

The Indian Evidence Act of 1872 v. Information Technology Act, 2000

Introduction

Recording the evidence is the important function of the trial court. With the growth of the e-commerce the electronic evidences have come in picture. Admissibility of electronic evidence, proving digital signature, relevance of proof is important before giving the verdict. Provisions related to evidence are given in Indian Evidence Act, 1872.

Syllabus Topic : Status of Electronic Records as Evidence

8.1.1 Status of Electronic Records as Evidence

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| Q.8.1.1 Explain the terms evidence, proved and facts. (Ref. Sec. 8.1.1) | (5 Marks) |
| Q.8.1.2 Write down the provisions of the Indian evidence Act, 1872 which are altered in IT Act, 2000. (Ref. Sec. 8.1.1) | (5 Marks) |
| Q.8.1.3 Write the definition of the document and explain the illustration for document and the ingredient of the definition of document. (Ref. Sec. 8.1.1) | (5 Marks) |
| Q.8.1.4 What is electronic record, data and computer system? Write the characteristics of electronic records. (Ref. Sec. 8.1.1) | (5 Marks) |

Now a day's Electronic agreements, electronic messages, and digital signatures are making a great impact on our lives. It is a general perception that electronic evidence is not covered in Indian Evidence Act, 1872. The Indian Evidence Act, 1872 is amended by the IT Act, 2000.

Let's see the status of computer records or electronic records in the Indian Evidence Act 1872 before and after the IT Act 2000.

The Section 3 mentions the definition of evidence, proved and the fact.



- **Evidence :** In evidence act the evidence are oral evidences that is statements of the witness and documentary evidences. The two types of evidences recognized by the definition of evidence are oral evidence and documentary evidence. The definitions of facts and proved gives things and object status of evidences.
 - **Proved :** A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.
 - **Facts :** It includes things or objects.
- **The definition of evidence in Indian Evidence Act, 1872 before the amendment by the IT Act 2000 is :**
- 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, such statements are called oral evidence;
 - (2) All documents produced for the inspection of the Court, such documents are called documentary evidence.
- In the given definition only the words "Including electronic records" is added in the IT Act, 2000 amendment.
- 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, such statements are called oral evidence;
 - (2) All documents "including electronic records" produced for the inspection of the Court, such documents are called documentary evidence.
- Apart from the definition of the evidence the words like electronic record and electronic form are introduced alongside with documents in certain provisions.
- The following are some provisions of the Indian evidence Act, 1872 which are altered in IT Act, 2000.
- In Section 17 of the Indian evidence Act, 1872, for the words "oral or documentary," words "oral or documentary or contained in electronic form" shall be substituted by IT Act, 2000.
 - In Section 34 of the Indian evidence Act, 1872, for the words "Entries in the books of account", the words "Entries in the books of account, including those maintained in an electronic form" shall be substituted by IT Act, 2000.

In Section 35 of the Indian evidence Act, 1872, for the word "record", in both the places where it occurs, the words "record or an electronic record" shall be substituted by IT Act, 2000.

In Section 59 of the Indian evidence Act, 1872, for the words "contents of documents" "the words" contents of documents or electronic records" shall be substituted by IT Act, 2000.

Section 39 of the Indian evidence Act, 1872 is substituted vide the IT Act, 2000.

"Section 39 What evidence to be given when statement forms part of a conversation, documents, electronic record, book or series of letters or papers.

When any statement of which evidence is given forms part of longer statement, or of a conversation or part of an isolated documents, 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."

Section 39 of the Indian evidence Act, 1872 is substituted vide the IT Act, 2000.

"Section 131 Production of documents or electronic records which another person, having possession, could refuse to produce

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 possessions or control, unless such last-mentioned person consents to their production."

Definition of document is given in Section 3 of Indian evidence act, 1872 is :

Document means 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.

Illustration for documents

A writing is a document; Words printed, lithographed or photographed are documents; A map or plan is a document; An inscription on a metal plate or stone is a document; A caricature is a document.

☞ Ingredients of the definition of the document

1. Any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means.
2. The aforesaid expression or description is intended to be used or which may be used for the purpose of recording that matter.

The definitions of electronic record, data and computer system are given in Section 2(1) in IT Act, 2000.

