

রেজিস্টার্ড নং ডি এ-১

বাংলাদেশ



গেজেট

অতিরিক্ত সংখ্যা
কর্তৃপক্ষ কর্তৃক প্রকাশিত

বুধবার, আগস্ট ৩১, ২০২২

বাংলাদেশ জাতীয় সংসদ

ঢাকা, ১৬ ভাদ্র, ১৪২৯ মোতাবেক ৩১ আগস্ট, ২০২২

নিম্নলিখিত বিলটি ১৬ ভাদ্র, ১৪২৯ মোতাবেক ৩১ আগস্ট, ২০২২ তারিখে জাতীয় সংসদে
উত্থাপিত হইয়াছে :—

বা. জা. স. বিল নং ২১/২০২২

Evidence Act, 1872 সংশোধনকল্পে আনীত বিল

যেহেতু নিম্নবর্ণিত উদ্দেশ্যসমূহ পূরণকল্পে Evidence Act, 1872 (Act No. I of 1872)
এর অধিকতর সংশোধন সমীচীন ও প্রয়োজনীয়;

সেহেতু এতদ্বারা নিম্নরূপ আইন করা হইল :—

১। সংক্ষিপ্ত শিরোনাম ও প্রবর্তন ।—(১) এই আইন Evidence (Amendment)
Act, 2022 নামে অভিহিত হইবে।

(২) ইহা অবিলম্বে কার্যকর হইবে।

২। Act No I of 1872 এর section 3 এর সংশোধন।—Evidence Act, 1872
(Act No. I of 1872), অতঃপর উক্ত Act বলিয়া উল্লিখিত, এর section 3 এর—

(ক) "Document" অভিব্যক্তি (expression) এর 'that matter' শব্দগুলির পর 'and
includes any digital record' শব্দগুলি সন্নিবেশিত হইবে;

(১৪৮১৫)

মূল্য : টাকা ১৬.০০

- (খ) "Document" অভিব্যক্তিটির পর নিম্নরূপ "Digital record" or "electronic record" অভিব্যক্তিটি সন্নিবেশিত হইবে, যথা :—

"Digital record" or "electronic record" means any record, data or information generated, prepared, sent, received or stored in magnetic or electro-magnetic, optical, computer memory, micro film, computer generated micro fiche including audio, video, Digital Versatile Disc or Digital Video Disc (DVD), records of Closed Circuit Television (CCTV), drone data, records from cell phone, hardware, software or any other digital device as defined in Digital Security Act, 2018 (Act No. 46 of 2018).";

- (গ) "Evidence" অভিব্যক্তি (expression) এর—

- (অ) sub-clause (2) এর পর নিম্নরূপ sub-clause (3) সন্নিবেশিত হইবে, যথা :—

“(3) all materials or objects relating to blood, semen, hair, all body material, organ or part of organ, Deoxyribo Nucleic Acid (DNA), finger impression, palm impression, iris impression and foot print or any other similar material or object which may—

- (i) establish that an offence has been committed or establish a link or relation between an offence and its victim or an offence and its offender; and

- (ii) prove or disprove a fact:

such materials or objects are called physical or forensic evidence."।

- (আ) পর নিম্নরূপ "Digital Signature" or "electronic Signature", "Digital Signature Certificate" ও "Certifying Authority" অভিব্যক্তিসমূহ (expressions) সন্নিবেশিত হইবে, যথা :—

"Digital Signature" or "electronic Signature" means any electronic signature as defined in Information and Communication Technology Act, 2006 (Act No. 39 of 2006).

"Digital Signature Certificate" means any electronic signature certificate as defined in Information and Communication Technology Act, 2006 (Act No. 39 of 2006).

"Certifying Authority" means Certificate Issuing Authority as defined in Information and Communication Technology Act, 2006 (Act No. 39 of 2006)."

