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## **EVIDENTIARY CHALLENGES IN MATRIMONIAL DISPUTES BEFORE FAMILY COURTS: A STUDY**

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### **ABSTRACT**

Family Court in India undoubtedly has been established to resolve matrimonial disputes and this court has also undertaken its performance at par to excellence. But, alongwith efficient execution of decree the court too has some of the Evidentiary challenges to confront which act as the hurdle and seems as bar to matrimonial remedies. This researcher through this paper discusses the evidentiary challenges and measures to deal with it.

**Index Terms:** Family Court, Evidentiary challenges, Matrimonial Disputes, Hindu Marriage Act, 1955

## INTRODUCTION

The traditional Indian society has held marriage in an immense position of importance. Marriage has been recognised as the most fundamental institutions of Indian society since many generations. In India marriage is closely linked with culture religion family practices and traditions and also parallelly gives legal obligations to both the spouses<sup>1</sup>. It is a sacred union that binds not only the spouses but also their respective families' social circles and communities.

Recently the Indian society has witnessed a growing awareness of individual rights legal obligations and protections and general justice within the institution of marriage. People are now becoming more conscious of issues like maintenance, desertion, domestic violence, right to live with dignity and also the issues which come along with the matrimonial dispute like child custody maintenance alimony. Individuals who once endured unhappy and abusive marriages are now ready to seek legal remedies which are available to them through different provisions provided by law. Thus, there is a shift towards recognising marriage not only as a social institution but also as a relationship which should be based on mutual respect consent and fairness.

With the rise of awareness among people matrimonial disputes are being brought before courts with increasing frequency. Family courts and other judicial forums in India are witnessing a steady rise in cases which involve divorce, judicial separation, restitution of conjugal rights allegations of cruelty or harassment and the consequent related problems such as maintenance games and custody disputes. Next paragraph the matrimonial law in India is a combination of secular statutes personal dolls and procedural laws. Due to the religious diversity in India many a time matrimonial disputes are governed by the personal laws applicable to the respective parties and civil courts and family courts decide the dispute according to the principles of justice equity and good conscience along with the statutory provisions provided.

Among the key laws are the Hindu Marriage Act 1955, the special Marriage Act 1954 which applies to Hindus, Buddhist, Jains and Sikhs. These laws and statutes provide for rights of spouses remedies such as divorce judicial separation restitution of conjugal rights and also

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<sup>1</sup> IJLLR Journal, *Mediation In Family And Matrimonial Disputes In India: A Socio-Legal Analysis*, IJLLR JOURNAL (2026), <https://www.ijllr.com/post/mediation-in-family-and-matrimonial-disputes-in-india-a-socio-legal-analysis> (last visited May 4, 2026).

define conditions for a valid marriage and nullity of marriage. The special Marriage Act 1994 provides A secular framework for marriages irrespective of religion, caste or community. Along with these statues the laws such as the family courts act 1984 provides specialized codes to deal with family disputes in a conciliarity manner. The Indian Constitution, under Articles 14 guarantees equality before the law<sup>2</sup> and article 15 prohibits discrimination on the grounds of sex.<sup>3</sup> The protection of women from domestic violence Act 2005 grants protection and monetary remedies from domestic abuse to women.

In matrimonial litigation the burden of proof lies on the parties who make the allegations these parties must establish the facts before the court which will be reliable and admissible as evidence. Matrimonial allegations involve evidences in the form of oral testimonies of the parties and witnesses, documentary records such as emails, messages, letters bank statements medical papers photographs and call records. Electronic evidences such as WhatsApp chats social media communications audio and video recordings and digital transactions are also admissible in the court of law the deciding court has to consider all these evidences along with surrounding circumstances conduct of parties the consistency of statements and the probabilities arising from the case and the related facts. The matrimonial issues many a times arise within the closed walls of the home they are subject to privacy of the household and may not and direct evidence may not always be available. It is therefore the responsibility of the courts to use circumstantial evidence and take reasonable inference and also ensure fairness and justice to both the parties.

