



INDIAN JOURNAL OF
LEGAL REVIEW

VOLUME 5 AND ISSUE 1 OF 2025

INSTITUTE OF LEGAL EDUCATION



INDIAN JOURNAL OF LEGAL REVIEW

APIS – 3920 – 0001 | ISSN – 2583-2344

(Open Access Journal)

Journal's Home Page – <https://ijlr.iledu.in/>

Journal's Editorial Page – <https://ijlr.iledu.in/editorial-board/>

Volume 5 and Issue 1 of 2025 (Access Full Issue on – <https://ijlr.iledu.in/volume-5-and-issue-1-of-2025/>)

Publisher

Prasanna S,

Chairman of Institute of Legal Education

No. 08, Arul Nagar, Seera Thoppu,

Maudhanda Kurichi, Srirangam,

Tiruchirappalli – 620102

Phone : +91 94896 71437 – info@iledu.in / Chairman@iledu.in



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“LEGAL DYNAMICS OF THE PLEA OF ALIBI UNDER THE BHARATIYA SAKSHYA ADHINIYAM 2023”

AUTHOR – NUSRAT ALI RIZVI, ASSISTANT PROFESSOR AT GOVT. LAW COLLEGE, GWALIOR, M.P. EMAIL:

ALINUSRAT9@GMAIL.COM

BEST CITATION – NUSRAT ALI RIZVI, “LEGAL DYNAMICS OF THE PLEA OF ALIBI UNDER THE BHARATIYA SAKSHYA ADHINIYAM 2023”, *INDIAN JOURNAL OF LEGAL REVIEW (IJLR)*, 5 (1) OF 2025, PG. 836-843, APIS – 3920 – 0001 & ISSN – 2583-2344.

Abstract

Plea of alibi is an important defence in criminal jurisprudence, where the accused can prove his absence at the time and place of commission of the alleged offence. Bharatiya Sakshya Adhinyam, India's new evidence law has made substantial changes to the legal position regarding the plea of alibi, making it in line with modern judicial thoughts and technological inputs. This article analyses the changing legal dynamics of alibi plea under section 9 of the BSA 2023, marking its procedural framework, evidential significance, and judicial interpretations. The BSA 2023 maintains the content of Section 11 of the Indian Evidence Act, 1872, identifying alibi as a fact negating the guilt of an accused person in a crime. Yet the new act puts greater evidentiary pressures on the defence, calling upon them to deliver tangible, supportive evidence and not just assertions. The onus of proof, while generally residing with the prosecution to prove beyond reasonable doubt that the accused committed the offence, requires the accused to support the alibi by tangible documentary or electronic evidence. In addition, the judiciary's response under BSA 2023 indicates a move towards a technology-based evaluation of alibi claims, with courts increasingly using digital traces, CCTV images, and geolocation information. The rule that an alibi should be raised at the earliest opportunity remains in place, deterring spurious defences at subsequent stages of trial. Moreover, courts currently examine alibi pleas alongside circumstantial evidence to ensure an even and just assessment of truth. This Article critically examines the pivotal judicial statements and legislative provisions, providing an understanding of the challenges and opportunities in adjudicating alibi pleas in India's changing legal framework. It highlights the imperative of clarity in evidentiary standards and prevention against abuse, upholding justice while ensuring procedural integrity.

Keywords: Plea of Alibi, Criminal Law, Burden of Proof, Criminal Justice, Indian Judiciary.

1. Introduction

The term "alibi" has been of great importance in the field of criminal law for a long time, acting as an important defence strategy for suspects of criminal offences. The alibi plea, which is based on proving the physical impossibility of the suspect's presence at the crime scene, tends to be a deciding factor in the legal process. The alibi plea, from the Latin term for "elsewhere," is a defence tactic employed by suspected persons to prove their non-presence

at the site of a crime during its occurrence.¹⁵¹⁶ With the Bharatiya Sakshya Adhinyam (BSA) 2023, the plea has been codified with increased precision and applicability, responding to the changing requirements of the Indian judicial system. The BSA 2023, replacing the colonial law Indian Evidence Act (IEA) of 1872, brings in contemporary provisions to meet modern challenges, such as the admissibility of electronic evidence and safeguarding vulnerable witnesses. The legal concept of alibi

