

## A STUDY ON ELECTRONIC EVIDENCE ACT UNDER LAW OF EVIDENCE

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### ABSTRACT

Because of huge development in e-administration all through the Public and Private Sector, Electronic Evidence have included into a principal mainstay of correspondence, handling and documentation. These different types of electronic proof are progressively being utilised as a part of both Civil and Criminal Litigations. Amid trials, Judges are frequently solicited to control on the tolerability from electronic confirmation and it significantly impacts the result of common claim or conviction/vindication of the blamed. The Court keep on grappling with this new electronic boondocks as the remarkable idea of e-confirm, and in addition the straightforwardness with which it can be manufactured or distorted, makes obstacle to acceptability not looked with alternate confirmations. The different classifications of electronic confirmation, for example, site information, interpersonal organisation correspondence, email, SMS/MMS and PC created reports postures one of a kind issue and difficulties for legitimate verification and subject to an alternate arrangement of perspectives.

The Indian Evidence Act has been altered by temperance of Section 92 of Information Technology Act, 2000 (Before revision). Area 3 of the Act was corrected and the expression "All archives delivered for the assessment of the Court" were substituted by "All reports including electronic records created for the investigation of the Court". With respect to narrative confirmation, in Section 59, for the words "Substance of reports" the words "Substance of archives or electronic records" have been substituted and Section 65A and 65B were embedded to consolidate the suitability of electronic proof.

**KEYWORDS:** E-administration, electronic evidence, IT act, Proof, Investigation, litigation.

## INTRODUCTION

Electronic record is characterised under segment 2(1)(t) of Information Technology Act. It characterises that information, record or information produced, picture, or sound put away, got or sent in an electronic frame or smaller scale film or PC created smaller scale fiche" [microfiche is a card made of straightforward film used to store printed data in scaled down shape. (scale down -- to make in to a great degree little size to keep volume or weight to a base) Any information contained in an electronic record which is printed on a paper , stored , recorded or copied in optical or magnet media. Meaning: If things specified in the definition i.e. " information, record or information created, picture, or sound" is either "put away" or "got" or "sent", is in "an electronic shape" or "small scale film" or "PC produced miniaturised scale fiche", it is electronic record. Therefore most vital thought to term a thing as electronic record is that it must be put away, got or sent in an electronic frame or smaller scale film or PC created small scale fiche. The term "electronic frame" is characterised under area 2(1) (r) of the Information and Technology Act. Electronic frame with reference to data, implies any data produced, sent, got or put away in media, attractive, optical , PC memory, small scale film, PC created smaller scale fiche or comparative device. This demonstrates that, data should be put away in media , attractive, optical , PC memory, miniaturised scale film , PC created smaller scale fiche or comparative device. In Section 61 to 65, "Report or substance of archives" have not been supplanted by "Electronic records or substance of electronic reports". Along these lines, the goal of the lawmaking body is expressly clear i.e. not to expand the relevance of segment 61 to 65 to the electronic record. It is the cardinal rule of understanding that if the lawmaking body has discarded to utilise any word, the assumption is that the oversight is deliberate. It is very much settled that the Legislature does not utilise any word pointlessly. In such manner, the Apex Court in *Utkal Contractors and Joinery Pvt. Ltd. v. Territory of Orissa*[1] held that "... Parliament is likewise not anticipated that would communicate superfluously. Indeed, even as Parliament does not utilise any word without significance something, Parliament does not enact where no enactment is called for. Parliament can't be accepted to enact for enactment; nor enjoy enactment just to state what it is superfluous to state or to do what is as of now truly done. Parliament may not be accepted to administer pointlessly."

Then again, in Section 61 to 65 Indian Evidence Act, "Archive or substance of records" have not been supplanted by "Electronic reports or substance of electronic archives".

Electronic evidence Act will be admissible only if it is supported by an affidavit. In this manner, the oversight of, "Electronic Records" in the plan of Section 61 to 65 means the reasonable and express administrative goal, i.e. not to expand the pertinence of Section 61 to 65 to the electronic record in perspective of abrogating arrangement of Section 65-B Indian Evidence Act managing solely with the acceptability of the electronic record which in perspective of the convincing innovative reasons can be conceded just in the way determined under Section 65-B Indian Evidence Act.

