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Appreciation of Evidence including Evidence recorded through Electronic Media for Sessions Cases

by

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Law on Electronic Evidence

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. 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.

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.

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".

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 the electronic records produced is in question.

Statement as Part of Electronic Record

When any statement is part of an electronic record (Section 39 of the Evidence Act), the evidence of the electronic record must be given as the court considers it necessary in that particular case to

understand fully the nature and effect of the statement and the circumstances under which it was made. This provision deals with statements that form part of a longer statement, a conversation or part of an isolated document, or statements that are contained in a document that forms part of a book or series of letters or papers.

Admissibility of electronic evidence

New Sections 65A and 658 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 (ie, 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 the conditions set out in Section 65B(2) to (5) are satisfied.

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 particulars 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.

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.

Gazettes in electronic form

Under the provisions of Section 8lA 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.

Electronic agreements

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

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 the electronic record to which it relates in such a manner that if the electronic record as altered, the 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 certificates (Section 8Se of the Evidence Act), it is presumed that the information listed in the certificate is correct, with the exception of information specified as subscriber information that was not verified when the subscriber accepted the certificate.

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.

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.

Changes to Banker's Book Evidence Act

The definition of 'banker's book' has been amended to include the printout of data stored on a floppy disc or any other electro-magnetic device (Section 2(3)). Section 2A provides that the printout of an entry or a copy of a printout must be accompanied by a certificate stating that it is a printout of such entry or a copy of such printout by the principal accountant or branch manager, together with a certificate from a person in charge of the computer system, containing a brief description of the computer system and the particulars of its safeguards.

Changes to Penal Code

A number of offences were introduced under the provisions of the First Schedule of the IT Act, which amended the Penal Code with respect to offences for the production of documents that have been amended to include electronic records. The range of additional includes:

- absconding to avoid the production of a document or electronic record in a court (Section 172 of the Penal Code);
- intentionally preventing the service of summons, notice or proclamation to produce a document or electronic record in a court (Section 173 of the Penal Code);
- intentionally omitting to produce or deliver up the document or electronic record to any public servant (Section 175 of the Penal Code);
- fabricating false evidence by making a false entry in an electronic record or making any electronic record containing a false statement, and intending the false entry or statement to appear in evidence in judicial proceedings (Sections 192 and 193 of the Penal Code);
- the destruction of an electronic record where a person hides or destroys an electronic record or obliterates or renders illegible the whole or part of an electronic record with the intention of preventing the record from being produced or used as evidence (Sec. 204 of the Penal Code);

and

- making any false electronic record (Sections 463 and 465 of the Penal Code).

Recent Court Rulings

Search and seizure

State of Punjab v *Amritsar Beverages Ltd*[1] involved a search by the Sales Tax Department and the seizure of computer hard disks and documents from the dealer's premises. The computer hard disk was seized under the provisions set out in Section 14 of the Punjab General Sales Tax Act 1948, which requires authorities to return seized documents within a stipulated time frame (Section 14 (3)), provided that the dealer or person concerned is given a receipt for the property. Section 14 reads as follows:

"14. Production and inspection of books, documents and accounts

(1) The commissioner or any person appointed to assist him under subsection (1) of section 3 not below the rank of an [Excise and Taxation Officer], may, for the purpose of the act, require any dealer referred to in section 10 to produce before him any book, document or account relating to his business and may inspect, examine and copy the same and make such enquiry from such dealer relating to his business, as may be necessary.

Provided that books, documents and accounts of a period more than five years prior to the year in which assessment is made shall not be so required.

(2) Every registered dealer shall:

(a) maintain day-to-day accounts of his business;

(b) maintain a list of his account books, display it along with his registration certificate and furnish a copy of such list to the assessing authority;

(c) produce, if so required, account books of his business before the Assessing Authority for authentication in the prescribed manner; and

(d) retain his account books at the place of his business, unless removed therefrom by an official for inspection, by any official agency, or by auditors or for any other reason which may be considered to be satisfactory by the assessing authority.

