

Relevancy of Motive, Preparation and Conduct Under the Bharatiya Sakshya Adhiniyam, 2023: A Critical Examination

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Abstract: *The Bharatiya Sakshya Adhiniyam, 2023 (hereinafter "BSA" or "the Adhiniyam") represents a paradigm shift in India's evidentiary framework, replacing the colonial-era Indian Evidence Act, 1872 (hereinafter "IEA") which governed judicial proceedings for over one hundred and fifty years. Section 6 of the Adhiniyam, corresponding to the erstwhile Section 8 of the IEA, codifies the relevancy of motive, preparation, and previous or subsequent conduct as admissible categories of fact. These three juridical concepts are not merely technicalities of procedure; they constitute the very architecture through which courts reconstruct the mental state of an accused and builds chains of circumstantial evidence. This paper critically analyzes the scope, interpretation, and judicial application of Section 6 of the BSA within the broader framework of Indian evidence law. Drawing upon a vast body of Supreme Court and High Court jurisprudence, the paper argues that motive, preparation, and conduct function as interlocking evidentiary pillars, each contributing uniquely to the process of proof, and that their relevance—though contingent on circumstances—has evolved into a sophisticated doctrinal framework that demands careful judicial scrutiny.*

Keywords: Bharatiya Sakshya Adhiniyam 2023, motive in evidence, preparation as evidence, conduct evidence, Section 6 BSA, circumstantial evidence, Indian evidence law, Section 8 IEA

I. INTRODUCTION

The study of evidence law in India has long been shaped by its historical engagement with the common law tradition, transplanted through the Indian Evidence Act of 1872—a legislative masterpiece attributed to Sir James Fitzjames Stephen.¹ For over a century and a half, this statute governed the admissibility, relevancy, and weight of evidence before Indian courts. The year 2023 marked a decisive moment in this history, with the enactment of the Bharatiya Sakshya Adhiniyam, 2023, which came into force on December 25, 2023.² The Adhiniyam was introduced as part of a broader trilogy of criminal law reforms that also included the Bharatiya Nyaya Sanhita, 2023 (replacing the Indian Penal Code, 1860) and the Bharatiya Nagarik Suraksha Sanhita, 2023 (replacing the Code of Criminal Procedure, 1973).³

¹Sir James Fitzjames Stephen, *A Digest of the Law of Evidence* (Macmillan, 1876). Stephen drafted the Indian Evidence Act, 1872, which came into force on September 1, 1872. See also M. Monir, *Textbook on the Law of Evidence*, 9th ed. (Universal Law Publishing, 2010) at 1–2.

²The Bharatiya Sakshya Adhiniyam, 2023, No. 47 of 2023, received Presidential assent on December 25, 2023, and was published in the Gazette of India, Extraordinary, Part II, Section 1, No. 55 (December 25, 2023). The Adhiniyam came into force on July 1, 2024.

³See generally PRS Legislative Research, *The Bharatiya Sakshya Bill, 2023* (2023), available at <https://prsindia.org/billtrack/the-bharatiya-sakshya-bill-2023> (last visited Apr. 10, 2026).



Among the several provisions of the Adhinyam, Section 6—dealing with the relevancy of motive, preparation, and previous or subsequent conduct—occupies a position of especial significance. The provision is materially identical to Section 8 of the IEA,⁴ and thus the extensive jurisprudence that has developed under the parent provision remains applicable under the new regime. At the same time, the re-enactment of this provision offers an important occasion to reflect upon its theoretical foundations, practical implications, and doctrinal challenges.

This paper attempts to do precisely that. It examines the three components of Section 6—motive, preparation, and conduct—in turn, exploring their definitions, their evidentiary value, and the extent to which the courts have interpreted them. The paper also discusses the relationship between these concepts and broader doctrines of evidence law, including the standard of proof in circumstantial cases and the admissibility of statements accompanying conduct. Ultimately, it argues that Section 6 of the Adhinyam embodies a nuanced recognition that facts of a "background" nature are often indispensable to a fair adjudication, but that they must be applied with discernment lest their probative value be overstated.

II. LEGISLATIVE FRAMEWORK: SECTION 6 OF THE BHARATIYA SAKSHYA ADHINIYAM, 2023

Section 6 of the BSA, situated within Part II, Chapter II (Relevancy of Facts), provides that: "(1) Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact. (2) The conduct of any party, or of any agent to any party, to any suit or proceeding, in reference to such suit or proceeding, or in reference to any fact in issue therein or relevant thereto, and the conduct of any person, an offence against whom is the subject of any proceeding, is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto."⁵

The section is supplemented by two Explanations of considerable importance. Explanation 1 clarifies that the word "conduct" in this section does not include statements, unless those statements accompany and explain acts other than statements, though this exclusion does not affect the relevancy of statements under other provisions of the Adhinyam.⁶ Explanation 2 provides that when the conduct of any person is relevant, any statement made to him, or in his presence and hearing, which affects such conduct, is relevant.⁷

The provision is substantively identical to Section 8 of the IEA of 1872. A comparative reading of the two statutes, as reflected in the official comparative table published by the Ministry of Home Affairs, shows that Section 8 of the IEA maps directly onto Section 6 of the BSA.⁸ This is significant because the body of judicial interpretation developed under Section 8 of the IEA—spanning over 150 years of case law from the Supreme Court and the High Courts—remains applicable to Section 6 of the BSA.

