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Introduction

Welcome to the Indian Journal of Legal Affairs and Research (IJLAR), a distinguished platform dedicated to the dissemination of comprehensive legal scholarship and academic research. Our mission is to foster an environment where legal professionals, academics, and students can collaborate and contribute to the evolving discourse in the field of law. We strive to publish high-quality, peer-reviewed articles that provide insightful analysis, innovative perspectives, and practical solutions to contemporary legal challenges. The IJLAR is committed to advancing legal knowledge and practice by bridging the gap between theory and practice.

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Preface

The Indian Journal of Legal Affairs and Research is a testament to our unwavering commitment to excellence in legal scholarship. This volume presents a curated selection of articles that reflect the diverse and dynamic nature of legal studies today. Our contributors, ranging from esteemed legal scholars to emerging academics, bring forward a rich tapestry of insights that address critical legal issues and offer novel contributions to the field. We are grateful to our editorial board, reviewers, and authors for their dedication and hard work, which have made this publication possible. It is our hope that this journal will serve as a valuable resource for researchers, practitioners, and policymakers, and will inspire further inquiry and debate within the legal community.

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Description

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ADMISSIBILITY OF ELECTRONIC EVIDENCE

AUTHORED BY - ANUPRIYA

Abstract:

This article starts with the meaning and concept of "electronic evidence" and the question that why electronic evidence is very essential in our present time. Electronic evidence value is similar to paper evidence and oral evidence. This article also discusses the amendments which are done concerning electronic evidence. With the increase in technology nowadays cyber crimes have also increased and accordingly punishment for committing the offense has also been brought under the "Information Technology Act, 2000". There are various cases in which the Supreme Court has given the judgment relating to electronic evidence in reference to the "admissibility of Electronic evidence". "Section 65B of the Indian Evidence Act and Sections 61 to 63 of Bharatiya Sakshya Adhiniyam, 2023" explains the "admissibility of electronic evidence" and how electronic evidence is to be presented and what are the important areas which are required for a proper electronic record to be considered as evidence. As technology has improved and is increasing day by day, requirements of electronic evidence have also become increasingly significant.

Keywords: Electronic evidence, Amendments, Indian Evidence Act, Bharatiya Sakshya Adhiniyam 2023, Information Technology Act

Introduction:

At present, Electronic evidence now plays a significant role. With the advancement of technology, every work is done digitally. In the present time, the value of electronic evidence has been increased. It is the digital era. So it is very important to give more preference to electronic evidence as now everything is done digitally. Electronic evidence is being used very much nowadays because, in the era of computers, everything is being digitally stored. In 2000, the Parliament created a new law called the "Information Technology Act 2000" after the victory, the books of India's laws were amended, and electronic records were added. "Information Technology Act" is the best "United Nations Commission on Electric National Trade Block Model Law on Electronic Commerce". The basic objective of electronic evidence

is to bring legal identity to electronic commerce.[1] Nowadays as technology has developed there are also many Cybercrimes that are penalized under the "Information Technology Act" and punishment is given accordingly under this act. There was also an amendment in the Information Technology Act which was made by the "Negotiable Instrument Act 2002" because of which there was the introduction of truncated cheques and electronic cheques. Earlier, under the Evidence Act, an amendment was made, and after that electronic records were also included along with the paper documents as evidence. Under the "Indian Evidence Act", Section 3 of the act includes the definition and the meaning of electronic evidence. Under "Bharatiya Sakshya Adhiniyam, 2023", Section 2 of the act includes electronic and digital records. It has mentioned about two types of evidence which are oral and document. There was also an amendment in the documentary evidence definition and it was mentioned that electronic records will also be included in the definition of documentary evidence along with the documents.[2] The definition of admission was also amended and it was mentioned that admission in relation to the oral admission can be done in relation to the E-record when the record is genuine.

When the electronic record is a part of a statement then it must be given to the court as evidence. In relation to the "admissibility of electronic records", there are sections under the "Indian Evidence Act, i.e, Sections 65A and 65B and under "Bharatiya Sakshya Adhiniyam, 2023" i.e, Sections 61, 62 and 63 which is related to electronic evidence.

Section 65B of Indian Evidence Act:

Under "section 65B of the Indian Evidence Act", it addresses information produced as computer output for use as electronic evidence.

