ELECTRONIC EVIDENCE IN MATRIMONIAL DISPUTES POST BSA: TOWARDS A VICTIM CENTRIC APPROACH

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ABSTRACT

This paper builds upon the Author's earlier examination of the Bharatiya Sakshya Adhiniyam, 2023 (BSA) and its impact on electronic evidence in matrimonial matters in India. Since that paper was published, a series of landmark judgments, most notably the Supreme Court of India's decision in *Vibhor Garg v. Neha* (2025) and subsequent High Court rulings from Allahabad, Madhya Pradesh, Chhattisgarh, and Gujarat, have expanded the admissibility of digital evidence admissibility in family courts. These judgments collectively affirm that electronic evidence such as WhatsApp chats, call recordings, CCTV footage, and mobile photographs cannot be mechanically excluded on account of procedural deficiencies like the absence of a Section 65B certificate (now Section 63 under the BSA). The courts have increasingly embraced a victim centric approach, holding that the pursuit of truth and the right to a fair trial must prevail over rigid evidentiary technicalities. Separately, this paper proposes that the framework for admission and denial of documents found under the Commercial Courts Act, 2015, which penalises frivolous and unsupported denials, can be adapted in matrimonial and family court proceedings. In an age where digital communication has become the dominant mode of human interaction, the bare minimum expectation of any judicial fora must be to bring electronic evidence to standards of admissibility without sacrificing access to justice. This paper argues for an evidentiary framework that is at once procedurally accountable and substantively just.

I. Introduction and Summary of the Earlier Paper

In an earlier paper, the author examined how the Bharatiya Sakshya Adhiniyam, 2023 (BSA), which replaced the Indian Evidence Act, 1872 (IEA), altered the treatment of electronic evidence in India. That paper identified three core challenges arising from the BSA's new framework. The first was the dual certification mandate under Section 63(4), which requires both a party certificate (Part A) and an expert certificate (Part B) together with hash values. This introduced operational delays that could prove devastating in time sensitive matrimonial disputes. The second was the absence of any clear definition of who qualifies as an "expert" under Part B, which created jurisdictional inconsistencies across courts and opened the door to the possibility that identical evidence might receive entirely different treatment in different courts. The third challenge was the infrastructural deficit, particularly in rural India, where forensic labs remain scarce, creating a digital divide in access to justice.

That paper also observed that the BSA's interaction with existing statutes, including the Information Technology Act, 2000 and the Protection of Children from Sexual Offences Act, 2012, produced overlapping and at times conflicting evidentiary standards. The paper concluded with a call for victim centric exceptions, clearer expert qualifications, and uniform protocols for hash value generation.

This second paper revisits those concerns in light of the rapidly evolving judicial landscape. Between mid 2025 and early 2026, Indian courts at every level have grappled with the tension between procedural compliance and substantive justice, producing case law that vindicates many of the earlier paper's concerns while also providing for new paths forward.

II. The Supreme Court's judgment in Vibhor Garg v. Neha (2025)

The most consequential development since the earlier paper has been the Supreme Court's decision in *Vibhor Garg v. Neha* (2025 INSC 829), delivered on 14 July 2025 by a Division Bench comprising Justice B.V. Nagarathna and Justice Satish Chandra Sharma. The case arose from a matrimonial dispute in which the husband sought to introduce secretly recorded telephone conversations with his wife as evidence of mental cruelty in divorce proceedings under Section 13 of the Hindu Marriage Act, 1955. The Family Court at Bathinda admitted the recordings as relevant evidence. The Punjab and Haryana High Court, however, set aside that order on the ground that the recordings constituted a breach of the wife's fundamental right to

privacy under Article 21 of the Constitution.

The Supreme Court reversed the High Court. Justice Nagarathna, writing for the Bench, observed that where a marriage has deteriorated to the point of active surveillance by one spouse upon the other, that surveillance is a symptom of a broken relationship rather than its cause. The right to privacy, while fundamental, is not absolute and must be balanced against the equally fundamental right to a fair trial, which is itself an aspect of Article 21. What makes this judgment particularly important is the statutory basis on which admissibility was grounded. The Court held that secretly recorded spousal communications are admissible directly under the exception contained in Section 122 of the IEA (retained as Section 121 under the BSA), which permits disclosure of marital communications in suits between married persons. The Court explicitly noted that it was unnecessary to resort to the extraordinary power under Section 14 of the Family Courts Act when the Evidence Act itself permitted such communications to be admitted by way of a statutory exception. The finding basically confirmed that the admissibility of spousal recordings in matrimonial disputes is not merely a matter of judicial discretion but a statutory right flowing from Section 122 itself.

