

Statements Made In The Course Of Business As Evidence: A Critical Analysis Under The Bharatiya Sakshya Adhiniyam, 2023

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Abstract: *The law of evidence in India has undergone a structural transformation with the enactment of the Bharatiya Sakshya Adhiniyam, 2023 (hereinafter "BSA"). Among the important yet often overlooked provisions are those relating to statements made in the ordinary course of business. These statements form a crucial exception to the rule against hearsay and play a significant role in both civil and criminal adjudication. This paper critically examines the admissibility, scope, and evidentiary value of such statements under the BSA, with reference to judicial precedents developed under the Indian Evidence Act, 1872. It argues that while the statutory framework appears modernized, interpretative continuity with earlier jurisprudence remains inevitable. The paper also highlights certain ambiguities and practical concerns, especially in the context of digital records and automated business entries.*

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I. INTRODUCTION

The rule against hearsay has long been considered a cornerstone of evidentiary law. However, exceptions have evolved over time to accommodate practical necessities. One such exception relates to statements made in the course of business, which are deemed reliable due to their routine and contemporaneous nature.

Under the Indian legal framework, this principle was codified under Section 32 and Section 34 of the Indian Evidence Act, 1872. The Bharatiya Sakshya Adhiniyam, 2023 retains and refines these principles, reflecting both continuity and reform. However, the exact scope and application of these provisions requires careful legal analysis.

This paper seeks to examine how statements made in the ordinary course of business are treated under the BSA, and whether the new law effectively addresses modern evidentiary challenges.

1. Conceptual Framework: Hearsay Rule and Its Exceptions

The hearsay rule excludes statements made outside the court when they are offered to prove the truth of the matter asserted. The rationale behind this exclusion lies in the inability to cross-examine the declarant.¹

However, exceptions exist where circumstances guarantee reliability. Statements made in the course of business fall within such exceptions due to:

- * Regularity of record-keeping
- * Absence of motive to fabricate
- * Contemporaneity with the event

This exception is grounded more in necessity than in strict logical reasoning.

1. Statutory Position under the Bharatiya Sakshya Adhiniyam, 2023

The BSA incorporates provisions analogous to Sections 32 and 34 of the Evidence Act. These include:



- * Entries in books of account
- * Statements made by persons in professional or business capacity
- * Electronic records maintained in routine operations

The language of the BSA attempts to expand the admissibility to include digital and automated business records, which is a significant development.

However, one issue still remains unclear — whether mere admissibility equates to probative value. Courts have repeatedly held that admissibility does not guarantee evidentiary weight.²

1. Judicial Interpretation under Indian Law

Entries in Books of Account

In *Central Bureau of Investigation v. V.C. Shukla*, the Supreme Court held that entries in books of account alone are insufficient to charge a person with liability unless supported by independent evidence.³

This principle continues to be relevant under the BSA.

Business Records and Reliability

In *State of Bihar v. Radha Krishna Singh*, the Court emphasized that documents prepared in the ordinary course of business carry inherent reliability, but must still be scrutinized carefully.⁴

Electronic Business Records

With increasing digitization, courts have started recognizing electronic records as business statements. The landmark judgment in *Anvar P.V. v. P.K. Basheer* laid down strict requirements for admissibility of electronic evidence.⁵

The BSA attempts to simplify this process, but ambiguity still persists.

Conditions for Admissibility

For a statement made in the course of business to be admissible, the following conditions must generally be satisfied:

1. It must be made in the ordinary course of business
2. It must be contemporaneous with the transaction
3. The person making the statement must have had personal knowledge
4. There should be no motive for falsification

Failure to meet these conditions may render the evidence unreliable.

1. Critical Analysis

While the BSA modernizes the evidentiary framework, certain issues remain:

G.1 Over-Reliance on Documentary Evidence

Courts sometimes give undue weight to business records without sufficient corroboration. This can lead to injustice, especially in criminal cases.

G.2 Digital Evidence Challenges

Automated entries, AI-generated records, and server-based logs raise serious concerns:

- * Who is the “maker” of the statement?
- * Can machine-generated entries be treated as reliable? The BSA does not clearly answer these questions.

G.3 Risk of Fabrication

Despite the presumption of reliability, business records can be manipulated. The Supreme Court has cautioned against blind reliance on such records.⁶

1. Comparative Perspective

In jurisdictions like the United States, the “business records exception” under the Federal Rules of Evidence is more structured and includes safeguards such as certification and verification.

