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Re-conceptualizing Section 63 of Bharatiya Sakshya Adhiniyam: Judicial Approach to Electronic Evidence in the Age of AI-Generated Content

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Abstract:

Artificial intelligence technology has altered the nature of digital information, which has led to significant problems for legal systems worldwide. While Section 63 of the Bharatiya Sakshya Adhiniyam (BSA) addresses the admissibility of electronic documents with regard to copyright in India, its applicability to AI content is rather ambiguous. By examining the current status of case law on electronic evidence in a world where it is difficult to determine whether documents were captured by a human or a machine, this paper aims to reinterpret Section 63.

The study looks into two main issues: whether current standards of proof adequately address the unique challenges that AI-generated content presents, and what legal and procedural concerns exist regarding the treatment of such content within the Indian legal system, particularly in light of the role of the Indian AI interface from a system design standpoint. It argues that current legal standards for the admission of evidence are insufficient to maintain the impartiality, equity, and dependability required in situations where testimony produced by AI computers serves as evidence. In order to ensure that the provisions of Section 63 remain relevant as technology develops, the study concludes with recommendations for judicial and governmental changes that would bring evidence law into line with new developments.

Keywords: Section 63, Bharatiya Sakshya Adhiniyam, Electronic Evidence, AI-Generated Content, Judicial Interpretation, Digital Forensics, Admissibility Of Evidence, Legal Framework, Deep Fake Detection, Technology And Law

Introduction:

The Bharatiya Sakshya Adhiniyam, 2023, which superseded the Indian Evidence Act, 1872, which was passed during the colonial era, has significantly changed the country's evidence law environment. One of its most important clauses, Section 63, deals with electronic documents and is especially significant in the digital age. This provision establishes the admissibility requirements for electronic evidence and roughly translates to provision 65B of the abolished Act. But given the speed at which digital

technologies—in particular, artificial intelligence (AI)—are developing, the conventional judicial approach to electronic documents needs to be immediately reexamined.

The distinction between real and fake digital evidence has become more hazy due to the spread of AI-generated information, such as deepfakes, synthetic texts, and algorithmically modified documents. There are significant ethical, legal, and evidential issues with this new era of "hyperreal" content, especially when it is presented in court. Once assumed under specific technical circumstances, the dependability, validity, and integrity of electronic documents can today be easily and sophisticatedly altered, raising concerns about the sufficiency of current legal frameworks and judicial norms.

Given the difficulties presented by AI-generated content, this research article critically analyzes Section 63 of the Bharatiya Sakshya Adhiniyam. It examines the contemporary interpretation and application of electronic evidence laws by Indian courts, pointing up both advancements and enduring inconsistencies. The paper makes the case that, notwithstanding the current provision's emphasis on certificate-based authentication, a more sophisticated and technologically advanced approach is necessary due to the rapidly changing nature of digital manipulation. Establishing credibility in an AI-infused evidential ecosystem may require more than just following the rules.

Additionally, the paper identifies potential paths for Indian law to develop by drawing analogies with emerging foreign practices and global jurisprudence in handling synthetic and algorithm-driven content. As possible improvements to the current judicial system, the function of expert testimony, digital forensic tools, metadata analysis, and blockchain-based authentication methods are also looked at.

Conceptual Framework:

By examining judicial trends in the processing of electronic evidence, particularly in light of the proliferation of AI-generated content, this study redefines Section 63 of the Bharatiya Sakshya Adhiniyam. Through doctrinal and comparative jurisprudence, it investigates authenticity, admissibility, and evidential value in order to suggest legal interpretations that are ready for the future.

Review of Literature:

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As technology has changed the legal environment, there has been a great deal of scholarly and judicial discussion over the reliability and admissibility of electronic evidence. Basic texts like Batuk Lal's "Law of Evidence" and Vakul Sharma's "Information Technology and Law" offer thorough analyses of the development of electronic evidence in India, highlighting the function of Sections 65A and 65B of the Indian Evidence Act, which are currently reflected in Section 63 of the Bharatiya Sakshya Adhiniyam (BSA), 2023.

After the Supreme Court's historic ruling in Anvar P.V. v. P.K. Basheer (2014)[1], which made it clear that electronic records are only admissible with a certificate under Section 65B(4), a significant change took place. Previous rulings such as State (NCT of Delhi) v. Navjot Sandhu (2005)[2], which permitted secondary electronic evidence without rigorous adherence to procedural requirements, were overturned by this ruling. The 2020 ruling in Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal[3] upheld Anvar and placed a strong emphasis on procedural rigor, sparking discussion on how to strike a balance between practical viability and evidential authenticity.

