

# **JUSTICE IN THE DIGITAL REALM: "THE ADMISSIBILITY OF ELECTRONIC EVIDENCE IN INDIA"**

*BY*

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## **INTRODUCTION**

In the legal world, evidence plays a focal role in establishing claims regarding numerous issues involved in a legal case. Evidence exists in many forms, but its admissibility depends on the permissive power of the court, which establishes rules and laws. Nowadays, with the advent of various technologies, the courts are also allowing the admissibility of digital/electronic evidence. This digital/electronic evidence exists in numerous forms, like computers, smartphones, and pen drives, etc. Moreover, it is pertinent to note that the admissibility of these documents varies according to the circumstances of various cases. If we specifically talk about India, it has tussled with the issue of the admissibility of e-evidence in the court of law. Supreme Court, High Court, and various other courts in India have long been sceptical about the use of electronic/digital evidence, as they can be easily tampered with. Now, with the increase of this digital technology, courts should permit the use of this digital/electronic evidence, which will in turn help them to deal with modern ways of committing crimes and offences.

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## **ADMISSIBILITY UNDER LAW**

The Indian Evidence Act, 1872, was passed during the British Raj in 1872. It contains the rules and regulations related to the admissibility of evidence in the Indian Court of Laws. The Indian Evidence Act, 1872 has now been replaced by the Bhartiya Sakshya Adhiniyam on 1<sup>st</sup> July, 2024. Under Section 2 (d) of Bhartiya Sakshya Adhiniyam, 2023, that document also includes "an electronic record on emails, server logs, documents on computers, laptops or smartphones, messages, websites, locational evidence, and voice mail messages stored on digital devices"<sup>1</sup>.

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<sup>1</sup>The Bharatiya Sakshya Adhiniyam 2023, s 2(d)

Under Section 2 (e), the definition of evidence is given, which includes (I) all statements, including statements given electronically, which the Court permits or requires to be made before it by witnesses concerning matters of fact under inquiry, and such statements are called oral evidence.

(II) all documents, including electronic or digital records, produced for the inspection of the Court, and such documents are called documentary evidence.<sup>2</sup>

Moreover, Section 65A of the Indian Evidence Act, 1872 says that the content of electronic records may be proved by Section 65 B. It redirects the procedure for admitting electronic records to the mechanism under Section 65 B. Section 65 B (1) says that, notwithstanding anything contained in the Evidence Act, any information contained in an electronic record, which is printed on paper, stored, recorded, or copied in optical or magnetic media produced by a computer, is deemed to be a document <sup>3</sup>(under the Evidence Act), If the conditions mentioned in Section 65B(2) are satisfied. Section 65B (2) specifies four conditions that must be followed to admit the digital evidence under 65B (1)<sup>4</sup>:

**1. Regular use:** The Computer must be used regularly to store or process information for activities being investigated.

**2. Accurate Record:** Information produced by the computer must be produced during the relevant time and should reflect the original information.

**3. No Alteration:** The information must not be tampered with or altered as it was first stored by a computer.

**4. Authenticity:** A proper certificate signed by an officer must verify the authenticity of the electronic record, ensuring that the conditions under this section are satisfied<sup>5</sup>.

## JUDICIAL DEVELOPMENT ON THE ADMISSIBILITY OF E-EVIDENCE

Indian Courts, time and again, have grappled with the question whether different forms of E-evidence qualify as permissible evidence in the court of law or not. This question is answered by various honourable courts in India through varied judgements, which enlighten us with

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<sup>2</sup> The Bharatiya Sakshya Adhinyam 2023, s 2(e)

<sup>3</sup> Indian Evidence Act 1872, s 65B (1)

<sup>4</sup> Indian Evidence Act 1872, s 65B (2)

