

Digital Evidence in Matrimonial Disputes: Challenges and Opportunities

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Abstract

The Smartphone has emerged as the most personal record of marital life and now marriages - a lot of times litigation cases in India are decided based on the contents of whatsapps, the covertly recorded calls, call detail records, social-media activity and digital financial trails. This article will provide a brief overview of the fast-changing landscape of such digital evidence in divorce, maintenance, custody and domestic violence cases. It sketches the course of the statutory regime from Section 65A and Section 65B of the "Indian Evidence Act, 1872" to its current form under a dual-signature certificate requirement in Section 63 of the "Bharatiya Sakshya Adhiniyam, 2023", and explores the foundational admissibility principles that have since emerged from "Navjot Sandhu" to "Anvar P.V.," then to "Shafhi Mohammad," and finally to "Arjun Panditrao Khotkar" and Section 14 of the "Family Courts Act, 1984," which grants Family Courts a unique evidentiary authority. This then raises the core of the normative issue of the field, the balance between the probative value of intimate digital content versus the constitutional principle of privacy, especially as enunciated in K.S. Puttaswamy that was the subject of the recent and controversial Supreme Court judgment in "Vibhor Garg v. Neha" (2025), where the Court agreed that recordings of private conversations between parties in a marriage are admissible in the divorce process. Finally, the article outlines the key issues around authentication, deepfakes, the certificate conundrum, forensic capacity and the gendered nature of intimate surveillance and the opportunities for truth finding and protection in instances of abuse and financial discovery and offers a framework for the way forward

Keywords: Digital evidence; matrimonial disputes; Section 63 BSA; Section 65B; right to privacy; spousal communications; Family Courts Act; Vibhor Garg v. Neha.

I. Introduction

Contemporary marriage has an intimate life that leaves a dense and continuous digital footprint. Spouses communicate via instant-messaging apps, swap pictures, videos, spot one another, make payments with a single app and maintain parallel social media accounts; each one of these actions leaves a permanent fingerprint on a server or as a call record on a cell phone. But when the marriage begins to fall apart, and before the parties appear in a Family Court, these woolen threads are no longer the leftovers from everyday life, but the main nearest product of litigation. Mobile phones, from a communications device, are now the one most significant piece of evidence in a marriage nowadays.¹

All throughout the range of marriage-related activities the phenomenon is noticeable. In actions for divorce based upon grounds of cruelty, screenshots of abusive or threatening communications are introduced in evidence to prove the conduct about which complaints are made; in cases involving an allegation of adultery, made communications and intimate photographs and metadata are produced as evidence of an extramarital affair; in cases involving a challenge to maintenance, digital financial statements and payment-application records are

¹ *Riley v. California*, 573 U.S. 373 (2014).

summoned to prove hidden sources of funds; and in child custody and child welfare cases, social communication contents and recorded exchanges are tendered to prove the unfitness of the parent.²

Digital evidence is at once uniquely probative and uniquely fragile. It is probative because it captures, with apparent immediacy and contemporaneity, the private conduct and admissions of the parties in a manner that oral testimony seldom can. It is fragile because it is, by its very nature, susceptible to fabrication, selective editing, decontextualisation and silent alteration, and because it is, in the matrimonial setting above all, frequently procured through the covert surveillance of one's own intimate partner. The adjudicator is therefore compelled to mediate between two values that the modern constitutional order holds equally dear: the search for truth and the rendering of a fair trial on the one hand, and the protection of privacy, autonomy and dignity within the marital relationship on the other.³

II. Conceptualising Digital Evidence in the Matrimonial Context

A. The notion of an electronic record

The expression “digital evidence” has no single statutory definition, but its conceptual core is the “electronic record.” “The Information Technology Act, 2000” defines an electronic record to mean data, record or data generated, image or sound stored, received or sent in an electronic form or micro film or computer-generated micro fiche.⁴ The law of evidence assimilates this category into the wider concept of a “document.” Under the “Bharatiya Sakshya Adhiniyam, 2023”, which on 1 July 2024 replaced the “Indian Evidence Act, 1872”, the definition of “document” has been expressly enlarged so as to include electronic and digital records, thereby placing such records on a textual footing of parity with conventional documentary evidence.

