FIRST WORKSHOP FOR THE JUDICIAL OFFICERS DURING THE YEAR 2026 ON THE SUBJECT "**CHANGES IN NEW MAJOR ACTS**".

SESSION IV- ON THE TOPIC OF:

NEW PROVISIONS UNDER BHARATIYA SAKSHYA ADHINIYAM 2023 (BSA), IN CONDRADISTINCTION TO THE PROVISIONS OF THE INDIAN EVIDENCE ACT, 1872.

BY

GADDAM VANDANA

ADDITIONAL CIVIL JUDGE, (JUNIOR DIVISION),

NANDIGAMA, KRISHNA DISTRICT.

INTRODUCTION

Under Indian law, the evidentiary frame work governing criminal as well as civil proceedings was found under the Indian Evidence Act, 1872 ("IEA"). The IEA, drafted by Sir James Fitzjames Stephen, was enacted in 1872 and functioned effectively for over 150 years. **The Bharatiya Sakshya Adhiniyam, 2023 (BSA) replaces the Indian Evidence Act of 1872 (IEA)** and it was approved by both the Lok Sabha and Rajya Sabha on December 20 and December 21, 2023 respectively, before receiving presidential assent on December 25, 2023. This paper aims to highlight and examine key changes introduced vide the BSA in relation to electronic and digital evidence. The key objectives of BSA are to modernize, simplify, and streamline how evidence is presented and interpreted inside the courts. Such modern provisions will make judicial system more technology-enabled, fair, and efficient. The Bharatiya Sakshya Adhiniyam is simplified, streamlined, and modernized version of evidence rules, which came into existence on July 1st, 2024 by replacing the centuries old Indian Evidence Act of 1872. Though the BSA retains many of the provisions of IEA, but in the revised and modernized form. Besides, BSA also inserted certain new points for the ease of judicial trial and make the system more transparent. Modification in 23 Sections, 5 repealed sections, and 1 newly added section gave birth to the NEWLY BSA,2023. The following provisions from IEA have been deleted from BSA:

- Section 3 (j) of IEA: India
- Section 22A of IEA: when oral admission as to contents of electronic records are relevant.
- Section 82 of IEA: Presumption as to document admissible in England without proof of seal or signature
- Section 88 of IEA: Presumption as to telegraphic messages
- Section 113 of IEA: Proof of cession of territory
- Section 166 of IEA: Power of jury or assessors to put questions

Key Changes made and inserted in the new act are:

Section 170: **Repeal and savings.**

(1) The Indian Evidence Act, 1872 (1 of 1872) is hereby repealed.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.

1. **Removal of Archaic and Use of Inclusive Language**
    - The BSA wants to replace outdated legal terminology in the IEA with more current, acceptable, and inclusive language. For example, Section 124 of the BSA overrides Section 118 of the IEA and deals with a witness's competency. When discussing the likelihood for persons with disturbed minds to testify, the IEA section referred to them as "lunatics." The BSA has replaced this term with "a person of unsound mind."
    - According to several perspectives, the usage of terms such as "lunatic" or "idiot" has a negative influence on how society regards people with mental diseases, producing a sense of polarization among them in a functional society. As a result, removing such wording from law and court processes is a positive step toward increasing the inclusion and acceptance of people with mental disorders in society. Various words and phrases which were linked to India's colonial past, present in the IEA by virtue of it being drafted by Sir James F. Stephen, have been completely removed and the Sections of the BSA now include language that aptly replaces them.
    - For example, the words "*of Her Majesty's Dominions",* used in Section 86 of the IEA, in the context of the presumption of copies of foreign judicial records, have been removed and are now replaced with the words *"of any country beyond India"*, under Section 88(1) of the BSA. **Colonial and antiquated terminology,** including references to entities such as the 'Parliament of the United Kingdom', 'Provincial Act', 'London Gazette', 'Commonwealth', 'Privy Council', 'Queen's Printer', and 'Her Majesty', as well as colonial

proclamations and orders (as outlined in Section 77 of the BSA, which corresponds to Section 78 of the IEA, and Section 79 of the BSA, corresponding to Section 80 of the IEA), have been eliminated.

2. **Enhancing Victim-Centric Justice and witness protection**
   - The new legislation aims to protect the rights of victims, particularly in cases involving sexual offenses, gender-based violence, and domestic abuse. It ensures that victims are given a more central role in the judicial process and that the legal system provides them with the essential protections. The new statute provides extensive witness protection provisions such as anonymity, relocation, and other security safeguards. This allows witnesses to testify without fear of reprisal, which strengthens the judicial system.

3. **Territorial Application of the BSA:** Section 1 of the Indian Evidence Act (IEA) specified the application of the act to the entire territory of India. However, Section 1 of the Bharatiya Suraksha Adhiniyam (BSA) lacks this provision. This omission is likely intended to facilitate the admissibility of digital evidence originating from locations outside India.
4. **Changes in Definitions:**
   - **Document- Section 2(d), BSA (Sec 3(e)IEA)-** *" "document" means 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."* The new definition included-

     Inclusion of Electronic and Digital Records: The newer definition explicitly includes electronic and digital records within the scope of what constitutes a document. This means that any information expressed, described, or recorded electronically, such as through computers, smartphones, or other digital devices, falls under the definition of a document.

