DNA, NARCO-ANALYSIS, POLYGRAPH TESTS ETC.

(Evidentiary value thereof)

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1.01. **Scientific tests generally applied for investigation of crimes etc. :** Scientific tests which are generally applied for the detection of crimes and criminals and determination of paternity etc. are as under :

(i) DNA (Deoxyribo Nucleic Acid)
(ii) RNA (Ribo Nucleic Acid)
(iii) Lie-Detector Test
(iv) Polygraph Test
(v) Brain-Mapping Test (P300)
(vi) Narco Analysis Test (Also known as Truth Serum Test)
(vii) Voice Analysis Test
(viii) Finger Print Test
(ix) Handwriting Test

1.02. **Accused not to be compelled to be witness against himself :** Article 20(3) of the Constitution mandates that no person accused of an offence shall be compelled to be a witness against himself.

1.03. **Article 20(3) of the constitution as bar against forced scientific tests like Narco-analysis & Polygraph etc. :** In view of the bar of the Constitution contained under Article 20(3), an accused person cannot be compelled to undergo scientific tests like Narco analysis, Polygraphy, Brainfinger Printing etc. as it amounts to self-incrimination of the accused. See : **Smt. Selvi Vs. State of Karnataka, AIR 2010 SC 1974 (Three-Judge Bench).**

2.01. **'DNA' & its meaning ?** : 'DNA' stands for deoxyribonucleic acid, which is the biological blueprint of every life. DNA is made-up of a double stranded structure consisting of a deoxyribose sugar and phosphate backbone, cross-lined with two types of nucleic acids referred to as adenine and guanine, purines and thymine and cytosine pyrimidines. The most important role of DNA profile is in identification, such as an individual and his blood relations such as mother, father, brother, and so on. Successful identification of skeleton remains can also be performed by DNA profiling. DNA usually can be obtained from any biological material such as blood, semen, saliva, hair, skin, bones etc. See : **Dharam Deo Yadav Vs State of UP, (2014) 5 SCC 509.**

2.02. **'DNA' what is ? :** DNA is a molecule that encodes the genetic information in all living organisms. DNA genotype can be obtained from any biological material such as bone, blood, semen, saliva, hair, skin, etc. Now, for several years, DNA profile has also shown a tremendous impact on forensic investigation. Generally, when DNA profile of a sample found

at the scene of crime matches with the DNA profile of the suspect, it can generally be concluded that both the samples have the same biological origin. DNA profile is valid and reliable, but variance in a particular result depends on the quality control and quality procedure in the laboratory. See : **Anil @ Anthony Arikswamy Joseph Vs. State of Maharashtra, (2014) 4 SCC 69** (para 18).

2.03. **'DNA' & its sources ? :** DNA can be obtained from any biological material such as blood, semen, saliva, hair, skin, bones etc. See : **Dharam Deo Yadav Vs. State of UP, (2014) 5 SCC 509.**

2.04. **'DNA' & its sources ? :** DNA genotype can be obtained from any biological material such as bone, blood, semen, saliva, hair, skin, etc. See : **Anil @ Anthony Arikswamy Joseph Vs. State of Maharashtra, (2014) 4 SCC 69** (para 18).

2.05. **'DNA' Test not violative of Art. 20(3) of the constitution :** DNA profiling technique has been expressly included among the various forms of medical Examination in the amended explanation to Sections 53, 53-A and 54 of the CrPC DNA Profile is different from a DNA sample which can be obtained from bodily substances. The use of material samples such as finger prints for the purposes of comparison and identification does not amount to testimonial act or compulsion for the purpose of Article 20(3) of the constitution. Hence, the taking and retention of DNA Samples which are in the nature of physical evidence do not face constitutional hurdles in the Indian context. See : **Smt. Selvi Vs. State of Karnataka, AIR 2010 S.C. 1974 (Three-Judge Bench).**

2.06. **Delayed 'DNA' test not to vitiate its findings** : Where the accused was charged with having caused the death of his girl friend by hitting her with car tools like jack and spanner and cutting her with shaving blades and throwing acid on her as she had refused to abort and was found pregnant at the time of her death, the DNA report had linked the accused as biological father of foetus taken out from the body of the deceased, the sample was taken from the foetus on the date of post-mortem itself and was preserved into ice, some delay had taken place in conducting the DNA test on the sample of foetus, Junior Scientific Officer from Central Forensic Laboratory had conceded as witness that mishandling of sample could lead to wrong results but had categorically deposed that in the case on hand, result reported by him was not based on wrong facts, it has been held by the Hon'ble Supreme Court that the burden was on the accused to prove that prosecution case was vitiated because of delay in conducting test on the sample taken from the foetus and that the sample was improperly preserved. In the absence of the said burden being discharged by the accused, his conviction for the offences u/s 302/34 and 316/34 of the IPC was held proper. See : **Sandeep Vs. State of UP, (2012) 6 SCC 107.**

2.07. **'DNA' test & effect of improper preservation of sample ? :** Where the accused was charged with having caused the death of his girl friend who was found pregnant at the time of her death, the DNA report had linked the accused as biological father of foetus taken out from the body of the deceased, the sample was taken from the foetus on the date of post-mortem itself and was preserved into ice, some delay had taken place in conducting the DNA test on the sample of foetus, Junior Scientific Officer from Central Forensic Laboratory had conceded as witness that mishandling of sample could lead to wrong results but had categorically deposed that in the case on hand, result reported by him was not based on wrong facts, it has been held by the Hon'ble Supreme Court that the burden was on the accused to prove that prosecution case was vitiated because of delay in conducting test on the sample taken from the foetus and that the sample was improperly preserved. In the absence of the said burden being discharged by the accused, his conviction for the offences u/s 302/34 and 316/34 of the IPC was held proper. See : **Sandeep Vs. State of UP, (2012) 6 SCC 107.**

2.08. **'DNA' reports may vary depending on the quality control & quality procedure in laboratory :** Variance in DNA report depends on the quality control & quality procedure in laboratory. See : **Anil Vs. State of Maharashtra, (2014) 4 SCC 69.**

2.09. **'DNA' & 'DNA' profile distinguished :** DNA profiling technique has been expressly included among various forms of medical examination in the amended Explanation to Sec. 53 CrPC. DNA Profile is different from DNA sample which can be obtained from bodily substances. A DNA profile is a record created on the basis of DNA samples made available to forensic experts. Creating and maintaining DNA profiles of offenders and suspects are useful practices since newly obtained DNA samples can be readily matched with existing profiles that are already in the possession of law enforcement agencies. Matching of DNA samples is emerging as a vital tool for linking suspects to specific criminal acts. See : **Selvi Vs. State of Karnataka,(2010) 7 SCC 263(Three-Judge Bench).**

2.10. **'DNA' profiling report of a person accused of rape to be prepared by registered Medical Practitioner examining him :** Section 53A(2)(iv) CrPC as inserted w.e.f. 23.06.2006 casts a duty on the Registered Medical Practitioner examining an accused of offence of rape to prepare a report of his DNA profiling without delay.

2.11. **'DNA' profiling report of a victim of rape to be prepared by registered Medical Practitioner examining the person of the victim of rape :** Section 164A(2)(iii) CrPC as inserted w.e.f. 23.06.2006 casts a duty on the Registered Medical Practitioner examining the person of a victim of rape to prepare a report of her DNA profiling without delay.

2.12. **'DNA' & other scientific tests when can be ordered by courts? :** DNA Test is not to be directed as a matter of routine and only in deserving cases such direction can be given. See :

1. **Goutam Kundu vs. State of W.B., (1993) 3 SCC 418**
2. **Banarsi Dass vs. Teeku Dutta (Mrs.), (2005) 4 SCC 449**

2.13(A).'DNA' profiling test of the person of victim of rape (Sec. 164-A (2) (iii) CrPC w.e.f. 2006) : (A) An investigating officer, u/s. 164-A(2)(iii) CrPC, can get a victim of rape not only medically examined by a registered medical practitioner but can also get the material taken from the person of the woman (victim of rape) through a registered medical practitioner for DNA profiling. But according to the provisions under sub-sections (4) & (7) to Sec. 164-A Cr.P.C. the woman (victim of rape) cannot be subjected to DNA test without her consent and in case of the woman being minor or otherwise incompetent to give consent then with the consent of some person competent to give consent on her behalf.

2.13(B).DNA reports of the victim of rape and murder matching with those of the accused persons found to be accurate and reliable : In a criminal trial of accused persons for offences u/s 376(2)(g), 302, 120-B, 377, 365, 366, 396, 397, 307, 412, 201 IPC, DNA profiles generated from samples of the accused persons matched with the DNA profiles of the victim and the injured informant. Analysis of biological samples linked with each of the accused persons and with the crime scene. The doctor conducting analysis testified that all experiments were conducted in conformity to the guidelines and methodology validated and recommended for use in the laboratory. Analysis of DNA profiles by the doctor revealed that the samples were authentic and established identities of all accused persons beyond reasonable doubt. The DNA report linking the accused persons with the crime was found by the Supreme Court to be accurate and reliable. **See :Mukesh Vs. State for NCT of Delhi & Others, AIR 2017 SC 2161 (Three-Judge Bench)**

2.14. **'DNA' Test & precautions & procedure in conducting such tests** : While conducting DNA test precautions are required to be taken to ensure preparation of high-molecular-weight, DNA complete digestion of the samples with appropriate enzymes, and perfect transfer and hybridization of the blot to obtain distinct bands with appropriate control. See : **Pantangi Balarama Venkata Ganesh vs. State of A.P., 2009 (5) Supreme 506.**

2.15. **'DNA' test report & its evidentiary value :** Referring to the U.S. Supreme Court decision rendered in the case of R. vs. Watters, (2000) All.E.R. (D) 1469, the Supreme Court of India has ruled that the DNA evidence may have a great significance where there is supporting evidence, dependent of course, on the strength of that evidence. In every case one has to put the DNA evidence in the context of the rest of the evidence and decide whether taken as a whole, it does amount to a prima facie case. See : **Ranjitsing Brahmajeetsing Sharma vs. State of Maharashtra, 2005 CrLJ 2533 (SC)(Three-Judge Bench).**

2.16. **'DNA' test report & its evidentiary value** : From matching of DNA profile of sample at the scene of crime with that of the accused, it can generally be concluded that both samples are of same biological origin. DNA profile is valid and reliable but variance in a particular result depends on the quality control and quality procedure in the laboratory. See : **Anil Vs. State of Maharashtra, (2014) 4 SCC 69.**

2.17. **'DNA' test report & its evidentiary value :** Where DNA report, being the solitary piece of evidence against an accused of offence of rape, had gone negative, it has been held that the DNA report conclusively excludes possibility of involvement of the accused in the commission of offence of rape. See : **2009 ACC (Summary) 22 (Gujarat)**

2.18. **'DNA' report to be accepted as accurate & exact :** In the case of rape with murder, it has been held by the Hon'ble Supreme Court that DNA report must be accepted as scientifically accurate & an exact science. Interpreting the provisions of Sec 53 & 53-A CrPC, it has also been held that court cannot substitute its own opinion for that of an expert specially in case of complex subject like DNA profiling. See : **Santosh Kumar Singh Vs. State through CBI, (2010) 9 SCC 747**

2.19. **'DNA' report in the face of other evidence** : Where in a murder trial the conviction of the accused was not based on expert evidence alone but on other evidence available on record as well, it has been held by the Supreme Court that the use of the word 'similar' and not 'identical' in his report by the DNA expert is not material. See : **Pantangi Balarama Venkata Ganesh vs. State of A.P., AIR 2009 SC 3129.**

2.20. **'DNA' Test to decide paternity when can be ordered by court? :** As regards the scientific test of blood or DNA Test for determining the paternity or legitimacy of a child, the Supreme Court has laid down following guidelines for the purpose :

(1) That courts in India cannot order blood test as a matter of course;

(2) Wherever applications are made with such prayers in order to have roving inquiry, the prayer for blood test cannot be entertained.

(3) There must be a strong prima facie case in that the husband must establish non-access in order to dispel the presumption arising u/s 112 of the Evidence Act.

(4) The court must carefully examine as to what would be the consequence of ordering the blood test; whether it will have the effect of branding a child as a bastard and the mother as an unchaste woman.

(5) No one can be compelled to give sample of blood for analysis. See :

(i) Goutam Kundu vs. State of W.B., (1993) 3 SCC 418

(ii). Bhabani Prasad Jena Vs. Orissa State Commission for women, (2010) 8 SCC 633.

2.21. **'DNA' & 'RNA' Tests whether conclusive for determination of paternity etc.? :** Section 112 of the Evidence Act was enacted at a time when the modern scientific advancements like **Deoxyribo Nucleic Acid (DNA)** as well as **Ribo**

Nucleic Acid (RNA) tests were not even in contemplation of the legislature. The result of a genuine DNA test is said to be scientifically accurate. But even that is not enough to escape from the conclusiveness of Sec. 112 of the Evidence Act e.g. if a husband and wife were living together during the time of conception but the DNA test revealed that the child was not born to the husband, the conclusiveness in law would remain irrebuttable. This may look hard from the point of view of the husband who would be compelled to bear the fatherhood of a child of which he may be innocent. But even in such a case the law leans in favour of the innocent child from being bastardized if his mother and her spouse were living together during the time of conception. Hence the question regarding the degree of proof of non-access for rebutting the conclusiveness must be answered in the light of what is meant by access or non-access as delineated herein. It is for the parties to place evidence in support of their respective claims (regarding paternity) and establish their stands. The view that the documents produced by the party regarding succession certificate (paternity) are not sufficient or relevant for the purpose of adjudication of paternity and **DNA Test is conclusive, is erroneous**. See :

(i) Banarsi Dass vs. Teeku Dutta (Mrs.), (2005) 4 SCC 449

(ii) Kamti Devi vs. Poshi Ram, (2001) 5 SCC 311

2.22. <u>'DNA' Test Report denying biological paternity to repel presumption u/s 112, Evidence Act</u> : In the case noted below, the DNA Test Report stated that the husband was not the biological father of the child. The husband's plea that he had no access to his wife when the child was begotten stood proved by the DNA Test Report. The child was born during the continuance of a valid marriage between the husband and the wife. Section 112 of the Evidence Act was enacted at a time when modern scientific advancement and DNA tests were not even in contemplation of the legislature. The result of DNA test is said to be scientifically accurate. Although Section 112 raises a presumption of conclusive proof on satisfaction of the conditions enumerated therein, but the same is rebuttable. The presumption may afford legitimate means of arriving at an affirmative legal conclusion. While the truth or fact is known, there is no need or room for any presumption. Where there is evidence to the contrary, the presumption is rebuttable and must yield to proof. The interest of justice is best served by ascertaining the truth and the court should be furnished with the best available science and may not be left to bank upon presumptions, unless science has no answer to the facts in issue. When there is a conflict between a "conclusive proof" envisaged under law based on a presumption and a proof based on scientific advancement accepted by the world community to be correct, the latter must prevail over the former. See : **Nandlal Wasudeo Badwaik Vs. Lata Nandlal Badwaik & Another, (2014) 2 SCC 576** *(para 17)*

