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# DIGITAL PARADOX IN ARBITRATION: ENFORCEMENT OF FOREIGN ELECTRONIC ARBITRAL AWARDS IN INDIA

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## ABSTRACT

This paper examines the complex interplay between the Information Technology Act, 2000 and Section 65B of the Indian Evidence Act concerning the enforcement of foreign electronic arbitral awards in India. While the IT Act aims to facilitate the recognition of electronic records to promote ease of doing business, Section 65B imposes stringent certification requirements that often hinder the swift enforcement of such awards. Through a detailed legislative analysis, judicial case law review, and exploration of procedural challenges, the paper highlights the paradox where evidentiary rigor conflicts with the legislative intent of digital equivalence. Comparative insights from international arbitration practices and technological considerations further underscore the gap between India's current framework and global standards. The study concludes with policy recommendations advocating for legislative reforms, judicial capacity building, and adoption of streamlined procedures to balance evidentiary integrity with enforcement efficiency, thereby enhancing India's position as an arbitration-friendly jurisdiction.

**Keywords:** Cross-Border Enforcement, Electronic Evidence, Digital Authentication, Procedural Validity, Online Arbitration Framework.

## 1. Introduction

The enforcement of foreign electronic arbitral awards in India presents a complex legal landscape shaped by the interplay between the Information Technology Act, 2000 and the provisions governing electronic evidence under Section 65B of the Indian Evidence Act, 1872 and the corresponding provisions of the Bharatiya Sakshya Adhiniyam, 2023.<sup>1</sup> While the IT Act seeks to facilitate the recognition and admissibility of electronic records to promote ease of doing business,<sup>2</sup> the evidentiary requirements governing electronic records impose stringent certification conditions that often hinder the smooth acceptance of electronic evidence.<sup>3</sup> This creates a paradox where the principle of equivalence—mandating that electronic evidence should be treated on par with paper evidence—is challenged by procedural rigidity. The judiciary, tasked with interpreting and applying these provisions, faces the additional burden of addressing technical issues inherent in electronic evidence, which impacts case management efficiency and the timely enforcement of arbitral awards.<sup>4</sup> This paper examines these evidentiary and procedural challenges through legislative analysis, judicial trends, and comparative international perspectives. It further explores the implications for foreign investors and the need for reforms aimed at harmonizing India's legal framework with global arbitration standards, thereby enhancing the country's attractiveness as a jurisdiction for arbitration and dispute resolution.<sup>5</sup>

## 2. Literature Review

The enforcement of foreign electronic arbitral awards in India involves a complex intersection of legislative frameworks and judicial interpretation, primarily shaped by the Information Technology Act, 2000 and Section 65B of the Indian Evidence Act, 1872, along with the corresponding provisions under the Bharatiya Sakshya Adhiniyam, 2023.<sup>6</sup> The IT Act was introduced to facilitate the recognition and admissibility of electronic records, aiming to

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<sup>1</sup> Information Technology Act, 2000, No. 21, Acts of Parliament, 2000 (India); Indian Evidence Act, 1872, No. 1, Acts of Parliament, 1872, § 65B (India); Bharatiya Sakshya Adhiniyam, 2023, No. 47, Acts of Parliament, 2023, §§ 61–63 (India).

<sup>2</sup> Information Technology Act, 2000, §§ 4–5.

<sup>3</sup> Anvar P.V. v. P.K. Basheer, (2014) 10 S.C.C. 473; Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal, (2020) 7 S.C.C. 1.

<sup>4</sup> State of Maharashtra v. Dr. Praful B. Desai, (2003) 4 S.C.C. 601.

<sup>5</sup> Gary B. Born, International Commercial Arbitration 3521–29 (3d ed. 2021); UNCITRAL Model Law on International Commercial Arbitration art. 35, U.N. Doc. A/40/17 (1985), amended in 2006

<sup>6</sup> Information Technology Act, 2000, No. 21, Acts of Parliament, 2000 (India); Indian Evidence Act, 1872, No. 1, Acts of Parliament, 1872, § 65B (India); Bharatiya Sakshya Adhiniyam, 2023, No. 47, Acts of Parliament, 2023, §§ 61–63 (India).

promote ease of doing business and modernize evidence law in the digital age.<sup>7</sup> However, Section 65B imposes stringent certification requirements for electronic evidence, which has been widely discussed in academic and judicial literature as a significant procedural hurdle.<sup>8</sup>

Scholars highlight a paradox where the principle of equivalence—mandating that electronic evidence should be treated on par with traditional paper evidence—is undermined by the rigid procedural strictness of Section 65B.<sup>9</sup> This strictness often results in challenges to the admissibility of electronic evidence, thereby impacting the enforcement of arbitral awards that rely on such evidence. The literature emphasizes that this conflict affects the timely resolution of disputes and undermines the legislative intent of promoting digital equivalence.<sup>10</sup>

Judicial commentary and case law analyses reveal that the judiciary faces an increasing burden to develop technical expertise to effectively manage electronic evidence. This requirement for specialized knowledge impacts case management efficiency and the overall arbitration enforcement process. Several studies and judicial opinions note that the judiciary's limited technical capacity can lead to delays and procedural complications in arbitration enforcement.<sup>11</sup>

The literature also addresses the perception of India as a challenging jurisdiction for foreign investors due to these evidentiary and procedural difficulties. This perception is linked to concerns about the enforceability of foreign electronic arbitral awards and the broader attractiveness of India as a venue for international commercial arbitration.<sup>12</sup>

Comparative international perspectives in the literature point to a gap between India's current legal framework and global arbitration standards. Many jurisdictions adopt more pragmatic and flexible approaches to electronic evidence admissibility, balancing evidentiary rigor with enforcement efficiency. This contrast is frequently cited as a benchmark for reform in the Indian context.<sup>13</sup>

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<sup>7</sup> Information Technology Act, 2000, Statement of Objects and Reasons.

