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ON

“BHARTIYA SAKSHYA ADHINIYAM, 2023”

ESSENTIAL STRUCTURE AND PROVISIONS OVERVIEW

Submitted by-

District – Rajnandgaon (CG)

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We feel highly elated to work on the topic **“BHARTIYA SAKSHYA ADHINIYAM, 2023” ESSENTIAL STRUCTURE AND PROVISIONS OVERVIEW**”

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**Judicial Officers
District Rajnandgaon (CG)**

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CHAPTER-I

Introduction



The term “evidence” originates from the Latin word evidens or evidere, meaning “to show clearly; to make clear to the sight; to discover clearly; to make plainly certain; to ascertain; to prove”. Before the enactment of the Evidence Act, Courts in India, particularly in presidency towns, adhered to the principles of English law regarding evidence.

In rural areas (mofussil), British Courts initially followed Mohammedan law on evidence, but later, various regulations were introduced to govern evidence principles in those courts. Act II of 1855

was a partial codification of evidence law, although it did not alter the practices in mofussil Courts. In 1868, Sir Henry James Sumner Maine drafted a Law of Evidence Act, but it was abandoned due to its unsuitability for the country. In 1871, Sir James Fitzjames Stephen prepared a new draft, which was enacted as Act I of 1872. The primary objective of the Act I of 1872 (Evidence Act) was to establish stricter standards for evidence admissibility, aiming to bring about greater consistency and accuracy in legal proceedings compared to previous practices.

The Act's scope was limited to prescribing rules for determining the admissibility of evidence in issues where Courts are required to render judgments. This legislation took effect on 01-07-1872, during India's colonial period under British rule.

The introduction of the BSA 2023, set to be implemented in the country from 1st July 2024, reflects a meticulous restructuring, featuring 170 sections, a modest increase from the previous 167 sections. The focus on evidentiary procedures in the digital age is evident, with provisions for electronic and digital records.

The BSA has undergone significant changes to reflect the evolving legal landscape and discard outdated colonial terminology. Phrases such as 'Parliament of the United Kingdom', 'Provincial Act', and 'notification by the Crown Representative' have been eliminated as they no longer hold relevance. Similarly, terms like 'Jury', 'Lahore', and 'United Kingdom of Great Britain and Ireland' have been removed. Additionally, modernization

efforts have replaced archaic terms like ‘Vakil’, ‘Pleader’, and ‘Barrister’ with the more contemporary ‘Advocate’. These revisions not only align the language of the law with contemporary usage but also signify a departure from colonial legacies.



CHAPTER-II

An Overview of Bharatiya Sakshya Adhiniyam

The Changes made and inserted in the new act are:

Territorial Application of the BSA: Section 1 of the Indian Evidence Act (IEA) specified the application of the act to the entire territory of India. However, Section 1 of the Bharatiya Sakshya Adhiniyam (BSA) lacks this provision. This omission is likely intended to facilitate the admissibility of digital evidence originating from locations outside India.

Document- Section 2(d), BSA (Sec 3(e) IEA) - *“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.”*

The new definition included-

Inclusion of Electronic and Digital Records: The newer definition explicitly includes electronic and digital records within the scope of what constitutes a document. This means that any information expressed, described, or recorded electronically, such as through computers, smartphones, or other digital devices, falls under the definition of a document.

Expansion of Means of Recording: The newer definition expands on how information can be recorded beyond just letters, figures, or marks. It encompasses any means of recording, which could include audio recordings, video recordings, or any other method of capturing information.

Clarification of Intended Use: Both definitions mention the intended use of the document for recording information. However, the newer definition clarifies that the intended use may include electronic and digital formats, ensuring that these formats are not excluded from the definition due to their non-physical nature.

Inclusion of “Otherwise Recorded”: The newer definition includes the phrase “otherwise recorded,” which further emphasizes the broad scope of what constitutes a document. This phrase acknowledges that there are various ways information can be recorded beyond traditional methods and ensures that such unconventional methods are also covered under the definition.

Evidence- Section 2(e), BSA (Sec 3(f) IEA) - “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;”

The newer definition of “evidence” expands the scope to include statements given electronically as oral evidence, alongside traditional oral testimony. It also explicitly incorporates electronic and digital records within the category of documentary evidence, reflecting the contemporary reality of information storage and communication. This update enhances clarity and adaptability to technological advances, ensuring that legal frameworks effectively address modern forms of evidence. In contrast, the older definition primarily focuses on oral testimony and documents without specific mention of electronic records, potentially limiting its applicability in today’s digital age.

Section 4, BSA (Sec 6, IEA) - The inclusion of the phrase “*or a relevant fact*”. This addition broadens the scope of the connected facts that are considered relevant. In the earlier section, only facts connected to a fact in the issue are mentioned, whereas the newer section includes facts connected to both a fact in the issue and any relevant fact. This adjustment allows for a more comprehensive consideration of connected facts in legal proceedings, ensuring that all relevant information is taken into account, regardless of whether it directly pertains to the specific issue being addressed.

