

A Paradigm Shift in Indian Evidence Law: An Analysis of Presumptions under the Bharatiya Sakshya Adhiniyam, 2023

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Abstract

The Bharatiya Sakshya Adhiniyam, 2023 (BSA) marks a significant reform in India's legal framework by replacing the colonial-era Indian Evidence Act, 1872 (IEA). This paper provides a comprehensive analysis of the various presumptions codified within the BSA, examining their role in streamlining judicial proceedings and modernizing the evidentiary landscape. It delves into the distinct categories of presumptions—"may presume," "shall presume," and "conclusive proof"—as defined in the statute. The paper highlights key innovations, particularly the BSA's robust treatment of electronic evidence, which addresses the technological gaps of the previous law. Through a structured examination of the BSA's provisions, including those related to documentary evidence, electronic records, and specific criminal and social issues, this study demonstrates how the new law redefines the burden of proof, enhances procedural efficiency, and aligns the Indian justice system with contemporary challenges.

Keywords: Bharatiya Sakshya Adhiniyam, Evidence Law, Presumptions, Burden of Proof, Digital Evidence, Indian Justice System.

• 1. Introduction

The recent enactment of the **Bharatiya Sakshya Adhiniyam, 2023 (BSA)** represents a transformative moment in the history of Indian jurisprudence. This legislation, along with the Bharatiya Nyaya Sanhita and the Bharatiya Nagarik Suraksha Sanhita, aims to overhaul India's criminal justice system, moving away from colonial statutes. A core component of the BSA is its detailed and modernized framework for legal **presumptions**. In law, a presumption is an inference that a court is permitted or required to draw concerning the existence of a fact, based on the existence of another fact that has been proven. Presumptions serve a vital function: they aid in resolving factual disputes efficiently by shifting the burden of proof from one party to another, thereby reducing the need for extensive evidence on a particular point. The BSA not only restructures the presumptions found in the IEA but also introduces new ones to address the complexities of the digital age and contemporary societal issues. This paper examines the statutory provisions of the BSA to provide a systematic overview of its presumptions and their implications for the Indian legal system.

- **2. The Juridical Concept of Presumptions**

Presumptions are foundational to the law of evidence, acting as procedural tools that facilitate the flow of a trial. The BSA, like its predecessor, recognizes three distinct types of presumptions, each with a different legal effect on the burden of proof:

- **May Presume:** Under this category, the court is granted the discretion to either regard a fact as proved unless and until it is disproved, or to call for proof of the fact (BSA, Section 2(h)). It implies a rebuttable presumption of fact, where the court is not legally bound to draw the inference but can do so based on the circumstances.
- **Shall Presume:** This is a mandatory and rebuttable presumption of law (BSA, Section 2(l)). When the law directs a court to "shall presume" a fact, the court must regard that fact as proven unless and until the party against whom the presumption operates successfully disproves it. The burden of proof shifts to the opposing party.
- **Conclusive Proof:** This is an irrebuttable presumption of law (BSA, Section 2(b)). When one fact is declared to be "conclusive proof" of another, the court is legally bound to consider the latter as proven upon the establishment of the former, and no contrary evidence is permitted to be presented to disprove it.

- **3. Presumptions Under the Bharatiya Sakshya Adhiniyam, 2023**

The BSA categorizes presumptions into several thematic groups, reflecting a logical and comprehensive approach to the subject.

3.1 Presumptions Regarding Documentary Evidence (Sections 78-84)

The BSA builds upon the IEA's provisions concerning the authenticity of official and public documents.

- **Section 78 (Certified Documents):** The law "shall presume" the genuineness of certified copies or certificates issued by a Central or State Government officer, provided they are in the prescribed format and properly executed. This presumption significantly eases the burden of proving the authenticity of a document, such as a birth certificate or land record.
- **Section 79 (Judicial Records):** The court "shall presume" the genuineness of documents purporting to be records of evidence, statements, or confessions from judicial proceedings, assuming they were taken in accordance with the law.
- **Sections 80-81 (Official Gazette & Newspapers):** These sections provide that a court "shall presume" the genuineness of the Official Gazette, newspapers, and other documents required by law to be kept.

