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Relevancy and Admissibility of Electronic evidence

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Anyone investigating criminal activity will be confronted sooner or later by electronic evidence. For many humans, this kind of technical subject is a brand new and daunting departure from conventional investigative exercise and despite the fact that virtual forensic examiners will continually be those to absolutely seize and examine such proof, there may be nonetheless a want to have a perception and fundamental expertise of what digital proof is, in which it is able to be found, whilst it has to be sought and the way it'll be processed. More importantly, how do you already know a specific man or woman became running a tool whilst an unlawful act became taking place? This consultation is a fundamental creation of digital proof for non-technicians. It will discover the character of such proof via way of means of connection with each day enjoy and could give an explanation for it in phrases everybody can understand. It will describe in which digital proof can be found, the demanding situations concerned in acquiring it, and could offer an outline of fundamental virtual forensic examination.

Keywords: *evidence, investigation, admissibility.*

INTRODUCTION

The law of evidence has for quite some time been coordinated by the standard of "best proof" which is considered to have two fundamental models – evasion of prattle and creation of

essential proof¹. These guidelines are accepted to plan out decrepit proof and produce just that which can't be sensibly be suspected. Considering the Indian Evidence Act, 1872, this can be perceived as just an individual who has himself claimed the reality being demonstrated can eliminate regarding it, and not somebody who has gotten the data second hand². Also, where a report is to be utilized to make a statement, the first ought to be delivered in court, and not a duplicate or photo or some other reproduction of the equivalent, not even assertions in regards to the substance by somebody who has seen it³. Any copy of an assertion or archive is lower on the phase of legitimacy than the first, giving chances for misrepresentation or creation⁴.

Prattle has been characterized as "all the proof which doesn't get its worth exclusively from the credit given to the observer himself, yet which rests additionally partially on the legitimacy and capacity of some other individual"⁵. In this way, if an individual A decides to dismiss in court that individual B revealed to him that he had seen individual C attacks individual D, individual A's articulations regarding the demonstration of wounding that happened will be gossip, since it isn't totally out of his own insight, yet dependent on what individual B advised him. Be that as it may, individual B's proof will be immediate proof since he saw the demonstration occurring with his own eyes. In the event that, then again, individual A's declaration was to be in regard to whether individual B had witnessed the demonstration, his assertions would be immediate proof, since he had himself understood individual B say as much. In this manner, it is the reason for which an assertion is being utilized that qualifies it as noise or not.

The primary proof is simply the first report being created for examination by the court⁶. A report has been characterized as any matter which has communicated or depicted upon any

¹ *Macdonnel v Evans* 138 ER 742

² All Answers ltd, 'Relevancy and Admissibility of Electronic Law Essays' (*Law Teacher*, 28 June 2019) <<http://www.lawteacher.net/free-law-essays/commercial-law/relevancy-and-admissibility-of-electronic-law-essays.php?cref=1>> accessed 15 May 2021

³ BEST, 12th Edn., S. 215 and 216 at pg. 199, 200

⁴ *L Choraria v State of Maharashtra* AIR 1968 SC 938

⁵ *Kalyan Kumar Gogoi v Ashutosh Agnihotri & Anr* (2011) 2 SCC 532

⁶ Indian Evidence Act 1872, s 61

material through letters, checks, or figures with the end goal of film that matter⁷. In the event that a duplicate is made of such an archive, it won't be essential proof since it isn't the first. Copies of the first archive are viewed as auxiliary proof. The auxiliary proof is appropriate in court just under specific conditions, for example, when the first is in the control of the foe or when the first is annihilated or lost, or when the first is of such a nature that it can't be handily moved⁸.

Insofar as a proof is immediate and not gossip in nature, or is essential proof, the court may acknowledge it, given that the reality being demonstrated through such proof demonstrates the being or non-presence of certainty in issue to be sound before, presence or future, in other words, it is an important truth⁹. The Indian Evidence Act has set out various conditions under which reality can be considered applicable. As such, the condition for suitability of a piece of proof is that it ought to demonstrate an important certainty.

NEW FORMS OF EVIDENCE

While there can be no restriction to the structures where proof exists, they were so far extensively ordered into oral and narrative. The narrative proof was normally, for example, could be written down – declarations, executed deeds, photos, maps, exaggerations¹⁰, and so on. Gradually, as records were made on items, for example, tapes and gramophone plates, those started being engaged as archives as well.

