Relevancy and Admissibility of documents in evidence

i) Relevancy of documents with reference to the provisions of Indian Evidence Act

ii) Admissibility of documents with reference to provisions of Stamp Act, Registration Act and other relevant laws

by

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"Relevancy of documents with reference to the provisions of Indian Evidence Act"

The expressions 'relevancy' and 'admissibility' are often taken to be synonymous. But they are not the same. Their legal implications are different. All admissible evidence is relevant but all relevant evidence is not admissible. Relevancy is the genus of which admissibility is the species.

Before going to further discussion in detail, we need to ascertain properly what is fact, what is fact in issue and what is relevant fact and also the related aspects thereof in view of the law of evidence.

Fact means and includes -

a) Anything, state of things or relation of things capable of being perceived by the senses .

b) Any mental condition of which any person is conscious.

1. As per the definition facts are of 2 types -
   a) Physical facts b) psychological facts
2. The first part of the definition dealing with anything or state of things or relations of things capable of being perceived by the senses indicates physical facts.
3. The second part of the definition dealing with any mental condition of which any person is conscious indicates psychological facts.

4. Physical facts are the facts that can be perceived by a person by any one of his 5 senses.
5. It means the fact which is perceived by a person by seeing or hearing or smelling or touching or tasting is known as physical fact.
6. Psychological facts are the facts which are known to the person who entertained them in his mind.
7. When it comes to the criminal law every completed offence consists of 4 stages.

   (a) State of Mind (or) Mens rea (b) Preparation (c) Attempt (d) Commission
8. Out of these 4 stages preparation, attempt and commission are known as physical facts as they can be perceived by a person by any one of his 5 senses.
9. State of Mind (or) mens rea is indicated with the expressions like intentionally, knowingly, negligently, recklessly, voluntarily, dishonestly, fraudulently, having reason to believe, malafidely etc.., all these expressions are nothing but the state of mind of a person.
10. State of Mind is the fact which is known only to the person who entertained it, unless that person discloses it before or after the transaction.
11. Physical facts are generally provable with the help of direct evidence, if direct evidence is not available they can be proved with the help of circumstantial evidence.
12. Psychological facts like guilty intention, knowledge, negligence, recklessness, etc.., are generally provable with the help of circumstances evidence, if available they cane be proved with the help of direct evidence.

Illustrations:

1. That a man heard or saw something, is a fact.
2. That a man said certain words, is a fact.

Sense, or is or was at a specified time conscious of a particular sensation, is a fact.

3. That a man has a certain reputation, is a fact.

Relavant:- One fact is said to be relevant to another when the one is connected with the other in any of the ways referred to in the provisions of this Act relating to the relevancy of facts.

1. Relevancy means connection between one fact and the other fact.
2. Under the Indian Evidence Act, a fact is said to be relevant only when it is connected with other facts provided under section 6 to 55 of the Act.
3. In relevancy there are 2 types.

   a) legal relevancy b) Logical relevancy
4. A fact is said to be legally relevant when it is shown under any of the Section from 6 to 55 of the Act.
5. All the facts there are legally relevant are automatically considered logically relevant.
6. Sometimes a fact may be logically relevant but may not be legally relevant, then such fact is not admissible as evidence.
7. Logical relevancy means considering a fact to be relevant on the basis of common sense.
8. Legal relevancy means law making that fact under on section or the other section legally relevant.
9. As per this definition a fact to be admissible as evidence must be recognized by law as relevant.
10. Facts which are logically relevant but legally not relevant have been mentioned under section 25 & 122 of Indian Evidence Act.
11. Section 122 says that a confession given to a police officer is irrelevant. Logically speaking confession made a police officer is relevant as he knows that law. But it has been made irrelevant by Section 25. So such confession has no legal relevancy hence it is inadmissible.
12. Section 122 says that communication exchanged by the spouses during the subsistence of their marriage is not to be disclosed before the Court.

Logically speaking such communication is disclosable but as per the law provided under Section 122 disclosure of such communication is prohibited. So it has no legal relevancy. Hence inadmissible.

Facts in Issue: - The expression “facts in issues” means and includes -
Any fact from which, either by itself or in connection with other facts, the existence, non-existence, nature or extent of any right, liability, or disability, asserted or denied in any suit or proceedings, necessarily follows -

1. Facts in issue are the matter which are in dispute between the parties to the sit or proceedings and brought before the Court for its decision.
2. Facts in issue or the facts asserted by one party and denied by the other party to the suit or proceedings.
3. Facts which are in dispute between the parties like plaintiff and defendant; prosecutor and defence.
4. Facts in issue are the subject matter of the suit or proceedings i.e., the basis for investigation by police and trial by the Court.
5. Facts in issue are the foundation for the criminal trial or civil proceedings.
6. Facts in issue are the points for determination placed before the Court for its decision.
7. In criminal law facts in issue are known as charges.
8. In civil law facts in issue are known as issues framed by the Court.

For eg:- In criminal law where the accused person caused the death of the victim with a guilty intention or not is the fact in issue.

For eg:- In Civil law whether the plaintiff claiming the ownership of piece of land is the owner or not, is the facts in issue.

Sec.5 to Sec.55 of Indian Evidence Act provides several ways in which one fact may be connected with the other fact and therefrom the concept of relevant fact can be meted out. One fact is relevant to another fact if they are connected with each other in any of the ways as described in Sec.5 to Sec.55. If a fact is not so connected, it is not a relevant fact.

All facts are relevant which are capable of affording any reasonable presumption as to fact in issue or the principal matter in dispute.

Difference between relevancy and admissibility:-

Relevancy	**Admissibility**
1) When facts are so related as to render the existence or non-existence of other facts probable according to common course of events or human conduct, they are called relevant.	1) When facts have been declared to be legally relevant under I.E.Act, they become admissible.
2) It is founded on logic and human experience.	2) It is founded on law not on logic.
3) The question regarding relevancy has been enunciated in Sec.5 to Sec.55 of I.E.Act.	3) The question of admissibility is provided in Sec.56 and the following sections.
4) It signifies as to what facts are necessary to prove or disprove a fact in issue.	4) It is a decisive factor between relevancy and proof.
5) It merely implies the relevant facts.	5) It implies what facts are admissible and what are not admissible.
6) It is the cause.	6) It is the effect.
7) The court may apply its discretion.	7) There is no scope for the court to apply discretion.
8) All admissible facts are relevant.	8) All relevant facts are not admissible. Only legally relevant facts are admissible.

