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# THE EVIDENTIARY VALUE OF WHATSAPP MESSAGES AS ELECTRONIC EVIDENCE IN INDIA, THE USA, THE UK, AND CHINA

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## ABSTRACT

Information technology has paved the way for doors previously unopened in the realm of evidence law. The evidentiary value of electronic evidence has come a long way in Indian criminal procedure, with a paradigm shift in terms of its relevance under the newly enacted Bharatiya Sakshya Adhiniyam, 2023. The authors aim to understand the crucial changes brought under S. 63 of the BSA and recent judicial precedents to understand the admissibility of WhatsApp messages as electronic evidence and its evidentiary value. The authors analyze several precedents in this regard, and the BSA considers it at par with primary evidence if certain crucial factors are satisfied, marking a big victory for evidence in techno-legal cases. Also, a brief comparison of the current stand on whatsapp and similar electronic evidence has been discussed in the paper for comprehensive understanding of the instant messaging apps evidence. The authors also comparatively analyze how evidence is appreciated in other countries like the USA, the UK, and China.

**Keywords:** Electronic Evidence, Admissibility of WhatsApp Chats, Section 63 of Bharatiya Sakshya Adhiniyam, Right to Privacy & Fair Trial.

## Introduction

In today's digital age, social media has not only become ubiquitous but also an integral part of human life. The amount of data that is being transmitted from one system to another is boundless. Consequently, like how social interactions lead to some form of dispute, internet/digital interactions also lead to the same. The vast amounts of data that are generated can serve as crucial evidence in legal proceedings. The evidentiary value of data transferred via social media such as WhatsApp messages, is increasingly recognised in courts worldwide, including in India.

For electronic data to be admissible, it must be authenticated and meet specific conditions outlined in the S. 63 Bharatiya Sakshya Adhiniyam, 2023 (BSA) [previously S. 65B of the Indian Evidence Act, 1872 (IEA)]. It plays a pivotal role in determining the admissibility of electronic records, including the provision of a certificate. This ensures the integrity and reliability of the data by alleviating concerns about tampering and forgery. Courts have adapted to these technological advancements through various landmark judgements, emphasising the importance of proper certification and verification of electronic evidence. As social media continues to permeate every aspect of life, its role in legal contexts will undoubtedly grow, necessitating a robust appreciation of its evidentiary value.

## Legal Framework Governing Electronic Evidence

The BSA has brought slight yet crucial changes to the law of electronic evidence. The newly inserted provisions along with expanded definitions [e.g., S. 2 (1)(d) "document" incorporating electronic and digital records] have significant legal impact. Following are the major changes induced by BSA in three specific areas:

1. Electronic evidence has been elevated to primary evidence:<sup>1</sup> Electronic evidence used to be considered merely as a secondary evidence under the IEA. But now it is deemed to be a document as per S. 63 BSA. As long as it meets the prerequisites mentioned in S. 63<sup>2</sup>, the electronic evidence will suffice to convince relevant facts and facts in issue. Additionally, the definitions & constituents of oral evidence have been expanded, such that it can be adduced as secondary evidence to corroborate the original document's contents as permitted in S. 60 (i) explanation. This is allowed when an adverse party

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<sup>1</sup> The Bharatiya Sakshya Adhiniyam, 2023 (Act 47 of 1872), S.57 explanations 4-7.

<sup>2</sup> The Bharatiya Sakshya Adhiniyam, 2023 (Act 47 of 1872).

has possession of the original document, it is lost, not easily accessible, etc.

2. The BSA provides for a dual-certificate mechanism, replacing ss. 22 and 22A IEA: Along with the basic certificate criteria<sup>3</sup> followed previously, it also mandates for hash values and an expert's signature on the certificate. This was the consequence of judicial pronouncements like *Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal*.<sup>4</sup> These provisions restricted oral admissions regarding the contents of documents and electronic records as secondary evidence. As these sections required the party to prove entitlement before secondary evidence of the document's contents was admissible. Relievingly, the BSA consolidates this principle in S. 20 and updates the definition of "document" to explicitly include electronic and digital records. Thus, oral admissions about electronic record contents remain inadmissible, unless proper primary evidence or certified certificate as per ss. 62 and 63 is produced.
3. Changes to IT Act, 2000: The BSA has also brought changes to the IT Act, 2000 (ITA) to include the definition of records, their legal recognition,<sup>5</sup> retention,<sup>6</sup> & agreements formed through them.<sup>7</sup> Furthermore, the act also specifies that the central government is empowered to appoint any department, body, or agency as an examiner of electronic evidence. The certified output by these examiners is treated as a piece of expert evidence.<sup>8</sup>

### The Major Cases that Impacted Admissibility of Electronic Media as Evidence

The admissibility of the electronic evidence hinges on the case's unique scenario, genuineness of the claim and mainly on the availability of the expert's certification required by S. 63 (4) BSA/65 B (4) IEA. One of the very first cases is *Jagjit Singh*,<sup>9</sup> where the Apex court willingly accepted the digital proof even when the rules of procedure were not strictly followed. However, it was held in *Navjot Sandhu*<sup>10</sup> that parties could either produce the original record or a copy of the original record with S. 65B (4) IEA certificate to substantiate their case.

