence¹³.

The legacy IEA was replete with outdated vocabulary reflecting India's status as a subordinate crown colony. The BSA systematically purges these historical anomalies by introducing a series of modifications. Outdated terms like "Vakil," "Pleader," and "Barrister" are completely replaced by the uniform, modern legal designation "Advocate" across Sections 21, 64, 132, 133, 152, and 153.

References to the Parliament of the United Kingdom, Crown Representative Notifications, the London Gazette, Dominion, Colony, the Imperial Jury system, and Her Majesty's Government have been cleanly extracted from the text. Additionally, archaic and offensive descriptions such as "lunatic" (found in Section 118 of the old IEA) [2] have been updated to empathetic, legally precise terminology such as "a person of unsound mind" under Section 124 of the BSA. By stripping away these linguistic remnants of the British Raj, the BSA successfully shifts the ideological foundation of the law from a tool of colonial governance to a framework serving sovereign citizens.

THE DUAL-SIGNATURE AUTHENTICATION SHIELD: RESOLVING THE CERTIFICATION DILEMMA

While the BSA welcomes digital integration, it also introduces a highly sophisticated mechanism to address the threat of data tampering, deepfakes, and electronic fabrication. Instead of continuing with the single-party certificate model under the old Section 65B of the IEA—which led to endless conflicting judgments that routinely derailed trial timelines¹⁴—the

¹¹ India Const. art. 21.

¹² Selvi v. State of Karnataka, (2010) 7 SCC 263 (India).

¹³ Parliamentary Standing Committee on Home Affairs, *Three Hundred Sixty-Fifth Report on the Bharatiya Sakshya Bill, 2023*, Rajya Sabha (2023).

¹⁴ Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal, (2020) 7 SCC 1 (India).

BSA establishes a clear, streamlined procedure via Section 63 and its accompanying Schedule.¹⁵

The new Schedule splits the authentication process into a mandatory dual structure consisting of two key elements:

- Part A (To be filed by the party): This segment is signed by the person who has lawful control over the computer or communication device. It explicitly identifies the device, validates the data source, and confirms the stable status of custody during the period of information generation.
- Part B (To be filed by an independent expert): This segment must be signed by an independent technical expert, system manager, or official examiner. It certifies the structural health of the operating system, confirms digital hash values, and formally locks the secure chain of custody.

By binding both the factual presenter (Part A) and the technical expert or system manager (Part B) to a standardized statutory template, the BSA simplifies the admission process. This structure protects the court from contaminated digital files while giving judges a reliable, uniform metric to verify the integrity of the evidence before it is admitted.

NEW PROVISIONS INSERTED IN BHARATIYA SAKSHYA ADHINIYAM

TITLE	BHARATIYA SAKSHYA ADHINIYAM,2023	INDIAN EVIDENCE ACT,1872
Electronic or digital record	Section 61: Nothing in this Adhiniyam shall apply to deny the admissibility of an electronic or digital record in the evidence on the ground that it is an electronic or digital record and such record shall, subject to section 63, have the same legal effect, validity and	New Section

¹⁵ Anvar P.V. v. P.K. Basheer, (2014) 10 SCC 473 (India).

	enforceability as other document.	
Repeal and savings	Section 170: (1) The Indian Evidence Act, 1872 (1 of 1872) is hereby repealed. (2) Notwithstanding such repeal, if, immediately before the date on which this Adhiniyam comes into force, there is any application, trial, inquiry, investigation, proceeding or appeal pending, then, such application, trial, inquiry, investigation, proceeding or appeal shall be dealt with under the provisions of the Indian Evidence Act, 1872 (1 of 1872), as in force immediately before such commencement, as if this Adhiniyam had not come into force.	New Section

DELETED PROVISION OF INDIAN EVIDENCE ACT, 1872¹⁶

S. No.	Sections	IEA Provisions

¹⁶ Uttar Pradesh Police, *Corresponding Section Table of Bharatiya Sakshya Adhiniyam, 2023 with Indian Evidence Act, 1872* (2023), <https://uppolice.gov.in/site/writereaddata/siteContent/Three%20New%20Major%20Acts/202407031507276576BSA2023-9-25.pdf> (last visited June 23, 2026).

1.	22A	When oral admission as to contents of electronic records are relevant.
2.	82	Presumption as to document admissible in England without proof of seal or signature.
3.	88	Presumption as to telegraphic messages.
4.	113	Proof of cession of territory.
5.	166	Power of jury or assessors to put questions.

CONCLUSION

The transition from the Indian Evidence Act, 1872, to the Bhartiya Sakshya Adhiniyam, 2023, is far more than a routine legislative update. It is a fundamental philosophical shift. By elevating digital records to primary evidence, legalizing electronic oral statements, expanding the scope of expert testimony, and incorporating robust protections against custodial coercion, the BSA transforms India's evidentiary framework into a contemporary tool of justice.

The true success of this legislative milestone will ultimately rest on how effectively it is executed on the ground. As noted in contemporaneous legal evaluations, it requires continuous technical training for advocates and judges, alongside a steady upgrade of forensic capabilities across police stations and cyber cells nationwide. By laying down a clear, progressive statutory foundation, the BSA provides a vital blueprint for a swift, fair, and modern judicial process tailored to the demands of the 21st century.