



# THE BHARATIYA SAKSHYA ADHINIYAM 2023

Secondary Stage: Phase 1  
Classes IX And X



October 2024  
Kartika 1946

**PD 5H BS**

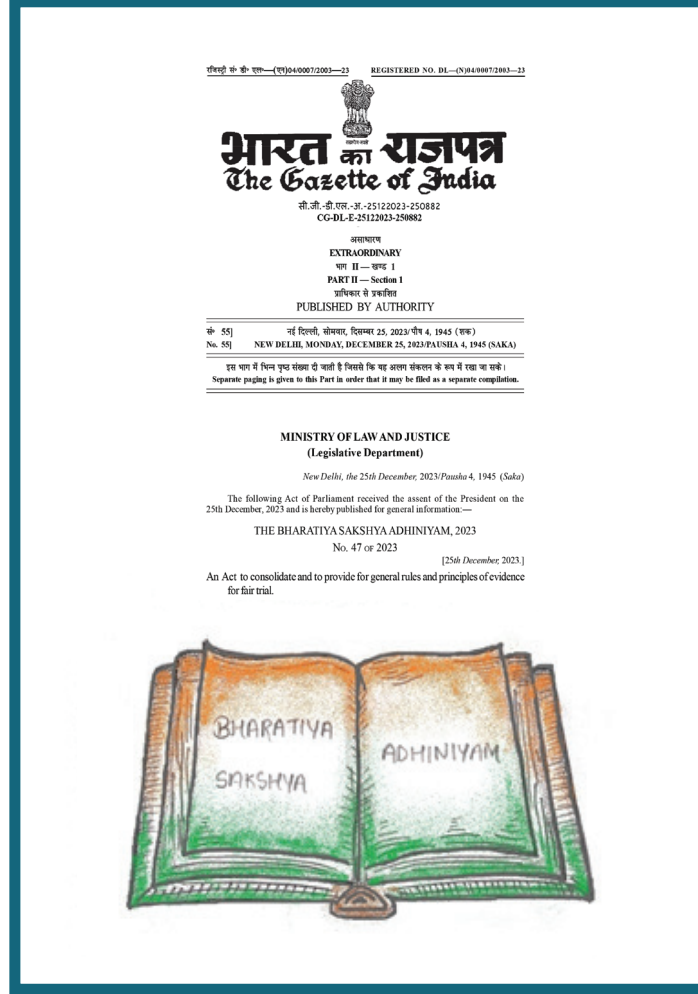
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# THE BHARATIYA SAKSHYA ADHINIYAM, 2023



## Secondary Stage: Phase 1 Classes IX and X



राष्ट्रीय शैक्षिक अनुसंधान और प्रशिक्षण परिषद्  
NATIONAL COUNCIL OF EDUCATIONAL RESEARCH AND TRAINING



# Bharatiya Sakshya Adhiniyam, 2023



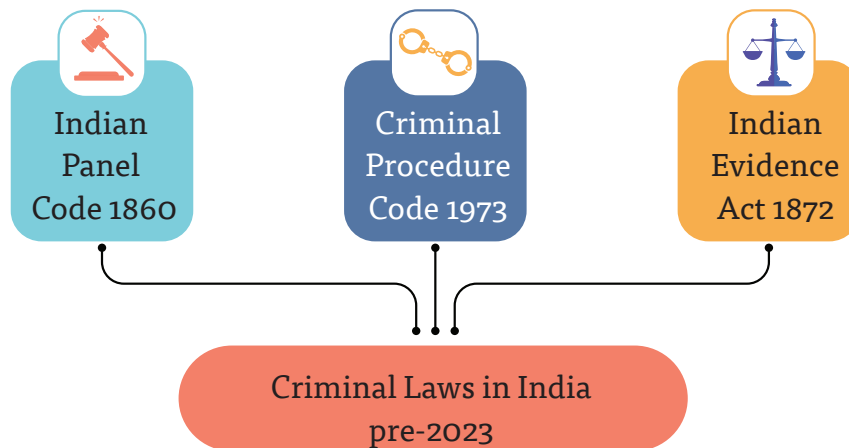
## Learning outcomes



After going through this module you will be able to:

- explain BSA's important features
- draw illustration on its important highlights
- prepare awareness messages for stakeholders highlighting its importance in dealing with conflicts and violence in the present times
- organise a discussion in the classroom on BSA

India's criminal justice system has undergone significant changes throughout its history, influenced by various rulers and legal traditions. The most notable codifications occurred during British rule, forming the basis of modern Indian criminal law.