2.23 <u>Wife cannot be forced to undergo DNA Test to prove paternity/legitimacy of child</u> : Allegations were made against wife by husband that son of wife is not his son as she had begotten by somebody else. No cogent evidence was produced by husband that he had divorced wife and she had begotten child after 280 days of divorce as was required u/s 112 of the Evidence Act. One cannot be forced to

undergo DNA test. Utmost, an adverse inference can be drawn against wife. Refusal to order DNA test, Proper. See : **Kamlesh Yadav Vs. State of UP, AIR 2017 (NOC) 379 (Allahabad).**

2.23. **<u>'DNA' test can be ordered by Court to repel or establish infidelity and presumption u/s 112 of the Evidence Act</u> :** The Supreme Court in Nandlal Wasudeo Badwaik, (2014) 2 SCC 576, clearly opined that proof based on a DNA test would be sufficient to dislodge a presumption under Section 112 of the Evidence Act. Further, it is borne from the decisions rendered by the Supreme Court in Bhabni Prasad Jena, (2010) 8 SCC 633 and Nandlal Wasudeo Badwik case, that depending on the facts and circumstances of the case, it would be permissible for a court to direct the holding a DNA examination to determine the veracity of the allegation(s) which constitute one of the grounds, on which the party concerned would either succeed or lose. However, it is not disputed that if the direction to hold such a test can be avoided, it should be so avoided. The reason is that the legitimacy of a child should not be put to peril. .... In the instant case, the respondent husband has made clear and categorical assertions in the petition filed by him under Section 13 of the Hindu Marriage Act, alleging infidelity. He has gone to the extent of naming the person who was the father of the male child born to the appellant wife. It is in the process of substantiating his allegation of infidelity that the respondent husband had made an application before the Family Court for conducting a DNA test which would establish whether or not he had fathered the male child born to the appellant wife. The respondent rightly feels that it is only possible for him to substantiate the allegations leveled by him (of the appellant wife's infidelity) through a DNA test. In the opinion of the Supreme Court, but for the DNA test, it would be impossible for the respondent husband to establish and confirm the assertions made in his pleadings. Hence, the direction issued by the High Court allowing the respondent's prayer for conducting a DNA test, was fully justified. DNA testing is the most legitimate and scientifically perfect means, which the husband could use, to establish his assertion of infidelity. This should simultaneously be taken as the most authentic, rightful and correct means also with the wife, for her to rebut the assertions made by the respondent husband, and to establish that she had not been unfaithful, adulterous or disloyal. If the appellant wife is right, she shall be proved to be so. See : **Dipanwita Roy Vs. Ronobroto Roy, (2015) 1 SCC 365** *(paras 16 & 17)*

2.24. **<u>'DNA' report & directions therefor by Division Bench of the Hon'ble Allahabad High Court issued in its judgment & order dated 28.08.2014 passed in Capital Case No. 574/2013 Akhtar Vs. State of UP(Directing that 'DNA' report in the cases of rape & murder of minor girls must be obtained from the hair & clothes etc. of the victim of rape & accused)</u>** : Following directions in the case of Akhtar Vs. State of UP have been issued by the Hon'ble High Court :

(1) That in cases of rape and murder of minor girls, which are based on circumstantial evidence, as far as possible, material which is collected from the deceased or the accused for example hair or blood of the victim or the accused,

which is found on the persons or clothes of the victim or the accused or or at the spot, seminal stains of the accused on the clothes or body of the victim, Seminal swabs which may be collected from the vaginal or other orifices of the victim and the blood and other materials extracted from the accused which constitutes the control sample should be sent for D.N.A. Analysis, for ensuring that forensic evidence for establishing the participation of the accused in the crime, is available.

(2) We also direct the Director General Medical Health U.P., Principal Secretary Health, U.P., and D.G.P., U.P. to mandate sending the accused for medical examination in each case for ascertaining whether he has any injuries caused by the resisting victim, or when he attempts to cause harm to her as is provided under section 53 A of the Code of Criminal Procedure Code, which was introduced by Act 25 of 2005, (w.e.f. 23.6.2006). In particular if the rape suspect is apprehended at an early date after the crime, it should be made compulsory to take both dry and wet swabs from the penis, urinary tract, skin of scrotum or other hidden or visible regions, after thorough examination for ascertaining the presence of vaginal epithelia or other female discharges which are also a good source for isolating the victim's DNA and necessary specialized trainings be imparted to the examining forensic medical practitioners for this purpose.

(3) We direct the Principal Secretary (Health), U.P., Director General (Health and Medical Services) U.P. to prohibit conducting the finger insertion test on rape survivors, and to employ modern gadget based or other techniques for ascertaining whether the victim has been subjected to forcible or normal intercourse. These finger insertion tests in female orifices without the victim's consent have been held to be degrading, violative of her mental and physical integrity and dignity and right to privacy and are re-traumatizing for the rape victim. Relying on the International Covenant on Economic, Social, and Cultural Rights, 1966 and the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985 it was further held in Lillu v. State of Haryana, (2013) 14 SCC 643 that no presumption of consent could be drawn ipso facto on the strength of an affirmative report based on the unwarranted two fingers test.

(4) We find that there is absence of an adequately equipped D.N.A. Laboratory in U.P. which has advanced mitochondrial DNA analysis facilities, comparable to the CDFD, Hyderabad, (from where we were able to obtain positive results in this case, after unsuccessful DNA matching in an earlier case [Criminal Capital Appeal (Jail) No. 2531 of 2010], Bhairo vs. State of U.P.(decided on 6.9.11) where this Court had sent the sample of vaginal smear slides and swabs and appellant's underwear to the U.P. DNA laboratory, viz. Forensic Science Laboratory, Agra), and we direct that such a DNA centre comparable to the CDFD be established in the State of U.P. at the earliest so that Courts and investigating agencies are not compelled to send DNA samples at high costs to the specialized facility of the CDFD at Hyderabad.

(5) The Director General of Prosecution, U.P., the Director General of Police U.P. and Director General Medical Health should ensure that blind cases of rape and murder of minor girls or other complicated cases are thoroughly investigated by efficient Investigating Officers. Effective steps should be taken for forensic investigations by collecting and promptly sending for DNA analysis all possible incriminating material collected from the deceased, victim, accused, and at the scene of the crime etc. which may give information about the identity of the accused and his involvement in the crime, after taking precautions for preventing the contamination of the material. This is necessary to prevent Courts being rendered helpless because the prosecution and investigating agency are lax in producing witnesses or because witnesses have been won over or are reluctant to depose in Court. Steps should also be taken for preventing witnesses from turning hostile, by prosecuting such witnesses, and even by cancelling bails of accused where they have secured bails where it is apparent that efforts are being made to win over witnesses and by providing witnesses with protection where ever necessary so that they can give evidence in Court without fear or pressure. In case there is reason to think that the Investigating Officers or medical officers or others have colluded with the accused, strict action be initiated against the colluding officials as was recommended in the case of Dayal Singh vs. State of Uttaranchal (supra). It is necessary that policies and protocols be developed by the DGP, U.P., Principal Secretary Health, Director Medical Health U.P., Director of Prosecutions, U.P., for the aforesaid purposes.

Note : (1) Registry of the High Court was directed to forthwith forward the copies of the above judgment/directions to all the respondents to submit compliance report of the directions of the Hon'ble High Court within 4 weeks.

(2) Registry was also directed to circulate copies of the above judgment/directions to all the District Judges for ensuring compliance of the above directions.

2.25. **Effect of non-production of DNA report before court despite taking sample from body of accused u/s 53-A & 164-A CrPC:** In the case noted below which related to rape and murder of three years old girl child, the DNA sample was taken from the bodies of the accused and the victim u/s 53-A and 164-A CrPC and was sent to the Forensic Sciences Laboratory for DNA test and DNA profiling but the same was not produced before the trial court and the accused was awarded death sentence. The Supreme Court converted the death sentence into life imprisonment by holding that non-production and non-explanation for not producing the DNA profiling report before the court was not justified. The convict was however directed to remain in jail for his entire normal life. See:

Rajendra Prahladrao Wasnik Vs. State of Maharashtra, AIR 2019 SC 1 (Three-Judge Bench).

2.26. <u>पड़वा और पड़िया का डीएनए टेस्ट</u> : गोसाईगंज थाना क्षेत्र में एक भैंस चर्चा का विषय बन गयी है । तमाम उपाय के बाद अब भैंस के असली दावेदार की पहचान के लिए पंचायत में पड़वा और पड़िया का डीएनए परीक्षण कराये जाने का फैसला लिया गया है । सीओ मोहनलाल गंज राकेश नायक के मुताबिक बीते दिनों गोसाईगंज के मुल्लाखेड़ा निवासी माता प्रसाद की भैंस चोरी हो गयी थी । अगले दिन भैंस मिली थी जिसके बाद गांव के ही गुदरू ने भी भैंस को लेकर अपनी दावेदारी पेश कर दी थी । पूर्व में भैंस को लेकर यह निर्णय लिया गया था कि भैंस को छोड़ दिया जाएगा । दोनों में जिसके दरवाजे पर भैंस पहुंचेगी, उसको सौंप दी जाएगी । जब भैंस छोड़ी गयी तो दोनों में से किसी के दरवाजे पर नहीं गयी थी । इसके बाद निर्णय हुआ कि दोनों दावेदारों में से जो भैंस को दुह लेगा उसको भैंस सौंप दी जाएगी लेकिन यह तरीका भी फेल हो गया । सीओ के मुताबिक माता प्रसाद के पास एक भैंस का पड़वा है, जबकि गुदरू के पास एक पड़िया है । अब पंचायत में फैसला हुआ है कि पड़वा और पड़िया का डीएनए टेस्ट कराया जाएगा ताकि भैंस के असली दावेदार का पता लगाया जा सके । सीओ ने बताया कि शुरूआती दौर में डीएनए टेस्ट में खर्च की जिम्मेदारी भैंस के दोनों दावेदारों की होगी और उनसे एडवांस में रूपये जमा कराये जायेंगे । अन्त में जिस दावेदार की भैंस नहीं निकलेगी, उसके द्वारा जमा रकम से खर्च लिया जाएगा । **स्रोत : दैनिक जागरण, लखनऊ संस्करण 26 फरवरी, 2015, पृष्ठ 8.**

<u>DNA Test to determine buffalo's master</u> : To settle an ownership dispute, Lucknow police is going in for DNA sampling of a buffalo to match with two calves. The scientific approach may be foolproof but the method does not appear appropriate as DNA fingerprinting may cost far more than the buffalo in question. The incident relates to a controversy that began after two persons turned up last week to claim ownership of the buffalo that initially went missing but was later traced grazing outside the village. The matter landed up with the Mohanlalganj police. The cops first applied the 'desi methods' in which the bovine was left in the fields and villagers waited for it to walk back to the owner's house. But, it didn't. The police then asked the two contenders to milk and feed the buffalo. Both passed the tests with equal ease. Interestingly, the two claimants, Ram Bachan and Awadh Ram, are resdents of Gangaganj village under Gosainganj police station and their buffalos had gone missing the same day, on February 19. Though it was Ram Bachan who informed police about the theft, Awadh Ram did not. It was only after the buffalo was traced that the latter came into the picture and the controversy began. Now, the two men are claiming ownership of the buffalo, which will undergo the test. **Source : Times of India, Lucknow Edition, Dated 05.03.2015.**

2.25. **<u>DNA testing sites may be new social networks (Companies using their databases to help people find long-lost relatives, adoptive mothers,</u>**

sperm-donor fathers) : There years ago Dyan de-Napoli, a 57 year-old author and TED speaker who specialises in penguins, was given a 23and Me genetic testing kit for her birthday. In trigued, she spit in the tube and sent the results to a lab in Burlington, North-Carolina. About two months later she received a pie chart breaking down where her ancestors lived (99.4% of them were from Europe). What she was most giddy about, however, was a 41-page list of all the people who had done the test and were genetically related to her : 1,200 in all. I had the names of every-one from my immediate family members to my first cousins, second cousins, third. Once I got past fourth cousins, it went to my fifth cousins, and beyond," said De Napoli, who lives in George-town, Massachusetts. "It started me down this genealogical rabbit hole." Using the website's internal messaging system supplemented with Facebook, she connected with three second cousins, who were in neighbouring towns. "Jorge is an older cousin, a very young 90", De Napoli said. "Everybody agreed he looks just like my dad." Last June she visited a third cousin and other relatives in a mountainous village in the Campania region of Italy, her paternal grandmother's place of origin, learning stories of her ancestors, including a long-ago Hatfield-McCoy-level feud. "That's why I really didn't know this side of my family," deNapoli said in wonderment. At-home genetic testing services have gained significant traction in the past few years. 23 and Me, which costs $99, has more than 5 million customers, according to the company; Ancestry DNA (currently $69), more than 10 million. The companies use their large databases to match willing participants with others who share their DNA. In many cases, long-lost relatives are reuniting, becoming best friends, travel partners, genealogical resources or confidantes. The result is a more layered version of what happened when Facebook first emerged and out-of-tough friends and family members found one another. Children of long-ago casual sperm donors are finding their fathers. Adoptees are bonding to biological family members they've been searching for their entire lives. Sherri Tredway, 55, is a marketing and development director for a social service agency based in Washington, Indiana. She was adopted as a baby, and in January she drove 2 1/2 hours to Bowling Green, Kentucky, to meet her biological half sister, Patty Roberts Free-man, 60, with whom she connected through Ancestry DNA. Others who have their DNA tested are forming relations not with specific people, but with their family's places of origin. One example is Leah Madison, 32, an education outreach coordinator for the Desert Research Institute in Reno. Nevada. She was planning trips to Peru and Korea when she learned a year and a half ago from 23 and Me that her family came from Greece, Italy and the Iberian Peninsula. Over the winter she and her father went to the Iberian Peninsula for two weeks. "I had a piece of paper

that tells me I'm from Spain. But then I noticed all these people have curly hair, and may be that is where mine comes from ?" Madison sad. **(Source : Times of India, Lucknow Edition Dated 18.06.2018 at page 11).**

1(T-1).<u>Opinion of an expert not to be relied on unless examined as witness in court</u> : Unless the expert submitting his opinion is examined as witness in the court, no reliance can be placed on his opinion alone. See :

(i) State of Maharashtra vs. Damu, AIR 2000 SC 1691

(ii) Keshav Dutt Vs. State of Haryana, (2010) 9 SCC 286

1(T-2).<u>Pre-conditions for the admissibility of scientific evidence</u> : The admissibility of the result of a scientific test will depend upon its authenticity. Whether the Brain Mapping Test is so developed that the report will have a probative value so as to enable a court to place reliance thereupon, is a matter which would require further consideration, if and when the materials in support thereof are placed before the court. Referring to the US Supreme Court decisions in the cases of Frye vs. United States, (293F1013 DCcir 1923) and Daubart vs. Merryll Dow Pharmaceuticals Inc., 113SCt. 2786 (1993), it has been ruled by the Supreme Court of India that the pre-conditions for the admissibility of the scientific evidence (u/s. 45 of the Evidence Act) are as under :

