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# **BHARATIYA SAKSHYA ADHINIYAM IN THE CONTEXT OF MATRIMONIAL MATTERS IN INDIA**

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## **Abstract:**

The Bharatiya Sakshya Adhinyam, 2023 marks a significant shift in India's approach to electronic evidence, replacing the Indian Evidence Act of 1872. While aiming to modernize evidentiary rules for the digital age, the BSA introduces complex certification requirements that may inadvertently hinder justice in matrimonial and interpersonal disputes. The Act reclassifies electronic records as primary evidence but mandates dual certification and hash values, creating operational delays, ambiguity in expert qualifications, and technical infrastructure challenges. These new standards disproportionately affect cases with scant evidence, such as matrimonial disputes, where critical electronic proof may become inadmissible due to stringent requirements. The BSA's interaction with existing laws like the IT Act and POCSO Act further complicates matters, potentially creating a "digital divide" in justice delivery. To address these issues, the article suggests clarifying expert qualifications, establishing uniform protocols, and introducing victim-centric exceptions to balance procedural rigor with the urgent need for justice in sensitive cases.

The legal landscape governing electronic evidence in India has undergone a transformative shift with the enactment of the Bharatiya Sakshya Adhinyam, 2023 (BSA), replacing the colonial-era Indian Evidence Act, 1872 (IEA). While the BSA modernizes evidentiary rules to accommodate digital realities, its provisions introduce complexities that may inadvertently hinder justice in inter-personal disputes such as matrimonial cases. This article examines the key differences between the two regimes, identifies operational challenges under the BSA, and explores unresolved issues that could undermine the very objectives of the reform.

Under the IEA, electronic evidence was treated as secondary documentary evidence unless the original device was produced, governed by Sections 65A and 65B. These provisions required

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<sup>1</sup> The Author is an aspiring law student based out of the United States of America and picked up the topic while interning before the Madras High Court and Family Courts.

a certificate from a “responsible official” to authenticate copies of electronic records, a standard established through judicial precedents like *Anvar P.V. v. P.K. Basheer*, 2014 10 SCC 473. While this framework had ambiguities—such as debates about whether the certificate needed to be filed at the evidence stage or later—it allowed flexibility in admitting critical digital evidence like emails, CCTV footage, and social media communications. Courts often prioritized substance over technicalities. Especially, in matrimonial matters, the Family Courts Act, 1984 accorded leeway to Family Courts to prioritize interests of justice over technical rules.

The BSA fundamentally alters the erstwhile approach by reclassifying electronic records as primary evidence under Section 57<sup>2</sup>, provided they are stored in proper custody. This recognizes the practical reality that original devices (like smartphones or servers) are rarely feasible to produce in court. However, the Act introduces a dual certification mandate under Section 63(4): Part A must be completed by the party submitting the evidence, while Part B requires validation by an unspecified “expert.” Additionally, the certificate must include a hash value—a digital fingerprint to detect tampering—and adhere to a standardized format prescribed in the BSA’s Schedule. These changes aim to enhance authenticity but create three significant hurdles:

1. **Operational Delays:** The requirement for expert involvement introduces dependency on third-party validations, which may delay trials. In matrimonial cases, where timely justice is critical for spouses and children, prolonged waits for certification could exacerbate trauma. For instance, a crucial WhatsApp message or

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<sup>2</sup> **57. Primary evidence.**

Primary evidence means the document itself produced for the inspection of the Court.

*Explanation 1.* - Where a document is executed in several parts, each part is primary evidence of the document.

*Explanation 2.* - Where a document is executed in counterpart, each counterpart being executed by one or some of the parties only, each counterpart is primary evidence as against the parties executing it.

*Explanation 3.* - Where a number of documents are all made by one uniform process, as in the case of printing, lithography or photography, each is primary evidence of the contents of the rest; but, where they are all copies of a common original, they are not primary evidence of the contents of the original.

*Explanation 4.* - Where an electronic or digital record is created or stored, and such storage occurs simultaneously or sequentially in multiple files, each such file is primary evidence.

*Explanation 5.* - Where an electronic or digital record is produced from proper custody, such electronic and digital record is primary evidence unless it is disputed.

*Explanation 6.* - Where a video recording is simultaneously stored in electronic form and transmitted or broadcast or transferred to another, each of the stored recordings is primary evidence.

*Explanation 7.*- Where an electronic or digital record is stored in multiple storage spaces in a computer resource, each such automated storage, including temporary files, is primary evidence.

*Illustration.* A person is shown to have been in possession of a number of placards, all printed at one time from one original. Any one of the placards is primary evidence of the contents of any other, but no one of them is primary evidence of the contents of the original.

video evidence might be rendered inadmissible if overburdened forensic labs cannot promptly process the expert certificate.

