

**The Transformation of Evidentiary Paradigms:
From the Indian Evidence Act, 1872 to the Bharatiya Sakshya Adhiniyam, 2023**

B.VANI SREE*

**Research Scholar, P.G. Dept. of Legal Studies & Research, Acharya
Nagarjuna University,
Nagarjuna Nagar, Guntur-Dist., A.P**

Abstract

The enactment of the Bharatiya Sakshya Adhiniyam, 2023 (BSA) represents a purported paradigmatic shift in Indian evidentiary jurisprudence, superseding the colonial Indian Evidence Act, 1872 (IEA). This article undertakes a rigorous comparative analysis of the transformative provisions introduced by the BSA, with particular emphasis upon the reconceptualization of electronic evidence, the expansive redefinition of primary evidence, and the attendant procedural exigencies that reshape evidentiary standards and the burden of proof within the criminal justice framework. Through a critical examination of the legislative architecture, this inquiry interrogates whether the BSA constitutes a genuine substantive reform or merely an episodic amendment masquerading as comprehensive legislative renewal. The analysis further evaluates the implications of the newly mandated certification requirements for electronic records and the interaction between the BSA and the forensic investigation mandates under the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS). This article contends that while the BSA manifests progressive aspirations in its recognition of digital evidentiary forms, its implementation reveals significant procedural complexities that potentially undermine the expeditious dispensation of justice and the fundamental right to a fair trial.

1. Introduction

The Indian legal system has historically been characterised by its colonial inheritance, with the Indian Evidence Act, 1872 serving as the foundational statute governing the admissibility, relevancy, and proof of evidence for over one hundred and fifty year. The legislative landscape underwent a momentous transformation with the enactment of the Bharatiya Sakshya Adhiniyam, 2023, which formally repealed and replaced the IEA effective 1 July 2024. The BSA is situated within a broader legislative trilogy, alongside the Bharatiya Nyaya Sanhita and the Bharatiya

Nagarik Suraksha Sanhita, collectively intended to decolonise and modernise India's criminal justice architecture.

Critical scholarly assessment, however, has characterised the BSA as fundamentally an episodic amendment of the IEA masquerading as comprehensive reform. The legislation preserves the core architecture of its predecessor while introducing substantive modifications primarily concerning digital and electronic evidence. This article undertakes a doctrinal and comparative analysis of these modifications, addressing the research question: How does the BSA's redefinition of evidence, particularly its inclusion of digital and electronic records, alter evidentiary standards and the burden of proof, and what implications arise for the right to a fair trial?

2. Conceptual Restructuring of Documentary Evidence

2.1. The Expanded Definition of Documentary Evidence

The BSA fundamentally recalibrates the conception of a "document" within Indian evidentiary law. Section 2(1)(e)(i) explicitly classifies "electronic or digital records" as documents, placing them on an equal evidentiary footing with conventional paper-based documents. Section 61 further provides that no electronic or digital record shall be denied admissibility solely on the ground that it is in electronic form, and such records shall possess the same legal effect, validity, and enforceability as paper records. These provisions reflect a legislative recognition of the technological transformations pervading contemporary evidentiary practice.

2.2. Redefinition of Primary Evidence

Perhaps the most transformative innovation of the BSA resides in its reconfiguration of primary evidence through four newly introduced explanations appended to Section 57. These explanations represent a significant doctrinal departure from the IEA's evidentiary framework.

2.2.1. Explanation 4: Multiple File Storage

Explanation 4 establishes that where an electronic or digital record is created or stored, and such storage occurs either simultaneously or sequentially across multiple files, each such file constitutes primary evidence. This provision recognizes the technological reality that electronic records frequently exist as fragmented files across multiple storage locations. The import of this explanation extends to circumstances where incriminating data, allegedly deleted, is recovered as

a temporary file from a computer system; the BSA renders such recovered files sufficient primary evidence, thereby expanding the universe of admissible evidentiary materials.

