

# Statement Made in the Course of Business As Evidence - A Critical Analysis under the Bharatiya Sakshya Adhinyam, 2023

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**Abstract:** *The Bharatiya Sakshya Adhinyam, 2023 (hereinafter BSA) represents a watershed moment in the codified law of evidence in India, replacing the century and a half old Indian Evidence Act 1872. Among its most commercially and judicially significant provisions are those governing the admissibility of statements made in the ordinary course of business. These provisions spread across section 14,26(b),28 and 29 of the BSA it serve as vital exceptions to the hearsay rule and as independent rules of relevancy ensuring that the routine documentary record of professional life remains accessible as credible evidence before court. This paper undertakes a comprehensive of those provision tracing their historically from the common law doctrine through the BSA, the judicial interpretation that has shaped their boundaries and assessing the BSA innovation. The paper of BSA brings welcome modernization certain tension notably the verification requirement under section 28, the `unavailability` under section 26(b), and the Bankers` Book of Evidence Act,1891 demand suitable judicial attention to prevent evidentiary gap in commercial litigation.*

**Keywords:** *Bharatiya Sakshya Adhinyam.*

## I. INTRODUCTION

Law have always been inseparable companions. The of every era has been compelled to revoke with the written records that bankers, physicians and administrators generate in the day to day of their affairs. The admission of such records as evidence poses a fundamental challenge to the adversarial system the maker of the entry is frequently dead or untraceable and yet the document they produced in the ordinary course of business record define the ideal of cross examination and the practical necessity of admitting reliable business records defines the character of its law of evidence. In India, the solution was first codified in the Indian Evidence Act 1872, drafted by Sir James Fitzjames Stephen. section 32(2) and 34 of the IEA carried out a business records exception that courts applied for over 150 years.

On 25 December 2023, The Baratiya Sakshya Adhinyam 2023 received presidential and came into force on 1 July 2024, replacing the IEA. This paper has a fourfold objective. First. It traces the historical evolution of the business records doctrine in English common law and its transplantation into colonial Indian Evidence Law. Second, the statutory framework under the BSA with particular reference to section 14,26(b), 28 and 29 Third, it surveys the judicial interpretation of these provision and by the Supreme Court and High court. Fourth it critically evaluates the reforms introduced by the BSA, particularly in relation to digital and electronic records, and identifies areas requiring legislative or judicial clarification. The paper confines itself to the Indian domestic legal context and does not undertake a comparative study with foreign jurisdiction.



## **II. HISTORICAL BACKGROUND AND EVOLUTION OF THE BUSINESS RECORDS EXCEPTION**

The rule that exclusion of out of court statement to prove the truth of their contents has always coexisted uneasily with the commercial world. In English common law the courts of seventeenth and eighteenth centuries developed the doctrine, which permitted to produce their account books to prove the existence of debts. The rule was rationalized on two grounds first entries made simultaneous with the events they recorded carried inherent indicia of reliability and second the daily routine of business created a powerful prevention to false statement.

When the IEA,1872 was enacted, section 34 provided that entries in book of account regularly kept in the court of business were relevant whenever they referred to a matter into which the court had to inquire but stated that such statements were not alone sufficient to charge any person with liability. section 32(2) of the IEA provided a separate but complementary of admissibility statements made by a person who was dead, untraceable, business, including entries in book kept in the discharge of professional duty and documents used in commerce.

The different between these two provision was significant. Section 34 operated independently of any condition any entry regularly kept in the course of business was relevant. Section 32(2), by contrast was triggered only by unavailability of the maker and covered range of statement including verbal ones and commercial documents beyond of account book

The Bankers` Book Evidence Act, 1891 added a future dimension by creating a special regiment for certified copies of bank account entries permitting their admission without production of the original banker. The BBEA was amended by the Information Technology Act, and the IT Act created layered that BSA has now sought to consolidate.

## **III. THE STATUTORY FRAMEWORK UNDER THE BHARATIYA SAKSHYA ADHINIYAM 2023**

### **Section 14 Relevancy of course of Business**

Section 14 of the BSA corresponds to section 16 of the IEA and provide that when there is a question whether a particular act was done, the existence of any course of business according to which it naturally would have been done is relevant facts. The section is illustrated by official body example of a letter posted in the ordinary course of business the fact that letter placed in a particular location were habitually carried to the post is relevant to whether a specific letter was dispatched.

This provision has been applied extensively in commercial dispute to prove receipt of notices, invoices, and communications. The Supreme Court in Jagdish Singh v. Nathu Ram held that the `course of business` exception is premised on systemic regularity the practice must be established not occasional. Section 14 is therefore foundational to the broader business record framework it establishes that systematic conduct in business is itself a category of relevant fact lending coherence to the more specific provisions in sections 26(b), 28, and 29.

