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Evidence act 1872 bangla pdf free printable pdf download

The Information Technology Act, 2000 and the Evidence Act, 1872 The concept of "electronic evidence" has been introduced through the Information Technology Act, 2000 ("IT Act") and the related amendments in the Evidence Act, 1872 ("Evidence Act") and the Indian Penal Code, 1860 ("IPC"). You're Reading a Free Preview Page 3 is not shown in this preview. Despite the enactment of the IT Act in the year 2000 and the amendments to the Evidence Act, the Supreme Court for the first time in the case of Anwar PV held conclusively that documentary evidence in the form of an electronic record can be proved only in accordance with the procedure set out under Section 65B of the Evidence Act. S. Havovi Kersi Sethna v Kersi Gustad Sethna 2011 SCC OnLine Bom 120 21. In the recent times, even service through WhatsApp has been recognized by the Hon'ble Delhi High Court²⁷ and the Hon'ble Bombay High Court²⁸. Om Prakash v Central Bureau of Investigation (CBI), 2017 SCC OnLine Del 10249 24. This has now been answered in the affirmative by the Supreme Court in the case of Anwar PV v PK Basheer and Others ([2014] 10 SCC 473). Want a Shipping Estimate? The Supreme Court observed that Section 65B of the Evidence Act begins with a 'non-obstante clause' and would override the general law on secondary evidence, as laid down under Section 63 and 65 of the Evidence Act. It needs to be determined independently whether the document has an actual bearing on the case or not and how much, if any, weight is to be attached to it. & Ors. With the requirement of a certificate under Section 65B of the Evidence Act being diluted by the ruling of the Supreme Court Shafiq Mohammed, it would be interesting to see how the same is clarified by the Supreme Court. As per these provisions, the electronic evidence gathered through various means by applying cyber forensics was deemed as a "document" and the printed reproductions were considered secondary evidence, which required certification of authenticity from a competent signatory who was susceptible to cross-examination relating to the certified document. Palanisamy (2011) 11 SCC 275 20. Conclusion With the enactment of the IT Act and the subsequent Amendments in the Evidence Act, the use of electronics records in judicial proceedings has gone a long way. However, pursuant to the ruling of the Supreme Court in Anwar PV, the requirement of complying with the provisions of Section 65B of the Evidence Act in cases where such electronic record is produced by a party who is not in possession of the device have been relaxed. Thus, a computer print-out of the entries in the book which does not contain certificate as provided under Section 2A of the Banker's Book Act would not be a certified copy within the meaning of Section 2(8) of the Banker's Book Act and would not be then admissible as the original entry itself under Section 4 of the Banker's Book Act. The certificate must identify the electronic record containing the statement, describe the manner in which it was produced and also give such particulars of any device involved in the production of the electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer. Abdul Rahaman Kunji v. Shafiq Mohammed v. The entire idea behind the certificate is also to ensure the integrity of the source and authenticity of the data, so that the Court may be able to place reliance on it. E-mail Electronic mail or e-mail is one of the most commonly utilized electronic media for transmission of information. The crucial test, as affirmed by the Supreme Court, is whether the defect could have been cured at the stage of marking the document.⁷ It is pertinent to note that Section 65B of the Evidence Act deals with conditions precedent for admission of the electronic evidence. v Rohidas Jadhav 2015 SCC OnLine Bom 1262 The content of this document do not necessarily reflect the views/position of Khatan & Co but remain solely those of the author(s). Sanjaysinh Ramrao Chavan v Dattatray Gulabrao Phalke (2015) 3 SCC 123 18. This is has been further clarified by the Hon'ble Delhi High Court by stating that when the party deposes that he took the photographs himself, got them developed and filed them in the Court; the non-filing of negatives cannot be a ground to reject them, especially when the photographs so relied upon are digital photographs.18 Compact Disc (CD) The Courts while dealing with the admissibility of a compact disc containing audio recordings have held that amended definition of "evidence" in Section 3 of the Evidence Act read with the definition of "electronic record" in Section 2(1)(t) of the IT Act, include a compact disc.19 This is critical since electronic data is more prone to tampering and alteration. While noting that call records are stored in huge servers which cannot be easily moved and produced in the court, the Hon'ble Supreme Court has held that printouts taken from the computers/servers by mechanical process and certified by a responsible official of the service-providing company can be led in evidence through a witness who can identify the signatures of the certifying officer or otherwise speak of the facts based on his personal knowledge. Section 65B of the Evidence Act provides that notwithstanding anything contained in the Evidence Act, any information contained in an electronic record, whether it be the contents of a document or communication printed on a paper, or stored, recorded, copied in optical or magnetic media produced by a computer, it is deemed to be a document and is admissible in evidence without further proof of the production of the original, subject to satisfaction of the conditions set out in Section 65B(2) - (5) of the Evidence Act. Earlier, in the case of State (NCT of Delhi) v Navjot Sandhu @ Afzal Guru, [(2005) 11 SCC 600], the Supreme Court dealing with the admissibility and evidentiary value of electronic evidence for the first time, held that irrespective of the compliance of the requirements of Section 65B of the Evidence Act which is a provision dealing with admissibility of electronic records, there is no bar to adducing secondary evidence under other provisions of the Evidence Act, namely Sections 63 and 65. 