

ELECTRONIC EVIDENCE-AN OVERVIEW

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Evidence

- The Indian Evidence Act, 1872 earlier had enacted keeping in view only the physical World, but later it was suitably amended to include the concept of electronic evidence. The IT Act, 2000 provides for amendment in the Indian Evidence Act, 1872, these amendments contained in the Schedule II of the Act. The amendments made are:

WHAT IS AN ELECTRONIC RECORD?

• The Indian Evidence Act, 1872

– Section 3

- Evidence means and includes

– All documents including electronic records for the inspection of the court

– P. Gopalkrishnan v. State of Kerala, 2019 SCC OnLine SC 1532

- 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

Section 3 of the Indian Evidence Act, 1872 was amended and the phrase "All documents produced for the inspection of the Court" were substituted by "All documents including electronic records produced for the inspection of the Court". Regarding the documentary evidence, in Section 59, for the words "Content of documents" the words "Content of documents or electronic records" have been substituted and Section 65A & 65B were inserted to incorporate the admissibility of electronic evidence.

As per amended provision Sec 3(2) of evidence Act electronic evidence is documentary evidence. "All documents including electronic records produced for the inspection of the Court, such documents are called documentary evidence."

- In Section 17, for the Words "oral or documentary", the words "oral or documentary or contained in electronic form" have been substituted.
- After Section 22, section 22A has been inserted which says that "Oral admissions as to the contents of electronic records are not relevant, unless the genuineness of the electronic record produced is in question".
- In Section 34, for the words "Entries in the books of account", the words "Entries in the books of account, including those maintained in an electronic form" have been substituted.
- In Section 35, for the word "record", in both the places where it occurs, the words "record or an electronic record" have been substituted.
- For Section 39, the following section has been substituted, namely: What evidence to be given when statement forms part of a conversation, document, electronic record, book or series of letters or papers". When any statement of which evidence is given forms part of a longer statement, or of a conversation or part of an isolated document, or is contained in a document which forms part of a book, or is contained in part of electronic record or of a connected series of letters or papers, evidence shall be given of so much and no more of the statement, conversation, document, electronic record, book or series of letters or papers as the Court considers necessary in that particular case to the full understanding of the nature and effect of the statement, and of the circumstances under which it was made."
- After Section 47, section 47A has been inserted, which talks about, Opinion as to digital signature where relevant. In Section 59, for the words "contents of documents" the words "contents of documents or electronic records" have been substituted.

PROVISIONS OF THE INDIAN EVIDENCE ACT RELATED TO ELECTRONIC EVIDENCE

- 65A – Special provisions as to evidence relating to electronic record
- 65B – Admissibility of electronic records
- 67A – Proof as to Electronic signature
- 73A – Proof as to verification of Electronic signature

- **S. 81-A**
It contains presumption as to genuineness of every electronic record purporting to be the Official Gazette.
- **S. 85-A**
There is a presumption that every electronic record purporting to be an agreement containing the digital signatures of the parties was so concluded by affixing the digital signature of the parties.
- **S. 85-B**
Creation of a presumption of authenticity of secured digital signatures unless proven otherwise.
- **S. 85-C**
Creation of a presumption of authenticity of secured DSC unless proven otherwise.
- **S. 88-A**
Creation as to the contents of electronic messages, but not the originator of the electronic messages.
- **S. 90-A**
Creation of a presumption as to the authenticity electronic records five years old, which is produced from the custody of a person.
- 131 – Production of documents or electronic records which another person, having possession, could refuse to produce

"131. No one shall be compelled to produce documents in his possession or electronic records under his control, which any other person would be entitled to refuse to produce if they were in his possession or control, unless such last-mentioned person consents to their production

- Sec.22A declares that “oral evidence as to the contents of electronic records are not relevant, unless the genuineness of electronic record produced is in the question.
- A digital charge sheet was held to be a document and it can be accepted as an electronic record. Hon'ble Supreme court directed to supply of charge sheet in electronic form additionally [Thana Singh Vs. Central Bureau of Narcotics, (2013) 2 SCC 590].
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The Information Technology Act, 2000

– Section 2(1) (t)

- **Electronic Record**

- Data record or data generated - Image or sound stored - Received or sent in electronic form or microfilm or computer generated microfiche

– Section 4

- Legal Recognition of Electronic Records
- Section 4 of the Information Technology Act also provides that if the document in electronic form i.e. CD/DVD etc., is (a) rendered or made available in an electronic form; and (b) accessible so as to be usable for a subsequent reference, then it would be sufficient compliance.
- As per section 2(t) of Information Technology Act, 2000, a photograph taken from a digital camera is an electronic record and it can be proved as per section 65B of the Indian Evidence Act.

