

# Bharatiya Sakshya Adhiniyam 2023

Presented by

Aditya Chavan & Siddhantrao Molankar

# Introduction

- 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. Compared to the Indian Evidence Act, BSA is simplified, clearer, and visibly addresses challenges like cybercrime and vulnerable groups. The Bharatiya Sakshya Adhinyam is simplified, streamlined, and modernized version of evidence rules, which came into existence 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.

# Changes in Bhartiye saksh Adhinyam

- The BSA consists of 170 Sections in 12 Chapters while IEA consists of 167 Sections in 11 Chapters
- 5 new sections have been added in the BSA
- 23 Section had been modified.
- 1 Sections have been deleted

# Changes Made

SECTION	HEADING Bhartiya Saksh Adhinyam(BSA)	SECTION	HEADING Indian Evidence Act
1	Short title, application and commencement	1	Short title, extent and commencement
2(1)(d)	"document"	3, para 5	"document"
2(1)(e)	"evidence"	3, para 6	Evidence
2(1)(f)	Fact	3, para 2	Fact
2(2)	Words and Expression(New)		
4	Relevancy of facts forming part of same transaction.	6	Relevancy of facts forming part of same transaction.

SECTION	HEADING Bhartiya Saksh Adhinyam(BSA)	SECTION	HEADING Indian Evidence Act
22	Confession caused by inducement, threat, coercion or promise, when irrelevant in criminal proceeding.	24	Confession caused by inducement, threat or promise, when irrelevant in criminal proceeding
24	Consideration of proved confession affecting person making it and others jointly under trial for same offence.	30	Consideration of proved confession affecting person making it and others jointly under trial for same offence.
35	Relevancy of certain judgments in probate, etc., jurisdiction.	41	Relevancy of certain judgments in probate, etc., jurisdiction
39	Opinions of experts	45 and 45A	Opinions of experts
57	Primary Evidence	62	Primary evidence
58	Secondary Evidence	63	Secondary evidence

SECTION	HEADING Bhartiya Saksh Adhinyam(BSA)	SECTION	HEADING Indian Evidence Act
61	Electronic or Digital Record	New	
74(1)	Public and Private Documents	74	Public Documents
74(2)	Public and Private Documents	75	Private Documents
77	Proof of other official documents	78	Proof of other official documents
80	Presumption as to gazettes, news paper and other documents	81	Presumption as to gazettes, news paper, <b>private act of parliament</b> and other documents
122	Estople of tenant and of licensee of person in possession	116	Estople of tenant and of licensee of person in possession

SECTION	HEADING Bhartiya Saksh Adhinyam(BSA)	SECTION	HEADING Indian Evidence Act
124	Who may testify	118	Whom may testify
138	Accomplice	133	Accomplice
165	Production of documents	162	Production of documents

1. Short title. —This Act may be called the Indian Evidence Act, 1872.

❖ **Extent.**—It extends to the whole of India 2[ 3\*\*\*] and applies to all judicial proceedings in or before any Court, including Courts-martial, 4[other than Courts-martial convened under the Army Act (44 & 45 Vict., c. 58)] 5[the Naval Discipline Act [29 & 30 Vict., 109]; or 6\*\*\* the Indian Navy (Discipline) Act, 1934 (34 of 1934),] 7[or the Air Force Act (7 Geo. 5, c. 51)] but not to affidavits<sup>8</sup> presented to any Court or officer, nor to proceedings before an arbitrator;

- **BSA**

- 1. Short title, **application** and commencement
- (1) This Act may be called the Bharatiya Sakshya Adhinyam, 2023.
- (2) It applies to all judicial proceedings in or before any Court, including Courts-martial, but not to affidavits presented to any Court or officer, nor to proceedings before an arbitrator.
- (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.



- **India Evidence Act 1872**

- **“Document”**. —“Document” means any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter. Illustrations A writing<sup>3</sup> is a document; <sup>3</sup>Words printed lithographed or photographed are documents; A map or plan is a document; An inscription on a metal plate or stone is a document; A caricature is a document.

- **BSA**

- (d) "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.

- **Illustrations.**

(i) A writing is a document.

(ii) Words printed, lithographed or photographed are documents.