1. Electronic record
2. Data
3. Computer system

→ 1. Electronic record

"Electronic record" means data, record or data generated, image or sound stored, received or sent in an electronic form or micro film or computer generated micro fiche;

→ 2. Data

Data means a representation of information, knowledge, facts, concepts or instructions which are being prepared or have been prepared in a formalized manner, and is intended to be processed, is being processed or has been processed in a computer system or computer network, and may be in any form (including computer printouts magnetic or optical storage media, punched cards, punched tapes) or stored internally in the memory of the computer;

→ 3. Computer system

- "Computer system" means a device or collection of devices, including input and output support devices and excluding calculators which are not programmable and capable of being used in conjunction with external files which contain computer programmers, electronic instructions, input data and output data that performs logic, arithmetic, data storage and retrieval, communication control and other functions.
- From the definitions of the electronic record, data and computer system it is clear that electronic record can appear on the screen of the monitor or it can be stored on hard disk, CD or floppy and an expression or description of matter upon any substance stored in them.

Characteristics of electronic records

- 1. The copy is practically indistinguishable from the original.
- 2. The original computer record is the one which is created first and stored in computer's memory. To prove this primary evidence the computer has to be brought to the court which causes hardship.
- 3. The primary evidence situation is covered in Section (2) of Section 63 and clause (D) of Section 65 and permits the secondary evidences of electronic records through CD, floppy, printout etc.

Section 63 : Secondary evidences

Secondary evidence means and includes :

Section (2) copies made from the original by mechanical processes which in themselves insure the accuracy of the copy, and copies compared with such copies;

Section 65 : Cases In which secondary evidence relating to documents may be given

Secondary evidence may be given of the existence, condition, or contents of a document in the following cases :

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Clause (D) When the original is of such a nature as not to be easily movable;

The Section 32 the Indian evidence Act, the second paragraph has included rule against the hearsay evidence, would not apply to electronic records.

Syllabus Topic : Proof and Management of Electronic Records; Relevancy, Admissibility and Probative Value of E-Evidence

8.2 Proof and Management of Electronic Records; Relevancy, Admissibility and Probative Value of E-Evidence

- There are some certain computer outputs of the original electronic record which has been granted admissibility as documentary evidence in any proceeding without proof or production of the original electronic record.
- The admissibility of electronic records is given in Subsection (1) of Section 65B of the Indian Evidence Act, 1872.



8.2.1 Admissibility of Electronic Records

Q. 8.2.1 Explain the admissibility of electronic records. (Ref. Sec. 8.2.1)

(5 Marks)

☞ **Section 65B : Admissibility of electronic records.**

- Subsection (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 of any contents of the original or of any fact stated therein or which direct evidence would be admissible.
- As per Section 65B any information contained in an electronic record if any of the following computer outputs what is my computer, computer output shall also be deemed and documents which are admissible in law as evidence, On compliance of certain conditions, of the contents of the original electronic record stated any facts therein of which direct evidence would be admissible:
 - Computer printout.
 - Stored, recorded or copy in optical or magnetic media that is floppy, CD etc. iPhone SE computer output are admissible as proof without producing improving the original electronic record this condition is given in Section 2 of Section 65B.

☞ **Subsection (2) of Section 65B of the Indian Evidence Act, 1872**

- (a) The computer output containing the information was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;
- (b) 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 in the ordinary course of the said activities;
- (c) Throughout the material part of the said period, the computer 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

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

There are different computers or combinations of computer involved for which the following is provided :

Subsection (3) of Section 65B of the Indian Evidence Act, 1872

Subsection (3) Where over any period, the functions of storing or processing information for the purposes of any activities of any regularly carried on over that period as mentioned in clause (a) of sub-section (2) was regularly performed by computer, whether :

- (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.

Section 65B says regarding the mode of supply of information to a computer and production of computer output.

Subsection (5) of Section 65B of the Indian Evidence Act, 1872

- (a) Information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;
- (b) Whether in the course of activities carried on by any official, information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;
- (c) A computer output shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.

Explanation : For the purposes of this Section any reference to information being derived from other information shall be a reference to its being derived there from by calculation, comparison or any other process.



- The secondary evidence should be deemed to be a document and shall be admissible in any proceedings as evidence of any content of the original electronic record or of the facts stated therein of which direct evidence would be admissible.
- Section 65B in the fourth limb the provision. 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,
 - (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;
 - (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 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.