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<sup>3</sup> The Indian Evidence Act, 1872 (Act 1 of 1872), s. 65-B (4).

<sup>4</sup> (2020) 7 SCC 1; *Shafiqi Mohammad v. State of H.P.* (2018) 2 SCC 8, *Anvar P.V v. P.K.Basheer & Ors*, (2014) 10 SCC 473 01.

<sup>5</sup> The Indian Evidence Act, 1872 (Act 1 of 1872), s. 4.

<sup>6</sup> The Indian Evidence Act, 1872 (Act 1 of 1872), s. 7.

<sup>7</sup> The Indian Evidence Act, 1872 (Act 1 of 1872), s. 10-A.

<sup>8</sup> The Indian Evidence Act, 1872 (Act 1 of 1872), s. 79-A.

<sup>9</sup> *Jagjit Singh v. State of Haryana* (2006) 11 SCC 1.

<sup>10</sup> *State (N.C.T. of Delhi) v. Navjot Sandhu* (2005) 11 SCC 600.

This precedent caused inconsistencies which the Supreme Court overturned in *Anvar P.V. v. P.K. Basheer & Ors.*,<sup>11</sup> where it was held that without the S. 65B (4) certificate, any electronic record would be inadmissible as evidence. In the same year, the case of *Tomaso Bruno*<sup>12</sup> was decided, wherein the court reiterated that electronic evidence needs to be proved beyond reasonable doubt. This reasoning is palpable, as law tends to provide leniency to the accused if at all the evidence is vague. Moreover, in the same matter the top court also announced that S. 65 B itself isn't a complete code in itself, which allows for interpretation and referencing from the evidence law.

In pursuit of this, there has been an array of cases that shaped and reshaped the WhatsApp chats evidentiary jurisprudence. Some of the notable cases include the Delhi High Court's opinion that the original of the contents of the device is itself presented, a certificate as per S. 65B is not necessary.<sup>13</sup> This was subsequently followed by the *Shafhi Mohammad*,<sup>14</sup> where the Supreme Court adopted a liberal approach like *Jagjit Singh* and the *State (N.C.T. of Delhi)*, stating that if a party doesn't possess the device, the certificate is not mandatory to adduce evidence under S. 65B.

Then, a set of unprecedented overruling of *Tomaso Bruno*<sup>15</sup> and *Shafhi Mohammad*<sup>16</sup> took place in the case of *Arjun Panditrao Khotkar*,<sup>17</sup> where the Hon'ble Court handled the question of the admissibility of electronic records as secondary evidence in court proceedings. It further ruled that a certificate is mandatory for the admissibility of electronic records in a court. Also, the court clarified that if the original document is produced, then S. 65B (4) isn't necessary. Finally, the court held that S. 62 of the IEA is not always followed when electronic documents are introduced as primary evidence. This is due to the fact that S. 65B is regarded as the comprehensive code for handling electronic records.<sup>18</sup> This shows a 'see-saw' stance from the side of courts while accepting electronic evidence; based on the circumstances of the case and the availability of the S. 65-B(4) certificate.

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<sup>11</sup> AIR 2015 SC 180.

<sup>12</sup> *Tomaso Bruno v. State of Uttar Pradesh* (2015) 7 SCC 178.

<sup>13</sup> *Raj Kumar v. State* [2016] CRL.A.232/16 in High Court of Delhi

<sup>14</sup> *Shafhi Mohammad v. The State of Himachal Pradesh* (2018) 2 SCC 801.

<sup>15</sup> *Supra* note 13 at 4.

<sup>16</sup> *Supra* note 15 at 4.

<sup>17</sup> *Supra* note 5 at 3.

<sup>18</sup> Sri Mude Anil Kumar Naik, Criminal Law: Practice and Procedure, f) Electronic Evidence, available at: <https://cdnbbsr.s3waas.gov.in/s3ec03333cb763facc6ce398ff83845f22/uploads/2024/11/2024112871.pdf>. (last visited on December 3, 2024).

