

APPRECIATION OF E-EVIDENCE

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APPRECIATION OF E-EVIDENCE

- Digital evidence or electronic evidence is any probative information stored or transmitted in digital form that a party to a court case may use at trial.
- Before accepting digital evidence a court will determine if the evidence is relevant, whether it is authentic, if it is hearsay and whether a copy is acceptable or the original is required.



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E-EVIDENCE IS FOUND IN:

- e-mails
- digital photographs
- ATM transaction logs
- word processing documents
- instant message histories
- files saved from accounting programs
- spreadsheets
- internet browser histories
- databases



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Cont...

- Contents of computer memory
- Computer backups
- Computer printouts
- Global Positioning System tracks
- Logs from a hotel's electronic door locks
- Digital video or audio files



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Digital Evidence:

- >tends to be more voluminous
- >more difficult to destroy
- >easily modified
- >easily duplicated
- >potentially more expressive, and
- >more readily available



APPRECIATION OF E-EVIDENCE

- >Computer forensics is a branch of forensic science pertaining to legal evidence found in computers and digital storage mediums.
- >Computer forensics is also known as digital forensics.
- >The goal of computer forensics is to explain the current state of a digital artifact.



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The term **digital artifact** can include:

- >a computer system
- >storage medium (hard disk or CD-ROM)
- >an electronic document (e.g. an email message or JPEG image) or
- >even a sequence of packets moving over a computer network.



APPRECIATION OF E-EVIDENCE

- >Digital Evidence is “information of probative value that is stored or transmitted in binary form”.
- >Evidence is not only limited to that found on computers but may also extend to include evidence on digital devices such as telecommunication or electronic multimedia devices.

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- The Information Technology Act is based on the United Nations Commission on International Trade Law (UNCITRAL) model Law on Electronic Commerce.
- Amendments to the Indian Evidence Act 1872, the Indian Penal Code 1860 and the Banker's Book Evidence Act 1891 provides the legislative framework for transactions in electronic world.

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- The definition of 'evidence' has been amended to include electronic records.
- The definition of 'documentary evidence' has been amended to include all documents, including electronic records produced for inspection by the court.
- Section 3 of the Evidence Act, 1872 defines evidence as under:
 - "Evidence" - Evidence means and includes:-
 - 1)-----
 - 2) all documents including electronic records produced for the inspection of the court.

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- The term 'electronic records' has been given the same meaning as that assigned to it under the IT Act
- IT Act provides for "data, record or data generated, image or sound stored, received or sent in an electronic form or microfilm or computer-generated microfiche".

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- **The definition of 'admission' (Section 17 of the Evidence Act) has been changed to include a statement in oral, documentary or electronic form which suggests an inference to any fact at issue or of relevance.**
- **New Section 22A has been inserted into Evidence Act to provide for the relevancy of oral evidence regarding the contents of electronic records.**
- **It provides that oral admissions regarding the contents of electronic records are not relevant unless the genuineness of the electronic records produced is in question**

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- New sections 65A and 65B are introduced to the Evidence Act under the Second Schedule to the IT Act.
- Section 65A provides that the contents of electronic records may be proved in accordance with the provisions of Section 65B.
- Section 65B provides that notwithstanding anything contained in the Evidence Act, any information contained in an electronic, is deemed to be a document and is admissible in evidence without further proof of the original's production, provided that the conditions set out in Section 65B are satisfied.

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- Section 65B(1) states that if any information contained in an electronic record produced from a computer (known as computer output) has been copied on to a optical or magnetic media, then such electronic record that has been copied 'shall be deemed to be also a document' subject to conditions set out in Section 65B(2) being satisfied.
- Both in relation to the information as well as the computer in question such document 'shall be admissible in any proceedings when 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.'

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- The conditions specified in Section 65(B)(2) are:
- 1. Firstly, the computer output containing the information should have been produced by the computer during the period over which the computer was used regularly to store or process information for the purpose of any activities regularly carried on over that period by the person having lawful control over the use of the computer.
- 2. The second requirement is that it must be shown that during the said period the information of the kind contained in electronic record or of the kind from which the information contained is derived was 'regularly fed into the computer in the ordinary course of the said activity'.

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- 3. A third requirement is that 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 that break did not affect either the record or the accuracy of its contents.
- 4. The fourth requirement is that the information contained in the record should be a reproduction or derived from the information fed into the computer in the ordinary course of the said activity.

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- Under Section 65B(4) the certificate which identifies the electronic record containing the statement and describes the manner in which it was produced giving the particulars of the device involved in the production of that record and deals with the conditions mentioned in Section 65(B)(2) and is signed by a person occupying a responsible official position in relation to the operation of the relevant device 'shall be evidence of any matter stated in the certificate'.

