



# **PRESENTATION ON THE BHARATIYA SAKSHYA ADHINIYAM, 2023**

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# Key Points of the Presentation

1. Salient features of The Bharatiya Sakshya Adhiniyam, 2023
2. Brief introduction regarding The Bharatiya Sakshya Adhiniyam, 2023
3. A Comparative Chart between the Indian Evidence Act, 1872 and The Bharatiya Sakshya Adhiniyam, 2023;
4. Action required to implement Bharatiya Sakshaya Adhiniyam, 2023 effectively in the State of Haryana.
5. Training required for implementation of Bharatiya Sakshya Adhiniyam, 2023
6. Latest Judgments on Admissibility of Electronic Evidence

## Key Point No. 1

### Salient features of Bharatiya Sakshya Adhiniyam, 2023

- Object of this Adhiniyam **to consolidate and to provide for General Rules and Principles of Evidence for Fair Trial.**
- To repeal and replace the existing Indian Evidence Act, a colonial legislation, passed in the year 1872.
- The Bharatiya Sakshya Adhiniyam, 2023 hereinafter referred to as the Adhiniyam, focuses primary on the procedural aspect of the Law, governing the rights by which they may be enforced before a court of law.
- To provide the Fundamentals of a fair trial qua the **examination of witnesses through electronics modes including digital evidence** i.e. video conferencing etc. and forms a basic aspect of ensuring every citizen a fair trial/hearing i.e a component of ***Audi Alteram Partem* as a Principle of Natural justice.**

## Key Point No. 2 .

### Brief Introduction regarding the Bharatiya Sakshya Adhiniyam, 2023

- The Indian Evidence Act, 1872 contained 3 Parts and 11 chapters.
- The Bharatiya Sakshya Adhiniyam, 2023, contains 4 parts, 12 chapters and a Schedule.
- The Indian Evidence Act had a total of 167 sections, whereas the Bharatiya Sakshya Adhiniyam, 2023 contains 170 sections.
- The Bharatiya Sakshya Adhiniyam, 2023 now containing four parts: -
  - ❖ Part-I is **Preliminary** Clauses of the Act which is the Short title of the Act and Definition clause as Chapter 1. This is the only additional Part in the Act, implying that the remaining three parts are the same as before except now differently numbered. (Section 1 to 2)
  - ❖ Part-II is '**Relevancy of Facts**' - containing Chapter 2. (Section 3 to 50)
  - ❖ Part III of the Act is '**On Proof**'-containing Chapters 3 to 6. (Sections 51 to 103)
  - ❖ Part IV is “**Production and Effect of Evidence**” containing Chapters 7 to 12. (Sections 104 to 170)

## Key Point No. 2 .

### Brief Introduction regarding the Bharatiya Sakshya Adhiniyam, 2023 (Contd...)

➤ The changes in Part-I are as under: -

- ❖ Amending definitions of important terms such as **Document U/s 2(d)** and **Evidence U/s 2(e)**, the **Adhiniyam has begun encompassing and recognizing Electronic evidence and Digital records as Evidence.**
- ❖ Section 2(d) of the Act **defines a document** as 'any matter expressed or described or otherwise recorded upon any substance by means of letters, figures or marks or any other means or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter and **includes electronic and digital records.**
- ❖ Section 2(e) of the Act ***recognizes all documents including electronic or digital records produced for the inspection of the Court as documentary evidence*** which was added to the repealed legislation by the amendment of it in the year 2000, with the introduction of the IT Act.
- ❖ Section 8 of the repealed legislation which dealt with facts relating to motive, preparation and conduct of a certain act, is now contained within Section 6(2) of the new Adhiniyam.

## Key Point No. 2 .

### Brief Introduction regarding the Bharatiya Sakshya Adhiniyam, 2023 (Contd...)

#### ➤ The changes in Part-II are as under: -

- ❖ In this part, qua the relating to **Relevancy of Facts**, the different aspects related to **facts** such as **closely connected facts**, **Surrounding facts** becoming relevant in an attempt to prove facts in issue or relevant facts (Section 7), **Things said or done by a conspirator** (section 8), **facts relevant when right or custom** is in question and when **facts not otherwise relevant become relevant** (section 9) of the Adhiniyam.
- ❖ The admission, under the Adhiniyam defined under section 15 has the same meaning as was given to it in the repealed legislation.
- ❖ Under the Adhiniyam, Section 22-A - When oral admission as to contents of electronic records is relevant, of the repealed legislation has been omitted.
- ❖ The Section 23 of the Adhiniyam contains the provision qua the **Confession**, and it is a consolidation of provisions from Sections 25, 26 and 27 of the repealed legislation.
- ❖ Section 26 now contains provisions relating to Statements made by a person who is dead or cannot be found, previously contained U/s 32 of the repealed legislation.
- ❖ Section 27 of the repealed legislation has now been made a proviso to Section 23 of the Adhiniyam.

## Key Point No. 2 .

### Brief Introduction regarding the Bharatiya Sakshya Adhiniyam, 2023 (Contd...)

#### ➤ The changes in Part-II are as under: -

- ❖ Further, the matter of 'Confessions' is dealt with, where any confession in a criminal proceeding that is induced by threat, or promise is irrelevant (Section 22). Sections 28 and 29 of the repealed act , have been introduced as Proviso's to Section 22 of the Adhiniyam.
- ❖ This portion of the Adhiniyam also deals with Statements made by persons who can not be called as witnesses and Statements made under special circumstances under Sections 26 to 33 in part II of the Adhiniyam..
- ❖ The title of Section 38 of the repealed Legislation, Relevancy of statements as to any law contained in law books' now also extends to **law books in electronic or digital form**, as mentioned in the margin note of Section 32 of the Adhiniyam.
- ❖ Further, Section 45A of the repealed legislation entailing the aspect of 'Opinion of the Examiner of Electronic Evidence' now falls u/s 39(2) of the Adhiniyam.
- ❖ Section 41 relating to the Opinion of handwriting and signature when relevant has also absorbed the amended section 47-A of the repealed legislation into Section 41(2) of Adhiniyam, relating to the opinion of electronic/digital signature.
- ❖ Section 46 deals with matters of Character in civil cases and when it is relevant, while Sections 47, 48 and 49 of the Adhiniyam deal with the same in Criminal cases.

