

ADMISSIBILITY OF INTERVIEWS AS EVIDENCE

The role of media in the Indian legal system has been growing in the recent times, to the extent that today media has even started to play the judicial role of deciding cases even before the trial begins. No doubts that the coming of the investigatory journalism has benefited the country in ways more than one and it has been playing a crucial role of bringing up issues of public concern and importance to the notice of the courts.

Today the media is not only referring the areas of concern rather collecting statistics, evidence and of course shaping the public opinion to the extent that at times even the educated lawyers get carried away and act as they did in the court premises in Noida recently in reference to the Nithari Case, such is the power media already enjoys.

Supreme Court has added a new, and significant, chapter to the conservative criminal jurisprudence and given a role to the media in criminal trials by ruling that interviews given by an accused to TV channels could be considered evidence by courts, where by enhancing the power of the already powerful media.

No doubt such a decision is a fabulous step in the direction of curtailing the misuse of the freedom of speech, which in the recent years has been used to mislead the investigation process. Still there are serious issues that need to be deliberated as to how such a scenario will fit into the existing evidence mechanism.

In this project of ours we have dealt with the admissibility of the interview as evidence by dealing with the related issues and the latest decision of the apex court in this regard.

The Questions

There is no question as to the admissibility of the Television interview as evidence in the Indian judicial process, still if we say that there are questions involved then they pertain as to:

What kind of evidence a television interview will prove to be?

Whether it will be taken as oral evidence or documentary evidence?

If documentary then whether a television interview is a primary evidence or secondary Evidence?

What will be the issues involved when one confesses of having committed a crime in an interview on television, will it be admissible as a confession?

Whether the confession would amount to extra-judicial confession?

Whether those parts of confession (interview) can be used selectively which most obviously prejudices the accused 'suggesting the inference that he committed the crime'?

What should be the standards of the video tape or record in which the evidence is produced?

And many more.

The Decision -

Sajidbeg Asifbeg Mirza Vs. State of Gujarat

Facts: The process began right at the trial court stage in Gujarat. In a murder incident of 2000, police allegedly beat up the accused Sajidbeg Asifbeg Mirza during his custodial interrogation. When Mirza was admitted to a hospital in Surat, a local TV channel interviewed him. As what he said in the interview, being relevant to prove his guilt, the prosecution moved trial court requesting it to summon the videographer as witness to prove contents of the interview.

The accused and his counsel objected saying extra-judicial confessions before media cannot be cited as evidence during the trial in a criminal case. The trial court did not agree with this plea and summoned the videographer to depose before it as a witness.

Sessions Judge: it appears that, no principle has been laid down by Hon'ble Supreme Court, but, it appears that, Hon'ble Supreme Court has observed that, if a statement is made in the course of an interview prearranged by the police, no weightage can be given to it at the time of appreciation of evidence. It appears that, there is no question of

appreciation of evidence, but the only question to be decided is whether the grievance which is sought to be adduced by the prosecution is relevant or not? And whether the prosecution can be permitted to adduce such evidence or not?

The accused moved Gujarat High Court to appeal the summoning order and cited the SC judgment in the Parliament attack case, which narrated that Ram Jethmalani, appearing for SAR Geelani, had cited a TV interview given by Mohammed Afzal to a TV channel purportedly confessing to his guilt but absolving Geelani.

High Court: The HC said the apex court, in the Parliament attack case, had rejected the admissibility of Afzal's statement to the TV channel as it became apparent that the interview was arranged by the police and recorded in their presence.

The HC, agreeing with the trial court, held that the SC has not laid down any principle about admissibility of confessional statement by an accused to media, if it were given suo-motu and without any pressure from the police. Mirza carried his appeal to the Supreme Court.

Supreme Court: A Bench comprising Justices Arijit Pasayat and SH Kapadia dismissed Mirza's petition saying, "There is no merit in it. However, it said, "It goes without saying that the relevance and admissibility of the statement, if any, given by the accused before the media persons shall be considered at the appropriate state in the trial." Once the "shall" word is used in the direction, then the trial court will definitely consider the admissibility.

Criticism: Neither before the learned Sessions Judge nor before this Court it is argued or pointed out by the learned advocate for the petitioner that as to how the production of the evidence in question, in the form of video cassette of the interview or the examination of the videographer, who recorded that interview, is going to prejudice. In absence of any convincing material to show the production of this evidence is going to cause prejudice to the petitioner it can be said that the learned Sessions Judge is right in observing that the contents of that interview might support the defence.

The Reflections

The SC verdict saying that TV interviews can be used as evidence in a case where it has given more weight to the saying 'Think before you speak'. While this verdict gives more muscle to the media, will it deter the accused from make controversial statements to media. In this light, the apex court's January 22 order that the trial court could consider admissibility of statements given by an accused to the media, is not only a significant leap in law but also a trend-setter. This has wide implications for sting operations. The recent "entrapment" of MPs seeking bribes for local area development contracts is a case in point, as such interviews may become key evidence in corruption trials. Also, those accused who seek to use these interviews to influence investigation need to watch out.

Let us see how the people reacted to this decision before we proceed further.

"Yes, that's what this verdict aims at - to discourage the suspects or the accused from giving any public statements while the investigation is still on. That's because it complicates the investigation in cases where the accused would want to change his statement later," states Majeed Memon, well-known criminal lawyer.

"Moreover, such public statements are directly admissible in the court of law as they are regarded as voluntary disclosures and not made under pressure, as the version given to the police might be construed as," adds Memon.

Now, isn't that giving far too much power to the media "But media was always powerful. This verdict just recognises its strength and is actually a tribute to it. Still, law empowers each one of us with the right to silence - then why make public statements at all and complicate the case" he says.

However, actor and social activist Nafisa Ali has her apprehensions about the media getting to play such a crucial part. "Media is the voice of the nation and it's fine that its

powers are being brought to use. But while the bytes on TV might look real, there may be cases where there are some digital manipulations. To avoid that, it's important that the credentials of the journalist who's covering a sensitive issue or interviewing an accused, be well established. Or there should be another law for cases of inaccuracy found in the taped confessions that would put the onus on the media house involved. And only then would justice be meted out to all."

And while Ali might be apprehensive, director Mahesh Bhatt has no doubts about where the verdict is taking our society. "This judgement has come at the right time. It's the age of audio-visual media. One must make the most of it in every possible way. However, the authenticity of these clippings needs to be checked. But still, you can't doubt and question the sagacity of such a senior body as the Supreme Court, and think that it could be misled by any small interview on TV. There are ways of proving everything."

Well, while the others might be weighing the pros and cons of this judgement, it seems the police are the happiest of all.

Welcoming the move, DC Pandey, DIG, Public Complaint, Lucknow, says, "Investigation is all about evidence collection and with the SC making bytes given by an accused on TV admissible in a court of law, it would only help us in that exercise. And e audio-visual bytes make for strong evidence."

"As long as the police and media are working towards the same goal, it can't get any better," he adds.

The above is how the society reacted to the supreme court verdict, which in general was accepted by almost all, but still the questions as to the law remains so let us have an analysis of the legal points involved which the court has not clearly dealt with as regards the kind of evidence.

