

Legal framework for Digital Forensics- I: Indian Evidence Act 1872 and amendments

E-Vimarsh: Lecture Notes for Digital Forensics Course

For M.Tech.(CSE) and Ph.D.(Coursework)

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Introduction



- ▶ Digital Forensics is a new and growing discipline.
- ▶ With increasing use of Cyberspace, and consequent increase in Cyber crimes, Digital Forensics has become important.
- ▶ Digital forensics is the field of forensic science that is concerned with retrieving, storing and analyzing electronic data that can be useful in criminal investigations. This includes information from computers, hard drives, mobile phones and other data storage devices.
- ▶ Digital Forensics deals with post-crime investigation.
- ▶ Legislation related to Digital/ Cyber Forensics is still work-in-progress in India.
- ▶ We have Indian Evidence Act 1872, IT Act 2000 and few other rules and guidelines dealing with relevant issues.



Indian Evidence Act 1872

- ▶ The Indian Evidence Act contains rules and relevant issues regarding **admissibility of evidence** in courts of law in India.
- ▶ As per the Act, Evidence includes all documents **including electronic records** produced for the inspection of the Court. Such evidence is known as documentary evidence.
- ▶ **Section 65 B** of the Act deals with admissibility of Electronic records as Evidence. (It was inserted by Information Technology Act 2000)

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- ▶ This Act is divided into three parts and there are 11 chapters in total under this Act.

Part 1 deals with relevancy of the facts. There are two chapters under this part: the first chapter is a preliminary chapter which introduces to the Evidence Act and the second chapter specifically deals with the relevancy of the facts.

- ▶ Part 2 consists of chapters from 3 to 6. Chapter 3 deals with facts which need not be proved, chapter 4 deals with oral evidence, chapter 5 deals with documentary evidence and chapter 6 deals with circumstances when documentary evidence has been given preference over the oral evidence.
- ▶ The last part, consists of chapter 7 to chapter 11. Chapter 7 talks about the burden of proof. Chapter 8 talks about estoppel, chapter 9 talks about witnesses, chapter 10 talks about examination of witnesses, and last chapter talks about improper admission and rejection of evidence.

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- ▶ (1) 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 of any contents of the original or of any fact stated therein of which direct evidence would be admissible.

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- ▶ (2) The conditions referred to in sub-section (1) in respect of a computer output shall be the following, namely:—
 - ▶ (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;

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- (b) during the said period, information of the kind contained in the 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.



Digital 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” . Section 79A of IT (Amendment) Act, 2008 defines electronic form evidence as “any information of probative value that is either stored or transmitted in electronic form and includes computer evidence, digital audio, digital video, cell phones, digital fax machines”.



Rules of Evidence

The five properties that evidence must have in order to be useful:

- Admissible
- Authentic
- Complete
- Reliable
- Believable



Concluding Remarks

- ▶ Amendments to the Indian Evidence Act are made in part IV of the IT(*Amendment*) Act 2008.
- ▶ The Indian Evidence Act is important part of judicial system.
- ▶ In digital forensics, we have to understand the importance of Digital Evidence and that it is admissible in courts of law as per provisions of IEA 1872.



References

- ▶ 1. https://indiacode.nic.in/bitstream/123456789/6819/1/indian_evidence_act_1872.pdf
- ▶ Cyber Law and IT Protection, Harish Chander, Prentice Hall of India, 2012.
- ▶ <https://www.slideshare.net/raghurx/digital-evidence-by-raghu-khimani>