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AI-Generated Evidence: Admissibility & Reliability in Indian Courts

-Ashna Ahmad

INTRODUCTION:

A district court in northern India was recently required to consider evidence that lawmakers hadn't foreseen in their last revision of rules of evidence. The evidence was an audio clip of a civil servant who seems to have accepted a bribe. The complainant swore that it was authentic. The accused insisted that he never said those words, though he stated that the voice was his but the sentence was not. Neither party was telling lies in a way that courts can detect them. The technology allowed both positions to sound really plausible. The judge found himself with an audio recording, which could either have been produced by a mobile phone or by a machine imitating it & he had no settled doctrine to apply. The situation described is not an isolated case. It is the constant problem faced by all the courts, cyber cells & constitutional courts across India due to artificial intelligence evolution from being a tool for lawyers to becoming the source of evidence in cases.¹

In this article, we will look at Law of evidence in India & how it deals with AI-generated contents such as synthetic audio, deep fake videos, AI-enhanced images, documents produced by machine learning algorithms & future outputs of AI in terms of analytical capacities. We will also try to answer the question of whether the 19th century legal regime that we have inherited & upgraded not so long ago can face this challenge or not.

THE TRANSITION FROM INK TO ALGORITHM: UNDERSTANDING THIS UNIQUE PROBLEM:

The Indian legal system has adapted itself to technological shifts in past, such as from handwritten registers to typewritten documents, followed by use of email as well as WhatsApp

¹ *AI-Generated Evidence in Indian Courts: Admissibility and Verification Challenges*, INDIAN J.L. & L. RSCH. (2025).

messages. In all these cases, however, there has been no need for a redefinition of principles. Only the existing categories of ‘documents’ or ‘electronic documents’ were expanded in order to encompass this new technology & this was possible due to the belief that every document must be written by a real person whose intentions could be verified through cross-questioning of verification.²

The use of AI-generated evidence, however, challenges this belief in two important ways. First, the evidence itself may not necessarily have a single author or “a real person,” meaning that a voice cloning machine could produce a phrase that was never said by a person & a generative image model can produce a photograph of an event that never occurred. Second, in cases where an individual is clearly involved, like an investigator who has a compelling crime-scene recording through the AI enhancement system or a forensic expert who makes use of facial recognition, the process through which the output was achieved is often clouded even from the developers. Courts are used to inquiring “who made it & whether this individual may be questioned about it.” AI-generated materials often do not allow to have a straightforward answer to “who” & examine “how.”³

THE LEGAL BEGINNING: BSA 2023 & SECTION 65B’S JOURNEY:

The framework for presenting evidence in cases involving electronic devices was largely based on Section 65B of Indian Evidence Act, which was included after enactment of Information Technology Act, 2000⁴. Section 65B required that secondary evidence of an electronic record be accompanied by a certificate identifying the device on which it was produced & supporting the conditions of its creation, in order to be treated as admissible without formal proof of original. The requirements of Section 65B have been introduced in Bharatiya Sakshya Adhiniyam, 2023 (BSA), which replaced the Indian Evidence Act from July 2024. Sections 61 to 63 of BSA incorporate the main elements of Section 65B- electronic & digital evidence is said to be in a position similar to that of written evidence, given that circumstances regarding the creation of electronic evidence have been satisfied. This modernization confirms that a WhatsApp chat, a CCTV recording or a bank’s electronic transaction log is admissible in same way a signed letter always was.⁵

² Madhavi Tiwary, *Admissibility in the Age of Algorithm: Legal and Forensic Limitations in Establishing Electronic Evidence in AI-Powered Digital Crime* (Scribd Manuscript, 2025).

³ Aishwarya Kaushiq, *Actual Intelligence v. Artificial Intelligence – The Dangers of AI-Generated Evidence and Its Ethical Implications*, INT’L BAR ASS’N (Apr. 14, 2026).

⁴ The Information Technology Act, 2000, No. 21 of 2000, India Code (2000).

⁵ The Bharatiya Sakshya Adhiniyam, 2023, No. 47 of 2023, §§ 61–63, India Code (2023).

What the BSA doesn't do is differentiate between a digital record that accurately reflects a real-life event & a fake constructed to mimic a real event. A certificate under Section 63 can prove that a video file was created by a certain device functioning normally but it does not say anything related to the source of video footage shown, whether it was obtained with a camera or produced by an AI model.⁶

THE COURT'S OPINIONS:

The Indian judiciary has crafted a quite progressive body of law concerning electronic evidence since they have yet to deal specifically with evidence of artificial intelligence.

In *Anvar P.V. v. P.K. Basheer*, Supreme Court noted that electronic records could only be presented to the courts after following the procedure of certifying such records established in Section 65B. This comment went against prior practice that allowed for the presentation of the records as any other document⁷. The court confirmed this position in *Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal*, stating that it was mandatory to produce the certificate whenever the courts dealt with secondary electronic evidence & it could be dispensed with only in the very few cases when the original device was presented in the court⁸.

