

**ELECTRONIC EVIDENCE – ADMISSIBILITY OF SECONDARY
EVIDENCE AND PRACTICAL ISSUES ON MAKING OF DOCUMENTS AS
SECONDARY EVIDENCE AND ELECTRONIC EVIDENCE**

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The advent of technology transformed the way documents are created, stored, and presented in court, recognizing this shift, the Information Technology Act, 2000 granted legal recognition to electronic records, section 4 of the Act states that electronic records shall have the same legal validity as traditional paper-based documents. This provision was revolutionary, ensuring that contracts, communications, and transactions conducted electronically could be enforced in courts.

The Indian Evidence Act, 1872, as amended after the IT Act, Section 65B is incorporated, which specifically governs the admissibility of electronic records. Section 65B requires that electronic records be accompanied by a certificate authenticating their production, specifying details such as: 1)The manner in which the record was produced, 2)The device used to produce the record, 3)Assurance that the record has not been tampered with. This certificate acts as a safeguard against manipulation, ensuring the integrity of digital evidence.

The electronic records are admissible, but subject to strict statutory conditions, section 65B of the Indian Evidence Act, 1872, Introduced after the IT Act, it lays down conditions for admissibility of electronic records.

1. Requires a **certificate** identifying the electronic record, describing the manner of production, and attesting to the integrity of the device.
2. Without such certification, electronic evidence is generally inadmissible.

II. **Information Technology Act, 2000:** Expanded the definition of “document” to include electronic records, thereby aligning Indian law with global digital realities.

TYPES OF ELECTRONIC EVIDENCE:

Category	Examples	Legal Use
Communication Records	Emails, SMS, WhatsApp chats	Proof of contracts, fraud, harassment
Multimedia	CCTV footage, audio recordings	Criminal trials, civil disputes
Digital Documents	PDFs, spreadsheets, contracts	e-Corporate litigation, property disputes
Social Media	Posts, tweets, metadata	Defamation, cyber crime
Forensic Data	IP logs, server records	Cybersecurity, hacking cases

Section 2(1)(t) of the IT Act 2000 defines “electronic record” which reads as thus: “electronic record” means data, record or data generated, image or sound stored, received or sent in an electronic form or micro film or computer-generated micro fiche;” In other words an electronic record is a digital representation of information that can be created, modified, stored or shared by a computer system. Electronic records can include text, graphics, audio, data, and more.

Section 2(1)(d) of the Bharatiya Sakshya Adhiniyam (BSA), 2023 defines a document as any matter that is expressed, recorded, or described on a substance using letters, figures, marks, or other means. This includes **electronic and digital records**, such as emails, server logs, documents on computers, messages, websites, and voice mail messages.

A digital record is a document, image or other type of information that is stored in a computer format. The main difference between electronic records and digital records is how they are created and how they are accessed. Digital records can be created by digitizing physical records, or they can be created digitally from the

start. Electronic records are created within computer systems, either by the user or by the system itself. Digital records are usually portable and can be accessed on any device. Electronic records are often dependent on specific software or systems to access, and they are less portable outside of those systems.

As per BSA, “**evidence**” means and includes—

- i. all statements **including statements given electronically** which the Court permits or requires to be made before it by witnesses in relation to 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.

Thus, The definitions of document and evidence have become wider to include electronic record and digital records.

In **P. Gopalkrishnan Vs. State of Kerala, reported in (2020) 9 SCC 161 = AIR 2020 SC 1** the Hon’ble Supreme Court held that the video footage/clipping contained in such memory card/pen-drive being an electronic record as envisaged by Section 2(1)(t) of the 2000 Act, is a "document" and cannot be regarded as a material object. It was further held that if the prosecution is relying on the electronic record such as pendrive/memory card/CD, the accused must be given a cloned copy thereof to enable him/her to present an effective defence during the trial. However, in cases involving issues such as of privacy of the complainant/witness or his/her identity, the Court may be justified in providing only inspection thereof to the accused and his/her lawyer or expert for presenting effective defence during the trial.

The definition of ‘admission’ under Section 15 of BSA includes statements contained in electronic form. Similarly, entries in books of account maintained in

an electronic form (Sec. 28 of BSA), an electronic record made by a public servant in his official duty or by any other person in performance of a duty specially enjoined by the law of the country (Sec. 29 of BSA), statement as to fact of public nature contained in certain Acts or notifications appearing in electronic or digital form (Sec. 31 of BSA) and statements as to any law contained in law books including electronic or digital form (Sec. 32 of BSA) are now made relevant facts under Part II Chapter II of BSA

ADMISSIBILITY OF ELECTRONIC EVIDENCE:

The admissibility of electronic evidence is a critical aspect of the Indian Evidence Act (IEA) and the Bharatiya Sakshya Adhiniyam (BSA). The admissibility of electronic evidence determines whether it can be presented in court as evidence to prove or disprove a fact in issue.