2. **Ambiguity in Expert Qualifications:** The BSA does not define the credentials or accreditation required for the “expert” under Part B. This vagueness risks inconsistent standards—a rural magistrate might accept a local IT professional’s certification, while urban courts demand formal forensic qualifications. Such disparities could lead to jurisdictional inconsistencies and appeals over procedural validity. Furthermore, in some cases, it is being interpreted that the experts who could issue such certificates have to obtain accreditation from the Central Government
3. **Technical Infrastructure Gaps:** The hash value requirement assumes universal access to advanced digital preservation tools. In reality, many police stations—particularly in semi-urban and rural areas—lack the resources to generate and store hash values at the evidence collection stage. A 2024 study highlighted that only 35% of Indian police stations have dedicated cyber cells, raising concerns about evidence integrity in cases where hash values are missing due to logistical constraints.

The BSA also retains the IEA’s distinction between primary and secondary evidence but complicates it through asymmetrical admissibility standards. Stored copies (like cloud backups or server logs) are deemed primary evidence under Section 57, bypassing certification needs unless disputed. However, any challenge to their authenticity triggers the full certification process under Section 63, creating a paradox: a victim’s submitted chat logs might initially be admitted as primary evidence, but the opponent’s mere allegation of tampering could force the victim to procure expert validation mid-trial—a resource-intensive demand for many litigants. These procedural layers disproportionately affect cases with inherently scant evidence. In matrimonial disputes, for example, electronic evidence often consists of fleeting communications (deleted texts, ephemeral social media posts) or device-based data (call records, location history). Under the IEA, courts could admit such evidence with basic certification, but the BSA’s expert mandate raises the bar. A spouse alleging harassment through deleted emails must now not only recover the data (via forensic tools) but also secure an expert to validate the recovery process—a costly and time-consuming endeavor that may deter victims from pursuing justice.

Unresolved issues in the BSA further compound these challenges. First, the Act lacks

guidelines for handling privileged communications. In matrimonial cases, couples often use shared devices; a spouse accessing the other's emails to prove infidelity might breach privacy laws, leading to evidence exclusion. Second, the chain of custody protocols for electronic evidence remain undefined. For example, if a victim's phone is seized as evidence but not properly logged in a hash-secured system, the defense could argue tampering, even if the content is genuine. Third, the BSA does not address interoperability with existing laws. For instance, the Information Technology Act, 2000 (IT Act), and the Protection of Children from Sexual Offences Act, 2012 (POCSO Act) have overlapping evidentiary standards, creating confusion. While the IT Act provides for relatively straightforward certification of electronic records, and the POCSO Act emphasizes child-friendly, speedy procedures, the BSA introduces more stringent requirements including dual certification and hash values. This discrepancy can lead to significant challenges in court. For instance, a prosecutor in a POCSO case might initially rely on IT Act certifications for crucial evidence like Instagram messages, believing them to be sufficient as per established practice. However, they may face objections based on the BSA's stricter norms, which demand expert validation and technical integrity proofs. This situation not only risks delays in trials but also potentially renders critical evidence inadmissible, creating a conflict between the child-centric approach of POCSO and the technical rigour demanded by the BSA. The implications are stark in scenarios where electronic evidence is both vital and fragile. Consider a matrimonial case where a woman alleges dowry harassment *via* audio recordings on her smartphone. Under the IEA, she could submit a Section 65B certificate which is, in most cases, a self-certification. The BSA, however, mandates an expert's validation—a hurdle if she resides in a region with limited forensic resources.

These constraints risk reviving the very issues the BSA aimed to resolve. The IEA's critics argued that Section 65B's certification was a mere formality, but the BSA's complex requirements may overcorrect, creating a "digital divide" in justice delivery. Affluent litigants can afford private experts, while marginalized victims depend on overburdened state mechanisms.

To mitigate these challenges, policymakers must address the BSA's ambiguities through clear rules and capacity-building. Defining "expert" qualifications (e.g., certified forensic analysts or government-appointed professionals), establishing hash value protocols for rural agencies could harmonize standards. Additionally, victim-centric exceptions—such as fast-track certification for matrimonial, child abuse cases—would balance procedural rigor with urgency.

In conclusion, while the BSA marks a progressive leap in recognizing digital realities, its current formulation risks stifling justice in the very cases where electronic evidence is most critical. Without urgent clarifications and infrastructural support, the Act's procedural labyrinth may overshadow its transformative potential, leaving victims in matrimonial disputes navigating a system where the burden of proof becomes a barrier to truth.

