ISSN 1991-8976

RAJSHAHI UNIVERSITY LAW JOURNAL

Vol. X June 2022

Articles

FACULTY OF LAW
UNIVERSITY OF RAJSHAHI

RAJSHAHI UNIVERSITY LAW JOURNAL 2022 Vol. X ISSN 1991-8976

ISSN 1991-8976

Rajshahi University Law Journal

Faculty of Law
University of Rajshahi

Volume X, 2022

Published by
Dean
Faculty of Law
University of Rajshahi
Rajshahi-6205
Bangladesh

Printed at
Uttoran Offset Printing Press, Rajshahi
Mobile: 01712-101249

Subscription Rates
For Individuals: TK 250.00 USD 30 (without postage)
For Organization: TK 300.00 USD 50 (without postage)

[Published in June 2023]

Rajshahi University Law Journal (RULJ), 2022
Volume X

Contents

Rajshahi University Law Journal

ISSN 1991-8976

Guidelines for Contributors

Rajshahi University Law Journal is an official journal of the Faculty of Law, University of Rajshahi that publishes research articles. Contributions to the Journal may be in English or in Bangla and must be previously unpublished articles containing original research that have not been submitted for publication elsewhere. All submissions are subject to peer review and to edition by the Editorial Board. Articles accepted for publication have to be proof-read by contributors who are entitled to 20 copies of off-prints as well as a bound copy of journal in which the article appears. The decision of the Editorial Board regarding publication is final and the copyright of published articles rests with the Faculty of Law, University of Rajshahi. Letter of Acceptance is given only after an article accepted finally.

Manuscripts submitted for publication must be in three copies, in neat and clear double-spaced typescript or electronic print-out on A4 size (8.5″×11″) white sheets with margins of 1″ on all sides and pages consecutively numbered. The manuscript should have a title-page with the title of the article and the author's name, designation and contact address. The title should also be placed on the first page of the text of the article. The author's name or anything that may identify the author should not appear anywhere in the text paper. Submissions should be addressed to the Editor, Rajshahi University Law Journal, Faculty of Law, University of Rajshahi, Rajshahi 6205.

An abstract in English must be provided within 200-300 words at the beginning of the article. Notes and references in the text should be placed at the end of the article under the caption 'Notes and References'. Notes should be numbered consecutively in the text in superscript (i.e., one half line above the text). The note index number should be placed after all punctuation in a sentence, i.e., it should be placed after a comma or semicolon or the concluding full stop of the sentence. For articles in the Humanities the following is the prescribed form of documentation notes on their first occurrence:

Books: Published Books Should be cited by the author's name in normal order (first name first), title and subtitle (if any) of the book underlined or in italics, place of publication, publisher's name, year of publication within brackets, page number(s) preceded by the abbreviation 'p' or 'pp'.

Admissibility of Electronic Evidence in India, Pakistan, and Bangladesh: A Comparative Study

Md. Mosharaf Hossain*

Abstract: *In the Evidence Act, documents play a crucial role. The ICT industry has undergone tremendous growth in the modern period. In modern times, electronic documents have effectively taken equal status of a paper documentation. In the future, electronic documents or records may replace paper-based documents. To stay up with the evolving global electronic industry, India, Pakistan, and Bangladesh have also progressed in this area. Three countries have acknowledged the admission of e-documents as e-evidence in their respective laws. This paper initially makes a comparative analysis of the concerned laws recognizing the electronic evidence of these countries. Secondly, it will explore whether the relevant laws of Bangladesh have any lacuna or not, comparing with the relevant laws of the other two countries. Finally, it will make a suggestion to eliminate the flaws if any.*

Keywords: E-Document, E-Evidence, Information Technology, Precondition, General Laws.

1. Introduction

In 1872, the Evidence Act was passed for the Indian subcontinent. The Indian subcontinent is separated into three regions: India, Pakistan, and Bangladesh; nonetheless, the Evidence Act has been implemented in all three nations, except for Pakistan, which has made minor modifications.[1] The Evidence Act of 1872 is a foundational statute that remains in effect. In 1872, there was no such thing as an electronic document (e-document)[2], which exists today and is utilized for a variety of purposes like a paper document. E-document is a result of applying ICT. Information technology (IT)[3] has given the twenty-second

---

* Lecturer, Department of Law, Khulna University, Khulna, Bangladesh.

1 See the Evidence Act of Pakistan; Some changes have been made in two or three sections in the Evidence Act of Pakistan. Preamble, sections 3, 17(2)a, section 71, 79 of the *Qanun-E-Shahadat Order*, 1984

2 Electronic means electrical, digital, magnetic, wireless, optical, electromagnetic or any technology having equivalent such capability as per section 2 (3) of the ICT Act, 2006; electronic document or record means data, record or data generated, image or sound stored, received or sent in an electronic form or microfilm or computer-generated microfiche as per section 2(7) of the ICT Act, 2006

3 These technologies are the internet, various websites, emails, Facebook, Messenger, Twitter, Instagram, etc.

century a new dimension. Using technology, individuals can interact, trade, and publish many forms of information. Today, the entire globe is in the palm of one's hand with the welfare of IT and Bangladesh utilizes information technology on par with other nations of the world.[4] People are so dependent on information technology that it has become an integral part of their lives.[5]

Although the British enacted the Evidence Act in 1872 and periodically amended it to reflect societal changes, it has not been amended by Bangladesh to reflect societal changes.[6] Bangladesh is technologically advanced[7] and a large number of e-files are being modified, but their physical copies have not yet been released.[8] In addition, the government of Bangladesh dreams of mobile phones, Internet connectivity for everyone, and a paperless office. As a consequence, these e-files satisfy the requirements of the prior paper document. Nonetheless, people also use information technology to conduct a variety of crimes.[9] Several forms of crimes are conducted using information technology. These offenses may involve an attack on any information technology or the use of one information technology to target another, moving data from one computer to another without the authorization of the computer owner etc. Again, a crime that involves the use of information technology can be itself a crime. Electronic documents may be important to a lawsuit. If a party to the lawsuit wishes to rely on these electronic documents, the court should let him do so; but, in Bangladesh, this was not feasible without a revision to the Evidence Act or the passage of new legislation.[10] The Appellate

---

[4] The number of Internet users in Bangladesh is about 12 crores, the number of government websites is 51000, and 90% of the government service are on e-platform. *https://www.youtube.com/watch?v=oDpxxmQJwhE accessed on 24 August, 2022*

