

## Electronic Evidence

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### Introduction:

The danger to society is not merely that it should believe wrong things, though that is great enough; but that it should become credulous, and lose the habit of testing things and inquiring into them, William Kingdon Clifford quotes. The Courts always require evidence to believe the facts in issue placed before the Courts. At the same time, the Courts require certain rules to place the evidence before them. The Indian Courts follow the provisions of the [Indian Evidence Act, 1872](#) for many decades without major amendments to it. In fact, the Legislature could not touch this masterpiece for more than a century, and the Indian Courts have been following the same rules relating to the evidence. The evidence before the Courts is to make the Courts believing certain facts occurred either in favour of or against to a party approaching the Courts.

According to the provisions of the [Indian Evidence Act, 1872](#), anything, state of things, or relation of things, capable of being perceived by the senses including the mental condition of a person is a fact. The fact is required to be proved by way of oral and documentary evidence till the date of introducing the [Information Technology Act, 2000](#). The [Information Technology Act, 2000](#) not only touched other few Indian Legislations to amend in the schedules, but also amended the Indian Evidence Act, 1872 which remained unaltered till the date of the [Information Technology Act, 2000](#) came into force. The [Information Technology Act, 2000](#) brought major amendments to the Indian Evidence Act, 1872 introducing a very new concept of 'electronic evidence'.

Though the new concept of 'electronic evidence' was introduced in the [Indian Evidence Act, 1872](#), the Legislature did not make an endeavour to define the same in the [Indian Evidence Act, 1872](#), but adopted some definitions like 'certifying authority, electronic signature, electronic signature certificate, electronic form, electronic records, information, secure electronic record, secure digital signature and subscribe' from the [Information Technology Act, 2000](#), but the [Indian Evidence Act, 1872](#) was amended by inserting many new sections relating to electronic evidence. The amendments were taken back two decades ago, but the Law relating to 'electronic evidence' is still found

insufficient. I made my endeavour to evolve the existing Law relating to 'electronic evidence' concluding that the [Indian Evidence Act, 1872](#) is required to be amended further.

### **What is Electronic Evidence:**

The word "electronic evidence" is not defined either in the [Indian Evidence Act, 1872](#) or in the [Information Technology Act, 2000](#). For better appreciation, I examined the same from a legal blog viz., "[Legal Match](#)" which broadly stated the electronic evidence as, "electronic evidence is any electronically stored information that may be used as evidence in a lawsuit or trial. Electronic evidence includes any documents, emails, or other files that are electronically stored. Additionally, electronic evidence includes records stored by network or internet service providers". For example, any data stored in electronic form in a computer and used as evidence in a trial, such as electronic records, emails, etc. The electronic evidence may be in the form of Hard Disk, Pen Drive, CD, DVD, Electronic Message, Computer Printout, Banking Record, emails, etc., or in any form of 'electronic record' as defined under [Sec.2 \(t\) of the Information Technology Act, 2000](#). The electronic record may be in the forms of CD, DVD, Electronic Message, Computer Printout, Banking Record, Statement of Accounts, Invoices, emails, etc., in a Civil or CCTV Footage, mobile phone record, chatting, postings in social media network, etc in Criminal Cases.

### **Source of Electronic Evidence:**

The source of 'electronic evidence' is using the computer as a computer for its output, but not as a tool. For example, a computer is used as type machine for preparing a document and the printout is taken. Then, the computer is said to be used as a tool, like a type machine, to prepare the document and the output of such document is not called as 'electronic record' within the meaning of [Sec.2 \(t\) of the Information Technology Act, 2000](#). But, when the computer is used to generate a document using any software, or the document is generated by partly feeding the data and partly using the software, the output of the computer is called electronic record. The difference can be seen between the typed copy (on computer) of First Information Report and computer generated First Information Report downloaded from the portal maintained by the [A.P. Police](#). In the first case, the computer is used as a tool and in the second one, the information is partly fed, and the application software generated the rest of the document.

