Jus Corpus Law Journal
Open Access Law Journal – Copyright © 2022 – ISSN 2582-7820
Editor-in-Chief – Prof. (Dr.) Rishikesh Dave; Publisher – Ayush Pandey

Whether Certificate u/s 65b (4) Evidence Act is Compulsory for the Admissibility of Electronic Evidence

Rajat Tripathi[a]

[a]Shri Ramswaroop Memorial University, Lucknow, India

Received 24 September 2022; *Accepted* 05 October 2022; *Published* 13 October 2022

*The Indian Evidence Act 1872, enacted to consolidate laws which were existing before in this area, also provides the aim of the Act to define and amend the law of evidence. It was passed by the British Parliament in 1972, containing rules and regulations containing procedures and rights. The enforcement and adoption of the evidence act in India are one of the major judicial measures to frame the channel relating to and admissibility of the evidence in trial courts. The process to enact the evidence act passed through two commissions, namely the "**Maine Commission"** under the chairmanship of **Sir Henry Maine,** who presented the bill in 1868, but it was rejected on the basis that it was not prevailing under the conditions at that time. Later, the **"Stephen Commission"**[2] set up in 1871 presented the draft of the Bill to the Council and it got its approval with due process and finally became The Indian Evidence Act, 1872. The scenario arose in the 21st century, creating the reliability of information technology and growth in the cyber world. As the dependency on electronic means has increased, there should be a set of statutes regarding the admissibility of electronic evidence in Indian courts. Before accepting electronic evidence, it is crucial to determine its relevance, authenticity, and accuracy be ascertained by the court to determine its originality. Judges and Indian courts have laid down their perspectives regarding the nature of electronic evidence.*

[1] Batuklal, *The Law of Evidence* (23rd edn, Central Law Agency 2020) 9
[2] Law Commission of India, *Indian Evidence Act, 1872* (Law Comm. No. 69) <https://www.latestlaws.com/library/law-commission-of-india-reports/law-commission-report-no-69-indian-evidence-act-1872> accessed 17 September 2022

Keywords: *evidence, certificate, section 65.*

INTRODUCTION

Oral, documentary, and primary, or secondary, evidence are separated. When a document is generated specifically for the court's review that evidence is referred to as primary. When a piece of evidence is secondary, it includes any copies or certified copies that were made mechanically from the original record.

WHAT IS THE ELECTRONIC EVIDENCE?

According to the Information Technology Act of 2000, any data with a probative value is electronically stored or transmitted. It includes any electronically stored information that is stored and can be used in judicial trials or lawsuits. It mainly includes two types:

- Oral Evidence
- Documentary Evidence

Section 3 of the Evidence Act, 1872 defines the term **"evidence" to refer to all written materials, including electronic records, produced for the court's review. Documentary evidence relates to such records.**

Further, if we refer to another provision of the Information Technology Act 2000 under **Section 2(1),** which states that, The term **"Electronic Record"** refers to any data, record, or data generated, image, or sound stored, received, or communicated in an electronic form, as well as microfilm or microfiche produced by a computer. In light of the provisions indicated in **Sections 65-A & 65-B** of the Evidence Act, the aforementioned proviso should be considered. Electronic evidence is thus another sort of documentary evidence that, if properly established by section 65-B, may be taken into consideration as strong evidence.

Section 65-A & 65-B were inserted and the admissibility of electronic evidence under the Evidence Act was added by Amendment Act No. 21 of 2000, which took effect on October 17,

2000, under the Second Schedule of the Information Technology Act, 2000. According to Section 65B, which is sometimes known as a **"Section 65B Certificate or Statement,"** an electronic record must meet certain requirements to be accepted as evidence in court. These requirements are explained. If the information in an electronic form complies with the requirements listed in Section 65B(2) and is accompanied by a **"Certificate/Affidavit"** confirming the authenticity of the documents produced, without the need for additional documentation or the production of the original, the information is deemed to be a document.

