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Evidence in the Digital Era: Section 63 of the Bharatiya Sakshya Adhiniyam, 2023

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From Victimization to Survival: A Criminological Review of 'A Child Called "It": One Child's Courage to Survive'

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ABSTRACT

This paper examines Section 63 of the Bharatiya Sakshya Adhiniyam, 2023, which modernizes the legal treatment of electronic records in India by replacing Section 65B of the Indian Evidence Act, 1872. It explains how the new provision broadens the scope of admissibility, introduces clearer conditions, and strengthens authentication through mandatory certification and the use of hash values. The study highlights similarities and improvements over the old law, outlines practical challenges involving intermediaries and technical compliance, and offers recommendations for smoother implementation. Overall, the paper emphasizes that Section 63 represents a significant step toward ensuring reliable digital evidence and shaping India's legal system to meet the demands of an increasingly digital era.

KEYWORDS

Section 63, Bharatiya Sakshya Adhiniyam, 2023 (BSA), Electronic Evidence, Electronic Records, Admissibility, Certification Requirement, Hash Values, Computer Output, Communication Device, Digital Evidence, Expert Certification, Data Integrity, Indian Evidence Act, 1872, Section 65B, Information Technology Act, 2000, Non-Obstante Clause, Generalia Specialibus Non Derogant, Anvar v. Basheer.

INTRODUCTION

Section 63 of the Bharatiya Sakshya Adhiniyam, 2023 (BSA), provides the core framework for admitting electronic records as evidence in Indian courts. It replaces Section 65B of the Indian Evidence Act, 1872, which was introduced after the Information Technology Act, 2000 to enable the use of electronic evidence.

With the rapid expansion of digital technology, Section 63 continues the same purpose but introduces clearer procedures and safeguards. By requiring proper certification and compliance with specific conditions, it strengthens the reliability of electronic documents and protects them from tampering or misuse. Effective from July 1, 2024, this new provision along with the legal reforms under the Bharatiya Sakshya Adhiniyam, Bharatiya Nyaya Sanhita, and Bharatiya Nagarik Suraksha Sanhita modernises India's framework for the digital age. This paper examines the role and impact of Section 63 of the Bharatiya Sakshya Adhiniyam on the admissibility of electronic evidence.

HISTORY OF EVIDENCE LAW IN INDIA

1. Pre Independence Era

The roots of India's law of evidence can be traced to the British period, when Dr. James Fitzjames Stephen introduced a bill that was approved in 1872. The resulting Indian Evidence Act was enacted to codify the rules of evidence and provide a clear framework for determining facts in judicial proceedings.

2. Post Independence Period

By the late 20th century, following the LPG (Liberalization, Privatisation, Globalization) reforms, India sought to match its laws with global standards, particularly the UNCITRAL model on e-commerce. This led to the enactment of the Information Technology (IT) Act, 2000, which introduced the definition of electronic records for the first time. The IT Act made it necessary to amend the Indian Evidence Act, 1872 so that electronic records could be recognised as admissible evidence. To address this need, Section 65B was added in 2000, providing a structured framework for admitting electronic evidence, something that had not been accepted earlier. This amendment marked a major milestone in the evolution of India's legal system.

3. The Bharatiya Sakshya Adhiniyam, 2023

As technology continued to evolve and become a part of everyday life, the shortcomings of Section 65B grew increasingly clear. To update the outdated framework, the Bharatiya Sakshya Adhiniyam, 2023 was introduced. This new law aims to resolve issues that the old Indian Evidence Act, 1872 could not address by offering clear rules and additional requirements for the use of electronic evidence.