In the landmark case of ***State of Maharashtra Vs. Dr. Praful B. Desai***, 2003 (4) SCC 601, the Hon'ble Supreme Court of India held that electronic evidence, including computer-generated records, could be considered as “documentary evidence” under Section 3 of the IEA.

Section 62 and Section 63 of Bhartiya Sakshya Adhiniyam, 2023 (BSA) lays down rules regarding admissibility of electronic records.

Section 62 of BSA provides that the contents of electronic records may be proved in accordance with the provisions of section 63.

Section 63 of BSA provides for admissibility of electronic records.

Section 63(1) provides that **Notwithstanding anything contained in this Adhiniyam**, any information contained in an electronic record which is printed on paper, stored, recorded or copied in optical or magnetic media or semiconductor memory which is produced by a computer or any communication device or

otherwise stored, recorded or copied in any electronic form (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.

I. Section 63(2) provides that the conditions referred to in sub-section (1) in respect of a computer output shall be the following, namely:

1. The computer output containing the information was produced by the computer or communication device during the period over which the computer or communication device was used regularly to create, store or process information for the purposes of any activity regularly carried on over that period by the person having lawful control over the use of the computer or communication device;
2. During the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer or communication device in the ordinary course of the said activities.
3. Throughout the material part of the said period, the computer or communication device was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents; and

4. The information contained in the electronic record reproduces or is derived from such information fed into the computer or communication device in the ordinary course of the said activities.

II. Section 63(3) provides that Where over any period, the function of creating, storing or processing information for the purposes of any activity regularly carried on over that period as mentioned in clause (a) of sub-section (2) was regularly performed by means of one or more computers or communication device, whether—

1. (a) in standalone mode; or
2. (b) on a computer system; or
3. (c) on a computer network; or
4. (d) on a computer resource enabling information creation or providing information processing and storage; or
5. (e) through an intermediary,

All the computers or communication devices used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer or communication device and references in this section to a computer or communication device shall be construed accordingly.

III. Section 63 (4) provides that in any proceeding where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things shall be submitted along with the electronic record at each instance where it is being submitted for admission, namely:—

1. (a) identifying the electronic record containing the statement and describing the manner in which it was produced;

2. (b) giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer or a communication device referred to in clauses (a) to (e) of sub-section (3)

3. (c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate,

and purporting to be signed by a person in charge of the computer or communication device or the management of the relevant activities (whichever is appropriate) and an expert shall be evidence of any matter stated in the certificate; and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it in the certificate specified in the Schedule.

IV. Section 63 of BSA expands its reach to electronic records in **semiconductor memories**, in addition to those on paper and stored/recorded/copied in optical or magnetic media.

1. Furthermore, the provision extends its applicability to encompass 'any communication device,' broadening its scope.

2. Subsection (3) of the provision refines the definition of a computer or a communication device, providing it with a more comprehensive interpretation.

V. Section 63(4) of BSA mandates a certification process similar to Section 65B (4) of IEA with added safeguards like producing the electronic record with the certificate.

VI. The BSA provides that while producing electronic evidence, the party must produce the certificate mentioned in the Schedule.

The Certificate contained in the Schedule consist of two parts:

1. Part A which has to be filled by the party;
2. Part B which has to be filled by the Expert.

VII. The hash value which to be provided in the certificate as shown in the schedule is a numeric value of a fixed length that uniquely identifies data. Hash values represent large amounts of data as much smaller numeric values, so they are used with digital signatures. You can sign a hash value more efficiently than signing the larger value. Hash values are also useful for verifying the integrity of data sent through insecure channels. The hash value of received data can be compared to the hash value of data as it was sent to determine whether the data was altered. Thus, to bring integrity to the electronic evidence in the chain of custody, the hash value has been introduced.

VIII. The BSA has introduced **Section 61** which provides that nothing in the Adhiniyam shall apply to deny the admissibility of an electronic or digital record as evidence on the basis that it is an electronic or digital record. Such records, subject to Section 63, shall have the same legal effect, validity, and enforceability as other documents. This Section treats electronic records at par with documentary evidence as already treated under the IEA as amended by the Information Technology Act, 2000.

STANDARD OF PROOF:

I. Tukaram S. Dighole Vs. Manikrao Shivaji Kokate, (2010) 4 SCC 329

In this case it was held by the Hon'ble Supreme Court that the "Standard of proof" in the form of electronic evidence should be "more accurate and stringent" compared to other documentary evidence.

