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White Black Legal – The Law Journal is an open-access, peer-reviewed, and refereed legal journal established to provide a scholarly platform for the examination and discussion of contemporary legal issues. The journal is dedicated to encouraging rigorous legal research, critical analysis, and informed academic discourse across diverse fields of law.

The journal invites contributions from law students, researchers, academicians, legal practitioners, and policy scholars. By facilitating engagement between emerging scholars and experienced legal professionals, *White Black Legal* seeks to bridge theoretical legal research with practical, institutional, and societal perspectives.

In a rapidly evolving social, economic, and technological environment, the journal endeavours to examine the changing role of law and its impact on governance, justice systems, and society. *White Black Legal* remains committed to academic integrity, ethical research practices, and the dissemination of accessible legal scholarship to a global readership.

AIM & SCOPE

The aim of *White Black Legal – The Law Journal* is to promote excellence in legal research and to provide a credible academic forum for the analysis, discussion, and advancement of contemporary legal issues. The journal encourages original, analytical, and well-researched contributions that add substantive value to legal scholarship.

The journal publishes scholarly works examining doctrinal, theoretical, empirical, and interdisciplinary perspectives of law. Submissions are welcomed from academicians, legal professionals, researchers, scholars, and students who demonstrate intellectual rigour, analytical clarity, and relevance to current legal and policy developments.

The scope of the journal includes, but is not limited to:

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The journal accepts original research articles, case comments, legislative and policy analyses, book reviews, and interdisciplinary studies addressing legal issues at national and international levels. All submissions are subject to a rigorous double-blind peer-review process to ensure academic quality, originality, and relevance.

Through its publications, *White Black Legal – The Law Journal* seeks to foster critical legal thinking and contribute to the development of law as an instrument of justice, governance, and social progress, while expressly disclaiming responsibility for the application or misuse of published content.

NATURE AND SCOPE OF THE BHARATIYA SAKSHYA ADHINIYAM, 2023

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(A) INTRODUCTION

The Indian Evidence Act, 1872, which was enacted during colonial era, has been replaced by the Bharatiya Sakshya Adhiniyam, 2023, which represents a substantial change in legal framework governing evidence law in India. The new legislation aims to modernize the rules of evidence in line with contemporary needs, particularly in the context of technological advancements and digital transformation. It consolidates and refines the principles governing judicial proceedings, broadens the admissibility of digital evidence, and removes outdated references to repealed British Statutes.

(B) SCOPE

APPLICATION UNDER NEW ACT

Section 1 of The Bharatiya Sakhya Adhiniyam¹ (herein referred to as 'BSA') states that this act applies to all *judicial proceedings* in or before any court, including courts martial. But, it does not apply to:

- Affidavits presented to any court or officer.
- Proceedings before an arbitrator

APPLICATION UNDER THE OLD EVIDENCE ACT

The Old evidence act of 1872 extended to the whole of India and applied to all judicial proceedings, including courts-martial, except:

- Courts-martial convened under the Army Act (44 & 45 Vict., c.58)
- The Naval Discipline Act [29 & 30 Vict., 109]
- The Indian Navy (Disciple) Act, 1934 (34 of 1934).
- The Air Force Act (7 Geo. 5, c.51).
- Affidavits presented to any court or officer.
- Proceedings before an arbitrator.

¹ The Bharatiya Sakhya Adhiniyam, 2023, Section 1.

Changes in the New Law

The Fifth Law Commission of India, in its 69th Report² recommended to amend the provision that excluded courts-martial under outdated British statutes. The recommendation was adopted because these laws were repealed by the **British Statutes (Application to India) Repealing Act, 1960**. Thus, the new laws removed references to these repealed statutes.

Judicial Proceedings under BSA

The BSA does not explicitly define “judicial proceedings”.

However, Section 2(m) of **Bharatiya Nagarik Suraksha Sanhita, 2023** defines *judicial proceedings as proceedings where evidence is or may be taken on oath*.

A proceeding is considered judicial only when its objective is to determine the legal relationship:

- Between two persons.
- Between a person and a group of persons.
- Between a person and the community at large.

In *Queen Empress v. Tulja*³, it was held that a judge is not considered to be acting judicially if the proceedings does not aim to determine a legal relationship. Is this objective (to determine legal relationship) is absent, the proceedings is not a judicial proceedings.

