
BHARATIYA SAKSHYA ADHINIYAM, 2023: A LOGICAL SHIFT FROM THE INDIAN EVIDENCE ACT, 1872

Nikita Mishra, Thakur Ramnarayan College of Law, Affiliated to University of Mumbai,
Mumbai, Maharashtra, India.

ABSTRACT

This paper delves into the increasing importance of electronic evidence within India's legal framework, charting its evolution from the Indian Evidence Act of 1872 to the contemporary guidelines set forth by the Bharatiya Sakshya Adhiniyam, 2023. As digital technology advances at a rapid pace, courts are increasingly turning to electronic records—such as emails, digital documents, CCTV footage, and online communications—to resolve disputes more efficiently. This study employs a doctrinal approach supported by a thorough analysis of relevant statutory provisions and judicial rulings. The research identifies various legal challenges associated with electronic evidence, focusing on critical issues such as admissibility, authenticity, and reliability. It explores how judicial interpretations have influenced this area of law, spotlighting landmark cases like *Anvar P.V. v. P.K. Basheer*, which highlighted the necessity for strict adherence to certification requirements. Furthermore, it examines *Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal*, a case that reaffirmed these certification needs while also allowing for some degree of flexibility. Additionally, this paper evaluates how the Bharatiya Sakshya Adhiniyam, 2023 seeks to simplify evidentiary processes and explicitly recognizes electronic records as valid documentary evidence. It emphasizes key provisions aimed at striking a balance between procedural efficiency and evidentiary integrity, ultimately enhancing the effectiveness of India's legal system. The study finds that while the new legislation is a positive step forward and aligns well with technological advancements, several practical challenges still exist. These challenges include the need for technical expertise, the risk of data manipulation, and gaps in implementation. To effectively use electronic evidence and achieve fair and reliable justice outcomes, ongoing judicial development and capacity-building are crucial.

Keywords: Electronic Evidence, Bharatiya Sakshya Adhiniyam 2023, Indian Evidence Act 1872, Section 65B.

1. INTRODUCTION

The rapid technological advancements of the late 20th and early 21st centuries have profoundly changed how we view evidence. Today, most commercial transactions, financial activities, government communications, and personal interactions occur online. As a result, various forms of evidence—such as emails, digital signatures, CCTV footage, call data records, GPS logs, WhatsApp messages, and social media content—have become increasingly vital in legal proceedings. This shift presents courts with the challenge of evaluating the validity, reliability, and admissibility of electronic records. With the rise of crimes involving electronic devices keeping pace with technological progress, the legal system faces new hurdles every day. New devices are introduced constantly, and the widespread use of computers along with advancements in information technology has transformed society. Recognizing the limitations of the original legislative framework, lawmakers revised the Evidence Act of 1872 by integrating the Information Technology Act of 2000. This update introduced Sections 65A and 65B, which created a specific set of guidelines for evaluating the admissibility of electronic records in court. However, implementing these provisions has led to significant legal discussions and uncertainties, particularly regarding the mandatory certification requirement outlined in Section 65B(4).¹ The Bharatiya Sakshya Adhinyam, 2023 was introduced to tackle current challenges by updating India's law of evidence. This Act officially recognizes electronic evidence as an important type of admissible evidence and provides clear guidelines for how it should be presented in courts. By setting standards for authenticity, chain of custody, and reliability, the legislation aims to connect technological advancements with judicial practices. Its goal is to simplify the process of introducing electronic evidence in courts, reducing reliance on complicated formalities that have previously posed significant obstacles. The Bharatiya Sakshya Adhinyam takes a practical and technology-driven approach to the acceptance of electronic evidence. According to this law, courts can accept electronic records as long as they are properly verified for authenticity, reliability, and chain of custody. In contrast to Section 65B of the Indian Evidence Act, which enforced strict procedural rules, this new legislation emphasizes a more substantive evaluation. This allows courts to assess the evidentiary value based on the context of the information rather than just adhering to formalities. Several important court decisions have highlighted the limitations of Section 65B. In the case of *Anvar P.V. v. P.K. Basheer*, the Supreme Court ruled that electronic records must

¹ *Admissibility Of Electronic Evidence Under The Bharatiya Sakshya Adhinyam, 2023: A Critical Analysis Of Judicial Interpretation*, (Mar. 6, 2026), <https://share.google/ts5K9DzjLIA4tS5K6>.

be accompanied by proper certification to be deemed admissible in court. Although this requirement aims to maintain the integrity of evidence, it often results in the rejection of crucial digital information that could help clarify a case's facts.²

1.1 AIM OF THE STUDY

This study aims to thoroughly explore the shift from the Indian Evidence Act of 1872 to the Bharatiya Sakshya Adhiniyam of 2023. We will analyze whether the changes brought about by this new law constitute a logical, reasonable, and effective reform of India's evidence law.