7. v State of Rajasthan 2015 SCC OnLine Raj 9331. In addition, Section 85C of the Evidence Act provides for presumption as to the accuracy of information contained in a electronic signature certificate, while Section 81A of the Evidence Act provides for such presumption with respect to Gazettes in electronic forms. Relevance, genuineness, veracity and reliability of electronic records While relevance of electronic records is specific to the facts and circumstances of each case, the genuineness, veracity and reliability of digital evidence is one of the biggest challenges that courts have to deal with while adjudicating upon the admissibility of the electronic evidence. 4. State (NCT of Delhi) v Navjot Sandhu (2005) 11 SCC 600 15. Hard-disk A hard disk of a computer is the fundamental source of all information. As with other spheres of human life, the cyber space has not been free from dangers and commission of crimes. The very heading of Section 65A of the Evidence Act read with Sections 59 and 65B of the Evidence Act is sufficient to hold that the special provisions on evidence relating to electronic record shall be governed by the procedure prescribed under Section 65B of the Evidence Act. While the Courts have consistently held that such recordings shall constitute a 'document' under Section 3 of the Evidence Act, it is important that the voice of the person alleged to be speaking is duly identified by the maker of the record or by others who know it.¹⁵ In addition, the accuracy of what was actually recorded had to be proved by the maker of the record and satisfactory evidence, direct or circumstantial, has to be there so as to rule out possibilities of tampering with the record.¹⁶ However, while dealing with a case of transcription of recorded conversations, the Courts have clarified that without the actual audio recording being made susceptible to analysis, no reliance can be placed on transcriptions of audio recordings¹⁷. Similarly, Section 85B of the Evidence Act allows the Courts to presume that the secure electronic record has not been altered since the specific point of time to which the secured status relates, until proven to the contrary. The certificate is to be executed/signed by a person occupying a responsible position in relation to the device through which the data has been produced. Dr. Madhav Vishwanath Dawalbhakta v M/s. Babu Ram Aggarwal v Krishan Kumar Bhanagar & Ors. It was in this case that the importance of Section 65B of the Evidence Act was fully recognised and appreciated by the Supreme Court. The Hon'ble Delhi High Court has held that in a case where a CD is a copy obtained by the mechanical/electronic process of having the original tape recorded conversation uploaded on a computer from the original electronic record and copied on the CD, it shall constitute secondary evidence under section 63 of the Evidence Act and therefore, can be used only upon production of the original record of such taped conversation under section 65B of the Evidence Act.²⁰ Similarly, the Hon'ble Punjab & Haryana High Court has held that in a case where there is no link between the CD and memory chip that was said to have been the source for replication of data in CD; if the CD cannot stand test of authenticity by its comparison with its hash value with source, then transcript of what had been obtained through its audio footage shall not be of any value.²¹ Statement of Account Statements of Accounts are governed by Sections 2(8), 2A and 4 of the Banker's Book Evidence Act, 1891 ("Banker's Book Act"). Section 2(8)(c) of the Banker's Book Act also provides that the print-out of an entry in the book of an account should ensure the accuracy of such print-out and contain the certificate in accordance with provisions of Section 2A of the Banker's Book Act. FREE SHIPPING OVER Rs. 395. SBI Cards & Payments Services Pvt. (2010) 10 SCC 280 26. Mandatory requirement of certificate A pertinent question that arises in this context is whether a certificate under Section 65B of the Evidence Act is mandatory? Certificate of Authenticity Section 65B(4) of the Evidence Act provides for the non-technical conditions being the requirement of a certificate of authenticity. Shamsheer Singh Verma v State of Haryana (2016) 15 SCC 485. K.K. Velusamy v N. The article analyses and examines the admissibility of electronic evidence in a court of law based on judicial pronouncements and legislative intent. State of Himachal Pradesh 2018 (2) SCALE 235. 2. Further, it is also important to state that the computer was operating properly and the contents printed on paper are derived from the information fed into the computer in the ordinary course of activities.