The British codified India's criminal laws, creating a structured legal system that has largely remained in place with some recent amendments.



### Indian Penal Code (IPC)

- Drafted in 1860 by the first Law Commission established under the Charter Act of 1833.
- Became effective on 1 January 1862.
- The IPC serves as the official criminal code of India, laying down definitions, penalties and the nature of criminal offences.

### Code of Criminal Procedure (CrPC)

- Enacted in 1973 and became effective on 1 April 1974.
- The CrPC outlines procedures for administering criminal law, including the investigation of crimes, collection of evidence, arrest of suspects and the conduct of trials.

### Indian Evidence Act (IEA)

- Passed in 1872 by the Imperial Legislative Council during the British Raj.
- Provides a comprehensive set of rules governing the admissibility of evidence in Indian courts.

The Parliament, in December 2023, passed three pivotal Bills:

- **Bharatiya Nyaya (Second) Sanhita, 2023:** Overhauls the Indian Penal Code (IPC).
- **Bharatiya Nagarik Suraksha (Second) Sanhita, 2023:** Replaces the Criminal Procedure Code (CrPC).
- **Bharatiya Sakshya (Second) Adhiniyam, 2023:** Revises the Indian Evidence Act (IEA).

## Indian Evidence Act 1872

The Indian Evidence Act stipulates how facts can be proved through evidence. The Evidence Act helps the judges to separate the 'wheat from the chaff' and plays a crucial role in the establishment of facts during the court proceedings. What evidence can be admitted, how it can be admitted, how the burden of proof has to be discharged, etc., are matters governed by the Evidence Act.

The Cardinal Principles which form the foundation of Law of Evidence are:

1. Evidence must be confined to the matter at hand.
2. Hearsay evidence must not be admitted.
3. Best evidence must be given in all cases.



## What do we mean by evidence in law terms?

Evidence in law refers to any material items or assertions of fact that may be presented to a competent tribunal to determine the truth of any matter under investigation. Courts are responsible for conducting proper proceedings to hear and consider such evidence to base their decisions on truth.

The law of evidence encompasses procedural regulations on the proof and presentation of facts, including witness testimony, documents, physical objects, or foreign laws. These rules have evolved through experience and varying legal requirements on what constitutes admissible and sufficient proof.

In court, evidence can take various forms, each serving to establish or refute facts in a legal proceeding. Examples of evidence include:

1. **Eyewitness Testimony:** A person who witnessed an event provides a firsthand account.
2. **Contracts:** Written agreements between parties.
3. **Emails and Letters:** Correspondence that can indicate agreements, disputes, or other relevant information.
4. **Official Records:** Birth certificates, marriage licenses, or other government-issued documents.
5. **Weapons:** Guns, knives, or other objects used in the commission of a crime.
6. **Clothing:** Items worn by individuals involved in an incident, which may contain traces of evidence like blood or gunpowder residue.
7. **DNA Evidence:** Biological material that can link a person to a crime scene or victim.
8. **Photographs and Videos:** Visual recordings of the crime scene, events, or relevant locations.
9. **Diagrams and Models:** Visual aids that help illustrate how an event occurred or the layout of a crime scene.
10. **Fingerprints:** Unique patterns left by individuals that can link them to a location or object.
11. **Computer Files:** Data retrieved from computers or other digital devices.
12. **Surveillance Footage:** Video recordings from security cameras that capture relevant activities.