## Recent Cases that Changed the Usage of WhatsApp Messages as Evidence in Disputes

The following are a set of cases that explore the various judgements of the Supreme Court and High Courts of India deciding on acceptance and denial of electronic and social media evidence; In *Vikas Garg*,<sup>19</sup> the Punjab and Haryana High Court relied on WhatsApp messages and convicted the accused of rape and other offenses. The court highlighted that the chats provided crucial evidence of the accused's intent and actions. The *SBI Cards & Payment Services Pvt. Ltd. v. Rohit Jadhav*<sup>20</sup> case saw the Bombay High Court ruling that WhatsApp conversations might be used as evidence; provided they were accompanied by a S. 65B's certificate. The court affirmed that "blue tick" on WhatsApp chats may serve as proof that the recipient received and read the messages.<sup>21</sup>

Surprisingly, the top court in *Ambalal Sarabhai Enterprise Ltd. v. KS Infraspace LLP Limited and Another*<sup>22</sup> held that WhatsApp messages being a part of virtual verbal conversations come under the ambit of evidence based on their meaning and substance established via trial through chief and cross examination.<sup>23</sup>

Contrastingly, in *A2Z Infraservices Ltd. v. Quippo Infrastructure Ltd.*,<sup>24</sup> the Apex Court declared that the messages exchanged between parties or any sender of WhatsApp messages cannot be held accountable, especially in business partnerships. It was observed that the evidentiary value of WhatsApp chats is trivial. Further, they went on to comment that anything can be added to or deleted from social media. Thus, the court does not consider WhatsApp communications to be a valuable source of evidence. However, this case marked a significant advancement in the use of email evidence. The court ruled that e-mail evidence is admissible as evidence as per IEA and ITA, when accompanied with an approval email adding evidentiary value.<sup>25</sup>

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<sup>19</sup> *Vikas Garg v. State of Haryana* Cr.M.No.23962 of 2017, High Court of Punjab and Hararyana, dated 13.09.2017.

<sup>20</sup> 2018 SCC OnLine Bom 1262.

<sup>21</sup> Aishwarya Agrawal, How to Prove WhatsApp Messages in Court?, available at: <https://lawbhoomi.com/how-to-prove-whatsapp-messages-in-court/> (last visited on December 3, 2024).

<sup>22</sup> AIR 2020 SC (Civil) 738.

<sup>23</sup> Admissibility of Social Media Messages as Evidence before Court of Law, available at: [https://taxguru.in/corporate-law/admissibility-social-media-messages-evidence-court-law.html#\\_ftn5](https://taxguru.in/corporate-law/admissibility-social-media-messages-evidence-court-law.html#_ftn5) (last visited on December 10, 2024).

<sup>24</sup> SLP(C) No. 8636/2021.

<sup>25</sup> XpertsLegal, Admissibility of WhatsApp chats and Emails in Court, available at: <https://xpertslegal.com/blog/admissibility-of-whatsapp-chats-and-emails-in-court/> (last visited on September 5, 2025).

Furthermore, in the case of **Rakesh Kumar Singla**,<sup>26</sup> the Apex Court recognised that WhatsApp message screenshots available with CBI can directly correlate the suspect with the said contraband. Therefore, it is encouraged that by following proper adherence to S. 65B of the Indian Evidence Act, the Narcotics Bureau will always be free to rely on WhatsApp chats.<sup>27</sup>

### **The Aftermath of the BSA, 2023**

The new law calls for the S. 63 certificate, that acts as a triple assurance by requiring; incharge of the device adducing the evidence, the signature of the evidence expert, and to add the hash values. The following are the set of cases after the advent of BSA, 2023 that have impacted the admissibility of Whatsapp evidence in India:

In **Dell International Services Private Limited v. Adeel Feroze**,<sup>28</sup> the Delhi High Court observed that for electronic records, including WhatsApp conversations, to be admitted in court, a certificate under S. 65B IEA is required. This certificate needs to attest to the fact that the electronic record was created by a trustworthy computer system and accurately reflects the data it contains. The petitioner in this dispute had not presented the required S. 65B certification. As a result, the Court decided that the WhatsApp conversations were not admissible evidence without the certificate.

In **R v. B, the Secretary to Government, Ministry of Electronics and Information Technology (MEITY), Government of India, & Ors**,<sup>29</sup> Swaminathan, J. directed the MEITY to promptly notify the list of electronic evidence experts to authenticate as given under S 79A of the Information Technology Act, 2000, within three months. Furthermore, the court observed that the Central Government acknowledged the fact that only a number of organisations have been designated as experts. Alarmingly, in the State of Tamil Nadu, no experts have been notified yet. There is no denying Tamil Nadu's strong IT infrastructure and highly qualified workforce. Since BSA is now in effect, certificates will soon be required in order to use secure electronic records under S. 63(4) of the BSA.

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<sup>26</sup> *Rakesh Kumar Singla v. Union of India* 2021-1 RCR(CRI) 704; 2021-3 CRICC 452.

<sup>27</sup> Joji George Kadavath, 'How To Prove Whatsapp Messages, Facebook and Website in Courts', available at: <https://www.scribd.com/document/624548227/How-to-Prove-Whatsap-Messages-Facebook-and-Website-in-Courts-Saji-Koduvath-Associates>. (last visited on September 5, 2025).