2.2.2. Explanation 5: Proper Custody

Explanation 5 provides that any electronic or digital record produced from proper custody constitutes primary evidence, unless such custody is disputed. Proper custody is defined as custody wherein the device is maintained by a responsible person, and no custody is rendered improper provided legitimate origins are established. This provision establishes a presumption of authenticity that can be rebutted through successful challenge to custodial integrity. The concept of proper custody ensures the preservation of the evidentiary chain and safeguards against tampering, alteration, or fabrication.

2.2.3. Explanation 6: Video Recordings

Explanation 6 addresses video recordings stored electronically and disseminated through transmission, broadcast, or transfer, declaring each such stored recording to constitute primary evidence. This explanation effectively dilutes the traditional principle requiring production of the original recording device, recognising that digital video exists simultaneously across multiple devices during transmission.

2.2.4. Explanation 7: Multiple Storage Spaces

Explanation 7 provides that where an electronic or digital record is stored in multiple storage spaces within a computer resource, each automated storage, including temporary files, constitutes primary evidence. The distinction between Explanation 4 and Explanation 7 is significant: while Explanation 4 addresses storage across multiple files, Explanation 7 addresses storage across multiple storage spaces, recognising that the same electronic record may exist as a complete entity in multiple locations.

3. The Certification Conundrum: Section 63 of the BSA

The admissibility of electronic records under the BSA is governed by Section 63, which establishes the procedural framework for admitting computer output as evidence. Section 63

largely retains the core framework of its predecessor, Section 65B of the IEA, but introduces refinements that have generated significant interpretive controversy.

3.1. Conditions for Admissibility

Sub-section (2) of Section 63 prescribes the conditions under which a computer output becomes admissible. The conditions include that the device was regularly used to create, store, or process information; that the information was regularly supplied to the device in the ordinary course of activity; that the device was operating properly or any malfunction did not materially affect the accuracy of the record; and that the information derives from regular data inputs. The provision explicitly includes communication devices within its ambit, bringing smartphones and other portable devices within the evidentiary framework .

3.2. Dual Certification Requirement

The most contentious innovation of Section 63 is the dual certification requirement introduced under Sub-section (4). Under this provision, the certificate authenticating an electronic record must be signed both by the person in charge of the computer or communication device and by an expert. This represents a significant departure from the IEA's Section 65B(4), which required certification from only the responsible person.

The dual certification requirement has generated substantial academic and judicial discourse. The requirement that an "expert" certify the electronic record raises questions regarding the qualifications and designation of such experts . The phrase "an expert" allows for flexibility in appointing certifiers, avoiding exclusive reliance on Section 79A experts under the Information Technology Act, 2000. However, the practical implementation of this requirement remains problematic, particularly given the absence of a central regulatory body to set qualification standards for forensic experts in India.

4. The Blockchain Conundrum and Technological Incompatibility

The decentralised architecture of blockchain technology presents a fundamental challenge to the certification framework prescribed by Section 63(4). Public blockchains such as Bitcoin and Ethereum are inherently decentralised, maintained by numerous independent nodes with no central

authority or single entity "in charge" . The requirement under Section 63(4) to identify a "person in charge" of the computer or communication device becomes virtually impossible to satisfy for truly decentralised systems.

This incompatibility reflects a broader tension within the BSA's evidentiary framework. The legislation, while recognising the admissibility of electronic records, nonetheless imposes certification requirements predicated upon centralised technological architectures. The Supreme Court's jurisprudence on this matter has been inconsistent; while Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal (2020) affirmed the mandatory nature of certification, it also acknowledged an "impossibility exception" where a party genuinely cannot obtain the certificate despite best efforts. The principle that the law does not demand the impossible may provide an avenue for admitting blockchain evidence, albeit with considerable judicial discretion.

Comparative jurisprudence offers potential models for resolving this conundrum. The United States state of Vermont permits blockchain records accompanied by a written declaration from a "qualified person" made under oath, without requiring that the declarant be responsible for managing the blockchain. China's approach, as exemplified by the Hangzhou Internet Court's decision in 2018, focuses upon the technological integrity of blockchain records, emphasising source reliability rather than formalistic certification requirements. A nuanced framework has been proposed for the Indian context, differentiating between public and private blockchains. Public blockchains, characterised by decentralisation and immutability, should be admissible upon certification by a qualified technical expert, while private blockchains, controlled by a single entity and therefore more susceptible to tampering, should be subject to the dual certification requirement.

