

Evolution and Provisions of the Bharatiya Nyaya Sanhita, 2023

STA



Evolution and Provisions of the Bharatiya Sakshya Adhiniyam (BSA), 2023

The Bharatiya Sakshya Adhiniyam (BSA), 2023, represents a significant legislative milestone in India's legal framework, updating and modernizing the Indian Evidence Act (IEA) of 1872. While retaining the core principles of the IEA, the BSA introduces crucial changes to address the evolving landscape of digital evidence and the complexities of contemporary legal proceedings. This article explores the provisions retained from the IEA, key changes introduced in the BSA, and the steps needed to ensure its effective implementation.

Retained Provisions from the IEA

Admissible Evidence

The BSA, like the IEA, stipulates that only admissible evidence can be presented in legal proceedings. Admissible evidence includes 'facts in issue' and 'relevant facts.' Facts in issue are those that determine the existence, nature, or extent of any right, liability, or disability claimed or denied in a legal proceeding. Relevant facts are those pertinent to a given case, encompassing both documentary and oral evidence.

Proven Fact

A fact is considered proven if, based on the evidence presented, the court believes it to exist or its existence is so likely that a prudent person would act as if it exists under the circumstances.

Police Confessions

Confessions made to police officers or in police custody remain inadmissible unless recorded by a Magistrate. However, information leading to the discovery of a fact, obtained from an accused in custody, may be admitted if it distinctly relates to the fact discovered.

Key Changes

Documentary Evidence

The BSA expands the definition of documents to include electronic records, acknowledging the pervasive role of digital data. Documentary evidence now includes primary evidence (original documents and electronic records) and secondary evidence (documents and oral accounts proving the contents of the original). Secondary evidence is broadened to encompass oral and written admissions and testimony from individuals skilled in examining the documents.



Oral Evidence

Oral evidence can now be given electronically, allowing witnesses, accused persons, and victims to testify through digital means. This change enhances accessibility and efficiency in legal proceedings.

Admissibility of Electronic or Digital Records

The BSA recognizes information in electronic records stored in various digital media as admissible documentary evidence. This includes data processed by different computers, reflecting the interconnected nature of modern digital information.

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Joint Trials

The BSA clarifies the handling of joint trials involving multiple persons for the same offense. It specifies that a trial of multiple persons, where an accused has absconded or not responded to an arrest warrant, will be treated as a joint trial.

Crucial Changes Introduced

Precise Definition of “Document”

The BSA provides a detailed illustration of what constitutes a document, including emails, server logs, documents on digital devices, messages, websites, locational evidence, and voice mail messages. This comprehensive definition ensures clarity and inclusivity of various forms of digital evidence.

Primary (Electronic) Evidence

The BSA stipulates that simultaneous electronic storage and transmission of video recordings shall be considered primary evidence. This provision helps in fixing the culpability of cyber-criminals even if the original record is destroyed, as copies from other sources retain their evidentiary value.

Synchronization with IT Act, 2000

The BSA incorporates terms from the IT Act, 2000, such as ‘semiconductor memory’ and ‘communication device,’ ensuring alignment with existing digital evidence regulations.

Concerns and Challenges

Tampering of Electronic Records

The Supreme Court has recognized the susceptibility of electronic records to tampering. Without adequate safeguards, reliance on electronic records may lead to injustice.

Ambiguity in Admissibility

The BSA allows the court to consult an Examiner of Electronic Evidence to form an opinion on electronic records. However, ambiguity remains regarding the admissibility criteria, necessitating clear guidelines.

Information Obtained in Police Custody

The BSA retains the provision that information leading to the discovery of a fact obtained from an accused in police custody is admissible. Concerns about duress and torture during custody highlight the need for stringent safeguards.

Discrimination Between Accused

The distinction between admissibility of information received from an accused in police custody and outside custody persists, raising questions about fairness and consistency.

Steps for Effective Implementation

Safeguarding Electronic Records

The Standing Committee on Home Affairs (2023) emphasized the importance of safeguarding the authenticity and integrity of electronic records. Secure handling and processing through a proper chain of custody are essential.

Guidelines for Search and Seizure

The Karnataka High Court’s 2021 guidelines recommend that a qualified forensic examiner accompany search teams, prohibit investigating officers from using seized devices during searches, and pack electronic storage devices in Faraday bags to prevent data manipulation.

EU Directive Proposal

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"The BSA, 2023, introduces pivotal reforms, including the recognition of electronic records as primary evidence and the expansion of witness protection mechanisms, ensuring a more robust and secure legal framework."

EU Directive Proposal

The EU's Draft Directive Proposal for Mutual Admissibility of Evidence and Electronic Evidence in Criminal Proceedings provides valuable insights. It mandates the use of electronic evidence only if sufficiently secured against manipulation and involves IT experts to ensure authenticity.

Law Commission and Malimath Committee Recommendations

The Law Commission and Malimath Committee made several recommendations, such as excluding facts discovered through coercion and allowing judges to play an active role in evidence collection. These suggestions could enhance the fairness and efficiency of the criminal justice system.

Conclusion

The Bharatiya Sakshya Adhiniyam, 2023, introduces much-needed clarity and modernization to India's evidence laws, particularly in the realm of electronic and digital records. However, the successful implementation of the BSA requires addressing concerns related to the tampering and admissibility of electronic evidence, ensuring secure handling, and incorporating best practices from international standards. By doing so, India can create a robust legal framework that effectively addresses the challenges of the digital age and upholds the principles of justice.

