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DIGITAL EVIDENCE UNDER THE BHARATIYA SAKSHYA ADHINIYAM, 2023: ADMISSIBILITY AND EVIDENTIARY VALUE

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ABSTRACT

The Bharatiya Sakshya Adhiniyam, 2023 ("BSA"), which came into force on 1 July 2024, replaces the Indian Evidence Act, 1872 ("IEA") and substantially recasts the law governing the admissibility of electronic and digital evidence in India. This paper undertakes a doctrinal analysis of Sections 2(1)(d), 57, 61, 62 and 63 of the BSA, situating them against the jurisprudential trajectory traced by the Supreme Court of India from State (NCT of Delhi) v. Navjot Sandhu through Anvar P.V. v. P.K. Basheer, Shafhi Mohammad v. State of Himachal Pradesh and finally Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal. It examines the most significant structural innovation introduced by the BSA – the dual-certification regime under Section 63(4), read with the statutory Schedule, requiring certification both by the person responsible for the device (Part A) and by an independent expert (Part B). Drawing on National Crime Records Bureau data evidencing a more than three-fold rise in registered cybercrime cases between 2018 and 2023, the paper argues that while the BSA represents a technologically literate advance over Section 65B of the IEA, the expert-certification requirement, the continuing ambiguity over hash-value protocols, and the absence of clear procedural rules pose a real risk of converting a facilitative provision into a fresh evidentiary bottleneck. The paper concludes with policy recommendations directed at the framing of subordinate legislation, capacity-building of forensic examiners, and harmonisation with the Bharatiya Nagarik Suraksha Sanhita, 2023 and the Information Technology Act, 2000.

Keywords: *Bharatiya Sakshya Adhiniyam 2023; Section 63; electronic evidence; Section 65B; digital forensics; admissibility; certificate of authenticity; Indian Evidence Act 1872.*

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1. Introduction

India's evidentiary architecture underwent its most consequential transformation in over a century when the Bharatiya Sakshya Adhiniyam, 2023 came into force on 1 July 2024, repealing and replacing the Indian Evidence Act, 1872. Enacted alongside the Bharatiya Nyaya Sanhita, 2023 and the Bharatiya Nagarik Suraksha Sanhita, 2023, the BSA was projected by the legislature as a modernisation exercise responsive to a digitally networked society in which transactions, communications, and even the commission of crime increasingly leave their trace not on paper but on servers, devices, and cloud infrastructure.

Electronic evidence – call data records, WhatsApp chats, CCTV footage, e-mail trails, server logs, and forensic disk images – has moved from the periphery to the centre of both civil and criminal adjudication. Yet the law's encounter with this category of evidence has historically been troubled. Sections 65A and 65B, inserted into the Indian Evidence Act, 1872 by the Information Technology Act, 2000, generated nearly two decades of conflicting judicial interpretation before the Supreme Court's three-judge bench in Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal attempted to settle the field in 2020. The BSA, 2023 inherits this jurisprudence almost in its entirety while introducing a textually significant change: a dual-certification requirement under Section 63(4).

This paper interrogates whether the BSA's reform genuinely strengthens the evidentiary value of digital evidence or merely re-codifies old uncertainties in new statutory language, while adding fresh procedural friction through the expert-certification mandate.

1.1 Statement of the Problem

Despite the BSA's stated objective of aligning evidentiary law with technological reality, several open questions remain: who qualifies as an ‘expert’ for the purposes of Part B of the Section 63(4) certificate; whether the dual-certificate requirement is workable in resource-constrained police stations and trial courts; and whether the judge-made flexibility carved out in Arjun Panditrao (permitting courts to summon the certificate through judicial process where a party cannot procure it) survives, textually and practically, under the new Adhiniyam.

1.2 Research Objectives

1. To trace the doctrinal evolution of electronic evidence law in India from Sections 65A–65B of the IEA, 1872 to Sections 61–63 of the BSA, 2023.

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2. To critically examine the structure, conditions, and certification mechanism prescribed under Section 63 of the BSA, 2023.
3. To assess the continuing relevance of Supreme Court precedent – particularly Anvar P.V., Shafhi Mohammad, and Arjun Panditrao – to the interpretation of the new provisions.
4. To examine, using NCRB data, the empirical scale of digital evidence generation in India and its implications for court and forensic infrastructure.
5. To identify gaps and propose reform measures for the effective implementation of the BSA's digital evidence framework.