## Key Point No. 2 .

# Brief Introduction regarding the Bharatiya Sakshya Adhiniyam, 2023 (Contd...)

### ➤ The changes in Part-III are as under: -

- ❖ Firstly, it is stated U/s 51 of the Adhiniyam that “No fact of which the Court will take judicial notice need be proved.” , which was Section 56 under the old/repealed Act.
- ❖ In this part, under Section 52, clauses (b), (c), (d) and (e) have been reformulated as per present scenario.
- ❖ In Section 57 of the Adhiniyam which talks about '**Primary Evidence**' **4 new explanations** (Explanation No. 4 to 7) have been added, relating to **Electronic or Digital record**, which was Section 62 under the old/repealed Act.
- ❖ In this part, under Section 58 of the Adhiniyam which talks about 'Secondary Evidence', three new components have been added to it, meaning that clauses (vi) (vii) and (viii) talk about oral admissions, written admissions and evidence of a person who has examined a document, the original of which consists of numerous accounts or other documents which cannot conveniently be examined in Court, respectively, are now recognised as Secondary Evidence, which was Section 63 under the old/repealed Act.
- ❖ Section 61- **Electronic and Digital record**, was newly introduced in the Adhiniyam which states that 'Nothing in this Adhiniyam shall apply to deny the admissibility of 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 enforceability as other document, which was Section 65-B under the old/repealed Act.



## Key Point No. 2 .

### Brief Introduction regarding the Bharatiya Sakshya Adhiniyam, 2023 (Contd...)

#### ➤ The changes in Part-III are as under: -

- ❖ Section 65-A of the repealed legislation is now contained in Section 62 and Section 65-B is now contained in section 63 of the Adhiniyam. Moreover, Section 65B (5)(b) of the repealed legislation has been omitted in the Adhiniyam.
- ❖ In the new Adhiniyam a new Schedule containing certificate as Part-A and Part-B to be filed by the party and the expert respectively to authenticate the electronic record/output of the digital record have been annexed which simplified the procedure as well as mode of proof of electronic/digital evidence.
- ❖ Section 82 of the repealed legislation dealing with the Presumption as to document admissible in England without proof of seal or signature has been omitted.
- ❖ Section 88 of the new Adhiniyam is drastically different from its older counterpart Section 86 of the repealed legislation, where the unnecessary reference to her majesty's dominions, United Kindom etc. are removed and replace with more timely and relevant references.
- ❖ Another extremely important aspect of the Adhiniyam is that of the **Burden of Proof**, on whom it lies, the Burden of proving fact to be proved to make evidence admissible, the Burden of proving that the case of the accused comes within exceptions etc., has now been added in Part IV of the Adhiniyam.

## Key Point No. 2 .

### Brief Introduction regarding the Bharatiya Sakshya Adhiniyam, 2023 (Contd...)

➤ **The changes in Part-III are as under: -**

- ❖ Witnesses and other related aspects such as who may Testify, the order of Production and examination of witnesses, their cross-examination, examination of own witness, and leading questions are now covered in Part IV of the Adhiniyam from Sections 124 to 139 in the Adhiniyam.
- ❖ Section 127 of the repealed legislation now falls under Section 132(3) of Adhiniyam.
- ❖ Sections 141, 142 and 143 of the repealed legislation on have been condensed into Section 146 of the Adhiniyam.

➤ **The Part-IV of Adhiniyam contains Chapter VII to XII relating to Production and effect of Evidence, Burden of Proof, Estoppel, Of Witnesses, Of Examination of Witnesses and Repeals and Savings.**

- ❖ The gist of the provisions of Bharatiya Sakshya Adhiniyam, 2023 does not entail many conceptual or theoretical changes in comparison to its older counterpart, now repealed. However, the areas of change include making electronic or digital records admissible as evidence, thereby they will have the same legal effect as paper documents, the scope of expansion for secondary evidence to include copies made from the original by mechanical processes, counterparts of documents, and oral accounts of document contents has been made and with its enactment the government is attempting to ensure uniformity not only in the law but also in the procedure by which the law is applied in cases before any Court.

**Key Point No. 3**

**Comparative Chart between the Indian Evidence Act, 1872 and of  
Bharatiya Sakshya Adhiniyam, 2023 are as under**

**COMPARATIVE TABLES**

***Between***

**Indian Evidence Act, 1872 (IEA 1872)**

**And**

**Bharatiya Sakshya Adhiniyam, 2023 (BSA 2023)**

**COMPARATIVE TABLES**  
*Between* **Indian Evidence Act, 1872 (IEA 1872)**  
 And **Bharatiya Sakshya Adhiniyam, 2023 (BSA 2023)**

| IEA Sections | Heading                                      | BSA Section | Heading                                    |
|--------------|--|-------------|--|
| 1            | Short title, Extent and Commencement of Act. | 1           | Short title, application and Commencement. |
| 2            | Repeat of Enactments.                        | 170         | Repeal and Savings.                        |
| 3            | Interpretation-clause.                       | 2           | Definitions.                               |
|              |  | 2(a)        | Court                                      |
|              |  | 2(c)        | Disproved                                  |
|              |  | 2(d)        | Document                                   |
|              |  | 2(e)        | Evidence                                   |
|              |  | 2(f)        | Fact                                       |
|              |  | 2(g)        | Facts in issue                             |
|              |  | 2(i)        | Not proved                                 |
|              |  | 2(j)        | Proved                                     |
|              |  | 2(k)        | Relevant                                   |