Other Cases

R v Thomas

Facts: It is a recent decision of the Victorian Court of Appeal. Briefly put, the facts are as follows. Joseph Thomas is an Australian national who converted to Islam. In 2001 he travelled to Afghanistan and attended the Al Faroq training camp run by Al Qaeda. Whilst there, he met Osama Bin Laden and other high ranking Al Qaeda officials. He then went to Pakistan where he stayed for a year and met an Al Qaeda official called Khaled bin Attash. He was arrested at Karachi Airport when attempting to catch a flight back to Australia. Thomas' passport had been altered, seemingly to disguise the amount of time he had spent in Pakistan. He had a substantial amount of money in his possession. He said that he had been given the money and the airline ticket by Attash. He was detained in custody in Pakistan because of his suspected links to Al Qaeda.

Issue: The central issue of the appeal was whether the trial judge should have admitted into evidence an interview taken on 8 March 2004 by the Australian Federal Police ("AFP") in Pakistan. The AFP was only given an interview strictly limited to 2 hours, with no access to a legal representative for Mr Thomas (despite the AFP's request that he be given such access). Thus, the interview took place with no access to legal representation for Mr Thomas. The AFP told Mr Thomas that he had a choice whether or not to answer their questions and that he had the right to remain silent. However, from previous interviews involving American, Pakistani and ASIO officials, Mr. Thomas understood that he would not see his wife and child again unless he cooperated with investigators.

Held: The Court of Appeal found that, while nothing occurred in the actual interview of 8 March 2003 to overbear Mr Thomas' will, he did not have a real choice as to whether or not to answer the AFP's questions. This was because he felt that he had to cooperate to see his wife and child again, and that if he did not cooperate, there was a risk being incarcerated in an unidentified foreign goal. Thus, the admissions made in the 8 March 2003 interview could not be described as voluntary, and should not have been admissible as evidence. Accordingly, Mr. Thomas has been released from custody. This has caused outrage among some groups and commentators.

The Department of Public Prosecution had sought leave to make submissions for a retrial based on a television interview Mr. Thomas made with Four Corners on 27 February 2006.

Sharad Yadav and Ors. Vs. Union of India (UOI) and Anr

Facts: Facts of the present case are in pari materia with the case instituted against Shri L.K. Advani. The specific allegations in the charge sheet filed against Shri L.K. Advani and Jain brothers were that he received a sum of Rs. 25 lacs from Jain brothers during his tenure as a Member of Parliament (besides a sum of Rs. 35 lacs which was received by him while he was not a Member of Parliament).

The entry about payment of Rs. 25 lacs to Shri L.K. Advani was made at page 8 of MR-72/91. Allegations were made in the charge-sheet that Jain brothers entered into a criminal conspiracy among themselves, the object of which was to receive unaccounted money and to disburse the same to their companies, friends and other persons including influential public servants and political leaders; that in pursuance of the said conspiracy, S.K. Jain lobbied with various public servants, Union Ministers and influential politicians to persuade them to award contracts to different foreign bidders with the motive of getting illegal kickbacks from them. The gravamen of the charge against Shri Sharad Yadav is that he received Rs. 5 lacs from Jain brothers as illegal gratification.

It is pertinent to mention that there is no proof of the payment of the said amount to Shri Sharad Yadav or why it was paid, aliunde in the case. The learned Special Judge, relying upon the entry made at page 8 of the file MR-72/91 and the extra judicial confession alleged to have been made by Shri Sharad Yadav during interviews given to Shri Rajat Sharma of ZEE T.V. and Shri Vikram Aditya Chandra, came to the conclusion that a prima facie case had been made out against Shri Sharad Yadav.

Issue: Whether the two interviews by him would amount to confession? And whether the said statements of Shri Sharad Yadav can be construed as extra-judicial confessions suggesting the inference that he committed the alleged offence.

Reasoning: The question that falls for consideration is whether Shri Sharad Yadav admitted having received any amount as bribe from Jain brothers. It needs to be highlighted that in both the interviews, Shri Sharad Yadav has nowhere stated that he had received any amount from Jain brothers or from J.K. Jain, towards bribe. He had simply admitted having received a sum of Rs. 3 lacs from one Jain as donation to the party fund. In both the interviews he had stated that he did not know who that Jain was and he had come along with Chimmanbhai Patel. Editing the said statements of Shri Sharad Yadav so as to exclude the reference to receipt of Rs. 3 lacs as donation to the party fund from one Jain whom he did not know would utterly distort the true sense of both the statements. The facts must be interpreted reasonably and an admission of all the facts which constitute the offence should be present.

Held: 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. Eliminating the aforesaid interviews of Shri Sharad Yadav, there remains nothing on record to connect him with the alleged crime. Consequently, the charges of conspiracy, sought to be framed, cannot stand also against Jain brothers and their employee J.K. Jain, for the simple reason that in a case of conspiracy there must be two parties.

Mohd. Afzal Vs. State or The Paliament Attack Case

Contention advanced by Shri Ram Jethmalani, learned Senior Counsel appearing for S.A.R. Gilani with reference to the confession of Afzal. Shri Jethmalani contended that: # Afzal in the course of his interview with the TV and other media representatives, a day prior to the recording of a confession before the DCP, while confessing to the crime, absolved Gilani of his complicity in the conspiracy. A cassette (Ext.DW-4/A) was produced as the evidence of his talk. DW-4, a reporter of Aaj Tak TV channel was

examined. It shows that Afzal was pressurised to implicate Gilani in the confessional statement, according to the learned Counsel.

The statement of Afzal in the course of media interview is relevant and admissible under Section 11 of the Evidence Act.

Learned Counsel for Afzal, Shri Sushil Kumar did not sail with Shri Jethmalani on this point, realising the implications of admission of the statements of Afzal before the TV and press on his culpability. However, at one stage he did argue that the implication of Gilani in the confessional statement conflicts with the statement made by him to the media and therefore the confession is not true.

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.

The Supreme Court confirmed the death sentence of Mohammed Afzal in the Parliament attack case, but condoned the death sentence of Shaukat Hussain Guru and passed the order of 10 years rigorous imprisonment. The court upheld the Delhi high court judgement of acquitting S A R Geelani and Afsan Guru, wife of Shaukat Guru. Justice P V Reddy and Justice P V Neolkar absolved Shaukat Guru of charges under the Terror Act, but sentenced him to for concealment of the conspiracy of the attack on Parliament.

Analysis

Television interviews are admissible as evidence in the court, but we will have to see how evidence has been defined in the Indian Evidence Act (hereinafter referred to as the act) in section 3 says:

Evidence-"Evidence" means and includes--

- (1) All statements, which the Court permits or requires to be made before such statements are called oral evidence;
- (2) [All documents including electronic records produced for the inspection of the Court]; such documents are called documentary evidence.

Now the question before us is whether the evidence in the form of an interview is oral evidence or a documentary evidence. Can the statement given in the interview be kept in the category of oral evidence and be admitted as an evidence. If it is so then are the interviews given with the permission of the courts. And if it is only documentary evidence then such evidence has been accepted earlier also so there is nothing new. Above all electronic records are now accepted as documentary evidence by amendment to the Evidence Act. So it can be taken that we are referring to the Oral evidence in the form of interviews given to the Television Channels.