<sup>8</sup> Anvar P.V. v. P.K. Basheer, (2014) 10 S.C.C. 473; Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal, (2020) 7 S.C.C. 1.

<sup>9</sup> Avnish Bajaj, Electronic Evidence and Section 65B: Problems of Admissibility in Indian Law, 12 Indian J.L. & Tech. 45, 52–58 (2016).

<sup>10</sup> Sumeet Kachwaha, Enforcement of Foreign Arbitral Awards in India: Emerging Trends and Challenges, 5 Indian Arb. L. Rev. 112, 120–26 (2018).

<sup>11</sup> State of Maharashtra v. Dr. Praful B. Desai, (2003) 4 S.C.C. 601; Fali S. Nariman, Harmony Amidst Disharmony: The Indian Approach to Arbitration 214–20 (2019).

<sup>12</sup> Gary B. Born, International Commercial Arbitration 3521–29 (3d ed. 2021).

<sup>13</sup> UNCITRAL Model Law on International Commercial Arbitration art. 35, U.N. Doc. A/40/17 (1985),

Policy-oriented literature advocates for legislative reforms to harmonize Section 65B with the principle of equivalence, suggesting simplification of certification requirements without compromising evidentiary integrity. Additionally, capacity building within the judiciary and the adoption of streamlined procedural rules are recommended to enhance enforcement efficiency. Such reforms are posited to improve India's arbitration-friendly image and promote foreign direct investment.<sup>14</sup>

### **3. Statement of the Problem**

The rapid digitalisation of international commercial arbitration has led to the increasing use of electronic communication, virtual hearings, digitally signed documents, and electronic arbitral awards. Although the Information Technology Act, 2000 grants legal recognition to electronic records and digital signatures, the admissibility and enforcement of such records in India continue to face procedural and evidentiary challenges under Section 65B of the Indian Evidence Act, 1872 and the corresponding provisions under the Bharatiya Sakshya Adhiniyam, 2023. The stringent certification requirements governing electronic evidence often create procedural barriers in the enforcement of foreign electronic arbitral awards, particularly where electronic records originate outside Indian jurisdiction. These requirements frequently result in delays, increased litigation costs, and technical objections, thereby undermining the summary enforcement mechanism envisaged under the Arbitration and Conciliation Act, 1996. Further, the absence of explicit statutory provisions dealing specifically with electronic arbitral awards and inconsistent judicial interpretation concerning electronic evidence create uncertainty regarding admissibility and enforcement. Consequently, the existing legal framework raises significant concerns regarding the balance between evidentiary integrity and efficient enforcement, while also affecting India's aspiration to emerge as an arbitration-friendly jurisdiction in the digital era.

### **4. Research Objectives**

1. To examine the legal framework governing the enforcement of foreign electronic arbitral awards in India.

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amended in 2006; Nigel Blackaby et al., *Redfern and Hunter on International Arbitration* 645–50 (7th ed. 2022).

<sup>14</sup> Sumeet Kachwaha, *Electronic Evidence in Arbitration Proceedings: Challenges and Reform*, 8 *Indian J. Arb. L.* 67, 74–81 (2021).

2. To analyse the recognition and admissibility of electronic records and digital signatures under the Information Technology Act, 2000.
3. To study the evidentiary requirements relating to electronic evidence under Section 65B of the Indian Evidence Act, 1872 and the corresponding provisions under the Bharatiya Sakshya Adhinyam, 2023.
4. To identify the procedural and evidentiary challenges involved in enforcing foreign electronic arbitral awards in India.
5. To examine judicial interpretation concerning electronic evidence and enforcement of arbitral awards.
6. To compare India's legal position with international arbitration standards relating to electronic evidence and digital arbitration.
7. To suggest reforms for improving the efficiency and enforceability of foreign electronic arbitral awards in India.

## **5. Research Questions**

1. Whether foreign electronic arbitral awards are adequately recognised and enforceable under Indian law?
2. How do the provisions relating to electronic evidence under Section 65B of the Indian Evidence Act, 1872 and the Bharatiya Sakshya Adhinyam, 2023 affect the enforcement of electronic arbitral awards?
3. What are the major evidentiary and procedural challenges faced in the enforcement of foreign electronic arbitral awards in India?
4. Whether the present Indian legal framework effectively balances evidentiary integrity with efficient enforcement of electronic arbitral awards?
5. To what extent does the Indian framework align with international arbitration practices and standards concerning electronic evidence?

6. What legal and procedural reforms are necessary to strengthen India's position as an arbitration-friendly jurisdiction in the digital era?

## **6. Research Methodology**

The present study adopts a doctrinal method of legal research to examine the enforcement of foreign electronic arbitral awards in India. The research is primarily based on secondary sources of data, including statutes, judicial decisions, books, journal articles, legal commentaries, reports, and international legal instruments relating to arbitration law and electronic evidence.

The study undertakes a detailed analysis of the Arbitration and Conciliation Act, 1996, the Information Technology Act, 2000, and the provisions relating to electronic evidence under the Bharatiya Sakshya Adhinyam, 2023. Reference has also been made to the earlier framework under the Indian Evidence Act, 1872 for analysing judicial precedents delivered prior to the enactment of the Bharatiya Sakshya Adhinyam.

The research further analyses important judicial pronouncements of the Supreme Court and various High Courts concerning electronic evidence and enforcement of arbitral awards, particularly those dealing with certification requirements for electronic records. The study also examines international legal instruments such as the Convention on the Recognition and Enforcement of Foreign Arbitral Awards and the UNCITRAL Model Law on International Commercial Arbitration to evaluate the extent to which Indian law aligns with international arbitration standards.