Each type of evidence has specific rules governing its admissibility, and courts must ensure that evidence presented is relevant, reliable and not unduly prejudicial.

## Activity 1



Given above are a few examples of types of evidence that can be presented before the court of law. Recall from the books, movies and OTT series where you have seen the use of these evidences. Make an account with the name of the story or series and the evidence. You may also record any other evidence that is not mentioned above.

## Activity 2



Take an inkpad and take a print of your hand dipped in the ink. Do this for all your family members.

Now, ask your family members to touch different solid objects. This will leave their fingerprints on the objects.

With the help of a magnifying glass, try to match the print taken by you with the print on the solid objects.

## Why do the courts need evidence?

Suppose a student of your school reports that his expensive calculator was stolen from his backpack during a math class and this was not the first instance of theft. The school administration decides to investigate the theft. How do you think the school administration can find out the culprit and prove that he is the thief?

The answer is simple, the authorities need some proof to establish the fact of theft in class. How will they find the proof?



- The school has CCTV cameras installed in the classroom and hallways. The administration reviews the footage from the time period when the theft likely occurred.
- The footage shows several students moving around the classroom during a break. One student is seen approaching the victim's backpack and appears to reach into it. This footage is saved as primary evidence of the theft.

So, to prove the guilt before the court of law, the advocates need to put forth evidences (proofs) in order to bring the guilty to justice.

Evidence is crucial in legal proceedings for several fundamental reasons:

1. **Proving What Happened:** Evidence helps establish the actual events that occurred, clarifying the facts of a case.
2. **Preventing False Claims:** It ensures that only factual and verifiable information is considered, reducing the likelihood of false claims being accepted.
3. **Protecting Rights:** Evidence-based proceedings protect the rights of all parties involved by ensuring decisions are made based on verified information.
4. **Objective Decision-Making:** Judges rely on evidence to make impartial decisions, avoiding biases and subjective judgments.
5. **Legal Requirements:** Adherence to rules of evidence ensures that the legal requirements for proving a case are met. Different types of cases have varying standards of proof, such as 'preponderance of evidence' in civil cases and 'beyond a reasonable doubt' in criminal cases.
6. **Trust in the Legal System:** When decisions are based on solid evidence, it enhances public trust in the judicial system.
7. **Transparency:** Evidence provides a transparent basis for decisions, making it easier to understand how conclusions were reached.

One of the main objectives of the Evidence Act is to prevent the inaccuracy in the admissibility of evidence and to introduce a more correct and uniform rule of practice.

Important provisions of the Indian Evidence Act 1872 and subsequent changes are discussed in the following section.





## What is new in BSA, 2023?

Indian Evidence Act, 1872 had 170 sections in total, of which:

- 23 sections have been changed;
- 1 new section has been added;
- 5 sections have been scrapped.

The BSA, 2023 retains most of the provisions of the Indian Evidence Act (IEA), 1872, including:

1. **Admissible Evidence:** Only admissible evidence can be presented in a legal proceeding.
  - Classification of Admissible Evidence:
    - Facts in Issue: Facts that determine the existence, nature, or extent of any right, liability, or disability claimed or denied in a legal proceeding.
    - Relevant Facts: Facts that are pertinent to a given case.
2. **Types of Evidence:** The IEA provides for two kinds of evidence:
  - Documentary Evidence: Documents that are presented as evidence.
  - Oral Evidence: Spoken testimony presented as evidence.
3. **Proven Fact:** A fact is considered proven when, based on the evidence presented, the Court believes it to either:
  - Exist, or
  - Be so likely to exist that a prudent person should act as if it exists in the circumstances of the case.
4. **Police Confessions:**
  - Any confession made to a police officer is inadmissible.
  - Confessions made in police custody are inadmissible unless recorded by a Magistrate.
  - However, if a fact is discovered as a result of information received from an accused in custody, that information may be admitted if it distinctly relates to the fact discovered.



