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## **THE DIGITAL ADVANCEMENT IN THE EVIDENCES: THE REVOLUTIONARY IMPACT OF USAGE OF ELECTRONIC RECORDS IN BHARATIYA SAKSHYA ADHINIYAM.**

### **Abstract**

After the Enforcement of Bharatiya Sakshya Adhinyam, the Indian courts were permitted to use the electronic and digital records as evidence in the Indian courts, and it is a significant shift in the Indian criminal justice system. With the adaptation of a new type of evidence that is electronic records, it has also changed the collection and submission of evidence in court. This qualitative study explores how developments in technology have changed judicial procedures. The impact of using electronic documents such as images, videography, metadata, etc. as evidence in legal proceedings was studied in this research through opinions from experts and self-reported opinions.

This paper also studies how the electronic evidence is causing changes in speed of acquiring the evidence, transparency of the evidence, and accuracy while used in the legal proceeding. This adaptation of taking electronic records as evidence raises questions like reliability and validity of the evidence, data protection, and criminal justice system capacities to keep up with the technological advancements. This research also provides suggestions to the criminal justice system for the reliable use of electronic records as evidence.

**Keywords:** Electronic evidences, Digital Evidences, Evidences, Laws, Bharatiya Sakshya Adhinyam, BSA

## **Introduction:**

Bharatiya Sakshya Adhinyam (BSA) is the India's new evidence act. It was replaced the Indian evidence act, 1872. It was enacted in December 2023 in parliament of India. It was enforced in 1<sup>st</sup> July, 2024. The Bhartiya Sakshya Adhinyam, 2023, is a significant development in the legal landscape of India. It addresses the pressing need to update the evidence law framework in light of the swift improvements in technology. Traditional legal systems must change to be relevant, efficient, and successful in an increasingly digital environment.

The Bhartiya Sakshya Adhinyam, 2023, is a milestone piece of Indian legislation that puts technology at the middle of the legal system and completely changes the way evidence is collected, presented, and evaluated in Indian courts. The Indian Evidence Act has been updated numerous times to keep it relevant over the years. The biggest shift came in 2000 when the Parliament of India passed the Information Technology Act, 2000. This law helped bring technology into the legal system, allowing digital and electronic evidence, like emails and messages, to be used in court. These updates made sure that the Evidence Act could handle modern technology and digital information. In the previous years, when digital technology didn't exist, courts mostly relied on paper documents and physical evidence to prove cases. But as the world has shifted into the digital age, new types of evidence, like multimedia files, electronic records, and digital signatures, have come up. This has created some challenges for courts, especially when it comes to accepting and understanding these new types of evidence, as the older legal systems were not designed to handle such complex digital evidence.

By providing a clear and modern legal framework that recognises digital evidence, the Bharatiya Sakshya Adhiniyam, 2023 is trying to solve this issues .One of the most important features of this updated law is that it gives clear definitions and classifications for what counts as digital evidence, like emails, social media posts, and electronic documents. It also lays down clear guidelines on how this evidence should be collected, stored, and presented in court. By doing this, the new Adhiniyam ensures that digital evidence is treated fairly and is given the same importance as traditional forms of proof. This new law is a major step towards making the Indian legal system more capable of handling cases in today's digital world.

Major improvements like how courts has to handle digital evidence were introduced in the Bharatiya Sakshya Adhiniyam, 2023. BSA makes sure that electronic materials, like emails, multimedia files, and other digital records, are evaluated with the same care and attention as traditional paper documents. By doing this, the law helps to make court decisions more reliable and fair. It reduces the chances of mistakes or misuse of digital data, helping to create a better and more efficient judicial system. Another important feature of the new act is its strong focus on cyber security. Since digital evidence is vulnerable to tampering, hacking, and cyber-attacks, the Adhiniyam includes strict measures to protect electronic data. These measures cover how data is stored, transmitted, and verified, making sure that the evidence stays secure and unaltered throughout its journey in the legal process. This ensures that the courts can rely on the integrity of digital evidence when making their decisions.

### **Statement of problem:**

The growing influence of digital technology has drastically changed how evidence is managed in the criminal justice system. Traditional provisions in the Evidence Act, primarily designed for physical documents and oral testimony, have struggled to keep pace with the increasing reliance on electronic records, such as emails, digital signatures, and multimedia files. The recent amendments to key sections of the Bhartiya Sakshya Adhiniyam, particularly Sections 2, 58, 61, and 63, have introduced significant changes to accommodate the rise of digital evidence. However, these changes also present new challenges. This research seeks to explore the impact of these revisions on the admissibility, authentication, and reliability of electronic records in Indian courts. It aims to analyze whether the updates in the Bhartiya Sakshya Adhiniyam adequately address the challenges posed by digital evidence

or if further legal frameworks and technological safeguards are required to ensure justice in the digital era.

## **Section 2: Definitions**

The definitions section has been updated to include definitions pertinent to digital evidence. This is significant as it recognizes various forms of electronic records, digital signatures, and other technological advancements. The term "electronic record" is defined, which includes any data generated, received, or stored in electronic form. This broadens the scope of what can be considered as evidence in a court of law, moving beyond traditional physical forms of evidence.

### **Impacts**

The recognition of electronic records under the Bharatiya Sakshya Adhiniyam has brought several positive and negative impacts. On the positive side, it provides clarity on digital evidence, includes new types like emails and social media posts, and aligns legal practices with modern technology, fostering efficiency and global compatibility. It promotes digital transactions, reduces paper dependency, and empowers legal practitioners with stronger tools. However, challenges include potential misuse due to public misunderstanding, vulnerability to manipulation, and the complexity of legal terms. Inconsistencies in application, unequal access to technology, increased legal costs, cybersecurity risks, and the potential for misinterpreting digital evidence also present concerns, potentially leading to longer legal battles and unequal opportunities in presenting evidence.