These rulings have been criticized by recent scholarly works, including papers in the NLU Delhi Journal of Legal Studies, Journal of Indian Law and Society, and NUJS Law Review, for failing to address the particular difficulties presented by AI-generated content. Because establishing authorship, integrity, and chain of custody is difficult, if not impossible, with synthetic or deepfake evidence, experts contend that the existing certification framework is inadequate.

International literature offers insightful information as well. Legal norms should be modified to account for automated data collection and artificial intelligence, according to studies on evidentiary law reform in the US, UK, and EU.

Multidisciplinary studies that combine AI ethics and digital forensics recommend creating flexible frameworks that combine legal presumptions with technological protections.

This study offers a rethought, AI-sensitive judicial approach to Section 63 of the BSA by drawing on these doctrinal, comparative, and interdisciplinary literatures.

Research Questions:

[1] Anvar P.V. v. P.K. Basheer, (2014) 10 SCC 473
[2] NCT of Delhi v. Navjot Sandhu, (2005) 11 SCC 600
[3] Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal, (2020) 7 SCC 1

1. What are the major legal and technical challenges faced by the Indian judiciary in evaluating AI-generated content as electronic evidence under Section 63 of the Bharatiya Sakshya Adhiniyam?
2. To what extent do current evidentiary standards under Section 63 differentiate between human-generated and AI-generated electronic records, and are these distinctions sufficient to ensure judicial fairness and reliability?

Research Gaps Identified:

Although there is a wealth of literature on the admissibility and procedural issues of electronic evidence under Section 63 of the Bharatiya Sakshya Adhiniyam and Section 65B of the Indian Evidence Act, most of it concentrates on digital content created by humans. Judicial interpretation and legal study of AI-generated content, including deepfakes, synthetic language, and automated media, are noticeably lacking. Traditional ideas of authorship, originality, and dependability are called into question by these new types of evidence. Furthermore, there is still little interdisciplinary interaction between legal frameworks and technical developments, especially when it comes to suggesting specific judicial guidelines for the treatment of AI-generated electronic evidence in Indian courts.

Research Methodology:

Mostly doctrinal and analytical, with a strong multidisciplinary focus, is the study technique used in this work on "Reconceptualizing Section 63 of the Bharatiya Sakshya Adhiniyam: Judicial Approach to Electronic Evidence in the Age of AI-Generated Content." In view of recent developments in artificial intelligence, including AI-generated content like deepfakes, synthetic media, and algorithm-driven textual data, the goal is to examine whether the current legal framework governing electronic evidence is adequate.

1. **Doctrinal Legal Research:**

   The study starts with a doctrinal approach, looking at main legal sources such as law commission reports, case laws, statutory provisions, and constitutional principles. The main legal provision is Section 63 of the Bharatiya Sakshya Adhiniyam, which takes the place of Section 65B of the Indian Evidence Act. Comparative analysis of comparable legislation in other jurisdictions, including

the US Federal Rules of Evidence (FRE 902), the UK's Civil Evidence Act, and EU guidelines on digital evidence, is another aspect of the research. To comprehend the developing law on the admissibility of electronic evidence, significant Indian court rulings like Anvar P.V. v. P.K. Basheer (2014) and Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal (2020) are also critically reviewed. The purpose of this analysis is to evaluate the extent to which Indian courts have adjusted to the evolving technology landscape.

2. **Interdisciplinary and Comparative Research:**

   The study incorporates knowledge from the domains of computer science, digital forensics, and AI ethics due to the nature of AI-generated material. This multidisciplinary paradigm aids in identifying the technological constraints of existing evidentiary norms, particularly with regard to the authorship, authenticity, and dependability of content generated by AI systems on their own.

   The goal of comparative legal research is to investigate how other legal systems are handling comparable issues. For possible adoption or adaptation in the Indian context, best practices, reforms, and judicial innovations from those jurisdictions are assessed.

3. **Analytical and Critical Evaluation:**

   To find any gaps, inconsistencies, or out-of-date components in the current legal system, a critical assessment of the doctrinal content is conducted. This involves determining whether the current legal system can manage evidence produced by artificial intelligence, particularly in the absence of digital certification or human interaction. The study also looks at evidentiary presumptions and judicial discretion that could need to change.

