

THE BHARATIYA SAKSHYA ADHINIYAM, 2023

[No. 47 of 2023, dt. 25-12-2023, w.e.f. 1-7-2024]

PART I

CHAPTER-I PRELIMINARY

Introduction of Bharatiya Sakshya Adhiniyam - The Bharatiya Sakshya Adhiniyam, (BSA) 2023 is a landmark legislative reform enacted to modernize and replace the Indian Evidence Act of 1872, which had governed the rules of evidence in Indian Courts for over 150 years.¹ New law BSA, 2023 came into force on July 1, 2024, as part of a broader overhaul of India's criminal justice system, alongside other major legislative changes.

Purpose and Rationale - The primary objective of the Bharatiya Sakshya Adhiniyam (BSA) 2023 is to consolidate and lay down updated, clear, and comprehensive principles and rules of evidence to ensure fair trials in the contemporary context. The need for this reform arose from the significant evolution of society, technology, and legal processes since the colonial era, making many provisions of the old Act obsolete or irrelevant. The rapid growth of digital technology, new forms of evidence, and changes in crime and investigation methods necessitated a legal framework that could address these modern realities.

Features of BSA - The following are the main features of Bharatiya Sakshya Adhiniyam (BSA) 2023.

- Modernization and technological adaptation** - The BSA, 2023 introduces significant changes to address challenges posed by digital evidence and technological advancements, such as recognizing electronic records as primary evidence and expanding definitions to include digital documents.
- Simplification and clarity** - The BSA adopts modern and simplified legal terminology, removing outdated colonial language and concepts, and aims to make the law more accessible and relevant to present-day judicial needs.
- Comprehensive structure** - The BSA is structured into 4 parts, 12 chapters, and 170 sections, revising, omitting, and adding provisions to streamline the evidentiary process in courts.
- Fairness and efficiency** - The law is designed to enhance the efficiency of judicial proceedings and ensure justice by providing

¹ Statement of Object and Reasons published in Gazette of India, 1868, at 1574; for the draft or preliminary Report of the Select Committee, dated 31st March, 1871, Gazette of India, 1871, Pt. V. at 273 and Second Report of the Select Committee dated 30th January, 1872, Gazette of India, 1872, Pt V at 34. Discussion in Council Gazette of India, 1868, Supplement at 1060 and 1209, Gazette of India, 1871, Extra supplement, at 42 and supplement, at 1641 and Gazette of India, 1872 at 136 and 230.

clear guidelines for the admissibility, relevancy, and evaluation of all forms of evidence, including oral, documentary, and electronic.

Legislative background - The Bharatiya Sakshya Adhiniyam (BSA) 2023 was introduced in Parliament on 11th August, 2023, passed by both Houses on 20th December, 2023, and received Presidential assent on December 25, 2023. It officially replaced the Indian Evidence Act, 1872 (Act 1 of 1872), from July 1, 2024,¹ marking a significant step towards a modern, technology-driven legal system in India.

History of law of evidence - The following are the stages and history of law of evidence.

Ancient and medieval periods - In ancient India, the law of evidence was rooted in religious texts and local customs. Hindu law relied on sources like the Vedas and Smritis, while Muslim law was based on the Quran, Hadith, and Sharia. Evidence practices varied widely across regions and communities, often reflecting local traditions rather than a unified legal standard.

Early colonial period : When the British East India Company began administering justice, they operated a dual court system: the Adalat system for natives and separate courts for Europeans. Each followed different rules of evidence, leading to inconsistencies and confusion. The need for a standardized, codified law of evidence became apparent as the British expanded their control and sought to unify legal administration across India. The first efforts to regulate evidence came through a series of acts between 1835 and 1869, influenced by reforms proposed by legal thinkers like Jeremy Bentham. The first Law Commission (1834–1870), chaired by Thomas Babington Macaulay, laid groundwork for major legal codifications, including the Indian Penal Code and the Indian Evidence Act. In 1868, a commission led by Sir Henry Maine drafted a bill, but it was found unsuitable for Indian conditions.

The Indian Evidence Act, 1872 - The final drafting was undertaken by Sir James Fitzjames Stephen in 1871. His draft was reviewed by local governments, High Courts, and legal professionals before being enacted. The Indian Evidence Act was passed by the Imperial Legislative Council on March 15, 1872, and came into force on September 1, 1872. The Act provided a uniform, comprehensive set of rules for the admissibility, relevance, and evaluation of evidence in Indian Courts, replacing the patchwork of local customs and community-based rules.

Features and impact on BSA, 2023 - This Act is basically based on English common law principles but was adapted to Indian realities. It brought uniformity and clarity to the rules of evidence, making them applicable to all Indians regardless of caste, community, or social position. The Act has been drafted to address new challenges, such as advancements in technology and forensic science, but its core framework has remained largely intact for over 150 years.

Modern Developments - The Indian Evidence Act, 1872 was replaced by the Bharatiya Sakshya Adhiniyam on July 1, 2024, as part of a major overhaul of India's criminal justice system. The evolution of the law of evidence in India reflects a blend of indigenous traditions, colonial legal reforms, and ongoing judicial interpretation, making it a cornerstone of the Indian legal system. The history of the law of evidence in India spans from ancient religious and customary

1 Notification No. S.O. 849(E), dated 23rd February, 2024 published according Extraordinary, Part II-Section 3(ii) of the gazette. Publication date is 24th February, 2024.

practices to a unified, codified system established by the Indian Evidence Act of 1872. This Act standardized the rules of evidence across the country, ensuring fairness, clarity, and efficiency in judicial proceedings, and has significantly shaped the administration of justice in India for over a century.

Function of the law of evidence - The law of evidence serves several essential functions within the legal system, all aimed at ensuring that legal proceedings are fair, efficient, and result in just outcomes. Following are the functions of law of BSA as evidence.

1. Establishing the truth - The primary function of the law of evidence is to provide a framework for presenting and evaluating evidence so that the facts of a case can be accurately determined. This helps the court to confirm or deny specific propositions relevant to the dispute, thereby ascertaining the truth of the matter at issue.

2. Regulating admissibility and relevance - The law of evidence sets out clear rules about what evidence can be presented in Court. Only evidence that is relevant to the facts in issue is admissible, irrelevant evidence is excluded. Even relevant evidence may be excluded if it is obtained improperly or is overtly prejudicial.

3. Ensuring fairness in proceedings - By prescribing the manner in which evidence is presented and how witnesses are examined, the law of evidence ensures that both parties have a fair opportunity to present their case and challenge the evidence against them. This includes safeguards for vulnerable witnesses and rules on the competence and compellability of witnesses.

4. Protecting individual rights - The law of evidence protects the rights of all parties involved, including the accused, by establishing standards for the collection, preservation, and presentation of evidence. This helps to prevent miscarriages of justice and upholds the integrity of the legal process.

5. Promoting consistency and predictability - By providing a standardized set of rules and principles, the law of evidence ensures that similar cases are treated in a consistent manner. This enhances the predictability of legal outcomes and supports the rule of law.

6. Enhancing efficiency - The law of evidence streamlines legal proceedings by filtering out unnecessary, irrelevant, or unreliable material. This focus on relevance, admissibility, and weight helps to avoid delays and distractions, making trials more efficient.