(iii) A map or plan is a document.

(iv) An inscription on a metal plate or stone is a document.

(v) A caricature is a document.

(vi) **An electronic record on emails, server logs, documents on computers, laptop or smartphone, messages, websites, locational evidence and voice mail messages stored on digital devices are documents;**

- **India Evidence Act 1872**

- **“Evidence”.** —“Evidence” means and includes —
- (1) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry; such statements are called oral evidence;
- (2) 4[all documents including electronic records produced for the inspection of the Court;] such documents are called documentary evidence.

- **BSA**

- (e) "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;

- **India Evidence Act 1872**

- **“Fact”**.—“Fact” means and includes—
- (1) anything, state of things, or relation of things, capable of being perceived by the senses;
- (2) any mental condition of which any person is conscious.
- Illustrations
- (a) That there are certain objects arranged in a certain order in a certain place, is a fact.
- (b) That a man heard or saw something, is a fact.
- (c) That a man said certain words, is a fact.
- (d) That a **man** holds a certain opinion, has a certain intention, acts in good faith or fraudulently, or uses a particular word in a particular sense, or is or was at a specified time conscious of a particular sensation, is a fact.
- (e) That a man has a certain reputation, is a fact.

- **BSA**

- (f) "fact" means and includes—
  - (i) any thing, state of things, or relation of things, capable of being perceived by the senses;
  - (ii) any mental condition of which any person is conscious.
- Illustrations.
  - (i) That there are certain objects arranged in a certain order in a certain place, is a fact.
  - (ii) That a person heard or saw something, is a fact.
  - (iii) That a person said certain words, is a fact.
  - (iv) That a **person** holds a certain opinion, has a certain intention, acts in good faith, or fraudulently, or uses a particular word in a particular sense, or is or was at a specified time conscious of a particular sensation, is a fact;

- **BSA**

- 2(2) Words and expressions used herein and not defined but defined in the Information Technology Act, 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

- **6. Relevancy of facts forming part of same transaction.**—Facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction, are relevant, whether they occurred at the same time and place or at different times and places.
- Illustrations
  - (a) A is accused of the murder of B by beating him. Whatever was said or done by A or B or the bystanders at the beating, or so shortly before or after it as to form part of the transaction, is a relevant fact.
  - (b) A is accused of waging war against the 1[Government of India] by taking part in an armed insurrection in which property is destroyed, troops are attacked and gaols are broken open. The occurrence of these facts is relevant, as forming part of the general transaction, though A may not have been present at all of them.
  - (c) A sues B for a libel contained in a letter forming part of a correspondence. Letters between the parties relating to the subject out of which the libel arose, and forming part of the correspondence in which it is contained, are relevant facts, though they do not contain the libel itself.
  - (d) The question is, whether certain goods ordered from B were delivered to A. The goods were delivered to several intermediate persons successively. Each delivery is a relevant fact.

- BSA

- **4. Relevancy of facts forming part of same transaction** Facts which, though not in issue, are so connected with a fact in issue **or a relevant** fact as to form part of the same transaction, are relevant, whether they occurred at the same time and place or at different times and places.
- Illustrations.
  - (a) A is accused of the murder of B by beating him. Whatever was said or done by A or B or the bystanders at the beating, or so shortly before or after it as to form part of the transaction, is a relevant fact.
  - (b) A is accused of waging war against the Government of India by taking part in an armed insurrection in which property is destroyed, troops are attacked and jails are broken open. The occurrence of these facts is relevant, as forming part of the general transaction, though A may not have been present at all of them.
  - (c) A sues B for a libel contained in a letter forming part of a correspondence. Letters between the parties relating to the subject out of which the libel arose, and forming part of the correspondence in which it is contained, are relevant facts, though they do not contain the libel itself.
  - (d) The question is, whether certain goods ordered from B were delivered to A. The goods were delivered to several intermediate persons successively. Each delivery is a relevant fact

