

## A STUDY ON ELECTRONIC EVIDENCE AND ADMISSIBILITY

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### ABSTRACT:

Digital evidence acquisition could be a terribly complicated task owing to the character of digital proof. If we have a tendency to were speaking just one facet of the coin, we'd simply find yourself there, the forensics, technology of deed evidence by forensics. Won't you think that solely the battle is won? The law regarding digital proof varies from country to country. As no agreement regarding Cyber law is there within the world on a worldwide level, therefore is that the scenario of the digital evidence law. Primarily, in Republic of India the legislation that introduced the Cyber area technology to law was the IT Act, 2000 (amend. 2008) and really marginal mention of digital proof or perhaps the kind of crimes happening nowadays is there. Digital evidence is additionally incorporated within the Indian evidence Act, 1872. The interpretation clause of Section three of the Indian proof Act speaks regarding proof as "all documents together with electronic records created for the scrutiny of the court, such statements square measure referred to as documentary evidence". The purpose of distinction is that alternative statement proof is termed oral proof.

Good, we have a tendency to have gotten there. Currently what's this 'electronic record?'

**KEYWORDS:** Cyber law, Digital evidence, Indian evidence Act, 1872, forensics, admissibility

### OBJECTIVES:

1. To study about digital evidence in detail.
2. To analyse whether the level of admissibility of digital evidence.

### HYPOTHESIS:

Electronic evidence is considered as conclusive proof and it is an admissible one.

### RESEARCH METHODOLOGY:

This is a doctrinal research and all materials collected are secondary data. Question:

Research question: whether electronic evidence is considered as conclusive proof?

## INTRODUCTION:

### Section 2(t) of the IT Act, 2000. It means

'data, record or knowledge generated, image or sound keep, received or sent in AN electronic film or pc generated small fiche.' the primary few words area unit pretty clear regarding knowledge, record, image, sound etc. microfilm could be a photographic paper containing micro images. Digital evidence will embody something from word documents to dealing logs, ftp logs of a server, GPS System tracks, memory device, browser history and kinds of windows artifacts.

Sec 4 of identical Act talks regarding legal recognition of this these records, it means

\* If there's any law that needs info to be within the written, written or written type then this demand is deemed to be glad mechanically if

- a. it's rendered created accessible in an electrical type
- b. accessible therefore on be usable for a ulterior reference.

Talking regarding the Legal Prospects of Admission, Sec seventeen of the Indian evidence Act, 1872 defines admission of evidence and Sec 22A of identical act provides for connexion of any oral proof concerning the electronic record to corroborate it. Therefore bear in mind till your evidence's acceptability is in question, none of the documentation that you just offer regarding its genuineness on goes to be valid.

Now the large player of this scene is Sec 65-A and 65-B of Indian evidence Act,1872:

- a. Sec 65-A is solely regarding however electronic records could also be established, it's to be in accordance with Sec 65-B and therefore the conditions as ordered come in it.
- b. Sec 65B(1) could be a very little confusing within the language however it merely means any info (from the pc or device in question) that is written on a paper, stored, recorded or derived in optical or magnetic media shall be conjointly referred to as a document. And this can be admissible in any continuing once a symptom of the initial or any truth expressed of that evidence would be admissible, that means that such a document can even act as an admissible proof once it satisfies all the requisites underneath Sec. 65B. T hat's why for investigators, proof retention and preservation vital.
- c. Sec 65B(2) talks regarding the conditions that require to be glad for a chunk of proof to be admissible:

1. Firstly, the pc output containing the data ought to be created by the pc throughout amount over that the pc was used frequently to store or method information for the aim of any activities frequently carried on over that period by the person having lawful management over the utilization of the pc.
2. The second demand is that it should be shown that in the aforementioned amount, the knowledge of the sort contained in electronic record or of the sort from that the knowledge contained springs was 'regularly fed into the pc within the normal course of the aforementioned activity'.
3. a 3rd demand is that in the fabric a part of the aforementioned amount, the pc ought to be operational properly which though it absolutely was not operational properly for a few time that break mustn't of shock therapy either the record or the accuracy of its contents.
4. The fourth demand is that the knowledge contained within the record ought to be a replica or derived from the knowledge fed into the pc within the normal course of the aforementioned activity.