     Expansion of Means of Recording: The newer definition expands on how information can be recorded beyond just letters, figures, or marks. It

encompasses any means of recording, which could include audio recordings, video recordings, or any other method of capturing information.

Clarification of Intended Use: Both definitions mention the intended use of the document for recording information. However, the newer definition clarifies that the intended use may include electronic and digital formats, ensuring that these formats are not excluded from the definition due to their non-physical nature.

Inclusion of "Otherwise Recorded": The newer definition includes the phrase "otherwise recorded," which further emphasizes the broad scope of what constitutes a document. This phrase acknowledges that there are various ways information can be recorded beyond traditional methods and ensures that such unconventional methods are also covered under the definition.

- **Evidence- Section 2(e), BSA (Sec 3(f)IEA)**– *"evidence" means and includes— (i) 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 and such statements are called oral evidence; (ii) all documents including electronic or digital records produced for the inspection of the Court and such documents are called documentary evidence;"*

  The newer definition of "evidence" expands the scope to include statements given electronically as oral evidence, alongside traditional oral testimony. It also explicitly incorporates electronic and digital records within the category of documentary evidence, reflecting the contemporary reality of information storage and communication. This update enhances clarity and adaptability to technological advances, ensuring that legal frameworks effectively address modern forms of evidence. In contrast, the older definition primarily focuses on oral testimony and documents without specific mention of electronic records, potentially limiting its applicability in today's digital age. In line with these changes, the entire BSA includes words such as *"digital"* in order to include electronic records in the realm of applicability of other provisions.

- **Sec. 2(2) of BSA**: **Words and expressions**- (2) Words and expressions used herein and not defined but defined in the Information Technology Act, 2000 (21 of 2000), the Bharatiya Nagarik Suraksha Sanhita, 2023 and the Bharatiya Nyaya Sanhita, 2023 shall have the same meanings as assigned to them in the said Act and Sanhitas

5. **Section 4, BSA(Sec 6, IEA)**the inclusion of the phrase "*or a relevant fact"*. This addition broadens the scope of the connected facts that are considered relevant. In the earlier section, only facts connected to a fact in the issue are mentioned, whereas the newer section includes facts connected to both a fact in the issue and any relevant fact. This adjustment allows for a more comprehensive consideration of connected facts in legal proceedings, ensuring that all relevant information is taken into account, regardless of whether it directly pertains to the specific issue being addressed.
6. **Section 6, BSA (Sec8, IEA):** The difference is the omission of "previous or subsequent conduct" in the new version. Additionally, the phrase "Admiration of Poison" in the old section is absent in the new one. Both versions emphasize the relevancy of motive, preparation, and conduct in legal proceedings, but the new section is structured with numbered subsections for clarity, while the old one is not.
7. **Section 22, BSA (Sec24,28-89, IEA):** The new Section 22 of the Bhartiya Sakshya Adhiniyam (BSA) consolidates and refines the provisions related to confessions in criminal proceedings from the old Sections 24, 28, and 29 of the Indian Evidence Act. Sections 24, 28, and 29 of IEA were separate provisions dealing with different aspects of confessions whereas Section 22 (BSA) combines these provisions into a single section, making the law more streamlined.

    - The Inclusion of "*Coercion*": Where Old Sections: Only "*inducement, threat, or promise*" were mentioned as factors affecting the relevance of a confession and New Section 22 (BSA): It explicitly includes "*coercion"* as a factor, broadening the scope and providing more comprehensive coverage.

    - Clarification on Timing: where Section 28, IEA: Mentioned the relevance of a confession made after the removal of the impression caused by inducement, threat, or promise and new Section 22, BSA: It provides a clearer timeline,

specifying that a confession becomes relevant once the impression of inducement, threat, or promise has been fully removed.

- Expanded Scenarios for Relevance: Section 29: It listed scenarios where a confession remains relevant despite being made under certain conditions. Section 22 (BSA): It expands on these scenarios, including confessions made under a promise of secrecy, after deception, when drunk, or in response to questions not required to be answered. It also mentions that the lack of warning about the admissibility of the confession doesn't make it irrelevant. Section 22, BSA offers a more comprehensive, structured, and inclusive approach to the admissibility of confessions in criminal proceedings compared to the older, fragmented provisions in the Indian Evidence Act.

8. **Section 24, BSA (Sec30. IEA):** The wording in the BSA,2023 section appears to be slightly more streamlined and clearer compared to the Indian Evidence Act. However, the core content and meaning remain essentially the same in both sections.
    - Only insertion of *"Explanation II—A trial of more persons than one held in the absence of the accused who has absconded or who fails to comply with a proclamation issued under section 82 of the Bharatiya Nagarik Suraksha Sanhita, 2023 shall be deemed to be a joint trial for the purpose of this section."*
9. **Section 31, BSA (Sec37, IEA):** The new section focuses on Indian Central and State Acts and acknowledges digital formats, reflecting India's modern legal sovereignty and adapting to technological advancements. In contrast, the old section includes UK Acts and lacks digital acknowledgment, indicating its colonial-era origins. The new section removes colonial references, aligning with India's independent status. Overall, the changes show a move towards a localized, digitally inclusive, and post-colonial legal framework.
10. **Section 32 of the BSA,2023** restructures and refines the provisions found in Section 26 of the Indian Evidence Act, 1872. BSA,2023 categorizes the cases into numbered subsections (1 to 8), offering a clearer and more organized framework. Notably, BSA,2023 adds specificity to some categories, like defining the types of business-related documents in subsection (2) and detailing certain relationships in subsections (5) and (6). However, BSA,2023 omits the provision

related to documents specified in clause (a) of section 11 of the Indian Evidence Act. Despite these changes, the core intent and content of the provisions remain largely consistent between the two versions. BSA section ensures that the law stays relevant with technological advancements and the increasing accessibility of legal documents in digital formats.