1.3 Research Questions

- Does Section 63 of the BSA, 2023 cure the defects identified by courts in the operation of Section 65B of the IEA, 1872?
- What is the legal and practical effect of the newly introduced expert-certification requirement under Section 63(4)?
- Is the certificate under Section 63(4) a mandatory condition precedent to admissibility, or can courts continue to relax this requirement as in Shafhi Mohammad?
- What institutional and infrastructural reforms are necessary to operationalise the BSA's digital evidence regime?

1.4 Research Methodology

This study adopts a doctrinal legal research methodology, relying on primary sources – the text of the Bharatiya Sakshya Adhiniyam, 2023, the Indian Evidence Act, 1872, the Information Technology Act, 2000, and reported judgments of the Supreme Court of India and High Courts – supplemented by secondary sources comprising law commission reports, peer-reviewed commentary, and bar association literature. The doctrinal analysis is supplemented by a limited quantitative component drawing on National Crime Records Bureau (NCRB) statistics to contextualise the scale of digital evidence generation, lending the study a law-and-empirics dimension appropriate to contemporary socio-legal research.

1.5 Scope and Limitations

The paper is confined to the law of evidence as applicable within the territory of India and does not undertake a comparative survey of foreign jurisdictions beyond brief references for

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contextual purposes. As the BSA has been in force only since July 2024, reported appellate authority interpreting Section 63 directly remains sparse at the time of writing; the analysis therefore necessarily extrapolates from the settled jurisprudence on the predecessor provision, Section 65B of the IEA, 1872, while flagging points of textual departure.

2. Literature Review

The admissibility of electronic evidence has attracted sustained academic and judicial attention since the Information Technology Act, 2000 first inserted Sections 65A and 65B into the Indian Evidence Act, 1872. Early commentary focused on the novelty of treating a 'computer output' as a document without insisting on production of the underlying original – a marked departure from the primary/secondary evidence dichotomy that had governed paper records since 1872.

A second wave of literature, concentrated between 2014 and 2020, tracked the doctrinal confusion generated by conflicting Supreme Court rulings. Scholars such as those writing in the Supreme Court Cases (SCC) journal and the National Law School journals documented how Anvar P.V. v. P.K. Basheer (2014) imposed a strict mandatory-certificate rule, how Shafhi Mohammad v. State of Himachal Pradesh (2018) attempted to soften that rigidity in the interest of substantive justice, and how the resulting conflict was ultimately referred to a larger bench, producing the definitive ruling in Arjun Panditrao Khotkar (2020). This body of work consistently flagged the practical hardship faced by prosecution and defence alike in procuring Section 65B(4) certificates from third-party service providers and government agencies.

A third and more recent strand of literature, emerging since the enactment of the BSA in December 2023 and its commencement in July 2024, has begun to assess the new Section 63 framework. Initial commentary from law firms and bar associations has been broadly welcoming of the statutory codification of the certificate format in the Schedule but has expressed reservations about the practicability of the dual-certification requirement, particularly the demand for an independent 'expert' certificate under Part B – a requirement with no direct precedent in the 1872 Act regime. Commentators have also noted that the BSA, unlike contemporaneous reform efforts in other common law jurisdictions, does not statutorily define digital forensic standards such as hash value verification or chain-of-custody documentation, leaving these matters to evolve through subordinate rules and judicial interpretation.

This paper situates itself within this third strand, offering an integrated doctrinal and empirical

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assessment that connects the structural design of Section 63 to the institutional capacity constraints revealed by NCRB cybercrime data.

3. Historical Background: From the Indian Evidence Act, 1872 to the Bharatiya Sakshya Adhiniyam, 2023

3.1 The Pre-Digital Framework

The Indian Evidence Act, 1872 was drafted at a time when the only conceivable form of documentary evidence was paper. Its primary/secondary evidence framework (Sections 62–65 of the 1872 Act) assumed that the original of a document could always, in principle, be produced before the court, and that secondary evidence was a fallback to be permitted only in defined circumstances.

3.2 The Information Technology Act, 2000 Amendments

The arrival of computerised records exposed the inadequacy of this framework. The Information Technology Act, 2000 responded by inserting Section 3 (defining digital signature and electronic record within the Evidence Act's definition of 'evidence') along with Sections 65A and 65B, creating a special, self-contained code for proving the contents of electronic records through a certified 'computer output', thereby dispensing with production of the original electronic device in most circumstances.

