

CRITICAL ANALYSIS OF THE BHARTIYA SAKSHYA ADHINIYAM 2023

AUTHOR – ANISHA AGRAWAL, STUDENT AT AMITY LAW SCHOOL, AMITY UNIVERSITY RAJASTHAN

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ABSTRACT

The Bhartiya Sakshya Adhinyam 2023 superseded the Indian Evidence Act of 1872, which was legislation still in the colonial era. There were fundamental changes in India's legal system with it. This research study critically analyses the primary innovations and reforms covered by the 2023 Act in relation to how they may influence India's legal system. With the rapidly developing technology and increase of complicated legal issues it had birthed, there was a definite call for evidence law to be updated. The new reform as can be reflected in this 2023 Act is through contemporary procedures for witness protection, strengthening of admissibility provisions concerning digital and electronic evidence, and making weightier the forensic and scientific evidence.

The Act has updated the burden of proof for economic crimes and sexual harassment cases, and it has streamlined the procedures on documentary evidence, so the introduction of authentic digital documents is made not burdensome before a court of law. Such a legal system in India would facilitate the goal of victim-centric, transparent, and efficient transparency in terms of best international practices.

But the paper also discusses possible obstacles in implementing the reforms in practice, especially in developing and rural areas where technology is still not well-accessible. And even if the Act introduces much needed amendments, proper balance between the right to personal privacy and the need for digital evidence in court gets raised as a concern. The analysis concludes that though Bhartiya Sakshya Adhinyam 2023 is a progressive step to modernize the Indian judiciary system, its success would depend upon equal application throughout different areas of India and effective judicial interpretation.

KEYWORDS: Digital Evidence, Forensic Science, Vulnerable Witnesses, Judicial Reforms, Admissibility

INTRODUCTION

The Indian Evidence Act, 1872, drafted during British colonial administration, had traditionally impacted India's legal structure governing evidence. Although it has served the purposes satisfactorily for over a century, the failure of this Act in meeting the present legal system needs are growing with the changing pattern in society, technology, and laws. The newly emerging types of crimes, including cybercrime, digital fraud, and data breach, gave tough times to this present system of law with developments in forensic science and communication technology. The judiciary would

often find themselves in a tight spot for interpreting antiquated statutes as applied to cases of digital evidence, which would often make decisions uneven and delay procedures in such cases.

The Bhartiya Sakshya Adhinyam 2023, which is advanced as a replacement for the Indian Evidence Act, 1872, marks an important step towards the resolution of these issues. This new Act incorporates evidence forms from this modern age such as digital or electronic records, forensic and scientific reports, and other high-tech evidence verification methods into the process of gathering, presenting, and

admitting evidence in Indian courts to transform this age-old process. It also marks a shift towards greater victimcentricity in sensitive cases involving vulnerable witnesses where protective measures and witness anonymity programs have been enhanced.

Introductions with evolving natures of crimes and disputes, the Bhartiya Sakshya Adhiniyam 2023 was also a recognition of the older system's weakness and complexity. For years, there had been serious concerns over the growing pendency of cases in Indian courts, which was frequently the result of delayed evidence admission and procedural delays. The new Act seeks to make the courts more streamlined and transparent, with easy admittance of digital records, quicker procedures for documentary evidence, and establishing burden of proof in crimes like financial frauds. This essay will provide a critical analysis of Bhartiya Sakshya Adhiniyam 2023 wherein its major changes, novelties, and effects on the Indian legal system are monitored. In this respect, the need for revision is put in proper perspective first by reviewing the historical background of the Indian Evidence Act, 1872. It further compiles analysis over the new provisions of the Act. An analysis by comparison with other legal systems evidences the suitability of these changes across the world. The article concludes by discussing the future opportunities and possible hurdles especially with regard to ensuring that the Act is applied justly across all areas in India and legal situations.