(3) If any officer referred to in subsection (1) has reasonable ground for believing that any dealer is trying to evade liability for tax or other dues under this act, and that anything necessary for the purpose of an investigation into his liability may be found in any book, account, register or document, he may seize such book, account, register or document, as may be necessary. The officer seizing the book, account, register or document shall forthwith grant a receipt for the same and shall:

(a) in the case of a book, account, register or document which was being used at the time of seizing, within a period of 10 days from the date of seizure; and

(b) in any other case, within a period of 60 days from the date of seizure;

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1 *2006 IndLaw SC 391*

return it to the dealer or the person from whose custody it was seized after the examination or after having such copies or extracts taken therefrom as may be considered necessary, provided that the dealer or the aforesaid person gives a receipt in writing for the book, account, register or document returned to him. The officer may, before returning the book, account, register or document, affix his signature and his official seal at one or more places thereon, and in such case the dealer or the aforesaid person will be required to mention in the receipt given by him the number of places where the signature and seal of such officers have been affixed on each book, account, register or document.

(4) For the purpose of subsection (2) or subsection (3), an officer referred to in subsection (1) may enter and search any office, shop, godown, vessel, vehicle or any other place of business of the dealer or any building or place except residential houses where such officer has reason to believe that the dealer keeps or is, for the time being, keeping any book, account, register, document or goods relating to his business.

(5) The power conferred by subsection (4) shall include the power to open and search any box or receptacle in which any books, accounts, register or other relevant document of the dealer may be contained.

(6) Any officer empowered to act under subsection (3) or subsection (4) shall have power to seize any goods which are found in any office, shop, godown, vessel, vehicle or any other place of business or any building or place of the dealer, but not accounted for by the dealer in his books, accounts, registers, records and other documents."

This section entitles the officer concerned to affix his or her signature and seal at one or more places on the seized document and to include in the receipt the number of places where the signature and seal have been affixed. In the case at hand, the officers concerned called upon the dealer, but the dealer ignored their requests.

After examination, the Sales Tax Authority was required to return all documents seized within 60 days. However, the authority failed to return the hard disk, claiming that it was not a document. Whet} the matter came before the Supreme Court, a creative interpretation was adopted, taking into account the fact that the Punjab General Sales Tax Act was enacted in 1948 when information technology was far from being developed. It was determined that the Constitution of India is a document that must be interpreted in light of contemporary life. This meant that a creative interpretation was necessary to enable the judiciary to respond to technological developments. The court was permitted to use its own interpretative principles since Parliament had failed to amend the statute with regard to developments in the field of science. The court stated that the Evidence Act, which is part of the Procedural laws, should be construed to be an ongoing statute, similar to the Constitution, which meant that in accordance with the circumstances, a creative interpretation was possible.

It was held that the proper course of action for officers in such circumstances was to make copies of the hard disk or obtain a hard copy, affix their signatures or official seal on the hard copy and furnish a copy to the dealer or person concerned.

Evidence recorded on CD

In *Jagjit Singh* v *State of Haryana*[2] the speaker of the Legislative Assembly of the State of Haryana disqualified a member for defection. (2) When hearing the matter, the Supreme Court considered the appreciation of 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.

[2] *AIR 2007 SC 590*

The Supreme Court of India indicated the extent of the relevance of the digital materials in Paragraph 25 of his ruling:

"The original CDs received from Zee Telefilms, the true translation into English of the transcript of the interview conducted by the said channel and the original letter issued by Zee Telefilms and handed over to Ashwani Kumar on his request were filed on June 23 2004. The original CDs received from Haryana News channel along with the English translation as above and the original proceedings of the Congress legislative party in respect of proceedings dated June 16 2004 at 11.30am in the Committee room of Haryana Vidhan Sabha containing the signatures of three out of four independent members were also filed."

In Paragraphs 26 and 27 the court went on to indicate that an opportunity had been given to the parties to review the materials, which was declined:

> "26. It has to be noted that on June 24 2004 counsel representing the petitioners were asked by the speaker to watch the interviews conducted in New Delhi on June 14 2004 by Zee News and Haryana News, which were available on the CD as part of the additional evidence with the application dated June 23 2004 filed by the complainant. The counsel, however, did not agree to watch the recording which was shown on these two channels. The copies of the application dated June 23 2004 were handed over to the counsel and they were asked to file the reply by l0 a.m. on June 25 2004. In the replies the petitioners merely denied the contents of the application without stating how material by way of additional evidence that had been placed on record was not genuine.
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> 27. It is evident from the above facts that the petitioners declined to watch the recording, failed to show how and what part of it, if any, was not genuine, but merely made general denials and sought permission to cross-examine Ashwani Kumar and the opportunity to lead evidence."