Computer output can include any information which is "recorded electronically, stored or recorded, printed on paper, or copied in magnetic media, and optical". It is also mentioned in the section that any computer output should be considered as a document.[3] It has also been stated that if the document fulfills the condition which is satisfied under clause (2) of section 65B then it shall be deemed as admissible evidence without any further proof and should be treated as having the same content as the original document. In Section 65B (2), It has been

[1] NAMAN JAIN, *Admissibility of E-evidence in India: An Overview* (2021), https://papers.ssrn.com/ (last visited Jan 10, 2022).
[2] C. Throphilopoulos, *The Admissibility of Data, Data Messages, and Electronic Documents at Trial*, 2015 J. S. AFR. L. 461 (2015).
[3] Sara J. Piasecki, *Legal Admissibility of Electronic Records as Evidence and Implications for Records Management*, 58 THE AMERICAN ARCHIVIST 54–64 (1995).

mentioned that whatever computer outputs are there, it must come from a system regularly used by a person with lawful control over it. Whatever information has been collected by the computer should be collected regularly. The computer must collect the information on a regular basis and it should not collect the information just only for the sake of evidence. All the computer outputs must be operated properly by the authority which is having legal control. he information should arise in the ordinary course of the action.

Under 65B (3) it states that if the information is taken from a computer that is regularly performing and if any activity is done by combined computers, or through different computers working one after another, meaning that the same task is carried out by different instrument, or for a different combination of computers which are operating same activity. If the process involves a series of connected operations, all the information generated or received during those operations will be taken as having been generated by a single computer.

Under "Section 65B (4)of the Indian Evidence Act" whenever a person has to give evidence according to section 65B or if a person wants to produce to electronic record electronically then he will require a certificate. In the certificate, there must be description about which mode electronic record was made in front of the court. For example- whether it was in the form of CD, pen drive, disc, etc. Along with this, the particulars and device's information will also be there mentioning that the record was made by the computer. Details of regular information on electronic devices also are written in the certificate stating that the information was fed regularly. WThe certificate must be signed by a person holding the required responsible position and who can say that whatever evidence is there is relevant. Compliance with the applicable requirements supports its admissibility.[4]

Under "Section 65B (5) of the Indian Evidence Act", it is mentioned that information should be in a proper mode either with or without human intervention. If any official data or information is given by one computer to another including or excluding the course of activity to store the information or data and the supply is proper then it will be considered that the supply is for the main activity only. It has also been mentioned that whatever computer output has been produced directly or through any proper equipment, it will be considered as a computer output only. Any information which is derived from the comparison, calculation, or any different process will be considered as other information.

Relevant Provisions under the Bharatiya Sakshya Adhiniyam, 2023

[4] Steven Goode, *The Admissibility of Electronic Evidence*, 29 REV. LITIG. 1 (2009).

The "Bharatiya Sakshya Adhiniyam, 2023" (BSA) replaced the "Indian Evidence Act, 1872". It recognises electronic and digital records and sets out rules for proving their contents and admitting them in evidence.

"Section 2(1)(d) of Bharatiya Sakshya Adhiniyam, 2023" mentions about Document which states that a document includes both paper documents and electronic or digital records, such as emails, computer files, mobile messages, server logs and websites.

"Section 2(1)(e) of Bharatiya Sakshya Adhiniyam, 2023" mentions about Evidence which states that evidence includes electronic or digital records presented before the Court. It also includes statements given electronically when the Court allows or requires them.

"Section 57 of Bharatiya Sakshya Adhiniyam, 2023" mentions about primary evidence. This section explains primary evidence. Certain electronic and digital records, such as records stored in multiple files, video recordings and records kept in automated systems, may be treated as primary evidence. Electronic or digital records produced from proper custody are also primary evidence unless disputed.

"Section 61 of Bharatiya Sakshya Adhiniyam, 2023" mentions about Electronic or Digital Record which states that an electronic or digital record cannot be rejected only because it is in electronic form. Subject to Section 63, it has the same legal validity and effect as other documents.

"Section 62 of Bharatiya Sakshya Adhiniyam, 2023" mentions about Special Provisions Regarding Electronic Records which requires the contents of electronic records to be proved in accordance with rules in Section 63.

"Section 63 of Bharatiya Sakshya Adhiniyam, 2023" mentions about "Admissibility of Electronic Records". This section explains when can electronic records may be admitted in court. These records may include emails, messages, CCTV footage, and files stored on computers or mobile phones. They can be admitted as evidence if they satisfy the legal requirements.

"Section 63(2) of Bharatiya Sakshya Adhiniyam, 2023" mentions about Conditions for Electronic Evidence. This section lays down certain conditions for accepting electronic evidence. The computer or device must be regularly used, the information must be entered during normal activities, and the device must be working properly. These conditions help show that the electronic record is reliable.