While many people perceive the Bhartiya Sakshya Adhiniyam 2023 as a step in the right direction toward India modernizing its legal system, it is only through skillful execution and judicial interpretation that its full benefits can be achieved. The mere opening up of various provisions for electronic evidence and protection of vulnerable witnesses under the act will depend on how much of these much-needed reforms are interpreted and applied through India's complex system of law. The paper critically examines the newness of the Act

as well as the practical complexities it presents and whether the latter meets up with the aspiration of India's fast-moving legal landscape.

HISTORICAL CONTEXT AND NEED FOR REFORM

The Indian Evidence Act, 1872, was enacted during British colonial control and was in itself a landmark statute. The legislation was draughted by Sir James Fitzjames Stephen and defined the principles under which the Indian legal system deals with matters relating to the admissibility of evidence in court cases. Ideas under common law provided the most significant inspiration for the Act, as it had been modified to suit the Indian setting. When first enacted, it played a very important role in bringing uniformity in the rules of evidence of each of the provinces of British India, thus guaranteeing consistency in the previously disjointed and unequal legal system.

A landmark legislation, the Act of 1872 dealt with some very vital matters like burden of proof, the relevance of facts, presumptions and the nature of permissible evidence—both oral as also documentary and circumstantial. As such, the Act of 1872 was the foundation of the law of evidence in India for over a century, and judicial pronouncements have, time and again, revived the core principles of these enactments.

But the Act was starting to tell the century something about the end of the twentieth and the beginning of the twenty-first century. Its provisions raise serious obstacles in their application to modern legal issues, as they had been draughted with a stress placed upon the socioeconomic and technological realities of the 19th century. The Act was not drafted to cope with the challenges thrown by the modern digital world, but mainly relied upon the conventional methods of proof such as oral testimony, documentary evidence, and direct statements. But the demands of the modern legal landscape became increasingly unmanageable for the Indian Evidence Act of 1872, as society and technology, in addition to the nature of crimes, continued to evolve.

- A. Technological Advancements: Therefore, technology has transformed the way evidence is created, archived, and presented. The legal landscape itself has changed entirely from emails, texts, and CCTV footage to now more complex types of digital evidence like blockchain records and metadata. The Indian Evidence Act, 1872 lacked clear provisions for admission, authentication, and verification of these types of electronic evidence. Though, Information Technology Act 2000 introduced Section 65B, which added a framework for admissibility of electronic records, the conditions for certification incorporated with this section created a lot of confusion and therefore often led to the rejection of precious evidence.
- B. Crimes of new age: the judiciary needed a strong framework while dealing with cases that involved advanced digital evidence as cyber crimes, digital fraud, and online harassment gained momentum. In crimes involving advanced financial networks, hacking, and even data manipulation, the gathering, storage, and presentation of evidence need to be correspondingly more advanced. Because the changing issues could not be addressed by the Indian Evidence Act of 1872, cases involved with these types of crimes frequently suffered from delays and unequal decisions.
- C. Tough Issues with Witness Protection: Another concern within the area is a witness's treatment, especially involving children, rape victims, and witnesses who have cases related to organized crime. The new methods for witness protection, including video conferencing and anonymous testimony, came into play as trials became more complex and perilous in their regard to witnesses; however, this was not implemented in the 1872 Act.
- D. The overstretching of the legal system in India brought along with it a plethora of failures in the 1872 Act. Millions of cases were stacked up in various courts due to cumbersome procedures involved in admitting evidence, particularly documentary evidence. The slow gait of the court was compounded by the requirement for hard copy documentation, long verification procedures, and the delay in admitting expert or forensic testimony.
- E. International Trends and International Models of Best Practice: The law of the whole world was in a process of race to meet the challenges associated with the computer era. Besides testing protected testimony schemes, expediting reporting procedures, and forensic science for use in court processes, the United States and United Kingdom had already developed structures for admissibility and validation of electronic evidence. Given the growing number of cross-border legal disputes, India's law of evidence really needed to catch up with the international norms, and this was quite emphatically so in this era when globalization was fast becoming a more pronounced feature.
- It was directly in response to those challenges that the Bhartiya Sakshya Adhiniyam 2023 was promulgated. This Act, fixing the shortcomings of the 1872 Act, finds ways of making it technologically more flexible and brings it into conformity with the requirement of a fast-paced, globalised world, modernises evidence law. It is an example of the commitment of the Indian Government to update the legal system and work toward making it better, more transparent and efficient. While making laws, the Bhartiya Sakshya Adhiniyam 2023 is aware of the inadequacies in laws enacted during the colonial period and tries to bring changes that address the problems which the court, litigants, and society at large are facing today.

