

**WORKSHOP - II**

Paper Presentation on  
**RECORDING OF EVIDENCE**

By

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## **RECORDING OF EVIDENCE**

The recording of evidence of a witness in his chief-examination shall be by affidavit of the said witness and a copy of it shall be furnished to the opposite party. When documents are filed in Court along with the affidavit, the relevancy and admissibility of such documents has to be determined by court. The cross-examination can be done in the presence of Presiding Officer of the Court or get it recorded by a Commissioner to be appointed by court out of panel of Commissioners prepared by the district court or the High Court. The remuneration to be given to Commissioner for this purpose can be fixed by the Court. The court can appoint a commissioner for examination of witness residing within the local limits of his jurisdiction (Vide Section 29 of Amendment Act 46 of 1999). During the examination of witnesses, the court receives objections as to a question as leading, irrelevant, inadmissible, etc., Many a time, the court also is confronted with objection about admissibility of documents on the grounds of non-registration, unstamped or under-stamped, unproved, exhibited without proper foundation, unattested, etc. The court is expected to hear both sides in such a case, and shall overrule or sustain objections by giving reasons, either in the deposition or by a separate order. The circular issued by A.P. High Court shows that all objections shall be answered by the court and that the Court shall not record evidence or exhibit documents "subject to objection to be decided at the time of disposal of the suit". In practice for a variety of reasons, the courts have been recording evidence and exhibiting documents subject to objection and deciding them at the time of disposal of the case. It is not uncommon for an advocate to request the court to record the evidence or exhibit the document, subject to the objection. Vigilance is required of the Judges while admitting a document and marking the same as exhibit. Usually the Judges believe the Advocates and when the other side is even absent, Judges often in good faith take up evidence and keep the same for cross examination. In such evidence when the adversary is absent, the lawyer gets all the inadmissible documents marked, and once

the inadmissible document is marked as exhibit, it becomes a valid document in law. Such ingenious acts jeopardises the judicial work, and no higher court is prepared to accept that the document being inadmissible have even inadvertently marked to be strike out. It is good if Judges are very careful in such adventures, and is advisable (with great respect) that Judges should not make document in the absence of the other side advocate. It is respectfully submitted that the law should be amended to make such documents withstand the test of admissibility even they are marked in quixotic manner. The court also has power to record the demeanour of the witness. But courts do not usually record it unless it finds it necessary to record the demeanour. Either side's counsel may also request the court to record the demeanor of a witness. If the court is satisfied, it may record the demeanour of the witness in the deposition itself. A party may pray for recall an already examined witness for further examination or further re-examination. The court may entertain such a request in appropriate cases. That apart, the court may suo motu recall any witness at anytime to question him further. Apart from the chief examination, cross examination and re-examination, the court may examine the witness at any time, putting any question to the witness, whether such a question is relevant or not and admissible or not. The power of the court thus is extensive in respect of examination of witnesses, for otherwise the Judge has right to put question at any time during the deposition of a witness, for the law recognises him not as a mute spectator but to be actually in the arena.

#### **RECENT TRENDS OF RECORDING EVIDENCE AND ITS ADMISSIBILITY:**

New technology and the evolution of communications systems have substantially transformed the process of exchanging information. Our country that regulates evidence, electronic evidence, the admissibility of evidence or the admissibility of electronic evidence.

It is not out of place to mull over the advantages and inconveniences in the process of electronic evidence. Advantages can be classified as 1. Information: exact, complete, clear, precise, true, objective, novel and neutral.

2. Proof: solid, useful, reliable, viable, essential, to prove certain crimes that previously Couldn't be proven. 3. Easy: collection, use, safekeeping and Storage. 4. Electronic documents, together with Electronic signatures, facilitate electronic Commerce making it faster and more secure. Inconveniences are such as :scant/lack of suitable and systematic regulation; scant jurisprudence; unknown and very technical material; few Experts; demands specific knowledge; difficult to present at court in an understandable manner; harder to be accepted at court: judges ask for more guarantees than with other evidence; lack of technical infrastructure in judicial departments; high cost of examining and interpreting the information; hard to know how to process the data and how to interpret specific processing laws; difficult to prove authenticity, reliability and origin of data; volatility of data and ease of manipulation; hard to identify perpetrator of the crime; difficult to conserve, preserve and store; hard to establish legal value of evidence and lack of legal support and certification etc. But, there is no dubiety to say that the information technology is a great tool for speedy justice.

