

**RECENT TRENDS IN RECORDING AND ADMISSIBILITY OF
ELECTRONIC EVIDENCE**

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Introductory:

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 as 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 (Cri.) 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 telecasted on Doordashan:-

In ***Sharad Yadav and Ors. Vs. Union of India (UOI) and Anr, 1999 VI AD 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 Parliament Attack Case.

Sajid Beg Asif Beg Mirza Vs. State of Gujarat

In this case, the Hon'ble Gujarat 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 of 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 different 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.

4. APPRECIATION OF EVIDENCE RECORDED THROUGH ELECTRONIC MEDIA:

Digital evidence is any probative information stored or transmitted in digital form. A party in court case may use the same at trial. Before accepting digital evidence a court will determine if the evidence is relevant, whether it is authentic, if it is secondary evidence and whether a copy is acceptable or the original is required. To know the principles as to admissibility of such evidence, it is essential to go through the ruling in **Anvar P.V. Versus, P.K. Basheer and Others, MANU/SC/0834/2014** (Infra).

The essential ingredients of section 65-B, 65-B (2), 65-B (3), and 65-B (4) of the Indian Evidence Act, 1872 are relevant as to appreciation of electronic evidence.

In **State of Maharashtra vs. Dr Praful B Desai (AIR 2003 SC 2053)**, 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 court allowed the examination of a witness through video conferencing. In this case, it was observed that, *'there is no reason why the examination of a witness by video conferencing should not be an essential part of electronic evidence.'*

In **Amitabh Bagchi Vs. Ena Bagchi (AIR 2005 Cal 11)**, it was held that the physical presence of person in Court may not be required for purpose of adducing evidence and the same can be done through medium like video conferencing.

In ***Dharambir vs. Central Bureau of Investigation (148 (2008) DLT 289)***, the Hon'ble Court distinguished as there being two levels of an electronic record. One is the hard disc which once used itself becomes an electronic record in relation to the information regarding the changes the hard disc has been subject to and which information is retrievable from the hard disc by using a software program.

The other level of electronic record is the active accessible information recorded in the hard disc in the form of a text file, or sound file or a video file etc. Such information that is accessible can be converted or copied as such to another magnetic or electronic device like a CD, pen drive etc. Even a blank hard disc which contains no information but was once used for recording information can also be copied by producing a cloned had or a mirror image.

In ***Bodala Murali Krishna vs. Smt. Bodala Prathima (2007 (2) ALD 72)***, the Hon'ble Court held that, "...the amendments carried to the evidence act by introduction of Sections 65-A and 65-B are in relation to the electronic record. Sections 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."

In ***State (NCT of Delhi) vs. Navjot Sandhu (AIR 2005 SC 3820)***, the proof and admissibility of mobile telephone call records was considered. In this case, the Hon'ble Apex Court held 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.

The landmark ruling of the Hon'ble supreme court in *Anvar P.V. Versus, P.K. Basheer and Others*, [MANU/SC/0834/2014], that computer output is not admissible without compliance of 65 B, overrules the judgment laid down in the state (NCT of Delhi) v. Navjot Sandhu alias Afzal Guru[(2005) 11 SCC 600 by the two judge Bench of the Supreme Court.

The court specifically observed that the Judgment of Navjot Sandhu supra, to the extent, the statement of the law on admissibility of electronic evidence pertaining to electronic record of this court, does not lay down correct position and is required to be overruled.

The legal interpretation by the court of the following Sections 22A, 45A, 59, 65A & 65B of the Evidence Act has confirmed that the stored data in CD/DVD/Pen Drive is not admissible without a certificate u/s 65 B(4) of Evidence Act and further clarified that in absence of such a certificate, the oral evidence to prove existence of such electronic evidence and the expert view under section 45A Evidence Act cannot be availed to prove authenticity thereof.

CONCLUSION:

Now-a-days, we saw rapid strides in the field of information and technology. The expanding horizon of science and technology threw new challenges for the ones who had to deal with proof of facts in disputes where advanced techniques in technology was used and brought in aid. Storage, processing and transmission of data on magnetic and silicon medium became cost effective and easy to handle.

Conventional means of records and data processing became outdated. Law had to respond and gallop with the technical advancement. He who sleeps when the sun rises, misses the beauty of the dawn.

Law did not sleep when the dawn of Information and Technology broke on the horizon. World over, statutes were enacted. Rules relating to admissibility of electronic evidence and its proof were incorporated.

The appropriate amendments in Evidence Law, incorporated by our judiciary show pro-activism. In my opinion the law enforcement agencies and investigating officers have to update themselves about the authentication process prescribed by the court regarding the admissibility of electronic/digital evidences so that impediments in trial procedures can be successfully overcome.

Proper training of law enforcement agencies in handling cyber related evidence and correct application of procedure and sections of Evidence Law while presenting such evidence in court is the primary need of recent times.