¹⁵¹⁶ Ajay Kumar Singh, 'Relevance of Plea of Alibi in Criminal Trials: An Overview' 8(1) *Journal of Indian Law Institute* 79 (2016).

has been an important part of criminal jurisprudence for long, providing a chance to defendants to establish their absence from the crime scene. The plea of Alibi, which is a Latin word for "elsewhere," is a defence in law that states the accused was somewhere else when the offence was committed, thus excluding the possibility of their participation. The plea of alibi is codified under the Bharatiya Sakshya Adhiniyam, 2023, within the ambit of circumstantial and documentary evidence, bringing it in line with contemporary developments in forensic science and digital evidence. This statute provides a structured approach to how courts evaluate an alibi, ensuring that such claims are scrutinized based on evidentiary reliability rather than mere assertions. The jurisprudence surrounding alibi has evolved through landmark judgments and statutory modifications, making it a crucial tool in the administration of criminal justice. This paper seeks to analyse the plea of alibi in the Bharatiya Sakshya Adhiniyam, 2023 in terms of its evidentiary component, judicial pronouncements, and criminal defence role. It also examines the opportunities and challenges posed by advances in technology, including GPS tracking and records, in proving or disproving alibi. Drawing from legal texts, case laws, and scholarly examination, this research seeks to achieve a comprehensive picture of the plea of alibi within India's contemporary evidentiary framework.

2. Review of Literature

The plea of alibi is a significant defence in criminal jurisprudence, stating that the accused was elsewhere at the time of the offence, thus eliminating their complicity. Several authors and commentators have examined the jurisprudential foundation of the plea, with particular emphasis on its importance for a fair trial. Phipson on Evidence (2020)¹⁵¹⁷ points out that alibi evidence is exculpatory and not affirmative, i.e., it does not establish innocence

but raises reasonable doubt against the case of the prosecution. The plea of alibi is not specifically enshrined in the Indian Penal Code (IPC) but is regulated by the evidence rules of the Bharatiya Sakshya Adhiniyam, 2023 (formerly the Indian Evidence Act, 1872). Section 9 of the Bharatiya Sakshya Adhiniyam provides for relevant facts which confirm or disaffirm the presence of the accused at the time and place of the alleged crime. Additionally, Section 106 makes the accused prove facts lying in their special knowledge. Jurists such as Ratanlal & Dhirajlal (2023) have discussed these provisions and observed that whereas the prosecution is required to prove guilt beyond reasonable doubt, the accused should corroborate an alibi with reasonable evidence. Some studies identify difficulties in proving an alibi. A study by Anupam Kumar (2022) in the Journal of Indian Law and Society explains how discrepancies in witness statements and lack of corroborative evidence can undermine an alibi defence. The courts also examine whether the alibi is fabricated, which impacts its admissibility. Comparative studies like those of Paranjape (2023) indicate that Indian case law on alibi is in consonance with common law. In the UK, in accordance with the Criminal Justice Act, 2003, alibi defences have to be disclosed early during the trial, something Indian courts also promote. However, in the U.S., the Federal Rules of Criminal Procedure mandate pretrial notice of alibi witnesses, a procedural protection that is lacking in Indian law. Although the plea of alibi is an essential defence mechanism, in India it is weakened by procedural inefficiencies and judicial suspicion. Legal experts such as N.R. Madhava Menon have advocated for procedural reforms to simplify the process of establishing alibi, such as the utilization of technology and stricter timeframes for invoking the defence. Moreover, there is also a necessity for increased awareness among law enforcement bodies and the judiciary regarding the subtleties of the plea of alibi to avoid its abuse and uphold justice. Although courts acknowledge alibi as a valid defence, they

¹⁵¹⁷ HODGE M. MALEK Q.C, PHIPSON ON EVIDENCE, SWEET & MAXWELL, 20th edition, 2023.

emphasize that it has to be established beyond doubt.¹⁵¹⁸ The advent of digital evidence, including CCTV footage and mobile location data, has had a major influence on the evaluation of alibi claims. Future legal developments could involve codifying procedural protections for pleading an alibi and ensuring its fair consideration in trials. This literature review points out that the plea of alibi, though an established defence, has to be thoroughly corroborated and scrutinized by the judiciary in order to preserve its validity in India's legal corpus.