Exclusion from Judicial Proceedings:

This act does not apply to:

- Internal inquiries⁴
- Departmental Inquiries⁵
- Proceedings under Income Tax authorities⁶
- Proceedings before Industrial Tribunals
- Contempt of Court proceedings. Etc

Special Legislation Limiting the Scope of the BSA

Certain special laws may limit the application of the BSA. For example, Section 14 of the Family Courts allows family court to admit reports, statements, documents, or any information

² The 69th Report of the Fifth Law Commission of India (1977).

³ Queen-Empress v Tulja ILR (1888) 12 Bom 36.

⁴ Firestone Tyre and Rubber Co. (P) Ltd. v. Workmen, AIR 1968 SC 236.

⁵ Union of India v T.R. Varma, AIR 1957 SC 882.

⁶ CIT v Benoy Kumar Sahas Roy, AIR 1957 SC 768.

that may assist in resolving disputes, even if such evidence is not admissible under the Indian Evidence Act.

Arbitrator

The provisions of BSA do not apply to proceedings before an arbitrator. As they are bound to follow the principles of natural justice but not restricted by technical rule of the BSA.

Vellore Electric Corporation Ltd. v. state of madras⁷, held that arbitrators have the discretion to assess and admit evidence without being bound by the strict rules of the BSA.

Affidavit

The BSA does not define the term “affidavit”. As per the Section 3(3) in the General Clauses Act, an affidavit includes affirmations and declarations for those legally permitted to affirm instead of swearing.

Affidavits are not admissible as evidence unless specifically permitted by law.

In *Nirmala v. Hari Singh*⁸, the rationale behind this exclusion was established. According to the court, the deponent cannot be cross-examined about its content.

(C) NATURE OF THE ACT

PREAMBLE

The Bharaitya Sakhya Adhiniyam is an act to consolidate and provide for general rules and principles of evidence for a fair trial.

- **STATEMENT OF OBEJCTS AND REASONS**

The old Indian Evidence act, 1872 was enacted to consolidate the law on evidence for courts to determine facts and pronounce judgements. It came into force on **1st September 1872**. Over the seven decades of Indian democracy called for a **comprehensive review** to address contemporary need and aspirations. The law of evidence, being “**adjective law**”, operationalizes substantive and procedural laws. The existing law did not accommodate technological advancements in recent decades.

As a result, the present law incorporates several recommendations made by the Standing Committee on Home affairs to enhance and refine the rules of evidence. These

⁷ *Vellore Electric Corporation Ltd. v. state of madras*, 1958 SCC Online Mad 315: AIR 1959 Mad 351.

⁸ *Nirmala v Hari Singh*, AIR 2001 HP.

recommendations aim to address existing challenges, enhance clarity, and ensure a more effective and just legal framework for the admissibility and evaluation of evidence.

- **CHANGES BASED ON PARLIAMENTARY RECOMMENDATIONS**

- (a) **Inclusion of Digital evidence**

- Digital and electronic records, including **witness appearances through electronic means**, are now admissible.

- (b) **Recognition of digital evidence**

- Digital records now have the **equivalent legal validity, cogency, and enforceability** as physical evidence.

- (c) **Expansion of secondary evidence**

- Secondary evidence now includes:

- Copies formed using **mechanical process** from the original.
 - Copies that have been **compared with the original document**.
 - Counterparts of documents, particular in relation to **non-executing parties**
 - **Oral descriptions** of a document's contents by individuals who have personally seen it.
 - **Matching hash values** as a valid method to authenticate **electronic evidence**.

- **OBJECTIVES**

- Ensure **fairness** by preventing **arbitrariness** in admissibility of evidence.
 - Establish **uniform rules** for consistent legal practice.
 - Define **clear guidelines** for the admissibility of evidence in courts.

- **PRINCIPLES OF THE BSA**

- **Relevance:** Evidence must be strictly related to the matter in issue.
 - **Exclusion of Hearsay:** Hearsay evidence is not admissible in court.
 - **Best evidence Rule :** The most direct and reliable evidence must be presented

- **LAW OF EVIDENCE IS “LEX FORI”**

- The law of evidence is part of the law of procedure, that is, the procedure which a court has to follow. This is expressed by saying that it is the law of forum (or court). This is

purely a matter of convenience. If foreigners come before an Indian court, they cannot insist upon their law of evidence and will follow it.

