

The Digital Footprint of Truth: Exploring the Evidentiary Value of Electronic Documents in India

Author¹

¹Dr. Sidhartha Sekhar Dash, Associate Professor, School of Law, KIIT Deemed to be University, Patia, Bhubaneswar, Odisha, 751024. sidharthadash.1981@gmail.com

Abstract

The proliferation of digital communication and computer-generated records has made electronic evidence central to contemporary Indian litigation, spanning emails, CCTV footage, call detail records, and instant messages. This article examines the evidentiary treatment of electronic documents under Indian law, focusing on the statutory scheme created by Sections 65A and 65B of the Indian Evidence Act, 1872, and its successor provisions under the Bharatiya Sakshya Adhiniyam, 2023. It traces the evolution of judicial interpretation from the comparatively permissive approach adopted in *State v. Navjot Sandhu* (2005), through the strict mandatory-certification requirement imposed by a three-judge bench in *Anvar P.V. v. P.K. Basheer* (2014), the temporary relaxation attempted in *Shafhi Mohammad v. State of Himachal Pradesh* (2018), and the definitive clarification delivered in *Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal* (2020), which reaffirmed *Anvar P.V.* and settled the conflicting case law. The article explains the distinction between primary and secondary electronic evidence, the four cumulative conditions under Section 65B(2), and the authentication function served by the Section 65B(4) certificate, before considering the rationale for this stringent evidentiary threshold and the practical difficulties litigants continue to face in obtaining certification from third parties. It concludes that Indian courts have deliberately calibrated a rigorous, certificate-based standard of admissibility to guard against the unique risks of undetectable alteration inherent in electronic records, while progressively refining mechanisms — such as the power to summon certificates during trial — to prevent that rigour from producing injustice.

Introduction: The past 20 years have seen a fundamental change in how transactions are made, communications are sent, and records are created and maintained. In India, today, an increasing number of civil and criminal suits are dependent on emails, WhatsApp messages, CCTV footage, CDR, digital signatures, server logs, social media posts, computer printouts as evidence. The legislature in India, realising this, made an appropriate change in Indian Evidence Act, 1872, under the Information Technology Act, 2000 which made electronic records fall within the ambit of documentary evidence. In the years since, Indian courts, and more importantly the Supreme Court, have been busy in a sometimes rocky manner trying to define what an electronic document is and under what circumstances it can be deemed as admissible. The evolution is detailed in this article. It starts with the statutory definition of “electronic record” and “document” in Indian law, and further explores in detail the special regime provided in Indian law under Sections 65A and 65B of the Indian Evidence Act, 1872 (now Section 61 to 63 of Bharatiya Sakshya Adhiniyam, 2023). It then reviews the path of interpretation starting from the more liberal interpretation of the Supreme Court in *State v. Navjot Sandhu* (2005), to the more formalistic approach in *Anvar P.V. v. P.K. Basheer* (2014), followed by a temporary respite in *Shafhi Mohammad v. State of Himachal Pradesh* (2018) and a final clarification in a three-judge bench in *Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal* (2020).

Finally, the article considers the practical challenges that still beset the authentication of electronic evidence in Indian courts, as well as the amendments made by the new code of evidence.

The Legal Definition of “Electronic Record” and “Document” : The definition of “document” as per Section 3 of the Indian Evidence Act, 1872 (IEA) before the year 2000 was limited to matter expressed or described upon any substance by means of letters, figures or marks, intended to be used for the purpose of recording that matter. It was a definition that was really written for an age of paper records – and was not very good to handle information held on a magnetic or optical computer, floppy disk, compact disc or server. Accordingly, the Information Technology Act, 2000, amended the Evidence Act by adding two new sections – 65A and 65B – which specifically address how the contents of electronic records may be proved; and by introducing changes to the statutory definition of “evidence” and “document” in the Evidence Act to expressly include electronic records (Scribd, n.d.-a, citing the Information Technology Act, 2000, Second Schedule).

Section 65A allows the contents of electronic records to be proved in accordance with the provisions of Section 65B, and thus allows a separate and special—and as judicial decisions were to later determine—a self-contained code to govern the admissibility of this type of evidence, apart from the general provisions in Sections 61 to 65 which apply to the proof of ordinary paper documents. The general rule allowing the contents of documents to be proved by either primary or secondary evidence is set out in Section 61, and the cases in which secondary evidence relating to documents can be accepted are listed in Section 65, with the law relating to the contents of electronic records being dealt with specifically and separately in Section 65A and 65B.