4. **Normative and Prescriptive Analysis:**

   The research's last stage takes a normative stance, suggesting legislative and judicial reforms. This entails putting up changes to Section 63, offering judicial instructions for handling content produced by artificial intelligence, and creating a technologically sound evidentiary framework that strikes a balance between admission and protections against abuse.

All things considered, the methodology combines comparative analysis, legal doctrinal research, interdisciplinary insights, and normative reasoning to create a comprehensive understanding and suggest a framework for electronic evidence in the AI era.

Research Question and Analytical Discussion:

What are the major legal and technical challenges faced by the Indian judiciary in evaluating AI-generated content as electronic evidence under Section 63 of the Bharatiya Sakshya Adhiniyam?

When assessing AI-generated content as electronic evidence under Section 63 of the Bharatiya Sakshya Adhiniyam (BSA), the Indian judiciary encounters substantial legal and technical obstacles. The main causes of these difficulties are the intricacy and uniqueness of digital information produced by AI, as well as the shortcomings of the existing legal structure intended for electronic records created by humans.

Legal Difficulties:

- Requirements for Authenticity and Certification: Section 63 mandates that electronic evidence be authenticated by a certificate. Conventional certification presumes that the source is either a trustworthy system or a human. But because AI-generated information, such deepfakes or documents produced by algorithms, frequently lacks a clear originator or certifying authority, compliance can be challenging. Courts find it difficult to determine whether AI systems themselves may be considered "authors" and who is responsible for certification.
- Proof of Integrity and Chain of Custody: Evidence must be proven to be trustworthy and undisturbed in order to be admitted. The court's ability to ensure integrity is challenged by the ease with which AI-generated content might be altered or falsified. AI content might not have a clear provenance, in contrast to conventional electronic documents, which have metadata and verified logs.

- Legal Personhood and Accountability: There are concerns about accountability when AI-generated content lacks a "person." The legal process will become more

complicated if AI creates false evidence without human control since it will be difficult to determine who is responsible for its production or distribution.

- Judicial Expertise and Familiarity: Courts frequently lack the technical know-how to comprehend AI processes like neural networks, machine learning models, and the creation of synthetic media. Judges' capacity to assess the trustworthiness of the evidence critically is hampered by this information gap.

Technical Difficulties:

- Detection of AI-Generated Content: Even professionals find it challenging to tell the difference between real and fraudulent content due to the remarkably lifelike fake photos, videos, and texts produced by AI technologies, particularly generative adversarial networks (GANs). This raises the possibility that fabricated evidence will affect court decisions.
- Absence of Standardized Forensic Tools: There aren't many reliable, commonly used digital forensic techniques and tools that can accurately confirm the integrity, validity, and provenance of AI-generated information.
- Rapid Development of AI Technology: As AI methods advance faster than related legal and forensic standards, courts are left with antiquated standards that fail to take into account emerging dangers to evidence.

In conclusion, significant doctrinal and technological reforms are needed because the Indian judiciary is struggling with a legal framework that was created for human-centric digital evidence and is ill-equipped to address the particular difficulties presented by AI-generated information.

1. To what extent do current evidentiary standards under Section 63 differentiate between human-generated and AI-generated electronic records, and are these distinctions sufficient to ensure judicial fairness and reliability?

The Bharatiya Sakshya Adhiniyam's Section 63 does not now make a clear distinction between electronic documents created by humans and those created by artificial intelligence. The law was written upon the presumption that electronic evidence comes

from controlled digital systems or human writers, both of which may be verified by accountable officials or custodians.

Absence of Uniqueness:

The validity and appropriate authentication of electronic documents are the main concerns of Section 63's provisions, which do not take into consideration whether the information is human or machine-generated.

Subsection (4) requirement for a certificate assumes that the authenticity of the evidence will be attested by a recognized individual or authority. The statutory framework ignores the special problems that come with AI-generated content that is autonomous, like the absence of human authorship, the possibility of synthetic fabrication, or the inability to follow a conventional chain of custody.

Implications for Judicial Reliability and Fairness:

The law may overlook the dangers of AI-generated content since it handles all electronic evidence in the same way, making it easier to manipulate or fabricate. By using current standards, courts may unintentionally accept fake AI-generated evidence that appears to meet certification requirements but is not substantially reliable. Because parties might not be sufficiently protected against sophisticated digital forgeries or fraud, the lack of specific safeguards or evidentiary presumptions for AI content could jeopardize judicial fairness. This damages the credibility of the legal system as a whole by eroding confidence in electronic evidence.