[5] See Evidence Act: How far should the changes go? - The Business available at https://*www.tbsnews.net* › last accessed on 05 March, 2021,

[6] "Need for amending Evidence Law 1872" , *The Financial Express*, Md. Mahmudul Islam Shakil

[7] *Ibid*

[8] *Supra note* 4

[9] Md Abu Bakar, Siddik and Saida Talukder Rahi. "Cybercrime in Social Media and Analysis of Existing Legal Framework: Bangladesh in Context." BiLD Law Journal 5, no. 1 (2020): 68-92. *https://bildbd.com/index.php/blj/article/view/34/32 p 72;* Kabir, Natasha. "Cyber Crime a New Form of Violence Against Women: From the Case Study of Bangladesh." Available at SSRN 3153467 (2018). P 2-5 available at file: *///C:/Users/User/Downloads/SSRN-id3153467.pdf*

[10] Death Reference No. 61 of 2011, *The State-Versus Oli* ...Condemned prisoner with Criminal Appeal No. 6592 of 2011 And Jail Appeal No. 50 of 2012 *Oli... Appellant in both the appeals-Versus the State*

Division of Bangladesh's Supreme Court has stated that Bangladesh's ICT industry has experienced unprecedented growth. Until 2021 the Court of Bangladesh has observed the necessity of e-documents. In 2021, the higher judiciary has given an observation that Bangladesh should amend the Evidence Act to recognize and incorporate e-documents or make new legislation recognizing and incorporating e-document or e-record in Bangladesh. The Court said that Bangladesh should do it as early as possible in a recent case named *states vs Oli* published in 2019.[11] Even the court saw that the speedy trial tribunal has given the power to take e-evidence and general court not and no specific ways of collecting and adducing this evidence to the court. The Appellate Division observed that there is unimaginable development in the ICT sector in Bangladesh and this ICT is being used even in committing different offenses but Bangladesh has not addressed the matter in her Evidence Act.[12] Whereas the neighboring country India has addressed the same matter by amending its Evidence Act. The court has also alluded to some sections like sections 3, 65A; 65B; 67A; 85A; 85A; 85C and 90A to harmonize their Evidence Act with the development of ICT.[13] Moreover, the chief justice of Bangladesh Syed Mahmud Hossain said on January 13, 2020, in a workshop of judges, prosecutors of Bangladesh, and judicial officers of the USA and the UK that the century-old Evidence Act must be updated. He continued by saying that courts and investigators would benefit from it if barriers to the introduction of digital evidence were lifted. As a result, it is a must to act quickly to update and revise the Evidence Act.[14] It is understood that the higher judiciary of Bangladesh has realized that e-document needs to be given the same status as a traditional document by amending the Evidence Act of Bangladesh. As a corollary of it, Bangladesh enacted the Information and Communication Technology Act of 2006[15] and the Digital Security Act of 2018, and some special laws[16] and the Evidence

[11] *The State and Ors.* Vs *Oli and Ors*,.Case Citation: LEX/BDHC/0128/2019, Decision Date: 28 August 2019.
[12] Supra note 5
[13] *Ibid*
[14] *Ibid*
[15] Section 87 of *the Information and Communication Technology Act*, 2006, Act no 39 of 2006.
[16] See the discussion in 4.3 of this article.

(Amendment) Act, of 2022[17] successively to regulate these concerns. India regulates the issues through the Information Technology Act of 2000 and the Evidence Amendment Act of 2003, and Pakistan by the Electronic Transaction Ordinance of 2002[18], which made changes to the Evidence Act of Pakistan. Apart from these, there are some case laws in these three countries over the matter of e-evidence. Orientation and training for the legal fraternity to deal with e-document and e-evidence to assist the court proceeding may be needed. A comparative study of those matters is being made hereinafter and the author will make some suggestions for Bangladesh to improve the lacking. Several studies have been conducted on cybercrimes and legal issues relating to these. AM Maruf and his co-authors have revealed that cybercrimes are on the rise and that our nation lacks proper measures for their prevention and punishment.[19] Mohammad Mostufa Kamal and his co-authors have demonstrated the impact and nature of cybercrime on young people in Bangladesh.[20] Badsha Mia has demonstrated the effects of cybercrime in Bangladesh and proposes a comprehensive cybercrime protection law.[21] Kamruzzaman and his co-authors have demonstrated the effects of cybercrime on adolescents in developing south Asian nations and proposed strategies to lessen the number of victims.[22] Cyberattacks against the Bangladeshi financial industry, the causes of cyber heists in that sector, and Bangladesh's current legal framework are all presented by Shusmoy Kundu and his co-authors.[23]

---

[17] Bill No 21 of 2022

[18] Electronic Transaction Ordinance, 2002 has made necessary changes to the Evidence Act of Pakistan to recognize e-document as e-evidence. See the schedule of the Ordinance.

[19] Ashiquddin Mohammad, Maruf, Md Rabiul Islam, and Bulbul Ahamed. "Emerging Cyber Threats in Bangladesh: in quest of effective legal remedies." *Northern University Journal of Law 1* (2010): 112-124.

[20] Kamal, Mohammad Mostufa, Iqbal Ahmed Chowdhury, Nadia Haque, Mydul Islam Chowdhury, and Mohammad Nazrul Islam. "Nature of cybercrime and its impacts on young people: A case from Bangladesh." *Asian Social Science 8*, no. 15 (2012): 171.

[21] Badsha, Mia, "Cybercrime And Its Impact in Bangladesh: A Quest for Necessary Legislation." *Int. J. Law Leg.* Jurisprud. Stud 2, no. 4 (2014).

[22] Kamruzzaman, Md, Md Ashraful Islam, Md Shahidul Islam, Md Shakhawat Hossain, and Md Abdul Hakim. "Plight of youth perception on cybercrime in South Asia." *American Journal of Information Science and Computer Engineering 2*, no. 4 (2016): 22-28.

[23] Kundu, Shusmoy, Khandaker Annatoma Islam, Tania Tahmina Jui, Suzzana Rafi, Md Afzal Hossain, and Ishraq Haider Chowdhury. "Cybercrime trend in Bangladesh, an analysis and ways out to combat the threat." In 2018 20th *International Conference on Advanced Communication Technology (ICACT)*, pp. 474-480. IEEE, 2018.