The Evidence Act, 1872, Section 65B: The Statutory Scheme Section 65B(1) of the Evidence Act, 1872, provides, by way of a non-obstante clause, that any information contained in an electronic record (whether in the form of print-out or in another format) produced by a computer (called “computer output”) shall be deemed to be a document and shall be admissible in evidence without further proof or production of the original provided that the conditions provided in the section are satisfied. The provision starts with a non-obstante clause, which has led courts to interpret Section 65B as setting out a full code of admissibility for electronic evidence that can override the general provisions which deal with the admissibility of paper documents.

There are four conditions set out in section 65B(2) which must all be satisfied for the computer output to be deemed to meet these requirements: that at the time the certificate is issued, the computer generating computer output was in regular use by a person having lawful control over it; that, during the relevant period, information of the type or information contained in the electronic record was regularly fed into the computer in the ordinary course of its activities; that, during the material part of the period, the computer was operating properly, or if that was not so, that the computer was not operating improperly so as to affect the accuracy of the electronic record; and that, the information reproduced in the computer output was a reproduction of information fed into the computer in the ordinary course of its activities during that period.

This certification requirement is then added on top of the substantive conditions by Section 65B(4), which provides that, in any proceeding in which it is desired to give a statement in evidence under the section, a certificate shall be produced, "identifying the electronic record in question, describing the manner in which it is produced, giving particulars of the device involved, and dealing with the conditions set out in Section 65B(2)". This certificate is also to be signed by a person holding an official position in relation to the relevant device or to the operation of the device, or a person otherwise responsible for the management of the relevant activities. The certificate is the mechanism by which the law replaces the actual printing or other production of the original device and the independent verification of the computer printout, and relies on the computer printout and an accompanying authenticated statement as to the reliability of the computer printout.

The Early Judicial Uncertainty: In the early cases, the approach towards Section 65B has been relatively liberal (*State v. Navjot Sandhu* and *Tomaso Bruno*). In a subsequent case of *State (NCT of Delhi) v. Navjot Sandhu* (2005), following the Parliament attack case of 2001, a two-judge Supreme Court panel ruled that a certificate under Section 65B(4) need not be produced, as otherwise, the computer printout of electronic evidence would not per se be excluded as evidence; that the evidence could be proved as secondary evidence under general provisions of Sections 63 and 65 of the Evidence Act. This effectively made Section 65B available as one of the few ways to prove an electronic record, but also allowed for the usual secondary evidence route, such as oral evidence about the contents of the record, where a certificate would not be available.

The Supreme Court yet again in *Tomaso Bruno v. State of Kerala* (2015), the case concerned with the non-production of CCTV footage in a criminal trial, took a broadly similar stance and, as noted by commentators, the stance taken in *Tomaso Bruno* was in tension with the stricter approach adopted by the Supreme Court in *Anvar P.V.* by this time. This case law was inconsistent, which explains the doctrinal correction that followed.

The Turning Point: In 2020, the Supreme Court ruled on several cases involving the tax, with the most significant decision before that being *Anvar P.V. v. P.K. Basheer* (2014), which was decided by a three-judge bench. While addressing the question of admissibility of CDs containing electoral campaign material in an election dispute, the Court expressly overturned the precedent set in *Navjot Sandhu*, holding that the general provisions on secondary evidence would no longer be applicable unless a certificate under Section 65B was issued; the three-judge bench found that *Navjot Sandhu*, which had allowed proof of electronic records in the absence of a certificate under Section 65B, could no longer be treated as a precedent.

In the case of *Anvar P.V.*, the Court formulated several important propositions, which still form the basis of the law today. First, it held that electronic evidence – comprising evidence of system generated data – had to meet certain requirements to be admitted as evidence, namely it had to be certified by a person in a responsible position in respect of the operation of the device or how the data was generated in order to ensure the accuracy and integrity of the data. Secondly, the Court noted a significant difference between an electronic record sought to be produced as primary evidence and a record

sought to be produced as secondary evidence—where the original device, such as a computer, tablet or mobile phone, is not produced before the Court—and held that if an electronic record is sought to be produced as primary evidence under Section 62 of the Evidence Act, for example, the original device from which the record is obtained is produced before the Court, then that record can be produced without complying with the conditions in Section 65B. The Section 65B certificate is a precondition only when one party wants to use a copy or computer output of an electronic record as evidence (which is called secondary evidence). Such a distinction between primary and secondary electronic evidence would form a central theme in the Court's future decisions.

