

ELECTRONIC EVIDENCE IN CIVIL PROCEEDINGS IN INDIA

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ABSTRACT

A significant leap in the development of information technology over the past twenty years has made the global legal community respond to new challenges that have come along with the progress in the digital environment. Together with the convenience of using electronic resources, society has developed a need for a simple and understandable legislative regulation of legal relations arising from the use of computer information technologies and various products of electronic digital activity in order to protect their interests potentially.

The concept and types of electronic evidence in civil proceedings in different countries have different meanings. Meanwhile, the regulations of their procedural admissibility and applicability differ. The common thing is the tendency towards an increase in the use of electronic information carriers in court proceedings, increasing importance for establishing specific facts, and the decisive evidentiary role in making decisions by the court.

India became one of the first countries to realize the growing level of implementation of Internet technologies, electronic digital storage media, and computer dominance in society and the state's daily life [1] (*Artemyeva, Y.A. et al.*). The consequence of this understanding was the timely development and implementation of the substantive and procedural bases in evidence law for practical, understandable, and convenient use of electronic evidence in civil proceedings.

The article examines the types and procedural status of electronic evidence and analyzes the current legislation and law enforcement practice in the admissibility and application of electronic evidence in civil proceedings in India. The study identifies the existing system of electronic evidence in the legal field of India, the determination of the advantages and disadvantages in the gathering, presentation, research, and evaluation of electronic evidence by the court in civil proceedings, as well as the identification of the procedural order for their provision.

The researchers have identified the following tasks to achieve the goals:

- to define and research the legislation of India governing the concept, types and procedural order of applicability and admissibility of electronic evidence in civil proceedings in India;
- to develop a particular procedural order for the effective use of the institution of electronic evidence in civil litigation in India;
- to identify the current trends in the gathering, presentation, research, and evaluation of electronic evidence in India's courts, based on the established judicial practice study.

The research methodology is based on general theoretical and scientific methods of cognition, including abstraction and specification, analysis and synthesis, modeling and comparison, and systemic, logical, and functional analyzes. The scientific novelty of the research consists of a comprehensive study of the instruments of legal regulation of the institution of electronic evidence in India's legal field, including regulatory legal acts and judicial precedents, and a consideration of the possibility of applying Indian approaches in the jurisdictions of other countries.

The analysis of legislation and jurisprudence regarding electronic evidence in India's civil proceedings was carried out using the synergistic principle of object study, statistical-sequential analysis, and empirical research method.

This study's results can be used in lawmaking to develop and improve regulations regarding the procedural status and use of electronic evidence in civil litigation in any country. The reference, citation, and use of this article's conclusions and materials are permissible when conducting lectures and seminars on civil procedure and private international law, research activities, law enforcement practice, and teaching.

Keywords: *electronic evidence, applicability and admissibility of electronic evidence, civil proceedings, digital technology, certificate*

INTRODUCTION

The institution of evidence law plays a crucial role in any legal system of the world and is a fundamental pillar when considering any dispute by the court due to the need to rely on the case's proven facts and circumstances to make a fair decision. In countries of common law, including India, the Institute of Evidence and Proof is separated into a separate branch of law - the law of evidence, which emphasizes its importance, relevance, and independence.

Nowadays, given the development of technology in India's legal field, electronic evidence has acquired a significant weight. Their unique informational content, allowing to obtain metadata that cannot be obtained in any other way, revolutionized civil evidence's procedural law. Electronic media can fully witness

the entire chain of events that have occurred between the subjects of civil relations. With the help of them, one can, for example, identify the time and content of correspondence, authorship, establish the creation date and the last saving of a particular electronic document, trace the sequence and content of the changes made, and much more.

India's legislation governing the admissibility and applicability of electronic evidence in civil proceedings is one of the most advanced in the world and covers a significant amount of electronic resources that can legitimately be used as evidence in litigation. With the codified legislation, the base of judicial precedents has grown significantly, where judges accept the intrinsic electronic nature of evidence and interpret the admissibility and applicability of electronic evidence in civil proceedings.

Analyzing the adopted laws and judicial practice in India, it can be stated that despite the modern codified norms, the decision on the admissibility and applicability of electronic evidence in the trial is taken by the judge grounded on the basic legal requirements for authenticity, impartiality, the legality of receipt, and alike. The freedom given to judges to interpret the correspondence of electronic evidence to the basic principles of jurisprudence in the early 2000s led to conflicting jurisprudence. Currently, procedural disagreements about the admissibility and applicability of electronic evidence have been seriously leveled by the Supreme Court of India's judicial precedents, and the lower courts are taking a consistent approach to the collection, presentation, research, and evaluation of electronic evidence [7] (*Sinha, M.*).