Now even if such interviews are admitted as oral evidence what will be the relevance of such interviews? The Act defines relevant as

"Relevant" -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.

The chapter on relevance of facts lays the circumstances in which a fact can be relevant. Under this chapter what is said in an interview can be relevant only under section 8 of the Act, which talks about the previous and subsequent conduct as an interview can only be a conduct previous, the section provides that,

Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact.

The conduct of any party, or of any agent to any party, to any suit or proceeding, in reference to such suit or proceeding, or in reference to a fact in issue therein or relevant thereto, and the conduct of any person an offence against whom is the subject of any proceeding, is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto.

Explanation 1. the word "conduct" in this section does not include statements, unless those statements accompany and explain acts other than statements, but this explanation is not to affect the relevancy of statements under any other section of this Act.

Explanation 2. when the conduct of any person is relevant, any statement made to him or in his presence and hearing, which affects such conduct, is relevant.

After having seen the relevance of the admission we need to see are they admissible as extra judicial confession or not under section 24 of the act but before that its important to note what is confession. This was laid down by the Privy Council in Narayana Swami v. Emperor, in these words:

".....& confession must either admit in terms the offence, or at any rate substantially all the facts which constitute the offence.

An admission of a gravely incriminating fact, even a conclusively incriminating fact, is not of itself a confession, e.g. an admission that the accused is the owner of and was in recent possession of the knife or revolver which caused a death with no explanation of any other man's possession. Some confusion appears to have been caused by the definition of confession in Article 22 of the Stephen's Digest of the Law of Evidence as an admission made at any time by a person charged with a crime stating or 'suggesting the inference that he committed that crime."

If the surrounding articles are examined it will be apparent that, after dealing with admissions generally, they are applied to admissions in criminal cases, and for this purpose confessions are defined so as to cover all such admissions, in order to have a general term for use in the three following articles, confession secured by inducement, made upon oath, made under a promise of secrecy. The definition is not contained in the Evidence Act, 1872, and in that Act it would not be consistent with the natural use of language to construe confession as a statement by an accused 'suggesting the inference that he committed the crime'.

And then coming to the question related to the editing of the parts of the interview the question becomes whether those parts of confession (interview) can be used selectively which most obviously prejudices the accused 'suggesting the inference that he committed the crime' As Lord Widgery, C.J. explained in R. v. Pearce:

"A statement that is not itself an admission is admissible if it is made in the same context as an admission. it would be unfair to admit only the statements against interest while excluding part of the same interview or series of interviews. It is the duty of the prosecution to present the case fairly to the jury. To exclude answers which are favorable to the accused whilst admitting those unfavorable would be misleading."

It has been established in the above case that the prosecution cannot selectively use only those parts of a confession which most obviously prejudice the accused. There can be no "editing" of exculpatory passages that detract from those parts.

It is likely in many cases that such editing of a confession will distort the true sense of the confession and unfairly accentuate those parts that incriminate the maker himself. This was recognized in R. v. Gunewardene , where Lord Goddard, C.J. said:

"It not infrequently happens that (an accused) in making a statement, though admitting his guilt upto a certain extent, puts greater blame on the (co-accused) In such a case the accused would have a right to have the whole statement read and could, with

good reason, complain if the prosecution picked out certain passages and left out others."

Thus it can be said that the prosecution cannot selectively use only those parts of a confession which most obviously prejudice the accused. There can be no "editing" of exculpatory passages that detract from those parts.

Conclusion

Stringent laws governing the admissibility of visual evidence in courts of law should induce law enforcement agencies to turn to advance video solutions to document and archive the proceedings of interviews. The country's criminal jurisprudence, which presumes innocence in favor of the accused and goes by the principle that one hundred guilty could escape the clutches of law but not a single innocent should be punished, had not recognized the role of media in a trial. But in the light of admissibility of interview as an evidence or infact admissibility of statements given by an accused to the media, is not only a significant leap in law but also a trendsetter. This has wide implications for sting operations. The recent "entrapment" of MPs seeking bribes for local area development contracts is a case in point, as such interviews may become key evidence in corruption trials. Also, those accused who seek to use these interviews to influence investigation need to watch out. The televised confession can now give different connotations to various complicated issues.

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PAPER PRESENTATION ON **RECORDING OF EVIDENCE THROUGH** **VIDEO CONFERENCING**

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Meaning:

Video conferencing or video conference means to conduct a conference between two or more participants at different sites by using computer networks to transmit audio and video data. For example, a point-to-point (two-person) video conferencing system works much like a video telephone.

In Evidence Act, under section 3 in interpretation clause the word "Evidence" defined as:-

"Evidence" means and includes :-

- (1).....
- (2) all documents including (**electronics record**) produced for inspection of court.

Under Information Technology Act, 2000 (Act 21 of 2000)

Certain Definitions relating to electronic records Under section 2 is as follows:-

Sec 2. Definitions :-

Sec.2 (o) "data" means a representation of information, knowledge, facts, concepts or instructions which are being prepared or have been prepared in a formalised manner, and is intended to be processed, is being processed or has been processed in a computer system or computer network, and may be in any form (including computer printouts magnetic or optical storage media, punched cards, punched tapes) or stored internally in the memory of the computer;

Sec.2 (r) "electronic form" with reference to information means any information generated, sent, received or stored in media, magnetic, optical, computer memory, micro film, computer generated micro fiche or similar device;

Sec.2(t) "electronic record" means data, record or data generated, image or sound stored, received or sent in an electronic form or micro film or computer generated micro fiche;

Sec.2(v) "information" includes data, text, images, sound, voice, codes, computer programmes, software and databases or micro film or computer generated micro fiche;

Section 4. Legal recognition of electronic records :-

Where any law provides that information or any other matter shall be in writing or in the typewritten or printed form, then, notwithstanding anything contained in such law, such requirement shall be deemed to have been satisfied if such information or matter is

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

As per Section 35 of Evidence Act the entry made in the public record or an electronic record made in performance of duty is relevant

As per section 65-A of Evidence Act the contents of electronic records may be proved in accordance with Section 65-B of Evidence Act . Section 65-B of Evidence Act laid down detailed procedure with regard to admissibility of electronic record. As per this section any information contained in an electronic record which is printed on a paper, stored, recorded or copied on optical or magnetic media produced by computer shall be deemed to be also a document and on production of original, as evidence of any contents of the original would be admissible.