Under Section sixty five B(4), a certificate to spot the electronic record is issued and it describes the way within which it absolutely was created giving the particulars of the device concerned within the production of that record and deals with the conditions mentioned in Section sixty five B(2) and is signed by an individual occupying an accountable official position in reference to the operation of the relevant device shall be proof of any matter expressed within the certificate.

#### **DIGITAL EVIDENCE IN DETAIL:**

The proliferation of computers and the influence of information technology on society as a whole, coupled with the ability to store and amass information in digital form have all necessitated amendments in Indian law, to incorporate the provisions on the appreciation of digital evidence. The Information Technology Act, 2000 and its amendment is based on the United Nations Commission on International Trade Law (UNCITRAL) model Law on Electronic Commerce. The Information Technology (IT) Act 2000, was amended to allow for the admissibility of digital evidence. An amendment to the Indian Evidence Act 1872, the Indian Penal Code 1860 and the Banker's Book Evidence Act 1891 provides the legislative framework for transactions in electronic world. Digital evidence or electronic evidence is any probative information stored or transmitted in digital form that a party to a court case may use at trial. Before accepting digital evidence it is vital that the determination of its relevance, veracity and authenticity be ascertained by the court and to establish if the fact is hearsay or a copy is preferred to the original. Digital Evidence is "information of probative value that is stored or transmitted in binary form". Evidence is not only limited to that found on computers but may also extend to include evidence on digital devices such as telecommunication or electronic multimedia devices. The e-EVIDENCE can be found in e-mails, digital photographs, ATM transaction logs, word processing, documents, instant message histories, files saved from accounting programs, spreadsheets, internet browser histories databases, Contents of computer memory,

Computer backups, Computer printouts, Global Positioning System tracks, Logs from a hotel's electronic door locks, Digital video or audio files. Digital Evidence tends to be more voluminous, more difficult to destroy, easily modified, easily duplicated, potentially more expressive and more readily available.

Computer forensics is a branch of forensic science pertaining to legal evidence found in computers and digital storage mediums. Computer forensics is also known as digital forensics. The goal of computer forensics is to explain the current state of a digital artifact. The term digital artifact can include: A computer system storage medium (hard disk or CD-ROM) an electronic document (e.g. an email message or JPEG image) or even a sequence of packets moving over a computer network.

The definition of 'evidence' has been amended to include electronic records. The definition of 'documentary evidence' has been amended to include all documents, including electronic records produced for inspection by the court. Section 3 of the Evidence Act, 1872 defines evidence as under: "Evidence" - Evidence means and includes:- 1) all statements which the court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry; such statements are called oral evidence; 2) all documents including electronic records produced for the inspection of the court. Such documents are called documentary evidence.

The term 'electronic records' has been given the same meaning as that assigned to it under the IT Act. IT Act provides for "data, record or data generated, image or sound stored, received or sent in an electronic form or microfilm or computer-generated microfiche". The definition of 'admission' (Section 17 of the Evidence Act) has been changed to include a statement in oral, documentary or electronic form which suggests an inference to any fact at issue or of relevance. New Section 22-A has been inserted into Evidence Act, to provide for the relevancy of oral evidence regarding the contents of electronic records. It provides that oral admissions regarding the contents of electronic records are not relevant unless the genuineness of the electronic records produced is in question. The definition of 'evidence' has been amended to include electronic records. The definition of 'documentary evidence' has been amended to include all documents, including electronic records produced for inspection by the court. New sections 65-A and 65-B are introduced to the Evidence Act, under the Second Schedule to the IT Act. Section 65-A provides that the contents of electronic records may be proved in accordance with the provisions of Section 65-B. Section 65-B provides that notwithstanding anything contained in the Evidence Act, any information contained in an electronic, is deemed to be a document and is admissible in evidence without further proof of the original's production, provided that the conditions set out in Section 65-B are satisfied. The conditions specified in Section 65-B (2) are:

1. Firstly, the computer output containing the information should have been produced by the computer during the period over which the computer was used regularly to store or process information for the purpose of any activities regularly carried on over that period by the person having lawful control over the use of the computer.
2. The second requirement is that it must be shown that during the said period the information of the kind contained in electronic record or of the kind from which the information contained is derived was 'regularly fed into the computer in the ordinary course of the said activity'.
3. A third requirement is that during the material part of the said period, the computer was operating properly and that even if it was not operating properly for some time that break did not affect either the record or the accuracy of its contents.
4. The fourth requirement is that the information contained in the record should be a reproduction or derived from the information fed into the computer in the ordinary course of the said activity.

Under Section 65-B(4) the certificate which identifies the electronic record containing the statement and describes the manner in which it was produced giving the particulars of the device involved in the production of that record and deals with the conditions mentioned in Section 65-B(2) and is signed by a person occupying a responsible official position in relation to the operation of the relevant device 'shall be evidence of any matter stated in the certificate'.

Section 65-B(1) states that if any information contained in an electronic record produced from a computer (known as computer output) has been copied on to a optical or magnetic media, then such electronic record that has been copied 'shall be deemed to be also a document' subject to conditions set out in Section 65-B(2) being satisfied. Both in relation to the information as well as the computer in question such document 'shall be admissible in any proceedings when further proof or production of the original as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.'

#### **HISTORY AND ADMISSIBILITY OF ELECTRONIC EVIDENCE:**

Before 2000,

\* Electronically kept data was treated as a document and secondary proof of those electronic 'documents' was adduced through written reproductions or transcripts, the credibility of that was certified by a competent soul. The soul would establish her signature in court and be receptive cross examination. This straightforward procedure met the conditions of each sections sixty three and sixty five of the Evidence Act.

\* To bridge this gap the IT Act amended section fifty nine of the proof Act to exclude electronic records from the significant force of oral proof within the same manner because it excluded documents. This is often the re-application of the documentary rule of evidence to electronic records. But, rather than submitting electronic records to the take a look at of secondary proof – that, for documents, is contained in sections sixty three and sixty five, it inserted 2 new evidentiary rules for electronic records within the proof Act: section 65A and section 65B.

\* However, the special law and procedure created by sections 65A and 65B of the proof Act for electronic proof weren't used. Disappointingly, the explanation for this non-use doesn't involve the law in the least. India's lower judiciary – the third tier of courts, wherever trials square measure undertaken – is immensely inept and technologically unsound. With exceptions, trial judges merely don't understand the technology the IT Act comprehends. it had been easier to hold on treating electronically keep data as documentary proof.

\* this case continued and was control high within the Parliament attacks case(State v Navjot Sandhu)by the Supreme Court wherever copies of decision detail records were admitted while not following procedures of Sections 65A and 65B.

\* Here, *generalia specialibus non derogant* (“the general doesn't bring down from the specific”), *lex specialis derogat legi generali* (“special law repeals general law”) were reiterated.

\* The Supreme Court control that Sec 65A and 65B produce some special provisions that override the final law of documentary proof. So now, all the conditions as listen beneath Sec 65B should be glad associated a certificate be taken to form an proof admissible.

\* This disqualifies oral proof to attest secondary documentary proof. it's solely restricted for later once oral proof beneath Sec. 22A speaks concerning genuineness of the proof associated not content by an witness beneath Sec. 45A of the Act.

\* currently the thumb rule to expect is verification of proof by suggests that of the particular laws of the proof Act, not the final ones.