Section 6, BSA (Sec 8, IEA):- The difference is the omission of “previous or subsequent conduct” in the new version. Additionally, the phrase “Admiration of Poison” in the old section is absent in the new one. Both versions emphasize the relevancy of motive, preparation, and conduct in

legal proceedings, but the new section is structured with numbered subsections for clarity, while the old one is not.

Section 22, BSA (Sec 24,28-89, IEA):- The new Section 22 of the Bhartiya Sakshya Adhinyam (BSA) consolidates and refines the provisions related to confessions in criminal proceedings from the old Sections 24, 28, and 29 of the Indian Evidence Act. Sections 24, 28, and 29 of IEA were separate provisions dealing with different aspects of confessions whereas Section 22 (BSA) combines these provisions into a single section, making the law more streamlined.

- **The Inclusion of “Coercion“:** Where Old Sections: Only “*inducement, threat, or promise*” were mentioned as factors affecting the relevance of a confession and New Section 22 (BSA): It explicitly includes “*coercion*” as a factor, broadening the scope and providing more comprehensive coverage.
- **Clarification on Timing:** where Section 28, IEA: Mentioned the relevance of a confession made after the removal of the impression caused by inducement, threat, or promise and new Section 22, BSA: It provides a clearer timeline, specifying that a confession becomes relevant once the impression of inducement, threat, or promise has been fully removed.
- **Expanded Scenarios for Relevance:** Section 29: It listed scenarios where a confession remains relevant despite being made under certain conditions. Section 22 (BSA): It expands on these scenarios,

including confessions made under a promise of secrecy, after deception, when drunk, or in response to questions not required to be answered. It also mentions that the lack of warning about the admissibility of the confession doesn't make it irrelevant.

Section 22, BSA offers a more comprehensive, structured, and inclusive approach to the admissibility of confessions in criminal proceedings compared to the older, fragmented provisions in the Indian Evidence Act.

Section 24, BSA (Sec 30. IEA):- The wording in the BSA, 2023 section appears to be slightly more streamlined and clearer compared to the Indian Evidence Act. However, the core content and meaning remain essentially the same in both sections.

Only insertion of *“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 82 of the Bharatiya Nagarik Suraksha Sanhita, 2023 shall be deemed to be a joint trial for the purpose of this section.”*

The new **Section 32 of the BSA, 2023** restructures and refines the provisions found in Section 26 of the Indian Evidence Act, 1872. BSA, 2023 categorizes the cases into numbered subsections (1 to 8), offering a clearer and more organized framework. Notably, BSA, 2023 adds specificity to some categories, like defining the types of business-related documents in subsection (2) and detailing certain relationships in subsections (5) and (6). However, BSA, 2023 omits the provision related

to documents specified in clause (a) of section 11 of the Indian Evidence Act. Despite these changes, the core intent and content of the provisions remain largely consistent between the two versions.

Section 31, BSA (Sec 37, IEA):- The new section focuses on Indian Central and State Acts and acknowledges digital formats, reflecting India's modern legal sovereignty and adapting to technological advancements. In contrast, the old section includes UK Acts and lacks digital acknowledgment, indicating its colonial-era origins. The new section removes colonial references, aligning with India's independent status. Overall, the changes show a move towards a localized, digitally inclusive, and post-colonial legal framework.

Section 32 BSA (Sec 38) Inclusion of Digital and Electronic Formats:- Section 32: Explicitly states that statements about foreign law can be contained in books published in both physical and electronic or digital forms. This indicates a modern approach, recognizing the evolving nature of legal publications and the increasing reliance on digital resources whereas, Section 38: Although it mentions law contained in books, it does not explicitly recognize electronic or digital forms. This implies that the section predates the common use of digital media, focusing primarily on physically printed materials. Both sections specify that the books must be printed or published under the authority of the government of the country whose law is being discussed, ensuring the authenticity of the source.

BSA section ensures that the law stays relevant with technological advancements and the increasing accessibility of legal documents in digital formats.

Section 35(Sec 41, IEA):- The sections deal with the relevance and the conclusive proof provided by final judgments, orders, or decrees from competent courts exercising probate, matrimonial, admiralty, or insolvency jurisdiction and the new change is largely confined to document formatting and slight variances in phraseology.

Section 39, BSA (Sec 45, IEA):- Both sections address the relevance of expert opinions in court cases regarding specific types of specialized knowledge, including foreign laws, sciences, arts, and the identification of handwriting or fingerprints.

BSA included:

- **Digital and Electronic Evidence:** It mentions the role of the Examiner of Electronic Evidence under the Information Technology Act, of 2000.
- **Legal Structure and Detail:** Provides a more detailed structure, including a subsection specifically dedicated to electronic evidence, which highlights the legal framework's adaptation to contemporary technological challenges.
- **Inclusion of digital forensics**

The primary distinction between BSA sec 39 and IEA sec 45 lies in the explicit recognition and incorporation of digital and electronic evidence in the BSA, reflecting a modernization in legal proceedings that accommodates advances in technology. Both sections underline the importance of expert testimony in judicial processes but the BSA demonstrates a broader scope by integrating contemporary issues like digital evidence.

