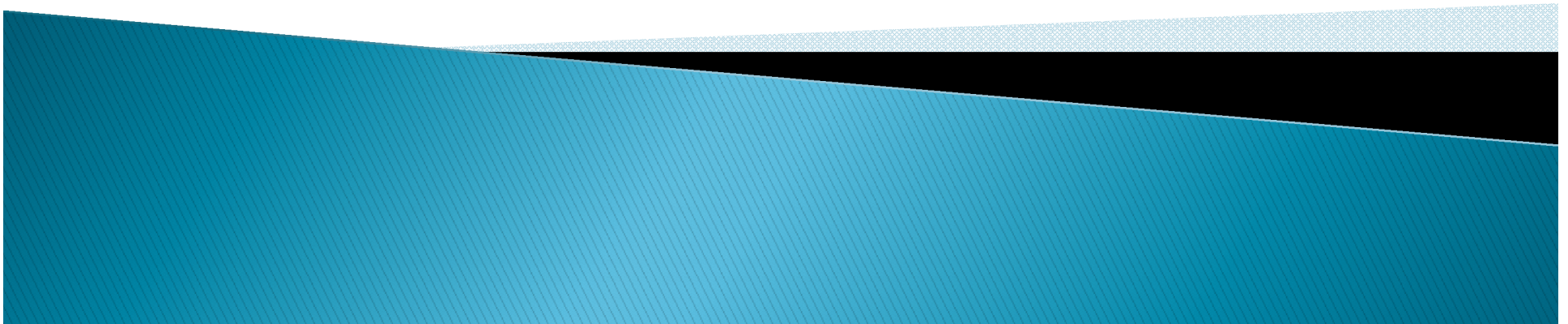


# TRIAL OF SPECIAL CRIMES AND EXPERT EVIDENCE

By Justice G.M Akbarali  
Former Judge, High court Madras  
Senior advocate, Supreme court of India

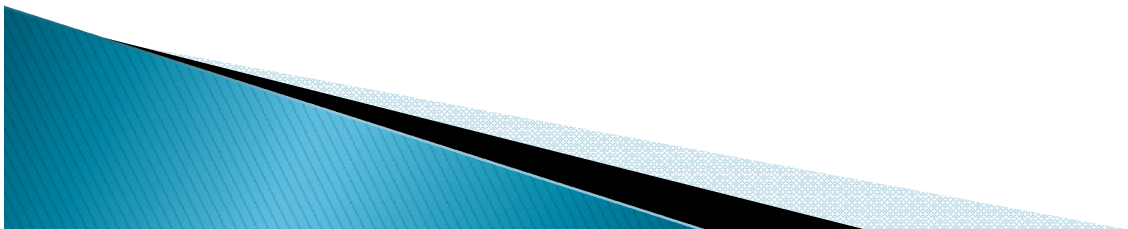


# Prevention of Corruption Act

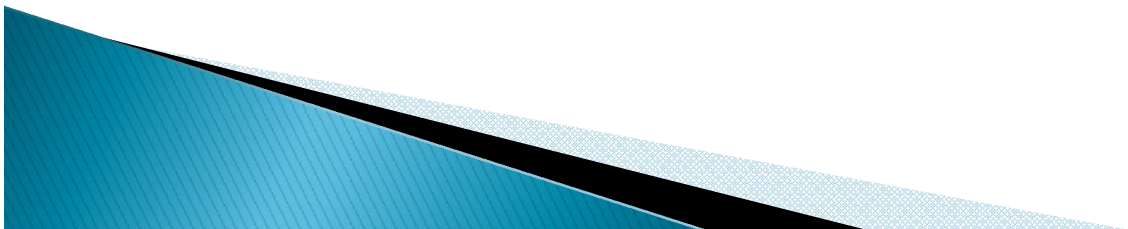
- ▶ **"3. Power to appoint special Judges.- (1)** The Central Government or the State Government may, by notification in the Official Gazette, appoint as many special Judges as may be necessary for such area or areas or for such case or group of cases as may be specified in the notification to try the following offences, namely:-
  - ▶ (a) any offence punishable under this Act; and
  - ▶ (b) any conspiracy to commit or any attempt to commit or any abetment of any of the offences specified in clause (a).
- ▶ **(2)** A person shall not be qualified for appointment as a special Judge under this Act unless he is or has been a Sessions Judge or an Additional Sessions Judge or an Assistant Sessions Judge under the Code of Criminal Procedure, 1973 (2 of 1974)."