The Statements of Accounts relating to Banker, Merchant, and other Financial Institutions are the best examples for the second category and the second category of the documents are alone considered as electronic records by virtue of the definition under [Sec.2 \(t\) of the Information Technology Act, 2000](#). For example, the computers are used for preparation of Revenue Adangals and issue the same duly signed and stamped by the Competent Authority. Later, the information relating to Revenue Adangals is fed into a portal maintained by the Government of Andhra Pradesh, and the copies of adangals are being generated through Mee-Seva or E-Seva from portal like [meebhoomi](#), etc. The second generation documents are called as electronic records and considered as electronic evidence. Similarly, the merchants prepare the bills/invoices using a template on the computer and deliver the same to the party. Such a document is not electronic record as long as separate books of accounts are maintained as the computer is used as a tool to prepare and print a document. In the present days, the merchants use an application software to generate the bills/invoices by feeding certain data, such as name of the customer, names of the goods, price of the goods, date, etc., and take computer output of the total document. The same program may be used to generate the Ledger Account of each party or firm. These documents are called electronic records within the meaning of [Sec.2 \(t\) of the Information Technology Act, 2000](#). The [Indian Evidence Act, 1872](#) also considered the same as electronic evidence and the relevant provisions of the [Indian Evidence Act, 1872](#) are also amended accordingly.

#### **Distinctive Features of Electronic Evidence:**

We can broadly identify the typical features of electronic evidence as ‘volatile and easily alterable memory, easily manipulated or forged, encrypted and cloud computing information’.

The memory stored in the electronic devices may be volatile and easily alterable. For example, the memory stored in the RAM disappears when the power is turned off or when the computer is reset. But, the data written to disk stays there permanently until it's erased, or until the storage medium fails. There is a lot of difference between the memory stored in [RAM and Hard Disk](#). But, the data on the RAM or Hard Disk is easily alterable. Similarly, the data on electronic device can easily be manipulated or forged. We often come across the issues relating to [morphing](#) of photographs. So, the

provisions of the [Indian Penal Code, 1860](#) were also simultaneously amended, the forgery of electronic record can also be seen from [Section 464 of the Indian Penal Code, 1860](#).

The next distinctive feature is [encryption](#) of information. When the information is encrypted, it is converted into secret code that hides the information's true meaning. In such a case, it may be difficult for the Investigating Agency to seize the original information until it is decrypted. The only way is to approach the authorized person to convert the information into plain text, or to approach the Examiner of Electronic Records for opinion. Similarly, the same problem is with the [cloud computing](#). In cloud computing, the information is delivered by different services through internet and the data is also stored in cloud storage. The Investigating Agency faces the same difficulty with the seizure of the data generated from internet with source and the seizure of the data stored in cloud storage, especially when the history or logs are deleted.

In view of the distinctive features of the electronic records, the issues are cropped up with respect to the data fed, data generated, data stored and data produced from a computer, and admitting the same before the Court in proof of the fact in issue or relevant fact.

### **The Importance of Electronic Evidence:**

The importance of electronic evidence can be understood that nowadays the day of human being may not be passed without touching the electronic device. The electronic evidence may be highly helpful to catch hold of an accused in a crime, and it may also help him to escape easily. Similarly, in Civil Suits, it is very easy to fix the liability of a party, and it may also help a party to escape from liability. It depends upon the agency that produces the electronic evidence before the Court according to the existing Laws of India.

The foremost case which explained the importance of the electronic evidence may be [Imran Khan Niazi v. Mian Muhammad Nawaz Sharif](#)<sup>1</sup> popularly known as Panama Papers Case. The report before the Court stated that Maryam was involved in falsifying evidence before the Supreme Court. The basis for this was the use of the Calibri font, first released to the public in January 2007, in documents said to be from

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1 PLD 2017 SC 265; PLD 2017 SC 692

2006. Following the verdict, Nawaz Sharif was disqualified from serving as Prime Minister, and also as leader of the National Assembly.