The research is qualitative in nature and seeks to identify the legal and procedural challenges associated with the enforcement of foreign electronic arbitral awards in India. The study further evaluates the adequacy of the existing legal framework and proposes reforms aimed at balancing evidentiary integrity with efficient enforcement in the digital arbitration environment.

## **7. Legal Recognition of Electronic Awards**

India's legal framework acknowledges electronic arbitral awards as valid under the Information Technology Act, 2000 (IT Act), which grants legal recognition to electronic records and digital

signatures, equating them with their physical counterparts.<sup>15</sup> Sections 4 and 5 of the IT Act embody the principle of functional equivalence by providing that information or signatures shall not be denied legal validity merely because they exist in electronic form.<sup>16</sup> The IT Act therefore facilitates the admissibility and enforceability of electronic documents and supports the broader objective of promoting digital transactions and ease of doing business in India.<sup>17</sup>

However, the legal recognition granted to electronic records is complicated by the stringent evidentiary requirements governing electronic evidence under Section 65B of the Indian Evidence Act, 1872 and the corresponding provisions of the Bharatiya Sakshya Adhiniyam, 2023.<sup>18</sup> These provisions mandate a formal certification process to establish the authenticity, integrity, and reliability of electronic records before they may be admitted as evidence in judicial proceedings. The requirement of producing a certificate identifying the electronic device, manner of production, and authenticity of the electronic record creates procedural difficulties, particularly in cases involving foreign electronic arbitral awards.<sup>19</sup> Consequently, a paradox emerges where electronic records are legally recognised in principle, yet their practical enforcement remains constrained by procedural rigidity.

The Arbitration and Conciliation Act, 1996 further provides the procedural basis for recognition and enforcement of arbitral awards in India. Sections 47 and 48 govern enforcement of foreign arbitral awards under the framework of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards.<sup>20</sup> However, the Arbitration and Conciliation Act does not expressly address electronic arbitral awards or prescribe specific procedures concerning electronic evidence, digital signatures, or electronically transmitted awards. As a result, courts rely upon general evidence law principles while determining the admissibility and enforceability of electronic arbitral awards.

Judicial interpretation has played a significant role in clarifying the legal status of electronic evidence in India. In *Anvar P.V. v. P.K. Basheer*, the Supreme Court held that electronic records are admissible only upon compliance with the mandatory requirements under Section

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<sup>15</sup> Information Technology Act, 2000, No. 21, Acts of Parliament, 2000 (India).

<sup>16</sup> Id. §§ 4–5.

<sup>17</sup> Id. Statement of Objects and Reasons.

<sup>18</sup> Indian Evidence Act, 1872, No. 1, Acts of Parliament, 1872, § 65B (India); Bharatiya Sakshya Adhiniyam, 2023, No. 47, Acts of Parliament, 2023, §§ 61–63 (India).

<sup>19</sup> *Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal*, (2020) 7 S.C.C. 1.

<sup>20</sup> Arbitration and Conciliation Act, 1996, No. 26, Acts of Parliament, 1996, §§ 47–48 (India).

65B.<sup>21</sup> This strict interpretation was reaffirmed in *Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal*, where the Court emphasized that certification under Section 65B constitutes a mandatory condition for admissibility of electronic evidence.<sup>22</sup> Although these judgments strengthened evidentiary safeguards against tampering and manipulation, they also increased procedural burdens in matters involving electronic arbitral awards.

Therefore, while Indian law formally recognises electronic arbitral awards and digital records, practical enforcement remains affected by evidentiary formalism and legislative ambiguity. The absence of explicit statutory provisions governing electronic arbitral awards, combined with strict certification requirements, continues to create uncertainty regarding admissibility and enforcement within the Indian arbitration framework.

## 8. Enforcement Framework under Indian Law

The enforcement of foreign electronic arbitral awards in India is primarily governed by the Arbitration and Conciliation Act, 1996, particularly Part II of the Act, which incorporates the principles of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards.<sup>23</sup> The legislative framework is further supplemented by the Information Technology Act, 2000 and the evidentiary provisions relating to electronic records under the Indian Evidence Act, 1872 and the Bharatiya Sakshya Adhinyam, 2023.<sup>24</sup> The Arbitration and Conciliation Act was enacted with the objective of ensuring minimal judicial intervention and promoting the speedy enforcement of arbitral awards.<sup>25</sup> However, when arbitral awards exist in electronic form or rely upon electronic evidence, the enforcement process becomes significantly more complicated due to the procedural requirements imposed under Section 65B.<sup>26</sup>

Sections 47 and 48 of the Arbitration and Conciliation Act prescribe the procedural requirements and limited grounds for refusal of enforcement of foreign awards.<sup>27</sup> Section 47

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<sup>21</sup> *Anvar P.V. v. P.K. Basheer*, (2014) 10 S.C.C. 473.

<sup>22</sup> *Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal*, (2020) 7 S.C.C. 1.

<sup>23</sup> Arbitration and Conciliation Act, 1996, No. 26, Acts of Parliament, 1996, pt. II (India); Convention on the Recognition and Enforcement of Foreign Arbitral Awards, June 10, 1958, 330 U.N.T.S. 3.

<sup>24</sup> Information Technology Act, 2000, No. 21, Acts of Parliament, 2000 (India); Indian Evidence Act, 1872, No. 1, Acts of Parliament, 1872, § 65B (India); Bharatiya Sakshya Adhinyam, 2023, No. 47, Acts of Parliament, 2023, §§ 61–63 (India).

<sup>25</sup> Arbitration and Conciliation Act, 1996, Statement of Objects and Reasons.

