

PRACTICE NOTE — LAW OF EVIDENCE

The Bharatiya Sakshya Adhiniyam, 2023 — Key Points

Law of evidence replacing the Indian Evidence Act, 1872, in force from 1 July 2024 — structure, key changes and a quick section map

IN FORCE FROM	1 July 2024
REPLACES	Indian Evidence Act, 1872 (1 of 1872)
STRUCTURE	4 Parts, 12 Chapters, 170 Sections (IEA: 3 Parts, 11 Chapters, 167 Sections)
APPLICATION	Governs evidence in proceedings from 1.7.2024 — verify transitional position for matters straddling the changeover
READ WITH	BNS, 2023 (substantive law) and BNSS, 2023 (procedure)

KEY CHAPTERS AT A GLANCE (SELECT)

CHAPTER/SUBJECT	COVERS	KEY SECTIONS
Preliminary	Definitions, incl. expanded "document"/"evidence" to cover electronic records	S.1–S.2
Relevancy of Facts	Facts in issue, res gestae, motive/preparation/conduct, admissions	S.3–S.21
Admissions & Confessions	When admissions/confessions are relevant or barred; discovery of facts	S.15–S.24
Statements Under Special Circumstances	Dying declarations and other hearsay exceptions	S.26–S.27
Judgments & Opinions of Third Persons	Relevance of judgments; expert opinion	S.32–S.39
Character Evidence	When character is relevant in civil/criminal cases	S.46–S.53
Oral & Documentary Evidence	Facts provable by oral evidence; primary/secondary evidence	S.54–S.58
Electronic & Digital Records	Admissibility, equal legal status, S.63 certificate	S.61–S.63
Public Documents & Presumptions	Public/private documents; presumptions as to genuineness	S.74–S.94
Burden of Proof	Who must prove what; presumptions of fact and law	S.104–S.120
Estoppel	When a party is precluded from denying a fact	S.121–S.123
Witnesses & Examination	Competency, privilege, order/manner of examination, hostile witness	S.124–S.170

Select list of frequently used chapters, not the full 12-chapter scheme — always verify exact section boundaries against the bare Adhiniyam.

KEY CHANGES FROM THE EVIDENCE ACT, 1872

ELECTRONIC & DIGITAL RECORDS (S.61–S.63)

- Electronic/digital records given the **same legal status** as paper documents — admissibility cannot be denied merely because a record is electronic (S.61).
- Expanded scope: covers records in semiconductor memory and **any communication device**, not just computers.
- S.63(4) certificate now needs **two signatures** — the person in charge of the device and a digital-forensics expert — plus a **hash value** of the record.

CONFESSIONS & ADMISSIONS (S.22–S.24)

- Confession to a police officer remains generally **inadmissible** unless made in the immediate presence of a Magistrate (S.22, was S.25 IEA); "coercion" expressly added as a vitiating factor.
- "Discovery of fact" rule preserved — so much of information leading to discovery of a fact may be proved (S.23, was S.27 IEA).
- Confession by one accused affecting co-accused in a joint trial (S. 24, was S.30 IEA).

DYING DECLARATIONS & HEARSAY (S.26)

- Core position from S.32(1) IEA retained — statement as to cause of death or circumstances of the transaction resulting in death remains relevant, regardless of expectation of death.
- No particular class of person (Magistrate/police) is mandated to record it — any person present may do so.

EXPERT & ACCOMPLICE EVIDENCE

- Expert opinion widened to **"any other field"** requiring/benefiting from expert opinion, not just the limited fields listed in S.45 IEA (now S.39 BSA).
- Accomplice competency rule (S.138, was S.133 IEA) now requires the accomplice's testimony to be **corroborated** — a materially stricter standard than the old "uncorroborated testimony is not illegal" wording.

CHART — ADMISSIBILITY OF ELECTRONIC EVIDENCE

1

Identify the Record as a "Document"

S.2(1)(d)

Electronic and digital records are expressly within the definition of "document" — emails, WhatsApp chats, CCTV footage, call data records, server logs, etc.

2

Primary or Secondary?

S.57–S.58

Is it the original electronic record itself (may qualify as primary evidence, including where recorded/stored simultaneously in multiple files), or a print-out/copy (secondary evidence, requiring the S.63 route)?

3

Prove Contents Under S.63

S.61–S.63

Contents of an electronic record are proved in accordance with S.63; admissibility cannot be refused merely because the record is electronic — the record has the same legal effect as a paper document, subject to compliance with S.63.

4

S.63(4) Certificate

Mandatory

Certificate identifying the record and describing the manner of its production, giving device particulars, signed by (a) the person occupying a responsible position in relation to the device and (b) an expert, and stating the **hash value** of the record.

5

Genuineness Disputed?

Court's discretion

If the genuineness of the record is disputed, the court may require the person signing the certificate to be summoned and examined on the manner of preparation of the electronic record.

6

Admission & Weight

—

Non-compliance with S.63 renders the electronic record inadmissible (codifying the position in *Arjun Panditrao Khotkar*). Once admitted, its evidentiary weight is assessed like any other evidence, on the facts of the case.