The Bankers' Book Evidence Act

– Section 2(3) read with Section 2(8)

- Bankers' books" include ledgers, day-books, cash-books, account-books and all other records used in the ordinary business of the bank, whether these records are kept in written form or stored in a micro film, magnetic tape or in any other form of mechanical or electronic data retrieval mechanism, either onsite or at any offsite location including a back-up or disaster recovery site of both;

Types of evidence-

- Evidence can be classified under various categories, such as **oral and documentary, direct and indirect, primary and secondary, hearsay and circumstantial, scientific and expert, paper based and digital**. Any form of evidence may be sufficient to have a fact proved before the court, depending upon the facts and circumstances of the case.
- Section 59 of the Evidence Act provides that all facts except the contents of documents or electronic records, may be proved by oral evidence. Documentary evidence, on the other hand, is evidence produced in the form of documents.

Electronic Evidence-

- Electronic evidence is any probative information stored or transmitted digitally and a party to a judicial dispute in court can use the same during the trial. Courts permit the use of digital evidence such as e-mails, digital photographs, word processing documents, instant message histories, spread sheets, internet browser histories, data bases, the contents of computer memory, computer backup, secured electronic records and secured electronic signatures, Global Positioning System tracks, Logs from a hotel's electronic door, Digital video or audio etc.
- As per explanation under Sec-79A(Chapter XIIA) of the IT Act, 2000, 'electronic form of evidence' means any information of probative value that is either stored or transmitted in electronic form and includes computer evidence, digital audio, digital video, cell phones, digital fax machines.
- 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.
- Secure communications on internet are possible by using encryption techniques and electronic signatures that authenticate the origin and integrity of an electronic record. The electronic records and signatures are generally recognized as legally valid under Sec-4 and 5 of the IT Act,2000.
- Under Sec-6 of the IT Act, 2000, electronic records and electronic signatures can be used in Government and its agency. Hence they are admissible in a court of law. Whenever a dispute regarding online contracts or e-crimes is to be adjudicated by a court, production of admissible evidence becomes a focal point of determination of merit of the case.

PROOF AND ADMISSIBILITY OF ELECTRONIC EVIDENCE

- Sections 65A, 65B and 136
- Section 65A
 - How an electronic evidence is to be proved
 - As per Section 65B
- Section 65B
 - any information contained in an electronic record 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 65B(2) to (5) are satisfied.

STANDARD OF PROOF

- Tukaram S. Dighole v. Manikrao Shivaji Kokate, (2010) 4 SCC 329
 - “Standard of proof ” in the form of electronic evidence should be “more accurate and stringent” compared to other documentary evidence

➤ **Sonu @ Amar v. State of Haryana (2017):**

- In this case, the 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.

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

Section 62 and Section 63 of Bhartiya Sakshya Adhiniyam, 2023 (BSA)

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

- 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;
 - 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.
 - 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
 - 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.
- 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—
- (a) in standalone mode; or
 - (b) on a computer system; or
 - (c) on a computer network; or
 - (d) on a computer resource enabling information creation or providing information processing and storage; or
 - (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.

- 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:—

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

APPRECIATION OF ELECTRONIC EVIDENCE

- Relevance of Section 65B (4)
- **State (NCT of Delhi) v. Navjot Sandhu @ Afsan Guru AIR 2005 SC 3820.**
 - Irrespective of the compliance with the requirements of Section 65B, which is a special provision dealing with admissibility of the electronic record, there is no bar in adducing secondary evidence, under Sections 63 and 65 of the Evidence Act, of an electronic record.
- **Anvar P.V. v. P.K. Basheer and Others (2014) 10 SCC 473.**
 - Overruled Navjot Sandhu's case
 - Special provision under section 65A and 65B will prevail over the general law on secondary evidence under sections 63 and 65 of the Indian Evidence Act, 1872.
 - Therefore, for an electronic record to be admissible as secondary evidence in the absence of the primary, the mandatory requirement of section 65B certification is required to be complied with
- **Shafhi Mohammad v. State of H.P. (2018) 2 SCC 801.**
 - Requirement of the certificate under Section 65B of the Evidence Act as per the judgment of Anvar (supra) is not required in the following two cases :-