**The Hon'ble Appex court in case of State of Maharashtra Vs Praful B Desai,
at para No.19 held as Citation: 2003 Law Suit (SC) 397**

[19] It was submitted that videoconferencing could not be allowed as the rights of an accused, under Article 21 of the Constitution of India, cannot be subjected to a procedure involving "virtual reality". Such an argument displays ignorance of the concept of virtual reality and also of video conferencing. Virtual reality is a state where one is made to feel, hear or imagine what does not really exists. In virtual reality one can be made to feel cold when one is sitting in a hot room, one can be made to hear the sound of ocean when one is sitting in the mountains, one can be made to imagine that he is taking part in a Grand Prix race whilst one is relaxing on one sofa etc. Video conferencing has nothing to do with virtual reality. Advances in science and technology have now, so to say, shrunk the world. They now enable one to see and hear events, taking place far away, as they are actually taking place. To take an example today one does not need to go to South Africa to watch World Cup matches. One can watch the game, live as it is going on, on one's T V. If a person is sitting in the stadium and watching the match, the match is being played in his sight presence and he/she is in the presence of the players. W hen a person is sitting in his drawing-room and watching the match on T V, it cannot be said that he is in presence of the players but at the same time, in a broad sense, it can be said that the match is being played in his presence. Both the persons sitting in the stadium and the person in the drawing-room, are watching what is actually happening as it is happening. This is not virtual reality, it is actual reality. O ne is actually seeing and hearing what is happening. Video conferencing is an advancement in science and technology which permits one to see, hear and talk with someone far away, with the same facility and ease as if he is present before you i.e. in your presence. In fact he/she is present before you on a screen. Except for touching one can see, hear and observe as if the party is in the same room. In video conferencing both parties are in presence of each other. The submissions of respondents counsel are akin to an argument that a person seeing through binoculars or telescope is not actually seeing what is happening. It is akin to submitting that a person seen through binoculars or telescope is not in the "presence" of the person observing. Thus it is clear that so long as the accused and/or his pleader are present when evidence is recorded by video conferencing that evidence is being recorded in the "presence" of the accused and would thus fully meet the requirements of Section 273, Criminal P procedure Code. Recording of such evidence would be as per "**procedure established by law**". Recording of evidence by video conferencing also satisfies the object of providing in Section 273, that evidence be recorded in the presence of the accused. The accused and his pleader can see the witness as clearly as if the witness was actually sitting before them. In fact the accused may be able to see the witness better than he may have been able to if he was sitting in the dock in a crowded Court room. They can observe his or her demeanour. In fact the facility to play back would enable better observation of demeanour. They can hear and rehear the deposition of the witness. The accused would be able to instruct his pleader immediately and thus cross-examination of the witness is as effective, if not better. The facility of play back would give an added advantage whilst cross-examining the witness. The witness can be confronted with documents or other material or statement in the same manner as if he/she was in Court. All these objects

would be fully met when evidence is recorded by video conferencing. Thus no prejudice, of whatsoever nature, is caused to the accused. Of course, as set out hereinafter evidence by Video Conferencing has to be on some conditions.

The Hon'ble Delhi High Court in case of International Planned ... vs Madhu Bala Nath on 7 January, 2016, dated 07th January, 2016, was pleased to held at paras No.8,14 and 15 as follows:-

“8. The judgment of the Supreme Court in **Dr Praful B. Desai (supra)** has also been followed by various High Courts. Even our High Court has followed the same in several cases. In fact, the facility of video conferencing has been utilized for the purposes of recording testimony of witnesses and the said facility has shown its merit. Not only has the evidence being recorded expeditiously, experience has shown that it has facilitated, not only the witnesses but also the lawyers as well as the Court.

14. Procedures have been laid down to facilitate dispensation of justice. Dispensation of justice entails speedy justice and justice rendered with least inconvenience to the parties as well as to the witnesses. If a facility is available for recording evidence through video conferencing, which avoids any delay or inconvenience to the parties as well as to the witnesses, such facilities should be resorted to. Merely because a witness is traveling and is in a position to travel does not necessary imply that the witness must be required to come to Court and depose in the physical presence of the court.

“15. We are not for a moment laying down that a witness can never be called to Court. There may be circumstances or situations where physical presence of a witness may be necessary and required by the Court, in such situations it would be obligatory on the witness to be present in Court. Where a witness or a party requests that the evidence of a witness may be recorded through video conferencing, the Court should be liberal in granting such a prayer. There may be situations where a witness even though within the city may still want the evidence to be recorded through video conferencing in order to save time or avoid inconvenience, the Court should take a pragmatic view.”

The Hoble Apex Court in Sakshi v. Union of India, 2004 SCC (Cri) 1645, held as follows:-

"31. The whole inquiry before a Court being to elicit the truth, it is absolutely necessary that the victim or the witnesses are able to depose about the entire incident in a free atmosphere without any embarrassment. Section 273, Cr.P.C. merely requires the evidence to be taken in the presence of the accused. The Section, however, does not say that the evidence should be recorded in such a manner that the accused should have full view of the victim or the witnesses. Recording of evidence by way of **videoconferencing** vis-a-vis Section 273, Cr. P.C. has been held to be permissible in a recent decision of this Court in **State of Maharashtra v. Dr. P raful B. Desai, (2003) 4 SC C 601 : (2003 Cri L J 2033).**

There is major difference between substantive provisions defining crimes and providing punishment for the same and procedural enactment laying down the procedure of trial of such offences. Rules of procedure are handmaidens of justice and are meant to advance and not to obstruct the cause of justice. It is, therefore, permissible for the Court to expand or enlarge the meanings of such provisions in order to elicit the truth and do justice with the parties."

The Hon'ble Apex Court in **Kalyan Chandra Sarkar v. Rajesh Ranjan alias Pappu Yadav, 2005 Cri L J 1441** formulated the **guidelines to be followed**, which are as follows :

"45. We also direct that the trial of the case in Patna shall continue without the presence of the appellant by the Court dispensing such presence and to the extent possible shall be conducted with the aid of **video conferencing**. However, in the event of the respondent making any application for his transfer for sole purpose of being present during the recording of the statement of any particular witness, same will be considered by the learned Sessions Judge on its merit and if he thinks it appropriate, he may direct the authorities of Tihar Jail to produce the accused before him for that limited purpose. This, however, will be in a rare and important situation only and if such transfer order is made the respondent shall be taken from Tihar Jail to the Court concerned and if need be detained in appropriate jail at the place of trial and under the custody and charge of the police to be specifically deputed by the authorities of Tihar Jail who shall bear in mind the factual situation in which the respondent has been transferred from Patna to Delhi."

The Hon'ble High court of Madras in case of **Abdul Karim Telgi Vs State, Dated.17 September 2007, reported in :2007 Law Suit(Mad) 219, para No.17 and 21** held as follows:-

"[17] The Hon'ble Supreme Court was of the firm view that the fundamental right available to an under-trial prisoner under Article 21 is not an absolute one, which is circumscribed by the rules and regulations in the Prison Manual of respective States. Applying those principles to the case on hand, it has to be held herein that even though the provision for personal appearance of the accused is incorporated in the statutes, the right of the accused, being not absolute, using video conferencing system could not be held to be a violation of the provisions."

“[21] I feel, a practicable way has to be paved for the Special Court for conduct of the proceedings in accordance with law. Though it is stated on behalf of the petitioners that the principles laid down by the Apex Court need not be applied mechanically to a particular case, I am of the considered view, that the peculiar facts and circumstances of this case warrant for adopting the services of video conferencing system, in order to render justice to the parties. Such procedure would avoid strain of the accused persons in undergoing the ordeal of travel to appear before the Court; reduce manpower, energy and monetary loss to the Government; safeguard the safety of the prisoners and ensure proper conduct of the Court proceedings.”