B. A taxonomy of matrimonial digital evidence

Within matrimonial litigation the universe of digital evidence may usefully be organised into several families.⁵ The first and most prevalent is communication content the substantive text of conversations conducted over instant-messaging platforms such as WhatsApp, short message service, electronic mail and direct messages on social networks. The second is recorded speech, comprising audio and audio-video recordings of telephonic or in-person conversations, which in the matrimonial context are very often made surreptitiously by one spouse. The third is transactional and locational metadata call detail records, internet-protocol logs, geolocation and global-positioning data which establish patterns of contact and movement without disclosing content. The fourth is social-media and publicly posted material, including photographs, status updates and relationship indicia. The fifth is financial data bank statements, unified-payment-interface histories and wallet records increasingly decisive in maintenance and asset disputes. The sixth comprises ambient and device-resident data such as closed-circuit-television footage, photographs and the contents of a shared computer or handset.⁶

C. Why matrimonial litigation is digital-evidence-intensive

Three features of matrimonial litigation render it unusually dependent upon digital proof. First, that the substantive bases in question are often subjective and intangible. The most frequently pleaded is that of cruelty, and the evidence of conduct and intention is most often lacking here, since only documents which are contemporaneous with the defeat, and written or at least recorded with intention to show the true state of mind at the time can be relied on as evidence.⁷ Secondly, the conduct sought to be proved is, by definition, private and clandestine; adultery, concealment of income and intimate verbal abuse occur away from public view and

² *Deepti Kapur v. Kunal Julka*, AIR 2020 Del 156.

³ *K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1.

⁴ The Information Technology Act, 2000 (Act 21 of 2000), s. 2(1)(t).

⁵ Batar, S. (2021). Gender inequality in india: an overview. *ACADEMICIA: An International Multidisciplinary Research Journal*, 11(12), 458-464.

⁶ Stephen Mason and Daniel Seng (eds.), *Electronic Evidence and Electronic Signatures* 21-58 (University of London Press, London, 5th edn., 2021).

⁷ Kumari, S., Nanduri, S., Sharma, H., & Batar, S. (2023). Women in politics: examining their impact on policy development—A comprehensive review. *Multidisciplinary Reviews*, 6(1), 202.

beyond the reach of independent witnesses, so that the digital trace is often the only available corroboration. Thirdly, the litigants are intimates who share, or have shared, devices, accounts, networks and physical space, which affords each party an unrivalled if ethically and legally fraught capacity to gather evidence against the other.

III. The Statutory Architecture: From Section 65B to Section 63

A. Sections 65A and 65B of the Evidence Act

The legislative response to the advent of electronic evidence was the insertion, by the “Information Technology Act, 2000”, of Sections 65A and 65B into the “Indian Evidence Act, 1872”. Section 65A provided that the contents of electronic records might be proved in accordance with Section 65B, and Section 65B in turn created a self-contained scheme for the admissibility of “computer output.” Its essential mechanism was a deeming provision: any information contained in an electronic record, when printed, stored or copied, was to be deemed a document and admissible without further proof of the original, provided that the conditions of the section were satisfied and, critically, that a certificate under sub-section (4) accompanied the record.⁸ First, is the fact that many times the substantive bases in question are intangible and subjective? The most common is that of cruelty, and in this instance the evidence of their conduct and intention is most often absent, only what is actually written or at least written or, in other words, recorded at the time of the defeat can be used as evidence.⁹

B. The Bharatiya Sakshya Adhiniyam, 2023

“The Bharatiya Sakshya Adhiniyam, 2023” has re-affirmed this structure with continuity and consequent change. Section 61 is an declaration in the form of an enabling provision that the mere fact of a document being in an electronic or digital format does not deny the admissibility of such a document and such an electronic document or digital document shall have the same legal effect and be equally enforceable as a document in paper format subject to the provisions of Section 63. Section 62, which states that the contents of an electronic record can be proved under Section 63, essentially embodies the same language and provisions of the former Section 65B, but adds semiconductor memory as well.