### **CONCEPT AND SCOPE OF MATRIMONIAL LITIGATION.**

The disputes among the spouses within the institutions of marriages often need to legal proceedings which are known as matrimonial litigation. The matrimonial disputes generally involve the protection determination enforcement and actually an adjudication of rights and obligations which often arise due to matrimonial and household relationships. The litigation in matrimonial disputes follows a legal framework through which the issues between the parties is resolved in accordance with statutory law and judicial principles.

The court examines the facts and applies the relevant laws and grants remedies such as divorce judicial separation restitution of conjugal rights maintenance custody etc. A very prominent

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<sup>2</sup> India Const. art. 14

<sup>3</sup> India Const. art. 15

issue of child custody and guardianship is also under the umbrella of matrimonial litigation in which the court gave paramount importance to the welfare and well-being of the child. In cases of child custody the factors such as health education safety emotional well-being and overall development of the child is considered by deciding the visitation and custody rights.

A very common matrimonial dispute arise out of domestic violence mental and physical cruelty property disputes and economic neglect. In such cases the courts have to ensure safety by enforcement of remedies and protect the legal rights while considering all the relevant facts and circumstantial evidence. Thus, the range of matrimonial litigation covers marital conflicts protecting the interests of spouses and children while playing an important role in securing justice fairness and equity.

## **EVIDENCE IN MATRIMONIAL LITIGATION**

As matrimonial disputes arise within the privacy of the matrimonial homes evidences occupy a very unique position and independent witnesses are rarely available. Instances of cruelty harassment and emotional abuse along with marital misconduct and neglect mostly occurs behind closed doors and are known only to the spouses and close family members. Therefore when the question comes with dealing with matrimonial matters the courts have you rely upon circumstantial evidence conduct of parties correspondence messages emails photographs medical records financial documents and also oral testimony of the parties themselves. The family courts in matrimonial proceedings apply the technical rules of evidence with flexibility to ensure substantial justice.<sup>4</sup> The civil nature of matrimonial disputes makes it makes the standard of proof to be based on the preponderance of probabilities rather than proof beyond reasonable doubt. The court mostly determines which version of the parties is more accurate from the materials and facts which are placed before it.

Therefore, the courts have to balance law, evidence, and human relationships with sensitivity as many matrimonial wrongs and abuse and domestic violence incidents occur in private and are often proved through documentary and circumstantial evidence.

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<sup>4</sup> IJLLR Journal, *Mediation In Family And Matrimonial Disputes In India: A Socio-Legal Analysis*, IJLLR JOURNAL (2026), <https://www.ijllr.com/post/mediation-in-family-and-matrimonial-disputes-in-india-a-socio-legal-analysis> (last visited May 4, 2026).

## **Types of evidence in matrimonial cases.**

1. **Digital evidence** with the advance of technology and the use of electronic communication what's up chats emails screenshots CCTV footage and social media posts are recognised under the Bharatiya Saksha Adhinyam 2023 only when they are authenticity and reliability approved. Such electronic evidence is used to prove cruelty, adultery, threats, harassment, and financial concealment.

2. **Documentary evidence**, documents such as marriage certificates, bank statements, salary slips, property papers, medical records, and school records are very important to prove the marriage, the status of spouses, the financial capacity, and these are very helpful in cases of maintenance claims, child custody, and property disputes.

Oral evidence- Oral evidences include the testimony of spouses, relatives, neighbors, friends, and other witnesses. Such testimonies are relevant to prove cruelty, desertion, neglect, and behavior of the husband and the wife, and also to prove attempts at reconciliation. The credibility, consistency, and the naturalness of the witnesses are all assessed and taken under consideration by the courts.

Circumstantial evidence and presumptions- As matrimonial relationships are mostly private in nature, the court relies upon the circumstantial evidence, the surroundings related to the circumstances, the conduct of both the parties, the financial capacities, the unexplained absence, and the communication and behavioural patterns of both the spouses. Under the Bharatiya Sakshya Adhinyam2023, a reasonable presumptions may be drawn from such facts.