(i) Whether the principle or technique has been or can be reliably tested?
(ii) Whether it has been subject to peer review or publication?
(iii) It is known for potential rate of error?
(iv) Whether there are recognized standards that control the procedure of implementation of the technique?
(v) Whether it is generally accepted by the Community?
(vi) Whether the technique has been introduced or conducted independently of the litigation? See : **Ranjitsing Brahmajeetsing Sharma vs. State of Maharashtra, 2005 CrLJ 2533 (SC)(Three-Judge Bench)**

1(U). <u>Oral Evidence when to yield to electronic or forensic evidence</u> ? : Existence of serious discrepancy in oral evidence has to yield to conclusive scientific evidence like electronic records (Mobile call details) and other forensic evidence. See: **Gajraj Vs. State of NCT of Delhi , (2011) 10 SCC 675.**

2(A). <u>History & method of Narco Analysis Test</u> : Narco analysis test is also known as Truth Serum Test. Narco+Analysis=Narco-analysis means psycho analysis using drugs to induce a state akin to sleep. In narco analysis test the drug like sodiumamytal is used as a truth drug on the suspect for determination of facts about the crime. It is called **"Amytal Interview"**. It is believed that if a person is administered a drug which suppresses his reasoning power without affecting memory and speech, he can be made to tell the truth. Some drugs have been found to create this 'twilight state' in some persons. These drugs are being administered in some countries including India. The term narcoanalysis was introduced in 1936 for the use of narcotics to induce a trance like state wherein the person is subjected to various queries. Under the influence of the drug, the subject talks freely and is purportedly deprived of his self-control and will-

power to manipulate his answers. The underlying theory is that a person is able to lie by using his imagination. In the narcoanalysis test, the subject's imagination is neutralized and reasoning faculty affected by making him semi-conscious. The subject is not in a position to speak up on his own but can answer specific and simple questions. In this state it becomes difficult for him to lie and his answers would be restricted to facts he is already aware of. His answers are spontaneous as a semi-conscious person is unable to manipulate his answers. Truth Serums (or sera) are no serum at all. They are drugs sometimes used clinically. A few of the best known **drugs are Seconal, Hyoscine (scopolamine), Sodium Pentothal, Sodium Amytal, Phenobarbital**. Most commonly used drug for truth serum test is an anesthetic and sedative drug, Sodium Pentothal which when administered intravenously can make a person garrulous and confessional. Injected in continuous small dosages it has a hypnotizing effect on a person who responds loquaciously when questioned. The narcoanalysis test is conducted by mixing 3 grams of Sodium Pentothal or Sodium Amytal dissolved in 3000 ml of distilled water. Depending on the person's sex, age, health and physical condition, this mixture is administered intravenously alongwith 10% of dextrose over a period of 3 hours with the help of an anesthetist. **Wrong dose can send the subject into coma or even result in death.** The rate of administration is controlled to drive the accused slowly into a hypnotic trance. The effect of the biomolecules on the bio-activity of an individual is evident as the drug depresses the central nervous system, lowers blood pressure and slows the heart rate, putting the subject into a hypnotic trance resulting in a lack of inhibition. The subject is then interrogated by the investigating agencies in the presence of the doctors. The revelations made during this stage are recorded both in video and audio cassettes. The report prepared by the experts is used in the process of collecting evidence. This procedure is conducted in government hospitals after a court order is passed instructing the doctors or hospital authorities to conduct the test. Personal consent of the subject is also required.

2(B) **Narco Analysis, Polygraph & BEAP tests not permissible to be conducted on accused u/s 53, 53-A, 54 CrPC :** Though conducting of certain medical tests on accused is permissible under Explanation (a) to Sec 53, 53-A & 54 CrPC, yet Narco Analysis, Polygraph & BEAP tests are not included in those tests. See : **Selvi Vs. State of Karnataka, (2010) 7 SCC 263 (Three-Judge Bench**).

2(C). **Power of court to order Narco Analysis or Brain Mapping tests etc.** : The discovery of the truth is the desideratum of investigation, and all efforts have to be made to find out the real culprit, because, a guilty person should not be allowed to escape from the liability of the guilt. Courts have, therefore, to adopt a helpful attitude, in all efforts, made by the prosecution for discovery of the truth. If the Narco Analysis and Brain Mapping Test can be helpful in finding out the facts relating to the offence, it should be used and utilized and the Courts should not obstruct the conduct of the exercise. See :

1. Abhay Singh vs. State of U.P., 2009 (65) ACC 507 (All)

2. **Santokben vs. State of Gujarat, 2008 CrLJ 68 (Gujarat)**
3. **Dinesh Dalmia vs. State, 2006 CrLJ 2401 (Madras)**

2(D). <u>Drugs generally applied for tests like Narco-analysis & Polygraph etc.</u> : Following drugs are generally used on the subject for conducting the tests like Narco Analysis, Lie Detector and Polygraph etc. to extract truth or confession--

(i) Sodium Pentothal,
(ii) Seconal
(iii) Hyoscine (scopolamine)
(iv) Sodium Amytal
(v) Phenobarbital

2(E). <u>Admissibility of the Result of Narco-analysis Test Report</u> : The Supreme Court of India (in the case noted below), while dealing with the question of admissibility and reliability of the result of the narco-analysis test, has not given any conclusive opinion regarding the admissibility and the reliability of the result (report) of the narco-analysis test. See : **Ram Singh vs. Sonia, 2007 AIR SCW 1278**

2(F). <u>Plea of health hazard not tenable against the proposed scientific tests like Polygraph, Narco Analysis & Brain Mapping etc.</u> : Directing scientific tests like polygraph, narco-analysis or brain mapping of an accused is not violative of the provisions of Art. 20(3) of the Constitution. Such tests on accused to bring out clinching evidence by extracting truth from him would not amount to breaking his silence by force and intrusion of his constitutional right to remain silent. Plea that such tests would cause health hazard to accused is also not tenable. Scientific tests like polygraph, narco-analysis and brain mapping etc. are **like taking MRI or CT Scan** of a person. Scientific value of such tests and credibility thereof can be evaluated only during course of trial. There is a hue and cry from public and human rights activists that the investigating sleuths adopt third degree methods to extract information from accused. But it is high time that the investigating agencies should take recourse to scientific methods of investigation. See :

(i) Arun Gulab Gavali vs. State of Maharashtra, 2006 CrLJ2615 (Bombay)(DB)
(ii) Dinesh Dalmia vs. State, 2006 CrLJ 2401 (Madras)

3(A). <u>History & Method of Polygraph Test</u> : The polygraph test was invented by Robert House of the U.S.A. in 1922. The subject is applied sedative drugs and under its influence questioning of the subject is done by the expert. Under the influence of the drug administered to the subject, he cannot create a lie as he has no power to think or reason. Under the influence of such drugs the subject cannot innovate and he would be speaking only the truth.

3(B). <u>Polygraph or Lie Detector Test & its advantages</u> : "Lie-detector" or "Polygraph" is a device which records tracings of several different pulsations as arterial and venous pulse waves and the apex beat of heart. "Lie-detector" or "Lie Detecting Machine" is an instrument for detecting physiological evidence of the tension that accompanies. Any device which records involuntary bodily

responses associated with conscious lying is called lie detector machine. Polygraph is a combination of technologies. In Medieval England, truth was tested by putting a suspect under water or throwing him in fire considering that if he is truthful God will save him. Another test was that the suspect would have to carry a red-hot iron bar for nine paces and if he was burnt he was deemed guilty and was immediately hanged. Sometimes the accused was tied with the sack of sand and thrown in the river. If he sank he was considered truthful and if he floated he was thought guilty and was then hanged. In both the cases the accused had to die. These practices of lie detection were banned by law in England in 1215. The earliest scientific method of detecting deceptions or lies was developed in 1895 by Cesare Lombroso, an Italian Criminologist, and in 1921 Dr. John A. Larson developed the earliest version of Polygraph. The test of Polygraph was for the first time judicially noticed in USA in 1923 in the case of Frye vs. United States. Polygraph instrument is stated to record with 100% accuracy the physiological changes in breathing, perspiration, blood pressure and pulse rate to determine a truth or a lie. If the instrument is faulty it will not record changes correctly. The polygraph test cannot take place of a thorough investigation. Before making request for polygraph test, the investigating officer must exhaust all avenues of investigation. The polygraphic test can check truthfulness of witnesses' statement, it can induce criminals to confess to crimes committed by them, it replaces third degree methods used during police interrogations, it can help in discriminating the innocent from the guilty and it can also be used to check honesty and integrity of employees or candidates to employment or persons subjected to the polygraph test.

3(C). **Power of court to order Polygraph Test :** Court can order an accused to be subjected to polygraph test. See : **Ram Chandra vs. State of Maharashtra, (2005) CCR 355 (Bombay) (DB)**

3(D). **Voluntary test of polygraph admissible in evidence** : If certain safeguards like the one recommended by the National Human Rights Commission in the case of polygraph test are observed, then such test results may be admissible in evidence for a limited purpose as indicated in Sec 27 of the Evidence Act. See : **Smt.Selvi Vs. State of Karnataka,(2010) 7 SCC 263 (Three-Judge Bench)**

4(A). **Brain Mapping Test (P300) & its History & Method :** The brain mapping test which is also known as P300 was for the first time developed in 1995 by famous neurologist Dr. Lawrence A. Farwell who was the Director & the Chief Scientist of "Brain Wave Science" IOWA says that in this method which is also called the **"Brain Wave Finger Printing"**; the accused is first interviewed and interrogated to find out whether he is concealing any information. Then sensors are attached to the subject's head and the person is seated before a computer monitor. He is then shown certain images or made to hear certain sounds. The sensors monitor electrical activity in the brain and register P300 waves, which are generated only if the subject has connection with the stimulus i.e. picture or sound. The subject is not asked any questions. Dr. Farwell has published that a MERMER (Memory and Encoding Related Multifaceted Electro Encephalographic Response) is initiated in the accused when his brain

recognized noteworthy information pertaining to the crime. These stimuli are called the "target stimuli". In nutshell, Brain finger printing test matches information stored in the brain with information from the crime scene.

4(B). **Brain Mapping Test Report & its Reliability :** The admissibility of the result of a scientific test will depend upon its authenticity. Whether the brain mapping test is so developed that the report will have a probative value so as to enable a court to place reliance thereupon, is a matter which would require further consideration, if and when the materials in support thereof are placed before the court. See : **Ranjitsing Brahmajeetsing Sharma vs. State of Maharashtra, 2005 CrLJ 2533 (SC) (Three-Judge Bench).**

4(C). **Brain Fingerprinting Test :** Central brain controls the outer brain parts. This control is disturbed by deception. An instrument called "Automatic Response Indicator" can record these disturbances. This device or system is known as "Automatic Response Indicator System". A device called Electroencephalograph (EEG) has been developed which can record cognitive process of recognition. For example, if weapon of an offence is recognized by the culprit the instrument would show the change in the brain wave patterns. This technique is also called Brain Printing or Brain Fingerprinting. EEG is also called BEAM, i.e., Brain Electrical Activity Mapping. It is a neurophysiologic measurement of electrical activity of brain. Electro-signals are called brain waves and it is recorded by EEG. The brain produces other electrical activities also such as responses to sound, light, touch etc. but Alpha, Beta, Delta and Theta are the standard bands of the frequency spectrum that constitute EEG activity. Electroencephalography is the science of recording and analyzing brain's electrical activity. Certain electrodes are attached to the scalp of the person. These electrodes are attached to EEG. EEG is an amplifier and converts electrical impulses into vertical moments of a pen over a sheet of paper. This recording is called electroencephalogram. Recording is made in different ways. For example, by coupling a simple electrode with an indifferent or neutral lead or between two areas of the brain through bipolar technique. The combination of recorded impulses is called a montage. By recording in different ways the scientists have been able to detect and treat various diseases such as epilepsy, cerebral tumor, encephalitis and stroke and also fainting (syncope), sleep disorders, coma and brain death can be monitored and diagnosed with the help of EEG. This technique has proved beneficial in study of brain from various angles and in different conditions. It is also used for determining whether brain has dies or not. It is said to be non-invasive and can detect convert responses to stimuli. Even a change on a millisecond level is recorded by means of Electroencephalograph. It helps monitor clinical depression treatment. Other methods of brain mapping take minutes and seconds but by mean of EEG it is done is sub-milliseconds. This is the only method to record brain activity directly. Other methods rely on blood flow or metabolism.

5(A). **Blood-Grouping Test & Determination of paternity :** The blood grouping test is a perfect test to determine questions of disputed paternity of a child and can be relied upon by courts as circumstantial evidence. But no person can be

compelled to give a sample of blood for blood grouping test against his will and no adverse inference can be drawn against him for his refusal. See : **Hargovind Soni vs. Ramdulari, AIR 1986 MP 57**

5(B). **Blood Grouping Test Report & its evidentiary value for determining paternity** : It has been held by the Bombay High Court that blood grouping tests have their limitation. They cannot possibly establish paternity as they can only indicate its possibilities. See : **Raghunath Eknath Hivale vs. Shardabai Karbharikale, AIR 1986 Bom. 386.**

5(C). **Evidentiary Value of Blood Test for Determining Paternity :** Medical science is able to analyze the blood of individuals into definite groups; and by examining the blood of a given man and a child to determine whether the man could or could not be the father. Blood tests cannot show positively that any man is father, but they can show positively that a given man could or could not be the father. It is obviously the later aspect that proves to be most valuable in determining paternity, i.e. the exclusion aspect, for offence it is determined that a man could be the father, he is thereby automatically excluded from considerations of paternity. When a man is not the father of a child, it has been said that there is at least a 70% chance that if blood tests are taken they will show positively he is not the father, and in some cases the chance is even higher, between two given men who have had sexual intercourse with the mother at the time of conception, both of whom undergo blood tests will show that one of them is not the father with the irresistible proof that the other is the father. The position which emerges on reference to these authoritative texts is that depending on the type of litigation, samples of blood, when subjected to skilled scientific examination, can sometimes supply helpful evidence on various issues, to exclude a particular parentage set up in the case. But the consideration remains that the party asserting the claim to have a child and the rival set of parents put to blood test must establish his right so to do. The court exercises protective jurisdiction on behalf of an infant. It would be unjust and not fair either to direct a test for a collateral reason to assist a litigant in his or her claim. The child cannot be allowed to suffer because of his incapacity; the aim is to ensure that he gets his rights. If in a case the court has reason to believe that the application for blood test is of a fishing nature or designed for some ulterior motive, it would be justified in not acceding to such a prayer. See : **Bharti Raj Vs. Sumesh Sachdeo, AIR 1986 All 259**

