

A Comparative Analysis of the Admissibility of Electronic Records: Evaluating Section 63 of the Bharatiya Sakshya Adhiniyam, 2023 and Section 65B of the Indian Evidence Act, 1872

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Abstract—This article examines the significant advancements in India's evidence laws introduced by the Bharatiya Sakshya Adhiniyam, 2023 (BSA), with particular focus on Section 63, which modernizes the admissibility of electronic records. As Chief Justice Dr. D.Y. Chandrachud champions digitization within India's judiciary, the BSA addresses limitations found in Section 65B of the Indian Evidence Act, 1872 (IEA), which, despite its amendment in 2000 to include electronic records, struggled to adapt to rapid technological advancements. Key improvements in Section 63 include expanding admissibility to a broader array of electronic communications, such as telephonic and social media records, and introducing two-factor authentication for digital evidence. Furthermore, Section 63 clarifies the mandatory nature and structure of certification, addressing ambiguities from Section 65B and providing clearer standards to enhance judicial efficiency. However, successful implementation of these reforms will require careful management, including training for judges and legal experts, and establishing a robust framework for forensic examination. Additionally, the article suggests that further reforms will be needed to accommodate emerging technologies, such as blockchain and artificial intelligence, to maintain data integrity and support fair trials. By integrating modern standards for electronic evidence, the BSA positions India's legal system to better balance authenticity with accessibility, addressing both current and future digital challenges while minimizing reliance on judicial interpretation.

Index Terms—Bharatiya Sakshya Adhiniyam, Electronic records, Judicial efficiency, fair trials, data integrity.

I. INTRODUCTION

The societal dynamics and the upliftment and development of civilisation have been the result of technological advancement. This has also infiltrated the legislative and jurisprudential domain, hence it is

essential to incorporate them effectively in the legislation. Chief Justice of India Dr D Y Chandrachud has also emphasized on the Digitisation of court records, e-filing and promoting paperless judiciary¹. In this increasingly digital world, the legal framework surrounding the admissibility of electronic records has become paramount. Also in the case of Som Prakash v. State Of Delhi², the Supreme Court has rightly observed that “in our technological age nothing more primitive can be conceived of than denying discoveries and nothing cruder can retard forensic efficiency than swearing by traditional oral evidence only thereby discouraging the liberal use of scientific aids to prove guilt.” On this note, The Bharatiya Sakshya Adhiniyam, 2023 (BSA) has introduced significant reforms to the existing laws governing evidence in India, particularly in relation to electronic records. This analysis aims to provide a detailed examination of Section 63 of the BSA and its relationship with Section 65B of the Indian Evidence Act, 1872 (IEA).

II. EVOLUTION OF EVIDENCE LAW IN INDIA

A. Pre Independence Era

The origin of the Evidence Act in India dates back to the British era, when the bill introduced by Dr James Fitzjames Stephen was approved by the British government in 1872³. This Indian Evidence Act was enacted to codify the rules of evidence and for the determination of facts in India.

B. Post Independence period

Later at the end of the 20th century, after the LPG (Liberalization, Privatisation, Globalization) reforms, India wanted to incorporate the United

Nations Commission on International Trade Law model on e-commerce through the Information Technology(IT) Act, 2000⁴. It is in this act, the definition of electronic records is first mentioned. This Act necessitated amendment to the Evidence Act,1872 in order to bring into this legislation, the admissibility of electronic records. The introduction of Section 65B in 2000 was an attempt to address this gap. This section provided a framework for admitting electronic records as evidence which was till then not accepted as evidence in the court of law. This was considered as a major milestone in the Indian legal system.

C. Latest Amendment to the Act

As technology advanced and became integral to daily life, the limitations of Section 65B became apparent. Therefore, The Bharatiya Sakshya Adhiniyam, 2023 was introduced as an initiative to revise the decade old evidence laws. It seeks to address the concerns which were not addressed by the erstwhile Indian Evidence Act,1872 by providing clearer guidelines and new requirements for electronic evidence.