III. THE CONCEPT OF MOTIVE: JURISPRUDENTIAL FOUNDATIONS AND EVIDENTIARY VALUE

A. Definition and Distinctions

Before a proper understanding of Section 6 of the BSA can be achieved, it is essential to draw a clear distinction between "motive," "intention," and "mens rea"—three concepts that are related but legally distinct. Motive refers to the ulterior purpose that prompts a person to act; it is the emotion or desire that serves as the psychological stimulus behind

⁴Comparative Table of Indian Evidence Act, 1872 & Bharatiya Sakshya Adhinyam, 2023, prepared by Adv. Gurender Rana, West Bengal Law Officers' and Robing Room Association (2024), at col. 2 (noting IEA § 8 = BSA § 6, heading: "Motive, preparation and previous or subsequent conduct").

⁵Bharatiya Sakshya Adhinyam, 2023, §§ 6(1)–(2).

⁶Bharatiya Sakshya Adhinyam, 2023, § 6, Explanation 1.

⁷Bharatiya Sakshya Adhinyam, 2023, § 6, Explanation 2.

⁸Comparative Table of Indian Evidence Act, 1872 & Bharatiya Sakshya Adhinyam, 2023, *supra* note 4.



a course of conduct.⁹ Intention, by contrast, refers to the immediate object or purpose of the act itself—the conscious decision to bring about a particular consequence. As the Supreme Court of India observed in *Suresh Chandra Bahri v. State of Bihar*, "a motive is something which prompts a person to form an opinion or intention to do certain illegal act or even a legal act but with illegal means with a view to achieve that intention."¹⁰

The distinction between motive and intention is not merely academic. In criminal law, the prosecution is generally required to prove intention (or at least knowledge) as part of the mens rea of the offence; motive, on the other hand, is not an ingredient of the offence and need not be proved as a matter of law. However, motive is always a relevant fact under Section 6(1) of the BSA.¹¹ Courts have consistently held that the absence of motive does not destroy a prosecution case that is otherwise adequately proved, but that the existence of a clear and strong motive lends significant corroborative strength to the evidence.

B. Motive as Relevant Fact: Judicial Interpretation

The relevancy of motive under Section 6(1) of the BSA is contingent upon the fact showing or constituting a motive for a fact in issue or relevant fact. In other words, the evidence must connect the motive to the particular act alleged. In *State of U.P. v. Babu Ram*, the Supreme Court held that motive is a relevant factor in all criminal cases, whether the case is based on the testimony of eye witnesses or on circumstantial evidence.¹² However, the Court went on to qualify this by noting that the weight to be attached to proof of motive varies depending on the nature and quality of other evidence available in the case.

In cases where there is strong and reliable direct evidence—particularly credible eye-witness testimony—the proof of motive becomes of lesser consequence. This principle was clearly articulated in *Yunis alias Kariya v. State of Madhya Pradesh*, wherein the Supreme Court held that where ocular evidence is clear and consistent, the failure to prove motive has no consequence.¹³ The same principle was applied in *Anil Yadav v. State of Bihar*, where it was held that motive is not a sine qua non for the success of the prosecution case if the evidence is otherwise convincing and not open to reasonable doubt.¹⁴

However, in cases resting entirely or substantially on circumstantial evidence, proof of motive assumes much greater importance. The Supreme Court in *Suresh Chandra Bahri v. State of Bihar* laid down the seminal proposition that while the absence of motive does not render other evidence untrustworthy, the proof of motive provides "added support" to the finding of guilt.¹⁵ Furthermore, in *Babu v. State of Kerala* (2010), the Court observed that in a case resting on circumstantial evidence, absence of motive is a factor that tilts in favour of the accused.¹⁶

A striking illustration of the centrality of motive is provided by the landmark case of *Bhagwan Dass v. State (NCT) of Delhi*. In this case—involving an honour killing—the Supreme Court, per Markandey Katju, J., held that the

⁹Vepa P. Sarathi, *Law of Evidence*, 6th ed. (Eastern Book Company, Lucknow, 2006) at 68–70; V. Krishnamachari, *Law of Evidence*, 5th ed. (S. Gogia & Company, Hyderabad, 2004) at 52.

¹⁰*Suresh Chandra Bahri v. State of Bihar*, 1994 AIR 2420 : 1995 SCC Supl. (1) 80, ¶ 39, per Faizan Uddin, J. (Indian Kanoon, <https://indiankanoon.org/doc/144689/>).

¹¹Indian Evidence Act, 1872, § 8 (now Bharatiya Sakshya Adhinyam, 2023, § 6(1)); Ratanlal & Dhirajlal, *The Law of Evidence*, 27th ed. (LexisNexis, 2022) at 185.

¹²*State of U.P. v. Babu Ram*, AIR 2000 SC 1735, ¶ 5.