The Hon'ble Supreme Court of India emphasized the importance of electronic evidence in [Tomaso Bruno and Anr Vs. State of U.P.](#)<sup>2</sup>, when the prosecution failed to produce CCTV footage, the Hon'ble Apex Court of India held that notwithstanding the fact that the burden lies upon the accused to establish the defence plea of alibi in the facts and circumstances of the case, in our view, prosecution in possession of the best evidence-CCTV footage ought to have produced the same. In our considered view, it is a fit case to draw an adverse inference against the prosecution under [Section 114 \(g\) of the Indian Evidence Act, 1872](#) that the prosecution withheld the same as it would be unfavourable to them had it been produced.

But, time and again, the questions relating to admissibility and proof of electronic record are cropped up when the electronic evidence is produced before the Courts. The Law is tilting on admissibility and proof of electronic evidence right from the amendment to the [Indian Evidence Act, 1872](#) incorporating several provisions relating to electronic evidence. So, let me examine the provisions relating to the electronic evidence, its relevancy, admissibility, proof, and authenticity.

### What is 'Evidence':

The term 'evidence' is defined under [Section 3 of the Indian Evidence Act, 1872](#) as hereunder:

““ Evidence” means and includes—

(1) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry, such statements are called oral evidence;

(2) all documents including electronic records produced for the inspection of the Court, such documents are called documentary evidence.”

The foremost query is including the electronic records in documentary evidence. Let me examine the definition of document under [Section 3 of the Indian Evidence Act, 1872](#) which runs as hereunder:

““Document” means any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended

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2 (2015) 7 SCC 178

to be used, or which may be used, for the purpose of recording that matter.

Illustrations

A writing is a document; Words printed, lithographed or photographed are documents;

A map or plan is a document;

An inscription on a metal plate or stone is a document;

A caricature is a document.”

From the plain reading of the definition of document referred supra, it does not include the electronic record. The special provisions relating to admissibility and proof of electronic records also disclose that the electronic record is different from a document. In other words, the admissibility and proof of document is entirely different from the admissibility and proof of electronic record under Part - II and Chapter - V of the [Indian Evidence Act, 1872](#). I strongly feel that the Legislature could have incorporated the third form of evidence while amending the definition of ‘Evidence’ referred supra in the name of ‘Electronic Records’ called as ‘Electronic Evidence’, and it could have incorporated a new Chapter - VA immediately after Chapter - V as “Of Electronic Evidence”. For the time being, I can safely conclude that the document does not include electronic record for the purpose of relevancy, admissibility, and proof. The same is also made clear by incorporating Sections [22A](#), [45A](#), [65A](#), and [65B](#) of the [Indian Evidence Act, 1872](#) apart from the other provisions in respect of presumptions, etc.

#### **Relevancy of Electronic Record:**

The original [Section 22 of the Indian Evidence Act, 1872](#) deals with the relevancy of oral admissions as to contents of documents. If the document includes the electronic record, there is no need to incorporate [Section 22A of the Indian Evidence Act, 1872](#). Similarly, the original [Section 45 of the Indian Evidence Act, 1872](#) deals with the relevancy of opinions of experts, but [Section 45-A of Indian Evidence Act, 1872](#) is inserted for the relevancy of opinion of examiner of electronic evidence. So, the Legislature made it clear that the electronic record is not included within the meaning of document for the purpose of relevancy. The same can also be seen from the provisions of [Section 59 of the Indian Evidence Act, 1872](#) which says the document and electronic record are two different things. In such a case, I do not understand the object behind the intention of the Legislature inserting Sections [65-A](#), [65-B](#), [67-A](#), and [73-A](#) of the Indian Evidence Act, 1872 in Chapter - V under the heading of “Of Documentary

Evidence”.