Section 52, BSA (Sec 57, IEA):- The sections ensure courts operate with efficiency by recognizing commonly accepted facts without proof, but they differ in their historical context and the specificity with which they approach modern legal frameworks. Section 52 appears more tailored to current legal contexts, while Section 57 provides a broader historical scope that includes colonial influences and the evolution of legal recognitions over time. This reflects the dynamic nature of legal texts as they adapt to changing governance and societal structures.

Section 55, BSA (Sec 60, IEA):- Both sections describe the requisites for oral evidence in judicial proceedings, emphasizing the importance of direct testimony from witnesses regarding their personal experiences of sensory perceptions or opinions. The modification is on subtle legal distinctions or contextual applications rather than on the fundamental legal requirements detailed in these sections.

Section 57, BSA (Section 62, IEA):

- **Inclusion of Digital and Electronic Records:** includes detailed explanations about how electronic or digital records are treated as primary evidence. It covers scenarios like electronic files stored in multiple locations or formats and video recordings stored and transmitted simultaneously, reflecting modern digital realities.
- **Depth of Explanations and Examples:** offers more extensive explanations and includes additional scenarios relevant to modern technology, like electronic records and video recordings.

Section 58, BSA (Section 63, IEA): Both sections define and elaborate on the concept of secondary evidence in the context of legal proceedings. Secondary evidence is essentially any evidence that is not the original document or artefact but can still provide credible information about the original. In the New act includes additional categories such as oral admissions, written admissions, and evidence from persons skilled in examining complex documents (like financial records), which are not explicitly mentioned in sec 63, IEA.

This expansion reflects a broader approach to what can be considered secondary evidence under the BSA, potentially accommodating more diverse types of evidence in legal processes. It provides a more detailed enumeration of what qualifies as secondary evidence, including conditions under which certain types of evidence are admissible.

Section 59, BSA (sec 64, IEA):- Section 59 states that documents shall be proved by primary evidence except in the cases hereinafter mentioned. It also mandates the use of primary evidence for proving documents but phrases it slightly differently by emphasizing the method of proof (“Proof of documents by primary evidence”).

The section seems to be more directives (“shall be proved”), indicating a mandatory action.

Section 60, BSA (Sec 60,IEA): BSA sec 60 refers to sec 64 for the notice, while IEA sec 65 refers to sec 66.

The mention of “*India*” in IEA section 65 suggests it is tailored specifically to the Indian legal context, whereas BSA section 60 does not specify a geographical context, possibly making it more generic or applicable in a different jurisdiction.

Section 63, BSA (Sec 65B, IEA) : Section 63 provides an elaborate description of scenarios, including the case where multiple computers or devices over a period or network might be involved. It details how these should be treated as a single source for evidence if they were used interchangeably or in a sequence that is consistent with regular business practices. It goes into greater detail regarding the treatment of data processed through various modalities, whether directly, through intermediaries or across different systems or networks.

Sec 73, BSA (Sec 73A, IEA):

- Section 73 specifically addresses the verification of digital signatures. This involves the production of a Digital Signature Certificate and the application of the public key listed therein to verify the authenticity of the digital signature whereas, 73A deals with traditional signatures, writings, or seals. It outlines a method for comparing these items with others that have been admitted or proved to verify their authenticity.
- Section 73 involves a technical process that requires specific digital tools and certificates, reflecting its adaptation to digital communication and authentication technologies and section 73A uses a more traditional approach by comparing the questioned signature, writing, or seal directly with known samples that have been accepted by the court. This section also allows for real-time demonstration by directing a person to create new writing or signatures in court for comparison purposes.
- Sec 73 is tailored towards the realm of digital transactions and electronic documents, which is increasingly relevant in modern legal contexts due to the rise of digital communications and sec 73A applies to physical documents and is versatile in its application, including to impressions with necessary modifications, thus covering a broader range of evidence types than BSA 73.

- Sec 73 potentially involves interactions with digital authorities such as Controllers or Certifying Authorities, highlighting the collaborative nature between the judiciary and digital certification bodies and sec 73A, while more straightforward, invokes the court's authority to create ad hoc evidence by directing the creation of writings or signatures in the courtroom, making it highly practical and interactive.

These differences underline the distinct approaches required by courts when dealing with digital versus traditional forms of evidence, reflecting the adaptations needed to accommodate technological advancements in legal proceedings.

Sec 74, BSA (Sec 74-75, IEA): Sec 74, BSA categorizes documents into public and private categories.

The approach taken by BSA to consolidate the classification may streamline legal processes by providing all relevant information in one place, whereas IEA's division across two sections could help in emphasizing the legal distinctions and implications of each category. This classification impacts everything from evidence admissibility to public access and document handling procedures in legal settings.