The significance of *Vibhor Garg* for the concerns raised in the earlier paper is threefold. It settles the debate over the admissibility of spousal communications in matrimonial proceedings by holding that Section 122 of the Evidence Act itself provides the statutory basis for admitting such evidence, making it a matter of right rather than mere discretion. This is a stronger foundation than the Section 14 route because it means that even courts not bound by the Family Courts Act must admit such evidence in spousal disputes. Additionally, while the Court did not need to invoke Section 14 for the facts before it, it acknowledged the broad discretionary power that Section 14 confers on Family Courts, thereby leaving undisturbed the High Court rulings (discussed below) that rely on Section 14 to admit other categories of electronic evidence such as WhatsApp chats and photographs without Section 65B certification. Finally, the Court's acknowledgment that truth finding in matrimonial disputes often depends on digital evidence produced from within the domestic sphere validates the earlier paper's argument that victim centric exceptions are not merely desirable but constitutionally necessary.

III. The High Court Rulings basis (2025-2026)

Succeeding *Vibhor Garg*, multiple High Courts have reinforced and expanded the principle that electronic evidence in matrimonial disputes can be admitted even at the cost of imperfect

procedural documentation.

A. Allahabad High Court (2026)

In *ABC v. State of U.P.* (Criminal Revision No. 6409 of 2025), Justice Madan Pal Singh of the Allahabad High Court set aside a maintenance order of Rs. 10,000 per month, holding that the trial court had erred in ignoring WhatsApp chats submitted by the husband to prove the wife's adultery. The husband alleged that the chats between his wife and another man were indecent in nature and indicative of physical intimacy. The trial court had refused to consider these chats, partly on the ground that no Section 65B certificate had been filed. The High Court held that this refusal amounted to a denial of natural justice. Invoking Section 14 of the Family Courts Act, the Court observed that family courts possess the discretion to receive any evidence that assists in the effectual adjudication of a dispute, irrespective of its strict admissibility under the Evidence Act. The Court further held that the trial court was obligated to frame a proper issue on adultery and adjudicate the same on merits before mechanically granting maintenance under Section 125 of the Code of Criminal Procedure.

B. Madhya Pradesh High Court (2025)

In *Lumeshwari @ Pinky v. Rajesh Dubey* (First Appeal No. 866 of 2021), a Division Bench of Justice Vishal Dhagat and Justice B.P. Sharma upheld a Family Court divorce decree that had relied on mobile photographs showing the wife's alleged adultery, without a Section 65B certificate having been filed. The wife argued that the Supreme Court's ruling in *Arjun PanditraoKhotkar v. Kailash Kushanrao Gorantyal* (2020) made Section 65B compliance mandatory. The High Court disagreed, holding that *Arjun Panditrao* was decided in a context unrelated to matrimonial disputes and that the special provisions of Section 14 of the Family Courts Act empowered the Family Court to receive electronic evidence without strict adherence to the certification regime. The Court also noted that the wife's own deposition corroborated the existence of the photographs, and her vague claim that they were created by using some trick was unsupported by any explanation of who created them or how. The photographer who developed the photographs was also examined in court. In an age where smartphones are the primary medium through which people conduct their personal lives, the Court's refusal to let procedural technicalities override the plain content of photographic evidence is necessary.

C. Chhattisgarh High Court (2026)

In a decision delivered on 11 February 2026, Justice Sachin Singh Rajput of the Chhattisgarh High Court dismissed a wife's challenge to a Family Court order that had permitted the husband to introduce her WhatsApp chats and call recordings as evidence in divorce proceedings under Section 13(1)(ia) and (ib) of the Hindu Marriage Act. The wife alleged that the evidence was obtained by hacking her mobile phone, constituting an invasion of her fundamental right to privacy. The Court, relying on Sections 14 and 20 of the Family Courts Act and the Supreme Court's decision in *Vibhor Garg*, held that the right to privacy must yield to the right of a fair trial. The Court reasoned that family courts adjudicate sensitive personal disputes involving intimacies, and if Section 14 were held inapplicable to evidence that impinges on privacy, then not only Section 14 but the very object of the constitution of Family Courts would be rendered meaningless. Relying on *Vibhor Garg*, the Court further held that Section 122 of the Evidence Act was designed to protect the sanctity of marriage rather than the individual right to privacy, and that in suits between married persons, this protection does not apply. The Court affirmed that the test of admissibility before a Family Court is relevance, and that fundamental considerations of fair trial and public justice warrant that evidence be received if it is relevant, regardless of how it is collected.

