

# From Colonial to Digital : A Comparative Analysis of Indian Evidence Act,1872 and Bharatiya Sakshya Adhiniyam, 2023.

**Apsara. R and Mahalingam. V**

B.Com LLB (Hons), SRM School of Law, SRM Deemed to be University, Chennai, Tamil Nadu, India  
Assistant Professor, SRM School of Law, SRM Deemed to be University, Chennai, Tamil Nadu, India

**Abstract:** *The enactment of the Bharatiya Sakshya Adhiniyam (BSA), 2023, marks a significant legislative shift in India's legal landscape, replacing the colonial-era Indian Evidence Act (IEA), 1872, with a framework designed for the modern digital era. This paper provides a comparative analysis of the IEA and the BSA, focusing on structural changes, modernized electronic evidence, evidentiary admissibility, and updated terminology. Key changes include renumbering and consolidating provisions into 12 chapters and 170 sections, explicitly incorporating electronic and digital records-such as emails, server logs, and smartphone data-as primary evidence under Section 57 and Section 63 of the BSA.*

*The study highlights the expansion of the "document" definition to include electronic records, thus simplifying the certification process (formerly Section 65B IEA) while maintaining requirements for authentication. Confessions and admissions now include video-recorded statements, enhancing transparency. Furthermore, the BSA updates archaic terminology, removing colonial references like 'Her Majesty' and replacing them with contemporary language.*

*Witness protection is enhanced through provisions for virtual testimony, aligning with technological advancements.*

*Finally, the paper critically analyses the challenges in implementation, particularly regarding the need for digital infrastructure, training for legal professionals, potential data privacy issues, and the technical requirements for handling electronic evidence in lower courts. The BSA is a progressive step toward a faster, technology-driven justice system, yet its effectiveness depends on robust implementation and judicial interpretation..*

**Keywords:** Bharatiya Sakshya Adhiniyam (BSA) 2023, Indian Evidence Act (IEA) 1872, Digital Evidence, Electronic Records, Admissibility, Judicial Reform

## I. INTRODUCTION

The transition from the Indian Evidence Act, 1872 (IEA) to the Bharatiya Sakshya Adhiniyam, 2023 (BSA) represents a fundamental shift in the Indian legal system, aiming to modernize, digitize, and decolonize the rules governing evidence in courts.

While the IEA was a 150-year-old colonial-era statute primarily focusing on physical and oral evidence, the BSA 2023, which came into effect on July 1, 2024, is designed to align with modern technology and contemporary societal changes. The new law repeals the IEA and its subsequent amendments, consolidating evidence rules into a more concise structure of 170 sections.

### Introduction: The Evolution of Evidence Law

The Indian Evidence Act, 1872 was the foundation of the administration of justice in India, dictating how facts are established and evaluated in courts. As technology evolved, particularly with the growth of electronic communication



and cybercrime, the 1872 Act became fragmented, requiring multiple amendments. The Bharatiya Sakshya Adhiniyam, 2023 was introduced to:

Modernize Evidence:

Specifically incorporate digital and electronic records as primary evidence.

Decolonize the Law:

Remove outdated British-era references, such as "Vakil" or "Barrister," and replace them with contemporary terms.

Simplify Proceedings:

Streamline the process of presenting evidence to ensure fair trials.

Context: The Need for Change

The shift from the IEA to the BSA 2023 is part of a broader overhaul of India's criminal laws, aiming to make them "Indian" in ethos rather than colonial.

Technological Shift (1872 vs 2023):

The IEA 1872 treated electronic records as secondary evidence, leading to procedural complexities in producing paperless evidence. The BSA 2023 recognizes electronic/digital records (emails, server logs, smartphone data) as primary evidence.

Legal "Adhiniyam":

The 2023 Act represents a move towards simplified, accessible law that removes colonial language, gendered terminology, and obsolete references to the British Crown.

Admissibility & Confessions:

The BSA 2023 consolidates earlier fragmented sections regarding confessions into a more comprehensive framework (Section 22 BSA), while retaining the core principle that confessions made to police are generally inadmissible.