Natasha Kabir has demonstrated the magnitude and variety of online/cyber abuse and harassment against women and girls, as well as its impact on daily life.[24] In light of the vulnerabilities exposed by Md. Abu Bakar Siddik and Saida Talukder Rahi's research, there is a pressing need to increase public awareness about the dangers of misusing social media.[25] Tasnuva Habib Zisan has examined the obstacles women encounter in gaining access to and control over resources, notably information and communication technology (ICT) tools and devices, as well as the potential of women's access to and use of such resources.[26] There is no research in Bangladesh on the present study. This research will strive to look for the answers of two questions, namely: 1. Is it necessary to have a separate provision in some special laws recognizing e-evidence whereas there is a general law recognizing the same? 2. Should not Bangladesh consider the guidelines provided by different higher courts of India and Pakistan relaxing the rigid prerequisites of admissibility of e-documents against the provision of 65B of the Evidence Amendment Act, 2003 of India and the equivalent provision of Pakistan? 3. Should not the legal fraternity be trained to deal the electronic document and e-evidence? The researcher will find the answers to these questions in this write-up. In this paper, analytical and comparative methods have been utilized.

2. Analysis of legal recognition of e-document in three countries

Legal provisions relating to e-document in all three countries will be discussed here to make a comparative study and to find out some challenges, prospects, and suggestions. These are discussed hereinafter.

2.1 Legal recognition of e-document in India

The Indian Evidence Act has recognized e-document in many places where needed and suited. The Act includes electronic records or e-record in section 3 of it. In section 16, admission means an oral or documentary statement, where

[24] Natasha, Kabir, "Cyber Crime a New Form of Violence Against Women: From the Case Study of Bangladesh." Available at *SSRN 3153467 (2018).*

[25] Siddik, Md Abu Bakar, and Saida Talukder Rahi. "Cybercrime in Social Media and Analysis of Existing Legal Framework: Bangladesh in Context." *BiLD Law Journal 5, no. 1 (2020): 68-92.*

[26] Tasnuva Habib, Zisan, "Analyzing the Status of Women in E-governance Era of Bangladesh: Challenges and Potentials. "*Bangladesh Journal of Multidisciplinary Scientific Research 3*, no. 2 (2021): 1-10

an electronic statement has been included. According to Section 22, if the genuineness of the document is a question, then the content of the document is relevant. Similarly, the content of e-records is essential or relevant if the validity of e-records is in doubt under section 22A. Section 39 deals with any part of an e-record in the same way a court deems a particular part of a record. Section 45A provides for the e-record of expert opinion like section 45. The expert mentioned in this case will assist the court in forming an opinion regarding the e-record. This is also stated in Section 79 of the Information Technology Act of India; just as Section 47 provides for expert opinion on handwriting, so does Section 47A provide for a specialist opinion on digital writing. Section 59 gives the status of e-record content equal to India's e-document coverage. The position of traditional record content. As a result, oral testimony about the content of the e-record can be given. The content of the e-document under section 65A can be used if the conditions of section 65B can be fulfilled. In that case, further testimony or original testimony will not be required. The prerequisites of 65 B are as follows: A computer under the legal control of a person must be used regularly for data processing and storage. In the event of an e-document incident, the data must be retained on a computer in the regular course of activities. The computer has to hold the data as a regular activity. The computer has to show the e-document that it was running correctly or not at the time of the incident. If a statement is made after identifying the e-record, the statement must explain how or in what manner the e-record was produced. The e-records shall be presented to the court by e-record certificate, where the e-records must be signed by the person in the official position responsible for the device by which the e-records are produced. In this case, the information in the e-record is accurate to the best of the person's knowledge. The e-record must be sent in an acceptable form where human hands may or may not have a hand. If any information is sent to a person in a responsible official position for processing or storage, it should be assumed that it falls within the regular activities. If a computer output comes either directly or through a human interface, it must be captured appropriately. If any information obtained for the above purpose is obtained from any other information using computation or comparison or any other way, it will also be considered correct. If one or more computers are used to process or store data, they will be regarded as one computer together. Already India has applied e-evidences in several cases.[27]

2.2 Legal recognition of e-document in Pakistan

In Pakistan, section 3 of the Electronic Transactions Ordinance, 2002 establishes the legal recognition of an electronic document, record, information, communication, or transaction as admissible evidence even if no witness is present. Section 9(b) of the Ordinance assumes that attaching an advanced e-signature to an e-document makes it valid and trustworthy. Furthermore, the individual signing such a document did so to sign it, and it had not been altered since that time. Pakistan amended article 73 of P.O. NO. 10 of 1984 to recognize e-document, by adding two explanations after the second explanation of the article, namely explanations 3 and 4.[28] An electronic document has the same value as a written document, as long as the e-documents may be used for future reference.[29] After a two-year waiver, Section 10 of the law provides stamp duty for any electronic form in an electronic medium. They will create it afterward. Moreover, section 11 assures that an e-document does not need attestation or notarization for two years or longer. Section 12 specifies that if any law allows the certified copies of any paper-based document on fulfillment of some requirements, any printouts or other forms of display of electronic documents will be allowed on fulfillment of the same requirements plus these to be verified in the manner laid down by the appropriate authority. Then the status of paper-based document and electronic document or their printouts forms will be of the same status. Qanun-e-Shahadat Order, 1984 of Pakistan must be interpreted according to the revisions mentioned in the Ordinance's schedule, according to section 29 of

---

[27] Sethia, Aradhya. "Rethinking admissibility of electronic evidence." *International Journal of Law and Information Technology* 24, no. 3 (2016): Pp 229-250.