7. Preserving public confidence - By ensuring that Court decisions are based on reliable and trustworthy information, the law of evidence helps to maintain public trust in the fairness and integrity of the justice system. In essence, the law of evidence is foundational to the legal process, guiding how facts are established, protecting the rights of those involved, and maintaining the integrity and efficiency of the justice system.

Nature of evidence - The Bharatiya Sakshya Adhiniyam (BSA) 2023, which replaced the Indian Evidence Act, 1872 from 1st July, 2024, is the new principal

legislation governing the law of evidence in India. Its nature can be understood through the help of following aspects:

1. **Codified and comprehensive** - Like its predecessor, the BSA is a codified law that systematically lays down the rules regarding what constitutes evidence, how it is to be presented, and how it should be evaluated by Courts. It aims to provide a uniform and exhaustive code on the subject of evidence for all judicial proceedings in India.
2. **Modern and technology-oriented** - The BSA, 2023 addresses the shortcomings of the old IE Act, 1872, particularly the need to accommodate modern forms of evidence such as electronic records, digital signatures, emails, CCTV footage, and other digital materials. This makes the law more relevant and effective in the context of contemporary technology and communication methods. The technology as incorporated in the BSA, 2023 has relation with Information Technology and the Judgments of the Supreme Court. In *Arjun Panditrao Khotkar v Kailash Kushanrao Gorantyal*¹ Supreme Court held that section 65B(1) of Evidence Act, as it is section 63 of the BSA, 2023 clearly differentiates between the “original” document which would be original “electronic record” contained in the “computer” in which the original information is first stored and the computer output containing such information, which then may be treated as evidence of the contents of the “original” document. All this necessarily shows that section 65B of the Evidence Act, differentiates between the original information contained in the “computer” itself and copies made therefrom, the former being primary evidence, and the latter being secondary evidence.
3. **Principle-based and its rational** - The law is based on principles of logical reasoning and common sense, ensuring that only relevant and admissible evidence is considered by the Courts. It emphasizes the importance of relevance, admissibility, and reliability of evidence presented in judicial proceedings.
4. **Procedural and substantive** - The BSA, 2023 not only defines what the evidence is, but also prescribes the procedures for its admission, examination, and evaluation. It sets out the burden of proof, presumptions, and the manner in which facts are to be proved or disproved in court.
5. **Simplified and accessible** - One of the goals of the BSA, 2023 is to use clearer language and simpler procedures, making it more accessible to legal practitioners and the general public. This is intended to reduce delays and confusion in trials, and to ensure that justice is delivered efficiently.
6. **Indian context and vision** - The BSA, 2023 reflects an Indian outlook, moving away from colonial-era terminology and adapting the law to

1 (2020) 7 SCC 1: AIR 2020 (SC) 4908; 2020 SCC Online SC 571. In this case leading observation expressed by Justice R. F. Nariman.

better suit Indian realities and values. It seeks to make the law more relatable and effective for Indian society.

The nature of the Bharatiya Sakshya Adhiniyam (BSA) 2023 is codified, modernized, principle-based on Indian values and technologically updated, with a focus on relevance, fairness, and accessibility, while maintaining the foundational objective of ensuring just and efficient adjudication of disputes in Indian Courts.

Evidence Law as Procedural, Substantive and Adjective

The law of evidence is primarily considered procedural law, though it can have substantive effects in specific contexts, therefore it is called adjective law.¹ However, analysis of law of evidence known as various laws is as follows:

Evidence law as procedural - The law of evidence consists of rules and principles that govern how facts are proved or disproved in legal proceedings. Its main function is to ensure fair and consistent procedures in Courts, enabling the judicial system to ascertain the truth effectively. It regulates—

- (a) What evidence is admissible and relevant.
- (b) The manner and order in which evidence is presented.
- (c) How witnesses are examined and cross-examined.
- (d) The standards of proof required (e. g., beyond reasonable doubt, preponderance of evidence).

Evidence law as substantive - While fundamentally procedural, the law of evidence sometimes overlaps with substantive law. Certain doctrines, such as estoppel, create or affect legal rights and obligations, thus, having a substantive impact. However, these instances are exceptions rather than the rule.

Evidence law as Adjective - Evidence law is often referred to as “adjective law” because it provides the procedures for enforcing substantive rights and duties defined by other laws. It does not create rights or liabilities but provides the framework for their adjudication.

The law of evidence is predominantly procedural (adjective) law, regulating the methods and means by which facts are established in legal proceedings. It may, in rare cases, interact with substantive law, but its core nature is procedural.

1. Short title, application and commencement

(1) This Act may be called the Bharatiya Sakshya Adhiniyam, 2023.

(2) It applies to all judicial proceedings in or before any Court, including Courts-martial, but not to affidavits presented to any Court or officer, nor to proceedings before an arbitrator.

(3) It shall come in force on such date as the Central Government may, by notification in the Official Gazette, appoint.²

1 Adjective law means something added or attached to another as supplement or accessory. On other hand, it refers to the procedural part of law, it prescribes how rights and duties are enforced.

2 Published in Gazette of India, Extraordinary, Part II, Sec. 1, No. 55, dated 25th Dec., 2023/Pausha 4, 1945 (Saka), New Delhi. The following Act of Parliament received the assent of the President on the 25th of Dec., 2023 and BSA came into force from 1st of July, 2024 vide S.O. 849(E), 23rd Feb., 2024.

COMMENTS**Corresponding provision:**

Section 1 of the BSA, 2023 corresponds to section 1 of the Indian Evidence Act, 1872.

Legislative Changes and Territorial extent of the legislation

1. Section 1 of the Evidence Act provided that it extended to the whole of India. Section 1 of the BSA omits this provision to a territorial extent. It also omits the definition of "India" given in section 3 of the Evidence Act.
2. The possible reason for such omission is that any stipulation that the BSA extends to the whole of India would call to question the admissibility of evidence digitally generated outside the borders of India.

Applicability to Courts-martial

Existing provision - Section 1 of the Evidence Act, 1872 provided that the said Act did not apply to Court-martial convened under the Army Act, or the Naval Discipline Act or the Indian Navy (Discipline) Act or the Air Force Act.

Amended provision - 1. Section 1(2) of the BSA, 2023 omits the words "convened under the Army Act, Naval Discipline Act or the Indian Navy (Discipline) Act or the Indian Navy (Discipline) Act or the Air Force Act".

The BSA, 2023 shall also apply to Courts-martial convened under the Army Act, the Naval Discipline Act or the Indian Navy (Discipline) Act or the Indian Navy (Discipline) Act or the Air Force Act.

ANALYSIS OF THE SECTION AND CASES:

01.01 Scope of provision - Section 1 of the Bharatiya Sakshya Adhiniyam, (BSA) 2023 defines the short title, application, and commencement of the Act. Its scope is as follows:

1. **Short title** - The Act is officially named the "Bharatiya Sakshya Adhiniyam, 2023".
2. **Application** - The Act applies to all judicial proceedings in or before any Court, including Courts-martial. However, it specifically excludes:
 - (a) Affidavits presented to any Court or Officer.
 - (b) Proceedings before an arbitrator.
3. **Commencement** - The Act comes into force on a date appointed by the Central Government through notification in the Official Gazette. This date has been appointed by the Central Government on 1st July, 2024.