5(D-1). **Legitimacy of child :** Section 112 of the Evidence Act provides that if a person was born during the continuance of a valid marriage between his mother and any man or within 280 days after its dissolution and the mother remains unmarried, it shall be taken as conclusive proof that he is the legitimate son of that man, unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten. This rule of law based on the dictates of justice has always made the courts inclined towards upholding the legitimacy of a child unless the facts are so compulsive and clinching as to necessarily warrant a finding that the child could not at all have been begotten to the father and as such a legitimatization of the child would result in rank

injustice to the father. Courts have always desisted from lightly or hastily rendering a verdict and that too, on the basis of slender materials, which will have the effect of branding a child as a bastard and its mother an unchaste woman. See :

1. **Dukhtar Jahan (Smt.) vs. Mohammed Farooq, AIR 1987 SC 1049**
2. **Amarjit Kaur vs. Harbhajan Singh, (2003) 10 SCC 228**

5(D-2). <u>DNA Test Report when can rebut presumption of legitimacy of Child u/s 112 of the Evidence Act ?</u> : The DNA test cannot rebut the conclusive presumption envisaged under Section 12 of the Evidence Act. The parties can avoid the rigor of such conclusive presumption only by proving non-access which is a negative proof. See : **Shaik Fakruddin Vs. Shaik Mohammed Hasan, AIR 2006 AP 48.**

5(D-3).<u>Issuing direction to hold DNA Test to establish infidelity of wife and illegitimacy of child should be avoided as for as possible</u> : Depending on the facts and circumstances of the case, it would be permissible for a Court to direct the holding of a DNA examination, to determine the veracity of the allegations(s), which constitute one of the grounds, on which the concerned party would either succeed or lose. There can be no dispute, that if the direction to hold such a test can be avoided, it should be so avoided. The reason, is that the legitimacy of a child should not be put to peril. ....The respondent-husband has made clear and categorical assertions in the petition filed by him under Section 13 of the Hindu Marriage Act, alleging infidelity. He has gone to the extent of naming the person, who was the father of the male child born to the appellant-wife. It is in the process of substantiating his allegation of infidelity that the respondent-husband had made an application before the Family Court for conducting a DNA test, which would establish whether or not, he had fathered the male child born to the appellant-wife. But for the DNA test, it would be impossible for the respondent-husband to establish and confirm the assertions made in the pleadings. The direction of hold DNA test in circumstances is proper. .... The court however gave liberty to wife to comply with or disregard the order passed by the High Court, requiring the holding of the DNA test with caveat that in case, she declines to comply with the direction issued by the High Court, the allegation would be determined by the concerned Court, by drawing a presumption of the nature contemplated in Section 114 of the Indian Evidence Act, especially, in terms of Illustration (h) thereof. See : **Dipanwita Roy Vs. Ronobrotao Roy, AIR 2015 SC 418** *(paras 10, 11 & 12).*

5(E). <u>Proof of "access" or "non-access" by husband or wife to each other (Sec. 112 Evidence Act)</u> : Sec. 112, Evidence Act, requires the party disputing the paternity to prove non-access in order to dispel the presumption. "Access" and "non-access" mean the existence or non-existence of opportunities for sexual intercourse; it does not mean actual "co-habitation". The effect of Section 112 Evidence Act is that: there is a presumption and a very strong one though a rebuttable one. Conclusive proof means as laid down under Section 4 of the Evidence Act. See :

(i) Shyam Lal vs. Sanjeev Kumar, AIR 2009 SC 3115

(ii) **Goutam Kundu vs. State of W.B., (1993) 3 SCC 418**

6(A-1).<u>Voice Analysis Test</u> : In the case noted below, the Bombay High Court has laid down that taking a voice sample of an accused as sample for comparing and identifying it with a tape recorded or telephonic conversation is not violative of the fundamental rights of the accused guaranteed by Art. 20(3) of the Constitution. See :

(i) **Ritesh Sinha Vs. State of U.P, AIR 2013 SC 1132.**

(ii) **CBI vs. Abdul Karim Ladsab Telgi, 2005 CrLJ 2868 (Bombay) (**Popularly known as multi-crore fake stamp paper case)

(iii) **Mohan Singh Vs. State of Bihar, 2011(75) ACC 202(SC)**

6(A-2).<u>Alleged translated version of voice cannot be relied on without producing its source</u> : Interpreting Sections 65-A & 65-B of the Evidence Act, it has been held by the Hon'ble Supreme Court that where the voice recorded was inaudible and the voice recorder was not subjected to analysis, the translated version of the voice cannot be relied on without producing the source and there is no authenticity for translation. Source and it authenticity are the two key factors for an electronic evidence. See : **Sanjaysinh Ramrao Chavan Vs. Dattatray Gulabrao Phalke & Others, (2015) 3 SCC 123.**

6(B). <u>Taking voice sample of accused not violative of Article 20(3) of the Constitution</u> : Taking voice sample of an accused by the investigating agency u/s 53 & 53-A CrPC for purposes of investigation is not violative of Article 20(3) of the Constitution. But such sample of voice can be taken by the police only under permission from the Magistrate u/s 53/165 of the CrPC. See : **Ritesh Sinha Vs. State of U.P., AIR 2013 SC 1132.**

6(C). <u>Sample of Voice & Photograph of Face etc</u> : Where the contents of FIR and the statements recorded during investigation were disowned by the witness, interpreting Sections 3, 65(a), 65(b) of the Evidence Act & Section (1)(t) of the Information Technology Act, 2000, it has been held that it is the duty of court while rejecting an application to summon witness to take sample of her voice to see that all relevant evidence for purposes of trial is collected and the rejection of the application of the I.O. for taking photographs of her face & body for seeking expert opinion was held to be not proper. See : **Shekhar Tiwari vs. State of U.P., 2011 (2) ALJ 275 (All)**

6(D-1). **<u>Section 66A of the Information Technology Act, 2000 struck down by the Supreme Court in its entirety being violative of Article 19(1)(a) of the Constitution</u> :** Section 66A of the Information Technology Act, 2000 is intended to punish any person who uses the internet to disseminate any information that falls within the sub-clauses of Section 66A. It will be immediately noticed that the recipient of the written word that is sent by the person who is accused of the offence is not of any importance so far as this Section is concerned. (Save and except where under sub-clause (c) the addressee or recipient is deceived or misled about the origin of a particular message.) It is clear, therefore, that the information that is disseminated may be to one individual or several individuals. The Section makes no distinction between

mass dissemination and dissemination to one person. If the Section does not require that such message should have a clear tendency to disrupt public order. Such message need not have any potential which could disturb the community at large. The nexus between the message and action that may be taken based on the message is conspicuously absent - there is no ingredient in this offence of inciting anybody to do anything which a reasonable man would then say would have the tendency of being an immediate threat to public safety or tranquillity. On all these counts, it is clear that the Section has no proximate relationship to public order whatsoever. Under Section 66A, the offence is complete by sending a message for the purpose of causing annoyance, either 'persistently' or otherwise without in any manner impacting public order. Viewed at either by the standpoint of the clear and present danger test or the tendency to create public disorder, Section 66A would not pass muster as it has no element of any tendency to create public disorder which ought to be an essential ingredient of the offence which it creates. Equally, Section 66A has no proximate connection with incitement to commit an offence. Firstly, the information disseminated over the internet need not be information which 'incites' anybody at all. Written words may be sent that may be purely in the realm of 'discussion' or 'advocacy' of a 'particular point of view'. Further, the mere causing of annoyance, inconvenience, danger etc., or being grossly offensive or having a menacing character are not offences under the Penal Code at all. They may be ingredients of certain offences under the Penal Code but are not offences in themselves. For these reasons, Section 66A has nothing to do with 'incitement to an offence'. As Section 66A severely curtails information that may be sent on the internet based on whether it is grossly offensive, annoying, inconvenient, etc. and being unrelated to any of the eight subject-matters under Article 19(2) must, therefore, fall foul of Article 19(1)(a), and not being saved under Article 19(2), is declared as unconstitutional. Section 66A cannot possibly be said to create an offence which falls within the expression 'decency' or 'morality' in that what may be grossly offensive or annoying under the Section need not be obscene at all - in fact the word 'obscene' is conspicuous by its absence in Section 66A. If one looks at Section 294 of the Penal Code, the annoyance that is spoken of is clearly defined - that is, it has to be caused by obscene utterances or acts. Equally, under Section 510, the annoyance that is caused to a person must only be by another person who is in a state of intoxication and who annoys such person only in a public place or in a place for which it is a trespass for him to enter. Such narrowly and closely defined contours of offences made out under the Penal Code are conspicuous by their absence in Section 66A which in stark contrast uses completely open ended, undefined and vague language.

Incidentally, none of the expressions used in Section 66A are defined. Even 'criminal intimidation' is not defined - and the definition clause of the Information Technology Act, Section 2 does not say that words and expressions that are defined in the Penal Code will apply to this Act. Hence, S. 66A is unconstitutionally vague. Applying the tests of reasonable restriction, it is clear that Section 66A arbitrarily, excessively and disproportionately invades the right of free speech and upsets the balance between such right and the reasonable restrictions that may be imposed on such right. Information that may be grossly offensive or which causes annoyance or inconvenience are undefined terms which take into the net a very large amount of protected and innocent speech. A person may discuss or even advocate by means of writing disseminated over the internet information that may be a view or point of view pertaining to governmental, literary, scientific or other matters which may be unpalatable to certain sections of society. It is obvious that an expression of a view on any matter may cause annoyance, inconvenience or may be grossly offensive to some. In point of fact, Section 66A is cast so widely that virtually any opinion on any subject would be covered by it, as any serious opinion dissenting with the mores of the day would be caught within its net. Such is the reach of the Section and if it is to withstand the test of constitutionality, the chilling effect on free speech would be total. Thus S. 66A is unconstitutional also on the ground that it takes within its sweep protected speech and speech that is innocent in nature and is liable therefore to be used in such a way as to have a chilling effect on free speech and would, therefore, have to be struck down on the ground of overbreadth. See : **Shreya Singhal** Vs. **Union of India, AIR 2015 SC 1523.**

6(D-2). **Sending offensive message online not punishment u/s 66A of the Information Technology Act, 2000 as Section 66A is constitutionally invalid :** If Section 66A of the Information Technology Act, 2000 is otherwise invalid, it cannot be saved by an assurance from the learned Additional Solicitor General that it will be administered in a reasonable manner. Governments may come and Governments may go but Section 66A goes on forever. An assurance from the present Government even if carried out faithfully would not bind any successor Government. It must, therefore, be held that Section 66A must be judged on its own merits without any reference to how well it may be administered. Section 66A purports to authorize the imposition of restrictions on the fundamental right contained in Article 19(1)(a) in language wide enough to cover restrictions both within and without the limits of constitutionally permissible legislative action. The possibility of Section 66A being applied for purposes not sanctioned by the Constitution cannot be ruled out. It must, therefore, be held to be wholly unconstitutional and void. Further, Section 66A does not fall within any of the

subject-matters contained in Article 19(2) and the possibility of its being applied for purposes outside those subject-matters is clear. Therefore, no part of Section 66A is severable and the provision as a whole must be declared unconstitutional. **See : Shreya Singhal Vs. Union of India, AIR 2015 SC 1523.**

6(D-3).<u>Tape recorded conversation & its admissibility in Evidence (S. 7, Evidence Act)</u> : Tape recorded conversation is admissible in evidence provided that the conversation is relevant to the matters in issue, that there is identification of the voice and that the accuracy of the conversation is proved by eliminating the possibility of erasing the tape record. A contemporaneous tape record of a relevant conversation is a relevant fact and is admissible u/s. 7 of the Evidence Act. It is also comparable to a photograph of a relevant incident. A tape recorded statement is admissible in evidence subject to the following conditions :

(1) The voice of the speaker must be identified by the maker of the record or other persons recognizing his voice. Where the maker is unable to identify the voice, strict proof will be required to determine whether or not it was the voice of the alleged speaker.

(2) The accuracy of the tape recorded statement must be proved by the maker of the record by satisfactory evidence: direct or circumstantial.

(3) Possibility of tampering with, or erasure of any part of, the tape recorded statement must be totally excluded.

(4) The tape recorded statement must be relevant.

(5) The recorded cassette must be sealed and must be kept in safe or official custody.

(6) The voice of the particular speaker must be clearly audible and must not be lost or distorted by other sounds or disturbances. See :

1. State (NCT of Delhi) vs. Navjot Sandhu alias Afsan Guru, 2005 SCC (Cri) 1715---*(known as Parliament attack case)*

2. Ram Singh & others vs. Col. Ram Singh, 1985 (Suppl) SCC 611

3. R.M. Malkani vs. State of Maharashtra, AIR 1973 SC 157.

Note : *State (NCT of Delhi) Vs. Navjot Sandhu alias Afsan Guru, 2005 SCC (Cri) 1715 (known as Parliament attack case) now overruled by a Three-Judge Bench in Anvar P.V. Vs. P.K. Basheer, (2014) 10 SCC 473 (Three-Judge Bench)= AIR 2015 SC 180 (Three-Judge Bench) observing that in the absence of certificate u/s 65-B of the Evidence Act, a secondary evidence of electronic records like CD, VCD, Chip etc. is not admissible in evidence.*

6(E). <u>Preconditions for admissibility of tape recorded conversation</u> : A tape recorded statement is admissible in evidence, subject to the following conditions :

(i) The voice of the speaker must be identified by the maker of the record or other persons recognizing his voice. Where the maker is unable to identify

the voice, strict proof will be required to determine whether or not it was the voice of the alleged speaker.

(ii) The accuracy of the tape recorded statement must be proved by the maker of the record by satisfactory evidence: direct or circumstantial.

(iii) Possibility of tampering with, or erasure of any part of, the tape recorded statement must be totally excluded.

(iv) The tape recorded statement must be relevant.

(v) The recorded cassette must be sealed and must be kept in safe or official custody.