This change is overdue and would bring Indian evidence law into the twenty-first century, not only a necessary change. The Bhartiya Sakshya Adhinyam 2023 attempts to make justice delivery more efficient and fairer by trying to mitigate procedural delays and protect the rights of witnesses through imaginative modifications in the means of collecting, processing, and presenting evidence before courts.

KEY INNOVATIONS AND REFORMS IN BSA,2023

Bhartiya Sakshya Adhinyam 2023, introduced as a replacement to the Indian Evidence Act of 1872 brings a whole slew of interesting reforms in the Indian legal system and attempts to align with the changing trends and needs of society, complex modern crime, and issues introduced by technological advancements. Being an initiative towards implementing international best practice, it gives a modern facelift to the process of admitting evidence in court and protects vulnerable witnesses from harassment and trauma. Major changes and improvements the Bhartiya Sakshya Adhinyam 2023 introduce have been discussed in detail below:

1) Admissibility of digital and electronic evidence: Among these, some of the significant ones in Bhartiya Sakshya Adhinyam 2023 include the strengthening of the framework pertaining to the admissibility of digital and electronic evidence. The Indian Evidence Act of 1872 was primarily based on the nature of evidence—orally transmitted and documentary. Even though Section 65B of the Act came into effect as early as the year 2000, criticism has frequently been directed at it for being vague and for its lengthy certification process.

The 2023 Act addresses these matters by standardizing the admissibility of electronic evidence on a par with modern technical realities. This reform is of pivotal importance in respect of:

A. Authentication Process Simplified: Electronic evidence such as emails, SMS, digital contracts, and CCTV footage are

authenticated by courts much faster compared to earlier times. This is because the 2023 Act has made the necessities to acquire certification for electronic evidence for admission in courts much easier. The 2023 Act has provided that authentication can be done by advanced techniques of verification, such as blockchain technology, digital signature, metadata analysis, and other advanced techniques for electronic evidence.

B. Preservation and Chain of Custody: The new Act introduces more detailed guidelines for preserving the electronic evidence to ensure no alterations, manipulations, or contaminations can occur by up-to-date record-keeping. It is through such safeguards that digital evidence stands in court better and remains unaltered.

C. Justice and Privacy: The 2023 Act puts into perspective the very growing issue about digital privacy and rules on collection of electronic evidence within the context of respecting the right to privacy. For example, even if emails or footage recordings of the surveillances may be necessary for the case, they must be collected legally so that privacy may not be unconstitutionally violated.

2. Enhancing Witness Safety and Testimonies of Vulnerable Witnesses: Witness protection is one of the major proposals put forward by Bhartiya Sakshya Adhinyam 2023; this act protects some at-risk witnesses—children, sexual abuse victims, and witnesses in cases related to the underworld and corruption. This is one of the most progressive improvements under the law. India has historically lacked satisfactory witness protection laws, leaving many prone to abuse, threats, and violence. There are several other provisions in the 2023 Act and this is to ensure the security and comfort of witnesses in legal procedures.

A. Vulnerable Witnesses and Video Conferencing: The newly enacted law

also permits a witness who is vulnerable to testify either by video conferencing or behind a screen. This aspect of it diminishes exposure to the accused persons and serves to decrease the psychosocial stresses associated with confrontation in public.

