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THE ADMISSIBILITY & RELIABILITY OF ELECTRONIC EVIDENCE IN INDIAN COURTS & ITS LEGAL FRAMEWORK

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ABSTRACT

Digitalization of almost every field paves way in opting digitalization in administration which further involves the necessity and importance of the transfer of information and communication using the technological devices such as laptops, mobile phones, computers, fax machines, etc. Crime rate has been increasing rapidly in digital sector and electronic evidence turns out to be a mandatory thing during the due process of investigation. Therefore, it is evident that most of the evidence constituted in recent times are said to be in electronic format. Amidst of all these, there are many cybercrimes prevailing in recent times where the burden of proof could constitute probably in digital format therefore it falls under the category where it is necessary to admit the electronic evidence. Analysis of various provisions under The Evidence Act, 1872 and The Information Technology Act, 2000 relative to electronic evidence are to be covered in this paper and about the advancement of the judiciary to deal with the digitalization of the evidences issued.

This paper would clear out the ambiguity of the legal framework caused by the electronic evidence stating out the eligibility and the exceptions of its admissibility and reliability in the courts of India involving the judicial process. The outline of the obligations of Indian courts regarding the admission of electronic evidence with reference to the judgments by Hon'ble Supreme Court.

KEYWORDS – Evidence, Courts, Digital, Judiciary, Technology, Crime.

I. INTRODUCTION:

In recent times, exchange of information in a digital format has rapidly increased in unlawful activities which further tell about the necessity to produce electronic evidence for the due process of investigation. Evidence not in conformity of law would not be admissible under the court of law regardless of the subject matter involved. The enormous reach out of e-governance and e-commerce results in the validation of e-evidence as it plays a primary role in the due process of communication or exchange of any information.

As stated in Black's Law Dictionary, evidence is something that aims in *proving or disproving the existence of an alleged fact*¹⁰. The representatives are obliged to validate the electronic evidence and the source or origin of the evidence. The challenging part is the admissibility and reliability of the electronic evidence before the trial of any court. The recent trend and the majority has opted cyberspace as the mode and medium of communication which has significantly increased the rate of crimes in the same field,

¹⁰ BLACK HENRY CAMPBELL, BLACK'S LAW DICTIONARY, 31 (2nd ed. 1910)



which leads to misuse of information. Therefore, maintaining the standards of electronic evidence is much more complicated than the default method of handling the evidences.

The ambiguity regarding the admissibility of electronic evidence arises due to the absence of separate provision for electronic evidence in The Evidence Act, 1872 regarding the appliance of digital evidence in judiciary, which is substituted by the provisions of The Information Technology Act, 2000 which provides the legal recognition for electronic records which are produced as evidence.

II. ANALYSIS OF THE INDIAN EVIDENCE ACT, 1872:

A. Amendments made: According to The Indian Evidence Act, 1872 after amendment with reference to The Information Technology Act, 2000, specific sections regarding the electronic evidence are,

- Section – 3 stating “All documents produced for the inspections of court” was replaced with “All documents including electronic records produced for the inspection of court”.¹¹

- Section – 59 replaced “Content of documents” into “Content of documents or electronic records”¹², which evidently shows about the inclusion of electronic evidences legally.

B. Admission of electronic form: Oral or documentary or contained in electronic form which suggests any inference as to any fact in issue or relevant fact.¹³

C. Admission of oral evidence: Oral admissions regarding the contents of documents are not relevant unless the documents produced are not in stake, here

documents also refers to the electronic records collectively.¹⁴

D. In Anvar P.V. v. P.K. Basheer case¹⁵, the holding was that electronic records is said to be more susceptible to tampering, alteration, transposition, excision only after the stage of admissibility by the courts.

E. Choice of Judge for admissibility: The Judge possesses the right to choose to admit the electronic evidence before the court of law.

In the due course of time, after various interpretations the provisions were made in favour of the admissibility of electronic evidence as stated above. These necessary changes in legislation considering the electronic evidence were made under the implications as stated by United Nations Commission on International Trade Law (UNCITRAL).

III. RECOGNITION UNDER THE INFORMATION ACT, 2000

Section – 2(1)(t) defines electronic record as any piece of information or data or any record in the format of image or sound either received or sent in electronic form or through micro film.¹⁶

In *Tomaso Bruno & Anr vs State Of U.P.*¹⁷, the court held the importance of electronic evidence in the due process of investigation and how efficiently those evidences help in clearing out cases.