## COMPARATIVE TABLES

***Between* Indian Evidence Act, 1872 (IEA 1872)  
And Bharatiya Sakshya Adhiniyam, 2023 (BSA 2023)**

| IEA Sections | Heading  | BSA Section | Heading  |
|--------------|--|-------------|--|
| 4            | May presume, Shall presume and Conclusive proof.                                     | 2(h)        | May presume  |
|              |  | 2(l)        | Shall presume  |
|              |  | 2(b)        | Conclusive proof   |
| 5            | Evidence may be given of facts in issue and relevant facts.                          | 3           | Evidence may be given of facts in issue and relevant facts.                    |
| 6            | Relevancy of facts forming part of same transaction                                  | 4           | Relevancy of facts forming part of same transaction.                           |
| 7            | Facts which are the occasion, cause or effect of facts in issue.                     | 5           | Facts which are occasion, cause or effect of facts in issue or relevant facts. |
| 8            | Motive, preparation and previous or subsequent conduct.                              | 6           | Motive, preparation and previous or subsequent conduct.                        |
| 9            | Facts necessary to explain or introduce relevant facts.                              | 7           | Facts necessary to explain or introduce fact in issue or relevant facts.       |
| 10           | Things said or done by conspirator in reference to common design.                    | 8           | Things said or done by conspirator in reference to common design.              |
| 11           | When facts not otherwise relevant become relevant.                                   | 9           | When facts not otherwise relevant become relevant.                             |
| 12           | In suits for damages, facts tending to enable Court to determine amount are relevant | 10          |  |

**COMPARATIVE TABLES**  
***Between* Indian Evidence Act, 1872 (IEA 1872)**  
**And *Bharatiya Sakshya Adhiniyam*, 2023 (BSA 2023)**

| IEA Sections | Heading   | BSA Section | Heading   |
|--------------|---|-------------|---|
| 13           | Facts relevant when right or custom is in question                            | 11          | Facts relevant when right or custom is in question                            |
| 14           | Facts showing existence of state of mind, or of body of bodily feeling        | 12          | Facts showing existence of state of mind, or of body of bodily feeling        |
| 15           | Facts bearing on question whether act was accidental or intentional           | 13          | Facts bearing on question whether act was accidental or intentional           |
| 16           | Existence of course of business when relevant                                 | 14          | Existence of course of business when relevant.                                |
| 17           | Admission defined   | 15          | Admission defined   |
| 18           | Admission by party to proceeding or his agent                                 | 16(1)       | Admission by party to proceeding or his agent.                                |
| 18           |   | 16(2)(i)    |   |
| 18(1)        |   | 16(2)(ii)   |   |
| 18(2)        |   | 16(2)(iii)  |   |
| 19           | Admissions by persons whose position must be proved as against party to suit. | 17          | Admissions by persons whose position must be proved as against party to suit. |
| 20           | Admissions by persons expressly referred to by party to suit.                 | 18          | Admissions by persons expressly referred to by party to suit.                 |
| 21           | Proof of admissions against persons making them, and by or on their behalf.   | 19          | Proof of admissions against persons making them, and by or on their behalf.   |

## COMPARATIVE TABLES

*Between* **Indian Evidence Act, 1872 (IEA 1872)**  
And **Bharatiya Sakshya Adhiniyam, 2023 (BSA 2023)**

| IEA Sections | Heading   | BSA Section | Heading  |
|--------------|---|-------------|--|
| 22           | When oral admissions as to contents of documents are relevant                                 | 20          | When oral admissions as to contents of documents are relevant                              |
| 22A          | When oral admission as to contents of electronic records                                      | -           |  |
| 23           | Admissions in civil cases when relevant.  | 21          | Admissions in civil cases when relevant.   |
| 24           | Confession caused by inducement, treat or promise, when irrelevant in criminal proceeding.    | 22          | Confession caused by inducement, treat or promise, when irrelevant in criminal proceeding. |
| 25           | Confession to police-officer not to be proved.  | 23(1)       | Confession to Police Officers  |
| 26           | Confession by accused while in custody of police not to be proved against him.                | 23(2)       |  |
| 27           | How much of information received from accused may be proved                                   |             |  |
| 28           | Confession made after removal of impression caused by inducement, threat or promise, relevant |             |  |
| 29           | Confession otherwise relevant not to become irrelevant because of promise of secrecy, etc.    |             |  |

## COMPARATIVE TABLES

***Between* Indian Evidence Act, 1872 (IEA 1872)  
And Bharatiya Sakshya Adhiniyam, 2023 (BSA 2023)**

| IEA Sections | Heading   | BSA Section | Heading   |
|--------------|---|-------------|---|
| 30           | Consideration of proved confession affecting person making it and others jointly under trial for same offence | 24          | Consideration of proved confession affecting person making it and others jointly under trial for same offence |
| 31           | Admissions not conclusive proof, but may estop  | 25          | Admissions not conclusive proof, but may estop  |
| 32           | Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant         | 26          | Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant         |
| 32(1)        | When it relates to cause of death.  | 26(a)       |   |
| 32(2)        | Or is made in course of business.   | 26(b)       |   |
| 32(3)        | Or against interest of maker  | 26(c)       |   |
| 32(4)        | Or gives opinion as to public right or custom, or matters of general interest                                 | 26(d)       |   |
| 32(5)        | Or relates to existence of relationship   | 26(e)       |   |
| 32(6)        | Or made in will or deed relating to family affairs  | 26(f)       |   |