### **Section 26(b): Statements in the Ordinary Course of Business by Unavailable Person**

Section of the BSA is the most significant of the business evidence provisions. It corresponds to Section 32 of the IEA and deals with statements made by persons who are dead, cannot be found have become incapable of giving evidence, or whose attendance cannot be procured without unreasonable delay or expense. Such statement are relevant facts in several enumerated circumstances of which clause

#### **(b) the ordinary course of business exception is the focus of this section.**

Section 26(b) provide that a statement is relevant when it was made by the unavailable person in the ordinary course of business and in particular when it consists of: (i) any entry or memorandum made in books kept in the ordinary course of business or in the discharge of professional duty (ii) an acknowledgement written or signed by him of the receipt of money, goods, securities or property of any kind; (iii) a document used in commerce written or signed by him; or (iv) the date of a letter or other document usually dated, written, or signed by him..

This language is reproduced substantially from section 32(2) of the IEA. The critical elements are the unavailability of the maker. The illustration to section 26 are particularly revealing the entry in a deceased surgeon diary recording the



delivery of a child the statement if deceased solicitor diary that he attended a client at a particular place the letter of deceased merchant firm member recording the sailing date of a ship

A significant of Section 26(b) carried over from Section 32(2)

Of the IEA is that verbal statement as well as written document. This is important in the context of oral admission made in the professional setting .

### **C Section 28 Entries in books of Account**

Section 28 of the BSA addresses entries in book of account. It provides that entries in the books of account including those maintained in an electronic form regularly kept in the course of business are relevant to a matter into which the court has to inquire such statement shall not alone be sufficient evidence to change any person with liability illustration this section states if A sues B for one thousand rupees and shows entries in his account books showing B to be indebted to him the entries are relevant but are not sufficient without other evidence to prove the debt

Second and crucially section 28 limits the probative weight of business account entries they are relevant but insufficient alone to prove liability. The proviso against sole sufficiency has been consistently enforced by courts. In firm Srinivas Ram Kumar VS Mahabir Prasad the Supreme court held that account book entries are admissible under Section 34 of the IEA but require corroboration by other evidence before a debt can be established. The rationale is that account books record one party and in the absence of an admission the book entries leave open the possibility of fabrication.

### **D Section 29 Entries in Public Record and Electronic Record Made in Performance**

Section 29 of the BSA provides an entry in any public or other official book register or record or an electronic record stating a fact in issue a relevant fact and made by a public servant in the discharge of official duty specially enjoined by the law of the country in which such book register or record is kept. This provision corresponds to section 35 of IEA

The scope of the section 29 is wider than section 28 in one important respect it extends to records made by any other person in the performance of legally enjoined duty not merely in the ordinary course of private business. Birth and death registration and government notification all fall within this provision. Section 29 also expressly includes electronic records planning digital government

## **IV. CONDITIONS OF ADMISSIBILITY: A DOCTRINAL ANALYSIS**

### **The Regularity Requirement**

The most fundamental requirement common to all business records provision is regularity. The books of records must have been kept regularly in the course of business not prepared specially for litigation. Courts have consistently read this as requiring a systematic practice established before the dispute arises. In Jugraj Singh v Jaswant Singh the Supreme Court observed that entries made in the ordinary routine of business carry a presumption of truth and because of any statutory but because the exigencies carry a presumption of truth not because of any statutory estoppel but because the exigencies of commerce demand accuracy in recording. A creditor who falsifies his account books risks disrupting his own commercial dealings

### **The Corroboration Rule under Section 28**

The proviso that entries in book of account are not alone sufficient to charge any person with liability has generated a substantial body of case law. The Supreme Court in Srinivas Ram Kumar v Mahabir Prasad held that the section makes entries relevant but expressly denies them the status of sole proof of liability. This means that a plaintiff sue a witness or some independent document

The nature of the requisite corroboration has itself been contested. In Brij Mohan Lal vs Hans Raj the Punjab and Haryana high court held that corroboration need not independently prove the debt in full it is sufficient if it renders



the account book entry more probable than not sufficiency as district questions action 28 makes entries relevant it requires corroboration before.

## **V. JUDICIAL INTERPRETATION: LAND MARKE CASE**

### **Admissibility of medical and professional Records**

Medical record present some of the most frequently litigated of business record admissibility. Report injury certificate and hospital record are made in the discharge of professional duty and are within Section 26(b). in any body of criminal jurisprudence court have admitted post mortem reports prepared by medical officers who subsequently became untraceable within section 32(2) of IEA. The underlying logic with no personal stake outcome and contemporaneous recording of injuries and cause of death carries reliability.