## Key Changes Incorporated in BSA, 2023

The BSA, 2023 includes several updates to the Indian Evidence Act (IEA), 1872, particularly in the areas of documentary and oral evidence, as well as the admissibility of electronic records and joint trials:

### 1. Documentary Evidence

- Definition: Under the IEA, a document includes writings, maps, and caricatures. The BSA expands this definition to include electronic records.
- Types of Documentary Evidence
  - **Primary Evidence:** The original document and its parts, such as electronic records and video recordings.
  - **Secondary Evidence:** Documents and oral accounts that can prove the contents of the original. The BSA expands this to include:
    - Oral and written admissions.
    - Testimony of a person who has examined the document and is skilled in examining documents.

The definition of "document" now explicitly includes electronic and digital records. This encompasses electronic records on emails, server logs, documents on computers, laptops or smartphones, messages, websites, locational evidence and voicemail messages stored on digital devices.

### 2. Oral Evidence

- Under the IEA, oral evidence includes statements made before Courts by witnesses in relation to a fact under inquiry. The BSA allows for oral evidence to be given electronically, permitting witnesses, accused persons and victims to testify through electronic means.

### 3. Admissibility of Electronic or Digital Records as Evidence

- Documentary evidence now includes information in electronic records that have been printed or stored in optical or magnetic media produced by a computer.



- This information may have been stored or processed by a combination of computers or different computers.

### **Clarity with Respect to Primary (Electronic) Evidence**

- The BSA stipulates that when a video recording is simultaneously stored in electronic form and transmitted, broadcast, or transferred to another location, each of the stored recordings is considered primary evidence.
- This change is significant for investigating agencies as it ensures that even if a cyber-criminal destroys the original electronic record, the evidence can still be collected from other sources without losing its value.

### **Synchronisation with Information Technology Act, 2000**

- Section 63, which deals with the admissibility of electronic records, has been updated to include terms such as 'semiconductor memory' and 'any communication device' for better clarity.
- Despite these additions, the impact of the provision remains unchanged because the definition of 'electronic form' in the IT Act, 2000 already includes information generated, sent, received, or stored in 'computer memory'.

## **4. Joint Trials**

- A joint trial refers to the trial of more than one person for the same offence. Under the IEA, if a confession made by one of the accused affects other accused in a joint trial, it will be treated as a confession against both.
- The BSA adds an explanation stating that a trial of multiple persons, where an accused has absconded or has not responded to an arrest warrant, will be treated as a joint trial.

These changes aim to modernise the legal framework in India, ensuring it is equipped to handle the complexities of digital evidence and cybercrime in the contemporary digital landscape.



### Key takeaways of The Bharatiya Sakshya Adhiniyam 2023



Documents to also include electronic or digital records, e-mails, server logs, computers, smart phones, laptops, SMS, websites, locational evidence, mails and messages on devices

Digitisation of all records including case diary, FIR, charge sheet and judgement

Electronic or digital record shall have the same legal effect, validity and enforceability as paper records

## Conclusion

The Bharatiya Sakshya Adhiniyam introduces clarity in the definition and admissibility of electronic records, particularly emphasising the importance of expert certification and hash algorithms for the secure use of electronic mediums. However, this emphasis may pose challenges for cyber laboratories, as their workload is expected to increase substantially.

It is crucial for enforcement agencies to raise awareness about encryption methods and ensure that the necessary infrastructure is in place before these laws come into effect. Overall, these changes reflect a commitment to modernising criminal laws in India to address emerging challenges in the digital age.

### Points to Ponder

The draft of the Indian Penal Code was prepared by the First Law Commission, chaired by Lord Thomas Babington Macaulay in 1834. The draft was submitted to Governor-General of India Council in 1835.



<b>Points to Ponder</b>	On 12 March 1872, 13 members of the Viceroy's Legislative Council considered a motion to adopt the Indian Evidence Bill drafted by its Law Member, James Fitzjames Stephen.
<b>Case Studies</b>	Provide students with simplified versions of real-life cases and ask them to identify the types of evidence presented and how they impacted the case outcome. Discuss the relevance and reliability of the evidence.
<b>Role Play</b>	Create mock court scenarios where students play different roles such as judge, lawyer, witness, and defendant. This will help them understand how evidence is presented and evaluated in court.
<b>Creative Writing</b>	Ask students to write short stories or essays incorporating legal scenarios where the Bharatiya Sakshya Adhiniyam 2023 plays a crucial role. This helps them apply their knowledge creatively.



