

Research paper on
**“ELECTRONIC EVIDENCE: IT’S LEGAL EFFECT, ADMISSIBILITY
IN COURT, SCOPE AND CHALLENGES”**

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INTRODUCTION

Electronic evidence, often referred to as digital evidence, plays an increasingly crucial role in modern legal proceedings. With the proliferation of digital devices and online activities, such evidence encompasses a wide array of data types, ranging from emails and text messages to social media posts and digital documents. The admissibility and weight of electronic evidence hinge on various factors, including its relevance, authenticity, and the manner in which it was obtained and preserved. Understanding the nuances of electronic evidence is essential for legal practitioners and judicial officers alike, as it can significantly impact the outcome of cases in today's digital age.

In 2000, the Indian Parliament enacted the Information Technology Act, 2000 (IT Act), which brought in corresponding amendments to existing Indian statutes to make digital evidence admissible. The IT Act is based on the UNCITRAL Model Law on Electronic Commerce and, apart from providing amendments to Indian Evidence Act, 1872 (Evidence Act), the Indian Penal Code, 1860 and the Banker's Book Evidence Act, 1891, mainly recognizes transactions that are carried out by means of electronic data interchange and other means of electronic communication.

We are living in the digital world. The reliance on the digital device and digitalization is part of the modern day life and it generates electronic evidence. It is useful to resolve the disputes which may be of the civil or criminal nature. There are so many investigation be dependent on the electronic evidence. It is challenge to collect the

electronic evidence and it is more challenging to place it for the admissibility during the court trial. The validity and reliability of electronic evidence are challenged before the Hon'ble court during the trial. The prosecution has to prove the authenticity of the electronic evidence and its source. It is possible that technical issues will be raised regarding the admissibility of electronic evidence and the whole trial proceeding may be wreck. In the recent time the Apex Court of India had pronounced judgments on the admissibility of electronic evidence. Hon'ble Apex Court of India has not opined with consistency regarding the admissibility and authenticity of the electronic evidence. Hon'ble Apex Court had endeavored to give justice on the different occasion by giving their judicial opinion on the basis of the legal scheme of electronic evidence. It is necessary to study the legal position and judicial perception on the admissibility and reliability of electronic evidence in India.

INTRODUCTION TO ELECTRONIC EVIDENCE

The term electronic record was first introduced when the Information Technology Act 2000 was first implemented, Section 2(t) of the IT Act defines the term '**electronic record**' as —data, record or data generated, image or sound stored, received or sent in an electronic form or micro film or computer generated micro fiche; where as Section 6 of the IT Act provided that electronic records and electronic signatures can be used in Government and its agency. Hence they are admissible in a court of law. So, whenever a dispute regarding online contracts or e-crimes is to be adjudicated by a court, production of admissible evidence becomes necessary to decide the merits of the case.

Section 3 of Indian Evidence Act,1872 defines the evidence as, “Evidence means and includes-

1. all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry;
2. all documents *including electronic records* produced for the inspection of the Court;

Such documents are called documentary evidence.”

It was after the amendment the phrase “all documents produced for the inspection of the Court” was 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 or Electronic Records have been substituted and Sections 65A & 65B were inserted to incorporate the admissibility of electronic evidence.

There are various provisions under Evidence Act which deals with Electronic Evidence, which are as follows:-

1. **22A. When oral admission as to contents of electronic records are relevant.** -- Oral admissions as to the contents of electronic records are not relevant, unless the genuineness of the electronic record produced is in question.¶

2. Similarly, Section 59 of the Evidence Act speaks about proof of facts by oral evidence.

Section 59 reads thus:

59. Proof of facts by oral evidence.-- All facts, except the contents of documents or electronic records, may be proved by oral evidence.

3. Section 45A of the Evidence Act is with regard to the opinion of the Examiner of Electronic Evidence and it states thus:

45A. Opinion of Examiner of Electronic Evidence.-- When in a proceeding, the court has to form an opinion on any matter relating to any information transmitted or stored in any computer resource or any other electronic or digital form, the opinion of the Examiner of Electronic Evidence referred to in section 79A of the Information Technology Act, 2000 (21 of 2000), is a relevant fact. Explanation.-- For the purposes of this section, an Examiner of Electronic Evidence shall be an expert.

4. Section 67A of the Evidence Act deals with proof as to digital signature. Section 67A reads thus:

“67-A. Proof as to digital signature. --- Except in the case of a secure electronic 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. As such, Section 65B will be applicable.

