

The Role of Section 63 (BSA) / 65B (IEA) Certificates in Modern Divorce

To provide a comprehensive case study, we must first address a critical legal update. Under the Bharatiya Sakshya Adhinyam (BSA), 2023, which replaced the Indian Evidence Act in July 2024, Section 63 is now the primary provision governing the admissibility of electronic records.

The "Section 63 Certificate" (previously known as the 65B certificate) is the "golden key" for admitting WhatsApp chats, emails, and recordings in divorce proceedings.

1. Introduction: The Digital Paper Trail

In contemporary Indian divorce cases, the "smoking gun" is rarely a physical letter. It is a deleted WhatsApp thread, a GPS log, or a recorded heated argument. However, digital data is fragile and easily manipulated.

To prevent "deepfakes" or edited screenshots from misleading the Family Court, the law mandates a technical bridge: the Section 63 Certificate. This document acts as a sworn statement that the digital evidence is authentic and the device used to produce it was functioning correctly.

2. Legal Framework & Necessity

The transition from the Information Technology Act (IT Act) to the new criminal and evidence laws has streamlined how electronic records are handled:

- **Primary vs. Secondary:** If a spouse produces the actual smartphone in court, it is "Primary Evidence" (Section 62 BSA). No certificate is needed.
- **The Certificate Requirement:** Since spouses usually submit printouts or CDs, these are "Secondary Evidence." Under Section 63 of the BSA, these are legally invisible to the judge unless accompanied by a signed certificate.

Mandatory Nature: As established in *Arjun Panditrao vs. Kailash Gorantyal*, the certificate is not a mere formality; it is a mandatory condition. Without it, the evidence is inadmissible.

3. Case Scenario: "The Adultery Allegation"

The Facts: A Petitioner (Husband) filed for divorce on grounds of adultery. His primary evidence consisted of:

1. Screenshots of the Wife's private conversations with a third party.
2. Call Logs showing midnight durations.
3. Bank Statements downloaded from a mobile app showing hotel payments.

The Challenge:

The Respondent (Wife) challenged the evidence, claiming the screenshots were "doctored" using a fake-chat application and that the bank statements were edited PDFs.

4. Drafting the Section 63 Certificate: Key Points

For the Husband's evidence to stand, his Section 63 Certificate had to detail the following points:

- **Device Identification:** Specify the Make, Model, and IMEI/Serial Number of the phone used to capture or store the messages.
- **Source Integrity:** State that the Husband had "lawful control" over the computer/phone from which the printout was taken.
- **Operational Status:** Explicitly declare that during the period the data was created, the device was operating properly and was not compromised by viruses or unauthorized access.
- **The "Hash Value" (New Requirement):** Under the BSA, there is an increased emphasis on digital signatures and hash values (a unique alphanumeric string that acts as a digital fingerprint). Including the hash value ensures that the file has not been altered by even one pixel since the certificate was generated.

5. Judicial Scrutiny and the "Family Court Act" Twist

The case study highlights a unique conflict in matrimonial law: Section 14 of the Family Courts Act.

- This section allows Family Courts to receive evidence that might otherwise be inadmissible under the Indian Evidence Act if it helps the court resolve the dispute effectively.
- **The Court's Ruling in the Scenario:**
- While the Wife argued for the strict exclusion of the chats due to minor technical errors in the certificate, the Court ruled that in matrimonial matters, the "Substantial Justice" rule applies. However, the Court still required the Husband to file a rectified Section 63 certificate to prove the "Chain of Custody" (showing the phone went from his hand to the printer without a third-party editor in between).

6. Common Defenses Against the Certificate

In this case study, the defense (Respondent) used three main arguments to invalidate the electronic certificate:

1. Privacy Violation: Arguing that the evidence was obtained by "hacking" or "theft" of the device, violating the Right to Privacy (Puttaswamy Judgment).
2. Lack of Originality: Arguing that the Husband did not provide the "metadata" (time-stamped logs) of the images.
3. Intermediary tampering: Claiming the service provider (WhatsApp/Google) was not summoned to verify the records.

7. Strategic Importance for Practitioners

For a divorce case to succeed on the back of digital evidence, the following points are vital:

- Don't Wait for Trial: The certificate should be filed at the earliest stage (along with the petition or the evidence affidavit).
- The "Responsible Person": The certificate must be signed by the person who managed the device. If a private detective gathered the evidence, the detective must sign the certificate.
- Video Evidence: For video recordings of cruelty, the certificate must specify the software used to play and capture the video to ensure no "frame-editing" occurred.

8. Conclusion: The Future of Evidence

- The move from Section 65B (IT Act/IEA) to Section 63 (BSA) reflects India's shift toward a "Digital First" legal system. In divorce cases, where emotions are high and "he-said-she-said" is the norm, the Section 63 certificate serves as the objective truth-teller. It ensures that while the heart may lie, the metadata does not.
- In our case study, the court eventually granted the divorce, not just because the chats existed, but because the Section 63 Certificate provided the technical bridge of trust required to accept those chats as absolute truth.

Conclusion: The Future of Evidence

Feature	Old Law (IEA)	New Law (BSA)	Impact on Divorce
Section	65B	63	Mandatory for digital proof
Signed by	Owner/Operator	Person in charge	Usually the aggrieved spouse/Incl
Scope	Computer Outputs	Digital/Electronic Records	Includes Cloud/Social Media
Key Aim	Prevent Tampering	Ensure Authenticity	Critical for Adultery/Cruelty