



## Audio Forensics & Jurisprudence: Evidentiary Value of Voice in Investigation, Identification & Legal Admissibility

Palak Aneja<sup>1</sup>, Shefali Parashar<sup>2</sup>, Dr. Sumit Kumar Choudhary<sup>3\*</sup>, Dr. Surbhi Mathur<sup>4</sup>, Dr. Parvesh Sharma<sup>5</sup>

<sup>1</sup>Assistant Professor, Department of Forensic Science, PIAS, Parul University, Vadodara, Gujarat, India

<sup>2</sup>Student, L.L.M, School of Law, Humanities and Social Sciences, Rashtriya Raksha University, Gandhinagar, Gujarat, India

<sup>3</sup>Senior Assistant. Professor, School of Forensics, Risk Management & National Security, Rashtriya Raksha University, Gandhinagar, Gujarat, India

<sup>4</sup>Associate Professor, School of Forensic Science, National Forensic Science University, Gandhinagar, Gujarat, India.

<sup>5</sup>Assistant Professor, School of Forensic Science, National Forensic Science University, Tripura Campus, India.

**Corresponding Author:** Dr. Sumit Kumar Choudhary

Senior Assistant. Professor, School of Forensic Science & Risk Management, Rashtriya Raksha University, Gandhinagar, Gujarat, India

Email id: [dr.choudhary.sk@gmail.com](mailto:dr.choudhary.sk@gmail.com)

Mob No.: +91-9099917401

### **Abstract:**

Technology & Law have exceedingly interdependent relationship in the criminal justice system in the context and taking into account the advancements in technology and its appreciation in court of law. The evolution of the technological discipline of Audio Forensics, its wide applicability in variety of crime investigations, the maturing of forensic technologies – hardware's and softwares for voice identification and the response of law and its acceptability as evidence in the courts have witnessed lot of progression and perfection over the years. In this paper we have examined the various landmark judgements related to the admissibility of recorded audio evidences in the courts of law in India. The study highlights the evolutionary journey of judicial proceedings and conclusions on appreciation of forensic voice examination and its evidentiary value vis-à-vis addressing the issues of right of individual against self-incrimination by providing voice samples through various judgements and case studies of India. The manuscript shall update the latest legal status of the audio

forensics technology as corroborative evidence and address the concerns related to its legal use in establishing the identity of a person in crime investigations, procedural requirements & compliances and infringement of individual's right against self-incrimination in the Indian Criminal Justice System.

**Key words:** Voice, Evidence, Audio, Court, Judgement.

### **Introduction:**

*Lord Woolf* had once very rightly stated "As like old clock, the judiciary also need to be oiled timely to find out the truth and fact". By mentioning the clock and judiciary, he had touched upon both the technology and the law and how the progression in both is inevitable for the truth to be uncovered and justice to be delivered. The expansion and progress in the science and technology makes it preordained for the legal system to move hand in hand to be able to impart the justice. The *Hon. Justice Mr. Aftab Alam* while pronouncing one his landmark judgements in 2005 had emphasised on the need of equipping the police with all the forensic aid and underlined the investigative value of audio evidences. The quoted remarks read: "In today's world when terrorism is a hard reality and terrorist violence is a common phenomenon, the police need all the forensic aids from science and technology. The technology is in position today to say whether two voice recordings are of the same person or of two different people and, thus, to provide valuable aid in investigation. The voice sample can be analysed or measured on the basis of time, frequency, and intensity of the speech sound waves so as to compare and identify the voice of the person who must have spoken or participated in recorded telephonic conversation."