II. **Sonu @ Amar Vs. State of Haryana (2017) 8 SCC 570**

In this case, the Hon'ble Supreme Court held that objections regarding the mode or method of proof of electronic evidence must be raised at the time of marking the document as an exhibit, not at a later stage. The Court emphasized that if such objections are not raised promptly, the opposing party loses the opportunity to rectify any deficiencies.

JUDICIAL INTERPRETATION ON ADMISSIBILITY OF ELECTRONIC EVIDENCE:

In the case of **State (NCT of Delhi) Vs. Navjot Sandhu reported in AIR 2005 SC 3820**, the Hon'ble Supreme Court had held that courts could admit electronic records such as printouts and compact discs (CDs) as prima facie evidence without authentication. This case dealt with the proof and admissibility of the records of mobile telephone calls. The accused made a submission that no reliance could be placed on the mobile telephone records because the prosecution had failed to produce the relevant certificate under section 65B(4) of the Evidence Act and that the procedure set out in section 65B of the Evidence Act was not followed. The Hon'ble Supreme Court concluded that a cross examination of the competent witness acquainted with the functioning of the computer during the relevant time and manner in which the printouts of the call records were taken was sufficient to prove the call records. As a result, the printouts and CDs were not compared to the original.

In **Anvar P. V. Vs. P.K Basheer & Ors., reported in (2014) 10 SCC 473** the Hon'ble Supreme Court overruled the decision in the case of Navjot Sandhu, and redefined the evidentiary admissibility of electronic records to correctly reflect the letter of the Evidence Act by re- interpreting the application of sections 63, 65 and 65B of the Evidence Act. In this case, Mr. P.V. Anwar had filed an appeal, who had lost the previous Assembly election in Kerala, and contended that his

opponent P. K. Basheer, M.L.A had tarnished his image and had indulged in character assassination and the defamatory content was recorded in songs and on CDs. The Hon'ble Supreme Court declined to accept the view that the courts could admit electronic records as prima facie evidence without authentication. It was held that in the case of any electronic record, for instance a CD, VCD, chip, etc., the same must be accompanied by the certificate in terms of section 65B obtained at the time of taking the document, without which, the secondary evidence pertaining to that electronic record is inadmissible. It was further held that section 65B is a complete code, and evidence from any other source would not be permissible. It emphasized that the Indian Evidence Act does not allow proof of an electronic record through oral evidence and stated that a certificate under Section 65B (4) is mandatory. Hence, strict compliance with section 65B is now mandatory for persons who intend to rely upon e-mails, web sites or any electronic record in a civil or criminal trial before the courts in India.

In 2017, the Hon'ble Supreme Court re-evaluated the requirement of a certificate in **Sonu@Amar Vs. State of Haryana, (2017) 8 SCC 746** and concluded that certificates under Section 65B (4) are only a "mode of proof." Therefore, the non-production of a certificate on an earlier occasion could be considered a curable defect. This view point was further supported by another judgment in **Shafhi Mohammad Vs. State of H.P. reported in (2018) 2 SCC 801**, which stated that the requirement of a certificate is procedural and not mandatory. It can be relaxed in certain circumstances, such as when a party does not have control over the original device. Consequently, Section 65B is not considered a complete code.

Over the years, various cases such as *Navjot Sandhu*, *P.V. Anvar*, and *Shafhi Mohammad* have attempted to address the ambiguity surrounding these provisions. However, due to the differing circumstances and related factors in each case, there was no unified stance on these issues. As a result, the legal

landscape remained unclear, and doubts persisted. In a significant development, the three-judge bench of the Honorable Hon'ble Supreme Court in the case of ***Arjun Panditrao Vs. Kailash Kishanrao*** reported in (2020) 7 SCC 1, has provided a definitive and comprehensive clarification. This landmark judgment stands as the latest interpretation of the relevant provisions, offering a consistent approach in line with the legislative intent.

In a civil appeal, a defeated candidate and an elector accused a successful candidate of improperly filing nomination papers after the deadline. The respondents presented video-camera recordings (VCDs) from the RO's office as evidence, but the RO refused to provide a Section 65B (4) certificate. The Hon'ble Supreme Court clarified two issues: (1) A certificate is necessary when presenting electronic evidence as secondary evidence, not when the original record is available. (2) Compliance with Section 65B (4) is mandatory, even if obtaining a certificate is not possible. The High Court held that the oral testimony of an employee at the RO's office regarding the regular collection of VCDs, their inclusion in their own records, and the absence of recent complaints about the working of the office, is not barred by Section 65B, complying with the requirements u/s Section 65B (4).

The Hon'ble Supreme Court upheld the decision of the High Court for its reliance on the other evidences than the VCD. It noted that section 65A and 65B govern the admissibility of electronic evidence as a complete code, and the production of a certificate is not needed if the original record is presented. Acknowledging the conflict between the judgments in *Anvar* and *Shafhi*, the Court upheld the decision in *P.V. Anvar*, emphasizing the requirement of a written and signed certificate. Therefore, in the said case, the absence of such a certificate, lead the VCDs to not be admitted as evidence.

