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THE ROLE OF DIGITAL EVIDENCE IN CRIMINAL TRIALS UNDER THE BHARATIYA SAKSHYA ADHINIYAM, 2023: A CRITICAL LEGAL ANALYSIS

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Abstract

The rapid advancement of information technology has significantly transformed the nature of criminal investigations and trials. In the modern digital era, electronic records, digital communications, social media data, CCTV footage, emails, mobile phone records, and other forms of digital information have become important sources of evidence in criminal proceedings. Recognising this technological transformation, the Bharatiya Sakshya Adhiniyam, 2023 (BSA) replaced the Indian Evidence Act, 1872, and introduced a more technology-oriented approach towards the recognition and admissibility of electronic evidence. Digital evidence plays a crucial role in establishing facts, identifying offenders, proving criminal intent, and assisting courts in reaching fair decisions. However, the increasing dependence on digital evidence also creates challenges relating to authenticity, reliability, privacy, data manipulation, cybersecurity threats, and proper preservation of electronic records. The effectiveness of digital evidence depends upon proper collection methods, maintaining the chain of custody, and ensuring compliance with legal requirements.

This research paper critically examines the role of digital evidence in criminal trials under the Bharatiya Sakshya Adhiniyam, 2023. It analyses the legal framework governing electronic evidence, changes introduced by the new legislation, judicial interpretation, practical challenges, and the future of digital evidence in India's criminal justice system. The paper argues that while BSA 2023 strengthens the recognition of digital evidence, effective implementation requires technological expertise, procedural safeguards, and judicial awareness to balance efficient crime investigation with fundamental rights.

Keywords

Digital Evidence, Electronic Records, Bharatiya Sakshya Adhiniyam 2023, Criminal Trials,

Electronic Evidence, Admissibility, Cybercrime, Chain of Custody, Indian Evidence Law, Judicial Process.

1. Introduction

The rapid growth of digital technology has transformed the nature of crime and criminal investigations. Modern offences increasingly involve electronic communication, online transactions, digital platforms, and technological devices. Due to this shift, traditional evidence such as oral statements and physical documents is often insufficient, making digital evidence an essential part of criminal trials. Digital evidence refers to information stored, processed, or transmitted in electronic form that can assist courts in proving or disproving facts. It includes emails, call records, CCTV footage, social media content, electronic documents, GPS information, digital photographs, videos, and data from electronic devices. Such evidence plays a significant role in cases involving cybercrime, fraud, terrorism, organised crime, and other technology-based offences.

Earlier, evidence law in India was governed by the Indian Evidence Act, 1872, which was not originally designed to address technological developments. The introduction of electronic records through amendments, especially Section 65B relating to electronic evidence, attempted to address these challenges. However, changing technological conditions required a more modern legal framework. The Bharatiya Sakshya Adhiniyam, 2023 (BSA 2023) represents a significant reform in Indian evidence law by recognising electronic and digital records as valid forms of evidence. It aims to simplify the treatment of digital evidence and provide a legal framework suitable for contemporary criminal investigations and trials.

Despite its importance, digital evidence presents challenges related to authenticity, reliability, privacy, and data preservation. Electronic records can be altered, deleted, or manipulated, making proper collection and verification essential. Therefore, courts must ensure that digital evidence is admitted only when its credibility and integrity are established. This research paper examines the role of digital evidence in criminal trials under BSA 2023 by analysing its legal provisions, judicial approach, practical challenges, and future scope in strengthening India's criminal justice system.

2. Research Problem

The increasing use of technology in criminal activities has created a need for effective recognition and regulation of digital evidence in criminal trials. Traditional evidentiary principles were developed primarily for physical documents and oral testimony, making it difficult to address issues related to electronic records.

Although digital evidence has become essential for modern criminal investigations, problems regarding authenticity, reliability, admissibility, preservation, and privacy continue to affect its acceptance in courts. Digital information can be easily modified or manipulated, creating doubts about its credibility.

The introduction of the Bharatiya Sakshya Adhiniyam, 2023 attempts to strengthen the legal position of electronic evidence. However, questions remain regarding whether the new framework adequately addresses technological challenges and whether courts and investigating agencies possess sufficient expertise to handle digital evidence effectively.