[28] *Section 29, The Schedule of The Electronic Transaction Ordinance, 2002;*

[29] Section 4 of the *Electronic Transaction Ordinance*, 2002; As per section 5 of the said Ordinance, if the law requires an original form of e-document, it will be deemed acceptable if the document's integrity can be reliably assured and it can be displayed in a readable form.; Section 7 equalizes electronic signatures with paper-based signatures and recognizes e-signatures as legal documents. Section 8 indicates that an e-signature may be proven in any manner under the Qanun -e-Shahadat Order 1984 and that the person signing it, did so intending to verify the validity of e-document and its integrity available at http://nasirlawsite.com/laws/elect.htm.; Section 9 of the Ordinance assumes that an advanced electronic signature is accurate unless there is proof to the contrary and that the signature corresponds to the person to whom it corresponds. The signature signifies the approval of an electronic document.

the Electronic Transaction Ordinance, 2002. It signifies that the Qanun-e-Shahadat Order of 1984 has been modified as shown in the schedule by this ordinance. Section 30 of the ordinance equalizes the e-document to the paper-based document with an exception in section 31 for the time being.[30] Section 32 confers the same value and recognition on an Electronic Transaction document between two parties in Pakistan and outside Pakistan as it does on an electronic transaction between two parties inside Pakistan. Section 33 has precedence over all other Pakistani legislation. In all other cases, electronic documents and electronic signatures can be used. The government of Pakistan will not impose stamp duty on e-documents even within the first two years from the date or the commencement of the Ordinance or until the Provincial Governments devise and implement appropriate measures for payment and recovery of stamp duty through electronic means whichever is later.[31]

2.3 Legal recognition of e-evidence in Bangladesh

Bangladesh already has power under section 14 of the *Ain Sringkhola Bighnokari Aporadh Ain* 2002[32], section 16 of the Speedy Trial Tribunal Ain 2002[33], Section 30 of the *Manobpachar Protirodh o Damon Ain* 2012[34], section 2(c) of *Pornography Niyontron Ain* 2012[35], and Section 3 of the Emergency Powers Ordinance, 2007[36] to recognize e-document. These

---

30 The expressions "attestation," "books," "books of accounts," "certificate," "charts," "deed," "document," "document of title," "execution," "instrument," "ledger," "map," "original," "plans," "publish," "record," "register," "seal," "signature," "witnessing," "words," "writing," or other words in electronic form shall have, mutatis mutandis, the same value as those of paper-based forms. see for more http:*//nasirlawsite.com/laws/elect.htm*; Section 31, *The Electronic Transaction Ordinance*, 2002 of Pakistan.

31 Section 10, *The Electronic Transaction Ordinance*, 2002 of Pakistan, The Ordinance was promulgated by the President of Pakistan and published in the Official Gazette vide F-No. 2(I)/2002 – Published on 11 September, 2002, available at http://nasirlawsite.com/laws/elect.htm.

32 Act no 11 of 2002; section 14 of *The Law and Order Disruption (Speedy Trial) Act*, 2002 admits the admissibility of photographs taken with a camera and conversations recorded on a disc or tape.

33 Act no 28 of 2002

34 Act no 3 of 2012; section 30 of *The Prevention and Suppression of Human Trafficking* Act, 2012 recognizes the admissibility of an audiovisual instrument or any electronic communication.

35 Act no 9 of 2012

36 Ordinance No. 1 / 2007; No. 15-Ain/2007 S.R.O. According to the authority granted under section 3 of the *Emergency Powers Ordinance*, 2007 (Ordinance No. 1/2007), the government formulates the following Rules, which permit the acceptance of images taken with a camera, conversations recorded on a disc or tape in sections 19G and 19H.

sections state that any type of e-communication, audio-visual document, photograph held on a camera, or any conversation held on a disk or tape recorder is accepted as evidence, i.e., admissibility is granted. Through the ICT, Act, of 2006, the Digital Security Act, of 2018, and special laws. Bangladesh has given recognition to e-document and the admissibility of e-documents, if any, as evidence under these laws if these e-documents are involved in a crime committed under these special laws as where and not committed under general laws. After the enactment of the Evidence Amendment Act, 2022 the matter has been addressed. The legislations mentioned above before the Amendment Act had no procedure to test the admissibility of the e-evidence which the Amendment Act has addressed through sections 65A and 65B laying down a specific rule on how to collect and adduce electronic evidence before the court to admit it as evidence. Then it can be recognized under the Evidence Act of Bangladesh and it can be applied to any case as per necessity. The Evidence Amendment Act, 2022 has recognized e-document in many places where needed and suited. The Act includes electronic records or e-record in section 3 of it. In section 16, admission means an oral or documentary statement, where an electronic statement has been included. According to Section 22, if the genuineness of the document is a question, then the content of the document is relevant. Similarly, the content of e-records is essential or relevant if the validity of e-records is in doubt under section 22A. Now sections 34, 35, 36, 39 and 45 of the Evidence (Amendment) Act, 2022 will include *inter alia* digital record.[37] Section 45A provides for the e-record of expert opinion like section 45. The expert mentioned here will assist the court in forming an opinion regarding the e-record. Section 47 provides for expert opinion on handwriting, so does Section 47A provide for a specialist opinion on digital writing. However, the content of the e-document under section 65A can be used if the conditions of section 65B can be fulfilled. In that case, further testimony or original testimony will not be required. The prerequisites of 65 B are as follows: A computer under the legal control of a person must be used regularly for data processing and storage. In the event of an e-document incident, the data must be retained on a computer in the regular course of activities. The computer has

[37] Sections 22 to 30, 33, 34 and 35 of The Evidence Act, 1872; See sections 5 to 9 of the Evidence (Amendment) Act, 2022.

to hold the data as a regular activity. The computer has to show the e-document that it was running correctly or not at the time of the incident. If a statement is made after identifying the e-record, the statement must explain how or in what manner the e-record was produced. The e-records shall be presented to the court by e-record certificate, where the e-records must be signed by the person in the official position responsible for the device by which the e-records are produced. In this case, the information in the e-record is accurate to the best of the person's knowledge. The e-record must be sent in an acceptable form where human hands may or may not have a hand. If any information is sent to a person in a responsible official position for processing or storage, it should be assumed that it falls within the regular activities. If a computer output comes either directly or through a human interface, it must be captured appropriately. If any information obtained for the above purpose is obtained from any other information using computation or comparison or any other way, it will also be considered correct. If one or more computers are used to process or store data, they will be regarded as one computer together. The Amendment law adds two sections about proof regarding: 1. Digital signature[38] 2. Verification of digital signature.[39] The law embodies a new section about comparison of physical or forensic evidence with others, admitted or proved.[40] Chapter 5 of the Amendment Act has added some new sections about presumption. These are presumption about 1. Gazette in digital forms[41] 2. Agreement in digital forms[42] 3. Digital records and digital signatures[43] 4. Digital signature certificates[44] 5. Digital communication[45] 6. Physical or forensic evidence[46] 7. Digital records of five years.[47]