5. Section 73A of the Evidence Act deals with the Proof as to verification of digital signature. It reads thus: **73A. Proof as to verification of digital signature.** – In order to ascertain whether a digital signature is that of the person by whom it purports to have been affixed, the Court may direct --

(a) that person or the Controller or the Certifying Authority to produce the Digital Signature Certificate;

(b) 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 IT Act.

Section 4 of the IT Act speaks about the legal recognition of the electronic records. It reads thus:

4. Legal recognition of electronic records.-- Where any law provides that information or any other matter shall be in writing or in the typewritten or printed form, then notwithstanding anything contained in such law, such requirement shall be deemed to have been satisfied if such information or matter is- rendered or made available in an

electronic form; and b) accessible so as to be usable for a subsequent reference.

The rationale behind the second requirement is that electronic data is intangible and by its very nature transient. Thus, it is expedient to require it to be available for future reference.

A reading of above provisions make it clear that India has made necessary changes in the legislation related to electronic evidence keeping in mind the United Nations Commission on International Trade Law (UNCITRAL) model law on electronic commerce. The legal recognition of the electronic records is provided under the Information Technology Act, 2000 Electronic records are defined under the Information Technology Act, 2000 and it means data, record, image, sound stored received or sent in the electronic form. The definition of the document is given under the Evidence Act and it says that electronic records are also considered as document within the meaning of that definition. All facts except the electronic records may be proved by oral evidence in India. Section 65(A) and 65(B) of the Evidence Act, 1872 are speaking about the admissibility of electronic evidence in India. The electronic evidence is admissible before the court proceedings subject to the production of the certificate as per the requirement provided under the Evidence Act. The certificate is not required if the original document (electronic device) itself is produced before the Hon'ble Court and the person who is operating the electronic device give the statement before the court that he is the owner of the device or operated the device.

Primary evidence is the document produced before the Court and the expression document is defined in Section 3 of the Evidence Act to mean any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter.

It is worthy to mention that under the regulation of Sections 61 to 65 of the Indian Evidence Act, which deals with primary and secondary evidences, “the word Document or content of documents have not been replaced by the word Electronic documents or content of electronic documents while amending the provisions. Thus, the intention of the legislature is explicitly clear i.e. not to extend the applicability of Sections 61 to 65 to the electronic record.” It happens to be the primary rule of interpretation when legislators overlooked any terminology, the premise would certainly that omission was planned.

VIEW OF APEX COURT ON ELECTRONIC EVIDENCE

Anvar P.V. vs. P.K. Basheer (2014) 10 SCC 473

The case was filed against the corrupt practices employed by the winning candidate at the time of election against which the complainant filed a plea to set aside the election. The complainant produced CDs which were comprised of songs, announcements, and speeches to support his claim, but he failed to secure the certificate under Section 65B(4) of Evidence Act.

For deciding the matter at hand, the three-judge bench of the Hon'ble Supreme Court looked into the language of Section 65B(4) dealing with the admissibility of electronic records. The provision says that if in any case, there is a need to give any statement related to any electronic evidence produced, then any of the following conditions must be satisfied:

(a) There must be a certificate which identifies the electronic record containing the statement;

(b) The certificate must describe the manner in which the electronic record was produced;

(c) The certificate must furnish the particulars of the device involved in the production of that record;

(d) The certificate must deal with the applicable conditions mentioned under Section 65 B (2) of the Evidence Act; and

(e) The certificate must be signed by a person occupying a responsible official position in relation to the operation of the relevant device.

It was further clarified by the court that there must be a certificate accompanying the electronic evidence in which that person is required to state that the same is to the best of his knowledge and belief. These measures are taken by the court to ensure the source and authenticity of the electronic record. Electronic evidence can be easily tampered, altered with, hence, these safeguards prove to be very significant to ensure justice especially in the cases where the conclusion of the trial is based on the electronic records.

Section 65A of Evidence Act states that the contents of the electronic evidence may be proved in accordance with the provisions laid down in Section 65B. Therefore, only if the conditions specified under Section 65B of Evidence Act are satisfied, the electronic evidence can be relied upon by the courts and can be sent for the opinion of the examiner under Section 45A of Evidence Act. Section 65B being a special provision related to electronic evidence must be favoured over the general provisions contained in the act.