- ▶ **"4. Cases triable by special Judges.-**
- ▶ (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), or in any other law for the time being in force, the offences specified in sub- section (1) of section 3 shall be tried by special Judges only.
- ▶ (2) Every offence specified in sub- section (1) of section 3 shall be tried by the special Judge for the area within which it was committed, or, as the case may be, by the special Judge appointed for the case, or where there are more special Judges than one for such area, by such one of them as may be specified in this behalf by the Central Government.



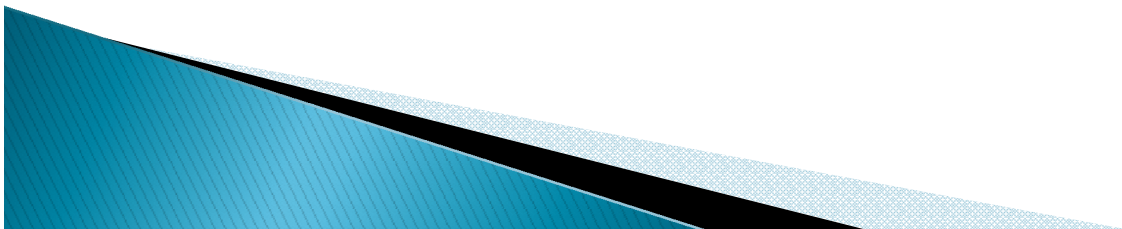
- ▶ (3) When trying any case, a special Judge may also try any offence, other than an offence specified in section 3, with which the accused may, under the Code of Criminal Procedure, 1973 (2 of 1974), be charged at the same trial.
- ▶ (4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), a special Judge shall, as far as practicable hold the trial of an offence on day- to- day basis."





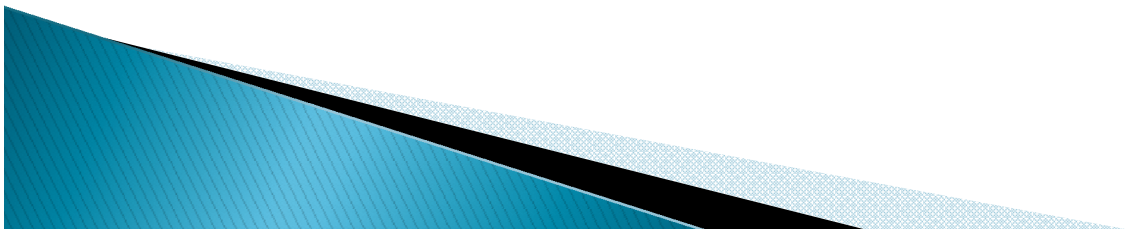
# Offences and Penalties under the PC Act

- ▶ *(i) Bribery of Public Servants: (secs. 7, 10, 11 & 12 of the Act)*
- ▶ Section 7 punishes a public servant or a person expecting to be a public servant, who accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act.
- ▶ The important point to note here is that even the mere demand of bribe or agreeing to accept a bribe is an offence under this law. Actual exchange of a bribe is not an essential requirement to be prosecuted under this law.
- ▶ A willing bribe giver is also punishable under Section 12 of the PC Act. Further, those public servants who do not take a bribe directly, but through middlemen or touts, and those who take valuable things from a person with whom they have or are likely to have official dealings, are also punishable as per Sections 10 and 11 respectively.



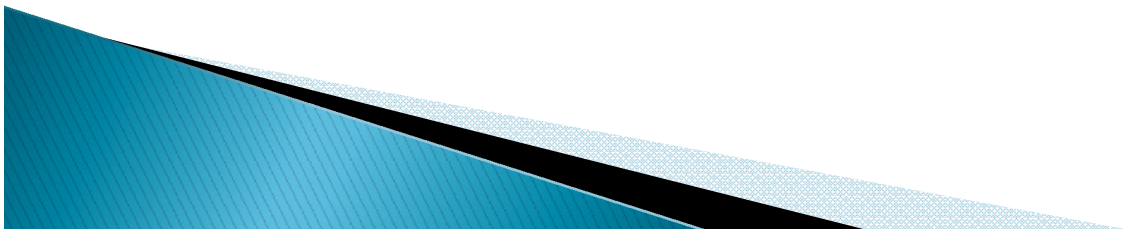
*Embezzlement, Misappropriation of Property by  
Public Servants: (sec. 13(1)(c) of the  
Act)*

