

THE IMPACT OF DIGITAL EVIDENCE ON MODERN LEGAL PROCEEDINGS

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ABSTRACT

With the era of flourishing technology and remarkably increasing digitalized society, the legal landscape is evolving to match the velocity of the admissibility of digital evidence in courts according to the Indian Evidence Act, 1872¹. The transpiring picture of the rising cybercrimes or social media crimes has made it vital with respect to the pursuit of justice to utilize digital evidence in deciding cases. This article explores the manifold aspects of digital evidence from its inception to its application in the Indian legal context. However, this paradigm shift has opportunities and digital challenges, thereby necessitating its elaborate acceptance and impacts in the court of law. If we fall short of this now, then it will be too late to cover the lagging journey of cases and evidence. Digital evidence encompassing a wide array of electronic evidence, video conferencing, metadata, social media content, e-mails, and artificial intelligence, has become an indispensable part of the realm of legal proceedings.

Digital evidence can prove counter-productive, as it is a double-edged sword, offering both boon and bane to legal practitioners and the judiciary. The potential of incorporating it is lofty but inevitable. With the courts performing live streaming of court proceedings, usage of computer monitors to facilitate the sightlines of participants. With the compact system components, it would be easier to manage the interests of the technology and the people in a single courtroom, defying challenges like space availability, and placing relatively bulky components, without the ruckus of a nest of cables running across floors and furniture.

Further, for streamlining the operation of such electronic components, computer operators, and technicians, must also be appointed at courts, so that in case of any glitch, or failure to upload information, can be immediately solved without delaying justice any further. Hence, it is an alarming stage that a “technology system renovation plan” be adopted by at least more than 75% of courts. Indian courts have accepted and rejected digital evidence in the past in a few cases which gives us a light of further consideration of the same by the judges. The change is unavoidable and as one cannot avoid the unavoidable, it's high time that we realise the

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¹ Indian Evidence Act, 1872

importance of digital evidence. There is an undeniably huge task if the plan is executed in a country like India, with the delay in renovation, and pendency of cases.

Keywords: Electronic Evidence, Electronic Records, Admissibility.

WHAT IS EVIDENCE?

‘Evidence’ is a word derived from the Latin word ‘evidera’ which means to discover clearly, to ascertain or to prove. According to Blackstone, evidence “signifies that which demonstrates, makes clear or ascertains the truths or facts or points in issue either in one side or the other”². Section 3³ of the Indian Evidence Act, defines 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 facts 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.

This definition of evidence in the act is objected to have loopholes as it does not include the following –

- Vital evidence other than documents, eg: weapons, materials that are of stolen property.
- Oral testimony made out of court or before the court proceedings by the parties.
- A thong-like struggle in the case of murder.
- The outcome of local inspection.
- Identification proceedings.

The answer to the objection can be given that section 3 is a definition clause that only explains the evidence. The definition of “evidence” considered with the definition of “proved” in the act, will not give rise to such objection⁴. In this digital age, where the dissemination of data is online, electronic evidence becomes vital. This has been realised for proving offences,

² Batuk Lal, The Law of Evidence, (21st edition, Central Law Agency 2015) 1

³ Indian Evidence Act, 1872, s 3

⁴ Batuk Lal, The Law of Evidence, (21st edition, Central Law Agency 2015) 2

subsequently through amendments of s.65 has been expanded to give sanction to Electronic Records as Digital evidence.

The authenticity of these since they are sensitive in nature, places them on a pedestal of doubt. However, on many occasions, the courts have reiterated that proof or testaments received by new techniques and devices cannot be refused as evidence, provided that their accuracy can be proved⁵. The digital path of any statement in the electronic record must be provided to the courts. The court considers that synthesized evidence must be present with its entire path.

LANDMARK CASES ON THE ADMISSIBILITY OF DIGITAL EVIDENCE IN COURTS

As stated above the data in electronic devices are sensitive and can be tampered with easily, it is vital to glean the landmark judgements upon which the courts have given their two cents to maneuver through the way to produce electronic evidence in court.

In the case of *Anvar P.V. vs P.K. Basheer & Ors*, 2014⁶, it was said that if an electronic device as such is primary evidence under section 62⁷ of the evidence act, the same is admissible without compliance with the requirement of section 65⁸ of the evidence act. The highlight here is the primary evidence, which means the data should not have been sent or transferred to the device via mail, or any other social media platforms. In this case, the certificate from an authority about the authentication of data is not necessary. The second case I would like to bring to notice is the *Shafhi Mohammad vs The State Of Himachal Pradesh*, 2018⁹. The court held that the requirement of a certificate being procedural in nature can be relaxed by the court wherever the interest of justice so requires. Example: when an electronic device is produced by the party, not in possession of such device.

Further in the case of *Arjun Panditrao Khotkar vs Kailash Kushanrao Gorantyal* on 14 July 2020¹⁰ the issues raised were whether the requirement of a certificate for producing electronic evidence is mandatory, and at what stage the certificate should be produced. The 3-judge bench

⁵ *Ram Singh v. Col Ram Singh*, 1985 (Supp) SCC 611, *Tukaram S. Dighole v. Manikrao Shivaji Kokate*, (2010) 4 SCC 329

⁶ Indian Kanoon, (18 September 2014) < *Anvar P.V vs P.K.Basheer & Ors*, 2014> accessed 13 October 2023

⁷ Indian Evidence Act, 1872, s 62

⁸ Indian Evidence Act, 1872, s 65

⁹ Indian Evidence Act, 1872, (30 January 2018) < *Shafhi Mohammad vs The State Of Himachal Pradesh* 2018> accessed 1 November, 2023