<sup>28</sup> Arunima, Delhi High Court rules WhatsApp Chats Inadmissible Evidence Without Proper Certification; Rejects Dell International Services' Delay Condonation Appeal, available at: <https://www.sconline.com/blog/post/2024/07/06/delhi-high-court-whatsapp-chats-inadmissible-evidence-without-proper-certification-rejects-dell-international-services-delay-condonation/>. (last visited on September 5, 2025).

<sup>29</sup> CRP(MD)No.2362 of 2024, Madurai Bench, High Court of Madras, pronounced on: 30.10.2024.

Otherwise, the fundamental right to seek justice would be denied if there were no experts available in Tamil Nadu. Therefore, the court instructed the second respondent to promptly notify a sufficient number of individuals, organisations, and bodies that are specialists in the state.<sup>30</sup>

Following similar steps, the Karnataka HC called upon the Centre to appoint experts to handle e-evidence authentication, in the case of *X Corp. v. Union of India*<sup>31</sup>. The Court, in response to growing concerns about the integrity of digital evidence, issued notice in a public interest litigation seeking prompt appointment of qualified experts under S. 79A IT Act, 2000. The petitioners contended that the absence of certified professionals hampers proper examination and certification of electronic evidence, potentially impeding justice.<sup>32</sup>

In the lines of the above cases, a further step was taken in the top court. In the *Vinod Kumar Boinapally*<sup>33</sup> case, a writ petition was filed before the SC challenging the constitutional validity of several provisions of the BSA, 2023 and BNS, 2023. The petitioner alleges that S. 2(d) BSA regarding the definition and admissibility of electronic and digital records, as well as certain confession rules and judge's powers, are arbitrary, vague, and conflict with constitutional guarantees of fair trial and privacy.<sup>34</sup>

### **Breakthrough in Admissibility of Evidence in Matrimonial Cases**

The Madhya Pradesh HC delivered a landmark ruling in *Smt. Anjali Sharma*<sup>35</sup> case. The court held that WhatsApp chats obtained without consent of the spouse could be admitted as evidence in matrimonial disputes. This was recognised inherent to S. 14 of the Family Courts Act, 1984. The court emphasized that while privacy is a fundamental right, it is not absolute and can be superseded by the right to fair trial. Here, the husband had installed a monitoring software that automatically forwarded his wife's WhatsApp messages to his phone. Thereby, revealing

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<sup>30</sup> LawWeb, Madras high court directs MEITY to expeditiously notify experts as per S 79A of Information technology Act for authenticating electronic evidence, *available at*: <https://www.lawweb.in/2024/11/madras-high-court-directs-meity-to.html>. (last visited on September 11, 2025).

<sup>31</sup> Writ Petition No.7405 OF 2025 (GM - RES)

<sup>32</sup> Karnataka High Court issues notice to Centre on PIL to appoint an adequate number of experts to examine and certify electronic evidence, *available at*: <https://www.livelaw.in/high-court/karnataka-high-court/karnataka-high-court-pil-experts-appointment-electronic-evidence-examination-information-technology-act-281776>. (last visited on January 27, 2026).

<sup>33</sup> 2025 INSC 209

<sup>34</sup> Plea In Supreme Court Challenges BSA's Electronic Evidence & Confession Provisions And BNS Sections *available at*:

<https://www.livelaw.in/top-stories/supreme-court-former-mp-vinod-boinapally-plea-challenging-new-criminal-laws-bns-bsa-282624> (last visited on January 31, 2026).

<sup>35</sup> 2025:MPHC-JBP:51095

alleged extramarital affair communications and providing valid proof of adultery. The court established that in matrimonial disputes, relevance of the evidence prevails over procurement methods. However, the court cautiously laid down specific safeguards including in-camera proceedings and higher scrutiny standards for such extra-ordinary cases to maintain confidence and integrity of the legal system.<sup>36</sup>

In *Manjari Tiwari v. Vaibhav Dubey*,<sup>37</sup> the Court held that WhatsApp chats and call recordings are admissible in matrimonial disputes. It reiterated the stance of the MP High court and held that even if the electronic evidence was obtained without the spouse's consent like hacking or stealth), it was still admissible. The court ruled that S. 14 of the Family Courts Act, 1984 allows for greater flexibility and that the right to a fair trial outweighs the right to privacy in such sensitive litigations.

### Validation in Income Tax Proceedings

The decision in *Giriraj Pugalia*<sup>38</sup> was a significant development in Income Tax and e-evidence proceedings. In this case, the Rajasthan HC in April 2025 upheld income tax reassessment proceedings based on WhatsApp chats discovered during search operations of the accused premises. The court held that WhatsApp messages with incriminating evidence, when corroborated by other evidence like ledger entries and witness statements, could justify S. 153C proceedings. The court emphasized that while S. 65B certification remained important for final adjudication, the threshold for initiating tax proceedings was lower, provided substantial compliance was demonstrated.<sup>39</sup>

### Application in Customs Law

The SC's August 2025 decision in *Additional Director General, DRI*<sup>40</sup> case clarified that e-evidence under the Customs Act could be admissible without strict S. 138C(4) certification if substantial compliance was demonstrated. The court held that signed proceedings and unretracted statements under S. 108 acknowledging documents could fulfill legal requirements.