In *Bain v Whitehaven and Furness Junction Railway Co*, it was held that which law of procedure is to be followed that is to be established by the law of country where the question arises, where the remedy is sought to be enforced, and where the court sits to enforce it⁹.

In *Niharendru Dutt Majumdar v King Emperor*, where the fact had occurred in England, the federal court observed that “Though the question is one of the methods of proving an event which occurred in England, the law applicable is the Indian and not the English law of evidence”.

- **CIVIL AND CRIMINAL PROCEEDINGS – LAW OF EVIDENCE**

The difference between civil and criminal proceedings lies in their purpose – civil law aims to protect private rights and provides remedy, whereas criminal law seeks to safeguard societal interest by penalizing wrongful acts. Nonetheless, despite their different objectives, both types of proceedings may involve the same facts in issue, imposing the application of the Law of evidence in both realms.

Illustration:

Consider the case of A, B and C. where A marries B in 2024 according to Hindu rites and customs. Later, B marries C while A is still alive.

In this scenario, the same fact – whether A and B were legally married according to Hindu Law- becomes an important issue in both civil and criminal cases.

1. In Civil Law (Hindu Marriage Act, 1955):

If C files a suit seeking a declaration that her marriage to B is valid, the court must determine whether B's earlier marriage to A was solemnized with all the required Hindu rites and formalities. If A and B's marriage was legally valid, then B's marriage with C would be void under Hindu Marriage Act.

2. In Criminal Law (Bigamy under Section 497 of IPC)

If A initiates criminal proceedings against B for bigamy, the prosecution must prove that B's marriage with A was legally binding and that B knowingly entered into a second marriage while A was still alive. Under Section 497 of the Bharatiya Nyaya Sanhita, 2023, bigamy is a punishable offence.

⁹ *Bain v Whitehaven and Furness Junction Railway Co.* (1850) 3 HLC 1,19.

COMMON ISSUE AND APPLICATION OF LAW OF EVIDENCE

The fact is issue in both civil and criminal case is same – whether A and B’s marriage is lawful. The Law of evidence comes to play here. In order to establish the veracity, how witness will be examined, which documents will be admissible etc will be given by law of evidence.

DISTINCTION OF APPLICATION

1. Exclusivity

There are certain provisions of Law of Evidence (BSA) which apply exclusive to civil matters while some apply exclusive to criminal matters.

Example, Section 47 and 49 of BSA dealing with character of an accused person, is exclusively applicable to criminal matters. Whereas Section 46 and 50 of the BSA dealing with character of the parties apply exclusively to civil matters.

2. Standard of Proof

In civil cases, the mere preponderance of evidence is sufficient whereas in criminal cases, the accused has to prove its case beyond reasonable doubt.

ANALYSIS

1. DISTORTION OF JUSTICE

The act acknowledges *electronic and digital records* as primary evidence to align with the digital era. However, a significant loophole is the vulnerability of digital records to manipulation through AI tools and other means. If a trial relies entirely on electronic records without robust safeguards, it may compromise the integrity of justice.

2. Divergence from colonial Vocabulary

The Bharatiya Sakshya Adhinyam, 2023, has not introduced substantial changes, many of which could have been implemented through amendments. However, the primary motivation behind its enactment appears to be political – aimed at breaking away from colonial legacies rather than addressing substantive legal improvements.

(D) CONCLUSION

An attempt has been made to bring India’s evidence law into line with contemporary judicial and technological realities through the Bharatiya Sakshya Adhinyam, 2023. The law aims to increase the effectiveness of court proceedings by acknowledging digital records as primary evidence and simplifying procedural elements. The lack of significant doctrinal reforms, the

susceptibility of digital evidence to manipulation, and the political motivation behind the decision to abandon colonial terminology rather than implement significant legal advancements are still issues, though.

REFERNCES

1. List of Statues

- [Bharatiya Sakshya Adhiniyam,2023](#)
- [The Indian Evidence Act, 1872.](#)

2. Books referred

- Ratanlal and Dhirajlal, The Bharatiya Sakshya Adhiniyam, 2023, 27th Edition, 2024.
- Avtar Singh, Principles of Law of Evidence, Central Law Publications, (24th Edition, 2020).



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