Common man in the role of a complainant should be now aware that while submitting evidence to police or courts, he should submit it with a certificate under section 65B(4) of The Indian Evidence Act so the court takes cognizance and reads it as a primary evidence.

Let me conclude this paper with a suggestion that there must be a **Digital Evidence Act** for regulation on incident response.

ADDITIONAL LEGAL DEVELOPMENTS:

However, in a subsequent case High Court of Delhi in **Kundan Singh v. State, SSC Online, Delhi 136471** in appeal against the conviction of the appellant had occasioned

to examine the Video footage from the ATM as also Call Data Record including location of the mobile of the convict and it differed with the interpretation placed in the case of '**Ankur Chawla v. Central Bureau of Investigation**, CrI.M.C. No.2455/12 & CrI. M.A. Nos. 8308 and 8318/2014 and CrI. Revision P. 385/2012 decided on 20th November, 2014 by Delhi High Court.

The court examined the contours of Section 65B and it noted that the controversy as to whether a certificate under sub-section (4) to Section 65B must be issued simultaneously with the production of the computer output, or a certificate under Section 65B can be issued and tendered when the computer output itself is tendered to be admitted as evidence in the court.

The **High Court of Delhi** in the case of **Kundan (Supra)** noted that '**Anvar P. V. (Supra)**' used the expression when the electronic evidence is "produced in evidence" is emphasizing that the Certificate must accompany the electronic record when the same is "produced in evidence". It was categorically held that the expression used by the Supreme Court of India does not postulate or propound a ratio that the computer output when reproduced as a paper print out or on optical or magnetic media must be simultaneously certified by an authorised person under sub-section (4) to Section 65B. The Court referred the decision of the Lahore High Court in the case titled **Baldeo Sahai v Ram Chander & Ors, AIR 1931 Lahore 546**.

Thus, it was observed that '**Anvar P. V. (Supra)**' does not state or hold that the said certificate cannot be produced in exercise of powers of the Trial Court **u/s 311 Code of Criminal Procedure Code** or at the appellate stage **u/s 391 Code of Criminal Procedure Code**.

The Court also referred another case decided by the Apex Court in the case titled as **Tomaso Bruno v. State of UP, (2015) 7 SCC 178** on importance of electronic evidence in investigation and increasing impact of technology in everyday life. In Tomaso Bruno the prosecution was castigated for withholding CCTV footage as also call records so as to decipher where the accused were during the relevant time of murder.

It is interesting to note that in another case by the same Bench titled **Kishan Tripathi @ Kishan Painter v. The State, 2016 SCC Online Del 1136** in appeal against the conviction by the appellant, the court was examining electronic evidence in the form of CCTV footage and it was held that CCTV footage stored in the hard drive is the original media. .

There have been divergent views on such issue by the other High Courts as well. The Bombay High Court, in the case of **Nyati Builders v. Rajat Dinesh Chauhan, 2015 SCC OnLine Bom7578**, the certificate under S. 65B was not filed at the time of filing of electronic records (emails). The learned trial Judge allowed application of plaintiffs to produce a fresh certificate. The issue of admissibility was kept open at the stage of final hearing and thus, emails were neither discarded nor admitted in evidence. The emails thereof were treated as primary evidence which was upheld by the Bombay High Court.

In **Paras Jain & Ors. v. State of Rajasthan, MANU/RH/1150/2015**, the files and certificates to be filed u/s 65B was not filed along with the charge-sheet and it was subsequently filed during the course of the trial. The Court, while accepting the S.65B certificate at a later point observed –

“15. Section 65-B of the Evidence Act deals with admissibility of secondary evidence in the form of electronic record and the procedure to be followed and the requirements be fulfilled before such an evidence can be held to be admissible in evidence and not with the stage at which such a certificate is to be produced before the Court.

23. When legal position is that additional evidence, oral or documentary, can be produced during the course of trial if in the opinion of the Court production of it is essential for the proper disposal of the case, how it can be held that the certificate as required under Section 65-B of the Evidence Act cannot be produced subsequently in any circumstances if the same was not procured along with the electronic record and not produced in the Court with the charge-sheet. In my opinion it is only an irregularity not going to the root of the matter and is curable.”

However, in the case of **State of Rajasthan v. Ramsahay, MANU/RH/0350/2016**, the Rajasthan High Court discarded the evidence of call detail report as it did not fulfill the requirement under S.65B. Similarly, the Madras High Court in the case of

R.S. Raja Kannappan v. K.R. Periakaruppan, MANU/TN/3391/2015 did not admit electronic records in evidence in the absence of the certificate under S.65B.

This was also the view taken by the **Karnataka High Court in Manoj Kumar v. State of Karnataka, MANU/KA/1648/2015** where it was held that, in the absence of certification under Section 65B of the Evidence Act, secondary evidence of electronic records are totally inadmissible and cannot be looked into by the court while appreciating the case of the prosecution.