In State of Maharashtra vs Dr. Praful B.Desai the supreme court addressed the question of witness could be examined through video conferencing and doing the general principal of law of evidence must interpreted to allow reliable evidence to reach the court this principle has been applied by subsequent court to hold that the reliable because they were created

### **Banker's Books and the Interface**

A frequently litigated is the relationship between the general business record provision of the BSA and the special regimen of Banker's Evidence Act 1891. The BBEA enable bankers to produce certified copies of entries in their book without producing the original banker the book or any officers. In Dadha &co v Wheeler the supreme court held that the BBEA creates a special mode of proof for bank records and operates as alegal specialized supplements rather than displaces the general provision of the evidence of law.

### **Dying Declaration and the overlap with Business Records**

An intriguing of doctrinal overlap exist between Section 26(a) and Section 26(b) both are sub clauses of the same omnibus provision dealing with statement by unavailable person. In Ram Bihari Yadav State of Bihar, the Supreme court articulated the distinction for each clause of Section 32 of the IEA must be independently. This reasoning applies with equal force to Section 26(b). the fact that a statement was made in the ordinary course of business does not satisfy the condition of section 26(a). and vice versa.

## **VI. INNOVATION OF THE BSA: ELECTRONIC RECORDS AND DIGITAL BUSINESS EVIDENCE**

The BSA most significant innovation in the business records is the express inclusion of the electronically maintained records across multiple provision. This is not definitional change but a substantive shift in the architecture of evidentiary law.

Section 2(d) of the BSA defines 'document' comprehively to include any mater expressed described by means of letters figures marks or any other means including electronic and digital records. The illustration includes Email server logs documents on messages locational evidence and voice mail messages stored on digital devices. This definition expansion ensures that the business records provisions which refer to documents and books now unambiguously encompass digital records.

Section 28 is particularly significant in this regard. By adding the phrase 'including those maintained in an electronic form' parliament has confirmed that digitally maintained accounting software enterprise resource planning system cloud based accounting platforms. This addresses a lacuna that had been identified by scholars and practitioner who noted Section 34 of the IEA as originally drafted predated electronic records.

Section 63 of the BSA governs the admissibility of electronic records and require a certificate signed by the responsible person and expert confirming that the computer system operated properly as evidence and overlap with section 28 treatment of electronic account books. Court will need to determine whether a party on electronically



maintained book of account under section 28 must also compel with the certification requirement of section 63 or section 28 operates independently as rule of relevancy that bypasses the section 63 certification.

#### **VII. PRACTICAL IMPLICATIONS FOR COMMERCIAL LITIGATION AND LEGAL PRACTICE**

The business records provision of the BSA have direct and immediate implication for commercial practitioners. Several practical points deserve emphasis

Parties intending to rely on electronically maintained account books under section 28 as a matter of abundant caution simultaneously prepare a section 63 certificate from the responsible person and an expert the doctrinal relation between Section 28 and 63 is unsettled a party fail to file such a certificate risks.

Commercial parties would be well advised to maintain comprehensive electronic audit trail logs that records the date time and identify of any person who creates an entry as part of their ordinary records keeping parties. Such audit trail not only satisfy the 'regularity kept' requirement of section 28 but also provide the corroborating material that courts require before treating entries as sufficient proof.

The BBEA certification procedure remains the element route to admissibility for bank records bank should ensure that their electronic banking records infrastructure in certified by personal qualified under the BBEA as amended by the IT Act. The certificate must be dated and subscribed by the principal accountant or manager with name and official title and must confirm that the entry was made in the usual and ordinary course of business.

In criminal proceeding particularly fraud forgery and cheating case proceedings should identify at the investigation stage the maker of relevant business records is availability is a procedural grounds on which defence seeks exclusion of business records evidence under section 26(b).

#### **VIII. CONCLUSION**

The Bharatiya Sakshya Adhiniyam 2023 preserves and consolidates the business records exception that Indian evidence law has nurtured for over a century. Section 14 26(b) 28 and 29 together provide a coherent and principal framework grounded in the insight that regularity of practice is the stronger of reliability

The BSA most significant contribution is the express recognition of electronically maintained records across business evidence provision. This brings Indian evidentiary law into alignment with the digital of contemporary commerce. The reform are incomplete the relationship between sections 28 and the section 63 requirement unexplored the corroboration proviso has not been modernized to reflect the self authenticating character of certified digital records and the asymmetry between the BBEA simplified certificate region and the general business records framework has not been addressd.

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