Addressing Modern Challenges: The new law includes provisions for modern offenses, cybersecurity breaches, and better management of vulnerable witnesses.

## 2. Structural Changes and Key Differences

While retaining the foundational principles of relevancy and admissibility, the BSA brings significant structural and substantive changes, primarily focusing on digital evidence, updated terminology, and refined legal procedures.

Structural Changes (IEA 1872 vs BSA 2023)

Structure & Volume: The IEA (1872) had 167 sections organized into 11 chapters and 3 parts. The BSA (2023) has been reorganized into 170 sections, 12 chapters, and 4 parts.

Definitions Consolidated:

Interpretation clauses (Definitions) in the IEA (Section 3) were scattered in paragraphs, whereas in the BSA, they are consolidated under Section 2(1) with individual alphabetical clauses, improving clarity.

Modernization of Language:

Archaic terms have been removed. "Barrister," "Vakil," or "pleader" are replaced with "advocate." The phrase "Queen's Printer" or references to UK Acts are removed to reflect an independent India.

Territoriality:

The BSA removes the "whole of India" extent clause (Section 1 of IEA), aiming to facilitate the admissibility of electronic evidence originating outside India.

Key Substantive Differences

1. Electronic and Digital Evidence (Primary Focus)

• Definition of Document:

The BSA expands the definition of "document" to explicitly include electronic and digital records, including server logs, emails, smartphones, laptops, websites, locational evidence, and voice mail messages.

• Electronic Records as Primary Evidence:

Under IEA, electronic records were often treated as secondary evidence (Section 65B). The BSA (Section 57) clarifies that electronic/digital records produced from proper custody are considered primary evidence.



• **Mandatory Certification:**

The BSA (Section 63) simplifies the 65B certificate process into a specific mandatory format in the schedule, requiring a certificate from a "person in charge" and an expert for admissibility.

**2. Confessions and Witness Protection**

• **Coercion Added:**

BSA Section 22 adds "coercion" to the factors (inducement, threat, promise) that make a confession inadmissible in a criminal proceeding.

• **Trial In-Absentia Confession:**

A new explanation to Section 24 of BSA stipulates that if an accused has absconded, the trial of other co-accused will still be considered a "joint trial," making confessions relevant.

**Confessions in Police Custody:**

While keeping confessions to police inadmissible, the BSA retains the exception where a fact is discovered in consequence of information received from the accused.

**3. Expanded Scope of Evidence**

• **Secondary Evidence:**

The BSA (Section 58) broadens the scope of secondary evidence, adding:

(i) oral and written admissions, and

(ii) The testimony of an expert who has examined complex accounts or documents.

• **Witness Examination:**

The BSA permits witnesses, victims, and accused persons to testify electronically, bringing in line with the Bharatiya Nagarik Suraksha Sanhita (BNSS).

**4. Omissions and Deletions from IEA**

Several outdated sections have been removed:

• Section 3(j): Interpretation of "India."

• Section 82: Presumption as to document admissible in England.

• Section 88: Presumption as to telegraphic messages.

• Section 113: Proof of cession of territory.

• Section 166: Power of jury or assessors to put questions.

The BSA aims to bridge the gap between 19th-century law and 21st-century technology, placing a strong emphasis on digital forensics and the authenticity of electronic records.

**3. Modernization of Electronic and Digital Evidence**

While the IEA was designed for physical documents, the BSA 2023 explicitly integrates digital realities-such as emails, server logs, smartphones, and cloud data-into the primary legal framework.

**Key Aspects of Modernisation between IEA 1872 and BSA 2023:**

• **Definition of Document (Expansion):**

The BSA expands the definition of "document" to specifically include electronic and digital records, such as emails, server logs, smartphone messages, and locations.

• **Admissibility of Digital Records:**

Section 61 of the BSA provides that electronic or digital records are admissible, and their admissibility cannot be denied solely on the grounds that they are electronic.



- **Primary Evidence Status:**

Under BSA Section 57, electronic records produced from proper custody are considered primary evidence. This differs from the IEA, where electronic records were often treated as secondary evidence, requiring complex certification under Section 65B.