3. Research Objectives

The objectives of this research paper are:

1. To examine the concept and importance of digital evidence in criminal trials.
2. To analyse the provisions of the Bharatiya Sakshya Adhiniyam, 2023 relating to electronic and digital evidence.
3. To study the changes introduced by BSA 2023 compared with the Indian Evidence Act, 1872.
4. To examine the role of digital evidence in investigation and criminal adjudication.
5. To analyse judicial approaches towards electronic evidence in India.

4. Research Questions

1. Whether BSA 2023 provides an effective framework for the admissibility of digital evidence?
2. What are the major challenges involved in using digital evidence before criminal courts?
3. How have Indian courts interpreted and applied principles relating to electronic evidence?

4. What reforms are required to strengthen the use of digital evidence in criminal justice?

5. Concept and Evolution of Digital Evidence

Digital evidence is information that exists in electronic form and can establish facts relevant to a legal dispute or criminal proceeding. It is generated through computers, smartphones, digital networks, cloud storage systems, and other electronic devices.

Earlier, criminal investigations mainly depended upon physical evidence such as documents, fingerprints, weapons, and witness statements. However, technological advancement has transformed criminal behaviour. Crimes are now committed through digital platforms, requiring investigators to rely on electronic traces.

The development of digital evidence can be traced to the emergence of computer-related crimes in the late twentieth century. Initially, courts were hesitant to accept electronic records because of concerns regarding authenticity and reliability. With the growth of information technology, legal systems across the world began developing rules for recognising electronic evidence.

In India, the Information Technology Act, 2000 introduced legal recognition of electronic records and digital signatures. Subsequently, amendments to the Indian Evidence Act incorporated provisions relating to electronic evidence, especially Section 65A and Section 65B.

The Bharatiya Sakshya Adhiniyam, 2023 further modernises this framework by recognising digital records as an important category of evidence. It reflects the shift from traditional documentary evidence towards technology-based proof.

6. Legal Framework Governing Digital Evidence under Bharatiya Sakshya Adhiniyam, 2023

The Bharatiya Sakshya Adhiniyam, 2023 provides a comprehensive framework for dealing with electronic and digital evidence. It expands the scope of documentary evidence by recognising electronic records as legally admissible evidence.

The Act treats electronic records as equivalent to traditional documents. Digital information

stored in computers, mobile phones, servers, and other electronic systems can be produced before courts for establishing facts.

The legislation aims to remove uncertainty regarding the acceptance of electronic evidence and provides legal recognition to modern forms of communication and data storage.

Important categories of digital evidence under BSA 2023 include:

- Electronic communications such as emails and messages.
- Digital photographs and videos.
- CCTV recordings.
- Computer-generated records.
- Mobile phone data.
- Online transaction records.
- Social media information.
- Digital documents.

The recognition of these forms of evidence allows courts to consider technological sources while determining criminal liability.

7. Admissibility and Authentication of Digital Evidence

The admissibility of digital evidence depends upon whether the evidence is relevant, reliable, and properly authenticated. Since electronic records can be easily modified, courts require assurance regarding their originality and integrity.

Authentication involves proving that the electronic record presented before the court is genuine and has not been altered. The process generally requires establishing the source of the evidence, the manner of collection, and the maintenance of its chain of custody.

The chain of custody refers to the documented process through which evidence is collected, stored, transferred, and presented before the court. Any gap in this process may create doubts regarding the reliability of digital evidence.

Courts must ensure that digital evidence is collected through lawful methods and that individual

privacy rights are protected during investigation.

8. Comparison between Indian Evidence Act, 1872 and Bharatiya Sakshya Adhiniyam, 2023 Regarding Digital Evidence

The Indian Evidence Act, 1872 was enacted during the colonial period when technological developments such as computers, mobile phones, and digital communication systems did not exist. Therefore, the original framework of the Act was mainly focused on oral evidence and physical documentary evidence. With the emergence of electronic records, amendments were introduced through the Information Technology Act, 2000 to include electronic evidence within the scope of Indian evidence law.

The Bharatiya Sakshya Adhiniyam, 2023 represents a significant transformation in Indian evidence law by replacing the Indian Evidence Act, 1872. The new legislation attempts to create a technology-friendly evidentiary framework by directly recognising electronic and digital records as evidence.

Under the Indian Evidence Act, electronic evidence was mainly regulated through Sections 65A and 65B. Section 65B provided the conditions for admissibility of electronic records, including the requirement of a certificate to establish the authenticity of computer-generated evidence. The Supreme Court in several judgments interpreted these provisions and developed principles regarding electronic evidence.