#### **ADMISSIBILITY:**

Since computer generated evidence is a recent development, Indian law has not addressed the issue yet. Thus, even though the focus is on the Indian Evidence Act, positions in the U.K. and U.S are also looked into. References to the UNCITRAL Model Law on Electronic Commerce are also made. Advance of science and technology is such, that now it is possible to set up video-conferencing equipment in the court itself. In that case, evidence would be recorded by Magistrate or under his dictation in open court. If that is done, then the requirements of Cr.P.C., 1973 that evidence be taken down in writing by the Magistrate himself or by his dictation in open court would be fully met. To

this method, there is, however, a drawback. As the witness is not in court, there may be difficulties if he commits contempt of court or perjures himself and it is immediately noticed that he has perjured himself. Therefore, as a matter of procedure, evidence by video-conferencing in open court should be taken only if the witness is in a country which has an extradition treaty with India and under whose laws contempt of court and perjury are also punishable.

### **BURDEN OF PROOF**

The need for having a check on computer-generated evidence is due to the fact that computers are machines, unreliable, and unavailable for cross-examination in court. Thus, till now, the burden of satisfying the computer operation requirement rested on the proponent of such evidence. As already discussed, there are difficulties with certification as regards Internet-evidence. The method of communication imposes an almost impossible requirement of the proponent. If the aim of the evidential regime is to facilitate the spread of Internet usage, and allied technologies, such a requirement would hamper these efforts. Thus, the burden of proving the malfunction of a computer should lie with the defence. Further, it must be kept in mind that the malfunction must be affecting the data sought to be adduced. If there are other malfunctions, which do not affect the data adduced, they should be rendered irrelevant. However, a balanced approach (to ensure that computer-generated records are not abused because of the strong evidential presumption), could be laid down that 'if the defence proves the existence of a malfunction in the computer in question, it should be up to the prosecution to prove that such malfunction did not affect the data sought to be adduced.' This approach envisages a reversing of the presumption contingent on a demonstrated objection by the defence. This would balance out the problem with computer generated evidence as regards the Internet and would ensure that the evidence adduced is reliable and not prejudicial to either party. This would impose a reasonable and balanced check on the admissibility of Internet and computer evidence. However, this framework does not envisage the unfettered admission of Internet-based, computer-generated evidence. It merely provides an umbrella to the recognition of an electronic record as not being valid solely on the ground of it being in electronic format. This framework provides a method of adducing and objecting to electronic records on substantial grounds, and not merely because of the format of the record. It does not provide an unnecessary burden on either party, and ensures that the evidence sought to be adduced is reliable and authentic. The discretion as to proof of objections (how the parties would prove their objections to be valid and true) should rest with the court.

**RELEVANT CASE LAWS:**

Amitabh Bagchi Vs. Ena Bagchi [Sections 65-A and 65-B of proof Act, 1872 were analyzed.] The court control that the physical presence of person in Court might not be needed for purpose of argument proof and therefore the same will be done through medium like video conferencing. Sections 65-A and 65-B offer provisions for evidences regarding electronic records and acceptability of electronic records, which definition of electronic records includes video conferencing.

State of geographic region vs. Dr Praful B Desai [The question concerned whether or not a witness will be examined by suggests that of a video conference.] The Supreme Court ascertained that video conferencing is associate advancement of science and technology which allows seeing, hearing and talking with somebody WHO isn't physically gift with an equivalent facility and ease as if they were physically gift. The legal demand for the presence of the witness doesn't mean actual physical presence. The court allowed the examination of a witness through video conferencing and all over that there's no reason why the examination of a witness by video conferencing mustn't be a vital a part of electronic proof.

BODALA MURALI Krishna VS. SMT. BODALA PRATHIMA The court control that, "...the amendments carried to the proof Act by introduction of Sections 65-A and 65-B square measure in reference to the electronic record. Sections 67-A and 73-A were introduced as regards proof and verification of digital signatures. As regards presumption to be drawn regarding such records, Sections 85-A, 85-B, 85-C, 88-A and 90-A were accessorial. These provisions square measure referred solely to demonstrate that the stress, at present, is to acknowledge the electronic records and digital signatures, as admissible items of proof."