ANALYSIS OF SECTION 63 OF THE BHARATIYA SAKSHYA ADHINIYAM, 2023:

1. Sub Section (1) of Section 63 of BSA

- a. Any information stored electronically whether printed, saved on a disk, or kept in any digital format can be treated as a valid document. If the conditions outlined in Section 63(2) of the BSA are fulfilled, such electronic records may be used as evidence in legal proceedings without requiring the original physical document.
- b. The idea of this section is that electronic outputs produced in compliance with its requirements must be accepted as evidence, even without the original document. Courts are required to admit such electronic records unless a serious problem with the certification is specifically raised. Section 63 of the BSA also broadens the scope by replacing the word “computer” with “computer or any communication device.”
- c. Sub-section (1) of Section 63 of the BSA expands the scope of the provision to cover information stored in semiconductor memory, any communication device such as a smartphone, or any other electronic form. The addition of the phrase “or communication device” ensures that mobile-based data is clearly included, providing better clarity in the law.

2. Sub Section (2) of Section 63 of BSA

The conditions mentioned in Sub-section (1) of Section 63 BSA regarding computer output shall be as follows:

- a. The information must have been produced by the computer or device during its normal use by the person who had control over it.
- b. During that period, similar information was regularly entered into the computer or device as part of its normal use.
- c. For most of the relevant period, the computer or device was functioning properly. Even if it had occasional problems, those issues did not affect the accuracy of the electronic record.
- d. The electronic record reflects the same information that was regularly entered into the computer or device during its normal use.

3. Sub Section (3) of Section 63 of BSA

If, during a given period, information was regularly created, stored, or processed using one or more computers or devices whether used individually, as part of a system, connected through a network, or operating through an intermediary all such devices will be treated as a single unit for the purposes of this section.

4. Sub Section (4) of Section 63 of BSA

In any case where a statement is to be used as evidence under this section, a certificate must be submitted along with the electronic record each time it is presented. The certificate should:

- I. Identify the electronic record and explain how it was created.
- II. Provide details about any device used to create the record, showing it was made by a computer or device as described earlier in clauses (a) to (e) of Sub-section (3).
- III. Address any relevant conditions mentioned above in Sub-section (2).
 - a. The certificate must be signed by a person responsible for the device or its activities, and the information provided should reflect their best knowledge and belief.
 - b. Sub-section (4) of Section 63 of the BSA describes what the certificate must contain and how it should be issued. The certificate must clearly identify the electronic record, provide details about the devices used to produce it, and be signed by both the person responsible for the computer and an expert (each using their respective prescribed formats). The hash value of the electronic or digital record must also be included in both certificates.
 - c. Therefore, it is reasonable to interpret that the certificate is required only from the owner of the computer that generated the output. This should be supported by a declaration stating that the owner believes the intermediary's processing did not alter the document in any way.

- d. The format of the certificate required under Section 63(4) of the BSA, which must accompany electronic record evidence, is provided in the Schedule to the Act. In contrast, the Indian Evidence Act, 1872 did not prescribe any specific format for the certificate under Section 65B(4).
- e. It is advisable that when multiple parties are involved in processing the data, the person submitting the evidence should obtain certificates from the others confirming that the data has not been altered. The intermediary may also be required to provide details of their processing methods or appear in court to testify.

5. Sub Section (5) of Section 63 of BSA

- a. Information is treated as being supplied to a computer or device if it is provided in any suitable form whether directly or through another machine, and whether or not human assistance is involved.
- b. A computer output is treated as having been produced by a computer or device if it was generated either directly or through any equipment or electronic means referred to in clauses (a) to (e) of Sub-section (3), whether or not human help was involved.

SIMILARITY IN SECTION 63 OF BHARATIYA SAKSHYA ADHINIYAM 2023, AND SECTION 65B OF INDIAN EVIDENCE ACT

The common elements between Section 63 of BSA and Section 65B of Indian Evidence Act are:

- a. Both sections allow electronic records to be admitted as evidence, and they require the same conditions to be fulfilled for this admissibility.
- b. Both sections are non-obstante clauses, which means their special rules override any other provisions in their respective laws. This follows the principle generalia specialibus non derogant (special law prevails over general law), a principle also affirmed by the Supreme Court in *Anvar v. Basheer*.
- c. Both Section 65B of the old Evidence Act, 1872 and Section 63 of the new Bharatiya Sakshya Adhiniyam, 2023 include a requirement for a certificate when submitting electronic records.