3. Purpose of Study

The aim of this study is to critically analyse the legal dynamics of the plea of alibi under the Bharatiya Sakshya Adhinyam, 2023 (BSA), and its implications in criminal trials. The plea of alibi is an important defence where an accused person can prove his/her absence from the crime scene, and thus exclude himself/herself from involvement in the alleged crime. This research paper aims to examine the statutory provisions, judicial views, and requirements of evidence related to the plea of alibi in the context of the BSA.

The main goals of this study are:

1. Understanding the Legal Framework – To examine the statutory provision of the Bharatiya Sakshya Adhinyam, 2023, specifically Section 9, dealing with the admissibility and relevancy of facts in connection with the plea of alibi.

2. Burden of Proof and Evidentiary Standards – To review the legal duty imposed on the accused in establishing an alibi, as discussed under Section 106 of the BSA, and determine the manner in which courts consider such claims on a balance of probabilities versus beyond a reasonable doubt.

3. Judicial Trends and Interpretations – To study recent judgments and case laws interpreting the plea of alibi under the BSA, 2023,

and its significance in criminal jurisprudence in India.

4. Methodology

The method of research used is mostly doctrinal, depending on legal literature, court precedents, legislative instruments, and policy papers.

Primary Sources: The study heavily depends on the wording of the Bharatiya Sakshya Adhinyam, 2023, especially Sections 9 and 106, dealing with the plea of alibi and the onus of proof. Further, appropriate judgments from the Supreme Court and High Courts of India construing the plea of alibi will be discussed.

Secondary Sources: Commentaries to the BSA, legal magazines, research studies, law commission reports, and books written by distinguished jurists will be referenced in order to find out what insights have evolved and how the defence of alibi has been interpreted.

5. Historical Context of the Plea of Alibi

Historically, the concept of alibi has been integral to criminal jurisprudence, offering defendants an avenue to demonstrate their non-involvement in alleged crimes by proving their presence elsewhere at the relevant time.¹⁵¹⁹

This defence underscores the principle that it's unreasonable to hold someone accountable for an act they couldn't have committed due to their absence from the crime scene.¹⁵²⁰ Through the years, Indian courts have honed the plea of alibi, pointing out that the accused has the onus to establish this defence beyond all doubt. Not establishing this doesn't automatically suggest guilt but only that the alibi hasn't been convincingly made. The plea of alibi has its origins in common law and has found place within Indian jurisprudence with the enactment of the Indian Evidence Act (IEA) of 1872. The plea of alibi under the IEA was regulated by Section 11, which made facts inconsistent with relevant

¹⁵¹⁸ Alok Kumar Srivastava, 'Relevance of Plea of Alibi: A Judicial Approach' (2016) 3(2) International Journal of Research in Humanities and Social Studies 27 (2016).

¹⁵¹⁹ Harsimran Kaur and Saurabh Mittal, 'The Evidentiary Value of Plea of Alibi in Criminal Trials' (2019) 11(3) The Indian Journal of Criminology and Criminalistics 46 (2019).

¹⁵²⁰ Surya Prakash Sinha, 'Plea of Alibi in Criminal Cases: An Analysis' 9(2) SC Advocate 54, (2018).

facts admissible as evidence. Yet, the provisions of the IEA were frequently faulted as being antiquated and unsuitable to meet the complexities of contemporary criminal cases. Ancient and Medieval India:

In ancient India, Dharma Shastras and Arthashastra were the forces which guided the administration of justice to rely on truth and evidence. Even though there is no mention of the plea of alibi in any of these works, the doctrine of establishing one's innocence by evidence was understood. Islamic law (Fiqh) in the medieval period brought in the concept of "al-Hujjah" (proof) including defences such as alibi.

Colonial Era:

The colonial British rule in India codified the criminal justice system, applying English common law principles to it. The rules of evidence were codified under the Indian Evidence Act, 1872, including the plea of alibi. According to Section 11 of the Evidence Act, facts which are inconsistent with the facts in issue may be admitted, and they include the defence of alibi. The onus of establishing alibi is on the accused, but the burden of proof is not as high as the prosecution requires.