DHARAMBIR Vs. CENTRAL BUREAU OF INVESTIGATION The court acquired the conclusion that once Section 65-B talks of associate electronic record created by a laptop named because the laptop output) it might conjointly embrace a tough disc during which info was keep or was earlier keep or continues to be keep. It distinguished as there being 2 levels of associate electronic record. One is that the disc that once used itself becomes associate electronic record in reference to the data concerning the changes the disc has been subject to and that information is recoverable from the disc by employing a software system program. the opposite level of electronic record is that the active accessible info recorded within the disc within the type of a document, or sound file or a video file etc. Such info that's accessible will be regenerate or traced in and of itself to a different magnetic or device sort of a CD, pen drive etc. Even a blank disc that contains no info however was once used for recording info also can be traced by manufacturing a cloned had or a likeness.



STATE (NCT OF DELHI) Vs. NAVJOT SANDHU There was associate charm against conviction following the attack on Parliament on Dec thirteen 2001. This case controlled the proof and acceptability of mobile phone call records. whereas considering the charm against the suspect for offensive Parliament, a submission was created on behalf of the suspect that no reliance may be placed on the mobile phone call records, as a result of the prosecution had did not manufacture the relevant certificate underneath Section 65-B(4) of the proof Act. The Supreme Court all over that a interrogation of the competent witness accustomed to the functioning of the pcthroughout the relevant time and therefore the manner during which the printouts of the decision records were taken was spare to prove the decision records.

JAGJIT SINGH Vs. STATE OF HARYANA The speaker of the law-makers of the State of Haryana disqualified a member for defection. once hearing the matter, the Supreme Court thought of the digital proof within the type of interview transcripts from the alphabetic character News TV channel, the Aaj Tak TV channel and therefore the Haryana News of geographic area nowadays TV channel. The court determined that the electronic proof placed on record was admissible and upheld the reliance placed by the speaker on the recorded interview once reaching the conclusion that the voices recorded on the CD were those of the persons taking action. The Supreme Court found no debility within the speaker's reliance on the digital proof and therefore the conclusions reached by him. The comments during this case indicate a trend rising in Indian courts: judges square measure setting out to acknowledge and appreciate the importance of digital proof in legal proceedings.

TWENTIETH CENTURY FOX FILM CORPORATION Vs. NRI FILM PRODUCTION ASSOCIATES (P) LTD . during this case sure conditions are arranged down for video-recording of evidence:

Before a witness is examined in terms of the Audio-Video Link, witness is to file associate official document or associate enterprise punctually verified before a notary public or a decide that the person who is shown because the witness is that the same person as who goes to depose on the screen. a duplicate is to be created on the market to the opposite aspect. (Identification Affidavit). The one that examines the witness on the screen is additionally to file associate affidavit/undertaking before examining the witness with a duplicate to the opposite aspect with relevance identification. The witness should be examined throughout operating hours of Indian Courts. Oath is to be administered through the media. The witness mustn't plead any inconvenience on account of your time completely different between Bharat and USA. Before examination of the witness, a group of plaint, written statement associated different documents should be sent to the witness so the witness has acquaintance with the documents and an acknowledgement is to be filed before the Court during this regard. Learned decide is to record such remarks as is material concerning the demur of the witness whereas on the screen. Learned decide should note the objections raised throughout recording of

witness and to make your mind up an equivalent at the time of arguments. After recording the proof, an equivalent is to be sent to the witness and his signature is to be obtained within the presence of a functionary and thenceforth it forms a part of the record of the suit proceedings. The visual is to be recorded and therefore the record would be at each end. The witness is also to be alone at the time of visual conference and notary public is to certificate to the present impact. The learned judge may additionally impose such different conditions as square measure necessary during a given set of facts.

The expenses and therefore the arrangements square measure to be borne by the applicant WHO needs this facility.