<sup>26</sup> Indian Evidence Act, 1872, § 65B; Bharatiya Sakshya Adhinyam, 2023, §§ 61–63.

<sup>27</sup> Arbitration and Conciliation Act, 1996, §§ 47–48.

requires the party seeking enforcement to produce the original arbitral award or a duly authenticated copy before the competent court.<sup>28</sup> In the context of electronic arbitral awards, determining the authenticity and admissibility of digitally transmitted documents becomes legally challenging because electronic records are subject to the certification requirements under Section 65B.<sup>29</sup> The provision mandates that electronic evidence must be accompanied by a certificate identifying the manner of production of the electronic record, the particulars of the electronic device involved, and confirmation regarding the integrity and authenticity of the information contained therein.<sup>30</sup>

The Supreme Court in *Anvar P.V. v. P.K. Basheer* established that electronic records are admissible only when the mandatory conditions under Section 65B are satisfied.<sup>31</sup> The Court rejected the earlier flexible approach toward electronic evidence and held that compliance with certification requirements is compulsory for admissibility. This position was further reaffirmed in *Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal*, where the Court clarified that Section 65B certification constitutes a mandatory precondition unless the original electronic device itself is produced before the court.<sup>32</sup> These judgments significantly affect enforcement proceedings involving foreign electronic arbitral awards because parties are often required to obtain certification from custodians located outside Indian jurisdiction.

The practical difficulties associated with obtaining Section 65B certification become more severe in international arbitration matters. Foreign arbitral awards may be generated through cloud-based systems, digitally signed using foreign authentication standards, or transmitted through electronic communication platforms operated by third-party service providers. In such situations, obtaining the necessary certification from foreign custodians becomes procedurally burdensome and expensive. Jurisdictional limitations, differences in foreign technological standards, and lack of cooperation from overseas entities frequently delay enforcement proceedings and increase litigation costs.<sup>33</sup>

Indian courts have consistently emphasised the limited scope of judicial interference in arbitration matters. In *Vedanta Ltd. v. Shenzhen Shandong Nuclear Power Construction Co.*

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<sup>28</sup> *Id.* § 47.

<sup>29</sup> Indian Evidence Act, 1872, § 65B.

<sup>30</sup> *Id.* § 65B(4).

<sup>31</sup> *Anvar P.V. v. P.K. Basheer*, (2014) 10 S.C.C. 473.

<sup>32</sup> *Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal*, (2020) 7 S.C.C. 1.

<sup>33</sup> Gary B. Born, *International Commercial Arbitration* 3521–29 (3d ed. 2021).

Ltd., the Supreme Court reiterated that enforcement proceedings under the Arbitration and Conciliation Act are intended to function summarily and that courts should avoid extensive review of the merits of the award.<sup>34</sup> Similarly, in *Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc.*, commonly referred to as the BALCO judgment, the Supreme Court emphasised India's pro-arbitration approach and recognised the importance of aligning domestic arbitration law with international commercial standards.<sup>35</sup> Nevertheless, the strict evidentiary framework governing electronic records often transforms summary enforcement proceedings into detailed evidentiary inquiries resembling full-scale trials.

The judiciary has also recognised the increasing role of technology in legal proceedings. In *State of Maharashtra v. Dr. Praful B. Desai*, the Supreme Court upheld the validity of video conferencing and observed that technological developments should be accommodated within legal procedures.<sup>36</sup> Despite such judicial recognition of digital processes, courts continue to adopt a cautious approach regarding admissibility and authentication of electronic evidence, particularly in arbitration enforcement matters.

The enforcement framework under Indian law therefore reflects a contradiction between the pro-enforcement philosophy of arbitration legislation and the procedural rigidity imposed by electronic evidence rules. While the Arbitration and Conciliation Act seeks to facilitate efficient enforcement of foreign arbitral awards, the strict certification requirements under Section 65B often create delays, technical objections, and procedural complications. This inconsistency undermines India's aspiration to emerge as a leading arbitration-friendly jurisdiction and highlights the urgent need for legislative clarification and procedural reform concerning electronic arbitral awards.

## 9. Evidentiary and Procedural Challenges

One of the most significant obstacles in the enforcement of foreign electronic arbitral awards in India arises from the evidentiary and procedural requirements governing electronic records. Although the Information Technology Act, 2000 grants legal recognition to electronic records and digital signatures, the admissibility of such records in judicial proceedings is subject to the strict requirements contained under Section 65B of the Indian Evidence Act, 1872, now

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<sup>34</sup> *Vedanta Ltd. v. Shenzhen Shandong Nuclear Power Construction Co. Ltd.*, (2020) 10 S.C.C.

<sup>35</sup> *Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc.*, (2012) 9 S.C.C. 552.

<sup>36</sup> *State of Maharashtra v. Dr. Praful B. Desai*, (2003) 4 S.C.C. 601.

substantially incorporated within the Bharatiya Sakshya Adhiniyam, 2023.<sup>37</sup> These evidentiary requirements create substantial procedural complications for parties seeking enforcement of electronic arbitral awards, particularly in cross-border arbitration disputes.