B. Witness Anonymity and Protection Programs: The Bhartiya Sakshya Adhiniyam 2023 establishes the legal frameworks with a call to cover witnesses' identities even when the case is at a heightened level of risk. These programs have this feature that shows a witness can safely testify without fear of revenge, especially in cases covered by organized crime, terrorism, or corruption in such high degrees. It has relocation and anonymity options whereby witnesses can be protected and need to come out.

C. In-camera Proceedings: The Act provides for in-camera proceedings and testimony can be taken in private excluding the public or media, especially where these subjects are of a sensitive nature—in sexual offense cases and other cases involving child witnesses. This reduces the psychological burden on victims and helps in upholding the integrity of the law.

3. There will be much more usage of scientific evidence and forensic: The Bhartiya Sakshya Adhiniyam 2023 gives substantial importance to the role of scientific and forensic evidence in judicial procedures. It defines clear guidelines regarding collecting, preserving, and presenting forensic evidence, as modern crime cracking is increasingly based on forensic science. A few differences recently brought to this area include the following:

A. Admissibility of Forensic Reports as Original Evidence The forensic findings of DNA analysis, fingerprint evidence, and toxicology reports are similarly considered more important in court cases today. Now, the 2023 Act has

changed to treat these findings as primary evidence and their admittance is allowed without requiring the physical appearance of the forensic expert in each case.

B. Forensic Evidence Collection Rules. The Act also has strict rules for collection and storage of forensic evidence. These involve protocols that ensure proper handling of the evidence from the crime scene to the laboratory, maintaining chain of custody, and avoiding contamination. These changes reduce the possibility of challenging forensic evidence on technical grounds.

C. Training of Judges and Advocates: The 2023 Act favours training of judges as forensic science involves technical evidence obtained from forensic activity; the bill ensures that even the judges and advocates, at the baseline, have knowledge about how such evidence is produced and interpreted.

4. Simplify acceptance of documentary proofs: Major modifications under Bhartiya Sakshya Adhiniyam 2023 have aimed to ease the process of documentary proof admission especially with civil and commercial matters. Due to this tedious process of attestation and authentication, the parties in litigation were put to undue stress while the courts suffered prolongation in judicial proceedings under the Indian Evidence Act, 1872 requiring actual documents.

A. Acceptance of Digital papers: A digitally signed or verified paper can be accepted as evidence in court under the 2023 Act. This brings down adjudication, eliminates the physically voluminous nature required for its physical copies, and increases the efficiency of the rule of law.

B. Documentary Certification Relaxation: There has been simplification in the certification procedures. As long as the other party doesn't have a denial on certificates issued by credible

institutions, companies, and government agencies, it is assumed to be true, thereby dispensing with the need for very strict documentations every time.

The comprehensive package of changes under the Bhartiya Sakshya Adhinyam 2023 would modernize evidence law in India, responding to the rapidly changing legal environment. This Act reflects the changed demands of an Indian judiciary for the twenty-first century—from resolving problems related to digital and electronic evidence to improving witness protection and giving greater value to forensic science. The new Act thus lays solid foundations for an effective, transparent, and equitable legal system through harmonization with worldwide best practices, simplification of documentary procedures, and changing the burden of proof in complicated situations.

COMPARITIVE ANALYSIS WITH INTERNATIONAL LEGAL SYSTEM

Acceptability of Digital Evidence: One of the most debated reforms by Bhartiya Sakshya Adhinyam 2023 is the admissibility of digital and electronic evidence, which subjects legal systems all around the world to much challenge.