---

[38] Section 67A, *The Evidence (Amendment) Act, 2022.*
[39] Sections 73A, *Ibid*
[40] Sections 73B, *Ibid*
[41] Section 81A, *Ibid*
[42] Sections 85A , *Ibid*
[43] Sections 85B, *Ibid*
[44] Sections 85C, *Ibid*
[45] Section 88A, *Ibid*
[46] Section 89A, *Ibid*
[47] Section 90A, *Ibid*

3. Recent development on e-evidence in three countries

Recently India and Pakistan have developed to some extent the admissibility of e-evidence through case laws whereas the Bangladeshi legislature or higher judiciary is yet to think of it. These matters are discussed below:

3.1 Indian Perspective

In India in *State (NCT of Delhi) v. Navjot Sandhu alias Afsan Guru* [(2005) 11 SCC 600] case e-evidence was accepted without an authentic certificate under section 65B in 2005 which was toppled in 2010 by the *Tukaram S. Dighole v. Manikrao Shivaji Kokate* [(2010) 4 SCC 329] case observing that an exhaustive rule or fixed principle is not possible in this era of high-tech development concomitantly. In 2014 in *P.V. Anvar v. P.K. Basher* [(2014) 10 SCC 473 case section 65B was strictly followed. In 2015 in *Tomas Bruno v. State of U.P.* [(2015) 7 SCC 178 case, *Sonu v. State of Haryana* [(2017) 8 SCC 570, and *Shafi Mohammad v. State of H.P.* [(2018) 2 SCC 801 case the decision of the Anvar case was ignored by saying that being procedural requirement section 65B is not compulsory. In 2020 in *Arujn Panditrao Khotkar v. Kailash Kushnrao and Ors.* [(2020) 3 SCC 216] case the apex court of India gave observation that section 65B must be strictly followed in case of secondary e-evidence and not in primary e-evidence under sections 62 and 65 of the Indian Evidence Act, 1872 which is the outcome of that case deviating from the provision of section 65A and 65B. When primary evidence such as laptops, computers, tablets, and phones is supplied, Section 65 (B) (4) is not required. If the original documents (electronic device, system, or server) cannot be provided, a copy must be made and presented with a certificate as per Section 65 (B) (4) of the Indian Evidence Act. For secondary electronic (digital) evidence to be admissible, Section 65 (B) of the Indian Evidence Act requires a certificate, and a person in charge of the evidence cannot testify in place of the certificate.[48] Therefore, sections 65A and 65B are not now complete code for the admissibility of the e-evidence. When an electronic document is used as primary evidence under section 62 of the Evidence Act, it is admissible as evidence without meeting the conditions of section 65-B of

---

[48] Mr Devang, and Arun B. Prasad, Chhatrapati, "Electronic Evidence–Admissibility and Authentication: A Judicial Perception of Apex Court of India." *GLS Law Journal 3*, no. 1 (2021). P 7

the Evidence Act held by the supreme court in its various judgments.[49] Mr. Devang Chhtrapati and Dr. Arun B. Prasad have criticized the *Arjun case* for not accepting the oral evidence as a secondary one.[50] The oath of the witness who is using and managing the gadget is not acceptable instead of a valid certificate. In the absence of a valid certificate, electronic evidence will not be accepted. It is extremely difficult to generate a certificate if the plaintiff or the defendant does not possess the device or if a third party is operating the device or mechanism. The Honorable Court must open a window or else suffocation would ensue and no fresh air will enter. It is crucial to establish a realistic solution for the admissibility of electronic evidence with appropriate precautions and verification so that in the digital age, justice is not denied for lack of a certificate. By reducing the authentication certificate to secondary evidence only, as opposed to primary evidence like the computer or laptop producing the data itself submitted to the court, the Indian Supreme Court's most recent ruling in the *Arjun case* of 2020 relaxed the admissibility requirement in Section 65B. The operator's oral statement about e-document as a witness testimony is inadmissible in place of the secondary record accompanied by certificate. The article's author hopes for a clearer picture so that the trial procedure is not complicated by a second trial to hear the applicant's request for the issuance of an authentic certificate about the applicant's use of secondary e-evidence. If the witness operated the device, they seek that the secondary e-evidence be admissible against the witness. The authors in the article "Electronic Evidence–Admissibility and Authentication: A Judicial Perception of Apex Court of India" suggested that the legislator or the court should take a step so that the oral statement by the creator and the operator of the computer may be accepted as secondary evidence.[51]

3.2 Pakistani Perspective

An author from Pakistan has proved that circumstantial evidence is not accepted in Pakistan e-evidence but is needed.[52] In an article about Pakistani

[49] Naman. Jain, "Admissibility of E-evidence in India: An Overview." (2021). P 16

[50] *Supra note* 51, p.8

[51] *Ibid,* Pp 8 and 9

[52] Abbasi, H., S. Rafique, and S. N. Badshah. "Critical Analysis of Pakistani law of Electronic Evidence from the Perspective of Sharī'ah and English Law-Recommendations for Pakistan." (2021): 33-50. P 46

electronic evidence, it is stated that their existing system is inadequate in terms of website authenticity testing, as Pakistani law of evidence is designed for traditional papers and does not handle many aspects of digital data. This authenticity testing requirements to electronic evidence poses unique obstacles. An inadequate understanding of fundamental authentication criteria for digital data may result in negative judicial judgments. In judicial proceedings, the trustworthiness of evidence is of utmost importance for its admission. Verifying the authenticity of digital evidence is difficult without an exhaustive and pertinent investigation. In all types of computer evidence, the dependability of computer equipment, computer programs including all types of software used, the accuracy of the program, the error rate of the program, the procedure for data entry, the appropriate measures adopted for accuracy and safety, the method for storing data, the procedure for data printout, and metadata[53] must be evaluated. In addition, where website hacking and unlawful access, as well as website data accessibility. This technique is not implemented in the Pakistani system, which must be changed so that it can be authenticated properly. If Pakistani judges received even simple technology skills, judicial decisions would be improved.[54] People (evidence originator), methods, and technology are necessary components of ICT for the authenticity of digital evidence. Additionally, the chain of custody serves an important purpose. Whether highlighting the possibility of tampering alone is sufficient to challenge the admissibility of digital evidence, whether other evidence is required to strengthen the evidence, and whether the evidence will lose weight based only on the tampering claim. In the 1997 Allen case (*United States v. Allen*, 1997)[55], the court concluded that "showing the likelihood of tampering

