

Role of Digital Evidence in Modern Trials

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Abstract: *“It Often Starts with a single piece of footage.” Says Criminologist and PhD Candidate Isabella Regan of Erasmus School of Law.*

Digital evidence plays a vital role in modern trials due to the increasing use of electronic devices and online communication. It includes information such as emails, CCTV Footage, social media content, and other electronic records. This paper examines the concepts, types, and admissibility of digital evidence within the Indian legal framework, with reference to Section 65b of the Indian Evidence Act and its successor, the Bharatiya Sakshya Adhinyam, 2023 (BSA). The BSA recognises electronic records as valid evidence, subject to requirements of authenticity, integrity, and proper certification. The paper also highlights key challenges associated with digital evidence, including risks of data tampering, privacy concerns, and technical complexities. It concludes that while digital evidence significantly strengthens the justice delivery system, effective safeguards and greater awareness are essential for its reliable use in trials.

Keywords: Digital Evidence, Admissibility, BSA 2023, Section 65B, Cyber Evidence, Authentication

I. INTRODUCTION

In today’s digital age, electronic devices and online communication have become an essential part of daily life. Consequently, digital evidence has gained significant importance in modern trials. It includes emails, text messages, CCTV Footage, social media posts, and other electronic records that can be presented before the court.

With the increase in cybercrime and technology- based activities, digital evidence is often crucial in establishing facts and ensuring justice. In India, the legal framework has evolved from the Indian Evidence Act, 1872¹, to the Bharatiya Sakshya Adhinyam, 2023, which recognises an electronic record as valid evidence subject to certain conditions.

However, the use of digital evidence also raises important challenges, such as issues of authenticity, risk of data tampering, privacy concerns and technical complexities. Therefore, while digital evidence strengthens the justice system, proper safeguards are necessary for its effective and fair use in a trial.

HISTORICAL BACKGROUND

Traditionally, courts relied on oral and documentary evidence such as witness testimony and paper records. With the advent of computers and the internet in the late 20th century², electronic data began to emerge as a new form of evidence. However, the law initially lacked clear provisions to deal with such evidence.

In India, a major development came with the Information Technology Act, 2000, which recognised electronic records and digital signatures, and it also amended the Indian Evidence Act, 1872, by introducing Sections 65A and 65B, providing a legal framework for the admissibility of electronic evidence.

Over time, courts clarified the application of these provisions through important judgments, particularly Anvar P.V V. P.K Basheer (2014),³ which made certification under section 65B Mandatory for electronic evidence.

¹ The Indian Evidence Act, No. 1 of 1872, India.

² History of the Law of Evidence, Dhyeya Law, <https://www.dhyeyalaw.in/history-of-the-law-of-evidence>

³ Anvar P.V. v. P.K. Basheer, (2014) 10 SCC 473



Recently, India replaced the old Evidence Act with the Bharatiya Sakshya Adhinyam, 2023, which further strengthens the recognition and use of digital evidence in trials, reflecting the growing role of technology in the legal system.

METHODOLOGY

This research is based on a doctrinal research methodology, focusing on the analysis of existing legal principles related to digital evidence in trials. The study primarily relies on secondary sources, including statutes, case laws, book, research articles and online legal databases.

Relevant laws such as the Information Technology Act of 2000⁴, the Bharatiya Sakshya Adhinyam of 2023, and previous sections of the Indian Evidence Act of 1872 have all been reviewed. To comprehend the practical use of digital evidence, significant court rulings such as *Anvar P.V. v. P.K. Basheer* and *Arjun Panditrao Khotkar⁵ v. Kailash Kushanrao Gorantyal* have also been examined.

The research adopts an analytical and descriptive approach to evaluate the concept, admissibility, and challenges of digital evidence, with the objective of providing a clear understanding of its role in modern trials.

LEGISLATION

The legal framework governing digital evidence in India⁶ has evolved to address the growing use of technology in legal proceedings. Earlier, digital evidence was regulated under the Indian Evidence Act⁷, 1872, particularly through Sections 65A and 65B, which dealt with the admissibility of electronic records. Section 65B made it mandatory to provide a certificate to prove the authenticity of electronic evidence.