৩। Act No. I of 1872 এর section 17 এর সংশোধন।—উক্ত Act এর section 17 এর "documentary" শব্দের পর "or contained in digital record" শব্দগুলি সন্নিবেশিত হইবে।

৪। Act No. I of 1872 এ নূতন section 22A এর সন্নিবেশ।—উক্ত Act এর section 22 এর পর নিম্নরূপ নূতন section 22A সন্নিবেশিত হইবে, যথা :—

“22A. When oral admissions as to contents of digital records are relevant.—Oral admissions as to the contents of digital records are not relevant, unless the genuineness of the digital record produced is in question.”।

৫। Act No. I of 1872 এর section 34 এর সংশোধন।—উক্ত Act এর section 34—

(ক) এর উপাত্তিকায় উল্লিখিত “account” শব্দের পর “or digital record” শব্দগুলি সন্নিবেশিত হইবে; এবং

(খ) এ উল্লিখিত “account” শব্দের পর “or digital record” শব্দগুলি সন্নিবেশিত হইবে।

৬। Act No. I of 1872 এর section 35 এর সংশোধন।—উক্ত Act এর section 35—

(ক) এর উপাত্তিকায় উল্লিখিত “record” শব্দের পর “or digital record” শব্দগুলি সন্নিবেশিত হইবে; এবং

(খ) এ দুইবার উল্লিখিত “or record” শব্দগুলির পরিবর্তে উভয়স্থানে “, record or digital record” কমা ও শব্দগুলি প্রতিস্থাপিত হইবে।

৭। Act No. I of 1872 এর section 36 এর সংশোধন।—উক্ত Act এর section 36—

(ক) এর উপাত্তিকায় উল্লিখিত “and plans” শব্দগুলির পরিবর্তে “, plans and digital record” কমা ও শব্দগুলি প্রতিস্থাপিত হইবে;

(খ) এ উল্লিখিত “maps or charts” শব্দগুলির পরিবর্তে “maps, charts or digital record” শব্দগুলি ও কমা প্রতিস্থাপিত হইবে;

(গ) এ উল্লিখিত “maps or plans” শব্দগুলির পরিবর্তে “maps, plans or digital record” শব্দগুলি ও কমা প্রতিস্থাপিত হইবে; এবং

(ঘ) এ উল্লিখিত “maps, charts or plans” শব্দগুলি ও কমার পরিবর্তে “maps, charts, plans or digital record” শব্দগুলি ও কমা প্রতিস্থাপিত হইবে।

৮। Act No. I of 1872 এর section 39 এর সংশোধন।—উক্ত Act এর section 39—

(ক) এর উপাত্তিকায় উল্লিখিত “book” শব্দটির পরিবর্তে “book, digital record” শব্দগুলি ও কমা প্রতিস্থাপিত হইবে;

(খ) এ উল্লিখিত “forms part of a book,” শব্দগুলি ও কমার পরিবর্তে “forms part of a book, or of part of a digital record” শব্দগুলি ও কমা প্রতিস্থাপিত হইবে।

৯। Act No. I of 1872 এর section 45 সংশোধন।—উক্ত Act এর section 45 এর পরিবর্তে নিম্নরূপ section 45 প্রতিস্থাপিত হইবে, যথা :—

“45. **Opinion of Experts.**—When the Court has to form an opinion upon a point of foreign law, or of science, *physical or forensic evidence or digital record*, or art, or as to identity of hand writing or finger impression *or footprint or palm impression or iris impression or typewriting or usage of trade or technical terms or identity of person or animal*, the opinion upon that point of person specially skilled in such foreign law, science, *physical or forensic evidence or digital record* or art, or in questions as to identity of handwriting or finger impression, *footprint, palm impression, typewriting, usage of trade, technical term or identity of person or animal*, as the case may be, are relevant facts.

Such persons are called experts.

Illustrations

- (a) The question is, whether the death of A was caused by poison.

The opinion of experts as to the symptoms produced by the poison by which A is supposed to have died, are relevant.

- (b) The questions is, whether A, at the time of doing a certain act, was, by reason of unsoundness of mind, incapable of knowing the nature of the act, or that he was doing what was either wrong or contrary to law.

The opinions of experts upon the question whether the symptoms exhibited by A commonly show unsoundness of mind, and whether such unsoundness of mind usually renders persons incapable of knowing the nature of the acts which they do, or of knowing that what they do is either wrong or contrary to law, are relevant.

- (c) The question is whether a certain document was written by A. Another document is produced which is proved or admitted to have been written by A.

The opinions of experts on the question whether the two documents were written by the same person or by different persons, are relevant.”।

১০। Act No. I of 1872 এ নূতন section 45A এর সন্নিবেশ।—উক্ত Act এর section 45 এর পর নিম্নরূপ নূতন section 45A সন্নিবেশিত হইবে, যথা :—

“45A. Opinion of experts on physical or forensic evidence.—(1) Except by leave of the Court a witness shall not testify as an expert on physical or forensic unless a copy of his report has, pursuant to sub-section (2), been given to all the parties.