- **India Evidence Act 1872**

- **24. Confession caused by inducement, threat or promise, when irrelevant in criminal proceeding.**—  
 –A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the Court to have been caused by any inducement, threat or promise having reference to the charge against the accused person, proceeding from a person in authority and sufficient, in the opinion of the Court, to give the accused person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.
- **28. Confession made after removal of impression caused by inducement, threat or promise, relevant.**—If such a confession as is referred to in section 24 is made after the impression caused by any such inducement, threat or promise has, in the opinion of the Court, been fully removed, it is relevant.
- **29. Confession otherwise relevant not to become irrelevant because of promise of secrecy, etc.**—  
 –If such a confession is otherwise relevant, it does not become irrelevant merely because it was made under a promise of secrecy, or in consequence of a deception practiced on the accused person for the purpose of obtaining it, or when he was drunk, or because it was made in answer to questions which he need not have answered, whatever may have been the form of those questions, or because he was not warned that he was not bound to make such confession, and that evidence of it might be given against him.

- BSA

- **22. Confession caused by inducement, threat, coercion or promise, when irrelevant in criminal proceeding-** A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the Court to have been caused by any inducement, threat, coercion or promise having reference to the charge against the accused person, proceeding from a person in authority and sufficient, in the opinion of the Court, to give the accused person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him:
  - Provided that if the confession is made after the impression caused by any such inducement, threat, coercion or promise has, in the opinion of the Court, been fully removed, it is relevant:
  - Provided further that if such a confession is otherwise relevant, it does not become irrelevant merely because it was made under a promise of secrecy, or in consequence of a deception practised on the accused person for the purpose of obtaining it, or when he was drunk, or because it was made in answer to questions which he need not have answered, whatever may have been the form of those questions, or because he was not warned that he was not bound to make such confession, and that evidence of it might be given against him



- **India Evidence Act 1872**

- **30. Consideration of proved confession affecting person making it and others jointly under trial for same offence.**—When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other person as well as against the person who makes such confession.
- [Explanation.—“Offence,” as used in this section, includes the abetment of, or attempt to commit, the offence.]

- **BSA**

- **24. Consideration of proved confession affecting person making it and others jointly under trial for same offence-** When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other person as well as against the person who makes such confession.
- Explanation I.—“Offence”, as used in this section, includes the abetment of, or attempt to commit, the offence.
- 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 84 of the Bharatiya Nagarik Suraksha Sanhita, 2023 shall be deemed to be a joint trial for the purpose of this section.
- Illustrations.
- (a) A and B are jointly tried for the murder of C. It is proved that A said—“B and I murdered C”. The Court may consider the effect of this confession as against B.
- (b) A is on his trial for the murder of C. There is evidence to show that C was murdered by A and B, and that B said—“A and I murdered C”. This statement may not be taken into consideration by the Court against A, as B is not being jointly tried.

- **India Evidence Act 1872**

- **41. Relevancy of certain judgments in probate, etc., jurisdiction.**—A final judgment, order or decree of a competent Court, in the exercise of probate, matrimonial, admiralty or insolvency jurisdiction, which confers upon or takes away from any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing, not as against any specified person but absolutely, is relevant when the existence of any such legal character, or the title of any such person to any such thing, is relevant.
- Such judgment, order or decree is conclusive proof —
- that any legal character which it confers accrued at the time when such judgment, order or decree came into operation;
- that any legal character, to which it declares any such person to be entitled, accrued to that person at the time when such judgment 1[order or decree] declares it to have accrued to that person;
- that any legal character which it takes away from any such person ceased at the time from which such judgment, 1[order or decree] declared that it had ceased or should cease; and
- that anything to which it declares any person to be so entitled was the property of that person at the time from which such judgment, 1[order or decree] declares that it had been or should be his property.

- BSA

- **35. Relevancy of certain judgments in probate, etc., jurisdiction.**- (1) A final judgment, order or decree of a competent Court or Tribunal, in the exercise of probate, matrimonial, admiralty or insolvency jurisdiction, which confers upon or takes away from any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing, not as against any specified person but absolutely, is relevant when the existence of any such legal character, or the title of any such person to any such thing, is relevant.
- (2) Such judgment, order or decree is conclusive proof that—
  - (i) any legal character, which it confers accrued at the time when such judgment, order or decree came into operation;
  - (ii) any legal character, to which it declares any such person to be entitled, accrued to that person at the time when such judgment, order or decree declares it to have accrued to that person;
  - (iii) any legal character which it takes away from any such person ceased at the time from which such judgment, order or decree declared that it had ceased or should cease; and
  - (iv) anything to which it declares any person to be so entitled was the property of that person at the time from which such judgment, order or decree declares that it had been or should be his property.