METHODOLOGY

The methodology of this research is based on the general scientific method of cognition. The following methods were also included: the general logical method, methods of empirical and theoretical research, methods of systematizing scientific knowledge. The study of codified rules of procedural legislation, judicial precedents, orders and explanations of the highest courts of India, and the works of famous scholars in the field of law were carried out using the methods of detailed research, logical and statistical analysis. In the article, the authors relied on the results of Indian and English scholars, legislators, researchers, and legal theorists in the field of evidence law in India and related areas of law.

RESULTS

General characteristics and procedural status of electronic evidence in civil proceedings in India

The evolution and progress in information technology at the beginning of the twenty-first century gave rise to unique cyberspace, where people use electronic tools to conclude contracts, exchange information, conduct auctions, and perform

socially significant project events. The increased role of high technologies in civil society forced India to begin a significant transformation of the institution of evidence law for the legal regulation of the status, types and procedural rules of applicability and admissibility of electronic evidence [2] (*Dudin, M.N., et al.*).

In 2000, in India, based on the Model Law on Electronic Commerce, adopted by the United Nations Commission on International Trade Law at the United Nations General Assembly by resolution No. A/RES / 51/162 of January 30, 1997, a fundamental statute - the Law on information technology, came into force. This Law established the legal recognition of deals and transactions in India's legal field, carried out in electronic form using digital technologies, computer resources, and other means of electronic communication, which in essence are an alternative to paper methods of exchange and storage of information.

An essential purpose of the Information Technology Act was to amend and supplement the two primary codified sources of evidence in India - the Indian Evidence Act of 1872 and the Bank Records as Evidence Act of 1891. In the Indian Evidence Law, an additional characteristic was added to the definition of evidence - 'all documents, including electronic records, prepared by [third parties - author] for examination by the court.' Despite numerous other amendments, this phrase is critical since it introduces the concept of electronic evidence and defines its procedural order of admissibility and applicability on a par with ordinary evidence.

Electronic records include all evidence in electronic form attached to a claim or presented in a legal proceeding to prove the existence or absence of a specific fact of relevance to the case. In India's Evidence Law, the legislator did not go into details, prescribing mobile phones, video cameras, and other electronic devices with which certain digital content could be produced, but covered all possible electronic content from any digital sources.

In the Indian Law of Evidence, after the entry into force of the Law on Information Technology, there appeared such concepts as an electronic signature, electronic form, electronic record, subscriber, electronic signature certificate, and others. When defining these concepts, section 3 of India's Evidence Law refers to the definitions assigned to them under the Information Technology Act.

In turn, the Law on Information Technologies scrupulously reveals each concept, describing its definition and content. For example, "electronic records" include any information, recordings, and generated metadata, pictures, and sounds stored, received or sent in electronic form, including any microfilms. "Electronic form" means any information generated, sent, received, or stored in the media space, optical, magnetic, computer storage devices, microfilm, computer microfilm, or the like.

When providing electronic evidence in a claim or the course of legal proceedings, the judges are primarily obliged to establish the authenticity, reliability, and sufficiency of electronic evidence. In case of impossibility to carry out a technical analysis of the submitted electronic evidence or making an opinion on any electronic digital information, the judge is obliged to resort to the opinion of an expert on electronic evidence.

A specialized expert community has been created in India to provide expert judgment to the court or other government agency regarding the submitted electronic evidence, currently consisting of six laboratories. These laboratories are established under Article 79A of the Information Technology Law, located in different parts of the country, and are appointed by special orders of India's Central Government.

As an additional explanation, article 79A also reveals what is meant by "electronic evidence," which can be submitted for examination by the expert community. It includes any information of evidentiary value stored and transmitted in an electronic form, including digital video and audio recordings, computer programs, and content, any material generated by mobile communications and facsimile machines.

Determining the authenticity of electronic evidence by a judge in a civil process plays the most crucial role in assessing the evidence presented. No amount of verbal assertions and admissions can 'outweigh' an electronic recording unless the statements are about the recording's authenticity. In such a case, the judge requests the opinion of experts in the field of electronic evidence.

Electronic evidence related to banking activities has a unique procedural status. Currently, almost all commercial organizations conduct their business activities with checking accounts, credit loans, and other services provided by banking organizations. Almost all banking transactions are carried out in the electronic form [6] (*Dharmapala, et al.*). Therefore, the legislation provides for the following procedural order to provide electronic evidence data in civil proceedings.

A bank or credit institution makes a certified printed copy of a financial transaction, account statement, payment order, cash books, or any other information stored in electronic form and provides them to whom it may concern. [5] (*Protopopova, O.V.*). These copies are considered in all legal proceedings as *prima facie* evidence and serve as evidence of certain financial operations and transactions, the existence of accounts, orders, and instructions for specific actions.