III. SIGNIFICANCE AND OVERVIEW OF SEC 65B OF INDIAN EVIDENCE ACT, 1872

Section 65B of the erstwhile Indian Evidence Act,1872⁵ was introduced through an amendment in 2000 primarily to deal with the admissibility of electronic records. The Evidence Act of 1872 did not define the term 'electronic record', however Sec 2(t) of the IT act, 2000 defines it as "any data, record, image, or sound that is generated, stored, received, or sent in electronic form, including microfilm or computer-generated microfiche; essentially encompassing any digital data or information stored electronically."⁶ The following are some of the key provisions of the Sec 65B of Evidence Act,1872:

- a) Admissibility - Sec 65B(1) provides that the information contained in an electronic record which is stored in the computer shall be deemed to be a document if it meets certain conditions provided in the section and shall be admissible in any proceedings.
- b) Conditions to be satisfied - Sec 65B(2) deals with the conditions relating to the computer output, i.e the information stored in an electronic record. It states that the computer into which the computer output is present must be operating properly, should have been used regularly and must be fed into the computer during the

ordinary course of the said activities for which the computer was used. Similarly, Section 65B(3) provides for conditions relating to the computer system.

- c) Certificate requirement - Under Section 65B(4), a certificate from a person in a responsible official position is mandatory for the admissibility of electronic records. This certificate must verify the authenticity of the electronic record and outline how it was produced.

It is only through section 65B, the electronic records were considered to have equal standing with traditional records in any proceedings. This Section provides for certificate requirements to prove the authenticity of the documents in digital form. Though, this inclusion is a significant step towards addressing the technological intervention in the justice system, there are certain lacunae which are not addressed. The main reason being that the Evidence Act of 1872 could not cope up with the rapid development in the technological domain due to its limited scope.

IV. NEED FOR REFORM

When the evidence law in Britain was having discrepancies, Charles Dickens through his novel 'The Pickwick Papers' exposed the absurdity of rules⁷. In the similar manner, Indian judicial system has brought to light several lacunae that existed in the erstwhile Evidence Act of 1872.

- a) Firstly, the scope of Sec 65B is limited in nature as it only specifies about computer devices and computer output. It is only through various judicial interpretations that the telephonic calls, texts from mobile phones were included under the scope.
- b) Secondly, the issue of oral evidence to prove the authenticity of the electronic record has been looked into. This was first discussed in the case of State v Mohm Afzal⁸ wherein it was held that the oral evidence was equally sufficient and the lack of certificate was not an automatic bar, making the certificate requirement optional. However, Section 22-A of the Evidence Act⁹ provides that if the genuineness of the electronic record produced is proved, the oral evidence would be admissible as to the contents of the electronic records. This was also reiterated in Ravinder Singh v State of Punjab¹⁰ that the certificate under Section 65B(4) of the Evidence

Act is mandatory to produce electronic evidence and that the oral evidence in the place of such certificate cannot possibly suffice.

- c) Thirdly, the questions regarding the certificate requirement as to whether it is mandatory or optional, who is the competent authority to issue and at which stage should it be issued are not addressed by the given section. In the case of *Anvar P V v Basheer*¹¹, the Supreme Court categorically held that the IEA does not contemplate or permit the proof of an electronic record by oral evidence if requirements under section 65B of the IEA are not complied with, as the law now stands in India. But whether it should be applied prospectively or retrospectively was questioned in *Sonu v State of Haryana*.
- d) Finally, due to lack of clarity, there has been over dependence on judicial interpretation where Courts had to navigate numerous cases interpreting Section 65B, leading to potential overload and inconsistency in rulings. This burden detracted from focusing on substantive issues within cases themselves.

These lacunae and obscurity in the wordings of the section and in the judicial pronouncements had made the legislature to widen the scope and requirement for the admissibility of electronic evidence under Sec 63 of the Bharatiya Sakshya Adhiniyam, 2023.

