

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO.599 OF 2026

Pune Bar Association

....Petitioner(s)

VERSUS

Union of India and Others

...Respondent(s)

ORDER

1. Petitioner, Pune Bar Association, contends that Section 63(4) of Bharatiya Sakshya Adhiniyam, 2023¹, read with the Schedule thereto is unconstitutional as it imposes undue hardship on an ordinary litigant by requiring submission of a certificate prescribed in the Schedule comprising Part A which needs disclosure of the hash value of digital records, and Part B which must be signed by an expert. Ld. Counsel argues imposition of such pre-requisites for admissibility of electronic records is an extremely onerous obligation on a litigant and renders the provision manifestly arbitrary and unjust.
2. With advancement of technology, digital space has encroached on all spheres of human life. Consequently, evidence in the form of electronic record has become commonplace in all litigation. Physical documents are increasingly replaced with digital records like electronic mails, audio-visual clips etc. To address the admissibility of such electronic records,

¹ Hereinafter "BSA/the Act"

Section 65B was incorporated in the erstwhile Evidence Act². Subsequently, BSA replaced the said provision with Section 63(4) which *inter alia* provides that electronic records must be accompanied by a certificate as set out in the Schedule to the Act. The certificate so prescribed comprises Part A, which *inter alia* requires disclosure of hash value of the electronic records in addition to the declaration required under the erstwhile Section 65B of the Evidence Act. Part B of the certificate requires a further declaration signed by an expert.

3. Electronic record is a unique species of evidence which is liable to continuous mutation and modification affecting its authenticity, integrity and intrinsic evidentiary value. Challenges to admissibility and probative value of electronic records are further accentuated with the advent of artificial intelligence and deepfake technology. Such fast and varied transformation in technology necessitated reviewing the erstwhile Evidence Act and the BSA was enacted. Statement of objects and reasons for enacting the BSA *inter alia* emphasises:

“(ii) it provides for admissibility of an electronic or digital record as evidence having the same legal effect, validity and enforceability as any other document;

(iii) it seeks to expand the scope of secondary evidence to include copies made from original by mechanical processes, copies made from or compared with the original, counterparts of documents as against the parties who did not execute them and oral accounts of the contents of a document given by some person who has himself seen it and giving matching hash value of

² The Indian Evidence Act, 1872

original record will be admissible as proof of evidence in the form of secondary evidence.”

4. To achieve such objective, Section 63(4) of BSA improved upon the certificate envisaged under the old law by mandating the issuance of a standard-form certificate prescribed in the Schedule which *inter alia* requires the disclosure of hash value of the electronic/digital record along with a further certification by an expert. Hash value of an electronic data is synonymous with an electronic fingerprint and provides a sure way of identifying and verifying digital data. The necessity of incorporating the hash value of the electronic record in the certificate is thus to ensure its authenticity and integrity, and cannot be said to lack a rational nexus with the object of the Act. Similarly, certification by an expert in Part B provides an additional layer of authenticity to the secondary electronic evidence. For these reasons, we are of the considered view that the new provision has a clear and rational nexus with the object of the law and cannot be said to be either arbitrary or unreasonable so as to suffer from the vice of manifest arbitrariness.

5. At this juncture, referring to a judgement of the Madras High Court³, Ld. Counsel submits Part B must be filled up by an expert notified under Section 79A of the Information Technology Act, 2000⁴. He contends that only a handful of entities are authorized by the Central/State government to examine electronic evidence under the said provision, thereby causing undue hardship and rendering its implementation illusory.

3 *R. v. B & Anr*, 2024 SCC OnLine Mad 6084, Paras 5 to 6

4 Hereinafter “IT Act”

6. We have perused the cited judgment, wherein the Madras High Court, in a matrimonial case instituted in 2019 *inter alia* held that the same would be governed by the erstwhile Evidence Act. Thereafter, it proceeded to analyse Part B of the Schedule in Section 63(4) to hold that the certificate by an expert therein must be by an Examiner of Electronic Evidence under Section 79A of the IT Act. In doing so, the High Court merely referred to Section 39(2) of the BSA and not sub-section (1). Section 39 deals with admissibility of opinions of experts. Sub-section (1) states when the Court has to form an opinion on a point of foreign law, science or art or any other field, or as to identity of handwriting or finger impressions, the opinion on that point of persons having special skill in such domain namely foreign law, science or art, or any other field, or in respect of identity of handwriting or finger impressions becomes a relevant fact. Sub-section (2) provides when in a proceeding, the Court has to form an opinion on any matter relating to information transmitted or stored in any computer resource or any other electronic or digital form, the opinion of the Examiner of Electronic Evidence under Section 79A of the IT Act shall be treated to be that of an expert and be admissible as a relevant fact.
7. If the two sub-sections are read harmoniously, it is possible to hold, in addition to entities notified as Examiner of Electronic Evidence under Section 79A, if the Court is satisfied, on the basis of unimpeachable material, that any other person has special skill and expertise in computer science and cyber forensics, opinion of such person may be held relevant

as an expert with regard to electronic/digital record and such person may sign Part B of the Schedule as an expert. We are further fortified to make such observation as sub-section (2) of Section 39 (unlike 63(4) and erstwhile 65B) is not prefaced by a non-obstante clause so as to exclude the operation of sub-section (1) from the arena of electronic records. The High Court had deferred adjudication of such issue and directed the State to notify adequate number of persons under Section 79A. Under these circumstances, we hold that the finding of the High Court that Part B must be filled up by an expert notified under Section 79A of the IT Act shall not be treated as a binding precedent. As we are not inclined to admit the matter and issue notice upon the Union of India, we refrain from giving any conclusive opinion on this issue and keep the question of law open. With this clarification, the petition stands disposed of.

....., CJI
(SURYA KANT)

....., J
(JOYMALYA BAGCHI)

....., J
(VIPUL M. PANCHOLI)

**NEW DELHI,
MAY 22, 2026.**

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G SWrit Petition(s) (Civil) No(s). 599/2026

PUNE BAR ASSOCIATION

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

Date : 22-05-2026 This petition was called on for hearing today.

CORAM : HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE JOYMALYA BAGCHI
HON'BLE MR. JUSTICE VIPUL M. PANCHOLIFor Petitioner(s) :Mr. Tank Dhruv Ketan, AOR
Mr. Abhay Anil Anturkar, Adv.
Mr. Dhruv Tank, Adv.
Mr. Sarthak Mehrotra, Adv.
Ms. Surbhi Kapoor, Adv.
Ms. Bhavya Pande, Adv.
Ms. Subhi Pastor, Adv.
Mr. Uday Gautam, Adv.
Ms. Aradhya Srivastava, Adv.

For Respondent(s) :

UPON hearing the counsel the Court made the following

O R D E R

The petition stands disposed of in terms of the signed order.

Pending application(s), if any, shall stand closed.

(NITIN TALREJA)
ASTT. REGISTRAR-cum-PS(PREETHI DILEEP KUMAR)
ASSISTANT REGISTRAR

(Signed order is placed on the file)