Thus it is found that all legally relevant facts are admissible, but all logically relevant facts are not admissible. What is legally receivable is admissible, whether it is logically probative or not. For practical purpose, relevant fact means what is legally admissible in evidence. Only the evidence which is legally admissible should be received by the court.

Relevancy of Evidence

Sec. 5 and 136 of the Evidence Act stipulate that evidence can be given only on 'facts in issue' or 'relevant facts'. Relevant facts are enumerated in Sec. 6 on wards. Documents used in a case have to pass through three steps. They are:

Production of documents in court

- Admittance and exhibition.
- Proof

“Document” :

The word ‘document’ has been defined in Section 3 of the Indian Evidence Act, 1872 -

“Document” means any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter.

1. Document is any substance on the thoughts of a person can be inscribed or subscribed or expressed.

2. As per Section 3 of Indian Evidence Act there are of 2 types of evidences - a) oral evidence, b) documentary evidence.

Recitals in deeds :

Recitals in a deed inter parts are relevant.

But recitals in deed between strangers are not relevant to prove the truth of the facts stated therein.

Recitals about boundaries in deeds between strangers are not relevant under Sec. 11.

(**R.C.R. Institute Vs. State, AIR 1975 Kant. 75**)

“ Relevancy of documents in Indian Evidence Act ”

The recital in document -

As mentioned above a document is admissible in evidence if it is a transaction by which a right is asserted or claimed, but recitals in it are not admissible except when they amount to admission and are otherwise relevant. (Abdul Rahim Khan Vs. Faqir Mohd. - AIR 1946 Nag. 401)

Recitals of boundaries in deeds not between the parties to the suit or proceeding were held to be inadmissible.

However in A.A. Nainer Vs. A. Chetiar - AIR 1972 Mad. 154, it has been held that recital of boundaries in document. Not inter partes are admissible.

- Tape recorded evidence is a documentary evidence - tape or casatte is considered to be relevant as evidence and admissible before the Court.
- Tape recorded confession is admissible.
- Tape recorded statement is document as defined in Sec. 3 of IEA.

“Assertion and recital” distinguished :

“It is well settled now that there is a fundamental distinction between a mere recital and an assertion.

A right is not asserted simply because it is recited in a certain document. It is asserted only when the transaction concerned is itself entered into in the permanent character.

The mere fact that in the document of the mortgage a revenue-free title was recited would not constitute an assertion of such title within the meaning of Sec. 13 of the Evidence Act.

(Kumud Kant Vs. Province of Bengal - AIR 1947 Cal 290)

Sec. 17 defines admissions as statements.

1. An admission is a statement of fact
2. Admission can be made by a person either orally or in the written form or it may be contained even in the election form.
3. Admission suggests or gives a conclusion relating to any fact in issue or relevant facts.
4. Admission can be made by the persons and under the circumstances mentioned in Section 18,19,20

Conditions for admissibility of admissions:-

1. Admission must relate to fact in issue or relevant facts.
2. Admission must be self – harming to be admissible.
3. It must be made by persons mentioned under Section 18,19,20.

“Oral or documentary” and, generally, the Evidence Act, does not indicate any preference for the documentary vis-a-vis oral admissions.

In most cases the difference might lie more on the reliability of a particular admission than whether it is written or oral.

But, when it comes to the question of proving the contents of a document, Sec. 22 provides that the oral admissions of its contents are inadmissible “unless and until the party proposing to prove them shows that he is entitled to give secondary evidence of the contents of such document. or unless the genuineness of a document produced is in question”.

Sec. 65 Secondary evidence

Secondary evidence may be given by a party to the suit or proceeding of the existence condition are contents of a document in the following cases-

a) When the original is in possession of the opposite party or adverse party. (or) when the original is in possession of a person who is out of the reach of the court or not subject ed to the process of the Court. (or)

a. When the original is in possession of a person who is legally bound to produce but doesn't produce even after notice.

b) When the contents of the original have been admitted in writing by the person against whom it is to be proved.

c) When the original document has been lost or destroyed or when a party is not able to produce the original, even though he is not negligent.

d) When the original is of such nature that it cannot be easily movable.

e) When the original is a public document with in the meaning of Section 74.

f) When the original is a document of which a certified copy is allowed by law.

g) When the original consists of numerous accounts or other documents which cannot be conveniently examined by the Court.

Sec. 35 of IEA speaks of relevancy of entries in public or official book made by a public servant.

The Section does not give any definition of the term 'Public or Official book'.

Sec. 74 of the Evidence Act gives a list of public documents.

Commonly speaking, a public document is that document which is made for the purpose of the public uses; the public may make use of it and may refer to it on occasions.

Documents forming the acts are records of the acts of ----

1. The sovereign body.

Eg:- acts of parliament or state legislatures, proclamations, ordinances, official gazettes etc.,

2. acts or records of official bodies or tribunals.

Eg:- Births & Deaths register, records of electronic tribunal, records of Courts of justice.

3. acts of records of public officers of India or a foreign country.

Eg:- Records of military officers acting as members of Court marshal, records of official trustee, records of receive of property in case of insolvency, visa officer of government of India, visa officer of a foreign country etc.

4. As per section 74(2) public records of private documents are also public documents.

Eg:- Records kept under Registration Act 1908.

(**Govardhan Vs. State of M.P. - 1995 CrLJ 632 MP**)

In a case of alleged kidnapping, birth register extract from Municipality was held to be a valuable piece of evidence as regards the age of the victim.

As per Sec. 61 of IEA, the contents of documents must be proved either by primary or secondary evidence.

As per Sec. 62 primary evidence means the original document itself produced for the inspection of the Court. Primary evidence is considered to be the best evidence and it is first permanent record of a transaction.

As per Sec 63 Secondary evidence means and includes.

a) Certified copies of public documents.

b) Copies made from the original by mechanical process and copies compared with such copies. Eg. xerox copies of the original.

c) Copies made form or compared with the original.

Eg:- Hand written copies which are compared with the original.

d) Counter parts of documents:-

Eg:- Duplicate of a challan, duplicate of a paying slip, duplicate of transfer certificate.

e) oral accounts of the contents of a document given by some person who has himself seen it.