Summarized concept - The Act governs the admissibility and use of evidence in all judicial proceedings across India, including Military Courts (Courts-Martial). It does not apply to affidavits or arbitration proceedings. Its enforcement date is determined by government by notification. That has been determined and notified on 1st July, 2024.

Section 1 thus, sets the foundational scope and boundaries for the operation of the Bharatiya Sakshya Adhiniyam, 2023, clarifying where and to whom the law of evidence applies under this new legislation.

01.02 Cases on section 1 of evidence law - Section 1 of the BSA, sets out the short title, extent, and commencement of the Act, specifying its application to all judicial proceedings in or before any Court, including Courts-Martial, but not to affidavits or arbitration proceedings. While section 1 itself is primarily procedural, its interpretation and scope have been discussed in several judicial pronouncements.

01.03 Judicial observations - Following are the judicial observations on section 1 of BSA.

1. Scope of application - Courts have clarified that the Act applies to all judicial proceedings, except those specifically excluded (affidavits and arbitration). In *State of Punjab v. Sodhi Sukhdev Singh*¹, the Supreme Court held that Courts-Martial not convened under the specified military

1 AIR 1961 (SC) 493.

laws are covered by the Act. In Bharatiya Sakshya Adhiniyam (BSA) 2023, section 1(2) has fulfilled this gap, in this law, it has provided that it applies to all judicial proceedings in or before any Court, including Courts-Martial, but not to affidavits presented to any Court or officer, nor to proceedings before an arbitrator.

2. Affidavits and arbitration - The exclusion of affidavits¹ and arbitration proceedings from the purview of the Act has been reiterated in various cases, confirming that rules of evidence under the Act do not apply to these proceedings. In *Sheoraj v A P Batra*², Allahabad High Court said that in practice the Courts in application for transfer of civil cases, stay of execution or for extension of time under section 5 of Limitation Act require an affidavit in proof of the point asserted so, even though the Evidence Act categorically does not apply to affidavit, proving a fact by an affidavit is not barred.³

3. Military Courts and amendments - Judicial commentary and Law Commission reports have addressed the evolving scope of section 1, especially regarding its application to military Courts after changes in relevant military statutes. The Law Commission recommended updating section 1 to reflect current military law references. "Section 1 of the BSA is a procedural provision which defines the extent and application of the Act". The Courts have consistently held that unless specifically excluded, the Act applies to all judicial proceedings before Courts in India, including certain Courts-Martial, but not to affidavits or arbitration proceedings. Section 1 is thus foundational, and its judicial interpretation ensures clarity about where and how the BSA, 2023 applies. As of now, for case law or judicial interpretation, Courts are likely to rely on established principles from the Indian Evidence Act, 1872, until new precedents under the BSA, 2023 are developed.

01.04 Application of *Lex Fori* in section 1 of Bharatiya Sakshya Adhiniyam—*Lex Fori* means "the law of the forum" that is, the procedural law of the jurisdiction where a legal action is brought. Section 1 of the Bharatiya Sakshya Adhiniyam, (BSA) 2023, establishes that the Act applies to all judicial proceedings in India (with certain exceptions), making it the procedural law governing the admissibility and use of evidence in Indian Courts.⁴

How *Lex-Fori* applies to section 1 ?

1. **Procedural law governing evidence:** The law of evidence is universally recognized as a matter of procedure, not substance. Section 1 of the Bharatiya Sakshya Adhiniyam, 2023 confirms that Indian courts must apply the procedural rules of evidence as laid down in this Act, regardless of the substantive law governing the dispute.
2. **Uniform application:** When a case is heard in an Indian court, even if the substantive rights and obligations (*lex causae*) are determined by a foreign law or another statute, the procedures for presenting, admitting, and evaluating evidence are governed by the Bharatiya Sakshya Adhiniyam, 2023 as the *lex fori*.
3. **Exclusions:** Section 1 specifically excludes affidavits and arbitration proceedings, reinforcing that the Act serves as the procedural law (*lex fori*) for judicial proceedings but not for other types of forums. The law of evidence, as codified in the Bharatiya Sakshya Adhiniyam, operates as "**lex fori**"—meaning

1 Municipal Corporation of Delhi v Jagan Nath Ashok Kumar, AIR 1987 (SC) 2316: (1987) 4 SCC 497. Statement through affidavit is a personal knowledge, therefore, it is not evidence. But according to section 216 of the BNS, 2023 "False statement on oath or affirmation to public servant or person authorized to administer an oath or affirmation is an offence punishable for the imprisonment of either description for a term which may extend to three years and shall also be liable to fine".

2 AIR 1955 (All) 638: (1955) Cr LJ 1451.

3 Law related to affidavit is not defined under the BSA, however, section 3 (3) of the General Clauses Act, 1897, provides that an affidavit shall include in affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing. The BSA does not apply to affidavits. Matters to which affidavits are confined have been specified in sections 331 and 333 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

4 Bain v White Raven and Furness Junction Ry Co. , (1853) 3 HLC 1: 10 ER 65 (HL).

it is the procedural law that Indian courts must apply in all judicial proceedings within their jurisdiction, as mandated by Section 1.

This ensures consistency, predictability, and fairness in the administration of justice, regardless of the substantive law applicable to the underlying dispute. *Kuldip Singh v State of Punjab*¹ Supreme Court held that the Evidence Act, now BSA does not apply to departmental inquiry and disciplinary proceedings.

2. Definitions

(1) In this Adhiniyam, unless the context otherwise requires,—

- (a) “Court” includes all Judges and Magistrates, and all persons, except arbitrators, legally authorised to take evidence;
- (b) “conclusive proof” means when one fact is declared by this Adhiniyam to be conclusive proof of another, the Court shall, on proof of the one fact, regard the other as proved, and shall not allow evidence to be given for the purpose of disproving it;
- (c) “disproved” in relation to a fact, means when, after considering the matters before it, the Court either believes that it does not exist, or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist;
- (d) “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.

Illustrations

- (i) *A Writing is a document.*
- (ii) *Words printed, lithographed or photographed are documents.*
- (iii) *A map or plan is a document.*
- (iv) *An inscription on a metal plate or stone is a document.*
- (v) *A caricature is a document.*
- (vi) *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;*
- (e) “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;
- (f) “fact” means and includes—

¹ (1996) 10 SCC 659; (1996) SCR (6) 339; (1996) SCC (Cri) 339.

- (i) any thing, state of things, or relation of things, capable of being perceived by the senses;
- (ii) any mental condition of which any person is conscious.

Illustrations

- (i) *That there are certain objects arranged in a certain order in a certain place, is a fact.*
- (ii) *That a person heard or saw something, is a fact.*
- (iii) *That a person said certain words, is a fact.*
- (iv) *That a person holds a certain opinion, has a certain intention, acts in good faith, or fraudulently, or uses a particular word in a particular sense, or is or was at a specified time conscious of a particular sensation, is a fact;*
- (g) “facts in issue” means and includes any fact from which, either by itself or in connection with other facts, the existence, non-existence, nature or extent of any right, liability or disability, asserted or denied in any suit or proceeding, necessarily follows. *Explanation.*—Whenever, under the provisions of the law for the time being in force relating to civil procedure, any Court records an issue of fact, the fact to be asserted or denied in the answer to such issue is a fact in issue.