3.3 Two Decades of Judicial Contestation

The certificate requirement under Section 65B(4) became the principal battleground. In State (NCT of Delhi) v. Navjot Sandhu (2005), arising out of the Parliament Attack case, the Supreme Court treated Section 65B as one of several available routes of proof, holding that secondary evidence of electronic records could also be led under the general law (Sections 63 and 65 of the 1872 Act) even without a Section 65B certificate. This relatively permissive position prevailed for nearly a decade.

In Anvar P.V. v. P.K. Basheer (2014), a three-judge bench overruled this approach, holding that Sections 65A and 65B constitute a complete and exhaustive code for the proof of electronic records, and that an electronic record could not be admitted through oral evidence or the general secondary evidence provisions if the procedure under Section 65B was not followed. The certificate under Section 65B(4) was held to be a mandatory condition precedent to admissibility.

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This rigidity proved difficult to administer where the certifying authority – frequently a telecom company, bank, or other third party – was beyond the control of the party seeking to rely on the evidence. In Shafhi Mohammad v. State of Himachal Pradesh (2018), a two-judge bench held that the requirement of a certificate was procedural, not substantive, and could be relaxed in the interest of justice where the party adducing the evidence was not in possession of the device in question.

The resulting conflict between a three-judge bench (Anvar) and a two-judge bench (Shafhi Mohammad) was resolved in Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal (2020), where a three-judge bench reaffirmed Anvar P.V. as correctly decided and overruled Shafhi Mohammad. Importantly, the Court clarified that a Section 65B(4) certificate is unnecessary only where the original electronic device itself is produced before the court; where secondary evidence (such as a printout or copy) is relied upon, the certificate remains mandatory. The Court further held that where the requisite certificate cannot be obtained from a person in control of the device, the party seeking to rely on the record may apply to the court to direct production of the certificate through appropriate judicial process, including by summoning the relevant authority.

Figure 2 below maps this judicial trajectory.

Figure 2: Judicial Evolution of Electronic Evidence Law in India (2000-2024)

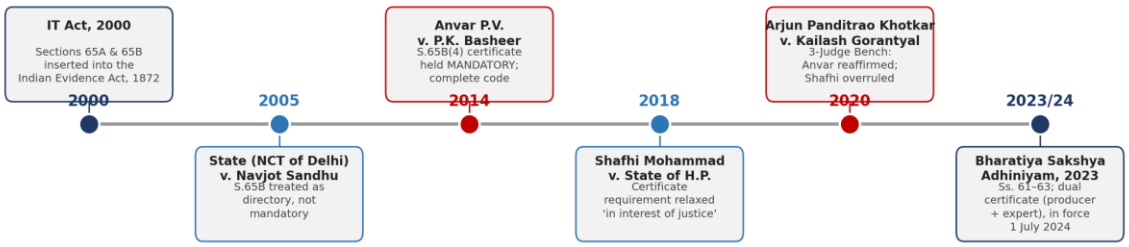

Figure 2: Judicial Evolution of Electronic Evidence Law in India (2000–2024)

Source: Author's compilation from reported Supreme Court judgments cited in the text.

3.4 Enactment of the Bharatiya Sakshya Adhiniyam, 2023

The Law Commission and the Ministry of Home Affairs' broader review of India's colonial-era criminal statutes culminated in the introduction of three replacement codes in Parliament in 2023: the Bharatiya Nyaya Sanhita (replacing the Indian Penal Code, 1860), the Bharatiya

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Nagarik Suraksha Sanhita (replacing the Code of Criminal Procedure, 1973), and the Bharatiya Sakshya Adhiniyam (replacing the Indian Evidence Act, 1872). All three received presidential assent in December 2023 and came into force with effect from 1 July 2024. The BSA retains roughly 80–90 per cent of the textual content of the 1872 Act but introduces material changes on electronic evidence, the treatment of confessions, and witness protection, among other areas relevant to digital-age adjudication.

4. The Legal Framework under the Bharatiya Sakshya Adhiniyam, 2023

4.1 Expanded Definition of 'Document' – Section 2(1)(d)

Section 2(1)(d) of the BSA defines 'document' to expressly include electronic and digital records, with illustrations clarifying that material on emails, server logs, computers, laptops, smartphones, messaging applications, websites, and voicemail recordings stored on digital devices qualify as documents. This express inclusion removes the residual ambiguity that existed under the 1872 Act, where electronic records were brought within the evidentiary regime only through the special device of Sections 65A and 65B rather than through the primary definitional provision.