V. SECTION 63 OF BHARATIYA SAKSHYA ADHINIYAM, 2023

The Centre has implemented new criminal law reforms whereby The Bharatiya Nyay Sanhita, 2023 (BNS), the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), and the Bharatiya Sakshya Bill, 2023 (BSB), replace the Indian Penal Code, 1860 (IPC), the Code of Criminal Procedure, 1973 (CrPC), and the Indian Evidence Act, 1872 (IEA), respectively. One of the significant steps in the admissibility of evidence is the inclusion of section 63 of BSA which reflects section 65B of Indian Evidence act, 1872 with slight modifications. Some of the common elements between the two sections regarding the admissibility of electronic evidence are:

- i) Both the sections permit the admissibility of information contained in an electronic record and the conditions to be satisfied are the same.
- ii) They both are 'non-obstante clauses' meaning their special provisions prevail over any other sections of their respective acts. This is based on the

maxim *Generalia specialibus non derogant*, which was also upheld in the *Anwar v Basheer* case by the Supreme court.

- iii) The certificate requirement is present in both sec 65B of erstwhile Evidence act, 1872 and in sec 63 of the new Bharatiya Sakshya Adhiniyam, 2023.

The legislative intent and the crux of these sections are the same. However, few additions and modifications are done in Sec 63 of BSA without disrupting the scope of the section - admissibility of electronic record.

VI. HOW SEC 63 FARED WELL COMPARED TO SECTION 65B OF IEA, 1872

Section 63 has been enacted to overcome the issues faced by the erstwhile section and supplement it in order to incorporate the recent development in technological domain. Section 63(1) has included into its admissibility, the communication devices along with computers to cover telephonic conversations, social media texts, posts, tweets etc as documents admissible into evidence. In the erstwhile sec 65B(3), the conditions to be satisfied by devices covered only storage and processing operation, however in Sec 63(3), it includes creation operation also. This is done in order to include the intermediaries into the evidential jurisprudence. Regarding the certificate requirement, Section 63(4) provides that whenever an electronic record is submitted for evidence in those instances, a certificate should accompany it, thereby making it a mandatory requirement. This section has also brought two factor authentication of electronic records - first by the person in charge of the device and then by an expert. By using "an" expert instead of "the" expert, this section clearly distinguishes it from the expert opinion under section 39 of BNS. This has removed the confusion regarding the who, when and what of the certificate requirement. Thus, Section 63 of BNS provides better clarity which will in turn reduce the judicial burden and higher stability by improving the authentication requirement of electronic records as compared to Section 65B of Indian evidence act.

VII. FUTURE CONSIDERATIONS

Despite the implementation of Bharatiya Sakshya Adhiniyam, 2023 in July, 2024, there are certain hurdles which are to be crossed for its effective implementation. The experts and the judges must be

well trained in understanding the scope and mechanism of evidence brought under this section. At present, the Ministry of Electronics and Information Technology has notified 15 examiners of electronic evidence, which, given the expansive scope of the new law, is woefully inadequate to support the vast scale of litigation in the country¹². Also the government has promised to build forensic science universities across 6 major states which is expected to provide 36,000 forensic experts annually¹³. The role of intermediaries in production of evidence has to be clearly defined. It is also important to note that excessive regulation for ensuring the authenticity of documents should not result in the delay of fair trial which is mentioned in the preamble of the new legislation. Further the law should accommodate advancements like blockchain technology or artificial intelligence that can enhance data integrity and security. When all these are fulfilled, the newly enacted evidence act will prove to be the best of its kind in the judicial system.

VIII. CONCLUSION

The transition from Section 65B of the Indian Evidence Act, 1872, to Section 63 of the Bharatiya Sakshya Adhinyam, 2023 marks a significant step forward in modernizing India's approach to admissibility concerning electronic records. While it addresses many shortcomings and lacunae inherent in its predecessor by enhancing clarity and accountability through mandatory expert certification, it also introduces new challenges that must be navigated carefully. The effectiveness of this new legal framework will depend heavily on its implementation, judicial interpretation, and ongoing adaptation as technology evolves further. Continuous dialogue among stakeholders will be essential in ensuring that the law remains relevant while protecting the integrity and reliability necessary for fair trials in an increasingly digital age. Ultimately, achieving a balance between rigorous standards for admissibility while ensuring timely access to justice will be key as India moves forward into this new era concerning digital documentation and evidence handling.

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