The fundamental goal to present the particular arrangement has its starting point to the specialised idea of the proof especially as the confirmation in the electronic shape can't be created in the official courtroom inferable from the measure of PC/server, living in the machine dialect and in this manner, requiring the mediator to peruse the same. The provision given in evidence Act under sec 65 A and B are referred only to demonstrate that the emphasis at present is to recognise the electronic records and digital signature as admissible piece of evidence. The Section 65B of the Evidence Act influences the auxiliary duplicate as PC to yield including printout or the information replicated on electronic/attractive media.

#### **OBJECTIVES**

- Whether the role of digital evidence in evidence Act is effective or not?
- A analysis on Indian evidence Act sec 63 in India and USA
- Increasing of technologies in society leads to acceptance of electronic evidence judicial.

#### **HYPOTHESIS**

**NULL HYPOTHESIS** : Digital evidence does not have profound value as evidentiary value in court of law

**ALTERNATIVE HYPOTHESIS** : Digital evidence have profound value as evidentiary value in court of law

#### **RESEARCH METHODOLOGY:**

This is a doctrinal research. The researcher has referred books, research articles, unpublished thesis and e-sources as a part of secondary source of the writing of the project.

### **ADMISSIBILITY OF ELECTRONIC RECORD**

In exceptional cases, contents of electronic record may be proved if the compliance of section 65B is made. It means, contents of such document can be proved on the basis of mere certificate. Now it is for the court to see which document can be proved on certifying it under section 65B of Indian Evidence Act.

Notwithstanding anything contained in this Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer (hereinafter referred to as the computer output) shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence or any contents of the original or of any fact stated therein of which direct evidence would be admissible. court held that in view of sec 65A and 65B of evidence Act it will held that recording of evidence. The electronic evidence and technologies is acknowledged and recognised in judicial system.

#### **Sec. 65B(2):**

The PC from which the record is created was consistently used to store or process data in regard of movement frequently carried on by a man having legal control over the period, and identifies with the period over which the computer was routinely utilised; Data was nourished in computer in the common course of the exercises of the individual having legitimate control over the computer ; The computer was working appropriately, and if not, was not, for example, to influence the electronic record or its precision; Data replicated is, for example, is nourished into computer in the common course of movement.

#### **Sec.65B(3):**

The accompanying computer should constitute as single computer by a mix of computer working over that period; or by various computer working in progression over that period; or by various mixes of computer working in progression over that period; or in some other way including the progressive activity over that period, in whatever request, of at least one computer and at least one mixes of computer ,

**Sec. 65B(4):**

Concerning individual who can issue the endorsement and substance of testament, it gives the authentication doing any of the accompanying things: distinguishing the electronic record containing the announcement and portraying the way in which it was created; giving the particulars of gadget managing any of the issues to which the conditions specified in sub-segment (2) relate, what's more, indicating to be marked by a man involving a mindful authority position in connection to the task of the applicable gadget or the administration of the pertinent exercises (whichever is fitting) might be proof of any issue expressed in the authentication; and for the reasons for this sub-segment it should be adequate for an issue to be expressed to the best of the learning and conviction of the individual expressing it. The high court held that a conclusion statement recorded in a video, admitted as electronic evidence under sec 65B of evidence Act.

This dispute is additionally reinforced by the inclusion of Section 65A and 65B and the words "Despite anything contained in this Act" which is a non-obstante statement, additionally sustains the way that the governing body has proposed the creation or presentation of the electronic records by Section 65A and 65B as it were. A non-obstante condition is for the most part affixed to a Section with a view to give the establishing some portion of the Section, if there should be an occurrence of contention, an abrogating impact over the arrangement in the same or other act said in the non-obstante provision. The Supreme Court considered the digital evidence, the form of interview to be determined, electronic evidence and can be admissible during the legal proceedings. It is comparable to stating that in spite of the arrangements or act specified in the non-obstante condition, the arrangement tailing it will have its full task or the arrangements grasped in the non-obstante statement won't be a hindrance for the activity of the institution or the arrangement in which the non-obstante proviso occurs.