- **India Evidence Act 1872**

- **45. Opinions of experts.**—When the Court has to form an opinion upon a point of foreign law or of science, or art, or as to identity of handwriting 2[or finger impressions], the opinions upon that point of persons specially skilled in such foreign law, science or art, 3[or in questions as to identity of handwriting] 2[or finger impressions] are relevant facts.
- Such persons are called experts.
- Illustrations
  - (a) The question is, whether the death of A was caused by poison. The opinions of experts as to the symptoms produced by the poison by which A is supposed to have died, are relevant.
  - (b) The question is, whether A, at the time of doing a certain act, was, by reason of unsoundness of mind, incapable of knowing the nature of the act, or that he was doing what was either wrong or contrary to law.
    - The opinions of experts upon the question whether the symptoms exhibited by A commonly show unsoundness of mind, and whether such unsoundness of mind usually renders persons incapable of knowing the nature of the acts which they do, or of knowing that what they do is either wrong or contrary to law, are relevant.
  - (a) The question is, whether a certain document was written by A. Another document is produced which is proved or admitted to have been written by A.
    - The opinions of experts on the question whether the two documents were written by the same person or by different persons, are relevant.
- **[45A. Opinion of Examiner of Electronic Evidence.** —When in a proceeding, the court has to form an opinion on any matter relating to any information transmitted or stored in any computer resource or any other electronic or digital form, the opinion of the Examiner of Electronic Evidence referred to in section 79A of the Information Technology Act, 2000 (21 of 2000), is a relevant fact.
- Explanation.—For the purposes of this section, an Examiner of Electronic Evidence shall be an expert.]

- BSA

- **39. Opinions of experts.** (1) When the Court has to form an opinion upon a point of foreign law or of science or art, or any other field, or as to identity of handwriting or finger impressions, the opinions upon that point of persons specially skilled in such foreign law, science or art, or any other field, or in questions as to identity of handwriting or finger impressions are relevant facts and such persons are called experts.
- Illustrations.
  - (a) The question is, whether the death of A was caused by poison. The opinions of experts as to the symptoms produced by the poison by which A is supposed to have died, are relevant.
  - (b) The question is, whether A, at the time of doing a certain act, was, by reason of unsoundness of mind, incapable of knowing the nature of the act, or that he was doing what was either wrong or contrary to law. The opinions of experts upon the question whether the symptoms exhibited by A commonly show unsoundness of mind, and whether such unsoundness of mind usually renders persons incapable of knowing the nature of the acts which they do, or of knowing that what they do is either wrong or contrary to law, are relevant.
  - (c) The question is, whether a certain document was written by A. Another document is produced which is proved or admitted to have been written by A. The opinions of experts on the question whether the two documents were written by the same person or by different persons, are relevant.
- 39(2) When in a proceeding, the court has to form an opinion on any matter relating to any information transmitted or stored in any computer resource or any other electronic or digital form, the opinion of the Examiner of Electronic Evidence referred to in section 79A of the Information Technology Act, 2000, is a relevant fact.
- Explanation.—For the purposes of this sub-section, an Examiner of Electronic Evidence shall be an expert.

- **India Evidence Act 1872**

- **62. Primary evidence.** — Primary evidence means the document itself produced for the inspection of the Court.
- **Explanation 1.** —Where a document is executed in several parts, each part is primary evidence of the document.
- Where a document is executed in counterpart, each counterpart being executed by one or some of the parties only, each counterpart is primary evidence as against the parties executing it.
- **Explanation 2.** — Where a number of documents are all made by one uniform process, as in the case of printing, lithography or photography, each is primary evidence of the contents of the rest; but, where they are all copies of a common original, they are not primary evidence of the contents of the original.
- A person is shown to have been in possession of a number of placards, all printed at one time from one original. Any one of the placards is primary evidence of the contents of any other, but no one of them is primary evidence of the contents of the original.

