

[-: Electronic Record:-](#)

Electronic Record, Its Proof and Certificate Under Section 65B of Indian Evidence Act

By, Arvind M. Bhandarwar.

[The views expressed in the article are authors own views. Readers may differ with it]

1. Definition:-

- **Electronic record** is defined under section 2(1)(t) of Information Technology Act. It defines that **data, record or data generated, image, or sound stored, received or sent in an electronic form** or micro film or computer generated micro fiche” [microfiche is a card made of transparent film used to store printed information in miniaturized form. (miniaturize -- to make in extremely small size in order to keep volume or weight to a minimum)]
- **Meaning:** If things mentioned in the definition i.e. “ **data, record or data generated, image, or sound**” is either “**stored**” or “**received**” or “**sent**”, is in “**an electronic form**” or “**micro film**” or “**computer generated micro fiche**”, it is electronic record.

Therefore most important consideration to term a thing as electronic record is that it has to be stored, received or sent in a **electronic form or micro film or computer generated micro fiche.**

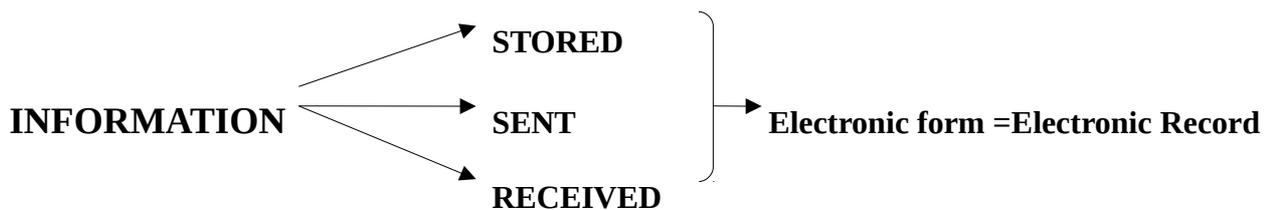
- “Electronic Form” :

The term “**electronic form**” is defined under section 2(1) (r) of the Information and Technology Act. *Electronic form* with reference to information, means any information generated, sent, received or stored in media, magnetic, optical , computer memory, micro film, computer generated micro fiche or similar device.

- This indicates that, information ought to be stored in **media** , magnetic, optical , computer memory, micro film , computer generated micro fiche or similar device

-:Summary:-

Summary: On the basis of above definition and its meaning, in simple words, it can be said that if any information is stored, sent or received in electronic form, it is termed as electronic record.



-:Legal Recognition: -

- The another important point is legal recognition to the such electronic record. Even though it is electronic record as defined under sect 2(1)(t) and 2(1)(r), **if it does not satisfy the condition of section 4 of IT act, its value is ZERO.**
- Section 4 of the Information and Technology Act gives legal recognition to the Electronic records on two conditions,
 - i. **Rendered or made available in an electronic form and**
 - ii. **Accessible so as to be usable for a subsequent reference.**

-:Summary:-

Legal recognition is given to electronic record, if such **electronic record is rendered or made available in an electronic form** and another condition is that, **it is accessible so as to be usable for subsequent reference.**

-: Mode to prove and make admissible electronic record :-

- Section 65A of the Indian Evidence Act is a special provision. Wordings of section 65A are very much important. **“Contents of electronic records may be proved in accordance with the provisions of section 65B.”** In simple words, electronic record may be proved, if compliance of section 65B is made.

-:Summary:-

In exceptional cases, contents of electronic record may be proved if the compliance of section 65B is made. It means, contents of such document can be proved on the basis of mere certificate. Now it is for the court to see which document can be proved on certifying it under section 65B of Indian Evidence Act.

- **Example:** Call Data Record. It may be proved by certifying under section 65B of IEA. Word may is used so it is not mandatory. Depending upon circumstances, court may ask for better proof.

Section 65B - Admissibility of electronic record

- Notwithstanding anything contained in this Act, any information contained in an **electronic record** which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer (hereinafter referred to as the computer output) **shall be deemed to be also a document, if the conditions mentioned in this section are satisfied** in relation to the information and computer in question and **shall be admissible in any proceedings, without further proof or production of the original, as evidence or any contents of the original or of any fact stated therein of which direct evidence would be admissible.**

- **Which are those conditions ?[Section 65B(2)]**

- (a) the computer output containing the information was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;
- (b) during the said period, information of the kind contained in me electronic record or of the kind from which the information so contained is derived was regularly fed into the computer in the ordinary course of the said activities;

(c) 'throughout the material part of the said period, the computer was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents; and

(d) the information contained in the electronic record reproduces or is derived from such information fed into the computer in the ordinary course of the said activities.

What is the method to make a statement in evidence in regard to electronic record admissible ?

