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Case Comment: Certifications over Truth? A Critical Study of Electronic Evidence in *Arjun Panditrao Khotkar v Kailash Kushanrao Gorantyal*

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BACKGROUND: CONSTITUTIONAL & JURISPRUDENTIAL CONTEXT

The verdict in the *Arjun Panditrao Case*¹ plays an important role in the development of the jurisprudence on the admissibility of electronic records in the criminal justice system. The case arose out of an election dispute under the Representation of the People Act, 1951, where the validity of the election depended significantly on video recordings that were relied upon to show that certain nomination papers had been submitted after the prescribed deadline.

Two election petitions were filed before the Bombay High Court challenging the election of the returned candidate from the 101-Jalna Legislative Assembly constituency. The central allegation was that two sets of nomination papers were presented after 3:00 p.m. on 27 September 2014, but were nevertheless accepted by the Returning Officer. To resolve the matter, the High Court directed that video recordings of the nomination process should be produced in court with the accompanying certificate as per Section 65B of the Indian

¹ *Arjun Panditrao Khotkar v Kailash Kushanrao Gorantyal & Ors* (2020) 7 SCC 1

Evidence Act. Although the recordings in the form of CDs/VCDs were produced, no formal certificate under Section 65B(4) accompanied them.

The High Court, however, admitted the electronic evidence based on the Returning Officer's oral testimony and treated this as sufficient compliance. Relying on this material, the court concluded that the nomination papers had been improperly accepted and declared the election void.

The dispute before the Supreme Court, therefore, did not remain confined to the factual question of the timing of nomination but raised a broader issue regarding the conditions under which electronic evidence can be admitted in judicial proceedings. The appellant challenged the High Court's approach on the ground that, in the absence of the mandatory certificate under Section 65B(4), the electronic record could not be relied upon.

This controversy must be understood in light of conflicting judicial precedents on the interpretation of Section 65B. Division bench in the Navjot Sandhu Case² held that if the authenticity of secondary electronic evidence is not disputed by the other party or can be proved by an alternative method, it can be admitted without complying with the certificate requirement under Section 65B(4), like any other documentary evidence. But then comes Anvar P.V. Case, which expressly overruled the Navjot case.

In Anvar P.V. v P.K. Basheer,³ the Supreme Court held that Sections 65A and 65B are a complete code in themselves, and for the admissibility of secondary electronic evidence, compliance with the certification requirement is mandatory. It is a special law that will prevail over general law, thus Sec 65A & 65B will prevail over other provisions. It also clarified that this certification requirement is only for secondary electronic evidence, i.e., primary electronic evidence is admissible without any certificate.

However, the Supreme Court, in its later decision, in Shafhi Mohammad v State of Himachal Pradesh,⁴ overlooked the existing precedent and showed a degree of flexibility by permitting courts to admit such secondary electronic evidence even without a certificate under certain circumstances. The Court held technicality cannot be used as a ground to reject such

² *State (NCT of Delhi) v Navjot Sandhu @ Afsan Guru* (2005) 11 SCC 600

³ *Anvar P V v P K Basheer & Ors* (2014) 10 SCC 473

⁴ *Shafhi Mohammad v State of Himachal Pradesh* (2018) 2 SCC 801

evidence; for this, they rely on the reasoning of the Navjot case, a case which was expressly overruled by a larger bench, thus held to be per incuriam in law.

The coexistence of these two approaches created uncertainty in the application of evidentiary rules, particularly at the trial stage. To resolve this inconsistency, the matter was referred to a larger bench of the Supreme Court. Then comes the case of Arjun Pandit Rao⁵ in 2020, the Certificate of Requirement, which was made mandatory and cannot be overlooked in any situation, was approved by Anwar PV. Also held sec 65A& 65B is the complete code, so Section 65B will apply in cases of both primary and secondary electronic evidence. Primary will not come under section 62 but under section 65 B itself.

At a broader level, the case reflects the challenges posed by technological developments to traditional evidentiary principles. Unlike traditional paper-based documents, digital files can be easily copied, tampered with, and manipulated. Therefore, their genuineness largely depends on the methods used to create, store, and retrieve them. This calls for specific measures to authenticate them. Section 65B⁶ attempts to resolve these issues by setting conditions for admission, such as certification. Therefore, the main issue before the Court was whether such protection measures should be mandated strictly or whether they could be interpreted flexibly to allow practical difficulties in proving electronic evidence to be addressed.