- **Streamlined Certification (Section 63 vs 65B):**

The "infamous" Section 65B of the IEA, which required a certificate, has been replaced by Section 63 of the BSA. The new Section 63 streamlines the requirements for a certificate for admissibility, removing previous ambiguities.

- **Certification Requirements:**

The BSA adds a layer of accountability, requiring the certificate for electronic records to be signed by both the person in charge of the computer device and an expert.

- **Oral Evidence electronically:**

The definition of evidence under BSA includes statements made electronically by witnesses, enabling the use of video conferencing and other digital means during trials.

- **Secondary Evidence:**

The BSA clarifies and expands the scope of secondary evidence to include oral and written admissions, as well as testimony from skilled individuals who examined the original document.

#### 4. Admissibility of Evidence : Key Revisions

While retaining fundamental principles of the IEA, the BSA introduces critical revisions regarding the admissibility of electronic evidence, primary/secondary evidence classification, and modernizes archaic terminology.

##### 1. Re-definition of "Document" and "Evidence"

- **IEA 1872 (Section 3):**

Defined documents primarily as writing, maps, and caricatures.

- **BSA 2023 (Section 2(1)(d)):**

Significantly expands the definition of "document" to specifically include electronic and digital records, such as emails, server logs, server documents, messages, websites, location information, and voice mails stored on digital devices.

- **BSA 2023 (Section 2(1)(e)) :**

Expands the definition of "evidence" to include statements given electronically (e.g., via video conferencing) as oral evidence.

##### 2. Admissibility of Electronic Evidence (Primary vs. Secondary)

- **IEA 1872 (Section 65B):**

Electronic records were generally treated as secondary evidence, requiring a strict, often misunderstood certificate for admissibility.

- **BSA 2023 (Section 61-63):**

Brings electronic/digital records at par with traditional documents.

- **Key Shift:**

If an electronic record is produced from "proper custody," it is deemed primary evidence (Section 57), unless disputed.

- **Simplified Certification:**

While certification is still mandatory for admissibility under Section 63, the BSA provides a structured, standardized certificate format to be signed by both the user/person in charge and an expert, ensuring higher reliability.

##### 3. Expanded Scope of Secondary Evidence

- **BSA 2023 (Section 58):**

Expands the list of secondary evidence to include oral and written admissions, and the testimony of a person skilled in examining documents, particularly when the original consists of numerous accounts.



#### 4. Coercion Added to Confessions

- IEA 1872 (Section 24):

Confessions caused by "inducement, threat or promise" were irrelevant.

- BSA 2023 (Section 22):

Adds "coercion" as a new ground. Confessions obtained through inducement, threat, coercion, or promise are deemed inadmissible.

#### 5. Joint Trials and "Trial in Absentia"

- IEA 1872 (Section 30):

Addressed confession of a co-accused in joint trials.

- BSA 2023 (Section 24):

Adds an explanation clarifying that if an accused has absconded or failed to appear, the trial of the remaining persons is still deemed a "joint trial" for the purpose of using their confession.

#### 6. Changes in Presumptions (Admissibility)

- BSA 2023 (Section 80):

Specifically defines "proper custody" for electronic records, clarifying that no custody is improper if it has a legitimate origin.

- Omissions:

The BSA removes outdated provisions, such as presumption as to documents admissible in England (IEA Section 82) and telegraphic messages (IEA Section 88).

#### 7. Modernization of Terminology and Inclusivity

- Language:

Archaic terms like "barrister," "vakil," or "pleader" are replaced with "advocate".

- Gender:

The Act moves towards gender-neutral language.

#### 5. Confessions and Admissions

##### 1. Admissions (Section 15-21 BSA vs. Sections 17-23 IEA)

The BSA retains the basic definition of admission as a voluntary statement (oral, documentary, or electronic) suggesting an inference to a fact in issue or relevant fact.

- Definition & Electronic Records:

Section 15 of the BSA defines admission, explicitly including statements made in electronic form. The definition of 'document' (Sec 2(1)(d) BSA) has been expanded to include all electronic and digital records, such as server logs, emails, and smartphone records.

- Admissibility:

Admissions can be oral, documentary, or electronic. They are generally not conclusive proof of the matters admitted but may act as estoppel.