The various categories of electronic evidence such as website data, social network communication, e-mail, SMS/MMS and computer generated documents poses unique problem and challenges for proper authentication and subject to a different set of views. Source and authenticity are the two key factors for electronic evidence.

#### **Definition of 'evidence':-**

The definition of 'evidence' (Section 3 of the Indian Evidence Act,1872) has been amended to include electronic records. The term 'electronic records' has been given the same meaning as that assigned to it under the IT Act. The definition of 'admission' (Section 17 of the Evidence Act) has been changed to include a statement in oral, documentary or electronic form which suggests an inference to any fact at issue or of relevance. New Section 22-A has been inserted into Evidence Act, to provide for the relevancy of oral evidence regarding the contents of electronic records. New sections 65-A and 65-B are introduced to the Evidence Act, under the Second Schedule to the IT Act.

## 1. ADMISSIBILITY OF INTERVIEWS AS EVIDENCE:

”All digital evidence presents the possibility of alteration or fabrication. From an evidentiary standpoint, a traditional authentication foundation, however minimal, likely will suffice for admissibility. (See generally Fredric Lederer, *The New Courtroom: the Intersection of Evidence and Technology: Some Thoughts On the Evidentiary Aspects of Technologically Produced or Presented Evidence*, 28 S.W.U.L. REV. 389 (1999).)”

Interpreting Section 273 of the Criminal Procedure Code in the light of technological advancements, in several recent rulings, our superior courts held that recording of evidence through video conferencing would be perfectly legal. (Ref: *State of Maharashtra vs. Dr. Praful B.Desai*, 2003 (2) ALT (CrL.) 118 (SC)). The amendments carried to the Evidence Act by introduction of Sections 65-A and 65-B are in relation to the electronic record. Section 67-A and 73-A were introduced as regards proof and verification of digital signatures. As regards presumption to be drawn about such records, Sections 85-A, 85-B, 85-C, 88-A, and 90-A were added. These provisions are referred only to demonstrate that the emphasis, at present, is to recognize the electronic records and digital signatures, as admissible pieces of evidence. See: *Bodala Murali Krishna vs Smt. Bodala Prathima*, 2007 (2) ALD 72.

Curiously enough, in *Jagjit singh vs. State of Haryana* ((2006) 11 SCC 1), the Hon’ble Apex Court considered the digital evidence in the form of interview transcripts from the Zee News television channel, the Aaj Tak television channel and the Haryana News of Punjab Today television channel and determined that the electronic evidence placed on record was admissible and upheld the reliance placed by the speaker on the recorded interview when reaching the conclusion that the voices recorded on the CD were those of the persons taking action.

**Admissibility of email:-** In *Abdul Rahaman Kunji Vs. The State of West Bengal*, [MANU/WB/0828/2014], the Hon’ble High Court of Calcutta while deciding the admissibility of email held that an email downloaded and printed from the email account

of the person can be proved by virtue of Section 65B r/w Section 88A of Evidence Act. The testimony of the witness to carry out such procedure to download and print the same is sufficient to prove the electronic communication.

**An electronic record by way of secondary evidence shall not be admitted in evidence:**

Their Lordships observed, inter alia, that an electronic record by way of secondary evidence shall not be admitted in evidence unless the requirements under section 65-B are satisfied. See:- Anvar P.V. v. P.K. Basheer & Others, [MANU/SC/0834/2014]. In the case of CD, VCD, chip, etc., the same shall be accompanied by the certificate in terms of section 65-B obtained at the time of taking evidence, without which, the secondary evidence pertaining to that electronic record, is not admissible.