India’s approach is comparatively flexible but less precise.—

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level, slightly imperfect grammar in places as you asked), and keep it consistent with your structure so you can directly append it.—

1. Nature and Evidentiary Value of Business Statements

The evidentiary value of statements made in the course of business lies not merely in their admissibility but in the degree of reliance that courts can safely place upon them. It is important to understand that such statements are not treated as conclusive proof, but rather as corroborative or supporting evidence in most cases.

The courts in India have consistently maintained that entries in business records, even when admissible, require independent verification. This principle becomes especially important in criminal proceedings where the standard of proof is beyond reasonable doubt. A mere ledger entry or account book, even if regularly maintained, cannot alone establish guilt.

Another important aspect is that business statements are often self-serving in nature. For instance, entries made by a company in its own books may favour its own position in a dispute. Therefore, courts tend to examine:

- * The credibility of the person maintaining records
- * The regularity of entries
- * The existence of corroborative material

It may be said that the reliability of such statements increases when they are maintained as part of a systematic and routine practice, rather than being prepared for the purpose of litigation.

1. Distinction Between Public Documents and Business Records

A key doctrinal distinction exists between public documents and private business records. While both may be admissible, their evidentiary weight differs significantly.

Public documents, such as government records, carry a presumption of correctness under evidentiary law. In contrast, business records are considered private documents and do not enjoy such presumption.

This distinction becomes important in disputes involving:

- * Taxation records
- * Banking transactions
- * Corporate filings

For example, bank statements are often relied upon as business records. However, unless properly certified and supported, they may not be sufficient to establish liability.

The Bharatiya Sakshya Adhinyam, 2023 does not fully clarify this distinction, which could lead to interpretational inconsistencies. Courts will likely continue relying on earlier jurisprudence developed under the Indian Evidence Act.

1. Role of Presumptions in Business Statements

Presumptions play a very crucial role in determining the evidentiary value of business statements. While the law does not automatically presume such statements to be true, it does recognize certain practical assumptions.

For example:

- * Entries made in regular books of account are presumed to be genuine unless proven otherwise
- * Routine business conduct is presumed to be carried out honestly

However, these presumptions are rebuttable in nature. The opposing party can challenge:

- * Authenticity of entries
- * Accuracy of data
- * Integrity of the system used to maintain records

In modern context, this becomes even more complicated when dealing with digital records, where tampering can occur without leaving obvious traces.

1. Statements by Deceased or Unavailable Persons in Business Context

An important category of business statements relates to those made by persons who are:

- * Dead
- * Missing



- * Incapable of giving evidence

Such statements are treated as exceptions to hearsay because the maker is unavailable for cross-examination.

In business context, this includes:

- * Entries made by a deceased accountant
- * Notes recorded by a clerk who is no longer traceable
- * Transaction records maintained by employees who have left

The admissibility of such statements depends on whether they were made:

- * In ordinary course of business
- * Without motive to misrepresent
- * Contemporaneously with the transaction

This principle ensures that businesses are not prejudiced merely because a key employee is no longer available.

However, courts remain cautious because such statements cannot be tested through cross-examination, which may reduce their evidentiary weight.

1. Impact of Technology on Business Statements

The digital revolution has fundamentally altered the way business records are created and maintained. Traditional handwritten ledgers have been replaced by:

- * Enterprise Resource Planning (ERP) systems
- * Cloud-based accounting software
- * Automated transaction logs

This raises several legal questions:

Machine-Generated Records

One major issue is whether machine-generated entries can be treated as “statements”. Since there is no human declarant, it becomes difficult to apply traditional hearsay rules.

Courts have gradually accepted such records, but only when:

- * The system is proven to be reliable
- * Proper safeguards are in place
- * Certification requirements are fulfilled

Data Integrity and Cyber Risks Digital records are vulnerable to:

- * Hacking
- * Unauthorized modification
- * Data loss

Unlike physical documents, tampering with digital data can be extremely difficult to detect. Therefore, courts require strict compliance with procedural safeguards.

Role of Certification

Certification plays a critical role in establishing authenticity of electronic business records. Without proper certification, such records may be rendered inadmissible.

Even under the new BSA, this requirement continues to be significant, although the procedure may be simplified.

1. Burden of Proof and Business Records

The burden of proof in cases involving business statements is an important issue. Generally:

- * The party relying on the record must prove its authenticity
- * Once admitted, the burden may shift to the opposing party to disprove it However, courts do not shift the burden lightly. The initial burden includes:
 - * Proving regular maintenance of records



- * Establishing credibility of the system
- * Demonstrating absence of manipulation

This ensures that business records are not misused as a shortcut to bypass proper evidentiary requirements.

1. Use in Criminal Proceedings

The use of business statements in criminal law raises serious concerns because of the higher standard of proof required.