- ▶ Section 13(1)(c) punishes public servants who dishonestly or fraudulently
- ▶ misappropriates or converts to their own use any property entrusted to them as a public
- ▶ servant which is punishable with a minimum imprisonment of one year, extendable up to
- ▶ seven years along with fine.



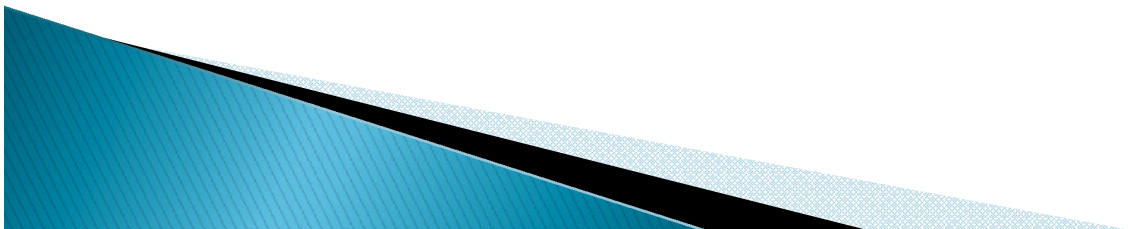
## *Trading in Influence: (secs. 8 & 9 of the Act)*

- ▶ Sections 8 and 9 punish middlemen or touts who accepts or obtains or agrees to accept or attempt to obtain, gratification as a motive or reward for inducing by corrupt or illegal means, or by exercise of personal influence, any public servant, to do or forbear to do any official act respectively. These offences are punishable with a minimum imprisonment of six months, extendable up to five years, along with a fine.



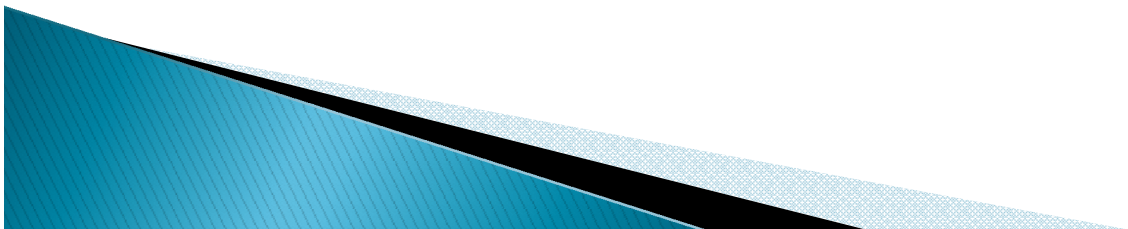
## *Abuse of position by Public Servants: (sec. 13 (1) (d) of the Act)*

- ▶ Section 13 (1) (d) punishes public servants who abuse their official position to obtain for himself or herself or for any other person, any valuable thing or pecuniary advantage (quid pro quo is not an essential requirement). This offence is punishable with a minimum imprisonment of one year extendable up to seven years, and also with a fine.




*Illicit Enrichment of Public Servants:  
(sec. 13(1)(e) of the Act)*

- ▶ Section 13(1)(e) punishes public servants, or any person on their behalf, who are in possession, or who have been in possession of pecuniary resources or property disproportionate to their known sources of income, at any time during the period of their office. Known sources of income have further been explained as income received from a lawful source only.