Colonial and antiquated terminology, including references to entities such as the 'Parliament of the United Kingdom', 'Provincial Act', 'London Gazette', 'Commonwealth', 'Privy Council', 'Queen's Printer', and 'Her Majesty', as well as colonial proclamations and orders (as outlined in

Section 77 of the BSA, which corresponds to Section 78 of the IEA, and Section 79 of the BSA, corresponding to Section 80 of the IEA), have been eliminated.

Section 88, BSA (Sec86, IEA):

- **Geographic Scope:** sec 88, BSA applies to judicial records of any country beyond India. It does not specify any particular jurisdiction or geographic limitation whereas sec 86, IEA applies to judicial records of any country not forming part of India or Her Majesty's Dominions. This includes a broader range of countries but excludes territories under Indian or British sovereignty.
- **Definition of Representative:** BSA sec 88 specifies that an officer designated as a Political Agent for a territory or place outside India is deemed to be a representative of the Central Government of that country. This provision facilitates the identification of a representative for certification purposes and sec 86, IEA also recognizes Political Agents for territories or places not forming part of India or Her Majesty's Dominions as representatives of the Central Government. However, it does not define another legislative act, as in sec 88, BSA.
- **Cross-references and Explanations:** BSA sec 88 includes an explanation for the term "proper custody" within the section itself and IEA sec 86 refers to other sections of the General Clauses Act, of

1897, for definitions, and does not include an explicit explanation within the section itself.

Section 112, BSA (Sec 116, IEA):

- BSA section 112 deals with the burden of proof regarding the existence or cessation of certain relationships, such as partners, landlord and tenant, or principal and agent. It places the burden of proof on the person who denies the existence of these relationships after they are acting as such and IEA section 116 focuses specifically on estoppel within landlord-tenant relationships and the license of a person in possession of immovable property. It prohibits tenants or those claiming through them from denying the landlord's title during the tenancy. Similarly, it prevents individuals who enter property with the permission of the person in possession from denying that person's title to possession at the time of granting the license.
- Nature of Estoppel: BSA sec 112 establishes a general principle of burden of proof regarding the existence or cessation of certain relationships. It doesn't explicitly use the term "estoppel," but it implies that once a relationship is established by evidence of acting as such, the burden shifts to the party denying it and IEA sec 116 explicitly refers to estoppel and outlines specific situations where tenants or licensees are estopped from denying the landlord's or possessor's title, respectively, during the continuance of the tenancy or license.

- **Applicability:** BSA section 112 applies to a broader range of relationships beyond just landlord-tenant scenarios, including partnerships and agency relationships and IEA section 116 is narrowly focused on the landlord-tenant relationship and the licensee's relationship with the person in possession of immovable property.
- **Legal Framework:** BSA sec 112 is part of the Indian Evidence Act, which is a comprehensive statute governing the admissibility and relevancy of evidence in Indian courts and IEA sec 116 is also part of the Indian Evidence Act and addresses specific aspects of landlord-tenant relationships within its framework.

Terminology considered insensitive or outdated, like '*lunatic*', has been updated to more respectful terms such as '*person of unsound mind*' (per Section 124 of the BSA, corresponding to Section 118 of the IEA).

CHAPTER III

Heralding a Legal Revolution: Shaping the Digital Justice Landscape

In the 21st century, the rapid pace of technological development and scientific discoveries continues to amaze. This progress, especially in Artificial Intelligence, has posed challenges in tracing and prosecuting crimes, prompting the need for updated laws. The BSA represents a significant advancement in India's criminal justice system, with a key focus on embracing technology. It introduces procedures for handling digital evidence and expanding the scope of admissible evidence. The overarching aim of this legislation is to streamline the delivery of justice by leveraging technological advancements without necessitating a complete overhaul of existing systems. The Evidence Act saw a significant amendment in 2000 to accommodate the burgeoning realm of electronic evidence.

The Information Technology Act, 2000 (IT Act) was enacted to regulate electronic transactions and provide legal recognition to electronic records in India, responding to the surge in technology. This necessitated amendments to the Evidence Act, which lacked provisions for electronic evidence, to establish a framework for the admissibility of electronic evidence in Courts, aligning legal practices with technological advancements. Consequently, the introduction of the IT Act introduced several amendments to the Evidence Act, facilitating the acceptance of

electronic evidence. This amendment, now reflected in the current Act (BSA), marks a pivotal moment in legal history. Before 2000, electronic records could only be presented in Court if accompanied by the device that generated them, such as a laptop housing a document. However, post-2000, the status of other computer-generated outputs shifted from secondary to primary evidence, simplifying the process by allowing printouts to stand on their own without requiring the device for validation. Now, the current Act seeks to enshrine these established principles, retaining the definition of 'primary evidence' while adding four additional Explanations to clarify the scope of electronic records considered primary evidence.

The Bharatiya Sakshya Adhiniyam 2023(BSA) includes "electronic and digital records" in the definition of "Document". This definition now covers a diverse range of electronic records, including emails, server logs, files stored on computers, laptops, or smartphones, text messages, website content, location data, voice mails, and messages stored on digital devices. Let's understand the changes introduced on the admissibility of electronic or digital evidence under BSA: -

1. Treating Electronic Evidence at par with Primary Evidence: Section 61 of BSA states that, "Nothing in this Adhiniyam 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."

