

Documentary Evidence under The Bharatiya Sakshya Adhiniyam, 2023

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Abstract: *Documentary evidence plays a very important role in the legal system. With the introduction of the Bharatiya Sakshya Adhiniyam, 2023 (BSA), India has modernized its law of evidence by replacing the old Evidence Act of 1872. This new law gives special importance to digital and electronic records along with traditional documents. Documentary evidence helps courts to decide cases based on written or recorded proof rather than only oral statements. This paper explains the meaning, types, rules, and importance of documentary evidence under BSA 2023 in a simple and clear manner. It also highlights the changes made to include modern technology like emails, digital signatures, and electronic records*

Keywords: Documentary Evidence, BSA 2023, Electronic Records, Primary Evidence, Secondary Evidence, Digital Signature, Proof

1. INTRODUCTION

Evidence is the backbone of every legal case. Without proper evidence, courts cannot give fair judgments. Among different types of evidence, documentary evidence is considered one of the most reliable forms.

The Bharatiya Sakshya Adhiniyam, 2023 replaces the old Indian Evidence Act and introduces modern rules for handling evidence. Today, many transactions happen through digital platforms. Therefore, the law now recognizes both physical and electronic documents.

Documentary evidence includes all written, printed, or recorded materials that can be presented in court to prove facts.

2. MEANING OF DOCUMENTARY EVIDENCE

Documentary evidence means any matter expressed or described upon any substance using letters, figures, or marks.

Examples:

- Written contracts
- Printed books
- Government records
- Emails and messages
- Audio and video recordings

Under BSA 2023, electronic records are also treated as documents.

3. TYPES OF DOCUMENTARY EVIDENCE

3.1 Primary Evidence

Primary evidence means the original document itself.

Examples:

- Original agreement
- Original certificate
- Original sale deed

Primary evidence is considered the best evidence because it shows the exact content.



3.2 Secondary Evidence

Secondary evidence means copies or substitutes of original documents.

Examples:

- Photocopies
- Certified copies
- Digital copies

Secondary evidence is allowed only in certain situations, such as when the original is lost or destroyed.

4. ELECTRONIC RECORDS UNDER BSA 2023

One of the biggest changes in BSA 2023 is the recognition of electronic records.

Electronic records include:

- Emails
- WhatsApp messages
- Digital files
- CCTV footage

These records are now treated as valid evidence if properly verified.

5. ADMISSIBILITY OF DOCUMENTARY EVIDENCE

For a document to be accepted in court, it must be admissible.

Conditions:

- It must be relevant to the case
- It must be genuine
- It must be properly proved

If these conditions are not met, the court may reject the document.

C. PROOF OF DOCUMENTS

Documents must be proved before they are accepted.

Methods:

- By producing the original document
- By witness testimony
- By expert opinion
- By digital verification

7. PUBLIC AND PRIVATE DOCUMENTS

7.1 Public Documents

These are documents prepared by government authorities.

Examples:

- Birth certificates
- Court records
- **सरकारी** records

Public documents are easily accepted as evidence.

7.2 Private Documents

These are documents prepared by individuals.

Examples:

- Agreements

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- Letters
 - Personal records
- They require proper proof before acceptance.

8. DIGITAL SIGNATURE AND AUTHENTICATION

BSA 2023 recognizes digital signatures. Digital signature:

- Confirms identity of the sender
- Ensures document is not altered Authentication is important for electronic evidence.

9. ROLE OF TECHNOLOGY IN DOCUMENTARY EVIDENCE

Technology has changed how evidence is collected and presented.

New developments:

- Online contracts
- Cloud storage
- Video recordings

Courts now depend more on digital evidence.

10. ADVANTAGES OF DOCUMENTARY EVIDENCE

- More reliable than oral evidence
- Provides clear proof
- Easy to store and preserve
- Helps in quick decision-making

11. DISADVANTAGES OF DOCUMENTARY EVIDENCE

- Can be forged or manipulated
- Requires verification
- Digital data may be hacked
- Technical knowledge is needed

12. COMPARISON WITH OLD LAW

The old Evidence Act did not fully cover digital records.

Changes in BSA 2023:

- Electronic records fully recognized
- Digital signatures accepted
- Modern technology included

13. JUDICIAL INTERPRETATION

Courts have played a key role in developing rules for documentary evidence.