Read together, these judgments reflect a judiciary alert to the risk that electronic material can be altered & determined to build procedural friction into its admission. This is a solid instinct, however, it arose from a time where to tamper with a recording meant that one had altered something that already existed for instance, cutting a segment from a recording or adding two recordings together.⁹ However, it can now also refer to circumstance where a new recording of great authenticity is created from the beginning. The existence of proof establishing that a certain device produced a certain file in the usual manner means little to courts if the contents of this file were never captured by that device in the usual sense.¹⁰

TWO DIFFERENT QUESTIONS: ADMISSIBILITY & RELIABILITY:

It is important to recognize the distinction between the two terms which is difficult to understand. The question of admissibility is not about whether a court is going to permit a piece

⁶ Gourika Aganpal, *AI-Generated Evidence and Admissibility Under the Indian Evidence Act*, INDIAN J. LEGAL REV., no. 8, 2026, at 746.

⁷ *Anvar P.V. v. P.K. Basheer*, (2014) 10 SCC 473.

⁸ *Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal*, (2020) 7 SCC 1.

⁹ Apar Gupta, "Electronic Evidence and Indian Courts" (2017) 10 NUJS L Rev 321

¹⁰ Aryav Kedia, *When Machines Testify: The Admissibility Crisis of AI-Generated Evidence in India* (SSRN 2026).

of evidence. The question of reliability concerns the validity & credibility of evidence once it has been admitted into the court. Traditionally, rules of evidence have made it possible for courts to admit evidence without much difficulty & to determine its reliability during examination & cross-examination phase of the process simply because adversarial trials make it possible to uncover flaws once evidence is presented.¹¹

AI-generated evidence is problematic in that it poses challenges to our understanding of reliability, as the kinds of features that would usually allow courts to assess reliability – a witness who can be cross-examined, an audit trail that can be traced, an expert witness whose methods can be challenged are often not available or contested in ways that evidence usually is. This is referred to as the “black box” problem - many AIs, especially those based on deep learning models, are unable to produce outputs in ways that even their creators can recreate or explain after fact. This means that facial recognition, voice authentication or risk assessment may all be regarded as accurate whereby the software operated in accordance with its guidelines, however, at the same time nobody is able to explain why a system has come to a particular conclusion.¹²

In this sense, putting such evidence before court & expecting the adversarial process to test it for reliability assumes a certain degree of transparency that AI systems often just don’t have by virtue of their programming.¹³

THE DEEPPFAKE ISSUE & THE BURDEN QUESTION:

Deepfake sound & video are at the very forefront of this challenge because their construction is focused on undermining the classic methods of determining authenticity, used by people & various verification devices. For example, a manipulated photo from the times prior to digital technology left behind traces that experts could discover, like improper shadows or mismatching grain. Conversely, a deepfake video is made by a device that has learned the course of actions to avoid leaving any traces, since it was trained specifically against detection¹⁴.

¹¹ Charul Rathore, *The Admissibility of AI-Generated Evidence: Reevaluating Section 65B of the Indian Evidence Act in the Age of Artificial Intelligence*, RECORD OF LAW (June 8, 2026).

¹² Sakshi Tripathi, *AI-Generated Evidence in Indian Courts: Admissibility and Legal Challenges*, LAW JURIST (July 2, 2025).

¹³ Legal Status of AI-Generated Evidence in Indian Courts, Lex Indica J. Dev. L. Rev. (2026).

¹⁴ Deepfake Evidence in India: Admissibility, Authenticity, and the Future of Digital Proof, Bharat Law A.I. Blog.

This brings about a true challenge in legal policy-making, when someone presents a convincing yet not absurd argument that a piece of digital evidence is artificially constructed, is it up to him or a court to ensure that evidence is real? According to the traditional rules, the person presenting the evidence has to prove this evidence to be genuine¹⁵. However, as litigation tends to show, courts have accepted both audio & video records as generally credible documents as long as the chain of custody is intact & burden of proof is laid upon a challenger. However, some experts criticized this approach in regard to use of AI in evidence, voicing the opinion that when doubts are expressed concerning the artificial nature of some digital evidence the responsibility for presenting proof of authenticity of evidence should be shifted to the party presenting it. This line of reasoning prompts some thoughts. In reality it seems unfair & unreasonable towards an accused person to expect him to prove that the evidence against him is fake even if he does not have enough money or possibilities to perform this investigation on his own.¹⁶

CONSTITUTIONAL BACKGROUND: ARTICLE 20(3) & ARTICLE 21:

Artificial intelligence (AI) based evidence raises not only question of compliance with statutes, but also the consideration of constitutional protections which are much older than this technology. Among such safeguards is Article 20(3), which forbids anyone from being compelled to testify against oneself. When law enforcement agencies use AI technologies to examine biometrics, voice analysis or any behavioural data based on digital footprint in order to conduct a study that will be internally presented to court, the question arises about the essentially involuntary nature of the provided data. The existing case law on narco-analysis & polygraph testing already analysed by Supreme Court within the framework of constitutionalism can provide a general understanding of the required approach towards the evaluation of the data extracted from AI.¹⁷

The protection offered by Article 21, with an expansive understanding of the natural right to life and personal liberty to include privacy rights, is applicable at an earlier stage in the very process of data collection from which the AI systems are developed & deployed. For example, facial recognition systems that are used in investigations usually rely on image databases that

¹⁵ Id.

¹⁶ Abinaya S., AI, Indian Evidence Act, and Bhartiya Sakshya Adhiniyam: Navigating Legal Challenges in the Digital Age, INDIAN J. L. & LEGAL RSCH., Vol. VI, No. V, 2024.

¹⁷ Kedia, Supra note 10.

were gathered without obtaining proper consent from the subjects of images¹⁸. The validity of facial recognition systems has been examined in jurisdictions that have advanced litigation in the area & it has been found to lack reliability across various demographic groups. A wrongful result that is produced by such a system, but which is simply taken for granted by a law enforcement officer & referred to in court, raises a question that goes beyond evidence and involves the risk that an innocent man will lose his freedom as a result of mere assumptions made by an AI system without any human verification of the process.¹⁹

AI IN THE COURTROOM VS AI AS EVIDENCE:

One final distinction should be made one which is often overlooked in public discourse. The Indian judiciary has taken some tentative steps in allowing the use of AI as a means of improving judicial efficiency. For instance, the Supreme Court's SUPACE initiative helps judges by organizing case files and extracting relevant documents²⁰. However, this is a completely different mode of use of AI from the one under discussion in this article. In this case, AI only helps the judge to look for precedents faster, raising questions of both the organization of the work and, at most, of undisclosed bias in how the evidence comes into play. On the other hand, AI evidence does not assist the decision maker, but rather claims to be the evidence on which the decision is made either the voice in the recording, or the face in the picture, or the risk score assigned to the person. Mixing the two discussions harms both of them. Courts should employ AI responsibly as an administrative tool, while being much more doubtful in terms of AI as a source of evidence.²¹

TOWARDS A USABLE FRAMEWORK:

A few simple reforms may bring us closer to reconciling existing rules on admissibility of evidence with what is happening in the realm of AI-generated content.

One such reform could be the introduction of a disclosure requirement as part of certification procedure mandated by Section 63 of BSA. Thus, any entity submitting audio, video or image evidence in a court proceeding should disclose whether any part of submitted material was

¹⁸ Tripathi, Supra note 12.

¹⁹ Kamakshi Singh, *Admissibility of AI-Generated Evidence in Indian Courts: A Critical Analysis Under the Indian Evidence Framework*, J. LEGAL RSCH. & JURID. SCI., no. 1, 2025, at 1356.

²⁰ Supreme Court Portal for Assistance in Courts Efficiency (SUPACE), Supreme Court of India.

²¹ *AI and the Admissibility and Reliability of AI-Generated Evidence in Indian Courts: The Legal Challenges in Digital Age*, LEGAL SERV. INDIA.

generated or altered by way of AI techniques, with some consequences for the misleading statements.

Another reform would be improving the capacity of forensic facilities to test the technologies being developed & adopted.²²

Thirdly, the judiciary may consider introducing the presumption into practice by developing relevant case law & aligning its content with the requirements of the particular context: if serious doubts arise in relation to the synthetic origin, the burden of proving authenticity should move to the party using the material, reflecting the Indian courts' approach to the confessions obtained by means of technology.

Lastly, which is probably of greatest importance, judges must recognize that knowledge of AI should be treated as necessity for the specialists, rather than an optional achievement. Moreover, legal astrologists do not have to be experts in the math of neural networks, but they should not miss the factual questions related to their applications, such as Who developed this system? How was it trained? What is its error rate and whether it has been tested in cases like this?²³

CONCLUSION:

To sum up, let's go back to the example of that court and the issue of the audio recording. In this situation, the judge does nothing extraordinary in terms of the law of evidence. We can only conclude that the devices allowing the distortion of reality are ahead of the devices allowing verification of reality & the law books are not written with this imbalance in mind. There is no need to abandon the main principles of Indian Evidence Act, they are still appropriate for the current situation. The only thing that is left to be done is follow the same rigorous practices that were established in the process of drafting the provisions in the case of Anvar & Arjun Panditrao since the facts that we have today do not look & sound real anymore.

²² Abhinaya, Supra note 14.

²³ Supra note 13.