The Indian Evidence Act, 1872, under section 3 mainly dealt with the oral and documentary evidence in courts. However, after the incorporation of the amendments according to the passing of the Information Technology Act, 2000 there has been an acceptance and admissibility of the conversations or statements recorded in an electro-magnetic device. Voice recordings and various other electronic evidences have opened a new era of jurisprudence. The first case which came to the apex court of Indian Judiciary in the year 1956 regarding the admissibility of tape-recorded conversations was *Rupchand vs. Mahabir Prasad*<sup>1</sup>, the Honourable Court allowed the admissibility of the same under Section 155(3) of the Evidence Act, 1872 to shake the credit of the witness. The apex court held that merely the

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<sup>1</sup>AIR 1956 Punjab 173.

fact that the audio's can be tampered does not make them inadmissible (*S. Pratap vs. State of Punjab*)<sup>2</sup>. In the *Yusufali vs. State of Maharashtra*<sup>3</sup> (1968) the Supreme Court of India observed that "if a statement is relevant, an accurate tape-record of the statement is also relevant and admissible". The court further stated that before admitting any such recording as evidence, the time and place and accuracy of the recording has to be proved by a competent witness and that the voice, of the person against whom such evidence is being submitted, must be properly identified. The court promulgated that since magnetic tape recordings can be easily tampered with, they must be received with great caution, and must be admitted only after the court is satisfied that the record has not been tampered with. In the case of *R.M. Malkani v. State of Maharashtra*<sup>4</sup> (1973), the Supreme Court held that the telephonic conversation or tape-recorded conversation can be admissible provided the conversation which is recorded must be relevant to matters in issue; the identification of the voice; the accuracy of the tape-recorded conversation is proved by eliminating the possibility of erasing the tape record. A coexisting tape record of a conversation is a relevant fact and is admissible under Section 8 of the Indian Evidence Act. It is *Res gestae* which is a Latin term which means "things done." This is the rule of law of evidence and is an exception to hearsay rule of evidence that hearsay evidence is not admissible.<sup>5</sup> The tape-recorded conversation is, therefore, a relevant fact and is admissible under Section 7 of Indian Evidence Acts. Therefore, it can be said that the tape-recorded evidence is admissible in the court of law provided that the recording is original and authenticity of the tape is free from doubt.

During 1970, in the case of *Shri N. Sri Rama Reddy Etc vs Shri V. V. Giri*<sup>6</sup> (1970), Justice Sabyasachi Mukherjee laid down some more guide lines for the acceptance and reliability of evidence of the tape recording. The voice of the speaker must be duly identified by the maker of the record. Where the voice has been denied by the maker it will require very strict proof to determine whether or not it was really the voice of the speaker. The accuracy of the tape-recorded statement has to be proved by the maker of the record by satisfactory evidence—direct or circumstantial. Every possibility of tampering with or erasure of a part of a tape-recorded statement must be ruled out otherwise it may render the said statement out of

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<sup>2</sup>AIR 1964 SC 72

<sup>3</sup> 1968 AIR 147

<sup>4</sup> (1973) 1 SCC 471.

<sup>5</sup>Aamir Khan, Doctrine of Res Gestae, Concept and

Scope, <[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2595574#:~:text=Res%20Gestae%20is%20a%20Latin,to%20conjure%20a%20false%20story.](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2595574#:~:text=Res%20Gestae%20is%20a%20Latin,to%20conjure%20a%20false%20story.)> Last Accessed 16.02.2021

<sup>6</sup>(1970) 2 SCC 340

context and, therefore, inadmissible. The statement must be relevant according to the rules of Evidence Act. The recorded cassette must be carefully sealed and kept in safe or official custody. The voice of the speaker should be clearly audible and not lost or distorted by other sounds or disturbances. In this case the apex court also held that the recorded audio documented evidence can be presented in the court of law as primary and direct evidence.

