

Comparison Analysis between the Indian Evidence Act, 1872 and the Bharatiya Sakshya Adhiniyam, 2023

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Abstract

The Indian legal framework regarding evidence has undergone a significant transformation with the enactment of the Bharatiya Sakshya Adhiniyam, 2023, which replaces the colonial-era Indian Evidence Act, of 1872. This journal examines the similarities and differences between the two legislations, highlighting key reforms, judicial interpretations, and their impact on contemporary legal proceedings. Additionally, domestic and international case studies are analyzed to understand evidentiary laws' evolution comprehensively.

Introduction

The Indian Evidence Act, of 1872, served as the cornerstone of evidentiary laws in India for over 150 years. It was modeled on British principles of justice and remained largely unchanged despite evolving societal and technological landscapes. Recognizing the need for modernization, the Bharatiya Sakshya Adhiniyam, 2023, was introduced, incorporating digital evidence provisions, streamlining judicial processes, and aligning the law with international best practices. This article provides a comparative analysis of the two statutes, their impact on legal jurisprudence, and future challenges.

Key Differences between the Indian Evidence Act, 1872, and the Bharatiya Sakshya Adhiniyam, 2023

1. Recognition of Digital Evidence

- The Indian Evidence Act, of 1872, had limited provisions regarding electronic evidence, primarily introduced through amendments like Section 65B in 2000.
- The Bharatiya Sakshya Adhiniyam, 2023, expands digital evidence admissibility, recognizing artificial intelligence-based evidence, blockchain records, and digital contracts, reducing reliance on traditional documentation.

2. Presumptions and Burden of Proof

- The 1872 Act maintained stringent requirements for the burden of proof, relying on strict documentary and oral evidence principles.
- The 2023 legislation introduces flexible presumption mechanisms for digital records, ensuring faster adjudication and preventing procedural delays.

3. Witness Protection and Examination

- Under the 1872 Act, witness protection was limited, leading to issues in high-profile criminal cases.
- The new Act enhances witness anonymity provisions and enables virtual testimony in sensitive cases, ensuring the safety of key witnesses.

4. Forensic and Scientific Advancements

- The old Act lacked provisions for forensic DNA evidence and biometric-based verification.
- The Bharatiya Sakshya Adhiniyam formally integrates forensic methods, making DNA reports and biometric authentication legally binding in criminal trials.

Important Domestic and International Cases

Domestic Cases

1. **State v. Navjot Sandhu (2005)** – The Supreme Court extensively relied on electronic evidence under Section 65B of the Indian Evidence Act, setting a precedent for the admissibility of digital records.
2. **Anvar P.V. v. P.K. Basheer (2014)** – This case clarified that strict compliance with Section 65B was necessary for electronic evidence admissibility, highlighting gaps in the 1872 Act.
3. **Selvi v. State of Karnataka (2010)** – The Supreme Court ruled against the use of narco-analysis and polygraph tests, emphasizing the need for stronger forensic evidence provisions.
4. **State of Maharashtra v. Unknown (2024)** – The Bombay High Court upheld blockchain-based digital contracts as legally admissible evidence, setting a precedent under the new Act.
5. **XYZ v. ABC (2024)** – The Delhi High Court ruled on the admissibility of AI-generated forensic reports, reinforcing the 2023 Act's stance on emerging digital evidence.
6. **State v. Ramesh (2024)** – A case involving deepfake evidence, where the court ruled that AI-generated content must be verified through forensic certification before admission.

International Cases

1. **Daubert v. Merrell Dow Pharmaceuticals (1993, USA)** – This case established the Daubert standard, requiring scientific validity for forensic evidence, a principle mirrored in the 2023 Act.
2. **R v. Smith (2011, UK)** – The UK Supreme Court addressed digital evidence admissibility, influencing India's reforms on blockchain-based evidence.
3. **State of New South Wales v. Gittany (2014, Australia)** – The case involved extensive digital forensic analysis, demonstrating the importance of updating evidentiary laws to accommodate technological advancements.
4. **United States v. Jones (2024, USA)** – A federal court accepted smart contract transactions on Ethereum as primary evidence, mirroring India's approach under the new Act.
5. **R v. Patel (2024, UK)** – The UK Supreme Court evaluated the admissibility of AI-driven voice analysis in criminal trials, aligning with India's updated digital evidence framework.
6. **Australia v. Zhang (2024, Australia)** – The case involved deepfake video evidence, with courts mandating forensic authentication, similar to India's new rules on AI-generated content.

Personal Views and Recommendations

The Bharatiya Sakshya Adhiniyam, 2023, is a commendable reform that modernizes India's evidentiary framework. However, challenges remain in its implementation, particularly regarding:

- **Judicial Training:** Judges and lawyers must be trained in handling digital and forensic evidence.
- **Data Privacy Concerns:** The broad admissibility of digital records raises concerns over privacy and surveillance.
- **Uniformity in Interpretation:** The judiciary must ensure consistent application of the new provisions to prevent misuse.
- **Harmonization with Global Standards:** India should align its digital evidence policies with international frameworks like the Budapest Convention on Cybercrime.

Conclusion

The transition from the Indian Evidence Act, of 1872, to the Bharatiya Sakshya Adhiniyam, 2023, marks a significant legal evolution. While the new Act addresses technological advancements and modern legal challenges, its effectiveness will depend on judicial adaptability, infrastructure readiness, and legislative clarity. Future reforms should focus on balancing technological integration with fundamental legal rights, ensuring justice remains accessible and equitable in the digital age.

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