- Admissions by Conduct:

Similar to the IEA, admissions can be implied by conduct, such as in "res gestae" situations, which are now under Section 4 of the BSA.

##### 2. Confessions (Section 22-24 BSA vs. Sections 24-30 IEA)

Confessions are admissions of guilt by a person accused of a crime.

- Definition of Confession:



The BSA does not formally define "confession" but continues to rely on judicial precedents (like Pakala Narayana Swami) where it must be a direct admission of guilt.

- Inclusion of "Coercion" (Section 22 BSA):

A major change is the explicit inclusion of "coercion" along with inducement, threat, or promise as a ground to make a confession irrelevant in criminal proceedings.

- Voluntariness (Section 22 BSA):

The BSA clarifies that a confession made after the removal of the impression of inducement/threat is relevant, similar to IEA's Section 28.

- Confessions under Deception (Section 22 BSA):

Similar to Section 29 IEA, confessions made under a promise of secrecy, after deception, when drunk, or without a warning do not become irrelevant solely for these reasons.

### 3. Confession to Police (Section 23 BSA vs. Sections 25-27 IEA)

- General Rule:

Confessions made to a police officer remain inadmissible.

- Custodial Confession (Section 23 BSA):

Confessions made in police custody are inadmissible unless made in the immediate presence of a Magistrate.

- Discovery Exception (Section 23 BSA):

The "discovery of fact" clause (previously Sec 27 IEA) is retained. Information received from an accused in custody, leading to the discovery of a fact, is admissible.

### 4. Confession of Co-accused (Section 24 BSA vs. Section 30 IEA)

- Joint Trial:

When multiple people are tried together for the same offense, a confession made by one affecting others can be considered.

- Explanation II (Trial in Absentia):

The BSA adds an explanation allowing for a joint trial even if one accused has absconded, provided a proclamation has been issued under the Bharatiya Nagarik Suraksha Sanhita, 2023.

### 6. Witness Protection and Expert Testimony

#### 1. Witness Protection and Examination (BSA 2023 vs. IEA 1872)

The BSA enhances protections for witnesses, particularly in sensitive cases, by allowing virtual testimony and stricter control over examination, aligning with modern witness safety standards that were absent in the 1872 Act.

- Virtual Testimony (Section 2(e), BSA):

The BSA explicitly includes "statements given electronically" as oral evidence, enabling testimony through audio-video electronic means (e.g., video conferencing) for witnesses, victims, and accused persons, which is in line with the Bharatiya Nagarik Suraksha Sanhita (BNSS).

- Protection of Vulnerable Witnesses (Section 125, BSA):

Witnesses unable to communicate verbally (e.g., due to speech impairment) can testify through writing, signs, or gestures in open court, with the proceeding recorded via video to ensure authenticity.

- Confidentiality of Identity:

The BSA provides stronger legal protections and potential anonymity for witnesses, specifically in cases involving terrorism, organized crime, or sexual offenses.

- Hostile Witness Examination (Section 157, BSA - Formerly 154, IEA):

The BSA strengthens the process for cross-examining one's own witness if they turn hostile, allowing the court to permit such examinations to ensure truthfulness.

- Protection Against Aggressive Examination (Sections 151, 152, BSA):



The BSA protects witnesses from overly aggressive or offensive cross-examination by prohibiting questions that injure their character without reasonable grounds, requiring the court's intervention.

## 2. Expert Testimony (BSA 2023 vs. IEA 1872)

The BSA expands the scope of "expert opinion" to include new fields, particularly in digital and forensic science, making it more applicable to contemporary technology-driven crimes.

- Broadened Scope of Expert Opinion (Section 39, BSA -Formerly 45, IEA):

While the IEA limited expert opinion to foreign law, science, art, handwriting, or finger impressions, the BSA expands this to include opinions on any other field requiring specialized skills, such as cyber forensics, voice analysis, and DNA profiling.

- Expert Evidence of Digital Records (Section 63, BSA):

The BSA introduces stricter requirements for certifying electronic records, requiring an expert to validate the authenticity of digital evidence.