4.2 Non-Exclusion of Electronic Evidence – Section 61

Section 61 of the BSA provides that nothing in the Adhiniyam shall operate to deny the admissibility of an electronic or digital record in evidence merely on the ground that it is an electronic or digital record, and that such a record shall, subject to Section 63, have the same legal effect, validity, and enforceability as any other document. This declaratory provision did not exist in equivalent express form under the 1872 Act and signals a clear legislative intent to place electronic records on a footing of formal parity with paper documents.

4.3 Mode of Proof – Section 62

Section 62 provides that the contents of electronic records may be proved in accordance with the procedure laid down in Section 63, mirroring the structure of the erstwhile Section 65A of the 1872 Act, which directed parties to Section 65B for the detailed conditions of admissibility.

4.4 Admissibility Conditions – Section 63

Section 63(1) deems any 'computer output' – information contained in an electronic record that is printed on paper, or stored, recorded, or copied in optical or magnetic media or semiconductor memory, whether produced by a computer or any communication device – to

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also be a ‘document’, admissible in any proceeding without further proof or production of the original, provided the conditions of the section are satisfied. This provision is, in substance, the direct successor of Section 65B(1) of the 1872 Act, retaining the ‘computer output’ formulation but extending its language to expressly cover ‘any communication device’, a phrase aimed at capturing smartphones and similar devices that may not, in a strict technical sense, have been ‘computers’ within the meaning of the older provision.

Section 63(2) lays down the substantive conditions for admissibility – in summary, that the computer or communication device was in regular use, that the information was regularly fed into it in the ordinary course of activities, that the device was operating properly during the material period (or, if not, that any malfunction did not affect the accuracy of the record), and that the information reproduced is derived from information so fed into the device. These conditions are substantially carried forward from Section 65B(2) of the 1872 Act.

4.5 The Dual-Certification Mechanism – Section 63(4) and the Schedule

The most significant structural departure introduced by the BSA lies in Section 63(4), read with the Schedule. Under the 1872 Act, a single certificate – signed by a person occupying a responsible official position in relation to the operation of the device or the management of the relevant activities – sufficed to satisfy the procedural requirement. The BSA's Schedule splits this certificate into two distinct parts: Part A, to be completed by the person responsible for the device (broadly mirroring the erstwhile s.65B(4) certifier), and Part B, to be completed by an expert. Figure 3 below illustrates this certification pathway diagrammatically.

Figure 3: Certification Pathway for Admissibility of Electronic Evidence under Section 63, Bharatiya Sakshya Adhiniyam, 2023

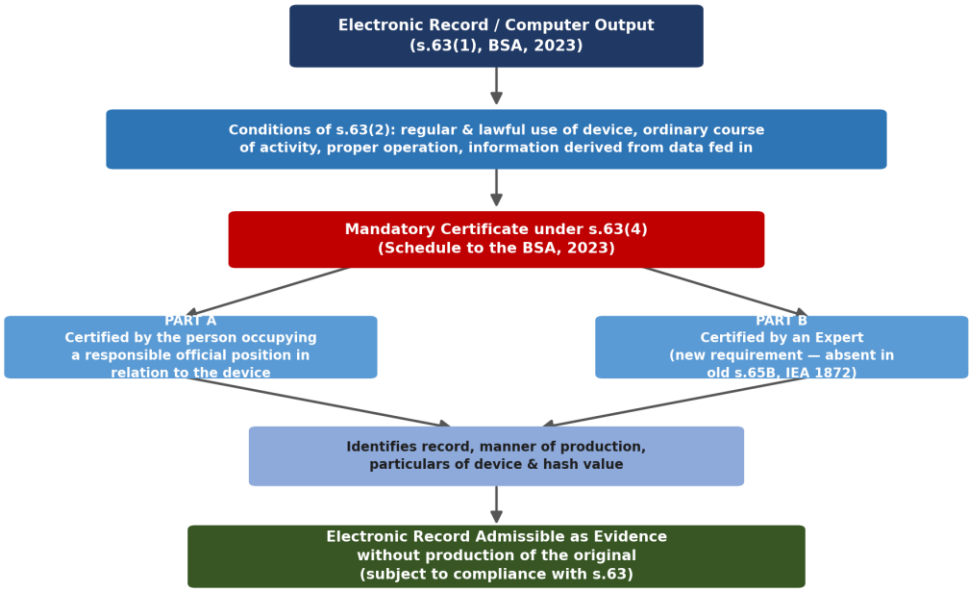

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Figure 3: Certification Pathway under Section 63, BSA, 2023

Source: Author's diagrammatic representation of Section 63(1)–(4) and the Schedule, BSA, 2023.

