

# Standing Committee Report Summary

## The Bharatiya Sakshya Bill, 2023

- The Standing Committee on Home Affairs (Chair: Mr. Brij Lal) submitted its report on the Bharatiya Sakshya Bill, 2023 (BSB), on November 10, 2023. The Bill replaces the Indian Evidence Act, 1872 (IEA), which governs the admissibility of evidence in Indian Courts. The Act applies to all civil and criminal proceedings. BSB retains most of the provisions of the IEA. Key changes proposed in the Bill include admitting electronic or digital records as primary evidence. The Bill was referred to the Standing Committee on Home Affairs on August 11, 2023. The Committee has recommended changes to certain provisions of the Bill. Eight members of the Committee submitted dissent notes. Key observations and recommendations of the Committee include:
  - **Tampering of electronic evidence:** Under the IEA, electronic records are admissible as secondary evidence. Under the BSB, electronic records are classified as primary evidence. Primary evidence includes the original document and its parts. Secondary evidence contains documents that can prove the contents of the original. The Committee noted that it is essential to safeguard the authenticity and integrity of electronic and digital records as they are prone to tampering. To address this, it recommended inserting a provision mandating that all electronic and digital records collected as evidence during investigation be securely handled and processed through proper chain of custody. The Committee has also suggested similar amendments concerning the audio-video recording of evidence in the Bharatiya Nagarik Suraksha Sanhita, which replace the Code of Criminal Procedure, 1973.
  - **Admissibility of electronic evidence:** As per the IEA, electronic records must be authenticated by a certificate. The Committee noted that the BSB specifies that electronic records must be proved by primary evidence (Clause 59). However, the Bill also retains the section from the IEA on the admissibility of electronic record (Clause 63), which requires a certificate authentication. The Committee recommended proving electronic records as per Clause 63, which provides for the admissibility of electronic records.
  - **Certificate for authenticating electronic records:** The Committee noted that the certificate filled out by the person in charge of the electronic device and by an expert does not fulfil all the requirements under the provision of admissibility of electronic records. For instance, the certificate does not give declarations regarding: (i) the condition of the device, and (ii) the lawful control of the person presenting the record. The Committee noted that such shortcomings may jeopardise the authenticity, reliability, and integrity of the electronic and digital records submitted as evidence, making them susceptible to tampering. It recommended amending the certificate to meet the requirements under the section on admissibility of electronic records.
  - **Facts in issue:** Under the BSB, in certain cases statements made by a deceased person or a person who cannot be found may be considered as facts in issue or a relevant fact. The Committee observed that the parallel section in the IEA has no mention of ‘facts in issue’ and only uses ‘relevant facts’. It noted that ‘facts in issue’ and ‘relevant facts’ have a distinct connotation in judicial parlance. The Committee opined that the insertion is erroneous. It recommended deleting the words ‘facts in issue’ from the provision. Facts in issue refers to any fact that determines the existence, nature, or extent of any right, liability, or disability claimed or denied in a legal proceeding. Relevant fact is a fact pertinent to a given case.
  - **Dissent notes:** Observations of the dissenting members include: (i) the Bills are vastly the same as the existing laws, (ii) having Hindi-only names for the Bills may violate the Constitution, and (iii) the proposed Bills lacked sufficient consultation with experts and the public.

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