Section 65B was introduced to regulate the admissibility of electronic evidence and ensure the reliability and authenticity of digital records. Under Section 65B(1), any information contained in an electronic record may be treated as admissible evidence only if the conditions specified under the provision are satisfied.<sup>38</sup> Section 65B(2) further requires proof that the electronic device was operating properly, that the information was regularly stored or processed during ordinary activities, and that the electronic record was not altered or manipulated.<sup>39</sup> Most importantly, Section 65B(4) mandates the production of a certificate identifying the electronic record, describing the manner in which it was produced, providing particulars of the electronic device involved, and certifying the authenticity and integrity of the data.<sup>40</sup>

These statutory requirements become particularly burdensome in the context of foreign electronic arbitral awards. In international commercial arbitration, electronic awards may be generated through cloud-based systems, online arbitration platforms, encrypted digital communication systems, or foreign institutional servers located outside India. Consequently, obtaining the mandatory certificate from the person responsible for the operation or management of such systems becomes practically difficult. Foreign custodians may not be subject to Indian jurisdiction, and differences in technological infrastructure and legal standards may complicate compliance with Indian evidentiary requirements.<sup>41</sup>

The Supreme Court in *Anvar P.V. v. P.K. Basheer* clarified that electronic records are admissible only upon strict compliance with Section 65B certification requirements.<sup>42</sup> The Court rejected the earlier flexible approach adopted in certain decisions and held that secondary electronic evidence cannot be admitted without the mandatory certificate prescribed under Section 65B(4). This strict interpretation significantly increased the evidentiary burden on parties relying upon electronic documents. The position was reaffirmed in *Arjun Panditrao*

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<sup>37</sup> Information Technology Act, 2000, No. 21, Acts of Parliament, 2000 (India); Indian Evidence Act, 1872, No. 1, Acts of Parliament, 1872, § 65B (India); Bharatiya Sakshya Adhiniyam, 2023, No. 47, Acts of Parliament, 2023, §§ 61–63 (India).

<sup>38</sup> Indian Evidence Act, 1872, § 65B(1).

<sup>39</sup> *Id.* § 65B(2).

<sup>40</sup> *Id.* § 65B(4).

<sup>41</sup> Gary B. Born, *International Commercial Arbitration* 3521–29 (3d ed. 2021).

<sup>42</sup> *Anvar P.V. v. P.K. Basheer*, (2014) 10 S.C.C. 473.

Khotkar v. Kailash Kushanrao Gorantyal, where the Supreme Court emphasised that Section 65B certification is a mandatory condition for admissibility unless the original electronic device itself is produced before the court.<sup>43</sup>

The procedural complications created by Section 65B frequently transform arbitration enforcement proceedings into detailed evidentiary examinations. Enforcement proceedings under Sections 47 and 48 of the Arbitration and Conciliation Act, 1996 are intended to operate as summary proceedings with limited judicial interference.<sup>44</sup> However, when disputes arise regarding authenticity, integrity, or admissibility of electronic records, courts are compelled to undertake extensive scrutiny of technical evidence. Parties may be required to establish the chain of custody of electronic records, demonstrate protection against tampering, and provide expert testimony regarding digital signatures, metadata, server logs, encryption systems, or electronic transmission methods. Consequently, proceedings that were intended to ensure speedy enforcement often resemble full-scale trials.<sup>45</sup>

Another major procedural challenge concerns the concept of “original” electronic evidence. Section 47 of the Arbitration and Conciliation Act requires production of the original arbitral award or a duly authenticated copy for enforcement of foreign awards.<sup>46</sup> In the context of electronic arbitral awards, identifying an “original” document becomes legally complicated because digital files may exist simultaneously in identical electronic forms across multiple devices and servers. Indian law has not yet comprehensively clarified how electronically signed awards, digitally transmitted copies, or cloud-stored arbitration records should satisfy statutory requirements relating to original documents and authentication.<sup>47</sup>

Judicial inconsistency further complicates the procedural landscape. While some courts adopt a strict interpretation of Section 65B, others have occasionally permitted substantial compliance where rigid adherence would defeat the interests of justice. In *State of Maharashtra v. Dr. Praful B. Desai*, the Supreme Court acknowledged the importance of accommodating technological developments within legal procedures by recognising the validity of video conferencing.<sup>48</sup> Nevertheless, courts continue to exercise caution while dealing with

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<sup>43</sup> Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal, (2020) 7 S.C.C. 1.

<sup>44</sup> Arbitration and Conciliation Act, 1996, No. 26, Acts of Parliament, 1996, §§ 47–48 (India).

<sup>45</sup> Fali S. Nariman, *Harmony Amidst Disharmony: The Indian Approach to Arbitration* 214–20 (2019).

<sup>46</sup> Arbitration and Conciliation Act, 1996, § 47.

<sup>47</sup> Sumeet Kachwaha, *Electronic Evidence in Arbitration Proceedings: Challenges and Reform*, 8 *Indian J. Arb. L.* 67, 74–81 (2021).

<sup>48</sup> *State of Maharashtra v. Dr. Praful B. Desai*, (2003) 4 S.C.C. 601.

electronically generated evidence, particularly in international arbitration matters involving foreign parties and digital records.

The judiciary also faces institutional challenges in dealing with technologically sophisticated evidence. Judges often require specialised understanding of digital systems, cybersecurity measures, blockchain authentication, metadata analysis, and electronic communication technologies. Limited technical expertise and inadequate digital infrastructure within judicial institutions contribute to procedural delays and inconsistent interpretation of electronic evidence rules. These institutional limitations weaken the efficiency and predictability of arbitration enforcement proceedings.<sup>49</sup>

Therefore, the evidentiary and procedural challenges surrounding electronic arbitral awards reveal a significant contradiction within India's legal framework. While the law formally recognises electronic records and digital signatures, the rigid procedural requirements governing admissibility often obstruct efficient enforcement. The strict statutory framework under Section 65B, combined with institutional and technological limitations, undermines the pro-enforcement philosophy of arbitration law and highlights the urgent need for legislative reform and procedural modernisation.