The Bharatiya Sakshya Adhiniyam, 2023 incorporates similar principles but provides a broader recognition of digital records. It expands the meaning of documents to include electronic and digital records, acknowledging the importance of modern technological sources in legal proceedings.

The major differences between the two laws are:

Indian Evidence Act, 1872	Bharatiya Sakshya Adhiniyam, 2023
Enacted in 1872 based on traditional evidence concepts	Enacted to address modern technological developments
Electronic evidence introduced through amendments	Digital evidence directly recognised within the statute

Relied heavily on Section 65B certificate requirements	Provides a broader framework for electronic records
Focused mainly on physical documents	Includes digital records, electronic communications, and modern data sources
Limited technological understanding	More technology-oriented approach

The replacement of the Indian Evidence Act with BSA 2023 demonstrates the intention of lawmakers to modernise evidence law and make it compatible with digital advancements. However, practical issues relating to cyber expertise, data protection, and forensic capabilities continue to require attention.

9. Role of Digital Evidence in Criminal Trials

Digital evidence has become an important tool in criminal trials because modern crimes often leave electronic traces. It assists courts in determining facts, establishing criminal responsibility, and evaluating the credibility of statements presented during proceedings.

9.1 Establishing Identity of Offenders

Digital evidence helps investigators identify individuals involved in criminal activities. Information obtained from mobile phones, computers, internet records, and social media platforms can establish the presence, communication, and activities of accused persons.

For example, call detail records, location data, and digital communication history can connect an accused person with a particular crime.

9.2 Proving Criminal Intent

In criminal law, establishing intention or knowledge is often essential. Digital records such as emails, messages, online searches, and recorded communications may provide evidence regarding the intention of an accused person.

For offences involving conspiracy, fraud, cybercrime, and financial offences, digital communication can reveal planning and coordination between offenders.

9.3 Supporting Investigation Process

Digital evidence assists investigating agencies by providing additional sources of information. CCTV footage, GPS data, digital payment records, and online activities can help reconstruct events and identify the sequence of criminal activities.

9.4 Strengthening Prosecution Cases

Digital evidence can support prosecution by providing objective information that may confirm witness statements or physical evidence. Since electronic records often contain time and location details, they can assist courts in determining the accuracy of facts.

9.5 Protection Against False Accusations

Digital evidence is not only useful for prosecution but also protects accused persons against wrongful conviction. Authentic electronic records may establish innocence by proving that an accused person was not involved in the alleged offence.

Therefore, digital evidence contributes to both conviction of offenders and protection of individual rights.

10. Judicial Approach Towards Digital Evidence in India

Indian courts have played an important role in developing principles relating to electronic evidence. Judicial decisions have clarified issues regarding admissibility, authentication, and reliability of digital records.

10.1 State of Punjab v. Amritsar Beverages Ltd.

The courts recognised the importance of electronic records and accepted that technological evidence can play a significant role in proving facts before courts.

10.2 Anvar P.V. v. P.K. Basheer (2014)

This landmark judgment of the Supreme Court clarified the requirement of Section 65B of the Indian Evidence Act for electronic evidence. The Court held that electronic records must comply with the conditions prescribed under Section 65B to become admissible.

The judgment established that electronic evidence cannot be admitted merely by producing a copy of the original record. Proper certification was required to establish authenticity.

10.3 Shafhi Mohammad v. State of Himachal Pradesh (2018)

The Supreme Court considered situations where obtaining a Section 65B certificate was difficult. The Court observed that procedural requirements should not prevent genuine evidence from being considered.

10.4 Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal (2020)

The Supreme Court reaffirmed the importance of Section 65B certification and clarified that the requirement of certification applies to secondary electronic evidence.

The judgment emphasised that electronic evidence must be properly authenticated to ensure reliability.

10.5 Tomaso Bruno v. State of Uttar Pradesh (2015)

The Supreme Court recognised the importance of CCTV footage and electronic evidence in criminal investigations. The Court observed that failure to produce available electronic evidence may affect the fairness of the investigation.

These judicial decisions demonstrate that Indian courts have gradually developed principles to balance technological advancement with evidentiary reliability.

11. Challenges Associated with Digital Evidence in Criminal Trials

Although digital evidence provides significant advantages, several challenges affect its effective use in criminal trials.