## COMPARATIVE TABLES

***Between* Indian Evidence Act, 1872 (IEA 1872)  
And Bharatiya Sakshya Adhiniyam, 2023 (BSA 2023)**

| IEA Sections | Heading  | BSA Section | Heading  |
|--------------|--|-------------|--|
| 32(8)        | Or is made by several persons and expresses feelings relevant to matter in question  | 26(h)       |  |
| 33           | Relevancy of certain evidence for proving, in subsequent proceeding, the truth of facts therein stated.                                  | 27          | Relevancy of certain evidence for proving, in subsequent proceeding, the truth of facts therein stated.                                  |
| 34           | Entries in books of account when relevant  | 28          | Entries in books of account when relevant  |
| 35           | Relevancy of entry in public record made in performance of duty  | 29          | Relevancy of entry in public record made in performance of duty  |
| 36           | Relevancy of statements in maps charts and plans   | 30          | Relevancy of statements in maps charts and plans   |
| 37           | Relevancy of statements as to fact of public nature contained in certain Acts or notifications   | 31          | Relevancy of statements as to fact of public nature contained in certain Acts or notifications   |
| 38           | Relevancy of statements as to any law contained in law-books   | 32          | Relevancy of statements as to any law contained in law-books including electronic or digital   |
| 39           | What evidence to be given when statement forms part of a conversation, document, electronic record, book or series of letters or papers. | 33          | What evidence to be given when statement forms part of a conversation, document, electronic record, book or series of letters or papers. |
| 40           | Previous Judgments relevant to bar a second suit or trial  | 34          | Previous Judgments relevant to bar a second suit or trial  |

## COMPARATIVE TABLES

***Between* Indian Evidence Act, 1872 (IEA 1872)  
And Bharatiya Sakshya Adhiniyam, 2023 (BSA 2023)**

| IEA Sections | Heading   | BSA Section | Heading  |
|--------------|---|-------------|--|
| 41           | Relevancy of certain judgments in probate, etc., jurisdiction.                                | 35(1)       | Relevancy of certain judgments in probate, etc., jurisdiction                                  |
| 41           |   | 35(2)       |  |
| 42           | Relevancy and effect of judgment, orders or decrees, other than those mentioned in section 41 | 36          | Relevancy and effect of judgment, orders or decrees, other than those mentioned in section 35. |
| 43           | Judgments, etc., other than those mentioned in section 40, 41 and 42, when relevant.          | 37          | Judgments, etc., other than those mentioned in section 34, 35 and 36, when relevant.           |
| 44           | Fraud or collusion in obtaining judgment, or incompetency of Court, may be proved.            | 38          | Fraud or collusion in obtaining judgment, or incompetency of Court, may be proved.             |
| 45           | Opinions of experts   | 39(1)       | Opinions of experts  |
| 45-A         | Opinion of Examiner of Electronic Evidence  | 39(2)       |  |
| 46           | Facts bearing upon opinions of experts  | 40          | Facts bearing upon opinions of experts   |
| 47           | Opinion as to hand-writing, when relevant   | 41(1)       | Opinion as to handwriting and signature, when relevant   |
| 47-A         | Opinion as to digital signature, when relevant  | 41(2)       |  |
| 48           | Opinion as to existence of right or custom, when relevant                                     | 42          | Opinion as to existence of general custom or right, when relevant                              |

## COMPARATIVE TABLES

*Between* **Indian Evidence Act, 1872 (IEA 1872)**  
And **Bharatiya Sakshya Adhiniyam, 2023 (BSA 2023)**

| IEA Sections | Heading  | BSA Section | Heading  |
|--------------|--|-------------|--|
| 49           | Opinion as to usages, tenets, etc., when relevant                                  | 43          | Opinion as to usages, tenets, etc., when relevant                                  |
| 50           | Opinion on relationship, when relevant.  | 44          | Opinion on relationship, when relevant.  |
| 51           | Grounds of opinion, when relevant.   | 45          | Grounds of opinion, when relevant.   |
| 52           | In civil cases character to prove conduct imputed, irrelevant                      | 46          | In civil cases character to prove conduct imputed, irrelevant                      |
| 53           | In criminal cases previous good character relevant                                 | 47          | In criminal cases previous good character relevant                                 |
| 53(A)        | Evidence of character or previous sexual experience not relevant in certain cases. | 48          | Evidence of character or previous sexual experience not relevant in certain cases. |
| 54           | Previous bad character not relevant, except in reply                               | 49          | Previous bad character not relevant, except in reply                               |
| 55           | Character as affecting damages.  | 50          | Character as affecting damages.  |
| 56           | Fact judicially noticeable need not be proved.                                     | 51          | Fact judicially noticeable need not be proved.                                     |

**COMPARATIVE TABLES**  
*Between* **Indian Evidence Act, 1872 (IEA 1872)**  
**And Bharatiya Sakshya Adhiniyam, 2023 (BSA 2023)**

| IEA Sections | Heading  | BSA Section | Heading  |
|--------------|--|-------------|--|
| 57           | Fact of which Court must take judicial notice. | 52(1)       | Facts of which Court shall take judicial notice. |
| 57(1)        |  | 52(2)       |  |
| 57(2)        |  | 52(1)(a)    |  |
| 57(3)        |  | -           | -  |
| 57(4)        |  | -           | -  |
| 57(5)        |  | -           | -  |
| 57(6)        |  | 52(1)(e)    | Facts of which Court shall take judicial notice. |
| 57(7)        |  | 52(1)(f)    | Facts of which Court shall take judicial notice. |
| 57(8)        |  | 52(1)(g)    |  |
| 57(9)        |  | 52(1)(h)    |  |
| 57(10)       |  | 52(1)(i)    |  |
| 57(11)       |  | 52(1)(j)    |  |
| 57(12)       |  | 52(1)(k)    |  |
| 57(13)       |  | 52(1)(l)    |  |

