

ACCEPTANCE OF DIGITAL EVIDENCE IN THE INDIAN COURTS OF LAW: ADDRESSING GAPS AND CHALLENGES

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Abstract

In modern times, the judicial proceedings rely mostly upon integration of digital evidences presented in the courts of law. Although, the Bharatiya Sakshya Adhiniyam, 2023 provides for a very clear meaning to the word electronic evidence, its acceptance in court is obstructed due to a number of challenges such as authenticity, integrity, procedural compliances and the emergence of technologies like of Artificial Intelligence. Tragically, the access to digital technology is not limited to only courts and government organisations. There is an increasing risk of technology falling into wrong hands and the chances of it being misused cannot be ignored, hence we require a strong procedural framework for collecting and authenticating such digital evidences. This paper examines the legislative framework governing digital evidence in India including the Indian Evidence Act, 1872, the Bharatiya Sakshya Adhiniyam (BSA), 2023 and the Information Technology Act, 2000. The fact that digital evidence is vulnerable has been noticed by the courts in many instances. This paper focusses on the main challenges faced in admission and handling of digital evidence in India, keeping in view the gaps, it also suggests possible strategies to enhance reliability and strengthen the procedural framework of digital evidences.

Keywords: *electronic evidence, digital technology, admissibility, relevance, judicial proceedings.*

1. Introduction

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The digital era has transformed the way in which legal investigations take place and how court proceedings are looking at digital evidences more often. The evidences are presented in the form of emails, social media engagements and interactions, financial transactions, mobile device logs and even more sophisticated networks that are beyond the understanding of a common person.¹ Prior to the enactment of the Bharatiya Sakshya Adhiniyam, 2023, hereinafter referred to as the BSA, electronic evidence gained statutory recognition through amendments in the Indian Evidence Act, 1872 and Information Technology (IT) Act, 2000, along with judicial precedents. BSA provides a clear legal recognition to the word electronic evidence by including it under the category of 'evidence' under Section 2(1)(e)², thereby, giving it the same status of traditional documentary evidence. It also contains strict provisions in terms of admissibility and recognition of electronic evidence, how it is to be recorded and stored but it assumes that the judicial agencies have access to advanced cutting-edge technology required to process the electronic evidence. The electronic certificate to admit electronic evidence that was earlier discretionary in exceptional circumstances³ has now become mandatory as per Section 63 of the BSA⁴. Amendments have also been made to the procedural laws such as The Bharatiya Nagarik Suraksha Sanhita, 2023 which provides for collection and admissibility of electronic evidence in criminal cases. The increased dependence upon technology have significantly increased technology related crimes. Therefore, despite the developments, no law is able to keep up with the ever-evolving dynamics of technology. This has led to certain gaps and challenges that persist in the law leading to ambiguities in authenticity, relevance and admission of digital evidences. Thus, the due process of law is violated.

¹Sharma, A. & Srivastava, R.K. *Digital Justice: Analyzing The Role And Legal Admissibility Of Digital Forensic Evidence in India*. IJLLR. Vol VII (I)

²BSA s.2(1)(e) "evidence" means and includes—

- (i) all statements including statements given electronically which the Court permits or requires to be made before it by witnesses in relation to matters of fact under inquiry and such statements are called oral evidence;
- (ii) all documents including electronic or digital records produced for the inspection of the Court and such documents are called documentary evidence;

³Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal & Ors[2018] 2 SCC 801.

⁴Pune Bar Association v. Union of India, WRIT PETITION (CIVIL) NO.599 OF 2026

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2. Literature Review

This paper evaluated the intersection of modern technology and traditional evidence rules within the present-day legal systems. Electronic evidences have taken over physical documents to such an extent that courts have to accept and apply the traditional statutes to data structures, while recognizing the admissibility of electronic evidences.⁵ Legal scholars such as Orin S. Kerr and Stephen Mason have consistently maintained that there exists a contrast between physical evidence that is tangible, while digital evidence is invisible and can be easily altered or manipulated.⁶ Hence, a piece of electronic evidence travels through various stages from the moment of its extraction to being admissible in the court of law. The main problem arises at the outset of offence. Where evidences are electronic, physical measures fall short as data can be deleted or overwritten. The data collection personnels are not equipped with suitable technologies to detect such alterations or modifications which makes procurement of data very difficult. Further, storing the data and preserving the chain of custody also poses a challenge as the storage facilities present within law enforcement agencies are under-equipped and vulnerable to manipulation. Statutory barriers also mentioned under BSA in the form of mandatory certification for authentication has been termed as an unseen burden upon the litigants.⁷ The judiciary has been oscillating on this stance giving contrary opinions from *Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal & Ors*⁸ to *Pune Bar Association v. Union of India*⁹. Also, the existing legal setup and technology fails to align with dynamics of current technology trends. The study aims to address this gap and related legal challenges.