<sup>5</sup> Indian Evidence Act 1872, s 65B (4)

various circumstances under which electronic/digital evidence can be admitted. In the case of *Abdul Rahman Kunji vs State of West Bengal*, it was held that an email satisfying the conditions under Section 65 B can be admitted as a piece of evidence in a court of law<sup>6</sup>. Further, in the case of *Shamsher Singh Verma v. State of Haryana* (2016), it was concluded by the Apex Court that a Compact Disc can be permitted as a piece of evidence in court as it falls under the definition of document under Section 3 of the Indian Evidence Act, 1872<sup>7</sup>. One of the earliest judgements by the Supreme Court related to the admissibility of electronic/digital evidence was pronounced in the case of *State (NCT of Delhi) v. Navjot Sandhu*, 2005, in which it was held that Section 65B provides a specific process for admitting electronic evidence, including a certificate. However, if the conditions of Section 65B are not met, you can still try to introduce the electronic evidence by using the more general rules about secondary evidence found in Sections 63 and 65. These general rules allow for secondary evidence to be introduced when the original is lost, destroyed, or otherwise not easily accessible<sup>8</sup>. Afterwards, this Judgement was overruled by *Tomaso Bruno v. State of U.P.*, (2015) wherein it was held by the Apex Court that though Section 65 B requires a certificate for the admissibility of electronic/digital evidence, the non-production of the same when they are in the exclusive possession of one party will result in the presumption by the court that the same was unfavourable to them<sup>9</sup>.

In the case of *Anvar P.V. v. P.K. Basheer* (2014), it was established by the court that the Indian Evidence Act 1872, as it currently stands in India, does not allow electronic records to be proved through oral evidence if the requirements under Section 65B are not fulfilled. The court applied the maxim "Generalia Specialibus Non-Derogant", which means that general provisions must give way to special provisions. Since Section 65B is a special provision introduced by the IT Act, it must be followed over the general provisions contained in Sections 63 and 65<sup>10</sup>.

Supreme Court in the case of *Shafhi Mohammad v. State of H.P.* (2018) swerved from the judgment of *Anvar P.V. v. P.K. Basheer* (2014) and held that the prerequisite of getting a certificate under Section 65B is not mandatory and can be set aside in the interest of justice.<sup>11</sup>.

<sup>6</sup> *Abdul Rahaman Kunji v State of West Bengal* 2014 SCC OnLine Cal 18816

<sup>7</sup> *Shamsher Singh Verma v State of Haryana* (2016) 15 SCC 485

<sup>8</sup> *State (NCT of Delhi) v Navjot Sandhu* (2005) 11 SCC 600

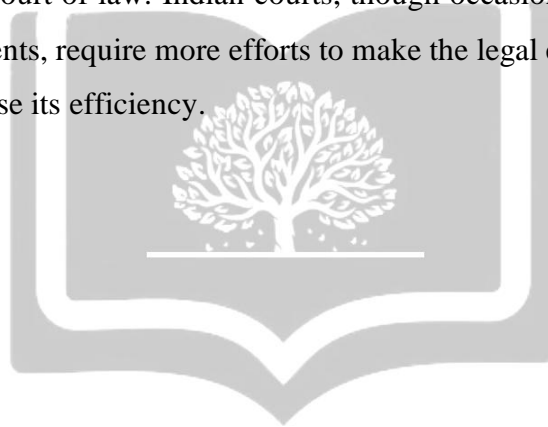
<sup>9</sup> *Tomaso Bruno v State of Uttar Pradesh* (2015) 7 SCC 178

<sup>10</sup> *Anvar PV v PK Basheer* (2014) 10 SCC 473

<sup>11</sup> *Shafhi Mohammad v State of Himachal Pradesh* (2018) 2 SCC 801

## CONCLUSION

It is to be given paramount importance that the procedural glitches related to the admissibility of electronic evidence must be dealt with at the earliest. A proper judicial precedent should be established by the court that can be followed in the cases. As is clear by analysing the judgements of various courts that there is an overlap in the decisions related to the production of electronic/digital evidence in the court, which in turn causes great confusion in the mind of citizens. Moreover, on critically analysing the judgement of the Shahfi Mohammad case in which a two-judge bench overrules a judgement passed by a larger bench in Anvar P.V vs P.K Basheer &Ors, this in turn puts the judiciary in a bad light. It is to be kept in mind that as the technology advances, the way courts provide justice to the people should also be improved. While other countries like England, the United States and Germany have developed the ecosystem under which a proper legal framework has been established in which e-evidence is admitted at ease in the court of law. Indian courts, though occasionally addressing this issue through various judgements, require more efforts to make the legal ecosystem more advanced, which in turn will increase its efficiency.



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