8.2.2 Relevancy and Admissibility

Q. 8.2.2 Explain relevancy. (Ref. Sec. 8.2.2)

(5 Marks)

- As we know that under Section 65B, the computer outputs are admissible but we have to prove it as an evidence also. Evidence may be given in any suit or proceedings of the existence or non-existence of every fact in issue and of such other facts as are hereinafter declared to be relevant, and of no others (Section 5).
- Section 3 says "facts in issue" means and includes any fact from which, either by itself or in connection with other facts, the existence, non-existence, nature, or extent of any right, liability, or disability, asserted or denied in any suit or proceeding, necessarily follows.

For example : A is accused of the murder of B. At his trial the following facts may be in issue :

- That A caused B's death;
- That A intended to cause B's death;
- That A had received grave and sudden provocation from B;

That A at the time of doing the act which caused B's death, was, by reason of unsoundness of mind, incapable of knowing its nature.

The fact is said to be relevant to another when the one is connected with the other in any of the ways referred to in the provisions of this Act relating to the relevancy of facts.

In the IT Act 2000, two new Sections are introduced related to relevancy, they are 22A and 47A :

o **Section 22A :** When oral admissions 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.

o **Section 47A :** Opinion as to digital signature when relevant

When the Court has to form an opinion as to the digital signature of any person, the opinion of the certifying authority which has issued the digital signature certificate is a relevant fact.

According to Section 47 when the Court has to form an opinion as to the person by whom any document was written or signed, the opinion of any person acquainted with the handwriting of the person by whom it is supposed to be written or signed that it was or was not written or signed by that person, is a relevant fact.

All the provisions of the Indian Evidence Act which are applicable to document are also applied automatically to electronic records.

8.2.2.1 Relevancy for Business Community

The relevancy for business community is given in Section 16, 32(Para 2), and 34.

1. Existence of course of business when relevant :

When there is a question whether a particular act was done, the existence of any course of business, according to which it naturally would have been done, is a relevant fact.

Illustrations

(a) The question is, whether a particular letter was dispatched. The facts that it was the ordinary course of business for all letters put in a certain place to be carried to the post, and that particular letter was put in that place, are relevant.

(b) The question is, whether a particular letter reached A. The facts that it was posted in due course, and was not returned through the Dead Letter Office, are relevant.



8.2.2.2 Authorship of an Electronic Record

- After admissibility and relevance of computer output the next step is to prove the authorship of the electronic record. Under Section 65B the author of an electronic record is a person who may give the certificate.
- The person who has official position in relation to the operation of the computer or the management of the activities regularly carried out during the period when the computer was used regularly to store or process the information for such activities, then only such a person only provides the evidence of the authorship of the electronic record.
- The normal method of proving a document is by calling the witness the person who had executed or signed it or who is qualified or competent to express his opinion as to the handwriting in the document.
- The person who executed the electronic record or who saw it being executed or who is otherwise familiar with the execution would be required to prove the execution.
- If the electronic record is signed with the digital signature then the digital signatures need to be proved.

8.2.3 Probative Value of Electronic Evidence

Q. 8.2.3 What are the different types of evidences ? (Ref. Sec. 8.2.3)

(5 Marks)

- Probative value of electronic evidence is the weight to be given to it which has to be judged having regard to the facts and circumstances of the case.
- The nature of the computer generated evidence would also assume importance in determining its probative value. There are oral, documentary, circumstantial, direct and real evidences.

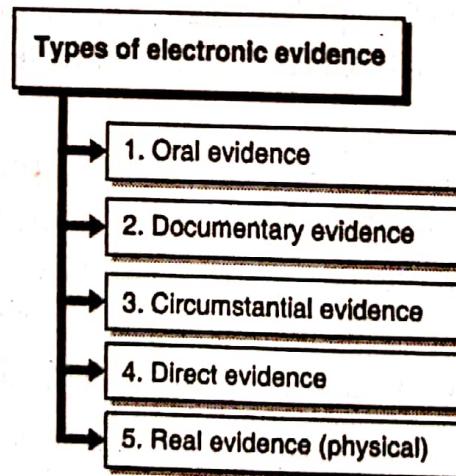


Fig. 8.2.1 : Types of electronic evidence

1. Oral evidence

- Section 60 of the Indian Evidence Act, 1872 prescribed the provision of recording oral evidence.
- All those statements which the court permits or expects the witnesses to make in his presence regarding the truth of the facts are called oral evidence.
- Oral evidence is that evidence which the witness has personally seen or heard.