Post-Independence Developments:

Indian courts, post-independence, have continued to depend upon the principles established in the Evidence Act. The judiciary has always held the view that the plea of alibi should be made at the earliest possible time and backed by reliable evidence. Then, Bharatiya Sakshya Adhiniyam (BSA) 2023 is a departure from the IEA inasmuch as it incorporates provisions that acknowledge the realities of the digital age. Section 9 of the BSA¹⁵²¹, which is the equivalent of Section 11 of the IEA, clearly recognizes the plea of alibi as a defence mechanism. It provides that facts contrary to relevant facts or facts which make the occurrence of a relevant fact highly unlikely are admissible evidence. The BSA 2023 also

introduces Section 106, which fixes the burden of proof on the accused to prove their alibi. This is in line with the principle that the accused shall offer credible evidence in support of their absence at the scene of the crime.

6. Statutory Framework under the BSA 2023

Section 9: Relevance of Inconsistent Facts

The plea of alibi is provided in section 9 of The Bharatiya Sakshya Adhiniyam, 2023, previously in section 11 of the Indian Evidence Act, 1872. It states facts not otherwise relevant are relevant:

1. If they are inconsistent with any fact in issue or relevant fact;
2. If standing alone or in conjunction with other facts, they render the existence or nonexistence of any facts extremely probable or unlikely.

Illustration

- a. The issue is whether A committed a crime in Chennai on a particular day. The fact that, on that particular day, A was in Ladakh is material. The scenario is that close to the time when the crime was committed, A was far from a location where it was committed, which would make it extremely unlikely, although not impossible, that he is the one responsible for the committed crime.
- b. The issue, whether A committed an offence. The circumstances are such that the offence must have been committed either by X, Y, Z, or W. Any fact that establishes that the offence could have been committed by nobody else and it was not committed by either Y, Z or W is irrelevant.

Section 106: Burden of Proof

Section 106 states the onus of proof with respect to any specific facts rests on that individual who desires the court to hold its existence in belief, unless it is furnished by any legislation that the evidence of that fact shall rest on any specific person. Section 106 of the BSA 2023 puts the onus of proof upon the accused to prove their alibi. This section mandates the accused to present credible evidence, including witness

¹⁵²¹ Bharatiya Sakshya Adhiniyam, 2023.

statements, electronic records, or other supporting materials, to substantiate their assertion. The burden of proof under Section 106 is not absolute since the prosecution still has to prove the accused's guilt beyond a reasonable doubt. The failure of the accused to establish their alibi, however, does not necessarily mean that they are guilty.

Illustration

X charges Y with stealing and wants the court to find that Y had confessed the theft to Z. X has to establish the confession. Y wants the court to find that he was somewhere else at the relevant time; he has to establish it.

7. Elements of a Plea of Alibi

A plea of Alibi is a criminal law defence that is employed by an accused person who claims not to have been present at the scene of the crime during the time of the offence.¹⁵²² The elements of a plea of alibi are:

- 1. Crime:** The crime should be illegal and punishable.¹⁵²³
- 2. Absence of accused:** The accused should not have been present on the scene of the crime at the time when the crime took place.
- 3. Evidence:** The accused should present substantial evidence to substantiate their Alibi.
- 4. Early plea:** The plea should be made as soon as possible.
- 5. Consistency:** The Alibi should be presented consistently.

The plea of Alibi must be accepted at the earliest possible moment and not accepted as an afterthought. The plea of Alibi must be accepted at the time of framing of the charge or at the initial stages of the preliminary hearing of the case. It will have more impact on the trial.

8. Procedural Requirements of Raising the Plea of Alibi

Timely Assertion

The plea of alibi has to be raised at the earliest available opportunity in the course of legal proceedings, usually while framing charges or during the preliminary hearing. Late assertions of alibi can erode the defence's credibility because they can be taken as afterthoughts.

Evidence and Witnesses

The defendant should present valid evidence to substantiate their alibi, including witness statements, electronic records, or other supporting documents. The admissibility of electronic evidence, including GPS tracking or video footage, has gained prominence under the BSA 2023.

Judicial Scrutiny

The judiciary has a significant role in assessing the validity of the alibi defence. Judges will have to scrutinize the coherency and reliability of such evidence, checking that the alibi plea will not be applied as a tactical device to beguile the court. Recently, in the interpretation of laws, courts emphasized that although alibi plea constitutes a valid defence, it is required to be supported by pertinent and credible proof. Merely claiming to be elsewhere is inadequate. Courts carefully examine the evidence that is submitted to validate its credibility and pertinence prior to considering an alibi.