Recently, in February 2010, the city of Pune was endangered by a terrorist attack in a much-frequented bakery. The 'German Bakery blast' accused were finally identified by the police on the basis of a CCTV recording. The question, therefore, arises as to whether such a recording, which is neither on paper nor on a camera negative nor on a magnetic tape, in fact, not

⁷ *Ibid* s 3

⁸ Evidence (n 6), s 65

⁹ Evidence (n 6), s 5

¹⁰ Evidence (n 6), s 3

available in any tangible form at all, can be introduced in court as evidence. The only proof available will be that recorded in the computer system controlling the CCTV unit.¹¹

This example brings into centre the new wonder of the expanding utilization of PCs in regular daily existence. With the office of composing letters over the web being broadly accessible now, an ever increasing number of agreements are being gone into on the web. All types of correspondence and agreement arrangements that, prior, occurred eye to eye or through letters, would now be able to occur over the web. In this manner, if any of the gatherings to the agreement were to sue each other for penetrating of agreement, the solitary adducible proof would be the content of the messages.

CLASSIFICATION OF ELECTRONIC EVIDENCE

Under the Indian Evidence Act, any material on which matter has been communicated or depicted can be viewed as an archive, given that the motivation behind such articulation or portrayal is to record the matter. Electronic records have been characterized in the Information Technology Act, 2000 as any information, record, or information created, any picture or sound put away, got, or sent in an electronic structure or miniature film or PC produced miniature fiche¹². An electronic record can be securely included under such a definition since the issue is recorded on the PC as pieces and bytes, which are the advanced same of figures or stamps.

An electronic record would either include reports put away in a computerized structure, or a printout of something similar. What is recorded carefully is a strictu sensu report, yet can't be clear by an individual not utilizing the PC framework into which that data was initially taken care of. A report containing a print out of PC records, however an archive lato sensu, can be seen by anyone. Such print outs of reports would add up to optional proof going stringently by the necessities of the Indian Evidence Act¹³.

¹¹ Agencies, 'CCTV footage reveals vital clues in Pune blast' (*Indian Express*, 16 February 2010) <<http://expressindia.indianexpress.com/latest-news/CCTV-footage-reveals-vital-clues-in-Pune-blast/579947/>> accessed 17 May 2021

¹² Information Technology Act 2000, s 2(1)(t)

¹³ Relevancy and Admissibility (n 2)

Electronic archives strictu sensu were conceded as genuine proof, that is, material proof, however, such proof requires confirmation concerning the consistency of the machine for affirmation. In *R v. Wood*¹⁴, where the indictment tried to depend on a correlation of a PC investigation of certain handled metals to that of metals found in the litigant's ownership, the Court held that since the PC had been utilized as a mini-computer, the examination could be conceded as genuine proof.

Being both prattle just as auxiliary proof, there was a lot of hesitance in regards to the tolerability of electronic records as proof.

ADMISSIBILITY OF ELECTRONIC EVIDENCE

In the United Kingdom, gossip PC records were made allowable in 1995 through a modification to their Civil Evidence Act, 1968 on account of the absence of endorsements raised by gatherings to such proof throughout some stretch of time, demonstrating its getting among the overall population.

Concerning criminal cases, the situation of law following the choice in *R v. Wood* changed with the choice in *Castle v. Cross*¹⁵, wherein the preliminary looked to depend on a printout from an electronic breath-testing gadget. The Court held that the print-out was permissible proof.

The situation of law was explained in the main instance of *R v. Shephard*¹⁶. For this situation, records from till moves connected to a focal PC in a shop were created to demonstrate that things possessing the denounced had not been charged and had along these lines been taken by the blamed. The issue was whether a report created by a PC can be delivered as proof. The Court held that insofar as it very well may be shown that the PC was usable appropriately and was not abused, a PC record can be conceded as evidence.

¹⁴ *R v Wood* (1982) 76 Cr App R at 27

¹⁵ *Castle v Cross* [1985] 1 All ER 87

¹⁶ *R v Shephard* (1993) AC 380

Prior judicial interpretation of Section 65B- The most punctual outstanding choice of the Supreme Court corresponding to the acceptability of electronic records is *State (NCT of Delhi) v. Navjot Sandhu*, which held that regardless of consistency with the prerequisites of Section 65B, there is no bar to illustrate auxiliary proof under Sections 63 and 65, of an electronic record. This judgment was overruled by the Supreme Court in *Anvar* (supra).