¹³*Yunis alias Kariya v. State of Madhya Pradesh*, AIR 2003 SC 539, ¶ 14.

¹⁴*Anil Yadav v. State of Bihar*, 1992 (1) Crimes 282 (SC).

¹⁵*Suresh Chandra Bahri v. State of Bihar*, 1994 AIR 2420 : 1995 SCC Supl. (1) 80, ¶ 39 (Indian Kanoon, <https://indiankanoon.org/doc/144689/>).

¹⁶*Babu v. State of Kerala* (2010), as cited in *Anwar Ali v. State of Himachal Pradesh* (2020) (S.C.); *Drishti Judiciary*, *Circumstantial Evidence*, www.drishtijudiciary.com/circumstantial-evidence (last visited Apr. 10, 2026).



prosecution had successfully established the motive, namely that the accused-father killed his daughter to avenge a perceived family dishonour arising from her alleged incestuous relationship.¹⁷ The Court noted that "in cases of circumstantial evidence, motive is very important, unlike cases of direct evidence where it is not so important."¹⁸ The combination of an established motive, the accused's exclusive presence, and subsequent conduct in concealing the crime was held to amount to a complete chain of circumstances.

C. The Principle of Adequate Motive

The question of whether a proved motive is "adequate" to support a conviction has occupied the courts in several cases. It is settled that the Court must consider the motive along with all other evidence and determine whether, in the totality of circumstances, the motive affords a sufficient link in the chain.¹⁹ It is equally settled that a strong motive alone, without conclusive proof, cannot ground a conviction. As the Supreme Court held in *Sampath Kumar v. Inspector of Police, Krishnagiri* (2012), motive alone, "no matter how strong, cannot replace the need for conclusive proof."²⁰

Similarly, in *Chunni Lal v. State of Uttar Pradesh*, the Supreme Court upheld a conviction where the motive of revenge and property-grabbing had been clearly established, supporting the chain of circumstantial evidence.²¹ The treatment of motive in the Indian courts thus reflects a calibrated approach: its significance is proportional to the strength and quality of the remaining evidence in the case.

IV. PREPARATION AS AN EVIDENTIARY CATEGORY: DOCTRINAL ANALYSIS

A. Nature and Meaning of Preparation

Preparation, in the context of criminal law and evidence, refers to the act of arranging the means and methods necessary for the commission of a crime.²² It occupies the second stage in the ladder of criminal culpability, following intention but preceding attempt and the completed act. The Supreme Court in *Union of India v. Formulators Association of India* interpreted the word "preparation" not only as the process of assembling components but also as the state of being ready or prepared.²³

As a general rule of criminal law, mere preparation is not punishable. The law intervenes to punish at the stage of attempt, not preparation, because preparation in itself does not reveal a firm and irreversible decision to commit the offence.²⁴ There are, however, exceptions to this rule: Section 122 of the Bharatiya Nyaya Sanhita, 2023

¹⁷Bhagwan Dass v. State (NCT) of Delhi, (2011) 6 SCC 396 : AIR 2011 SC 1863, per Markandey Katju and Gyan Sudha Misra, JJ. (Indian Kanoon, <https://indiankanoon.org/doc/1422914/>).

¹⁸Bhagwan Dass v. State (NCT) of Delhi, (2011) 6 SCC 396, ¶ 6 (citing Wakkar v. State of U.P., (2011) 3 SCC 306, ¶ 14).

¹⁹Badam Singh v. State of Madhya Pradesh (2004) (S.C.), as discussed in Drishti Judiciary, Motive, www.drishtijudiciary.com/motive (last visited Apr. 10, 2026).

²⁰Sampath Kumar v. Inspector of Police, Krishnagiri, (2012) (S.C.), as discussed in Samiksha Singh, "Section 8 of the Indian Evidence Act, 1872," iPleaders Blog, <https://blog.ipleaders.in/section-8-of-indian-evidence-act-1872/> (last visited Apr. 10, 2026).

²¹Chunni Lal v. State of Uttar Pradesh, AIR 2010 SC 2467.

²²Abhirup Das, "Motive, Preparation and Previous or Subsequent Conduct," Legal Service India, <https://www.legalserviceindia.com/article/131-Motive-Preparation-and-Previous-or-Subsequent-Conduct.html> (last visited Apr. 10, 2026).

²³Union of India v. Formulators Association of India, (2002) 8 SCC 410 (CaseMine, <https://www.casemine.com>) (last visited Apr. 10, 2026).

²⁴K.D. Gaur, *Textbook on the Indian Penal Code*, 5th ed. (Universal Law Publishing, 2014) at 77–80.



(corresponding to Section 122 of the IPC) punishes the collection of arms or ammunition in preparation for waging war against the government. Similarly, preparation to commit dacoity is punishable under Section 310 of the BNS.²⁵

B. Admissibility of Evidence of Preparation Under Section 6(1) BSA

Section 6(1) of the BSA declares that any fact which "constitutes" or "shows" a preparation for a fact in issue is relevant. This means that preparation is admissible not only when it directly constitutes preparation for the act in question but also when it merely *shows* that preparation was being made. The provision thus operates with considerable breadth.