1.2 HYPOTHESIS

HO- The Bharatiya Sakshya Adhiniyam, 2023, fails to present any meaningful or logical advancements compared to the Indian Evidence Act of 1872. The amendments made are inadequate to improve the overall effectiveness of the law regarding evidence.

H1- the Bharatiya Sakshya Adhiniyam, 2023 brings essential and well-thought-out reforms to the Indian Evidence Act of 1872. These updates enhance the efficiency, fairness, and flexibility of evidence law. They are particularly important in addressing modern advancements, such as the use of electronic evidence.

1.3 OBJECTIVES

- To compare the Indian Evidence Act, 1872 and the Bharatiya Sakshya Adhiniyam, 2023.
- To analyze the logical basis of the changes introduced.
- To evaluate the impact on fairness and efficiency in the law of evidence.

1.4 METHODOLOGY

This study employs a doctrinal research methodology, focusing exclusively on secondary data gathered from reputable online sources. The research draws on official government websites,

² *Electronic Evidence Under Bharatiya Sakshya Adhiniyam: A Critical Analysis*, (Jan. 19, 2026), <https://www.ijllr.com/post/electronic-evidence-under-bharatiya-sakshya-adhiniyam-a-critical-analysis>

legal databases, academic journals, and scholarly articles to analyze the provisions of the Indian Evidence Act of 1872 and the Bharatiya Sakshya Adhiniyam of 2023. By using a comparative and analytical approach, we evaluate the changes brought about by the new legislation and assess their logical justifications. Additionally, we reference relevant case laws, expert commentaries, and legal opinions found on credible websites to ensure both accuracy and reliability in our findings.

2. WHAT IS ELECTRONIC EVIDENCE?

The term "Evidence" originates from the Latin word "evidera," which means to ascertain or prove. As stated by Taylor, evidence encompasses "all means which tend to prove or disprove any matter or fact, the truth of which is to be submitted to judicial investigation."

Under the Bhartiya Sakshya Adhiniyam 2023, evidence is classified into two primary categories:

1. Oral Evidence

2. Documentary Evidence

Notably, the definitions of evidence now include "electronic record" and "digital record," reflecting the evolving nature of information in our digital age. Electronic evidence, often referred to as digital evidence, is stored electronically or transmitted in a digital format. This category encompasses various forms, including digital photographs, audio files, emails, word processing documents, CCTV footage, ATM transaction reports, browsing history, files saved on devices, electronic signatures, and other electronic media. Electronic evidence can be instrumental in asserting or denying facts relevant to both criminal and civil proceedings. However, it is crucial that this form of evidence remains authentic and untampered; only then can it hold legal weight in a court of law. Thus, electronic evidence serves as a modern counterpart to traditional physical evidence, reinforcing its significance in today's judicial landscape.³

³ Sakshi Kumari, *Development Of Law On Electronic Evidence*, YOUR LAW ARTICLE (Aug. 2, 2025), <https://www.yourlawarticle.com/post/development-of-law-on-electronic-evidence>.

3. ROLE OF DIGITAL EVOLUTION IN CRIMINAL LAWS

The Bharatiya Sakshya Adhiniyam marks a significant evolution in how evidence is managed within the Indian legal system. This new law aims to modernize the processes of obtaining, preserving, and presenting evidence in court, while still retaining many elements from the Indian Evidence Act. One of the most notable advancements introduced by the BSA is the formal recognition of electronic evidence.

Now, the law explicitly identifies ‘electronic and digital records’ as valid forms of primary evidence. This category encompasses various digital documents, including emails, server logs, voicemail messages, and locational data stored on electronic devices. By adopting this updated approach, the law acknowledges society's digital transformation and strives to align legal standards with contemporary technological advancements. As a result, electronic evidence can be treated fairly in court, which also facilitates faster investigations and trial procedures.

However, this shift towards accepting electronic evidence comes with potential challenges regarding its credibility. The Supreme Court has raised concerns about the risks of tampering with digital records. Without proper safeguards in place, relying solely on electronic evidence could compromise justice. Therefore, it may be essential for the law to establish standardized certification processes for digital records to ensure their authenticity and prevent misuse.⁴

4. COMPARATIVE ANALYSIS: IEA 1872 vs BSA 2023

o *DEFINITION AND TERMINOLOGY*

IEA 1872- The Indian Evidence Act of 1872 includes outdated terms like “Vakil” and “Barrister,” as well as references to the “Crown,” which no longer resonate with contemporary India.