- A. United States: In the United States of America, the Federal Rules of Evidence developed long before the 2000 FRE amendment the conditions for authentication of digital records, as discussed below. The Electronic Signatures in Global and National Commerce Act (E-SIGN) and the Uniform Electronic Transactions Act (UETA) further legitimize electronic records and signatures. The former and latter apply only to such electronic records and signatures as shall have been validated by established technological processes like blockchain verification or digital signatures.
- B. UK: Electronic evidence may be used in the civil courts as well as in criminal courts in the UK upon proof of their

admissibility to a reasonable extent under the 1995 Civil Evidence Act. In addition, the 2003 Criminal Justice Act comes with digital record admission opportunities, removing unnecessary procedural barriers for the introduction of electronic evidence in court, such as footage from closed-circuit televisions and e-mail correspondence. In like vein, the Indian 2023 Act has done away with cumbersome procedural certification process which led to a delay in admitting digital evidence and which was made under erstwhile Section 65B of the Indian Evidence Act, 1872.

2. Protection of Vulnerable Witnesses: The Bhartiya Sakshya Adhinyam 2023 brings India's legal system to the mainstream of international methods on the best ways to protect witnesses' rights in delicate situations, such as sexual assault or organized crime. Gradually improving the protection of vulnerable witnesses is introduced.

- A. United States: The United States has an extensive Witness Security Program, which provides new identities, relocation, and anonymity for high-risk witnesses involved in organized crime or terrorism cases, including organized crime. The Bhartiya Sakshya Adhinyam 2023 covers initiating witness protection arrangements, including in-camera hearings, video conferencing, and anonymity protocols, where the witnesses are sexual assault victims or children, but it does not take that to all the way to a structure of any resemblance to WITSEC. It certainly seems a step forward in optimizing witness protection and reducing intimidation and thereby increasing chances that a witness would testify in court.
- B. United Kingdom: The Youth Justice and Criminal Evidence Act 1999 of the UK introduced special safeguards to be implemented for vulnerable and

intimidated witnesses. This provided an opportunity to take depositions in-camera behind screens or video links. Such clauses guarantee that the mental and physical security of witnesses is given priority. Witness anonymity and video conferencing are just a few examples, however of the ways in which the principles shine through within the 2023 Act, and make it easier for witnesses to testify without the threat of intimidation and retribution.

3. Use Scientific and Forensic Evidence: With the increasing interest on the use of forensic science in legal procedures around the world today prompted by the necessity for it to provide reasonable and reliable evidential results in the process of civil and criminal cases, it appears that forensic science has become a dynamically relevant factor in modern investigations.

A. United States: United States, in its *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, established the Daubert Standard as the standard of admissibility for scientific evidence. Forensic evidence is essential to legal proceedings in the U.S. Expert testimony shall have an identifiable scientific foundation and be reliable and relevant. This step toward scientific accuracy is reflected well in *Bhartiya Sakshya Adhiniyam 2023*, which gives forensic reports a status as the most basic and leading evidence types in courts; that applies to toxicology studies, DNA evidence, and fingerprint analyses. One step in the correct direction has thus been taken through including reliable forensic science in India's legal systems with this step toward the Daubert Standard.

B. Significance and Procedure: United Kingdom: There exist procedures for gathering, handling, and presentation of forensic evidence in court, and it also holds immense significance there. Under the Criminal Procedure and

Investigations Act of 1996, disclosure of forensic evidence is guaranteed to the prosecution and defense appropriately. Similarly, India's 2023 Act articulates clear regulations for the preservation and presentation of forensic evidence to a court while maintaining its integrity and proper chain of custody.

4. Digital Records and Documentary Evidence: Being one of the steps toward the legal system of India getting closer to international norms in handling documentation and digital transactions, *Bhartiya Sakshya Adhiniyam 2023* streamlines procedures in admitting digital records and documentary proof.

A. In the United States: Digital papers and records are often admitted into court under FRCP and Federal Rules of Evidence if they are authenticated by used accepted techniques, such as certified copies, or by electronic signatures. In a similar direction, *Bhartiya Sakshya Adhiniyam 2023* decoys the court procedure largely on civil and commercial matters by introducing the acceptance of digital papers without undergoing tedious certification procedures as was prevalent earlier.