## Some Activities to Engage the Learners

### 1. Mock Trials

**Activity:** Organise a mock trial in the classroom where students can role-play as judges, lawyers, witnesses, and jurors.

**Objective:** To help students understand the application of evidence in court cases.

**Procedure**

- Provide a fictional case.
- Assign roles to students.
- Conduct the trial focusing on how evidence is presented and challenged.

### 2. Case Study Discussions

**Activity:** Discuss real-life cases where evidence played a crucial role.

**Objective:** To analyse the significance of different types of evidence.

**Procedure**

- Choose notable cases from news or history.
- Divide students into groups and assign each group a case.
- Have each group present their case and discuss how evidence was used.

### 3. Evidence Collection Simulation

**Activity:** Create a simulated crime scene and have students collect evidence.

**Objective:** To teach students about different types of evidence and how they are collected.

**Procedure**

- Set up a mock crime scene in the classroom.
- Provide students with gloves, evidence bags, and tags.
- Have students document and collect evidence.
- Discuss the types of evidence collected and their relevance.



## Quiz

**1. Which of the following is NOT considered as evidence under the Bharatiya Sakshya Adhiniyam 2023?**

- (a) Oral statements
- (b) Electronic records
- (c) Hearsay
- (d) Documents

(Answer: c)

**2. The Bharatiya Sakshya Adhiniyam 2023 applies to which of the following areas?**

- (a) Civil cases only
- (b) Criminal cases only
- (c) Both civil and criminal cases
- (d) None of the above

(Answer: c)

**3. Which type of evidence refers to information obtained from electronic devices?**

- (a) Oral evidence
- (a) Documentary evidence
- (b) Digital evidence
- (c) Physical evidence

(Answer: c)

**4. Which of the following statements is true regarding the presumption of documents under the Bharatiya Sakshya Adhiniyam 2023?**

- (a) A document is presumed to be genuine unless proven otherwise.
- (b) A document is presumed to be false unless proven otherwise.
- (c) A document is always inadmissible.
- (d) None of the above

(Answer: a)

**5. What is the main objective of the Bharatiya Sakshya Adhiniyam 2023?**

- (a) To define the procedures for arrest and detention
- (b) To lay down the rules regarding admissibility of evidence in court
- (c) To outline the process of filing a lawsuit
- (d) To regulate the conduct of lawyers

(Answer: b)



**6. Which of the following is NOT considered admissible evidence under the Bharatiya Sakshya Adhiniyam 2023?**

- (a) Confessions made under duress
- (b) Documents signed by the involved parties
- (c) Testimonies of witnesses
- (d) Digital evidence such as emails

(Answer: a)

**7. Under the Bharatiya Sakshya Adhiniyam 2023, which of the following is considered primary evidence?**

- (a) A copy of a document
- (b) Oral testimony about the content of a document
- (c) The original document itself
- (d) A digital photograph of the document

(Answer: c)

**8. Which term refers to evidence that is directly related to the fact in issue under the Bharatiya Sakshya Adhiniyam 2023?**

- (a) Hearsay evidence
- (b) Circumstantial evidence
- (c) Direct evidence
- (d) Secondary evidence

(Answer: c)

**9. The burden of proof in a civil case under the Bharatiya Sakshya Adhiniyam 2023, generally lies on:**

- (a) The defendant
- (b) The plaintiff
- (c) The judge
- (d) The witnesses

(Answer: b)

**10. According to the Bharatiya Sakshya Adhiniyam 2023, a confession made under duress or coercion is:**

- (a) Admissible as evidence
- (b) Inadmissible as evidence
- (c) Conditionally admissible
- (d) Always irrelevant

(Answer: b)











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