The Hon'ble Apex court In *Salem Advocate Bar Association v. Union of India.*

(2003) 1 SCC 49, at Paragraph 19 held as follows:-

"19. Order 18 Rule 4(2) gives the court the power to decide as to whether evidence of a witness shall be taken either by the court or by the Commissioner. An apprehension was raised to the effect that the court has no discretion and once it decides that the evidence will be recorded by the Commissioner then evidence of other witnesses cannot be recorded in court. We do not think that this is the correct interpretation of sub-rule (2) of Rule 4. Under the said sub-rule, the court has the power to direct either all the evidence being recorded in court or all the evidence being recorded by the Commissioner or the evidence being recorded partly by the Commissioner and partly by the court. For example, if the plaintiff wants to examine 10 witnesses, then the court may direct that in respect of five witnesses evidence will be recorded by the Commissioner while in the case of the other five witnesses evidence will be recorded in court. In this connection, we may refer to Order 18 Rule 4(3) which provides that the evidence may be recorded either in writing or mechanically in the presence of the Judge or the Commissioner. **The use of the word "mechanically" indicates that the evidence can be recorded even with the help of the electronic media, audio or audio-visual,** and in fact whenever the evidence is recorded by the Commissioner it will be advisable that there should be simultaneously at least an audio recording of the statement of the witnesses so as to obviate any controversy at a later stage."

Hoble Justice Bhagwati in the case of *National Textile Workers' Union v. P.R. Ramakrishnan [(1983) 1 SCC 228 : 1983 SCC (Tax) 2 : 1983 SCC (L&S) 72]*, at SCC p. 255, para 9 held that:

"We cannot allow the dead hand of the past to stifle the growth of the living present. Law cannot stand still; it must change with the changing social concepts and values. If the bark that protects the tree fails to grow and expand along with the tree, it will either choke the tree or if it is a living tree, it will shed that bark and grow a new living bark for itself. Similarly, if the law fails to respond to the needs of changing

society, then either it will stifle the growth of the society and choke its progress or if the society is vigorous enough, it will cast away the law which stands in the way of its growth. Law must therefore constantly be on the move adapting itself to the fast-changing society and not lag behind."

Impact on government and law in Foreign countries: This information got from Internet (Wikipedia)

In the United States, videoconferencing has allowed testimony to be used for an individual who is unable or prefers not to attend the physical legal settings, or would be subjected to severe psychological stress in doing so, however there is a controversy on the use of testimony by foreign or unavailable witnesses via video transmission, regarding the violation of the [Confrontation Clause of the Sixth Amendment](#) of the U.S. Constitution.[28]

In a military investigation in [State of North Carolina, Afghan](#) witnesses have testified via videoconferencing.

In [Hall County, Georgia](#), videoconferencing systems are used for initial court appearances. The systems link jails with court rooms, reducing the expenses and security risks of transporting prisoners to the courtroom.[29]

The [U.S. Social Security Administration](#) (SSA), which oversees the world's largest administrative judicial system under its [Office of Disability Adjudication and Review](#) (ODAR),[30] has made extensive use of videoconferencing to conduct hearings at remote locations.[31] In Fiscal Year (FY) 2009, the U.S. Social Security Administration (SSA) conducted 86,320 video conferenced

hearings, a 55% increase over FY 2008.[32] In August 2010, the SSA opened its fifth and largest videoconferencing-only National Hearing Center (NHC), in St. Louis, Missouri. This continues the SSA's effort to use video hearings as a means to clear its substantial hearing backlog. Since 2007, the SSA has also established NHCs in Albuquerque, New Mexico, Baltimore, Maryland, Falls Church, Virginia, and Chicago.

Conclusion:-

In view of above referred Legal provisions and referred decisions of Hon'ble Apex Court and Hon'ble High Court , I am of the opinion that evidence can be recorded through video conferencing in both Civil and Criminal cases by adopting the latest changes of the Technology to meet the needs of society and to rendered timely justice to the needy.

***Paper presented for the workshop IV Dt.23-07-2016 by
S.Kamalakara Reddy, Secretary, DLSA, Ananthapuramu.***

Sub: Recent trends in recording and admissibility of evidence

TOPIC : Appreciation of Evidence recorded through Electronic Media

It is the age of e-governance, e-banking, e-courts and all the documents are stored or transferred in digital form. The digital form is called "**data**". Slowly but steadily, the entire world is proceeding towards digital world where we do not find any papers in physical form. All data will be stored in hard device, SD cards; flash memories i.e. pen drives, CDs and DVDs.

The Information Technology Act, 2000 has brought about revolutionary changes to the Major Acts, IPC, Cr.P.C., Evidence Act. As stated above, Sec.3 of Indian Evidence Act included electronic records produced for the inspection of the courts

Secs.61 to 65 which speaks about the proof of document including production of secondary evidence to prove a document. In these provisions the word "**Electronic record**" has been omitted. That means the proof of document as contemplated U/Secs.61 to 65 has no application to production of electronic record and proof of it.

What is evidence:

"**Evidence**" has been defined U/Sec.3 of the Indian Evidence Act. It is as follows:

The evidence means and includes

- i) All statements which the court permits or require to be made before it by witnesses, in relation to matters of fact under enquiry; such statements are called "**Oral Evidence**".
- ii) All documents, including electronic records produced for the inspection of the court; such documents are called "**Documentary Evidence**"

Sec.59 of Indian Evidence Act says that all facts, except the contents of the documents or electronic records, may be proved by oral evidence.

Sec.60 says oral evidence in all cases be direct.

Sec.61 says the documents must be proved either by primary or by secondary evidence.

Sec.62 says "**Primary Evidence**" means the document itself produced for inspection of the court.

Whereas **Sec.63** says that "**Secondary Evidence**" means and includes certified copies, copies made from the original by mechanical process, copies made from or compared with the original, counter parts of the documents as against the parties and oral accounts of the contents of a document given by some person who has himself seen it.

Primarily documents must be proved by producing the original documents themselves (primary evidence).

What is electronic media: Electronic media means any type of device that stores and allows distribution or use of electronic information. This includes television, radio, internet, floppy, CD ROMS, DVD, SD Cards, hard disks, flash cards, and pen drive/USBs and any other electronic media. It is in contrast to print media.

Now we have to see evidentiary value of TV channel visuals, face book, what's app visuals, video recording, still images.

Digital cameras and recorders have provided better, higher resolution images with a great clarity. However, digital images also provide easier ways to edit and alter digital images. The digital evidence being questioned and challenged in court. Digital images do not have negatives or raw video tape to refer back to.

To appreciate and admit digital evidence in the court, first we have to see the following issues:

- i) Most digital cameras capture images to a memory card. These images are then transferred or down loaded to a computer for editing and often the original memory card is erased. If the evidence which is captured through the electronic media is going to be used in courts, the digital images stored while recording, the memory card be used and be produced. The first stored SD Card contains fresh, new and origin evidence. The images down loaded from the memory card to a hard drive or USB/flash drives are not the storage device used to capture the images. Therefore, they can be questioned. However, they can be treated as copy pages.