### **Admissibility and proof of electronic records:**

As I earlier mentioned, the Law relating to admissibility and proof of electronic record is tilting right from the insertion of electronic evidence by way of amendments to the [Indian Evidence Act, 1872](#). Perhaps, the reasons may be that the Law is insufficient, and it relates to new generation instruments, such as, computers, etc. Before touching the provisions relating to admissibility and proof of electronic records under Sections 65-A and 65-B of the [Indian Evidence Act, 1872](#), I want to make it clear that the other Sections in Chapter - V of the [Indian Evidence Act, 1872](#) such as, Sections 61 to 65 of the [Indian Evidence Act, 1872](#) do not deal with the admissibility and proof of electronic records. In other words, none of these sections contain a single word as to admissibility and/or proof of ‘electronic record’ though the definition of ‘Evidence’ under [Section 3 of the Indian Evidence Act, 1872](#) includes the electronic record in documentary evidence. The Legislature made special provisions regarding the admissibility and proof of electronic records by incorporating Sections [65-A](#) and [65-B](#) of the [Indian Evidence Act, 1872](#).

According to the provisions of [Section 65-A of the Indian Evidence Act, 1872](#), the contents of electronic record may be proved in accordance with the provisions of [Section 65-B of the Indian Evidence Act, 1872](#). The Legislature, before jumping into the admissibility and proof of computer output, could have thought about the provisions relating to the production of the original electronic device. The argument that there is no need to have a specific provision for production of original electronic device may not be acceptable for the reason that there are specific provisions for production of original documents under sections [62](#) and [64](#) of the [Indian Evidence Act, 1872](#). If this argument is accepted, there is no need to incorporate Sections [62](#) and [64](#) in the original enactment. So, there could be a provision for production of original electronic record and safety measures to protect the device and information until the finality of the dispute in [Section 65-A of the Indian Evidence Act, 1872](#) itself, and the rest of the contents of the may be continued.

However, the total Law is revolving around [Section 65-B of the Indian Evidence Act, 1872](#) and the production of the certificate required under [Section 65-B \(4\) of the Indian Evidence Act, 1872](#). [Section 65-B \(1\) of the Indian Evidence Act, 1872](#) deals with

admissibility and proof of electronic record, [Section 65-B \(2\) of the Indian Evidence Act, 1872](#) deals with the conditions referred in Sub-section (1) in respect of computer output and computer in question, [Section 65-B \(3\) of the Indian Evidence Act, 1872](#) deals with the combination of computers, and [Section 65-B \(4\) of the Indian Evidence Act, 1872](#) deals with the requirements of the certificate. It is also clear that [Section 65-B of the Indian Evidence Act, 1872](#) gives overriding effect to the other provisions of the [Indian Evidence Act, 1872](#). But, on careful reading of [Section 65-B \(1\) of the Indian Evidence Act, 1872](#), it appears that the words “computer output shall be deemed to be also a document” are used without any significance.

The opening words of the section starts with non-obstante clause giving overriding effect to the other provisions of the [Indian Evidence Act, 1872](#) for the reason that special provisions are made under [Section 65-B of the Indian Evidence Act, 1872](#). In such a case, the computer output mentioned in the section need not be referred as a document, especially, when the rules regarding the documents are not made applicable and the definitions such as, ‘electronic form, electronic record, etc’ are adopted from the [Information Technology Act, 2000](#). It may not be out of place to mention that the “Document” under [Section 3 of the Indian Evidence Act, 1872](#) is not amended as I earlier mentioned by including the electronic record within the purview of document. So, there is no significance in regarding the computer output as a document even when the conditions mentioned under [Section 65-B \(4\) of the Indian Evidence Act, 1872](#) are satisfied.

Irrespective of the significance of the expression ‘document’, [Section 65-B \(1\) of the Indian Evidence Act, 1872](#) makes it clear that the computer output shall be deemed to be a document if the conditions mentioned in the section are satisfied in relation to the information and computer in question, and shall also be admissible in evidence without further proof or production of the original as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible. So, it obviously dispenses the production of the original electronic record making it clear that the conditions mentioned in the section with respect to information and computer in question are to be satisfied. Then, the issues cropped up when the parties to the suit or other proceedings failed to produce the original or the certificate in terms of [Section 65-B \(4\) of the Indian Evidence Act, 1872](#).