B. European Union: The EU eIDAS Regulation sets a framework for the crossborder use and acceptance of digital records and electronic signatures. This ensures that digital documents have the same legal power as their hard copies, which makes crossborder legal transactions easier to settle. India's new Act focusing on digital records and electronic transactions fails to address the crossborder problems in this regard specifically. This tends to point toward attempting to harmonize domestic practices with the same international standards.

POTENTIAL IMPACT ON JUDICIAL PROCESS

1. The efficiency and speed of the legal process: The procedurally cumbersome hurdles that goosed delay under the

earlier law have been easily removed under the Bhartiya Sakshya Adhiniyam 2023 in accepting digital and documentary evidence. Removal of the accreditation requirement of Section 65B simplified producing electronic evidence, thus streamlining trials so that they take lesser time than before and the backlog of cases decreases over time. In doing so, this streamlined process for authenticating documents frees the courts from playing a game of where every bean and beans shot ends up, rather than concentrating on what matters: efficiency and better civil and commercial litigation. That, again, will facilitate an even faster pace of court cases to litigants' easier access to the legal system.

2. **Enhanced Evidence Accuracy and Reliability:** The Act acknowledges forensic reports—hearing the toxicological and DNA analyses as the first evidence in courts, hence making it much more significant for forensic evidence. This change will improve the soundness of judgments handed out by courts and lessen the dependency on circumstantial evidence. Most importantly, the Act highlights the importance of forensic science training in court officers who are able to understand and assess the complexities much better. It is an expectation that judicial decisions, implemented by these reforms, would also be more reliable and sounder from an objective point of view and, therefore, would decrease errors in civil as well as criminal cases.
3. **Enhanced Safety for Afflicted Eyewitnesses:** The 2023 Act includes protections for vulnerable witnesses like in camera trials, video linked cases, and allowing witnesses to testify under anonymity. The former is hoped to encourage involvement by witnesses in sensitive cases—child abuse, organized

crime, sexual assault, among others—for the testimony of which has long been refused on grounds of fear of retaliation. The law enhances the efficiency of the legal system where testimony alone has to be protected so that the well-being of witnesses physically and mentally is ensured.

4. **Increased Technology in the Use of the Law:** The Bhartiya Sakshya Adhiniyam 2023 will also enable greater technological incorporation in the legal system, mainly because of the addition of digital evidence, use of blockchain for authenticating records and streamlining electronic documentation procedures. Courts can also manage digital data more aggressively with modernization that has reduced demands on paper records and physical papers. Moreover, access to court systems, accelerating court processes, and transparency are achieved through especially those technical improvements in electronic transactions and cybercrime cases.
5. **Equity and Fairness in the Legal System:** The Act sets the changes which are going to establish equity and fairness. For example, it favors people so that powerful people can be taken through the law by transferring the burden of proof in certain cases like financial crimes or harassment cases at the workplace. In the second aspect, the legislation safeguards the rights of the individual and ensures that justice is served by setting the balance between privacy and gathering of technological evidence. All these changes enhance access to justice, protect the weaker party in any dispute, and prevent the abuse of authority, together making for a fairer legal system.

CONCLUSION

The Bhartiya Sakshya Adhiniyam 2023 addresses crucial questions regarding the admission of digital evidence, protection of



vulnerable witnesses, application of forensic technology, and processing of documentary evidence. The legal framework for evidence in India will now come into conformance with international standards. The comparison of these reforms with evidence laws in the US, the UK, and EU shows clearly that India has taken a progressive step by incorporating international best practices. It keeps in mind that such changes are tailor-made in the country's legal and social setting. Therefore, Bhartiya Sakshya Adhiniyam 2023 enhances India's ability to meet the needs of the 21st-century legal landscape as well as modernizes this nation's evidentiary law.