Legal recognition of electronic record is stated as, “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-

(a) Rendered or made available in an electronic form; and

¹¹ The Indian Evidence Act, 1872, § 3, No. 1, Acts of Parliament, 1872 (India)

¹² The Indian Evidence Act, 1872, § 59, No. 1, Acts of Parliament, 1872 (India)

¹³ The Indian Evidence Act, 1872, § 17, No. 1, Acts of Parliament, 1872 (India)

¹⁴ The Indian Evidence Act, 1872, § 22, No. 1, Acts of Parliament, 1872 (India)

¹⁵ Anvar P.V. v. P.K. Basheer (2014) 10 SCC 473

¹⁶ The Information Technology Act, 2000, § 2(1)(t), No. 21, Acts of Parliament, 2000 (India)

¹⁷ Tomaso Bruno & Anr vs State Of U.P. Cr. A. No. 142/2015

(b) Accessible so as to be usable for a subsequent reference.¹⁸

In *Sudarshan Cargo Pvt. Ltd. vs. Techvac Engineering Pvt. Ltd.*,¹⁹ the court held that as the electronic record is legally recognized under Section – 4, the electronic evidence e-mail was admissible by the court validating the mail of the recipient.

Under Section 79A proper definition of the components of electronic evidence are stated, which includes information of probative value that is either stored or transmitted in electronic form and includes cell phones, digital audio or fax machines or video, computer evidence.²⁰

The Indian Evidence Act, 1872 was amended as specified in the Second Schedule of The Information Technology Act, 2000 as mentioned in Section 92 of the act.²¹

IV. PROVISIONS FAVOURING ELECTRONIC EVIDENCE:

A. Classification of electronic evidence:

Electronic evidence can be classified as:

- Primary evidence
- Secondary evidence

1. *Primary evidence*: Under Section 62, the evidence where the original record or original document is produced for the court's inspection is termed as primary evidence.²²

2. *Secondary evidence*: Under Section 63, the evidence which includes the copies or photographs or any other form of the original certified copy is constituted to be secondary evidence.²³ This also includes the oral statement of any person who has seen and acts as the

proof for the primary evidence as stated in Section 65²⁴.

Mostly primary evidence is preferred over the secondary evidence, secondary evidence acts as an alternative source if primary evidence is failed to be produced due to various reasons such as huge file size, or any other technical issues.

B. Conditions for electronic evidence: The admissibility of electronic evidence was validated after when the Sections 65A and 65B²⁵ was introduced in The Indian Evidence Act, 1872 under the influence of Second Schedule of Information Technology Act, 2000 making the evidence valid only if found relevant to the issues involved in the facts of the case of the court.

1. Section 65A states that the electronic evidence is admissible if it satisfies the conditions laid down in Section 65B of the act.²⁶

2. Section 65B(1) mentions that any information which is that, the electronic format of any information either printed or stored or copied or in magnetic media, the information is said to be considered as a document when the conditions mentioned in the Section 65B(2) of the act in satisfied. The information and the electronic object both would be admissible on the production of proof of evidence of the original before the court proceedings.²⁷

3. The computer output shall be admissible by the court only if it satisfies the conditions laid down under Section 65B(2) of the act:

a) The computer must have been in regular use when the document is produced.

¹⁸ The Information Technology Act, 2000, § 4, No. 21, Acts of Parliament, 2000 (India)

¹⁹ *Sudarshan Cargo Pvt. Ltd. vs. Techvac Engineering Pvt. Ltd.* CO.P. No. 11 of 2013

²⁰ The Information Technology Act, 2000, § 79(A), No. 21, Acts of Parliament, 2000 (India)

²¹ The Information Technology Act, 2000, § 92, No. 21, Acts of Parliament, 2000 (India)

²² The Indian Evidence Act, 1872, § 62, No. 1, Acts of Parliament, 1872 (India)

²³ The Indian Evidence Act, 1872, § 65, No. 1, Acts of Parliament, 1872 (India)

²⁴ The Indian Evidence Act, 1872, § 65, No. 1, Acts of Parliament, 1872 (India)

²⁵ The Indian Evidence Act, 1872, § 65B, No. 1, Acts of Parliament, 1872 (India)

²⁶ The Indian Evidence Act, 1872, § 65A, No. 1, Acts of Parliament, 1872 (India)

²⁷ The Indian Evidence Act, 1872, § 65B(1), No. 1, Acts of Parliament, 1872 (India)

b) Periodically, the computer must have been fed with the information produced before the court.

c) The computer should be working properly, if was not working properly for a certain period, that should not affect or influence the accuracy of the output and any other contents of the documents produced.

d) The copy produced must be the copy of the original to be produced before the court.²⁸

In *State (NCT of Delhi) v. Navjot Sandhu alias Afsan Guru*²⁹ the defendants argued for the inadmissibility of phone call recordings under the provisions of Section 65B (2)³⁰, though the prosecution failed in producing the certificate for the admissibility, the witness who were taking the printout of records were examined and proved that the records were valid and admissible by the court.