- Digital Forensic Experts:

The BSA acknowledges digital forensic examiners, putting them on par with handwriting or fingerprint experts, which assists courts in handling electronic data (emails, server logs, smartphone data).

- Admissibility of Expert Certification:

Electronic records, when produced with a certificate in the prescribed format signed by the person in charge and an expert, are recognized as primary evidence, enhancing the reliability of expert input.

## 7. Omissions and Updated Technology

The BSA repeals 5 sections and modifies 23 sections to remove colonial-era language and adapt to modern technology.

### Key Omissions (Sections Deleted in BSA 2023)

Several sections deemed obsolete, colonial-era, or redundant have been omitted:

- Definition of "India":

Omitted Section 3(j), as the Act is now intended for an independent, modern India.

- Presumption as to Documents in England:

Omitted Section 82 (Presumption as to document admissible in England without proof of seal or signature).

- Telegraphic Messages:

Omitted Section 88 (Presumption as to telegraphic messages), which is irrelevant in the age of digital communication.

- Cession of Territory:

Omitted Section 113 (Proof of cession of territory).

- Jury and Assessors:

Omitted Section 166 (Power of jury or assessors to put questions).

- "Previous or Subsequent Conduct":

The BSA removed specific phrasing regarding previous or subsequent conduct in Section 6 (formerly Sec 8 of IEA).

### Updated and Modernized Terminology

The BSA removes archaic colonial terminology and adopts gender-neutral and modern legal language:

- Legal Professionals:

Archaic terms like "Vakil", "Barrister", or "Pleader" have been replaced with the modern term "Advocate".

- Unsound Mind:

The term "Lunatic" has been replaced with "Person of unsound mind".

- Gender Neutrality:

Outdated gendered language, such as "man" in illustrations, has been replaced with gender-neutral terms like "person".



• Colonial References:

References to "Her Majesty's Dominions" or "Crown" have been replaced with "India" or "country beyond India" (e.g., Section 88 of BSA replaces Sec 86 of IEA).

• Terminology for Documents:

The definition of "Document" in Section 2(d) of BSA has been widened to specifically include "electronic and digital records" (emails, server logs, smartphone messages, etc.).

8. Critical Analysis and Challenges to Implementation

While the core principles of evidence remain similar, the shift from a British-colonial framework to a "digitally first" approach introduces significant analytical differences and practical implementation challenges.

Critical Analysis: IEA 1872 vs. BSA 2023

The transition represents an evolution from paper-based, colonial-era rules to a technology-integrated system.

Digital Evidence as Primary:

A critical change is that electronic records, previously treated as secondary evidence under Section 65B of the IEA (requiring strict certification), are now recognized as primary evidence. This removes the rigid procedural hurdles for admitting emails, WhatsApp messages, and server logs.

Expansion of "Document" and "Evidence":

The BSA expands definitions to include digital records, server logs, smartphone evidence, and video recordings, covering almost all modern storage media. The definition of evidence now formally includes statements given electronically by witnesses, which helps in virtual testimony.

Colonial Removal & Simplification:

The BSA removes obsolete references to the British Crown, London Gazette, and "Her Majesty's Dominions". It also updates outdated terminology, such as replacing "lunatic" with "person of unsound mind".

Confessions and Coercion:

While retaining that confessions to police are generally inadmissible, the BSA adds "coercion" as a factor rendering a confession irrelevant. This attempts to strengthen protection against custodial violence.

Continuity of Core Principles:

Despite the rebranding, most rules on relevancy, burden of proof, expert opinion, and hearsay remain consistent with the IEA.

Shoddy Drafting Critiques:

Legal analyses suggest that some changes are simply renumbered provisions rather than substantive reform, and some, including the Parliamentary Standing Committee's intervention, left drafting errors unresolved.

Challenges in Implementation of BSA 2023

The successful implementation of the BSA hinges on technological infrastructure and training, posing immediate logistical hurdles.



### 1. Technical and Infrastructural Gaps

- Forensic Facilities:

The BSA relies heavily on electronic records. However, law enforcement agencies lack sufficient forensic labs to analyze digital evidence and generate certificates under the new guidelines.