11. **Section 35(Sec 41, IEA):** The sections deal with the relevance and the conclusive proof provided by final judgments, orders, or decrees from competent courts exercising probate, matrimonial, admiralty, or insolvency jurisdiction and the new change is largely confined to document formatting and slight variances in phraseology.
12. **Section 39, BSA (Sec45, IEA):** Both sections address the relevance of expert opinions in court cases regarding specific types of specialized knowledge, including foreign laws, sciences, arts, and the identification of handwriting or fingerprints. Even though expert evidence is not considered conclusive proof in itself, its importance is substantial in proceedings, and it assists the Court in the formation of conclusions, provided that they are in conformity with other direct evidence. Due to its importance, the BSA reproduces the provision regarding the opinion of experts exactly under Section 39, with the addition of the words *"or any other field".*

    - This is a significant change in the literature of expert opinions as now Courts may rely upon expert opinions on any field that requires or necessitates, or is better served with the opinion of an expert, and not just the limited fields that were previously mentioned under Section 45 of the IEA, pertaining to handwriting, science, art, foreign law or finger impressions.
    - The primary distinction between BSA sec 39 and IEA sec 45 lies in the explicit recognition and incorporation of digital and electronic evidence in the BSA, reflecting a modernization in legal proceedings that accommodates advances in technology. Both sections underline the importance of expert testimony in judicial processes but the BSA demonstrates a broader scope by integrating contemporary issues like digital evidence. In **Manoj v. State of Madhya Pradesh (2022) 8 SCC 1,** forensic integrity was emphasized. (Para 153):

- “The importance of proper collection, preservation and production of forensic evidence cannot be overstated. Chain of custody is essential. Scientific evidence strengthens truth discovery

13. **Section 52, BSA (Sec57, IEA):** The sections ensure courts operate with efficiency by recognizing commonly accepted facts without proof, but they differ in their historical context and the specificity with which they approach modern legal frameworks. Section 52 appears more tailored to current legal contexts, while Section 57 provides a broader historical scope that includes colonial influences and the evolution of legal recognitions over time. This reflects the dynamic nature of legal texts as they adapt to changing governance and societal structures.
14. **Section 55, BSA (Sec 60, IEA):** Both sections describe the requisites for oral evidence in judicial proceedings, emphasizing the importance of direct testimony from witnesses regarding their personal experiences of sensory perceptions or opinions. The modification is on subtle legal distinctions or contextual applications rather than on the fundamental legal requirements detailed in these sections.
15. **Section57, BSA (Section 62. IEA):**

    - Inclusion of Digital and Electronic Records: includes detailed explanations about how electronic or digital records are treated as primary evidence. It covers scenarios like electronic files stored in multiple locations or formats and video recordings stored and transmitted simultaneously, reflecting modern digital realities.
    - Depth of Explanations and Examples: offers more extensive explanations and includes additional scenarios relevant to modern technology, like electronic records and video recordings.

16. **Section 58, BSA (Section 63, IEA):** Both sections define and elaborate on the concept of secondary evidence in the context of legal proceedings. Secondary evidence is essentially any evidence that is not the original document or artifact but can still provide credible information about the original. In the New act includes additional categories such as oral admissions, written admissions, and evidence from persons skilled in examining complex documents (like financial records), which are not explicitly mentioned in sec63, IEA. This expansion

reflects a broader approach to what can be considered secondary evidence under the BSA, potentially accommodating more diverse types of evidence in legal processes. It provides a more detailed enumeration of what qualifies as secondary evidence, including conditions under which certain types of evidence are admissible. The Hon'ble Bombay High Court in **Hindustan Petroleum Corporation Ltd. v. Vinod Anandrao Parate [Writ Petition No. 2546 of 2025] observed that:**

> **"**The Court noted that under Sections 58 and 60 of the Bharatiya Sakshya Adhiniyam, secondary evidence may only be allowed where the original has been destroyed, lost, or cannot be produced for reasons not arising from the party's own default or neglect. Further, for leading secondary evidence, there has to be a foundation in the pleadings or in the evidence.The Court observed that the authenticity of the documents in question can be tested by actually considering the original documents bearing signatures, if any, of the concerned persons. Hence, the original documents are expected to be in the custody of the Management, and the reasons mentioned in the application stating that the documents are 'not immediately available/ traceable' appear to be lacking genuineness. Further the Court also emphasised that the contention for leading secondary evidence is not supported by any affidavit, and the application appears to have been signed only by the counsel."