---

53 Often referred to as data that describes other data, metadata is structured reference data that helps to sort and identify attributes of the information it describes. In Zen and the Art of Metadata Maintenance, John W. Warren describes metadata as "both a universe and DNA." Available at, https: *//www.techtarget.com/whatis/definition/metadata*

54 Mahboob Usman, Dr, Fazli Dayan, Iftikhar Ahmad Khan, Kamran Abdullah, Mian Muhammad Sheraz, Ghufran Ahmad, and Muhammad Haroon Khan. "Authentication Of Digital Evidence with Reference to USA And Pakistani Courts." Webology (ISSN: 1735-188X) 18, no. 5 (2021). E-Evi PAK 2021 Authentication of Digital Evidence with Reference to USA And Pakistani Courts.pdf) P 10

55 *United States vs Allen*, 1997, the USA case has been discussed in the article "Authentication Of Digital Evidence With Reference To USA And Pakistani Courts" and has been compared with the electronic evidence system of the USA.

is insufficient to exclude evidence" Instead, considerable evidence is required to demonstrate the authenticity. In addition, a general accusation of tampering with digital evidence is insufficient; there must be clear evidence of tampering; claims that computer data has been altered are insufficient.[56] Providers of certification needed for admissibility in the court services are those who issue certifications and statements for confirming the authenticity, integrity, or both of any electronic document requiring the use of algorithms and codes.[57] Certificate providers are IT specialists who are capable of conducting electronic discovery and must be able to authenticate electronic documents.[58] Electronic discovery of data entails the execution of crucial processes, including the examination of privacy concerns and the resolution of management and economic difficulties. These issues and answers are thoroughly studied and commented upon in western legal systems. Pakistan, on the other hand, is just beginning to discuss these matters. Electronic discovery and other issues associated with it, such as cost, data management, and privacy, are not addressed in Pakistani law. On the other hand, Western nations have created their infrastructure and regulations to address these issues. Pakistan should act expeditiously to avert any severe consequences.[59]

3.3 Bangladeshi Perspective

In the meantime, e-documents like video cassettes have already been accepted as evidence[60] in the courts of Bangladesh within the existing system elaborating the word document[61] before which case, digital evidence would not be accepted as evidence.[62] After this case in some other cases, this digital evidence has been accepted as evidence like the *Rajon Murder Case*[63] *Biswajit*

---

[56] *Supra note* 54, P.6

[57] Section 2(x) of *the Electronic Transaction Ordinance*, 2002

[58] Abbasi, Hafsa, and Muhammad Asim Iqbal. "Authentication of Electronic Evidence; A Journey from Electronic Discovery to Digital Forensic Experts in Western Law-Recommendations for Pakistan." *Journal of Social Sciences & Humanities* (1994-7046) 28, no. 1 (2020). P 223

[59] *Ibid*, P 228

[60] *Mrs. Khaleda Akhter vs The State 37 DLR* (1985) (HCD) 275

[61] The General Clauses Act 1897, s 3(16)

[62] Tanbir, Khandker, (2021). "Admissibility of Digital Evidence in Bangladesh." Available at SSRN 4274024.

[63] *Rajon Murder Case*, The Daily Star (November 26, 2019), available at *www.thedailystar.net/tags/rajon-murder-case.*

Murder case,[64] and the *Nusrat Murder case*.[65] There are other undecided cases where such evidence may be used like the *Abrar Murder case*, *Rifat Murder Case*, etc.[66] These undecided cases may be benefited as with the observation of the Higher Judiciary in the *State vs Oli case* the e-evidence has been recognized in Bangladesh by the Evidence Amendment Act, 2022. The admissibility criteria which were set by India in 2003 by the Evidence Act, 2003 and by Pakistan in 2002 by the Electronic Transaction Ordinance, 2002 respectively have been set by Bangladesh in 2022. The legislature or the judiciary should have taken their recent development by case law into account as there has been unprecedented and unimaginable development in the ICT sector of Bangladesh. It means Bangladesh amended its Evidence Act after the observation made by the Appellate Division in the *State v Oli* case where the Division alluded about the amendment made by India in 2003 but the Division did not consider the development made by the case law after their amendment in India. The judiciary or the parliament of Bangladesh could have taken the matter into account. Moreover, Mahboob Usman and his co-authors from Pakistan in the article "Authentication of Digital Evidence with Reference to USA And Pakistani Courts" *inter alia* suggested for training of the legal fraternity i. e. the judges and advocates so that they can understand the procedure of the admissibility test of e-evidence.[67] It is also required in Bangladesh so that the judges and advocates from Bangladesh can understand the admissibility procedure of e-evidence and matters ancillary to this. An Indian author has suggested that like section 22 of the Evidence Act of 1872 the oral statement of the creator or the operator of the e-document should be accepted as secondary evidence by the court. With the Evidence Amendment Act, 2022 in Bangladesh there will need sufficient IT experts to get opinions in different cases. Like India and Pakistan, Bangladesh should think about the admissibility of different electronic data in a more convenient way for the sake of justice.

---

[64] High Court Verdict on Biswajit Murder Case, The Daily Star (July 17 2017) available at access on www.thedailystar.net/politics/bangladesh-high-court-verdict-biswajit-murder-case6-1434460%3famp

[65] Nusrat Murder: Ex-madrasa Principal, 15 others get death The Daily Star (October 24, 2019)

[66] Tanbir, Khandker. "Admissibility of Digital Evidence in Bangladesh." Available at SSRN 4274024 (2021).

[67] *Supra note* 54, P 10

4. Comparison among India, Pakistan, and Bangladesh

The Evidence Acts of India, Pakistan, and Bangladesh which have already recognized e-document are being compared giving special importance to the admissibility of e-evidence with the case laws of those countries.

India and Pakistan have given legal recognition of e-evidence in their Evidence Act through a reference from the IT Act, 2000 having the corresponding amendment to the Evidence Act in 2003, and the ETO, 2000 by which it amended its evidence law whereas Bangladesh though mentioned in section 87 of the ICT Act, 2006 it did not make any corresponding amendment to the evidence act, 1872 like India and Pakistan until 2022.