"Section 63(4) of Bharatiya Sakshya Adhiniyam, 2023" mentions about Certificate. When an electronic record is submitted as computer output, a certificate must be provided as required

by law. The certificate must clearly explain the electronic record, explain how it was produced, and provide particulars of the device or system. It must also be signed by the required person or persons. The prescribed format also includes details of the record and its hash value, which helps check whether the record has been changed.

Practical Examples-Electronic evidence includes emails, WhatsApp messages, CCTV footage, call records, screenshots, audio recordings, videos, and computer files. However, these records are not automatically accepted by the court. They must meet the legal requirements and be relevant and genuine.

Relationship with the Earlier Law

Under the "Indian Evidence Act, 1872", Sections 65A and 65B dealt with electronic evidence. The "Bharatiya Sakshya Adhiniyam, 2023" (BSA) replaced that law from 1 July 2024. Under the BSA, Sections 62 and 63 deal with how electronic records can be proved and whether they can be accepted as evidence in court.

. Sections 2 and 61 also recognise digital and electronic records. However, the earlier law may still apply to certain proceedings due to the transitional provisions.

Case Laws:

In "**Pune Bar Association v. Union of India"[5],** the Supreme Court stated that electronic evidence, such as emails, digital documents or videos must have a certificate showing its authenticity under "Section 63(4) of the Bharatiya Sakshya Adhiniyam, 2023". The certificate includes a hash value (a digital fingerprint) and an expert's signature to help prevent tampering. The Court said these requirements are reasonable. It also clarified that a qualified expert need not always be government-notified, but left this legal question open for future decisions.

In **"N. Mahesh v. G.N. Nanjundaswamy"[6]**, a former MLA accused another politician of defamation for allegedly calling him anti-social and accusing him of corruption worth ₹30 crore. The court dismissed the complaint because the complainant failed to prove the allegations with reliable evidence. The newspaper report and video recordings were not properly verified, and the electronic evidence certificate lacked important details about the devices and how the video was transferred and preserved. The court explained that simply

[5] WRIT PETITION (CIVIL) NO.599 OF 2026
[6] C.C.No. 29859/2025

submitting a video or certificate is not enough; its authenticity and reliability must also be proved. Therefore, the accused was not found guilty of defamation.

In "**Tomaso Bruno v. State of Uttar Pradesh (2015)"**[7], the Supreme Court analyzed the murder case of Italian tourist in which two people were convicted. The Court stated that the prosecution's failure to produce important evidence, especially CCTV footage, created serious doubts about its case. It explained that courts should rely on reliable evidence and not merely on suspicion. In cases based on circumstantial evidence, all the facts must form a complete chain proving the accused's guilt beyond reasonable doubt. The Supreme Court set aside the convictions and acquitted the accused. This case highlights the importance of electronic evidence in criminal trials.

In "**State of Maharashtra v. Dr. Praful B Desai"**[8]**,** the issue was with regard to the examination of witnesses examination, and the question which was taken into account was whether the examination can be made through video conferencing or not. The Supreme Court mentioned that the examination of a witness can be made by video conferencing. There is no compulsion for the witness to be physically present.

In "**State (NCT of Delhi) v. Navjot Sandhu"**[9], a conviction was there on basis of an attack on the Parliament in which many members were killed and injured. Looking into the electronic evidence which was produced by means of call records, the accused argued that the electronic evidence had no relevance as the fulfillment of proper certificate which is required under "section 65B (44) of Indian Evidence Act" for producing electronic evidence was not fulfilled. However, the Supreme Court mentioned that whatever electronic evidence was obtained in the form of call record and the way of taking call record prints was relevant.
It was also observed that: Under section 63 the interpretation of secondary evidence also includes "copies made from the original by mechanical processes which in themselves insure the accuracy of the copy, and copies compared with such copies".

In "**Jagjit Singh v. State of Haryana"**[10], one member was disqualified by the speaker of the

[7] (2015) 7 SCC 178
[8] AIR 2003 SC 2053
[9] AIR 2005 SC 3820
[10] 2006(2) SCC 1

Legislative Assembly of Haryana because of defection. In the hearing, the Supreme Court considered and relied on the electronic evidence by the way of interview record and observed that at the time of the interview the person taking action against the member was present. Therefore electronic evidence was considered applicable in this case and was relevant.

In "**Dharambir v. Central Bureau of Investigation"[11],** court analyzed that under section 65B, computer output also includes a hard disc under which information is stored. The court also distinguished between the two levels of electronic. The first hard disc and the second video file or text file etc. which are recorded on the hard disc. This information can be copied into other devices also like pen drive, CD, etc.