## **10. Comparative International Position**

The enforcement of electronic arbitral awards has gained increasing importance within international commercial arbitration due to the rapid expansion of digital technologies and online dispute resolution mechanisms. Several jurisdictions have modernised their legal frameworks to accommodate electronic evidence and digitally authenticated arbitral awards with minimal procedural barriers. International instruments such as the Convention on the Recognition and Enforcement of Foreign Arbitral Awards and the UNCITRAL Model Law on International Commercial Arbitration encourage a pro-enforcement approach that prioritises efficiency, party autonomy, and minimal judicial interference.<sup>50</sup> In comparison, India's evidentiary framework under Section 65B creates comparatively rigid procedural barriers that often complicate enforcement of foreign electronic arbitral awards.

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<sup>49</sup> Nigel Blackaby et al., *Redfern and Hunter on International Arbitration* 645–50 (7th ed. 2022).

<sup>50</sup> Convention on the Recognition and Enforcement of Foreign Arbitral Awards, June 10, 1958, 330 U.N.T.S. 3; UNCITRAL Model Law on International Commercial Arbitration art. 35, U.N. Doc. A/40/17 (1985), amended in 2006.

Singapore is widely regarded as one of the most arbitration-friendly jurisdictions in the world due to its technologically adaptive legal framework and efficient judicial system. The Singapore International Arbitration Act incorporates the UNCITRAL Model Law and permits extensive use of electronic communication and digital documentation in arbitral proceedings. Singaporean courts generally adopt a pragmatic approach toward electronic evidence by focusing on authenticity and reliability rather than strict procedural formalities. Electronic records are admissible if their integrity can reasonably be established, and courts avoid unnecessary technical objections that may delay enforcement proceedings. Institutions such as the Singapore International Arbitration Centre actively support electronic filings, virtual hearings, and digitally signed awards, thereby facilitating efficient enforcement of electronic arbitral awards.<sup>51</sup>

Similarly, the United Kingdom has adopted a technologically progressive approach toward arbitration and electronic evidence. The Arbitration Act 1996 recognises party autonomy and procedural flexibility as central principles of arbitration. English courts generally avoid imposing rigid evidentiary requirements for electronic documents and instead assess the overall reliability and authenticity of electronic records. The United Kingdom also recognises electronic signatures and digitally transmitted documents under the Electronic Communications Act 2000. Consequently, enforcement proceedings involving electronic arbitral awards are conducted with greater procedural efficiency and reduced technical barriers compared to the Indian framework.<sup>52</sup>

The United States likewise demonstrates a flexible approach toward electronic evidence in arbitration proceedings. Under the Federal Arbitration Act and the Federal Rules of Evidence, electronic records are generally admissible upon demonstration of authenticity through reasonable evidentiary standards rather than mandatory certification formalities equivalent to Section 65B. American courts often permit electronic authentication through metadata, system logs, digital signatures, witness testimony, or circumstantial evidence. This flexible approach reduces procedural delays and supports the rapid enforcement of electronic arbitral awards in cross-border commercial disputes.<sup>53</sup>

International arbitration institutions have also increasingly embraced technological integration.

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<sup>51</sup> Nigel Blackaby et al., *Redfern and Hunter on International Arbitration* 645–50 (7th ed. 2022).

<sup>52</sup> Arbitration Act 1996, c. 23 (U.K.); Electronic Communications Act 2000, c. 7 (U.K.).

<sup>53</sup> Federal Arbitration Act, 9 U.S.C. §§ 1–16; Fed. R. Evid. 901.

Institutions such as the International Chamber of Commerce, the London Court of International Arbitration, and the Singapore International Arbitration Centre permit electronic filing of pleadings, online document submission, virtual hearings, and electronic transmission of awards. Following the COVID-19 pandemic, online arbitration and digital case management systems became standard practice across many international arbitration centres. The UNCITRAL Technical Notes on Online Dispute Resolution further encourage member states to develop legal frameworks capable of accommodating digital arbitration processes and electronic evidence efficiently.<sup>54</sup>

In contrast, India continues to maintain comparatively strict evidentiary requirements through Section 65B. The mandatory certification requirement frequently creates procedural hurdles for parties seeking enforcement of foreign electronic arbitral awards. Unlike jurisdictions such as Singapore or the United Kingdom, Indian courts often prioritise procedural compliance over practical commercial considerations. This rigid approach can delay enforcement proceedings, increase litigation costs, and undermine the efficiency traditionally associated with arbitration. The requirement of obtaining certificates from foreign custodians or overseas digital service providers further complicates enforcement of electronically generated awards in international commercial disputes.<sup>55</sup>

The divergence between India and leading arbitration jurisdictions also affects investor confidence and India's reputation as a preferred arbitration seat. International commercial parties generally favour jurisdictions that ensure predictability, efficiency, technological adaptability, and minimal judicial interference. Excessive procedural rigidity concerning electronic evidence may discourage foreign investors from selecting India as a seat for arbitration or as a jurisdiction for enforcement of awards.

Comparative international practice therefore demonstrates that successful arbitration regimes balance evidentiary integrity with procedural efficiency. Jurisdictions that adopt technologically adaptive frameworks and flexible evidentiary standards are better equipped to facilitate enforcement of electronic arbitral awards in the digital age. India's current framework, although recognising electronic records in principle, remains constrained by procedural formalism and legislative ambiguity. Aligning Indian arbitration law with evolving

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<sup>54</sup> UNCITRAL Technical Notes on Online Dispute Resolution, U.N. Doc. A/CN.9/888 (2016).

<sup>55</sup> Gary B. Born, *International Commercial Arbitration* 3521–29 (3d ed. 2021).

international standards would require statutory clarification, simplified authentication mechanisms, judicial training in digital evidence, and greater integration of technology within arbitration enforcement procedures. Such reforms would strengthen India's position within the global arbitration ecosystem and promote its emergence as a modern arbitration-friendly jurisdiction.