Section 65B(2) elaborates on the conditions in respect of a computer output shall be following, namely:

- The computer from which the record was created was routinely used to store or process data on activities that were regularly carried out by a person who had legal authority over the period, and it refers to the time during which the computer was routinely utilized.
- The person who had legal control over the computer gave information to it during regular business operations.
- If the computer wasn't functioning correctly, it wouldn't have had an impact on the electronic record.
- The data that is duplicated is the same data that is regularly input into computers.

IMPLICATION OF SECTION 65(B)4 WITH CASE LAWS

This section talks about the requirement of a Certificate with the electronic document if the same is to be submitted as evidence. The requirement of a certificate is essential, which ensures the accuracy of that deemed evidence. Electronic records can readily be digitally altered, manipulated, forged, destroyed, and regenerated; the legislation imposed the need under Section 65B(4) to protect the source and authenticity of the record. But whether or not this certificate should be required for the admission of electronic evidence appears to be the subject of a legal dispute. When stating evidence under this section in any proceeding, a certificate that does any of the following things, that is to say:

- identifying the electronic document that contains the assertion and outlining the process used to create it.
- Providing any information about the equipment used to create the electronic record that may be necessary to demonstrate that a computer was used to create it.
- Taking care of any issues that fall under the subsection's conditions (2).

All the above conditions should be fulfilled and it should be purported to be evidence of any matter stated in the certificate, and for this subsection, it shall be sufficient for a matter to be stated to be the best of the declarant's knowledge and belief. The certificate must be signed by a person holding a responsible official position about the operation of the relevant device or the management of the relevant activities.

In the **case of Anvar P.V. v P.K. Basheer**[3], the appellant challenged the election of R-1 on the ground of corrupt practice under section 123(4) of the Representation of People Act because of the publication in relation to the personal character and conduct of the petitioner or in relation to the personal character and conduct of the petitioner or the announcements as part of the election propaganda of R-1. By making the announcement and song CDs available as evidence, the appellant did not introduce the main evidence. The speeches, songs, and announcements were recorded on various instruments and fed into a computer, and then CDs were created from those recordings that were presented in court, uncertified. It was held by the court that those CDs were not accepted as evidence in view of Section 65B of the Evidence Act. The High Court may have played the CDs in court to determine whether the claims were accurate if those CDs had been used for objectionable songs or announcements and had been legally seized by the police or Election Commission. Without meeting the requirements in Section 65-B of the Evidence Act, an electronic record utilized as primary evidence under Section 62 of the Evidence Act is admissible as evidence. Sections 59 and 65-A being special provisions, section 63 read with section 65 shall yield to the same "**Generalia specialibus nonderogant"**[4] i.e, special law shall always prevail over general law. The secondary evidence of electronic records is wholly

[3] *Anvar PV v PK Basheer* (2014) 3 ECS (1) (SC)
[4] Akanksha Yadav, 'Generalia Specialibus Non Derogant' (*Law Column*, 31 May 2020) <https://www.lawcolumn.in/generalia-specialibus-non-derogant/> accessed 15 September 2022

governed by Sections 65-A and 65-B. An electronic record by way of secondary shall be accompanied by the certificate in terms of VCD, Chip, etc. For the secondary evidence relating to that electronic record to be admissible, it must be submitted with the certificate required by Section 65B that was received at the time the document was taken. A tape-recorded version of the ransom call that was recorded is not secondary evidence and no certificate under Section 65-B is required when it is the original cassette of such recording[5]. The certificate requirement under 65B(4) is mandatory without assigning adequate reasons of its own for why it should be so.

In the case of **Shafhi Mohammad vs State of Himachal Pradesh,**[6] It was ruled that a certificate under Section 65B(4) of the Evidence Act can only be used when a person who is qualified to give a certificate can make an electronic record. The device must be under the control of such a person and must not belong to the adversary.