The speaker was required to rule on the authenticity of the digital recordings, as indicated at Paragraph 30 of the ruling:

> "Under these circumstances, the speaker concluded that 'there is no room for doubting the authenticity and accuracy of the electronic evidence produced by the petitioner'. The speaker held that:
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> "In this regard, it is to be noted that the petitioner has produced the original CDs containing the interviews conducted by Zee News and Haryana News of the six independent members of the Haryana Vidhan Sabha, including the respondent, and the same have been duly certified by both television channels as regards their contents, as well as having been recorded on June 14 2004 at New Delhi. It has also been certified by both television channels through their original letters (P-9 and P-12) duly signed by their authorized signatures that the original CDs were handed over to Ashwani Kumar, who was authorized by the petitioner in this regard and whose affidavit is also on record as Annexure P-8, wherein he states that he had handed over the original CDs to the petitioner. The letters, Annexures P-9 and P-12, also give out that the coverage of their interviews on June 14 2004 was also telecast by both television channels. In fact, the certificate given by Haryana News authenticates the place of the interview as the residence of Mr Ahmed Patel at 23, Mother Teresa Crescent in Delhi, which interview as per the certificate was conducted by the correspondent of the said television channel, namely Shri Amit Mishra on June 14 2004. The same certificate, P-12, also authenticates the coverage of the [Congress Legislative Party] meeting held in Chandigarh on June 16 2004 conducted by their correspondent Mr Rakesh Gupta."

The court 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. The Supreme Court found no infirmity in the speaker's reliance on the digital evidence and the conclusions reached in Paragraph 31 bear repeating in full:

> "Undoubtedly, the proceeding before the speaker, which is also a tribunal albeit of a different nature, has to be conducted In a fair manner and by complying with the principles of natural justice. However, the principles of natural justice cannot be placed in a strait-jacket. These are flexible rules. Their applicability is determined on the facts of each case. Here, we are concerned with a case where the petitioners had declined to avail of the opportunity to watch the recording on the compact disc. They had taken vague pleas in their replies. Even In respect of signatures on the [Congress Legislative Party] register their reply was utterly vague. It was not their case that the said proceedings had been forged. The speaker, in law, was the only authority to decide whether the petitioners incurred or not disqualification under the Tenth Schedule to the Constitution in his capacity as speaker. He had obvious opportunity to see the petitioners and hear them and that is what has been stated by the speaker in his order. We are of the view that the speaker has not committed any illegality by stating that he had on various occasions seen .and heard these [members of legislative assembly]. It is not a case where the speaker could transfer the case to some other tribunal. The doctrine of necessity under these circumstances would also be applicable. No illegality can be inferred merely on the speaker relying upon his personal knowledge of having seen and heard the petitioners for coming to the conclusion that the persons In the electronic evidence are the same as he has seen and so also are their voices. Thus, even if the affidavit of Ashwani Kumar is ignored in substance, it would have no effect on the questions involved."

The comments in this case indicate a trend emerging in Indian courts: judges are beginning to recognize and appreciate the importance of digital evidence in legal proceedings.

Admissibility of intercepted telephone calls

State (NCT of Delhi) v *Navjot Sandhu*[3] was an appeal against conviction following the attack on Parliament on December 13 2001, in which five heavily armed persons entered the Parliament House Complex and killed nine people, including eight security personnel and one gardener, and injured 16 people, including 13 security men. This case dealt with the proof and admissibility of mobile telephone call records. While considering the appeal against the accused for attacking Parliament, a submission was made on behalf of the accused that no reliance could be placed on the mobile telephone call records, because the prosecution had failed to produce the relevant certificate under Section 65B(4) of the Evidence Act. The Supreme Court concluded that a cross-examination of the competent witness acquainted with the functioning of the computer during the relevant time and the manner in which the printouts of the call records were taken was sufficient to prove the call records.