ISSUES

The following are the key legal questions arising in the case:

1. Whether the requirement of a certificate under Section 65B(4) constitutes a mandatory condition precedent for the admissibility of secondary electronic records, or whether it can be relaxed in certain circumstances and how this requirement should be practically applied.
2. Whether testimonial or oral evidence, including statements made by responsible officials, can substitute or cure the absence of the statutory certification required under Section 65B(4).⁷

⁵ *Arjun Panditrao Khotkar v Kailash Kushanrao Gorantyal* (2020) 7 SCC 1

⁶ Indian Evidence Act 1872, s 65B

⁷ Indian Evidence Act 1872, s 65B(4)

3. Whether the interpretation adopted in (*Tomaso Bruno*,⁸ *Shafhi Mohammad*⁹, etc) represents a legally sustainable and permissible deviation from the rule laid down in *Anvar P.V.*¹⁰
4. Whether Sections 65A and 65B of the Indian Evidence Act operate as a self-contained and exhaustive code, thereby excluding the application of general principles governing documentary and secondary evidence.¹¹
5. Whether the distinction between primary and secondary electronic evidence has a decisive impact on admissibility standards, particularly in determining when certification is required.

SUBMISSIONS OF THE PARTIES

Submissions on Behalf of the Appellant -

The appellant's arguments were mainly based on a strict and textually focused interpretation of the statutory scheme, underlining the mandatory character of procedural safeguards in the law of electronic evidence. Their main points can be summarised as follows:

- The evidentiary basis of the High Court decision was radically wrong as it depended on electronically recorded material (CDs/VCDs) that did not have the necessary certification as required under Section 65B(4), which is a mandatory requirement; the said evidence was inadmissible in law at the very first stage.
- Section 65B is not only a procedural rule that can be overlooked, but rather it is a substantive condition precedent for the admissibility of evidence to safeguard the genuineness and the integrity of the electronic records, amongst other things, and it is therefore not possible to treat it as a requirement that is optional or a directory one.
- In fact, the High Court's adoption of the 'substantial compliance' principle is in contradiction to the statute as well as the legislative scheme, since the statute does not provide such a notion, and also the legislature cannot be said to have given the courts the power to relax judicially conditions that are explicitly set out.

⁸ *Tomaso Bruno & Anr v State of U P* (2015) 7 SCC 178

⁹ *Shafhi Mohammad v State of Himachal Pradesh* (2018) 2 SCC 801

¹⁰ *Anvar P V v P K Basheer & Ors* (2014) 10 SCC 473

¹¹ Indian Evidence Act 1872, ss 65A and 65B

- The decision of the Court in the *Anvar P.V. v P.K. Basheer* case reflects the correct state of law and is therefore binding, whereas a departure from it by a less strong bench (as in *Shafhi Mohammad*¹² and *Tomaso Bruno*)¹³ cases are not allowed under the doctrinal hierarchy of precedents anyway.
- Allowing non-certified electronic records to be used as evidence in court would be a major blow to the credibility of the whole judicial process, especially when you consider how easy it is to change, manipulate, or create digital data.

Submissions on Behalf of the Respondent (Election Petitioner) -

On the other hand, the respondents brought a more realistic and fairness-oriented perspective to the interpretation of the statutory provisions, pointing out that procedural requirements need to be flexible so that the exclusion of important evidence can be avoided. They put forth the following:

- The requirement of certification under Section 65B is essentially procedural in nature and should not be applied in a rigid manner that obstructs substantive adjudication, particularly where the electronic evidence is otherwise reliable and relevant.
- In situations where the requisite certificate is unavailable, withheld, or beyond the control of the party, courts must adopt a purposive and flexible approach to avoid denial of justice on purely technical grounds.
- A litigant should not be prejudiced by the deliberate or negligent refusal of authorities to furnish the certificate, especially when repeated efforts have been made to obtain compliance with statutory requirements.

Testimony of a responsible public official, given on oath and subject to cross-examination, should be treated as functionally equivalent to certification, as it satisfies the underlying objective of establishing authenticity and reliability of the electronic record.

The approach taken in *Shafhi Mohammad*¹⁴ is a timely judicial answer to the problem of getting the certification. It also constitutes a more pragmatic and justice-focused interpretation of the rules of evidence. Moreover, even without considering the contested

¹² *Shafhi Mohammad v State of Himachal Pradesh* (2018) 2 SCC 801

¹³ *Tomaso Bruno & Anr v State of U P* (2015) 7 SCC 178

¹⁴ *Shafhi Mohammad v State of Himachal Pradesh* (2018) 2 SCC 801

electronic evidence, the entire body of evidence, both oral and written, was enough to uphold the High Court's findings, thus supporting the accuracy of its decision.

JUDICIAL REASONING AND CRITICAL EVALUATION - WHAT THE COURT OVERLOOKED

The Court reaffirmed that compliance with Section 65B(4) is a mandatory condition precedent for the admissibility of secondary electronic evidence, thereby endorsing the position in *Anvar P.V. v P.K. Basheer* and rejecting any discretionary relaxation.¹⁵ Such a line of thought tries to guarantee certainty and uniformity in evidentiary standards; nevertheless, it is subject to criticism because such a stringent demand for certification might lead to the exclusion of reliable and expressive materials solely on technical grounds. The emphasis on procedural compliance might compromise the main trial function for uncovering the truth, especially when, through other ways, the genuine character of the evidence can be clearly shown.