- *A party who is not in possession of device from which the document is produced cannot be required to produce certificate under Section 65-B(4) of the Evidence Act*
- *The applicability of requirement of certificate being procedural can be relaxed by the court wherever interest of justice so justifies.*

➤ **Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal (2020):**

- The Supreme Court reaffirmed that a certificate under Section 65B(4) of the Indian Evidence Act is mandatory for the admissibility of electronic records. The Court clarified that oral evidence cannot substitute the requirement of this certificate, emphasizing the need to ensure the authenticity and reliability of electronic evidence.

➤ **State of Karnataka v. M.R. Hiremath (2019):**

- The Supreme Court held that electronic evidence without a certificate under Section 65B(4) is inadmissible. The Court reiterated that the certificate is a condition precedent to the admissibility of electronic records, ensuring their authenticity and reliability.

WHEN IS THE CERTIFICATE NOT REQUIRED

• **Shafhi Mohammad v. State of H.P. (2018) 2 SCC 801.**

– The requirement of the certificate under Section 65B of the Evidence Act as per the judgment of Anvar (supra) is not required in the following two cases :-

- A party who is not in possession of device from which the document is produced cannot be required to produce certificate under Section 65-B(4) of the Evidence Act
- The applicability of requirement of certificate being procedural can be relaxed by the court wherever interest of justice so justifies.

➤ **Shafhi Mohammad v. State of Himachal Pradesh (2018):**

- The Supreme Court observed that the requirement of a certificate under Section 65B(4) is procedural and can be relaxed in the interest of justice, especially when the party seeking to produce electronic

evidence is not in possession of the device from which the document is produced. However, this position was later overruled by the decision in Arjun Panditrao Khotkar, reinstating the mandatory nature of the certificate.

STAGE OF FILING THE CERTIFICATE

- **State by Karnataka Lokayukta, Police Station, Bengaluru v. M.R. Hiremath (2019) 7 SCC 515.**
 - 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.
 - 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.

Comparison between Indian Evidence Act, 1872 (IEA) and Bhartiya Sakshya Adhiniyam, 2023 (BSA)

Section 65B of Indian Evidence Act, 1872	Section 63 of Bhartiya Sakshya Adhiniyam, 2023
<p>(1) 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</p>	<p>(1) 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</p>

<p>stated therein of which direct evidence would be admissible.</p>	<p>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.</p>
<p>Clause (2) is same</p>	
<p>(3) Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in clause (a) of sub-section (2) was regularly performed by computers, whether—</p> <p>(a) by a combination of computers operating over that period; or (b) by different computers operating in succession over that period; or (c) by different combinations of computers operating in succession over that period; or (d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers, all the computers used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer; and references in this section to a computer shall be construed accordingly.</p>	<p>(3) 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—</p> <p>(a) in standalone mode; or (b) on a computer system; or (c) on a computer network; or (d) on a computer resource enabling information creation or providing information processing and storage; or (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.</p>
<p>(4) In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say, —</p> <p>(a) identifying the electronic record containing the statement and</p>	<p>(4) 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</p>

<p>describing the manner in which it was produced;</p> <p>(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;</p> <p>(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 occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this subsection it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.</p>	<p>for admission, namely:—</p> <p>(a) identifying the electronic record containing the statement and describing the manner in which it was produced;</p> <p>(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);</p> <p>(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.</p>
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Major Changes Introduced by the BSA

- The BSA has increased the ambit of the definition of the term ‘document’ and provided that “electronic and digital records’ shall fall within the ambit of the term document. (Section 2(d) of BSA)
- The BSA also made an addition to the definition of evidence which shall include ‘information given electronically’ within oral evidence and ‘or digital records’ within documentary evidence.