**Cell-phone recording – Evidentiary Value:-**

In State (NCT of Delhi) v. Navjot Sandhu @ Afsan Guru: (2005) 11 SCC 600, the Apex Court while considering the print out of the computerised records of the calls pertaining to the cell phones in view of the production of electronic record held as follows: “150. xxx irrespective of the compliance with the requirement of section 65-B, which is a provision dealing with admissibility of the electronic records, there is no bar to adducing secondary evidence under the other provisions of the Evidence Act, namely, sections 63 & 65. It may be that the certificate containing the details in Sub-section (4) of section 65-B is not filed in the instance case, but that does not mean that secondary evidence cannot be given even if the law permits such evidence to be given in the circumstances mentioned in the relevant provisions, namely, sections 63 & 65.”

**Admissibility of Telephone call in a CD and CDR:-**

In Jagdeo Singh Vs. The State and Ors, MANU/DE/0376/2015, the Hon’ble High Court of Delhi, while dealing with the admissibility of intercepted telephone call in a CD and CDR which were without a certificate u/s 65B Evidence Act, the court observed that the secondary electronic evidence without certificate u/s 65B Evidence Act is inadmissible and cannot be looked into by the court for any purpose whatsoever.

**Interview telecast-ed on Doordashan:-**

In Sharad Yadav and Ors. Vs. Union of India (UOI) and Anr, 1999 VIAD Delhi 821, 82 (1999) DLT 13, 1999 (51) DRJ 371, Shri Sharad Yadav in an interview recorded in Hindi, had admitted having received a sum of Rs. 3 lac from one Jain and the said interview was telecasted on Doordarshan after due editing. Hindi version of said interview has been produced before the Court, which is as under :

“MUJHE CHMMAN BHAI PATEL KE SAATH EK JAIN AIYA THA USNE TEEN LAKH RUPEEYE DIYE HAIN AUR WOH TEEN LAKH RUPEEYE JO CHANDE KE AIYE HAIN WOH MAIN NE KISKO DIYE HAIN PARTY KI TARAF SE WOH BHI LIKHA HUWA HAL”

In this case, it was observed that tested on the touchstone of the principles of law enunciated by their Lordships of the Privy Council and the Supreme Court, the aforesaid video recorded interviews of Shri Sharad Yadav do not amount to confessions and cannot, therefore, be used to complete the offence, with which Shri Sharad Yadav was charged. In this case, considering the dicta observed in in R. v. Pearce, (1979) 69 Cr. App. R. 365 at page 369, Palvinder Kaur v. State of Punjab, AIR 1954 SC 354;Om Prakash vs. State of U.P. and C.B.I v. V.C. Shukla and Ors, it was observed that ”it would be unfair to admit only the statements against interest while excluding part of the same interview or series of interviews.” See also:- Mohd. Afzal Vs. State Citation: MANU/DE/1132/2009 or The Paliament Attack Case.

**Sajidbeg Asifbeg Mirza Vs. State of Gujarat**

In this case, the Hon’ble Gujaath High Court observed :- We are of the view that the talk which Afzal had with the TV and press reporters admittedly in the immediate presence of the police and while he was in police custody, should not be relied upon irrespective of the fact whether the statement was made to a police officer within the meaning of Section 162 CrPC or not. We are not prepared to attach any weight or credibility to the statements

made in the course of such interview prearranged by the police. The police officials in their over-zealousness arranged for a media interview which has evoked serious comments from the counsel about the manner in which publicity was sought to be given thereby. Incidentally, we may mention that PW 60 the DCP, who was supervising the investigation, surprisingly expressed his ignorance about the media interview. We think that the wrong step taken by the police should not ensure to the benefit or detriment of either the prosecution or the accused.

## **2. MODE OF TREATING AND RECORDING EVIDENCE, INCLUDING RECORDING OF EVIDENCE THROUGH VIDEO CONFERENCING:-**

Electronic record is documentary evidence under section 3 of the Evidence Act. Taking and recording evidence would assume great significance in administration of justice. Electronic record is documentary evidence under section 3 of the Evidence Act. An electronic record may be like computer print out, Compact Disc (CD), Video Compact Disc (VCD), Pen drive, Chip etc. As was observed in *Bodala Murali Krishna vs Smt. Bodala Prathima*, 2007 (2) ALD 72 = 2007 (1) ALT 237. Examination of witnesses in criminal cases, through video conferencing was approved by the Supreme Court in a judgment reported in *State of Maharashtra vs. Dr. Praful B.Desai*, 2003 (2) ALT (CrI.) 118 (SC).