In criminal cases:

- * Courts are more cautious in relying solely on business records
- * Corroboration becomes essential
- * Any ambiguity benefits the accused

For example, in financial crimes, prosecution often relies heavily on accounting records. However, unless supported by:

- * Witness testimony
- * Documentary corroboration
- * Expert analysis

such records alone may not sustain conviction.

This reflects the principle that documentary evidence cannot replace substantive proof of guilt.

1. Use in Civil Proceedings

In contrast, civil cases operate on the principle of preponderance of probabilities. Therefore, business records are given relatively greater importance.

In civil disputes involving:

- * Contracts
- * Loans
- * Commercial transactions

business statements often form the backbone of evidence. Courts may rely on such records if they appear:

- * Consistent
- * Regularly maintained
- * Supported by surrounding circumstances

Thus, the evidentiary threshold is lower compared to criminal cases.

1. Judicial Trends and Emerging Patterns

Recent judicial trends indicate a growing acceptance of business records, particularly electronic ones. However, courts continue to emphasize caution.

Some emerging patterns include:

- * Increased reliance on digital evidence
- * Greater scrutiny of authenticity
- * Emphasis on procedural compliance

At the same time, courts have shown reluctance to accept:

- * Unverified digital documents
- * Records lacking proper certification
- * Documents created specifically for litigation

This balanced approach ensures that efficiency does not compromise fairness.

1. Practical Challenges in Implementation

Despite the legal framework, several practical challenges exist:

Lack of Awareness

Many businesses, especially small enterprises, are unaware of evidentiary requirements. This leads to improper record-keeping.

Inconsistent Judicial Approach

Different courts may interpret the same provision differently, leading to uncertainty.



Technological Limitations

Not all courts are equipped to handle complex digital evidence, which can delay proceedings.

Risk of Over-Documentation

Businesses may start over-documenting transactions to safeguard themselves, which can create unnecessary complexity.

1. Suggestions for Reform

To improve the legal framework, the following measures may be considered:

1. Clear guidelines on admissibility of digital business records
2. Standardized certification procedures
3. Judicial training on handling electronic evidence
4. Greater clarity on machine-generated statements
5. Legislative clarification on probative value

Such reforms would enhance both efficiency and fairness in judicial proceedings.

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1. Interplay with Other Provisions of Evidence Law

Statements made in the course of business do not operate in isolation. Their admissibility and evidentiary value are often influenced by other provisions within the broader framework of evidence law.

One important interaction is with the concept of relevancy of facts. Even if a statement qualifies as a business record, it must still be relevant to the fact in issue. This means that courts will not admit such statements merely because they are part of routine records; they must have a direct or indirect connection to the dispute.

Further, the provisions relating to oral evidence and documentary evidence also affect business statements. For instance, when a written business record exists, oral testimony attempting to contradict it may be viewed with suspicion unless properly justified. At the same time, oral evidence may be used to explain ambiguities within business records.

Another area of interaction is with the rule of best evidence. Where original business records are available, secondary evidence may not be readily accepted. However, in the case of digital records, determining what constitutes "original" itself becomes confusing sometimes.

Thus, business statements must be analysed not as a standalone exception, but as part of an interconnected evidentiary system.

1. Evidentiary Value of Account Books in Commercial Litigation

Account books play a central role in commercial disputes, particularly in suits relating to recovery of money, partnership accounts, and contractual obligations.

Traditionally, Indian courts have taken a cautious approach towards such records. While recognizing their relevance, courts have repeatedly emphasized that:

- * Entries alone are not sufficient to fasten liability
- * Independent corroboration is necessary
- * The credibility of the person maintaining accounts must be assessed

This approach is based on the understanding that account books are usually maintained by interested parties. Therefore, they may reflect a biased version of events.

However, in modern commercial practice, businesses rely heavily on accounting systems. In such cases, strict insistence on corroboration may not always be practical. Courts have therefore gradually adopted a more flexible approach, especially when:

- * Records are maintained digitally



- * Transactions are supported by invoices, receipts, and bank statements
- * There is consistency across different documents

Even then, courts do not completely abandon the requirement of scrutiny, which remains an essential safeguard.

1. Role of Expert Evidence in Business Records

In complex cases, especially those involving digital or technical business records, courts may rely on expert evidence to determine authenticity and reliability.

Experts may be required in situations such as:

- * Verification of electronic logs
- * Analysis of accounting software
- * Detection of data manipulation
- * Interpretation of financial statements

The role of experts becomes particularly important when the opposing party challenges the integrity of business records. In such cases, expert testimony helps the court understand technical aspects which are beyond ordinary knowledge.