The most important changes include the requirement that the certificate is to be filed at the time the electronic record is produced for use and, unlike the previous version which envisaged one signatory responsible for computer or communication device, it must be signed by the signatory responsible for such system and an expert. The prescribed form also calls for recording a hash value a unique digital fingerprint - through which the integrity of the electronic record can subsequently be checked and any tampering with the record can be detected.¹⁰

C. The Examiner of Electronic Evidence

The statutory edifice is completed by the institution of forensic certification. Section 79A of the “Information Technology Act, 2000” empowers the Central Government to notify any department or agency as an “Examiner of Electronic Evidence” for the purpose of providing expert opinion on electronic-form evidence. The opinion of such an Examiner is admissible as expert opinion, and the institution is intended to supply the technical assurance of authenticity upon which the higher reliability of electronic evidence ultimately depends.¹¹

⁸ The Indian Evidence Act, 1872 (Act 1 of 1872), ss. 65A and 65B.

⁹ Batar, S. (2021). Acquaintance rape: A review. *ACADEMICIA: An International Multidisciplinary Research Journal*, 11(11), 1059-1066.

¹⁰ *Admissibility of Electronic Evidence, Certificate and Hash Value*, available at: <https://corpotechlegal.com> (last visited June 5, 2026).

¹¹ Chaudhary, A., Asudani, V. H., Mishra, A., Deshpande, A., & Batar, S. (2023). NRI MARRIAGES–WOMEN VICTIMS AND SCAPEGOAT FAMILIES. *Russian Law Journal*, 11(5S), 132-136.

IV. The Admissibility Jurisprudence and Its Afterlife

A. From Navjot Sandhu to Anvar P.V.

The judicial career of Section 65B has been marked less by clear legislative design than by successive judicial correction. In “State (NCT of Delhi) v. Navjot Sandhu”, the Supreme Court treated the certificate as optional, holding that electronic records might equally be proved through the ordinary rules relating to secondary evidence.¹² That accommodating view overlooked the distinctive character of digital data and was decisively corrected in “Anvar P.V. v. P.K. Basheer”, in which a three-Judge Bench held that Section 65B is a complete code and that compliance with the certificate requirement of sub-section (4) is a condition precedent to the admissibility of secondary electronic evidence, expressly overruling Navjot Sandhu on the point.¹³

B. The Shafhi Mohammad detour

The settled position was unsettled by a two-Judge Bench in “Shafhi Mohammad v. State of H.P.”, which held that the certificate requirement is procedural and may be relaxed in the interest of justice where the party tendering the evidence is not in possession of the device that generated it.¹⁴ Whatever its justices, but the decision seemed to be less palatable in view of the three-Judge binding decision in Anvar P.V. and the Supreme Court resolved the conflict by sending it for consideration to the larger Bench.

C. Arjun Panditrao Khotkar: the certificate as condition precedent

The above, in Shafhi Mohammad, was addressed by a three-Judge Bench which held that the certificate in Section 65B(4) is indeed a condition precedent for the admissibility of secondary electronic evidence, and found that Anvar P.V. was decided per incuriam and ought to have been so resolved.¹⁵ There is a significant exception, however, formulated by the Court: the certificate isn't required if the original electronic record is its own product, such as when the owner of a laptop, tablet or mobile phone sits in the witness stand and establishes that the information was first recorded on the device that she owns or operates.

D. Survival under Section 63 and the matrimonial burden

The Section 63 of the “Bharatiya Sakshya Adhiniyam” retains the essence of Section 65B, which means that the law provided in the case of Arjun Panditrao Khotkar will remain binding and the certificate remains as a gateway of admissibility. But for the litigant in the matrimonial battle the regime induces an unusual burden. It is usually a forwarded WhatsApp conversation or recorded call and/or a downloaded file or print-out that's used as evidence. If such an original apparatus is not available, the spouse bringing suit must obtain a certificate from Section 63, which must now be signed by an expert, and this requires an expense, a delay and a certain amount of technical expertise that may be virtually unattainable when an unrepresented spouse seeks such assistance with a proceeding designed, elsewhere in this legislation, to be technically accessible to the parties.

V. The Family Courts Act Gateway

A. Section 14 and the relaxation of evidentiary rules

Section 14 of that Act provides that a Family Court may receive as evidence any report, statement, document, information or matter that may, in its opinion, assist it to deal effectually with a dispute, whether or not the same would be otherwise relevant or admissible under the “Indian Evidence Act, 1872”.¹⁶ Read with Section 20, which gives the Act overriding effect notwithstanding anything inconsistent contained in any other law, the provision confers upon Family Courts an evidentiary latitude unavailable to ordinary civil and criminal courts,

¹² State (NCT of Delhi) v. *Navjot Sandhu*, (2005) 11 SCC 600.