⁹ Upon satisfying the aforementioned criteria, e-mails can be read into evidence in view of the presumption under Section 88A of the Evidence Act regarding the veracity of the contents of an electronic message, until specifically rebutted.¹⁰ However, this Section does not provide for any presumption as to the sender of the e-mail. The purpose of the certificate is to satisfy the conditions laid out by the preceding sub-section (2) of Section 65B of the Evidence Act. In this regard, the Courts have noted that there could also be active information available on the hard disk which is accessible and convertible into other forms of data and transferable to other electronic devices. Syed Asifuddin v State of Andhra Pradesh 2005 SCC OnLine AP 1100 13. However, a certificate under Section 65B of the Evidence Act neither does conclusively prove the facts contained in the electronic record nor amount to truth. The Hon'ble High Court of Telangana while drawing a comparison between a computer and a mobile phone has held that by the very definition of computer and computer network as defined in IT Act, a cell phone is a computer which is programmed to do among others the function of receiving digital audio signals, shall be construed to be a computer.¹² 5. Footnotes 1. Sub-section (2) of Section 65B of the Evidence Act lists the technological conditions upon which a duplicate copy (including a print-out) of an original electronic record may be used. Ram Kishan Fauji v State of Haryana, 2015 SCC OnLine P&H 5058 22. Technical conditions and non-technical grounds Section 65B of the Evidence Act provides for both technical conditions and non-technical grounds for admissibility of electronic evidence. Since such messages shall be subject to judicial scrutiny, it is also important to ensure that there is no tampering of data, which may otherwise undermine the evidentiary value of these messages. Tata Sons Limited & Ors. Use of electronic Media in other judicial proceedings In addition to electronic records being led in evidence, there has also been an increase in reliance on electronic media for other purposes in judicial proceedings. Tape Recordings Often parties record conversations with others, in order to utilise the same as evidence in trials. Over a period of time, various Courts in India have adjudicated on how different electronic media may be tendered in evidence. Paras Jain and Others. Arjun Panditrao Khotkar v Kailash Kushanrao Gorantyal & Ors 2019 SCC OnLine SC 1553 3. 10. Z.O.O 2018 SCC OnLine Del 9459 11. Prior to the legal recognition granted to electronic evidence, Sections 63 and 65 of the Evidence Act majorly dealt with and provided for the conditions for admissibility of electronic evidence. Further, any objection to the person exhibiting the said statements of account i.e. an objection to the mode of proof and not admissibility, has to be taken at the time of exhibition of the documents²³. R.M. Malkani v State of Maharashtra (1973) 1 SCC 471 17. Therefore, until and unless a party establishes as to who was the sender, a print out of an email cannot be given much importance.¹¹ SMS / instant messaging applications such as WhatsApp In contrast to e-mails, which are usually utilised for official communications, the use of short messaging service (SMS) or instant messaging applications such as WhatsApp are common in both official as well as unofficial communications. In case of Bank statements, the certificate given by the authorised representative of the bank under Section 65B of the Evidence Act is adequate and supports the statement of account relied upon by banks.²⁴ Presumptions under Evidence Act The Evidence Act also provides for certain presumptions in order to facilitate the use of electronic record. Therefore, in cases where the mobile phone containing the SMS or WhatsApp cannot be led into evidence, a certificate under Section 65B would be required to be filed by the person, who has received or sent the SMS / WhatsApp message. According to Section 2(1)(t) of the IT Act, the term "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. Therefore, a hard disk that is once written upon or subjected to any change is itself an electronic record even if does not contain any accessible information at present. M/s. Investigation agencies are also increasingly facing issues with regard to the admissibility of such electronic evidence. Pravata Kumar Tripathy v Union of India 2014 SCCOnLine 407 6. R.P.C.D.CO.RF.BC.No. 100/07.38.03/2008-09 dated 24 April 2009 has also directed all State and Central Co-operative Banks to comply with the provisions of the Banker's Book Act while furnishing certified copies and computer printouts to courts.²². Therefore, it becomes important that the Courts ensure that records were not manipulated, altered or damaged, between the time they were actually created and put forward in Courts. With most formal interactions between people taking place through e-mails, the Courts in India have allowed such e-mails to be admissible in evidence upon filing of a printout of the e-mails along with the certificate under Section 65B of the Evidence Act.