(vi) The voice of the particular speaker must be clearly audible and must not be lost or distorted by other sounds or disturbances. See :

1. Ram Singh & others Vs. Col. Ram Singh, 1985 (Suppl) SCC 611

2. State (NCT of Delhi) Vs. Navjot Sandhu alias Afsan Guru, 2005 SCC (Cri) 1715 (known as Parliament attack case)

Note : *State (NCT of Delhi) Vs. Navjot Sandhu alias Afsan Guru, 2005 SCC (Cri) 1715 (known as Parliament attack case) now overruled by a Three-Judge Bench in Anvar P.V. Vs. P.K. Basheer, (2014) 10 SCC 473 (Three-Judge Bench)= AIR 2015 SC 180 (Three-Judge Bench) observing that in the absence of certificate u/s 65-B of the Evidence Act, a secondary evidence of electronic records like CD, VCD, Chip etc. is not admissible in evidence.*

6(F). <u>Admissibility and evidentiary value of tape recorded conversation (S. 7, Evidence Act)</u> : With the introduction of Information Technology Act, 2000 "electronic records" have also been included as documentary evidence u/s. 3 of the Evidence Act and the contents of electronic records, if proved, are also admissible in evidence. Tape recorded conversation is admissible in evidence provided that the conversation is relevant to the matters in issue, that there is identification of the voice and that the accuracy of the conversation is proved by eliminating the possibility of erasing the tape record. A contemporaneous tape record of a relevant conversation is a relevant fact and is admissible u/s. 7 of the Evidence Act. It is also comparable to a photograph of a relevant incident. See **: R.M. Malkani Vs. State of Maharashtra, AIR 1973 SC 157**

6(G). <u>Admissibility of conversation on telephone or mobile</u> : Call records of (cellular) telephones are admissible in evidence u/s. 7 of the Evidence Act. There is no specific bar against the admissibility of the call records of telephones or mobiles. **Examining expert to prove the calls on telephone or mobile is not necessary**. Secondary evidence of such calls can be led u/s 63 & 65 of the Evidence Act. The provisions contained under the Telegraph Act, 1885 and the Telegraph Rules, 1951 do not come in the way of accepting as evidence the call records of telephone or mobile. See : **State (NCT of Delhi) vs. Navjot Sandhu alias Afsan Guru, 2005 SCC (Cri) 1715** *(known as Parliament attack case).*

Note : *State (NCT of Delhi) Vs. Navjot Sandhu alias Afsan Guru, 2005 SCC (Cri) 1715 (known as Parliament attack case) now overruled by a Three-Judge Bench in Anvar P.V. Vs. P.K. Basheer, (2014) 10 SCC 473 (Three-Judge Bench)= AIR 2015 SC 180 (Three-Judge Bench) observing that in the absence of certificate u/s 65-B of the Evidence Act, a secondary evidence of electronic records like CD, VCD, Chip etc. is not admissible in evidence.*

6(H). **Conversation on telephone or mobile & its evidentiary value** : Call records of (cellular) telephones are admissible in evidence u/s. 7 of the Evidence Act. There is no specific bar against the admissibility of the call records of telephones or mobiles. Examining expert to prove the calls on telephone or mobile is not necessary. Secondary evidence of such calls can be led u/s. 63 & 65 of the Evidence Act. The provisions contained under the Telegraph Act, 1885 and the Telegraph Rules, 1951 do not come in the way of accepting as evidence the call records of telephone or mobile. See : **State (NCT of Delhi) Vs. Navjot Sandhu alias Afsan Guru, 2005 SCC (Cri) 1715** *(known as Parliament attack case).*

Note : *State (NCT of Delhi) Vs. Navjot Sandhu alias Afsan Guru, 2005 SCC (Cri) 1715 (known as Parliament attack case) now overruled by a Three-Judge Bench in Anvar P.V. Vs. P.K. Basheer, (2014) 10 SCC 473 (Three-Judge Bench)= AIR 2015 SC 180 (Three-Judge Bench) observing that in the absence of certificate u/s 65-B of the Evidence Act, a secondary evidence of electronic records like CD, VCD, Chip etc. is not admissible in evidence.*

6(I). **Alleged translated version of voice cannot be relied on without producing its source :** Interpreting Sections 65-A & 65-B of the Evidence Act, it has been held by the Hon'ble Supreme Court that where the voice recorded was inaudible and the voice recorder was not subjected to analysis, the translated version of the voice cannot be relied on without producing the source and there is no authenticity for translation. Source and it authenticity are the two key factors for an electronic evidence. See : **Sanjaysinh Ramrao Chavan Vs. Dattatray Gulabrao Phalke & Others, (2015) 3 SCC 123.**

7(A). **Comparison of handwritings or signatures not a science at all but only an art** : Comparison of hand writings or signatures is not a science at all muchless any scientific approach is involved in making such comparison. It is only an art which has to be acquired by experience. In so far as judicial officers in States are concerned, they are provided with the subject of introduction to comparison of signatures and hand writing during their basic induction course at the time of their induction into the subordinate judiciary after selection. They are taken to several premier forensic and scientific institutions for practical experience and also are provided with lectures by faculty on the above subject. It is not as if judicial officers undertake the power under Section 73 of the Evidence Act in a gullible manner. They are provided with basic confidence in understanding this subject. It cannot be said that lower Court which is Court presided over by senior subordinate judicial officer cannot undertake work of comparison of

signatures in exercise of power under Section 73 of Evidence Act, particularly when that Court did not entertain any doubt on this aspect of matter. After all, evidence of a person who claims to be an expert, is not conclusive. An expert's evidence has to be scrutinized and adjudicated again by Court, like any other witness for the party, as to his approach to his conclusion and also reliability of such report. Judicial discretion thus exercised by lower Court in refusing to send disputed documents and admitted document to expert for comparison of signatures, proper. See : **J. Krishna Vs. Maliram Agarwal & Others, AIR 2013 AP 107** *(paras 9 &10)*

7(B). **<u>Necessary qualifications of an expert u/s 45, Evidence Act</u>** : Sec. 45 of the Evidence Act which makes opinion of experts admissible lays down that when the court has to form an opinion upon a point of foreign law or of science or of art or as to identity of handwriting or finger impressions, the opinions upon that point of persons specially skilled in such foreign law, science or art, or in questions as to identity of handwriting, or finger impressions are relevant facts. Therefore, in order to bring the evidence of a witness as that of an expert it has to be shown that he has made a special study of the subject or acquired a special experience therein or in other words that he is skilled and has adequate knowledge of the subject. See :

(i) **Ramesh Chandra Agrawal vs. Regency Hospital Ltd., 2009 (6) Supreme 535**

(ii) **State of H.P. vs. Jai Lal, (1999) 7 SCC 280**

7(C). **<u>Judicial Officers are provided training during their basic induction training course and are competent to themselves compare the handwritings/signatures</u>:** Comparison of hand writings or signatures is not a science at all muchless any scientific approach is involved in making such comparison. It is only an art which has to be acquired by experience. In so far as judicial officers in States are concerned, they are provided with the subject of introduction to comparison of signatures and hand writing during their basic induction course at the time of their induction into the subordinate judiciary after selection. They are taken to several premier forensic and scientific institutions for practical experience and also are provided with lectures by faculty on the above subject. It is not as if judicial officers undertake the power under Section 73 of the Evidence Act in a gullible manner. They are provided with basic confidence in undertaking this subject. It cannot be said that lower Court which is Court presided over by senior subordinate judicial officer cannot undertake work of comparison of signatures in exercise of power under Section 73 of Evidence Act, particularly when that Court did not entertain any doubt on this aspect of matter. After all, evidence of a person who claims to be an expert, is not conclusive. An expert's evidence has to be scrutinized and adjudicated again by Court, like any other witness for the party, as to his approach to his conclusion and also reliability of such report. Judicial discretion thus exercised by lower Court in refusing to send disputed documents and admitted document to expert for comparison of signatures, proper. See : **J. Krishna Vs. Maliram Agarwal & Others, AIR 2013 AP 107** *(paras 9 &10)*

7(D). <u>Judicial discretion available to refuse to send disputed and admitted documents to expert for comparison of signatures u/s 73 of the Evidence Act</u> : Comparison of hand writings or signatures is not a science at all much less any scientific approach is involved in making such comparison. It is only an art which has to be acquired by experience. In so far as judicial officers in State are concerned, they are provided with the subject of introduction to comparison of signatures and hand writing during their basic induction course at the time of their induction into the subordinate judiciary after selection. They are taken to several premier forensic and scientific institutions for practical experience and also are provided with lectures by faculty on the above subject. It is not as if judicial officers undertake the power under Section 73 of the Evidence Act, in a gullible manner. They are provided with basic confidence in undertaking this subject. It cannot be said that lower Court which is Court presided over by senior subordinate judicial officer cannot undertake work of comparison of signatures in exercise of power under Section 73 of Evidence Act, particularly when that Court did not entertain any doubt on this aspect of matter. After all, evidence of a person who claims to be an expert, is not conclusive. An expert's evidence has to be scrutinized and adjudicated again by Court, like any other witness for the party, as to his approach to his conclusion and also reliability of such report. Judicial discretion thus exercised by lower Court in refusing to send disputed documents and admitted document to expert for comparison of signatures, proper. See : **J. Krishna Vs. Maliram Agarwal & Others, AIR 2013 AP 107** *(paras 9 &10).*

7(E-1). <u>Magistrate may order a person or accused to give his specimen signatures or handwriting for purposes of investigation or other proceedings under the CrPC provided such person/accused was earlier arrested in connection with such investigation or proceeding</u> : Section 311-A CrPC as inserted w.e.f. 23.06.2006 provides that Magistrate may order a person or accused to give his specimen signatures or handwriting for purposes of investigation or other proceedings under the CrPC provided such person/accused was earlier at some time arrested in connection with such investigation or proceeding**.**

7(E-2). <u>Section 311-A inserted in the CrPC on suggestions of the Supreme Court</u> : Section 311-A CrPC has been inserted on the suggestions of the Supreme court in State of Uttar Pradesh Vs. Ram Banu Misra, (1980) 2 SCC 343, AIR 1980 SC 791, that a suitable legislation be brought along the lines of Section 5 of Identification of Prisoners Act, 1980, to provide for the investiture of Magistrates with powers to issue directions to any person including an accused person to give specimen signature and handwriting but no such powers existed prior to such amendment. The said amendment is prospective in nature and not retrospective. After referring to Section 5 of the Identification of Prisoners Act, 1980 in Ram Babu Mishra's case, Supreme Court suggested that a suitable legislation be made along its lines to provide for investiture of Magistrates with powers to issue directions to any person including an accused person to give

specimen signatures and handwriting. Accordingly, a new Section 311-A was inserted in the Criminal Procedure Code. Section 311-A CrPC reads thus : Section 311-A : Power of Magistrate to order person to give specimen signatures or handwriting. If a Magistrate of the first class is satisfied that, for the purposes of any investigation or proceeding under this Code, it is expedient to direct any person, including an accused person, to give specimen signatures or handwriting, he may make an order to that effect and in that case the person to whom the order relates shall be produced or shall attend at the time and place specified in such order and shall give his specimen signatures or handwriting. Provided that nor order shall be made under this section unless the person has to sometime been arrested in connection with such investigation or proceeding." The said amendment is prospective in nature and not retrospective. See : **Sukh Ram Vs. State of Himachal Pradesh, AIR 2016 SC 3548** *(paras 17 to 19)*

7(F-1). **Court/Magistrate competent to order taking of specimen finger prints or handwritings/signature etc. from accused** : U/s 5 & 6 of the Identification of Prisoners Act, 1920, a first class Magistrate is competent to order taking of specimen fingerprint, handwriting, thumb impression, impressions of foot, impression of palm or fingers, showing parts of the body by way of identification, for an investigation or proceedings under the CrPC and the same would not be hit by Art 20(3) of the Constitution as "being witness against himself". See :

1. **Selvi Vs. State of Karnataka, (2010) 7 SCC 263 (Three-Judge Bench)**
2. **State through SPE & CBI vs. M. Krishna Mohan, AIR 2008 SC 368**
3. **State of Bombay vs. Kathi Kalu, AIR 1961 SC 1808 (Eleven-Judge Bench)**

7 (F-2). Delayed seizure of incriminating articles, non-sending thereof to finger print expert same day and his non-examination as witness before court renders his evidence incredible: Delayed seizure of incriminating articles, non-sending thereof to the finger print expert same day, non-explanation for such delay and non-examination of the finger print expert as witness before the court renders his evidence incredible. See: Digamber Vaishnav Vs. State of Chhatishgarh, AIR 2019 SC 1367 (Three-Judge Bench)

7(F-3). Taking finger print of accused without magisterial order held doubtful: In the case noted below, alleged Tumblers bearing finger print of the accused was found at the scene of the crime. His finger prints were taken by the investigating officer u/s 4 of the Identification of Prisoners Act, 1920. Since the attesting witnesses of packing and sealing of tumblers were not independent witnesses and the finger print of the accused was obtained by the police without magisterial order, the Supreme Court held that the finger prints of the accused upon the tumblers were doubtful. See: State of MP Vs. Markand Singh, AIR 2019 SC 546.

7(G). <u>Court may direct an accused to give impression of thumb, foot, palm finger or specimen writing or showing parts of the body to police officer</u> : Relying upon earlier **Eleven-Judge Bench** decision rendered in the case of **State of Bombay vs. Kathi Kalu, AIR 1961 SC 1808,** it has been ruled by the Hon'ble Supreme Court that giving thumb impressions or impressions of foot or palm or fingers or specimen writings for examination by experts or showing parts of the body by way of identification are not included in the expression 'to be a witness' and the same would not be hit by Article 20(3) of the Constitution. See : **Rabindra Kumar Pal Vs. Republic of India, AIR 2011 SC 1436**

7(H). <u>Thumb impression & expert's evidence</u> : Science of identifying thumb impression by an expert u/s. 45 of the Evidence Act is an exact science and does not admit of any mistake or doubt. See : **Jaspal Singh Vs. State of Punjab, AIR 1979 SC 1708.**

7(I). <u>Typewriter expert</u> : Overruling an earlier Three-Judge Bench decision in Hanumant vs. State of M.P., AIR 1952 SC 343, a Five-Judge Bench of the Supreme Court has held that the word 'expert' in Sec. 45 of the Evidence Act includes expert in typewriters as well. Typewriting also falls within the meaning of work 'handwriting'. Hence opinion of typewriter expert is admissible in evidence. The examination of typewriting and identification of the typewriter on which the questioned document was typed in based on a scientific study of certain significant features of the typewriter peculiar to a particular typewriter and its individuality which can be studied by an expert having professional skill in the subject and, therefore, the opinion of the typewriter expert is admissible u/s. 45 of the Evidence Act. See : **State Through CBI vs. S.J. Choudhary, AIR 1996 SC 1491 (Five-Judge Bench).**

8(A). <u>Fingerprint experts report not substantive evidence</u> : evidence of fingerprint expert u/s 45 of the Evidence Act is not substantive evidence. It can be used to corroborate some items of substantive on record. See **: Musheer Khan Vs. State of M.P., 2010 (70) ACC 150 (SC)**

8(B).<u>Finger prints & its evidentiary value</u> : There is no gainsaying the fact that a majority of fingerprints found at crime scenes or crime articles are partially smudged, and it is for the experienced and skilled fingerprint expert to say whether a mark is usable as fingerprint evidence. Similarly it is for a competent technician to examine and give his opinion whether the identity can be established, and if so whether that can be done on eight or even less identical characteristics in an appropriate case. See : **Mohan Lal Vs. Ajit Singh, (1978) 3 SCR 823.**

8(C). <u>Fingerprint experts report not substantive evidence</u> : Evidence of fingerprint expert u/s 45 of the Evidence Act is not substantive evidence. It can be used to corroborate some items of substantive on record. See :**Musheer Khan Vs. State of M.P, 2010 (70) ACC 150(SC).**

8(D). <u>Non-examination of finger print expert & its effect</u> : Where the crime article, before its seizure, was handled by many persons, non-examination of the finger

print expert in such a case would not have any adverse effect on prosecution case. See : **Keshavlal Vs. State of M.P., (2002) 3 SCC 254.**

