



June 2026

Supreme Court of India clarifies scope of expert certification under Section 63(4) of the *Bharatiya Sakshya Adhinyam, 2023*

In a recent judgement, the Supreme Court of India (“**Supreme Court**”), in *Pune Bar Association vs. Union of India and Ors.*¹ upheld the constitutionality of Section 63(4)² of the *Bharatiya Sakshya Adhinyam, 2023* (“**BSA**”) which requires a certificate accompanying electronic records to disclose the hash value of such records and contain certification by an expert as conditions for their admissibility³.

The Supreme Court further disagreed with the Madras High Court’s (“**Madras HC**”) view that Part B of the Schedule to the BSA, prescribed under Section 63(4) of the BSA, must be signed only by an Examiner of Electronic Evidence (“**Examiner**”) notified under Section 79A⁴ of the Information Technology Act, 2000 (“**IT Act**”). Reading Sections 39(1)⁵ and 39(2)⁶ of the BSA harmoniously, the Supreme Court observed that persons possessing special skill and expertise in computer science and cyber forensics may also sign Part B as experts.

Brief facts

Section 63 of the BSA requires a certificate in the prescribed format to accompany electronic records. The Schedule consists of Part A, to be completed by the concerned party, and Part B, to be completed by an expert. The certificate requires disclosure of details relating to the electronic record, including its hash value.

The Pune Bar Association challenged the constitutional validity of Section 63(4) of the BSA and the Schedule thereto before the Supreme Court, contending that the requirements prescribed for admissibility of electronic records are unduly onerous. The Pune Bar Association relied on the Madras HC’s decision in *R. vs. B & Anr.*⁷, which held that Part B of the Schedule can be completed only by an Examiner notified under Section 79A of the IT Act, and submitted that since only a very few entities are authorised by the government to examine electronic evidence under the said provision, serious hardship is caused to litigants who wish to rely on electronic records in proceedings.

¹ Writ petition (Civil) No. 599 of 2026 (decided on May 22, 2026)

² Section 63(4) of the BSA requires electronic records to be accompanied by a prescribed certificate, including disclosure of hash value and expert certification, for admissibility.

³ Section 65B of the now repealed The Indian Evidence Act, 1872, did not have such certification requirement.

⁴ Section 79A of the IT Act provides for the Central Government to notify an Examiner for the purposes of providing expert opinion on electronic form evidence.

⁵ Sections 39(1) of the BSA makes opinions of persons specially skilled in foreign law, science, art or other fields relevant as expert evidence.

⁶ Sections 39(2) of the BSA treats the opinion of an Examiner of Electronic Evidence under Section 79A of the IT Act as expert evidence in relation to electronic records.

⁷ 2024 SCC OnLine Mad 6084

Findings and analysis

The Supreme Court observed that Section 63(4) of the BSA replaces the earlier framework under Section 65B of the Indian Evidence Act, 1872 and introduces additional safeguards, including disclosure of the hash value of electronic records and certification by an expert. It observed that electronic records are susceptible to continuous mutation and modification concerns that have been amplified by advancements in artificial intelligence and deepfake technology. It further observed that a hash value functions as an electronic fingerprint of an electronic record, while expert certification provides an additional layer of authentication. Accordingly, it held that these requirements bear a rational nexus to the object of the BSA. The Supreme Court therefore held that Section 63(4) and the Schedule thereto were therefore neither arbitrary nor unreasonable.

The Supreme Court observed that the Madras HC had relied on Section 39(2) of the BSA without considering Section 39(1) of the BSA. Section 39 of the BSA deals with admission of opinions of experts. While Section 39(1) recognises the opinions of persons especially skilled in foreign law, science, art, or any other field as relevant facts, Section 39(2) of the BSA provides that the opinion of an Examiner under Section 79A of the IT Act will be treated as expert evidence in matters relating to electronic records.

Reading Sections 39(1) and 39(2) of the BSA harmoniously, the Supreme Court disagreed with the Madras HC's view that Part B of the Schedule under Section 63(4) of the BSA can be signed only by an Examiner notified under Section 79A of the IT Act. The Supreme Court held that persons possessing special skill and expertise in computer science and cyber forensics may also qualify as experts and sign Part B of the Schedule. Accordingly, it held that the Madras HC's finding should not be treated as a binding precedent. While holding so, the Supreme Court did not express a conclusive opinion on the issue and kept the question of law open.

Conclusion

The judgment is particularly significant for litigants and businesses that routinely rely on electronic records in legal proceedings. Given the limited number of Examiners notified under Section 79A of the IT Act, a stricter interpretation as done by the Madras HC would have created practical difficulties in certifying electronic evidence and could have delayed litigation. The judgment therefore provides greater flexibility in complying with Section 63(4) and is likely to facilitate the admission of electronic evidence while preserving safeguards relating to its authenticity and integrity. However, as the Supreme Court expressly kept the question of law open, the issue may be examined in greater detail in a future case.

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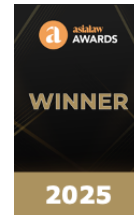
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