2. Documentary evidence

- Section 3 of The Indian evidence Act says that all those documents which are presented in the court for inspection such documents are called documentary evidences.

3. Circumstantial evidence

- A form of evidence that allows a judge or jury to infer or accept a fact based on a set of known circumstances. A fact that can be used to infer another fact.
- Example : The cookie monster is found standing by an open cookie jar with cookie crumbs on his face. The circumstantial evidence would indicate that the cookie monster ate a cookie. However, he was not actually seen eating the cookie.

4. Direct evidence

- An eyewitness has seen or heard the alleged events, or some real evidence is provided which proves a fact in question. (The fact in question must prove the guilt of the accused.)
- Example : Someone sees cookie monster eat a cookie out of the cookie jar.

5. Real Evidence (physical)

- Evidence that consists of physical objects that can be offered into evidence. Real Evidence means real or material evidence. Real evidence of a fact is brought to the knowledge of the court by inspection of a physical object and not by information derived from a witness or a document.
- Example : The cookie jar with the cookie monster's fingerprints on it. Other typical examples... weapons, tools, tool markings, fingerprints, blood, hair, skin samples
- To enhance the probative value of the electronic evidence, the kind of software's used would also assume importance.



1. Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant

- When it relates to cause of death. When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question.
- Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.

2. Entries in books of account including those maintained in an electronic form when relevant

- Whenever they refer to a matter into which the Court has to inquire, but such statements shall not alone be sufficient evidence to charge any person with liability. Illustration A sues B for ₹ 1,000, and shows entries in his account-books showing B to be indebted to him to this amount.
- The entries are relevant, but are not sufficient, without other evidence, to prove the debt. COMMENTS Admissibility Entries in account books regularly kept in the course of business are admissible though they by themselves cannot create any liability.

Syllabus Topic : Proving Digital Signatures

8.3 Proving Digital Signatures

Q. 8.3.1 Explain proving digital signature. (Ref. Sec. 8.3)

(5 Marks)

- The Indian Evidence Act, 1872 amended by the IT Act 2000 states that 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.
- The Section 73A of evidence act tells how to verify the digital signature as follows:

8.3.1 Section 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.

Explanation

For the purposes of this Section, "Controller" means the Controller appointed under sub-section (1) of Section 17 of the Information Technology Act, 2000.

When the Court has to form an opinion as to the digital signature of any person, the opinion of the certifying authority which has issued the digital signature certificate is a relevant fact (Section 47A).

The following example explains the proving digital signature :

Example

If B has filed a Suit against A, A Relies upon electronic record and alleges that he had affixed his digital signature on the same which is disputed by B. If it wants to prove his digital signature then he has to produce before the court his digital signature certificate that states public key and request the court to direct any person to apply that public key upon the said electronic record.

A also has to prove that the digital signature certificate has been issued in him, by making the certificate authority concerned as a witness to confirm the side fat in the court.

It is reiterated that the court authority 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 :

- That person or the controller or the certifying authority to produce the digital signature certificate;
- 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.

Digital signature certificate plays an important role in digital signature proving. Digital signature certificates are accepted by the subscriber. The court shall presume, unless the contrary is proved, that the information given as subscriber information which has not been verified.

It means there is a presumption that the information given by the subscriber to the certifying authority which has not been verified.



8.3.2 Securing Digital Signature (IT Act 2000, Section 15)

- To secure the digital signature a security procedure agreed to by the parties concerned, it can be verified that a digital signature, at the time it was affixed, was -
 - Unique to the subscriber affixing it;
 - Capable of identifying such subscriber;
 - Created in a manner or using a means under the exclusive control of the subscriber and is linked to the electronic record to which it relates in such a manner that if the electronic record was altered the digital signature would be invalidated, then such digital signature shall be deemed to be a secure digital signature.
- In any proceedings, involving secure digital signature the court shall presume unless contrary is proved the secure digital signature is affixed by subscriber with the intention of signing or approving the electronic record.

Syllabus Topic : Proof of Electronic Agreements

8.4 Proof of Electronic Agreements

Q. 8.4.1 Explain proof of electronic agreements. (Ref. Sec. 8.4)

(5 Marks)

- Electronic agreements are the backbone of the e-commerce. Electronic agreements are the electronic record. So, the legal principle of admissibility, relevancy, and compliance of Section 65B for admitting computer outputs as evidence of electronic records, evidentiary value and proof of digital signature shall also apply to e-agreements and e-messages.
Electronic agreements are classified as follows:
 1. E-agreement upon which digital signature are affixed by both the parties.
 2. E-agreement to email messages between the parties,
 - With digital signatures of the party sending the message.
 - Without digital signature.
- In the Section 85 of Indian Evidence Act, 1872, the following presumption is created for electronic agreement signed by both the parties.