The Information Technology Act, 2000, further supports this framework by legally recognising electronic records and digital signatures, thereby facilitating their use in courts. Recently, the Bharatiya Sakshya Adhinyam, 2023 (BSA), has replaced the Indian Evidence Act. The BSA gives greater importance to digital evidence and formally recognises electronic records as valid evidence, subject to conditions such as authenticity, integrity, and proper certification. These legislative developments show that Indian law has adapted to technological advancements and continues to strengthen the role of digital evidence in trials.

JUDICIARY

The judiciary⁸ has played a crucial role in shaping the law relating to digital evidence in India. Courts have clarified the rules regarding admissibility, authenticity, and reliability of electronic records through various landmark judgments:

In *Anvar P.V. v. P.K. Basheer (2014)*⁹, the Supreme Court held that electronic evidence is admissible only if it satisfies the requirements of Section 65B of the Indian Evidence Act, making certification mandatory. This judgment marked a significant shift by strictly regulating the use of digital evidence.

Later, in *Shafhi Mohammad v. State of Himachal Pradesh (2018)*¹⁰, the Court relaxed this requirement in certain situations where obtaining a certificate was not possible.

⁴ The Information Technology Act, No. 21 of 2000, India.

⁵ *Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal*, (2020) 7 SCC 1.

⁶ Hemlata B. Patil, Dr Anjula Chowbe, The significance of digital evidence, its impact and the progress in the Indian Legal System, *Afr. J. Biomed. Res.* Vol. 28(1s) 855-858, (Jan,2025), <https://www.africanjournalofbiomedicalresearch.com/index.php/AJBR/article/view/6256/4986>

⁷ The Indian Evidence Act, No. 1 of 1872, India.

⁸ Mr. Bivas Chatterjee, *Electronic Evidence, Sikkim Judicial Acad.*, https://sikkimjudicialacademy.nic.in/sites/default/files/PPTs/ELECTRONIC%20EVIDENCE%20LATEST_compressed.pdf

⁹ *Anvar P.V. v. P.K. Basheer*, (2014) 10 SCC 473.

¹⁰ *Shafhi Mohammad v. State of Himachal Pradesh (2018) 2 SCC 801.*



However, this view was overruled in **Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal**¹¹(2020), where the Supreme Court reaffirmed that Section 65B certification is essential for admissibility.

Through these decisions, the judiciary has ensured that digital evidence is used carefully and reliably in trials, maintaining a balance between technological advancement and legal safeguards.

II. CONCLUSION

Digital evidence has become an essential part of modern trials¹² due to the rapid growth of technology and digital communication. It plays a significant role in establishing facts and ensuring justice, especially in cases involving cybercrime and electronic transactions.

The legal framework in India, now strengthened by the Bharatiya Sakshya Adhiniyam, 2023¹³, recognises the importance of electronic records while laying down conditions for their admissibility. Judicial decisions have further clarified these requirements, ensuring reliability and fairness.

However, challenges such as data tampering, privacy concerns, and technical complexities still exist. Therefore, while digital evidence greatly strengthens the justice delivery system, proper safeguards, awareness, and technical support are necessary for its effective and fair use in trials.

SUGGESTIONS

To improve the effective use of digital evidence in trials, the following measures are recommended¹⁴

Strengthening legal framework: Laws should be regularly updated to keep pace with technological advancements.

Forensic Infrastructure: Improve digital forensic laboratories and technical support systems

Awareness: Increase awareness about legal requirements like certification and proper handling of electronic evidence.

Data Protection: Ensure strong safeguards to prevent data tampering and protect privacy.

Standard Procedures: Establish uniform guidelines for the collection, preservation and presentation of digital evidence.

These steps will help ensure the reliability and effective use of digital evidence in the justice system.

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¹¹ 2. Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal, (2020) 7 SCC 1.

¹² Yaksh Sharma, The Impact of Digital Evidence in Today's Criminal Cases, Lawyers Club India (July 7,2025), <https://www.lawyersclubindia.com/articles/the-impact-of-digital-evidence-in-today-s-criminal-cases-17517.asp>

¹³ 13 The Bharatiya Sakshya Adhiniyam, No. 47 of 2023, India.

¹⁴ Yaksh Sharma, The Impact of Digital Evidence in Today's Criminal Cases, Lawyers Club India (July 7,2025), <https://www.lawyersclubindia.com/articles/the-impact-of-digital-evidence-in-today-s-criminal-cases-17517.asp>



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