- Primary evidence is the best or highest evidence. Until it is shown that the production of primary evidence is out of the party's power, no other proof of the fact is, in general, admitted. All evidence falling short of this in its degree is termed secondary.

Patient Ambiguity & Latent Ambiguity (Sec.93-98)

1. Ambiguity means confusion.

2. There may be 2 types of ambiguity that can be identified in documentary evidence.

3. the 2 types of ambiguity are -

a) Patent ambiguity b)Latent ambiguity

4. Patent ambiguity means the ambiguity or confusion which can be identified on the face of the document.

5. The confusion or ambiguity which is apparent on the face of the record is known as Patent ambiguity.

Eg:- X agreed in writing with his friend Y to sell his house for 10 lakhs or 20 lakhs. This document is considered to be having patent ambiguity. Because as per law consideration must always be certain, but here it is flue. So it is known as patent ambiguity.

6. In case of patent ambiguity, court doesn't allow any evidence to clear that ambiguity. Such document is considered invalid and a fresh document should be drafted without ambiguity in its place.

7. The second type of ambiguity is know as latent ambiguity.

8. In case of latent ambiguity on the fact of the document every thing seems to be correct, but when we go through the contents of the document, we can find some hidden confusion. So it is known as latent ambiguity.

9. Eg:- X agreed in writing with his friend Y to sell his house in Hyderabad for 5 lakhs but in fact he has no house in Hyderabad, but he got one in Secundrabad. This document is considered to be having latent ambiguity. Here X can clear the confusion by showing that his house in Hyderabad means his house in Secundrabad.

10. In case of patent ambiguity a party can produce evidence before the court to clear the confusion. Document itself is not considered invalid.

11. Latent ambiguity basically arises due to difference in language used, mis-discription of parties and technical terms used in the document.

Section 90 of Indian Evidence Act:

Document of 30 years old may be presumed genuine.

Section 90-A :

5 Years old electronics records may be presumed genuine. (Ancient electronic document).

ADMISSIBILITY OF DOCUMENTS IN EVIDENCE IN CIVIL CASES – MARKING OF DOCUMENTS AS EXHIBITS AND OBJECTIONS TO DOCUMENTS BEING TAKEN ON RECORD

Parties rely upon various documents in their pleadings and/or enlist such documents in support of their pleadings or contentions. These documents can be taken on record by the court and read in evidence only if relied upon, produced, and exhibited in accordance with rules and settled principles laid down by the courts. This is a matter of vital importance often treated casually and overlooked. A document once admitted in evidence, without objection and marked as an exhibit by the court, becomes part of judicial record.

The question then arises as to whether it is open to the court to relook at the admission of such a document, not objected to when tendered and marked as an exhibit in evidence? When and in what circumstances is this permissible and when does such admission become a fait accompli and beyond the scope of judicial review? Often times, the process raises a conundrum for judicial officers and lawyers, particularly when an objection is raised after the document is already admitted on record and marked as an exhibit.

Admission of a document in evidence is different from proof of its contents. The latter, a separate topic by itself, is not dealt with herein.

Marking of exhibits

The courts have evolved the practice of marking of exhibits while recording evidence, as a matter of convenience and for ease of identification. The expression “exhibit” is not defined in the Civil Procedure Code, 1908. The Civil Procedure Code, 1908, contemplates admission and rejection of documents in evidence and the due endorsements to be made thereon by the court.

Order 13 Rules 3 and 4 of the Civil Procedure Code, 1908 provide rules for admission or rejection of documents. The same read as follows:

Rule 3**.** Rejection of irrelevant or inadmissible documents.- The Court may at any stage of the suit reject any document which it considers irrelevant or otherwise inadmissible, recording the grounds of such rejection.

Rule 4. Endorsements on documents admitted in evidence – (1) Subject to the provisions of the next following sub-rule, there shall be endorsed on every document which has been admitted in evidence in the suit the following particulars, namely : (a) the number and title of the suit; (b) the name of the person producing the document; (c) the date on which it was produced; and (d) a statement of its having been so admitted; and the endorsement shall be signed or initialled by the Judge.

The High Court of Delhi in Sudir Engineering Company vs Nitco Roadways Ltd., 1995 IIAD Delhi 189, has elucidated this practice of marking of exhibits as follows:

Para no.6. Let me now look at the law. Any document filed by either party passes through three stages before it is held proved or disproved.

These are:

First stage: when the documents are filed by either party in the Court; these documents though on file, do not become part of the judicial record;

Second stage : when the documents are tendered or produced in evidence by a party and the court admits the documents in evidence. A document admitted in evidence becomes a part of the judicial record of the case and constitutes evidence;

Third stage : the documents which are held “proved, not proved or disproved” when the court is called upon to apply its judicial mind by reference to Section 3 5 of the Evidence Act. Usually, this stage arrives at the final hearing of the suit or proceeding.

Para 13. Admission of a document in evidence is not to be confused with proof of a document.

Para 14. When the court is called upon to examine the admissibility of a document it concentrates only on the document. When called upon to form a judicial opinion whether a document has been proved, disproved, or not proved the court would look not at the document alone or only at the statement of the witness standing in the box; it would take into consideration probabilities of the case as emerging from the whole record. It could not have been intendment of any law, rule or practice direction to expect the court applying its judicial mind to the entire record of the case, each time a

document was placed before it for being exhibited and form an opinion if it was proved before marking it as an exhibit.

Para 15. The marking of a document as an exhibit, be it in any manner whatsoever either by use of alphabets or by use of numbers, is only for the purpose of identification. While reading the record the parties and the court should be able to know which was the document before the witness when it was deposing. Absence of putting an endorsement for the purpose of identification no sooner a document is placed before a witness would cause serious confusion as one would be left simply guessing or wondering which was the document to which the witness was referring to which deposing. Endorsement of an exhibit number on a document has no relation with its proof. Neither the marking of an exhibit number can be postponed till the document has been held proved; nor the document can be held to have been proved merely because it has been marked as an exhibit.

Para 16. This makes the position of law clear. Any practice contrary to the above said statement of law has no sanctity and cannot be permitted to prevail.