Examination of a witness by video conference

State of Maharashtra v *Dr Praful B Desai*[4] involved the question of whether a witness can be examined by means of a video conference. The Supreme Court observed that video conferencing is an advancement of science and technology which permits seeing, hearing and talking with someone who is not physically present with the same facility and ease as if they were physically present. The legal requirement for the presence of the witness does not mean actual physical presence. The court allowed the examination of a witness through video conferencing and concluded that there is no

[3] *AIR 2005 SC 3820*

[4] *AIR 2003 SC 2053*

reason why the examination of a witness by video conferencing should not be an essential part of electronic evidence.

This Supreme Court decision has been followed in other high court rulings (eg, *Amitabh Bagchi* v *Ena Baqchi*[5] More recently, the High Court of Andhra Pradesh in *Bodala Murali Krishna* v *Bodala Prathima*[6] held that necessary precautions must be taken to identify the witness and ensure the accuracy of the equipment being used. In addition, any party wishing to avail itself of the facility of video conferencing must meet the entire expense.

Comment

'Science and law, two distinct professions have increasingly become commingled, for ensuring a fair process and to see that justice is done. On one hand, scientific evidence holds out the tempting possibility of extremely accurate fact-finding and a reduction in the uncertainty that often accompanies legal decision making. At the same time, scientific methodologies often include risks of uncertainty that the legal system is unwilling to tolerate.

The above analysis brings out clearly that though the Indian evidence law cannot be said to be withered in the wake of new scientific challenges, as suitable amendments have been incorporated, however much remains to be done to make it comprehensively adequate to face any modern challenges that mayanse.

The need of the hour therefore is to fill the chasms where no law exists and to reduce it into writing where judicial pronouncements have held up the system so far.

Besides there is a need for overhauling the entire justice system by adopting E-governance in Judiciary. E-Governance to the judiciary means, use of information and communication technology to smoothen and accelerate case progression to reach its logical end within the set time frame, with complete demystification of the adjudicatory process ensuing transparency. This would perhaps make us closer to the pursuit of truth and justice.

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5 *AIR 2005 Cal 11*

6 *2007 (2) ALD 72*

Evidence of eye witness

(i) Having examined all the eyewitnesses even if other persons present nearby, not examined, the evidence of eyewitness cannot be discarded, courts are concerned with quality of evidence in a criminal trial. Conviction can be based on sale evidence if it inspires confidence

(ii) Where there are material contradictions creating reasonable doubt in a reasonable mind, such eye witnesses cannot be relied upon to base their evidence in the conviction of accused.

(iii) Evidence of an eye witness cannot be disbelieved on ground that his statement was not recorded earlier before he was examined in motor accident claim case by police.

(iv) Where court acquitted accused by giving benefit of doubt, it will not affect evidence of eye witnesses being natural witnesses.

Interested witness

(i) It has been held regarding "interested witness" that the relationship is not a factor to affect credibility of witness.

(ii) Testimony of injured eye witnesses cannot be rejected on ground that they were interested witnesses.

(iii) The mechanical rejection of evidence on sale ground that it is from interested witness would invariably lead to failure or justice.

Maxim "Falsus in uno falsus in omnibus"

(i) *"Falsus in uno falsus in omnibus"* is not a rule of evidence in criminal trial and it is duty of the Court to engage the truth from falsehood, to shift grain from the chaff.

(ii) The maxim *"Falsus in uno falsus in omnibus"* has not received general acceptance nor has this maxim come to occupy the status of rule of law. The maxim merely involves the question of weight of evidence which a court may apply in a given set of circumstances, but it is not what may be called "a mandatory rule of evidence".

Natural witness

Witnesses being close relations of deceased living opposite to house of deceased, are natural witnesses to be believed.

Testimony: when to be relied

(i) The testimony of police personnel should be treated in the same manner as testimony of any other witness and there is no principle of law that without corroboration by independent witnesses their testimony cannot be relied· upon. The presumption that a person acts honestly applies as much in favour of police personnel as of other persons and it is not a proper judicial approach to distrust and suspect them without good grounds.