- BSA

- **57. Primary evidence** means the document itself produced for the inspection of the Court.
- Explanation 1.—Where a document is executed in several parts, each part is primary evidence of the document.
- Explanation 2.—Where a document is executed in counterpart, each counterpart being executed by one or some of the parties only, each counterpart is primary evidence as against the parties executing it.
- Explanation 3.—Where a number of documents are all made by one uniform process, as in the case of printing, lithography or photography, each is primary evidence of the contents of the rest; but, where they are all copies of a common original, they are not primary evidence of the contents of the original.
- Explanation 4.—Where an electronic or digital record is created or stored, and such storage occurs simultaneously or sequentially in multiple files, each such file is primary evidence.
- Explanation 5.—Where an electronic or digital record is produced from proper custody, such electronic and digital record is primary evidence unless it is disputed.
- Explanation 6.—Where a video recording is simultaneously stored in electronic form and transmitted or broadcast or transferred to another, each of the stored recordings is primary evidence.
- Explanation 7.—Where an electronic or digital record is stored in multiple storage spaces in a computer resource, each such automated storage, including temporary files, is primary evidence.

- **India Evidence Act 1872**

- **63. Secondary evidence.** — Secondary evidence means and includes —
  - (1) certified copies given under the provisions hereinafter contained;
  - (2) copies made from the original by mechanical processes which in themselves insure the accuracy of the copy, and copies compared with such copies;
  - (3) copies made from or compared with the original;
  - (4) counterparts of documents as against the parties who did not execute them;
  - (5) oral accounts of the contents of a document given by some person who has himself seen it.
- Illustrations
  - (a) A photograph of an original is secondary evidence of its contents, though the two have not been compared, if it is proved that the thing photographed was the original.
  - (b) A copy compared with a copy of a letter made by a copying machine is secondary evidence of the contents of the letter, if it is shown that the copy made by the copying machine was made from the original.
  - (c) A copy transcribed from a copy, but afterwards compared with the original, is secondary evidence; but the copy not so compared is not secondary evidence of the original, although the copy from which it was transcribed was compared with the original.



• BSA

- **58. Secondary evidence includes**— (i) certified copies given under the provisions hereinafter contained;
- (ii) copies made from the original by mechanical processes which in themselves ensure the accuracy of the copy, and copies compared with such copies;
- (iii) copies made from or compared with the original;
- (iv) counterparts of documents as against the parties who did not execute them;
- (v) oral accounts of the contents of a document given by some person who has himself seen it;
- (vi) oral admissions;
- (vii) written admissions;
- (viii) evidence of a person who has examined a document, the original of which consists of numerous accounts or other documents which cannot conveniently be examined in Court, and who is skilled in the examination of such documents.
- Illustrations. (a) A photograph of an original is secondary evidence of its contents, though the two have not been compared, if it is proved that the thing photographed was the original.
- (b) A copy compared with a copy of a letter made by a copying machine is secondary evidence of the contents of the letter, if it is shown that the copy made by the copying machine was made from the original.
- (c) A copy transcribed from a copy, but afterwards compared with the original, is secondary evidence; but the copy not so compared is not secondary evidence of the original, although the copy from which it was transcribed was compared with the original.

- **BSA**

- **61. Electronic or digital record-** Nothing in this Adhinyam shall apply to deny the admissibility of an electronic or digital record in the evidence on the ground that it is an electronic or digital record and such record shall, subject to section 63, have the same legal effect, validity and enforceability as other document.

- **India Evidence Act 1872**

- **65B. Admissibility of electronic records.** — (1) Notwithstanding anything contained in this Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer (hereinafter referred to as the computer output) shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence or any contents of the original or of any fact stated therein of which direct evidence would be admissible.
- (2) The conditions referred to in sub-section (1) in respect of a computer output shall be the following, namely: —
  - (a) the computer output containing the information was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;
  - (b) during the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer in the ordinary course of the said activities;
  - (c) throughout the material part of the said period, the computer was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents; and
  - (d) the information contained in the electronic record reproduces or is derived from such information fed into the computer in the ordinary course of the said activities.