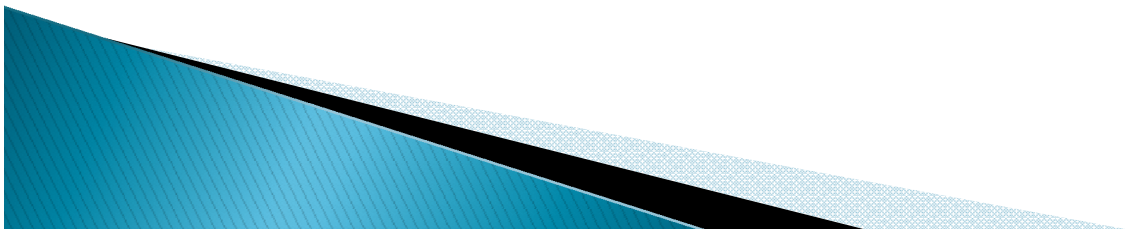


## *Presumption in favour of complainant*

- ▶ The public servant can no longer sit tight and wait for the prosecution to conclusively prove his guilt beyond doubt and hold the dictum that until the contrary is proved everyone in the face of law is deemed innocent. The prosecution has the initial responsibility to establish the offence.
  - ▶ However, once certain circumstances against the public servant are pointed out, it becomes his equal responsibility to explain his conduct satisfactorily and prove his innocence or else he may be presumed to be guilty.
- 

# Relevancy of opinion of third party

- ▶ Sec. 45 to Sec.51 under Chapter-II of the Indian Evidence Act provide relevancy of opinion of third persons, which is commonly called in our day to day practice as expert's opinion.
- ▶ These provisions are exceptional in nature to the general rule that evidence is to be given of the facts only which are within the knowledge of a witness.
- ▶ The exception is based on the principle that the court can't form opinion on the matters, which are technically complicated and professionally sophisticated, without assistance of the persons who have acquired special knowledge and skill on those matters.





# Who is an expert?

▶ The definition of an expert may be referred from the provision of Sec.45 of Indian Evidence Act that an 'Expert' means a person who has special knowledge, skill or experience in any of the following----

- 1) foreign law,
- 2) science
- 3) art
- 4) handwriting or
- 5) finger impression

and such knowledge has been gathered by him—

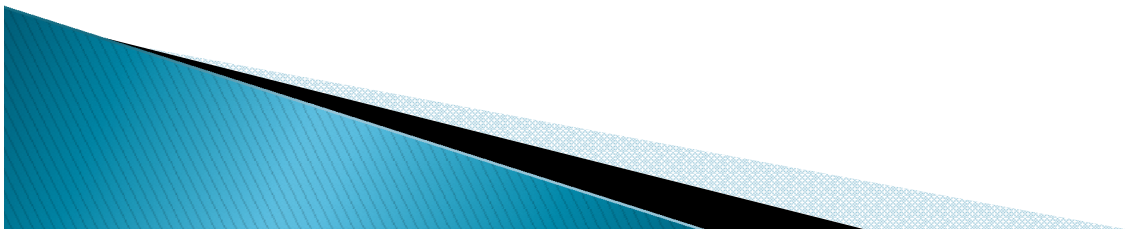
- a) by practice,
- b) observation or
- c) proper studies.

For example, medical officer, chemical analyst, explosive expert, ballistic expert, fingerprint expert etc.



# Duty of the expert

- a) An expert is not a witness of fact.
- b) His evidence is of advisory character.
- c) An expert deposes and does not decide.
- d) An expert witness is to furnish the judge necessary scientific criteria for testing the accuracy of the conclusion so as to enable the judge to form his independent judgment by application of the criteria to the facts proved by the evidence.



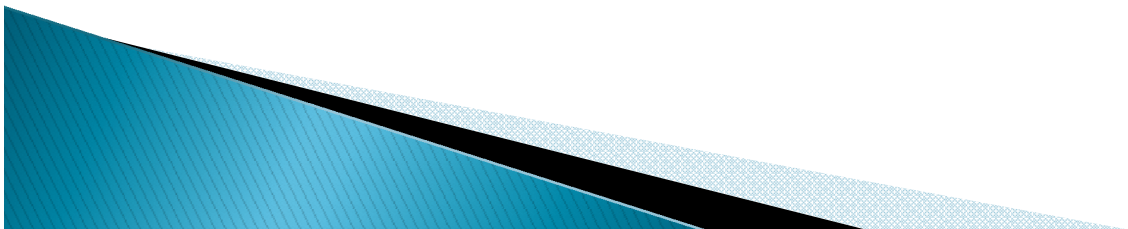
# Value of expert opinion

The Expert evidence has two aspects ---

- a) Data evidence [it can't be rejected if it is inconsistent to oral evidence]
- b) Opinion evidence [it is only an inference drawn from the data and it would not get precedence over the direct eye-witness testimony unless the inconsistency between the two is so great as to falsify the oral evidence] -- **[Arshad v. State of A.P. 1996 CrLJ 2893 (para34) (AP)]**