17. **Section 59, BSA (sec 64, IEA):** Section 59 states that documents shall be proved by primary evidence except in the cases hereinafter mentioned. It also mandates the use of primary evidence for proving documents but phrases it slightly differently by emphasizing the method of proof ("Proof of documents by primary evidence"). The section seems to be more directive ("shall be proved"), indicating a mandatory action.
18. **Section 60, BSA (Sec 60, IEA):** BSA sec 60 refers to sec 64 for the notice, while IEA sec 65 refers to sec 66.

- The mention of "*India*" in IEA section 65 suggests it is tailored specifically to the Indian legal context, whereas BSA section 60 does not specify a geographical context, possibly making it more generic or applicable in a different jurisdiction.
  - To bolster the admissibility of electronic evidence, the BSA introduced Section 61, which provides that electronic evidence cannot be declared

inadmissible solely by virtue of being in an electronic form. . Section 61 of the BSA states that no electronic or digital record shall be denied entrance provided it fits the conditions outlined in Section 63, which include:

- The data was typically produced by a computer or communication device that was frequently utilized for generating, storing, or manipulating information.
- The electronic record contained information that was inputted into the devhostilice as part of its regular operations.
- The device was functioning when the data was created.

➢ Section 61 brings electronic evidence and digital records at par with any other documents, subject to fulfilment of other legal requisites. It mentions that nothing in Adhiniyam would as such deny the admissibility of the electronic or digital record in evidence on the ground that it is an electronic or digital record and subject to the requisites of Section 63 regarding its admissibility, it would have the same legal effect, validityand enforceability, like any other document.

19. **Section 63, BSA (Sec 65B, IEA): admissibility of electronic evidence**. It prescribes detailed conditions and procedural safeguards to admit electronic records as evidence without requiring the **production of the original**.

Sub-section (1): Computer Output Deemed Document: The provision states that **information contained in an electronic record** printed on paper or stored in any electronic form (optical, magnetic media, semiconductor memory, etc.) is termed **"computer output."** Such computer output will be **deemed a document** and admissible in legal proceedings if certain conditions are met. Importantly, this admissibility is without the need for **further proof or production of the original**, addressing the practical difficulties in producing original electronic data. This marks a significant shift towards **presumption of authenticity** for electronic records, reflecting the realities of digital data handling.

Sub-section (2): Conditions for Admissibility: This sub-section enumerates four critical conditions that must be satisfied to admit computer output as evidence:

- **Regular Usage (Clause a):** The computer or device producing the output must have been used regularly over a period for activities carried out by a person with lawful control over the device. This indicates a **routine or systematic usage**, enhancing credibility.
- **Regular Feeding of Information (Clause b):** The type of information in the electronic record must have been regularly fed into the computer during that period in the ordinary course of business or activity.
- **Proper Functioning (Clause c):** Throughout the relevant period, the computer or device must have been **operating properly**, or if not, any malfunction should not affect the accuracy or reliability of the electronic record.
- **Derivation from Original Input (Clause d):** The electronic record must faithfully **reproduce or derive from the inputted information** fed into the device. These conditions collectively ensure that the electronic record is **reliable, authentic, and free from tampering or error**.

Sub-section (3): Multiple Devices Treated as Single Device: Recognizing the complexity of modern IT systems, sub-section (3) states that if multiple computers or devices are involved in creating, storing, or processing information as part of a regular activity, these shall be treated as a **single computer or communication device** for the purpose of admissibility. This includes standalone devices, computer systems, networks, computer resources, or intermediaries. This provision simplifies evidentiary treatment of distributed computing environments and networked systems prevalent in corporate and government setups.

Sub-section (4): Requirement of a Certificate: To reinforce the credibility and authenticity of electronic re cords, Section 63(4) mandates that every electronic record submitted as evidence must be accompanied by a **certificate.** The certificate must **identify the electronic record and describe how it was produced.** It must provide particulars of any device involved. It must address the conditions laid down in sub-section (2) (regular use, proper functioning, etc.). The certificate must be signed by a person responsible for the device or the management of the relevant activities. The

certificate is **prima facie evidence** of the matters stated therein. This certification requirement institutionalizes the concept of a **"self-authenticating electronic document,"** reducing the need for viva voce evidence on authenticity.

Sub-section (5): Interpretation Provisions: This subsection clarifies:

- How information is "supplied" to a computer — whether directly or via equipment, with or without human intervention.
- That a computer output includes data produced by the device directly or electronically by any appropriate equipment.

- Section 63 provides an elaborate description of scenarios, including the case where multiple computers or devices over a period or network might be involved. It details how these should be treated as a single source for evidence if they were used interchangeably or in a sequence that is consistent with regular business practices. It goes into greater detail regarding the treatment of data processed through various modalities, whether directly, through intermediaries or across different systems or networks. The digital revoution created new evidentiary challenges including emails, server logs, CCTV footage, cloud storage, metadata, and blockchain records. Sections 65A and 65B were introduced in the IEA in 2000 to address electronic evidence. However, judicial inconsistencies arose regarding certification and admissibility. The BSA structurally incorporates electronic records within the definition of "document," thereby resolving earlier fragmentation.

- ***ELECTRONIC AND DIGITAL EVIDENCE UNDER THE IEA***.