9(A-1). <u>Video conferencing & recording of evidence in the absence of physical presence of the accused permissible u/s 273 CrPC</u> : Recording of evidence of witness by video conferencing even in the physical presence of the accused before court would fully meet the requirements of Section 273 CrPC. Evidence, both oral and documentary which includes electronic records also, even in criminal matters, can be recorded by way of electronic records like video conferencing. See : **State of Maharashtra Vs. Dr. Praful B. Desai, AIR 2003 SC 2053.**

9(A-2). <u>Video conferencing & recording of evidence in the absence of physical presence of the accused permissible u/s 273 CrPC</u> : Sections 9(6), 11(1) and 273 CrPC---Circular issued in consonance of Section 9(6) of the CrPC---it is meant for sitting of court of sessions and not for court of Magistrate. According to Section 11(1) CrPC, State Government may after consultation with the High Court notify the place of sitting or judicial Magistrate. Sessions Judge cannot shift the place of sitting. Section 273 CrPC contemplates constructive presence (of the accused). Actual physical presence of accused is not must. Recording of evidence by Video Conferencing also satisfies the object of Section 273 CrPC . Using Video Conferencing System could not be held to be a violation of the provision of 273 CrPC. Administrative order passed by Session's Judge and by ACJM were quashed by the High Court. See **: Haseen Siddiqui Vs. State of UP, 2014 (84) ACC 591 (All)(LB).**

9(B). <u>Recording of evidenceof a witness in a foreign country through video conferencing only permissible when that country has extradition treaty with India</u> : Recording of evidence of a witness in a foreign country through video conferencing is permissible when that country has extradition treaty with India and under whose laws contempt of court and perjury are also punishable. See : **State of Maharashtra Vs. Dr. Praful B. Desai, AIR 2003 SC 2053.**

9(C).<u>Issuance of commission u/s 284 & 285 CrPC to record evidence of a witness by way of video conferencing permissible</u> : Issuance of commission u/s 284 & 285 CrPC to record evidence of a witness (even in a foreign country) by way of video conferencing is permissible where attendance of the witness cannot be procured without an amount of delay, expense or inconvenience. See : **State of Maharashtra Vs. Dr. Praful B. Desai, AIR 2003 SC 2053.**

9(D).<u>Evidence of witness by way of video conferencing where, how and by whom to be recorded</u> ? : Where a witness in USA was willing to give evidence to a trial court in Bombay by way of video conferencing from USA, the Hon'ble Supreme Court has held thus : A witness is willing to give evidence an official of the Court can be deported the record evidence on Commission by way of video conferencing. The evidence will be recorded in the studio/hall where the vide conferencing takes place. The Court in Mumbai would issuing Commission to record evidence by video conferencing in Mumbai. Therefore, the Commission would be addressed to the Chief Metropolitan Magistrate, Mumbai who would depute a responsible officer (preferably a judicial officer) to proceed to the office

of VSNL and record the evidence of in the presence of the respondent-accused. The officer shall ensure that the respondent and his counsel are present when the evidence is recorded and that they are able to observe the demeanour and hear the deposition of the witness. The officers shall also ensure that the respondent has full opportunity to cross-examine said witness. It must be clarified that adopting such a procedure may not be possible if the witness is out of India and not willing to give evidence. …Fixing of time for recording evidence on Commission is always the duty of the officer who has been deputed to so record evidence. Thus the officer recording the evidence would have the discretion to fix up the time in consultation with VSNL, who are experts in the field and who, will know which is the most convenient time for video conferencing with a person is USA. The respondent and his counsel will have to make it convenient to attend at the time fixed by the concerned officer. If they do not remain present the Magistrate will take action, as provided in law, to compel attendance. Officer who will be deputed would be one who has authority to administer oaths. That officer will administer the oath. See : **State of Maharashtra Vs. Dr. Praful B. Desai, AIR 2003 SC 2053.**

9(E). **Accused cannot object against recording of evidence of victim/witness on the ground that he cannot have full view of the victim/witness :** Section 273 CrPC merely requires the evidence to be taken in the presence of the accused. This Section, however, does not say that the evidence should be recorded in such a manner that the accused should have full view on the victim (of rape) as witness. Recording of evidence of the victim/witness by way of video conferencing vis-à-vis Section 273 CrPC is permissible. See : **Sakshi Vs. Union of India, AIR 2004 SC 3566.**

9(F). **Accused held not entitled to bail on the ground that the evidence of witnesses during trial could not be recorded due to non-availability of video conference facility on certain dates :** Accused was held not entitled to bail u/s 439 CrPC on the ground that the evidence of witnesses during trial could not be recorded due to non-availability of video conference facility on certain dates. See : **Rajesh Ranjan Yadav alias Pappu Yadav Vs. CBI, AIR 2008 SC 942.**

9(G). **Trial of accused in one State can be held by video conferencing with the jail of the other State where the accused is lodged :** Where the accused facing trial in the State of Bihar for the offences u/s 302 read with 120-B IPC was transferred from the jail in Bihar to Tihar jail in Delhi, it has been held by the Hon'ble Supreme Court that the trial of the accused in one State can be held by video conferencing with the jail of the other State where the accused is lodged. See : **Kalyan Chandra Sarkar Vs. Rajesh Ranjan alias Pappu Yadav, (2005) 3 SCC 284.**

9(H). **Video conferencing & warrant trail by Magistrate u/s 275(1) CrPC :** Proviso to sub-section (1) of Section 275 CrPC as inserted w.e.f. 31.12.2009 provides that evidence of a witness u/s 275(1) CrPC in a warrant-case may also be recorded by the Magistrate by audio-video electronic means in the presence of the advocate of the accused.

9(I) **Process of identification by the witness identifying an arrested person to be videographed if such witness is mentally or physically disabled :** Second

Proviso to Section 54A CrPC as inserted w.e.f. 03.02.2013 provides that the process of identification by the witness identifying an arrested person shall be videographed if such witness is mentally or physically disabled**.**

9(J). **Videography of recording of dying declaration not mandatory :** Videography of recording of dying declaration u/s 32 of the Evidence Act is only a measure of caution and not mandatory. In the absence of Videography, DD would not be fatal to the case of the prosecution and cannot be discarded. See : **Mukesh Vs. State for NCT of Delhi & Others, AIR 2017 SC 2161 (Three-Judge Bench)**

10(A). Information contained in computers : The printouts taken from the computers/servers by mechanical process and certified by a responsible official of the service-providing company can be led in evidence through a witness who can identify the signatures of the certifying officer or otherwise speak of the facts based on his personal knowledge. Such secondary evidence is admissible u/s. 63 and 65 of the Evidence Act. See **: State (NCT of Delhi) Vs. Navjot Sandhu alias Afsan Guru, 2005 SCC (Cri) 1715** *(known as Parliament attack case)*

Note : *State (NCT of Delhi) Vs. Navjot Sandhu alias Afsan Guru, 2005 SCC (Cri) 1715 (known as Parliament attack case) now overruled by a Three-Judge Bench in Anvar P.V. Vs. P.K. Basheer, (2014) 10 SCC 473 (Three-Judge Bench)= AIR 2015 SC 180 (Three-Judge Bench) observing that in the absence of certificate u/s 65-B of the Evidence Act, a secondary evidence of electronic records like CD, VCD, Chip etc. is not admissible in evidence.*

10(B). In the absence of certificate required u/s 65-B of the Evidence Act, secondary evidence of electronic records like CD, VCD, Chip etc. not admissible in evidence : A Three-Judge Bench of the Hon'ble Supreme Court while overruling its previous ruling on admissibility of secondary electronic evidence rendered in the case of **State (NCT of Delhi) Vs. Navjot Sandhu alias Afsan Guru, 2005 SCC (Cri) 1715** (*known as Parliament attack case*) has held that in the absence of certificate required u/s 65-B of the Evidence Act, secondary evidence of electronic records like CD, VCD, Chip etc. is not admissible in evidence. The Three-Judge Bench held thus :"The case was an election petition which related to an allegation of a corrupt practice against the Respondent No. 1 under Section 100(1)(b) and Section 123(4) of the Representation of the People Act, 1951 on the ground that Respondent No.1 had made certain speeches, songs and announcements to prejudice the prospects of the appellant and it had materially affected his election results. The evidence of the said speeches, songs, etc. was produced in CDs by feeding the contents into computer and thereafter making copies. Section 65-B certificate was not produced along with those CDs. The Court held that such evidence is inadmissible. A Three-Judge Bench of the Hon'ble Supreme Court in the case of **Anvar P.V. Vs. P.K. Basheer, (2014) 10 SCC 473 (Three-Judge Bench)** (para 22) held thus : "*The evidence relating to electronic record, as noted hereinbefore, being a special provision, the general law on secondary evidence under Section 63 read with Section 65 of the Evidence Act shall yield to the same.*

Generalia specialibus non derogant, special law will always prevail over the general law. It appears, the court omitted to take note of Section 59 and 65-A dealing with the admissibility of electronic record. Section 63 and 65 have no application in the case of secondary evidence by way of electronic record; the same is wholly governed by Sections 65-A and 65-B. To that extent, the statement of law on admissibility of secondary evidence pertaining to electronic record, as stated by this Court in Navjot Sandhu case, does not lay down the correct legal position. It requires to be overruled and we do so. An electronic record by way of secondary evidence shall not be admitted in evidence unless the requirements under Section 65-B are satisfied. Thus, in case of CD, VCD, chip, etc. the same shall be accompanied by the certificate in terms of Section 65-B obtained at the time of taking the document, without which, the secondary evidence pertaining to that electronic record, is inadmissible." See :

(i) Anvar P.V. Vs. P.K. Basheer, (2014) 10 SCC 473 (Three-Judge Bench).

(ii) **(2016) 5 SCC (J-I)**

(iii) Kundan Singh Vs. State, 2015 SCC Online Del 13647.

Note : *State (NCT of Delhi) Vs. Navjot Sandhu alias Afsan Guru, 2005 SCC (Cri) 1715 (known as Parliament attack case) now overruled by a Three-Judge Bench in Anvar P.V. Vs. P.K. Basheer, (2014) 10 SCC 473 (Three-Judge Bench) observing that in the absence of certificate u/s 65-B of the Evidence Act, a secondary evidence of electronic records like CD, VCD, Chip etc. is not admissible in evidence.*

11. **Bail granted by SJ, Badaun u/s 67 of the I.T. Act, 2000, cancelled by the High Court** : In the case noted below, the accused was working as Manager of the Urban Co-operative Bank, Badaun, and had fraudulently got signed some blank papers from the informant Smt. Veena Verma in respect of certain home loan advanced to her and thereafter started harassing her and her husband by threatening to commit their murder and had also sent some obscene SMS to her from his mobile with obscene comments on her and started blackmailing her by threatening to make public the obscene recorded of her on his phone. The accused had also demanded a sum of Rs. 8 lacs from her failing which he had threatened to commit her murder and of her husband and to make public the SMS on his phone. During investigation it was found that the accused had committed rape also on her. The Sessions Judge, Badaun had granted bail to the accused for the offences u/s 386, 511, 506, 509 IPC and u/s 67 of the Information Technology Act, 2000. But the said Bail was subsequently cancelled by the Hon'ble Allahabad High Court. See : **Smt. Veena Verma Vs. State of UP, 2010 (71) ACC 510 (All).**

12. **ELECTRONIC RECORDS & THEIR EVIDENTIARY VALUE** : With the enactment of the **'Information Technology Act, 2000'** as further amended by the Parliament in the year 2008 (Central Act No. 10 of 2009) w.e.f. 27.10.2009, the expression "document" occurring in Section 3 of the Evidence Act, 1872 now includes "electronic records" also. Following Sections in the Evidence Act w.e.f.

17.10.2000 & 27.10.2009 stood amended or inserted after coming into force of the Information Technology Act, 2000 :

Sections	Subject covered by the Sections
3	Documents include electronic records also.
3	Meaning of 'electronic signature certificate' as assigned to it in the Information Technology Act, 2000
17	Admission of facts contained in electronic records
22A	Oral admissions as to contents of electronic records relevant
34	Entries in books of account including those maintained in an electronic form relevant
35	Entry in public record or an electronic record made by a public servant in discharge of his official duty relevant
39	How much part of a statement contained in electronic records to be proved
45A	Opinion of examiner/expert of electronic records relevant as per Section 79A of the Information Technology Act, 2000
47A	Opinion of Certifying Authority of the electronic signature (digital signature) certificate on Electronic Signature relevant
59	Proof of facts except the contents of electronic records may be proved by oral evidence
65A	Contents of electronic records may be proved in accordance with the provisions of Section 65B
65B	Information contained in electronic records which is printed on a paper, stored, recorded or copied in optical or magnetic media by a computer may be proved as provided by Section 65B
67A	Electronic signature must be proved
73A	Proof of digital signature of a person either by producing the Digital Signature Certificate of the Controller or Certifying Authority or by any other person as provided by Section 73A(b)
81A	Presumption as to Gazettes in electronic forms
85A	Presumption as to electronic agreements
85B	Presumption as to electronic records & electronic signatures
85C	Presumption as to Electronic Signature Certificates
88A	Presumption as to Electronic messages (SMS)
90A	Presumption as to electronic records five years old
131	Production of electronic records in the possession or control of a person entitled to refuse its production not to be compelled.

13. **<u>Guidelines dated 31.05.2011 & 17.12.2013 issued by the Hon'ble Allahabad High Court for operating the Video-Conferencing System in the District Courts in UP are being reproduced here as under</u> :** *(kindly see at the next pages from 38 to 51)*.

Apoorva Agha
Incharge Computer Centre

HIGH COURT AT ALLAHABAD

Lucknow Bench,
Lucknow.
Dated : 31.05.2011

To,

The District Judge,
Allahabad / Lucknow / Kanpur Nagar / Varanasi / Ghaziabad / Meerut / Mirzapur.

Sub: Establishment of Video Conferencing facility in Court and Jail of your district.

Sir,

With reference to the pilot project for establishment of Video Conferencing facility in the Court and Jail of your district, please find enclosed the Minutes of the 9th Meeting of the Video Conferencing Monitoring Committee held on 18.05.2011 and Agenda for 10th Meeting to be held on 14.06.2011 at Lucknow Bench for your information and records.

Thanking you,

Yours faithfully

31/5/2011

(Apoorva Agha)

Encl. :
1- Minutes of 9th meeting dated 18.05.2011.
2- Agenda for 10th meeting dated 14.06.2011.