## COMPARATIVE TABLES

*Between* **Indian Evidence Act, 1872 (IEA 1872)**  
And **Bharatiya Sakshya Adhiniyam, 2023 (BSA 2023)**

| IEA Sections | Heading                           | BSA Section | Heading                            |
|--------------|-----------------------------------|-------------|------------------------------------|
| 58           | Facts admitted need not be proved | 53          | Facts admitted need not be proved. |
| 59           | Proof of facts by oral evidence   | 54          |                                    |
| 60           | Oral evidence must be direct      | 55          |                                    |
| 61           | Proof of contents of documents    | 56          |                                    |
| 62           | Primary evidence                  | 57          |                                    |
| 63           | Secondary evidence                | 58          |                                    |
| 63(1)        |                                   | 58(i)       |                                    |
| 63(2)        |                                   | 58(ii)      |                                    |
| 63(3)        |                                   | 58(iii)     |                                    |
| 63(4)        |                                   | 58(iv)      |                                    |
| 63(5)        |                                   | 58(v)       |                                    |

**COMPARATIVE TABLES**  
*Between* **Indian Evidence Act, 1872 (IEA 1872)**  
 And **Bharatiya Sakshya Adhiniyam, 2023 (BSA 2023)**

| IEA Sections | Heading  | BSA Section | Heading |
|--------------|--|-------------|---------|
| 64           | Proof of documents by primary evidence                               | 59          |         |
| 65           | Cases in which secondary evidence relating to documents may be given | 60          |         |
| 65-A         | Special provisions as to evidence relating to electronic records     | 62          |         |
| 65-B         | Admissibility of electronic records                                  | 63          |         |
| 66           | Rules as to notice to produce.                                       | 64          |         |
| 66(1)        |  | 64(a)       |         |
| 66(2)        |  | 64(b)       |         |
| 66(3)        |  | 64(c)       |         |
| 66(4)        |  | 64(d)       |         |
| 66(5)        |  | 64(e)       |         |
| 66(6)        |  | 64(f)       |         |

## COMPARATIVE TABLES

*Between* **Indian Evidence Act, 1872 (IEA 1872)**  
**And Bharatiya Sakshya Adhiniyam, 2023 (BSA 2023)**

| IEA Sections | Heading   | BSA Section | Heading   |
|--------------|---|-------------|---|
| 67           | Proof of signature and handwriting of person alleged to have signed or written document produced. | 65          | Proof of signature and handwriting of person alleged to have signed or written document produced. |
| 67-A         | Proof as to [electronic signature]  | 66          | Proof as to electronic signature  |
| 68           | Proof of execution of document required by law to be attested                                     | 67          | Proof of execution of document required by law to be attested                                     |
| 69           | Proof where no attesting witness found  | 68          | Proof where no attesting witness found  |
| 70           | Admission of execution by party to attested document  | 69          | Admission of execution by party to attested document  |
| 71           | Proof when attesting witness denies the execution.  | 70          | Proof when attesting witness denies the execution.  |
| 72           | Proof of document not required by law to be attested  | 71          | Proof of document not required by law to be attested  |
| 73           | Comparison of signature, writing or seal with others admitted or proved.                          | 72          | Comparison of signature, writing or seal with others admitted or proved.                          |
| 73-A         | Proof as to verification of digital signature.  | 73          | Proof as to verification of digital signature.  |
| 74           | Public documents  | 74(1)       | Public and private documents  |
| 75           | Private documents   | 74(2)       |   |

## COMPARATIVE TABLES

***Between* Indian Evidence Act, 1872 (IEA 1872)  
And Bharatiya Sakshya Adhiniyam, 2023 (BSA 2023)**

| IEA Sections | Heading   | BSA Section | Heading  |
|--------------|---|-------------|--|
| 76           | Certified copies of public documents.   | 75          | Certified copies of public documents.                            |
| 77           | Proof of documents by production of certified copies                                    | 76          | Proof of documents by production of certified copies             |
| 78           | Proof of other official documents   | 77          | Proof of other official documents                                |
| 79           | Presumption as to genuineness of certified copies.                                      | 78          | Presumption as to genuineness of certified copies.               |
| 80           | Presumption as to documents produced as record of evidence.                             | 79          | Presumption as to documents produced as record of evidence etc.  |
| 81           | Presumption as to Gazettes, newspapers, private Acts of Parliament and other documents. | 80          | Presumption as to Gazettes, newspapers, and other documents.     |
| 81-A         | Presumption as to Gazettes in electronic forms.   | 81          | Presumption as to Gazettes in electronic or digital record.      |
| 82           | Presumption as to document admissible in England without proof of seal or signature.    | -           | -  |
| 83           | Presumption as to document admissible in England without proof of seal or signature.    | 82          | Presumption as to maps or plans made by authority of Government. |
| 84           | Presumption as to collections of laws and reports of decisions.                         | 83          | Presumption as to collections of laws and reports of decisions.  |



**COMPARATIVE TABLES**  
*Between* **Indian Evidence Act, 1872 (IEA 1872)**  
**And Bharatiya Sakshya Adhiniyam, 2023 (BSA 2023)**

| IEA Sections | Heading   | BSA Section       | Heading   |
|--------------|---|-------------------|---|
| 85           | Presumption as to powers-of-attorney.                             | 84                | Presumption as to power-of-attorney.                              |
| 85-A         | Presumption as to electronic agreements                           | 85                | Presumption as to electronic agreements                           |
| 85-B         | Presumption as to electronic records and [electronic signatures]  | 86                | Presumption as to electronic records and electronic signatures.   |
| 85-C         | Presumption as to [Electronic Signature Certificates]             | 87                | Presumption as to Electronic Signature Certificates.              |
| 86           | Presumption as to certified copies of foreign judicial records.   | 88                | Presumption as to certified copies of foreign judicial records.   |
| 87           | Presumption as to books maps and charts.                          | 89                | Presumption as to books maps and charts.                          |
| 88           | Presumption as to telegraphic messages.                           | -                 | -   |
| 88-A         | Presumption as to electronic messages.                            | 90                | Presumption as to electronic messages.                            |
| 89           | Presumption as to due execution, etc., of documents not produced. | 91                | Presumption as to due execution, etc., of documents not produced. |
| 90           | Presumption as to documents thirty years old.                     | 80<br>Explanation | Presumption as to Gazettes, newspapers, and other documents.      |
| 90           |   | 92                | Presumption as to documents thirty year old.                      |