In "**Anvar P.V. v. P.K. Basheer"[12]**, it was mentioned that no application of "sections 63 and 65 of Indian Evidence Act" in the case was related to electronic evidence and the same was also governed under "section 65A and section 65B of the Indian Evidence Act". The court said that in India electronic evidence record can be accepted if it complies with "section 65B of the Indian Evidence Act" and if "section 65B of the Indian Evidence Act" is not taken into consideration then it cannot be accepted as evidence. The court said that electronic evidence by way of secondary evidence can only be considered when it is satisfying section 65B along with the requirement of the certificate under "65B(4) of the Indian Evidence Act". It was said that "section 65A and 65B of the Indian Evidence Act" on its own is a complete course for electronic evidence. Therefore this judgment overturned "State (NCT of Delhi) v. Navjot Sandhu and Ors".

In "**Shafhi Mohammed v. The State Of Himachal Pradesh"[13],** the court stated that certificate requirement under "section 65B (4) of Indian Evidence Act" is not always necessary and electronic evidence can be given without the certificate if the court allows for it. The court observed the "admissibility of electronic evidence" and held that person who is not in the position of the device in which the electronic evidence was kept does not require to bring a the certificate under "section 65B(4) of the Indian Evidence Act". In these cases section, 65 and 63 procedures can be invoked.

[11] 148 (2008) DLT 289
[12] (2014) 10 SCC 473
[13] *(2018) 2 SCC 801.*

In "**Tomaso Bruno v. State of U.P"[14]**, the court stated and analyzed that the "contents of the document" for secondary evidence can be made under "section 65 of the Indian Evidence Act". The main issue was related to the "admissibility of evidence" concerned with CCTV footage related to a criminal matter, and the court also discussed "Section 65B(4) of the Indian Evidence Act".

In "**Sanjaysinh Ramrao Chavan v. Dattatray Gulabrao Phalke"[15]**, court ruled that the translated version of the recording will not be considered because the voice recorder had not been properly examined. No authenticity or source of the recording was there which is very important in evidence law.

In the case of **Ankur Chawla v. CBI**, the case was related to corruption and in this case, video CDS and audios were in question as they were not clearly admissible evidence. The offense committed by the accused was in question as the record was not clearly admissible as evidence. An offense committed by the accused was in question as no reasonable ground was mentioned on which it can be said that he has committed the offense.

In **Dharambir v. CBI[16]** it has been mentioned about the compliance of "section 65B of the Indian Evidence Act" and it has been said that compliance of "section 65B of the Indian Evidence Act" is mandatory. There must be the accessibility of active information by the accused.

"Om Prakash Verma v. State of West Bengal and Ors." [17]

This case is connected with the preservation of electronic evidence. It was decided that electronic devices like tablet, mobile phones, laptops, etc. which are stolen property and is seized can be produced in the trial court but trail or inquiry cannot be done on those devices if their unique identification number is not there.

In the case of **Arjun Pandit Rao v. Kailash Kushanrao[18]**, it was decided that the certificate

[14] (2015) 7 SCC 178.
[15] (2015) 3 SCC 123
[16] 148 (2008) DLT 289.
[17] 2018 CRLJ 640.
[18] (2020) SCC 571.

which is mentioned under "section 65B (4) of the Indian Evidence Act" is very essential for the electronic record admissibility. An electronic record is identified by the certificate and the device producing the electronic record is also identified with the help of a certificate. The certificate is signed by the person who is authorized and was operating or occupying a position to operate the device containing the electronic record as evidence.

Conclusion:

The Bharatiya Sakshya Adhiniyam, 2023 is the main law that deals with evidence in court. Sections 61–63 explain how electronic evidence, such as emails, videos and digital documents, can be accepted and proved in court. Section 63 also states the conditions that must be fulfilled and when a certificate is required to prove electronic evidence. With the advancement of technology, it is clear that secondary evidence has taken an important place. However, the evidence produced electronically must be in accordance with "section 65B of the Indian Evidence Act". There are many cases related to the "admissibility of electronic evidence". However, there are two types of evidence that we have observed. One is oral and the other is the documentary and accordingly, documentary evidence has been amended. It has been observed that electronic records will also be relevant in accordance with "section 65B of the Indian Evidence Act". "Section 65B of the Indian Evidence Act" talks about the admissibility of electronic evidence. It talks about the devices from which electronic record has been made, certificates required for "admissibility of electronic evidence", mode of information, and what type of electronic record will be considered admissible for the evidence. There are many cases related to the "admissibility of electronic evidence" and in many cases, it has been stated that section 65 (4) will be necessary for which certificate is required for admissibility. Therefore electronic record has become a very important part in the day to day activities as everything is done digitally.