The court held that CDs, VCD, Chip produced in the court can be taken admissible only if the same is accompanied by a certificate under

Section 65B of the Evidence Act. The electronic evidence will have no relevance and admissibility without that certificate. The court further said that without due certification of the secondary evidence, the authenticity of the electronic evidence in the form of CDs, VCD, Chip cannot be relied upon.

It overruled the judgment in *State (NCT of Delhi) v. Navjot Sandhu alias Afzal Guru* [(2005) 11 SCC 600] by the two judge Bench of the Hon'ble Supreme Court. The court observed that "the Judgment of *Navjot Sandhu*, 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".

**Arjun panditrao khotkar v/s Kailash kishanrao Goratyal (2020) 7
SCC 1**

In *Arjun v. Kailash*, the Court had to adjudicate on an election petition which challenged the election of Mr. Arjun Panditrao Khotkar from Jalna-101 Legislative Assembly Constituency, on the ground that the nomination papers were filed after the stipulated deadline. The Respondents wished to rely on video camera recordings to prove that the candidate had filed his nomination after the stipulated deadline. The Election Commission produced CDs which contained a copy of the video camera recordings, in accordance with the direction given by the High Court. However, the necessary certificates were not produced in accordance with Section 65B(4) by the Election Commission, despite multiple requests made by the Petitioner.

During the cross examination, an officer of the Election Commission testified that the video camera recordings were authentic. Based on this testimony, the High Court admitted the evidence of the video recordings even though the certificate in accordance with Section 65B (4) had not been produced. The High Court held that it was satisfied that there was “substantial compliance” with Section 65B, as a competent officer had testified that the video recordings were authentic.

In this scenario, the Hon’ble Supreme Court had to interpret Section 65B(4) for determining the following issues:

- Whether a certificate under Section 65B(4) must be produced even when an original record of the electronic evidence is available, or does it have to be given only when a secondary record of the electronic evidence is produced?
- Whether compliance with Section 65B(4) is mandatory even in a situation when it is not possible to obtain the certificate from the competent entity?

The lead opinion was delivered by Hon’ble Justice Nariman and a concurring opinion was delivered by Hon’ble Justice V Ramasubramanian.

Hon’ble Justice Nariman noted that Section 65B(1) differentiates between the ‘original’ electronic record, which is contained in the computer in which the information is first stored – and the secondary copies that are made from the primary electronic record. For instance, in

the present case, the original electronic record would be the computer of the Election Commission in which the video footage is first stored. The CDs where the content of the video recording is copied shall constitute the secondary copies of the electronic record. It was held that a certificate under Section 65B(4) shall have to be obtained only when the secondary copies of the electronic record are produced before the Court.

In the case of *Arjun v Kailash*, it was observed by the Hon'ble Supreme Court that section 65B (1) differentiates between the primary electronic record i.e. the device where the information was first stored and the secondary copies that are made from that primary electronic record.

In this case, the Hon'ble Court has held that the requirement of a certificate under section 65B (4) must be satisfied when a secondary copy of a primary electronic record is produced before the court. The requirement of a certificate under section 65B (4) is not required to be satisfied in case if an original electronic record is produced.

The Court concurred the dictum given by the Hon'ble Supreme Court in the case of *Anvar v Basheer*. The Court concurred that section 65 B contains non-obstante clause and it is a complete legal framework for the admissibility of an electronic evidence. The Court clarified that this dictum should be read by omitting the words "under Section 62 of the Evidence Act". As section 65B is a complete code for electronic evidence and that's why it should supersede other provisions.

In this case, the Hon'ble Supreme Court also overruled the *Shahfi Mohammad Case*. There are provisions under the Evidence Act ,

the Civil Procedure Code and the Criminal Procedure Code which empowers the Court to order for the production of any document in a trial. Accordingly, in *Arjun v Kailash* it was held that in case if a person fails to procure a certificate under section 65B (4) then that person can file an application to the Judge to order for the production of certificate.

Thus, the Court concluded that "the obligation placed by Section 65B (4) was mandatory, and not voluntary, and is a condition precedent before secondary copies of an electronic record can be admitted". The conditions under sections 65B (2) and 65B (4) must be satisfied cumulatively. **Overruling of *Tomaso Bruno v/s State of UP (2015) 7 SCC 178* and *Shahfi Mohammad v/s State of Himachal Pradesh (2018) 2 SCC 801***. The Court stated that the decision in *Tomaso Bruno* was per incuriam, as the Court in *Tomaso Bruno* concluded that Section 65B was not a complete code – without making any reference to the earlier decision in *Anvar v. Basheer*. Hon'ble Justice Nariman also stated that the decision in *Shahfi Mohammad* had misinterpreted the law while concluding that Section 65B is merely a procedural provision, and the requirement of obtaining a certificate can be dispensed with when the electronic device storing the records is inaccessible to the person who needs to obtain the certificate.