However, reliance on expert evidence also has its limitations. Experts may differ in their opinions, and their testimony may be influenced by the party engaging them. Therefore, courts must evaluate expert evidence carefully and not treat it as conclusive.

1. Business Statements in Banking and Financial Transactions

Banking records are one of the most frequently used forms of business statements in legal proceedings. These include:

- * Bank statements
- * Loan records
- * Transaction logs
- * Credit and debit entries

Such records are generally considered reliable because banks operate under strict regulatory frameworks. However, their admissibility still depends on proper certification and compliance with legal requirements.

In disputes involving financial fraud, courts often rely heavily on banking records. These records help in tracing transactions, identifying patterns, and establishing links between parties.

At the same time, errors in banking records are not impossible. Technical glitches, clerical mistakes, and system failures may affect accuracy. Therefore, courts do not treat such records as infallible.

1. Corporate Records and Their Evidentiary Significance Corporate entities maintain a wide range of records, including:

- * Minutes of meetings
- * Board resolutions
- * Financial statements
- * Internal communications

These records often become crucial in disputes involving company law, shareholder rights, and corporate governance.

Statements made in such records are generally admissible if they are:

- * Maintained in the ordinary course of business
- * Properly authorized
- * Consistent with statutory requirements

However, internal corporate records may sometimes be manipulated, especially in cases involving fraud or mismanagement. Courts therefore examine:

- * Whether records were created contemporaneously
- * Whether proper procedures were followed
- * Whether there is any evidence of alteration

Thus, corporate records, while important, are not beyond scrutiny.



1. International Transactions and Cross-Border Evidence

In an increasingly globalized economy, business transactions often involve parties from different jurisdictions. This raises complex issues regarding admissibility of business statements.

Some of the challenges include:

- * Differences in legal standards
- * Authentication of foreign records
- * Compliance with international conventions

Indian courts may require foreign business records to be:

- * Properly authenticated
- * Certified according to applicable law
- * Supported by additional evidence

The BSA does not provide detailed guidance on cross-border evidence, which may lead to reliance on judicial interpretation and international practices.

1. Standard of Proof and Judicial Discretion

The standard of proof plays a significant role in determining how business statements are evaluated.

In civil cases, the standard is based on balance of probabilities, which allows courts to rely more freely on business records.

In criminal cases, the standard is beyond reasonable doubt, which requires stricter scrutiny. Courts are reluctant to convict solely on the basis of documentary evidence unless it is supported by strong corroboration.

Judicial discretion also plays an important role. Judges may assess:

- * The overall credibility of records
- * The conduct of parties
- * The consistency of evidence

This discretionary element introduces flexibility but may also lead to inconsistency in application.

1. Ethical Concerns and Misuse of Business Records

The use of business statements as evidence also raises ethical concerns. There is always a risk that such records may be:

- * Fabricated
- * Altered
- * Selectively presented

In some cases, parties may create records specifically to support their legal position. Such practices undermine the integrity of the judicial process.

Courts have recognized this risk and have emphasized the need for:

- * Careful scrutiny
- * Cross-examination where possible
- * Corroboration with independent evidence

Legal professionals also have a responsibility to ensure that evidence presented before the court is genuine and not misleading.

1. Future of Business Records in Evidence Law

The future of business statements as evidence is closely linked to technological developments. Emerging technologies such as:

- * Artificial Intelligence
- * Blockchain
- * Automated data systems

are likely to transform the way business records are created and maintained.

For example, blockchain technology offers the possibility of tamper-proof records. If widely adopted, it may significantly enhance reliability of business statements.



At the same time, AI-generated records raise new questions about authorship and accountability. The law will need to evolve to address these challenges.

The Bharatiya Sakshya Adhiniyam, 2023 represents a step forward, but it is only the beginning. Continuous legal development will be necessary to keep pace with technological changes.

II. CONCLUSION

The law relating to statements made in the course of business represents a delicate balance between practicality and evidentiary rigor. While the Bharatiya Sakshya Adhiniyam, 2023 attempts to modernize this area, it does not completely resolve existing ambiguities.

The increasing reliance on digital records makes it necessary to rethink traditional evidentiary principles. Concepts such as authorship, reliability, and authenticity need to be reinterpreted in light of technological advancements.

At the same time, courts must remain vigilant to prevent misuse of business records. Blind reliance on documentary evidence can undermine the fairness of the judicial process.

In conclusion, while statements made in the course of business will continue to play a vital role in litigation, their evidentiary value must always be assessed with caution, context, and critical scrutiny. The future development of this area will largely depend on judicial interpretation and legislative refinement, and it is expected that Indian courts will gradually evolve a more coherent and consistent approach.

