
ADMISSIBILITY OF AI-GENERATED EVIDENCE IN INDIAN CRIMINAL TRIALS: LEGAL CHALLENGES AND EMERGING ISSUES

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ABSTRACT

Artificial Intelligence (AI) is increasingly being used in criminal investigations through tools such as facial recognition, predictive systems, and digital forensic technologies. These tools can help investigators work faster and find evidence more efficiently. However, the use of AI-generated evidence in Indian criminal trials raises important questions about its reliability, authenticity, and admissibility. The Bharatiya Sakshya Adhiniyam, 2023 deals with electronic and digital evidence, but it does not clearly provide specific rules for AI-generated evidence. This paper examines major issues such as AI bias, lack of transparency, difficulty in checking the accuracy of AI results, and the risk of manipulation and deepfakes. It also discusses the possible impact of AI evidence on the right to a fair trial and the presumption of innocence. The paper suggests that India needs clearer legal rules and proper standards to ensure that AI-generated evidence is reliable, transparent, and fairly used in criminal trials.

KEYWORDS: Artificial Intelligence, AI-Generated Evidence, Criminal Trials, Digital Evidence, Fair Trial.

1. INTRODUCTION

AI-Generated Evidence: Meaning, Nature and Scope AI-generated evidence refers to information or results produced by artificial intelligence, machine learning systems, or automated algorithms that are later used in legal proceedings to prove or establish relevant facts². Unlike ordinary digital evidence, such as emails or CCTV recordings, it involves

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² Harry Surden, Machine Learning and Law, 89 Wash. L. Rev. 87 (2014)

algorithmic analysis or interpretation for example facial recognition identifying a suspect from a video. Traditionally, the law of evidence has been premised on human testimony, documentary proof, and material objects, all of which are subject to judicial scrutiny and cross-examination. However, AI-generated evidence differs fundamentally in that it is produced through algorithmic processes that may not be transparent or easily comprehensible to judges, lawyers, or the accused³. It may include facial recognition, predictive policing, AI-based forensic analysis, and deepfakes. However, its use raises concern about accuracy, bias, transparency, and reliability because AI systems can operate like “black boxes” and cannot be directly questioned like human witnesses. Rewritten Paragraph

In the Indian legal framework, the introduction of the Bharatiya Sakshya Adhiniyam, 2023 marks a significant step towards updating the law of evidence, especially in relation to electronic and digital records. Nevertheless, the legislation does not specifically provide for evidence produced or manipulated by artificial intelligence, leaving important legal questions concerning the reliability, authenticity, admissibility, and use of AI-generated evidence in criminal proceedings unresolved. Therefore, courts must carefully examine the technology, data, and methods behind AI-generated evidence to protect fairness and the rights of accused persons.

The rapid advancement of Artificial Intelligence (AI) has led to the emergence of a new category of evidentiary material commonly referred to as AI-generated evidence. Broadly, AI generated evidence may be understood as information or output produced by machine learning systems, algorithms, or automated processes that is subsequently used in legal proceedings to establish facts in issue⁴. **Section 63** of the Bharatiya Sakshya Adhiniyam, 2023 explains when electronic records can be accepted as evidence in court.

Electronic records as evidence: Electronic information such as computer files, digital documents, recordings, or other electronic data can be treated as documents and used as evidence in court if the required conditions are fulfilled.

Conditions for accepting electronic evidence: The electronic record should come from a computer or device that was regularly used for normal activities. The information should have been regularly entered into the device, and the device should have been working properly. The record must accurately reproduce the information that was stored or entered.

³ Cary Coglianese & David Lehr, regulating by Robot: Administrative Decision Making in the Machine-Learning Era, 105 Geo. L.J. 1147 (2017).

⁴ Harry Surden, Machine Learning and Law, 89 Wash. L. Rev. 87 (2014).

Use of multiple devices: If information was created, stored, or processed using several computers, devices, networks, or intermediaries, they may be treated together as one system for the purpose of this section.

Certificate requirement: When electronic evidence is presented in court, a certificate must generally be submitted with it. The certificate should identify the electronic record, explain how it was produced, provide details of the device used, and confirm that the required conditions were satisfied. It is to be signed by the appropriate person and an expert.

Information supplied to a computer: Information is considered to be supplied to a computer even when it is entered automatically or through another device, with or without human involvement.

Computer-generated output: A record is considered to be produced by a computer even if it is created indirectly through other electronic equipment or systems.

In simple terms, Section 63 allows electronic or digital records to be used as evidence in court when their source, method of creation, accuracy, and reliability can be properly established, usually through the required certificate. Section 63 broadly corresponds to the former Section 65B of the Indian Evidence Act, 1872, which dealt with the admissibility of electronic records

Using AI-Generated Evidence in Indian Courts. The rules relating to the admission and assessment of evidence in Indian criminal courts are now mainly governed by the Bharatiya Sakshya Adhiniyam, 2023, which has replaced the Indian Evidence Act, 1872. The new law seeks to bring the evidentiary system in line with technological developments, especially the growing use of electronic and digital material in legal proceedings. However, it does not specifically deal with evidence created or generated through artificial intelligence. As a result, courts may face difficulties in determining how such evidence should be admitted, examined, and relied upon during criminal trials.