Illustrations

A is accused of the murder of B. At his trial, the following facts may be in issue:—

- (i) *That A caused B’s death.*
- (ii) *That A intended to cause B’s death.*
- (iii) *That A had received grave and sudden provocation from B.*
- (iv) *That A, at the time of doing the act which caused B’s death, was, by reason of unsoundness of mind, incapable of knowing its nature;*
- (h) “may presume”—Whenever it is provided by this Adhiniyam that the Court may presume a fact, it may either regard such fact as proved, unless and until it is disproved or may call for proof of it;
- (i) “not proved”—A fact is said to be not proved when it is neither proved nor disproved;
- (j) “proved”—A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists;
- (k) “relevant”—A fact is said to be relevant to another when it is connected with the other in any of the ways referred to in the provisions of this Adhiniyam relating to the relevancy of facts;
- (l) “shall presume”—Whenever it is directed by this Adhiniyam that the Court shall presume a fact, it shall regard such fact as proved, unless and until it is disproved.

(2) Words and expressions used herein and not defined but defined in the Information Technology Act, 2000 (21 of 2000), the Bharatiya Nagarik Suraksha Sanhita, 2023 and the Bharatiya Nyaya Sanhita, 2023 shall have the same meanings as assigned to them in the said Act and Sanhitas.

COMMENTS

Corresponding provision:

1. Section 2(1) of the BSA corresponds to section 3 of the Evidence Act.
2. There is no change.

SECTION 2(1)(a) OF BSA: COURT

Corresponding provision:

Section 2(1)(a) of the BSA corresponds to section 3, para1, of the Evidence Act.
There are no changes.

SECTION 2(1)(b) of BSA: CONCLUSIVE PROOF

Corresponding provision:

Section 2(1)(b) of the BSA corresponds to section 4, para 3, of the Evidence Act.
There are no changes.

SECTION 2(1)(c) of the BSA: Disproved

Corresponding provision:

Section 2(1)(c) of BSA corresponds to section 3, para 8, of the Evidence Act.
There are no changes.

SECTION 2(1)(d) OF BSA: DOCUMENT

Corresponding provision:

Section 2(1)(d) of the BSA corresponds to section 3, para 5 of the Evidence Act.

Electronic & Digital records

1. Section 2(1)(d) of BSA gives a new definition of the word “documents” which is compatible with the modern digital era.
2. The new definition specially includes electronic and digital records within the scope of the term “document”.
3. The five statutory illustrations in old definition have been retained. The new definition gives the new statutory illustrations No. (vi) which clarifies that “An electronic record on emails, server logs, documents on computers, laptop or smartphone, messages, websites, locational evidence and voice mail messages stored on digital device are documents”.
4. Under the new definition, to qualify as “document” or “documentary evidence”, it is not necessary that matter be websites, locational evidence and voice mail messages stored on digital devices are documents”.
5. Under the new definition, as “document” or “documentary evidence”, it is not necessary that matter be expressed or described upon any substance by means of letters, figures or marks only.
6. Any matter which is “otherwise recorded” upon any substance “by any other means” will also qualify as “document” or “documentary evidence”.

It appears that video recording on mobile phone would qualify as “documentary evidence” as it is “otherwise recorded” upon any substance “by any other means”.

SECTION 2(1)(e) of BSA: EVIDENCE

Corresponding provision

Section 2(1)(e) of the BSA corresponds to section 3, para 6 of the Evidence Act.

Electronic/Digital records

1. Under the new definition of “evidence” in section 2(1)(e) of the BSA, statement including statements given electronically are to be treated as evidence as well as oral evidence. This is a logical corollary to section 530 of Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 providing for examination of complainant and witnesses in electronic mode by use of electronic communication or by audio-video electronic means.
2. Under the Evidence Act, only electronic records were treated as documentary evidence and there was no express mention of digital records electronic or digital records in definition of ‘evidence’ under Evidence Act.
3. Section 2(1)(e) of BSA specifically includes electronic or digital records as documentary evidence.

SECTION 2 (1)(f) of BSA: FACT**Corresponding provision**

Section 2(1)(f) of the BSA corresponds to section 3, para 2 of the Evidence Act.

Illustration

Illustration (e) in section 3 (2nd para) of Evidence Act which states that “(e). that a man has certain reputation, is a fact,” is omitted in new definition of “fact” in section 2(1)(f).

SECTION 2(1)(g) of BSA: FACTS in ISSUE**Corresponding provision**

Section 2(1)(g) of the BSA corresponds to section 3, para 4 of the Evidence Act.

There are no changes.

SECTION 2(1)(h) of BSA: MAY PRESUME**Corresponding provision**

Section 2(1)(h) of BSA corresponds to section 4, para 1, of the Evidence Act

There are no changes.

Section 2(1)(i) of BSA: NOT PROVED**Corresponding provision**

Section 2(1)(i) of the BSA corresponds to section 3, para 9, of the Evidence Act.

There are no changes.

SECTION 2(1)(j) of BSA:PROVED**Corresponding provision**

Section 2 (1)(j) of the BSA corresponds to section 3, para 7 of Evidence Act

There are no changes.

SECTION 2(1)(k) OF BSA: RELEVANT**Corresponding provision**

Section 2(1)(k) of the BSA corresponds to section 3, para 3, of the Evidence Act.

There are no changes.

SECTION 2(1)(l) OF BSA: SHALL PRESUME**Corresponding provision**

Section 2(1)(l) of BSA corresponds to section 4, para 2, of the Evidence Act.

There are no changes.

SECTION 2(2) of BSA: WORDS AND EXPRESSIONS**Corresponding provision**

No corresponding provision in Evidence Act

This is a new provision.

Words not defined

Sub-section (2) of Section 2 of BSA provides that words and expressions used herein and not defined but defined in the Information Technology Act, 2000 (21 of 2000), the Bharatiya Nagarik Suraksha Sanhita, 2023 and Bharatiya Nyaya Sanhita, 2023 shall have the same meanings as assigned to them in the said Act and Sanhitas.

ANALYSIS OF THE SECTION AND CASES

Scope of provision—

2(1)(a).01 “Court” - Definition of “Court” for the application of Bharatiya Sakshya Adhiniyam (BSA) 2023 includes all Judges and Magistrates, and all persons, except arbitrators, legally authorized to take evidence.¹ Courts have consistently relied on the statutory definition and clarified its scope in various contexts. These judgments are:

1. Queen v. Chola Ismail² - In this early Allahabad High Court case it has discussed the meaning of “judicial proceeding” and, by extension, the entities that qualify as “Courts” under the Evidence Act. The Court emphasized that only those persons legally authorized to take evidence (excluding arbitrators) are considered “Courts” under the Act.

2. Maromma v. Emperor³ - The Madras High Court held that a Magistrate recording statement under section 164 of the Criminal Procedure Code equal to section 183 of BNSS acts as a “Court” for the purposes of the Evidence Act, now it is BNSS as they are legally authorized to take evidence.

3. Purshottom Ishwar Amin v. Emperor⁴ - The Bombay High Court clarified that a statement recorded by a Magistrate during a police investigation is not evidence in a “stage of judicial proceeding” and thus the Magistrate, in this context, does not act as a “Court” under the Evidence Act, now it is BSA.

4. Sheo Raj v. State⁵ - The Allahabad High Court held that statements recorded by a Magistrate during investigation are not judicial proceedings and the Magistrate is not acting as a “court” under the Evidence Act, equal to BSA for such purposes.