DIFFERENT TYPE OF ELECTRONIC EVIDENCE

Video/Audio Tape Recordings: Indian courts had recognized the contents of tape recording as admissible evidence for some time before the introduction of the IT Act, subject to certain conditions being satisfied. The Hon'ble Supreme Court in **Ziyauddin Burhanuddin Bukhari v Brijmohan Ramdass Mehra and Others** [AIR 1975 SC 1788 (1)] observed that tape-recorded speeches are a 'document', as defined by Section 3 of the Evidence Act, which stands on no different footing than photographs, and they are admissible in evidence on satisfying certain conditions. The subject matter recorded had to be shown to be relevant according to rules of relevancy found in the Evidence Act.

In **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. While 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 while 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

that the Judges in India are beginning to recognize and appreciate the importance of digital evidence in legal proceedings.

Hard Disk: As to whether a hard disk of a computer can be considered as documentary evidence, the High Court of Delhi in **Dharambir Vs. CBI** [148 (2008) DLT 289] 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 programs 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 is restored to the original position, by reversing that change, the information can be retrieved by using the 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) of the IT Act, there can be no doubt that an electronic record' is a document'.

Data copied from Hard Disk to CD: 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 vide **Babu Ram Aggarwal & Anr. Vs. Krishan Kumar Bhatnagar & Ors.** [2013, IAD (Delhi) 441].

Call Records: In **Rakesh Kumar and Ors. Vs. State** (Criminal Appeal No. 19/2007 decided on 27.08.2009), the High Court of Delhi while appreciating the reliance placed by the prosecution upon the call records, observed that —computer generated electronic records is evidence, admissible at a trial if proved in the manner specified by Section 65B of the Evidence Act.

Digital Camera Photograph: 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.

ATM : Teller Machines (ATM) was held to be not computer by itself nor is it a computer terminal (**2005 AIR Knt. HCR 9**).

Proof of SMS & MMS: If someone challenges the accuracy of an electronic evidence or e-record on the grounds of misuse of system or

operating failure or interpolation, then the person challenging it must prove the same beyond reasonable doubt.

Proof of e-mail: E-mail is a computer output of electronic record and therefore, it has to be proved in the manner prescribed in Section 65B of the Indian Evidence Act, which requires a certificate to be given by a person occupying responsible position in management of the computer.

Proof of Obscene SMS sent through Mobile Phone: As per section 2(t) of the IT Act, '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.

Proof of Contents of the CD: 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.

Electronic Evidence Under The Bhartiya Sakshya Adhiniyam, 2023

With the introduction of new act, *the Bhartiya Sakshya Adhiniyam*, 2023, the law of evidence in India is all set to change. With the new Adhiniyam outgoes the law that ruled world of evidence for almost 150 years. Looking back at the jurisprudence, one can surely say that the evidence act in its present form did amazing job in dealing with the traditional cases pertaining to oral and documentary evidence. Where the language fell short, courts rushed to rescue.

However, the present law was not yet adept at the new technological advancements and ever evolving mutants of electronic evidence. The amendment brought by the Information Technology Act of 2000 created more issues, then it sought to resolve. With this amendment of 2000, started the journey of pendulum jurisprudence on the electronic evidence. The dust rose by *Navjot Sandhu* in 2005 settled down only in *Arjun Khotkar*, few important issues, still begging for the answers. This state of flux lasting for more than two decades itself exhibited insufficiency and inadequacy of the amendment that IT Act of 2000 brought. Many High Courts and even Supreme court time and again underline the need for new law to deal with electronic evidence at par with some other countries.

With this ever changing judicial paradigm and fast paced electronic evidence, all the hopes were pinned on the new law.

When finally an announcement was made about introduction of the *Bhartiya Sakshya Adhiniyam*, 2023, all thought this to be the moment

but the earlier version look better, apart from the fact that it was by now at least tested and set by the Supreme Court.