### **Section 273 of Cr.P.C:-**

Section 273 of Cr.P.C says that "evidence to be taken in presence of accused". Now, a doubt arises in our mind whether evidence can be taken through video conferencing in the absence of accused. Now, the law is settled. Section 273 of Cr.P.C contemplates constructive presence. Indeed, actual physical presence of accused is not a must. This indicates that the term "presence", as used in section 273 of Cr.P.C is not incorporated in the sense of actual physical presence. Under section 3 of Indian Evidence Act, "Evidence" can be both oral and documentary and electronic form.

### **Presentation of software in Court :-**

Curiously enough, in-court electronic presentation of information is a skill that many lawyers have not yet acquired. Therefore, knowledge on computer side is essential for both judicial officers and lawyers. I suggest the following methods which are useful for presentation electronic evidence in court-room.

1. Microsoft's Power Point and competing "slideshow" products can be used to present a wide variety of digital information. In our 2003, this process was permitted in experimental terrorist case, United States v. Stanhope, FTI Consulting, Inc.,
2. Sanction, Trial Director, and Trial Pro are some of the major multifaceted presentation programs with significant trial capabilities. This type technology is being used in United States.

### **How to record evidence through Audio-Video Linkage:-**

In Twentieth Century Fox Film Corporation vs. NRI Film Production Associates (P) Ltd, (AIR 2003 KANT 148) In this case certain conditions have been laid down for video-recording of evidence:

1. Before a witness is examined in terms of the Audio-Video Link, witness is to file an affidavit or an undertaking duly verified before a notary or a Judge that the person who is shown as the witness is the same person as who is going to depose on the screen. A copy is to be made available to the other side. (Identification Affidavit).
2. The person who examines the witness on the screen is also to file an affidavit/undertaking before examining the witness with a copy to the other side with regard to identification.
3. The witness has to be examined during working hours of Indian Courts. Oath is to be administered through the media.
4. The witness should not plead any inconvenience on account of time difference between India and USA.
5. Before examination of the witness, a set of plaint, written statement and other

documents must be sent to the witness so that the witness has acquaintance with the documents and an acknowledgement is to be filed before the Court in this regard.

6. Learned Judge is to record such remarks as is material regarding the demur of the witness while on the screen.

7. Learned Judge must note the objections raised during recording of witness and to decide the same at the time of arguments.

8. After recording the evidence, the same is to be sent to the witness and his signature is to be obtained in the presence of a Notary Public and thereafter it forms part of the record of the suit proceedings.

9. The visual is to be recorded and the record would be at both ends. The witness also is to be alone at the time of visual conference and notary is to certificate to this effect.

10. The learned Judge may also impose such other conditions as are necessary in a given set of facts.

11. The expenses and the arrangements are to be borne by the applicant who wants this facility.

**Safeguards:- For recording evidence through audio-video link observing:-**

In 'Amitabh Bagchi Vs. Ena Bagchi', 2005 AIR (Calcutta) 11, while referring to State of Maharashtra Vs. Dr. Praful B. Desai's case (supra), the Court laid down various safeguards to be taken by the Court for the purpose of recording evidence through audio-video link observing:-

(1) Before action of the witness under Audio-Video Link starts the witness will have to file an affidavit or an undertaking duly verified before a Judge or a Magistrate or a Notary that the person who is shown as the witness is the same person as who is going to depose on the screen with a copy of such identification affidavit to the other side.

(2) The person who wishes to examine the witness on the screen will also file an affidavit or an undertaking in the similar manner before examining the witness with a copy of the other side with regard to identification before hand. (3) As soon as identification part is

complete, oath will be administered through the media as per the Oaths Act, 1969 of India.