Agenda for the 10th Meeting of Video Conferencing Monitoring Committee scheduled for 14-6-2011 (Tuesday) at 4.30 pm at Lucknow Bench under the Chairmanship of Hon'ble Mr. Justice A. Mateen:

S.N.	Agenda Items
1.	To take stock of the present status of site preparation at Mirzapur, Allahabad and Varanasi District Jails and Courts and report on providing wooden enclosure and raised construction at Jail and Court ends for giving it resemblance of a Court. ***Report to be submitted by Shri V.K.Gupta, IG, Prisons and Shri N.K. Singh, Spl. Secretary Home.***
2.	Report on status of sanction of Manpower arrangement grant of Rs.20.16 lacs and Management Support grant of Rs.2.00 lacs, total Rs.22.16 lacs, by the state government and its transfer to NIC. ***Report to be submitted by Shri V.K.Gupta, IG, Prisons and Shri N.K. Singh, Spl. Secretary Home.***
3.	1. Report on status of commissioning and operations of video conferencing facilities using radio frequency technology in the seven districts namely, Kanpur Nagar, Meerut, Lucknow, Ghaziabad, Mirzapur, Allahabad and Varanasi out of the respective grants transferred to NIC for the purpose. 2. Report on establishing connectivity between District Courts and Jails of UP using judicious combination of radio frequency and SWAN based connectivities. ***Reports to be submitted by Shri S.B.Singh, SIO NIC.***
4.	Any other item with permission of the Chair.

30/5/2011

(Apoorva Agha)
Incharge Computer Centre
High Court, Lucknow Bench

Court, Kanpur Nagar that the VC facility was tested at the Jail and Court ends at Kanpur Nagar where, Shri V.K.Gupta, IG Prisons, Shri S.B.Singh, SIO, NIC and others were present. Illumination at Court end was found to be low due to which, unclear pictures appeared with darker images at the Jail end, while audio & video signals were quite clear. Shri V.K.Gupta reported that the quality of audio & video signals were still not of the quality shown by the vendor during its demonstration between Lucknow District Jail and Court ends at the time of selection of technology. Shri S.B.Singh reported that there ware some technical problems relating to fine tuning the audio & video equipments and assured to take all necessary measures for achieving the desired performance. He further reported that necessary steps for providing proper light arrangement will also be taken care of and the illumination will be increased to the desired level.

Shri Singh further reported that in all the districts, where civil and furnishing work is complete, installation work of video conferencing system has been done except that UPS has not been provided. He assured that in all such districts, the same shall be made available within a week and in the remaining districts, complete installation work will be finished within a fortnight. The Committee directed Shri Himanshu Bajpai, SDE, BSNL present in the Meeting to ensure the installation of towers within fifteen days looking into the urgency of the work. Sri Bajpai was further cautioned that the quality of material used for erecting towers will not be compromised with and the work be done on highest priority basis and directed him to submit his report on 6th June 2011.

With respect to the operations of the video conferencing system at Kanpur Nagar, the Committee decided to request the District Judge that the Court for which, remand through video conferencing may be started be identified and put into operations and after its successful functioning, other courts may be included. The Committee further decided to request the District Judges and Jail Superintendents of remaining districts also to identify the Courts and start remand of under trials as soon as the establishment of video conferencing system is complete and send their feedback before the next Meeting of the Committee for their review and consideration. Registrar, Lucknow Bench and IG Prisons, Shri V.K.Gupta were requested to communicate the decision of the Committee to the District Judges and the Jail Superintendents of all concerned Districts to start using the video conferencing facility for the remand of the under trails and report

their feedback by the next Meeting.

(2) Report on allocation of manpower at the sites and training of the officers / officials of the District Courts and Jails for operations and functioning of the video conferencing system.

Sri Singh, SIO, NIC assured that desired initial operations and training of the officials of the Courts and Jails in Districts where video conferencing systems are getting established, will be managed by the respective District Units of NIC, and later on, the same shall be managed by the manpower to be selected for the purpose out of the sanction of grant by the state government.

(3) Report on establishing connectivity between District Courts and Jails of UP using judicious combination of radio frequency and SWAN based connectivities.

Shri Singh reported that decision to connect all the Courts of UP with UP SWAN has been taken and he shall inform the Committee about the steps to be taken for providing similar connectivity of all the District Jails of UP to the UP SWAN by the next Meeting.

4. Any other item with permission of the Chair.

After deliberations, it was felt that in Jail premises, there should be a wooden enclosure in front of the camera, and in Court premises, there should be a raised construction giving resemblance of a Court. Sri V.K.Gupta, IG., Prisons informed that sufficient funds have been provided to the Rajkiya Nirman Nigam and within the allocated/sanctioned amount, this work can very well be done. The Committee directed Shri V.K.Gupta, IG Prisons to inform the Managing Director of the Rajkiya Nirman Nigam to remain present in the next Meeting.

5. The next date for Meeting of the Committee was fixed on 14.6.2011 (Tuesday) at 4.30 pm at the Lucknow Bench.

6. There being no other item, the Meeting was closed.

29/5/2011

(Apoorva Agha)
Incharge Computer Centre
High Court, Lucknow Bench

Minutes of the 9th Meeting of Video Conferencing Monitoring Committee held on 18-5-2011 (Wednesday) at 4.30 pm at Lucknow Bench under the Chairmanship of Hon'ble Mr. Justice A. Mateen:

Present :

Hon'ble Mr. Justice A. Mateen	: Chairman
Hon'ble Mr. Justice D. K. Arora	: Member
Shri Harsh Kumar, HJS	: Registrar, Lucknow Bench
Shri V.K. Gupta	: IG, Prisons
Shri N.K. Singh	: Spl. Secretary, Home (Jails)
Shri S.M.Haseeb, HJS	: Spl.Sec. & Adl.LR (Nyay Anubhag)
Shri K.B. Joshi	: RO, IG Prison's Office
Shri H. Bajpai	: SDE, BSNL, Lucknow
Shri S.B.Singh	: SIO, NIC, Lucknow
Shri Sanjeev Gahlaut	: TD, NIC, Lucknow
Shri Apoorva Agha	: Incharge Computer Centre
Shri Abhay Srivastava	: Systems Analyst, Lucknow Bench

1. Report on present status of site preparation at Allahabad, Mirzapur and Varanasi District Jails and Courts.

Shri V.K.Gupta, IG Prisons reported that at Varanasi District Jail end, work of slab casting is in progress and at the District Court end, room has been provided and necessary civil and furnishing works will be completed within a month. At Naini Central Jail and Allahabad District Court ends, all the civil work is complete and at both the ends, all furnishing work will be completed within this month. Letter No.786/XV Mirzapur dated 17.5.2011 was placed before the Committee wherein, it was reported by Nodal Officer (Computer), District Court, Mirzapur that Rijkiya Nirman Nigam has locked the newly constructed VC rooms at the Court and Jail premises and have not handed over its keys till date. Shri V.K.Gupta, sought a couple of days' time to sort out the matter and report in the next Meeting.

2. Report on status of sanction of Manpower arrangement grant of Rs.20.16 lacs and Management Support grant of Rs.2.00 lacs, total Rs.22.16 lacs, by the state government and its transfer to NIC.

Sri N.K. Singh, Special Secretary, Home reported that the sanction of manpower arrangement grant is likely to be accorded within a week, whereafter the same shall be transferred to NIC forthwith.

3. (1) Report on status of installation of video conferencing facilities using radio frequency technology and their commissioning for operations in the seven districts namely, Kanpur Nagar, Meerut, Lucknow, Ghaziabad, Mirzapur, Allahabad and Varanasi out of the respective grants transferred to NIC for the purpose.

Letter No. 973/I Kanpur Nagar dated 17.5.2011 was placed before the Committee wherein it was reported by Nodal Officer (Computer), District

Harsh Kumar, HJS
Registrar,
Lucknow Bench.

HIGH COURT AT ALLAHABAD

Lucknow Bench,
Lucknow.
No. 15986 / 11
Dated : 31.05.2011.

To,

The District Judge,
Allahabad / Lucknow / Varanasi / Ghaziabad / Meerut / Mirzapur.

Sub.: Trial Operation of Video Conferencing facility in the Court and Jail of your District for the purpose of remand of under trials.

Ref. : **Resolution passed by the Video Conferencing Monitoring Committee in its 9th Meeting held on 18.5.2011 at Lucknow.**

Dear Sir,

Kindly refer to the resolution (item no.3(1) and 3(2)) passed by the Video Conferencing Monitoring Committee in its 9th Meeting held on 18.5.2011 at High Court, Lucknow Bench under Chairmanship of Hon'ble Mr. Justice A. Mateen (copy enclosed), which states as under :

3.1) "With respect to the operations of the video conferencing system at Kanpur Nagar, the Committee decided to request the District Judge that the Court for which, remand through video conferencing may be started be identified and put into operations and after its successful functioning, other courts may be included. The Committee further decided to request the District Judges and Jail Superintendents of remaining districts also to identify the Courts and start remand of under trials as soon as the establishment of video conferencing system is complete and send their feedback before the next Meeting of the Committee for their review and consideration. "

3.2) "Sri Singh, SIO, NIC assured that desired initial operations and training of the officials of the Courts and Jails in Districts where video conferencing systems are getting established, will be managed by the respective District Units of NIC, and later on, the same shall be managed by the manpower to be selected for the purpose out of the sanction of grant by the state government."

It is, hereby, requested that the use of Video Conferencing facility for remand of the under trials in your District Court be started forthwith for which, necessary coordination and cooperation from the District Jail authorities and the NIC unit of your district may kindly be obtained and its feedback be forwarded to this Court for being placed in the next Meeting of the Committee to be held on 14.6.2011.

Thanking you,

Yours faithfully,

(Harsh Kumar)

Encl. : As above

cc:

1. Shri V.K.Gupta, IG Prisons, PICKUP Bhawan, Vibhuti Khand, Gomti Nagar, Lucknow.
2. Shri S.B.Singh, SIO, NIC, Yojna Bhawan, 9, Sarojini Naidu Marg, Lucknow.

(Harsh Kumar)

बातचीत आदेश को सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषित।

प्रशासनिक [illegible]
जनपद न्यायाल[illegible]

Minutes of the 9th Meeting of Video Conferencing Monitoring Committee held on 18-5-2011 (Wednesday) at 4.30 pm at Lucknow Bench under the Chairmanship of Hon'ble Mr. Justice A. Mateen:

Present :

Hon'ble Mr. Justice A. Mateen	: Chairman
Hon'ble Mr. Justice D. K. Arora	: Member
Shri Harsh Kumar, HJS	: Registrar, Lucknow Bench
Shri V.K. Gupta	: IG, Prisons
Shri N.K. Singh	: Spl. Secretary, Home (Jails)
Shri S.M.Haseeb, HJS	: Spl.Sec. & Adl.LR (Nyay Anubhag)
Shri K.B. Joshi	: RO, IG Prison's Office
Shri H. Bajpai	: SDE, BSNL, Lucknow
Shri S.B.Singh	: SIO, NIC, Lucknow
Shri Sanjeev Gahlaut	: TD, NIC, Lucknow
Shri Apoorva Agha	: Incharge Computer Centre
Shri Abhay Srivastava	: Systems Analyst, Lucknow Bench

1. **Report on present status of site preparation at Allahabad, Mirzapur and Varanasi District Jails and Courts.**

   Shri V.K.Gupta, IG Prisons reported that at Varanasi District Jail end, work of slab casting is in progress and at the District Court end, room has been provided and necessary civil and furnishing works will be completed within a month. At Naini Central Jail and Allahabad District Court ends, all the civil work is complete and at both the ends, all furnishing work will be completed within this month. Letter No.786/XV Mirzapur dated 17.5.2011 was placed before the Committee wherein, it was reported by Nodal Officer (Computer), District Court, Mirzapur that Rijkiya Nirman Nigam has locked the newly constructed VC rooms at the Court and Jail premises and have not handed over its keys till date. Shri V.K.Gupta, sought a couple of days' time to sort out the matter and report in the next Meeting.

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   Sri N.K. Singh, Special Secretary, Home reported that the sanction of manpower arrangement grant is likely to be accorded within a week, whereafter the same shall be transferred to NIC forthwith.

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Court, Kanpur Nagar that the VC facility was tested at the Jail and Court ends at Kanpur Nagar where, Shri V.K.Gupta, IG Prisons, Shri S.B.Singh, SIO, NIC and others were present. Illumination at Court end was found to be low due to which, unclear pictures appeared with darker images at the Jail end, while audio & video signals were quite clear. Shri V.K.Gupta reported that the quality of audio & video signals were still not of the quality shown by the vendor during its demonstration between Lucknow District Jail and Court ends at the time of selection of technology. Shri S.B.Singh reported that there ware some technical problems relating to fine tuning the audio & video equipments and assured to take all necessary measures for achieving the desired performance. He further reported that necessary steps for providing proper light arrangement will also be taken care of and the illumination will be increased to the desired level.

Shri Singh further reported that in all the districts, where civil and furnishing work is complete, installation work of video conferencing system has been done except that UPS has not been provided. He assured that in all such districts, the same shall be made available within a week and in the remaining districts, complete installation work will be finished within a fortnight. The Committee directed Shri Himanshu Bajpai, SDE, BSNL present in the Meeting to ensure the installation of towers within fifteen days looking into the urgency of the work. Sri Bajpai was further cautioned that the quality of material used for erecting towers will not be compromised with and the work be done on highest priority basis and directed him to submit his report on 6th June 2011.

With respect to the operations of the video conferencing system at Kanpur Nagar, the Committee decided to request the District Judge that the Court for which, remand through video conferencing may be started be identified and put into operations and after its successful functioning, other courts may be included. The Committee further decided to request the District Judges and Jail Superintendents of remaining districts also to identify the Courts and start remand of under trials as soon as the establishment of video conferencing system is complete and send their feedback before the next Meeting of the Committee for their review and consideration. Registrar, Lucknow Bench and IG Prisons, Shri V.K.Gupta were requested to communicate the decision of the Committee to the District Judges and the Jail Superintendents of all concerned Districts to start using the video conferencing facility for the remand of the under trails and report

their feedback by the next Meeting.

(2) Report on allocation of manpower at the sites and training of the officers / officials of the District Courts and Jails for operations and functioning of the video conferencing system.

Sri Singh, SIO, NIC assured that desired initial operations and training of the officials of the Courts and Jails in Districts where video conferencing systems are getting established, will be managed by the respective District Units of NIC, and later on, the same shall be managed by the manpower to be selected for the purpose out of the sanction of grant by the state government.

(3) Report on establishing connectivity between District Courts and Jails of UP using judicious combination of radio frequency and SWAN based connectivities.

Shri Singh reported that decision to connect all the Courts of UP with UP SWAN has been taken and he shall inform the Committee about the steps to be taken for providing similar connectivity of all the District Jails of UP to the UP SWAN by the next Meeting.

4. Any other item with permission of the Chair.

After deliberations, it was felt that in Jail premises, there should be a wooden enclosure in front of the camera, and in Court premises, there should be a raised construction giving resemblance of a Court. Sri V.K.Gupta, IG., Prisons informed that sufficient funds have been provided to the Rajkiya Nirman Nigam and within the allocated/sanctioned amount, this work can very well be done. The Committee directed Shri V.K.Gupta, IG Prisons to inform the Managing Director of the Rajkiya Nirman Nigam to remain present in the next Meeting.