5. Forensic Science Integration and Institutional Challenges

The BSA interacts with the forensic investigation mandates under the BNSS, which renders forensic testing mandatory for offences punishable with imprisonment of seven years or more. This statutory requirement represents a significant expansion of forensic science's role within the criminal justice system, creating institutional challenges that directly affect the admissibility and reliability of scientific evidence.

The existing forensic infrastructure in India is grossly inadequate to meet the increased demand generated by the BNSS mandate. The absence of a central regulatory body to establish standard operating procedures, mandate accreditation, and conduct quality audits of forensic laboratories represents a critical lacuna. Private forensic laboratories have proliferated in response to the demand-supply gap, yet these facilities are frequently unaccredited and lack standardisation and quality control measures. The consequences of flawed forensic analysis can be devastating, leading to wrongful convictions and miscarriages of justice.

The lack of a regulatory framework also permits individuals with dubious qualifications to claim expertise in forensic science, thereby undermining the credibility of expert evidence. As forensic experts have observed, "anyone can claim to be a forensic expert in India, armed only with dubious online or diploma certifications in forensic science or related disciplines". This situation is exacerbated by the BSA's expansion of expert domains to include "any other field," which, while intended to accommodate emerging scientific disciplines, may inadvertently permit unqualified individuals to proffer expert opinions.

6. Implications for the Right to a Fair Trial

The transformation of evidentiary standards under the BSA raises fundamental questions regarding the right to a fair trial, guaranteed under Article 21 of the Constitution of India. The dual certification requirement for electronic evidence, while intended to enhance evidentiary integrity, has the potential to create procedural barriers that exclude reliable evidence on technical grounds. This is particularly problematic where electronic evidence constitutes the primary source of proof.

The practical challenges in obtaining certification are substantial. Courts are bound to admit electronic records produced under Section 63 provided the certification is compliant, removing judicial discretion to reject compliant evidence. However, this makes the certification process critical; failure to obtain the required certificate renders the electronic record inadmissible, regardless of its probative value.

The technological integration within the BSA also risks exacerbating systemic inequalities. The digitisation of evidence and procedural requirements may disadvantage litigants without access to technology or digital literacy, potentially creating a "digital divide" that undermines equitable access to justice. The reliance upon forensic science, while intended to enhance evidentiary reliability, may be undermined by institutional deficiencies in the forensic infrastructure, ultimately compromising the reliability of scientific evidence and the integrity of the justice system.

7. Conclusion

The Bharatiya Sakshya Adhiniyam, 2023 represents a legislative response to the technological transformations pervading contemporary evidentiary practice. The Act's recognition of electronic records as documents and its expansion of primary evidence to encompass digital materials demonstrate progressive legislative intent. However, the implementation of these provisions reveals significant challenges that warrant critical scholarly attention.

The dual certification requirement under Section 63, while intended to ensure evidentiary integrity, risks creating procedural obstacles that exclude reliable electronic evidence on technical grounds. The incompatibility between the certification framework and decentralised technologies such as blockchain exemplifies the challenges inherent in adapting traditional evidentiary rules to emerging technologies. The forensic science integration under the BNSS, while laudable, is constrained by institutional deficiencies in India's forensic infrastructure.

This analysis suggests that the BSA, while manifesting progressive aspirations, effectively constitutes an episodic amendment of the IEA masquerading as comprehensive reform. The substantive architecture of evidentiary law remains fundamentally unchanged, with modifications focused primarily upon digital evidence. The challenge for Indian jurisprudence lies in developing an evidentiary framework that accommodates technological innovation while preserving the principles of fairness and reliability that underpin the right to a fair trial. Future legislative and judicial interventions must address the institutional deficiencies and procedural complexities that currently constrain the effective implementation of the BSA's transformative provisions.

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