**INTERPRETATION OF SECTION 65B (4) OF INDIAN EVIDENCE ACT NOW
SECTION 63 (4) OF BHARATIYA SAKSHA ADHINIYAM:**

In distinguishing between primary and secondary evidence, the court highlighted that the original information contained within a computer is considered as primary evidence. Copies derived from it, on the other hand, are inherently secondary evidence. The court also clarified that the phrase "any of the conditions" in Section 65B (4) should be interpreted as "all." Therefore, since an electronic record, as mentioned in subsection (1), is considered secondary evidence, the requirement of a certificate in accordance is mandatory.

In cases such as *Shafhi Mohammad*, where the parties involved do not have first-hand possession of the data and are unable to obtain a certificate, the said court provided some relaxation. It stated that an application must be presented to the judge to seek relaxation of the mandatory requirement under Section 65B (4). However, the subsequent judgment in *Arjun Panditrao* overruled this decision. It held that the portion of Section 349 of the Criminal Procedure Code (CrPC) stating, "who are not in possession of an electronic device" is entirely incorrect. The court clarified that an application can always be made to a judge for the production of such a certificate from the relevant person under Section 65B (4), even if the person refuses to provide it at the first instance.

**M/S. Jaimin Jewellery Exports Pvt. Vs. The State Of Maharashtra
And Anr on Criminal Revision Application No.432 OF 2015, 14/03/ 2017
Hon'ble Bombay High Court.**

Section 65B only relates to the admissibility of electronic records and not actual correctness or proof/ genuineness of electronic evidence.

Para 74. It has to be borne in mind that section 65B only relates to the admissibility of electronic records. It authenticates the genuineness of the copy/computer printout and thus absolves the parties from producing the

original. This section only makes the computer output admissible on complying with the requirements of the section. It does not prove the actual correctness of the entries and does not dispense with the proof or genuineness of entries made in such electronic records. Furthermore, there is no presumption regarding the genuineness of the entries in electronic records.

STAGE OF FILING THE CERTIFICATE:

I. State by Karnataka Lokayukta, Police Station, Bengaluru Vs. M.R. Hiremath reported in (2019) 7 SCC 515.

In the above case, the Hon'ble Supreme Court held that:

1. The failure to produce a certificate under Section 65B(4) of the Evidence Act at the stage when the charge-sheet is filed is not fatal to the prosecution.
2. The need for production of such a certificate would arise when the electronic record is sought to be produced in evidence at the trial. It is at that stage that the necessity of the production of the certificate would arise.

However, this position has changed in view of Section 63 (4) of BSA which provides that a certificate doing any of the following things shall be submitted along with the electronic record at each instance where it is being submitted for admission

Sec-79A of IT Act, 2000 provides that, the Central Government may, for the purpose of providing expert opinion on electronic form of evidence before any court or other authority specify, by notification in the official Gazette, any department, body or agency of the Central Government or State Government as an Examiner of Electronic Evidence. However, there is no clarity as to whether the above provision applies only to the expert referred to Section 39 (2) of BSA or to

the expert who has issue certificate in Part B of the Schedule to BSA in compliance of section 63(4)(c).

DISCRETION UPON THE JUDGE TO DECIDE AS TO THE ADMISSIBILITY OF EVIDENCE:

Section 136 of Indian Evidence Act which confers a discretion upon the Judge to decide as to the admissibility of evidence which reads as follows:

136.JUDGE TO DECIDE AS TO ADMISSIBILITY OF EVIDENCE:

When either party proposes to give evidence of any fact, the Judge may ask the party proposing to give the evidence in what manner the alleged fact, if proved, would be relevant; and the Judge shall admit the evidence if he thinks that the fact, if proved, would be relevant, and not otherwise.

If the fact proposed to be proved is one of which evidence is admissible only upon proof of some other fact, such last mentioned fact must be proved before evidence is given of the fact first mentioned, unless the party undertakes to give proof of such fact, and the Court is satisfied with such undertaking.

If the relevancy of one alleged fact depends upon another alleged fact being first proved, the Judge may, in his discretion, either permit evidence of the first fact to be given before the second fact is proved, or require evidence to be given of the second fact before evidence is given of the first fact.

There are three parts to Section 136. The first part deals with the discretion of the Judge to admit the evidence, if he thinks that the fact sought to be proved is relevant. The second part of Section 136 states that if the fact proposed to be proved is one, of which evidence is admissible only upon proof

of some other fact, such last mentioned fact must be proved before evidence is given of the fact first mentioned. But this rule is subject to a small concession, namely, that if the party undertakes to produce proof of the last mentioned fact later and the Court is satisfied about such undertaking, the Court may proceed to admit evidence of the first mentioned fact. The third part of Section 136 deals with the relevancy of one alleged fact, which depends upon another alleged fact being first proved. The third part of Section 136 has no relevance for our present purpose.