9. Judicial Interpretations and Case Laws

Indian courts have developed a consistent but careful trend towards the plea of alibi. The Supreme Court of India and many High Courts have held time and again that a successful proof of alibi acquitted the accused but on rejection by the court did not necessarily lead to a conviction.¹⁵²⁴ The courts have held that for an alibi to become believable, it has to be supported by firm and unassailable evidence.

¹⁵²² James L.J. and Grove L.J. in R v. White [1910].

¹⁵²³ Deepti Josephine Arul & Arun Kumar N.R., "Alibi as One of the Best Forms of Evidence to Prove the Innocence of the Accused" 1 Indian Journal of Integrated Research in Law 6 (2015).

¹⁵²⁴ Rekha Saxena, 'The Plea of Alibi: An Analysis of Judicial Approach' 10(1) International Journal of Humanities and Social Sciences 92, (2017).

In Dhananjay Chatterjee v. State of West Bengal (1994) 2 SCC 220 The Supreme Court reiterated that the plea of alibi has to be established with certainty, leaving no room for doubt about the presence of the accused at the scene of the crime, **In State of Maharashtra v. Narsingrao Gangaram Pimple, AIR 1984 SC 63**

The Court explained that in order for a plea of alibi to be successful, it should be established that the accused was so distant at the time in question that they could not have been present at the location where the crime was committed.

In State of Rajasthan vs. Mahavir Alias Mahavir Prasad (1998)¹⁵²⁵ the Supreme Court laid stress on timely assertion and cogent evidence in proving the plea of alibi. The court dismissed the accused's plea of alibi on account of contradictions in the evidence led. **In Gurpreet Singh vs. State of Haryana (2002)¹⁵²⁶** The Court pointed out the difficulties in establishing alibi in domestic violence cases. The court dismissed the alibi defence of the accused, citing lack of evidence and conflicting witness statements. **In Darshan Singh vs. State of Punjab (2016),¹⁵²⁷**

the Supreme Court reaffirmed that the burden of proof falls on the accused to prove their alibi. The court further stressed the role of corroborative evidence in reinforcing alibi claims. **In Dudh Nath Pandey v. State of Uttar Pradesh (1981),¹⁵²⁸** the Supreme Court ruled that the alibi plea should be established with certainty and not just by raising a doubt. **In State of Haryana v. Sher Singh (1981),¹⁵²⁹**

however, the Court made it clear that the accused's burden is not as great as that of the prosecution. **In Binay Kumar Singh v. State of Bihar (1997),¹⁵³⁰** the Supreme Court reaffirmed that the accused must only prove a reasonable possibility of their whereabouts elsewhere at the time of the offense. In recent times, the courts have placed special significance on corroborative evidence while establishing alibi.

In Rajesh Kumar v. State of Rajasthan (2022),¹⁵³¹ the Supreme Court ruled that the plea of alibi should be corroborated by credible and trustworthy evidence, i.e., documentary evidence or witness depositions. The Court also pointed out that advancements in technology, like GPS location and CCTV records, can become very significant to prove alibi. Technology has added new meanings to the plea of alibi. Cell phone records, GPS tracking data, and closed-circuit TV recordings are more frequently being employed to support claims of alibi. **In State of Maharashtra v. Suresh (2020),¹⁵³²** the Bombay High Court used the data of cell tower locations to discard an alibi defence, evidencing increasing reliance on technical evidence. A part of the key problems concerning the plea of alibi is when and how it is produced. Courts have frowned upon a delayed or unsubstantiated plea, as it may indicate fabrication. **In Shivaji Sahabrao Bobade v. State of Maharashtra (1973),¹⁵³³** the Supreme Court observed that a false alibi could serve as corroborative evidence against the accused, reinforcing the prosecution's case. But on the other hand, judgments like Shaikh Sattar v. State of Maharashtra (2010) have reaffirmed that mere failure of an alibi does not necessarily make the case of the prosecution true. **In Ashok Verma v. State of Chhattisgarh (2024),¹⁵³⁴** The Court once again stated that in order for a plea of alibi to be accepted, the accused needs to prove that they were in a place very far from the scene of the crime, which makes their participation extremely unlikely or impossible. Here, the alibi of the appellant was negated since the 'elsewhere place' was not distant enough from the crime scene to exclude his involvement. **In Kamal Prasad & Ors. v. State of Bihar (2023),¹⁵³⁵** The Supreme Court ruled that a plea of alibi cannot be based on oral evidence alone; it must be supported by corroborative evidence. Alibi of the appellants was rejected

¹⁵²⁵ AIR 1998 SC 3041.