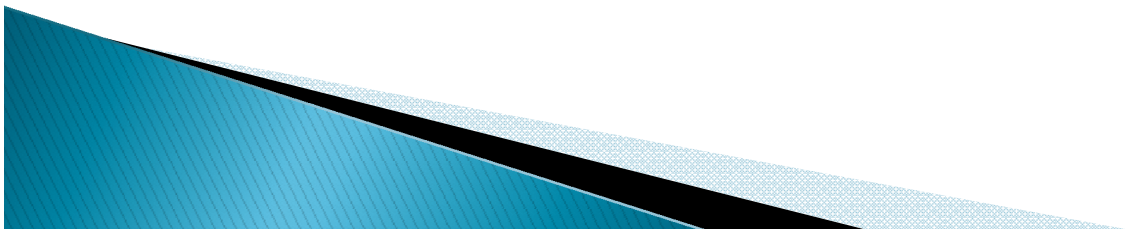
Expert evidence is opinion evidence and it can't take the place of substantive evidence. It is a rule of procedure that expert evidence must be corroborated either by clear direct evidence or by circumstantial evidence.

It is not safe to rely upon this type of evidence without seeking independent and reliable corroboration -- **[S.Gopal Reddy v. State of A.P. AIR 1996 SC2184 (Para27)]**

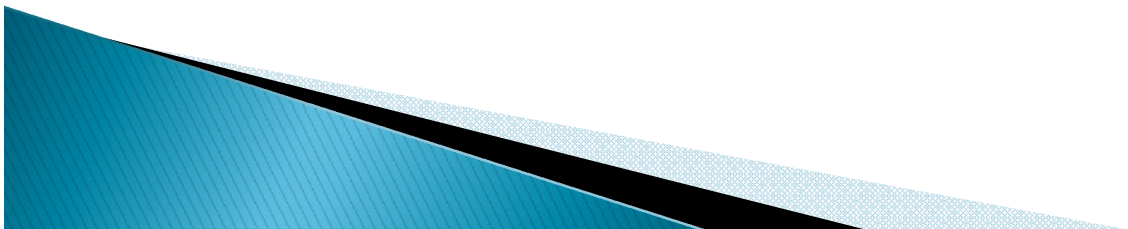


# Electronic Evidence


- ▶ Sec.47A:- Relevancy of Opinion as to electronic signature
- ▶ When the court has to form an opinion as to the electronic signature of any person, the opinion of the Certifying authority which has issued the Electronic Signature Certificate, is relevant.



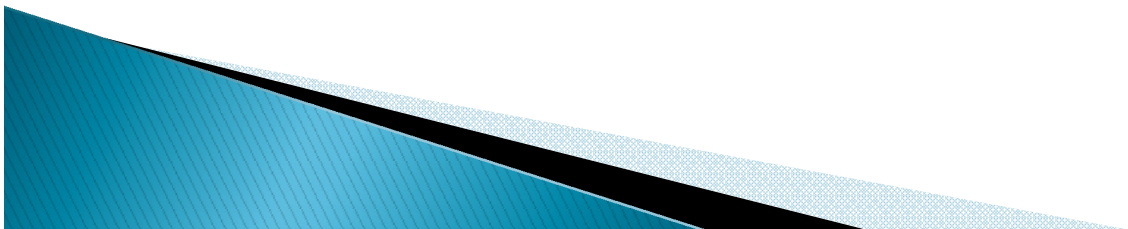
- ▶ The question arises whether an electronic signature is of A. The certifying authority which has issued the electronic signature opines that A is not the person who has applied or approached for getting an electronic signature. Thus A is not the owner of the electronic signature in question. It belongs to someone else.  
The opinion of Certifying authority may be accepted by the court.