## **Evidentiary challenges in matrimonial litigation-**

### **1. Admissibility of digital evidence and privacy concerns-**

The amendments in the Bharatiya Sakshya Adhinyam 2023 now allows electronic and digital records which are recognized and admissible evidence subject to authenticity, reliability, and lawful production. In the modern matrimonial disputes and litigation, the parties and the court mostly relies upon WhatsApp chats, emails, screenshots, call recordings, and CCTV footage, online transactions, and social media content to establish cruelty, adultery, harassment, threats, and concealment of income. The courts have to examine the integrity and the genuineness of such material, and at the same time, it should not violate the right to privacy which is provided

under Article 21 of the Constitution<sup>5</sup>. Private messages or recordings obtained without consent amounts to violation of the right to privacy. Therefore, the family courts have to balance the truth findings with the privacy rights.

## **2. Difficulty in proving cruelty**

Section 13 of the Hindu Marriage Act, 1955<sup>6</sup>, provides cruelty as one of the grounds for divorce. Physical cruelty may be proved through medical records, complaints, photographs, and witness testimonies, but however, mental cruelty is very difficult to prove, as these instances of cruelty are never accompanied with physical evidence. Mental cruelty consists of humiliation, abusive language, false accusation, denial of companionship, and emotional harassment. Such instances are often occur privately, so the courts have to rely on the oral testimonies, electronic communication between the spouses, and the surrounding circumstances to prove cruelty. The principles of relevance contained in the Bharatiya Sakshya Adhiniyam, have to be applied by the courts to acquire clear and credible evidence, not vague allegations.

## **3. Proving adultery**

Adultery is another grounds for divorce which is very difficult to prove in courts. Many a times the conduct which proves adultery is not openly admitted and the courts depend upon circumstantial evidence, suspicious conduct, hotel records, private chats, photographs, travel history, call records and admissions. Under the Bharatiya Sakshya Adhiniyam 2022, facts forming a conduct surrounding the circumstances and connected facts may be relevant, but however, the mere suspicion of friendship is insufficient to prove adultery. The circumstances must be strong and the facts must be clear to prove adultery

## **4. Evidentiary flexibility in family courts**

Section 14 of the Family Courts Act 1984<sup>7</sup> empowers the family court to receive reports, statements, and documents or information which effectively helps in resolving a dispute and provides exception for evidences which may be otherwise strictly admissible under the under the Bharatiya Sakshya Adhiniyam 2023. This allows the court to prioritize the truth and also

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<sup>5</sup> India Const. art. 21

<sup>6</sup> The Hindu Marriage Act, 1955, §13

<sup>7</sup> The Family Courts Act, 1984, §14

provide fair resolution over technical evidentiary rules. This provision is significant in matrimonial matters where letters, private messages, counselling records, informal documents, and electronic communications may reveal the true relationship between the spouses. The flexibility complements the Bharatiya Sakshya Adhiniyam, but it must be exercised very fairly and cautiously by the family courts.

### **5. Allegations of Fabricated Electronic Evidence**

With the advance of technology and electronic communication, the evidences in family disputes are mostly based on electronic communication, such as screenshots, chats, recordings. But it becomes a great challenge for the court to determine its authenticity. Under the **Section 63 of Bharatiya Sakshya Adhiniyam, 2023** all the electronic evidence must satisfy standards of authenticity and reliability.<sup>8</sup> The courts have to examine the source of such electronic evidence. It should take expert opinion and also consider the surrounding circumstances and rely on metadata and the authenticity of such evidence. Manipulation is suspected, courts should refuse to accept the evidentiary value of any facts and evidence.