## 11. Judicial Trends and Case Analysis

Indian courts have exhibited varied approaches in interpreting Section 65B concerning electronic arbitral awards and electronic evidence generally. Some courts adopt a strict literal interpretation, insisting upon complete compliance with certification formalities, while others have demonstrated judicial flexibility by accepting substantial compliance or alternative methods of proving authenticity.<sup>56</sup> This inconsistency has created uncertainty regarding admissibility of electronic records and has contributed to delays in enforcement proceedings involving foreign electronic arbitral awards.

The judicial approach toward electronic evidence underwent a significant transformation through the decision of the Supreme Court in *Anvar P.V. v. P.K. Basheer*.<sup>57</sup> In this case, the Court held that electronic records are admissible only upon strict compliance with the requirements prescribed under Section 65B of the Indian Evidence Act, 1872.<sup>58</sup> The Court clarified that secondary electronic evidence cannot be admitted unless accompanied by the mandatory certificate under Section 65B(4). By rejecting the earlier flexible approach adopted in previous decisions, the judgment established a stricter evidentiary standard for electronic records. Although the ruling strengthened safeguards against manipulation and tampering of electronic evidence, it simultaneously imposed substantial procedural burdens upon parties relying on digital records.

The strict interpretation adopted in *Anvar P.V.* was reaffirmed and elaborated in *Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal*.<sup>59</sup> The Supreme Court held that Section 65B certification constitutes a mandatory precondition for admissibility unless the original

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<sup>56</sup> Sumeet Kachwaha, *Electronic Evidence in Arbitration Proceedings: Challenges and Reform*, 8 *Indian J. Arb. L.* 67, 74–81 (2021).

<sup>57</sup> *Anvar P.V. v. P.K. Basheer*, (2014) 10 S.C.C. 473.

<sup>58</sup> Indian Evidence Act, 1872, No. 1, Acts of Parliament, 1872, § 65B (India); Bharatiya Sakshya Adhiniyam, 2023, No. 47, Acts of Parliament, 2023, §§ 61–63 (India).

<sup>59</sup> *Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal*, (2020) 7 S.C.C. 1.

electronic device itself is produced before the court. The judgment clarified procedural ambiguities that had emerged after earlier conflicting decisions and reaffirmed the importance of evidentiary authenticity in relation to electronic records. However, the decision also intensified concerns regarding practical difficulties in obtaining certificates for electronically generated documents, particularly in cross-border arbitration disputes involving foreign custodians or overseas digital platforms.

At the same time, certain judicial decisions reflect a more technologically adaptive approach. In *State of Maharashtra v. Dr. Praful B. Desai*, the Supreme Court recognised the validity of video conferencing in judicial proceedings and observed that technological developments must be accommodated within evolving legal procedures.<sup>60</sup> The judgment reflected judicial willingness to interpret procedural law in light of technological advancements and practical necessities. Nevertheless, despite recognising technological integration, courts have generally continued to apply strict standards regarding admissibility and authentication of electronic evidence.

The judiciary has also consistently emphasised the pro-enforcement philosophy underlying arbitration law. In *Vedanta Ltd. v. Shenzhen Shandong Nuclear Power Construction Co. Ltd.*, the Supreme Court reiterated that enforcement proceedings under the Arbitration and Conciliation Act, 1996 are intended to function summarily with minimal judicial interference.<sup>61</sup> Similarly, in *Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc.*, commonly known as the BALCO judgment, the Court highlighted the necessity of aligning Indian arbitration law with international commercial standards and promoting India as an arbitration-friendly jurisdiction.<sup>62</sup> However, despite these pro-arbitration principles, strict evidentiary requirements governing electronic records often result in extensive judicial scrutiny, thereby undermining the efficiency of enforcement proceedings.

Judicial inconsistency becomes particularly problematic in matters involving foreign electronic arbitral awards. Some courts prioritise procedural compliance with Section 65B, even where electronic evidence appears reliable and authentic, while others have occasionally permitted flexibility to avoid injustice or procedural hardship. The absence of uniform judicial standards concerning electronically signed awards, cloud-based records, encrypted communications, and

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<sup>60</sup> *State of Maharashtra v. Dr. Praful B. Desai*, (2003) 4 S.C.C. 601.

<sup>61</sup> *Vedanta Ltd. v. Shenzhen Shandong Nuclear Power Construction Co. Ltd.*, (2020) 10 S.C.C.1.

<sup>62</sup> *Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc.*, (2012) 9 S.C.C. 552.

digitally transmitted arbitral documents creates unpredictability in enforcement outcomes. This uncertainty increases litigation costs and affects the confidence of international commercial parties seeking enforcement of arbitral awards in India.<sup>63</sup>

The judicial trend therefore reflects a continuing tension between two competing objectives: ensuring evidentiary integrity and facilitating efficient enforcement of arbitral awards. While courts seek to prevent tampering and ensure reliability of electronic evidence, excessive procedural rigidity may obstruct the pro-enforcement framework envisaged under arbitration law. Consequently, the existing judicial approach highlights the urgent need for clearer legislative guidance, specialised judicial training, and procedural reforms capable of harmonising technological realities with the objectives of modern international arbitration.

## 12. Need for Reform and Policy Recommendations

The existing legal framework governing enforcement of foreign electronic arbitral awards in India reveals a significant contradiction between the legislative recognition of electronic records and the stringent procedural requirements governing their admissibility. While the Information Technology Act, 2000 promotes legal recognition of electronic records and digital signatures, the strict certification requirements under Section 65B of the Indian Evidence Act, 1872 and the corresponding provisions of the Bharatiya Sakshya Adhiniyam, 2023 continue to create procedural obstacles in enforcement proceedings.<sup>64</sup> Consequently, there is an urgent need for legislative and institutional reforms capable of reconciling evidentiary integrity with the efficiency objectives underlying modern arbitration law.