Law Relating to Certificate under Section 65-B (4) of the Indian Evidence Act, 1872:

The interpretation of Law relating to the production of the certificate under [Section 65-B \(4\) of the Indian Evidence Act, 1872](#) is tilting from the decision of Hon'ble Supreme Court of India in [State \(N.C.T. Of Delhi\) vs Navjot Sandhu@ Afsan Guru](#)<sup>3</sup>, wherein it was held that the printouts taken from the computers/servers by mechanical process and certified by a responsible official of the service providing Company can be led into evidence through a witness who can identify the signatures of the certifying officer or otherwise speak to the facts based on his personal knowledge, irrespective of the compliance of the requirements of [Section 65-B of the Indian Evidence Act, 1872](#) which is a provision dealing with admissibility of electronic records, there is no bar to adducing secondary evidence under the other provisions of the [Indian Evidence Act, 1872](#) viz., Sections [63](#) & [65](#) of the [Indian Evidence Act, 1872](#). This Law was holding the field till it was reconsidered by a Three Judge Bench of Hon'ble Supreme Court of India in [Anvar P.V vs P.K.Basheer & Ors](#)<sup>4</sup>, wherein it was held that the certificate must accompany the electronic record like computer printout, Compact Disc (CD), Video Compact Disc (VCD), pen drive, etc., pertaining to which a statement is sought to be given in evidence, when the same is produced in evidence. It was further held that an electronic record by way of secondary evidence shall not be admitted in evidence unless the requirements under [Section 65-B of the Indian Evidence Act, 1872](#) are satisfied. The decision in *Navjot Sandhu's case* was overruled.

The Hon'ble Supreme Court of India had an occasion to emphasize the importance of CCTV Footage in *Tomaso Bruno Case* referred supra and while dealing with the electronic record, it was held that Sub-section (1) of [Section 65B of the Indian Evidence Act, 1872](#) makes admissible as a document, paper print out of electronic records stored in optical or magnetic media produced by a computer, subject to the fulfillment of the conditions specified in sub-section (2) of [Section 65B of the Indian Evidence Act, 1872](#), and secondary evidence of contents of document can also be led under [Section 65 of the Indian Evidence Act, 1872](#).

While so, the Hon'ble Supreme Court of India in [Shafhi Mohammad v. State of Himachal Pradesh](#)<sup>5</sup>, relaxed the condition to produce the certificate when the device is

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3 2005 (11) SCC 600

4 (2014) 10 SCC 473

5 (2018) 2 SCC 801

not under the control of the party producing the electronic record. Again, the matter was referred to a Three Judge Bench of Hon'ble Supreme Court of India in [Arjun Panditrao Khotkar vs Kailash Kushanrao Gorantyal](#)<sup>6</sup>, wherein it was held that the declaration of law in *Tomaso Bruno* (supra) following *Navjot Sandhu* (supra) that secondary evidence of the contents of a document can also be led under [Section 65 of the Indian Evidence Act, 1872](#) to make CCTV footage admissible would be in the teeth of *Anvar P.V.*, (supra) and cannot be said to be a correct statement of the law. It was further held that the judgment in *Shafhi Mohammad* (supra) states the law incorrectly and is in the teeth of the judgment in *Anvar P.V.* (supra), following the judgment in *Tomaso Bruno* (supra) - which has been held to be per incuriam hereinabove - the underlying reasoning of the difficulty of producing a certificate by a party who is not in possession of an electronic device is also wholly incorrect. It was further held that the requisite certificate in [Section 65B \(4\) of the Indian Evidence Act, 1872](#) is unnecessary if the original document itself is produced. This can be done by the owner of a laptop computer, a computer tablet or even a mobile phone, by stepping into the witness box and proving that the concerned device, on which the original information is first stored, is owned and/or operated by him. In cases where "the computer", as defined, happens to be a part of a "computer system" or "computer network" (as defined in the Information Technology Act, 2000) and it becomes impossible to physically bring such network or system to the Court, then the only means of proving information contained in such electronic record can be in accordance with [Section 65B \(1\) of the Indian Evidence Act, 1872](#), together with the requisite certificate under [Section 65B \(4\) of the Indian Evidence Act, 1872](#). Further, the decision in *Anvar P.V Case* referred supra was clarified as hereunder:

"This being the case, it is necessary to clarify what is contained in the last sentence in paragraph 24 of *Anvar P.V.* (supra) which reads as "...if an electronic record as such is used as primary evidence under [Section 62](#) of the Evidence Act...". This may more appropriately be read without the words "under [Section 62](#) of the Evidence Act,...". With this minor clarification, the law stated in paragraph 24 of *Anvar P.V.* (supra) does not need to be revisited."

Thus, the relevant portion of the decision in *Anvar P.V. Case* shall be read as hereunder:

"It is clarified that notwithstanding what we have stated herein in the preceding paragraphs on the secondary evidence on electronic record with reference to

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6 (2020) 7 SCC 1

Section 59, 65A and 65B of the Evidence Act, if an electronic record as such is used as primary evidence (under Section 62 of the Evidence Act), the same is admissible in evidence, without compliance of the conditions in Section 65B of the Evidence Act.”

The Hon'ble Apex Court of India made it clear that the provisions of Section 62 of the Indian Evidence Act, 1872 are not applicable to electronic records, the certificate as required under Section 65B(4) of the Indian Evidence Act, 1872 is mandatory for admitting electronic record in evidence, and the certificate is unnecessary if the original device is produced.

**Requisite Conditions of the Certificate and Authenticity of Electronic Record:**

The certificate under Section 65B (4) of the Indian Evidence Act, 1872 is not mere formality. As I earlier mentioned, while dealing with the characteristics of electronic record, the electronic record is easily alterable, easily forged, may be encrypted or may be generated from cloud computing. In order to assure the authenticity of the electronic record, the production of electronic record with the certificate is mandatory. The Hon'ble Apex Court of India in *Arjun Panditrao Khotkar Case* referred supra upheld the Law laid down in *Anvar P.V. Case* referred supra in respect of the following conditions mentioned under Section 65B (2) of the Indian Evidence Act, 1872:

- (i) The electronic record containing the information should have been produced by the computer during the period over which the same was regularly used to store or process information for the purpose of any activity regularly carried on over that period by the person having lawful control over the use of that computer;
- (ii) The information of the kind contained in electronic record or of the kind from which the information is derived was regularly fed into the computer in the ordinary course of the said activity;
- (iii) During the material part of the said period, the computer was operating properly and that even if it was not operating properly for some time, the break or breaks had not affected either the record or the accuracy of its contents; and
- (iv) The information contained in the record should be a reproduction or derivation from the information fed into the computer in the ordinary course of the said activity.

The Hon'ble Apex Court of India while dealing with the statement under Section 65B (4) of the Indian Evidence Act, 1872 further upheld the Law laid down in *Anvar P.V. Case*

referred supra that if it is desired to give a statement in any proceedings pertaining to an electronic record, it is permissible provided the following conditions are satisfied:

- (a) There must be a certificate which identifies the electronic record containing the statement;
- (b) The certificate must describe the manner in which the electronic record was produced;
- (c) The certificate must furnish the particulars of the device involved in the production of that record;
- (d) The certificate must deal with the applicable conditions mentioned under Section 65-B(2) of the Evidence Act; and
- (e) The certificate must be signed by a person occupying a responsible official position in relation to the operation of the relevant device.

It was further upheld the decision in *Anvar P.V. Case* referred supra that the person need only to state in the certificate that the same is to the best of his knowledge and belief. Most importantly, such a certificate must accompany the electronic record like computer printout, compact disc (CD), video compact disc (VCD), pen drive, etc., pertaining to which a statement is sought to be given in evidence, when the same is produced in evidence, all these safeguards are taken to ensure the source and authenticity, which are the two hallmarks pertaining to electronic record sought to be used as evidence, and electronic records being more susceptible to tampering, alteration, transposition, excision, etc. without such safeguards, the whole trial based on proof of electronic records can lead to travesty of justice.