TAPE-RECORDED CONVERSATION:

Vikram Singh and Anr. Vs. State of Punjab and Anr. (2017) 8 SCC 518, a three-Judge Bench of this Court followed the law in *Anvar P.V.* (supra), clearly stating that where primary evidence in electronic form has been produced, no certificate under Section 65B would be necessary.

It was held as follows:

*“25. The learned counsel contended that the tape-recorded conversation has been relied on without there being any certificate under Section 65-B of the Evidence Act, 1872. It was contended that audio tapes are recorded on magnetic media, the same could be established through a certificate under Section 65-B and in the absence of the certificate, the document which constitutes electronic record, cannot be deemed to be a valid evidence and has to be ignored from consideration. Reliance has been placed by the learned counsel on the judgment of this Court in *Anvar P.V. Vs. P.K. Basheer*. The conversation on the landline phone of the complainant situated in a shop was recorded by the complainant. The same cassette containing conversation by which ransom call was made on the landline phone was handed over by the complainant in original to the police.*

This Court in its judgment dated 25-1-2010 has referred to the aforesaid fact and has noted the said fact to the following effect:

5. The cassette on which the conversations had been recorded on the landline was handed over by Ravi Verma to SI Jiwan Kumar and on a replay of the tape, the conversation was clearly audible and was heard by the police.”

ADMISSIBILITY OF INTERPRETATION PHONE IN CD AND CDR :

Jagdeo singh Vs.The State And Ors [Manu/De/0376/2015]

In the recent judgment pronounced by Hon’ble High Court of Delhi, while dealing with the admissibility of intercepted telephone call in a CD and CDR which were without a certificate u/s 65B Evidence Act, the court observed that *“the secondary electronic evidence without certificate u/s 65B Evidence Act is inadmissible and cannot be looked into by the court for any purpose whatsoever, Thus, requirement of certificate under Section 65B(4) is not always mandatory.*

Accordingly, we clarify the legal position on the subject on the admissibility of the electronic evidence, especially by a party who is not in possession of device from which the document is produced. Such party cannot be required to produce certificate under Section 65B(4) of the Evidence Act. The applicability of requirement of certificate being procedural can be relaxed by Court wherever interest of justice so justifies.”

G. shyamlal Rajini Vs. M.S. Tamizhnathan. AIR 2008 NOC 476 (Mad.)

The audio C.D. was marked by the court as an exhibit with the condition that when it was displayed, an opportunity would be given to the wife for cross examining the husband.

VIDEO RECORDING OF EVIDENCE :

State of Maharashtra Vs. Dr.Praful Desai AIR 2003 S.C. 2053,

The police had recorded evidence by video conferencing, with the enactment of Information Technology Act, 2000, the law of evidence was amended to incorporate several provisions governing admissibility and proof of the electronic evidence.

The question involved was whether a witness can be examined by means of a video conference. The Supreme Court observed that video conferencing is an advancement of science and technology which permits seeing, hearing and talking with someone who is not physically present with the same facility and ease as if they were physically present. The legal requirement for the presence of the witness does not mean actual physical presence. The court allowed the examination of a witness through video conferencing and concluded that there is no reason why the examination of a witness by video conferencing should not be an essential part of electronic evidence.

Amitabh Bagchi Vs. Ena Bagchi (AIR 2005 Cal 11),

The court held that the physical presence of person in Court may not be required for purpose of adducing evidence and the same can be done through medium like video conferencing.

Twentieth Century Fox Film Corporation Vs. NRI Film Production Associates (P) Ltd

Certain conditions have been laid down for video recording of evidence:

1. Before a witness is examined in terms of the Audio Video Link, witness is to file an affidavit or an undertaking duly verified before a notary or a Judge that the person who is shown as the witness is the same person

as who is going to depose on the screen. A copy is to be made available to the other side. (Identification Affidavit).

2. The person who examines the witness on the screen is also to file an affidavit/undertaking before examining the witness with a copy to the other side with regard to identification.
3. The witness has to be examined during working hours of Indian Courts. Oath is to be administered through the media.
4. The witness should not plead any inconvenience on account of time different between India and USA.
5. Before examination of the witness, a set of plaint, written statement and other documents must be sent to the witness so that the witness has acquaintance with the documents and an acknowledgment is to be filed before the Court in this regard.
6. Learned Judge is to record such remarks as is material regarding the demeanor of the witness while on the screen.
7. Learned Judge must note the objections raised during recording of witness and to decide the same at the time of arguments.
8. After recording the evidence, the same is to be sent to the witness and his signature is to be obtained in the presence of a Notary Public and thereafter it forms part of the record of the suit proceedings.
9. The visual is to be recorded and the record would be at both ends. The witness also is to be alone at the time of visual conference and notary is to certificate to this effect.
10. The learned Judge may also impose such other conditions as are necessary in a given set of facts.

