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Bharatiya Sakshya Adhiniyam, 2023

27 March 2026

SUBJECTS COVERED

POLITY

SCIENCE & TECH

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ACT NUMBER	YEAR ENACTED	REPLACES
Act No. 47 of 2023	2023	Indian Evidence Act, 1872 (Act No. 1 of 1872)

KEY PROVISIONS

- 1 Section 2(1)(d) — Electronic and digital records recognised as documents on par with paper records
- 2 Section 63 — Admissibility of electronic records with certificate of authenticity
- 3 Section 39 — Oral evidence must be direct; hearsay rules tightened
- 4 Section 23 — Confession to police officer remains inadmissible but electronically recorded confessions before Magistrate are valid
- 5 Section 57 — Court may presume genuineness of electronic records in the regular course of business
- 6 Section 170 — Expert opinion on electronic evidence given special evidentiary weight
- 7 Section 118 — Accomplice evidence requires corroboration; burden clarified

BACKGROUND

The Bharatiya Sakshya Adhiniyam (BSA) was enacted to replace the Indian Evidence Act, 1872, which was originally drafted by Sir James Fitzjames Stephen during British colonial rule. The 1872 Act was designed for an era of paper documents, oral testimonies, and physical evidence. Over 150 years later, the nature of evidence had fundamentally changed with the advent of digital communication, electronic transactions, cloud storage, and social media, but the evidentiary framework had not kept pace.

The BSA Bill was introduced in the Lok Sabha on August 11, 2023, received Presidential assent on December 25, 2023, and came into force on July 1, 2024. It is the third pillar of the criminal law reform trilogy, alongside the Bharatiya Nyaya Sanhita (BNS) and Bharatiya Nagarik Suraksha Sanhita (BNSS). While the BNS defines crimes and the BNSS prescribes procedures, the BSA governs what evidence is admissible and how it is to be evaluated.

The BSA contains 170 sections (compared to 167 in the Indian Evidence Act). The most significant change is the comprehensive treatment of electronic and digital evidence, elevating it to the same legal status as physical documents. The Act also introduces provisions for audio-video recordings of statements, electronic signatures, and digitally preserved records.

KEY CONCEPTS

- **Electronic records as primary evidence (Section 2):** Under the old Evidence Act, electronic records were treated as secondary evidence requiring special conditions for admissibility. The BSA recognises electronic records — emails, social media posts, digital photographs, server logs, cloud-stored data — as primary documents at par with paper records.
- **Certificate of authenticity (Section 63):** For electronic records to be admissible, they must be accompanied by a certificate from a person who had control over the device or was responsible for the electronic record. This certificate must identify the electronic record, describe the manner of its production, and certify its authenticity.
- **Presumption for electronic records (Section 57):** Courts may presume that electronic records produced from regular business activities are genuine. This shifts the burden — the opposing party must prove the record is fabricated rather than the proponent proving it is authentic.
- **Oral evidence and hearsay (Section 39):** Oral evidence must be direct — a witness must testify about facts they personally perceived. The BSA tightens hearsay rules while creating structured exceptions for dying declarations, statements against interest, and statements in the ordinary course of business.
- **Joint trials and common evidence (Section 164):** When multiple accused are tried together, evidence given by or against one can be considered against others, subject to safeguards. This streamlines complex multi-accused trials.
- **Expert digital evidence (Section 170):** Courts can call upon experts specifically for digital forensics. Expert opinion on electronic evidence — hash values, metadata analysis, device forensics — is given special evidentiary weight compared to general expert opinion.

IMPORTANT PROVISIONS

- **Section 2(1)(d) — Definition of Document:** Expanded to explicitly include electronic and digital records. A “document” means any matter expressed or described on any substance by means of letters, figures, marks, or any other means, or by more than one of those means, intended to be used as evidence of that matter. Electronic records, semiconductor memory, and any communication device output are included.