- (3) Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in clause (a) of sub-section (2) was regularly performed by computers, whether—
  - (a) by a combination of computers operating over that period; or
  - (b) by different computers operating in succession over that period; or
  - (c) by different combinations of computers operating in succession over that period; or
  - (d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers,
- all the computers used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer; and references in this section to a computer shall be construed accordingly.
- (4) In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say, —
  - (a) identifying the electronic record containing the statement and describing the manner in which it was produced;
  - (b) giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer;
  - (c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate,
- and purporting to be signed 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) shall be evidence of any matter stated in the certificate; and for the purposes of this subsection it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it

- (5) For the purposes of this section, —
- (a) information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;
- (b) whether in the course of activities carried on by any official, information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;
- (c) a computer output shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.
- Explanation.—For the purposes of this section any reference to information being derived from other information shall be a reference to its being derived therefrom by calculation, comparison or any other process.]

- **BSA**

- 63. Admissibility of electronic records (1) Notwithstanding anything contained in this Adhiniyam, any information contained in an electronic record which is printed on paper, stored, recorded or copied in optical or magnetic media or semiconductor memory which is produced by a computer or any communication device or otherwise stored, recorded or copied in any electronic form (hereinafter referred to as the computer output) shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence or any contents of the original or of any fact stated therein of which direct evidence would be admissible.
- (2) The conditions referred to in sub-section (1) in respect of a computer output shall be the following, namely:—
  - (a) the computer output containing the information was produced by the computer or communication device during the period over which the computer or communication device was used regularly to create, store or process information for the purposes of any activity regularly carried on over that period by the person having lawful control over the use of the computer or communication device;
  - (b) during the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer or communication device in the ordinary course of the said activities;
  - (c) throughout the material part of the said period, the computer or communication device was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents; and
  - (d) the information contained in the electronic record reproduces or is derived from such information fed into the computer or communication device in the ordinary course of the said activities.

- (3) Where over any period, the function of creating, storing or processing information for the purposes of any activity regularly carried on over that period as mentioned in clause (a) of subsection (2) was regularly performed by means of one or more computers or communication device, whether—
  - (a) in standalone mode; or
  - (b) on a computer system; or
  - (c) on a computer network; or
  - (d) on a computer resource enabling information creation or providing information processing and storage; or
  - (e) through an intermediary,
- all the computers or communication devices used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer or communication device; and references in this section to a computer or communication device shall be construed accordingly.

- (4) In any proceeding where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things shall be submitted along with the electronic record at each instance where it is being submitted for admission, namely:—
  - (a) identifying the electronic record containing the statement and describing the manner in which it was produced;
  - (b) giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer or a communication device referred to in clauses (a) to (e) of sub-section (3);
  - (c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate,
  - and purporting to be signed by a person in charge of the computer or communication device or the management of the relevant activities (whichever is appropriate) and an expert shall be evidence of any matter stated in the certificate; and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it in the certificate specified in the Schedule.
- (5) For the purposes of this section,—
  - (a) information shall be taken to be supplied to a computer or communication device if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;
  - (b) a computer output shall be taken to have been produced by a computer or communication device whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment or by other electronic means as referred to in clauses (a) to (e) of sub-section (3).



- **74. Public documents.**—The following documents are public documents: —
  - (1) Documents forming the acts, or records of the acts —
    - (i) of the sovereign authority,
    - (ii) of official bodies and tribunals, and
    - (iii) of public officers, legislative, judicial and executive, 3[of any part of India or of the Commonwealth], or of a foreign country;
  - (2) Public records kept 4[in any State] of private documents.
- **75. Private documents.**—All other documents are private.

• BSA

- **74. (1) The following documents are public documents:—**
  - (a) documents forming the acts, or records of the acts—
    - (i) of the sovereign authority;
    - (ii) of official bodies and tribunals; and
    - (iii) of public officers, legislative, judicial and executive of India or of a foreign country;
  - (b) public records kept in any State or Union territory of private documents.
- **74(2)** All other documents except the documents referred to in sub-section (1) are private.