### **6. Vague and General Allegations**

Many a times under the matrimonial petitions, there are claims of harassment, neglect, and interference by in-laws and mental tortures. Such allegations can be vague and general. Under the principles of pleadings and evidence, these allegations, which may be vague, cannot be the basis of relief. The court have to very specifically examine all the documentary evidence, digital evidence, and oral testimonies provided by the witnesses. This is particularly relevant in the proceedings under the Domestic Violence Act 2005<sup>9</sup> and maintenance claims under for divorce petitions under matrimonial statutes.

### **7. Privacy versus Truth-**

Evidences in matrimonial disputes strike a conflict with the right to privacy and the truth which is to be proved in court. Many a times issues arises where evidence is obtained secretly through recorded calls, accessed phones, surveillance, and intercepted communication. One side, there are materials which exposes the truth.and on other hand, there is a breach of privacy and

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<sup>8</sup> Bharatiya Sakshya Adhiniyam,2023, §63

<sup>9</sup> The Domestic Violence Act, 2005, §28(2)

unlawful intrusion. Now, it is the duty of the courts that they must balance the constitution right to privacy and also to adjudicate justice. Family courts often adopt an approach where the material is directly relevant to the cruelty, threats and financial concealment. and discourage misuse of law.

### **8. Child custody and welfare evidence-**

Another crucial issue in the matrimonial disputes is of child custody. Child custody dispute is governed by the Guardians and Wards Act 1980, the Hindu Minority and Guardianship Act 1956. Matrimonial statute require the courts to prioritise the welfare of the child<sup>10</sup> and the parental rights should be given a secondary concern. Evidences should include school records, medical records, standard of living, emotional bonding, conduct of the parents towards the child, and the psychological well-being of the child<sup>11</sup>. Many a times, such matters are emotionally charged, making an objective assessment for the courts very difficult. The courts evaluate all relevant facts under the Bharatiya Sakshya Adhinyam to determine and protect the child's best interests.

## **TRANSFORMATION OF EVIDENCE RULES IN MATRIMONIAL LITIGATION**

The changing nature of society, behavior, technological advancement, and modern judicial approaches has significantly changed the concept of evidence in the matrimonial disputes which has evolved rapidly. Traditionally, there was a reliance on oral testimonies and material facts, but now these testimonies are supplemented and supported by digital records, electronic communication, and behavioral evidence. The courts have started recognizing that marital conflicts often emerge through technology and financial transactions and private communication rather than only the conventional forms of evidence. Another major trend is the growing use of digital evidence. Courts have frequently examined WhatsApp chats, emails, screenshots, call records, online transfers, and social media activity to determine cruelty, adultery, threats, etc. Emotional abuse and hidden relationships are often proved through such digital evidence for which direct proof is not available. Neglect and financial concealment are also brought forward to the court through bank transactions, bank statements, assets and liabilities which are filed in the court. As spousal communication has become mainly online through WhatsApp communication, chats, and video calls, electronic records now truly reveal

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<sup>10</sup> The Guardians and Wards Act 1980, §17

<sup>11</sup> The Guardians and Wards Act 1980, §12

the true nature of matrimonial disputes.

The importance of electronic records and the modern evidentiary methods has been re-established when there was a transition from the Indian Evidence Act 1872 to the Bharatiya Sakshya Adhinyam 2023. This shows that there was an attempt to draw parallel lines between the evidentiary laws and the present-day circumstances. The emerging evidentiary trends, which have a greater inclination towards the technological-based proof, financial honesty, child welfare, and emotional abuse, are very practical and justice-oriented. Matrimonial adjudications are now more responsive to contemporary realities and have a capability of delivering fair outcomes because of these developments.

### **Section 61 — Parity Clause**

Section 61<sup>12</sup> of the Bharatiya Sakshya Adhinyam 2023 places the traditional electronic records on the same footing as that of traditional paper documents. This means that electronic evidence such as scanned documents, emails, digital communication, WhatsApp messages, etc., and electronically stored records have the same legal value and the same evidentiary values as that of physical written papers or printed papers, but subject that they are authentic and reliable. For example, a WhatsApp screenshot or an email may be considered in the same manner as that of a written communication, document if its authenticity and genuineness is proved.