4. Section 65B (3) states that the storing and processing of information during that period of time as mentioned in sub-section (2) should be done by same or different combination of computers operating during that period or succession to it.³¹

5. Section 65B (4) states about the conditions of issue of certificate,

- Identification of electronic record,
- Nature of device and other details of the electronic record,
- Should be signed by a person who is involved in a responsible position for the operation of relevant device.³²

V. UPGRATION OF ELECTRONIC EVIDENCE:

There are various conditions which they must be aware of everyone while handling the cases

²⁸ The Indian Evidence Act, 1872, § 65B(2), No. 1, Acts of Parliament, 1872 (India)

²⁹ *State (NCT of Delhi) v. Navjot Sandhu alias Afsan Guru* [(2005) 11 SCC 600]

³⁰ *supra* note 18.

³¹ The Indian Evidence Act, 1872, § 65B(3), No. 1, Acts of Parliament, 1872 (India)

³² The Indian Evidence Act, 1872, § 65B(4), No. 1, Acts of Parliament, 1872 (India)

of electronic evidences. As it has developed technological aspects in the current world, it becomes very efficient to misuse the technology even in the field of evidence and must be very conscious about the whole process of collection of evidence and make sure that the original evidence remains unaltered for any further future references to be made.

The person accessing the evidence should be qualified enough and should be related to access the device or the evidence. The overall responsibility lies in the heads of the inspecting officer to make sure that no provisions are being violated in the whole process of documentation of the electronic evidence.³³

Various forms of admissibility of electronic evidence with illustrative case laws are to be listed:

1.E-mail:

In *Abdul Rahaman Kunji vs. The State of West Bengal*³⁴, it was held that the downloaded and printed copy of the e-mail could be considered as the secondary evidence and could be validated if only the e-mail should be provided under the provisions Section 65B³⁵ and Section 88A³⁶ of The Indian Evidence Act.

2. Interviews:

Examination of witness through video conferencing interpreted the legality of the evidence produced, which was further concluded to be legal under the provisions of Section 273 of Criminal Procedure Code³⁷ based on the technological advancements.

In *State of Maharashtra vs. Dr. Praful B Desai*³⁸ case, it was stated that examination of witness only requires the physical presence of the witness either virtual or through any other means. Furthermore, there are no other provisions stating that examination of witness

³³ Varsha, *Electronic Evidence And It's Admissibility in Indian Courts*, B&B Associates LLP, (June, 9, 2023, 3:47 PM), <https://bnblegal.com/article/electronic-evidence-and-its-admissibility-in-indian-courts/>

³⁴ *Abdul Rahaman Kunji vs. The State of West Bengal* CRA 624 of 2009

³⁵ *supra* note 16.

³⁶ The Indian Evidence Act, 1872, § 88A, No. 1, Acts of Parliament, 1872 (India)

³⁷ The Code of Criminal procedure, 1973, § 273, No. 2, Acts of Parliament, 1974 (India)

³⁸ *State of Maharashtra vs. Dr. Praful B Desai*, (2003)4 SCC 601



through video conferencing could be termed as illegal. Therefore the court held to admit the electronic evidence.

VI. CONCLUSION:

In this digitalized era, every occurrence of an event constitute any type of proof in electronic format which is also a merit & demerit and it becomes a necessity in regard to the provisions of the legal framework regarding the admissibility and validation of electronic evidence. The Indian Courts also works efficiently in clearing out the ambiguity regarding the validation of electronic evidence. The only condition or the necessary principle stated is the certification of the evidence in order to escape the rebuttal and to utilize it as a valid proof and to avoid the fake fabrication of the evidence.

The various amendments of the acts relating to the subject matter at the appropriate time has brought up and signifies the advancement of the legal field in relation to the electronic evidence, and now the responsibility lies in the hands of the authorities who are assigned in relative to the inspection of evidence to work with the updating and advancement of the relative fields. Concluding this article, I would suggest for a specific act in sorting out the ambiguity arising in regard to this topic and which would convey the necessity of this sensational topic in light of avoiding any further forgeries which is yet to happen in this field.

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