Para 17. Every court is free to regulate its own affairs within the framework of law. Chapter 13 Rule 3 6 above said contemplates documents admitted in evidence being numbered in such manner as the court may direct. I make it clear for this case and for all the cases coming up before me in future that the documents tendered and admitted in evidence shall be marked with numerical serial numbers, prefixed by Ext. P if filed by plaintiff or petitioner and prefixed by Ext. D if filed by defendant or respondent.

Thus, once documents are admitted on record and marked as exhibits, they can be read in evidence and/or as evidence of transactions, subject to being proved under the Evidence Act, 1872 and other laws.

Those documents which are not admitted in evidence and are rejected in terms of Order 13 Rule 3, Civil Procedure Code, 1908, are returned to the party recording the grounds for such rejection.

Types of objections and orders thereon

At the stage of evidence when documents are tendered in evidence, the opposing party has the right to object to the document being admitted in evidence and marked as an exhibit.

Objections are basically of three types:

(a) Objection to the document absence/insufficiency of stamp duty. Purely on ground of

(b) Where the document is by itself admissible in evidence, but the objection is directed towards the mode of proof alleging the same to be irregular or insufficient.

(c) Objection that the document sought to be produced in evidence is ab initio inadmissible in evidence in terms of a relevant statutory provision, for instance under the provisions of the Registration Act, 1908, the Transfer of Property Act, 1882.

In the first case, the court before which the objection is raised questioning admissibility of the document on the ground that it is not duly stamped, has to judicially determine the issue as soon as the document is tendered in evidence and before it is marked as an exhibit. A Bench of four Judges of the Supreme Court had the occasion to consider the question in Javer Chand v. Pukhraj Surana AIR 1961 SC 1655. The Court held as follows:

Para 4. ...With reference to the provisions of Section 36 of the Stamp Act, the High Court held that the plaintiffs could not take advantage of the provisions of that section because, in its opinion, the admission of the two hundis “was a pure mistake”. Relying upon a previous decision of the Rajasthan High Court in Ratanlal v. Daudas -1953 SCC OnLine Raj 23, the High Court held that as the admission of the documents was pure mistake, the High Court, on appeal, could go behind the orders of the trial court and correct the mistake made by that court. In our opinion, the High Court misdirected itself, in its view of the provisions of Section 36 of the Stamp Act. Section 36 is in these terms:

Where an instrument has been admitted in evidence, such admission shall not, except as provided in Section 61 of Stamp Act, be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped.

An objection should be taken when the document is tendered and before it is admitted in evidence and exhibited. Failure to raise a prompt and timely objection amounts to waiver of the necessity for insisting on formal

proof of the document, which is sought to be produced, the document by itself being otherwise admissible in evidence. Once the document is admitted in evidence and is used in cross-examination, the document gets proved and can be read in evidence.

When a document has been marked as "an exhibit", an objection to its admissibility is not excluded. It is available to be raised even at later stage of the suit or even in appeal or revision. There is no question of inadmissible documents being read into evidence merely on account of such document being given an exhibit number without any objection being raised by the opposite party or due to lack of judicial appreciation by the Court. For example, in case of unregistered sale deed or gift deed or lease deed requiring registration, the document itself is inadmissible and no evidence of the terms thereof can be given.

An important aspect to be borne in mind is, being let in evidence is different from being used as evidence of a transaction. This has been reiterated by the Supreme Court in Korukonda Chalapathi Rao v. Korukonda Annapurna Sampath Kumar - 2021 SCC Online SC 847.

As per Para 36. As far as Section 49(1)(c) of the Registration Act 16 is concerned, it provides for the other consequence of a compulsorily registrable document not being so registered. That is, under Section 49(1)(a), a compulsorily registrable document, which is not registered, cannot produce any effect on the rights in immovable property by way of creation, declaration, assignment, limiting or extinguishment. Section 49(1)(c) in effect, reinforces and safeguards against the dilution of the mandate of Section 49(1)(a). Thus, it prevents an unregistered document being used "as" evidence of the transaction, which "affects" immovable property. If the khararunama by itself, does not "affect" immovable property, as already explained, being a record of the alleged past transaction, though relating to immovable property, there would be no breach of Section 49(1)(c), as it is not being used as evidence of a transaction effecting such property. However, being let in evidence, being different from being used as evidence of the transaction is pertinent (see Muruga Mudallar). Thus, the transaction or the past transactions cannot be proved by using the khararunama as evidence of the transaction. That is, it is to be noted that, merely admitting the

khararunama containing record of the alleged past transaction, is not to be, however, understood as meaning that if those past transactions require registration, then, the mere admission, in evidence of the khararunama and the receipt would produce any legal effect on the immovable properties in question.

In R.V.E. Venkatachala Gounder v. Arulmigu - 2003 (8) SCC 752; the Hon'ble Supreme Court has laid down the following salutary principles which have been followed in a catena of judgments:

(a) Admission of a document in evidence and giving it an exhibit number is a formal act, which does not dispense with proof of the document.

(b) As a general rule, objections are to be raised and decided at the time when the document is tendered and can neither be raised nor entertained thereafter.

(c) An objection to deficiency or defect of stamp duty has to be raised at the time the document is tendered in evidence and cannot be raised or entertained after the document is already admitted in evidence and exhibited.

(d) Similarly, objection as to mode of proof has to be raised before the document is admitted in evidence and exhibited failing which such objection is treated as waived.

(e) As regards a document which is ab initio inadmissible in evidence, notwithstanding that such document is admitted in evidence and given an "exhibit" number, the same would not render it a part of admissible evidence or preclude an objection thereafter. It is the duty of the Court to exclude all inadmissible evidence, even if no objection is taken to its admissibility by the parties.

(f) The power of the Court is not fettered or limited to exclude an inadmissible document at a later stage of the same proceedings or even in appeal or revision and the bar of review is not applicable to such judicially inadmissible documents.

(g) Mere cross-examination upon an ab initio inadmissible document would not render it admissible or proved in evidence. Such principle would apply only to a document which is itself admissible in evidence but suffers from the defect of deficiency of stamp duty or if the mode of its proof is irregular [i.e. a document in categories (a) and (b) above] .

(h) In civil cases, ordinarily, the issue of admissibility is to be decided at the earliest and cannot be postponed to a later stage as can be done in a criminal trial.

