
THE BHARATIYA SAKSHYA BILL, 2023: A COMPREHENSIVE ANALYSIS OF THE PROPOSED LEGISLATION (REPLACEMENT OF INDIAN EVIDENCE ACT, 1872)

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ABSTRACT

The Bharatiya Sakshya Bill, 2023 is a proposed legislation that seeks to consolidate and provide general rules and principles of evidence for fair trial in India. The bill is divided into two parts, each containing several chapters that deal with various aspects of relevancy of facts. This article provides a comprehensive analysis of the Bharatiya Sakshya Bill, 2023, and its potential impact on the Indian legal system. The article examines the key provisions of the bill, its objectives, and the challenges that may arise in its implementation. The article also discusses the potential benefits of the bill and its implications for the Indian legal system.

Keyword: Indian Evidence Act, 1872, The Bharatiya Sakshya Bill, 2023, New Evidence Act for India

Introduction:

The Bharatiya Sakshya Bill, 2023 is a proposed legislation that seeks to consolidate and provide general rules and principles of evidence for fair trial in India. The bill is divided into two parts, each containing several chapters that deal with various aspects of relevancy of facts. The bill is expected to bring significant changes to the Indian legal system, and has been the subject of much debate and discussion among legal professionals, policymakers, and the general public.

The Bharatiya Sakshya Bill, 2023 is a response to the need for a more efficient and effective legal system in India. The Indian legal system is known for its complexity, delays, and high costs, which often make it difficult for ordinary citizens to access justice. The bill seeks to address these challenges by introducing more precise and uniform rules of practice of courts in dealing with facts and circumstances of the case by means of evidence. The bill has several key provisions that are aimed at improving the quality of evidence presented in legal proceedings. One of the most significant provisions of the bill is the admissibility of electronic or digital records as evidence. The bill provides that electronic or digital records shall have the same legal effect, validity, and enforceability as paper records. This is expected to increase the use of electronic evidence in legal proceedings, which is becoming increasingly important in the digital age.

The bill also seeks to expand the scope of secondary evidence to include copies made from original by mechanical processes, copies made from or compared with the original, counterparts of documents as against the parties who did not execute them and oral accounts of the contents of a document given by some person who has himself seen it. This is expected to make it easier to introduce secondary evidence in legal proceedings.

Another key provision of the bill is the introduction of more precise and uniform rules of practice of courts in dealing with facts and circumstances of the case by means of evidence. The bill seeks to bring clarity and uniformity in the rules of evidence across all courts in India. This is expected to reduce the time and costs associated with litigation, and improve access to justice for all citizens, particularly those who are marginalized or disadvantaged.

The Bharatiya Sakshya Bill, 2023 is also expected to have a significant impact on the legal profession in India. The bill introduces several new concepts and rules of evidence that may be unfamiliar to many legal professionals.

Objectives of the Bharatiya Sakshya Bill, 2023:

The Bharatiya Sakshya Bill, 2023 seeks to achieve several objectives. The bill aims to provide a comprehensive framework for determining the relevancy of facts in legal proceedings. It seeks to ensure that only relevant facts are admitted as evidence in court, and irrelevant facts are excluded. The bill also aims to ensure that the rules of evidence are applied uniformly across all courts in India. The bill seeks to promote fairness and transparency in legal proceedings and to ensure that the rights of all parties are protected.

The bill seeks to achieve the following objectives:

1. To modernize the Indian legal system by introducing more precise and uniform rules of practice of courts in dealing with facts and circumstances of the case by means of evidence.
2. To increase the use of electronic evidence in legal proceedings, which is becoming increasingly important in the digital age.
3. To improve the quality of evidence presented in legal proceedings, which is essential for ensuring fair and just outcomes.
4. To reduce the time and costs associated with litigation, which is a major challenge in the Indian legal system.
5. To improve access to justice for all citizens, particularly those who are marginalized or disadvantaged.
6. To bring clarity and uniformity in the rules of evidence across all courts in India.
7. To introduce new provisions for the admissibility of electronic and digital records as evidence.
8. To expand the scope of secondary evidence to include copies made from original by mechanical processes, copies made from or compared with the original, counterparts of documents as against the parties who did not execute them and oral accounts of the contents of a document given by some person who has himself seen it.

9. To introduce more precise and uniform rules of practice of courts in dealing with facts and circumstances of the case by means of evidence.

Overall, the objective of the Bharatiya Sakshya Bill, 2023 is to bring significant changes to the Indian legal system, and to make it more efficient, effective, and accessible to all citizens.