(ii) Rejection of whole testimony of hostile witness is not proper.

(iii) Where evidence of some witnesses was found not safe for conviction, whole of their testimony should not be rejected.

(iv) The testimony of a single witness if it is straightforward, cogent and if believed is sufficient to prove the prosecution case.

Opinion as to electronic signature when relevant (Section 47A)

When the Court has to form an opinion as to the electronic signature of any person, the opinion of the Certifying Authority which has issued the Electronic Signature Certificate is a relevant fact.

Presumption as to electronic agreements (Section 85 A)

The Court shall presume that every electronic record purporting to be an agreement containing the electronic signature of the parties was so concluded by affixing the electronic signature of the parties.

Presumption as to electronic records and electronic signatures (Section 85B)

(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 electronic signature, the court shall presume unless the contrary is proved that-

a. the secure electronic 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 electronic signature nothing in this section shall create any presumption, relating to authenticity and integrity of the electronic record or any electronic signature.

Judge's power to put questions or order production (Section 165)

The Judge may, in order to discover or to obtain proper proof of relevant facts, ask any question he pleases, in any form, at any time, of any witness, or of the parties, about any fact relevant or irrelevant, and may order the production of any document or thing; and neither the parties nor their agents shall be entitled to make any objection to any such question or order, not, without the leave of the Court, to cross-examine any witness upon any answer given in reply to any such question:

Provided that the Judgment must be based upon facts declared by this Act to be relevant, and duly proved:

Provided also that this section shall not authorize any Judge to compel any witness to answer any question, or to produce any document which such witness would be entitled to refuse to answer or produce under Sections 121 to 131, both inclusive, if the questions were asked or the documents were called for by the adverse party; nor shall the Judge ask any question which it would be improper for any other person to ask under Section 148 or 149; nor shall he dispense with primary evidence of any document, except in the cases hereinbefore excepted.

The Information Technology Act, 2000

Legal recognition of electronic records (Section 4)

Where any law provides that information or any other matter shall be in writing or in the typewritten or printed form, then, notwithstanding anything contained in such law, such requirement

shall be deemed to have been satisfied if such information or matter is-

(a) rendered or made available in an electronic form; and
(b) accessible so as to be usable for a subsequent reference.

Legal recognition of digital signatures (Section 5)

Where any law provides that information or any other matter shall be authenticated by affixing the signature or any document shall be signed or bear the signature of any person (hen, notwithstanding anything contained in such law, such requirement shall be deemed to have been satisfied, if such information or matter is authenticated by means of digital signature affixed in such manner as may be prescribed by the Central Government.

Explanation - For the purposes of this section, "signed", with its grammatical variations and cognate expressions, shall, with reference to a person, mean affixing of his hand written signature or any mark on any document and the expression "signature" shall be construed accordingly.

Use of electronic records and digital signatures in Government and its agencies (Sec. 6)

(1) Where any law provides for-

- the filing of any form. application or any other document with any office, authority, body or agency owned or controlled by the appropriate Government in a particular manner;
- the issue or grant of any licence, permit, sanction or approval by whatever name called in a particular manner;
- the receipt or payment of money in a particular manner,

then, notwithstanding anything contained in any other law for the time being in force, such requirement shall be deemed to have been satisfied if such filing, issue, grant, receipt or payment, as the case may be, is effected by means of such electronic form as may be prescribed by the appropriate Government.

(2) The appropriate Government may, for the purposes of sub-section (1), by rules, prescribe-

(a) the manner and format in which such electronic records shall be filed, created or issued;
(b) the manner or method of payment of any fee or charges for filing, creation or issue any electronic record under clause

Retention of electronic records (Sec. 7)

(1) Where any law provides that documents, records or information shall be retained for any specific period, then, that requirement shall be deemed to have been satisfied
if such documents, records or information are retained in the electronic form, if-

(a) the information contained therein remains accessible so as to be usable for a subsequent reference;
(b) the electronic record is retained in the format in which it was originally generated, sent or received or in a format which can be demonstrated to represent accurately the information originally generated, sent or received;
(c) the details which will facilitate the identification of the origin, destination, date and time of despatch or receipt of such electronic record are available in the electronic record:

Provided that this clause does not apply to any information which is automatically generated solely for the purpose of enabling an electronic record to be despatched or received.