D. Gujarat High Court (2026)

The Gujarat High Court contributed a more nuanced approach. In a reported case involving CCTV footage showing a husband assaulting his wife, the Court upheld the Family Court's reliance on the footage to grant a decree of divorce on the ground of cruelty, despite the absence of a Section 65B certificate. However, the Court drew a distinction between "looking at" electronic evidence to understand the circumstances of a dispute and "relying upon" it as conclusive legal proof. At the interim or prima facie stage, the Court held, a Family Court is not barred from perusing electronic evidence that lacks certification. But for the purpose of final adjudication, compliance with Section 65B must eventually be satisfied. This approach ensures that victims of domestic violence are not left remediless merely because they initially lack a technical certificate, while also preserving the integrity safeguards that the certification regime is designed to provide.

IV. The Emerging Principle

Evaluating the verdicts altogether, it is observed that electronic documents, by themselves, are neither automatically admissible nor automatically excludable. The courts have rejected both extremes. On one hand, they have refused to treat the BSA's certification requirements as absolute gatekeepers that mechanically bar otherwise genuine evidence. On the other hand, they have not permitted the indiscriminate admission of digital material without any scrutiny. The emphasis has consistently been on relevance, authenticity, and the overarching objective of truth finding.

Justice Nagarathna's observations in *Vibhor Garg* that snooping between partners is an effect and not a cause of marital disharmony, and that a marriage requiring secret recordings is already a marriage without trust, are very helpful. But it is the Madhya Pradesh High Court in *Anjali Sharma v. Raman Upadhyay* (2025) that most clearly articulated the distinction between admissibility and probative value. Justice Ashish Shroti held that merely admitting evidence on record is not proof of a fact in issue or a relevant fact. Admission is mere inclusion of evidence in the record, to be assessed on a comprehensive set of factors, parameters, and aspects in the discretion of the court. The opposing party retains the full right to contest, cross examine, and disprove such evidence during trial.

The Supreme Court has separately emphasised that courts dealing with matrimonial cases must exercise caution and take pragmatic realities into consideration. In *Shobhit Kumar Mittal v. State of Uttar Pradesh* (2025), a Bench comprising Justice B.V. Nagarathna and Justice R. Mahadevan held that courts must be careful and cautious in dealing with matrimonial complaints and that allegations in such disputes must be scrutinised with great care and circumspection to prevent miscarriage of justice and abuse of the process of law. This reinforces the position that no single category of evidence, whether documentary, electronic, or oral, can function as a standalone deciding factor. The court's role is to weigh all available material holistically, with sensitivity to the power dynamics and vulnerabilities inherent in matrimonial relationships.

V. The position in Commercial Courts in India:

While the foregoing discussion addresses the admissibility side of the equation, there is an equally pressing problem on the opposite side. In matrimonial proceedings, parties routinely

deny the genuineness of electronic documents, WhatsApp chats, photographs, and recordings, through vague, unsupported, and often frivolous objections. The burden then shifts to the party producing the evidence to prove its authenticity through expensive and time consuming forensic processes.

Indian jurisprudence already possesses a mechanism to address precisely this problem, but it exists in an entirely different area of law. The Commercial Courts Act, 2015, through its substitution of Order XI of the Code of Civil Procedure, introduced a framework for admission and denial of documents that is designed to eliminate frivolous denials.

Under Order XIA, Rule 4 of the CPC (as applicable to commercial suits), each party is required to submit a statement of admissions or denials of all documents disclosed by the opposing party within fifteen days of completion of inspection. The statement must explicitly address whether the party is admitting or denying the correctness of contents, the existence of the document, its execution, its issuance or receipt, and the custody of the document. Sub Rule (3) provides, critically, that each party shall set out reasons for denying a document, and that bare and unsupported denials shall not be deemed to be denials at all. Where a bare denial is made, proof of such documents may be dispensed with at the discretion of the Court. Sub Rule (5) requires an affidavit confirming the correctness of the admission and denial statement. And Sub Rule (6) provides that where the Court holds that a party has unduly refused to admit a document, costs, including exemplary costs, may be imposed for the additional expense of proving the document's admissibility.