(i) Assuming that it is possible to work out a different procedure as suggested in **Bipin Shantilal Panchal v. State of Gujarat**, **AIR 2001 SC 1158**, and only by way of exception in a case which requires resolution of complex issues which may arrest the progress of the matter or if the admissibility of such evidence is itself dependent on receipt of further evidence, only then, the decision on admissibility can be deferred to a later stage, and not as a rule .

(j) Postponement of adjudication on the issue of admissibility of a document to an uncertain future date, would thwart the course of cross-examination/re-examination and would neither subserve the interests of justice nor expedition.

(k) The mere fact that an ab initio inadmissible document has been marked as an exhibit in evidence and that cross-examination is conducted thereon without any objection from the parties and also overlooked by the Court, the objection can be raised even at the revisional or appellate stage and such evidence is liable to be rejected under Order 13, Civil Procedure Code, 1908, at any stage.

(l) It is well settled that where evidence has been received without objection in direct contravention of an imperative provision of law, the principle on which un objected evidence is admitted, be it acquiescence, waiver or estoppel is not available against a positive legislative enactment.

(m) A document which is ab initio inadmissible in evidence as well as the oral evidence led upon its terms are liable to be rejected in terms of Order 13 of the Civil Procedure Code, 1908 at any stage of the proceedings, original, appellate or revisional.

Registration Act & stamp Act

Every Court of law is free to regulate its own affairs within the framework of law. There are catena of rulings of our Hon'ble Superior Courts as to receiving and marking of documents. Still, in some situations, some confusion arises while receiving and marking of documents.

There are several issues are involved while receiving and marking of documents. Whether an unregistered document can be marked or not? Whether an unregistered document can be received for collateral purpose or not?

When does the question of impounding arise? If a document is insufficiently stamped, what should be done? When should decide the question of admissibility of a document? All such questions can be answered by looking at the following **8** principles as to receiving of documents:-

1. Order VII of CPC relates to the production of documents by the plaintiff whereas Order VIII of CPC relates to production of documents by the defendant. Under Order-18 Rule-4 of the Code of Civil Procedure, examination -in-chief shall be filed in the form of an affidavit and the copies thereof shall be supplied to the opposite party. As per the proviso to Rule-4 of Order-18 of the Code of Civil Procedure, the proof and admissibility of the documents filed by the respective parties along with the affidavit shall be subject to the orders of the Court. As per Order-13 Rule-3 of the Code of Civil Procedure, the Court may at any stage of the suit, reject any document, which it considers irrelevant or otherwise inadmissible, recording the grounds for such rejection. Under Order-13 Rule-4 of the Code of Civil Procedure, when once the document is admitted in evidence, there is a bar under Section-36 of the Indian Stamp Act as regards the objection of admissibility of the document.

2. Under Order VIII Rule 1A(4) a document not produced by defendant can be confronted to the plaintiff's witness during cross-examination. Similarly, the plaintiff can also confront the defendant's witness with a document during cross-examination.

3. By mistake, instead of 'defendant's witnesses', the words 'plaintiff's witnesses' have been mentioned in Order VII Rule 14 (4). The Hon'ble Apex Court has given clear direction till the legislature corrects the mistake, the words 'plaintiff's witnesses, would be read as 'defendant's witnesses' in Order VII Rule 4.

4. Order-7 Rule-14(1) C.P.C. enjoins upon the plaintiff to file all his documents along with the plaint and that unless he puts forth convincing reasons, the Court cannot allow him to file the documents at a later stage, the same is unexceptionable.

5. Similar is the provision under the sub-clause (3) of Rule 1 of Order XIII of the Code. Being so, it cannot be disputed that if the plaintiff fails to mention the documents in the list annexed to the plaint and to place on record a copy of such document, which is required to be produced under the law at the time of filing of the plaint, the plaintiff is not entitled to produce any additional document thereafter without the leave of the Court. But, at the same time, it is also to be noted that nothing prevents the Court in its discretion to grantl eave subsequent to the documents being produced before the Court even though such documents were not entered in the list annexed to the plaint. It would depend upon the facts of each case.

6. A document filed under Order XIII, Rule 1 as a piece of evidence in support of the claim of one of the parties to the suit filed along with the pleading may eventually be proved or may not be proved by the concerned party depending upon the issues involved in the suit .

7. Order 13, Rule 1 deals with only reception of the documents by the Court as part of the record of the suit. It does not deal with reception of the document as a piece of evidence. Rule 13 deals with a stage prior to the reception of the evidence in the suit. Whereas Order 7, Rule 14 deals with different situation altogether.

8. There is a clear embargo on the reception of a document in evidence, which forms the basis of the suit and filed by the plaintiff along with the plaint, but not filed. The Court of course is vested with the discretion under Sub-rule (3) of Rule 14 to receive any such document contemplated under Rule 14(1) at a belated stage by granting leave.

“Colletral purpose”

The Apex Court in **K. B. Saha and Sons Private Limited, 2008 AIR SCW 4829, has laid down the principle in respect of the Collateral purposes.**

From the principles laid down in the various decisions of this Court and the High Courts, as referred to here in above, it is evident that :-

1. A document required to be registered is not admissible into evidence under Sec. 49 of the Registration Act.

2. Such unregistered document can however be used as an evidence of Collateral purpose as provided in the proviso to Sec. 49 of the Registration Act.

3. A collateral transaction must be independent of, or divisible from, the transaction to effect which the law required registration.

4. A collateral transaction must be a transaction not itself required to be effected by a registered document, that is, a transaction creating any right, title or interest in immovable property of the value of 100 Rupees and upwards.

5. If a document is inadmissible in evidence for want of registration, none of its terms can be admitted in evidence and that to use a document for the purpose of proving an important clause would not be using it as a collateral purpose.

R. Rama Koteswara Rao Vs. Manohar Fuel Centre, 2003 (2) ALD 638.

The bar engrafted under Sec. 35 of the Stamp Act is an absolute bar and, therefore, the document cannot be used for any purpose, unlike the bar contained in Sec. 49 of the Indian Registration Act.

G. Lalitha Kumari Vs. B. Neelakanthan, 2004 (2) ALD 315.

A document which has to be registered under the provisions of the Transfer of Property Act and not registered under the provisions of Registration Act, the document falls under Sec. 49 of the Registration Act and the same is not admissible in evidence of any transaction affecting any immovable property.