(4) The witness will be examined during working hours of Indian Courts. Plea of any inconvenience on account of time difference between India and other country will not be allowed.

(5) The witness action, as far as practicable, be proceeded without any interruption without granting unnecessary adjournments. However, discretion of the Court or the Commissioner will be respected.

(6) Witness includes parties to the proceedings.

(7) In case of non-party witness, a set of plaint, written statement and/or other papers relating to proceeding and disclosed documents should be sent to the witness for his acquaintance and an acknowledgement in this regard will be filed before the Court.

(8) Court or Commissioner must record any remark as is material regarding the demur of the witness while on the screen and shall note the objections raised during recording of witness either manually or mechanically.

(9) Depositions of the witness either in the question answer form or in the narrative form will have to sign as early as possible before a Magistrate or Notary Public and thereafter it will form part of the record of the proceedings. (10) Mode of digital signature, if can be adopted in this process, such signature will be obtained immediately after day's deposition.

(11) The visual is to be recorded at both the ends. The witness alone can be present at the time of video conference, Magistrate and Notary is to certify to this effect.

(12) In case of perjury Court will be able to take cognizance not only about the witness gave evidence but who induced to give such evidence.

(13) The expenses and the arrangements are to be borne by the applicant who wants to this facility.

(14) Court is empowered to put condition/s necessary for the purpose."

### **3. TECHNOLOGICAL COURTS AND SPEEDY JUSTICE**

New technology will allow courts to better serve the public by protecting digital information.

In criminal matters, during the investigation, it is the police and the prosecutors who are responsible for guarding electronic evidence in criminal proceedings. During the trial stage, it is the court that is in charge of guarding this evidence. In civil matters, it is mainly the parties who keep the evidence that will be presented before the civil court when the latter so requires, both in the pre-trial phase and during the same.

#### **Key points for improving regulation and practice for speedy justice:-**

1. Judges are the key actors in admitting electronic evidence and police experts hold the main position in gathering evidence.
2. Legislation has the effect of positively influencing the perceptions of security held by different social agents.
3. Confidence in the experts related to the collection, analysis and conservation of electronic evidence.
4. Training, knowledge and experience are the necessary and indispensable elements that experts must satisfy.

Improvement in communication between the persons related to electronic evidence, at the national, Indian and international Level, is a unanimously prized and desired Asset. There must be an improvement for understanding between Judges and technicians.

#### **Improvements that are essential for speedy justice:-**

In India, in my view, the main tendency in electronics is actually found to be well regulated. However, judges, who are the ones that have to interpret the law because of a legal gap, are divided in their opinions according to their speciality, but the majority opinion favours those whose tend to think that the current legal situation is not the ideal

one and needs changes to adapt the laws to technological reality. For this, improvements for following areas are essential.

1. there must be simple rules/ procedure;
2. Standards for e-documents;
3. International Data regulation and International mutual assistance
4. regulating the use of digital signatures
5. collaboration between electronic service providers
6. improvement of data retention and evidence gathering
7. simple policy for security issues
8. privacy data protection.
9. adapt the law to reality
10. Preservation of records on E-Services

For speedy justice, electronic media is an effective tool in the judicial administration.

Video conferencing is a great tool that can be used to take evidences in all cases for speedy justice. It can be used in various situations both in civil and criminal matters.

### **APPRECIATION OF ELECTRONIC EVIDENCE**

01. The proliferation of computers, the social influence of information technology and the ability to store information in digital form have all required Indian law to be amended to include provisions on the appreciation of digital evidence. In 2000 Parliament enacted the Information Technology (IT) Act 2000, which amended the existing Indian statutes to allow for the admissibility of digital evidence.

02. The IT Act is based on the United Nations Commission on International Trade Law Model Law on Electronic Commerce and, together with providing amendments to the Indian Evidence Act 1872, the Indian Penal Code 1860 and the Banker's Book Evidence Act 1891. It recognizes transactions that are carried out through electronic data interchange and other means of electronic communication.