The illustrations appended to Section 6 of the BSA are instructive. Illustration (a) provides that if A is tried for murdering B by poison, the fact that A procured poison similar to that administered to B is relevant, because it constitutes preparation.²⁶ Illustration (d) concerns a charge where a person alleged to have committed a crime had previously examined related matters and consulted legal professionals about drafting a will—all of which constitute preparatory steps admissible under the section.²⁷

In practice, the evidentiary significance of preparation depends upon the strength of the link between the preparatory act and the crime charged. The courts have consistently held that the evidence of preparation is always admissible but that its weight depends on how closely the preparatory act connects to the crime.²⁸ In a classic burglary case discussed in academic commentary, where the accused conducted meetings and procured iron bars and pincers prior to the offence, the preparatory acts were held to be strong circumstantial evidence of premeditated intent.²⁹

C. Preparation and Premeditation: The Nexus with Rarest-of-Rare Doctrine

The significance of preparation as a form of evidence extends to the sentencing stage in capital punishment cases. In *Vasant Sampat Dupare v. State of Maharashtra*, the Supreme Court, while confirming the death sentence, found that the accused had diabolically conceived and systematically executed his plan, which demonstrated a high degree of prior preparation and premeditation.³⁰ The Court noted that the planned and calculated nature of the crime—which involved luring a four-year-old girl, committing rape, and then murdering her to destroy evidence—reflected careful premeditation that placed the case within the "rarest of rare" category.³¹

The connection between proof of preparation and the "rarest of rare" doctrine is significant because it shows that evidence of preparation under Section 6 of the BSA is not merely relevant for the purpose of conviction, but may also influence the quantum of punishment in the most serious cases. The fact that a crime was the product of careful planning and preparation aggravates the moral culpability of the accused and distinguishes a cold-blooded premeditated crime from an impulsive one.³²

²⁵Bharatiya Nyaya Sanhita, 2023, §§ 122, 310; Indian Penal Code, 1860, §§ 122, 399 (predecessor provisions).

²⁶Bharatiya Sakshya Adhinyam, 2023, § 6, Illustration (a).

²⁷Bharatiya Sakshya Adhinyam, 2023, § 6, Illustration (d).

²⁸Juriscrack, "Section 8 of Evidence Act – Motive, Preparation and Previous or Subsequent Conduct," <http://juriscrack.com/section-8-of-evidence-act-motive-preparation-and-previous-or-subsequent-conduct/> (last visited Apr. 10, 2026).

²⁹Indian Legal Solution, "Motive, Preparation and Conduct," <https://indianlegalsolution.com/motive-preparation-conduct/> (last visited Apr. 10, 2026), citing classic burglary illustration from academic commentary on IEA § 8.

³⁰*Vasant Sampat Dupare v. State of Maharashtra*, (2015) 1 SCC 253 : 2015 CriLJ 774, per Dipak Misra, Nariman, and Lalit, JJ. (Indian Kanoon, <https://indiankanoon.org/doc/176493192/>).

³¹*Vasant Sampat Dupare v. State of Maharashtra*, (2015) 1 SCC 253, ¶¶ 54–56.

³²*Bachan Singh v. State of Punjab*, (1980) 2 SCC 684, ¶ 38 (listing "murder after previous planning and involving extreme brutality" as aggravating circumstance under the rarest-of-rare doctrine).



V. CONDUCT UNDER SECTION 6(2) OF THE BSA: PREVIOUS AND SUBSEQUENT

A. The Meaning of "Conduct" Under the Adhinyam

The word "conduct" in Section 6(2) of the BSA has received extensive judicial interpretation. The Supreme Court has consistently held that conduct in this context refers to the behaviour or actions of a party as they relate to the suit, proceeding, or fact in issue. It is important to note that conduct is distinct from character: conduct is specific to the circumstances of the case, while character refers to the general disposition of a person.³³ Conduct to be relevant under Section 6(2) of the BSA need not be simultaneous or spontaneous with the act alleged; it may be previous or subsequent to the fact in issue.³⁴

As Explanation 1 to Section 6 clarifies, statements are ordinarily excluded from the definition of "conduct" unless they accompany and explain acts other than statements.³⁵ This exclusion is of considerable practical importance because it prevents parties from attempting to use self-serving or incriminating statements as "conduct" evidence when they are really in the nature of oral declarations. However, Explanation 2 creates an important qualification: where the conduct of a person is relevant, any statement made to him, or in his presence, that affects such conduct is also rendered relevant.³⁶

B. Previous Conduct

Previous conduct refers to the behaviour of the accused—or any relevant party—prior to the commission of the act alleged. In criminal trials, previous conduct is frequently adduced to establish motive, to show threats made, or to demonstrate a pattern of behaviour leading up to the offence.³⁷ Thus, if the accused had made prior threats to the deceased, had quarreled with him, or had exhibited hostility towards him on earlier occasions, all such conduct would be relevant under Section 6(2) of the BSA as tending to show the animus of the accused.