### **Section 62 — Admissibility of Electronic Records:**

Section 62<sup>13</sup> of the provides that any information which is created, stored and received or transmitted in an electronic form can be produced as evidence before a court. Now this digital evidence includes emails, text messages, social media posts, audio files, call recordings, CCTV footage, and also computer-generated data and other digital communications which may be highly relevant to prove cruelty, harassment, and financial dealings. The law thus recognises the reality of modern life and human interaction now takes place mostly on the digital platforms, thus it becomes very essential and important to admit such forms of digital evidence in court of law.

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<sup>12</sup> Bharatiya Sakshya Adhinyam 2023, §61

<sup>13</sup> Bharatiya Sakshya Adhinyam 2023, §62

### Section 63 — Expert Certification

In order that the electronic records be admissible in court, it is very important to prove its authenticity. Therefore, Section 63<sup>14</sup> of Bharatiya Sakshya Adhiniyam (BSA), 2023 provides that an expert certification should be given for any electronic evidences. A proper verification by a responsible technical expertise and a competent authority should be given to any digital record. The earlier system, was associated with Section 65B of the Indian Evidence Act, intended to address more aptly the technological realities and also to strengthen the value of digital evidence in the court of law.

### Section 64 — Primary Evidence Expansion

Section 64 of the Bharatiya Sakshya Adhiniyam 2023 expands the horizon of primary evidence. According to this provision, the data which is stored in computers, mobile devices, digital storage servers, cloud systems, etc., is also included under the ambit of a primary evidence. this provision reduces the dependency on printed copies and physical documents. Thus, the electronic evidence and digital evidence can be directly relied upon when it is properly verified.

Case laws addressing the evidentiary challenges in family court-

#### **Vibhor Garg v. Neha<sup>15</sup>**

In the case of Vibhor Garg vs. Sneha, the husband filed a divorce petition under the Section 13 of Hindu Marriage Act, 1955, before the Family Court in Bhatinda. He was alleging cruelty. During the trial, he produced many memory cards, CDs, and transcripts, and recorded phone conversations between the husband and his wife. The Family Court allowed the evidence under Section 14 of the Family Courts Act, 1984, but the Punjab and Haryana High Court set aside the same order. The Punjab and Haryana High Court held that the secretly recorded conversation violated the wife's right to privacy and upheld Article 21 of the Constitution. The husband then appealed to the Supreme Court.

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<sup>14</sup> India Code: Section Details, INDIACODE.NIC.IN (2023), [https://www.indiacode.nic.in/show-data?actid=AC\\_CEN\\_5\\_23\\_00049\\_2023-47\\_1719292804654&orderno=63](https://www.indiacode.nic.in/show-data?actid=AC_CEN_5_23_00049_2023-47_1719292804654&orderno=63) (last visited May 4, 2026).

<sup>15</sup> Evidentiary Value of Secretly Recorded Phone Calls Between Spouses in Marital Disputes - Supreme Court Observer, SUPREME COURT OBSERVER (2025), <https://www.scoobserver.in/supreme-court-observer-law-reports-scolr/evidentiary-value-of-secretly-recorded-phone-calls-between-spouses-in-marital-disputes-vibhor-garg-v-neha/> (last visited May 4, 2026).

The appellant argued that matrimonial cruelty occurs in private and therefore, the best available evidence which may be produced in court are digital recordings. Section 122 of the Evidence Act allows the disclosure between the spouses, and Section 14 of Family Courts gives a flexibility in admitting relevant evidence including privately recorded calls and videos. The respondent argued that the recordings were obtained without consent, violated privacy and breached the marital trust. She also argued that the authenticity was doubtful as it was obtained in a very vulnerable circumstances

### **Judgement-**

The Supreme Court allowed the appeal. It set aside the High Court's judgment and it restored the Family Court's order, which permitted the husband to rely on recordings, but subject to the proof of genuineness and authenticity. This judgment upholds the evidentiary value of electronic records in matrimonial litigation and says that privacy cannot be used to suppress relevant material which may be essential for the adjudication of justice.