2(1)(a).02 Application of definition of Court on tribunal - “Court” includes all judges and Magistrates and all persons, except arbitrators, legally authorized to take evidence. This definition is inclusive and not exhaustive, leaving scope for judicial interpretation regarding its application to bodies such as tribunals. Followings are the tests to determine the definition of Court.

1. Exercise of judicial functions under authority derived from the sovereign.
2. Power to deliver definitive judgments.
3. Legal authority to take evidence.
4. Exercise of judicial power or being part of the judiciary.
5. Exercise of powers otherwise exercisable by civil and revenue courts.

The definition in section 2(1)(a) of BSA specifically excludes arbitrators but does not expressly mention tribunals. Whether a tribunal is a “Court” under the BSA depends on its powers and functions. If a tribunal is legally authorized to take evidence and deliver definitive judgments affecting rights, it may be treated as a “Court” for the purposes of this law. Following are the core judgments:

1. Bharat Bank Ltd. v. Employees of Bharat Bank Ltd.⁶ - The Supreme Court held that an Industrial Tribunal, while not a “court” in the strict sense, exercises some judicial functions and may be treated as a court for certain purposes if it is legally authorized to take evidence and deliver judgments.

¹ BSA, 2023, Section 2 (1) (a).

² 1875 ILR 1 All 1: Indian Law Reports (All) 1 (1875). Judgment delivered by Turner J.

³ AIR 1946 (Mad) 452: (1846) 1 MLJ 154 (Madras).

⁴ AIR 1921 (Bom) 3: ILR 45 Bom 834 (FB).

⁵ AIR 1964 (All) 290 (FB)

⁶ AIR 1950 (SC) 188: 1950 SCR 459; (1950) LL. J. 921 (SC).

2. ***Brajnandan Sinha v. Jyoti Narain***¹ - The Supreme Court clarified that a body would be considered a “Court” only if it has the power to give a definitive judgment which has finality and authoritativeness. Tribunals may not always qualify unless they possess such powers.

3. ***State of Maharashtra v. Labour Law Practitioners’ Association***² - The Supreme Court reiterated that not all tribunals are Courts, but some tribunals performing judicial functions and authorized to take evidence may be treated as Courts for specific purposes.

The definition of “Court” under the BSA is inclusive and covers bodies legally authorized to take evidence, except arbitrators. The norms for the purpose of the tribunal as a Court are as follows:

1. Whether a tribunal is a “Court” under the BSA depends on its statutory powers, particularly its authority to take evidence and deliver binding judgments.
2. Key Supreme Court judgments have clarified that not all tribunals are Courts, but some may be treated as such if they meet the established tests.

To determine whether a body qualifies as a “Court” or “Tribunal,” Courts have developed specific legal tests focused on statutory authority, functions, and procedural characteristics. Below is a synthesis of key criteria from judicial precedents and legal analyses related to definition of Court apply on tribunal.

1. Legal Authority and Establishment: Legal analysis of legal authority and establishment is follows:

- (a) **Statutory empowerment** - The body must derive its adjudicatory authority from legislation. For example, tribunals created under specific statutes (e.g., Industrial Tribunals) are recognized as Court, if they exercise judicial functions.
- (b) **Permanence** - The body must operate as a permanent institution, not on a temporary basis.

2. Nature and Functions—Judicial vs. Administrative:

- (a) Courts adjudicate disputes by applying legal principles and evidence.
- (b) Tribunals often blend judicial and administrative functions, such as implementing departmental policies or resolving specialized disputes (e.g., service matters).

Bodies authorized to compel witness testimony, demand documents, or administer oaths are more likely to be deemed “Court.”

3. Independence and Impartiality:

- (a) **Institutional autonomy** - The body must function independently of executive influence. For instance, Courts are constitutionally independent, while tribunals may have members appointed by the executive.
- (b) **Adversarial procedure** - The process must allow parties to present arguments and evidence, ensuring fairness.

4. Binding Decision-Making Authority:

- (a) **Definitive judgments** - The body must issue decisions that conclusively determine rights and obligations. In *Brajnandan Sinha v. Jyoti Narain*³, the Supreme Court emphasized that only bodies with authoritative, final judgments qualify as Courts.
- (b) **Jurisdiction** - Courts have broad jurisdiction, while tribunals are limited to specific areas (e.g., tax, labour).

5. Procedural Formality:

- (a) **Application of legal rules** - Courts strictly follow codified laws and evidence rules, whereas tribunals may use flexible procedures or consider fairness principles.

¹ AIR 1956 (SC) 66.

² (1998) 2 SCC 688; AIR 1998 (SC) 1237.

³ AIR 1956 (SC) 66; 1955 SCR (2) 955.

- (b) **Appeal mechanisms** - Courts are part of a hierarchical judicial system with appellate avenues, while tribunal decisions may be final or subject to limited review.

A body is classified as a “Court” if it exercises sovereign judicial authority independently, follows formal legal procedures, and issues definitive judgments. Tribunals, while quasi-judicial, typically have narrower mandates, flexible procedures, and may integrate administrative policies. The distinction hinges on statutory intent, functional overlap with Courts, and procedural rigour.

2(1)(a).03 Exemption from the definition of Court - The following are not the Court:

1. Proceeding before the Income Tax Authorities.¹
2. Proceeding of Regional Transport Authority.²
3. Magistrate holding preliminary enquiry.³

2(1)(b).01 “conclusive proof” - The definition of ‘conclusive proof’ is given under section 2(1)(b) of the BSA.⁴ The following are the main essentials of conclusive proof:

- (1) **Irrefutable presumption** - Once the fact declared as conclusive proof is established, the Court must accept the associated fact as proved. No evidence can be found to disprove or contradict it.
- (2) **Legislative mandate** - This is a legislative command, not a matter of judicial discretion. The Court is bound by the statute to treat the fact as conclusively proved.
- (3) **Purpose** - The doctrine ensures legal certainty, finality, and judicial economy by preventing endless litigation on foundational facts.

2(1)(b).02 Illustrative example - If a statute declares that a child born during a valid marriage is the legitimate child of the husband, then once the marriage and birth within the stipulated period are proved, legitimacy is conclusively presumed. No evidence can be admitted rebutting this, except as specifically provided (such as proof of non-access).⁵

In the case of *Somavanti v. State of Punjab*⁶, the Supreme Court distinguished “conclusive proof” from “conclusive evidence.” Where the law declares a fact to be conclusive proof of another, the court is precluded from considering any other evidence once the primary fact is established. The conclusiveness is absolute, and the court must proceed on that basis. In *State of Kerala v Mohammad Basheer*⁷, Supreme Court of India said that when the enactment enjoins that any evidence would be treated as a conclusive proof of certain factual situation or legal hypothesis, the law would forbid other evidence to be adduced for the purpose of contradicting or varying the aforesaid conclusiveness. In *Cheeranthoodika Ahmadkutty v Pramhur Mariakutty Umma*⁸, Supreme Court said that conclusiveness of document would remain beyond the reach of controvertibility.