11. The expenses and the arrangements are to be borne by the applicant who wants this facility.

EXAMINATION ON 'SKYPE' TECHNOLOGY FOR RECORDING EVIDENCE IN THE DIVORCE PETITION OF THE PETITIONER:

Sirangai Shoba @ Shoba Munnuri rep. by her General Power of Attorney, M. Narayana Rao Vs. Sirangi Muralidhar Rao, rep. by his Power of Attorney Sirangi Vijayalakshmi, 2017 0 AIR(AP) 88; 2017 5 ALT 475; the Honble High Court of AP permitted recording of evidence through Skype/video conferencing in a matrimonial proceeding, and held that recording of evidence through skype does not violate principles of natural justice.

DATA COPIED FROM HARD DISK TO CD :

Babu Ram Aggarwal & Anr. Vs. Krishan Kumar Bhatnagar & Ors. [2013, IAD (Delhi) 441

Hard Disc is a storage devise. If written, then it becomes electronic record under the Evidence Act. Under section 65B, it has to be proved that the computer during the relevant period was in the lawful control of the person proving the email.

CLONE COPY OF CCTV FOOTAGE :

Dharambir Vs. Central Bureau of Investigation 148 (2008) DLT 289

Suppose in a CCTV camera a criminal activity is recorded and same is stored in the hard disk or memory card. Said video of a crime in the CCTV camera can be copied by the police either on the pen drive or CD or memory card or other suitable device (and original hard disk or the memory card may be preserved). This is in term known as making the clone copy. This clone copy has to be accompanied by a Section 65B(4) certificate, issued by a

person who has copied the said video from hard disk or memory card to the pen drive with the details like process, device/s and method used for it. Then the investigating officer can produce this clone copy before the court with a Section 65B(4) certificate. Video recording in the office of the Returning Officer on the day of election. This video recording is first recorded in the hard drive or a memory card. The Returning Officer can keep the original hard drive or memory card in the safe custody by making a clone copy in the CD with the Section 65B(4) certificate, issued by a person who has copied the said video from hard drive or memory card to the CD with the details like process, device/s and method used for it and the Returning Officer may in turn give this CD (upon a written request) to candidates. With a view to prove his case, the candidate produces this video recording before the court, after copying this the said video recording from the CD to the pen drive with the second Section 65B(4) certificate, certified by a person who has copied the said video recording from the CD to pen drive with the details like process, device/s and method used for it.

ADMISSIBILITY OF E-MAIL :

Electronic Messages.

It includes emails, SMS, MMS etc. of messages sent via social networking sites, like whatsapp, twitter etc. Under the provisions of Section 88A, there is a presumption as to such messages. Sections 88, 88A, 114(f) of the Evidence Act with section 26 of the General Clauses Act are relevant sections for sending and receipt of email and its proof.

LEAKAGE OF ELECTRONIC EVIDENCE (IN THE FORM OF WHATSAPP CHATS):

The leaked whatsapp chats can be admitted in evidence, but only when a certificate as required under section 65B (now 63(4) BSA) is

enclosed, **Vinit Kumar Vs. Central Bureau of Investigation 2019 SCC Online Bom 3152** the court held that electronic evidence is admissible only when it is produced with certificate as required under section 65B (now 63(4) BSA).

DIGITAL CHARGE SHEET:

Thana Singh Vs. Central Bureau of Narcotics

A digital charge sheet was held to be a document and it can be accepted as an electronic record. The Hon'ble Supreme court directed to supply of charge sheet in electronic form additionally.

RECITALS IN DOCUMENTS :

The recitals in the document do not become a part of the evidence. They are assertions by a person who is alive and who might have been brought before the Court if either of the parties to the suit had so desired. This distinction is frequently overlooked and when a document has been admitted in evidence as evidence of a transaction the parties are often apt to refer to the recitals therein as relevant evidence. **Nihar Bera Vs. Kadar Bux Mohammed, AIR 1923 Cal 290.**

ADMISSIBILITY OF CARBON COPY OF DOCUMENTS:

Since the carbon copy was made by one uniform process the same was primary evidence within the meaning of Explanation 2 to Section 62 of the Evidence Act. Therefore, the medical certificate was clearly admissible in evidence. That apart, there is strong, reliable and dependable evidence of the prosecution witness which clearly proves that the prosecutrix was raped by the appellant. **Prithi Chand Vs. State of Himachal Pradesh, 1989 (1) SCC 432: 1989 Cri. LJ 841 (SC).**