[Section 65B(4)]

(4) In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say,--

- identifying the electronic record containing the statement and describing the manner in which it was produced;
- giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer;
- dealing with any of the matters to which the conditions mentioned in sub-section (2)

-: Landmark Judgment : -

Anvar P.V. v. P.K. Basheer AIR 2015 SC 180

- To test the correctness of the aforesaid observations of the trial court, it has to be kept in mind that any electronic record is admissible in evidence only when it is in accordance with the

procedure prescribed under Section 65B of the Indian Evidence Act, 1872. It is so said in view of the pertinent observations made by three Judge Bench of Apex Court in Anvar P.V. v. P.K. Basheer AIR 2015 SC 180 which are as under:-

"15.It is further clarified 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**. **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.

XXXXXXXXXXXXXXXXXXXX

The **evidence** relating to **electronic record**, as noted herein before, being a special provision, the general law on secondary **evidence** under Section 63 read with Section 65 of the **Evidence** Act shall yield to the same. Generalia specialibus non derogant, special law will always prevail over the general law. It appears, the court omitted to take note of Sections 59 and 65A dealing with the admissibility of **electronic record**. Sections 63 and 65 have no application in the case of secondary **evidence** by way of **electronic record**; the same is wholly governed by Sections 65A and 65B. To that extent, the statement of law on admissibility of secondary

evidence pertaining to **electronic record**, as stated by this court in Navjot Sandhu case (supra) , does not lay down the correct legal position. It requires to be overruled and we do so. An **electronic record** by way of secondary **evidence** shall not be admitted in **evidence** unless the requirements under Section 65B are satisfied. Thus, in the case of CD, VCD, chip, etc., the same shall be accompanied by the certificate in terms of Section 65B obtained at the time of taking the document, without which, the secondary **evidence** pertaining to that **electronic record** is inadmissible."

Electronic record by way of secondary evidence shall not be admitted in evidence unless the requirements under Section 65-B are satisfied - Thus, in the case of CD, VCD, chip, etc., the same shall be accompanied by the certificate in terms of Section 65-B obtained at the time of taking the document, without which, the secondary evidence pertaining to that electronic record, is inadmissible.

QUESTIONS/ ANSWERS

Question No. 1:

7/12 extract uploaded on government website and its print out is taken and filed on record. Does it require certification ?

Answer:

7/12 extract is public document. Therefore, whenever certified copy of such document is filed on record, it has presumptive value, which can be rebutted.

The point in issue is about the 7/12 extract downloaded from website. When we are talking about electronic record, it is necessary to see whether 7/12 extract uploaded on website is electronic record.

There may be two methods of uploading 7/12 extract on website.

First is uploading the scanned copy of manually prepared 7/12 extract.

Second may be feeding the data in prescribed form prepared on website of government, where entries of 7/12 extract can be entered.

Once a scanned document is uploaded or data fed into, it is stored in electronic form. Whenever a file is downloaded from such website, it is saved in the computer hard disk or temporary memory in electronic form. If printout of such a document is taken, it would be a print out of a electronic document, which is in electronic form and accessible for future reference as contemplated under section 4 of IT Act. Therefore, if such document is filed on record, it must be certified under section 65B of IEA, to make it admissible.

Most important aspect is about disclaimer. If website itself declares that, document uploaded on website cannot be used for any purpose, then even though it is certified to make it admissible, it has no value.

By, Arvind M. Bhandarwar

I have downloaded 7/12 extract from website
<https://mahabhulekh.maharashtra.gov.in/Nagpur/pg712.aspx>

गाव नमुना सात
 अधिकार अभिलेख पत्रक
 (महाचक्र जमीन मसुदा अधिकार अभिलेख आणि नोंदवहा (तयार करणे व सुविधित ठेवणे) नियम, १९७१ यातील नियम ३, ५, ६ आणि ७)

गाव :- घेंपुर्णा तालुका :- घेंपुर्णा जिल्हा :- चंद्रपूर अहवाल दिनांक:- 06-12-2016

भुगण क्रमांक व उखेमाण 1408/1अ	भुगण पत्ती भोगवटादार वर्ग-1	भोगवटादारेचे नांव					खाले क्रमांक
भौतिक स्थानिक नांव			क्षेत्र	आकार	आणे	पे.ख.	फे.फा
क्षेत्र एकक हे.आर.सौ.मी	संतोष मनोहर मंळसार						(9999) 805
जिज्यत -	प्रकाश रामचंद्र बेले						(9999) कुळचे नाव
बागयत -	-----सामाईक क्षेत्र-----		0.43.00	0.55			इतर अधिकार
तरी -							अकृषिक वापर - रहिवास (गावठागातील) (1426)
वस्त्रस -							मा.उत्पादितध्यांकेसमाक्र५/एनएडि३४/२०१३/२०१४सुसलरीवासीअकृषिक,नियाम-२४२८.५३चौ.मि.खुलेजागा-४३५.००,स्ते१४३६.४७,एकुन-४३००.००चौ.मि.प्रतिचौ.मि ०.१०से (1426)
इतर -							इतर - (1426)
.....							दि 11/4/12 (1426)
एकुण क्षेत्र							
.....							
पोटखत (संगवडीस अयोग्य)							
वर्ग (अ) 0.43.00							
वर्ग (ब) -							
एकुण पे ख 0.43.00							
.....							
आकाराली 244.00							
.....							
जुडी किंवा विशेष							
आकाराली -							
							सीमा आणि भुगण किंवे