⁸ The certificate under Section 65B of the Evidence Act ought to specify that the computer during the relevant period was in the lawful control of the person proving the e-mail and that information was regularly fed into the computer in the ordinary course of the activities. Therefore, in cases where the device containing the message and/or instant message exchanged on WhatsApp or any other such application are led in evidence, there would be no requirement to file a certificate under Section 65B of Evidence Act. The authenticity of e-documents has always been debatable, considering how prone they are to be tampered with. However, in the absence of filing such evidence, the CD cannot be read into evidence. However, the omission of the word, "Electronic Records" in the scheme of Section 61 to 65 of Evidence Act, and the exclusion of electronic record under Section 59 of Evidence Act clearly signifies the clear and explicit legislative intention to not extend the applicability of Sections 59 and 61 to 65 of the Evidence Act to electronic record, in view of overriding provision of Section 65B of the Evidence Act, which deals exclusively with the admissibility of such electronic record. An objection as to mode of proof can be waived if not taken at the appropriate stage.⁶ In this regard, the Supreme Court has also held that such objection relating to the mode or method of proof has to be raised at the time of marking of the document as an exhibit and not later. The State of West Bengal 2014 SCC OnLine Cal 18816 9. Xact Studio International v M/s. 23. The Supreme Court while dealing with a similar factual scenario has held that the applicability of procedural requirement under Section 65B(4) of the Evidence Act for furnishing certificate is to be applied only when such electronic evidence is produced by a person who is in a position to produce such certificate being in control of the said device and Court may relax such requirement, wherever interest of justice so justifies.¹ Owing to the lack of certainty caused due to the aforesaid ruling, a two judge bench of the Supreme Court has referred the issue to a larger bench, in order to lay down the law with greater certainty.² Filing of certificate in Court It is also relevant to state that the initial view of the certificate having to be filed along with the reproduction of the electronic record and not subsequently, has been modified. However, if the opposite party admits the reproduction of the data and does not dispute it, in such a situation, admission acts as waiver of proof and compliance of Section 65B of the Evidence Act to prove the same is not required. While the Courts in India are yet to independently adjudicate upon the admissibility of WhatsApp messages into evidence, it is prudent to ensure proper custody of the mobile phone. Since electronic evidence, as compared to conventional or traditional evidence, requires specialised and expert training in the field of cyberspace, the method used to investigate and analyse the data maintained on or retrieved from electronic media for the purposes of presentation in a court of law is of prime importance. The IT Act and its amendment are based on the United Nations Commission on International Trade Law ("UNCITRAL") model Law on Electronic Commerce. Liwona SP. Karunakaran v Srileka 2019 SCC OnLine Mad 1402 12. 2013 SCC OnLine Del 324. The certificate must also deal with any of the matters to which the conditions for admissibility relate. These are: a) At the time of the creation of the electronic record, the computer that produced it must have been in regular use; b) The kind of information contained in the electronic record must have been regularly and ordinarily fed into the computer; c) The computer was operating properly; and d) The duplicate copy must be a reproduction of the original electronic record. Thus, any documentary evidence by way of an electronic record can be proved only in accordance with the procedure prescribed under Section 65B of the Evidence Act. However, once a hard disk is subject to any change, then even if it restored to the original position by reversing that change, the information concerning the two steps, viz., the change and its reversal will be stored in the subcutaneous memory of the hard disk and can be retrieved by using software designed for that purpose. However, with the proliferation of the cyber space, there has been a tremendous increase in its misuse. The active information would also constitute an electronic record.¹³ Call Records Most criminal investigations often commence from an analysis of the call records of the accused. Section 4 of the IT Act expressly recognises the validity and use of electronic records in place of ordinary paper-based records. Central Electricity Regulatory Commission v National Hydroelectric Power Corporation Ltd. However, this was not the first view of the issue. Therefore, upon filing a certificate under Section 65B, a CD is admissible in evidence. Interestingly, a printout of statement of account, duly certified by a responsible official of the bank along with a certificate under Section 65B of the Evidence Act has also been recognised by Courts as sufficient proof to lead such statements into evidence. For any further queries or follow up please contact Khatan & Co at legalalerts@khatanco.com Bendale Brothers 2018 SCC OnLine Bom 2652 27. A similar view has also been taken by the Hon'ble Bombay High Court²⁶. Puneet Prakash v Suresh Kumar Singhal & Anr 2018 SCC OnLine Del 9857 19. While recognising the advantage of electronic media such as emails, WhatsApp messages, etc., the Supreme Court has encouraged parties / their advocates to serve the counter party through e-mail, in addition to the usual modes of service²⁵ in commercial litigation and litigation wherein interim relief is prayed for. So a person who was responsible for handling of the digital camera who also took the photograph and transferred it to the storage media needs to certify that how the printout