**02. Changes to Evidence Act :-**

Although the Evidence Act has been in force for many years, it has often been amended to acknowledge important developments. Amendments have been made to the Evidence Act to introduce the admissibility of both electronic records and paper-based documents.

**03. Evidence :-**

The definition of 'evidence' has been amended to include electronic records (Section 3(a) of the Evidence Act). Evidence can be in oral or documentary form. The definition of 'documentary evidence' has been amended to include all documents, including electronic records produced for inspection by the court. The term 'electronic records' has been given the same meaning as that assigned to it under the IT Act, which provides for "data, record or data generated, image or sound stored, received or sent in an electronic form or microfilm or computer generated microfiche."

**04. Admissions :-**

The definition of 'admission' (Section 17 of the Evidence Act) has been changed to include a statement in oral, documentary or electronic form which suggests an inference to any fact at issue or of relevance. Section 22A has been inserted into the Evidence Act to provide for the relevancy of oral evidence regarding the contents of electronic records. It provides that oral admissions regarding the contents of electronic records are not relevant unless the genuineness of electronic records produced is in question.

**05. Admissibility of Electronic Evidence :-**

New Sections 65A and 65B are introduced to the Evidence Act under the Second Schedule to the IT Act, 2000. Section 5 of the Evidence Act provides that evidence can be given regarding only facts that are at issue or of relevance. Section 136 empowers a judge to decide on the admissibility of the evidence. New provision Section 65A provides that the contents of electronic records may be proved in accordance with the provisions of Section 65B. Section 65B provides that notwithstanding anything contained in the Evidence Act, any information contained in an electronic record (i.e. the contents of a document or communication printed on paper that has been stored, recorded and copied in optical or

magnetic media produced by a computer ('computer output'), is deemed to be a document and is admissible in evidence without further proof of the original's production, provided that conditions set out in Section 65B (2) to (5) are satisfied.

**06. Conditions for the admissibility of electronic evidence :-**

Before a computer output is admissible in evidence, the following conditions as set out in Section 65(B)(2) must be fulfilled:

"(2) The conditions referred to in subsection (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 subsection (2) was regularly performed by computers, whether:

(a) by a combination of computers, operating over that period;

(b) by different computers operating in succession over that period;

(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."

**Section 65B(4)** provides that in order to satisfy the conditions set out above, a certificate of authenticity signed by a person occupying a responsible official position is required. Such certificate will be evidence of any matter stated in the certificate.

The certificate must :

- \* identify the electronic record containing the statement;
- \* describe the manner in which it was produced; and
- \* give such particular of any device involved in the production of the electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer. The certificate must also deal with any of the matters to which the conditions for admissibility relate.

#### **07. Presumptions Regarding Electronic Evidence :-**

A fact which is relevant and admissible need not be construed as a proven fact. The judge must appreciate the fact in order to conclude that it is a proven fact. The exception to this general rule is the existence of certain facts specified in the Evidence Act that can be presumed by the court. The Evidence Act has been amended to introduce various presumptions regarding digital evidence.

#### **08. Gazettes in electronic form :-**

Under the provisions of Section 81A of the Evidence Act, the court presumes the genuineness of electronic records purporting to be from the Official Gazette or any legally governed electronic record, provided that the electronic record is kept substantially in the form required by law and is produced from proper custody.

#### **09. Electronic agreements :-**

Section 84A of Evidence Act provides for presumption that a contract has been concluded where the parties digital signatures are affixed to an electronic record that purports to be an agreement.

#### **10. Secure electronic records and digital signatures :-**

Section 85B of the Evidence Act provides that where a security procedure has been applied to an electronic record at a specific time, the record is deemed to be a secure electronic record from such time until the time of verification. Unless the contrary is proved, the court is to presume that a secure electronic record has not been altered since obtaining secure status. The provisions relating to a secure digital signature are set out in Section 15 of the IT Act. A secure digital signature is a digital signature which, by application of a security procedure agreed by the parties at the time that it was affixed, is:

- \* unique to the subscriber affixing it;
- \* capable of identifying such subscriber, and
- \* created by a means under the exclusive control of the subscriber and linked to electronic record to which it relates in such a manner that if the electronic record is altered, digital

signature would be invalidated. It is presumed that by affixing a secure digital signature the subscriber intends to sign or approve the electronic record. In respect of digital signature certificate (Section 85-C of the Evidence Act), it is presumed that information listed in the certificate is correct, with exception of information specified as subscriber information that was not verified when the subscriber accepted the certificate.