The underlying logic behind the setup is why the same process can be adapted in matrimonial proceedings. In commercial disputes, parties frequently denied documents in a cursory and mechanical fashion, even where those documents were public records or were otherwise easily verifiable. This practice has trial durations, multiplied costs, and obstructed the efficient resolution of disputes. The Commercial Courts Act thus has a regime where if you deny, you must be prepared to face costs if your denial is found to be frivolous.

In family courts, the same culture of bare denial persists, often with even greater consequences. A spouse who categorically denies the authenticity of WhatsApp chats without offering any explanation of how or why they might have been fabricated effectively forces the producing party into a forensic and technical burden that many litigants, particularly women in economically disadvantaged positions, cannot bear. If Family Courts were to adopt a

requirement of reasoned denial, supported by affidavit and backed by the threat of costs for frivolous objections, the dynamics of electronic evidence litigation in matrimonial disputes could be transformed.

VI. Towards a Victim Centric and Document Accountable Framework

We live in a world that is overwhelmingly digital. For spouses in conflict, the digital footprint of a relationship is often the only contemporaneous record of what transpired within the four walls of a matrimonial home. In this context, the bare minimum expectation from any modern evidentiary jurisdiction must be to bring electronic evidence to standards of admissibility without making the process so cumbersome that it defeats the very purpose of the evidence. The BSA was conceived with this goal in mind, but its implementation, as the earlier paper demonstrated and as subsequent case law confirms, has produced unintended barriers. The following propositions are offered not as a blueprint but as a set of principles that policymakers, rulemaking bodies, and courts may consider adopting.

First, the admissibility of electronic evidence in matrimonial proceedings should be governed primarily by the test of relevance, as established by the Supreme Court in *Vibhor Garg* and reinforced by the High Courts of Allahabad, Madhya Pradesh, Chhattisgarh, and Gujarat. Section 14 of the Family Courts Act already provides the statutory basis for this approach, and the BSA's certification requirements should not be mechanically applied to exclude otherwise genuine and relevant evidence in family courts.

Second, following the Madhya Pradesh High Court's guidelines in *Anjali Sharma v. Raman Upadhyay* (2025), Family Courts should adopt a structured approach to electronic evidence that includes scrutiny of authenticity, the option of in camera proceedings for sensitive material, and the principle that admission does not equate to proof. This ensures that the relaxation of formal certification requirements does not open the door to fabricated or manipulated evidence.

Third, the framework for admission and denial of documents under the Commercial Courts Act should be adapted, with appropriate modifications, for use in family courts. Parties who deny the authenticity of electronic evidence should be required to state the specific grounds for denial, whether they dispute the contents, the existence, the execution, or the custody of the document. Bare and unsupported denials should not be treated as valid denials, and the court should have the discretion to dispense with proof of documents that have been frivolously

denied. Costs, including exemplary costs, should be available as a deterrent against denial practices.

Fourth, the BSA's expert certification requirement under Section 63(4)(Part B) should be subject to a victim centric exception in matrimonial proceedings, as the earlier paper recommended. Where a litigant demonstrates that access to forensic certification is impracticable due to geographical, economic, or infrastructural constraints, the court should have the power to admit the evidence provisionally, subject to subsequent verification if challenged. This approach mirrors the Gujarat High Court's distinction between looking at and relying upon electronic evidence and avoids the injustice of excluding genuine evidence on purely procedural grounds.

VII. Conclusion

The direction of Indian Legal theory since the publication of the earlier paper has been encouraging. The Supreme Court's decision in *Vibhor Garg v. Neha* and the subsequent rulings from the Allahabad, Madhya Pradesh, Chhattisgarh, and Gujarat High Courts have collectively established that the procedural formalities cannot stall access to justice. The right to a fair trial, the power of Family Courts under Section 14 of the Family Courts Act, and the pragmatic recognition that digital evidence is often the only evidence available in domestic disputes, have all converged to produce a jurisprudence that is both victim centric and truth oriented.

At the same time, the problem of frivolous denial remains unaddressed. The Commercial Courts Act offers a tested and effective model for ensuring that parties engage with documentary evidence in good faith. Adapting that model for family court proceedings would complete the framework.

The BSA, for all its ambition, remains a work in progress. Its certification requirements, expert qualifications, and hash value mandates need urgent clarification. Indian courts have begun to build the victim centric, document accountable framework that the earlier paper called for. In a digital age where every relationship leaves an electronic trail, the law cannot afford to treat that trail as inadmissible simply because the procedural machinery has not yet caught up with the technology. The challenge now lies in translating judicial innovation into legislative and administrative reform, so that the promise of digital justice reaches every litigant, in every court, across every corner of the country.