ELECTRONIC (DIGITAL) EVIDENCE
&
ADMISSIBILITY

“Technology is defined an essential element of change in all spheres of life. The element involved also is an important factor. If technology is properly used, it can bring about tremendous changes for the betterment of life. Any change we contemplate is for speedy justice mechanism keeping in focus the quality, transparency and public accountability”.

The intention of the legislature is to introduce the specific provisions which has its origin to the technical nature of the evidence particularly as the evidence in the electronic form cannot be produced in the court of law owing

to the size of computer/server, residing in the machine language and thus, requiring the interpreter to read the same. The Section 65B of the Evidence Act makes the secondary copy in the form of computer output comprising of printout or the data copied on electronic/magnetic media admissible.

65A. Special provisions as to evidence relating to electronic record—

The contents of electronic records may be proved in accordance with the provisions of section 65B.

(i) SECTIONS 65-A AND 65-B OF THE EVIDENCE ACT READ AS FOLLOWS:

→ Computer Output → Conditions u/s 65B(2) are satisfied → shall be admissible → without further proof or production of the original.

Electronic Record, these are:

* Data generation;
* Storage;
* Receiving.
* Sending;

Section 65B – Admissibility of Electronic Records

Sec. 65B(1): Notwithstanding anything contained in this Act, any information contained in an electronic record -

* which is printed on a paper, stored, recorded or
* copied in optical or magnetic media
* produced by a computer
* shall be deemed to be also a document, if the conditions mentioned in this section are satisfied
* in relation to the information and
* computer in question and
* shall be admissible in any proceedings, without further proof or production of the original,
* as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.

Sec. 65B(2):

* The computer from which the record is generated was regularly used to store or process information in respect of activity regularly carried on by a person having lawful control over the period, and relates to the period over which the computer was regularly used;

* Information was fed in computer in the ordinary course of the activities of the person having lawful control over the computer;

* The computer was operating properly, and if not, was not such as to affect the electronic record or its accuracy;

* Information reproduced is such as is fed into computer in the ordinary course of activity.

Sec.65B(3):

The following computers shall constitute as single computer-

* by a combination of computers operating over that period; or
* by different computers operating in succession over that period; or
* by different combinations of computers operating in succession over that period; or
* 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,

Sec. 65B(4):

* Certificate Regarding the person who can issue the certificate and contents of certificate, it provides the certificate doing any of the following things:

* identifying the electronic record containing the statement and describing the manner in which it was produced;

* giving the particulars of device

* dealing with any of the matters to which the conditions mentioned in sub-section (2) relate,

* and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this

sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

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* and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this sub- section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

M/S. Jaimin Jewelery Exports Pvt. vs The State Of Maharasthra And Anr on Criminal Revision Application No.432 OF 2015, 14/03/ 2017 Hon'ble Bombay High Court.

Section 65 B only relates to the admissibility of electronic records and not actual correctness or proof/ genuiness of electronic evidence.

Para 74. It has to be borne in mind that section 65B only relates to the admissibility of electronic records. It authenticates the genuineness of the copy/computer printout and thus absolves the parties from producing the original. This section only makes the computer output admissible on complying with the requirements of the section. It does not prove the actual correctness of the entries and does not dispense with the proof or genuineness of entries made in such electronic records. Furthermore, there is no presumption regarding the genuineness of the entries in electronic records.

***Certificate Under Section 65b (4) Of The Evidence Act, A Condition Precedent For Admissibility Of Electronic Evidence: -**

The Supreme Court while discussing Shafhi Mohammad's case held that in the light of Anvar P.V.'s case, the law laid down in Shafhi Mohammad's judgment is incorrect. It was observed that the Evidence Act does not contemplate or permit the proof of an electronic record by oral evidence if requirements under Section 65B of the Evidence Act are not complied with. The major premise of Shafhi Mohammad's case that such certificate cannot be secured by persons who are not in possession of an electronic device is wholly incorrect. The Supreme Court by placing reliance on the provisions of the Evidence Act, the Code of Civil Procedure, 1908 **("CPC")** and Criminal Procedure Code, 1973 **("CrPC")** held that an application can always be made to a Judge for production of such a certificate from the requisite person under Section 65B(4) of the Evidence Act. As such, the Supreme Court held that Shafhi Mohammad's case does not lay down the correct position of law and is therefore overruled.

*** Discretion Upon The Judge To Decide As To The Admissibility Of Evidence**

Section 136 which confers a discretion upon the Judge to decide as to the admissibility of evidence reads as follows:

136. Judge to decide as to admissibility of evidence.

* When either party proposes to give evidence of any fact, the Judge may ask the party proposing to give the evidence in what manner the alleged fact, if proved, would be relevant; and the Judge shall admit the evidence if he thinks that the fact, if proved, would be relevant, and not otherwise.

* If the fact proposed to be proved is one of which evidence is admissible only upon proof of some other fact, such lastmentioned fact must be proved before evidence is given of the fact firstmentioned, unless the party undertakes to give proof of such fact, and the Court is satisfied with such undertaking.

* If the relevancy of one alleged fact depends upon another alleged fact being first proved, the Judge may, in his discretion, either permit evidence of the first fact to be given before the second fact is proved, or require evidence to be given of the second fact before evidence is given of the first fact.

Para 78 There are three parts to Section 136.

* The first part deals with the **discretion of the Judge to admit the evidence, if he thinks that the fact sought to be proved is relevant**.

* The second part of Section 136 states that **if the fact proposed to be proved is one, of which evidence is admissible only upon proof of some other fact, such last mentioned fact must be proved before evidence is given of the fact first mentioned**. But this rule is subject to a small concession, namely, that **if the party undertakes to produce proof of the last mentioned fact later and the Court is satisfied about such undertaking, the Court may proceed to admit evidence of the first mentioned fact**.

* The third part of Section 136 deals with the **relevancy of one alleged fact, which depends upon another alleged fact being first proved. The third part of Section 136 has no relevance for our present purpose**.

79. Illustration (b) under Section 136 provides an easy example of the second part of Section 136.

Illustration (b) reads as follows:

(b) It is proposed to prove, by a copy, the contents of a document said to be lost. The fact that the original is lost must be proved by the person proposing to produce the copy, before the copy is produced.

* If a fact is sought to be proved through the contents of an electronic record (or information contained in an electronic record), the Judge is first required to see if it is relevant, if the first part of Section 136 is taken to be applicable.