Before adopting the Information Technology (IT) Act of 2000, India had made significant progress in this area, as they accepted e-documents as proof if needed. While enacting the Information Technology Act, of 2000, India customized the related provisions of the Evidence Act, 1872; Penal Code, 1860; Bankers, Book Evidence Act, 1891, and the Reserve Bank of India Act, 1934[68] whereas Bangladesh did not customize any such Acts while enacting the ICT Act, 2006, and the Digital Security Act, 2018 in Bangladesh.[69]

India has given an exclusive application of sections 65A and 65B as a comprehensive code, as well as additional safeguards against manipulation.[70] Aradhya Sethia has longed for admissibility tests like the United States for India.[71] The e-documents have already been recognized by neighboring nations such as India, Pakistan, Bhutan, and so on.[72] Pakistan has The Electronic Transaction Ordinance, 2002, and India considerably modified its Evidence Act in 2003 to keep pace with the age of information and communication technology (ICT) or electronic records. Sections 22a, 45A, 47A, 65A, 65B, 67A, 81A, 85A, 85B, 85C, 111A, and 114A have been added which are about electronic documents in the Indian Evidence Act, 2003.

---

68 Preamble, Information Technology Act, 2000 of India

69 *Supra note 14*

70 Sethia, Aradhya. "Rethinking admissibility of electronic evidence, "*International Journal of Law and Information Technology*" 24, no. 3 (2016): p 234

71 *Ibid*

72 The Use of Digital Evidence in Prosecutions in Asia, A comparative study of the laws and policies governing the admissibility and use of digital evidence in criminal proceedings in Bangladesh, Bhutan, Brunei, Cambodia, Maldives, Mongolia, Nepal, Sri Lanka, Vietnam February 2022, available at *file:///C:/Users/User/Downloads/The%20Use%20of%20Digital%20Evidence%20in%20Prosecutions%20in%20Asia...%20(1).pdf* Accessed on 26 August, 2022

Changes that India and Pakistan brought in their Evidence Act, in 2000, 2003, and 2002 respectively are now being brought in Bangladesh in 2022. In the meantime, both India and Pakistan have developed the matter through some case law that Bangladesh lag. Therefore, Bangladesh can consider them. In India, amendment to the Evidence Act in 2003 has been made to recognize e-documents when they are required and suitable. They made this necessary amendments when they enacted the Information Technology Act in 2000. Even they amended the Penal Code, of 1860, and the Bankers' Book Evidence Act, 1891 addressing e-document and e-evidence to keep pace with the development of information technology. Pakistan, on the other hand, has enacted a new regulation known as the Electronic Transaction Ordinance of 2002 to recognize e-documents as e-evidence. By that Ordinance, Pakistan has made revisions to the evidence act, i.e., Qanun-e-Shahadat Order. The country has proclaimed that the Evidence Act would be read subject to the changes made to the legislation by the Ordinance. Bangladesh has also done so regarding e-document by section 87 of the ICT Act, 2006, and by some special laws mentioned in 4.3 of this article Bangladesh has made the Evidence Amendment Act, 2022 to recognize and legalize the e-document in general which India did in 2000 and 2003 by the IT Act and the Evidence Amendment Act respectively. On the other hand, Pakistan did it in 2002 by The Electronic Transaction Ordinance, 2002. After these years both India and Pakistan have relaxed the precondition criteria through court's observation for the admissibility of e-evidence[73] which are better than Bangladesh. Better in the sense that Indian Court has relaxed the admissibility criteria mentioned in section 65B. Indian Court has given observation that the original copy of the e-evidence as primary evidence under section 62 and 65 will be accepted. This is the deviation from the compulsory submission of the certificate of authenticity regarding the e-evidence under section 65B. At this, procedural complications will be lessened. Obtaining authentication certificate has been made compulsory for the secondary e-evidence under section 65B.[74] Pakistani court has given a guideline for admissibility of the e-evidence in Pakistan.

---

[73] Section 65A and 65B of the *Evidence Act*, 2003 of India and Schedule of the Electronic Transaction Ordinance; Article 72 (explanation 3 and 4) and article 78A of the P.O No. 10 of 1984 of Pakistan.

[74] Chhatrapati, Mr Devang, and Arun B. Prasad. "Electronic Evidence–Admissibility and Authentication: A Judicial Perception of Apex Court of India." *GLS Law Journal 3*, no. 1 (2021). Pp 6 and 7

A court in Pakistan has given specific guideline regarding the admissibility of C.C.T.V footage. Here, importance has been given for the genuineness which can be determined by the examination of the footage creator or preparator. In Pakistan e-evidence has been termed as primary evidence which has not been in Bangladesh. The law of Pakistan says about the examination of the experts and also of the creator or operator of the e-evidence for testing the genuineness of the e-evidence or e-document whereas in Bangladesh the law says about the compulsory requirement of the certificate from the responsible officials for the genuineness of the e-document. In Bangladesh, who is responsible officials is not well defined. What about the e-document which are not certified as authentic or which may not be placed for obtaining the certificate of authenticity from such officials which may be even authentic if these are prepared by other person (experts) other than the officials mentioned in the law. If the barrier of obtaining the certificate is created here, then what will be the function of the expert team or rapid team about e-evidence? For India and Bangladesh, if the provisions for experts are available then why the obtaining of the certificate is compulsory. Pakistan is better because of no such barrier rather expert and creator are examined for authenticity.[75] This barrier has been removed in Pakistan by allowing its testing for authenticity by examining the creator, or preparator of it and by expert opinion about it.[76] However, in Bangladesh it has not been stated that the creator or operator or preparator will be examined to test the authenticity of the e-evidence. The status is same in India as well. Research from India suggests for the acceptance of statement of the creator, originator or operator as to the content of the e-document as secondary document. This could be considered by Bangladesh. Section 59 does not give, like India, the status of e-record content as equal to the position of traditional record content. As a result, oral testimony about the content of the e-record may be given India. Bangladesh may consider this matter.