The IEA classifies documentary evidence into two categories: (i) primary evidence, being the original document; and (ii) secondary evidence, which may be used to prove the contents of the original document. In order to bring the colonial-era IEA in line with developments in technology and law, the Indian Evidence (Amendment) Act, 2000 introduced certain changes, such as expanding the definition of documentary

evidence to include electronic records. The Hon'ble Supreme Court has highlighted that the distinction between primary and secondary evidence is also applicable to electronic record **(Arjun Panditrao Khotkar v. Kailash Kishanrao Gorantyal, (2020) 7 SCC 1).** Original information contained in the 'computer' is considered as primary evidence, whereas the computer output containing such information is considered to be secondary evidence. In case the original electronic record is produced in court, the owner of the device in which it is stored may testify before the court and prove that the concerned device, on which the original information is first stored, is owned and/or operated by him. However, in case the electronic record is a part of a 'computer system' or a 'computer network' and it is physically impossible to bring such network or system to the Court, then the only means of proving the information contained in such electronic record is through the mechanism prescribed under Sections 65A and 65B of the IEA. This requirement is also mandatory for providing information to an investigating authority. While adducing electronic evidence, under Section 65B(4), a certificate authenticating such evidence is required to be submitted by "a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate)". Submission of such a certificate has been held to be a mandatory condition precedent for admitting secondary electronic evidence.

- ***CHANGES INTRODUCED UNDER THE BSA.***
  - The BSA expressly defines a 'document' to include digital and electronic records, such as, inter alia, electronic records on emails, server logs, documents on computers, laptops or smartphones, websites, locational evidence, and voice mail messages stored on digital devices. Therefore, electronic evidence is now classified as primary evidence. The BSA also provides that each stored copy of electronic or digital records, produced from proper custody, is to be considered as primary evidence. Sections 62 and 63 of the BSA, corresponding to Sections 65A & B of the IEA, retain the criteria of admissibility of electronic evidence, with certain modifications. Under the BSA, the certificate is to be provided by any person in charge of the communication device or management of the relevant activities (whichever is appropriate), as well as an expert.

- Furthermore, the BSA also provides that such certificate is to be produced at every instance when such evidence is submitted for admission. Such additional requirements may make the process of adducing electronic evidence more onerous, and their purpose remains unclear. The BSA retains the position espoused in **Arjun Panditrao Khotkar**, wherein primary electronic evidence is admissible per se, while secondary electronic evidence is only admissible when accompanied by a certificate attesting the same. However, in light of the fact that copies of electronic evidence, including any temporary files, stored in different devices, may now be considered as primary evidence, it is unclear as to when an electronic evidence would be required to be supported by a certificate under Section 63 of the BSA. While the certification of electronic evidence by an expert may be a well-intended step towards ensuring that the integrity of the electronic evidence is maintained, it may have been better reserved for instances wherein there are doubts regarding the authenticity or integrity of the electronic evidence.
- Further, it is also not clear who would qualify to be such an expert. Maintenance of Data Integrity Data integrity has been recognised specifically under the BSA which states that where an electronic or digital record is produced from 'proper custody, such electronic and digital record is primary evidence unless it is disputed. The Schedule to the BSA contains the standard format of the certificate to be produced under Section 63 of the BSA. The certificate by the party tendering the electronic evidence (in Part A) as well as an expert (in Part B) now mandates recording of the hash value of the electronic evidence at the time of submission of such certificate. One lacuna under the BSA is that it fails to provide adequate safeguards in collection, storing and disposing of electronic and digital evidences during investigation.
- In a recent case (**Amazon Seller Services Pvt. Ltd. & Anr. v. Directorate of Enforcement & Ors, W.P. (C.) No. 1081 of 2022**, the Hon'ble Supreme Court has noted concerns in relation to absence of guidelines for search and seizure of electronic evidence. While such guidelines are awaited, in the interim, the Government has submitted that all investigative agencies will adhere to the CBI Manual. The BSA fails to address these issues, and additionally also does not provide safeguards in relation to dealing with confidential and privileged information that may be collected during investigation. In **Anvar P.V.**

v. P.K. Basheer (2014) 10 SCC 473, the Supreme Court clarified admissibility of electronic evidence. The Court held (Para 24):

> "Any documentary evidence by way of an electronic record under the Evidence Act can be proved only in accordance with the procedure prescribed under Section 65B."

- It is further held that secondary electronic evidence without certificate is inadmissible. This overruled the earlier position in Navjot Sandhu. **Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal (2020) 7 SCC 1**, a three-Judge Bench reaffirmed the mandatory nature of certification. The Court held (Para 59)

  > "The requirement of producing a certificate under Section 65B(4) is a condition precedent to the admissibility of evidence by way of electronic record."

- It was clarified that if the original device is produced, certification is unnecessary. It also held that certificate may be produced at a later stage if procedural justice requires This principle will continue to guide BSA interpretation. In **Sonu v. State of Haryana (2017) 8 SCC 570**, the Court emphasized procedural discipline It held (Para 32)

  > "Objection as to the mode of proof must be taken at the time when the document is tendered in evidence." Failure to object at trial precludes raising objection in appeal.

