



Electronic Record as Evidence in the Courts: An Analysis

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ABSTRACT:

In our day to day life, electronic devices and gadgets are playing the vital and indispensable role as now almost all systems, viz, Banking, Commerce, Trade, and Education etc. have been much depending upon internet and computers. Digital cameras, video and audio recorders, Compact Discs, SD Cards of mobile have made a pertinent place in our daily activities. However, the same technology also generates a new kind of problem before the legal system that how to prove the electronic record before the courts of law so that the same can be used as evidence. This article explores the Laws and relevant case laws in India in order to trace out the present state of affair of electronic records in the form of evidence and its admissibility in India.

Keywords: Evidence, Electronic Record, Law, Courts

INTRODUCTION:

Electronic record has become the vital part of our life as we become more accustomed to the electronic devices like CD, DVD, hard disk/ memory card data, website data, social network communication, e-mail, instant chat messages, SMS/MMS and computer generated documents.. However, a potential problem also emerged with rampant and general use of such electronic devices and gadgets which give birth to the new kind of challenge to the courts, that is what, how and when to rely on evidence relating to electronic records. Section 3 of the Indian Evidence Act, 1872 (hereinafter referred as Evidence Act) after the amendment in 2000, now provides that "All documents including electronic records produced for the inspection of the Court" is to be called Documentary Evidence. But problem has yet to be sort out as, although electronic record may be used as documentary evidence, but the rules of proving the same in the courts are entirely different.

Electronic Records

According to Section 2(t) of Information Technology Act, 2000, Electronic Records means any data, record or data generated, image or sound stored, received or sent in the electronic form or micro film or computer generated

microfiche¹. Thus, all internet activities, electronic chats, mobile or telephones communications, image created or video recorded, CCTV record will fall in the category of Electronic Record. As per Section 65-B of Indian Evidence Act² Electronic records are 'secondary evidence'. On the basis of rules of secondary evidence, when the original documents cannot be produced in the court then copies of such documents can be produced as secondary evidence and it will be admissible in the court according to its merit. In the matters of electronic documents, however, there exists no thin line between original or secondary. Whenever the evidence related to electronic document present in the court, the genuineness of the document must have to be established for the authenticity of electronic records except the conditions provided under Section 65B. In that case, the electronic record becomes automatically admissible as evidence of its contents in the same manner as a certified copy of a public document. Such certified copy is also secondary evidence but is received as if it is primary evidence, because of sections 77 and 79³.

1 Information Technology Act, 2000; Section 2(t).

2 Indian Evidence Act, 1872 (Act 1 of 1872); Section 65-B

3 Law Commission of India, 185th Report on Indian Evidence Act, available at: <https://lawcommissionofindia.nic.in/reports/185thReport-PartII.pdf>