The previously mentioned standards of translation as for the non-obstante proviso in type of "Despite anything contained in this Act" is additionally upheld by the Hon'ble Apex Court in Union of India and Anr., v. G.M. Kokil and Ors. watched "It is outstanding that a non obstante proviso is an administrative gadget which is normally utilised to give superseding impact to specific arrangements over some opposite arrangements that might be discovered either in a similar sanctioning or some other establishment, in other words, to maintain a strategic distance from the activity and impact of every single opposite

arrangement." Further, the Hon'ble Apex Court for the situation referred to as Chandavarkar Sita Ratna Rao v. Ashalata S. Guram clarified the extent of non-obstante condition as "... It is proportionate to stating that regardless of the arrangement of the Act or some other Act specified in the non obstante statement or any agreement or report said the authorisation tailing it will have its full activity..." The high court of Delhi held that by hearing the corruption case audio and video in question, clearly in admissible as electronic evidence.

### **Danger of control and consistence with the arrangements of segment 65B of the Evidence Act**

In spite of the obligatory idea of these conditions, the law has been connected conflictingly. For example, the endorsement of genuineness has not generally been documented with the electronic records in legitimate procedures. Digital Chalfgo sheet was held to be a document and it can be accepted as a electronic evidence, the Supreme Court directed to supply of charge sheet in electronic form additionally. For example, on account of State (NCT of Delhi) v. Navjot Sandhu, 8 the Supreme Court had held that courts could concede electronic records, for example, printouts and minimal plates (CDs) as at first sight prove without confirmation. This case managed the evidence and tolerability of the records of cell phone calls. The denounced made an accommodation that no dependence could be put on the cell phone records in light of the fact that the indictment had neglected to deliver the applicable authentication under segment 65B(4) of the Evidence Act and that the strategy set out in area 65B of the Evidence Act was not taken after. The Supreme Court presumed that a round of questioning of the able witness familiar with the working of the PC amid the important time and way in which the printouts of the call records were taken was adequate to demonstrate the call records. Accordingly, the printouts and CDs were not contrasted with the first . Electronic evidence manipulated data ,sec 63 of evidence Act probated information , online transaction.

### **Electronic record or guaranteed at the season of showing it as confirmation.**

This pattern of disregarding the unique technique recommended for illustrating electronic records as confirmation was seen even in ensuing cases. For example, the instance of Ratan Tata v. Association of India was another situation where a CD containing caught phone calls was presented in the Supreme Court without following the methodology set down under area 65B of the Evidence Act. The Supreme Court held that an electronic record by

way of secondary evidence shall not be admissible unless the requirement of sec. 65 B or satisfied.

Tragically, the lower legal in India are to a great extent mechanically questionable, and don't welcome the realness issues or guarantee shields while permitting the affirmation of electronic proof, notwithstanding a couple of exceptions. Increasing reliance on electronic means documentary evidence, sec 59 and 60 of evidence Act , admissibility of electronic records, risk of manipulation need for additional safeguards. These choices of the Supreme Court set up a further point of reference for the lower legal to value the uncommon system endorsed for electronic confirmation.

The choices set out above dismissed the way that it was decisively for the reason that printed duplicates of the electronic records would be defenceless against control and mishandle that the council proclaimed an exceptional strategy for illustrating electronic records as confirmation in court. Since the Evidence Act gives all types of PC yields to be acceptable as proof, the courts, disregarding the arrangements of area 65B(4), have disregarded and neglected the inborn idea of electronic confirmation and presented advanced proof to the danger of control. In this regard, the courts in India have not taken up the exchange on this point by Mason. Interpreting sec 65(B) (4) of evidence Act, certificates not mandatory, operation of relevant device, procedural provision, authentic and relevant. In this way, for an extensive stretch, unless the validity of the advanced proof itself was being referred to, courts have not raised any trepidation in regards to the validness or require the mediation of legal groups to decide the veracity of the record, and electronic records documented in the court were commenced to be right without being liable to any governing rules.