- ii) The actual oral evidence of other employees or just passersby confirming that they say they were present at the time of taking photographs at the scene can be secondary means.

Gold Stain an expert in Digital Forensic Evidence says any digital video evidence must answer these questions.

- i) Who captured the image and when
- ii) Who had access to the image between the time it has captured and the time it was introduced into the court.
- iii) As the original image been altered in any way since it was captured
- iv) Who enhanced the image, when and why
- v) What was done to enhance the image and is it repeatable
- vi) Has the enhanced image been altered in any way since it was first enhanced.

Most digital evidence is edited and stored to a CD, DVD, USB or hard drive as a copy for presentation in court. Copies of the original memory or hard drive and copies of CDs or DVDs are all back up users.

Mobile device contain personal information including caller details, text messages, e-mails, digital photographs, videos, calendar items, memos, address books, pass words and credit card numbers. The mobile phones can be used to communicate, exchange photographs, connect to social networks and consume video and audio, sketch, access the internet and much more. Mobile phones are network device. They send and receive data through telecommunication system, WiFi, access points and blue tooth piconets.

The principles that apply to any computing devise also applied to mobile devise in order to enable others to authenticate digital evidence.

e-evidence can be categorized:

- a) Web site data
- b) Social net work communications
- c) e-mail
- d) text messages
- e) computer stored and generated documents

Each of the five categories of electronic evidence poses problems. The authentication and consideration are the challenges before Judges.

The admissibility of e-evidence depends on authentication or identity, hearsay or not, relevant or not and unfair prejudicial or not?

Authentication means the party offering electronic evidence must present sufficient material to support the document in question. The common method of authentication is the use of testimony by a witness who has the knowledge that the document is what it claims to be.

Information available on private and government websites often produced as evidence. Printouts of web pages must be authenticated as accurately, reflecting the content and image of a specific web page on the computer.

The most common method of authenticating web site data is having a competent witness testifying that he typed in the URL of the web site that he logged on to the site and viewed what was there and that the print out fairly and accurately reflects what the witness saw.

When it comes to social network messages the web site permit their members to share information with others. The members can create their own pages (profiles) and they can post their personal information, photographs and videos. They can also send and receive messages to and from their friends.

The key issue in authentication of these social network messages is the authorship. Who posted the offered document in question? Courts lay emphasis on authentication of social network messages and postings for the reason that there is danger of falsehood and fraud.

The electronic conversation on social networking sites can be authenticated by a person who participated in the conversation.

There are three common methods of authenticating social net work profile or posting.

The first method is:

To ask the purported creator if he created the profile and also if he added the posting in the question and produce the material/document before the court.

The second method is:

Search the computer of the person who allegedly create the profile and posting and examine the computers internet history, hard drive to determine whether the computer was used to originate the social networking profile and produce the relevant material/document before the court.

The third method is:

To obtain information directly from the social networking web site and produce it before the court.

e-mail messages:

Authenticity can be established by testimony of witness who send or received the e-mails. The circumstantial indicators are also important to establish that e-mail was sent by a specific person.

- a) The e-mail in question bears the customary format of an e-mail including the address of the sender and recipient.
- b) The address of the recipient is consistent with the e-mail address
- c) The e-mail contains the typewritten name of the recipient
- d) The e-mail contains the electronic signature of the sender
- e) The e-mail recites matters that would normally be known only to the individuals who said to have sent it
- f) Following recipient of the e-mail

Text Messages:

Text messages sent between cell phone users are treated the same as e-mail for purposes of authentication. Like e-mail and social media, the text messages have certain seemingly self-authenticating features. Whether text message evidence has been properly authenticated or not can be seen by following the below steps

- i) Sequential consistency with another text message sent by the author
- ii) The author's awareness shown through the text message

- iii) Inclusion in the text message of similar requests that the alleged author made for phone, e-mail or other media.
- iv) The text messages reference to the author by the author's nickname.

Now the important point is as to how such an electronic record should be proved in the court of law.

Sec.65A of the Indian Evidence Act says that the contents of electronic records may be proved in accordance with the provisions of Sec.65B.

The Sec.65B reads as follows:

Sec.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 (computer output)
- 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)

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.

Secs.65 A and 65B of Indian Evidence Act have over riding effect over other provisions. Necessarily, the electronic record shall be proved in accordance with Sec.65 B of Indian Evidence Act.

In a decision held between **P.V.Anvar Vs P.K.Basheer** and others (Manu/SC/0834/2014) their Lordships interpreted Sec.22A, 45A,59,65A, 65B of

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Indian Evidence Act and held that secondary data in CD, DVD and pen drive are not admissible without certificate U/Sec.65B(4) of Evidence Act.

By producing the original electronic media as primary evidence or its copy by way of secondary evidence U/Sec.65B of Evidence Act the electronic records can be proved. The electronic media such as CD, DVD, Memory card etc., which contain the secondary evidence, shall be accompanied by a certificate as contemplated U/Sec.65B of the Evidence Act.

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A Note on Technological courts and Speedy Justice

Audhinarayana Vavili

Addl. Junior Civil Judge, Kadiri

The world has become increasingly connected through information and communication technology (ICT) in the past few decades, as ICT has become essential to relationships between individuals, businesses and the government. One of the main aims of ICT is to bring about social equity and inclusion, along with increased transparency in the system. In last two decades, Information technology has brought many beneficial changes into our lives. And this tool of information technology can be equally useful in imparting justice. This note discusses how court performance can be improved with introduction of Information and Communication Technology. The ICT (Information and Communication technology) in Indian judiciary was introduced by way of E-courts project in the year 2007 and it changed facet of the traditional court administration and management. At present, we are in Phase II of E-court project and still many things we need to undertake the days to come. The focus of this article is whether ICT can be a panacea for delay in administration of justice and how ICT has helped in speedy justice to the stake holders of the system. This article further highlights the constitutional mandate of speedy justice and finally recommends the advanced techniques that can be introduced in the system so that that same can be catalyst for speedy dispensation of justice.

Introduction:-

The timely dispensation of justice is a constitutional right guaranteed under Articles 14, 19, 32, 226 and preamble of the constitution of India. Directive Principles of State Policy also obligated state under Articles 38 (1), 39 and 39A for dispensation of justice in time. Furthermore, Hon'ble Supreme Court in P. Ramachandra Rao v. State of Karnataka [(2002) 4 SCC 578] held that "It is the constitutional obligation of the State to dispense speedy justice, more so in the field of criminal law, and paucity of funds or resources is no defence to denial of right to justice emanating from Articles 21, 19 and 14 and the preamble of the Constitution as also from the directive principles of State policy. Scientific Development in the field of Information and Communication Technology confirms with assurance that knowledge is universal and it is available to anyone, who is capable of using the technology. This wonderful revolutionary technology of the twentieth century has the potential to carry the human civilization on its back to unknown height of development. The technological development made by the human being in the field of science can be highly useful in realization of this objective. The primary reason behind justifying the existence of any functional judicial system is to ensure dispensation of justice at the earliest opportunity. In a democracy like ours, judiciary plays significant role in adjudicating the rights of litigant public. It has been established beyond doubt that with the help of information technology the process of dispensation of justice can be made easier, more convenient, accurate, less time consuming, less

expensive involving lesser manual labour. Introduction of Information technology in court management has apart from reducing the movement of files and records attended by transparency in the entire system of administration of justice has also made it possible to expedite dispensation of justice. After all the transparency is the fulcrum on which the accused, the victim and all other stake holders exhibit their satisfaction. The satisfaction of all the stake holders is the bottom line in any transparent system.