(2) An expert’s report shall be addressed to the Court and not to the party on whose behalf he is examined and he shall owe a duty to help the Court.”।

১১। Act No. I of 1872 এ নূতন section 47A এর সন্নিবেশ।—উক্ত Act এর section 47 এর পর নিম্নরূপ নূতন section 47A সন্নিবেশিত হইবে, যথা :—

“47A. Opinion as to digital signature where relevant.—When the Court has to form an opinion as to the digital signature of any person, the opinion of the Certifying Authority which has issued the Digital Signature Certificate is a relevant fact.”।

১২। Act No. I of 1872 এ নূতন sections 65A ও 65B এর সন্নিবেশ।—উক্ত Act এর section 65 এর পর নিম্নরূপ নূতন sections 65A ও 65B সন্নিবেশিত হইবে, যথা :—

“65A. Special provisions as to evidence relating to digital record.—*The contents of digital records may be proved in accordance with the provisions of section 65B.*

65B. Admissibility of Digital Records.—(1) Notwithstanding anything contained in this Act, any information contained in a digital record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer (hereinafter referred to as the computer output) shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.

(2) The conditions referred to in sub-section (1) in respect of a computer output shall be the following, namely :—

- (a) the computer output containing the information was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes or any activities regularly carried on over that period by the person having lawful control over the use of the computer;

- (b) during the said period, information of the kind contained in the digital record or of the kind from which the information so contained is derived was regularly fed into the computer in the ordinary course of the said activities;
- (c) throughout the material part of the said period, the computer was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the digital record or the accuracy of its contents; and
- (d) the information contained in digital record reproduces or is derived from such information fed into the computer in the ordinary course of the said activities.

(3) Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in clause (a) of sub-section(2) was regularly performed by computers, whether—

- (a) by a combination of computers operating over that period; or
- (b) by different computers operating in succession over that period; or
- (c) by different combinations of computers operating in succession over that period; or
- (d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers,

all the computers used for that purpose during that period shall be treated for the purposes of that section as constituting a single computer; and references in this section to a computer shall be construed accordingly.

(4) In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate containing any of the following things, that is to say,—

- (a) identifying the digital record containing the statement and describing the manner in which it was produced;
- (b) giving such particulars of any device involved in production of that digital record as may be appropriate for the purpose of showing that the digital record was produced by a computer;

- (c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate,

and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

(5) For the purposes of this section,—

- (a) information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;
- (b) whether in the course of activities carried on by any official, information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to the computer, shall be taken to be supplied to it in the course of those activities;
- (c) a computer output shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.

Explanation:—For the purposes of this section any reference to information being derived from other information shall be a reference to its being derived therefrom by calculation, comparison or any other process.”।

১৩। Act No. I of 1872 এ নূতন sections 67A এর সন্নিবেশ।—উক্ত Act এর section 67 এর পর নিম্নরূপ নূতন sections 67A সন্নিবেশিত হইবে, যথা :—

“67A. Proof as to digital signature.—Except in the case of a secure digital signature, if the digital signature of any subscriber is alleged to have been affixed to a digital record the fact that such digital signature is the digital signature of the subscriber must be proved.”।

১৪৮২২ | Act No. I of 1872 এ নূতন sections 73A ও 73B এর সন্নিবেশ।—উক্ত Act এর section 73 এর পর নিম্নরূপ নূতন sections 73A ও 73B সন্নিবেশিত হইবে, যথা :—

“73A. Proof as to verification of digital signature.—In order to ascertain whether a digital signature is that of the person by whom it purports to have been affixed, the Court may direct—

- (a) that person or the Controller or the Certifying Authority to produce the Digital Signature Certificate;
- (b) any other person to apply the public key listed in the Digital Signature Certificate and verify the digital signature purported to have been affixed by that person.

Explanation.—For the purpose of this section, "Controller" means the Controller appointed under sub-section (1) of section 18 of the Information and Communication Technology Act, 2006 (Act No. 39 of 2006).

“73B. Comparison of physical or forensic evidence with others, admitted or proved.—(1) In order to ascertain whether a sample of blood, semen, hair, DNA sample, any other biological substance, limbs or any part of limb, finger impression, palm impression or iris impression or foot impression belongs to or is created by that person from whom it purports to have been collected, the Court may order that it be compared with any sample which is admitted or proved to the satisfaction of the Court to have come from or been made by the person, although that sample of blood, semen, hair, DNA sample, biological substance, limbs or any part of limb, finger impression, palm impression, iris impression, foot impression or any other substance has not been produced or proved for any other purpose.