- **78. Proof of other official documents.**— The following public documents may be proved as follows:—
  - (1) Acts, orders or notifications of 1[the Central Government] in any of its departments, 2[or of the Crown Representative] or of any State Government or any department of any State Government, —
    - by the records of the departments, certified by the head of those departments respectively, or
    - by any document purporting to be printed by order of any such Government 3[or, as the case may be, of the Crown Representative];
  - (2) the proceedings of the Legislatures,— by the journals of those bodies respectively, or
    - by published Acts or abstracts, or by copies purporting to be printed 3[by order of the Government concerned];
  - (3) proclamations, orders or regulations issued by 4[Her Majesty] or by the Privy Council, or by any department of 4[Her Majesty's Government,—
    - by copies or extracts contained in the London Gazette, or purporting to be printed by the Queen's Printer;
  - (4) the Acts of the Executive or the proceedings of the Legislature of a foreign country, —
    - by journals published by their authority, or commonly received in that country as such, or by a copy certified under the seal of the country or sovereign, or by a recognition thereof in some 5[Central Act];
  - (5) the proceedings of a municipal body in 6[a State], —
    - by a copy of such proceedings, certified by the legal keeper thereof, or by a printed book purporting to be published by the authority of such body;
  - (6) public documents of any other class in a foreign country, —
    - by the original, or by a copy certified by the legal keeper thereof, with a certificate under the seal of a Notary Public, or of 7[an Indian Consul] or diplomatic agent, that the copy is duly certified by the officer having the legal custody of the original, and upon proof of the character of the document according to the law of the foreign country.

- BSA

- 77. The following public documents may be proved as follows:—
- (a) Acts, orders or notifications of the Central Government in any of its Ministries and Departments or of any State Government or any Department of any State Government or Union territory Administration—
  - (i) by the records of the Departments, certified by the head of those Departments respectively; or
  - (ii) by any document purporting to be printed by order of any such Government; (b) the proceedings of Parliament or a State Legislature, by the journals of those bodies respectively, or by published Acts or abstracts, or by copies purporting to be printed by order of the Government concerned;
  - (c) proclamations, orders or Regulations issued by the President of India or the Governor of a State or the Administrator or Lieutenant Governor of a Union territory, by copies or extracts contained in the Official Gazette;
  - (d) the Acts of the Executive or the proceedings of the Legislature of a foreign country, by journals published by their authority, or commonly received in that country as such, or by a copy certified under the seal of the country or sovereign, or by a recognition thereof in any Central Act;
  - (e) the proceedings of a municipal or local body in a State, by a copy of such proceedings, certified by the legal keeper thereof, or by a printed book purporting to be published by the authority of such body;
  - (f) public documents of any other class in a foreign country, by the original or by a copy certified by the legal keeper thereof, with a certificate under the seal of a Notary Public, or of an Indian Consul or diplomatic agent, that the copy is duly certified by the officer having the legal custody of the original, and upon proof of the character of the document according to the law of the foreign country.

- **India Evidence Act 1872**

- **116. Estoppel of tenants and of licensee of person in possession.** — No tenant of immovable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property; and no person who came upon any immovable property by the licence of the person in possession there of shall be permitted to deny that such person had a title to such possession at the time when such licence was given.

- **BSA**

- **122. Estoppel of tenant and of licensee of person in possession-** No tenant of immovable property, or person claiming through such tenant, shall, during the continuance of the tenancy **or any time thereafter**, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property; and no person who came upon any immovable property by the licence of the person in possession thereof shall be permitted to deny that such person had a title to such possession at the time when such licence was given.

- **India Evidence Act 1872**

- **118. Whom may testify.** — All persons shall be competent to testify unless the Court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind.
- Explanation. — A **lunatic** is not incompetent to testify, unless he is prevented by his **lunacy** from understanding the questions put to him and giving rational answers to them.

- **BSA**

- **124. Who can testify-** All persons shall be competent to testify unless the Court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind.
- Explanation.—**A person of unsound mind** is not incompetent to testify, unless he is prevented by his unsoundness of mind from understanding the questions put to him and giving rational answers to them.

- **India Evidence Act 1872**

- **133. Accomplice.** — An accomplice shall be a competent witness against an accused person; and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice.