To cover the loopholes, courts now mostly rely on expert evidence and digital forensic analysis. Unpredictable results result from inconsistent and ad hoc judicial approaches in the absence of clear statutory differentiation or guidance.

In summary, in the era of artificial intelligence-generated content, the current evidence standards under Section 63 are insufficient. Because human and AI-generated records are not distinguished, the law is unable to completely protect against the dangers of synthetic evidence, which compromises the validity and impartiality of proceedings. To maintain justice in the digital age, legislative changes and court rulings that take into account

technological realities, specify certification requirements for AI content, and set up procedures for admissibility and verification are desperately needed.

Research Findings:

The results of this study show that the existing legal framework, as outlined in Section 63 of the Bharatiya Sakshya Adhiniyam (2023), is inadequate to handle the complexity of electronic evidence produced by artificial intelligence. In order to guarantee the admissibility, dependability, and authenticity of content produced by autonomous AI systems, the judiciary must overcome a number of legal and technological obstacles. The existence of a human author or certifying official is assumed under Section 63, which requires the certification of electronic documents, but this presumption is broken in the case of AI-generated content, which has no obvious authorship, origin, or purpose.

The results show that courts lack the technological know-how and forensic resources required to verify AI-generated evidence, including deepfakes and synthetic documents. Additionally, the legislation does not specify how to distinguish between records created by AI and those created by humans, which leads to uncertainty and compromises judicial justice.

Additionally, the lack of established procedures for identifying AI manipulation raises the risk of abuse or false court filings. International jurisdictions including the US and EU have started looking into evidence reforms to solve these issues, according to case studies and comparative legal analysis. However, Indian law is still unprepared, lacking judicial and legislative direction tailored to the new digital realities.

Conclusion:

In order to identify the shortcomings in the current legal framework to deal with such cutting-edge technological advancements, this research paper critically investigated the court approach to AI-generated electronic evidence under Section 63 of the Bharatiya Sakshya Adhiniyam (2023). Fundamental evidentiary concepts like authenticity, relevance, and admissibility face new and unprecedented issues as the judicial system deals with a growing number of electronic documents produced by algorithms, neural networks, and machine learning models rather than by humans.

The main finding is that when Section 63 was written, most digital content was created by people or systems that could be directly traced. It failed to foresee autonomous AI tools that may produce artificially lifelike content, such as deepfakes or artificial audiovisuals. Therefore, when dealing with non-human generated content, obligations such as certification under sub-section (4) and source verification become challenging to enforce or comprehend.

Furthermore, this study shows that a lack of knowledge, instruction, and forensic assistance limits the judiciary's ability to handle these issues. Although courts may try to close these gaps by using ad hoc procedures or expert opinions, these methods are irregular and could jeopardize procedural justice. There is a greater chance of erroneous convictions or improper evidentiary weight being assigned to altered or unreliable evidence because there is no legal distinction between AI and human-generated content.

Legal reform is therefore urgently needed to make sure that the law keeps up with technological advancements. Proactive steps such as judicial training, standardized forensic procedures, procedural legislation modifications, and a reexamination of Section 63 from the perspectives of algorithmic transparency, metadata dependability, and technological auditability are essential to the future of evidentiary jurisprudence.

Suggestions and Recommendations:

The following actions are advised in order to resolve the evidentiary problems brought on by AI-generated content:

- **Legislative Amendments:** Section 63 ought to be modified to incorporate clauses that differentiate between records produced by humans and those produced by artificial intelligence, along with specific guidelines for certification and admissibility.
- **Judicial Training:** It should be mandatory for judges and legal experts to participate in regular training courses in digital forensics, deepfakes, and AI technology.
- **Forensic Infrastructure:** It should be a top priority to set up specialist digital forensic labs that can identify and examine fabricated information.

- **Standard Operating Procedures (SOPs):** Establish consistent standards for the admissibility, analysis, and validation of evidence produced by artificial intelligence.
- **Global Best Practices:** For the technical assessment of electronic material, India should embrace and modify foreign standards like those from NIST (USA) and the EU's AI Act. To improve accountability and transparency in digital evidence legislation, future studies can examine comparative legislative frameworks, blockchain-based evidence verification, and the regulation of generative AI tools.

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