Admissibility of carbon copy of documents: The post-mortem report is to be prepared in triplicate by pen-carbon and in the instant case also, the post-mortem report was prepared by pen-carbon in one uniform process and as such, in view of the provisions of Section 62 of the Evidence Act, such carbon copy is primary evidence. **Md. Yakub Ali Vs. State of Tripura, 2004 Cri. LJ 3315 (Guj).**

ADMISSIBILITY OF COUNTER PART ORIGINALS:

Section 62 of Evidence Act deals with Primary evidence. Explanation 2 says that where a number of documents are made by one uniform process, each is primary evidence of the contents of the rest, under Explanation 2, all the documents must be taken at a time under one uniform process in which case, each of such documents is a primary evidence of the contents of the rest. Printing, cyclostyle, lithography are some mechanisms which are recognized under law through which documents can be obtained under a uniform process. Thus, documents prepared under the uniform process of either printing or cyclostyle or lithography cannot be mere copies in strict legal sense of the term, in fact, they are all counterpart originals and each of such documents is a primary evidence of its contents under Sections 45 and 47 of the Evidence Act. **Surinder Dogra Vs. State, 2019 Cri. LJ 3580 (J&k).**

ADMISSIBILITY OF CERTIFIED COPIES OBTAINED UNDER RTI ACT:

The documents obtained under RTI Act can be admitted as secondary evidence, as they are obtained under a particular enactment, which fall within ambit of by “any other law in force in India”

TAPE RECORDED STATEMENT:

Whether tape recorded statement is admissible in evidence?

Yes. The person who speaks must identify that it is his voice. Accuracy of the recording must be proved, must be free from tampering. Such statement Subject matter of statement must be relevant **(AIR 1968 SC 147 “Yusufalli Esmail Nagree Vs. State of Maharashtra”**

NEWSPAPER ITEMS:

So, far as the news paper items are concerned it is neither primary nor secondary evidence but it is second hand to secondary evidence. Therefore, the news paper items cannot be admitted in evidence unless the original manuscript is produced **(AIR 1994 SC 1733 “Quamarul Islam Vs. S. K. Kanta”**.

COUNTERPART:

Counter Part means duplicate of original. So, far as evidentiary value attached to such document is to the effect that parties are bound by the contents of counter part signed by both the parties. For example Lease Deed, one retained by the land lord and one given to the tenant **(AIR 1977 Rajasthan 155, AIR 1996 Madras 147)**.

VIDEO CONFERENCING:

Whether video conferencing is permissible?

Yes: So, far as video conferencing is concerned it is a latest technological invention. It enables the Court to record the evidence without bringing the accused to Court. Evidence recorded through video

conferencing is admissible in evidence (**AIR 2003 SC 2053 "State of Maharashtra Vs. Praful B. Desai"** Headnote D).

CALL RECORDS:

In **Dharmesh Sharma Vs. Tanisha Sharma (2024)**, the **Himachal Pradesh High Court** declined to admit an illegally recorded phone conversation as evidence in a matrimonial dispute, upholding the right to privacy. The Court emphasized that evidence obtained without the consent of the concerned party violates fundamental rights and is inadmissible.

Now the question is, Whether the call records of mobile phone received from the operator is admissible in evidence?

Yes: It is admissible. Refer the decision reported in **AIR 2005 SC 3820P State (N.C.T. of Delhi) Vs. Navjot Sandhu**",

EVIDENTIARY VALUE ATTACHED TO VOTERS LIST:

Voters list is a public document. Certified copy of the same can be received and marked. (**AIR 1991 Orissa 166, AIR 1980 Allahabad 174**).

Identity card issued by the election commission – No evidentiary value can be attached with regard to the date of birth mentioned in the identity cards as it is a self serving statement (**AIR 2004 SC230 "Sushil Kumar Vs. Rakesh Kumar"**) wherein it is held that: Evidence Act (1 of 1872), date of birth in the Election Identity Card issued by Election Commission is not conclusive to infer whether a candidate was disqualified being under age on date of filing nomination paper, since it is issued under self serving statement .

DEPOSITIONS IN EARLIER PROCEEDINGS:

To prove the statement of a witness in earlier proceedings with regard to the admission true copy cannot be confronted. Certified copy of the deposition can be confronted. If such deposition is admitted it has evidentiary value (AIR 1974 SC 117 "**Biswanath Prasad Vs. Dwarka Prasad AIR 1974 SC 117**"). However, if the witness in earlier proceedings has deposed that he is the owner of Vidhana Soudha and if such deposition is produced in subsequent proceeding it cannot be relied upon ("**Krishnawati Vs. Hans Raj AIR 1974 SC 280**").