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<sup>36</sup>MP High Court allows husband to produce wife's WhatsApp chats obtained without her consent to prove, available at: <https://www.livelaw.in/high-court/madhya-pradesh-high-court/husband-sneaks-wifes-whatsapp-chat-extramarital-affair-adultery-right-to-privacy-fair-trial-295112>. (last visited on December 25, 2025).

<sup>37</sup> WP 227 No. 158 of 2025

<sup>38</sup> [2025:RJ-JD:14017-DB]

<sup>39</sup> Income Tax Act | Rajasthan HC Dismisses Challenge Against Proceedings Initiated U/S 153C Based On WhatsApp Chats, Says Chats Had Been Corroborated, available at: <https://www.livelaw.in/high-court/rajasthan-high-court/rajasthan-high-court-ruling-whatsapp-chats-and-section-153c-proceedings-income-tax-act-288620> (last visited on February 03, 2026).

<sup>40</sup>2025 INSC 1050

However, the court clarified that where obtaining such a certificate is impossible, and due compliance is established through acknowledgment and signatures on seized documents, the evidence cannot be rejected merely due to the absence of the formal certificate. The Court emphasized substantial compliance and undisputed authenticity, referencing *AP Khotkar* case.<sup>41</sup>

### **Application in Criminal Law**

The Bombay HC's September 2025 decision in *State of Goa v. UIDAI*<sup>42</sup>, directed the UIDAI to disclose the Aadhaar demographic information of an Israeli national residing in Goa without valid travel documents. The respondent had obtained an Aadhaar card despite lacking a valid passport or residential visa. Thereby, raising questions about the legitimacy of issuance of Aadhaar card to foreign nationals. The court allowed the petition and analyzed S. 33(1) of the Aadhaar Act, 2016, which empowers judicial disclosure upon sufficient cause. The HC emphasized that residence in India under the Act requires valid visa or equivalent government-issued documents, which the respondent lacked in the instant issue. The investigation was initiated based on the Anti Narcotic Cell's FIR for respondent's drug possession. Consequently, the court balanced privacy rights and investigative needs by ordering UIDAI to provide the demographic information. It also asked the agency details for the probe of a drug trafficking issue based on the continued reliance on WhatsApp evidence. To further tighten the noose, the Bombay court denied bail under the NDPS Act, relying on WhatsApp evidence, call logs, and financial records linking the applicant to drug distribution networks.<sup>43</sup>

### **Factors and Challenges for Consideration with regard to Admissibility of Electronic Evidence and Social Media Evidence**

Mainly, there are three terms which are employed to authenticate digital data, and they are 'authenticity, integrity and reliability'. All these three require a set of countermeasures and digital techniques to secure a digital object; to preserve it and to prevent the data from being manipulated, altered or falsified deliberately or inadvertently.<sup>44</sup> However, there are also other

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<sup>41</sup> Customs Act | Electronic Evidence Admissible Without S. 138C(4) Certificate If Assessee's S. 108 Statement Admits Contents : Supreme Court, *available at*: <https://www.livelaw.in/supreme-court/customs-act-electronic-evidence-admissible-without-s138c4-certificate-if-assessee-s108-statement-admits-contents-supreme-court-302590> (last visited on February 06, 2026).

<sup>42</sup> *State of Goa v. Unique Identification Authority of India* 2025 SCC OnLine Bom 3370

<sup>43</sup> Amid NDPS probe, Bombay HC directs UIDAI to reveal demographic information of Israeli national who obtained Aadhaar card despite ineligibility, *available at*: <https://www.scconline.com/blog/post/2025/09/26/bom-hc-orders-uidai-to-disclose-aadhaar-details-of-israeli-national> (last visited on February 08, 2026).

<sup>44</sup> Stephen Mason, *Authenticating Electronic Evidence*, in *Electronic Evidence* 195, (University of London Press,

factors discussed below that need due consideration to ensure that electronic/ social media data gets through the trial and not be rejected:

- **Authenticity and Relevance of Electronic Records:** The major factor affecting the evidentiary value of WhatsApp content is its relevancy to the case at hand. In addition, the person asserting the electronic evidence has to show that it has been tampered with and prove its authenticity. The same was held in the cases of *Umesh v. State of Karnataka*.<sup>45</sup>
- **Section 63(4)/ 65B certificate:** As held in *Arjun Panditrao Khotkar*<sup>46</sup> and *Harpal Singh*<sup>47</sup> without adducing the required expert's certificate, the electronic evidence proposed use in trial would be inadmissible.
- **Admissibility Issues of Electronic Evidence:** There is always the fear of non-acceptance of electronic records, specifically Whatsapp chats. The courts will look into the way the evidence was arranged, possibility of manipulation, procedure followed in obtaining and preserving the evidence etc.
- **Preservation of Electronic Evidence:** It is always advisable to maintain and preserve the original digital device to ensure the integrity of the evidence. The courts have reiterated the need for preserving the original medium from which the evidence was obtained.<sup>48</sup>
- **Electronic Evidence may be considered as Hearsay:** Even if electronic records are admitted as evidence, there might be objections to the same for being hearsay. The courts would then examine whether the evidence supports or counters any claims.
- **Privacy Concerns in obtaining Electronic Evidence:** Privacy is another major concern that courts look into while addressing electronic evidence. Privacy is a fundamental right for Indian citizens<sup>49</sup> and therefore, one must make sure that such evidence is obtained in a legally ethical manner.
- **Expert's Testimony for Electronic Evidence:** In certain cases, where there is a suspicion of malpractice or the evidence is highly technical, the court may call upon tech-experts to elaborate on the data collection method and for interpretation

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2017).

<sup>45</sup> CRL.A No. 2760 of 2012, KHC, 21 July, 2022; *Konnadan Abdul Gafoor v. The State of Kerala* (2015) SCC OnLine Ker 35800; *Joseph M. Puthussery v. T.S. John & Ors.*, AIR 2011 SC 906.

<sup>46</sup> *Supra* note 5 at 3.

<sup>47</sup> *Harpal Singh (Chhota) v. State of Punjab* AIR 2016 SC 5389.

<sup>48</sup> *Umesh v. State of Karnataka* CRL.A No. 2760 of 2012, High Court of Karnataka, dated 21 July, 2022.

<sup>49</sup> *Justice K.S. Puttaswamy v. Union of India* (2017) 10 SCC 1.

purposes.<sup>50</sup>

## Comparison of Frameworks Governing Admissibility of Whatsapp Data as Evidence From Around the World

### United States

The Current Legal Framework for Whatsapp evidence in the US follows the Federal Rules of Evidence (FRE). The evidence is primarily governed by Rules 901 (Authentication), 902 (Self-Authentication), and 803 (Hearsay Exceptions). The FRE Rule 901(a) requires that the evidence must be sufficient enough to support a finding that the item is what the claimant deems it to be. Followed by this, there is the FRE Rule 902(13)-(14) whose 2017 amendments allow machine-generated data and forensic electronic evidence to be self-authentication of the claimants.<sup>51</sup> Thus, it is safe to assume that in the US, the authentication standards mainly focus on authenticity, relevance, and reliability rather than strict certification requirements.

For example, US states such as Massachusetts and New York have specific provisions regarding use of electronic and digital records (including WhatsApp messages) as evidence. However, this highly depends on the quality of the message; no blurry images, sender information and timestamps are necessary. Also, these WhatsApp messages are classified as two separate record types which require specific conditions to be met to be admissible in a court of law.

The S. 901(b)(11) of the Massachusetts Guide to Evidence, 2025,<sup>52</sup> specifically addresses electronic communications like text messages, stating that “confirming circumstances” are required to authenticate authorship beyond just the sender's name or phone number. Confirming circumstances may include evidence like device ownership, message content, photos, metadata, or corroborating witness testimony. The above provision is supplemented by S. 1119 (Digital Evidence)<sup>53</sup> which provides the general approach for handling digital evidence in Massachusetts courts. Thus, just having the defendant's name on a text message is insufficient proof of authenticity.

There is a need for proper authentication of digital communications and the same can be done

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<sup>50</sup> *Konnadan Abdul Gafoor v. The State of Kerala* (2015) SCC OnLine Ker 35800.

<sup>51</sup> The Federal Rules of Evidence, 2024, ss. 803, 901 & 902.

<sup>52</sup> The Massachusetts Guide to Evidence, 2025, s. 901(b)(11).

<sup>53</sup> The Massachusetts Guide to Evidence, 2025, s. 1119.

in one of two ways as mentioned below:

- Using a “copy, a screenshot, photo, or print-out of the message” which has information about the message sender or the receiver
- By presenting testimony or affidavit to prove its accuracy.

One such landmark case that recognized electronic evidence is that of *Lorraine v. Markel American Insurance Co.*<sup>54</sup> This case established the comprehensive framework for electronic evidence admissibility in the US. The court emphasized the need for authentication, relevance, and hearsay exceptions for digital communications. Thereby it set precedent for a flexible approach towards electronic messaging evidence.