11 Section 85A : Presumption As to Electronic Agreements

The court shall presume that every electronic record purporting to be an agreement containing the digital signature of the parties was so concluded by affixing the digital signature of the parties.

The words 'shall presume' and 'unless the contrary is proved' are missing, yet the presumption is rebuttable in nature and not conclusive, Which suggest that the burden lies upon the person who dispute the presumption, to prove that the agreement was not concluded by affixation of the digital signature shall presume expression implies that whenever it is directed by this Act that the Court shall presume a fact, it shall regard such fact as proved, unless and until it is disproved (Section.4).

As per Indian Evidence Act 1872, Evidence of terms of contracts, grants and other dispositions of property reduced to form of documents, No evidence can be given in proof of the terms such a contract etc.

Syllabus Topic : Proving Electronic Messages

8.5 Proving Electronic Messages

Q. 8.5.1 Explain proving electronic records. (Ref. Sec. 8.5)

(5 Marks)

- Electronic records and electronic messages status of documentary evidence. Nowadays many people are using emails. Email messages can be easily campus and manipulated so it is important to take precaution when giving email as evidence.
- Digital signature enhances the credibility of the email message. Data is encrypted using the asymmetric cryptosystem it is recognized as digital signature under the IT Act 2000.
- Digital signature is used to identify the signatory and grant integrity to the data.
- Reception 12 of IT Act gives the information about acknowledgement of receipt of an electronic record .Is used for the identification of the originator and their addresses, and of the sending and receiving messages.

8.5.1 Section 12 : Acknowledgement of Receipt

- (1) Where the originator has not stipulated that the acknowledgement of receipt of electronic record be given in a particular form or by a particular method, an acknowledgement may be given by :
 - (a) Any communication by the addressee, automated or otherwise; or



- (b) Any conduct of the addressee, sufficient to indicate to the originator that the electronic record has been received.
- (2) Where the originator has stipulated that the electronic record shall be binding only on receipt of an acknowledgement of such electronic record by him, then, unless acknowledgement has been so received, the electronic record shall be deemed to have been never sent by the originator.
- (3) Where the originator has not stipulated that the electronic record shall be binding only on receipt of such acknowledgement, and the acknowledgement has not been received by the originator within the time specified or agreed or, if no time has been specified or agreed to within a reasonable time, then, the originator may give notice to the addressee stating that no acknowledgement has been received by him and specifying a reasonable time by which the acknowledgement must be received by him and if no acknowledgement is received within the aforesaid time limit he may after giving notice to the addressee, treat the electronic record as though it has never been sent.

The following are the questions pertaining electronic messages :

1. Identity of originator.
 2. E-message receipt.
 3. The identity of the message as fed into the computer for transmission by the originator, with the message as received by the addressee.
 4. The contents of electronic messages are not change.
 5. Contents of electronic.
- As the email messages sent by the originator digital signature, so it is identity of the originator and the message. The digital signature in world hash function and encryption of the data. So, the integrity of the evidence can be proved using digital signature.

8.5.2 Pieces of Evidence Relevant for the Originator

- The author statement of images that is the original to himself.
- Witness statement, if any, who is having the knowledge of content of the e-message in question to the addressee.
- Proof of the email address from where the e-message was sent to the addressee.
- The acknowledgement, if any, from the email service regarding the confirmation that the message has been sent to the addressee's email address.
- The acknowledgement, if any, of the receipt of the e-message by the addressee.

- User log maintained with network service provider that the email was sent by the originator to the addressee.
- Other supporting evidence.

8.5.3 Pieces of Evidence Relevant for the Addressee

- Proof of the email address of the originator through documents if any like letters where the originator has mentioned his email address.
- Oral evidence of persons who may be aware of the email address of the originator.
- Proof of identification of the originator through the users log maintained with the network service provider.
- Evidence of the fact that the e-message has been shown in the email account of the addressee as having been sent from the email address of the originator.
- Oral evidence of the person who have knowledge of the receipt of the e-message by the addressee.
- Evidence related to acknowledgement of receipt of an electronic record as proof.
- Other supporting evidence.
- In the Indian evidence Act the following legal presumption has been granted electronic messages.