This Section treats electronic records at par with documentary evidence, as already treated under the Indian Evidence Act, 1872 as amended by the Information Technology Act, 2000

The BSA under Section 57 defines “primary evidence” and carries four other explanations named 4, 5, 6 and 7, in addition to the three explanations mentioned in IEA. According to the BSA provisions, electronic or digital records would be treated as primary evidence in the following four circumstances: -

- a. Explanation 4 states that “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.”
- b. Explanation 5 states that “Where an electronic or digital record is produced from proper custody, such electronic and digital record is primary evidence unless it is disputed.”
- c. Explanation 6 states that “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.”
- d. Explanation 7 states that “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.”

2. Addition to the Definition of “Document” and “Evidence”: BSA now defines document as “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.” Thus, the new law considers electronic and digital records under the definition of document, which was not a part under IEA. Further, new illustration (vi) added to the definition of documents to account for electronic records – “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.”

Similarly, BSA made an addition to the definition of evidence which shall include 'information given electronically' within oral evidence and 'or digital records' within documentary evidence, as not provided under the IEA.

3. Expanding the reach of “electronic evidence”: The BSA introduces significant modifications in the realm of electronic evidence, bringing about substantive changes alongside primary/secondary evidence considerations. Section 63 of BSA expands its reach to electronic records in semiconductor memories, in addition to those on paper and stored/recorded/copied in optical or magnetic media. Furthermore, the provision extends its applicability to encompass 'any communication device,' broadening its scope. Subsection (3) of the provision refines the

definition of a computer or a communication device, providing it with a more comprehensive interpretation.

4. Condition of Mandatory Production of Certificate Retained but requires an approval from an expert too: It is important to note that the sub-section (4) of the BSA Section 63 maintains the mandatory requirement of a certificate as specified under Section 65B (4) of the IEA but specifies that the certificate must be submitted along with the electronic record each time electronic evidence is presented before a court. Additionally, the revised provision clarifies that the certificate can be provided by any person 'in charge of the computer or communication device and an expert (whichever is appropriate),' replacing the previous requirement for a person 'occupying a responsible official position.'

5. Introduction of Format of Production of Certificate for production of electronic or digital records: While the IEA did not specify the form of the certificate to be produced for the proof of the secondary evidence, and is often presented as an affidavit in practice, however, the Section 63(4)(c) of BSA introduces a Schedule A and B for this purpose. Part A needs to be filled by the Party producing the electronic record/output of the digital record, and Part B needs to be filled by an expert to submit that the HASH value/s of the electronic/digital record/ is produced from the given algorithms in the form itself.

THE SCHEDULE

[See section 63(4)(c)]

CERTIFICATE

PART A

(To be filled by the Party)

I, _____ (Name), Son/daughter/spouse of _____
residing/employed at _____ do hereby solemnly affirm and
sincerely state and submit as follows:—

I have produced electronic record/output of the digital record taken from the following
device/digital record source (tick mark):—

Computer / Storage Media DVR Mobile Flash Drive

CD/DVD Server Cloud Other

Other: _____

Make & Model: _____ Color: _____

Serial Number: _____

IMEI/UIN/UID/MAC/Cloud ID _____ (as applicable)

and any other relevant information, if any, about the device/digital record ____ (specify).

The digital device or the digital record source was under the lawful control for regularly
creating, storing or processing information for the purposes of carrying out regular
activities and during this period, the computer or the communication device was working
properly and the relevant information was regularly fed into the computer during the
ordinary course of business. If the computer/digital device at any point of time was not
working properly or out of operation, then it has not affected the electronic/digital
record or its accuracy. The digital device or the source of the digital record is:—

Owned Maintained Managed Operated

by me (select as applicable).

I state that the HASH value/s of the electronic/digital record/s is _____,
obtained through the following algorithm:—

SHA1:

SHA256:

MD5:

Other _____ (Legally acceptable standard)

(Hash report to be enclosed with the certificate)

(Name and signature)

Date (DD/MM/YYYY): _____

Time (IST): _____ hours (In 24 hours format)

Place: _____

PART B

(To be filled by the Expert)

I, _____ (Name), Son/daughter/spouse of _____
residing/employed at _____ do hereby solemnly affirm and
sincerely state and submit as follows:—

The produced electronic record/output of the digital record are obtained from the following
device/digital record source (tick mark):—

Computer / Storage Media DVR Mobile Flash Drive

CD/DVD Server Cloud Other

Other: _____

Make & Model: _____ Color: _____

Serial Number: _____

IMEI/UIN/UID/MAC/Cloud ID _____ (as applicable)

and any other relevant information, if any, about the device/digital record _____ (specify).