They ensure:

- Fair use of evidence
- Protection against misuse
- Proper verification of documents



14. BURDEN OF PROOF

The person who presents a document must prove it. If the document is not proved:

- It will not be accepted
- Case may fail

15. PRESUMPTIONS RELATED TO DOCUMENTS

Courts may presume certain facts about documents.

Examples:

- Official documents are genuine
- Certified copies are accurate

16. CHALLENGES IN DOCUMENTARY EVIDENCE

- Fake documents
- Cybercrime
- Lack of technical skills
- Delay in verification

17. ROLE IN CIVIL AND CRIMINAL CASES

In civil cases:

- Used to prove contracts and rights

In criminal cases:

- Used to prove guilt or innocence

18. Relevancy of Documentary Evidence

Relevancy is the most important condition for admitting documentary evidence in a court of law. A document must have a direct or indirect connection with the facts in issue or relevant facts of the case. If a document does not help the court in understanding or proving any fact, then it is considered irrelevant and cannot be admitted as evidence. Under the Bharatiya Sakshya Adhiniyam, 2023, courts carefully examine whether a document supports or contradicts a claim made by a party. For example, in a contract dispute, the agreement document is highly relevant because it contains the terms and conditions agreed by the parties. On the other hand, unrelated personal documents have no value in such cases. The principle of relevancy ensures that courts only consider useful and meaningful evidence, which helps in avoiding confusion and saving judicial time. Therefore, relevancy acts as a filter to select proper documentary evidence for justice.

19. Execution of Documents

Execution of a document means the proper completion of the document by signing it and fulfilling all legal formalities. A document becomes valid only when it is signed by the parties involved, showing their consent and agreement. In many cases, execution also requires the presence of witnesses who can later testify that the document was signed voluntarily. Under BSA 2023, proving execution is very important because a document without proof of execution cannot be relied upon by the court.

For example, in a sale deed, both the buyer and seller must sign the document, and their signatures must be verified. If any party denies the signature, the court may require evidence such as handwriting analysis or witness testimony. Proper execution ensures authenticity and prevents disputes regarding the validity of documents.



20. Attestation of Documents

Attestation refers to the process where a document is signed by witnesses to confirm that it has been properly executed. It is an important legal requirement for certain documents like wills and gift deeds. The witnesses must see the person signing the document and then sign it themselves in the presence of that person. This process creates additional trust and reliability in the document. Under BSA 2023, attested documents carry greater evidentiary value because they are supported by independent witnesses. If a dispute arises, the witnesses can be called to court to confirm the execution of the document. Without proper attestation, some documents may not be accepted as valid evidence. Therefore, attestation acts as a safeguard against fraud and ensures that the document reflects the true intention of the parties.

21. Registration of Documents

Registration is the process of recording a document with a government authority, making it legally recognized and publicly available. Certain documents, especially those related to immovable property, must be registered under the law.

Registration provides authenticity and prevents fraud by creating an official record of the transaction. Under BSA 2023, registered documents are given higher importance as evidence because they are maintained by public authorities. For example, a registered sale deed is strong proof of ownership in property disputes. If a document is required to be registered but is not registered, it may not be admissible in court. Registration also helps in maintaining transparency and protecting the rights of parties. It is an important step in ensuring the legal validity of documentary evidence.

22. Stamp Duty and Admissibility

Stamp duty is a legal tax imposed on certain documents, and its payment is necessary for the document to be valid and admissible in court. Under BSA 2023, if a document that requires stamp duty is not properly stamped, the court may refuse to admit it as evidence. The purpose of stamp duty is to generate revenue for the government and to ensure that documents are legally recognized. For example, agreements, contracts, and property documents usually require stamp duty. If a document is insufficiently stamped, the court may allow it to be admitted only after paying the required duty along with a penalty. Therefore, proper stamping is essential for the enforceability of documentary evidence and plays a crucial role in legal proceedings.

23. FUTURE OF DOCUMENTARY EVIDENCE

The future will see more digital records.

Possible changes:

- AI-based verification
- Blockchain records
- Fully digital courts

24. CONCLUSION

Documentary evidence is very important in modern law. The Bharatiya Sakshya Adhinyam, 2023 has improved the legal system by including electronic records. It makes the law more suitable for the digital age. However, proper safeguards are necessary to prevent misuse. With proper implementation, documentary evidence will continue to play a key role in delivering justice.

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