**Time to produce the Certificate:**

It is always desirable that the certificate shall be produced at the time when the electronic record is produced before the Court. But, often, the parties to the suit used to file a photograph (computer output) with a CD as if the CD is primary evidence and photograph is secondary evidence. But, it should be noticed that both are the electronic records being computer outputs. Similarly, the parties used to file computer generated statement of account even without signature as if it does not require any signature. No such exception was given under any Law for the time being in force. Surprisingly, the Investigating Officers used to file the electronic records including CCTV Footage without any certificate. These are few examples. But, in the absence of the certificate, the document is inadmissible in evidence and it can not be proved even if the person having knowledge over the electronic record is examined.

The Hon'ble Apex Court of India in *Arjun Panditrao Khotkar Case* referred supra held that [Section 65B of the Indian Evidence Act, 1872](#) does not speak of the stage at which such certificate must be furnished to the Court. It was further held that in *Anvar P.V.* (supra), this Court did observe that such certificate must accompany the electronic record when the same is produced in evidence. We may only add that this is so in cases where such certificate could be procured by the person seeking to rely upon an electronic record. However, in cases where either a defective certificate is given, or in cases where such certificate has been demanded and is not given by the concerned person, the Judge conducting the trial must summon the person/persons referred to in [Section 65B \(4\) of the Indian Evidence Act, 1872](#), and require that such certificate be given by such person/persons. This, the trial Judge ought to do when the electronic record is produced in evidence before him without the requisite certificate in the circumstances aforementioned. This is, of course, subject to discretion being exercised in civil cases in accordance with law, and in accordance with the requirements of justice on the facts of each case.

The Hon'ble Apex Court of India in *Arjun Panditrao Khotkar Case* referred supra further held when it comes to criminal trials, it is important to keep in mind the general principle that the accused must be supplied all documents that the prosecution seeks to rely upon before commencement of the trial, under the relevant sections of the [Criminal Procedure Code, 1973](#). Therefore, in terms of general procedure, the prosecution is obligated to supply all documents upon which reliance may be placed to an accused before commencement of the trial. Thus, the exercise of power by the courts in criminal trials in permitting evidence to be filed at a later stage should not result in serious or irreversible prejudice to the accused. A balancing exercise in respect of the rights of parties has to be carried out by the court, in examining any application by the prosecution under [Sections 91 or 311](#) of the [Criminal Procedure Code, 1973](#) or [Section 165](#) of the [Indian Evidence Act, 1872](#). Depending on the facts of each case, and the Court exercising discretion after seeing that the accused is not prejudiced by want of a fair trial, the Court may in appropriate cases allow the prosecution to produce such certificate at a later point in time. If it is the accused who desires to produce the requisite certificate as part of his defence, this again will depend upon the justice of the case - discretion to be exercised by the Court in accordance with law.

Keeping in view of the above said principles laid down by the Hon'ble Supreme Court of India, the Courts may exercise discretion to receive the certificate at a later stage when the certificate was not filed along with the electronic record.

**Conclusion:**

In this background, I can conclude that the Legislature fumbled to include or not the electronic record within the purview of document. If the [Indian Evidence Act, 1872](#) is suitably amended in the light of the observations and findings of Hon'ble Apex Court of India in *Arjun Panditrao Khotkar's Case* referred supra, especially, distinguishing the primary and secondary evidence in respect of electronic evidence, making a specific provision for production of original electronic device as primary evidence, and including a provision for device safety and data safety till the final disposal of the case, then only, it would meet the demands of new generation instruments i.e., electronic records.

It is my bounden duty to express my gratitude and thanks to 'Legal Match, Indian Kanoon, and the owners of others blogs whom I referred supra for giving me this opportunity by providing such information over the internet.

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