The Bharatiya Sakshya Adhiniyam 2023 (BSA)— modernises how electronic and digital evidence is treated in courts. AI-generated outputs, chatbot transcripts, AI forensic analysis, and synthetic media are increasingly appearing in court cases. This guide explains exactly how to present AI-generated evidence correctly, authenticate it, and how to challenge AI evidence presented against you

The Bharatiya Sakshya Adhiniyam 2023 (BSA) replaced the Indian Evidence Act 1872 with effect from July 1, 2024. The BSA modernizes India's evidence framework for the digital age. Key changes relevant to electronic/AI evidence: Section 63 BSA (replaces Section 65B

IEA): Electronic records can now be produced as secondary evidence (printed output, storage media) with a certificate from a responsible person who has custody/control of the computer or device that generated the output. The old Section 65B required the certificate from the "owner" of the computer — were found impractical and have been simplified. **Section 22A BSA:** Oral admissions about the contents of electronic records are not relevant (the electronic record itself must be produced). BSA uses wider category of electronic records which includes emails, social media posts, smartphone messages and digital records within the definition of electronic records admissible in evidence⁵

2. What is Electronic Evidence Under BSA

Section 2(1)(t) of the BSA defines electronic record as data, record, or data generated, image, or sound stored, received or sent in an electronic form or micro film or computer generated micro fiche. What this covers what's app images and call record, E-mails, CCTV footage, GPS/Location data, Bank transaction logs, social media posts, AI generated output as text, video, images and audio and AI analytics report. BSA was drafted with awareness of AI but does not specifically define or address AI-generated evidence separately. Courts will apply the general electronic evidence framework to AI outputs.

3. Can AI-Generated Output Be Used as Evidence

AI-Generated Output as Evidence Yes, AI-generated output can be used as evidence, but it must be properly authenticated under Section 63 of the Bharatiya Sakshya Adhiniyam (BSA). The output should accurately represent what the AI system produced and must be relevant to the case. However, courts may examine whether the AI system is reliable for the particular purpose, whether the output has been verified with other evidence, and whether it could contain errors or hallucinations. Therefore, anyone relying on AI-generated evidence should take steps to verify its accuracy and show that the particular output is trustworthy.

4. How to use Certificate under Section 63 BSA Section 63 of the BSA requires a certificate when an electronic record is produced as secondary evidence. The certificate should identify the electronic record, mention the device or computer system from which it was produced, confirm that the device was working properly at the relevant time, and state that the record is a true and accurate output of the system. It should be signed by a

⁵ <http://siddharthgupta.in/how-to/ai-evidence-indian-courts>

responsible person who has control or custody of the device or computer system. For AI-generated evidence, the certificate should also mention the AI system and its version, the inputs given to it, confirm that the output was generated from those inputs, state that the output was not materially changed, and explain that the AI system is suitable for the purpose for which it is being used. As a practical step, the entire AI conversation or output should be saved or screenshotted immediately, including the AI system name, date, and time. The original or raw data should also be preserved where possible, and the Section 63 certificate should be prepared by the person who controlled the device or system used to generate the AI output. The Supreme Court held that when electronic evidence is produced as **secondary evidence**, the statutory requirements for certification must be followed.⁶

5. AI Forensic Analysis in Court

AI forensic tools are increasingly used in digital forensics, such as analysing hard drives and recovering deleted data, detecting deepfakes in images and videos, identifying authorship through language analysis, detecting financial fraud patterns, and analysing social media timelines and connections. To present AI forensic evidence in court, a qualified forensic expert who used the AI tool should explain how the tool works, how it was used, and whether it is reliable for the particular purpose. The electronic output should also be supported by a Section 63 BSA certificate. The expert should clearly explain the meaning of the AI-generated results, as well as the tool's error rates and limitations. The expert cannot simply say, "the AI said so." Instead, the court relies on the expert's professional opinion, supported by the AI tool, to understand and evaluate the evidence.

6. How to Question AI-Generated Evidence in Court

If the other side presents AI-generated evidence in court, you can question whether that evidence is genuine, accurate, and reliable. First, challenge its authentication: check whether the required Section 63 BSA certificate has been submitted, whether it is signed by the appropriate person, and whether it contains all the necessary information. If these requirements are not properly fulfilled, you can challenge the admissibility of the electronic evidence. Second, question the reliability of the system: ask whether it has been tested and validated for the specific purpose for which it is being used and whether there is evidence about its accuracy or error rate. Third, check for errors: ask whether the result has been