Anvar (supra) held that Sections 63 and 65 have no application to optional proof via electronic record as this is entirely represented by Sections 65A and 65B. The Court held that Sections 65A and 65B structure a total code with regards to acceptability of data contained in electronic records, and an electronic record via optional proof will not be conceded except if the necessities under Section 65B are fulfilled, including a composed endorsement under Section 65B(4). It was additionally held that the Evidence Act doesn't think about or license verification of an electronic record by oral proof if the necessities under Section 65B are not consented to. Nonetheless, if an electronic record is utilized as essential proof under Section 62, the equivalent is allowable in proof, without consistency with the conditions determined in Section 65B.

Two choices of the Supreme Court veered off from the position set up in *Anvar* (supra). In *Tomaso Bruno* (supra), a three-judge seat of the Supreme Court held that optional proof of the substance of a report can be driven under Section 65. In any case, in this judgment, the Supreme Court neither depended on Section 65B (4) nor on the law set down in *Anvar* (supra). All things being equal, the Supreme Court depended on *Navjot Sandhu* (supra), which was explicitly overruled in *Anvar* (supra).

From there on, in *Shafhi Mohammad* (supra), the Supreme Court held that the necessity of delivering a declaration under Section 65B (4) is procedural and not generally compulsory. A gathering who isn't in control of the gadget from which the record is delivered can't be needed to create an endorsement under Section 65B (4). The Court was of the view that the procedural prerequisite under Section 65B(4) is to be applied just when the electronic proof is created by an individual who is in charge of the said gadget, and along these lines in a situation to deliver

such a declaration. Be that as it may, if the individual isn't in control of the gadget, Sections 63 and 65 can't be avoided.

The Supreme Court's decision -

The Supreme Court overruled *Tomaso Bruno* (supra) and *Shafhi Mohammad* (supra), and clarified the position as follows:

- A certificate under Section 65B (4) is mandatory, and a condition precedent to the admissibility of evidence by way of the electronic record.
- The law laid down in *Anvar* (supra) need not be revisited. However, the last sentence in paragraph 24 of the said judgment which reads as “if an electronic record as such is used as primary evidence under Section 62 of the Evidence Act, the same is admissible in evidence, without compliance with the conditions in Section 65-B of the Evidence Act” is to be read without the words “under Section 62 of the Evidence Act”.
- The non-obstante language of Section 65B(1) makes it clear that when it comes to the information contained in an electronic record, admissibility, and proof thereof must follow the drill of Section 65B, which is a special provision on this behalf. Sections 62 and 65 are irrelevant for this purpose.
- The requirement under Section 65B (4) is unnecessary if the original document itself is produced. This can be done by the owner of a laptop computer, tablet, or even a mobile phone by stepping into the witness box and proving that the concerned device, on which the original information is first stored, is owned and/or operated by him. Where the computer happens to be on a system or network and it is impossible to physically bring such system or network to court, then the only means of providing the information contained in such electronic record is in accordance with Section 65B(1), together with the requisite certificate under Section 65B(4).
- Oral evidence cannot suffice in place of a certificate under Section 65B (4) and evidence aliunde cannot be given by a person in charge of a computer device, in place of the requisite certificate under Section 65B(4).

- Where the requisite certificate has been sought from the person or the authority concerned, and the person or the authority concerned refuses to give such a certificate or does not reply to such demand, the party asking for such certificate can apply to the court for its products under the provisions of the Evidence Act, the Code of Civil Procedure, 1908 and/or Code of Criminal Procedure, 1973. Once such an application is made to the court, and the court orders or directs that the requisite certificate be produced by the person to whom it sends summons in this regard, the party asking for the certificate has done all that he can possibly do to obtain the requisite certificate.
- The Court saw that Section 65B doesn't discuss the stage at which such an endorsement should be outfitted to the court. In *Anvar (supra)*, the Court saw that such authentication should go with the electronic record when the equivalent is created in proof. This necessity is relevant in situations where such testament could be obtained by the individual trying to depend upon the electronic record. In situations where either a damaged endorsement is given, or where such testament has been requested and isn't given by the concerned individual, the court should call the individual alluded to in Section 65B (4) and necessitate that the authentication is given by such person(s). This should be done when the electronic record is delivered in proof under the watchful eye of the court without the essential authentication. In criminal cases, the essential testament can be coordinated to be delivered by the court at any stage, as long as the preliminary isn't finished. While these perceptions were made with regards to criminal cases, the Court noticed that the aforementioned is liable to exercise of suitable tact in common cases.
- Given that the certificate under Section 65B (4) may be given long after the electronic record has actually been produced by the computer, it is sufficient that the certificate is either to the best of the issuer's knowledge or belief.
- The conditions under Sections 65B (2) and 65B (4) must be satisfied cumulatively.