The illustrations appended to Section 6 of the BSA elaborate upon this. Illustration (g) provides that in a suit for breach of contract, evidence that the defendant had previously refused to perform a similar contract with the plaintiff is relevant as previous conduct.³⁸ In the criminal context, if A is tried for the murder of B, and the evidence shows that A had previously threatened B and harboured a grudge against him, such facts constitute relevant previous conduct under Section 6(2) of the BSA.

In the landmark Parliament attack case—*State (N.C.T. of Delhi) v. Navjot Sandhu*—the Supreme Court extensively analyzed the conduct of the accused persons both before and after the terrorist attack on Parliament House on December 13, 2001.³⁹ The court examined telephone records, movements, and financial transactions of the accused as evidence of previous conduct, and held that these facts, read cumulatively with the confessional statements and other evidence, established the guilt of the principal accused beyond reasonable doubt.⁴⁰

³³Vepa P. Sarathi, *Law of Evidence*, 6th ed. at 76 (discussing distinction between conduct and character in evidentiary law).

³⁴Bharatiya Sakshya Adhinyam, 2023, § 6(2) (declaring conduct relevant "whether it was previous or subsequent" to the fact in issue).

³⁵Bharatiya Sakshya Adhinyam, 2023, § 6, Explanation 1; M. Monir, *Textbook on the Law of Evidence*, 9th ed. at 208–210.

³⁶Bharatiya Sakshya Adhinyam, 2023, § 6, Explanation 2.

³⁷LawBhoomi, "Motive, Preparation and Previous or Subsequent Conduct," <https://lawbhoomi.com/motive-preparation-and-previous-or-subsequent-conduct/> (last visited Apr. 10, 2026).

³⁸Bharatiya Sakshya Adhinyam, 2023, § 6, Illustration (g).

³⁹*State (N.C.T. of Delhi) v. Navjot Sandhu @ Afsan Guru*, (2005) 11 SCC 600 : AIR 2005 SC 3820, per P. Venkatarama Reddi and P.P. Naolekar, JJ. (Indian Kanoon, <https://indiankanoon.org/doc/1769219/>).

⁴⁰*State (N.C.T. of Delhi) v. Navjot Sandhu*, (2005) 11 SCC 600, ¶¶ 62–72.



C. Subsequent Conduct

Subsequent conduct refers to the behaviour of the accused—or other relevant parties—after the commission of the act alleged. Courts have consistently recognized that subsequent conduct, particularly conduct that suggests consciousness of guilt, is highly relevant under Section 6(2) of the BSA.⁴¹ Common examples of incriminating subsequent conduct include the flight of the accused, the concealment or destruction of evidence, the fabrication of false alibis, or the making of false statements to the police.

The Supreme Court in *State of Rajasthan v. Kheraj Ram* (2003) observed that the accused's attempt to divert attention from himself constitutes relevant subsequent conduct under Section 8 of the IEA (now Section 6 of the BSA).⁴² In *Bhagwan Dass v. State (NCT) of Delhi*, the fact that the accused, after killing his daughter, concealed the fact of her death for eight to ten hours while arranging for her last rites—presumably to destroy evidence of strangulation—was held to be incriminating subsequent conduct.⁴³

Absconding is another classic example of subsequent conduct. The courts have held that the flight of the accused after the commission of a crime is relevant conduct under Section 6(2) of the BSA.⁴⁴ However, the courts have also cautioned against treating absconding as conclusive proof of guilt, since even innocent persons may flee due to the instinct of self-preservation or fear of wrongful arrest. In *Sekaran v. State of Tamil Nadu* (2023), the Supreme Court held that absconding alone does not establish guilt, particularly where the accused had reasonable explanations for his absence.⁴⁵

In *Chandrakant Ganpat Sovitkar v. State of Maharashtra*, the Supreme Court held that the conduct of the accused must be assessed in its entirety and not selectively.⁴⁶ This principle is of great practical importance: courts must resist the temptation to cherry-pick isolated items of conduct that point towards guilt while ignoring other items of conduct that point towards innocence.

VI. MOTIVE, PREPARATION AND CONDUCT WITHIN THE FRAMEWORK OF CIRCUMSTANTIAL EVIDENCE

The doctrine of relevancy under Section 6 of the BSA operates most powerfully in cases that rest entirely or substantially on circumstantial evidence. Circumstantial evidence, as opposed to direct evidence, establishes facts from which an inference of guilt may be drawn; it does not directly prove the fact in issue. The law of circumstantial evidence in India has been shaped decisively by the five golden principles—the Panchsheel—laid down by the Supreme Court in *Sharad Birdhichand Sarda v. State of Maharashtra*.⁴⁷

In *Sharad Birdhichand Sarda*, a case involving the alleged murder of a young wife by her husband through administration of potassium cyanide, the Supreme Court, per Fazal Ali, J., laid down the following five conditions for

⁴¹M. Monir, *Textbook on the Law of Evidence*, 9th ed. at 211–215.

⁴²*State of Rajasthan v. Kheraj Ram* (2003), as discussed in iPleaders, "Section 8 of the Indian Evidence Act, 1872," <https://blog.ipleaders.in/section-8-of-indian-evidence-act-1872/> (last visited Apr. 10, 2026).