Quickly, the position with respect to confirmation in the United States of America isn't steady. A progression of Throughout the years, with expanded introduction to electronic records, there has been a movement from a period of regarding electronic records as customary reports. Enormous growth in E- governance, sec 92 of IT Act , sec 62+of evidence Act, content of documentation , an intention of the legislature. In any case, it took nine years under the steady gaze of the Supreme Court definitively chose that narrative confirmation as an electronic record can be demonstrated just as per the methodology set out under area 65B of the Evidence Act. In Anvar P.K. versus P.K Basheer & Ors.,<sup>17</sup> the Supreme Court overruled the choice on account of Navjot Sandhu, <sup>18</sup> and reclassified the evidentiary

suitability of electronic records to accurately mirror the letter of the Evidence Act by re-translating the use of segments 63, 65 and 65B of the Evidence Act. For this situation, Mr P.V. Anwar had recorded an interest, who had lost the past Assembly decision in Kerala, and fought that his adversary P. K. Basheer, MLA had discoloured his picture and had enjoyed character death and the defamatory substance was recorded in tunes and on CDs. that on account of any electronic record, for example a CD, VCD, chip, and so on., the same must be joined by the declaration as far as area 65B got at the season of taking the archive, without which, the auxiliary proof relating to that electronic record is unacceptable. Henceforth, strict consistence with segment 65B is presently required for people who mean to depend upon messages, sites or any electronic record in a common or criminal trial under the steady gaze of the courts in India. Admissible statement has part of electronic records comes under admissibility of electronic evidence conditions.

This standpoint of the Supreme Court of India is to guarantee that the believability and evidentiary estimation of electronic confirmation is accommodated, since the electronic record is more helpless to altering and change. In its judgment, Kurian J . New technologies, evaluation of communication system regulating of electronic evidence sec 22(A) admissibility of email.

‘ Electronic records being more susceptible to tampering, alteration, transposition, excision, etc. without such safeguards, the whole trial based on proof of electronic records can lead to travesty of justice.’

The dynamic and restrained approach of the Indian courts in guaranteeing consistence of the shields for depending on computerised confirm is a consequence of an appropriate acknowledgment and valuation for the idea of electronic records itself. Relevancy of entry in public record made in an electronic form when relevant by the law of the country in which such book, record, electronic records is kept is itself relevant fact. This is a milestone choice for India in the techniques for taking confirmation, as it won't just spare the courts time squandered in parties endeavouring to demonstrate the electronic records through auxiliary oral proof in type of interrogations, yet in addition debilitate the affirmation of fudged and altered electronic records from being depended upon, yet certain safeguards for legitimacy of the electronic records will keep on being important. Consequently, the PC produced electronic record can't be exclusively depended upon, in light of the fact that there is a probability of it being hampered and ought to be utilised as an authenticating proof.



**The requirement for extra defends**

The Indian Evidence Act could be additionally altered to discount any control – at any rate for the reasons for assuming by all appearances genuineness of the proof of the electronic record – by including a condition that the record was made in the typical route by a man who was not a gathering to the procedures and the defender of the record did not control the making of the record. when an oral admission as to contents of electronic records are relevant, sec 34 of the Indian evidence Act highlights the areas when the entries in books of account. By guaranteeing that the record was made by a gathering who was unfavourable in enthusiasm to the defender of the record, and the record was being utilised against the unfriendly party, the danger of the control of the records would be decreased fundamentally. This is on the grounds that, it is contended, no unbiased gathering would need to guarantee the validness of the record which as far as anyone is concerned had been messed with. This is an extra condition that has been given under the Evidence (Amendment) Act, 1996 of Singapore. The CBN Act 2007 has made what appears to credit electronic records or records deriving in the bankers books evidence Act 1879 which amended the law of evidence.

For example, a bailiff's report can regularly be depended upon as an appropriate means for demonstrating a specific realities in France. The French law on this issue has created to give various specialized conditions that the bailiff ought to consent to while making proclamations about sites to maintain that the probative estimation of his confirmed report.

The law likewise needs to imaginatively address the necessity of the weight being on the advocate to give declaration with regards to the creator of a report to decide if there was any control or modification after the records were made, the unwavering quality of the PC program that produced the records, and whether the records are finished or not. The admissibility of an electronic record as a book of account 106 is defined in sec 3 of evidence Act. The courts likewise must be careful that information can be effectively produced or adjusted, and area 65B of the Evidence Act does not address these possibilities. For example, when sending an email, the sender can alter the message. Such modifications are regularly not detectable by the beneficiary, and in this manner a declaration of an outsider to the debate may not generally be a dependable condition to accommodate the legitimacy of the record.

Major issues have been brought up in the computerised world because of acts of neglect, for example, distortion of data and pantomime, in connection to the validness of data depended upon as confirmation. It raises questions with reference to how it is conceivable to demonstrate the creation and transmission of electronic correspondence by one gathering when the gathering's name as the creator of the post could have been embedded by anybody. Under the UETA if an electronic record or signature is an act of an particular person, just as a paper of contract one may use any relevant evidence to prove. Maybe, it might be reasonable for the courts or the administration to set up an uncommon group of computerised prove masters who might help the courts and particularly research the credibility of the electronic records.