## COMPARATIVE TABLES

*Between* **Indian Evidence Act, 1872 (IEA 1872)**  
And **Bharatiya Sakshya Adhiniyam, 2023 (BSA 2023)**

| IEA Sections | Heading  | BSA Section       | Heading  |
|--------------|--|-------------------|--|
| 90A          | Presumption as to electronic record five years old.  | 81<br>Explanation | Presumption as to Gazettes in electronic or digital record.  |
| 90-A         |  | 93                | Presumption as to electronic records five years old.   |
| 91           | Evidence of terms of contracts, grants and other dispositions of property reduced to form of document.               | 94                | Evidence of terms of contracts, grants and other dispositions of property reduced to form of document.               |
| 92           | Exclusion of evidence of oral agreement.   | 95                | Exclusion of evidence of oral agreement.   |
| 93           | Exclusion of evidence to explain or amend ambiguous document.  | 96                | Exclusion of evidence to explain or amend ambiguous document.  |
| 94           | Exclusion of evidence against application of document to existing facts.   | 97                | Exclusion of evidence against application of document to existing facts.   |
| 95           | Evidence as to document unmeaning reference to existing facts.   | 98                | Evidence as to document unmeaning reference to existing facts.   |
| 96           | Evidence as to application of language which can apply to one only of several persons.                               | 99                | Evidence as to application of language which can apply to one only of several persons.                               |
| 97           | Evidence as to application of language to one of two sets of facts, to neither of which the whole correctly applies. | 100               | Evidence as to application of language to one of two sets of facts, to neither of which the whole correctly applies. |
| 98           | Evidence as to meaning of illegible characters, etc.   | 101               | Evidence as to meaning of illegible characters, etc.   |

## COMPARATIVE TABLES

***Between* Indian Evidence Act, 1872 (IEA 1872)  
And Bharatiya Sakshya Adhiniyam, 2023 (BSA 2023)**

| IEA Sections | Heading  | BSA Section | Heading  |
|--------------|--|-------------|--|
| 99           | Who may give evidence of agreement varying terms of document.  | 102         | Who may give evidence of agreement varying terms of document.  |
| 100          | Saving of provisions of Indian Succession Act relating to wills.                                       | 103         | Saving of provisions of Indian Succession Act relating to wills.                                       |
| 87           | Presumption as to books maps and charts.   | 89          | Presumption as to books maps and charts.   |
| 88           | Presumption as to telegraphic messages.  | -           | -  |
| 88-A         | Presumption as to electronic messages.   | 90          | Presumption as to electronic messages.   |
| 89           | Presumption as to due execution, etc., of documents not produced.                                      | 91          | Presumption as to due execution, etc., of documents not produced.                                      |
| 90           | Presumption as to documents thirty years old.  | 80          | Presumption as to Gazettes, newspapers, and other documents.   |
| 90           |  | 92          | Presumption as to documents thirty year old.   |
| 90A          | Presumption as to electronic record five years old.  | 81          | Presumption as to Gazettes in electronic or digital record.  |
| 90-A         |  | 93          | Presumption as to electronic records five years old.   |
| 91           | Evidence of terms of contracts, grants and other dispositions of property reduced to form of document. | 94          | Evidence of terms of contracts, grants and other dispositions of property reduced to form of document. |

**COMPARATIVE TABLES**  
***Between* Indian Evidence Act, 1872 (IEA 1872)**  
**And *Bharatiya Sakshya Adhiniyam*, 2023 (BSA 2023)**

| IEA Sections | Heading  | BSA Section | Heading  |
|--------------|--|-------------|--|
| 92           | Exclusion of evidence of oral agreement.   | 95          | Exclusion of evidence of oral agreement.   |
| 93           | Exclusion of evidence to explain or amend ambiguous document.  | 96          | Exclusion of evidence to explain or amend ambiguous document.  |
| 94           | Exclusion of evidence against application of document to existing facts.   | 97          | Exclusion of evidence against application of document to existing facts.   |
| 95           | Evidence as to document unmeaning reference to existing facts.   | 98          | Evidence as to document unmeaning reference to existing facts.   |
| 96           | Evidence as to application of language which can apply to one only of several persons.                               | 99          | Evidence as to application of language which can apply to one only of several persons.                               |
| 97           | Evidence as to application of language to one of two sets of facts, to neither of which the whole correctly applies. | 100         | Evidence as to application of language to one of two sets of facts, to neither of which the whole correctly applies. |
| 98           | Evidence as to meaning of illegible characters, etc.   | 101         | Evidence as to meaning of illegible characters, etc.   |
| 99           | Who may give evidence of agreement varying terms of document.  | 102         | Who may give evidence of agreement varying terms of document.  |
| 100          | Saving of provisions of Indian Succession Act relating to wills.   | 103         | Saving of provisions of Indian Succession Act relating to wills.   |
| 101          | Burden of proof  | 104         | Burden of proof  |
| 102          | On whom burden of proof lies.  | 105         | On whom burden of proof lies.  |