- **Section 82 (Government Maps):** A presumption exists regarding the accuracy of maps or plans created under the authority of the Central or State Government. However, this presumption does not apply to maps made for a specific legal case, which must be proven independently.
- **Section 84 (Power of Attorney):** The BSA establishes a mandatory presumption that a document purporting to be a power of attorney and authenticated by a Notary Public, judge, or other specified authority was indeed executed and authenticated.

3.2 Presumptions in the Digital Age (Sections 85-87, 93)

A key innovation of the BSA is its explicit and comprehensive treatment of electronic evidence, reflecting the realities of modern life.

- **Section 85 (Electronic Agreements):** The court "shall presume" that electronic records, such as e-contracts, bearing the electronic or digital signatures of the parties were genuinely concluded. This provision lends legal certainty to online transactions and agreements.
- **Section 86 (Secure Electronic Records):** This section introduces a powerful presumption for **secure electronic records and signatures**. For a secure electronic record, the court "shall presume" that it has not been altered since the point in time to which its secure status relates. For a secure electronic signature, the presumption is that it was affixed with the intention of signing or approving the record. This is a critical provision for ensuring the integrity of digital evidence.
- **Section 87 (Electronic Signature Certificates):** The BSA mandates a presumption of correctness for the information contained in an Electronic Signature Certificate, unless disproved. This applies even to unverified subscriber information if the certificate has been accepted by the subscriber, thereby simplifying the proof of identity in digital contexts.
- **Section 93 (Aged Electronic Records):** This section provides that electronic records that are five years old or more, if produced from proper custody, "may be presumed" to be authentic. This is a shorter period than the thirty-year presumption for paper documents (Section 92), acknowledging the higher volatility and potential for tampering with digital data over time.
- **4. Miscellaneous & Social-Policy Presumptions (Sections 114-120)**

Beyond documentary evidence, the BSA includes presumptions rooted in public policy and common human experience.

- **Section 114 (Presumption of Good Faith):** This provision addresses transactions where one party is in a position of active confidence over another. In such cases, the burden of proving the good faith of the transaction rests on the party in the dominant position. This is a crucial safeguard in relationships like that between a client and an advocate or a patient and a doctor.
- **Section 115 (Disturbed Areas):** A new provision that allows a court to "presume" the commission of certain offenses if the accused was present in a disturbed area where firearms or explosives were used. This is a tool aimed at addressing crimes in high-risk zones.
- **Section 116 (Conclusive Proof of Legitimacy):** If a child is born during a valid marriage, the BSA provides that it is "conclusive proof" of the child's legitimacy, an irrebuttable presumption that protects the child's legal status.
- **Sections 117-118 (Abetment of Suicide & Dowry Death):** These sections are powerful tools for combating domestic violence. In cases of suicide within seven years of marriage due to cruelty, Section 117 allows the court to "presume" abetment against the husband or his relatives. Similarly, Section 118 mandates that the court "shall presume" dowry death if the deceased was subjected to cruelty or harassment for dowry before her death.
- **Section 120 (Rape Cases):** This section introduces a critical rebuttable presumption in rape trials. If sexual intercourse is proven, and the victim testifies that she did not consent, the court "shall presume" that the intercourse was without her consent. This shifts the burden onto the accused to prove that consent was, in fact, given.
- **5. Conclusion**

The Bharatiya Sakshya Adhiniyam, 2023, represents a significant and forward-looking reform of India's law of evidence. Its structured approach to presumptions, particularly the modernization of provisions for digital evidence, demonstrates a commitment to aligning the legal system with technological advancements. The inclusion of mandatory presumptions in cases of dowry death and rape reflects a progressive legal stance aimed at protecting vulnerable individuals and ensuring that the law serves as an effective deterrent against social crimes. The BSA's framework of presumptions not only simplifies the judicial process but also rebalances the scales of justice, making it a more efficient and socially responsive instrument of law. This new legislation is poised to have a profound and lasting impact on the administration of justice in India.

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