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ARTIFICIAL INTELLIGENCE AND DIGITAL EVIDENCE UNDER THE BHARATIYA SAKSHYA ADHINIYAM, 2023

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Results: The analysis demonstrates that the BSA provides an important statutory foundation for recognising electronic and digital records. However, AI-generated evidence creates additional difficulties concerning provenance, attribution, manipulation, authenticity and reliability. Conventional approaches to electronic evidence may not independently address all these technological challenges.

Conclusions: The study concludes that Indian courts should adopt a technology-sensitive and authenticity-focused approach towards AI-generated evidence. Greater reliance on digital-forensic examination, preservation of original records, chain-of-custody documentation and appropriate expert assistance may strengthen the reliability of digital evidence.

Keywords: Artificial Intelligence; Digital Evidence; Deepfakes; Electronic Records; Bharatiya Sakshya Adhiniyam; Authentication; Cyber Law

1. INTRODUCTION

The digital transformation of society has fundamentally changed the nature of evidence available to courts. Communication, financial transactions, social interactions, business activities and personal records are increasingly conducted through electronic systems. Consequently, electronic and digital records have become an important component of modern litigation and criminal investigations.

The evidentiary environment has become substantially more complicated with the development of generative artificial intelligence. Modern AI systems can create realistic images, audio recordings, videos and written documents with limited human intervention. Deepfake technology can further manipulate existing audio-visual material to create representations of persons or events that may never have occurred.

This development creates an important challenge for evidence law. The traditional question was often whether an electronic record genuinely represented an event that had occurred. With generative AI, a digital record may be created without any corresponding real-world event.

For example, an AI-generated video may appear to show an individual making a statement that the individual never made. Similarly, AI-generated voice cloning can produce an apparently genuine conversation, while manipulated photographs may appear to establish the presence of an individual at a particular location.

Therefore, courts increasingly face questions not only of admissibility, but also of authenticity, provenance, integrity and reliability.

India has responded to the changing digital environment through the enactment of the Bharatiya Sakshya Adhiniyam, 2023, which replaced the Indian Evidence Act, 1872. The BSA came into force on 1 July 2024 and contains specific provisions dealing with electronic and digital records. Sections 61–63 are particularly relevant to electronic evidence. [1]

The Supreme Court of India had already developed important principles relating to electronic evidence under the previous Evidence Act. In *Anvar P.V. v. P.K. Basheer*, the Court emphasised the statutory requirements for proving electronic records and highlighted the importance of authenticity and safeguards against tampering. [2]

Subsequently, in *Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal*, the Supreme Court reaffirmed the importance of Section 65B of the former Indian Evidence Act in relation to electronic evidence. [3]

However, AI-generated evidence presents a new dimension. The issue is no longer simply whether an electronic record was properly produced by a computer system. It may also be necessary to determine whether the underlying content itself was generated or manipulated by artificial intelligence.

This research therefore examines the adequacy of the BSA in dealing with AI-generated and AI-manipulated evidence and considers possible safeguards for maintaining evidentiary reliability.

2. METHODS

This study adopts a doctrinal and analytical legal research methodology.

Primary legal materials examined include: (1) the Bharatiya Sakshya Adhiniyam, 2023; (2) relevant provisions of the former Indian Evidence Act, 1872; (3) judgments of the Supreme Court of India concerning electronic evidence; and (4) relevant Indian legislation concerning digital technology and data protection.

Secondary materials include peer-reviewed academic literature, legal scholarship and contemporary research concerning AI-generated content, deepfakes and digital forensic authentication.

The research follows a qualitative analytical approach. Statutory provisions and judicial principles are examined to identify the existing legal position. Emerging technological challenges are then evaluated against this framework.

The study does not involve human participants, surveys, interviews, clinical trials or experimental research. Accordingly, no human-subject or animal ethics approval was required.

3. RESULTS

3.1 Development of Electronic Evidence Law in India

The increasing use of computers and electronic communication created a need for legal rules governing digital evidence. Under the Indian Evidence Act, 1872, Sections 65A and 65B specifically addressed electronic records.

The Supreme Court's decision in *Anvar P.V. v. P.K. Basheer* represented a significant development in Indian electronic evidence law. The Court treated Section 65B as a special statutory framework governing the admissibility of electronic records and emphasised the importance of the prescribed certification requirements. [2]

The Court also recognised the possibility of electronic records being susceptible to alteration, manipulation and tampering. [2]

In *Arjun Panditrao Khotkar*, the Supreme Court subsequently reaffirmed the importance of the certificate contemplated by Section 65B for the relevant form of secondary electronic evidence. [3]

These decisions established important principles concerning the authenticity and reliability of electronic evidence.

3.2 Electronic and Digital Records under the BSA

The BSA represents the present statutory framework for evidence in India.