- **Section 57** of BSA defines “primary evidence” and carries four other explanations namely Explanation 4,5,6 and 7.
 - **Explanation 4** provides that “Where an electronic or digital record is created or stored, and such storage occurs simultaneously or sequentially in multiple files, each such file is primary evidence.”
 - **Explanation 5** provides that “Where an electronic or digital record is produced from proper custody, such electronic and digital record is primary evidence unless it is disputed.”
 - **Explanation 6** provides that “Where a video recording is simultaneously stored in electronic form and transmitted or broadcast or transferred to another, each of the stored recordings is primary evidence.”
 - **Explanation 7** provides that “Where an electronic or digital record is stored in multiple storage spaces in a computer resource, each such automated storage, including temporary files, is primary evidence.”

- The BSA has introduced **Section 61** which provides that nothing in this Act shall be used 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 (IT).

- **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.
 - Furthermore, the provision extends its applicability to encompass 'any communication device,' broadening its scope.
 - Subsection (3) of the provision refines the definition of a computer or a communication device, providing it with a more comprehensive interpretation.

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

Digital Evidence

-any information created or stored in digital form that is relevant to a case.

- This includes, but is not limited to –emails, text documents, spreadsheets, images and graphics, -database files, deleted files and data back-ups

Electronic Evidence may be located in –

- floppy disks,
- zip disks,
- hard drives,
- CD-ROMs or DVDs,

as well as portable electronic devices such as cellular phones servers

- A digital charge sheet was held to be a document and it can be accepted as an electronic record. Hon'ble Supreme court directed to supply of charge sheet in electronic form additionally [Thana Singh Vs. Central Bureau of Narcotics, (2013) 2 SCC 590].

Hard Disk

As to whether a hard disk of a computer can be considered as documentary evidence, the High Court of Delhi in **Dharambir v Central Bureau of Investigation {148 (2008) DLT 289 }** has observed that:

"While there can be no doubt that a hard disc is an electronic device used for storing information, once a blank hard disc is written upon it is subject to a change and to that extent it becomes an electronic record. Even if the hard disc is restored to its original position of a blank hard disc by erasing what was recorded on it, it would still retain information which indicates that some text or file in any form was recorded on it at one time and subsequently removed. By use of software programmes it is possible to find out the precise time when such changes occurred in the hard disc. To that extent even a blank hard disc which has once been used in any manner, for any purpose will contain some information and will therefore be an electronic record"

So, once the hard disc is subject to any change, then even if it restored to the original position, by reversing that change, the information can be retrieved by using software designed for that purpose. Given the wide definition of the words "document" and "evidence" in the amended Section 3 the Evidence Act, read

with Sections 2(o) and (t) IT Act, there can be no doubt that an electronic record is a document.

Data copied from hard disk to CD

Hyderabad Cyber Forensic Lab – confirmed that the recorded data [call conversation] on CD as true copies of the originals + hard disk was in working condition. Hard Disc is a storage device. If written, then it becomes electronic record under 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 [Babu Ram Aggarwal & Anr. Vs. Krishan Kumar Bhatnagar & Ors. 2013 IAD (Delhi) 441]**.

CALL RECORDS

➤ **Dharmesh Sharma v. 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.

Proof of contents of C.D.

- The person intending to prove C.D. is required to prove whether the disputed C.D. was prepared by a combination of a computer operating therein or different computer operating in succession over that period or of different combination of computers. It is not necessary to examine the computer expert for the proof of C.D. in addition to the compliance of provisions of section 65B.
- In **Ankur Chawla Vs. CBI [MANU/DE/2923/2014]**. The Hon'ble High Court of Delhi, while deciding the charges against accused in a corruption case observed that since audio and video CDs in question are clearly inadmissible in evidence, therefore trial court has erroneously relied upon them to conclude that a strong suspicion arises regarding petitioners criminally conspiring with co –accused to commit the offence in question. Thus, there is no material on the basis of which, it can be reasonably said that there is strong suspicion of the complicity of the petitioners in commission of the offence in question.