In the case of **Ram Singh and Others vs Col. Ram Singh**[7] The apex court held that, as long as the accuracy of the recording can be proven, it would be incorrect to deny innovative techniques and technologies that benefit from the law of evidence. Further, it was noted that such evidence should always be treated cautiously and evaluated in the context of all the facts of each case.

However, In the case of **Mukesh vs State of N.C.T. of Delhi**, The allegation of the offence of committing rape in a moving bus and assault on deceased and injured information, CCTV evidence and pictures showed an injured informant and victim close to the mall where they had boarded, but footage taken close to the hotel where the victims were dropped indicated the movement of a white bus with the word **"Yadav"** printed on it. The bus was a perfect match for the description of the offending bus provided by the victim and injured informant. The computer cell expert's Forensic division H.O.D testifies that there was no tampering or editing of CCTV footage. The court held that the CCTV footage is creditworthy and acceptable and there is no reason or justification to perceive the same with the lens of doubt.[8]

[5] *Vikram Singh v State of Punjab* AIR 2017 SC 3227
[6] *Shafhi Mohammad v State of Himachal Pradesh* (2018) 2 SCC 801
[7] *Ram Singh and Others v Col Ram Singh* AIR 1985
[8] *Mukesh v State of NCT of Delhi* AIR 2017 SC 2161

In **Arjun Panditrao Khotkar v Kailash Kishanrao Gorantyal,**[9] The three judge bench of the Apex court while overruling the judgment divisional in Shafhi Mohammad vs State of Himachal Pradesh, the bench found that the fundamental tenet of Shafhi Mohammad—that such a certificate cannot be obtained by people who do not own an electronic record—is false. When the necessary individual fails to provide the certificate required by Section 65B(4), a judge may be asked to order their production. When the necessary certificate has been requested from the appropriate person or authority and that person or authority either declines to provide the requested certificate or does not respond to the request, the party requesting the certificate may apply to the court for the certificate's result by the aforementioned Evidence Act, CPC and CRPC provisions.

CDRs recovered from the accused, in a case of abduction and murder, were exhibited before the trial court but the objection was not taken that they were marked without a certificate as required under Section 65B(4) of the Evidence Act, no such objection was taken even in appeal before the High Court. The Supreme Court held that the objection of unreliability, which relates to the mode or method of proof, cannot be raised at the belated stage before the Supreme Court. Not taking objection before the Trial Court or the High Court amounts to the waiver of the necessity for insisting on formal proof of documents. Such a waiver is permissible even in criminal cases.[10] The failure to produce a certificate under section 65B(4) of the Evidence Act at the stage of filling the charge sheet is not fatal to the prosecution.

CONCLUSION

In India, with the increase in industrial and technological development makes the production of electronic evidence essential in most cases to determine the grounds of reality in a particular case. It becomes crucial for trial courts to admire the electronic evidence to check its accuracy and adequacy with a certificate that proves its originality. Every court has its standard format for filing Electronic Evidence in courts. Every court has its own standard format for filing Electronic Evidence in courts. A copy of the document, which is to be produced as evidence

[9] *Arjun Panditrao Khotkar* v *Kailash Kushanrao Gorantyal* (2020) 7 SCC 1
[10] *Sonu @ Amar v State of Haryana* 2017 SCC OnLine SC 765

shall be taken out in the form of print or image. The copy that was taken from the storage device must meet the requirements for such output to be admitted. The printout or image must be accompanied by an affidavit. It is clear by the above-mentioned facts if secondary electronic evidence exists without u/s Evidence 65B certificate, it is inadmissible in court, and forensic expert testimony and witness statements are inadmissible in court. Changes in judicial interpretation have mostly occurred for twenty years and most legal systems around the world change the laws regarding the admissibility of electronic evidence and are by the constitution and other laws of the land. However, several loopholes remain unresolved regarding the secondary electronic evidence seized from the defendant, and the person charged with a criminal offense was compelled to be a witness against himself.