Table 1: Comparative Overview – Indian Evidence Act, 1872 vs. Bharatiya Sakshya Adhiniyam, 2023

Aspect	Indian Evidence Act, 1872 (Ss. 65A–65B)	Bharatiya Sakshya Adhiniyam, 2023 (Ss. 61–63)
Governing provision	Section 65B, inserted by the IT Act, 2000	Section 63, read with Sections 61 and 62
Definition of 'document'	Did not expressly include electronic records within Section 3's definition of 'document'; treated separately	Section 2(1)(d) expressly includes electronic and digital records within the definition of 'document'
Non-exclusion clause	No equivalent express clause	Section 61 clarifies that evidence shall not be denied admissibility merely because it is in electronic form
Certificate requirement	Single certificate under s.65B(4) by a person occupying a responsible official position in relation to the device	Dual certificate under s.63(4): Part A by the person responsible for the device AND Part B by an independent expert
Certificate format	No prescribed statutory format; practice varied across courts and agencies	Standardised format prescribed in the Schedule to the BSA, 2023
Role of expert opinion	Court could consult an examiner of electronic evidence under s.79A, IT Act, 2000 at its discretion	Expert certification is built into the admissibility mechanism itself under s.63(4)
Judicial gloss	Anvar P.V. (2014) – mandatory; Shafhi Mohammad (2018) – directory/relaxable; Arjun Panditrao (2020) – mandatory,	Arjun Panditrao's interpretation of s.65B is generally treated as continuing to govern the substantially re-enacted s.63

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	subject to court-ordered production	framework

Source: Author's compilation from the Bharatiya Sakshya Adhiniyam, 2023 and the Indian Evidence Act, 1872.

4.6 Presumptions Relating to Electronic Records

Beyond Section 63, the BSA carries forward a cluster of presumptive provisions (broadly corresponding to Sections 81A, 85A–85C and 88A of the 1872 Act) that ease the prosecutorial or litigant burden of independently proving the genuineness of certain categories of electronic records, such as those exchanged through secure electronic signatures or government databases. These presumptions operate as rebuttable evidentiary shortcuts rather than independent gateways to admissibility – the record must still satisfy Section 63 before any such presumption can operate upon it.

Table 2: Selected Presumptive Provisions Relevant to Electronic Records under the BSA, 2023

Provision	Substance of Presumption
Section 79	Presumption as to the genuineness of certified electronic records exchanged through certified service providers
Section 85	Presumption as to electronic agreements and the attribution of an electronic record to its purported originator
Section 88	Presumption as to the integrity of electronic records maintained by a regulatory or government authority in the ordinary course of business
Section 90	Presumption as to the accuracy of electronic messages forwarded by an originator through an electronic mail server

Source: Author's compilation from the Bharatiya Sakshya Adhiniyam, 2023.

5. Judicial Interpretation: Continuing Relevance of Pre-BSA Precedent

Because Section 63 of the BSA is, in the words of recent commentary, a ‘direct successor’ to Section 65B of the 1872 Act and re-enacts its core framework, the weight of informed opinion – and early post-2024 case law – holds that the interpretative principles laid down in Arjun Panditrao Khotkar continue to apply to Section 63, including the holding that a certificate is unnecessary where the original device is itself produced, and that courts may direct the

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production of a certificate through judicial process where a party genuinely cannot procure one independently.

This continuity is significant because it preserves an important safety valve: a party who is not in custody or control of the source device – for instance, a complainant relying on a service provider's server logs – is not rendered remediless merely because the entity in possession of the device declines to furnish a certificate voluntarily. At the same time, the dual-certification requirement under Section 63(4) introduces a fresh, untested layer – the Part B expert certificate – on which the Arjun Panditrao line of authority offers no direct guidance, since that requirement post-dates the judgment by several years.

5.1 Summary of Leading Precedents

- State (NCT of Delhi) v. Navjot Sandhu (2005) 11 SCC 600 – treated Section 65B as one available, non-exclusive mode of proof; later disapproved on this point.
- Anvar P.V. v. P.K. Basheer (2014) 10 SCC 473 – held Sections 65A–65B to be a complete code; certificate mandatory for secondary electronic evidence.
- Sanjaysinh Ramrao Chavan v. Dattatray Gulabrao Phalke (2015) 3 SCC 123 – reiterated that source and authenticity are the touchstones of electronic evidence.
- Shafhi Mohammad v. State of Himachal Pradesh (2018) 2 SCC 801 – relaxed the certificate requirement where the party was not in possession of the device; later overruled.
- Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal (2020) 7 SCC 1 – three-judge bench; reaffirmed Anvar P.V., overruled Shafhi Mohammad, and clarified the procedure for judicial compulsion of certificates.