Section 61 provides that an electronic or digital record cannot be denied admissibility merely because it is electronic or digital, subject to Section 63. [1]

Section 62 deals with special provisions relating to evidence concerning electronic records, while Section 63 addresses their admissibility. [1]

The legislative framework therefore recognises that electronic and digital records are capable of possessing the same legal significance as other documentary evidence, subject to statutory

requirements.

This is particularly important because contemporary evidence may originate from smartphones, computers, CCTV systems, cloud platforms, social-media applications, email systems, digital payment systems, GPS devices and other networked technologies.

3.3 Emergence of AI-Generated Evidence

AI-generated evidence differs from conventional electronic evidence because the digital content may not represent a naturally occurring event.

AI systems can generate synthetic photographs, artificial voices, deepfake videos, fabricated conversations, AI-generated documents, manipulated CCTV footage and synthetic social-media content.

The evidentiary significance of such material depends upon whether the court can establish that it accurately represents the relevant facts.

The existence of a digital file therefore cannot automatically establish the truth of its contents. This distinction is central to AI evidence: A digital record may be genuine as a file while being false as a representation of an event.

3.4 Deepfakes and Synthetic Media

Deepfakes constitute one of the most significant emerging challenges to digital evidence.

Deepfake systems can manipulate facial features, speech, expressions and other elements of audio-visual content. Recent legal scholarship identifies deepfake evidence as a significant challenge because synthetic media can potentially be used to fabricate evidence and requires increasingly sophisticated forensic verification. [4]

The problem has two dimensions. First, a fabricated recording may be accepted as genuine. Second, genuine evidence may be incorrectly rejected because the opposing party alleges that it is AI-generated.

The second problem is particularly significant because widespread awareness of deepfakes may create the so-called 'liar's dividend'—the ability of a person to dismiss genuine evidence simply by claiming that it has been artificially generated.

Therefore, courts should not adopt a presumption that all AI-related evidence is unreliable.

3.5 Authentication and Provenance

Authentication should constitute the central safeguard in cases involving disputed digital evidence.

Provenance refers to the history and origin of a digital record.

For example: Original device → Original file → Preservation → Transfer → Forensic examination → Court.

At each stage, appropriate documentation can assist the court in assessing reliability.

Relevant factors may include the source of the digital record; the device from which it originated; metadata; creation and modification timestamps; hash values; chain of custody; storage method; evidence of editing; digital forensic examination; and whether AI-generation or manipulation has been detected.

These factors should be considered collectively rather than relying on a single technological indicator.

3.6 Role of Digital Forensic Experts

AI-generated content can involve technical questions beyond ordinary judicial knowledge.

Digital forensic experts can assist in determining whether metadata has been altered; a file has undergone editing; audio contains synthetic characteristics; images show evidence of manipulation; video frames have been generated or altered; file histories are consistent with the claimed source; and available technical indicators support or undermine authenticity.

Recent scholarship similarly emphasises the importance of digital-forensic expertise when courts encounter synthetic evidence. [4]

Expert evidence, however, should assist the court rather than replace judicial assessment. The ultimate determination regarding admissibility and evidentiary weight remains a judicial function.

3.7 Chain of Custody

Chain of custody is particularly important where digital evidence may be challenged as manipulated.

A proper chain of custody should document: Collection → Identification → Preservation → Storage → Transfer → Examination → Production before Court.

Any unexplained alteration or break in the chain may affect the evidentiary weight of the material. This becomes particularly important where the evidence exists in easily reproducible digital form.

3.8 Privacy Concerns

Digital investigations frequently involve large quantities of personal information.

A smartphone, for example, may contain private messages, photographs, financial information, location history, personal contacts, documents and other sensitive information.

Consequently, evidence collection must balance the interests of justice against privacy.

The Digital Personal Data Protection Act, 2023 represents an important development in India's broader data-governance framework. [5]

Courts and investigating agencies should therefore seek relevant evidence without unnecessarily exposing unrelated private information.

4. DISCUSSION

4.1 Is the BSA Sufficient for AI-Generated Evidence?

The BSA provides a strong statutory basis for recognising electronic and digital records. Sections 61–63 expressly address electronic evidence. [1]

However, the principal difficulty with AI-generated evidence is not merely whether the material is electronic.

The more difficult question is: How should a court determine whether the digital content itself is authentic?

Traditional electronic evidence rules generally focus on the conditions under which electronic information is produced and admitted. AI-generated evidence introduces a further question concerning the origin and integrity of the content.

For example, a properly certified electronic file may still contain manipulated content. Thus, admissibility and reliability should be treated as related but distinct questions.

4.2 Admissibility Versus Evidentiary Weight

A useful approach is to distinguish four stages: (1) Admissibility—whether the statutory requirements for placing the evidence before the court have been satisfied; (2) Authenticity—whether the evidence is what the party claims it to be; (3) Reliability—whether the evidence can reasonably be relied upon to establish a disputed fact; and (4) Evidentiary Weight—how much importance should ultimately be assigned to the evidence in determining the case.