## **Section 58: Secondary Evidence**

The BSA emphasizes that secondary evidence can be admitted if the original document is unavailable, including electronic records. The revised section recognizes that photocopies and digital reproductions can serve as secondary evidence, provided they meet certain criteria for authenticity.

### **Impact:**

The Bhartiya Sakshya Adhiniyam's recognition of secondary evidence, including digital records, brings several positive and negative impacts. On the positive side, it expands

the types of evidence admissible in court, making it easier to present digital copies when originals are unavailable, which can expedite trials and encourage better digital storage practices. It also supports the use of hybrid evidence and streamlines the submission process, with technology enhancing the reliability of digital copies. However, challenges arise in authenticating secondary evidence, leading to potential legal disputes, inconsistent application across courts, and increased reliance on digital records. Verification costs, the risk of incomplete or misleading evidence, and the possibility of data loss due to technical failures or cyberattacks also pose significant concerns.

### **Section 61: Electronic Records and Digital Signatures**

This section explicitly acknowledges digital signatures as a valid means of signing documents, thus granting them legal standing equivalent to traditional handwritten signatures. It outlines the requirements for the admissibility of electronic records in court, including the conditions under which they can be accepted as evidence.

#### **Impacts**

The legal recognition of digital signatures under the Bhartiya Sakshya Adhiniyam has streamlined business transactions, allowing for faster, secure, and eco-friendly contract processes. They reduce the risk of forgery, promote accessibility by enabling remote signing, and align Indian practices with international standards, benefiting cross-border transactions. However, challenges remain, including unequal access to technology, the risk of cyberattacks, and difficulties for some individuals in understanding digital signature processes. Regulatory complexities, potential misuse, and the need for continuous updates to legal frameworks also pose challenges, along with the initial costs of implementing secure solutions.

### **Section 63: Admissibility of Electronic Records**

The BSA specifies criteria for the admissibility of electronic records, including the requirement for proper authentication. It broadens the definition of admissible evidence to include a variety of electronic formats and systems for collecting and presenting electronic records.

#### **Impacts**

The expanded admissibility of electronic evidence under the Bharatiya Sakshya Adhinyam brings several positive and negative impacts to legal proceedings. On the positive side, it facilitates faster and more efficient trials by accepting a wider range of digital evidence like emails and text messages, encouraging the use of digital communications in various cases. This modern approach supports cases involving cybercrimes, increases transparency through clearer timelines, and simplifies evidence collection for legal practitioners. It also encourages organizations to maintain better digital records, reduces tampering risks, broadens investigative tools for law enforcement, and supports remote testimonies in global litigation. However, the changes also pose challenges in verifying the authenticity of digital records, increasing the risk of misinterpretation and leading to prolonged disputes over admissibility. The legal framework surrounding electronic evidence is complex and inconsistent across jurisdictions, requiring additional expertise and training for legal professionals. Moreover, the reliance on digital literacy, potential data breaches, overemphasis on digital evidence over traditional forms, and risks of cyber manipulation raise concerns about the integrity of digital evidence in the judicial system.

### **Conclusion:**

The digital advancements in the Bharatiya Sakshya Adhinyam (BSA) mark a conversion shift in the way evidence is defined, gathered, and admitted in Indian courts. The updated sections 2, 58, 61, and 63 addresses the growing significance of electronic records in legal proceedings, providing both opportunities and disputes.

Section 2 provides clear definitions of digital evidence, helping legal professionals to adapt contemporary practices and ensuring a more extensive understanding of what composes valid evidence. Section 58's compliance of secondary digital evidence facilitates the smooth presentation of documents when originals are unavailable, though it introduces disputes in verifying authenticity. Section 61 enhances the legal acceptance of electronic records and digital signatures, improving the efficiency of contracts and business transactions but raising concerns about cyber security and public access to the required technology. Section 63, which deals with the admissibility of electronic records, improves the pace of legal proceedings but requires proper safeguards against misuse, tampering, and interpretation errors.

These reforms make the legal system more relevant in a digital era, supporting the transition to a technology-driven society. However, they also introduce risks, such as unequal

access to digital tools, increased legal costs, and potential for cyber threats, which need to be addressed carefully.

### **Suggestions:**

- High efforts should be made to educate the public, particularly in rural and less technologically proficient communities, about the requirements and procedures for presenting digital evidence, make sure that no one is disadvantaged due to lack of knowledge or resources.
- Continuous training programs for judges, lawyers, and law enforcement officials on handling and interpreting digital evidence will ensure the effective and consistent application of the BSA provisions.
- Given the vulnerability of electronic records to hacking and tampering, stricter protocols and secure systems should be implemented to protect digital evidence from cyberattacks.
- To avoid unpredictability in the application of digital evidence across courts, clear guidelines must be developed and uniformly enforced, ensuring that the same standards are followed nationwide.
- Courts should have access to digital forensics experts who can verify the authenticity and integrity of electronic records, reducing challenges and misinterpretations during trials.
- The government should introduce measures to make digital tools and technologies more inexpensive and accessible, especially in rural areas, so that all citizens can effectively participate in the digital legal process.
- While electronic evidence is valuable, it should not overshadow traditional forms of evidence. Courts should attempt to balance both types, ensuring that no critical information is neglected.
- The pace of technological advancement necessitates regular reviews and updates to the legal framework to ensure the BSA remains relevant and powerful in dealing with emerging technologies.

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