¹³ *Anvar P.V. v. P.K. Basheer*, (2014) 10 SCC 473.

¹⁴ *Shafhi Mohammad v. State of H.P.*, (2018) 2 SCC 801.

¹⁵ *Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal*, (2020) 7 SCC 1.

¹⁶ The Family Courts Act, 1984 (Act 66 of 1984), s. 14.

founded upon the premise that the paramount object of matrimonial adjudication is the effectual and humane resolution of the dispute rather than rigid adherence to the technical rules of proof.¹⁷

B. Deepti Kapur and the recent High Court trend

The High Courts have repeatedly invoked this latitude to admit digital material that might otherwise have foundered upon the certificate requirement or upon objections of privacy. In *Deepti Kapur v. Kunal Julka*, the Delhi High Court held that a covertly recorded conversation tendered in divorce proceedings was receivable under Section 14, reasoning that the Family Court is not bound by the strict rules of the Evidence Act and that the question is ultimately whether the material assists in resolving the matrimonial dispute.¹⁸ That has been reiterated in 2025 by the Madhya Pradesh High Court, which determined that the admissibility of the WhatsApp chats, allegedly surreptitious, tampered forwarded from the wife's handset by use of an app installed on it, would not infringe the right to privacy, a fundamental right, if it did not affect the rights of the other party.¹⁹

C. The unresolved interface

However, a true and unsolved doctrinal dilemma remains: that of the compulsory certificate of section 63 and the optional reception of section 14. It is not clear that the discretionary scope of a Family Court can evaporate such a consequence of admission of the certificate, because the discretion to let the ends justify the means, which Section 14 gives, is a means of deciding what becomes admissible, not an ends-justifying-the-means licence to abandon the means on which the very category of electronic evidence is based. The preferable view is that section 14 applies to the quality of the reception, section 63 to the weight to be given to the material and to its reliability; but there is pending the need for authoritative elucidation on this point, and the divergence in the judgments of the High Court's is a result of the lack of such guidance.²⁰

VI. Challenges

A. Authentication, integrity and the spectre of fabrication

The foremost challenge is authentication. A screenshot of a conversation can be manufactured with trivial ease; a chat thread can be selectively curated so that exculpatory messages are suppressed; metadata can be stripped, altered or fabricated; and the very malleability of digital data means that what is tendered may bear no faithful relation to what was originally created. The certificate regime of Section 63 and the recording of hash values are designed to meet this danger, but a certificate attests to provenance and integrity at the point of certification and cannot retrospectively cure a record that was corrupted or confected before it was certified. The temptation to falsify evidence is even greater, and the ability to do so is even easier in a matrimonial context, where an intimate access to devices and accounts occurs between the parties.

B. Deepfakes and synthetic evidence

The situation is exacerbated by an unprecedented order of magnitude due to the maturation of generative Artificial Intelligence. Synthetic audio capable of convincingly impersonating a person's voice can now be produced and synthetic video can now be generated, in which a person has been modified to make them appear as if they have spoken or done something when they really didn't. Even a modern investigation could not detect a bogus tape using threats from a spouse or a fake recording that sounds as if the employer was defeated. The evidentiary regime, which was designed to deal with the threat of crude cutting, is not yet capable of handling the threat of synthetic media infidelity, may not be discernable from the naked eye or ear to the layperson, and may be, and the need for forensic examination to see the difference, increasingly the only difference, between a real and a faux recording will become even more commonplace.

¹⁷ The Family Courts Act, 1984, s. 20.

¹⁸ *Preeti Jain v. Kunal Jain*, AIR 2016 Raj 153

¹⁹ *Illegally Procured WhatsApp Chat in Matrimonial Dispute is Admissible under Section 14 of Family Courts Act: MP High Court*, SCC OnLine Blog (June 19, 2025)

²⁰ Sharma, M. A., Mahal, S. G., Irene, M., Batar, M. S., Gupta, M. Y. C., & Kumar, M. A. (2025). *Evolving Jurisprudence On Marital Rape: A Comparative Legal Study*. Dubey, MB.