3. Objectives

In the era of digitalization, technology can enhance the way investigations take place by introducing tools and mechanisms that help in handling and verifying digital evidences.

⁵*Anvar P.V. vs. P.K. Basheer*, (2014) 10 SCC 473.

⁶*Electronic Evidence* (Stephen Mason & Daniel Seng eds., 4th ed. 2017).

⁷ “Unseen Burden Of Electronic Evidence” Mayank Makhija & Naman Sharma, LiveLaw 21 Aug. 2026 available at: <https://www.livelaw.in/articles/unseen-burden-electronic-evidence-546749>.livelaw.in/articles/unseen-burden-electronic-evidence-546749

⁸[2020] 7 SCR 180

⁹WRIT PETITION (CIVIL) NO.599 OF 2026

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The enactment of new laws has introduced the concept of electronic evidences. The objective of this research paper is to analyse how courts appreciate digital evidence differently due to new legislations and identify the gaps and legal challenges in the process. A deep review of the legal framework explains the method in which electronic evidence enters the court and its relevancy. The researcher aims at elaborating the key challenges while suggesting practical solutions in the present scenario. Since the criminal laws have been recently enacted, they are still subject to interpretations by the Courts. The questions raised through various studies that identify the loopholes and lacunae can serve as the beginning of clarification of concepts by the Courts, scholars and reputable authors.

4. Research Questions

1. Whether the amended provisions in relation to electronic evidence are sufficient to tackle the complexities of digital technology?
2. Whether the standard set for admissibility of electronic evidence adequate in maintaining the authenticity of the electronic evidence?

5. Research Methodology

To identify the legal challenges faced in the admissibility of the digital evidences, doctrinal approach has been adopted by the researcher. The Bharatiya Sakshya Adhiniyam, 2023; Indian Evidence Act, 1872; Information Technology (IT) Act, 2000 and other significant statutes have been referred and analyzed in relation to digital evidences. Judicial precedents and landmark judgments focusing on the specific aspects of admissibility, relevance and verification of digital evidences have been analyzed while identifying key legal principles. Apart from the statutes, scholarly articles and reports from genuine sources, international practices have been reviewed and presented in the paper. The conclusions from these sources have been used to reach a critical analysis where the main gaps and legal challenges have been identified that are prevailing within the legal and legislative framework.

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6. Scope of the study

Digitalization has led to increased number of criminal breaches. Most conventional crimes are connected with electronic footprint, and as a researcher, it is impossible to think about a courtroom that does not appreciate electronic evidences appropriately.¹⁰ This paper focusses on the statutory framework and procedural rules in relation to acceptance and relevance of electronic evidences. The scope of the study is limited to the Indian perspective with some references to international law to draw comparisons. The paper covers technological issues in acceptance of electronic evidence such as authenticity, procedural compliance, data verification and storage and advanced threats in the form of tampering of evidence and deepfakes. It also covers the judicial perspective which tells how courts must evaluate evidence.

7. Significance of the study

This study is significant as it aims at fostering a potential connection between rapidly transitioning technology and a slow-paced legislative framework. Since, the modern society is so reliant upon the technology for day-to-day working, the legislature has also adopted this approach by using technology for their advancement. This study provides insights as to what extent the judicial process is equipped with technology to cater to the diversifying and advanced digital threats. This study is significant for the legal practitioners, judges and lawyers, who are at the heart of the judicial process and assist them in screening the digital evidence to reduce inconsistencies. It is also significant for policymakers as it identifies the loopholes in the existing system. It serves as reference for scholars who would further expand the study with upcoming judicial rulings and remarks.

8. Analysis of the study

Digital evidence has emerged to be instrumental in both civil and criminal litigations. There is a digital trace of every person and it becomes easier for the system to track

¹⁰P. Ganguli, "Admissibility of Digital Evidence Under Bharatiya Sakshya Sanhita: A Comparative Study with the Indian Evidence Act", available at: <https://doi.org/10.2139/ssrn.4977238> (last visited on February 12, 2025).

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anybody through their actions, social media interactions, financial transactions or through the surveillance systems deployed by the state. Since, it plays an essential role in the modern legal proceedings, the legal framework has also tried to imbibe this change in the legal practical system. The enactment of BSA is one such act. Digital evidence has now been defined explicitly under BSA as evidence that includes any information stored, transmitted, or generated in electronic form relevant to legal proceedings. The basic legal challenge is the proving the authenticity of the evidence, proving it was not tampered and making it admissible in the court of law.¹¹

Digital evidences can be found in various forms such as electronic documents; data from social media and messaging platforms like WhatsApp, Instagram, etc; Forensic data dealing with deleted files from electronic devices; Metadata that provides timelines for activities; and Audio-visual evidences, including phone recordings, surveillance tapes, etc.