I state that the HASH value/s of the electronic/digital record/s is _____,
obtained through the following algorithm:—

SHA1:

SHA256:

MD5:

Other _____ (Legally acceptable standard)

(Hash report to be enclosed with the certificate)

(Name, designation and signature)

Date (DD/MM/YYYY): _____

Time (IST): _____ hours (In 24 hours format)

Place: _____

CHAPTER IV

Understanding the Certificates under Bhartiya Sakshya Adhinyam

So what are these terms: SHA1, SHA256 and MD5? These are cryptographic hash functions and are used to verify that a file has been unaltered. These functions are used to generate a Hash Value (which are in alphanumeric form) for any file. The purpose of using these functions is that once an alphanumeric code is generated for a file, it is bound to remain the same, until and unless the file is altered. This basically means that once the hash value of a file has been generated, it remains the same, until and unless the file has been altered or tampered with. As soon as a file is altered with, its hash value will change and will signify that the file has been changed or altered in some manner.

These are the exactly two essential ingredients of a Certificate under Section 63 of the BSA. The alphanumeric Hash Value is to be filled in the blank after “I state that the HASH value/s of the electronic/digital record/s is” and the hash function which has been used has to be checked in the checkbox. So if you used MD5 as a hash function to generate the hash value of your file, you would check the checkbox of MD5.

So **How to generate a HASH Value?**

For the purpose of simplicity and avoiding complex purposes on how to generate Hash Value using the MD5 hash function.

Windows :

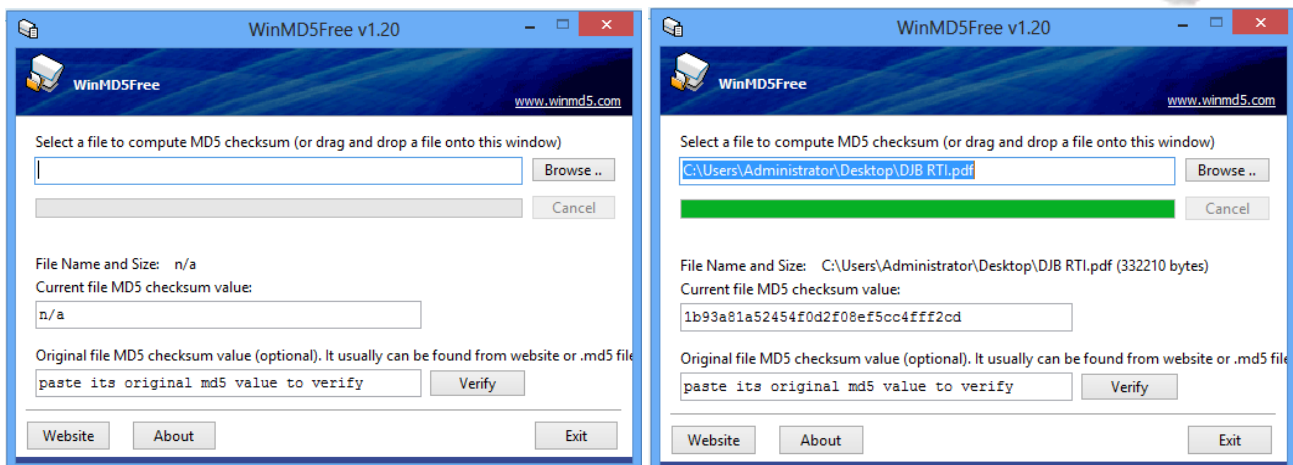
Here is a simple step:

Step 1: Download the WinMD5Free software from their website <https://www.winmd5.com/>. This is a free software and does not contain any adware, spyware or malware. I found this software to be optimal.

The file will be downloaded as a ZIP File on your computer. Extract the ZIP Files to any folder on the hard disk of your computer and run the .exe file.

Kindly note: This software does not require any installation.

Step 2: Open the software WinMD5Free on your computer. A window such as this will appear :

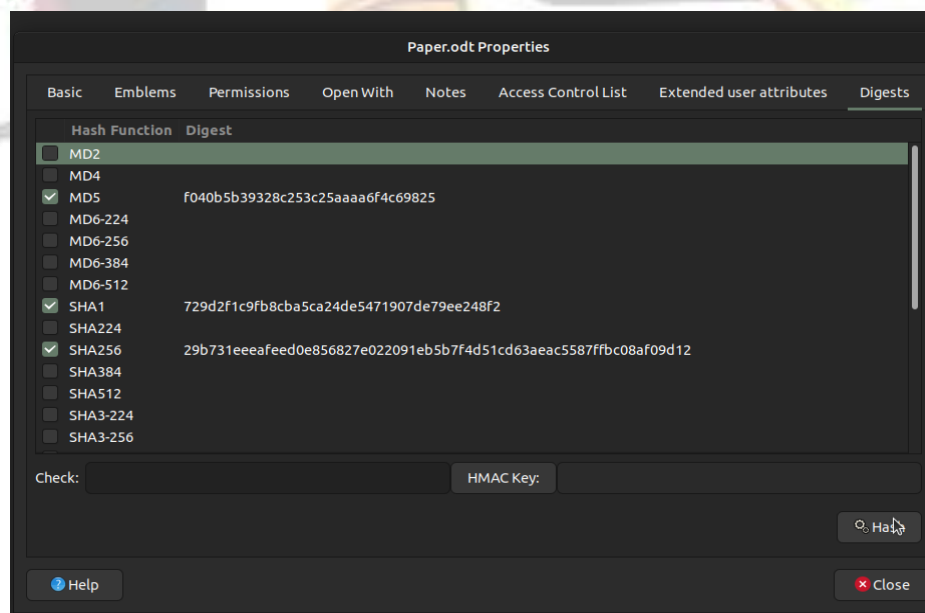


Step 3:

Either drag and drop the file in the window or browse for the file. As soon as the File is uploaded in this window, the Hash Value is generated in the box of “Current file MD5 cheksum value:” So taking the example in the above window, the text appearing in the “Current file MD5 cheksum value:” is “1b93a81a52454f0d2f08ef5cc4fff2cd”. This is the exact value which needs to be filled in the Certificate of Section 63 of the BSA, against “I state that the HASH value/s of the electronic/digital record/s is”.

Ubuntu:

The process to obtain HASH value in a Ubuntu operating system is much more simple. The Process to obtain HASH value of a file is to Right Click on the file and select properties on the drop down menu and select digest tab where you can find HASH values.



PART B

The title of Part –B of the Certificate states “To be filled by the expert”. The most likely and constructive interpretation of the requirement, as this doesn't place any burden on the party filing the electronic record, to place on record a signed document of an expert, each time he files an electronic record in the legal proceedings. If we look for a provision for experts under BSA, Section 39 of the BSA states that:

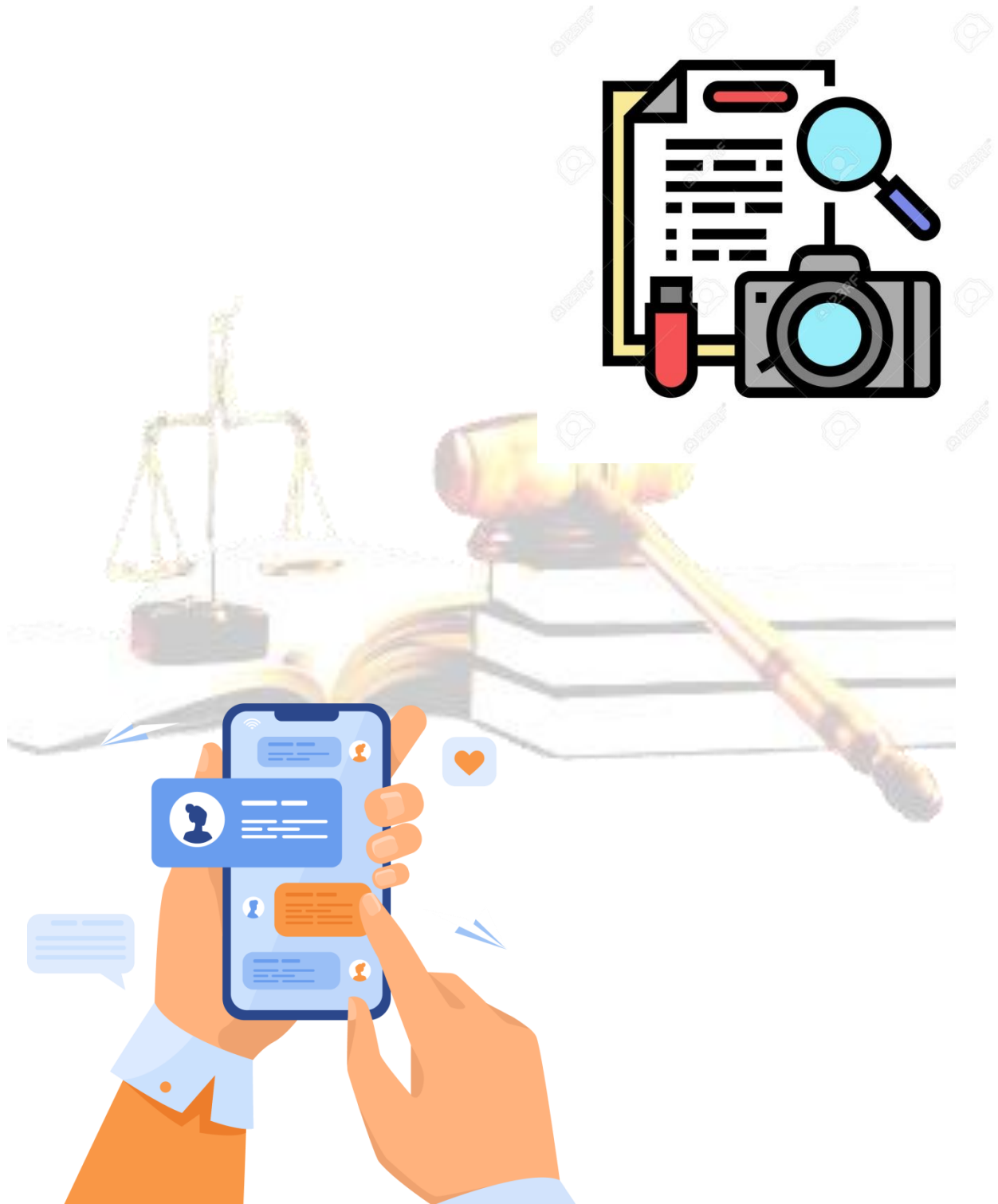
Section 39 (1) When the Court has to form an opinion upon a point of foreign law or of science or art, or any other field, or as to identity of handwriting or finger impressions, the opinions upon that point of persons specially skilled in such foreign law, science or art, or any other field, or in questions as to identity of handwriting or finger impressions are relevant facts and such persons are called experts.”