#### 11. **Electronic messages :-**

Under the provisions of Section 88A, it is presumed that an electronic message forwarded by a sender through an electronic mail server to an addressee corresponds with the message fed into the sender's computer for transmission. However, there is no presumption regarding the person who sent the message. This provision presumes only the authenticity of the electronic message and not the sender of the message.

#### 12. **Five-year old electronic records :-**

The provisions of Section 90A of the Evidence Act make it clear that where an electronic record is produced from custody which the court considers to be proper and purports to be or is proved to be five years old, it may be presumed that the digital signature affixed to the document was affixed by the signatory or a person authorized on behalf of the signatory. An electronic record can be said to be in proper custody if it is in its natural place and under the care of the person under whom it would naturally be. At the same time, custody is not considered improper if the record is proved to have had a legitimate origin or the circumstances of the particular case are such as to render the origin probable. The same rule also applies to evidence presented in the form of an electronic copy of the Official Gazette.

#### **Latest case laws on Electronic Evidence :-**

1. It is held by Hon'ble Rajasthan High Court - in the case of **Paras Jain & Ors. -V/s.- State of Rajasthan, Decided**

**On: 4-7-2015.** that certificate as per Section 65B of Evidence Act can be produced at subsequent stage during the course of trial if it is not produced alongwith electronic record or alongwith charge-sheet in the Court.

2. It is held by Hon'ble Orisa High Court, in the case of **Pravata Kumar Tripathy -V/s.- Union of India (C.B.I.) 19(2015)CLT177, 2014(II)OLR941** - that, at the time of consideration of bail application, it is not at all necessary to ask prosecution to first satisfy the fulfillment of all the criteria laid down in the case of **Anvar P. V. -V/s.- P. K. Basheer** before taking into account Forensic Voice Examination Report as well as transcription of CD.

3. It is held by Hon'ble Bombay High Court, in the case of **Balasaheb Gurling Todkari And Ors. -Vs- The State of Maharashtra, 2015, ALLMR(Cri.)3464** - CDR Report and

Electronic Evidence is not admissible in evidence in absence of certificate as per Section 65-B of Evidence Act.

4. **K. Ramajayam @ Appu -V/s.- The Inspector of Police**, Dated 27-1-2016. In this case, Hon'ble Madras High Court has issued guidelines to Magistrate to follow the procedure when CCTV footage and video recording is produced by police at the time of filing charge-sheet. In this case, it is held by Madras High Court.

"During the hearing of the case, we noticed that the trial Court had not played the DVR (MO-2) and

seen the CCTV footages in the presence of the accused. In this regard we propose to dispel misgivings, if any, in the mind of trial Judges about their power to view such evidences. There will be instances where, by

the time the case comes up for trial in one court, the electronic record would have had a natural death for want of proper storage facilities in the Court property room. To obviate these difficulties, we direct that, on a petition filed by prosecution, the Judicial Magistrate, who receives the electronic record, may himself view it and take a back up, without disturbing the integrity of the source, in a CD or Pendrive or any other gadget, by drawing proceedings. The back up can be kept in safe custody by wrapping it in anti static cover and

should be sent to Sessions Court at the time of committal".

5. It is held by Hon'ble Supreme Court, in the case of **Anvar P. V. -V/s.- P. K. Basheer AIR, 2015 SC 180**, that an electronic record by way of secondary evidence shall not be admitted in evidence unless the requirements under Section 65B are satisfied. Thus, in the case of CD, VCD, chip, etc., the same shall be accompanied by certificate in terms of Section 65B obtained at the time of taking the document, without which, the secondary evidence pertaining to that electronic record, is inadmissible.

By

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