The Temporary Relaxation: Despite the clarity created by *Anvar P.V.*, problems quickly surfaced in cases involving a complainant or a prosecution witness in cases where the party seeking to rely on the electronic evidence did not have custody or control of the device and could not practically obtain a certificate from the person in charge of the device. To alleviate this hardship, a two-judge bench of the Supreme Court in *Shafhi Mohammad v. State of Himachal Pradesh* (2018) has ruled that the requirement of a certificate under Section 65B(4) does not always have to be fulfilled and could be dispensed with “in the interest of justice.”

This decision was in direct conflict with the earlier three-judge verdict in *Anvar P.V.*, and the resulting tension between two contradictory verdicts—a two-judge bench claiming to make an exception to a rule stated by a larger three-judge bench—cry for a three-judge bench to authoritatively clarify the ruling.

The Definitive Ruling: The Supreme Court finally settled the dispute between *Anvar P.V.* and *Shafhi Mohammad* in *Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal* (2020), where a three-judge bench had to rule on an election petition in which the admissibility of video recordings from the CCTV cameras installed outside a Returning Officer's office was being challenged. The Supreme Court found that the certificate mandated by Section 65B(4) is of a mandatory nature and the same cannot be relaxed judicially for admissibility of secondary electronic evidence. In reaching this decision, the Court has expressly overruled the judgment in *Shafhi Mohammad* and reiterated its judgment in *Anvar P.V.* as the correct position of law; the three judge bench categorically overruled the earlier three-judge decision in *Tomaso Bruno* and the two-judge decision in *Shafhi Mohammad* and declared the position taken in *Anvar P.V.* as the correct law.

Meanwhile, the Court in *Arjun Panditrao* added some nuance to the exception to soften the blow that had prompted the *Shafhi Mohammad* exception in the first place. It explained, first, that the certificate was not required to be filed when the electronic evidence was created, such as when a suit was filed or a complaint was filed, but could be provided when the electronic evidence was offered to prove before the court. Second, and importantly, the Court ruled that it was not for a party to be denied the certificate of a person or authority not involved in the case where the party needs the certificate, and the person or authority is withholding or unable to issue it, to apply to the Court which may then summon the person or authority to produce the certificate or may exercise its power to do so — thus avoiding any abuse of the mandatory nature of the requirement against a party making a bona fide attempt to comply with the law. The Court also discussed the

timing of the certificate and that a court may order or require the certificate to be produced where the person in charge of the certificate refuses to produce it.

The Court also reaffirmed the Anvar P.V. principle that there is a prim and second distinction between electronic evidence and paper evidence, which is pivotal to the question whether the certificate is necessary at all. In line with its earlier judgment in Vikram Singh v. State of Punjab (2017), the Court again held that if primary evidence in electronic form, here the original device on which the record was first stored, is produced before the court, then there is no need for a certificate under Section 65B. It is relevant to the case, for example, where an original mobile phone with an audio or video recording is produced, rather than a printout of the transcript or a copy of the file taken from the mobile phone.

The judgment of Arjun Panditrao is now considered to be the most recent, important and authoritative pronouncement on the question of law and has been treated by the later courts, including under the new evidentiary law, as settling, at least for the time being, the long-standing uncertainty in this field of law since the judgment of Navjot Sandhu had moved the pendulum from one extreme to another, from Navjot Sandhu to Anvar P.V. and then to Tomaso Bruno, to Sonu and then to Shafhi Mohammad.

The Rationale for a Stringent Certification Requirement: The requirement of a certificate, even though it may cause some inconvenience for litigants who cannot easily obtain a certificate, is a judicial determination that the risks are different for electronic evidence. An electronic record is not a paper record and, in principle, its content can be altered, copied, or fabricated, without any change in the appearance of the record; its reliability lies not in its appearance but rather in the integrity of the computer system in which it resides and the process of its creation and maintenance. However, commentators have argued that the certificate requirement may be essential as without such a certificate, the risk of proof of fabrication and tampering with electronic material would greatly increase, and the certificate itself did not guarantee the genuineness of the underlying material, but rather did provide an important degree of accountability as the person signing the certificate could be examined and potentially held liable for any false statement within the certificate (SCC Online Blog, 2021).