⁴³*Bhagwan Dass v. State (NCT) of Delhi*, (2011) 6 SCC 396, ¶ 9.

⁴⁴*Nagesha v. State of Bihar*, AIR 1996 SC 119; Indian Legal Solution, "Motive, Preparation and Conduct," <https://indianlegalsolution.com/motive-preparation-conduct/> (last visited Apr. 10, 2026).

⁴⁵*Sekaran v. State of Tamil Nadu* (2023) (S.C.), as discussed in LawBhoomi, "Motive, Preparation and Previous or Subsequent Conduct," <https://lawbhoomi.com/motive-preparation-and-previous-or-subsequent-conduct/> (last visited Apr. 10, 2026).

⁴⁶*Chandrakant Ganpat Sovitkar v. State of Maharashtra*, (1975) 3 SCC 16 : 1974 SCC Cri LJ 1044.

⁴⁷*Sharad Birdhichand Sarda v. State of Maharashtra*, (1984) 4 SCC 116, per Fazal Ali, Varadarajan, and Sabyasachi Mukharji, JJ. (Indian Kanoon, <https://indiankanoon.org/doc/1505859/>).



conviction on circumstantial evidence alone: (1) the circumstances from which the conclusion of guilt is to be drawn must be fully established; (2) the facts established must be consistent only with the hypothesis of guilt; (3) the circumstances must be of a conclusive nature; (4) they must exclude every possible hypothesis except that of guilt; and (5) there must be a complete chain of evidence that leaves no reasonable ground for a conclusion consistent with innocence.⁴⁸

These five principles—the Panchsheel—have been consistently applied by the Indian courts in cases where motive, preparation, and conduct under Section 6 of the BSA form part of the circumstantial evidence.⁴⁹ Motive supplies the "why"; preparation supplies the "how"; and previous and subsequent conduct completes the chain by showing the "before" and "after" of the crime. Together, these three categories of evidence, when sufficiently proved, enable the Court to draw a reasonable inference of guilt that satisfies the Panchsheel test.

It must, however, be emphasised that the relevancy of these facts under Section 6 of the BSA is not the same as their sufficiency for conviction. A fact may be relevant without being conclusive.⁵⁰ The mere proof of motive, preparation, and conduct does not by itself satisfy the Panchsheel test; the prosecution must still prove each circumstance beyond reasonable doubt, and the chain must be so complete as to exclude any reasonable hypothesis of innocence.

VII. THE INTERPLAY BETWEEN CONDUCT AND STATEMENTS: EXPLANATION 1 AND EXPLANATION 2 TO SECTION 6

The relationship between "conduct" and "statements" under Section 6 of the BSA is delicate and has been the subject of considerable judicial discussion. Explanation 1 to Section 6 provides that the word "conduct" does not include statements unless they accompany and explain acts other than statements. This means that a mere oral assertion, if made independently and not as an accompaniment to some act, is not "conduct" within Section 6(2).⁵¹

The illustration appended to the section is helpful here: Illustration (j) provides that in a case where A is tried for rape, the fact that shortly after the alleged rape, the victim made a complaint in specific circumstances is relevant as conduct. But the bare statement—"I have been ravished"—made without making any complaint, is not relevant as conduct under Section 6, though it may be relevant as a dying declaration or corroborative evidence under other provisions.⁵² This illustration makes clear that the statement must be inseparably connected to an act or conduct for it to be treated as part of conduct evidence.

Explanation 2 to Section 6, however, widens the ambit of what is receivable. It provides that any statement made to a person whose conduct is in question, or in his presence and hearing, and which affects such conduct, is itself relevant. In other words, if the conduct of a party is relevant, then statements that causally explain or influence that conduct are also rendered relevant by this Explanation.⁵³

⁴⁸Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116, ¶ 153.

⁴⁹SCC Online, "Five Golden Principles Governing Cases Based Only on Circumstantial Evidence," SCCTimes Blog, <https://www.scconline.com/blog/post/2021/10/20/scc-snippets-five-golden-principles-governing-cases-based-only-on-circumstantial-evidence/> (last visited Apr. 10, 2026).

⁵⁰Ratanlal & Dhirajlal, *The Law of Evidence*, 27th ed. (LexisNexis, 2022) at 188.

⁵¹Bharatiya Sakshya Adhinyam, 2023, § 6, Explanation 1; Abhirup Das, "Motive, Preparation and Previous or Subsequent Conduct," Legal Service India, <https://www.legalserviceindia.com/article/131-Motive-Preparation-and-Previous-or-Subsequent-Conduct.html> (last visited Apr. 10, 2026).

⁵²Bharatiya Sakshya Adhinyam, 2023, § 6, Illustration (j); Indian Evidence Act, 1872, § 8, Illustration (j) (substantively identical).

⁵³Bharatiya Sakshya Adhinyam, 2023, § 6, Explanation 2; M. Monir, *Textbook on the Law of Evidence*, 9th ed. at 212–213.