# Special provisions as to evidence relating to electronic record.

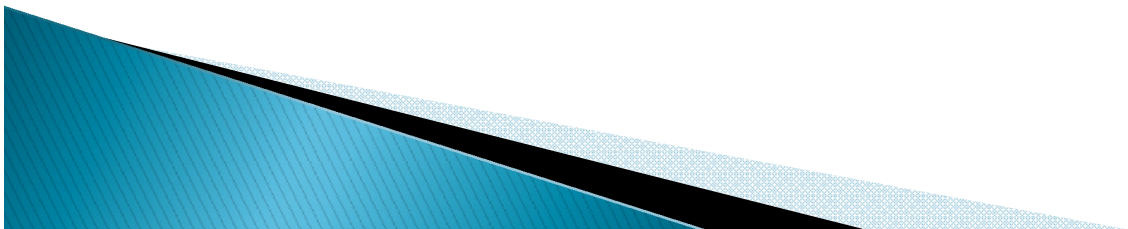
- ▶ '65A. The contents of electronic records may be proved in accordance with the provisions of section 65B.
  - ▶ **Admissibility of electronic records.**
  - ▶ 65B. (1) Notwithstanding anything contained in this Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer (hereinafter referred to as the computer output) shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.
- 

- ▶ (2) The conditions referred to in sub-section (1) in respect of a computer output shall be the following, namely: —
- ▶ (a) the computer output containing the information was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;
- ▶ (b) during the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer in the ordinary course of the said activities;
- ▶ (c) throughout the material part of the said period, the computer was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents; and
- ▶ (d) the information contained in the electronic record reproduces or is derived from such information fed into the computer in the ordinary course of the said activities.

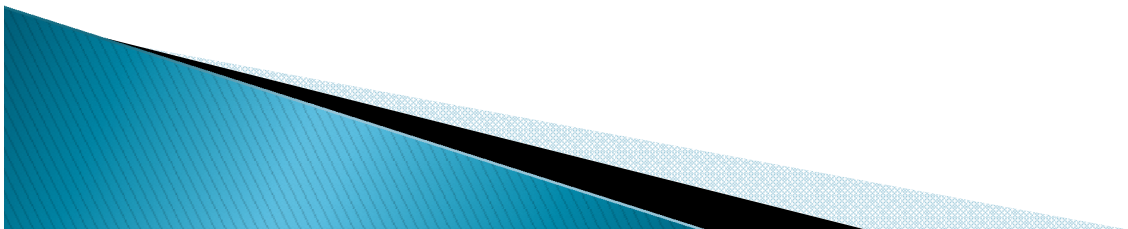




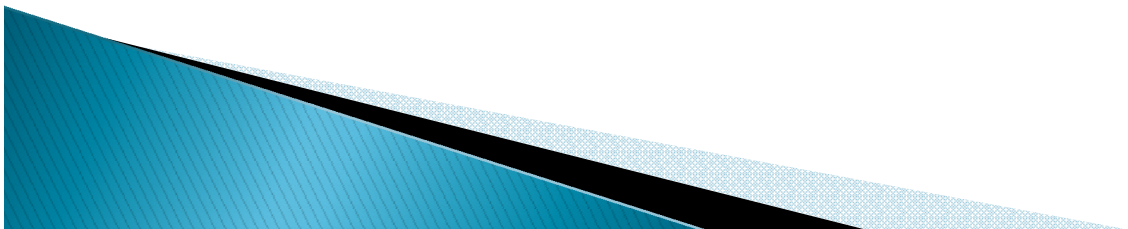
- ▶ 3) Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on combinations of computers operating in succession over that period as mentioned in clause (a) of sub-section (2) was regularly performed by computers, whether—
  - ▶ (a) by a combination of computers operating over that period; or
  - ▶ (b) by different computers operating in succession over that period; or
  - ▶ (c) by different period; or
  - ▶ (d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers, all the computers used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer; and references in this section to a computer shall be construed accordingly.



