

Bill Summary

The Bhartiya Sakshya Bill, 2023

- The Bhartiya Sakshya Bill, 2023 was introduced in Lok Sabha on August 11, 2023. It repeals the Indian Evidence Act, 1872. The Act provides rules for the admissibility of evidence in legal proceedings. The Bill retains several parts of the Act. It removes certain colonial references from the Act, widens the ambit of electronic records admissible as evidence, and removes provisions related to telegraphic messages. Key changes proposed in the Bill include:
 - **Admissibility of electronic or digital records as evidence:** The Act provides for two kinds of evidence – documentary and oral evidence. Documentary evidence includes information in electronic records that have been printed or stored in optical or magnetic media produced by a computer. Such information may have been stored or processed by a combination of computers or different computers. The Bill provides that electronic or digital records will have the same legal effect as paper records. It expands electronic records to include information stored in semiconductor memory or any communication devices (smartphones, laptops). This will also include records on emails, server logs, smartphones, locational evidence and voice mails. As per the Bill, the information may have been created on, stored in, or processed by one or more computers or communication devices: (i) which may be standalone systems or on a computer network, or (ii) through an intermediary.
 - **Oral evidence:** Under the Act, oral evidence includes statements made before Courts by witnesses in relation to a fact under inquiry. The Bill adds any information given electronically to be considered as oral evidence.
 - **Secondary evidence:** Under the Act, documentary evidence includes primary and secondary evidence. Primary evidence includes the original document and its parts, such as electronic records and video recordings. Secondary evidence contains documents that can prove the contents of the original. Secondary evidence includes certain copies of the original documents and oral accounts of the document's content. The Bill expands secondary evidence to include: (i) oral and written admissions, and (ii) the testimony of a person who has examined the document and is skilled in the examination of documents. Under the Act, secondary evidence may be required under various conditions, such as when the original: (i) is in the possession of the person against whom the document is sought to be proved, or (ii) has been destroyed. The Bill adds that secondary evidence may be required if the genuineness of the document itself is in question.
 - **Production of documents:** The Act provides for the production of documents. If a witness is summoned to produce a document and has it in their possession or power, they must bring it to Court regardless of any objection to its production or admissibility. The Court will determine the validity of such a document. The Bill adds that no Court will require any privileged communication between the Ministers and the President to be produced before it.
 - **Joint trials:** A joint trial refers to the trial of more than one person for the same offence. The Act states that in a joint trial, if a confession made by one of the accused which also affects other accused is proven, it will be treated as a confession against both. The Bill adds an explanation to this provision. It states 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.

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