In the *Ziyouddin Burhanuddin Bukhari vs. Brijmohan Ramdass Mehra and others*,<sup>7</sup> 1976, the Apex Court held that "Tape-records of speeches are "documents" under section 3 of the Evidence act and stand on no different footing than photographs. A contemporaneous tape-records of a relevant conversation or speech would be part of *Res gestae*. Later the 87<sup>th</sup> Report of the Law commission of India dated 29<sup>th</sup> August 1980 stated that "The Voice print (Spectrogram) is a visual recording of voice. It mainly depends on the position of formants. These are concentrated sound energy at a given frequency. Voice print resembles fingerprints, in that each person has a distinctive voice with characteristics dictated by vocal cavities and articulates." In the case *Ram Singh & Ors vs. Col. Ram Singh*<sup>8</sup> (1985), the court **laid down** conditions regarding the admissibility of the sound recordings which are as under- The concern persons who are engaged in recording of the voice sample must duly recognize the voice of the speaker in the recording whose admissibility is in question and which could be recognized by the parties involved in the case. The recording which is being submitted as evidence by any individual should be accompanied by adequate proof that it is genuine. The voice recording of the entire conversation which is recorded should be presented before the court of the law without any tampering or editing of even a microsecond time. The court considers the complete conversation in the evidential voice recording for making inferences. The voice recording must be accurate and true in nature to the facts of the case. The device in which the voice recording is recorded and stored should be sealed and kept in the secured custody. The recorded voice should be clear and without any disturbance. A voice recording provides a clear perspective of the view in the cases of coercion, bribery, threat or in any situation where the person has been mentally tortured via speech.<sup>9</sup>

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<sup>7</sup> (1976) 2 SCC 17 /<https://www.casemine.com/search/in/contemporaneous%2Btape-record>

<sup>8</sup> 1985 Supp SCC 611

<sup>9</sup> 1985 Supp SCC 611

*State vs. Navjot Sandhu*<sup>10</sup>(2005) commonly also known as Parliament Attack case was the first case in the Indian history that differed with the statute and opened jurisprudence. The judgement held that it was not necessary for evidence to comply with Section 65B (4). It revolves around the attack by a terrorist group on the Parliament in 2001. The call records were part of the evidence against the accused and were brought under question during the appeal in the Supreme Court for not complying with the requirement of producing a certificate under Section 65B (4) was contended. The Court held that submission of secondary digital evidence was not exclusively governed by Section 65B and that Sections 63 and 65 would continue to be valid and that the same evidence may be filed under either of these.

In the *Madhukar K. Farde vs. Central Bureau of Investigation having its office at Bambolim, Goa*<sup>11</sup>(2012) case the two issues were raised before the court:

1. Whether the voice recording is admissible in the court of law or not?
2. Whether the constitutional validity of Article 20 (3) is getting infringed or not?

It was held by the High court of Bombay in Goa that the voice recording is admissible in the court of law and it does not infringe the Constitutional validity of Article 20(3) of the Indian Constitution. The court gave the reference of the *State of Bombay vs. Kathi KatuOghad*<sup>12</sup>(4 August, 1961) case, where it was laid down that Article 20(3) of the Indian Constitution 1950 does not mean that an accused shall not be compelled to be a witness but the actual interpretation of Article 20(3) is that no person shall be compelled to be a witness against himself and only protects the accused from being forced to convey any information based upon his or her personal knowledge. It does not protect the accused from giving any material or documentary evidence as such evidence is used for the purpose of making comparisons between evidences rather than acting against the interests of the accused.

In the case *Anvar P. V. vs. P. K. Basheer &Ors.*<sup>13</sup>(2014), the issue was the appeal made by a contestant in an election to the Kerala Legislative Council. Among the evidence provided to the Court were electronic records whose admissibility was questioned. These electronic devices were not the original CDs but recordings of the same. Thus, not being primary evidence, their admissibility under Section 65B was contended. The Court here held that all

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<sup>10</sup> (2005) 11 SCC 600

<sup>11</sup> 28-02-2012 / MANU/MH/0777/2012

<sup>12</sup> 1961 AIR 1808

<sup>13</sup> (2014) 10 SCC 473,

the requirements of Section 65B have to be strictly complied with when submitting digital evidence. The case of *State v Navjot Sandhu* was overruled on this point and it was made mandatory for all digital evidence to carry a certificate with it at the time of submission. The Court also held that, only if the electronic record was in consonance with the requirements of Section 65B, the question as to its genuineness could arise. If the evidence did not comply with the same, it could not be considered in Court. The Court refused to accept the evidence given by the appellant, that is, the recording of the CD, as the secondary evidence.