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8.5.4 Section 88A : 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 (a) of sub-section (1) of Section 2 of the Information Technology Act, 2000.

Evidences as to time and place of dispatch and receipt of the electronics record would depend upon the ingredients of Section 13 of IT Act.

8.5.5 Section 13 : Time and Place of Dispatch and Receipt of Electronic Record

- (1) Save as otherwise agreed to between the originator and the addressee, the dispatch of an electronic record occurs when it enters a computer resource outside the control of the originator.



- (2) Save as otherwise agreed between the originator and the addressee, the time of receipt of an electronic record shall be determined as follows, namely :
- If the addressee has designated a computer resource for the purpose of receiving electronic records,
 - Receipt occurs at the time when the electronic record enters the designated computer resource; or
 - If the electronic record is sent to a computer resource of the addressee that is not the designated computer resource, receipt occurs at the time when the electronic record is retrieved by the addressee;
 - If the addressee has not designated a computer resource along with specified timings, if any, receipt occurs when the electronic record enters the computer resource of the addressee.
- (3) Save as otherwise agreed to between the originator and the addressee, an electronic record is deemed to be dispatched at the place where the originator has his place of business, and is deemed to be received at the place where the addressee has his place of business.
- (4) The provisions of sub-section (2) shall apply notwithstanding that the place where the computer resource is located may be different from the place where the electronic record is deemed to have been received under sub-section (3).
- (5) For the purposes of this Section,
- If the originator or the addressee has more than one place of business, the principal place of business, shall be the place of business;
 - If the originator or the addressee does not have a place of business, his usual place of residence shall be deemed to be the place of business;
 - "Usual place of residence", in relation to a body corporate, means the place where it is registered.

Syllabus Topic : Other Amendments In the Indian Evidence Act by the IT Act

8.6 Other Amendments in the Indian Evidence Act by the IT Act

Q. 8.6.1 Explain other amendments in the Indian Evidence Act by the IT Act.

(Ref. Sec. 8.6)

(5 Marks)

- In Section 3 of the Indian evidence Act, 1872 it is mentioned that "Certifying Authority", electronic signature, Electronic Signature Certificate, "electronic form", "electronic

"records", "information", "secure electronic record", "secure digital signature" and "subscriber" shall have the meanings respectively assigned to them in the Information Technology Act, 2000.

The other amendments done in the Indian Evidence Act by the IT Act are as follows :

8.6.1 Section 90A : Presumption as to Electronic Records Five Year Old

Where any electronic record, purporting or proved to be five years old, is produced from any custody which the court in the particular case considers proper, the court may presume that the digital signature which purports to be the digital signature of any particular was so affixed by him or any person authorized by him in this behalf.

Explanation : Electronic records are said to be in proper custody if they are in the place in which, and under the care of the person with whom, they naturally be; but no custody is improper if it is proved to have had a legitimate origin, or the circumstances of the particular case are such as to render such an origin probable. This Explanation applies also to Section 81A.

» Section 131 : Production of documents or electronic records which another person, having possession, could refuse to produce

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.

Syllabus Topic : Amendments to the Bankers Books Evidence Act, 1891 and Reserve Bank of India Acts, 1934

8.7 Amendments to the Bankers Books Evidence Act, 1891 and Reserve Bank of India Acts, 1934

Q. 8.7.1 Explain amendments to the bankers books evidence act, 1891 and Reserve Bank of India Acts, 1934. (Ref. Sec. 8.7) (5 Marks)

- The definition of banker's book is amended by the IT Act, 2000, So as to include within its ambit printouts of data stored in the floppy, disc, tape for any other form of electromagnetic data storage device.
- Before the amendments bankers' books includes ledgers, day- books, cash-books, account books and all other books used in the ordinary business of a bank.