Indian Judiciary Present Scenario: Identification of Problem

India has a total of 21,598 judges (sanctioned strength till December 31, 2015). This figure includes 20,502 judges in lower courts, 1,065 high court judges and 31 Supreme Court judges. There are 38.76 lakh cases pending as on December 31, 2015, in all high courts, of which 7.45 lakh — almost 20 per cent — have been pending for over 10 years.

In so far as subordinate courts concerned, out Of the 2.18 crore cases pending 1.46 lakhs are criminal cases and over 72 lakh are civil cases. Subordinate courts have shown a fall in the disposal rate, with 1.87 crore cases being disposed of in 2013 and 1.78 crore being disposed of in 2015. According to National Judicial Data Grid (NJDG), 10% of the cases are pending for over 10 years, 16% between five to 10 years and the remaining 73% have come up in the past five years.

A survey by the Bengaluru-based civil society organisation DAKSH on the socio-economic profile of Indian litigants revealed that over 90 per cent of them were inside the three lakh income per year bracket. The report said civil litigants spend Rs 497 per day on average for court hearings. They incur a loss of Rs 844 per day due to loss of pay. On the other hand, criminal litigants spend Rs 542 per day for court hearings on average and incurred a cost of Rs 902 per day.

The E-courts Projects and Implementation of ICT in Indian Judiciary:

The stake holders in the system are judges, litigants, advocates, court staff, general public and government. To increase efficiency and expeditious in the disposal of the cases, all the stake holders shall be involved and shall be made accountable for the laches. They are so many reasons for large pending of cases in India. Judges population ration, seeking adjournment by advocates without any reasons and non-productions of witnesses by the prosecution are some of them. The non implementation of ICT is also one of the mains reasons for delay in deciding the cases. The real problem is not with too many cases coming in; it's with too few coming out.

E-court project was conceptualized on the basis of **the National Policy and Action Plan for Implementation of information and communication technology (ICT)** in the Indian Judiciary–2005 submitted by e-Committee (Supreme Court of India), with a vision to transform the Indian Judiciary by ICT

enablement of Courts. The eCourts scheme largely aims at ICT enablement of the lower Judiciary including district and taluka courts. The project envisages deployment of Hardware, Software and Networking to assist district and taluka courts in streamlining their day to day functioning. Key functions such as case filing, allocation, registration, case work-flow, orders and judgments will be ICT enabled. Cause lists, case-status, orders, and judgments will be made available on the web and made accessible to litigants, advocates and general public. The project aims to build a National grid of key Judicial information available all round the clock in a reliable and secure manner.

NIC is the implementing agency for the project. It is required to be implemented in three phases. The first phase of the e-Courts project was approved in February 2007. The duration of the phase is 2 years with a planned expenditure of Rs.442 Core for different components of the project. As on 31 March 2014, 13,227 district and subordinate courts in the country have been computerized against the target of 14,249 courts. The basic infrastructure for ICT enablement consists of various modules such as setting up LAN and hardware, deployment of the Case Information Software (CIS) and the establishments of WAN/ broadband connectivity have been set up. Consequently, these Courts are now providing basic case-related services to litigants and lawyers. The e-Courts National portal (ecourts.gov.in) was launched by Hon'ble the Chief Justice of India on 7th August, 2013. This provides cause-list, case status information in respect of more than 2.5 core cases (pending and decided). All the judicial officers are provided with laptop and printer with basic training.

The Phase-II of the Project has been approved by e-Committee of Hon'ble Supreme Court of India in January 2014 for further enhancement of ICT enablement of Courts with broad objective of:

- (a) Computerization of more than 8000 new courts, legal service authority
- (b) offices and state judicial academies with strengthened hardware.
- (c) Connecting all the Courts in the country to the National Judicial Data Grid through WAN and additional redundant connectivity to enable integration with the proposed interoperable criminal justice system.
- (d) Citizen centric facilities such as centralized filling centers and touch screen based kiosks be based at each Court complex.
- (e) Creating a robust Court management system through digitization, document management, Judicial knowledge management and learning management.
- (f) Facilitating better performance in courts through change management and process re-engineering as well as improvement in process servicing through hand-held devices.
- (g) Enhance ICT enablement through e-filing, e-Payment and use of mobile application.

The implementation of E-Courts project so far in administration Justice has been reaping positive results. Most of the advance ICT techniques are being implemented in very limited courts or on the basis of pilot projects. The following are importance ICT module which was implemented successfully in notified courts:-

Video Conferencing:- Court is connected to the Jail by ISDN Lines and at both the ends a camera unit and a display unit like, 29” TV Screen is provided with recording facility at the Court’s end. Under-trial is produced at the Jail end. The Judge, Lawyers and witnesses etc. remain present in the Court and regular trial is conducted. The judicial remand of the under-trial can also be extended without physically producing him in Court.

The advantages for video conferencing include that dreaded criminals can be tried without risk and Cost and manpower in producing under trials only for remand extension can be saved. Further multiple trials of an accused lodged in one jail is possible in different states The evidence of witnesses unable to come to court can be recorded.

By using this facility Telgi lodged in Pune Jail was tried simultaneously in most of the states.

Data Management:-

Data is captured at the filing stage in computers for new cases. Data of old cases is fed in computers using dedicated manpower. Data relates to date of filing, full description of parties, law provision invoked, property no., detail of witnesses, stage of trial, next date of hearing and advocate’s name etc. Data is updated on daily basis without fail.

The benefits include that cause-lists can be generated at the press of the button, periodical statements can be easily generated, Cause-diary can be prepared and automatic marking of cases is possible.

Digital Signatures:

The data to be sent through internet / e-mail is encrypted by using the digital signature card provided by the Service Provider. The said data is then sent to the receiver through e-mail / internet in encrypted format The receiver decrypts the data by using the verifier software provided by the Service Provider.

The benefits of the Digital Signature includes the communication can become 100% safe by using digital signatures and release warrants can be sent from Courts to Jails within minutes of the passing of the order and certified copies can be immediately issued by the copying branch as soon as the order is digitally signed.

Docket-Management:

Files are given unique ID numbers and The unique IDs may be printed, bar-coded or embedded in an RFID tag . RFID / Bar-Coded Readers can be installed at strategic points Active / In-active RFID tags can be used to identify the files.

Advantages includes the file movement can be easily Record – Keeper can immediately trace a file tracked and theft of files can be

prevented and repeated labour of entering the file details in all documents is not required.