11.1 Authenticity and Reliability Issues

The biggest challenge associated with digital evidence is determining whether the evidence is genuine. Electronic records can be easily modified, deleted, or manipulated through advanced technologies.

Courts must ensure that digital evidence presented during trials has not been altered.

11.2 Digital Evidence Manipulation

Technological advancement has increased the possibility of creating fake digital content. Deepfake technology, edited videos, manipulated photographs, and fabricated messages create serious concerns regarding reliability.

The legal system must develop stronger methods for detecting manipulated digital evidence.

11.3 Lack of Technical Expertise

Many investigating officers, lawyers, and judicial officers may not possess sufficient knowledge regarding digital technology and forensic methods. Lack of technical expertise can affect proper collection and interpretation of electronic evidence.

11.4 Privacy Concerns

Collection of digital evidence often involves accessing personal information stored on electronic devices. Unregulated access may violate the right to privacy guaranteed under Article 21 of the Constitution.

Investigating agencies must ensure that digital evidence is collected according to lawful procedures.

11.5 Data Storage and Preservation Problems

Digital evidence can be lost due to deletion, system failure, encryption, or improper preservation methods. Maintaining the integrity of electronic records throughout the trial process remains a major challenge.

11.6 Cybersecurity Threats

Digital evidence stored in electronic systems may be vulnerable to hacking and unauthorised access. Strong cybersecurity measures are required to protect evidentiary data.

12. Critical Analysis

The recognition of digital evidence under the Bharatiya Sakshya Adhiniyam, 2023 is an important step towards modernising India's criminal justice system. The increasing dependence on technology makes it necessary for evidence law to adapt according to changing social realities.

Digital evidence provides several benefits, including faster investigation, accurate identification of offenders, and stronger proof before courts. It reduces dependence on unreliable oral testimony and allows courts to consider objective technological information.

However, the effectiveness of digital evidence depends upon proper implementation. Mere legislative recognition is insufficient unless investigating agencies, forensic laboratories, and courts have adequate technological resources.

The possibility of manipulation of electronic records creates serious concerns regarding wrongful conviction. Courts must carefully examine the authenticity and reliability of digital evidence before relying upon it.

The use of artificial intelligence, deepfake technology, and advanced digital tools further complicates the evidentiary process. Future criminal trials will require stronger forensic standards and expert assistance to evaluate digital materials.

Therefore, BSA 2023 should be viewed as a foundation for digital transformation rather than a complete solution. A balanced approach is required where technology assists justice without compromising constitutional rights and principles of fairness.

13. Suggestions and Recommendations

1. Development of Digital Forensic Infrastructure

The government should establish advanced digital forensic laboratories equipped with modern technology for examination and preservation of electronic evidence.

2. Training of Legal Professionals

Judges, lawyers, and investigating officers should receive specialised training regarding digital evidence collection, authentication, and interpretation.

3. Clear Procedural Guidelines

Detailed guidelines should be developed regarding the collection, preservation, and presentation of digital evidence before courts.

4. Protection of Privacy Rights

Digital investigations should follow constitutional principles and ensure protection of personal data and privacy.

5. Use of Expert Testimony

Courts should encourage assistance from digital forensic experts while dealing with complex technological evidence.

6. Improvement in Cybersecurity Measures

Strong security mechanisms should be adopted to prevent unauthorised access or alteration of digital evidence.

7. Regular Updating of Legal Framework

Since technology develops rapidly, evidence laws should be periodically reviewed to address emerging challenges such as artificial intelligence-generated content and deepfakes.

14. Conclusion

Digital evidence has become an essential element of modern criminal trials due to the increasing use of technology in both society and criminal activities. The Bharatiya Sakshya Adhiniyam, 2023 marks an important development by recognising electronic and digital records within India's evidence framework.

The use of digital evidence provides significant advantages by improving investigation quality, strengthening prosecution cases, and assisting courts in discovering the truth. It has transformed the traditional approach towards evidence by introducing technology-based methods of proving facts.

However, digital evidence also presents challenges relating to authenticity, manipulation, privacy, and technical limitations. The success of BSA 2023 depends upon effective implementation, technological infrastructure, and proper safeguards.

A future-oriented criminal justice system requires a balance between technological efficiency and constitutional protections. Digital evidence should be treated as a powerful tool for justice, but its acceptance must always be guided by principles of fairness, reliability, and due process.

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