Notwithstanding the previously mentioned, the Supreme Court gave general headings to cell organizations and network access suppliers to keep up call detail records and other pertinent records, for the concerned period, in an isolated and secure way, if such record is seized

during the examination in the applicable period. Concerned gatherings would then be able to bring such records at the phase of guard proof or in the occasion such information is needed to question an observer. The Supreme Court explained that these headings (contained in passage 62 of the judgment) should be trailed by the courts that manage electronic proof, to guarantee the protection of such proof and the creation of authentication at the fitting stage. The Court tracked down this fundamental given that phone and web access suppliers are by and large needed to save and keep up electronic call and weblog records for a restricted length of one year. On the off chance that the police or others neglect to get those records, or secure the records however neglect to get the authentication, inside that period, the creation of a testament gave after the beginning of preliminary would most likely deliver the information mysteriously. A blamed trying to challenge the validity for authentication under Section 65B (4) would be biased as the electronic record might be absent.

The Supreme Court was of the further view that fitting principles and headings ought to be outlined under the Information Technology Act, 2000, including for the maintenance of information associated with preliminary of offenses, their isolation, rules of the chain of authority, and stepping and record support, for the whole length of preliminaries and claims, and furthermore comparable to the safeguarding of the meta information to stay away from defilement. Proper principles for conservation, recovery, and creation of the electronic record, ought to be outlined subsequently to considering the report of the Committee comprised, in accordance with the gathering of Chief Justices held in April 2016.

INDIAN POSITION ON ADMISSIBILITY OF ELECTRONIC EVIDENCE

As we probably are aware the Evidence Act was drafted to build up standards of proof and basic principles of proof. As found in areas 59 and 60 of the Evidence Act, oral proof might be offered to demonstrate all realities, aside from reports, given, the oral proof is immediate.

The meaning of 'proof' has been corrected to incorporate electronic records. The meaning of 'narrative proof' has been modified to incorporate all archives, including electronic records delivered for assessment by the court.

Under segment 59 of the Evidence Act, Oral proof can't demonstrate the substance of reports since the record is missing, reality or exactness of the oral proof couldn't measure up to the archive and to demonstrate the substance of a record, either essential or auxiliary proof is fundamental. While an ever increasing number of reports were electronically put away, the prattle rule confronted new difficulties in the matter of computerized records. In *Anvar v. P. K. Basheer*¹⁷, the Supreme Court noticed that "there is an insurgency in how proof is delivered under the steady gaze of the court".

At the point when electronically put away, data was treated as an archive in India before 2000, optional proof of these electronic 'records' was cited through printed copies or records, and the genuineness was confirmed. The signatory would recognize signature in court and be available to questioning by meeting the states of the two areas 63 and 65 of the Evidence Act. At the point when the creation and capacity of electronic data developed more unpredictably, the law needed to change all the more generously.

In India, the adjustment of disposition accompanied the correction to the Indian Evidence Act in 2000. The meaning of 'confirmation' (Section 17 Evidence Act) has been changed to remember an assertion for the oral, narrative, or electronic structure which recommends a surmising to any reality at issue or of importance. New Section 22-A was embedded into Evidence Act, to accommodate the pertinence of oral proof with respect to the substance of electronic records. It gives that oral affirmations with respect to the substance of electronic records are not important except if the validity of the electronic records delivered is being referred to.

Segments 65A and 65B were acquainted with the section relating to narrative proof. Area 65A gives that substance of electronic records might be conceded as proof if the models furnished in Section 65B are followed¹⁸. Area 65B gives that electronic records will be viewed as archives, in this manner making it essential proof, if the PC which created the record had been routinely being used, the data took care of into the PC was important for the normal utilization of the PC

¹⁷ *Anvar v P K Basheer* MANU/SC/0834/2014

¹⁸ Evidence (n 6), s 65(a)

and the PC had been working appropriately¹⁹. It further gives that, all PC yield will be considered as being delivered by the actual PC, regardless of whether it was created straightforwardly or by implication, whether with human mediation or without²⁰. This arrangement gets rid of the idea of PC proof being prattle.