[75] Usman, Mahboob, and Muhammad Mushtaq Ahmad. "Digital Evidence as A Shahada in Pakistani Laws and Its Application in The Courts." Zia E Tahqeeq 10, No. 20 (2020): Pp 37,39 and 43

[76] *Ibid*, P 43

In Bangladesh, for the admissibility of the e-evidence in a legal proceeding, the obtaining of the certificate is compulsory. Nothing has been mentioned here about the primary or secondary e-evidence which has been categorized in India. It should have been clarified. Though Bangladesh has made significant progress in the ICT industry and it has given legal recognition to e-document in the Evidence Act, 1872 by an amendment to the Act in 2022 following the Evidence Amendment Act, 2003 of India as it was observed by the Appellate Division of Bangladesh. Bangladesh followed only the Amendment Act of India but not the further development regarding the e-evidence by the Indian case law. Hence, Bangladesh does not have a relaxed way to test the authenticity and admissibility of the e-document like India and Pakistan which the two countries have developed by case law and law. Bangladesh should have considered the matter of relaxing the admissibility criteria in section 65B for the primary e-evidence like India and Pakistan but it has not. It may be overcome by amending section 65B or by giving a guideline that is being practiced by the Indian and Pakistani courts. In this sense, Bangladesh may follow the footsteps of India and Pakistan. There may be cases in Bangladesh where an offense committed may not have direct evidence or eye witness but the matter may be captured in C.C.T.V footage or in mobile phone camera which may assist to prove the case and establish justice.[77] If it is not legally addressed people seeking justice may not get it.[78] If the procedural barrier under section 65B of the Evidence Amendment Act, 2022, is not relaxed in Bangladesh like India and Pakistan[79] justice may not be ensured without facing problem. India and Pakistan have kept an exception clause that they will not allow any conveyance of immovable property in electronic form and by an electronic signature which Bangladesh may think in amending its Evidence Act recognizing e-evidence or e-document.[80]

E-document authentication is very crucial. If the authenticity cannot be determined the Court may be presented with forged e-documents. If legitimate

---

[77] *Supra note 14*

[78] *Ibid*

[79] India and Pakistan have relaxed the admissibility test requirements of e-evidence by the observation of their higher courts.

[80] Section 1(4), *The Information Technology Act, 2000* (No. 21 of 2000); Section 31, *The Electronic Transaction Ordinance, 2002*

proof can be obtained, justice may be served. India, Pakistan, and Bangladesh have now similar provisions for testing the authenticity of the e-document. India and Pakistan have relaxed the precondition for accepting the admissibility of the e-document. There is an available article from India and Pakistan where they are recommending for relaxing the admissibility criteria for admissibility of the e-evidence making a comparison with the admissibility criteria followed in the USA,[81] which has already come up with various methods to test the authenticity of e-document. The issue of the USA has not been discussed because authors of different articles both from India and Pakistan are thinking to relax their admissibility criteria like the USA.[82] This article is comparing the position of Bangladesh regarding e-evidence with India and Pakistan.

5. Provability of Forensic of E-document in Bangladesh

Section 65B provided the precondition to make the e-evidence admissible in the court. The opinion of an expert on documents has been embodied in section 45A of The Evidence Amendment Act, 2022. Since Bangladesh's Digital Security Act, 2018, includes provisions for an expert team or rapid team, as well as a lab for forensic testing of e-documents or records, it is possible to seek assistance from there to verify the authenticity and admissibility of e-documents for the court.[83] They may even be used to get professional advice. As a result, if the court and legal fraternity judges and advocates face any problem and uncertainty to test the authenticity of the e-evidence under section 65B, they can seek assistance from the expert team and the professionals mentioned hereinbefore.[84] E-evidence may be examined only if it meets certain conditions set by Bangladesh, as well as those set by other nations that have previously done so. A direction should be put in place to allow the creator and the authorities to save the e-document in their original formats for adducing in court if necessary for the sake of justice. False e-

---

81 See Orin S Kerr, 'Computer Records and the Federal Rules of Evidence' (March 2001), available at *http://euro.ecom.cmu.edu/program/law/08-732/Evidence/KerrComputerRecords.pdf* Accessed on 26 August, 2022.;

82 *Supra Note 54,* P.5 "Rethinking admissibility of electronic evidence." International Journal of Law and Information Technology 24, no. 3 (2016): Pp 229-250.

83 Sections 9, 10 and, 11 of *the Digital Security Act*, 2018.

84 *Supra Note 82,* P.230

documents makers may face penalties and fines. These kinds of provisions have been created in India and Pakistan.[85]

6. Suggestions

With the advancement of information technology, several nations have acknowledged e-documents as e-evidence. Both India and Pakistan have recognized the e-evidence in their main Evidence Acts, Bankers' Book Evidence Acts and Penal Codes. The Evidence Act, Penal Code, and Bankers' Book Evidence Act of Bangladesh were required to make digitally relevant at the time of passing the ICT Act, 2006.[86] Though Bangladesh recognized the e-evidence through some special laws separately for some special purposes, it recognized it e-evidence only in the Evidence Act through the Evidence Amendment Act, 2022. The recognition of e-evidence in some special laws are not necessary separately as The Evidence Amendment Act, 2022 will encompass the e-document. These provisions might be abolished or repealed by the said Amendment Act. On the other hand, because of widespread use of ICT, it would be better to give the e-document equal status of the paper-based document in the Bankers' Book Evidence Act and Penal Code of Bangladesh like Indian and Pakistani ones. Having recognized electronic documents as e-evidence, it will require the legal fraternity to be aware of the issue and be acquainted with e-document and its acceptability procedure so that they can understand the issues and help the court to render justice. For the legal fraternity of Bangladesh, special training should be awarded for the issue of e-document, up-to-date technological development, and the procedure of admissibility of the e-document in the court proceeding to cope with the issues and for the sake of assisting and ensuring justice. It is also a contemporary necessity, as the ICT industry is expanding in Bangladesh, as it is elsewhere in the globe.

7. Conclusion

The Bangladeshi government has made a very positive step by passing The Evidence Amendment Act, 2022, which recognizes e-evidence. It will be

---

[85] Sections 25, 38 and 73 of *the Information Technology Act*, 2000; Sections 34 And 35, *The Electronic Transaction Ordinance*, 2002

[86] *Supra note 14.*

incredibly beneficial for litigants, as they will be able to employ e-evidence in court to show or disprove a case as necessary. Bangladesh could have taken into account the fact that India and Pakistan are in a better position than that of her in this regard. Bangladesh should study the issue and come up with a workable solution for the admissibility requirements of e-evidence, as the development of ICT is occurring concurrently. There are articles from India and Pakistan have to adopt the same standards as the US, the UK, Australia etc.[87] Bangladesh should not lag. In addition, the legal community should be trained to deal with e-evidence and its admissibility so that they can assist the court in determining the admissibility of e-evidence. In the sphere of ICT, e-evidence, and its admissibility procedure, it is hoped that Bangladesh will update its laws to keep up with the changing world.

[87] Supra note 84, p. 44