or storage was done. Such call records are often useful as a starting point for also establishing conspiracy with other individuals. Compliance of Section 65B of the Evidence Act only allows the Court to read/consider the document. Resultantly, the Supreme Court did not give Section 65B of the Evidence Act the requisite significance as envisaged by the legislature. Union of India and Others v CDR Ravindra V Desai (2018) 16 SCC 272 8. The Reserve Bank of India ("RBI") vide its order no. However, in such cases, it is essential to ensure that there is no dispute regarding the custody of the device or any alterations in the content. The Supreme Court's ruling in Anwar PV, that a certificate under Section 65B of the Evidence Act is compulsory for admission of electronic evidence overruled its earlier decision in the case of Navjot Sandhu, to that extent. M/s ICICI Bank Limited v Gurdev Singh, 2018 SCC OnLine Del 6934 25. This has resulted from diversity in the content and information available along with the ease of accessibility and wide reach. Further, irrespective of the compliance with the requirements of Section 65B of the Evidence Act, there is no bar to adduce secondary evidence under Sections 63 and 65 of the Evidence Act.¹⁴ It has been further clarified that merely because the printout is being filed as secondary evidence along with the necessary certificate, does not make it any less valid. The High Court of Delhi³ has held that the certificate under Section 65B of the Evidence Act can be filed subsequently and does not mandatorily have to be filed alongside the reproduction of the data. Further it is stated that, even if a certificate containing the details in sub-Section (4) of Section 65B of the Evidence Act is not filed, that does not mean that secondary evidence cannot be given even if the law permits such evidence to be given in the circumstances mentioned in the relevant provisions, namely Sections 63 & 65 of the Evidence Act. It was additionally held that non filing of certificate under Section 65B of the Evidence Act is not an incurable irregularity and can be rectified later on.⁴ Similarly, the Hon'ble Orrisa High Court has held that at the time of consideration of the bail application, it is not at all necessary to ask the prosecution to first satisfy the fulfilment of all the criteria of filing the certificate under Section 65B of the Evidence Act, before taking into account the Forensic Voice Examination Report as well as transcript of the CD.⁵ The Courts are yet to conclusively decide the question whether an objection as to non-compliance of Section 65B of the Evidence Act can be waived or conceded. Even thereafter, with the continuous evolution of the cyber space, it would be apposite that the courts keep up with the changes in cyber space, to promote certainty in the use of such electronic records, while taking into account all practical aspects. Section 65B of the Evidence Act is a special provision concerning proof of electronic records. The Court still has to examine relevancy, genuineness, veracity and reliability of the document. Admissibility of Electronic Records Section 65A of the Evidence Act provides that the contents of electronic records may be proved in accordance with the provisions of Section 65B of the Evidence Act. In view of Section 85A of the Evidence Act, the court shall presume that every electronic record purporting to be an agreement (containing the electronic signature of the parties) was concluded by affixing the electronic signature of the parties. Add an Indian Pin Code, Click Here Skip to content One of the greatest and most revolutionary inventions of mankind has been the proliferation of computers and digitalisation. However, despite various judicial precedents stressing on the importance of the certificate, the certificate has become a mere formality. This is a complete code in itself and being a special law, the general law under sections 63 and 65 of the Evidence Act has to yield following the maxim generalia specialibus non derogant. The conditions have a two-fold impact as they i) ensure that there has been no unauthorised use of the data; and ii) the device was functioning properly, ensuring accuracy and genuineness of the reproduced data. Dharambiv v Central Bureau of Investigation 2008 SCC OnLine Del 336 14. Kundan Singh v The State 2015 SCC OnLine Del 13647. The Evidence Act was amended by virtue of Section 92 of the IT Act and the term "evidence" was amended to include "electronic record", thereby allowing for admissibility of the digital evidence. Photographs In most of the cases, the digital camera itself is not produced before the court and a party either takes recourse to a printout or some other storage media such as CDs, USB Drives, etc. As can be inferred the above conditions relate to veracity of the data. Sub-section (3) of Section 65B of the Evidence Act is self-explanatory and confirms that if the user has been using a networked device either to store or process information, all the connected devices will be considered to be a single device. However, unlike the issue with traditional computers, a mobile phone being handy can be led in evidence. v John Doe(s) & Ors 2017 SCC OnLine Del 8335 28. Ltd. Therefore, while recognising its importance as an electronic evidence, the Hon'ble Delhi High Court has clarified that as long as nothing at all is written on to a hard disk and it is subjected to no change, it will be a mere electronic storage device like any other hardware of the computer.