- Current Authoritative position: The Supreme Court in **Chandrabhan Sudam Sanap v. The State Of Maharashtra AIR 2025 S.C1103** admissibility of CCTV footage:- by producing CCTV footage, prosecution sought to prove that the accused was last seen at railway station with deceased who was allegedly murdered by him-objection regarding absence of certificate u/s65-B of evidence Act was raised at the earliest point of time, CCTV footage was not admissible in evidence since said certificate is a condition precedent to admissibility of evidence in the nature of electronic evidence since said certificate is a condition precedent to admissibility of evidence in the nature of electronic record even otherwise prosecution has failed to answer issues regarding life time of CCTV

footage in DVR-II being 12 days, absence of both the accused and deceased in the same. footage etc, renders electronic records inadmissible.

Application: If the electronic evidence (such as photographs or videos from mobile phones) is a copy of the original, i.e., secondary evidence, the requirement of Section 65-B arises. An electronic record by way of secondary evidence (CD, VCD, chip, etc.) shall not be admitted unless the requirements under Section 65-B are satisfied, and it must be accompanied by the certificate obtained at the time of taking the document. For photographs, the original device used to capture them has to be produced; otherwise, the copy must be produced along with a 65-B certificate.

- **Mandatory Certificate under BSA (Section 63(4))**

  A certificate must be submitted along with the electronic record at each instance where it is being submitted for admission. The certificate, purporting to be signed by a person in charge or management or an expert, must:

  - Identify the electronic record and describe the manner of its production.
  - Give sufficient particulars of any device involved to show it was produced by a computer or communication device.
  - Deal with any of the matters related to the conditions mentioned in S.63(2).

20. **Sec 73, BSA (Sec 73A, IEA):**

- Section 73 specifically addresses the verification of digital signatures. This involves the production of a Digital Signature Certificate and the application of the public key listed therein to verify the authenticity of the digital signature whereas, 73A deals with traditional signatures, writings, or seals. It outlines a method for comparing these items with others that have been admitted or proved to verify their authenticity.

- Section 73 involves a technical process that requires specific digital tools and certificates, reflecting its adaptation to digital communication and authentication technologies and section 73A uses a more traditional approach by comparing the questioned signature, writing, or seal directly with known samples that have been accepted by the court. This section also allows for

real-time demonstration by directing a person to create new writing or signatures in court for comparison purposes.

- Sec 73 is tailored towards the realm of digital transactions and electronic documents, which is increasingly relevant in modern legal contexts due to the rise of digital communications and sec 73A applies to physical documents and is versatile in its application, including to impressions with necessary modifications, thus covering a broader range of evidence types than BSA 73.
- Sec 73 potentially involves interactions with digital authorities such as Controllers or Certifying Authorities, highlighting the collaborative nature between the judiciary and digital certification bodies and sec 73A, while more straightforward, invokes the court's authority to create ad hoc evidence by directing the creation of writings or signatures in the courtroom, making it highly practical and interactive. These differences underline the distinct approaches required by courts when dealing with digital versus traditional forms of evidence, reflecting the adaptations needed to accommodate technological advancements in legal proceedings.

21. **Sec74, BSA (Sec 74-75, IEA):** Sec 74, BSA categorizes documents into public and private categories. The approach taken by BSA to consolidate the classification may streamline legal processes by providing all relevant information in one place, whereas IEA's division across two sections could help in emphasizing the legal distinctions and implications of each category. This classification impacts everything from evidence admissibility to public access and document handling procedures in legal settings.
22. **Section 80, BSA [IEA Sec.81]:** Presumption as to Gazettes, newspapers, and other documents.

- The Court shall presume the genuineness of every document purporting to be the Official Gazette, or to be a newspaper or journal and of every document purporting to be a document directed by any law to be kept by any person, if such document is kept substantially in the form required by law and is produced from proper custody.

  Explanation. For the purposes of this section and section 92, document is said to be in proper custody if it is in the place in which, and looked after by

the person with whom such document is required to be kept; but no custody is improper if it is proved to have had a legitimate origin, or if the circumstances of the particular case are such as to render that origin probable.

- Section. 81 of BSA (IEA. Sec. 81A): presumption as to Gazettes in electronic or digital record.
- Section. 92 of BSA (IEA. Sec. 90): Presumption as to documents thirty years old.
- Section. 93 of BSA (IEA. Sec. 90A): Presumption as to electronic records five years old.

  Explanation. The Explanation to section 80 shall also apply to these three sections.

23. **Section 88, BSA (Sec.86, IEA):**

- Geographic Scope: sec 88, BSA applies to judicial records of any country beyond India. It does not specify any particular jurisdiction or geographic limitation whereas sec 86, IEA applies to judicial records of any country not forming part of India or Her Majesty's Dominions. This includes a broader range of countries but excludes territories under Indian or British sovereignty.
- Definition of Representative: BSA sec 88 specifies that an officer designated as a Political Agent for a territory or place outside India is deemed to be a representative of the Central Government of that country. This provision facilitates the identification of a representative for certification purposes and sec 86, IEA also recognizes Political Agents for territories or places not forming part of India or Her Majesty's Dominions as representatives of the Central Government. However, it does not define another legislative act, as in sec 88, BSA.
- Cross-references and Explanations: BSA sec 88 includes an explanation for the term "proper custody" within the section itself and IEA sec 86 refers to other sections of the General Clauses Act, of 1897, for definitions, and does not include an explicit explanation within the section itself.