C. The certificate conundrum

The dual-signature certificate of Section 63(4) also causes problems. Not much is specified about the “expert” who will be in charge of assigning signatures to the text messages or call recordings, nor is the qualifications outlined in full, leaving open questions on who will be competent to signify a WhatsApp conversation or a call record and at whose expense. This is a procedural hurdle that is easily overcome by the represented commercial litigant but, for the unrepresented matrimonial litigant, generally a female seeking maintenance or protection from a man, and likely with a restricted financial means to raise the funds for necessary evidence, it may prove a proper obstacle in obtaining just the evidence that that case rests upon. Matrimonial practice would create a risk that a provision intended to improve reliability of findings would, for technical reasons, be used to exclude meritorious evidence, but some amelioration lies in the breadth of Section 14.

D. Forensic capacity and chain of custody

Ultimately, the credibility of digital evidence is based on an uninterrupted chain of custody and on good forensic analysis there is a significant disconnect in the between statutory and institutional reality. Central and State forensic-science laboratories have pressing backlogs; few and not well-distributed Examiners of Electronic Evidence have been envisioned by Section 79A; and the Family Courts are constrained in their capacity to expose a contested recording to a thorough analysis. So it isn't uncommon for controversial evidence on computer systems to be received or not on impressionistic evidence rather than under a proper forensics blanket with no benefit to the quest for truth, or the quest to protect the innocent.²¹

E. Privacy, consent and the gendered character of surveillance

It's not just doctrinal, it's social! In practice, the ability to wiretap phone calls and to collect texts and emails without the other party knowing is an encouragement for spousal surveillance and that doesn't usually work out equally. When one party plants spyware on the other's handset or secretly tapes years of private dialogue, it is, in itself, an act of coercive control, and the law's acquiescence in its admissibility could sanction the very abuse which matrimonial law elsewhere endeavors to combat. Not only the relevance of the covert evidence, a court sensitive to the gendered realities of intimate relationships would take into account the way and the reason that evidence was obtained.

F. The institutional capacity of Family Courts

Lastly, discretion on imbued in Family Courts by the legislation under Section 14, which is now being exercised by Vibhor Garg to a greater extent in practice, implies some competence and expertise in judicial appreciation of things digital and forensic which are not uniformly distributed. So broad a discretion, without organized guidance and continuous education, may lead to uneven treatment at the hands of the courts, and to a merging of issues of admissibility and issues of reliability. It is this flexibility which renders the Family Court a humane forum in which to adjudicate matrimonial matters flexibility that, in the digital realm, creates foreseeability problems.

VII. Conclusion

The digital era is one looking at an unavoidable change in the face of matrimonial litigation in the Indian context. For the life of a couple, the Smartphone is the chief witness and the WhatsApp message, recorded call and the digital financial trail the staple of the divorce, maintenance and protection proceeding. While the journey from Navjot Sandhu to Arjun Panditrao Khotkar, the enactment of the “Indian Evidence Act, 1872” into “Bharatiya Sakshya Adhiniyam, 2023”, and the admissibility jurisprudence has taken a heavy trip, the outputs have been rather clear obviously, retaining their settled clarity. The unique location of the Family Court, as enjoyed by it under Section 14 of the “Family Courts Act, 1984”, coupled with the recent judgment of the Supreme Court in “Vibhor Garg v. Neha”, have, left a significant edge in favor of the law towards reception.

²¹ *Changing Scope of Certificate as per BSA 2023*, available at: <https://corpotechlegal.com> (last visited June 5, 2026).

But form has overtaken substance. The abilities to obtain, to prove, to certify cost-effectively the integrity of digital evidence, and to receive it without paying for an intrusive surveillance regime for the benefit of coercive or hostile only exist at half life. The problems of authentication, of synthetic media, of the weight of certificates, of forensic under-capacity and of the gendered nature of intimate surveillance real and pressing are, but so too are opportunities for the finding of truth, for the protection of victims of abuse, for the discovery of finances in good faith, and for a more objective and rapid adjudication. The job for the courts and the legislature is one of calibration: to unleash the evidentiary force of the digital record, and to rein in that power by the constitutional values of privacy, dignity and fairness. So long as such a balance is maintained, digital evidence will not necessarily undermine the integrity of matrimonial justice, but can end up being one of its most potent tools.