- d. The purpose and core idea of both sections remain the same. However, Section 63 of the BSA includes a few additions and changes, while still keeping the main objective intact allowing electronic records to be admitted as evidence.

HOW SECTION 63 OF THE BHARATIYA SAKSHYA ADHINIYAM, 2023 IS BETTER THAN SECTION 65B OF INDIAN EVIDENCE ACT

According to Section 63 has been introduced to address the shortcomings of the earlier provision and to keep pace with modern technological developments:

- a. Section 63(1) expands admissibility to include not only computers but also communication devices, thereby covering telephonic conversations, social media messages, posts, tweets, and similar digital content as admissible documents. Under the earlier Section 65B(3), the conditions applied only to the storage and processing of information. In contrast, Section 63(3) broadens this by adding the requirement of proper creation of electronic records as well.
- b. With respect to the certificate requirement, Section 63(4) states that a certificate must accompany an electronic record whenever it is submitted as evidence. This makes the certification process a mandatory condition for admissibility.
- c. This section also introduces a two-level authentication process for electronic records first by the person in charge of the device and then by an expert. By using the term "an expert" instead of "the expert," the provision makes it clear that this certification is different from the expert opinion required under Section 39 of the BNS. This clarification helps remove earlier confusion about who must issue the certificate, when it is needed, and what it should contain.
- d. Thus, Section 63 offers greater clarity, which is expected to reduce the burden on courts and provide more consistency in handling electronic evidence. By strengthening the authentication requirements, it improves upon the framework that previously existed under Section 65B of the Indian Evidence Act.

RECOMMENDATIONS AND REAL WORLD IMPACT OF SECTION 63 OF BHARATIYA SAKSHYA ADHINIYAM, 2023

- a. **Use of Hash Values:** Requiring hash values at every stage of document processing helps ensure data integrity and minimizes disputes. Standardized tools should be used to generate these hash values, and courts should follow uniform protocols for accepting them.
- b. **Clear Certification:** Certification forms should clearly mention the hash values, the devices used, and the methods followed for processing the electronic record. Using standardized formats will make it easier for courts to review and verify the certification.
- c. **Judicial Adaptability:** Courts should take a practical approach while applying Section 63, especially in cases involving intermediaries. They must maintain the reliability of evidence but avoid creating unnecessary procedural burdens.
- d. **Legal Amendments:** Future changes to the law could directly mention the use of hash values in Section 63. This would give legal recognition to an important tool for ensuring the integrity of electronic data.

CONCLUSION

- a. Section 63 of the Bharatiya Sakshya Adhiniyam, 2023 provides a clear and complete system for using electronic records in court. It explains how digital evidence can be admitted, what conditions must be met, and how records processed through intermediaries should be handled. This ensures that electronic evidence remains reliable and trustworthy.
- b. At the same time, some practical issues still exist especially regarding the use of hash values and certificates from intermediaries. All stakeholders must follow proper procedures and use technology effectively to make the process smoother. As technology continues to advance, Section 63 will play an important role in shaping how digital evidence is handled in Indian courts.
- c. The shift from Section 65B of the Evidence Act, 1872 to Section 63 of the Bharatiya Sakshya Adhiniyam, 2023 represents a major improvement in India's legal approach to electronic records. The new section fixes many gaps in the earlier law by adding clarity and requiring expert certification. However, it also brings new challenges that must be managed carefully.

- d. The success of this updated framework will depend on how it is implemented, how courts interpret it, and how well it adapts to future technological changes. Regular communication among courts, investigators, experts, and other stakeholders will be crucial to ensure that the law stays effective and continues to protect the integrity of digital evidence.
- e. Ultimately, India must strike a balance between strict standards for admissibility and timely access to justice as it moves into a more digital legal environment.

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