### **RECOMMENDATIONS**

The Paper inquires as to whether the meaning of "information message" in the ECT Act ought to be revised.<sup>112</sup>

At last, the SALRC finishes up by taking note of that the present meaning of information message (contained in the ECT Act) is risky in that it strays from the Model Law by including the words "voice, where the voice is utilised as a part of a computerised exchange." In the light of the standard of useful equivalence,<sup>117</sup> it can't be that segment 15 of the ECT Act consequently recommends that all information messages are allowable. Accordingly, South African courts have reliably discovered that the ECT Act does not abrogate the typical guidelines relevant to noise.

The assurance with reference to whether an information message is genuine proof or narrative confirmation will direct the acceptability prerequisites applicable;<sup>129</sup> and critically for the present purposes will decide if a noise enquiry is vital. (By its inclination, genuine proof is the thing that it indicates to be and it can't be liable to the exclusionary gossip rules.)

There is no meaning of the term information message, nor is there a meaning of information in this proposed change. The probability is that there will be a dependence on the definitions in the ECT Act and additionally the Cybercrimes and Cybersecurity Bill (when it moves toward becoming law). In addition, the meaning of prattle is the same as that contained in the Law of Evidence Amendment Act.

**Sanjaysinh Ramrao Chavan Vs. Dattatray Gulabrao Phalke [6]**

The Hon'ble High Court of Delhi, while choosing the charges against denounced in a defilement case watched that since sound and video CDs being referred to are unmistakably forbidden in confirm, hence trial court has incorrectly depended upon them to reason that a solid doubt emerges in regards to solicitors criminally plotting with co-blamed to carry out the offence being referred to. Along these lines, there is no material based on which, it can be sensibly said that there is solid doubt of the complicity of the applicants in commission of the offence being referred to. Ankur Chawla Vs. CBI [7]

The Hon'ble High Court of Calcutta while choosing the acceptability of email held that an email downloaded and printed from the email record of the individual can be demonstrated by ethicalness of Section 65B r/w Section 88A of Evidence Act. The declaration of the observer to do such technique to download and print the same is adequate to demonstrate the electronic correspondence. Abdul Rahaman Kunji Vs. The State of West Bengal [8]

In the ongoing judgment articulated by Hon'ble High Court of Delhi, while managing the acceptability of blocked phone bring in a CD and CDR which were without an endorsement u/s 65B Evidence Act, the court watched that the optional electronic confirmation without authentication u/s 65B Evidence Act is unacceptable and can't be investigated by the court for any reason at all. Jagdeo Singh Vs. The State and Ors.[9]

**Conclusion**

The tolerability of the optional electronic confirmation must be decreed inside the parameters of Section 65B of Evidence Act and the suggestion of the law settled in the ongoing judgment of the Apex Court and different other High Courts as examined previously. The suggestion is clear and unequivocal that if the auxiliary electronic confirmation is without an endorsement u/s 65B of Evidence Act, it isn't allowable and any assessment of the criminological master and the testimony of the observer in the official courtroom can't be investigated by the court. In any case, there are few holes which are as yet uncertain as what might be the destiny of the optional electronic confirmation seized from the blamed wherein, the declaration u/s 65B of Evidence Act can't be taken and the denounced can't be made observer against himself as it would be violative of the Article 19 of the Constitution of India. Unmistakably the affirmation of electronic proof is the standard over all locales, as opposed to the avoidance. Alongside preferences, the suitability of electronic

records can likewise be unpredictable – albeit a few locales have forced the necessities viewing acceptability as in India.<sup>22</sup> It may be, in this manner, upon the 'managers of law', the courts to see that the right proof is displayed and directed to encourage a smooth working of the lawful framework. Sound and educated administration rehearses alongside investigation by the courts must be received to decide if the confirmation satisfies the three basic legitimate prerequisites of validness, dependability and trustworthiness. Ideally, with the Supreme Court having re- characterized the guidelines, the Indian courts will embrace a reliable approach, and will execute every conceivable defend for tolerating and acknowledging electronic confirmation.

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