**COMPARATIVE TABLES**  
***Between* Indian Evidence Act, 1872 (IEA 1872)**  
**And *Bharatiya Sakshya Adhiniyam*, 2023 (BSA 2023)**

| IEA Sections | Heading   | BSA Section | Heading   |
|--------------|---|-------------|---|
| 103          | Burden of proof as to particular fact   | 106         | Burden of proof as to particular fact   |
| 104          | Burden of proving fact to be proved to make evidence admissible.                                      | 107         | Burden of proving fact to be proved to make evidence admissible.                                      |
| 105          | Burden to proving that case of accused come within exceptions   | 108         | Burden to proving that case of accused come within exceptions   |
| 106          | Burden to proving fact especially within knowledge  | 109         | Burden to proving fact especially within knowledge  |
| 107          | Burden proving death of person known to have been alive within thirty years                           | 110         | Burden proving death of person known to have been alive within thirty years                           |
| 108          | Burden to proving that person is alive who has not been heard of for seven years                      | 111         | Burden to proving that person is alive who has not been heard of for seven years                      |
| 109          | Burden of proof as to relationship in the cases of partners, landlord and tenant, principal and agent | 112         | Burden of proof as to relationship in the cases of partners, landlord and tenant, principal and agent |
| 110          | Burden of proof as to ownership   | 113         | Burden of proof as to ownership   |
| 111          | Proof of good Faith in transactions where one party is in relation of active confidence               | 114         | Proof of good Faith in transactions where one party is in relation of active confidence               |
| 111-A        | Presumption as to certain offences  | 115         | Presumption as to certain offences  |
| 112          | Birth during marriage, conclusive proof of legitimacy   | 116         | Birth during marriage, conclusive proof of legitimacy   |

**COMPARATIVE TABLES**  
*Between* **Indian Evidence Act, 1872 (IEA 1872)**  
**And Bharatiya Sakshya Adhiniyam, 2023 (BSA 2023)**

| IEA Sections | Heading  | BSA Section | Heading  |
|--------------|--|-------------|--|
| 113          | Proof of cession of territory  | -           | -  |
| 113-A        | Presumption as to abetment of suicide by a married woman   | 117         | Presumption as to abetment of suicide by a married woman             |
| 113-B        | Presumption as to dowry death  | 118         | Presumption as to dowry death  |
| 114          | Court may presume existence of certain facts   | 119         | Court may presume existence of certain facts                         |
| 114-A        | Presumption as to absence of consent in certain prosecution for rape                               | 120         | Presumption as to absence of consent in certain prosecution for rape |
| 115          | Estoppel   | 121         | Estoppel   |
| 116          | Estoppel of tenants and of licensee of person of in possession                                     | 122         | Estoppel of tenants and of licensee of person of in possession       |
| 117          | Estoppel of acceptor of bill of exchange, bailee of licensee                                       | 123         | Estoppel of acceptor of bill of exchange, bailee of licensee         |
| 118          | Who may testify  | 124         | Who may testify  |
| 119          | Witness unable to communicate verbally   | 125         | Witness unable to communicate verbally                               |
| 120          | Parties to civil suit, and there wives of husbands Husband or wife of Parties under Criminal trial | 126         | Contingency of Husband and Wife as witnesses in certain cases        |

## COMPARATIVE TABLES

***Between* Indian Evidence Act, 1872 (IEA 1872)  
And Bharatiya Sakshya Adhiniyam, 2023 (BSA 2023)**

| IEA Sections | Heading  | BSA Section | Heading  |
|--------------|--|-------------|--|
| 121          | Judges and Magistrate  | 127         | Judges and Magistrate  |
| 122          | Communication during Marriage  | 128         | Communication during Marriage  |
| 123          | Evidence as to affairs of state  | 129         | Evidence as to affairs of state  |
| 124          | Official Communications  | 130         | Official Communications  |
| 125          | Information as to commission of offences   | 131         | Information as to commission of offences   |
| 126          | Professional Communications  | 132(1)      |  |
| 127          | 126 to apply to interpreters, etc  | 132(3)      |  |
| 128          | Privilege not waived by volunteering evidence  | 133         | Privilege not waived by volunteering evidence  |
| 129          | Confidential communications with legal advisers  | 134         | Confidential communications with legal advisers  |
| 130          | Productions of title-deeds of witness not a party  | 135         | Productions of title-deeds of witness not a party  |
| 131          | Production of documents of electronic records which another person, having possession, could refuse to produce | 136         | Production of documents of electronic records which another person, having possession, could refuse to produce |

**COMPARATIVE TABLES**  
***Between* Indian Evidence Act, 1872 (IEA 1872)**  
**And *Bharatiya* Sakshya Adhiniyam, 2023 (BSA 2023)**

| IEA Sections | Heading   | BSA Section | Heading   |
|--------------|---|-------------|---|
| 132          | Witness not excused from answering on ground that answer will criminate | 137         | Witness not excused from answering on ground that answer will criminate |
| 133          | Accomplice  | 138         | Accomplice  |
| 134          | Number of witnesses   | 139         | Number of witnesses   |
| 135          | Order of production and examination of witnesses                        | 140         | Order of production and examination of witnesses                        |
| 136          | Judge to decide as to admissibility of evidence                         | 141         | Judge to decide as to admissibility of evidence                         |
| 137          | Examination-in-chief  | 142         | Examination of witnesses  |
| 138          | Order of examinations   | 143         | Order of examinations   |
| 139          | Cross-examination of person called to produce a document                | 144         | Cross-examination of person called to produce a document                |
| 140          | Witnesses to character  | 145         | Witnesses to character  |
| 141          | Leading questions   | 146(1)      | Leading questions   |
| 142          | When they must not be asked   | 146(2)      |   |
|              |   | 146(3)      |   |



**COMPARATIVE TABLES**  
*Between* **Indian Evidence Act, 1872 (IEA 1872)**  
**And Bharatiya Sakshya Adhiniyam, 2023 (BSA 2023)**

| IEA Sections | Heading  | BSA Section | Heading  |
|--------------|--|-------------|--|
| 143          | When they may be asked   | 146(4)      | -  |
| 144          | Evidence as to matters in writing  | 147         | Evidence as to matters in writing  |
| 145          | Cross-examination as to previous statements in writing.                            | 148         | Cross-examination as to previous statements in writing.                            |
| 146          | Questions lawful in cross-examination  | 149         | Questions lawful in cross-examination  |
| 147          | When witness to be compelled to answer.  | 150         | When witness to be compelled to answer.  |
| 148          | Court to decide when question shall be asked and when witness compelled to answer. | 151         | Court to decide when question shall be asked and when witness compelled to answer. |
| 149          | Question not to be answer without reasonable grounds.                              | 152         | Question not to be answer without reasonable grounds.                              |
| 150          | Procedure of Court in case of question being asked without reasonable grounds.     | 153         | Procedure of Court in case of question being asked without reasonable grounds.     |
| 151          | Indecent and scandalous questions  | 154         | Indecent and scandalous questions  |
| 152          | Questions intended to insult or annoy  | 155         | Questions intended to insult or annoy  |
| 153          | Exclusive of evidence to contradict answers to questions testing veracity.         | 156         | Exclusive of evidence to contradict answers to questions testing veracity.         |