The entire journey of interpretation of S.65B of electronic evidence began in *Navjot Sandhu* judgment. In this case, the Supreme Court, said that electronic evidence can also be proved with the help of the sections that deal with documentary evidence i.e. S. 59 to 65. [E.g. S.65[d] renders the secondary evidence admissible when the original is not easily movable as is the case with huge data servers and computers]. The Supreme Court in effect said, though tool of S.65B is now available, that does not bar utilisation of other sections, which are meant for documentary evidence. This judgement virtually gave a complete go-bye to the mandate of S.65B since therefrom everyone started following the regime meant for documentary evidence.

After holding the field for more than a decade, came another judgement in the year 2015 of *Anvar PV* which totally overruled *Navjot Sandhu* by inviting attention to the *non-obstante* clause of section 65B. The opening words of S.65B “*notwithstanding anything contained in this act...*”, itself completely ruled out the applicability of any other sections including the ones dealing with the documentary evidence, Supreme Court said. One must follow the rigours of section 65B was the *ratio*. Thus, now observance of section 65B was held mandatory.

Pendulum again swung in 2018, with a judgement of *Shafi Mohammad*, which diluted the ratio of *Anvar PV*. [by holding that the compliance with 65B cannot be compelled if the electronic evidence is coming from the custody of someone other than the owner/operator of

the computer/system]. However, all the issues were set at rest with the judgement of Supreme Court in *Arjun Panditrao* which not only the affirmed the view of the Supreme Court in *Anvar PV* but also frowned upon its dilution in *Shafi Mohammad*.

Now, in this background, let us examine what the present Bhartiya Sakshya Adhiniyam, 2023 stipulates about electronic evidence.

Section 61, 62 and 63 of *Sakshya Adhiniyam inter alia* deal with electronic evidence. Surprisingly, Section 61 clearly restores the position of *Navjot Sandhu* by holding the electronic evidence *at par* with documentary evidence and goes on to say that “*Nothing* in this act can be used to deny the admissibility of electronic record, and the electronic record shall have same legal effect, validity and enforceability as paper record. Note the opening word, “*Nothing..*” which makes this section supersede rest all.

Section 62 further fortifies this position by saying that the contents of electronic record may be proved in accordance with provisions of section 59 [the section that deals with documentary evidence]

Now comes a major problem and beginning of a conundrum.

Section 63 lays down the position as laid down in *Arjun Panditrao*. [which is diametrically opposite to the one laid down *Navjot Sandhu* and reinstated in Section 61]. Section 63 is reincarnation of Section 65B. It is *in verbatim* replica of S.65B. Therefore, even the *non obstante* clause makes its strong appearance in the opening line of section 63. It begins by saying ‘*Notwithstanding anything contained in this act...*’ Therefore,

this *non obstante* clause overrides all the earlier sections, including section 61, and 62. Therefore, this apparently indicates that one must resort only to section 63 whilst dealing with electronic record.

So one no longer can equate the electronic evidence with the documentary evidence as Section 61 attempts to do. Also, owing to the *non-obstante* clause, this section has the potential of again being interpreted by the Supreme Court as overriding all other provisions as was done in the judgement of *Arjun Panditrao*. In fact, this time the conflict between the two sections would be much more violent and severe. In the earlier legislation, there was nothing to be pitted against the *non obstante* clause of section 65B. However, in its present *Avatar*, this *non-obstante* clause has a worthy opponent in the form of equally strong opening lines of section 61 which say “*Nothing* in this Adhinyam shall apply to deny the admissibility of an electronic record on the ground that it is an electronic record and such record shall have the same legal effects, validity and enforceability as paper records’. The word ‘nothing’ has the ability to annul the effect of *non obstante* clause appearing in section 63 and vice versa.

In the clash of titans between *notwithstanding* and *nothing*, which one will prevail, is the moot question. In the earlier legislation, at least there was a guiding light in the form of section 65A which categorically paved the way for proving the electronic evidence in accordance with section 65B. It said that the contents of electronic record may be proved in accordance with section 65B. This section drew a line of division,

though subtle, between the regime of documentary evidence and that of electronic evidence.

However, section 61 is exactly contrary which instead of drawing the line, imports the sections dealing with documentary evidence in the regime of electronic evidence and mixes up both the jurisprudences. Section 61, standing alone, could have sorted the problems or Section 63 alone would have redressed the issues. But both holding the field is going to cause a worst ever fight.

In the coming time, the battle between section 61 and 63 is going to rule the court rooms but with much more chaos and confusion. Worst of all, this is going to breed uncertainty again.