The recent judgment of The Hon'ble Supreme Court delivered in ANVAR P.V. VERSUS, P.K. BASHEER et al, in CIVIL appeal NO. 4226 OF 2012 selected Sept., 18, 2014, That laptop Output isn't admissible while not Compliance of 65B, EA overrules the judgment arranged down within the State (NCT of Delhi) v. Navjot Sandhu alias Afzal Guru [(2005) eleven SCC 600] by the 2 judge Bench of the Supreme Court. The court specifically ascertained that the Judgment of Navjot Sandhu above, to the extent, the statement of the law on acceptability of electronic proof bearing on electronic record of this court, doesn't lay down correct position and is needed to be overruled. This judgment has place to rest the controversies arising from varied conflicting judgments and therefore thereby provided a suggestion concerning the practices being followed within the various High Courts and the court on the acceptability of the Electronic Evidences. The legal interpretation by the court of the subsequent Sections 22A, 45A, 59, 65A & 65B of the proof Act has confirmed that the knowledge in CD/DVD/Pen Drive isn't admissible while not a certificate u/s 65 B(4) of proof Act and any process that in absence of such a certificate, the oral proof to prove existence of such electronic proof and therefore the professional read underneath section 45A proof Act cannot be availed to prove legitimacy therefrom. In the Judgment, the Hon'ble Supreme Court has held that Section sixty five B of the proof Act being a 'not obstante clause' would override the final law on secondary proof underneath Section sixty three and 65 of the proof Act. The section sixty three and section sixty five of the proof Act haven't any application to the secondary proof of the electronic proof and same shall be entirely ruled by the Section 65A and 65B of the proof Act.

The only different to prove the electronic record/evidence is by manufacturing the first electronic media as Primary proof to the court or its copy by means secondary proof u/s 65A/65B of proof Act. Thus, within the case of CD, VCD, chip, etc., an equivalent shall be amid the certificate in terms of Section 65B obtained at the time of taking the document, while not that, the secondary proof bearing on that electronic record, is impermissible. within the gift case, the court ascertained that:

"The appellant avowedly has not created any certificate in terms of Section 65B in respect of the CDs, Exhibits-P4, P8, P9, P10, P12, P13, P15, P20 and P22. Therefore, an equivalent can not be

admitted obvious. Thus, the full case discovered concerning the corrupt apply exploitation songs, announcements and speeches fall to the bottom.”

This judgment can have severe implications all told the cases wherever the prosecution depends heavily on the electronic knowledge especially those cases wherever the audio-video recordings square measure created within the type of CD/DVD before the court. The anti corruption cases square measure usually supported heaps of electronic / digital proof so the CD/DVD forwarded to the courts square measure while not a certificate and shall therefore not be admissible as proof u/s 65B proof Act, that makes it obligatory to supply a certificate u/s 65B(4). The failure to produce the certificate u/s 65B(4). any occludes the judicial method because the professional read in this matter cannot be availed of until the preceding condition is consummated. it's been laid out in the judgment that Genuineness, truthfulness or responsibility of the proof is looked into by the court afterward solely once the connectedness and acceptability is consummated. the necessity to confirm the supply and legitimacy, bearing on electronic records is as a result of it's a lot of liable to meddling, alteration, transposition, excision, etc. while not such safeguards, the full trial supported proof of electronic records will result in mockery of justice.

The original recording in Digital Voice Recorders/mobile phones ought to be preserved as they'll get destroyed, in such a case the issue of certificate underneath section 65B(4) of the proof Act cannot be given. so such CD/DVD is impermissible and can't be exhibited as proof, the oral testimony or professional opinion is additionally barred and therefore the recording/data within the CD/DVD's don't serve any purpose for the conviction.

#### **SUGGESTION AND CONCLUSION:**

The progression of the Indian evidence law is clear because it has withstood the pressures and challenges of technology and also the cyber world. the suitable amendments conspicuous Law, incorporated by our judiciary show pro-activism. In my opinion the enforcement agencies and investigation officers got to update themselves concerning the authentication method prescribed by the court concerning the acceptableness of electronic/digital evidences in order that impediments in trial procedures may be with success overcome. correct coaching of enforcement agencies in handling cyber connected proof and proper application of procedure and sections of evidence Law whereas presenting such proof in court is that the primary want of recent times. mortal within the role of a litigant ought to be currently aware that whereas submitting evidence to police or courts, he ought to submit it with a certificate beneath section 65B(4) of The Indian proof Act therefore the court takes cognizance and reads it as a primary evidence.

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