**Ratio Decidendi of Anvar P.V vs. P.K Basheer**

The case was filed against the malpractice employed by the candidate who won during the election and the complainant filed a complaint to set aside the election. The plaintiff produced CDs as an evidence in front of court of law which contained songs, announcements, and various other things which supported his claim, but he was not able to secure the certificate under Section 65B (4) of Indian Evidence Act.

The three judges bench of the Supreme Court looked into the language of Section 65B(4) dealing with the admissibility of electronic records. The provision says that if in any case, there is a need to give any statement related to any electronic evidence produced, then any of the following conditions must be satisfied:

- (a) There must be a certificate which identifies the electronic record containing the statement;
- (b) The certificate must describe the manner in which the electronic record was produced;
- (c) The certificate must furnish the particulars of the device involved in the production of that record;
- (d) The certificate must deal with the applicable conditions mentioned under Section 65B(2) of the Evidence Act; and
- (e) The certificate must be signed by a person occupying a responsible official position in relation to the operation of the relevant device.<sup>14</sup>

In this judgement court held that a certificate under 65B of the Indian Evidence Act should invariably accompany the CD, VCD or chip presented in the court for these to be rendered admissible as evidence, otherwise such submissions will not be considered relevant or admissible and thus reliability cannot be placed upon such evidences.

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<sup>14</sup> <https://www.khuranaandkhurana.com/2020/09/30/is-certification-under-section-65b4-of-indian-evidence-act-mandatory-for-the-production-of-electronic-evidence/> visited -12.02.2021.

The Supreme Court of India laid down the important points regarding collection of the voice recording in the case *Sudhir Chaudhary & Others v/s State (NCT of Delhi) 2016*. The opinion, inter alia, stated that:

(A) It is not mandatory to have vis-à-vis same text to be read by a suspect. However, sufficient common sentences/words should be present in the sample voice recording with respect to the questioned voice recording for spectrographic examination.

(B) In case there are sufficient common sentences/words in between questioned & specimen voice recording, then a complete opinion could be offered. However, in case of completely different text and sufficient common sentences/words are not available; opinion could be offered based on auditory examination only.

(C) For auditory comparison, the whole recording/text is used. For spectrographic examination, some selected sentences/words are taken for comparison.<sup>15</sup>

In this case the appellant asked for the transcript in advance but the court and CFSL Expert refused to provide the transcript to the appellant because it can adversely affect the voice examination. Court also directed, Forensic experts that the transcript should contain the written passage containing the words, but not sentences, appearing in the disputed conversation.

Lately in the case *Shafhi Mohammad vs. State of Himachal Pradesh (2018)* the Court disagreed with the Anvar case on the point that the Sections 65A and 65B were a complete code on the matter of digital evidence. It held that the requirements of Section 65B were merely procedural in nature and that they may be relaxed or foregone in the interest of justice, and if the court was satisfied with the authenticity of the evidence, it could relax the procedures based on the facts in the interest of justice. However, by using such an ambiguous and undefinable word, the Court may have over broadened the scope of the Section as 'interest of justice' is not a concrete term. While the Court's reasoning that the two sections do not constitute a code is well founded, its opinion that the entire procedure may be subverted and that the certificate is not mandatory may become questionable. By giving courts the ability to subjectively apply a law that was made to govern all digital evidence; they are entering into a debatable domain. It is observed that if the court is satisfied with the

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<sup>15</sup>AIR 2016 SC 377

authenticity of the evidence, it can forego the procedure, but the purpose of the procedure was to establish the authenticity of the document.<sup>16</sup>

Honourable *Justice Ranajana P. Desai and Justice Aftab Alamin* one of their landmark judgements in 2018 stated that “Voice sample is like fingerprint impression, signature or specimen handwriting of an accused. Giving of voice sample for the purpose of investigation is similar to giving of fingerprint sample or request writing or signature by the accused and cannot be considered equivalent as “to be a witness”. When the accused provide the voice sample for investigation, they are not conveying information based on personal knowledge which could incriminate him. A voice sample on its own is entirely innocuous. The comparison of the voice sample of the accused and tape-recorded conversation which is investigated by the investigator may lead to a qualified decision, but the voice sample by itself is not evidence. With the help of the mechanical process and system to compare the voice sample the investigator could bring out the fact regarding the question being considered. So by giving the sample for voice comparison does not itself entail that the speaker has revealed any information privy to him or has stood as a witness against himself. The accused by giving the voice sample merely gives "identification data" to the investigating agency. He is not subjected to any testimonial compulsion.”<sup>17</sup>