BSA 2023- In contrast, the new BSA 2023 updates these archaic terms to modern alternatives such as “Advocate.” It also eliminates colonial-era references, ensuring that the law reflects the current societal context in India. Notably, the definition of documents now encompasses digital forms.

⁴ <https://ijirl.com/wp-content/uploads/2025/02/EVOLUTION-OF-ELECTRONIC-EVIDENCE-NAVIGATING-THE-ADMISSIBILITY-OF-THE-NEW-CRIMINAL-LAWS-IN-INDIA.pdf>.

IEA 1872- When it comes to digital and electronic evidence, the IEA of 1872 treated electronic records primarily as secondary evidence, leading to procedural ambiguities that limited their admissibility in court.

BSA 2023- However, under the BSA 2023, digital records—including electronic statements, emails, and online transactions—are recognized as primary evidence. The updated law provides clear guidelines for authentication, digital signatures, and verification processes, thereby streamlining court proceedings and enhancing overall efficiency.

○ ***BURDEN AND ADMISSIBILITY RULES***

IEA 1872- The IEA of 1872 established uniform rules for the burden of proof; however, these rules did not effectively tackle the challenges posed by modern digital contexts.

BSA 2023-In contrast, the BSA of 2023 offers clear guidance regarding the burden of proof for electronic evidence, such as metadata and digital signatures. This updated framework allows for greater flexibility in admissibility, addressing the evolving needs of today’s judicial system.

○ ***LANGUAGE MODERNIZATION AND INCLUSIVITY***

IEA 1872- The IEA of 1872 established uniform rules for the burden of proof; however, these rules did not effectively tackle the challenges posed by modern digital contexts.

BSA 2023- In contrast, the BSA of 2023 offers clear guidance regarding the burden of proof for electronic evidence, such as metadata and digital signatures. This updated framework allows for greater flexibility in admissibility, addressing the evolving needs of today’s judicial system.

○ ***STRUCTURAL AND PROCEDURAL CHANGES***

IEA 1872- The Indian Evidence Act of 1872 consisted of 167 sections and was structured to meet the judicial needs of the 19th century.

BSA 2023- In contrast, the updated BSA of 2023 now includes 170 sections. This modern legislation introduces new chapters focused on electronic evidence, offers procedural guidelines for managing digital records, and outlines special protocols for handling vulnerable

witnesses. Additionally, outdated sections have been either repealed or consolidated to enhance clarity and relevance.⁵

5. SEC. 65B OF INDIAN EVIDENCE ACT, 1872

Section 65B focuses on electronic devices and the specific conditions under which evidence is recorded. It clearly outlines the necessary requirements for these devices during the evidence-gathering process. In particular, Sub-Section 1 of Section 65B provides a definition of what constitutes computer output. By analyzing this section alongside Section 2 of the Information

Technology Act of 2000, we can determine that any electronic device capable of storing, processing, and transmitting information—such as computers, mobile phones, tape recorders, and video recorders—falls under the category of electronic devices. Collectively, we refer to these as "computer output."⁶

6. ANVAR P.V. v. P.K. BASHEER AND ORS.

RAJASTHAN HIGH COURT

In a civil writ petition, the petitioner challenged the order of the Rent Tribunal, which allowed the respondent to submit electronic evidence along with a self-issued certificate under Section 65-B of the Evidence Act, 1872. The Single Judge Bench, led by Justice Anoop Kumar Dhand, ruled that a certificate under Section 65-B must be issued by the individual who originally recorded the video. This requirement ensures that only the original device holder can authenticate such evidence, rather than someone who received it later.

BACKGROUND

The case emerged from an application submitted by the respondent to the petitioner at the Rent Tribunal, pursuant to Section 21 of the Rajasthan Rent Control Act, 2001. The Tribunal permitted the respondent to present electronic evidence in the form of a Pen Drive and a CD.

⁵ Namrata jana, *Comparing Bharatiya shakshya Adhinyam, 2023 and Indian Evidence law, 1872*, Legal Blur (Dec. 3, 2025), <https://legalblur.com/comparing-bharatiya-shakshya-adhinyam-2023-and-indian-evidence-law1872/>.

⁶ Sneha Mahawar, *All you need to know about Section 65 of the Indian Evidence Act, 1872 - iPleaders*, IPleaders (Apr. 3, 2022), <https://blog.ipleaders.in/all-you-need-to-know-about-section-65-of-the-indian-evidence-act1872/>.