(2) Nothing in this section shall apply to any law that expressly provides for the retention of documents, records or information in the form of electronic records.

Publication of rule, regulation, etc., in Electronic Gazette (Sec. 8)

Where any law provides that any rule, regulation, order, bye-law, notification or any other matter shall be published in the Official Gazette, then, such requirement shall be deemed to have been satisfied if such rule, regulation, order, bye-law, notification or any other matter is published in the Official Gazette or Electronic Gazette.

INJURED WITNESS

In the case of *State of Madhya Pradesh* v. *Mansinqht*[7], Arijit Pasayat, J. stated:

> The evidence of injured witnesses have greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly. Merely because there was no mention of a knife in the first information report. That does not wash away the effect of evidence tendered by the injured witnesses PWs 4 and 7. Minor discrepancies do not corrode credibility of otherwise acceptable evidence. The circumstances highlighted by the High Court to attach vulnerability to evidence of the injured witnesses are clearly inconsequential. Though, it is fairly conceded by learned counsel for the accused that though mere non-mention of the assailants' names in the requisition memo of injury is not sufficient to discard the prosecution version in entirety, according to him it is a doubtful circumstance and forms a vital link to determine whether prosecution version is credible. It is a settled position in law that omission to mention the name of the assailants in the requisition memo perforce does not render prosecution version brittle.

In another case of *Balraje v. State of Maharashtra*[8], it was held that:

"In law, testimony of an injured witness is given importance. When the eyewitnesses are stated to be interested and inimically disposed towards the accused, it has to be noted that it would not be proper to conclude that they would shield the real culprit and rope in innocent persons. The truth or otherwise of the evidence has to be weighed pragmatically. The court would be required to analyse the evidence of related witnesses and those witnesses who are inimically disposed towards the accused. But if after careful analysis and scrutiny of their evidence, the version given by the witnesses appears to be clear, cogent and credible, there is no reason to discard the same. Conviction can be made on the basis of such evidence."

In *Jarnail Singh v. State of Punjab*[9], the Apex Court considered the precedence of *Shivalingappa Kallayanappa v.State of Karnataka*[10] whereby it was held that the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies, for the reason that his presence on the scene stands established in case it is proved that he suffered the injury during the said incident.

In *State of U.P. v. Kishari Chand*[11] a similar view has been reiterated observing that the testimony of a stamped witness has its own relevance and efficacy. The fact that the witness sustained injuries at the time and place of occurrence, lends support to his testimony that he was present during the occurrence. In case the injured witness is subjected to lengthy cross-examination and nothing can be elicited to discard his testimony, it should be relied upon.

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7 *(2003) 10 SCC 414*

8 *(2010) 6 SCC 673*

9 *(2009) 9 SCC 719*

10 *1994 SCC (Cri) 1694*

11 *(2004) 7 SCC 629*

In the case of *Vishnu v. State of Rajasthan*[12], the court considered the fact that in, then present circumstances, What cannot be ignored by the Court is that this is a case wherein at least five persons were injured. Those five injured persons are closely related to the deceased. When a person receives injuries in the course of occurrence, there can be hardly any doubt regarding his presence at the spot. Further, injured witnesses would not spare the real assailants and falsely involve innocent persons.

Evidence Produced By Child Witness

Capability of a witness is the condition precedent to the administration of oath or affirmation, and is a question distinct from that of his creditability when he has been sworn or has been affirmed. Under Section 118 of the Indian Evidence Act, every person. is competent as a witness unless the Court considers that he is prevented from considering the question put to him or from giving reasonable reason because of the factor of age i.e. tender or extreme age.

This prevention is based on the presumption that children could be easily tutored and therefore can be made a puppet in the hands of the elders, In this regard the law does not fix any particular age as to the competency of child witness or the age when they can be presumed to have attained the requisite degree of intelligence or knowledge.

To determine the question of competency courts, often undertake the test whether from the intellectual capacity and understanding he is able to give a rational and intelligent account of what he has seen or heard or done on a particular occasion. Therefore it all depends upon the good sense and discretion of the judge.