2(1)(c). 01 “disproved” - The definition of ‘disproved’ is given under section 2(1)(c) of the BSA.⁹ The interpretation of disproved can be summarized in following manner. While the provided search results do not directly quote section 2(1)(c) of the Bharatiya Sakshya

1 Chaparala Kirashana Brahman v Guduru Gavardanaiah, AIR 1954 (Madras) 832.

2 Brij Bhushan Pandey v State of Transport Authority, Lucknow, AIR 1958 (All) 30.

3 R v Bharma, ILR 11 Bom 702 (1806) (FB).

4 “Conclusive proof” means “when one fact is declared by this Adhiniyam to be conclusive proof of another, the Court shall, on proof of the one fact, regard the other as proved, and shall not allow evidence to be given for the purpose of disproving it”.

5 Bharatiya Sakshya Adhiniyam, 2023, Section 116.

6 AIR 1963 (SC) 151: (1963) 2 SCR 774.

7 AIR 2019 (SC) 2994: (2019) 4 SCC 260.

8 (2000) 2 SCC 417.

9 Section 2 (c) of the BSA provides that “in relation to a fact, means when, after considering the matters before it, the Court either believes that it does not exist, or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist”

Adhiniyam (BSA), 2023, this section is modeled after section 3 of the Indian Evidence Act, 1872, where “disprove” is defined as follows:

“Disproved”—A fact is said to be disproved when, after considering the matters before it, the Court either believes that it does not exist, or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist.

This definition means that to “disprove” a fact, the evidence must either convince the Court that the fact does not exist or make its non-existence so probable that a reasonable person would act on the assumption that the fact is untrue.

2(1)(c).02 Judicial interpretation of disproved - Indian Courts have consistently interpreted “disprove” as requiring a high degree of probability against the existence of the fact in question. The Court must be satisfied, either by direct evidence or by the balance of probability, that the fact does not exist. In *State of Uttar Pradesh v. Rajesh Gautam*¹, the Supreme Court explained the interplay between “proved,” “disproved,” and “not proved,” holding that a fact is disproved when the Court believes it does not exist or considers its non-existence so probable that a prudent person would act on that supposition. In *Union of India v. Ibrahim Uddin*², the Court reiterated that the standard for “disprove” is not absolute certainty but a high degree of probability against the existence of the fact. In *State of Rajasthan v. Kashi Ram*³, the Supreme Court clarified that the burden of disproving a fact lies on the party against whom the presumption operates, and if the evidence leads the court to believe in the non-existence of the fact, it is said to be disproved.

“Disprove” under Section 2(1)(c) of the BSA requires the Court to be convinced, either by direct or circumstantial evidence, that the fact does not exist or its non-existence is highly probable. This interpretation has been consistently upheld by the Supreme Court in cases such as *State of Uttar Pradesh v. Rajesh Gautam*⁴; *Union of India v. Ibrahim Uddin*⁵ and *State of Rajasthan v. Kashi Ram*.⁶

2(1)(d).01 “document” - Term “document” defined under section 2(1)(d) of the Bharatiya Sakshya Adhiniyam, 2023.⁷ The definition of scope of document is as follows.

1. **Broad and inclusive** - The definition is expansive, covering any medium or method used to record information, not limited to traditional paper documents.
2. **Electronic and digital Records** - It explicitly includes electronic and digital records, reflecting the modern realities of information storage and communication.
3. **Any substance** - The matter may be recorded “upon any substance,” which means it is not restricted to paper but extends to physical, electronic, or any other tangible or intangible medium.

1 (2003) 5 SCC 527.

2 (2012) 8 SCC 148.

3 (2006) 12 SCC 254.

4 (2003) 5 SCC 527.

5 (2012) 8 SCC 148.

6 (2006) 12 SCC 254.

7 “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.

Illustrations.

(i) A writing is a document.

(ii) Words printed, lithographed or photographed are documents.

(iii) A map or plan is a document.

(iv) An inscription on a metal plate or stone is a document.

(v) A caricature is a document.

(vi) 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;

2(1)(d).02 Elements of documents - Following are the elements of documents

1. **Expression/Description/Recording** - The document must involve some form of expression, description, or recording of matter.
2. **Means** - The expression or recording can be by letters, figures, marks, or any other means, or a combination thereof.
3. **Purpose** - The recording must be intended to be used, or capable of being used, for the purpose of recording that matter.
4. **Inclusion of electronic and digital records** - The definition expressly includes electronic and digital records, ensuring that modern forms of documentation are covered.

2(1)(d). 03 Nature of documents - Following are the nature of the definition of documents.

1. **Evidentiary value** - Documents, as defined, serve as a primary source of evidence in judicial proceedings and can be used to prove or disprove facts.
2. **Technologically neutral** - The definition is technologically neutral and future-proof, accommodating both current and emerging forms of documentation, including those yet to be invented.
3. **Legal Recognition** - The BSA gives equal legal recognition to electronic/digital records and traditional documents, subject to conditions of admissibility and authenticity.

2(1)(d).04 Features highlighted by the BSA of document - Core features of the documents are—

1. **Expanded Ambit** - The definition of document under BSA, 2023 is wider than the old Indian Evidence Act, 1872, particularly due to the inclusion of “any other means” and explicit mention of electronic/digital records.
2. **Modernization** - The BSA, 2023 aims to align the law of evidence with technological advancements and contemporary practices.
3. **Primary and Secondary Evidence** - The BSA further clarifies the treatment of electronic/digital records as primary evidence under certain conditions.

Section 2(1)(d) of the BSA, 2023 provides a comprehensive, technology-neutral definition of “document,” ensuring that all forms of recorded information, whether physical, electronic, or digital are legally recognized for evidentiary purposes in Indian Courts.

2(1)(d). 05 Judicial interpretation of document - Below are important judgments where courts have interpreted and defined “document” under the Indian Evidence Act, 1872, a definition that has been substantially adopted in the Bharatiya Sakshya Adhiniyam, 2023 (BSA):

1. Check post of document - *Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal*¹, the Supreme Court explained the evidentiary process for documentary evidence, emphasizing that “documentary evidence, in contrast to oral evidence, is required to pass through certain check posts, such as:

- (i) admissibility
- (ii) relevancy and
- (iii) proof, before it is allowed entry into the sanctum. The Court reiterated the definition of “document” as any matter expressed or described upon any substance by means of letters, figures, or marks intended to be used for recording that matter and clarified that this includes electronic records.

2. Evidentiary value of document - In *State Bank of India v. Om Narain Agarwal*², the Supreme Court highlighted the evidentiary value of documents and the importance of limiting disputes to facts that have logical evidentiary value, thus reaffirming the centrality of documentary evidence in judicial proceedings.

¹ (2020) 7 SCC 1: 2020 SCC On Line SC 571.

² AIR 2011 (SC) 336.

3. Authenticity of document - In *Emperor v. Aftab Mohd. Khan*¹, the Allahabad High Court discussed the objective of documentary evidence and the necessity of safeguarding the authenticity and reliability of documents produced before the Court.

Document not duly stamped - In *Javer Chand v Pukhrak Surana*² A document which is not duly stamped and not also registered though required to be registered, can be admitted in evidence for collateral purposes under proviso to section 49 of the Registration Act, 1908, but so far as stamp duty is concerned, if the document is not duly stamped, it has to be dealt with under section 35 of the Indian Stamp Act, 1899 before it is admitted in evidence failing which, by virtue of section 36 of the Indian Stamp Act, 1899 admission of document in evidence cannot be questioned at any later stage.