* If we go by the requirements of Section 136, the computer output becomes admissible if the fact sought to be proved is relevant. But such a fact is admissible only upon proof of some other fact namely, that it was extracted from a computer used regularly etc. In simple terms, what is contained in the computer output can be equated to the first mentioned fact and the requirement of a certification can be equated to the last mentioned fact, referred to in the second part of Section 136 read with Illustration (b).

*** Tape-Recorded Conversation**

Vikram Singh and Anr. v. State of Punjab and Anr. (2017) 8 SCC 518, a three-Judge Bench of this Court followed the law in Anvar P.V. (supra), clearly stating that where primary evidence in electronic form has been produced, no certificate under Section 65B would be necessary.

This was so stated as follows:

*25. The learned counsel contended that the tape-recorded conversation has been relied on without there being any certificate under Section 65-B of the Evidence Act, 1872. It was contended that audio tapes are recorded on magnetic media, the same could be established through a certificate under Section 65-B and in the absence of the certificate, the document which constitutes electronic record, cannot be deemed to be a valid evidence and has to be ignored from consideration. Reliance has been placed by the learned counsel on the judgment of this Court in Anvar P.V. v. P.K. Basheer. The conversation on the landline phone of the complainant situate in a shop was recorded by the complainant. The same cassette containing conversation by which ransom call was made on the landline phone was handed over by the complainant in original to the police. This Court in its judgment dated 25-1-2010 has referred to the aforesaid fact and has noted the said fact to the following effect:

* 5. The cassette on which the conversations had been recorded on the landline was handed over by Ravi Verma to SI Jiwan Kumar and on a replay of the tape, the conversation was clearly audible and was heard by the police.

*** Admissibility of intercepted phone in CD and CDR**

JAGDEO SINGH VS. THE STATE AND 2021 ORS. [MANU/DE/0376/2015]

In the recent judgment pronounced by 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 Thus, requirement of certificate under Section 65B(4) is not always mandatory.

Accordingly, we clarify the legal position on the subject on the admissibility of the electronic evidence, especially by a party who is not in

possession of device from which the document is produced. Such party cannot be required to produce certificate under Section 65B(4) of the Evidence Act. The applicability of requirement of certificate being procedural can be relaxed by Court wherever interest of justice so justifies.

G. shyamlal Rajini V. M.S. Tamizhnathan. AIR 2008 NOC 476 (Mad.)

The audio C.D. was marked by the court as an exhibit with the condition that when it was displayed, an opportunity would be given to the wife for cross examining the husband.

*** Video Recording Of Evidence**

State of Maharashtra V. Dr. Praful Desai AIR 2003 S.C. 2053,

The police had recorded evidence by video conferencing. With the enactment of Information Technology Act, 2000, the law of evidence was amended to incorporate several provisions governing admissibility and proof of the electronic evidence.

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

Amitabh Bagchi Vs. Ena Bagchi (AIR 2005 Cal 11),

The court 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.

Twentieth Century Fox Film Corporation Vs. NRI Film Production Associates (P) Ltd

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 demeanor 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.

*** Examination on 'Skype' technology for recording evidence in the divorce petition of the petitioner**

Sirangai Shoba @ Shoba Munnuri rep. by her General Power of Attorney, M. Narayana Rao VS Sirangi Muralidhar Rao, rep. by his Power of Attorney Sirangi Vijayalakshmi, 2017 0 AIR(AP) 88; 2017 5 ALT 475;

*** Data copied from hard disk to CD:**

Babu Ram Aggarwal & Anr. Vs. Krishan Kumar Bhatnagar & Ors. [2013, IIAD (Delhi) 441

Hard Disc is a storage devise. If written, then it becomes electronic record under the Evidence Act. Under section 65B, it has to be proved that the computer during the relevant period was in the lawful control of the person proving the email.

*** Clone copy of CCTV footages**

Suppose in a CCTV camera a criminal activity is recorded and same is stored in the hard disk or memory card. Said video of a crime in the CCTV camera can be copied by the police either on the pen drive or CD or memory card or other suitable device (and original hard disk or the memory card may be preserved). This is in term known as making the clone copy. This clone copy has to be accompanied by a Section 65B(4) certificate, issued by a person who has copied the said video from hard disk or memory card to the pen drive with the details like process, device/s and method used for it. Then the investigating officer can produce this clone copy before the court with a Section 65B(4) certificate. Video recording in the office of the Returning Officer on the day of election. This video recording is first recorded in the hard drive or a memory card. The Returning Officer can keep the original hard drive or memory card in the safe custody by making a clone copy in the CD with the Section 65B(4) certificate, issued by a person who has copied the said video from hard drive or memory card to the CD with the details like process, device/s and method used for it and the Returning Officer may in turn give this CD (upon a written request) to candidates. With a view to prove his case, the candidate produces this video recording before the court, after copying this the said video recording from the CD to the pen drive with the second Section 65B(4) certificate, certified by a person who has copied the said video recording from the CD to pen drive with the details like process, device/s and method used for it.

Dharambir Vs. Central Bureau of Investigation

*** Admissibility of e-mail as evidence:**

Electronic Messages.

It includes emails, SMS, MMS etc. of messages sent via social networking sites, like whatsapp, twitter etc. Under the provisions of Section 88A, there is a presumption as to such messages. Sections 88, 88A, 114(f) of the Evidence Act with section 26 of the General Clauses Act are relevant sections for sending and receipt of email and its proof.

*** Leakage of electronic evidence (in the form of WhatsApp chats)**

The recent instances of leakage of Whatsapp chats obtained during the course of investigation and their admissibility as evidence in a criminal trial has brought the issue of electronic evidence to the forefront. These Whatsapp chats have been leaked in the public domain at the investigation stage itself, even before the commencement of the trial.

Digital charge sheet

Thana Singh Vs. Central Bureau of Narcotics

A digital charge sheet was held to be a document and it can be accepted as an electronic record. Hon'ble Supreme court directed to supply of charge sheet in electronic form additionally.

Recitals in documents:

The recitals in the document do not become a part of the evidence. They are assertions by a person who is alive and who might have been brought before the Court if either of the parties to the suit had so desired. This distinction is frequently overlooked and when a document has been admitted in evidence as evidence of a transaction the parties are often apt to refer to the recitals therein as relevant evidence. **Nihar Bera vs. Kadar Bux Mohammed, AIR 1923 Cal 290**.