Assessment Of *Voir dire:*

Voir dire is a phrase in law which comes from Anglo-Norman. In origin it refers to an oath to tell the truth, i.e., to say what is true, what is objectively accurate or subjectively honest in content, or both. The word *voir (or voire);* in this combination, comes from Old French and derives from Latin verum, "that which is true".

Child witness as far as defense is concerned is dangerous witness. Because once tutored they stick on that version in any circumstances. Before putting a child into witness box a *Voir dire* test must be conducted by the Court. Under this test the court puts certain preface questions before the child which have no connection with the case, in order to know the competency of the child witness. Some examples of the questions asked under this test can be that regarding their name, father's name or their place of residence.

This prevention is based on the presumption that children could be easily tutored and therefore can be made a puppet in the hands of the elders. **In** this regard the law does not fix any particular age as to the competency of child witness or the age when they can be presumed to have attained the requisite degree of intelligence or knowledge. To determine the question of competency courts, often undertake the test whether from the intellectual capacity and understanding he is able to give a rational and intelligent account of what he has seen or heard or done on a particular occasion. Therefore it all depends upon the good sense and discretion of the judge.

When the court is fully satisfied after hearing the answers to these preliminary questions, as to the capability of the child to understand these questions and to give rational answers thereto, then further court starts with substantial questions which are considered as evidences.

The Requirement Of Corroborative Evidence:

[12] *(2009) 10 SCC 477*

As a matter of prudence courts often show cautiousness while putting absolute reliance on the evidence of a solitary child witness and look for corroboration of the same from the facts and circumstances in the case, the Privy Council decision in *R* v. *Norbury*[13], where the evidence of the child witness of 6 years, who herself was the victim of rape, was admitted.

Here the court observed that a child may not understand the nature of an oath but if he is otherwise competent to testify and understand the nature of the questions put before him and is able to give rational answers thereto, then the statement of such a child witness would be held to be admitted and no corroborative proof is necessary.

The Supreme Court in *Tahal Singh* v. *Punjab*[14] observed: "In our country, particularly in rural areas it is difficult to think of a load of 13 year as a child. A vast majority of boys around that age go in fields to work. They are certainly capable of understanding the significance of the oath and necessity to speak the truth."

In-Capability of Child Witness:

The competency of a witness is the condition precedent to the administration of oath or affirmation, and is a question distinct from that of his creditability when he has been sworn or has been affirmed. Under section 118 of the Indian Evidence Act, every person is competent as a witness unless the Court considers that he is prevented from considering the question put to him or from giving reasonable reason because of the factor of age i.e.; tender or extreme age.

This prevention is based on the presumption that children could be easily tutored and therefore can be made a puppet in the hands of the elders. In this regard the law does not fix any particular age as to the competency of child witness or the age when they can be presumed to have attained the requisite degree of intelligence or knowledge.

In *State* v *Allen*[15], it was observed that the burden of proving incompetence is on the party opposing the witness. Courts consider 5 factors when determining competency of a child witness. Absence of any of them renders the child incompetent to testify.

They are as follows:

1. An understanding of the obligation to speak the truth on the witness stand.
2. The mental capacity at the time of the occurrence concerning which he is to testify, to receive an accurate impression of it.
3. A memory sufficient to retain an independent recollection of the occurrence.
4. The capacity to express in words his memory of the occurrence; and,
5. The capacity to understand simply questions about it. Another relevant case law is: *State v. Yen-kappa*[16]

Here the accused was convicted for the murder of his own wife on the basis of the statements of his children who were adolescents. Admission of such statement was challenged on appeal. In this regard the accused produced some evidence as to the fact that the children have been tutored and therefore their evidence must be rejected.

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13 *(1978) CrimLR 435*

14 *AIR 1979 SC 1347*

15 *70 Wn.2d 690, 424 P.2d 1021 (1967)*

16 *(2003) CRI LI 3558*

Here the SC observed that it is the settled law that just because the witness happens to be a child witness his evidence could not be rejected in toto on that score.

However the court must be cautious enough to see that an innocent is not punished solely acting upon the testimony of child witness, as the children are *very* easily suspect able for tutoring.

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