- Rural Digital Divide:

The newlaw assumes high-speed internet and advanced digital capability across all courts and police stations, which is not available in many rural areas, leading to potential regional disparities in justice delivery.

- Virtual Testimony Logistics:

While the Act permits remote testimony, many courts lack secure video conferencing, high-quality AV equipment, and the necessary cybersecurity measures to prevent tampering of electronic evidence during transmission.

### 2. Procedural Ambiguity and Training

- Who is the "Expert"?

The BSA requires a certificate for electronic evidence from a "responsible person," but is silent on the specific eligibility or qualification of such experts, which may lead to legal challenges.

- Inconsistency in Re-numbering:

The restructuring and re-numbering of 170 sections (as opposed to the 167 in IEA) will take time for judges, lawyers, and police to familiarize themselves with, potentially slowing down proceedings initially.

- Training Needs:

Massive training initiatives are required for the entire legal fraternity to adapt to the new legal language and electronic protocols.

### 3. Data Privacy and Security Risks

- Admissibility vs. Privacy:

While making digital evidence easier to admit, the BSA raises concerns regarding the breach of individual privacy, especially regarding the broad scope of digital forensics, without explicit data protection safeguards within the act.

- Manipulation Risks:

The over-reliance on digital records, which are susceptible to tampering, requires rigorous authentication methods that the current infrastructure may struggle to enforce.

### 4. Pendency and Transition Cases Pending under IEA:

- A major challenge is managing trials that started under the IEA (Section 65B) but continue under the BSA. Clarification on how to handle defective 65B certificates now that the BSA is in force remains a point of concern.

### 9. Conclusion

The transition from the Indian Evidence Act (IEA), 1872, to the Bharatiya Sakshya Adhiniyam (BSA), 2023, marks a significant, "decolonial" shift in India's evidentiary framework, moving from a 19th-century colonial statute to a contemporary law aimed at digital-era justice. While retaining the foundational principles of relevancy and admissibility, the BSA brings crucial structural changes by simplifying 23 sections, repealing five, and adding one, resulting in a more concise and logical, 170-section document.

The most impactful change is the modernization of electronic and digital evidence, shifting from the rigid Section 65B requirements of the IEA to treating digital records as primary evidence under Section 63 of the BSA. The BSA explicitly recognizes server logs, WhatsApp messages, and cloud-stored data, updating terminology to enhance the admissibility of evidence in technological cases. In terms of confessions and admissions, the BSA consolidates scattered provisions and broadens protection for the accused by explicitly recognizing coercion as a ground for inadmissibility.



Furthermore, the Act introduces enhanced witness protection measures and streamlines expert testimony. The omissions and updated terminology-such as replacing "lunatic" with "person of unsound mind"-reflect a more modern and gender-neutral legal approach.

However, the critical analysis and challenges in implementation lie in the potential for tampering with electronic data and the practical gaps in having trained "experts" to issue the mandatory certification for digital evidence. While the BSA is a progressive step toward a "victim-centric" and "technology-enabled" judiciary, its success depends heavily on developing forensic infrastructure and judicial training to handle the newly broadened evidentiary scope.

The Bharatiya Sakshya Adhiniyam is not merely a renaming but a functional restructuring aimed at adapting to contemporary technological and societal needs. Its success, however, requires bridging the technological gap in investigation and ensuring that the ease of digital admissibility does not compromise data integrity.

#### REFERENCES

- [1]. Vaish Associates Advocates, Bharatiya Sakshya Adhinyam, 2023 (BSA) Vs. Indian Evidence Act of 1872, 2024.
- [2]. LegalBlur, Comparative Analysis: Bhartiya Sakshya Adhinyam vs The Indian Evidence Act 1872, 2025.
- [3]. LexisNexis, Decoding Bharatiya Sakshya Adhinyam, 2023 -Comparative Insights, 2025.
- [4]. Mondaq, Bhartiya Sakshya Adhinyam, 2023 - A Dynamic Shift To The Digital Era, 2024.
- [5]. PRS Legislative Research, The Bharatiya Sakshya Bill, 2023, 2023.