In *Zwinglee Ariel v. State of Madhya Pradesh*, the Supreme Court considered the admissibility of statements alleged to have been made by the accused when he was apprehended after taking a bribe. The court scrutinised these statements against the backdrop of what was then Section 8 of the IEA (now Section 6 of the BSA) and held that the statements were not admissible as conduct since they were not accompanied by any relevant act.⁵⁴ This decision illustrates the strict construction courts have applied to Explanation 1: statements must do more than merely relate to conduct; they must actually accompany and explain an act.

VIII. APPLICATION OF SECTION 6 IN CIVIL PROCEEDINGS

While the discussion of Section 6 of the BSA has thus far focused primarily on criminal proceedings—where its application is most prominent—it is important to note that the provision applies equally to civil suits and proceedings. Section 6(2) of the BSA specifically refers to the conduct of "any party, or of any agent to any party, to any suit or proceeding," making it explicit that civil litigants are covered.⁵⁵

In civil cases, conduct evidence under Section 6 is particularly relevant in disputes involving alleged fraud, breach of contract, or tortious misconduct. For example, in a suit for breach of contract, the prior and subsequent conduct of the defendant with respect to similar contracts may be relevant to establish a pattern of bad faith or deliberate non-performance.⁵⁶ The Supreme Court has, however, laid down an important limitation in civil cases. In *Ramkishore Lal v. Kamal Narain*, the Court held that where a document is clear and unambiguous on its face, the conduct of the parties subsequent to the execution of the document is irrelevant for the purposes of interpreting it.⁵⁷ Conduct evidence can be used to resolve ambiguities but cannot override the plain meaning of a clear instrument.

In commercial disputes, too, courts have held that the conduct of parties during negotiations, and their post-contractual conduct, may throw light on the interpretation of the contract and hence be relevant. However, this relevance is always subject to the overarching rule that the terms of the contract, when clear, must be given effect to without resort to extrinsic evidence of conduct.⁵⁸

IX. CRITICAL ANALYSIS: LIMITATIONS AND DOCTRINAL CHALLENGES

A. The Risk of Over-Reliance on Motive

While the relevancy of motive under Section 6 of the BSA is undisputed, the courts have identified a significant risk: that juries and judges may be unduly influenced by the presence of a strong motive and may convict even where other evidence is insufficient to prove guilt beyond reasonable doubt. The principle that motive alone cannot ground a conviction is thus not merely a technical legal rule but reflects a deep jurisprudential concern about the reliability of inference-based guilt.⁵⁹

The Supreme Court has noted that most serious crimes are the product of strong emotions—jealousy, avarice, revenge, lust—and that the presence of these emotions in an accused's mind does not necessarily establish that he was the one who committed the crime. Other persons may have the same or a stronger motive but may not have committed the offence.⁶⁰ This concern is particularly acute in cases of honour killings, dowry deaths, and crimes of passion, where the

⁵⁴*Zwinglee Ariel v. State of Madhya Pradesh*, AIR 1954 SC 15 : 1954 Cri LJ 230.

⁵⁵*Bharatiya Sakshya Adhiniyam*, 2023, § 6(2).

⁵⁶*Bharatiya Sakshya Adhiniyam*, 2023, § 6, Illustration (b).

⁵⁷*Ramkishore Lal v. Kamal Narain*, AIR 1963 SC 890 : 1963 SCR Supl. (2) 417, per Gupta, Sinha, Gajendragadkar, Wanchoo, and Shah, JJ. (*Indian Kanoon*, <https://indiankanoon.org/doc/640087/>).

⁵⁸Avtar Singh, *Principles of the Law of Evidence*, 20th ed. (Central Law Publications, 2019) at 127–130.

⁵⁹Ratanlal & Dhirajlal, *The Law of Evidence*, 27th ed. at 186.

⁶⁰*Nandu Singh v. State of Madhya Pradesh*, 2022 (3) ACR 2328 (S.C.).



existence of a strong motive may be obvious but where the actual perpetrator may not be definitively identified by motive alone.

B. The Reliability Problem in Subsequent Conduct Evidence

Evidence of subsequent conduct—particularly of absconding, concealment, or flight—carries inherent risks of misinterpretation. Human behaviour in the aftermath of a crime is notoriously ambiguous: an innocent person who fears wrongful accusation may behave in ways that mimic guilty conduct.⁶¹ Courts have therefore repeatedly emphasised that subsequent conduct evidence must be assessed in the context of the totality of circumstances, and that no single item of conduct can be treated as conclusive.

The Explanation to the provision that conduct must "influence or be influenced by" a fact in issue imposes a meaningful nexus requirement that courts must take seriously. Evidence of random or unrelated conduct should not be admitted under Section 6(2) of the BSA merely because it involves a party to the proceeding.⁶²

C. The Problem of Narrative Prejudice

Scholars of evidence law have pointed out that the cumulative effect of motive, preparation, and conduct evidence can create a powerful narrative prejudice—a situation where the fact-finder, having been presented with a coherent and compelling story of guilt, may be less willing to scrutinize each link in the chain with appropriate rigor.⁶³ This concern is particularly relevant in the Indian context, where the judicial fact-finder is the judge rather than a lay jury, and where the danger lies not in irrationality but in a subtle erosion of the rigorous standard of proof required for criminal conviction.