- **Section 23 — Confession:** Confession made to a police officer is inadmissible (carrying forward the old rule from Section 25 of the Evidence Act). However, confessions recorded electronically before a Magistrate are admissible, with safeguards against coercion.
- **Section 39 — Oral Evidence:** Must be direct. In respect of electronic records, the person who was in control of the device or who perceived the record can give oral evidence. For video/audio evidence, the person who made the recording or was present is a competent witness.
- **Section 63 — Admissibility of Electronic Records:** An electronic record is admissible if accompanied by a certificate under Section 63(4) identifying the record, the device, and certifying that the record was produced in the ordinary course. This replaces the old Section 65B of the Evidence Act, which was the subject of extensive litigation.
- **Section 57 — Presumption as to Electronic Records:** The court may presume that electronic records in the regular course of business — bank statements, server logs, email records from established servers — are genuine unless specifically challenged.
- **Section 118 — Accomplice Evidence:** An accomplice is a competent witness. However, the court must warn itself that it is dangerous to convict on uncorroborated accomplice testimony. Corroboration must be independent and must connect the accused with the crime.

LANDMARK JUDGMENTS

- **Anvar P.V. v. P.K. Basheer (2014):** The Supreme Court held that electronic evidence without a certificate under Section 65B of the old Evidence Act is inadmissible. The BSA codifies this principle in Section 63 while simplifying the certification process.
- **Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal (2020):** A three-judge bench clarified that the Section 65B certificate is a mandatory requirement for electronic evidence, resolving a conflict between the Anvar P.V. judgment and the earlier Shafhi Mohammad case. The BSA Section 63 settles this definitively.
- **Shafhi Mohammad v. State of Himachal Pradesh (2018):** A two-judge bench had relaxed the Section 65B certificate requirement in certain cases. This was later overruled by Arjun Panditrao. The BSA's clear Section 63 framework prevents such judicial confusion going forward.
- **Tomaso Bruno v. State of U.P. (2015):** The Supreme Court accepted electronic evidence (CCTV footage, call records) to convict. This case demonstrated the growing importance of digital evidence in criminal trials, a trend the BSA formalises.

RECENT AMENDMENTS / DEVELOPMENTS

- **July 1, 2024:** BSA came into force. All new proceedings use BSA provisions for evidence. Cases filed under the old Evidence Act before this date continue under the old law.

- **Section 63 Expert Certification Challenge:** A key implementation challenge has emerged around Section 63(4), which requires electronic evidence certificates to be signed by both the person in charge of the device and an “expert.” The BSA does not clearly define who qualifies as an expert for this purpose. The only reference appears in Section 39(2), whose Explanation states that the “Examiner of Electronic Evidence” notified under Section 79A of the IT Act, 2000 shall be deemed an expert. Additionally, the certificate must include a “hash value” (digital fingerprint) ensuring the document’s authenticity — any alteration changes the hash value.
- **Supreme Court on Section 118 — Dowry Death Presumption (February 2026):** The Supreme Court invoked the mandatory presumption under BSA Section 118 in a dowry death case, setting aside bail granted by the Allahabad High Court. The Court held that courts must presume dowry death if cruelty or harassment for dowry occurred soon before the woman’s death under suspicious circumstances — reinforcing the statutory presumption carried forward from the old Evidence Act.
- **Privileged Communication (August 2025):** The Supreme Court highlighted BSA Section 132 (privileged communications) while observing that the practice of summoning lawyers undermines the autonomy of the legal profession. The Court emphasised that no advocate should be compelled to disclose confidential information communicated in the course of professional duties.
- **Digital forensic laboratories:** The Ministry of Home Affairs announced the establishment of digital forensic laboratories in every state to support BSA Section 63 certifications. As of early 2025, 18 states have operational labs.
- **Training for judiciary:** The National Judicial Academy, Bhopal, has conducted workshops on electronic evidence handling under BSA for over 3,000 judges across India.
- **Data privacy intersection:** The interplay between BSA’s electronic evidence provisions and the Digital Personal Data Protection Act, 2023 (whose rules were notified in November 2025) is being studied. Concerns exist about compelling production of personal electronic data without adequate privacy safeguards under the DPDP framework.

UPSC RELEVANCE

*BSA replacing the Indian Evidence Act, 1872; Section 63 for electronic evidence admissibility; certificate requirement; date of enforcement (July 1, 2024); total sections (170). **Mains GS-2:** Modernisation of the justice system; role of technology in evidence and trials; right to fair trial under Article 21; comparison with the old Evidence Act. **GS-3:** Cyber security, digital forensics, and their intersection with the legal framework.*

Interview: “How should courts balance the need for digital evidence in criminal trials with the right to privacy guaranteed under Puttaswamy?”

RELATED TERMS

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