Besides, the Court described Sections 65A and 65B as a complete and exclusive set of rules governing electronic evidence, which implicitly prevented the application of general provisions regarding secondary evidence. Although this decision gives doctrinal clarity, it drastically reduces the interpretative freedom of evidence law. Such a line of thought is subject to criticism as it curtails the role of courts to even accommodate technological complexities, where a rigid statutory application may not always yield the right results, especially concerning cases of new forms of digital data.

By abandoning the doctrine of 'substantial compliance', the Court decided that statutory provisions must be rigorously observed and cannot be evaded by any form of substitute oral evidence or approximation, i.e. even if the authenticity of secondary electronic evidence is not disputed, it still cannot be replaced by any other means or testimony. Even though such a decision enhances procedural discipline, it is unfortunate because it considers certification as an absolute hurdle rather than one of several ways to prove authenticity. Ignoring the fact that the reliability of evidence in many cases can be established by forensic examination or expert witnesses, the method simply sticks to the form rather than the content.

¹⁵ *Anvar P V v P K Basheer & Ors* (2014) 10 SCC 473

Besides that, the Court drew a further distinction between primary and secondary forms of electronic evidence. They explained here that no certificate is required if the original device is presented, whereas certification is a must for photostat copies, like CDs or printouts. Although from a doctrinal perspective, the argument is consistent, it is difficult to hold on to it practically, as in modern-day digital settings, the notion of an 'original' is mostly vague, especially in cloud-based or networked systems. As a result, admissibility may be chiefly related to the format in which evidence is presented and not the genuine reliability of that evidence.

Moreover, the Court construed the word 'any' in Section 65B (4) to be 'all,' thus making the specified conditions not only cumulative but also compulsory. Even though such a construction supports the view of strict adherence, it imposes a very strict evidentiary hurdle where even a slight imperfection can lead to the exclusion of the evidence. This line of reasoning has its flaws because it practically puts procedural fullness over the substantive assessment, resulting in the exclusion of potentially credible pieces of evidence.

The Court, while mentioning different international practices, noted how other countries like the UK, the United States, and Canada deal with the situation, agreed that there is some leeway in determining admissibility, yet they underlined that the methods of ensuring that the evidence is authentic must be preserved.¹⁶ Nevertheless, this argument misses the point that these countries generally handle the issue of authenticity when they consider the evidentiary value of the evidence rather than its admissibility. The Indian approach, by contrast, continues to rely on strict exclusion at the threshold, thereby limiting judicial discretion.

Section 57 of BSA expressly includes primary electronic evidence in the definition of Primary Evidence, but the Arjun Pandit Rao case held that the admissibility of both primary and secondary electronic evidence will fall under section 65B, not under section 62, IEA (now sec57, BSA). Even after the statutory mandate, courts are still following what was mentioned in the Arjun P Rao case, so this creates a sort of ambiguity that still needs to be resolved, and it leaves scope for further clarification.

¹⁶ Civil Evidence Act 1995; Youth Justice and Criminal Evidence Act 1999; US Federal Rules of Evidence 2024; Canadian Evidence Act 1985

Additionally, there is a lack of clarification regarding what should be the permissible stage for the production of such a certificate. Court in Arjun Case clarified that if the original has some other person, non-availability of certificate does not stay the proceeding, one can produce it at 'at any stage till the trial concludes' and if certificate unable to be produced because of the fault of other party in whose possession it is, then it will amount to deemed admissibility and such secondary electronic evidence is accepted without such certificate as it has been rightly said, no person can be put to a disadvantageous position or compelled to do something impossible.¹⁷ But Arjun Pandit Rao is silent on the admissibility of such evidence when it is first produced at the appellate stage, and provides no clarification on this point. Although it relied on the Kundan Singh case¹⁸, which says such a certificate can be produced at the appellate stage also, the Arjun case is silent on this point. Thus, there's a void that needs to be filled.

The Court also emphasised that the certificate must ordinarily accompany the production of electronic evidence and that defects cannot be cured through informal substitutes such as oral testimony. While this promotes procedural discipline, it is open to criticism because it imposes a disproportionate burden on litigants, particularly when the relevant data is controlled by third parties.