According to the Indian Evidence Act, all certified bank statements, including those contained only in electronic form, are evidentiary, but not enough to hold them liable. For example, when a person A in court proceedings demands a refund

of a certain amount of money from a person B and provides a certified printed copy of the electronic transaction confirming that person A has transferred this amount to person B, these printouts of electronic evidence are essential for resolving the dispute. However, they are not sufficient to prove the existence of a debt. In this case, the court is obliged to establish possible contractual relations between the parties to the dispute regarding the dispute's subject, to find out the reasons and motives for both the transfer of money and the refusal of the other party to return it.

Electronic agreements and contracts, certified by the parties' electronic signatures, are electronic evidence of acceptance by the parties of certain contractual obligations in Indian civil proceedings until this is refuted by other facts or evidence. In accordance with the Law on Information Technology, electronic signatures are a unique electronic instrument of identity verification in the electronic space using an asymmetric cryptosystem and a bit algorithm. In civil proceedings, an electronic signature's evidentiary value is equivalent to a signature made by the signatory in his hand [8] (*Ghosh, et al.*).

Any person or organization has the right to obtain an electronic signature by applying to the Certification Center to create and provision an electronic signature under the requirements and conditions prescribed by the authorities of the Central Government. When considering the application, the Certification Center asks for the information it needs and issues an electronic signature certificate containing the electronic signature holder's metadata.

Unlike a manual signature, an electronic signature's evidentiary value can be challenged and recognized as unreliable evidence on the following grounds:

- data on the creation of a signature is not associated with the person who signs or certifies a specific electronic document, or, depending on the circumstances the person is not its authenticator;
- the data on the creation or authentication of the signature at the time of signing or certification of a certain electronic document was not under the control of the person who owns the electronic signature;
- any change in the electronic signature cannot be detected after its use;
- any change in the information after the authentication of the electronic signature is not detectable.

In all civil litigation, therefore, judges, when considering cases involving the use of an electronic signature, take as a proven fact the signatory's intention to sign, certify or approve a particular electronic document by affixing an electronic signature unless proven otherwise.

Common electronic evidence in civil litigation includes emails and messages transmitted using specialized email servers. The courts admit the submitted

printouts of the emails to scrutiny and evaluation. Simultaneously, the courts can accept the content, addressees, time of sending and receiving emails as a proven fact but cannot consider the person who sent the message or letter to be established.

Admissibility of Electronic Evidence in Indian Civil Proceedings

The rules and conditions of the admissibility of computer-generated electronic content as electronic evidence in civil proceedings are governed by section 65B of India's Evidence Act. Under it, any information produced by a computer and transferred to paper, optical or magnetic media is recognized as documentary evidence. This computer product produced independently by a computer in the course of regular work or with the help of a person with legal access to the use of a computer is admissible for presentation as evidence in any civil proceedings [3] (*Ermakova E.P., et al.*).

This article allows the transformation of original electronic evidence into secondary evidence to facilitate the procedure for their presentation, research, and evaluation. It is a laborious, costly, and ridiculous process to deliver several computers to each trial to demonstrate electronic evidence in its original form [10] (*Kumar Singh, et al.*). In this regard, Article 65B establishes specific procedures and conditions for admissibility for this evidence.

The Indian Evidence Act does not reveal the concept of 'computer' and, accordingly, the question of the procedural admissibility of electronic records made with the help of other digital devices arises. A reference fills this gap in India's primary source of evidence to the interpretation of the concept of a computer under the Information Technology Act. Article 2 (i) applies to computers any electronic, magnetic, optical, or other high-speed device or data processing system that performs logical, arithmetic, and storage functions via electronic, magnetic, or optical pulses. Thus, video recording from a smartphone or video recorder also refers to computer products and is admissible electronic evidence in civil litigation [9] (*Sulaimanov R.A.*).

The following conditions must be met to determine computer products' admissibility as electronic evidence in civil proceedings:

- a) computer products must be obtained or manufactured as a result of the technical purpose of using a computer for any purpose by a person who has a legal right to use this computer;
- b) information and data contained in computer products were entered, produced, obtained during normal regular computer activities; during the entire period for which the information was provided, the computer worked without failures following its technical characteristics, or the improper operation of the computer and its programs could not affect the electronic information, its content or formation;

- d) the copy of the computer product must be a reproduction of the original.

Electronic evidence meeting these conditions can be presented in any litigation in India at any stage and is equated to documentary evidence.

In any civil proceedings, for the admissibility of electronic evidence meeting the above conditions, the following information must be provided for examination and assessment by the court and the parties to the case:

- a) identification of computer products containing data relevant to legal proceedings and a description of the method of its production;
- b) provision of information about a computer, device, apparatus, or common use for the production and receipt of electronic evidence.