- The definition of 'certified copies' amended by IT Act. Sub clause (b) has inter alia been added to clause (8) of Section 2 of the Banker's Book Evidence Act, 1891:
 - (a) clause (8) "Certified copy" means when the books of a bank,
 - (b) Consist of printouts of data stored in a floppy, disc, tape or any other electro-magnetic data storage device, a printout of such entry or a copy of such printout together with such statements certified in accordance with the provisions of [Section 2A]
- Section 2A is added in Bankers Book Evidence Act by the IT act. This tells about the requirements for admissibility of a certified copy as defined :

8.7.1 Section 2A : Conditions In the Printout

- A printout of entry or a copy of printout referred to in sub-section (8) of Section 2 shall be accompanied by the following, namely :
 - (a) A certificate to the effect that it is a printout of such entry or a copy of such printout by the principal accountant or branch manager; and
 - (b) A certificate by a person in-charge of computer system containing a brief description of the computer system and the particulars of,
 - (A) The safeguards adopted by the system to ensure that data is entered or any other operation performed only by authorized persons;
 - (B) The safeguards adopted to prevent and detect unauthorized change of data;
 - (C) The safeguards available to retrieve data that is lost due to systemic failure or any other reasons;
 - (D) The manner in which data is transferred from the system to removable media like floppies, discs, tapes or other electro-magnetic data storage devices;
 - (E) The mode of verification in order to ensure that data has been accurately transferred to such removable media;
 - (F) The mode of identification of such data storage devices;
 - (G) The arrangements for the storage and custody of such storage devices;
 - (H) The safeguards to prevent and detect any tampering with the system; and
 - (I) Any other factor which will vouch for the integrity and accuracy of the system.
 - (c) A further certificate from the person in-charge of the computer system to the effect that to the best of his knowledge and belief, such computer system operated properly at the material time, he was provided with all the relevant data and the printout in

The question represents correctly, or is appropriately derived from, the relevant data.
The amendments are done in Section 58 of Reserve Bank of India Act, 1934 by the IT Act 2000.

The Central Board of The Reserve Bank of India has granted the power for :

(pp) the regulation of fund transfer through electronic means between the banks or between the banks and other financial institutions referred to in clause (c) of Section 45-I, including the laying down of the conditions subject to which banks and other financial institutions shall participate in such fund transfers, the manner of such fund transfers and the rights and obligations of the participants in such fund transfers.

Exam Pack (Review Questions)

8.8

Syllabus Topic : Status of Electronic Records as Evidence

- Q. 1 Explain the terms evidence, proved and facts. (Refer Section 8.1.1) (5 Marks)
- Q. 2 Write down the provisions of the Indian evidence Act, 1872 which are altered in IT Act, 2000. (Refer Section 8.1.1) (5 Marks)
- Q. 3 Write the definition of the document and explain the illustration for document and the ingredient of the definition of document. (Refer Section 8.1.1) (5 Marks)
- Q. 4 What is electronic record, data and computer system? Write the characteristics of electronic records. (Refer Section 8.1.1) (5 Marks)

Syllabus Topic : Proof and Management of Electronic Records; Relevancy, Admissibility and Probative Value of E-Evidence

- Q. 5 Explain the admissibility of electronic records. (Refer Section 8.2.1) (5 Marks)
- Q. 6 Explain relevancy. (Refer Section 8.2.2) (5 Marks)
- Q. 7 What are the different types of evidences ? (Refer Section 8.2.3) (5 Marks)

Syllabus Topic : Proving Digital Signatures

- Q. 8 Explain proving digital signature. (Refer Section 8.3) (5 Marks)

Syllabus Topic : Proof of Electronic Agreements

- Q. 9 Explain proof of electronic agreements. (Refer Section 8.4) (5 Marks)

Syllabus Topic : Proving Electronic Messages

- Q. 10 Explain proving electronic records. (Refer Section 8.5) (5 Marks)



☞ Syllabus Topic : Other Amendments In the Indian Evidence Act by the IT Act

Q. 11 Explain other amendments in the Indian Evidence Act by the IT Act .

(Refer Section 8.6)

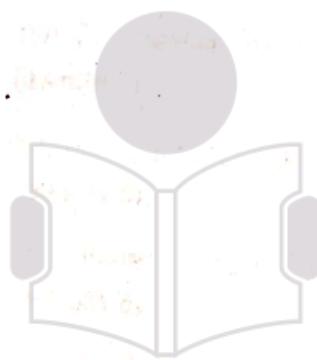
(5 Marks)

☞ Syllabus Topic : Amendments to the Bankers Books Evidence Act, 1891 and Reserve Bank of India 12 53 Acts, 1934

Q. 12 Explain amendments to the bankers books evidence act, 1891 and Reserve Bank of India 12 53 Acts, 1934. (Refer Section 8.7)

(5 Marks)

Chapter Ends...



E-next

THE NEXT LEVEL OF EDUCATION