Under those circumstances, rigid adherence may even hinder the opening of one's access to evidence rather than prevent its misuse. The Court relied on independent evidence such as official records and witness testimony to decide that the nomination papers were filed after the deadline. Although this makes the decision more convincing, it also creates a problem in the sense that, if critical facts can be established by independent evidence, then it is unfair to exclude electronic evidence simply on procedural grounds. The Court also decided that a mistake in the acceptance of a nomination cannot be the only ground for voiding an election without showing that the result has been seriously affected. Although this is the line taken by election law, it does not seem to me that election law should be so inflexible that it cannot provide an answer to the larger evidentiary problems that come with strict compliance with Section 65B.

¹⁷ *Arjun Panditrao Khotkar v Kailash Kushanrao Gorantyal & Ors* (2020) 7 SCC 1

¹⁸ *Kundan Singh v The State* (2015) SCC OnLine Del 13647

Additionally, the authenticity of electronic evidence is not only based on certification but also on proper handling and preservation. Without a standardised chain of custody protocol and with the digital forensics capacity of institutions being limited, the reliability of evidence is severely compromised, which raises doubts about whether certification alone can guarantee authenticity.

Moreover, the difficulties are exacerbated in cases that involve cross-border data and swiftly evolving technologies and where the courts and law enforcement agencies may be found to have very little technical expertise to determine the reliability of the evidence very accurately. Hence, there is an increased risk of either the procedural requirements of the law being over-relied upon or the relevant evidence being excluded without justification.

This is to say that the proposed changes to the legal framework must be viewed with some caution in the light of constitutional provisions, including the balance between the rules of evidence and the right to fair trial under Article 21 - especially after privacy was declared a fundamental right in *Justice K.S. Puttaswamy v Union of India*.¹⁹ It is a point that the judgment leaves out a thorough discussion of, and this leads to the questions about fairness in adjudication remaining unaddressed.

This strict approach has some very visible practical consequences, as is clear from subsequent cases like *Pooranmal v State of Rajasthan*, where the Supreme Court acquitted the accused in a murder case due to the inadmissibility of Call Detail Records for lack of certification.²⁰ The point here is that if the compliance is strict, there could be a failure of prosecution even in serious offences, and this raises the question whether the procedural rules are being given more importance than the substantive justice.

Besides, earlier decisions such as *State of Karnataka v M.R. Hiremath* had treated the absence of certification as a curable defect, allowing flexibility at the trial stage.²¹ The change in this stance in *Arjun Panditrao* has not only reduced the judicial discretion but also has made the admissibility dependent on the procedural timing rather than on the substantive reliability;

¹⁹ *Justice K S Puttaswamy (Retd) & Anr v Union of India & Ors* (2017) 10 SCC 1

²⁰ *Pooranmal v State of Rajasthan & Anr* (2026) INSC 217

²¹ *State By Karnataka Lokayukta Police Station, Bengaluru v M R Hiremath* (2019) 7 SCC 515

thus, this formalist approach is being strengthened, which may not be suitable for the realities of digital evidence.

ASSESSING THE LEGACY AND FUTURE TRAJECTORY

The above limitations clearly indicate the need for a more balanced and practical use of evidence. Strict demand for certification might be inappropriate in some situations, especially when a party's compliance is beyond their control. In those circumstances, a legislative change would be necessary to allow a court flexibility while still maintaining a controlled acceptance of electronic evidence based on reliability instead of merely adherence to procedural formalities.²²

Further, discrepancies between the forensic methods sharply illustrate the requirement of digital evidence standardisation, which encompasses the chain of custody documentation and secured storage methods. Besides, such reforms are capable of bolstering the credibility of the electronic records and will elevate them above simple formal certification only.

In fact, the above serves to underscore the point that there is a genuine need for enhancing institutional capacity via the training of judges, prosecutors, and police officers, as well as the involvement of experts in the more difficult case situations. Since digital data can be transferred from one country to another, it is also very necessary to reinforce international cooperation in order to ensure timely access to evidence.

Besides that, a review of other jurisdictions brings to light additional reasons for switching to a reliability-oriented approach aimed at the quality and genuineness of the evidence rather than solely the compliance with the procedural conditions.²³ Adopting such an approach will not only help to align legislation with new technologies but will also ensure the safeguarding of fairness in judicial proceedings.

Therefore, the ruling clarifies that, as a general principle, following Section 65B is an essential condition for the secondary electronic evidence to be admissible, and this will sort out the past variations in how courts understood the matter. In effect, this judgment has brought to light one of the issues that remain unresolved: strict adherence to procedural formalities or

²² Law Commission, *Report No. 185: Review of the Indian Evidence Act, 1872* (Law Com No 185, 2003)

²³ Stephen Mason & Daniel Seng, *Electronic Evidence* (5th edn, University of London Press 2017)

delivering real justice. Only time will tell the impact of the ruling, how judges and their decisions develop this given principle with respect to the ongoing changes in technology, will decide the ultimate impact of the ruling, and whether other legal instruments or means to soften the harshness of the rule will be introduced.