These items were accompanied by a certificate issued by the respondent under Section 65-B of the Evidence Act, 1872.

Dissatisfied with the Tribunal's decision to accept this electronic evidence, the petitioner filed a petition challenging it. The petitioner contended that since the original recording was made on another person's device, it was that individual who should have issued the required Section 65-B certificate, rather than the respondent.

ANALYSIS AND DECISION

The Court noted that the video in question was recorded on another person's device. This video was later transferred to the respondent's device, which subsequently produced the relevant Pen Drive and CD as evidence. At a subsequent stage, the respondent submitted a certificate under Section 65B of the Evidence Act to validate the electronic evidence.

The central issue before the Court was whether it is essential for a certificate from the individual whose device originally captured the video to be provided under Section 65B of the Indian Evidence Act. Alternatively, should the person who received and stored the material on their own device be responsible for issuing this certificate?

The Court observed that the question at hand had already been addressed by the Supreme Court in the case of *Anvar P.V. v. P.K. Basheer*, (2014) 10 SCC 473. In this landmark decision, the Supreme Court clearly stated that a certificate must be personally signed by the individual who was using the relevant device at the time of recording. This principle was reaffirmed in *Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal*, (2020) 7 SCC 1, where the Supreme Court emphasized that if a defective certificate is presented, or if a requested certificate is not provided by the appropriate individual, it is essential for the trial judge to summon those mentioned in Section 65B(4) of the Evidence Act and require them to issue such a certificate. In light of these precedents, the Court determined that the certificate submitted by the respondent was invalid because the video in question was not originally recorded on his device. Moreover, for any evidence to be deemed admissible, it is imperative that a valid certificate be submitted by the person whose device was actually used for recording. The Court, in overturning the Tribunal's decision, noted that the electronic evidence was already part of the official record. Therefore, respondent has the right to present a certificate from the individual who originally

recorded that evidence on their device.⁷

CONCLUSION

In conclusion, electronic evidence plays a crucial role in contemporary law. India has transitioned from the Indian Evidence Act of 1872 to the more progressive Bharatiya Sakshya Adhinyam of 2023. Landmark cases such as *Anvar P.V. v. P.K. Basheer* and *Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal* have significantly clarified the rules regarding admissibility and certification of digital evidence.

While the new law enhances clarity and officially acknowledges digital evidence, it still faces challenges related to authenticity and technical complexities. To ensure justice is served in this digital era, it is vital to implement these laws effectively and raise judicial awareness among legal practitioners.

⁷ *Who must submit the Section 65B Evidence Act certificate? Rajasthan HC reiterates requirements*, SCC Times (Sept. 26, 2025), <https://www.sconline.com/blog/post/2025/09/26/rajasthan-high-court-section-65-b-certificateevidence-act-original-device-holder/>.

REFERENCES

Admissibility of Electronic Evidence Under The Bharatiya Sakshya Adhiniyam, 2023: A Critical Analysis of Judicial Interpretation, (Mar. 6, 2026), <https://share.google/ts5K9DzjLIA4tS5K6>.

Electronic Evidence Under Bharatiya Sakshya Adhiniyam: A Critical Analysis, (Jan. 19, 2026), <https://www.ijllr.com/post/electronic-evidence-under-bharatiya-sakshya-adhiniyam-a-critical-analysis>

Sakshi Kumari, Development of Law on Electronic Evidence, YOUR LAW ARTICLE (Aug. 2, 2025), <https://www.yourlawarticle.com/post/development-of-lawon-electronic-evidence>.

<https://ijirl.com/wp-content/uploads/2025/02/EVOLUTION-OF-ELECTRONICEVIDENCE-NAVIGATING-THE-ADMISSIBILITY-OF-THE-NEW-CRIMINALLAWS-IN-INDIA.pdf>.

Namrata jana, Comparing Bharatiya shakshya Adhiniyam, 2023 and Indian Evidence law, 1872, Legal Blur (Dec. 3, 2025), <https://legalblur.com/comparing-bharatiyashakshya-adhiniyam-2023-and-indian-evidence-law-1872/>.

Sneha Mahawar, All you need to know about Section 65 of the Indian Evidence Act, 1872 - iPleaders, IPleaders (Apr. 3, 2022), <https://blog.ipleaders.in/all-you-need-to-know-about-section-65-of-the-indian-evidence-act-1872/>.

Who must submit the Section 65B Evidence Act certificate? Rajasthan HC reiterates requirements, SCC Times (Sept. 26, 2025), <https://www.sconline.com/blog/post/2025/09/26/rajasthan-high-court-section-65-bcertificate-evidence-act-original-device-holder/>.