- In the case of **JAGJIT SINGH Vs. STATE OF HARYANA (2006) 11 SCC 1**) the speaker of the Legislative Assembly of the State of Haryana disqualified a member for defection. When hearing the matter, the Supreme Court considered the digital evidence in the form of interview transcripts from the Zee News television channel, the Aaj Tak television channel and the Haryana News of Punjab Today television channel.
- The court determined that the electronic evidence placed on record was admissible and upheld the reliance placed by the speaker on the recorded interview when reaching the conclusion that the voices recorded on the CD were those of the persons taking action.
- The Supreme Court found no infirmity in the speaker's reliance on the digital evidence and the conclusions reached by him. The comments in this case indicate a trend emerging in Indian courts: judges are beginning to recognize and appreciate the importance of digital evidence in legal proceedings.
- In **K.K. Velusamy Vs. N. Palanisamy, 2011 EQ-SC-0-158** the Hon'ble Supreme Court considered the point of electronic evidence such as – the amended definition in Section 3 of Evidence Act 1872 read with the definition of electronic record in Section 2 clause (t) of the Information Technology Act, 2000. It includes a compact disk containing an electronic record of conversation. Section 8 of Evidence Act provides that the conduct of any party or of any agent to any party, to any suit, in reference to such a suit or in a reference to any fact in issue therein or relevant thereto, is relevant if such conduct influences or influenced by any fact in issue or relevant fact and whether it was previous or subsequent thereto.
- Hence compliance with Section 65B is now mandatory for persons who intend to rely upon emails, websites or any electronic record in a civil or criminal trial to which provisions of the Evidence Act are applicable.
- Hon'ble Supreme Court in **Anvar P.V. versus, P.K. Basheer and Others, in Civil Appeal No.c4226 OF 2012 decided on Sept., 18, 2014**, it was held that the Computer Output is not admissible without Compliance of S. 65B.
- It overruled the judgment laid down in the **State (NCT of Delhi) v. Navjot Sandhu alias Afzal Guru[(2005) 11 SCC 600** by the two judge Bench of the Supreme Court. The court specifically observed that "the Judgment of Navjot Sandhu [supra], to the extent, the statement of the law on

admissibility of electronic evidence pertaining to electronic record of this court, does not lay down correct position and is required to be overruled".

- This judgment has put to rest the controversies arising from the various conflicting judgments and thereby provided a guideline regarding the practices being followed in the various High Courts and the Trial Court as to the admissibility of the Electronic Evidences. The legal interpretation by the court of the following Sections 22A, 45A, 59, 65A & 65B of the Evidence Act has confirmed that the stored data in CD/DVD/Pen Drive is not admissible without a certificate u/s 65 B(4) of Evidence Act and further clarified that in absence of such a certificate, the oral evidence to prove existence of such electronic evidence and the expert view under section 45A Evidence Act cannot be availed to prove authenticity thereof.
- **In Amitabh Bagchi Vs. Ena Bagchi (AIR 2005 Cal 11)**, Sections 65A and 65B of Evidence Act, 1872 were analyzed.
- 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.
- Sections 65A and 65B provide provisions for evidences relating to electronic records and admissibility of electronic records, and that definition of electronic records includes video conferencing.
- In an interesting case dealt by the High Court of Allahabad in the matter of **Moninder Singh Pandher and Surendra Koli v State of U.P. (Criminal (Capital) Appeal No. 1475 of 2009)**, the question arose as, to admissibility of the confessional statement which was recorded in video, as there is no provision for video recording of the confessional statement. The High Court observed that, in this connection, s 4 of the IT Act provides that that information or any other matter should be in writing or in typewritten or printed form, but the requirement is deemed to have been satisfied if the information or matter is rendered or made available in an electronic form, and accessible so as to be useful for subsequent reference. The High Court further relied on S 65B of the Evidence Act and held that the confession was admissible

In Twentieth Century Fox Film Corporation Vs. NRI Film Production Associates (P) Ltd. (AIR 2003 KANT 148) certain conditions have been laid down for video recording of evidence:

1. 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.
2. The witness has to be examined during working hours of Indian Courts. Oath is to be administered through the media.
3. The witness should not plead any inconvenience on account of time different between India and USA.
4. 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 acknowledgement is to be filed before the Court in this regard.
5. Learned Judge is to record such remarks as is material regarding the demeanour of the witness while on the screen.
6. Learned Judge must note the objections if raised during recording of witness and to decide the same at the time of arguments.
7. 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.
8. 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.
9. The learned Judge may also impose such other conditions as are necessary in a given set of facts.
10. The expenses and the arrangements are to be borne by the applicant who wants this facility.

In **Suvarana Musale vs Rahul Musale 2015 (2) Mh.L.J. 801**, in view of section 65A and 65B of the Evidence Act it was held that recording of evidence with help of electronic method and techniques is acknowledged and recognized in judicial system. Petitioner wife was working in U.S. and has a minor daughter aged 6 yrs, travelling to India for being present physically was expensive and she may face difficulty in getting leave and hurdles in obtaining VISA . An application for recording evidence through video conferencing was allowed.