6. Critical Analysis: Strengths and Unresolved Challenges

6.1 Strengths of the BSA's Approach

1. Definitional clarity: bringing electronic records within the primary definition of ‘document’ under Section 2(1)(d), rather than treating them as a special category, reduces interpretive friction at the threshold stage.
2. Codified certificate format: the statutory Schedule prescribing the precise content of the Section 63(4) certificate addresses a long-standing complaint that, under the 1872 Act, certificate formats varied widely across police stations, banks, and telecom companies, often leading to objections on technical grounds unrelated to the substance of the evidence.

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3. Express non-discrimination clause: Section 61 forecloses arguments that electronic records are inherently suspect or of lesser evidentiary status than paper records, reinforcing the direction set by the courts since Anvar P.V.
4. Broader device coverage: the phrase ‘any communication device’ in Section 63(1) future-proofs the provision against arguments that smartphones, tablets, or IoT devices fall outside the strict definition of a ‘computer’.

6.2 Unresolved Challenges

1. Undefined ‘expert’: the BSA does not define who qualifies as an ‘expert’ for Part B of the Section 63(4) certificate, nor does it prescribe a system of accreditation. Without subordinate rules or a notified panel of certified examiners, investigating agencies and litigants face genuine uncertainty as to whom to approach, and courts may be confronted with disputes over the qualification of self-styled experts.
2. Capacity constraints: India's network of government-recognised forensic science laboratories is limited relative to the volume of digital evidence now generated (see Section 7 below). A statutory mandate for expert certification, without commensurate investment in forensic infrastructure, risks creating new bottlenecks and delays, particularly in trial courts outside metropolitan centres.
3. Hash value and chain-of-custody protocols: while industry best practice treats cryptographic hash verification as the gold standard for establishing the integrity of a digital exhibit, the BSA does not itself mandate a specific hashing standard or chain-of-custody procedure, leaving this to evolve through forensic manuals, police standing orders, and judicial practice directions – an approach that risks inconsistency across States.
4. Burden on the average litigant: in civil and quasi-criminal proceedings (e.g., cheque-bounce matters, matrimonial disputes involving WhatsApp or call-record evidence), an ordinary litigant may find it considerably more difficult than a State investigating agency to identify, engage, and pay for an independent expert, raising access-to-justice concerns absent a clear, affordable empanelment mechanism.
5. Interaction with the Arjun Panditrao safety valve: it remains to be authoritatively settled whether a court's power to direct production of a certificate through judicial process extends with equal force to the new Part B expert certificate, or whether the expert requirement will be treated as a more rigid, non-relaxable condition given its express statutory novelty.

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"The legislature has made a significant step forward... However, a doubt hangs over the requirement for an 'expert' outlined in Part-B of the Certificate under Section 63 of the BSA." – commentary on the BSA, 2023, reflecting a representative view among early reviewers of the provision.