Third party documents:-

Would certificate issued by doctor.

Post Mortem report

FSL report, calligraphy , etc.,

Admissibility of carbon copy of documents:

Since the carbon copy was made by one uniform process the same was primary evidence within the meaning of Explanation 2 to Section 62 of the Evidence Act. Therefore, the medical certificate was clearly admissible in evidence. That apart, there is strong, reliable and dependable evidence of the prosecution witness which clearly proves that the prosecutrix was raped by the appellant. **Prithi Chand vs. State of Himachal Pradesh, 1989 (1) SCC 432: 1989 Cri. LJ 841 (SC).**

Admissibility of carbon copy of documents: The post-mortem report is to be prepared in triplicate by pen-carbon and in the instant case also, the post-mortem report was prepared by pen-carbon in one uniform process and as such, in view of the provisions of Section 62 of the Evidence Act, such carbon copy is primary evidence. **Md. Yakub Ali vs. State of Tripura, 2004 Cri. LJ 3315 (Guj).**

Admissibility of counterpart originals:

Section 62 of Evidence Act deals with Primary evidence. Explanation 2 says that where a number of documents are made by one uniform process, each is primary evidence of the contents of the rest. Under Explanation 2, all the documents must be taken at a time under one uniform process in which case, each of such documents is a primary evidence of the contents of the rest. Printing, cyclostyle, lithography are some mechanisms which are recognized under law through which documents can be obtained under a uniform process. Thus, documents prepared under the uniform process of either printing or cyclostyle or lithography cannot be mere copies in strict legal sense of the term, in fact, they are all counterpart originals and each of such documents is a primary evidence of its contents under Sections 45 and 47 of the Evidence Act. Surinder Dogra vs. State, 2019 Cri. LJ 3580 (J&k).

Admissibility of certified copies obtained under RTI Act.

The documents obtained under RTI Act can be admitted as secondary evidence, as they are obtained under a particular enactment, which fall within ambit of by “any other law in force in India”

Section 65-B

Admissibility of electronic evidence:

The applicability of procedural requirement under Section 65-B(4) of the Evidence Act of furnishing certificate is to be applied only when such electronic evidence is produced by a person who is in a position to produce such certificate being in control of the said device and not of the opposite party. In a case where electronic evidence is produced by a party who is not in possession of a device, applicability of Sections 63 and 65 of the Evidence Act cannot be held to be excluded. In such case, procedure under the said sections can certainly be invoked. If this is not so permitted, it will be denial of justice to the person who is in possession of authentic evidence/witness but on account of manner of proving, such document is kept out of consideration by the court in absence of certificate under Section 65-B(4) of the Evidence act, which party producing cannot possibly secure. Thus, requirement of certificate under Section 65-B(4) is not22 always mandatory. Accordingly, the legal position was clarified on the subject on the admissibility of the electronic evidence, especially by a party who is not in possession of device from which the document is produced. Such party cannot be required to produce certificate under Section 65-B(4) of the Evidence Act. The applicability of requirement of certificate being procedural can be relaxed by the Court wherever interest of justice so justifies. **Shafhi Mohammad vs. State of Himachal Pradesh, 2018 Cri. LJ 1714**

<u>Necessity of certificate:</u>

An electronic record is not admissible unless it is accompanied by a certificate as contemplated under Section 65-B(4) of the Indian Evidence Act. **Ravindr Singh @ Kaku vs State of Punjab 2022 live law (SC) 461.**

TAPE RECORDED STATEMENT

Whether tape recorded statement is admissible in evidence?

Yes. The person who speaks must identify that it is his voice. Accuracy of the recording must be proved. must be free from tampering. Such statement Subject matter of statement must be relevant **(AIR 1968 SC 147 "Yusufalli Esmail Nagree vs. State of Maharashtra"**

NEWS PAPER ITEMS

So, far as the news paper items are concerned it is neither primary nor secondary evidence but it is second hand secondary evidence. Therefore, the news paper items cannot be admitted in evidence unless the original manuscript is produced **(AIR 1994 SC 1733 "Quamarul Islam vs. S. K. Kanta",** wherein at head note D it is held that:

COUNTER PART

Counter Part means duplicate of original. So, far as evidentiary value attached to such document is to the effect44 that parties are bound by the contents of counter part signed by both the parties. For example Lease Deed, one retained by the land lord and one given to the tenant (AIR 1977 Rajasthan 155, AIR 1996 Madras 147).

VIDEO CONFERENCING

Whether video conferencing is permissible?

Yes: So, far as video conferencing is concerned it is a latest technological invention. It enables the Court to record the evidence without bringing the accused to Court. Evidence recorded through video conferencing is admissible in evidence **(AIR 2003 SC 2053 "State of Maharashtra vs. Praful B. Desai" Headonte D).**

Whether call records of mobile phone received from the operator is admissible in evidence?

Yes: It is admissible. Refer the decision reported in **AIR 2005 SC 3820P State (N.C.T. of Delhi) vs. Navjot Sandhu",**

EVIDENTIARY VALUE ATTACHED TO VOTERS LIST

Voters list is a public document. Certified copy of the same can be received and marked. **(AIR 1991 Orissa 166, AIR 1980 Allahabad 174).**

Identity card issued by the election commission – No evidentiary value can be attached with regard to the date of birth mentioned in the identity cards as it is a self serving statement **(AIR 2004 SC 230 "Sushil Kumar vs. Rakesh Kumar")** wherein at head note E, it is held that: Evidence Act (1 of 1872), S.3DATE OF BIRTH - EVIDENCE - Date of birth - Proof - Entry in Voter List and47 Election Identity Card issued by Election Commission – Not

conclusive to infer whether a candidate was disqualified being underage on date of filing nomination paper.

DEPOSITIONS IN EARLIER PROCEEDINGS

To prove the statement of a witness in earlier proceedings with regard the admission true copy cannot be confronted. Certified copy of the deposition can be confronted. If such deposition is admitted it has evidentiary value (**AIR 1974 SC 117 "Biswanath Prasad vs. Dwarka Prasad").** However, if the witness in earlier proceedings has deposed that he is the owner of Vidhana Soudha and if such deposition is produced in subsequent proceeding it cannot be relied upon **(AIR 1974 SC 280 "Krishnawati vs. Hans Raj").**

* * *