5. The next date for Meeting of the Committee was fixed on 14.6.2011 (Tuesday) at 4.30 pm at the Lucknow Bench.

6. There being no other item, the Meeting was closed.

29/5/2011

(Apoorva Agha)
Incharge Computer Centre
High Court, Lucknow Bench

a) To take up the matter with the Chief Secretary of the State to provide connectivity under the State Wide Area Network (SWAN) with 1 MBPS band-width between every District Court (Headquarters) and such Jails.

b) Alternatively, to provide leased line connectivity with 1 MBPS band-width between every District Court (Headquarters) and such Jails.

Letter no.13950/2013 Lucknow / Dated:24.10.2013 from Registrar, Lucknow Bench has been sent to the Chief Secretary, Govt. of UP in this regard for seeking his report for perusal and consideration of the Hon'ble Video Conferencing Monitoring Committee in its 23rd Meeting scheduled to be held on 28.10.2013. The reply is still awaited.

The Committee observed that it has already resolved to provide Video Conferencing facility in all the districts throughout the State of Uttar Pradesh and the Government has also been asked to provide appropriate budget for the purpose. Shri S.B. Singh, SIO informed that the proposal has been sent to the Government in this regard to connect all District Courts and Jails with SWAN but the approval requires some changes. **The Committee directed Shri Singh to send a fresh proposal within two weeks and also send a copy of the proposal to the Committee. It further directed that a joint Meeting of Shri S.B.Singh, SIO NIC, Secretary(Home), Secretary(Finance) and ADG(Prisons) be held on 25.11.2013 in the office of Secretary(Finance) and the report regarding actions taken be submitted in the next Meeting.**

With respect to the use of items including UPS and DG sets etc., purchased and supplied to the District Courts and Jails for establishing Video Conferencing facilities, **the Committee expressed its strong desire that all such items purchased and installed under the Video Conferencing project should be installed and utilized for the said purpose only and not at any other place or for any other purpose. The Committee directed the Registrar to inform all the District Judges accordingly.**

6. The Committee decided to schedule its next Meeting in month of December 2013 at Lucknow Bench.

Apoorva.

(Apoorva Agha)
Incharge Computer Centre
High Court, Lucknow Bench

Date : 17.12.2013

Firozabad, Farukkhabad, Ghazipur, Gorakhpur, Hathras, Hamirpur, Jalaun at Orai, Kushinagar at Padrauna (Deoria), Lalitpur, Mau, Pilibhit, Raibareli, Rampur & Sultanpur and placed a compilation of feedback reports received from the Nodal Officers of these 26 District Courts and the reports received from ADG Prisons. He further informed the Committee that by 28.10.2013, a total of 2,51,368 under-trials (1,69,631 in 7 districts of 1st Phase and 81,737 in 19 districts of low cost solution) were produced for remand using the Video Conferencing facility u/s 167 2(b), 209 and 309 Cr.PC in the aforementioned 26 districts. Further, 22 cases of trials at Sessions and Magistrate levels have also being taken up at District Court, Lucknow. **The Committee noted the report.**

As per the reports received from District Courts, following Districts have taken up remand and trial cases under different Sections of Cr.PC using the video conferencing facilities:

S.N.	Name of District	Section 167 2(b) of Cr.P.C.	Section 209 of Cr.P.C.	Section 309 of Cr.P.C.	Trial at Sessions & Magistrate Level
A)	**7 Districts of Ist Phase under Pilot Project**				
1	Allahabad	√	√	√	
2	Ghaziabad	√	√	√	
3	Kanpur Nagar	√	√	√	
4	Lucknow	√		√	√
5	Meerut	√	√	√	
6	Mirzapur	√			
7	Varanasi	√	√	√	
B)	**Other Districts using low cost based solution**				
1	Aligarh	√			
2	Azamgarh	√			
3	Baghpat	√		√	
4	Banda	√			
5	Chitrakoot	√			
6	Farukkhabad	√			
7	Firozabad	√			
8	Ghazipur	√		√	
9	Gorakhpur	√			
10	Hamirpur	√			
11	Hathras	√			
12	Jalaun at Orai	√			
13	Kushinagar at Padrauna (Deoria)	√		√	
14	Lalitpur	√			
15	Mau	√			
16	Piliphit	√		√	
17	Raebareli	√			
18	Rampur	√			
19	Sultanpur	√			

The Committee directed all Nodal Officers to regularly submit reports regarding number of remand & trial cases taken up in their Districts under different Sections of Cr.PC for placing before the Committee in every Meeting.

Minutes of the 23rd Meeting of Video Conferencing Monitoring Committee held on 28.10.2013 (Monday) at 4.15 pm at Lucknow Bench under Hon'ble Mr. Justice D.P. Singh, Chairman and Hon'ble Mr. Justice D.K. Arora, Member:

Present :

Hon'ble Mr. Justice D.P. Singh	: Hon'ble Chairman
Hon'ble Mr. Justice D.K. Arora	: Hon'ble Member
Shri A.K. Mukherjee	: Registrar, Lucknow Bench
Shri R.P. Singh	: ADG, Prisons, UP, Lucknow
Shri K.B. Joshi	: Research Officer, Prisons HQ
Shri D.S. Sharma	: Secretary, Home, UP, Lucknow
Shri Chandra Mauli Shukla	: Adl. LR, UP, Secretariat, Lucknow
Shri Himanshu Kumar	: Secretary, Finance, UP, Lucknow
Shri A.P. Misra	: MD, UPPCL, Lucknow
Shri Srikant Prasad	: Director (Distb.), UPPCL, Lucknow
Shri R.K. Goyal	: GM, UPRNN, Lucknow
Shri S.R. Haider	: GM, UPRNN, Faizabad
Shri A.K. Purwar	: CGM, UP(East), BSNL, Lucknow
Shri Rajesh Kumar	: Sr. GM (EB), BSNL
Shri Devendra Nath Singh	: Nodal Officer (C), Aligarh
Shri Premendra Kumar	: Nodal Officer (C), Allahabad
Shri Saurabh Dwivedi	: Nodal Officer (C), Azamgarh
Shri Rajeev Kumar Paliwal	: Nodal Officer (C), Bagpath
Shri Sanjay Mishra	: Nodal Officer (C), Banda
Shri Prashant Bilgaiyan	: Nodal Officer (C), Chitrakoot
Shri Satya Prakash	: Nodal Officer (C), Firozabad
Shri Ram Karan Yadav	: Nodal Officer (C), Ghaziabad
Shri Ranjeet Kumar	: Nodal Officer (C), Ghazipur
Shri Purnendu Kumar Srivastava	: Nodal Officer (C), Gorakhpur
Shri Ombir	: Nodal Officer (C), Hathras
Shri Mukesh Kumar Singhal	: Nodal Officer (C), Jalaun at Orai
Shri Avinash Saksena	: Nodal Officer (C), Kanpur Nagar
Shri Ravindra Kumar	: Nodal Officer (C), Kushinagar
Shri Dilip Kumar Sachan	: Nodal Officer (C), Lalitpur
Shri Ran Dheer Singh	: Nodal Officer (C), Lucknow
Shri Nirbhay Prakash	: Nodal Officer (C), Mau
Shri Jeetendra Mishra	: Nodal Officer (C), Meerut
Shri Sanjeev Shukla	: Nodal Officer (C), Mirzapur
Shri Madan Lal Nigam	: Nodal Officer (C), Pilibhit
Shri Sohan Lal Srivastava	: Nodal Officer (C), Rai Bareli
Shri Azad Singh	: Nodal Officer (C), Rampur
Shri Dev Raj Prasad Singh	: Nodal Officer (C), Sultanpur
Shri Vikas Saxena	: Nodal Officer (C), Varanasi
Shri S.B. Singh	: SIO, NIC, Lucknow
Shri R.K. Tripathi	: PSA, NIC, Lucknow
Shri Apoorva Agha	: Incharge Computer Centre
Shri Abhay Srivastava	: Senior Systems Analyst

1. **To take stock of the actions on the decisions taken in earlier Meetings:**

The Incharge Computer Centre briefed the Committee about the status and progress of the Video Conferencing project in 7 districts of the 1st phase namely, **Allahabad, Ghaziabad, Kanpur Nagar, Lucknow, Meerut, Mirzapur & Varanasi,** 19 districts using low cost solution of IP & Email based Internet connectivity namely, **Aligarh, Azamgarh, Baghpat, Banda, Chitrakoot,**

2. **To consider matters relating to functioning of the Video Conferencing facility in the 7 districts of 1st Phase of pilot project namely Allahabad, Ghaziabad, Kanpur Nagar, Lucknow, Meerut, Mirzapur and Varanasi and to consider the issues arising therefrom:**

ADG Prisons, Shri R.P. Singh placed the following two summary reports before the Committee giving in details, the number of under-trials produced before Courts using the Video Conferencing facility since inception upto 30.08.2013 in the 7 districts of 1st Phase and the 19 districts, which are using low cost solution of IP and Email based Internet connectivity for video conferencing between their Courts & Jails using their own resources:

प्रदेश की 07 कारागारों में स्थापित वीडियो कान्फ्रेंसिंग इकाईयों के माध्यम से बंदियों की पेशी:-

माह	लखनऊ	नैनी	मेरठ	कानपुर	गाजियाबाद	मिर्जापुर	वाराणसी	योग
जुलाई से दिसम्बर, 11	7751	4545	3597	4151	4387	909	2466	27806
जनवरी से दिसम्बर 12	12474	12700	12685	11606	11334	2119	8524	71442
जनवरी, 13	661	1142	970	1212	1428	134	1295	6842
फरवरी, 13	627	958	699	811	1216	73	1120	5504
मार्च, 13	789	949	1070	840	1330	116	1245	6339
अप्रैल, 13	946	1139	984	1074	1885	148	1328	7504
मई, 13	949	1622	1025	1042	1132	222	1234	7226
जून, 13	767	1445	905	1028	1470	130	1387	7132
जुलाई 13	868	1599	1115	1085	1558	253	1431	7909
अगस्त 2013	878	1317	1397	1224	1493	212	1286	7807
सितम्बर 2013	878	1121	1003	1166	1674	135	1505	7482
1.10.13 से 25.10.13	864	1203	890	952	1298	147	1284	6638
योग-	28452	29740	26340	26191	30205	4598	24105	169631

बागपत मॉडल (ब्राड बैण्ड के माध्यम से) पर प्रदेश के 19 जनपदों में बंदियों की पेशी:-

माह	बागपत	अलीगढ	हाथरस	मऊ	आजमगढ	सुल्तानपुर	गाजीपुर	उरई	बांदा	चित्रकूट	पीलीभीत	गोरखपुर	ललितपुर	सावरेसी	देवरिया	फिरोजाबाद	हमीरपुर	रामपुर	फर्रुखाबाद	योग
फर0-दिस012	3913	5050	0	2040	2413	1813	2513	527	27	14	60	489	0	173	67	0	0	0	0	19099
जनवरी, 13	206	828	0	634	456	534	798	254	71	81	128	2453	0	240	462	0	0	0	0	7145
फरवरी, 13	135	753	0	428	305	387	672	237	86	54	89	1294	0	155	586	0	227	135	0	5543
मार्च, 13	135	579	0	553	383	400	693	223	102	81	99	768	21	136	783	292	354	266	0	5868
अप्रैल, 13	153	686	0	177	458	430	750	218	175	123	110	739	72	167	835	265	277	308	0	5943
मई, 13	171	718	0	0	430	396	859	140	239	135	218	749	39	240	780	492	228	341	0	6175
जून, 13	180	773	0	2	436	465	844	435	277	200	246	668	24	19	849	418	202	301	0	6339
जुलाई 13	238	862	0	81	515	606	1001	207	325	270	262	1264	1	158	544	405	157	348	0	7244
अगस्त 2013	219	715	0	91	429	483	732	237	159	185	248	837	5	164	444	525	29	284	0	5766
सितम्बर, 13	472	765	254	84	217	546	798	170	201	184	271	657	0	43	954	398	0	423	0	6437
25.10.13 तक	320	742	317	78	293	407	731	206	249	199	274	628	0	0	836	424	0	267	207	6178
योग-	6142	12471	571	4168	6335	6447	10391	2854	1911	1526	2005	10546	162	1495	7140	3219	1474	2673	207	81737

The Committee perused the summarized compilation chart prepared by Computer Centre based on reports received from the 7 districts of 1st Phase of pilot project and sought reports from the respective Nodal Officers present in the Meeting.

Nodal Officer, **Allahabad, Ghaziabad** and **Mirzapur** reported that there is no problem regarding Video Conferencing in their districts. Nodal Officer, **Kanpur**

reported that there is problem in light fittings in the Video Conferencing Court Room. **The Committee directed GM, U.P. Rajkiya Nirman Nigam present in the Meeting to take corrective measures within a week.** Nodal Officer, **Lucknow** reported that R.F. connectivity in not working. This problem was also raised in previous Meeting. As informed by Shri S.B. Singh, SIO, NIC the line of sight between Court and Jail ends has been impaired due to construction of a high altitude building between them. To restore the connectivity, it is necessary to increase the height of tower at the Jail end. Shri R.P. Singh, ADG (Prisons) vide his report dated 28-10-2013 informed that proposal of Rs.1,10,124.00 for raising the height of the tower at Jail end has been received from BSNL through NIC and the same has been forwarded to the Government for sanction of the amount. **The Committee directed Secretary (Home) to take necessary steps for an early sanction of the amount and directed Shri R.K. Purwar, CGM, BSNL to start the work of raising the height of tower in anticipation to the sanction of budget by the Government forthwith.** The two officers assured to comply with the directions. Nodal Officer, **Meerut** informed about malfunctioning of R.F. connectivity due to mouse problem with cables running loose between slab and false ceiling. **The Committee directed GM, UPRNN to cover the loose cables with steel pipe within 10 days.** Nodal Officer, **Varanasi** informed that the DG set at Court end is not working since a long time and the same has also not been handed over by UPRNN. Directions were issued to MD, UPRNN in previous Meetings to get the problem resolved at the earliest but the problems still persist. MD, UPRNN did not take necessary steps to get the problem resolved. **The Committee directed GM, UPRNN present in the Meeting to take necessary steps to replace the DG set within 2 weeks and hand over charge of the new DG set alongwith its warranty documents to the Varanasi Judgeship and submit compliance report thereafter forthwith.** Shri R.K. Goyal, GM, UPRNN assured the Committee to take all necessary steps to replace the DG set within 2 weeks and report compliance.

The Committee further directed all the Nodal Officers of 7 districts, where Video Conferencing facility has been initiated in 1st phase of pilot project and also the ADG, Prisons to ensure that the trained staff at the Court and Jail ends are immediately deployed for operations of the Video Conferencing facility in order to utilize and test their training.

3. **To consider matters relating to functioning of Video Conferencing facility based on low cost solution (Baghpat/Mau) model in 17 districts namely Aligarh, Azamgarh, Baghpat, Banda, Chitrakoot, Firozabad, Ghazipur, Gorakhpur, Hathras, Jalaun at Orai, Kushinagar at Padrauna (Deoria),**

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