Statutory definition has been consistently applied and interpreted by Indian Courts, including the Supreme Court and High Courts, in the above judgments. Courts have consistently held that “document” under evidence law is broadly defined to include any recorded matter, whether physical or electronic, intended to record information relevant to judicial proceedings. The admissibility and evidentiary value of such documents depend on their compliance with statutory requirements and the manner in which they are proved in Court.

2(1)(e).01 “evidence” - it is a most important definition under the BSA, 2023. The whole cosmos of proved, disproved and conclusive proof of document centered on evidence. Definition of evidence is defined under section 2(1)(e) of the BSA, 2023.³

2(1)(e).02 Scope of definition of evidence - The following are the scope of definition of evidence:

1. The Bharatiya Sakshya Adhiniyam, (BSA) 2023 applies to all judicial proceedings in or before any Court, including courts-martial, but not to affidavits or proceedings before an arbitrator.
2. The Act covers both traditional and modern forms of evidence, including oral, documentary, electronic, and digital records.
3. The BSA, 2023 is structured into 4 parts, 12 chapters, and 170 sections, consolidating and updating the rules and principles of evidence for fair trials.

2(1)(e). 03 Elements - The following are the core elements of section 2(1)(e) of the BSA, 2023:

1. **Oral evidence** - Includes statements made by witnesses in Court, now explicitly encompassing statements given electronically (e. g., via video conferencing).
2. **Documentary evidence** - Encompasses all documents, including electronic and digital records, produced for the Court's inspection.
3. **Primary and secondary evidence** - The BSA retains the distinction. Primary evidence is the original document, while secondary evidence is used when the original cannot be produced. Notably, electronic records are now classified as primary evidence.
4. **Direct and indirect evidence** - The Act recognizes both direct (first hand) and indirect (circumstantial) evidence.

2(1)(e).04 Nature - Evidence as prescribed under section 2(1)(e) have the following nature:

1. BSA modernizes the law of evidence, making it technologically inclusive by explicitly recognizing electronic and digital records as evidence.

1 AIR 1939 (All) 326

2 AIR 1961 (SC) 1655

3 “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.

2. It provides clear, precise, and uniform rules for presenting and evaluating evidence, ensuring that the legal process is transparent and efficient.
3. The Act adapts to advancements in technology, enabling Courts to examine witnesses via electronic means and accept digital signatures as valid evidence.

2(1)(e). 05 Object - Following is the object of section 2(1)(e) of the BSA, 2023.

1. The primary objective is to ensure a fair trial by providing consolidated, clear, and contemporary rules for the admissibility and evaluation of evidence.
2. The Act aims to promote reliability, accuracy, and efficiency in the justice system, protect individual rights, and balance competing interests in legal proceedings.
3. It addresses challenges posed by technological advancements, cybercrime, and the need for streamlined procedures in the digital age.

2(1)(e).06 Judicial interpretation - The Courts interpreted definition of 'evidence' in the cases mentioned below:

1. Evidence of electronic record - In *State of Maharashtra v. Dr. Praful B. Desai*¹, the Supreme Court held that the term "evidence" is broad enough to include electronic records and that recording of evidence by video conferencing is permissible and valid under the Act. In *Anvar P. V. v. P. K. Basheer*², the Supreme Court clarified that electronic records produced as evidence must comply with the requirements of section 65B of the Evidence Act, it is now section 63 of BSA thus, the definition of "evidence" includes electronic records.

2. Email as valid evidence - In *Sudarshan Cargo Pvt. Ltd. v. Techvac Engineering Pvt. Ltd*³, the case involved a winding-up petition against the respondent company for non-payment of dues. The petitioner relied on email correspondence from the respondent as acknowledgment of debt. The respondent argued that these emails, not being "signed," could not constitute valid acknowledgment under section 18 of the Limitation Act, 1963. The Karnataka High Court held that under section 18 of the Limitation Act, 1963 even if not physically signed. The Court harmoniously interpreted section 4 of the Information Technology Act, 2000, which gives legal recognition to electronic records and digital signatures, together with the Evidence Act and Limitation Act. "An acknowledgement of debt by e-mail originating from a person who intends to send or transmit such electronic message to any other person who would be the 'addressee' would constitute a valid acknowledgement of debt, and it would satisfy the requirement of Section 18 of the Limitation Act, 1963..."

- (a) The Court noted that the Information Technology Act, 2000 recognizes electronic records and communications as legally valid, and section 4 specifically allows electronic records to satisfy legal requirements for information to be in writing or in printed form.
- (b) The definition of "evidence" under section 3 of the Indian Evidence Act, 1872 now it is under section 2(1)(e) of BSA, 2023 includes electronic records.
- (c) The Court concluded that emails, as electronic records, are valid evidence of acknowledgement of debt, and their admissibility is not hindered by the absence of a physical signature, provided the origin and authenticity are not disputed.

3. Admissibility of evidence - In *Brajnandan Sinha v. Jyoti Narain*⁴, the Supreme Court discussed the definition of "evidence" and "Court" by holding that only those bodies capable of giving final and authoritative judgments are considered Courts under the Act, and only

1 (2003) 4 SCC 601; 2003 SCC (Cri) 1036; AIR 2003 (SC) 2053.

2 (2014) 10 SCC 473; AIR 2015 (SC) 180; (2014) 4 KLT353 (SC).

3 AIR 2014 (Karnataka) 6; 2013 (4) AKR 654; (2014) 118 CLA 444; 182 Camp cas 71; (2013) ILR (Kar) 3941; (2013) 4 KCCR 3079.

4 AIR 1956 (SC) 66; (1956) SCR 955.

evidence led before such Courts is admissible as “evidence”. In *Kaliyaperumal v. Rajagopal*¹, the Supreme Court reiterated that “evidence” includes both oral and documentary evidence and stressed the importance of the distinction for the purpose of admissibility and proof. Courts have consistently interpreted evidence to mean that “evidence” includes both oral and documentary forms, with documentary evidence now expressly including electronic records. The scope and admissibility of evidence are determined by the requirements set out in the Act and as clarified by judicial pronouncements.

4. Pen drive and memory card - In *P. Gopalkrishnan alias Dileep v State of Kerala*², case is related to pen drive and memory card as evidence. The details of the case are as follows:

Background and Facts - The case involved the alleged sexual assault of a South Indian actress, with the incident being video recorded and stored on a memory card and pen drive.

1. The appellant, Dileep, was accused of conspiring in the crime and sought access to the electronic evidence (video footage) that the prosecution intended to rely upon.
2. The prosecution refused to provide a cloned copy of the memory card to the accused, citing concerns over the privacy and dignity of the victim.

Legal issues in the case - The following are the legal issues in the case.

1. Whether the contents of a memory card or pen drive constitute a “document” or a “material object” under Indian law?
2. Whether the accused is entitled to a cloned copy of the electronic evidence under Section 207 of the Code of Criminal Procedure (CrPC), which is as section 230 of BNSS, balancing the right to a fair trial with the victim's right to privacy?

