

**ADDUCING ELECTRONIC EVIDENCE IN COURTS OF LAW***By*

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The Information Technology in India made amendments in the Indian Evidence Act, 1872. The most important amendments were made in Indian Evidence Act, 1872 being Section 65-A and Section 65-B relating to electronic records and its admissibility.

The amendments made in Indian Evidence Act, 1872, being Section 85-A, 85-B and 85-C as regards to the presumption as to the electronic record and digital signature, electronic agreement, digital signature certificate are also vital importance for appreciating the evidence in cyber world and the amendments being Section 81-A presumption as to the Gazettes in electronic form, Section 67-A as regards to the proof of digital signature, Section 90-A as regards to the presumption for the electronic records five years old are also relevant and vital provisions to appreciate the evidence through electronic and cyber world.

According to the definition of the word "Evidence" as per Section 3 of the Indian Evidence Act and Section 2 of the Information Technology Act, the electronic record is included in document and may be produced as evidence.

As per Aas Zucker Man (in the Principles of Criminal Justice 1989)-computer can act as a reservoir of evidence for enforcement agencies, if only one knows how to and where to look for it.

Justice *Stephen Breyer* of the US Supreme Court told on "Science in the Court Room", "In this age of science, science should expect to find a warm welcome, perhaps a permanent home, in our Court rooms. Our decisions should reflect a proper scientific

and technical understanding so that the law can respond to the needs of the public".

The nature of computer based electronic evidence is such that it poses unique challenges to ensure its admissibility in Court.

In the land mark decision in *Daubert Merrel Dow Pharmaceuticals Inc*, the American Supreme Court has however sounded a note of warning in the matter of the Courts placing reliance on conclusions of science. The Hon'ble Court observed: "there are important differences between the quest for truth in the Court room and the quest for truth in the laboratory. Scientific conclusions are subject to perpetual revision. Law on the other hand, must resolve disputes finally and quickly. "This view was referred by our Hon'ble Supreme Court in *AP Pollution Control Board v. Prof. MV Naidu*.

In *State of Maharashtra v. Praful B. Desai* case, AIR 2003 SC 2053; the Hon'ble Supreme Court has observed that advancement in science and technology has also helped the process of law, in administration of justice.

In United States of America and other parts of the developed world the Email as evidence has helped Judiciary to adjudicate different cases, famous among them is the *Monica Lewnsky v. Bill Clinton (Former President of USA)* case in 1999.

Conjoint reading of Information Technology Act and the amended Indian Evidence Act, in terms of definition of electronic record and document, it is now settle law that computer images, text and sound stored, whether on a computer file, blog, web-site, emails are all documents.

Now the amended definition of “evidence” includes the electronic records as documentary evidence.

*The process of leading Electronic Evidence:*

1. Admissibility and relevancy of evidence,
2. Proof of electronic records: Section 4 of the Information Technology Act and Section 65-B of the Indian Evidence Act,
3. Authorship of electronic records,
4. Proof of Email: Section 88-A of the Indian Evidence Act and Section 12 of the Information Technology Act are relevant in this field. Section 45-A of the Indian Evidence Act read with Section 79-A of the IT Amended Act, 2008 provide when the Court will form an opinion on any matter relating to any information transmitted or stored in any computer resource or any other electronic or digital form and the opinion of the Examiner of the Electronic Evidence are relevant.
5. Proof of Electronic Signatures: The relevant provisions are Sections 3, 47-A, 67-A, 85-A, 85-B, 85-C and 90-A of the Indian Evidence Act.
6. Proof of Computer Processes and value of Electronic Evidence.

Due to their pervasiveness in our day-to-day life computer, mobile phone and Internet has become the hubs of evidence of acts, events, communication, conduct motives and intent.

*Digital or Electronic Evidence:*

*Jagjit Singh v. State of Haryana* case, (2006) 11 SCC 1; The Speaker of the Legislative Assembly of the State of Haryana disqualified a member for defection. When hearing the matter, the Supreme Court considered the appreciation of 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.

The comments in this case indicate a trend emerging in India Courts. Courts are beginning to recognize and appreciate the importance of digital evidence in legal proceedings.

*Electronic Record:*

Any data that is recorded or preserved on any medium in, or by a computer system or other similar device. It includes a display, printout or other output of that data.

Electronic evidence can be classified into the following categories:

- (a) computer and electronic hardware,
- (b) computer software,
- (c) processing in the computer system
- (d) electronic communication through E-mail, on line chat and Internet telephony,
- (e) Blogs,
- (f) Web-sites,
- (g) Electronic content such as text, images and sound.

*Admissibility and Relevancy of Electronic Evidence:*

Admissibility and relevant are different legal requirements. Admissibility of evidence implies the legal permissibility to adduce the same. Evidence that is barred under the Indian Evidence Act can be said to be inadmissible.

**Legal Recognition of Electronic Record and E-Contract:** According to Section 4 of the Information Technology Act: Legal recognition of electronic record-

Where any law provides that information or any other matter shall be in writing or in

the type written 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) recorded or made available in an electronic form, and b) accessible so as to be usable for a subsequent reference.

As per Section 10-A of the Information Technology Act, validity of contracts formed through electronic means:

Where in a contract formation, the communication of proposals, the revocation of proposals and acceptances, as the record, such contract shall not be deemed to be unenforceable solely on the ground that such electronic form or means was used for that purpose.

Affidavit under Section 65-B, Indian Evidence Act is not absolute:

The mandate to file an affidavit under Section 65-B is not always absolute. The Hon'ble Supreme Court made observation in the case of *State v. Navajot Sandhu*, (2005) 11 SCC 600; printouts from the computers by mechanical process and certified by a responsible official of the service providing company can be led into evidence through a witness who can identify the signatures of the certifying officer or otherwise speak to the facts based on his personal knowledge.

In *State v. Navajot Singh* (supra) and *P. Padmanabb v. Syndicate Bank Ltd., Bangalore*, AIR 2008 Kant. 42; it was held that the non-compliance of Section 65-B, Indian Evidence Act, 1872 is not always fatal if secondary evidence can be given in any circumstances.

The evidence relating to electronic record, as noted herein before, being no special provision, the general law under Section 63 read with Section 65 of the Indian Evidence Act shall yield to the same *Generalia Specialibus non derogant*, special law will always prevail over the general law. Section 59 and Section 65-A dealing with admissibility of electronic record. Sections 63 and 65 of Indian Evidence Act, 1872 have no application in the case of secondary evidence by way of electronic record, the same is wholly governed by Section 65-A and Section 65-B. An electronic record by way of secondary evidence shall not be admitted in evidence unless the requirements under Section 65-B are satisfied. Thus in the case of CD, VCD, Chip, etc., the same shall be accompanied by the certificate in terms of Section 65-B obtained at the time of taking the document, without which the secondary evidence relating to that electronic record is inadmissible as observed by the highest Court of the land in *Anwar PV v. PK Basbeer and others*, in Civil Appeal No.4226 of 2012.

## APPOINTMENT OF JUDGES—II

By

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India is earlier ruled by many rulers, there used to be close relation between Law and Religious Heads. Holding the charge for the post of King is a philosophical one rather than thinking about their comforts, honestly,

discipline, adherence to the principles of social, economical and religious dictions are known from Aryan Times till Indus civilization. The true intention of this system is aimed at providing justice to all irrespective