This four-stage framework can help prevent a technically admissible record from automatically being treated as conclusive proof.

4.3 Lessons from Existing Supreme Court Jurisprudence

The jurisprudence developed under the former Indian Evidence Act remains important for understanding the principles underlying electronic evidence.

In Anvar P.V., the Supreme Court emphasised statutory compliance and safeguards relating to electronic records. [2]

In Arjun Panditrao Khotkar, the Court reaffirmed the importance of the Section 65B framework and addressed questions concerning the production and certification of electronic evidence. [3] These decisions demonstrate an underlying judicial concern with authenticity, source, integrity, procedural compliance and reliability. These principles remain valuable when courts encounter AI-generated evidence, although the technology presents new questions that may require further judicial development.

4.4 Need for an AI-Specific Evidentiary Approach

Recent scholarship has argued that the rise of generative AI challenges the assumption that an electronic record necessarily represents an underlying real-world event. [6]

An appropriate Indian framework could therefore require courts to consider an AI Evidence Reliability Test.

Step 1 — Identify the Source: Where did the evidence originate?

Step 2 — Preserve the Original: Can the original file/device be produced or independently preserved?

Step 3 — Examine Provenance: Can the history of the digital record be established?

Step 4 — Examine Integrity: Is there evidence of alteration or manipulation?

Step 5 — Assess AI Involvement: Was generative AI used to create or modify the content?

Step 6 — Obtain Expert Assistance: Where technically necessary, should a qualified forensic expert examine the evidence?

Step 7 — Assess Corroboration: Is the digital material supported by independent evidence?

Step 8 — Determine Evidentiary Weight: After considering all circumstances, what weight should the court assign to the evidence?

This framework would not automatically exclude AI-generated evidence. Instead, it would focus on reliability.

4.5 Comparative and International Perspective

The challenge of synthetic evidence is not unique to India. Courts and legal systems internationally are increasingly confronting the evidentiary implications of generative AI and deepfakes.

Recent comparative scholarship suggests that legal systems are considering approaches involving provenance, forensic verification, expert evidence and stronger authenticity

standards. [4]

India can benefit from these developments while maintaining its own constitutional and statutory framework. The objective should therefore be adaptation rather than direct transplantation of foreign legal standards.

4.6 Fair Trial Considerations

AI-generated evidence can affect both prosecution and defence.

If fabricated evidence is accepted, an innocent person may be wrongly implicated. Conversely, if genuine evidence is rejected merely because AI manipulation is technically possible, legitimate evidence may lose its value.

Therefore, the legal system must maintain a balance between technological innovation, evidentiary reliability, fair trial and privacy.

The burden should not automatically fall upon one party simply because the evidence is technologically complex.

5. RECOMMENDATIONS

5.1 Judicial Guidelines — Appropriate judicial institutions should consider developing guidelines for dealing with AI-generated and AI-manipulated evidence.

5.2 Preservation of Original Evidence — Investigating agencies and litigants should preserve original digital files and, wherever possible, the original source devices.

5.3 Provenance Documentation — The origin, transfer and processing history of digital evidence should be documented.

5.4 Expert Examination — Courts should have access to appropriately qualified digital forensic experts in technically complex disputes.

5.5 Disclosure of Material AI Manipulation — Where AI has materially created or altered evidence, such involvement should be disclosed when relevant to authenticity.

5.6 Judicial and Professional Training — Judges, advocates, police officers and forensic personnel should receive continuing training concerning synthetic media and AI-generated evidence.

5.7 Privacy Protection — Digital evidence collection should be proportionate and limited to information relevant to the proceedings.

5.8 Technological Standards — India should encourage reliable systems for digital provenance, authentication and content integrity.

6. CONCLUSIONS

Artificial intelligence has created a new evidentiary environment in which digital content can be generated, manipulated and reproduced with unprecedented sophistication.

The Bharatiya Sakshya Adhiniyam, 2023 provides an important statutory foundation for electronic and digital evidence. Its recognition of electronic records reflects the changing nature of modern litigation. [1]

Nevertheless, AI-generated and AI-manipulated evidence raises questions that extend beyond conventional electronic evidence. A digital file may be technically genuine while its contents may nevertheless be fabricated or manipulated.

Accordingly, the principal challenge for Indian courts is not to reject AI-related evidence automatically, but to develop reliable mechanisms for determining its authenticity.

The study proposes an approach based upon source identification, preservation, provenance, integrity, forensic examination, disclosure and corroboration.

The future of evidence law should therefore be neither technologically sceptical nor technologically uncritical. Instead, Indian courts should adopt a technology-neutral, authenticity-sensitive and rights-protective approach.

Such an approach can help ensure that technological advancement strengthens rather than undermines the administration of justice.

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