The New Evidence Law: What the Bharatiya Sakshya Adhiniyam Changed for Digital Proof

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Figure 1. From bound registers to phones and drives: the Bharatiya Sakshya Adhiniyam treats electronic records as documents.

For a century and a half, every Indian courtroom argument about proof ran through a statute drafted in 1872. On 1 July 2024 that statute, the Indian Evidence Act (IEA), was repealed and replaced by the Bharatiya Sakshya Adhiniyam, 2023 (BSA).[1][2] For anyone with a dispute to prove, the story is practical: the core logic of evidence is almost untouched, while the rules for proving a WhatsApp chat, an email or CCTV footage have

been rewritten. Getting those rules wrong can mean that the most persuasive piece of evidence in a case never reaches the judge.

Why the Evidence Act was replaced, and when

The BSA was enacted as Act No. 47 of 2023 and received Presidential assent on 25 December 2023.[?] It arrived alongside the Bharatiya Nyaya Sanhita (replacing the Indian Penal Code) and the Bharatiya Nagarik Suraksha Sanhita (replacing the Code of Criminal Procedure). All three came into force across the country on 1 July 2024.[?]

A first Bill, introduced in August 2023 and examined by the Standing Committee on Home Affairs, was withdrawn; its successor, incorporating most of the Committee's suggestions, passed both Houses in December 2023.[3]

The Government's stated reason was simple: the 1872 law "does not address the technological advancement undergone in the country during the last few decades".[4] The Statement of Objects and Reasons promised that electronic and digital records would carry "the same legal effect, validity and enforceability as paper records", that witnesses, accused persons, experts and victims could appear through electronic means, and that the scope of secondary evidence would be widened.[?]

The BSA is not a criminal statute alone. Like its predecessor, it applies to all judicial proceedings in or before any court, so it governs civil, consumer and family cases as much as criminal trials. It still does not apply to affidavits or arbitral proceedings.[?]

What changed

Electronic records are now documents in their own right

The old Act's definition of "document" did not mention electronic records. Now section 2(1)(d) says a document "includes electronic and digital records", and a new illustration lists emails, server logs, documents on computers, laptops or smartphones, messages, websites, locational evidence and voicemail stored on digital devices.[?] The definition of "evidence" in section 2(1)(e) now covers statements "given electronically" and documents "including electronic or digital records".

Section 61 adds that nothing in the Adhiniyam can deny admissibility to a record merely because it is electronic or digital, and that such a record has the same legal effect as any

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other document, subject to section 63.[?]

When a digital record counts as primary evidence

Primary evidence means the document itself. Section 57 adds four new explanations aimed at digital material:[?]

- where a record is created or stored simultaneously or sequentially in multiple files, each file is primary evidence;
- an electronic or digital record produced from proper custody is primary evidence "unless it is disputed";
- where a video recording is stored and at the same time transmitted, broadcast or transferred, each stored recording is primary evidence;
- where a record sits in multiple storage spaces in a computer resource, each automated storage, including temporary files, is primary evidence.

The phrase "unless it is disputed" matters: an opponent will usually dispute a key message or video, which sends the party relying on it back to the formal route in section 63.

The new section 63 certificate

Section 65B of the IEA allowed computer output to be admitted without the original device if accompanied by a certificate from a person "occupying a responsible official position" in relation to it. In *Arjun Panditrao Khotkar vs. Kailash Kushanrao Gorantyal* (decided 14 July 2020), the Supreme Court held that this certificate is "a condition precedent to the admissibility of evidence by way of electronic record", reaffirming its 2014 ruling in *Anvar P.V. vs. P.K. Basheer*. It also clarified that no certificate is needed where the original device itself is produced, for instance by the owner of a phone stepping into the witness box to prove that the device on which the information was first stored is owned or operated by him.[5]

Section 63 of the BSA keeps that architecture but changes it in four ways:[?]

1. **Wider scope.** It expressly covers communication devices and semiconductor memory, including devices operating through a network or an intermediary.

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2. **Two signatories.** The certificate must be signed by the person in charge of the device or the management of the relevant activities "and an expert".
3. **Every time.** It must be submitted with the electronic record "at each instance where it is being submitted for admission".
4. **A prescribed form.** It must be in the form set out in the Schedule to the Act.

The Schedule has two parts. **Part A, filled by the party**, identifies the source (computer, DVR, mobile, server, cloud and so on) with its make, model, serial number and IMEI, MAC or cloud ID, and confirms that the device was under lawful control, working properly and regularly used. **Part B, filled by the expert**, records the same device details. Both parts require the **hash value** of the record and the algorithm used (SHA1, SHA256, MD5 or another legally acceptable standard), with the hash report enclosed.[?]

A hash value is a digital fingerprint: change a single character in a file and the hash changes completely, so courts can check that the file before them is the one originally collected.

Wider secondary evidence

Section 63 of the IEA listed five kinds of secondary evidence. Section 58 of the BSA keeps those and adds three: oral admissions, written admissions, and the evidence of a skilled person who has examined a document whose original consists of numerous accounts or other documents that cannot conveniently be examined in court.[?][?]

Joint trials and absconding co-accused

The rule that a court may consider one accused's confession against a co-accused tried jointly for the same offence (IEA section 30) is now section 24. A new Explanation II provides that a trial of several accused held in the absence of an accused who has absconded, or who has failed to comply with a proclamation under section 84 of the BNSS, is deemed to be a joint trial for this purpose.[?] The bar on confessions to police and in police custody (now section 23) and the discovery rule from old section 27 (now the proviso to section 23) remain.

Structure and renumbering

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The BSA has 170 sections in 12 chapters, and most provisions have moved. New pleadings must cite the new numbers. Key provisions, checked against the text of the Adhiniyam:[?]