24. **Section 112, BSA (Sec.116, IEA):**

- BSA section 112 deals with the burden of proof regarding the existence or cessation of certain relationships, such as partners, landlord and tenant, or principal and agent. It places the burden of proof on the person who denies the existence of these relationships after they are acting as such and IEA section 116 focuses specifically on estoppel within landlord-tenant relationships and the license of a person in possession of immovable property. It prohibits tenants or those claiming through them from denying the landlord's title during the tenancy. Similarly, it prevents individuals who enter property with the permission of the person in possession from denying that person's title to possession at the time of granting the license.
- Nature of Estoppel: BSA sec 112 establishes a general principle of burden of proof regarding the existence or cessation of certain relationships. It doesn't explicitly use the term "estoppel," but it implies that once a relationship is established by evidence of acting as such, the burden shifts to the party denying it and IEA sec 116 explicitly refers to estoppel and outlines specific situations where tenants or licensees are estopped from denying the landlord's or possessor's title, respectively, during the continuance of the tenancy or license.
- Applicability: BSA section 112 applies to a broader range of relationships beyond just landlord-tenant scenarios, including partnerships and agency relationships and IEA section 116 is narrowly focused on the landlord-tenant relationship and the licensee's relationship with the person in possession of immovable property.
- Legal Framework: BSA sec 112 is part of the Indian Evidence Act, which is a comprehensive statute governing the admissibility and relevancy of evidence in Indian courts and IEA sec 116 is also part of the Indian Evidence Act and addresses specific aspects of landlord-tenant relationships within its framework.
- Other notable provisions include the proviso to Section 165, which prevents Courts from requiring any communication between the Ministers and the President of India to be produced before it; the conspicuous omission of the 'extent' or territory (in Section 1) to which the BSA extends;

- The substantive provision of estoppel as given under the IEA from Sections 115-117 has been amended, in particular the provision regarding the prohibition of denial of landlord's title by the tenant. Under the provision of Section 122 of the BSA, no tenant shall be able to deny that the landlord had a title to the property at the beginning of the tenancy, even after the expiry of the tenancy as well; the estoppel applies not only during the continuance of the tenancy but also at "*any time thereafter*".

- **Section 132 of BSA: (IEA Sec.126**): "No advocate shall be compelled to disclose any communication made to him in the course of his employment as an advocate by or on behalf of his client". It strengthens rule of law by protecting the advocates from coercion, upholding the adversarial legal system's and clarifying the limits of state power in compelling disclosure. It ensures fairness in legal proceedings while balancing the need to prevent misuse of legal privilege for criminal purposes which has been discussed by Hon'ble Supreme Court in **In Re : Summoning Advocates who Give Legal Opinion or Represent parties during investigation of cases Citation 2025 Live Law (SC) 1051** and gave certain directions before summoning them.

Other Key Changes:

25. **Protection of Vulnerable Witnesses:** Did not have specific provisions to protect vulnerable witnesses (children, sexual assault survivors, etc.). Includes special provisions for the protection of vulnerable witnesses, allowing them to testify behind screens or through video conferencing to avoid intimidation. This improves the safety and comfort of vulnerable witnesses, ensuring they can provide testimony without fear.
26. A welcome change introduced under the BSA is that oral evidence now includes any statements given electronically by witnesses as well. This will allow witnesses including experts to record statements, be cross examined and take part in a trial through audio video or other options, therefore allowing more flexibility, convenience and expediting trials in India. Another notable change is that while the scope of the IEA is limited to India, the BSA removes this limitation, presumably with a view to remove barriers to admissibility of electronic evidence that may be generated or stored outside India.

27. The BSA 2023 revises the rules on hearsay evidence, clarifying when hearsay can be admitted in court.
28. New exceptions to the hearsay rule have been introduced, allowing certain out-of-court statements to be admissible if they meet specific criteria of reliability and relevance.

Accomplice Evidence: Accomplice evidence was allowed under certain situations, although it was typically regarded with caution. The new statute improves these rules by stating when accomplice testimony is lawful and admissible. This offers clearer procedures for dealing with accomplice testimony, which is sometimes essential in criminal prosecutions.

Indian Evidence Act, 1982 vs Bharatiya Sakshya Adhiniyam, 2023

Sl. No.	Subject	Position under IEA, 1872	Position under BSA, 2023	Nature of Contradistinction / Departure
1	Status of Electronic Record	Electronic evidence governed separately under Sections 65A & 65B; treated as special category of secondary evidence	Electronic record included within definition of "document" itself	Conceptual shift from exceptional evidence to mainstream documentary evidence
2	Structural Treatment of Digital Evidence	Compartmentalised regime (65A–65B)	Integrated throughout documentary evidence provisions	Structural integration replaces isolated framework
3	Admissibility	Mandatory	Certification	Technical isolation