- **BSA**

- **138. Accomplice** -An accomplice shall be a competent witness against an accused person; and a conviction is not illegal if it proceeds upon the corroborated testimony of an accomplice.

- **India Evidence Act 1872**

- **162. Production of documents.** — A witness summoned to produce a document shall, if it is in his possession or power, bring it to Court, notwithstanding any objection which there may be to its production or to its admissibility. The validity of any such objection shall be decided on by the Court.
- The Court, if it sees fit, may inspect the document, unless it refers to matters of State, or take other evidence to enable it to determine on its admissibility.
- **Translation of documents.** —If for such a purpose it is necessary to cause any document to be translated, the Court may, if it thinks fit, direct the translator to keep the contents secret, unless the document is to be given in evidence and, if the interpreter disobeys such direction, he shall be held to have committed an offence under section 166 of the Indian Penal Code (45 of 1860).

- **BSA**

- **165. . Production of documents** (1) A witness summoned to produce a document shall, if it is in his possession or power, bring it to Court, notwithstanding any objection which there may be to its production or to its admissibility: Provided that the validity of any such objection shall be decided on by the Court.
- (2) The Court, if it sees fit, may inspect the document, unless it refers to matters of State, or take other evidence to enable it to determine on its admissibility.
- (3) If for such a purpose it is necessary to cause any document to be translated, the Court may, if it thinks fit, direct the translator to keep the contents secret, unless the document is to be given in evidence and, if the interpreter disobeys such direction, he shall be held to have committed an offence under section 198 of the Bharatiya Nyaya Sanhita, 2023:
- **Provided that no Court shall require any communication between the Ministers and the President of India to be produced before it.**

- **170. Repeal and savings** (1) The Indian Evidence Act, 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, as in force immediately before such commencement, as if this Adhiniyam had not come into force.



# Positive Effects

- Expedition in prosecution: The Bharatiya Sakshya Bill holds the potential to enhance the efficiency and equitability of the Indian criminal justice apparatus, as it facilitates the prosecution of cases and the attainment of convictions.
- Harmonization with technology: Through the incorporation of electronic or digital recordings as admissible evidence and the adoption of uniform standards for the collection of evidence, the BS Bill has the capacity to harmonize the Indian criminal justice system with the technological strides of the twenty-first century.
- Rationalizing the route for victims: By streamlining the path for victims to attain judicial redress, the BS Bill could contribute significantly to the safeguarding of the rights and interests of individuals who have suffered from criminal acts.

# Negative Effects

- Taking the stakeholders into consideration: Address the concerns and apprehensions of various stakeholders and build consensus and support for these bills. Since there are many laypersons which are not aware about intricacies of the legal system , it becomes imperative for the government to recognize the need of enhanced awareness.
- Passing of the bill: Ensure that the bill is passed by both houses of Parliament without any dilution or delay since there are law students, lawyers and other practitioners of law which may be affected by the confusion that is stirred due to different legislations on the same area, the new bills and the old Indian Penal Code, Crpc and The Indian Evidence Act, 1872. If the bills are passed timely, then this will help save a substantial amount of loss to these stakeholders.

- **Time period for enforcement:** Ensure that the three bills are notified and enforced in a phased and time-bound manner across the country. This will again help reduce the confusion that will be caused to lawyers while addressing the concerns of their clients. The lawyers will be able to avoid the dilemma that they will most probably face now between the old and new criminal codes.
- **Enhanced monitoring systems:** Ensure that all the three bills are monitored and evaluated periodically and that any gaps or glitches are rectified promptly since this will help prevent the difficulties that certain provisions of this bill bring home.

# Conclusion

- The criminal justice system stands as the linchpin of any thriving democracy, its equitable, nimble, and people-centric disposition being paramount. The unveiling of the three bills presents a watershed moment, affording an unprecedented chance to realize this ambition.
- Nevertheless, it is incumbent upon us to meticulously scrutinize and subject to rigorous examination the impact of specific clauses, notably those pertaining to confessions, due to the profound shift they portend. The Bharatiya Sakshya Bill, 2023 shall inaugurate a nascent epoch of metamorphosis within India's criminal justice paradigm, poised to set a precedent for emulation by nations worldwide.

Thank you

---

---