¹⁵²⁶ 2002 AIR SCW 3725

¹⁵²⁷ 10 SCC 214 (2016).

¹⁵²⁸ (1981) 2 SCC 166

¹⁵²⁹ AIR 2022 SC 456.

¹⁵³⁰ (1997) 1 SCC 283.

¹⁵³¹ 2022 5428 Raj.

¹⁵³² AIR1999 SC 169.

¹⁵³³ (1973) 2 SCC 793.

¹⁵³⁴ 2024 INSC 1011.

¹⁵³⁵ 2023 INSC 895.

because of absence of corroborative evidence other than witness evidence. In **Surendra Mahto @ Surendra Prasad v. The State of Jharkhand (2024)**,¹⁵³⁶ The Jharkhand High Court emphasized that the alibi should be advanced at the earliest possible time and not as an afterthought. The Court emphasized that late invocation of an alibi might even destroy its credibility. These conclusions underscore that the onus of establishing an alibi rest with the accused and must be supported by verifiable and corroborating evidence in order to successfully refute their presence at the crime scene. The BSA focuses more on adherence to procedure, especially in the presentation and authentication of digital evidence in favour of an alibi.

10. Challenges and Opportunities in the Digital Age

Admissibility of Electronic Evidence

The BSA 2023 identifies electronic records as main evidence, an indication of the increasing relevance of digital data in criminal proceedings. GPS tracking, video footage, and social media updates can be useful evidence to corroborate or contradict alibi defences.

Risks of Tampering and Manipulation

Though electronic evidence introduces new possibilities for the proof of alibi, it carries with it potential threats of tampering and manipulation. The courts have to safeguard the integrity and authenticity of electronic records by appropriate chain-of-custody protocols.

Witness Protection and Vulnerable Groups

The BSA 2023 includes witness protection provisions that protect vulnerable witnesses like children and victims of sensitive crimes from intimidation during their testimony. These provisions increase the credibility of witness evidence in alibi cases.

11. Conclusion

The plea of alibi under Bharatiya Sakshya Adhinyam (BSA) 2023 is a critical feature of criminal jurisprudence focusing on the right of the accused to establish their unavailability at the place of commission of the crime. The BSA 2023, which updates India's law of evidence, maintains the foundational features of the plea of alibi while bringing them in conformity with the standards of the modern era. The alibi defence, which is Latin for "elsewhere," necessitates the accused to present evidence acceptable to the court proving their physical impossibility of committing the crime because they were elsewhere. Successfully proving this defence may result in an acquittal, which highlights its significance for justice. Under the BSA 2023, the onus of proof for an alibi is mainly on the accused, who has to provide corroborative evidence, including witness statements, documentary evidence, or electronic data, to support their assertion. The prosecution still has the duty to negate the alibi beyond reasonable doubt. This double burden is a balanced approach that protects the rights of the accused while upholding the integrity of the judicial process. Recent court interpretations have highlighted the importance of early disclosure of alibi defences to avoid prejudice to the prosecution, in keeping with the changing dynamics of criminal trials. The BSA 2023 also includes technology advancements, and digital evidence is going to play a central role in proof or disproving alibis. For example, GPS records, CCTV records, and telephone records are being increasingly used to corroborate or disprove claims of presence or absence. This embedding of technology improves the precision and credibility of alibi defences, bringing Indian evidence law into harmony with international best practices. Finally, the alibi plea in the BSA 2023 continues to be an essential protection against miscarriages of justice, balancing the accused's rights with justice's interests. Its successful implementation, aided by technology and

¹⁵³⁶ 2024 (SC) 797.

judicial wisdom, upholds the equity and legitimacy of India's criminal justice system.

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