⁶ Anvar P.V. v. P.K. Basheer, (2014) 10 SCC 473

independently verified by a human expert or other evidence. If you can show that the system produced incorrect results, this may create doubt about the reliability of the evidence. Fourth, check for manipulation: the information given to the system may have been incomplete, selective, or deliberately designed to produce a particular result. You can therefore question whether the input was fair and accurate. Finally, question the lack of human review: the other side should not simply say that “the computer produced this result.” A qualified expert should explain how the result was obtained, what it actually means, and what its limitations are. Therefore, AI-generated evidence can be challenged by questioning its authentication, accuracy, verification, inputs, and expert interpretation.⁷

7. Deepfake Evidence and Practical Steps for Lawyers

Deepfake video evidence is a serious concern because a video may look genuine even though it has been digitally manipulated. In recent case concerning AI-generated deepfake videos, the Delhi High Court dealt with videos allegedly created using AI, deepfake technology, face morphing and generative AI and issued directions concerning their removal⁸. If there is doubt about a video, the original file should be requested along with its metadata, such as the date it was created, the device used, and other available information. A qualified expert can examine the video for signs of manipulation, such as unnatural facial movements, unusual blinking, inconsistent lighting, or problems between the audio and video.

The chain of custody should also be checked to understand where the video came from, who handled it, and how it reached the court. Under the applicable IT Rules, questions about synthetic or AI-generated content may also require the party relying on the video to establish its authenticity. Courts, including the Delhi High Court, have recognised that proving the authenticity of digital evidence is becoming increasingly important in the age of deepfakes. The Supreme Court recognised electronic and scientific evidence as important forms of evidence and observed that CCTV footage can constitute important or “best” evidence. Failure to produce available CCTV footage in appropriate circumstances may raise serious doubts about the prosecution's case.⁹

Before using any AI-generated evidence in court, a lawyer should clearly record which system was used, when it was used, and what information was given to it. The original output should be preserved through screenshots or exports, and the result should be independently

⁷ Section 63 of the Bharatiya Sakshya Adhiniyam (BSA).

⁸ Sudhir Chaudhary v. Meta Platforms Inc. & Ors., Delhi High Court, 10 October 2025

⁹ Tomaso Bruno v. State of U.P., (2015) 7 SCC 178

verified rather than accepted blindly. The required Section 63 BSA certificate should be prepared by the appropriate person, and a qualified expert should be involved where technical analysis is necessary. The lawyer should also disclose any known limitations of the system and be prepared to answer questions about how the result was obtained and how reliable it is. The Delhi High Court dealt with the misuse of an actor's name, image, voice and likeness through AI, deepfakes, face morphing and other technologies. The Court granted protection against such misuse and specifically recognised the problem of AI-generated and manipulated content.¹⁰

8. Practical Steps for Lawyers Using AI Evidence

Before using AI-generated evidence in court, a lawyer should clearly record the name and version of the system used, along with the date and time. The exact information given to the system should also be saved. The original output should be preserved through screenshots and, where possible, by exporting or saving the original file. The result should be checked independently and should not be accepted without verification. A proper certificate under Section 63 of the BSA should be prepared by the appropriate person. If the evidence involves technical analysis, a qualified expert should be consulted to explain the results to the court. The lawyer should also inform the court about any known limitations or possible errors in the evidence and should be prepared to question the reliability of the evidence if the opposing party challenges it. The Supreme Court emphasised the importance of complying with the statutory requirements for proving electronic records.¹¹

9. When You Need a Lawyer with Legal and Technical Expertise - Cases involving AI and electronic evidence require a lawyer who understands both law and technology. The lawyer should know the requirements of the BSA 2023, how electronic evidence is preserved and handled, and the rules relating to expert evidence. At the same time, the lawyer should understand how AI systems work, their limitations, and how deepfakes are created and detected. A lawyer with knowledge of both areas can present AI-related evidence more effectively and can also challenge unreliable or manipulated evidence.

10. Conclusion: The legality of AI-generated evidence in criminal trials in India is examined in this article. It addresses issues with authenticity, accuracy, dependability, bias,

¹⁰ Anil Kapoor v. Simply Life India & Ors., Delhi High Court, 20 September 2023

¹¹ Anvar P.V. v. P.K. Basheer, (2014) 10 SCC 473

transparency, and manipulation while discussing evidence generated by facial recognition, predictive systems, AI-based forensic analysis, and deepfake technology. Although it does not expressly regulate AI-generated evidence, the Bharatiya Sakshya Adhiniyam, 2023 offers a framework for electronic and digital evidence, especially under Section 63. As a result, the current regulations pertaining to electronic records, authentication, and certification must be applied while analysing such evidence. The essay highlights the significance of maintaining original data, documenting the AI system and inputs utilised, independently confirming outcomes, and seeking competent expert aid when technical analysis is needed. Examining the original file, metadata, and chain of custody is necessary for deepfake evidence. The article comes to the conclusion that The essay highlights the significance of maintaining original data, documenting the AI system and inputs utilised, independently confirming outcomes, and seeking competent expert aid when technical analysis is needed. Examining the original file, metadata, and chain of custody is necessary for deepfake evidence. The article concludes that before being used in criminal proceedings, AI-generated evidence should undergo appropriate authentication, verification, and judicial scrutiny.