Such evidences have been crucial in many criminal cases such as those linked to cyber-crimes, terrorism and fraud cases.¹²

8.1 The Legal Framework

Prior to the digital period, there was no mention of electronic records in the Indian Evidence Act, 1872. The IT Act, 2000 was amended to define the term electronic evidence which included data from computers. As a result, Sections 65A and 65B¹³ were added to the evidence Act. This required a mandatory certificate to be produced to establish authenticity of the evidence, when produced as secondary evidence in court. The IT Act further gave new powers to investigation officers such as interception of computers (Section 69) and search and seizure of computers or data (Section 70). Similarly, under The Code of Criminal Procedure (1973), electronic items were generally deemed to be 'movable property' subjected to search and seizure by the police. It is important to note that courts were already giving priority to digital and electronic records

¹¹ Kasper, Agnes, and Eneli Laurits. "Challenges in collecting digital evidence: a legal perspective." *The future of law and eTechnologies* (2016): 195-233.

¹² *ibid.*

¹³ Now Sections 62– 63 of the BSA

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as evidence. The current BSA provides clear definitions for electronic evidence, what can be treated as evidence (Section 62) and admissibility procedures (Section 63). The cases involving cross-border data sharing are still a niche area for Indian system.

8.2 Challenges in Admissibility

India has accepted the electronic evidence and has given it statutory recognition through the newly enacted laws, but admissibility in its true sense still poses many challenges. These challenges highlight the gap between theory and practical scenario. The main challenges are discussed below:

- i. **Authenticity and Integrity:** Alteration to electronic evidence can be done very easily without any visible footprint. This risk has been identified by the courts. For ensuring authenticity, the courts must be convinced that the data has not been tampered with, which is very difficult to prove. Despite statutory measures such as authentication certificates and hash files (create a cryptographic fingerprint using SHA-256), the courts might still term it as inadmissible if there is inconsistency.
- ii. **Chain of Custody:** the Supreme Court has observed that any break in chain of custody makes evidence unreliable.¹⁴ Hence maintaining the chain of custody is of utmost importance. It records every individual who had come in contact with the evidence. In digital evidence, this chain can be broken or tapered very easily. One has to establish that the chain was secure as the disruption might lead to inadmissibility.¹⁵ Any unexplained break will be dealt as inconsistency potential of harming the admissibility.
- iii. **Procedural Compliance:** the procedural laws govern how evidence must be collected and preserved. But in reality, procedural compliances are uneven and not adhered to.¹⁶ Shortage of experts in CFSL may also lead to rejection of evidence on procedural non-compliance.

¹⁴*Ram Singh v. Col. Ram Singh*[1985] 3 SCC 611.

¹⁵SCC Times, *Securing the Links: A Framework for Chain of Custody in Indian Courts*

¹⁶*Virendra Khanna v. State of Karnataka* AIR ONLINE 2021 KAR 525

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- iv. Judicial Expertise: Most judges and lawyers are not trained well in dealing with electronic evidences. They also lack sufficient resources and techniques to look into it. This gap has been noticed by various scholars and law enforcement agencies.¹⁷
- v. Emerging Technologies: Technology is ever-evolving. AI- generated videos, deepfakes and fake transaction records create multiplicity of evidences and it becomes difficult to check the authenticity as it creates more room for manipulation and bias. No strict laws have been laid down yet to cover AI generated content, which is very misleading.

The abovementioned points help in understanding the challenges faced by the legislative system in terms of admissibility of evidences. It also helps in answering the research questions laid down in the beginning of the paper. It is true that the amended law still lacks in providing sufficient framework to deal with digital complexities. In the absence of uniformity and genuine electronic evidences, the courts reject electronic evidence on suspicion and doubt which eventually leads to miscarriage of justice.

Conclusions and Suggestions

Digital evidences have now become an indispensable part of the judicial proceedings especially after the enactment of the new laws. There is no doubt that India is still falling behind in the race of technology, but taking appropriate steps can boost the speed.

Such as :

- Providing enhanced training and capacity building exercises for the judicial officers, lawyers and forensic experts.
- Strengthening the procedural compliances to improve admissibility.
- Investing to establish a high-tech digital infrastructure for safe-keeping the electronic evidence.

¹⁷Mathrubhumi. Com, Is this 18th or 19th century investigation?: SC slams archaic criminal justice system
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- Updating the legal framework to create legislations that take into account the emerging technological advancements such as AI, blockchains, etc. and clarifying the status of cross-border data transfers.

Addressing the challenges can make the justice system more open to reforms. These reforms can further strengthen the system, make uniform interpretations in relation to the new laws and ensure admissibility of the electronic evidences. The virtual world has now become an extended part of real life. All the activities are done via electronic means, even the crimes. Electronic evidence becomes an essential piece of information that can help bringing justice. Therefore, the reforms must reflect the current status of the society and must not leave any ambiguity. Creating a strong law and effective authentication is the way forward.

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