

31st DECEMBER, 2021

SERIES ON EVIDENCE ACT: ISSUE 5

ELECTRONIC EVIDENCE IN TODAY'S TECHNOLOGICAL WORLD

A. INTRODUCTION

1. The Information Technology Act, 2000 (for short “**IT Act, 2000**”) was enacted to introduce electronic records and digital signatures as additional means through which evidence could be adduced. It gave recognition to the use and admissibility of electronic evidence.

2. The Indian Evidence (Amendment) Act, 2000 and Section 92 of the IT Act, 2000 amended certain provisions of the Indian Evidence Act, 1872 (for short “**Indian Evidence Act**”) to include digital and electronic records within the meaning of evidence.

3. The definition of “evidence” under Section 3 of the Indian Evidence Act was amended to include all documents including electronic records produced for the inspection of the court.

B. Electronic records

Section 2(1)(t) of the IT Act, 2000 defines an “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 film.

C. Section 65B of the Indian Evidence Act: Admissibility of Electronic Records

1. The contents of an electronic record are to be proved under Section 65A of the Indian Evidence Act in accordance with the provisions of Section 65B of the Indian Evidence Act.

2. Section 65B(1) of the Indian Evidence Act states that an information which is present in electronic form and is printed or stored on paper, in optical or electronic media produced by a computer shall also be deemed to be a document if it satisfies the conditions in relation to the information contained therein and the computer in question, i.e., the computer that has been used in the process of producing such document.

3. On the satisfaction of such conditions, this section does not require further proof or production of the originals of the document so produced through electronic means.

4. Section 65B(2) of the Indian Evidence Act lists the conditions in respect of the computer in question that must be satisfied, as mentioned under sub-section (1). The relevant conditions are:

- When the information was produced, the computer in question must have been in regular use by the person having lawful control over the use of such computer

- During such period of use, the information of similar kind as has been produced must be regularly fed into the computer in the usual course of activities and the computer must have been operating properly.

D. Certificates under Section 65B(4) of the Indian Evidence Act:

1. Section 65B (4) of the Indian Evidence Act mandates the production of a certificate whenever evidence is desired to be recorded under this section. The said certificate must-

- Identify the electronic record containing the statement;
- describe the manner in which it was produced;
- give particulars of any device involved in the production of that electronic record;
- deal with such other conditions mentioned under sub-section (2).

2. The certificate to be produced in lieu of the electronic evidence shall be signed by a person occupying a responsible position in relation to the management of the device or the activity in question. The signature on the certificate is to prove the authenticity of the same.

3. The Supreme Court in *Arjun Panditrao Khotkar vs. Kailash Kushanrao Gorantyal* (2020) 7 SCC 1 clarified that when an original electronic document is produced before the court with owner's personal authentication as a witness, it shall not be mandatory to produce a certificate along with it, however, when a computer network is involved in the production of the document, sec-



Neha Maniktala

Associate, MCO Legals

BBA, LLB,
Symbiosis Law School Noida

Expertise:

Corporate Due Diligence &
Corporate/Commercial Arbitration

✉ neha.m@mcolegals.co.in



Shivangi Pathak

Research Partner

B.A., LLB (Hons)
Calcutta University

ment, secondary copies may also be produced only along with the certificate stipulated under Section 65B(4) and oral evidence shall not replace the mandatory requirement of production of a certificate in such cases.

E. Proof of electronic records

1. Emails-

An e-mail may be proved in evidence through a certificate under Section 65B of the Indian Evidence Act (*Abdul Rahman Kunji vs. The State of West Bengal* 2014 SCC OnLine Cal 18116).

E-mails may also be read into evidence in view of Section 88A of the Evidence Act which provides for presumption regarding the veracity of contents of an electronic message- *M/s. Xact Studio International vs. M/s. Liwona SP. Z.O. O* 2018 SCC OnLine Del 9469

Section 88A clarifies that the court may presume that a message forwarded by the originator through an e-mail corresponds to the message fed into the computer of the addressee but the person by whom such message was sent shall not be presumed.

2. Electronically generated invoices-

In *Bhartiya Dhoop Karyalya Pvt. Ltd. vs. Prakash Keserwani*, the contention was that since the electronically generated invoices were not produced with the certificated under Section 65B of the Indian Evidence Act, they were not duly proved. The court rejected the contention and held, merely because the certificates were produced at a later stage and not together with the invoices, a technical view would be of no consequence. Thus, electronically generate invoices are to be proved through the production of certificates under Section 65B.

Section 85A and 85B provide for provisions in relation to presumption as to electronic agreements and electronic records, i.e., all documents shall be considered true unless proven otherwise. Section 85B states that unless the contrary is proved, it shall be presumed that the electronic record has not been altered since the specific point of time when the record acquired the secure status.

3. Electronically generated bank statements-

The definition of bankers' books under Section 2(3) of the Bankers' Books Evidence Act, 1891 has been amended to include the printout of data or records stored on a floppy disc, micro-film, any electro-magnetic device or any other form of mechanical data retrieval mechanism.

Section 2A provides that the printout of an entry or a copy of a printout must be accompanied by a certificate stating that it is a printout of such entry or a copy of such printout by the principal accountant or branch manager, together with a certificate from a person-in-charge of the computer system, containing a brief description of the computer system and the particulars of its safeguards.

Thus, the authenticity of an electronically generated bank statement must be proved in accordance with the certification as required under Section 2A of the Bankers' Books Evidence Act. *Anvar P.V. vs. P.K. Basheer* (2014) 10 SCC 473 held that Section 2A of the Bankers Books Evidence Act must prevail over Section 65B of the Indian Evidence Act since the former is a special law dealing specifically with proof and admissibility of banking records in electronic form.

4. GST receipts-

When a computer-generated GST receipt is produced before a court, it must be accompanied with a certificate under Section 65B of the Evidence Act.

F. The importance of oral admission as to contents of an e-document

Section 22A of the Evidence Act clarifies that oral admissions as to contents of electronic records are not relevant unless the genuineness of the electronic record produced is in question. Oral admissions shall only be called for when the court is dissatisfied with other mode of proof of the e-document or with the genuineness of the e-document in lieu of the manner in which it has been produced.

G. Conclusion

1. The provisions under the Indian Evidence Act in relation to mode of proof of electronic documents present a clear picture on the intent of the legislature to make courts more accessible and friendly by introduction of admissibility of electronic records and digital signatures that are important sources of evidence in today's technological world.

2. In *Anvar P.V. vs. P.K. Basheer*, it was clarified that Section 65B of the Indian Evidence Act is a complete code in itself as far as admissibility of electronic records is concerned. It also held that the safeguards thereunder were to ensure source and authenticity of electronic records such that they may be used as vital and admissible piece of evidence since they are more susceptible to tampering, alteration, etc.