As a rule, this information is provided to the court and electronic evidence in the form of attached various certificates and statements signed by authorized persons and holding the appropriate official position to manage, operate and control a particular computer. A person who has the authority to control, supervise or manage a particular area of electronic activity must issue a certificate or license regarding the issue posed in any format based on his/her knowledge and beliefs. The content of the signed certificate, regarding the sources and methods of obtaining electronic evidence, is considered by the court as a statement of fact and does not require further proof.

Judicial practice, in turn, demonstrates the advantage of providing originals of electronic evidence over their certified copies. Thus, for example, in *Amar Singh v. Union of India (2011) 7 SCC 69* the absence of an audio recording of the telephone conversation in the case file, and only the presence of a printed transcript of the conversation, certified by the authorized representative of the telephone company, led to confusion, counterclaims and delay in the proceedings. The parties, including the government agency and the telephone company, have "bogged down" in endless disputes over the transcript's authenticity and interpretation.

Acceptable electronic evidence is any information transmitted to a computer or device, directly or through any other equipment, regardless of human intervention. Simultaneously, if the device generated, received, or any electronic data were created on it under the circumstances of the operation of equipment other than the prescribed and regularly performed, the court may also admit this information as evidence. In this case, the primary condition for admissibility will be the legality of obtaining the information.

An essential condition for the admissibility of electronic evidence presented based on other electronic information is the mandatory indication of links to sources. These references must also indicate how to use electronic information to

create specific electronic evidence, for example, by calculation, comparison, or other processes.

Recently, the issue of admissibility of electronic evidence in civil proceedings in India has begun to play a crucial role, since electronic evidence significantly affects the case's outcome. The relative ease with which they can be fabricated or altered and the variety of forms and sources of creation require a judge to scrupulously review the evidence presented when asked to rule on their admissibility. This evidence can immediately move to the status of prima facie evidence and level the probative power of oral and written prima facie evidence, not to mention secondary ones.

Even admitted as secondary evidence, electronic evidence can turn things around, such as in the absence of an agreement between two parties to a civil dispute. However, if there is a photograph taken with a mobile phone, the court may recognize the existence of certain contractual relations between the parties to the dispute if secondary electronic evidence is admissible. Of course, this photo must comply with the form and conditions of submission following legal norms, and the judge must contact experts to establish the authenticity of the photo.

CONCLUSION

Currently, India has one of the most modern and advanced legislation governing the concept, types, and procedural order to provide electronic evidence in civil proceedings. The Evidence Law of India, together with the Information Technology Law, are the two main pillars of the institution of electronic evidence, covering the entire spectrum of possible electronic evidence and detailing their procedural order for application. The Supreme and High courts' jurisprudence serves as additional legal support that consolidates procedural approaches to the production, collection, certification, examination, and evaluation of electronic evidence.

When deciding on the admissibility of electronic evidence in civil proceedings, the crucial procedural factor is the analysis and study of the submitted electronic evidence's source and authenticity. Meanwhile, non-compliance with the requirements and procedure for certifying electronic evidence under the norms of the Evidence Law of India, for example, the lack of a certificate for secondary electronic evidence, entails the inadmissibility of the evidence presented to consideration in the trial and cannot be considered by the court under any circumstances.

With all the attention to detail and breadth of electronic evidence coverage, codified law has some gaps. One of these gaps is that the legislation does not regulate the procedural status of potential electronic evidence arising and circulating in the popular and financially voluminous area of the crypto market and blockchain [4] (Frolova, E.E., et al.). By applicable law, the source of

electronic evidence must be confirmed by a certificate, but the cryptocurrency market does not have international borders, and it is simply impossible to identify a person with his physical location. Accordingly, it is impossible to confirm the source and authenticity of electronic evidence, which means that this evidence will be inadmissible in court.

Another problem that the Institute of Electronic Evidence in India is currently facing is the underdeveloped lower courts' technological system. Unlike the Supreme Court and High Courts of India, the lower courts in most cases ignore the provisions of Section 65B of the Evidence Law of India and apply the provisions of Articles 63 and 65 of the same Law to electronic evidence concerning the legal force of mechanically made copies of documents certified by the responsible official or confirmed by oral statements of a witness who could see or know specific facts. According to some lawyers, the reasons for this approach of judges to electronic evidence are the low funding of lower courts, the high age, and incompetence of judges and the desire of participants in civil proceedings to reduce the time spent on resolving the dispute.

The advantages of using electronic evidence in India's civil proceedings include unique informational content, relative ease of creation of a specific device by a user, and easy accessibility when needed. The disadvantages are the complicated bureaucratic process of certifying the electronic content, poor security against falsification and editing, and the lack of a clear perspective on the admissibility and applicability of the submitted electronic evidence, the decisions on which are made by the judges.

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