¹⁰ Indian Evidence Act, 1872 (14 July 2020) < *Arjun Panditrao Khotkar vs Kailash Kushanrao Gorantyal* 2020> accessed 13 October 2023

in the present case held the Shafi Mohammed judgement to be incorrect and said that a major premise of the case that such a certificate cannot be produced by persons who are not in possession of an electronic device is completely false. An application to a judge can always be made judge for such a certificate from the requisite person under section 65 B (4)¹¹ in cases in which such a person refuses to give it. After an application is made to the court, and the court then orders or directs, that the requisite certificate be produced by a person to whom it sends a summon to produce such certificate. The party seeking the certificate has done everything that it had in its hands to obtain the requisite certificate. Since the concerned party had done everything possible to obtain the necessary certificate, which was to be given by a third party over whom the party had no control, he must be relieved of the mandatory obligation contained in the subsection. The court articulated that in cases where the original document is produced, there is no requirement for a certificate. When a “computer system” is part of the computer network and infeasible to install such a system in a court, then we can only comply with 65 B (1)¹², along with a certificate section 65B (4)¹³. Further, in cases where either a shoddy certificate is given or in cases where such certificate, if demanded is not given by the concerned person, the judge conducting the trial must summon the persons referred to in section 65 B (4) of the evidence act¹⁴, and require that such certificates be given by such person/persons.

In civil cases, discretion can be used by the court subject to the interest of justice. Speaking of criminal trials, one should be mindful of the general principle that the prosecution must establish all documents that it seeks to rely upon before the commencement of the trial, under the relevant sections of the Code of Criminal Procedure¹⁵. Keeping in mind the rights of the accused in a criminal trial the bench observed that in terms of the general procedure, the prosecution is obligated to supply all documents upon which reliance may be placed to an accused before commencement of the trial. Thus, the exercise of the power by the courts in criminal trials in permitting evidence to be filed, should not result in irreversible prejudice to the accused.

With the flourishing technological era, the Supreme Court had observed in *R.M. Malkani v. State of Maharashtra*¹⁶ recording of the conversation is admissible in evidence as long as it is

¹¹ Indian Evidence Act, 1872, s 65B (4)

¹² Indian Evidence Act, 1872, s 65B (1)

¹³ Indian Evidence Act, 1872, s 65B (4)

¹⁴ Indian Evidence Act, 1872, s 65B (4)

¹⁵ Code of Criminal Procedure, 1973

¹⁶ *R. M. Malkani vs State Of Maharashtra*, 1972

relevant to the issue in the present case; provided that authenticity of voice and correctness and accuracy of voice is proved by quashing the certainty of the recorded conversation. A coeval tape record of such conversation is relevant evidence and is admissible under section 7 of the Indian Evidence Act, 1872¹⁷.

In *Sanjaysinh Ramrao Chavan v. Dattatray Gulabrao Phalke*¹⁸, The offence of asking bribe was to be proved by producing a tape-recorded conversation. The conversation was not of audible quality, as was stated in the report of the Directorate of Forensic Science Laboratories, State of Maharashtra. Therefore, it was rejected for spectrographic analysis. It was argued on behalf of the respondent that the conversation/ dialogue had been translated and its accuracy had been attested to by a panch witness. As the panch witness wasn't in the room, he couldn't hear the conversation.

The apex court stated that as the origin of the voice recorder is uncertain, it is baseless to go further for the translated version and have no source for authenticity. It's important to handle and decode evidence in a reliable and cogent manner to ensure its admissibility in court. The statements produced must be in accordance with the provisions mentioned in the Evidence and Information Technology Act. Digital evidence is hard to obtain and trace, but it has become essential to prove facts in civil and criminal cases¹⁹

When we take note of criminal trials, it can be said to be part of the natural law that the accused must be supplied with all documents before the commencement of the trial, in compliance with the relevant sections of the Code of Criminal Procedure, 1973. Considering the rights of the accused the courts have stated that the prosecution is obligated to supply the documents upon which reliance may be placed on the accused before the trial. Thus, the exercise of power by the courts in criminal trials in permitting evidence to be filed earlier should not result in serious or irreversible prejudice to the accused.

¹⁷ Richa Chadha, 'Admissibility of Digital Evidence' (Legal Service India) <<https://www.legalserviceindia.com/legal/article-5876-admissibility-of-digital-evidence.html>> 3

¹⁸ *Sanjaysinh Ramrao Chavan vs Dattatray Gulabrao Phalke & Anr*, 2015

¹⁹ Richa Chadha, 'Admissibility of Digital Evidence' (Legal Service India) <<https://www.legalserviceindia.com/legal/article-5876-admissibility-of-digital-evidence.html>> accessed 3 November 2023

CONCLUSION

The evolution of Indian evidence law is dynamic, as is the nature of law. It has risen up to the complexities and difficulties of technology and the cyber world. Our judiciary's incorporation of suitable revisions to Evidence Law demonstrates pro-activism. Based on past cases and the emerging digital era, law enforcing bodies and investigating officers, subordinates must upgrade themselves on the authentication process stipulated by the court regarding the admissibility of electronic/digital evidence to successfully overcome hurdles in trial proceedings. Technical training of law enforcement authorities in dealing with cyber-related evidence, as well as the correct application of procedure and sections of Evidence Law when presenting such evidence in court, is critically necessary in recent times. The common man, when a complainant should now be informed that when submitting evidence to police or courts, besides digital steps like E-FIR, he should submit it with a certificate under section 65B (4)²⁰ of the Indian Evidence Act so the court takes cognizance and reads it as a primary evidence, this would make it feasible for the layman as well as the authorities.



²⁰ Indian Evidence Act, 1872, s 65B (4)