(2) If there is any claim that the sample of blood, semen, hair, DNA sample, any other biological substance, limbs or any part of limb, finger impression, palm impression, iris impression, foot impression belongs to or is created by any person, the Court may direct that person to be present in Court for the purpose of enabling the Court to make that comparison.

(3) In relation to proving the authenticity of physical or forensic evidence, nothing in sections 60 and 165 of this Act, should prevent the Court from seeking its production in Court as an exhibit, along with any other necessary evidence concerning its identification.”¹

১৫। Act No. I of 1872 এ নতুন section 81A এর সন্নিবেশ।—উক্ত Act এর বিলুপ্ত section 81 এর পর নিম্নরূপ নতুন section 81A সন্নিবেশিত হইবে, যথা :—

“81A. Presumption as to Gazettes in digital forms.—The Court shall presume the genuineness of every digital record purporting to be the Official Gazette, or purporting to be digital record directed by any law to be kept by any person, if such digital record is kept substantially in the form required by law and is produced from proper custody.

Explanation.—Digital records are said to be in proper custody if they are in the place in which, and under the care of the person with whom, they naturally be; but no custody is improper if it is proved to have had a legitimate origin, or the circumstances of the particular case are such as to render such an origin probable.”।

১৬। Act No. I of 1872 এ নতুন sections 85A, 85B ও 85C এর সন্নিবেশ।—উক্ত Act এর section 85 এর পর নিম্নরূপ নতুন sections 85A, 85B ও 85C সন্নিবেশিত হইবে, যথা:—

“85A. Presumption as to agreements in digital forms.—The Court shall presume that every digital record purporting to be an agreement containing the digital signatures of the parties was so concluded by affixing the digital signature of the parties.

85B. Presumption as to digital record and digital signatures.—

(1) In any proceedings involving a secure digital record, the Court shall presume unless contrary is proved, that the secure digital record has not been altered since the point of time to which the secure status relates.

(2) In any proceedings, involving secure digital signature, the Court shall presume unless the contrary is proved that—

- (a) the secure digital signature is affixed by subscriber with the intention of signing or approving the digital record;
- (b) except in the case of a secure digital record or a secure digital signature, nothing in this section shall create any presumption relating to authenticity and integrity of the digital record or any digital signature.

85C. Presumption as to Digital Signature Certificates.—The Court shall presume, unless contrary is proved, that the information listed in a Digital Signature Certificate is correct, except for information specified as subscriber information which has not been verified, if the certificate was accepted by the subscriber.”।

১৭। **Act No. I of 1872 এ নূতন section 88A এর সন্নিবেশ।**—উক্ত Act এর section 88 এর পর নিম্নরূপ নূতন section 88A সন্নিবেশিত হইবে, যথা :—

“88A. Presumption as to digital communication.—The Court may presume that a digital communication forwarded by the originator through a digital communication or message server to the addressee to whom the message purports to be addressed corresponds with the message as fed into his computer or fed into other forms of digital device for transmission; but the Court shall not make any presumption as to the persons by whom such message was sent.

Explanation.—For the purposes of this section, the expressions “addressee” and “originator” shall have the same meanings respectively assigned to them in clauses (22) and (24) of section 2 of the Information and Communication Technology Act, 2006 (Act No. 39 of 2006).”।

১৮। **Act No. I of 1872 এ নূতন section 89A এর সন্নিবেশ।**—উক্ত Act এর section 89 এর পর নিম্নরূপ নূতন section 89A সন্নিবেশিত হইবে, যথা :—

“89A. Presumption as to physical or forensic evidence.—The Court may presume unless contrary is proved that the physical or forensic evidence belongs to or is created by that person from whom it purports to have been collected.”।

১৯। **Act No. I of 1872 এ নূতন section 90A এর সন্নিবেশ।**—উক্ত Act এর section 90 এর পর নিম্নরূপ নূতন section 90A সন্নিবেশিত হইবে, যথা :—

“90A. Presumption as to digital records five years old.—Where any digital record, purporting or proved to be five years old, is produced from any custody which the Court in the particular case considers proper, the Court may presume that the digital signature which purports to be the digital signature of any particular person was so affixed by him or any person authorized by him in this behalf.