Key Provisions of the Bharatiya Sakshya Bill, 2023:

1. PRELIMINARY Chapter I: This chapter contains two clauses that provide for the short title, application, and commencement of the bill, as well as definitions of certain expressions used in the proposed legislation.
2. RELEVANCY OF FACTS Chapter II: This chapter contains eight major division in which it speak about the Relevancy and closely connected facts, Admission and dismiss of person for witness, special circumstance in admission of evidence and finally judgment of court & opinions of the third person & character of a person when relevant
3. Chapter III: This chapter contains that facts which need to be proved and which need not to be proved.
4. Chapter IV: This chapter contains of oral evidence to be taken or not to be taken
5. Chapter V: This chapter contains proof of documentary evidence including electronic records and digital signature .
6. Chapter VI: This chapter contains of exclusion of oral evidence by documentary evidence.
7. Chapter VII: This chapter contains Burden proof lies on whom.
8. Chapter VIII: This chapter of Estoppel
9. Chapter IX: This chapter contains Witnesses whom can be produce
10. Chapter X: This chapter contains Examination of witness.
11. Chapter XI: This chapter contains Improper admission and rejection of evidances.

Electronic Record

The Bharatiya Sakshya Bill, 2023 contains several provisions relating to electronic evidence. These provisions are aimed at providing a framework for the admissibility and certification of electronic evidence in legal proceedings. Some of the key provisions relating to electronic evidence are:

- 1. Definition of electronic record:** The bill defines electronic record as any data, record, or data generated, image or sound stored, received or sent in an electronic form or microfilm or computer-generated microfiche.
- 2. Admissibility of electronic records:** The bill provides that an electronic record may be admitted as evidence in any legal proceeding, and shall have the same legal effect, validity, and enforceability as a paper record.
- 3. Certification of electronic records:** In any proceeding where it is desired to give a statement in evidence by virtue of an electronic record, a certificate shall be submitted along with the electronic record. The certificate shall identify the electronic record containing the statement and describe the manner in which it was produced. It shall also give particulars of any device involved in the production of that electronic record and deal with any of the matters to which the conditions mentioned in sub-section (2) relate.
- 4. Matters to be stated in the certificate:** The certificate shall be signed by a person in charge of the computer or communication device and an expert (whichever is appropriate) and shall be evidence of any matter stated in the certificate. The certificate shall state the facts relating to the electronic record, including the method of its creation, the date and time of its creation, and the identity of the person who created it.
- 5. Hash value of original record:** The certificate shall also give the matching hash value of the original record, which will be admissible as proof of evidence in the form of secondary evidence.
- 6. Burden of proof:** The bill provides that the burden of proving the authenticity of an electronic record shall be on the person who seeks to rely on it. These provisions are aimed at providing a framework for the admissibility and certification of electronic evidence in legal proceedings. They are intended to ensure that electronic evidence is

treated on par with paper records and that the authenticity of electronic evidence is established through a certification process. The provisions are also aimed at ensuring that the rules of evidence are applied uniformly across all courts in India.

The challenges may arise in implementation:

The implementation of the Bharatiya Sakshya Bill, 2023 is likely to face several challenges. Some of the challenges that may arise in the implementation of the bill are:

- 1. Lack of awareness and training:** The bill introduces several new concepts and rules of evidence that may be unfamiliar to many legal professionals. The implementation of the bill may require extensive training and awareness programs to ensure that legal professionals are equipped to apply the new rules of evidence.
- 2. Resistance to change:** The Indian legal system has been operating under the Indian Evidence Act, 1872 for over a century. The introduction of a new legislation may face resistance from legal professionals who are accustomed to the old rules of evidence.
- 3. Interpretation and application of the new rules:** The new rules of evidence introduced by the bill may be subject to different interpretations and applications by different courts. This may lead to inconsistencies in the application of the rules across different courts.
- 4. Technical challenges:** The bill introduces new provisions for the admissibility of electronic and digital records as evidence. The implementation of these provisions may require significant technical infrastructure and expertise.
- 5. Resource constraints:** The implementation of the bill may require significant resources, including financial, human, and technical resources. The availability of these resources may be a challenge, particularly for smaller courts and legal institutions.
- 6. Enforcement challenges:** The bill introduces new provisions for the certification of facts and evidence. The enforcement of these provisions may be a challenge, particularly in cases where the certification process is not followed correctly.
- 7. Impact on the backlog of cases:** The implementation of the bill may have an impact

on the backlog of cases in Indian courts. The introduction of new rules of evidence may require the re-examination of existing evidence in pending cases, which may further delay the resolution of these cases.