ADMISSIBILITY OF SECONDARY ELECTRONIC EVIDENCE:

The admissibility of secondary electronic evidence in India has emerged as a critical issue in modern litigation. With the proliferation of digital communication and electronic records, courts are increasingly confronted with questions of authenticity, reliability, and statutory compliance. This essay examines the statutory framework under the Indian Evidence Act, 1872, judicial interpretations by the Supreme Court and High Courts, and comparative perspectives from other jurisdictions. It argues that while Section 65B provides necessary safeguards, rigid application may hinder justice, necessitating a balanced approach.

Electronic evidence has become indispensable in both civil and criminal proceedings. From emails and WhatsApp chats to CCTV footage and digital contracts, electronic records often constitute the most reliable proof. However, the admissibility of secondary electronic evidence copies or reproductions of digital records remains contentious. The Indian Evidence Act, 1872, as amended by the Information Technology Act, 2000, provides the statutory basis for such admissibility, primarily through Sections 65A and 65B. The digital age has transformed litigation in India, with electronic records becoming central to both civil and criminal proceedings. Courts now routinely encounter WhatsApp chats,

emails, CCTV footage, and digital contracts. However, the admissibility of *secondary electronic evidence* copies or reproductions of such records remains a complex issue, balancing authenticity with accessibility.

PRIMARY VS SECONDARY ELECTRONIC EVIDENCE :

1. **Primary Evidence:** The original device or record itself (e.g., the hard drive containing the file).
2. **Secondary Evidence:** Copies such as printouts, CDs, DVDs, screenshots, or certified extracts.

Without certificate, secondary electronic evidence is generally inadmissible, In **Anvar P.V. Vs. P.K. Basheer (2014)** held that electronic records are admissible only with Section 65B certification, in **Shafhi Mohammad Vs. State of Himachal Pradesh (2018)** relaxed the requirement, allowing admissibility without certification if the party cannot reasonably produce it, in **Arjun Panditrao Khotkar Vs. Kailash Kushanrao Gorantyal (2020)** reaffirmed *Anvar*, ruling that Section 65B certification is mandatory unless the original device is produced.

PRESUMPTIONS:

Sections 81, 85, 86, 87, 90 and 93 of BSA provides for presumptions as to Gazettes in electronic or digital record, electronic agreements, electronic records and electronic signatures, electronic signature certificates, electronic message and electronic records which are proved to be five years old.

CONCLUSION :

The admissibility of secondary and electronic evidence in India is not simply a procedural formality but a matter that goes to the very heart of justice delivery. The Indian Evidence Act, 1872, with its provisions under Sections 61 to 65 and 65A and 65B, was designed to safeguard authenticity and

prevent manipulation of records. Yet, in practice, these safeguards often create bottlenecks that obstruct the effective presentation of evidence. Courts are frequently caught in a dilemma, whether to uphold strict statutory compliance to preserve evidentiary integrity, or to adopt a pragmatic approach that ensures litigants are not denied justice due to technical hurdles.

The insistence on certification under Section 65B exemplifies this tension. While the requirement is rooted in legitimate concerns about tampering and reliability, it has become a double-edged sword. On one hand, it strengthens the credibility of electronic records; on the other, it excludes vital evidence when litigants cannot reasonably obtain certificates, particularly in cases involving third-party custodians such as telecom companies, banks, or social media platforms. Similarly, the marking of secondary documentary evidence is plagued by objections, inconsistencies in judicial practice, and complications arising from stamp duty and registration requirements. These procedural obstacles often delay trials and undermine the principle of speedy justice.

The broader challenge lies in balancing authenticity with accessibility. Authenticity ensures that courts rely on trustworthy records, while accessibility guarantees that litigants are not deprived of justice due to procedural rigidity. At present, the Indian system leans heavily toward authenticity, sometimes at the cost of accessibility, thereby weakening the larger objective of fair adjudication.

Reform is therefore imperative. Legislative amendments should simplify the requirements for admissibility of electronic records, judicial guidelines should harmonize practices across trial courts, and technological infrastructure must be strengthened to enable independent verification of digital records. Training judicial officers and lawyers in digital forensics,

introducing block chain-based authentication, and allowing affidavits or undertakings in place of certificates are practical steps that can bridge the gap between law and technology.

In conclusion, the admissibility of secondary and electronic evidence is not a peripheral issue but central to the credibility of India's justice system. A forward looking, balanced approach combining statutory safeguards with judicial discretion and technological innovation will ensure that courts decide cases not on conjecture or procedural rigidity, but on reliable proof that reflects the truth. Such evolution is essential if Indian law is to remain relevant in an era where digital records dominate both personal and professional life.