**COMPARATIVE TABLES**  
*Between* **Indian Evidence Act, 1872 (IEA 1872)**  
**And Bharatiya Sakshya Adhiniyam, 2023 (BSA 2023)**

| IEA Sections | Heading   | BSA Section | Heading   |
|--------------|---|-------------|---|
| 154          | Question by party to his own witness.   | 157         | Question by party to his own witness.   |
| 155          | Impeaching credit of witness.   | 158         | Impeaching credit of witness.   |
| 156          | Questions tending to corroborate evidence of relevant fact, admissible.                         | 159         | Questions tending to corroborate evidence of relevant fact, admissible.                         |
| 157          | Former statements of witness may be proved to corroborate later testimony as to same fact.      | 160         | Former statements of witness may be proved to corroborate later testimony as to same fact.      |
| 158          | What matters may be proved in connection with proved statement relevant under section-32 or 33. | 161         | What matters may be proved in connection with proved statement relevant under section-26 or 27. |
| 159          | Refreshing memory.  | 162         | Refreshing memory   |
| 160          | Testimony to facts stated in document mentioned in section 159.                                 | 163         | Testimony to facts stated in document mentioned in section 162.                                 |
| 161          | Right of adverse party as to writing used to refresh memory.                                    | 164         | Right of adverse party as to writing used to refresh memory.                                    |
| 162          | Production of documents.  | 165         | Production of documents.  |

## COMPARATIVE TABLES

*Between* **Indian Evidence Act, 1872 (IEA 1872)**  
And **Bharatiya Sakshya Adhiniyam, 2023 (BSA 2023)**

| IEA Sections | Heading   | BSA Section | Heading   |
|--------------|---|-------------|---|
| 163          | Giving , as evidence, of document called for and produced on notice       | 166         | Giving , as evidence, of document called for and produced on notice       |
| 164          | Using, as evidence, of document production of which was refused on notice | 167         | Using, as evidence, of document production of which was refused on notice |
| 165          | Judge's power to put questions or order production                        | 168         | Judge's power to put questions or order production                        |
| 166          | Power of jury or assessors to put questions                               | -           | -   |
| 167          | No new trial for improper admission or rejection of evidence              | 169         | No new trial for improper admission or rejection of evidence              |

## Key Point No. 4

### Action required to implement 'The Bharatiya Sakshya Adhiniyam, 2023' effectively in the State of Haryana

- Training of officials of the Police Force, Public Prosecutor and other Stake Holders who are actively involved in the legal field are the necessary corollary in order to implement this Adhiniyam in the State of Haryana.
- Public awareness campaigns including the publication of text of the Bharatiya Sakshya Adhiniyam, 2023 needs to be organized periodically throughout the public places.
- Legal experts and stake holders are to be assigned in order to closely observe the implementation of the new Adhiniyam and to assess the impact of the provisions of this Adhiniyam on the criminal justice system.
- A task force should be constituted in order to anticipate and address any potential challenges that may arise during the implementation such as training of officials, infrastructure needs ensuring public understanding of the Bharatiya Sakshya Adhiniyam.
- In order to implement this Adhiniyam first of all one or two district of the State is/ are to be selected as a pilot project and said the said district/s must be monitored by the head of the departments with a close supervision at district level

## **Key Point No. 5**

### **Training required for implementation of Bhartiya Sakshay Adhiniyam, 2023: -**

- In order to provide training the necessary infrastructure is to be set up at district level.
- The necessary training center at District Level comprising special earmarked facilities for seating, video-conferencing, projector etc. should be set up.
- Training at the Academies such as at HIPA-Gurugram, HPA- Madhuban, Chandigarh Judicial Academy-Chandigarh should be organized and the experts from Law colleges, Universities etc. should be engaged in order to impart Training to Public Prosecutor/Police.
- There is a need to train police officers of all the ranks from the police station level to the higher ranks of police officers with all the aspects of the new Bhartiya Sakshya Adhiniyam-2023. This has to be achieved by ensuring a technology upgrade from the police station level to the police head quarter for the successful implementation of the same.

# Latest Judgments on Admissibility of Electronic Evidence

- In Landmark Judgment of Hon'ble Supreme Court in **"Arjun Pandit Rao Khotkar Vs Kailash Kushan Rao Gorantyal (2020) 7SCC 1"** in reference sent by 2-Judges Bench, a three-Judge Bench of Hon'ble Supreme Court after analysing the decisions in **"Anvar P.V Vs P.K. Basheer"** and **"Shafhi Mohammad Vs State of Himachal Pradesh"** ( Both 2-judges Bench), Held that **"certificate U/s 65-B Indian Evidence Act is a condition precedent to the admissibility of Electronic Evidence"**, thus upheld the decision taken in **"Anvar P.V Vs P.K. Basheer"** and overruled **"Shafhi Mohammad Vs State of Himachal Pradesh"**.
- In Latest Judgment Hon'ble Supreme Court in case titled as **" State of Karnataka Vs T Naseer@ Nasir@Hazi and Ors."** **2023**, Held that a certificate under Section 65-B of the Indian Evidence Act to prove electronic evidence can be produced at any stage of the trial.
- Now, Certificate U/s 63(4)(c) of Adhiniyam (Section 65-B of old Evidence Act) has to be given in the format provided in Schedule appended with the Adhiniyam.

Thank you