The implications for the Indian legal system

The Bharatiya Sakshya Bill, 2023 has several implications for the Indian legal system. Some of the key implications of the bill are:

- 1. Modernization of the Indian legal system:** The bill seeks to modernize the Indian legal system by introducing more precise and uniform rules of practice of courts in dealing with facts and circumstances of the case by means of evidence. This is expected to bring the Indian legal system in line with international best practices and make it more efficient and effective.
- 2. Increased use of electronic evidence:** The bill provides for the admissibility of electronic or digital records as evidence, which shall have the same legal effect, validity, and enforceability as paper records. This is expected to increase the use of electronic evidence in legal proceedings, which is becoming increasingly important in the digital age.
- 3. Improved quality of evidence:** The bill seeks to introduce more precise and uniform rules of practice of courts in dealing with facts and circumstances of the case by means of evidence. This is expected to improve the quality of evidence presented in legal proceedings, which is essential for ensuring fair and just outcomes.
- 4. Reduction in litigation time and costs:** The bill seeks to introduce more precise and uniform rules of practice of courts in dealing with facts and circumstances of the case by means of evidence. This is expected to reduce the time and costs associated with litigation, which is a major challenge in the Indian legal system.
- 5. Improved access to justice:** The bill seeks to introduce more precise and uniform rules of practice of courts in dealing with facts and circumstances of the case by means of evidence. This is expected to improve access to justice for all citizens, particularly those who are marginalized or disadvantaged.
- 6. Increased burden on the judiciary:** The bill introduces several new concepts and rules

of evidence that may be unfamiliar to many legal professionals. The implementation of the bill may require extensive training and awareness programs to ensure that legal professionals are equipped to apply the new rules of evidence. This may increase the burden on the judiciary in the short term.

- 7. Need for technical infrastructure and expertise:** The bill introduces new provisions for the admissibility of electronic and digital records as evidence. The implementation of these provisions may require significant technical infrastructure and expertise, which may be a challenge for smaller courts and legal institutions.

Overall, the Bharatiya Sakshya Bill, 2023 has several implications for the Indian legal system, including modernization, increased use of electronic evidence, improved quality of evidence, and improved access

The potential benefits of the bill

The Bharatiya Sakshya Bill, 2023 has the potential to bring several benefits to the Indian legal system. Some of the potential benefits of the bill are:

- 1. Clarity and uniformity in the rules of evidence:** The bill introduces more precise and uniform rules of practice of courts in dealing with facts and circumstances of the case by means of evidence. This is expected to bring clarity and uniformity in the rules of evidence across all courts in India.
- 2. Admissibility of electronic evidence:** The bill provides for the admissibility of electronic or digital records as evidence, which shall have the same legal effect, validity, and enforceability as paper records. This is expected to make it easier to introduce electronic evidence in legal proceedings, which is becoming increasingly important in the digital age.
- 3. Expansion of scope of secondary evidence:** The bill seeks to expand the scope of secondary evidence to include copies made from original by mechanical processes, copies made from or compared with the original, counterparts of documents as against the parties who did not execute them and oral accounts of the contents of a document given by some person who has himself seen it. This is expected to make it easier to introduce secondary evidence in legal proceedings

- 4. Reduction in litigation time and costs:** The bill seeks to introduce more precise and uniform rules of practice of courts in dealing with facts and circumstances of the case by means of evidence. This is expected to reduce the time and costs associated with litigation.
- 5. Improved access to justice:** The bill seeks to introduce more precise and uniform rules of practice of courts in dealing with facts and circumstances of the case by means of evidence. This is expected to improve access to justice for all citizens, particularly those who are marginalized or disadvantaged.
- 6. Improved quality of evidence:** The bill seeks to introduce more precise and uniform rules of practice of courts in dealing with facts and circumstances of the case by means of evidence. This is expected to improve the quality of evidence presented in legal proceedings, which is essential for ensuring fair and just outcomes. Overall, the Bharatiya Sakshya Bill, 2023 has the potential to bring several benefits to the Indian legal system, including greater clarity and uniformity in the rules of evidence, improved access to justice, and reduced time and costs associated with litigation.

Conclusion

In conclusion, the Bharatiya Sakshya Bill, 2023 has the potential to bring significant changes to the Indian legal system. The bill seeks to modernize the Indian legal system by introducing more precise and uniform rules of practice of courts in dealing with facts and circumstances of the case by means of evidence. The bill also seeks to increase the use of electronic evidence, improve the quality of evidence, and reduce the time and costs associated with litigation. However, the implementation of the bill may require significant technical infrastructure and expertise, and may increase the burden on the judiciary in the short term. Overall, the Bharatiya Sakshya Bill, 2023 is a step towards a more efficient and effective legal system in India.