Explanation.—Digital records are said to be in proper custody if they are in the place in which, and under the care of the person with whom, they naturally be; but no custody is improper if it is proved to have had a legitimate origin, or the circumstances of the particular case are such as to render such an origin probable.”।

২০। **Act No. I of 1872 এর section 146 এর সংশোধন।**—উক্ত Act এর section 146 এর clause (3) এর প্রান্তস্থিত ফুলস্টপ (.) চিহ্নটির পরিবর্তে কোলন (:) চিহ্নটি প্রতিস্থাপিত হইবে এবং অতঃপর নিম্নরূপ শর্তাংশসমূহ সংযোজিত হইবে, যথা :—

“Provided that in a prosecution for an offence of rape or attempt to rape, no question under clause (3) can be asked in the cross-examination as to general immoral character or previous sexual behaviour of the victim:

Provided further that such question can only be asked with the permission of the Court, if it appears to the Court necessary for the ends of justice.”।

২১। **Act No. I of 1872 এর section 155 এর সংশোধন।**—উক্ত Act এর section 155 এর sub-section (4) বিলুপ্ত হইবে।

উদ্দেশ্যে ও কারণ সংবলিত বিবৃতি

দেওয়ানি ও ফৌজদারি বিচার ব্যবস্থায় মৌখিক ও দালিলিক সাক্ষ্য চিহ্নিতকরণ ও গ্রহণযোগ্যতা নির্ধারণ, প্রমাণের দায়ভার, অভিযুক্তের স্বীকারোক্তি ও আদালতে সাক্ষ্য উপস্থাপনসহ অন্যান্য বিষয়ের প্রাসঙ্গিকতা নির্ধারণ করার লক্ষ্যে Evidence Act, 1872 প্রণয়ন করা হয়। ১৫০ বছর পূর্বে প্রণীত আইনটি বর্তমান সময়ে কার্যকরভাবে প্রাসঙ্গিক হলেও বিচার ব্যবস্থায় ডিজিটাইজেশন একটি নতুন বাস্তবতা এবং এই বাস্তবতার নিরিখে Evidence Act, 1872 সংশোধনের প্রয়োজনীয়তাও রয়েছে।

(খ) এমতাবস্থায়, ‘Evidence (Amendment) Act, 2022’-এর মাধ্যমে ডিজিটাল রেকর্ড ও ফরেনসিক পদার্থ বা বস্তুসমূহকে সাক্ষ্য হিসেবে গণ্য করে তার গ্রহণযোগ্যতা নির্ধারণ-সংক্রান্ত বিধান Evidence Act, 1872-এ সংযোজন করা হয়েছে। এই সংশোধনী আইন বিদ্যমান বিচার ব্যবস্থায় ডিজিটাইজেশনের মাধ্যমে দ্রুততার সাথে বিচারকার্য নিষ্পত্তি করতে গুরুত্বপূর্ণ ভূমিকা রাখবে।

(গ) Evidence Act, 1872-অনুযায়ী ধর্ষণ মামলার ভিকটিমকে জেরাকালে তার চরিত্র-সম্পর্কে প্রশ্ন করার সুযোগ রয়েছে, যা নারীর জন্য মর্যাদাহানিকর ও ‘আইনের চোখে সমতা’ নীতির পরিপন্থী। এমতাবস্থায়, ‘Evidence (Amendment) Act, 2022’-এর মাধ্যমে ধর্ষণ মামলার ভিকটিমকে তার চরিত্র নিয়ে প্রশ্ন করা-সম্পর্কিত Evidence Act, 1872-এর ১৫৫ ধারার উপধারা (৪) বিলুপ্ত করা হয়েছে। অপরদিকে, মামলার জেরাকালে কেবল আদালতের অনুমতি নিয়ে ন্যায়বিচারের স্বার্থে ধর্ষণ ও ধর্ষণের চেষ্টা মামলার ভিকটিমকে তার চরিত্র নিয়ে প্রশ্ন করার বিধান ১৪৬ ধারায় সংযোজন করা হয়েছে।

(ঘ) বর্ণিত উদ্দেশ্য ও কারণে ‘Evidence (Amendment) Act, 2022’ শীর্ষক বিল মহান জাতীয় সংসদের বিবেচনার জন্য উত্থাপন করিতেছি।

আনিসুল হক

ভারপ্রাপ্ত মন্ত্রী।

কে, এম, আব্দুস সালাম

সচিব।