### *United States v. Avenatti*<sup>55</sup>

Michael Avenatti, who represented Stormy Daniels, was charged with defrauding his client and felony. He had sought to exclude WhatsApp message evidence (screenshots and exported files) arguing the government failed to produce "original, electronically stored versions" of their communications. The court denied Avenatti's motion, ruling that the government has no obligation under Brady or Rule 16 to produce evidence not in its possession, custody, or control. It further stated that the government cannot be required to conduct forensic searches of devices it never fully controlled. Consequently, the court held that properly authenticated screenshots and exported WhatsApp messages are admissible evidence even if not in original electronic format. It rejected arguments about authentication deficiencies and the rule of completeness as premature. Additionally, the court denied Avenatti's motion to suppress evidence from his iCloud search conducted by a government "filter team." They observed that such privilege review procedures are standard practice in the Southern District of New York and do not violate constitutional separation of powers.

### **United Kingdom**

The current legal framework in the UK encompasses many laws like the 1) Civil Evidence Act 1995. S. 9 of the Act provides for computer records that establishes presumptions for computer-generated documents / electronic records admissibility. Furthermore, the provision empowers the court to provide leniency on authentication of computer evidence. Another adjoining provision is S. 13 which provides for the meaning of the document. This provision explicitly

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<sup>54</sup> (2007) [241 F.R.D. 534].

<sup>55</sup> 432 F.Supp.3d 354 (S.D. N.Y. 2020).

encompasses electronic communications and digital records.<sup>56</sup>

Then there is the Criminal Justice Act 2003, which provides for business documents covering electronic records (S. 117), additional requirements for business documents (S. 121), and also for S. 129 which governs machine-generated evidence including electronic communications; thereby requiring authenticity verification when statements emerge from automated systems.<sup>57</sup>

Police and Criminal Evidence Act 1984 (PACE): Governs collection and handling of digital evidence. PACE Codes E and F are supplementary codes of practice to the PACE in the UK, focused on the recording and preservation of evidence in police interviews. There are specific provisions for audio/visual recording and digital evidence preservation.<sup>58</sup>

Some of the major provisions include:

- For example: PACE Code E - Audio Recording
- S. 2 - Interviews and other matters to be audio recorded under this Code and
- Para 2.1: This para proposes for mandatory use of authorized recording devices when available.

**The three UK cases which explain the current position are:**

- *Paul Wells and Roberto Solari v. Cathay Investments 2 Ltd and PNC Global Logistics*<sup>59</sup>

In this case, facts show that two executives were terminated for sharing inappropriate WhatsApp group chat content during work hours. However, the employees had sued the company for wrongful termination stating that there was financial motive behind it. The employer was able to submit evidence of the pornographic content shared by the employees. The court admitted WhatsApp messages from company devices as evidence and ruled in the favour of the employer.

- *FKJ v. RVT and Others*<sup>60</sup>

A solicitor was dismissed for falsifying timesheets. She sued her former employers for

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<sup>56</sup> The Civil Evidence Act, 1995, s. 9 &13.

<sup>57</sup> The Criminal Justice Act, 2003, s. 117, 121, 129.

<sup>58</sup> The Police and Criminal Evidence Act 1984; Code of Practice E and F.

<sup>59</sup> [2019] EWHC 2996 (QB).

<sup>60</sup> [2023] EWHC 3 (KB).

misuse of private information in her WhatsApp messages (including intimate conversations with her husband and best friend) in employment tribunal proceedings. Allegedly, the employers obtained it by hacking her WhatsApp Web account. The court refused the defendants' application to strike out the claim, finding that the claimant had a clear reasonable expectation of privacy in her WhatsApp messages. It also noted that only 40 out of 80,000 messages were actually relevant to the employment dispute, making the bulk of the retention unjustified. The judge heavily criticized the defendants' conduct as potentially yielding damages of "many thousands of pounds". He condemned them for the serious breach of private information, emphasizing that private communications don't lose their protected character simply by being downloaded to a work laptop.

- *Jaevee Homes Limited v. Fincham*<sup>61</sup>

The High Court confirmed that WhatsApp messages can form legally binding contracts. This case clarified the stance that when digital communications constitute valid contractual agreements, subsequent obligations and proportionate rights follow. This case is a cornerstone that established the framework for commercial WhatsApp message validity and a timely reminder that modern communication mediums like WhatsApp chats can lead to legal obligations.

## China

China's legal framework on digital evidence integrates various laws and judicial precedents to address the growing importance of instant messaging in legal proceedings. The Cybersecurity Law 2017 mandates regulated digital data collection and real-name registration (Art. 24)<sup>62</sup>. The PRC Supreme People's Court had released the amended Provisions on Evidence for Civil (Amended Evidence Rules) which came into force on 1 May 2020. Articles 14, 15, 93 and 94 of the Amended Evidence Rules set out the types of electronic data admissible as evidence.<sup>63</sup> It also specifies the forms for the production and criteria for authentication of such evidence.

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<sup>61</sup> [2025] EWHC 942 (TCC)

<sup>62</sup> The Cybersecurity Law of the People's Republic of China, 2017, art.24.