D. Section 6 in the Digital Age: Emerging Issues Under the BSA

The Bharatiya Sakshya Adhiniyam, 2023 represents a significant advancement over the IEA in its treatment of electronic and digital records. While Section 6 of the BSA is substantively identical to Section 8 of the IEA, the broader context in which conduct evidence is now collected and produced has changed dramatically.⁶⁴ Digital conduct—such as search histories, messaging patterns, social media posts, GPS location data, and financial transactions—increasingly constitutes the most powerful form of preparatory and conduct evidence available to modern prosecutors.

The BSA addresses electronic records comprehensively under its provisions on documentary evidence, particularly through the certification requirements that govern the admissibility of electronic records.⁶⁵ In the context of Section 6, courts will increasingly be required to evaluate whether digital conduct—such as a WhatsApp conversation in which the accused discussed plans to commit the offence—constitutes relevant conduct evidence, or whether it falls foul of Explanation 1 because it is a "statement" rather than an "act."

This is an area where the BSA, though modernised in form, does not expressly resolve the tension between the traditional distinction of "statements" and "acts" in conduct evidence and the reality that, in the digital world, statements and acts are often inseparable. Future judicial interpretation will need to grapple with these questions with creativity and doctrinal sensitivity.⁶⁶

⁶¹Abhirup Das, "Motive, Preparation and Previous or Subsequent Conduct," Legal Service India, <https://www.legalserviceindia.com/article/l31-Motive-Preparation-and-Previous-or-Subsequent-Conduct.html> (last visited Apr. 10, 2026).

⁶²Bharatiya Sakshya Adhiniyam, 2023, § 6(2) (conduct must "influence or be influenced by" a fact in issue).

⁶³V. Krishnamachari, *Law of Evidence*, 5th ed. at 59.

⁶⁴PRS Legislative Research, *The Bharatiya Sakshya Bill, 2023* (2023) (noting that BSA classifies electronic records as primary evidence, a significant upgrade from secondary evidence under IEA).

⁶⁵Bharatiya Sakshya Adhiniyam, 2023, § 61; Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal, (2020) 7 SCC 1.

⁶⁶Anvar P.V. v. P.K. Basheer, (2014) 10 SCC 473 (strict compliance with § 65B of the IEA as precondition for admissibility of electronic records).



X. A BRIEF COMPARATIVE PERSPECTIVE

The relevancy of motive, preparation, and conduct as evidentiary categories is not unique to India. In English law, the common law tradition—from which Indian evidence law is partially descended—has long recognized the admissibility of such evidence. Under the English Law of Evidence, evidence of motive is generally admissible to show that a person had a reason to commit the act, and evidence of preparation and subsequent conduct are equally well-established categories.⁶⁷

The Federal Rules of Evidence in the United States, particularly Rule 404(b), permit the admission of prior acts of the accused (analogous to preparation and previous conduct) to show intent, knowledge, motive, and plan, while prohibiting their use to prove mere propensity to commit crimes.⁶⁸ This distinction between propensity evidence (inadmissible) and motive/intention/plan evidence (admissible) is also reflected in the Indian scheme, where Section 6 of the BSA deals specifically with conduct that is connected to the facts in issue, while the character provisions in Sections 46–50 of the BSA govern the admissibility of general character evidence.

XI. CONCLUSION

The Bharatiya Sakshya Adhinyam, 2023, through Section 6, continues a long and distinguished tradition of recognizing motive, preparation, and conduct as legally relevant categories of evidence. These three concepts serve as the evidentiary scaffolding that enables courts to understand human behaviour, reconstruct the sequence of events, and—in the appropriate cases—draw reliable inferences of guilt. The extensive judicial jurisprudence developed under the erstwhile Section 8 of the Indian Evidence Act, 1872, provides a rich and nuanced interpretive framework that continues to inform the application of Section 6 of the BSA.

At the same time, this paper has argued that the application of these evidentiary categories must be governed by a spirit of caution and doctrinal rigor. Motive alone cannot ground a conviction; preparation, while relevant, must be clearly connected to the crime; and conduct evidence—whether previous or subsequent—must be assessed holistically and in the context of all available evidence. The Panchsheel test of *Sharad Birdhichand Sarda* remains the lodestar for courts engaging with circumstantial evidence, and Section 6 of the BSA must always be read and applied in its light.

The emergence of digital conduct evidence, in particular, presents new challenges that the legislature and courts will need to address with imagination. The Bharatiya Sakshya Adhinyam, 2023 provides a modernized foundation, but the law of conduct evidence in the digital age is still very much a work in progress. It is hoped that the courts, guided by the rich jurisprudence outlined in this paper, will develop this body of law in a manner that is both technologically responsive and doctrinally sound

⁶⁷Colin Tapper, *Cross and Tapper on Evidence*, 13th ed. (Oxford University Press, 2018) at 63–66.

⁶⁸Federal Rules of Evidence (United States), Rule 404(b).