Supreme Court's key findings - The following are the Supreme Court's findings:

1. **Electronic record as document** - The Supreme Court held that the contents of a memory card or pen drive are to be treated as a “document” under section 3 of the Indian Evidence Act, 1872, this is section 2(1)(d) of BSA, 2023 and section 2(1)(t) of the Information Technology Act, 2000 not merely as a physical or material object.
2. **Right to fair trial vs. Victim's privacy** - The Court recognized a conflict between the accused's right to a fair trial (which includes access to evidence) and the victim's right to privacy and dignity under Article 21 of the Constitution.
3. **Balancing rights** - Normally, the accused should be furnished with a cloned copy of the electronic evidence to prepare an effective defense. However, in sensitive cases involving sexual violence, the Court must balance the accused's rights with the victim's privacy. Thus, instead of handing over the cloned copy directly to the accused, the Court allowed:
 1. Inspection of the contents of the memory card/pen drive by the accused and their counsel under strict supervision.
 2. Forensic analysis by an independent laboratory, with a cloned copy to be kept securely with the Central Forensic Science Laboratory (CFSL).
4. **Precedent Overruled** - The Supreme Court overruled the Kerala High Court's view that the memory card was only a material object and not a document, clarifying that it is the **contents** (the data or video) that are relevant as documentary evidence.

Final decision : The appeal was partly allowed. The accused was not given an unrestricted cloned copy but was permitted supervised inspection and forensic analysis to ensure a fair trial, while simultaneously protecting the victim's privacy.

¹ (2009) 4 SCC 193; AIR 2009 (SC) 212.

² AIR 2020 (SC) 1; 2019 (16) SCALE 752; 2020 Cr L J 1240; (2020) 1 KER L J 92.

Principles established - The following principles laid down by the Court in this case:

- (i) Electronic records (such as memory cards and pen drives) containing relevant data are “documents” under Indian law when their contents are relied upon as evidence.
 - (ii) In cases involving sensitive material (e. g. , sexual assault videos), Courts must balance the accused’s right to a fair trial with the victim’s right to privacy, often by allowing supervised inspection rather than unrestricted access to electronic evidence.
 - (iii) This approach aims to prevent misuse or further violation of the victim’s dignity while upholding due process for the accused.
5. **DNA test as evidence** - In *Abdul Nassar v. State of Kerala*¹, the Supreme Court, while upholding the admissibility of DNA evidence under section 45 of the Evidence Act, now it is section 39(1) of BSA, reiterated the principles for appreciating and evaluating evidence, especially circumstantial evidence. The Court emphasized that every link in the chain of evidence must be established beyond reasonable doubt, and all circumstances must point unerringly to the guilt of the accused. The judgment highlights that “evidence” encompasses all forms—oral, documentary, and scientific (such as DNA)—that the court permits or requires to be produced.
 6. **Investigation with dog** - In *Dinesh Borthakur v State of Assam*², the Supreme Court examined whether evidence based on the actions of a sniffer (tracker) dog can be relied upon to establish the guilt of an accused in a criminal trial.
 7. **Facts relevant to dog tracker evidence** : During the investigation of a double murder, a sniffer dog was brought to the scene. The dog, after being taken near the dead bodies, went close only to the accused (Dinesh Borthakur) when he was inside the house. The prosecution relied on this behaviour as a circumstance pointing to the accused’s guilt. Supreme Court reviewed prior judgments, notably *Abdul Rajak Murtaja Dafedar v. State of Maharashtra*³ and *Gade Lakshmi Mangaraju v. State of A.P.*⁴ which had expressed skepticism about the reliability of dog tracking evidence. The Court reiterated three main objectives:
 - (a) The dog’s behaviour is interpreted and reported by a human handler, making it hearsay.
 - (b) The liberty of a person should not depend on an animal’s inference.
 - (c) There is a significant possibility of error or misinterpretation by either the dog or its handler.

The Supreme Court held that while the services of a sniffer dog may be used during investigation, its faculties cannot be treated as substantive evidence to establish the guilt of an accused in Court. The Court emphasized that criminal Courts “need not bother much about the evidence based on sniffer dogs due to the inherent frailties,” though their use in investigation is not disapproved. Dog tracker evidence alone is not sufficient to convict an accused. It may assist in the investigation but cannot be relied upon as substantive proof of guilt in a criminal trial.

¹ 2025 INSC 35.

² AIR 2008 (SC) 2205; (2008) 5 SCC 697; 2008 AIR SCW 3301; (2008) 4SCALE 487; (2008) 3 SCC (Cri) 39; Surendra Pal Jain v Delhi Administration, AIR 1993 (SC) 1723.

³ (1969) 72 Bom LR 646 (SC)

⁴ AIR 2001 (SC) 2677.

2(f). 01 “facts”¹ - The definition of the fact prescribed under section 2(1)(f) of the BSA, 2023. This provision defines “fact” as:

- (i) Anything, state of things, or relation of things, capable of being perceived by the senses.
- (ii) Any mental condition of which any person is conscious.

2(1)(f).02 Scope of facts - The following is the scope of facts:

- (i) The definition is broad, encompassing both physical realities (objects, events, states, or relations observable by the senses) and subjective realities (mental conditions, such as intentions, knowledge, or feelings).
- (ii) This scope ensures that both tangible and intangible elements relevant to a case can be considered as “facts” in judicial proceedings.

2(1)(f).03 Kinds of facts - The following are the kinds of facts:

1. Physical Facts - Anything, state of things, or relation of things that can be perceived by the senses (sight, hearing, touch, smell, taste).

Example: The arrangement of objects in a room. The presence of a person at a location.

2. Psychological Facts - Any mental condition of which a person is conscious.

Example : A person’s intention, knowledge, or belief at a particular time.

2(1)(f).04 Nature of facts : The definition is inclusive, covering all that can be directly observed or subjectively experienced. It forms the foundational basis for what may be proved or disproved in court, as only “facts” as defined can be the subject of evidence. The BSA, 2023 retains the essence of the Indian Evidence Act, 1872, but modernizes the language and explicitly recognizes digital and electronic realities.

2(1)(f).05 Illustrations - The following are the illustrations of section 2(1)(f) of the BSA:

- (i) The existence of certain objects arranged in a particular order in a certain place is a fact.
- (ii) That a person heard or saw something is a fact.

2(1)(f).06 Judicial interpretation of section 2(1)(f) - While the BSA, 2023 is new, the definition of “fact” closely mirrors that in the Indian Evidence Act, 1872, Section 3. Thus, older case law remains relevant. In *M Kishan Rao v R Subramaniam*², Andhra Pradesh High Court, said material facts are all the facts which are essential to clothe petition with complete cause of action. If material facts are not pleaded, then it goes to the root of the case. But all material facts which may be relevant relate to any matter in issue can be allowed to be administered by interrogatories. The right thus is not confined to “fact directly in issue” but extends to all facts’ existence or non-existence which is relevant to the existence or non-existence of the facts directly in issue. Section 2(1)(f) of the BSA provides a comprehensive and modern definition of “fact,” ensuring that Courts can consider all relevant realities, physical and psychological, traditional and digital while adjudicating cases. The definition is supported by longstanding judicial interpretation, which remains applicable under the new Act.

¹ “fact” means and includes—

- (i) anything, state of things, or relation of things, capable of being perceived by the senses;
- (ii) any mental condition of which any person is conscious.

Illustrations

- (i) That there are certain objects arranged in a certain order in a certain place, is a fact.
- (ii) That a person heard or saw something, is a fact.
- (iii) That a person said certain words, is a fact.
- (iv) That a person holds a certain opinion, has a certain intention, acts in good faith, or fraudulently, or uses a particular word in a particular sense, or is or was at a specified time conscious of a particular sensation, is a fact.

² AIR 2010 (NOC) 666 (AP)