

Information Technology Act, 2000

Schedule II - The Second Schedule

1[THE SECOND SCHEDULE

[See sub-section (1) of section 3 A]

ELECTRONIC SIGNATURE OR ELECTRONIC AUTHENTICATION TECHNIQUE AND
PROCEDURE

Sl. No.	Description	Procedure
(1)	(2)	(3)

1. Substituted vide Information Technology (Amendment) Act, 2008 Prior to substitution text read as under :-

"THE SECOND SCHEDULE

[See section92]

AMENDMENTSTO THE INDIAN EVIDENCE ACT, 1872

[Act,No. 1 of1872]

1. In section3,-

(a) in the definition of "Evidence", for the words "all documents produced for the inspection of the Court", the words "all documents includingelectronic records produced for the inspection of the Court" shall be substituted;

(b) after the definition of "India", the following shall be inserted, namely:-

'the expressions "Certifying Authority", "digital signature", "Digital Signature Certificate", "electronic form", "electronic records"," information", "secure electronic record", "secure digital signature" and "subscriber" shall have the meaningsrespectively assigned to them in the Information Technology Act, 2000.'

2. In section 17, for the words "oral or documentary,", the words "oral or documentary or contained in electronic form" shall be substituted.

3. After section 22, the following section shall be inserted, namely:-

"22A. When oral admission as to contents of electronic records are relevant.-Oral admissions as to the contents of electronic records are not relevant, unless the genuineness of the electronic record produced is in question."

4. In section 34, for the words "Entries in the books of account", the words "Entries in the books of account, including those maintained in an electronic form" shall be substituted.

5. In section 35, for the word "record", in both the places where it occurs, the words "record or an electronic record" shall be substituted.

6. For section 39, the following section shall be substituted, namely:-

"39. What evidence to be given when statement forms part of a conversation, document, electronic record, book or series of letters or papers.-When any statement of which evidence is given forms part of a longer statement, or of a conversation or part of an isolated document, or is contained in a document which forms part of a book, or is contained in part of an electronic record or of a connected series of letters or papers, evidence shall be given of so much and no more of the statement, conversation, document, electronic record, book or series of letters or papers as the Court considers necessary in that particular case to the full understanding of the nature and effect of the statement, and of the circumstances under which it was made."

7. After section 47, the following section shall be inserted, namely:-

"47A. Opinion as to digital signature when relevant.-When the court has to form an opinion as to the digital signature of any person, the opinion of the Certifying Authority which has issued the Digital Signature Certificate is a relevant fact."

8. In section 59, for the words "contents of documents" the words "contents of documents or electronic records" shall be substituted.

9. After section 65, the following sections shall be inserted, namely:-

'65A. Special provisions as to evidence relating to electronic record.-The contents of electronic records may be proved in accordance with the provisions of section 65B.

65B. Admissibility of electronic records.-(1) Notwithstanding anything contained in this Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer (hereinafter referred to as the computer output) shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.

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

(a) the computer output containing the information was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;

(b) during the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer in the ordinary course of the said activities;

(c) throughout the material part of the said period, the computer was operating properly or, if not; then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents; and

(d) the information contained in the electronic record reproduces or is derived from such information fed into the computer in the ordinary course of the said activities.

(3) Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in clause (a) of sub-section (2) was regularly performed by computers, whether-

- (a) by a combination of computers operating over that period; or
- (b) by different computers operating in succession over that period; or
- (c) by different combinations of computers operating in succession over that period; or
- (d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers,

all the computers used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer; and references in this section to a computer shall be construed accordingly.

(4) In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say-

- (a) identifying the electronic record containing the statement and describing the manner in which it was produced;
- (b) giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer;
- (c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate,

and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

(5) For the purposes of this section,-

- (a) information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;
- (b) whether in the course of activities carried on by any official, information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;
- (c) a computer output shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.

Explanation.-For the purposes of this section any reference to information being derived from other information shall be a reference to its being derived therefrom by calculation, comparison or any other process.'

10. After section 67, the following section shall be inserted, namely:-

"67A. Proof as to digital signature.-Except in the case of a secure digital signature, if the digital signature of any subscriber is alleged to have been affixed to an electronic record the fact that such digital signature is the digital signature of the subscriber must be proved."

11. After section 73, the following section shall be inserted, namely:-

"73A. Proof as in verification of digital signature.-In order to ascertain whether a digital signature is that of the person by whom it purports to have been affixed, the Court may direct-

(a) that person or the Controller or the Certifying Authority to produce the Digital Signature Certificate;

(b) any other person to apply the public key listed in the Digital Signature Certificate and verify the digital signature purported to have been affixed by that person.

Explanation.-For the purposes of this section, "Controller" means the Controller appointed under sub-section (1) of section 17 of the Information Technology Act, 2000."

12. After section 81, the following section shall be inserted, namely:-

"81A. Presumption as to Gazettes in electronic forms.-The Court shall presume the genuineness of every electronic record purporting to be the Official Gazette, or purporting to be electronic record directed by any law to be kept by any person, if such electronic record is kept substantially in the form required by law and is produced from proper custody."

13. After section 85, the following sections shall be inserted, namely:-

"85A. Presumption as to electronic agreements.-The court shall presume that every electronic record purporting to be an agreement containing the digital signatures of the parties was so concluded by affixing the digital signature of the parties.

85B. Presumption as to electronic records and digital signatures.-(1) In any proceedings involving a secure electronic record, the Court shall presume unless contrary is proved, that the secure electronic record has not been altered since the specific point of time to which the secure status relates.

(2) In any proceedings, involving secure digital signature, the Court shall presume unless the contrary is proved that-

(a) the secure digital signature is affixed by subscriber with the intention of signing or approving the electronic record;

(b) except in the case of a secure electronic record or a secure digital signature, nothing in this section shall create any presumption relating to authenticity and integrity of the electronic record or any digital signature."

85C. Presumption as to Digital Signature Certificates.-The Court shall presume, unless contrary is proved, that the information listed in a Digital Signature Certificate is correct, except for information specified as subscriber information which has not been verified, if the certificate was accepted by the subscriber."

14. After section 88, the following section shall be inserted, namely:-

"88A. Presumption as to electronic messages.-The Court may presume that an electronic message forwarded by the originator through an electronic mail server to the addressee to whom the message purports to be addressed corresponds with the message as fed into his computer for transmission; but the Court shall not make any presumption as to the person by whom such message was sent.

Explanation.-For the purposes of this section, the expressions "addressee" and "originator" shall have the same meanings respectively assigned to them in clauses (b) and (za) of sub-section (1) of section 2 of the Information Technology Act, 2000."

15. After section 90, the following section shall be inserted, namely:-

"90A. Presumption as to electronic records five years old.-Where any electronic record, purporting or proved to be five years old, is produced from any custody which the Court in the particular case considers proper, the Court may presume that the digital signature which purports to be the digital signature of any particular person was so affixed by him or any person authorised by him in

this behalf.

Explanation.-Electronic records are said to be in improper custody if they are in the place in which, and under the care of the person with whom, they naturally be; but no custody is improper if it is proved to have had a legitimate origin, or the circumstances of the particular case are such as to render such an origin probable.

This Explanation applies also to section 81A."

16. For section 131, the following section shall be substituted, namely:-

"131. Production of documents or electronic records which another person, having possession, could refuse to produce.-No one shall be compelled to produce documents in his possession or electronic records under his control, which any other person would be entitled to refuse to produce if they were in his possession or control, unless such last-mentioned person consents to their production."