सुचना : या संकेतस्थळावर दर्शविलेली माहिती ही कोणत्याही शासकीय अथवा कायदेशीर बाबींसाठी वापरता येणार नाही.

गाव नमुना बाण
 अधिकार अभिलेख पत्रक
 अहवाल दिनांक:- 06-12-2016

At the bottom, it is mentioned that, “सुचना: या संकेतस्थळावर दर्शविलेली माहिती ही कोणत्याही शासकीय अथवा कायदेशीर बाबींसाठी वापरता येणार नाही.”

Therefore, such document as certified under section 65B of Indian Evidence Act it can at the most made admissible in evidence. In view of disclaimer such document cannot be used before court of law as evidence.

Question No 2: Copy of sale deed uploaded on website ?

Answer: In this case also same analogy. Sale deed is manually prepared and it's scanned copy is uploaded. If user has not obtained the certified copy from the office of registrar, and wants to file sale deed downloaded from website, same procedure as mentioned in case of sale deed is to be followed.

By, Arvind M. Bhandari

If there is disclaimer, then we can not use such document for evidence purpose.

Question No. 3:

Case-I] “A” purchased some goods from shopkeeper, “B”. “B” issued system generated bill. “A” received such system generated bill on paper. “A” instituted suit against, “B” and placed reliance upon bill received by him. “B” has taken the defence that, bill submitted by “A” is not the bill issued by him but it is different bill. “B” has also filed on record the print out of the bill stored in the system of “B”’s computer.

Which one is electronic record and who has to certify under section 65B of Indian Evidence Act ?

Case-II] “A” purchased some goods from shopkeeper, “B”. “B” sent system generated bill via email to “A” . “A” received such system generated bill on his email account. “A” instituted suit against, “B” and placed reliance upon bill received by him on his email. “A” taken its printout and filed it on record. Whether, it requires certification under section 65B of Indian Evidence Act ?

Answer: In order to answer the question it is necessary to see, whether a document is electronic record as defined in Information Technology Act.

Case-I]

“A” has received printout on a paper. It means, information received by “A” is not in electronic form. Therefore its a normal document and would not require any certification. It means in order to make a bill filed by “A” admissible, it is not necessary to certify it under section 65B of Indian Evidence Act.

“B” has filed the printout obtained of the information stored in the computer of “B”. It means information was saved in the computer system in electronic

form and “B” wants to place reliance upon that bill. “B” has two options. Either to produce the original electronic record before the court OR to reproduce it in the form of printout on paper or prepare CD etc. The copy is prepared from electronic record, hence “B” will require to file the certificate to make it admissible before the court of law.

Case-II]

In this example “A” has received the bill on his email. It means the same Bill is sent and received in electronic form.

In order to make the print out of bill, obtained by “A”, admissible “A” will be required to certify under section 65B of Indian Evidence Act.

Question No. 4

It is settled principal of law that, if electronic record is filed in its original form, to make it admissible before court, no certificate under section 65B of the Indian Evidence Act is required.

If it is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer, it is document and certificate under section 65B of EA is needed, to make it admissible.

Day in and day out, we feed some data in court and it is printed on paper. Evidence is recorded in computer and it's printed copy is attached with file. Now many judicial officers are recording statement of witnesses under section 164 of Crpc on computer and it's printout is filed on record. It means data contained in electronic record is printed on paper.

Question is, whether it requires certification under section 65B of Indian Evidence Act ?

Answer: It does not require certificate.

Reasoning-

Evidence adduced before the court in the same proceeding can not be treated as document. It is evidence. In order to come to conclusion, we have to see the definition and relevant provision.

“Evidence” .— “ 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. This makes it clear that, it defines what is meant by Evidence and it further states that what includes in evidence.

It defines evidence. It includes,

First:- 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.

The question is about the oral testimony given by witness and it is recorded by court. It is evidence.

Second:- all documents including electronic records produced for the inspection of the Court, such documents are called documentary evidence.

Documentary evidence means all the documents produced by the parties for the inspection of court is documentary evidence. It further includes electronic record, which is termed as document. Therefore, the oral statement which is recorded by court, will not be fall in the category of document.