CONCLUSION

In conclusion, the rise of electronic communication has led to the rapid increase of cyber-crimes and the importance of electronic evidence in legal proceedings. However, the collection and admissibility of electronic evidence pose challenges, and courts around the world, including in India, have struggled with consistent opinions on their admissibility and authenticity. Nevertheless, recent judgments by the Indian Supreme Court demonstrate a growing recognition of the importance of digital evidence in legal proceedings. As technology continues to evolve, the legal system will need to adapt to ensure the reliability and integrity of electronic evidence.

Electronic evidence plays a significant role in resolving civil and criminal disputes in the digital age. However, collecting, preserving, and presenting electronic evidence during the investigation and trial process poses several challenges. The admissibility and authenticity of electronic evidence are often questioned, and technical issues can arise, which can potentially derail the entire trial proceeding. Courts in India have recognized the admissibility of electronic evidence, including tape recordings and hard disks, subject to certain conditions being satisfied.

The use of electronic records as evidence has become increasingly prevalent in the Indian judicial system, and it is important to understand the admissibility and evidentiary value of these records. While primary evidence is preferred, secondary evidence in the form of electronic records can also be admitted if it satisfies the conditions under Section 65B of the Indian Evidence Act. Different types of electronic records

have different conditions relating to their evidentiary value and admissibility in court, and it is important to comply with these conditions to ensure their admissibility. With the proper understanding and use of electronic records as evidence, the Indian judicial system can effectively adapt to the rapidly evolving digital world.

Section 65B(4) of the Indian Evidence Act deals with the admissibility of electronic records in the court of law. According to this provision, an electronic record can only be admitted as evidence if it is accompanied by a certificate. This certificate must identify the electronic record, describe the manner in which it was produced, furnish the particulars of the device involved in the production of the record, deal with the applicable conditions mentioned under Section 65B(2) of the Evidence Act, and be signed by a person occupying a responsible official position in relation to the operation of the relevant device. The certificate must also state that the record is to the best of the person's knowledge and belief. The purpose of this certificate is to ensure the authenticity and source of the electronic record, which can be easily tampered with or altered. The admissibility of electronic evidence without this certificate is not possible. The Supreme Court has held that compliance with Section 65B(4) is mandatory even if the original record is available and that it must be followed even if it is not possible to obtain the certificate from the competent entity.

In both cases - *Anvar P.V. vs. P.K. Basheer and Arjun Panditrao Khotkar v/s Kailash Kishanrao Goratyal* - dealt with the admissibility of electronic evidence in court proceedings. The former case established that electronic evidence in the form of CDs, VCDs, and chips can be

admissible only if accompanied by a certificate under Section 65B of the Evidence Act, and without due certification, the authenticity of the electronic evidence cannot be relied upon. The latter case clarified the scope and applicability of Section 65B(4) of the Evidence Act and held that a certificate under Section 65B(4) is mandatory even when an original record of the electronic evidence is available, and non-compliance with Section 65B(4) cannot be excused on the ground of substantial compliance. These cases highlight the importance of complying with the procedural safeguards provided under Section 65B of the Evidence Act while producing electronic evidence in court.

The admissibility of electronic evidence is a complex and constantly evolving area of law. The increasing use of digital devices and the internet has led to the creation of vast amounts of electronic data, which can be used as evidence in legal proceedings. However, the admissibility of such evidence depends on a variety of factors, including the authenticity, reliability, and relevance of the evidence.

To determine the admissibility of electronic evidence, courts typically use a multi-step analysis. First, the proponent of the evidence (i.e. the party seeking to introduce the evidence) must establish its authenticity - that is, that the evidence is what it purports to be and has not been altered or tampered with in any way. This can be done through the use of expert testimony or by showing a chain of custody that demonstrates the continuity and integrity of the evidence.

Second, the reliability of the evidence must be established. This involves assessing the accuracy, completeness, and reliability of the methods used to create, store, and transmit the evidence. This can

include evaluating the source of the evidence, the software and hardware used to create or store it, and any processes used to ensure the integrity of the data.

Third, the relevance of the evidence must be established. This involves showing that the evidence is directly related to the issues in the case and has some probative value in proving or disproving a fact at issue.

Finally, the court will weigh the potential prejudicial effect of the evidence against its probative value and determine whether it should be admitted or excluded.

In summary, the admissibility of electronic evidence is a complex issue that requires careful consideration of a variety of factors. While technology has made it easier to create and store electronic data, it has also created new challenges for courts in assessing the authenticity, reliability, and relevance of such evidence. Courts must balance the need to admit relevant evidence with the need to protect the fairness and integrity of legal proceedings.

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