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# ADMISSIBILITY OF ELECTRONIC RECORDS IN INDIAN EVIDENCE ACT, 1872

## A Introduction:

- 1 Section 3 of the Evidence Act, 1872 (in short “**the Evidence Act**”) defines the term “Evidence” which means and includes all documents including electronic records produced for the inspection of the court. Such documents are called documentary evidence.
- 2 Under Section 2 (1) (t) of the Information Technology Act, 2000, ‘Electronic Record’ mean data, record or data generated, image, or sound stored, received or sent in an electronic form or micro film or computer-generated micro fiche.
- 3 Sections 65A and 65B of the Evidence Act were inserted by the Amendment Act No. 21 of 2000 under the Second Schedule to the Information Technology Act, 2000 with effect from 17th October 2000 to incorporate the admissibility of electronic evidence in the Evidence Act.
- 4 Section 65B of the Evidence Act explains the conditions under which an electronic record can be considered admissible in a Court as a document and it needs to be suitably confirmed for the Hon’ble Court to accept the document, which is often termed as “Section 65B Certificate or Statement”.
- 5 Section 65B of the Indian Evidence Act refer to the special provisions of the Evidence Act in respect of Electronic Documents.
- 6 A digital charge sheet was held to be an electronic document and it can be accepted as an electronic record. The Hon’ble Supreme court directed to supply of charge sheet in electronic form additionally. [*Thana Singh vs. Central Bureau of Narcotics, (2013) 2 SCC 590*]
- 7 Hard Disc is a storage devise. If written, then it becomes electronic record under the Evidence Act. Under section 65B it has to be proved that the computer during the relevant period was in the lawful control of the person proving the email. [*Babu Ram Aggarwal & Anr vs. Krishan Kumar Bhatnagar & Ors. 2013 IAD (Delhi) 441*].

## B Relevance of Certificate under Section 65 B of the Evidence Act:

- 1 Any documentary evidence printed or copied from an

electronic record which is in the nature of secondary evidence is required to be proved under Section 65 of the Evidence Act and can be proved under the procedure prescribed under Section 65B of the Evidence Act.

- 2 Section 65B refers to a process of producing a computer output of the electronic document such as emails, print-outs, etc. before the Hon’ble Court such that the same could be admitted in evidence.
- 3 Any information contained in an electronic shall be deemed to be a document, if, it satisfies the conditions mentioned under Section 65B (2), i.e. accompanied by a ‘Certificate/affidavit’ verifying the authenticity of the documents produced, without any further proof or production of the original.
- 4 There is a process by which the electronic document becomes the computer output and Section 65B identifies this as the subject activity, which needs to be conducted by a person having lawful control over the computer producing such output and that during the period of such production, the computer should be working properly.
- 5 Section 65B of the Evidence Act says that electronic records need to be certified by a person occupying a responsible official position for being admissible as evidence in any Court proceedings.
- 6 Section 65B (4) adds a requirement of a certificate to be attached with this deemed document if the same is to be submitted as evidence.
- 7 The requirement under Section 65B (4) has been put by the legislature to safeguard the source and authenticity of the electronic record because such records are easily capable of being digitally altered, manipulated, faked, destroyed and recreated. However, there appears to be a judicial tussle regarding the fact that whether or not this certificate should be mandatory for the admission of electronic evidence.
- 8 A certificate under Section 65B (4) of the Evidence Act, is to be applied only when an electronic record can be produced by a person who is capable of giving a certificate. Such person should be in control of the device and the device should not belong to the opposite party [*Shafhi Mohammad vs. The State of Himachal Pradesh, (2018) 2 SCC 801*].



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**c Indian Judiciary on Section 65B of the Evidence Act:**

- <sup>1</sup> Documentary evidence under Chapter V of the Evidence Act is of great importance during the course of trial as the same is the primary piece of evidence.
- <sup>2</sup> In *Ram Singh & Others vs. Col. Ram Singh*, [1985 (Supp) SCC 611], the Hon'ble Supreme Court observed that it will be wrong to deny to the law of evidence advantages to be gained by new techniques and new devices, provided the accuracy of the recording can be proved. It was further observed that such evidence should always be regarded with some caution and assessed in the light of all the circumstances of each case.
- <sup>3</sup> In *Anvar P. V. vs PK Basheer & Ors* [(2015) 11 SCC 600], the Hon'ble Supreme Court observed that any electronic record can be proved only in accordance with the procedure prescribed under Section 65 B in view of the existence of Section 59 and 65A of the Evidence Act.
- <sup>4</sup> The Hon'ble also further stated in *Anvar P. V. vs PK Basheer & Ors*, [(2015) 11 SCC 600], person issuing the certificate need to state in the certificate that the same is to the best of his knowledge and belief. Most importantly, such a certificate must accompany the electronic record like computer printout, Compact Disc (CD), Video Compact Disc (VCD), pen drive, etc. pertaining to which a statement is sought to be given in evidence, when the same is produced in evidence.
- <sup>5</sup> In *Shafhi Mohammad vs. The State of Himachal Pradesh*, [(2018) 2 SCC 801], the Hon'ble Supreme Court observed that a party, who is not in possession of a device which has produced an electronic document, need not be required to produce a certificate under Section 65 B (4) of the Evidence Act. It was further held that the requirement of producing a certificate can be relaxed by the court, if it is justified in the interest of justice.

- <sup>6</sup> However, recently a two-member bench of the Hon'ble Supreme Court in *Arjun Panditrao Khotkar vs. Kailash Khusanrao* in Civil Appeal No. 2082520826 of 2017, in its Daily Order dated 26th July 2019, has observed that reliance in electronic records during investigation has increased and therefore, the law needs to be laid down in this regard with certainty. The Hon'ble Court referred the case to a larger bench referring *Shafi Mohammad vs. The State of Himachal Pradesh*, and *Anvar P. V. vs PK Basheer & Ors*, 2015 Judgments for reconsideration.

**D Conclusion:**

- <sup>1</sup> Every Court has their own standard format for filing of electronic record in the Courts.
- <sup>2</sup> A copy of a document, which is to be produced as evidence shall be taken out in the form of a print out or in image. The copy retrieved from the storage device shall satisfy the conditions providing for the admissibility of such output. The print out or image shall be accompanied by an affidavit.
- <sup>3</sup> The Certificate under Section 65 B (4) of the Evidence Act shall fulfil the following conditions:
  - a Identify the electronic records.
  - b Describe the manner in which the electronic record was produced.
  - c Furnish the particular of the device involved in the production of that record.
  - d Sign by a person occupying a responsible official position in relation to the operation of the relevant device.
  - e The person giving the Certificate shall state in the certificate that the same is best to his knowledge and belief.