### **Lumeshwari @ Pinky v. Rajesh Dubey<sup>16</sup> 2025: MPHC-JBP:56736**

### **Facts**

The husband filed a petition under Section 13 of the Hindu Marriage Act, 1955 seeking divorce on the ground of adultery. The Family Court, Balaghat, allowed the petition and dissolved the marriage dated 13.02.2006.

The wife filed an appeal under Section 19 of the Family Courts Act, 1984 before the Madhya Pradesh High Court challenging the divorce decree.

### **Arguments**

Appellant- The Family Court wrongly relied on photographs which were secondary electronic evidence. No Section 65B certificate under the Evidence Act was filed. Reliance was placed

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<sup>16</sup> IN THE HIGH COURT OF MADHYA PRADESH IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR AT JABALPUR BEFORE BEFORE, <https://www.juryscan.in/wp-content/uploads/2025/12/Lumeshwari@-Pinky-v.-Rajesh-Dubey.pdf> (last visited May 4, 2026). Lumeshwari @ Pinky v. Rajesh Dubey( 2025),MPHC-JBP 56736

on *Arjun Panditrao Khotkar v. Kailash Gorantyal (2020) 7 SCC 1*<sup>17</sup> to argue that Section 65B compliance is mandatory.

Respondent- The photographs were genuine, showed adultery, and the wife herself admitted that the photographs were earlier in her mobile phone and were transferred to the husband's phone.

### **Judgement**

The Madhya Pradesh High Court upheld the divorce decree and dismissed the appeal. The family court relied upon the photographs and the surrounding evidence and proved adultery. This judgment shows that family courts can adopt a flexible standards for evidence in matrimonial disputes. Section 14 also empowers the courts to allow relaxation in certain rules and give exceptions to the strict rules of evidence as per the Indian Evidence Act. The relevant photographic and electronic evidence should be considered in a flexible way where strict technical objections are raised.

### **Deepti Kapur vs. Kunal Julka (2020)**

In this case, there was a matrimonial proceeding under the Hindu Marriage Act pending before the trial court. The husband in this case relied upon a CD and a video recorder and transcripts of recording and sought for its verification and authenticity in the forensic laboratory. The trial court directed that the CD and the original recording device should be sent to FSL Rohini to determine its authenticity and correctness and to ensure that there was no tampering with the evidence. The wife challenged this order before the Delhi High Court, alleging that there was a violation of privacy in her case.

The petitioner argued that the trial court's direction to examine the private recordings violated her right to privacy under Article 21 of the Constitution. The respondent argued that the order was justified under Section 14 of the Family Courts Act, which enables the courts to exercise, to admit evidence in a relaxed manner, and permits family court to receive material which is relevant for deciding matrimonial disputes.

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<sup>17</sup> Arjun Panditrao Khotkar v. Kailash Gorantyal (2020), 7 SCC 1

## **Judgment**

The Delhi High Court issued notices and granted time for written submissions. It is permitted that the continuation of the trial proceedings, examination of one witness. This case highlights that when electronic evidence is admitted in any matrimonial dispute, it can be subjected to forensic scrutiny, and the family courts should use expert assistance under Section 14 to determine the reliability of the evidence, also while balancing the privacy concerns.

## **CONCLUSION:**

The ultimate challenge before the courts in today's matrimonial litigation is to balance, and harmonize Bharatiya Sakshya Adhiniyam 2023 and the Family Courts Act and also preserve the principles of natural justice along with the constitutional values of dignity, privacy and equality and fairness. A technical and a rigid approach from the court may suppress the truth, while flexibility in admitting evidence in the court can provide the right kind of justice which the parties seek for. Therefore, matrimonial adjudication requires legal precision and also flexibility and the consideration of the circumstances with which resolves the dispute effectively and also protects the rights of the husband, wife and the children.