Any probative data put away or sent in advanced structure is computerized proof or electronic proof. Prior to tolerating computerized proof, its importance, veracity, and credibility and whether the truth of the matter is gossip or a duplicate is linked to the first area to be determined by the court. Computerized Evidence is "data of probative worth that is put away or sent in double structure". The proof isn't simply restricted to that found on PCs yet may likewise stretch out to remember proof for computerized gadgets like telecom or electronic mixed media gadgets.

Consequently, with the changes brought into the rule, electronic proof in India is not, at this point either optional or prattle proof, yet falls inside the best rule.

CASE LAW ANALYSIS OF ADMISSIBILITY OF ELECTRONIC EVIDENCE

The landmark decision of the United States District Court, for *Maryland in Lorraine v. Markel American Insurance Company*²¹, in 2007, held that when electronically stored information is offered as evidence, the following to be ascertained:

- (i) Is the information relevant;
- (ii) Is it authentic;
- (iii) Is it hearsay;
- (iv) Is it original or, if it is a duplicate, is there admissible secondary evidence to support it; and
- (v) Does its probative value survive the test of unfair prejudice?

¹⁹ Evidence (n 6), s 65(b)(2)

²⁰ Evidence (n 6), s 65(b)(5)

²¹ *Maryland in Lorraine v Markel American Insurance Company* 241 FRD 534

But in *Amar Singh v. Union of India*²², all the parties, including the state and the telephone company, dispute the authenticity of the transcripts of the CDRs, and the authorisation itself, and in *Ratan Tata v. Union of India*²³, a CD containing intercepted telephone calls was introduced in the Supreme Court without following any of the procedure contained in the Evidence Act.

In *Anvar v. P. K. Basheer*, to declare new law in respect of the evidentiary admissibility of the contents of electronic records, overruled the earlier Supreme Court judgment *State (NCT of Delhi) v Navjot Sandhu alias Afsal Guru*²⁴ and the application of sections 63, 65, and 65B of the Indian Evidence Act, re-interpreted the technical conditions upon which a copy of an original electronic record may be used can be seen in S. 65B (2) as:

- (i) at the time of the creation of the electronic record, the computer that produced it must have been in regular use;
- (ii) the kind of information contained in the electronic record must have been regularly and ordinarily fed into the computer;
- (iii) the computer was operating properly; and,
- (iv) the duplicate copy must be a replica of the original electronic record.

The non-technical conditions to set up the legitimacy of electronic proof in segment 65B(4) requires the creation of an endorsement by a senior individual answerable for the PC on which the electronic record was made, or is put away. The declaration should recognize the first electronic record, depict the way of creation, the gadget made it, and affirming the consistency of sub-segment (2) of area 65B.

The *Anvar* case accomplishes for India, how Lorraine helped US Federal Courts. In *Anvar*, the Supreme Court set track Indian electronic proof law to the uncommon strategy made under area 65B of the Evidence Act by applying the saying *generalia specialibus non-derogant* ("the general doesn't take away from the particular"), a repetition of the rule '*lex specialis derogat*

²² *Amar Singh v Union of India* (2011) 7 SCC 69

²³ *Ratan Tata v Union of India* W P (C) 398 of 2010

²⁴ *State (NCT of Delhi) v Navjot Sandhu alias Afsal Guru* (2005) 11 SCC 600

legi generali ("unique law repeals general law"). The Supreme Court held that the arrangements of segments 65A and 65B of the Evidence Act made unique law that supersedes the overall law of narrative proof. The law in India is changing and the legal decisions have an extraordinary job in trim the law material to the country.

It is fascinating to see the perceptions of the Court for a situation, where to demonstrate the charge of the degenerate practice, the candidate had documented a video CD and the court tracked down that new strategies and gadgets are the thing to get done. Direct data about an occasion can be accumulated and in a given circumstance may end up being a critical piece of proof by Audio and tape innovation. Simultaneously, such proof must be gotten with alert similarly as with quick improvement in the electronic methods, they are more responsive to changing and changes by record, extraction, and so on which might be hard to identify and it underlined that to preclude the chance of any sort of altering the tape, the norm of verification about its legitimacy and precision must be tougher when contrasted with other narrative proof. Without the source, there is no genuineness for the interpretation. Source and credibility are the two key components of electronic proof.

