
Bharatiya Sakshya Adhinyam, 2023 (BSA) Vs. Indian Evidence Act of 1872 (IEA)

The **Bharatiya Sakshya Adhinyam, 2023 (BSA)** replaces the **Indian Evidence Act of 1872 (IEA)** and it was approved by both the Lok Sabha and Rajya Sabha on December 20 and December 21, 2023, respectively, before receiving presidential assent on December 25, 2023.

The key objectives of BSA are to modernize, simplify, and streamline how evidence is presented and interpreted inside the courts. Such modern provisions will make judicial system more technology-enabled, fair, and efficient. Compared to the Indian Evidence Act, BSA is simplified, clearer, and visibly addresses challenges like cybercrime and vulnerable groups. The Bharatiya Sakshya Adhinyam is simplified, streamlined, and modernized version of evidence rules, which came into existence by replacing the centuries old Indian Evidence Act of 1872. Though the BSA retains many of the provisions of IEA, but in the revised and modernized form. Besides, BSA also inserted certain new points for the ease of judicial trial and make the system more transparent.

Modification in 23 Sections, 5 repealed sections, and 1 newly added section gave birth to the NEWLY BSA,2023.

For understanding, the following terms/words may be considered to me:

Bharatiya = India/Indian

Sakshya = Evidence

Adhinyam = Act

Sanhita = Code

The following provisions from IEA have been deleted from BSA:

1. Section 3 (j): India
2. Section 82: Presumption as to document admissible in England without proof of seal or signature
3. Section 88: Presumption as to telegraphic messages
4. Section 113: Proof of cession of territory
5. Section 166: Power of jury or assessors to put questions

The Changes made and inserted in the new act are:

- 1. 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 Suraksha Adhiniyam (BSA) lacks this provision. This omission is likely intended to facilitate the admissibility of digital evidence originating from locations outside India.
- 2. 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.

- 3. 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.

4. **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.
 5. **Section 6, Bsa(Sec8, 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.
 6. **Section 22, BSA (Sec24,28-89, 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.

- 7. Section 24, BSA (Sec30, 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.*”

- 8. 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.
- 9. Section 31, BSA(Sec37, 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.

10. 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.

- 11. 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.
- 12. Section 39,BSA (Sec45, 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.

13. Section 52,BSA(Sec57, 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.

14. 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.

15. Section57,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.

16. 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 artifact 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 sec63, 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.

17. 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 directive ("shall be proved"), indicating a mandatory action.

18. 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.

19. 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.

20. 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.

21. Sec74, 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.

22. 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.

23. 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.

24. 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).

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