- ▶ (4) In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say, —
- ▶ (a) identifying the electronic record containing the statement and describing the manner in which it was produced;
- ▶ (b) giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer;
- ▶ (c) dealing with any of the matters to which the conditions mentioned in subsection (2) relate, and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

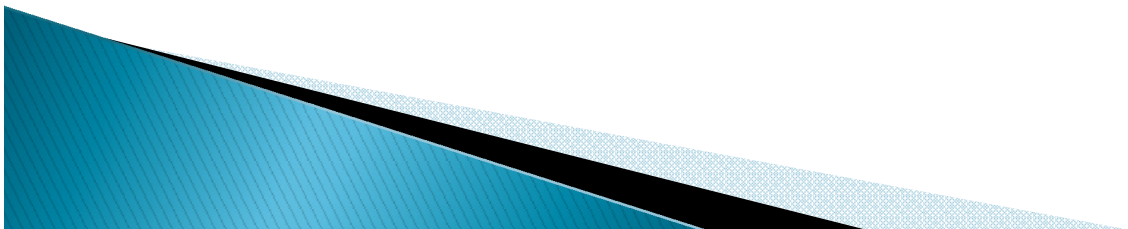


- ▶ (5)For the purposes of this section, —
- ▶ (a)information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;
- ▶ (b)whether in the course of activities carried on by any official, information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;
- ▶ (c)a computer output shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.
- ▶ *Explanation.*—For the purposes of this section any reference to information being derived from other information shall be a reference to its being derived there from by calculation, comparison or any other process.

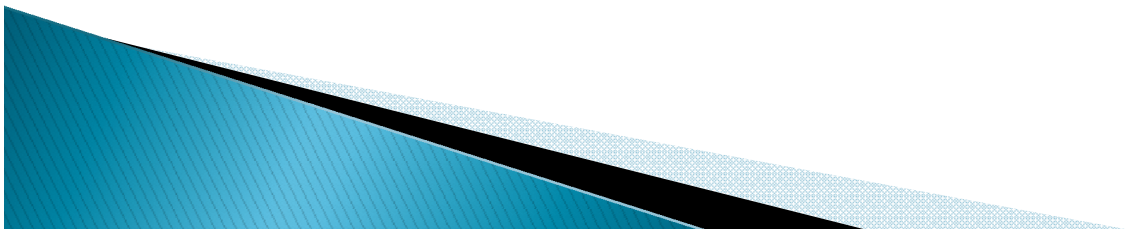


▶ "67A.

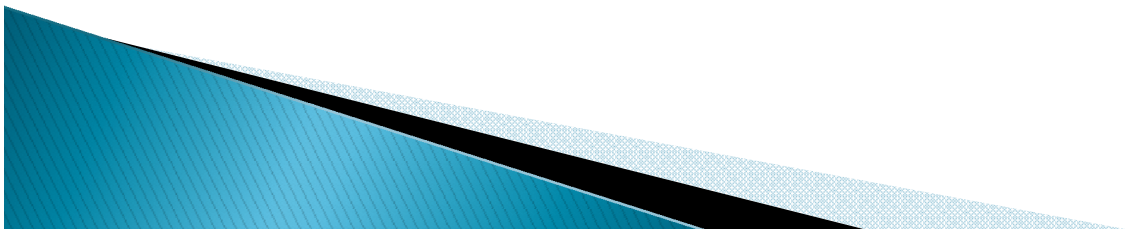
Except in the case of a secure digital signature, if the digital signature of any subscriber is alleged to have been affixed to an electronic record the fact that such digital signature is the digital signature of the subscriber must be proved."



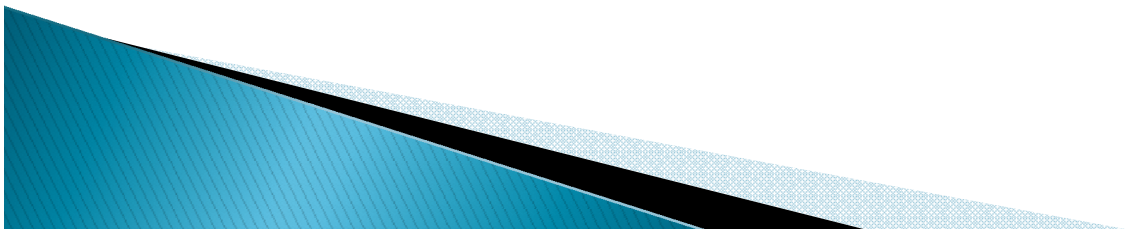
- ▶ 73 A :- Proof as to verification of digital signature.
- ▶ Presumption:
- ▶ 81A, 85A, B, C, 88A and 90A
- ▶ C D R (call data report)
- ▶ Voice detector – digital form



- ▶ 1. Observation notes of the computer expert not usually sent to court, thus court is unable to effectively review the findings of the expert.
- ▶ 2. The Report submitted by the expert does not contain the methodology employed to arrive a particular conclusion.
- ▶ 3. Instead of providing a complete picture of the evidence recovered, the reports usually mention that the “relevant data” is “extracted and put in a soft copy”.