One of the most significant reforms required concerns clarification and simplification of Section 65B certification requirements. The present framework imposes mandatory procedural conditions that are often difficult to satisfy in cases involving foreign electronic arbitral awards, particularly where electronic records are maintained on overseas servers or managed by foreign custodians. Legislative amendments could therefore introduce more flexible evidentiary standards for international arbitration matters by permitting presumptions of authenticity for electronic records certified under recognised foreign legal regimes or by accredited arbitration

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<sup>63</sup> Gary B. Born, *International Commercial Arbitration* 3521–29 (3d ed. 2021).

<sup>64</sup> Information Technology Act, 2000, No. 21, Acts of Parliament, 2000 (India); Indian Evidence Act, 1872, No. 1, Acts of Parliament, 1872, § 65B (India); Bharatiya Sakshya Adhiniyam, 2023, No. 47, Acts of Parliament, 2023, §§ 61–63 (India).

institutions.<sup>65</sup> Such reforms would reduce unnecessary procedural barriers while continuing to preserve safeguards against tampering and manipulation of digital evidence.

Another important reform involves establishing specialised procedural rules for arbitration-related electronic evidence under the Arbitration and Conciliation Act, 1996. At present, Indian arbitration law does not expressly address electronically signed awards, cloud-based arbitration records, digital transmission of awards, or online dispute resolution mechanisms.<sup>66</sup> The introduction of specific procedural provisions governing authentication, storage, and transmission of electronic arbitral awards would enhance certainty and reduce litigation concerning technical admissibility issues. Streamlined procedures for electronic filing, digital verification, and recognition of electronic signatures would further improve efficiency within arbitration enforcement proceedings.

Judicial and institutional capacity building also remains essential for effective implementation of electronic evidence rules. Courts increasingly encounter technologically sophisticated disputes involving digital signatures, metadata analysis, cybersecurity systems, blockchain authentication, cloud storage infrastructure, and encrypted communication platforms. However, limited technical expertise among judicial officers often contributes to inconsistent interpretation and procedural delays. Regular judicial training programmes concerning digital evidence, cybersecurity principles, and emerging technologies would therefore improve consistency and efficiency in adjudication of electronic evidence disputes.<sup>67</sup> Establishing specialised benches or technical support mechanisms for technologically complex arbitration matters may further strengthen judicial capacity.

Policy reforms should additionally focus on balancing evidentiary safeguards with procedural efficiency. Excessive procedural rigidity may undermine the pro-enforcement philosophy recognised under international arbitration law and discourage foreign investors from selecting India as a preferred arbitration jurisdiction. The judiciary and legislature must therefore adopt a commercially pragmatic approach that prioritises reliability and authenticity of electronic records rather than rigid technical formalities. International arbitration jurisdictions such as Singapore and the United Kingdom demonstrate that technologically adaptive frameworks can

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<sup>65</sup> Gary B. Born, *International Commercial Arbitration* 3521–29 (3d ed. 2021).

<sup>66</sup> Arbitration and Conciliation Act, 1996, No. 26, Acts of Parliament, 1996 (India).

<sup>67</sup> Nigel Blackaby et al., *Redfern and Hunter on International Arbitration* 645–50 (7th ed. 2022).

maintain evidentiary integrity while ensuring efficient enforcement of arbitral awards.<sup>68</sup>

Technological integration within the evidentiary framework also offers significant opportunities for reform. The use of digital forensics, blockchain verification systems, secure digital signatures, and tamper-resistant electronic storage mechanisms may strengthen reliability and authenticity of electronic records. Blockchain-based authentication systems, in particular, provide immutable records capable of reducing disputes concerning tampering or alteration of electronic evidence. Recognition of such technological mechanisms within statutory and procedural frameworks would modernise India's arbitration regime and improve confidence in electronic dispute resolution processes.<sup>69</sup>

International legal developments further indicate the necessity of harmonising Indian law with evolving global arbitration standards. Instruments such as the Convention on the Recognition and Enforcement of Foreign Arbitral Awards and the UNCITRAL Model Law encourage minimal procedural barriers and efficient enforcement of arbitral awards. Aligning Indian law with these standards through simplified authentication mechanisms and technologically adaptive procedures would strengthen India's credibility within the global arbitration ecosystem.

Therefore, meaningful reform requires a combination of legislative amendment, judicial modernisation, institutional capacity building, and technological integration. Such reforms would reduce procedural delays, minimise evidentiary uncertainty, and facilitate efficient enforcement of foreign electronic arbitral awards. More importantly, they would strengthen India's position as a modern and arbitration-friendly jurisdiction capable of accommodating the realities of digital commerce and technologically driven dispute resolution.

### **13. Conclusion**

The enforcement of foreign electronic arbitral awards in India is marked by a complex interplay between progressive recognition under the IT Act and stringent evidentiary demands of Section 65B of the Indian Evidence Act. This paradox hampers the swift and efficient enforcement envisioned by the Arbitration and Conciliation Act, leading to procedural delays and increased litigation costs. Judicial inconsistency further complicates the landscape. Comparative

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<sup>68</sup> Arbitration Act 1996, c. 23 (U.K.); Singapore International Arbitration Act, ch. 143A (Sing.).

<sup>69</sup> UNCITRAL Technical Notes on Online Dispute Resolution, U.N. Doc. A/CN.9/888 (2016).

international practices and technological advancements highlight the need for India to modernize its evidentiary framework. Legislative reforms, capacity building, and procedural innovations are imperative to balance evidentiary integrity with enforcement efficiency, thereby strengthening India's position in the global arbitration ecosystem.