By, Arvind M. Bhandarwar

In simple word, evidence recorded cannot be termed as a document in that proceeding.

Documentary evidence means the documents produced by parties for the inspection of court. Evidence is the record of court and it is not produced for the inspection of court.

Keeping in mind this aspect, if we go through, section 65B of Indian Evidence Act, it provides the procedure to prove electronic record. Evidence is record of the court. It is not a document which is produced by the parties to prove the case or plea or defense. Tendering a document to prove it and recording of evidence by court are two different things. In tendering evidence, party produce the document. In recording evidence court record it under the sovereign power of court. **Section 65B is helpful to the parties to prove a document which is in electronic form. The important point is that we are not taking printout of electronic record. Even though we are saving its copy, we are treating printout as a primary document and not its electronic version.**

How it's not electronic record ?

Evidence adduced is typed and it is stored on hard disk. Thereafter, we take its print out. After taking print out, we read over it to the witness and thereafter judge sign it. It is not the case that, we are treating file containing evidence, stored in the computer as final copy of evidence recorded. We are using computer as tool to record the evidence. We are not treating the evidence saved in electronic form as final version of evidence recorded. We are not placing reliance upon the electronic record, stored in computer, but we are placing reliance upon the print out which is made final after going

By, Arvind M. Bhandarwar

through it. We treat the printed copy as evidence. Therefore, it cannot be treated as electronic record.

Similarly, computer is used as tool to record the evidence and printed copy is treated as final version. Hence it is also not electronic record.

Therefore, certificate is not required.

:Summary Of Article:

When certification under section 65B is required ?

1. Document stored, received or sent, must be in electronic form.
2. It must be accessible so as to be usable for a subsequent reference.
3. The certificate has to be given by person as contemplated under section 65B of Indian Evidence Act.

When certification not required ?

If the information is not stored, received or sent in electronic form, certification is not required.

-:Case Law:-

1.	Whether computer system generated statement / bills are admissible directly without further proof ?
	No. AM Perumal v/s Star Tours and Travels (India) Ltd 2010 CrIj 3732
2.	Whether Printout of Insurance policy filed by Insurance company can be taken into consideration, without filing certificate under section 65(B) of Indian Evidence Act ?
	No. Since the requirement of Section 65-B(2) and (4) have not been satisfied in the instant case, the computer print out of the insurance policy was inadmissible in evidence and therefore the case of the Insurance Company that the risk was not covered at the time when the accident took place cannot be accepted. United India Insurance Company Ltd . vs . Sunita Sanjay Gujar IV(2016)ACC150(Bom.), 2016(2) An.W.R. 303(Bom.)
3.	Kailash Vs Suresh Chandra, 2011 LawSuit(MP) 598, 2011(5) MPHT 199
	Section 65-B of the Indian Evidence Act and is also required to produce a certificate as enumerated under sub-section (4) of Section 65-B of Indian Evidence Act. Since the provisions of Section 65-B of Indian Evidence Act were not complied with by the petitioner, therefore, learned Court below committed no error in rejecting the evidence produced by the petitioner.
4.	Twentieth Century Fox Film Corporation v. NRI Film Production Associates (P) Ltd. (AIR 2003 Kant 148)
	Certain conditions have been laid down for video-recording of evidence
5.	STATE OF MAHARASHTRA VS PRAFUL B DESAI AIR 2003 SC 2053 , 2003 LawSuit(SC) 397
	The Honb'le Supreme Court observed that video conferencing is an advancement of science and technology which permits seeing, hearing and talking with someone who is not physically present with the same facility and ease as if they were physically present. The legal requirement for the presence of the witness does not mean actual physical presence.

	The court allowed the examination of a witness through video conferencing and concluded that there is no reason why the examination of a witness by video conferencing should not be an essential part of electronic evidence.
6.	Bodala Murali Krishna vs Bodala Prathima. AIR 2007 Andhra Pradesh 43
	Recording of evidence through process of video conferencing in civil cases. There cannot be any plausible objection for adopting the procedure in civil cases. However, necessary precautions must be taken, both as to identity of witnesses and accuracy of equipment used for purpose. AIR 2003 SC 2053; AIR 2003 Kant 143 and AIR 2005 Cal 11 .
7.	Whether electronic record produced in criminal case be exhibited and is admissible when a police officer tenders it saying that he procured it ?
	It needs to be proved either by means of a certificate issued by person/authority in whose custody, device in which document was stored in an electronic form that printout generated had been through device and reflected an information stored in electronic form in ordinary course or through testimony of person who generated printout from device in which same was stored. Face Book India Online Services Pvt Ltd vs Vinay Rai (Delhi HC) Decision Date: 11.01.2012

Thank you !