Digital Signatures:-

The data to be sent through internet / e-mail is encrypted by using the digital signature card provided by the Service Provider. The said data is then sent to the receiver through e-mail / internet in encrypted format. The receiver decrypts the data by using the verifier software provided by the Service Provider.

Benefits:-

The communication can become 100% safe by using digital signatures. Release warrants can be sent from Courts to Jails within minutes of the passing of the order. Certified copies can be immediately issued by the copying branch as soon as the order is digitally signed.

E-Filing of Cases:-

This techniques require simultaneous filing of Soft & Hard Copies of Pleadings and can be done on Internet or on the Facilitation Centre on CDs or Floppies. It is required dedicated Server to be provided for E-Filing .

The advantages include Digitization of Records and Immediate service of E-Summons and Convenience of filing from Home/Office and Cost of maintaining paper files saved.

IVRS & SMS FACILITY:-

It is a unique combination of Information Technology & Communication Technology. Data-Bank would be integrated with Mobile Phone Service Provider's System. There shall be minute to minute updating of Proxy Server. progress & Status of pending cases to be available on voice enquiry via IVRS and also Automatic SMS response system to give details of cases on the basis of case.

The benefits include People without access to computers can also enquire about their cases and immediate response to the enquiries 24 X 7 X 365. Even illiterates can come to know the fate of their cases and It will bring transparency to the judicial system and No need to come to Court Complex to make enquiries

Touch Screen Enquiry Kiosks:-

This is similar to ATM processing technology. A proxy data bank has to be dedicated. Either Broadband or Satellite Communication is to be used to connect Kiosk to Databank. Kiosks in Facilitation Centers can be established either in Court Complexes and any other blocks. Or else, tie up with Banks which have ATM are more time saving and cost effective.

Besides above, introduction of biometric identification in the court is useful and Biometric Readers are available in the market which can be installed with Court Computers. Biometric Profiles of the accused, sureties, witnesses and other Court users are to be prepared and kept in an online Data-bank. A person has to put his finger on the Biometric Reader to identify him and his entire history can be retrieved. The advantages of the biometric identification are

that fake sureties can be detected and accused identity can be ensured without confusion. The Biometric identification is doing well in other government agencies and they are being used for controlling the movements of staff and entry and exit of staff to the offices.

Personnel Management System and Financial Package Software are also useful in day to day administration of the courts by way of ICT. They are not unknown to India and they are being successfully being implemented in MNCs and other government offices.

In order to introduce the above techniques, change of rules of practices and other manuals are to be amended. The ICT though reached to matured level in Hon'ble Supreme Court and Hon'ble High courts, its implementation in the lower judiciary is at inception stage. But, things are being moved fast.

The Hon'ble Supreme Court of Hon'ble High Courts also highlighted the need of introduction of ICT in the day to day proceeding of the courts.

Service of Summons by E-mail and Fax: - Hon'ble Supreme Court, In "M/S SIL Import, USA v M/S Exim Aides Silk Exporters held that "A notice envisaged u/s 138 can be sent by fax. Nowhere it is said that such notice must be sent by registered post or that it should be dispatched through a messenger. It further held that "When the legislature contemplated that notice in writing should be given to the drawer of the cheque, the legislature must be presumed to have been aware of the modern devices and equipment already in vogue and also in store for future. Technological advancement like Facsimile, Internet, E-mail etc. were on swift progress even before the Bill for the Amendment Act was discussed by the Parliament. So when Parliament contemplated notice in writing to be given we cannot overlook the fact that Parliament was aware of modern devices and equipment already in vogue. If the court were to interpret the words "giving notice in writing" in the section as restricted to the customary mode of sending notice through postal service or even by personal delivery, the interpretative process will fail to cope up with the change of time. So if the notice envisaged in clause (b) of the proviso to section 138 was transmitted by Fax, it would be compliance with the legal requirement".

Examination of Witness by Video Conferencing:-

In "State of Maharashtra v Dr.Praful.B.Desai " the Supreme Court observed: "The evidence can be both oral and documentary and electronic records can be produced as evidence. This means that evidence, even in criminal matters, can also be by way of electronic records. This would include video conferencing. Video conferencing is an advancement in science and technology which permits one to see, hear and talk with someone far away, with the same facility and ease as if he is present before you i.e. in your presence. Thus, it is clear that so long as the accused and/or his pleader are present when evidence is recorded by video conferencing that evidence is recorded in the "presence" of the accused and would thus fully meet

the requirements of section 273, Criminal Procedure Code. Recording of such evidence would be as per "procedure established by law". The advancement of science and technology is such that now it is possible to set up video conferencing equipments in the court itself. In that case evidence would be recorded by the magistrate or under his dictation in the open court. To this method there is however a drawback. As the witness is not in the court there may be difficulties if commits contempt of court or perjures himself. Therefore as a matter of prudence evidence by video conferencing in open court should be only if the witness is in a country which has an extradition treaty with India and under whose laws contempt of court and perjury are also punishable".

First Information And Technology:- The police officer who receives the information regarding the commission of cognizable offence has to report the matter to concerned magistrate. Sometimes, F.I.Rs to magistrate are not sent reasonable time. The delay in sending the report to magistrate is causing damage to the entire case of prosecution. The delay could be solved by sending it by using the ICT through online. This is being implemented in the Karnataka state.

Furthermore, an accused is required to be produced before number of courts and it is causing inconvenience not only to the court but also burden to state exchequer. The trials of the cases are adjourned due to non availability of the accused. This can be solved by introducing video conference by setting up the LCD at court and jails. Most of the courts are not provided with this facility. It is therefore, lot of money is spent for transportation of the accused to the court from jails. This can be saved by just connecting the jail to the court.

Conclusion:-

We can effectively use ICT for establishment of E-Courts in India so that E-Judiciary in India can be a reality. However, there is not even a single case that has been filed, contested and finally adjudicated through an E-Court System in India. ICT enablement of Judiciary is being pursued vigorously across the world. In USA and Europe, already fully fledged eCourts is running as per reports. In India also, ICT enablement of the higher Judiciary has already been started covering the Hon'ble Supreme Court and all the Hon'ble High Courts wherein the eCourts implementation has reached a significant level of maturity. However, the lower Judiciary, district and taluka courts across India are still in the developing stage under the ICT revolution. There is a urgent need of re-engineering its processes, optimize the use of its human resources and bring about change management by harnessing the potentiality of the available Information and Communication Technology (ICT) to its fullest extent. The objective of this exercise is to enhance the judicial productivity both qualitatively and quantitatively as also make the Justice delivery system affordable, accessible, cost effective, transparent and accountable. Similar objectives have been

achieved in other parts of the world by use of technology but in India though its manpower is known for its technology expertise, the ICT benefits could not be fully explored and utilized in public service sectors like Judiciary and other organs of the State. I conclude that implementation ICT in the judiciary is not alone a solution to the problem being faced by stake holders of judiciary and increasing the judges and population ratio and other institutional changes have to be taken up. However, ICT can be catalyst for the speedy justice and we have seen that considerable increases in disposing cases are reported across India. That is positive side of the issue.

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