Subject	IEA 1872	BSA 2023
Confession caused by inducement, threat or promise	s. 24	s. 22
Confession to police / in police custody; discovery	ss. 25, 26, 27	s. 23 and proviso
Confession of co-accused in joint trial	s. 30	s. 24
Dying declaration and other statements of persons who cannot be called	s. 32	s. 26
Expert opinion	s. 45	s. 39
Electronic records and certificate	ss. 65A, 65B	ss. 62, 63
Burden of proof; fact especially within knowledge	ss. 101, 106	ss. 104, 109
Presumptions on abetment of suicide and dowry death	ss. 113A, 113B	ss. 117, 118
Court may presume facts	s. 114	s. 119
Spousal and professional communications	ss. 122, 126	ss. 128, 132
Examination-in-chief, cross and re-examination	ss. 137, 138	ss. 142, 143
Party questioning its own witness (hostile witness)	s. 154	s. 157

What stayed the same

For all the renumbering, the BSA "retains most provisions of the IEA including those on confessions, relevancy of facts, and burden of proof".[?] In substance:

- **Relevancy** still turns on facts in issue and relevant facts, with the same doctrines of res gestae, motive, conduct and admissions.

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- **Burden of proof** remains on the person who asserts (section 104) and on the party who would fail if no evidence were given (section 105), with facts especially within a person's knowledge to be proved by that person (section 109).
- **Presumptions**, general and specific (such as in dowry death cases), carry over almost word for word.
- **Privilege** protects communications between spouses, unpublished official records relating to affairs of State, and communications between advocate and client (sections 128 to 132).
- **Examination of witnesses** keeps the familiar sequence of examination-in-chief, cross-examination and re-examination.

The definitions of "proved", "disproved" and "not proved" are unchanged.

Which law governs your case?

Section 170 answers the transition question directly. Sub-section (1) repeals the IEA. Sub-section (2) provides that if any application, trial, inquiry, investigation, proceeding or appeal was pending immediately before the BSA came into force, it "shall be dealt with under the provisions of the Indian Evidence Act, 1872 ... as if this Adhiniyam had not come into force".[?]

In practical terms:

- A suit, complaint, trial, appeal or investigation that was pending on 30 June 2024 continues under the IEA, so its electronic evidence is still proved through a section 65B certificate.
- Proceedings that begin on or after 1 July 2024 are governed by the BSA, and electronic records need a section 63 certificate in the Schedule format.
- The test in the text is whether the proceeding was pending, not when the WhatsApp message or video was created.

Where a matter straddles the line, check the court's approach before filing.

Collecting digital evidence: a practical checklist

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Digital evidence is most often lost at the collection stage, long before trial. Whether the matter is a cheating complaint, a consumer claim or a matrimonial case, the same habits help.

WhatsApp and other messages

- Keep the original phone and do not reset, sell or exchange it. Under the *Khotkar* reasoning, the device on which the message was first stored is the strongest proof.[?]
- Screenshots are useful for reference, but also export the full chat with media and keep it unaltered. Do not edit, crop or forward the exported file.
- Note the phone's make, model, serial number and IMEI now: Part A of the Schedule asks for them.[?]

Emails

- Save the message in its original format (for example as an .eml file) with full headers, not only a printout. Headers record routing and timestamps.

CCTV footage

- Recorders commonly overwrite footage automatically, so ask the owner of the system (a shop, housing society or employer) in writing to preserve the relevant period at once.
- The copy should be taken from the DVR or server by a competent person, with a hash value generated at the time of copying. The person in control of the system is usually the right signatory for Part A.

Call records

- Call detail records are held by telecom operators, not by the subscriber, and are generally obtained through the investigating agency or a court direction. In *Khotkar* , the Supreme Court noted that licence conditions oblige operators to retain such records only for a limited period, so delay can make data unrecoverable.[?] Ask early for the records to be secured.

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For every file

- Generate a hash value (SHA256 is widely used) as soon as the copy is made, record the date, time and method, and keep the hash report. The Schedule requires it.[?]
- Keep an untouched master copy and a simple chain-of-custody note: who copied the file, when, onto what medium, and who has held it since.
- Arrange the expert for Part B early. A certificate assembled in a hurry on the eve of evidence is easier to attack than one prepared when the data was collected.

How Vakil Dial can help

The formal requirements of section 63 are unforgiving. Vakil Dial can review the material you hold, explain whether your matter is governed by the old Act or the BSA, and outline what needs to be preserved and certified. Where needed, it can connect you with a verified legal professional from its network to prepare the certificate, draft preservation notices to third parties, and guide the matter through filing and evidence.

- For FIRs, complaints, bail and trials, see Criminal Law Assistance.
- For consumer complaints, recovery suits and other civil claims, see Consumer & Civil Disputes.
- For divorce, maintenance, custody and domestic violence matters, see Family Law.

You can describe your situation through the guided Free Legal Advice page. Sending an enquiry is free and does not commit you to any paid service; the Vakil Dial team reviews it and replies, and if a paid service would help, explains it first. You can follow the matter in "My Conversations" after signing in. If you first want to understand the concepts in this guide in general terms, MAATRA, Vakil Dial's intelligent AI legal-information persona, can walk you through them.

This is general legal information, not legal advice; every matter depends on its facts.

Conflicts of interest

This guide is published by Vakil Dial, which offers the services it describes.

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Notes

1. The Bharatiya Sakshya Adhiniyam, 2023 (Act No. 47 of 2023), Gazette of India text https://thc.nic.in/Central%20Governmental%20Acts/Bharatiya%20Sakshya%20Adhiniyam,%202023.pdf
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