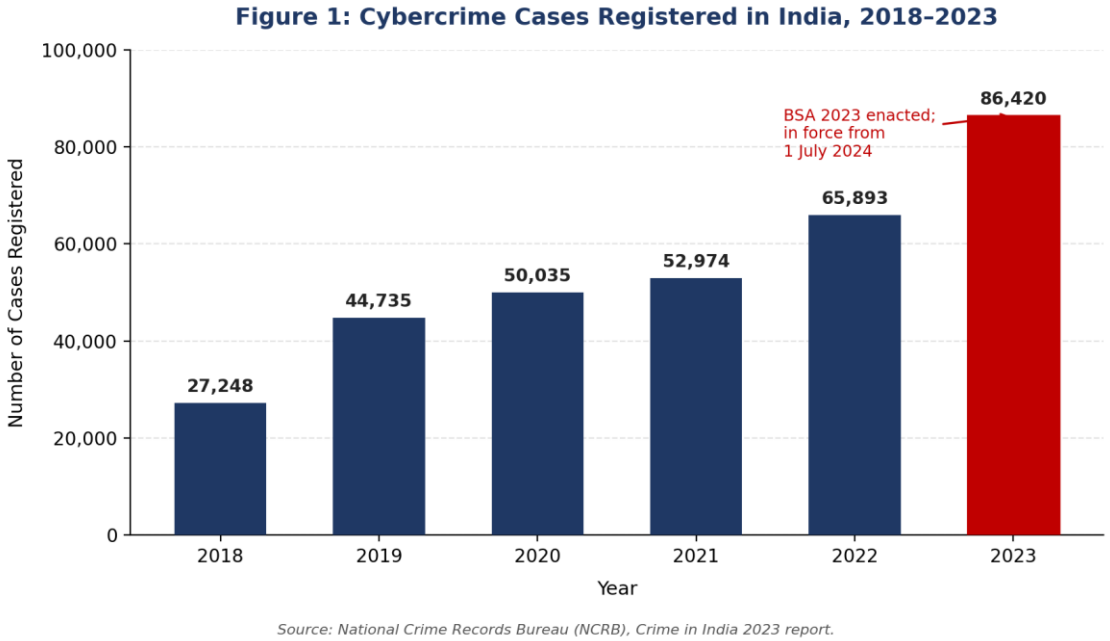

Figure 1: Cybercrime Cases Registered in India, 2018–2023

Source: National Crime Records Bureau (NCRB), Crime in India 2023 report.

7. The Empirical Dimension: Scale of Digital Evidence Generation in India

A purely doctrinal reading of Section 63 understates the practical stakes involved in getting the certification mechanism right. Data published by the National Crime Records Bureau (NCRB) in its annual Crime in India report shows a steep and sustained increase in registered cybercrime cases – each of which is, by definition, substantially evidenced through electronic records – over the years immediately preceding the BSA's enactment.

As Figure 1 illustrates, registered cybercrime cases rose from 27,248 in 2018 to 86,420 in 2023, a more than three-fold increase over six years, with a particularly sharp 31.2 per cent year-on-year rise between 2022 and 2023 alone. Fraud-related offences accounted for the overwhelming majority – approximately 68.9 per cent – of cases registered in 2023, followed by sexual exploitation and extortion. States such as Karnataka, Telangana, and Uttar Pradesh consistently report the highest absolute caseloads, reflecting both higher internet penetration and more robust cybercrime reporting infrastructure in these jurisdictions.

This trajectory carries direct implications for the BSA's evidentiary architecture: every one of

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these cases will, at the investigation or trial stage, generate electronic records – server logs, transaction trails, device images, or communication intercepts – that must satisfy Section 63 before they can be relied upon in court. If the expert-certification requirement under Section 63(4) is to be administered without becoming a structural bottleneck, India's forensic infrastructure – including State Forensic Science Laboratories, the Central Forensic Science Laboratories, and the National Cyber Forensic Laboratory established in Hyderabad – will need to scale in step with this caseload growth, supported by clear rules on expert empanelment and turnaround timelines.

Table 3: Cybercrime Cases Registered in India (NCRB Data Summary)

Year	2018	2019	2020	2021	2022/2023
Cases Registered	27,248	44,735	50,035	52,974	65,893 / 86,420

Source: National Crime Records Bureau, Crime in India 2023; Ministry of Home Affairs, Lok Sabha replies.

8. A Brief Comparative Glance

While a full comparative analysis is beyond the scope of this paper, a brief reference to other common law jurisdictions illuminates the choices made by the BSA. The United Kingdom abandoned a parallel certificate requirement for computer-generated documents in civil proceedings in 1995 (and largely in criminal proceedings thereafter), relying instead on a rebuttable common law presumption that mechanical and computer devices function correctly, subject to challenge by the opposing party. The United States, under Federal Rules of Evidence 901 and 902(13)–(14), permits self-authentication of electronic evidence through a certification of a qualified person regarding the output of a process or system, without requiring a second, independent expert sign-off as a default rule. Viewed against this backdrop, the BSA's dual-certification model is comparatively more stringent, reflecting a conscious legislative choice to prioritise verified authenticity over procedural ease – a trade-off whose wisdom will ultimately be tested by the volume of litigation passing through Indian courts in the coming years.

9. Conclusion and Recommendations

9.1 Conclusion

The Bharatiya Sakshya Adhiniyam, 2023 represents a considered, if incomplete, modernisation of India's law of digital evidence. By relocating electronic records within the primary definition

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of 'document', by inserting an express non-discrimination clause in Section 61, and by codifying a standardised certificate format in the Schedule to Section 63, the BSA addresses several of the practical and doctrinal pain points that plagued two decades of litigation under Section 65B of the Indian Evidence Act, 1872. The settled jurisprudence of the Supreme Court – culminating in Arjun Panditrao Khotkar – continues, in substantial part, to inform the interpretation of the new provisions, lending a welcome measure of continuity.