Presumptions

Presumption as to telegraphic messages:

- The Court may presume that a message, forwarded from a telegraph office to the person to whom such message purports to be addressed, corresponds with a message delivered for transmission at the office from which the message purports to be sent; but the Court shall not make any presumption as to the person by whom such message was delivered for transmission.

Presumption as to electronic messages.

- The Court may presume that an electronic message, forwarded by the originator through an electronic mail server to the addressee to whom the message purports to be addressed corresponds with the message as fed into his computer for transmission; but the Court shall not make any presumption as to the person by whom such message was sent.
- Explanation.—For the purposes of this section, the expressions “addressee” and “originator” shall have the same meanings respectively assigned to them in clauses (b) and (za) of sub-section (1) of section 2 of the Information Technology Act, 2000.
- The Presumption u/s. 88- A is a rebuttable presumption.
- Court shall not make any presumption as to the person by whom such e-message is sent [law recognizes the vulnerability of fabrication of e-message].

MOBILE PHONE FALLS UNDER THE DEFINITION OF COMPUTER

As per section 2(t) of Information Technology Act 2000, 'Mobile' is a computer and SMS in the mobile is an electronic record. So, it is to be proved as per section 65B of the Indian Evidence Act which requires a certificate issued by a person, occupying responsible position in relation to operation of that device or management of the relevant activities.

Syed Asifuddin V. State of Andhra Pradesh (decided on – 29.07.2005)	2005 SCC Online AP 1100 2005 Cri LJ 4314	The judgment examines how a cell phone works and compares it to the definition of ‘Computer’ and ‘Computer Network’ under the IT Act, to hold that, “a cell phone is a computer which is programmed to do among others the function of receiving digital audio signals,
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		convert it into analogue audio signal and also send analogue audio signals in a digital form externally by wireless technology.”
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In **Shreya Singhal Vs. Union Of India (2015) 0 AIR (SC) 1553**, Hon'ble the Apex Court declared Section 66A of IT Act unconstitutional and held that Section 66 A creates an offence which is vague and overbroad, and therefore, unconstitutional under Article 19 (1) (a) and not saved by Article 19 (2). It has also been held that the wider range of circulation over the internet cannot restrict the content of the right under Article 19 (1) (a) nor can it justified its denial

DIGITAL SIGNATURES

PROOF AS TO DIGITAL SIGNATURE [SECTION 67A] :

Except in the case of a secure electronic signature, if the electronic signature of any subscriber is alleged to have been affixed to an electronic record the fact that such electronic signature is the electronic signature of the subscriber must be proved.

As per section S.73A of the Evidence Act, For the purpose of ascertaining whether a digital signature is that of the person by whom it purports to have been affixed, the court may direct that person or the controller or the certifying authority to produce the digital signature certificate. The court may also direct any other person to apply the public key listed in the digital signature certificate and verify the digital signature purported to have been affixed by that person. For this purpose the “controller” means the controller appointed under S.17(1) of the Information Technology Act. 2000.

Section 67A of the Indian Evidence Act provides that except in the case of a secure digital signature, if the digital signature of any subscriber is alleged to have been affixed to an electronic record the fact that such digital signature is the digital signature of the subscriber must be proved. It is necessary to prove it in the manner of proof of electronic record. Section 65B will be applicable.

In **Bodala Murali Krishna Vs. Smt. Bodala Prathima (2007 (2) ALD 72)**, The court held that, “...the amendments carried to the Evidence Act by introduction of Sections 65A and 65B are in relation to the electronic record. Sections 67A and 73A were introduced as regards proof and verification of digital signatures. As regards presumption to be drawn about such records, Sections 85A, 85B, 85C, 88A and 90A were added. These provisions are referred only to demonstrate that

the emphasis, at present, is to recognize the electronic records and digital signatures, as admissible pieces of evidence.

CONCLUSION

- The integrity of the evidences must be maintained at all level as they are highly susceptible to alterations and damage.
- The Court must be extra cautious while dealing with electronic records and evidences
- Ultimate goal for the truth in any kind of evidence including electronic evidence is to ensure its relevance, admissibility and credibility and to extract truth therefrom.

THANK YOU