<sup>63</sup> Simon Hui, Haifeng Li, & Emma Chen, 'PRC Supreme People's Court Releases Revised Rules of Evidence for Civil Proceedings', *Global Litigation News*, April 17, 2020 available at: <https://globallitigationnews.bakermckenzie.com/2020/04/17/prc-supreme-peoples-court-releases-revised-rules-of-evidence-for-civil-proceedings/> (last visited on February 10, 2026).

Later the government was complemented by the comprehensive Data Security Law 2021<sup>64</sup> governing data handling and government access.

Judicial innovations have marked significant milestones: The Beijing's Xicheng District Court (2015-2016) extensively utilized chat records in numerous peer-to-peer lending cases, affirming their commercial evidential value.<sup>65</sup> Then the Guangdong's Nansha People's Court (2018) pioneered direct admission of WeChat/QQ chats without notarization, simplifying authentication via login demonstration.<sup>66</sup> Following similar lines, the Hangzhou Internet Court (2018) validated blockchain-verified electronic evidence, introducing distributed ledger technology for secure preservation.<sup>67</sup>

The most popular Shenzhen courts have recognized modern digital symbols: sun emoji as contract extension (2020) and cautioning against over-reliance on gesture emojis like "OK" as contract acceptance. The Supreme People's Court further consolidated progress in 2020, formally acknowledging social media posts (including blogs and group chats) as valid civil evidence, establishing comprehensive guidelines for authentication and verification, thus modernizing China's approach to digital proof in judicial processes.<sup>68</sup>

## Conclusion

Based on the above discussion, the following conclusions can be drawn; electronic evidence purported under S. 57 of BSA and its elevation to being primary evidence (original record) is a major win for contemporary techno-legal cases. The comprehensive certificate under S. 63(4) of BSA will ensure a second layer of protection that will increase the reliability of electronic

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<sup>64</sup> The Data Security Law (DSL) of the People's Republic of China, 2021.

<sup>65</sup> Echo Huang, Josh Horwitz, and Echo Huang, "All your chats and social media posts can now be used against you in court in China, a new law says," *Quartz*, October 27, 2016, available at: <https://qz.com/799561/all-your-chats-and-social-media-posts-can-now-be-used-against-you-in-court-in-china-a-new-law-says/> (last visited February 16, 2026).

<sup>66</sup> Celia Chen, "Chinese court moves to streamline admission of WeChat and QQ chats in civil cases," *South China Morning Post*, July 20, 2018, available at: <https://www.scmp.com/tech/china-tech/article/2156181/chinese-court-moves-streamline-admission-wechat-and-qq-chats-civil/> (last visited February 16, 2026).

<sup>67</sup> Dr. Richard Brunner, "Chinese court is first to accept blockchain as means of evidence," *Dennemeyer*, July 27, 2018, available at: <https://www.dennemeyer.com/ip-blog/news/chinese-court-is-first-to-accept-blockchain-as-means-of-evidence/> (last visited February 16, 2026).

<sup>68</sup> Sutirtho Patranobis, "Emojis increasingly being used as evidence in Chinese courts: Report," *Hindustan Times*, June 30, 2022, available at: <https://www.hindustantimes.com/world-news/emojis-increasingly-being-used-as-evidence-in-chinese-courts-report-101656578107034.html> (last visited February 16, 2026);

Ye Zhanhang, "Chinese Courts See Rise in Emojis Used as Evidence in Lawsuits," *Sixth Tone*, June 30, 2022, available at <https://www.sixthtone.com/news/1010658> (last visited February 16, 2026);

Huaxia, "Digital evidence valid in civil cases: China's top court", *XinhuaNet*, May 01, 2020, available at: [http://www.news.cn/english/2020-05/01/c\\_139023088.htm?utm\\_source=perplexity](http://www.news.cn/english/2020-05/01/c_139023088.htm?utm_source=perplexity) (last visited February 23, 2026).

evidence. Oral evidence of contents of electronic evidence provides for additional support in case the original digital record is lost or isn't accessible (it also acts as secondary evidence). The main step any person contemplating to use digital data as evidence is to collect and preserve the original medium from which the data evidence is to be obtained. Also, one must ensure to take all necessary measures to counteract any attempts of manipulation or destruction of data stored for evidence. The above 4 and 5 points are crucial because, the Indian courts seem to lean in favour of cases where the digital evidence is original/ authentic and untampered, and also those cases where the parties have duly obtained the S. 63(4)/ S. 65B certificate. Thus, it is always safe to have the certificate to boost and immunise the evidentiary value of electronic/ social media's data evidence.

As far as the US is concerned, it has the comprehensive framework of Federal Rules of Evidence along with the respective counterparts in Federal states; which collectively require authentication of electronic evidence including WhatsApp evidence. The UK has a much more elaborate stand compared to India and US, with laws and codes that deal with collection and authentication of e-evidence in a systematic manner. Out of all the countries, China is the most advanced in instant message evidence recognition. They have advanced to the point that they are recognizing emoji evidence and paving the way for new-gen jurisprudence that caters to contemporary needs.