Note — Documents Not Requiring the S.63 Route

Where an electronic record itself qualifies as **primary evidence** under S.57 (e.g. the original file/device is produced and proved through the person having custody or knowledge of it), the S.63 certificate route for secondary/derivative copies is not the only path — but in practice, certificate compliance is still the safer default for any print-out, forwarded message, or extracted copy tendered in evidence.

EVIDENCE ACT TO BSA — QUICK SECTION MAP

SUBJECT	EVIDENCE ACT, 1872	BSA, 2023
Confession to police	S.25	S.22
Discovery of fact from information by accused	S.27	S.23
Confession affecting co-accused in joint trial	S.30	S.24
Dying declaration	S.32	S.26
Expert opinion	S.45	S.39
Secondary evidence	S.65	S.58
Electronic record admissibility (certificate)	S.65B	S.63
Burden of proof	S.101	S.104
Estoppel	S.115	S.121
Accomplice evidence	S.133	S.138
Order of production/examination of witnesses	S.135	S.140
Leading questions	S.141–S.143	S.146–S.148

BURDEN OF PROOF, PRESUMPTIONS & ESTOPPEL

BURDEN OF PROOF (S.104–S.120)

- General rule preserved from S.101 IEA: whoever desires a court to give judgment on a legal right/liability dependent on facts must prove those facts.
- Specific presumptions retained — e.g. legitimacy, presumption of death after 7 years' unexplained absence, presumption as to dowry death, and presumptions regarding certain documents/electronic agreements.

ESTOPPEL (S.121–S.123)

- Where a person has, by declaration/act/omission, caused another to believe a thing to be true and act on it, they cannot later deny the truth of that thing in a proceeding between them.
- Structured across three sections (estoppel generally, estoppel of tenant/licensee, estoppel of acceptor of bill/bailee/licensee) — broadly mirrors the old S.115–S.117 IEA scheme.

WITNESSES & EXAMINATION

COMPETENCY & NUMBER OF WITNESSES

- All persons are competent to testify unless the court considers them incapable of understanding questions or giving rational answers (age, disease, infirmity, etc.).
- No particular number of witnesses is required to prove any fact — a single credible witness can suffice.

ORDER OF EXAMINATION & HOSTILE WITNESS

- Examination-in-chief, cross-examination, re-examination sequence preserved (S.140, was S.135 IEA).
- Leading questions generally barred in examination-in-chief/re-examination, permitted in cross-examination.
- Court's power to permit a party to cross-examine its own witness (hostile witness) is retained.

PUBLIC DOCUMENTS, PRESUMPTIONS & CHARACTER EVIDENCE

PUBLIC VS. PRIVATE DOCUMENTS (S.74–S.78)

- Public documents include records of sovereign/official acts, public records kept by the State, and documents forming the acts/records of public officers.
- Certified copies of public documents are admissible without production of the original, subject to conditions.

PRESUMPTIONS AS TO DOCUMENTS (S.79–S.94)

- Presumptions of genuineness for certified copies, Gazette notifications, and documents 30 years old produced from proper custody.
- Extended presumptions apply to electronic records/agreements meeting specified conditions.

CHARACTER EVIDENCE (S.46–S.53)

- Character generally not relevant except where it is itself a fact in issue, or to assess damages, or as specifically made relevant (e.g. previous bad character of accused becomes relevant once good character is asserted, or on certain sentencing-related questions).

JUDGMENTS AS EVIDENCE (S.32–S.35)

- Judgments of courts of justice are generally not relevant to prove facts in issue except in specified categories (e.g. *res judicata*, judgments in probate/matrimonial/admiralty jurisdiction, or as to matters of public nature).

PRACTICE NOTES

Always Tender the S.63 Certificate

Do not rely on oral testimony alone to prove WhatsApp chats, CCTV, or CDR evidence — obtain and file the S.63(4) certificate (both signatories, hash value) at the earliest opportunity to avoid an admissibility challenge mid-trial.

Accomplice Corroboration Now Explicit

When relying on an approver/accomplice under S.138, ensure independent corroborating evidence is on record — the "corroborated" wording removes ambiguity that previously existed under S.133 IEA.

Confession to Police — Check the Recording Context

A confession is admissible only if made in the immediate presence of a Magistrate; verify whether any BNSS audio-video safeguards were followed before relying on or challenging a recorded statement.

Transitional Matters — Verify Position

For proceedings or evidence spanning the 1 July 2024 changeover, confirm with the current record/roster whether the Evidence Act, 1872 or the BSA, 2023 governs a given piece of evidence before framing objections.

For internal practice reference only — this note highlights select, frequently used provisions and does not cover all 170 sections. Cross-check exact section text, applicable Rules, and the latest High Court/Supreme Court rulings before relying in proceedings. Prepared 28 July 2026.

Primary sources: Bharatiya Sakshya Adhiniyam, 2023 (indiacode.nic.in); BPR&D Comparison Summary, BSA to Indian Evidence Act; PRS Legislative Research Bill Summary; *Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal* (2020) (S.65B/S.63 certificate requirement).