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- **In Amitabh Bagchi Vs. Ena Bagchi (AIR 2005 Cal 11) sections 65A and 65B of Evidence Act, 1872 were analyzed.**
- **The court held that the physical presence of person in Court may not be required for purpose of adducing evidence and the same can be done through medium like video conferencing.**
- **Sections 65A and 65B provide provisions for evidences relating to electronic records and admissibility of electronic records, and that definition of electronic records includes video conferencing.**

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- **State of Maharashtra v Dr Praful B Desai (AIR 2003 SC 2053) involved the question whether a witness can be examined by means of a video conference.**
- **The 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.**

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- **In *Bodala Murali Krishna Vs. Smt. Bodala Prathima* (2007 (2) ALD 72) the court held that, “...the amendments carried to the Evidence Act by introduction of Sections 65-A and 65-B are in relation to the electronic record. Sections 67-A and 73-A were introduced as regards proof and verification of digital signatures. As regards presumption to be drawn about such records, Sections 85-A, 85-B, 85-C, 88-A and 90-A were added. These provisions are referred only to demonstrate that the emphasis, at present, is to recognize the electronic records and digital signatures, as admissible pieces of evidence.”**

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- **In Dharambir v Central Bureau of Investigation (148 (2008) DLT 289) , the court arrived at the conclusion that when Section 65B talks of an electronic record produced by a computer referred to as the computer output) it would also include a hard disc in which information was stored or was earlier stored or continues to be stored.**
- **It distinguished as there being two levels of an electronic record. One is the hard disc which once used itself becomes an electronic record in relation to the information regarding the changes the hard disc has been subject to and which information is retrievable from the hard disc by using a software programme.**
- **The other level of electronic record is the active accessible information recorded in the hard disc in the form of a text file, or sound file or a video file etc. Such information that is accessible can be converted or copied as such to another magnetic or electronic device like a CD, pen drive etc.**
- **Even a blank hard disc which contains no information but was once used for recording information can also be copied by producing a cloned had or a mirror image.**

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- **In State (NCT of Delhi) v Navjot Sandhu (AIR 2005 SC 3820) , there was an appeal against conviction following the attack on Parliament on December 13 2001.**
- **This case dealt with the proof and admissibility of mobile telephone call records.**
- **While considering the appeal against the accused for attacking Parliament, a submission was made on behalf of the accused that no reliance could be placed on the mobile telephone call records, because the prosecution had failed to produce the relevant certificate under Section 65B(4) of the Evidence Act.**
- **The Supreme Court concluded that a cross-examination of the competent witness acquainted with the functioning of the computer during the relevant time and the manner in which the printouts of the call records were taken was sufficient to prove the call records.**

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- In *Jagjit Singh v State of Haryana* the speaker of the Legislative Assembly of the State of Haryana disqualified a member for defection. (2006) 11 SCC 1
- When hearing the matter, the Supreme Court considered the appreciation of digital evidence in the form of interview transcripts from the Zee News television channel, the Aaj Tak television channel and the Haryana News of Punjab Today television channel.

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- The court determined that the electronic evidence placed on record was admissible and upheld the reliance placed by the speaker on the recorded interview when reaching the conclusion that the voices recorded on the CD were those of the persons taking action.
- The Supreme Court found no infirmity in the speaker's reliance on the digital evidence and the conclusions reached by him.
- The comments in this case indicate a trend emerging in Indian courts: judges are beginning to recognize and appreciate the importance of digital evidence in legal proceedings.

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- In *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:
- 1. Before a witness is examined in terms of the Audio-Video Link, witness is to file an affidavit or an undertaking duly verified before a notary or a Judge that the person who is shown as the witness is the same person as who is going to depose on the screen. A copy is to be made available to the other side. (Identification affidavit).

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- 2. The person who examines the witness on the screen is also to file an affidavit/undertaking before examining the witness with a copy to the other side with regard to identification.
- 3. The witness has to be examined during working hours of Indian Courts. Oath is to be administered through the media.
- 4. The witness should not plead any inconvenience on account of time different between India and USA.

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- 5. Before examination of the witness, a set of plaint, written statement and other documents must be sent to the witness so that the witness has acquaintance with the documents and an acknowledgement is to be filed before the Court in this regard.
- 6. Learned Judge is to record such remarks as is material regarding the demur of the witness while on the screen.
- 7. Learned Judge must note the objections raised during recording of witness and to decide the same at the time of arguments.

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- 8. After recording the evidence, the same is to be sent to the witness and his signature is to be obtained in the presence of a Notary Public and thereafter it forms part of the record of the suit proceedings.
- 9. The visual is to be recorded and the record would be at both ends. The witness also is to be alone at the time of visual conference and notary is to certificate to this effect.
- 10. The learned Judge may also impose such other conditions as are necessary in a given set of facts.
- 11. The expenses and the arrangements are to be borne by the applicant who wants this facility.



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