(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

Therefore, if Section 39(2) is considered in light of the Certificate, it would mean that Part –B of the Certificate has to be not executed by the litigant at all. It would imply that Part-B of the Certificate is only required,

when the validity of any electronic record is challenged by the other party and the Court may send such electronic records to be verified by Examiner of Electronic Evidence.



CHAPTER V

View of Apex Courts

With the introduction of new act, *the Bhartiya Sakshya Adhiniyam, 2023*, the law of evidence in India is all set to change. With the new Adhiniyam outgoes the law that ruled world of evidence for almost 150 years. Looking back at the jurisprudence, one can surely say that the evidence act in its present form did amazing job in dealing with the traditional cases pertaining to oral and documentary evidence. Where the language fell short, courts rushed to rescue. On that outset let's look into different views taken up by Hon'ble Courts in reference to the latest view adopted by the Supreme Court in Case of **Arjun Panditrao**.



| Judgment | Citation | Forum | Ratio | Followed/ Overruled |
|--|---|--------------------------------|---|------------------------|
| Anvar P.V. v. P.K. Basheer & Ors | (2014) 10 SCC 473 | Supreme Court (3 Judges) | Section 65A & 65B is a complete Code. A certificate required under Section 65B(4) is a condition precedent to the admissibility of any Secondary electronic record. If an electronic record is used as primary evidence under Section 62 of the said Act, the same is admissible in evidence, without compliance with the conditions in Section 65-B of the said Act. | Followed |
| Tomaso Bruno v. State of U.P. | (2015) 7 SCC 178 | Supreme Court (3 Judges) | Secondary evidence of the contents of a document can also be led under Section 65 of the said Act to make CCTV footage admissible | Overruled |
| Paras Jain v. State of Rajasthan | 2015 SCC OnLine Raj 8331 | Rajasthan High Court | Certificate as required under Section 65-B can be produced subsequently in any circumstances if the same was not procured alongwith the electronic record and not produced in the Court with the charge-sheet or produced but not in proper format. It is curable irregularity. | Given Concurrence |

| | | | | |
|---|--|--------------------------------|--|----------------------|
| Kundan Singh v. State | 2015 SCC OnLine Del 13647 | Delhi High Court | Requisite certificate need not necessarily be given at the time of tendering of evidence but could be at a subsequent stage of the proceedings. | Given Concurrence |
| K.Ramajyam v. Inspector of Police | (2016) Crl. LJ 1542 | Madras High Court | Evidence aliunde can be given through a person who was in-charge of a computer device in the place of the requisite certificate under Section 65B(4) of the said Act | Overruled |
| Vikram Singh & Anr. v. State of Punjab | (2017) 8 SCC 518 | Supreme Court (3 Judges) | Where primary evidence in electronic form has been produced, no certificate under Section 65B would be necessary | Followed |
| Shafhi Mohammad v. State of HP | (2018) 2 SCC 801 | Supreme Court (2 Judges) | A party who is not in possession of device from which the document is produced, cannot be required to produce certificate under Section 65-B(4) of the said Act. The applicability of requirement of certificate being procedural can be relaxed by the court wherever interest of justice so justifies. | Overruled |

| | | | | |
|--|-----------------------------|---|---|-----------------|
| State of Karnataka v. M.R. Hiremath | (2019) 7 SCC 515 | Supreme Court (2 Judges) | The need for production of a certificate under Section 65-B(4) would arise when the electronic record is sought to be produced in evidence at the trial. It is at that stage that the necessity of the production of the certificate would arise. | Followed |
|--|-----------------------------|---|---|-----------------|



CONCLUSION

Most of the core principles that formed a part of India's evidence jurisprudence under the 130+ year old IEA, e.g., burden of proof, admissions, relevancy of facts, etc. remain constant under the BSA. Nevertheless, with significant emphasis being accorded to electronic records and their treatment, the enactment of the BSA is certainly a significant step towards aligning India's legal system to contemporary technological advances. What remains to be seen is as to how quickly and efficiently stakeholders such as Courts, lawyers, litigants and investigating agencies embrace such changes to render the legal system truly contemporary at the ground level. The judicial recognition of international conventions, inclusion of the term 'coercion' in the context of barred admissions and deletion of long redundant colonial terms are definitely welcome changes under the BSA.



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