At the same time, the BSA's signature innovation – the dual-certification requirement under Section 63(4) – introduces a new and as yet under-specified burden whose workability depends heavily on subordinate rule-making, forensic capacity-building, and judicial clarification. Whether the BSA ultimately enhances or merely relocates the evidentiary friction long associated with digital evidence in India will depend less on the text of Section 63 itself than on the institutional ecosystem – expert empanelment, forensic laboratory capacity, and procedural rules – that the executive and judiciary build around it in the years following its commencement.

9.2 Recommendations

1. The Central Government should notify rules under the BSA specifying the qualifications, accreditation process, and a publicly accessible panel of 'experts' competent to certify under Part B of the Section 63(4) Schedule, to remove the present definitional vacuum.
2. State Forensic Science Laboratories and the National Cyber Forensic Laboratory should be allocated dedicated budgetary support, calibrated to NCRB caseload projections, to prevent expert-certification turnaround times from becoming a de facto barrier to timely trials.
3. A simplified, time-bound, and affordable expert-empanelment mechanism should be devised for civil and quasi-criminal litigants (e.g., in cheque-dishonour, matrimonial, or consumer disputes) who lack the institutional resources of State investigating agencies.
4. The Supreme Court or High Courts should, at the earliest appropriate opportunity, clarify whether the Arjun Panditrao safety valve of court-directed certificate production extends to the Part B expert certificate, to avoid a repeat of the decade-long uncertainty that attended Section 65B(4).
5. Standardised technical protocols for hash-value generation and chain-of-custody documentation should be issued, ideally through a uniform practice direction applicable

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across States, to ensure consistency in how Section 63(2)'s conditions are demonstrated in practice.

6. Periodic empirical audits – tracking admissibility objections, certificate-related adjournments, and conviction rates in cases substantially dependent on electronic evidence – should be institutionalised, possibly through the NCRB or the Bureau of Police Research and Development, to inform future amendments to Section 63.

References

Statutes

Bharatiya Sakshya Adhiniyam, 2023 (Act No. 47 of 2023).

Indian Evidence Act, 1872 (Act No. 1 of 1872).

Information Technology Act, 2000 (Act No. 21 of 2000).

Bharatiya Nagarik Suraksha Sanhita, 2023 (Act No. 46 of 2023).

Bharatiya Nyaya Sanhita, 2023 (Act No. 45 of 2023).

Cases

Anvar P.V. v. P.K. Basheer, (2014) 10 SCC 473.

Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal, (2020) 7 SCC 1.

Sanjaysinh Ramrao Chavan v. Dattatray Gulabrao Phalke, (2015) 3 SCC 123.

Shafhi Mohammad v. State of Himachal Pradesh, (2018) 2 SCC 801.

State (NCT of Delhi) v. Navjot Sandhu, (2005) 11 SCC 600.

Tomaso Bruno v. State of Uttar Pradesh, (2015) 7 SCC 178.

Vikram Singh v. State of Punjab, (2017) 8 SCC 518.

Reports and Official Sources

National Crime Records Bureau, Crime in India 2023 (Ministry of Home Affairs, Government of India).

Ministry of Home Affairs, Government of India, Lok Sabha Unstarred Question No. 452, answered on 2 December 2025.

Press Information Bureau, Government of India, releases on cybercrime statistics (various years).

Secondary Sources

Bhatt & Joshi Associates, 'Electronic Evidence Under BSA 2023: Section 63 Certificate Requirements & Supreme Court Interpretation' (2026).

ISSN: 2582-6433

Corpotech Legal, 'Admissibility of Electronic Evidence, Certificate and Hash Value, S 63 Bharatiya Sakshya Adhiniyam' (2024).

Drishti Judiciary, 'Electronic Evidence under Bhartiya Sakshya Adhiniyam, 2023' (online commentary).

KS&K Legal, 'Section 63 BSA 2023: Admissibility of Electronic Evidence' (2025).

Law.asia, 'Electronic Evidence Changes Will Modernise Banking Practices' (2026).

LeadIndia Law, 'Explain the Admissibility of Electronic Evidence Under the Bhartiya Sakshya Adhiniyam Act 2023' (2024).

LiveLaw, 'Understanding E-Evidence Under Bhartiya Sakshya Adhiniyam 2023: Key Provisions and Implications' (2024).

RK Dewan & Co., 'Electronic Records Now Governed by Section 63 of the Bhartiya Sakshya Adhiniyam, 2023' (2025).

SCC Online Blog, 'The Decision in Arjun Panditrao: Admissibility of Electronic Evidence in India Continues to Face Hurdles' (2021).