In the new judgment set apart by Hon'ble High Court of Delhi, while managing the acceptability of caught call in a CD and CDR which was without an endorsement u/s 65B Evidence Act, the court saw that the optional electronic proof without declaration u/s 65B Evidence Act is forbidden and can't be investigated by the court for any reason at all.

So far releasing of the weight of verification is concerned, creation of logical and electronic proof in Court as considered under S. 65B of the Evidence Act is of incredible assistance. The pertinence of electronic proof is likewise apparent in the light of Mohd. Ajmal Mohammad Amir Kasab v. Territory of Maharashtra, wherein the creation of records of web exchanges helped to demonstrate the blame of the denounced. In Navjot Sandhu moniker Afsal Guru, the connections among psychological oppressors and the driving forces of the assault were set up just through call records acquired from the versatile specialist co-ops.

So on a cautious examination of the development of the case laws regarding the matter plainly the courts were cruel on comparative proof considering most noteworthy of altering and foul

EFFECTS OF CONSIDERING ELECTRONIC EVIDENCE AS PRIMARY AND DIRECT

With the amendment in the Indian Evidence Act in 2000, electronic evidence can now be presented before the Court as primary and direct evidence. Electronic Evidence is now admissible as relevant and reliable evidence in a Court of law. There are some effects of considering such evidence as primary and direct²⁵, which are briefly dealt with, as follows:

1. Blurring the difference between Primary and Secondary Evidence

By bringing all types of PC proof into the overlay of essential proof, the rule has effectively obscured the distinction between essential and auxiliary types of proof. While the thing that matters is as yet expected to apply concerning different types of records, an exemption has been made regarding PCs. This, be that as it may, is fundamental, given the convoluted idea of PC proof as far as not being effectively producible in unmistakable structure. In this way, while it might make for a decent contention to say that assuming the word archive is the first, a printout of the equivalent ought to be treated as optional proof, it ought to be viewed as that creating a word report in court without the guide of print outs or CDs isn't simply troublesome, however very impossible.

2. Making Criminal Prosecution Easier

Considering the new spate of psychological oppression on the planet, including fear mongers utilizing profoundly modern innovation to complete assaults, it is of extraordinary assistance to the arraignment to have the option to create electronic proof as immediate and essential proof in court, as they demonstrate the blame of the charged far superior to searching for customary types of proof to substitute the electronic records, which may not exist.

As we found in the Ajmal Kasab case, fear based oppressors nowadays plan every one of their exercises either eye to eye or through programming. Having the option to create records of

²⁵ Relevancy and Admissibility (n 2)

web exchanges helped the indictment case an incredible arrangement in demonstrating the blame of the charged. Likewise, on account of State (NCT of Delhi) v. Navjot Sandhu @ Afsan Guru, the connections between the killed fear based oppressors and the driving forces of the assault were set up just through call records got from the mobile service providers.

3. Risk of Manipulation

While allowing all forms of computer output to be admissible as primary evidence, the statute has overlooked the risk of manipulation. Tampering with electronic evidence is not very difficult and miscreants may find it easy to change records that are to be submitted in court. However, technology itself has solutions for such problems. Computer forensics has developed enough to find ways of cross checking whether an electronic record has been tampered with, when and in what manner.

4. Opening Potential Floodgates

Computers are the most widely used gadget today. A lot of other gadgets involve computer chips in their functioning. Thus, the scope of Section 65A and 65B is indeed very large. Going strictly by the word of the law, any device involving a computer chip should be adducible in court as evidence. However, practical considerations, as well as ethics, have to be borne in mind before letting the ambit of these Sections flow that far. For instance, the Supreme Court has declared test results of narco-analysis to be inadmissible evidence since they violate Article 20(3) of the Constitution.

It is submitted that every new form of computer technology that is sought to be used in the process of production of evidence should be subjected to such tests of Constitutionality and legality before permitting their usage.

There is no doubt that the new techniques and devices are the order of the day. With the advancement of information technology, there is an increasing impact of technology in everyday life and as a result, the production of electronic evidence in cases has become relevant. Audio and videotape technology has emerged as a powerful medium through which

firsthand information about an event can be gathered and in a given situation may prove to be a crucial piece of evidence.²⁶

²⁶ Relevancy and Admissibility (n 2)