Meanwhile, this high evidentiary bar has received continued academic scrutiny for inappropriately imposing a substantial burden on ordinary litigants and complainants, especially when a third party, corporate, or public entity has control of the relevant electronic device and is unwilling to comply. International practice, such as the more flexible approach towards authentication in the United Kingdom and Singapore, has been suggested as a potential source of inspiration for Indian courts in the future when developing the certificate requirement (SCC Online Blog, 2021).

The Indian Evidence Act, 1872 was replaced by the Bharatiya Sakshya Adhiniyam, 2023 (BSA) with effect from 1st July 2024. The new statute largely preserves the scheme for the electronic evidence that was developed under Sections 65A and 65B of the old Act, but modernises it. Under the new Section 61 of the BSA, an electronic or digital record is now explicitly treated as having the same legal effect, validity and enforceability as any

other document, provided certain conditions required by the law are met. The BSA also adds that “evidence” now includes information provided electronically, and that witnesses, the accused, experts, and victims may appear by electronic means, in anticipation of the growing use of video conferencing and other technology in the administration of justice.

The process of proof by certification, which was a key part of the Section 65B scheme, has been incorporated in substance into the new scheme of proof, which is found in the equivalent provisions of the BSA (usually referred to as Sections 61 to 63), which continue to require output from a computer to be certified using a certificate broadly similar to the one contained in the old Section 65B(4). In addition, the BSA has added several new categories of secondary evidence expressly to include copies obtained by mechanical means from the original, copies obtained from or compared with the original, and oral accounts of the contents of a document made by a person who has examined the document in contrast to a party who did not sign it; those additions will have some impact on how courts will look at electronic copies in the future, although the core certification rule for computer output remains unchanged. The extensive similarity between the old Section 65B and the new BSA rules suggests that the legislators intended that well-established Supreme Court case law, including *Anvar P.V.* and *Arjun Panditrao*, should continue to be relevant to interpretation of the comparable provision in the new Act (Legistify, 2026).

Practical Difficulties in the Proof of Electronic Documents: Though this is a now established doctrinal position, there are still some practical difficulties that plague the proof of electronic documents in Indian courts. First, the litigants often only find out that a Section 65B(4) certificate is required after the relevant electronic record has already been marked, or relied upon, during the trial and, by then, the person competent to make the certificate may be untraceable, may have left the relevant organisation, or may simply be unwilling to cooperate. Although *Arjun Panditrao*'s cue to allow the courts to summon the certificate at a later stage is welcome, the practical task of tracing the correct signatory and enforcing compliance is still a significant burden, especially in cases of prosecutions against private entities like social media intermediaries, banks and private telecom service providers.

Secondly, the difference between primary and secondary electronic evidence may be conceptually clear, but it can still be difficult to apply. It may often be unclear which, if any, copy of a message is the ‘original’ and therefore to which one of them the certificate requirement applies, because modern digital communications are often in multiple, functionally equivalent, copies: a message sent on a messaging service may exist on the sender's device, the recipient's device, and on the service provider's servers.

Third, courts have been dealing with authenticity and integrity issues that lie outside the four corners of section 65B, such as whether a WhatsApp conversation, screenshot or social media post has been ‘tweaked’ in some way, or selectively edited, or even fabricated using easy-to-access message spoofing tools — and the certificate simply certifies how the computer output is produced, and does not certify the truth or accuracy of it.

Conclusion: Evidentiary treatment of electronic documents in India has made significant strides since the first introduction of Sections 65A and 65B of the Indian Evidence Act, 1872 in the Information Technology Act, 2000. While the law in this area began as a somewhat shaky and unclear case law that allowed for secondary electronic evidence to be admitted without a certificate in Navjot Sandhu, later insisted upon in Anvar P.V., and then relaxed again in Shafhi Mohammad, the three-judge verdict in Arjun Panditrao Khotkar has now settled the conflicts, and has established a reasonably clear, albeit stringent, rule: secondary electronic evidence can only be admitted in conjunction with a certificate of compliance with the conditions laid down by statute, while primary electronic evidence (in the form of an original device produced before the court) may be admitted without the same certificate. This approach has been largely reflected in the Bharatiya Sakshya Adhiniyam, 2023, as well, and has been a conscious judicial and legislative judgment that the special nature of electronic records, where the potential for alteration without notice is high, calls for a similarly stringent standard for admission, while the courts find ways to obtain the benefit of production of records without working an injustice to litigants who do not have direct control over the means of production. Since the paper-based method of human transactions and expression is being replaced by the digital one, and such a body of law is still evolving, its fair and accurate administration will continue to be at the core of justice delivery in India.

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