	Certificate (65B)	certificate required for secondary electronic evidence (as per Anvar & Arjun Panditrao)	retained in substance but embedded within broader documentary framework	removed; streamlined statutory placement
4	Definition of Document	Primarily physical document; electronic record inserted later	Definition expressly and originally includes electronic records	Expansion and modernization of document concept
5	Secondary Evidence	Mechanical copies, certified copies, oral accounts; digital copies narrowly interpreted	Recognizes system-generated copies, server data, electronic backups	Shift from mechanical reproduction model to digital ecosystem model
6	Online/Video Testimony	No express statutory recognition; allowed through judicial interpretation	Express recognition of evidence through electronic means	Legislative codification replaces judicial innovation
7	Public Documents	Primarily physical public records	Includes digital public records and electronic certified copies	E-governance formally incorporated
8	Presumptions – Electronic Agreements	Limited presumptions under IT Act interface	Strengthened presumptions regarding secure digital	Digital commercial transactions receive stronger statutory support

			signatures and electronic agreements	
9	Language and Drafting Style	Victorian drafting; archaic expressions	Simplified, modern drafting	Legislative modernization; reduces interpretative ambiguity
10	Alignment with Criminal Codes	Referenced IPC and CrPC	Harmonized with Bharatiya Nyaya Sanhita & BNSS	Systemic restructuring aligned with new criminal framework
11	Forensic Scope under Expert Evidence	Expert opinion limited to traditional categories (science, handwriting, etc.)	Language broad enough to cover cyber forensics, digital authentication, DNA science	Expansion reflecting scientific investigation era
12	Electronic Communications	Treated indirectly through amendments	Explicit statutory recognition	Digital communication mainstreamed
13	Metadata & Stored Data	Not expressly recognized	Recognized as electronic record	Addresses technological realities
14	Cloud / Server Data	Not contemplated in original scheme	Falls within electronic record framework	Future-oriented adaptability
15	Overall Legislative Philosophy	Reactive amendment approach	Proactive digital-first drafting	Structural modernization rather than

				piecemeal amendment

- **Challenges for Courts:**

The provision to enable electronic oral evidence under the BSA requires a significant financial commitment to improve the infrastructure of the court. To facilitate virtual testimony, courts must invest in upgrading their technological resources, including the installation of secure video conferencing systems, high-speed Internet, and audiovisual recording equipment. These initial expenses are necessary to ensure the smooth flow of remote testimony, thereby minimizing disruption during critical court proceedings. In addition to improving the infrastructure, it is necessary to allocate funds for the training of judges, court staff and lawyers in these new technologies. Key to the new system's effectiveness is ensuring employees are adept at using video conferencing tools, managing digital evidence and addressing cybersecurity issues. While such training programs and ongoing technical support may initially result in higher costs, they are vital to achieving long-term operational efficiency. Although the initial costs associated with these changes may seem significant, they have the potential for future cost savings.

For example, reducing costs associated with transporting prisoners/witnesses and ensuring their safety can lead to reduced logistical costs. Additionally, these advances can optimize court operations by minimizing delays caused by the non-availability of witnesses or the need for adjournments, ultimately reducing the costs associated with protracted trials. Overall, while careful planning is necessary to manage the financial implications of this provision, it promises significant long-term benefits for the efficiency of the justice system. With technology progressing at an unprecedented speed, the legal system needs to evolve accordingly. This entails continuous review and updating of laws, regulations, and practices related to digital evidence to align with emerging advancements. Neglecting this responsibility could result in a discrepancy between technological realities and legal proceedings, jeopardizing justice and individual rights. Additionally, it is crucial to provide ongoing training for lawyers and court officials, ensuring they possess the necessary expertise to manage digital evidence effectively and ethically.

CONCLUSION:

The Bharatiya Sakshya Adhiniyam, 2023 represents harmonized reform. The changes introduced under the BSA in relation to electronic evidence indicate a cognizance of the ever-increasing importance of digital evidence in legal proceedings, and are laudable on that account. However, in practice, they may create more problems than they seek to address. There is an urgent need for clarity on what electronic evidence would constitute primary versus secondary evidence, as only the latter is subject to the requirement of producing an authenticating certificate under Section 63 of the BSA. The BSA is a missed opportunity as it fails to address several other areas relevant to electronic evidence, such as, inter alia, clarifying the proper chain of custody for electronic evidence, providing guidance in relation to the safe storage and disposal of electronic evidence, segregation of privileged and confidential information, and addressing issues in relation to the possibility of self-incrimination which is inherently linked with the seizure of electronic data from a person.

While the BSA is a step forward towards establishing a framework for electronic evidence, it is a precarious step, and would benefit from judicial/legislative intervention in order to provide some much-needed certainty. The BSA has incorporated significant changes to crucial definitions pertaining to the law of evidence, some of which were much-needed given the dynamics of the changing legal framework of the country. A lot of the alterations and additions have kept in mind the social landscape of the country as well, also ensuring that the country's colonial past is put behind. A majority of the provisions remain unchanged in their language and application, and the evaluation of the changes made will be better understood with subsequent judicial decisions pertaining to them. The BSA does not radically contradict the IEA in core doctrines. It modernizes structure and integrates digital evidence. Confession law, dying declaration, burden of proof, circumstantial evidence principles remain largely intact. Therefore, the contradistinction is structural and technological, not doctrinal.