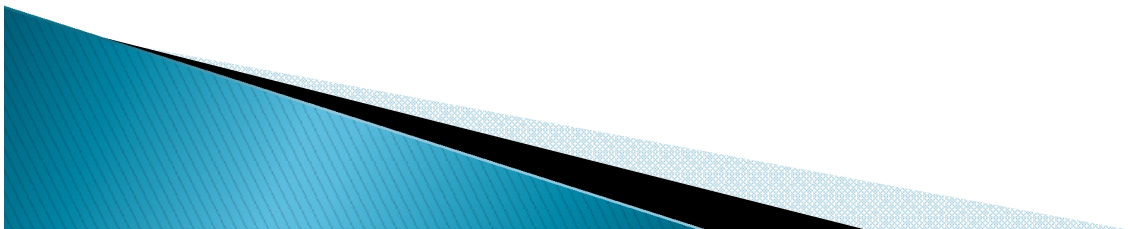


- ▶ 4. The Court is not provided with material by which it can verify the direct evidentiary value of the “relevant data” that is so extracted as it was present in the original.
- ▶ 5. The Expert usually does not endeavor to demonstrate the manner in which the findings were arrived at during their deposition. They just reproduce the report that is marked as exhibit.



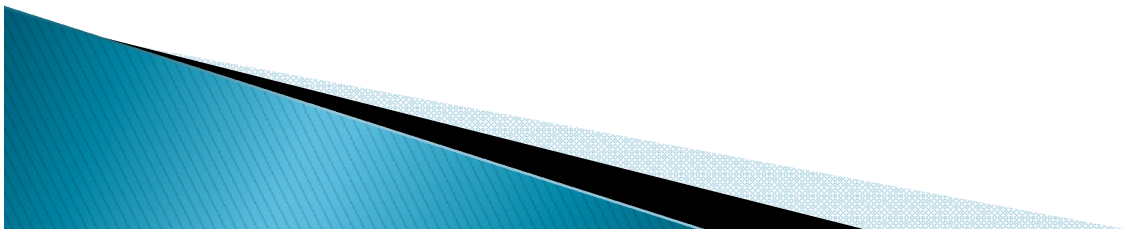


- ▶ 6. In Digital evidence, the expert after examination is to pack up the material in a manner that will ensure its preservation throughout the trial. In current cases, the experts pack the devices in newspaper parcels. There is a high chance that the electronic devices would be completely unusable by the end of the trial.
- ▶ 7. The manner of packing up the devices also influences the capability to demonstrate the findings before the court during trial.
- ▶ 8. The Expert can provide a copy of the software used to extract the evidence along with the report to the court.
- ▶ This helps the court to view the evidence directly with the technique available at the relevant point of time.



# D N A

- ▶ Deoxyribonucleic Analysis (DNA). Each person's genetic makeup contains DNA.
- ▶ This differs from individual to individual.
- ▶ DNA can be obtained through blood, saliva, semen, or hair. This helps in identifying a person.
- ▶ If a drop of blood or a strand of hair is found at a crime scene, it can be compared to a person's known DNA to see if there is a match, thereby linking the person to the crime.



- ▶ An expert witness can give an opinion about the likelihood that the blood that was found at the crime scene came from the individual whose sample was compared. DNA analysis is also used to establish paternity. Experts believe that the ability to link the culprit to the crime scene through his DNA prints is unquestionable as unlike conventional fingerprints that can be surgically altered, DNA is found in every tissue and no known chemical intervention can change it.



- ▶ Lie Detector: Generally Courts refuse to admit the results of a polygraph test as evidence. Polygraph measures a person's unconscious physiological responses, such as breathing, heart rate, and galvanic skin response while the person is being questioned. The underlying theory is that stress occurs when a person lies and that this stress is measured by changes in the person's physiological responses. There is a concern that an individual can conceal stress when he or she is lying. Polygraph tests are also considered unreliable because it is not possible to tell whether the stress that is measured during the test is caused by the test itself or by a lie.