As observed by the Court on multiple occasions, it is very easy to tamper with digital evidence, which is why stringent safeguards are needed. Lately in the case *Ritesh Sinha v. State of Uttar Pradesh*,<sup>18</sup> (2 August, 2019) Special Leave Petition was filed before the Supreme Court of India and some legal questions were raised. Firstly, whether compelling one to submit their voice sample during investigation means to infringe their right against self – incrimination guaranteed under Article 20(3) of the Constitution? Secondly, whether the present procedural laws in India have such provisions which enable a magistrate to order for the recording of a voice sample? Thirdly, whether such orders seeking voice samples are any threat to the concept of informational and bodily privacy?<sup>19</sup> In the reply of the first legal

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<sup>16</sup>(2018) 2 SCC 801

<sup>17</sup>2018 SCC online Raj 1343

<sup>18</sup>AIR 2019 SC 3592

<sup>19</sup>Diganth Raj Sehgal, Voice sampling and the right to privacy : the void that needs to be plugged, <<https://blog.ipleaders.in/voice-sampling-right-privacy-void-needs-plugged/>> , Last Accessed – 16.02.2021



question the supreme court of India quoted a case *State of Bombay vs. Kathi KatuOghad*<sup>20</sup> (4 August, 1961.)

In the reply of the 2<sup>nd</sup> legal question Apex Court also found that no such provision existed which would allow a Magistrate or any investigating agency to direct an accused to give his or her voice samples in spite of the recommendations made by the Law Commission with regards to the same and the subsequent amendments made in the Criminal Procedure Code, 1973 with regards to handwriting and other type of samples from the body.<sup>21</sup> In this case the supreme court gave the power to the judicial magistrate under article 142 of Indian Constitution to order a person to give voice sample for the purpose of the investigation of a crime in his jurisdiction. This power which is given by Supreme Court to the Magistrate will be valid until explicit provisions are engrafted in the code of Criminal Procedure by Parliament. Addressing the 3<sup>rd</sup> legal question, the court held that the right to privacy cannot be interpreted as absolute and must concede to interest of public, which are compelling in nature.

So, it can be said that the court has the power to curb the rights which are given under article 21 of Indian Constitution which is “No person shall be deprived of his life or personal liberty except according to procedure established by law.”

Recently in the case *Arjun Panditrao Khotkar vs Kailash Kushanrao Gorantyal* in July, 2020, the Honourable Supreme Court held that a certificate under Section 65B (4) is unnecessary if the original document itself is produced. The individual who is the owner of the laptop, computer, tablet, or mobile phone can do this by going into the witness box and verifying the actual questioned device on which the original information is first stored, is owned and/or operated by him.<sup>22</sup>

### **Conclusion:**

The various judgements cited above pertaining to admissibility and acceptance of voice or recorded audio evidences aptly demonstrates the positive stance of judiciary in appreciating the evidentiary value of such technology-based material evidences in deciding cases. The judiciary has been able to address most of the concerns related to admissibility of the

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<sup>20</sup> 1961 AIR 1808

<sup>21</sup> Diganth Raj Sehgal, Voice sampling and the right to privacy : the void that needs to be plugged, <<https://blog.ipleaders.in/voice-sampling-right-privacy-void-needs-plugged/>> , Last Accessed – 16.02.2021

<sup>22</sup> <<https://itatonline.org/digest/arjun-panditrao-khotkar-v-kailash-kushanrao-gorantyal-and-ors-www-itatonline-org-sc-manu-sc-0521-2020/>> , Last Accessed 16.02.2021

technology, procedural requirements, and infringement of individual's rights in safeguarding himself. The Indian Evidence Act, 1872 was one of the many Acts that was amended by the I.T Act, and it introduced the concept of digital evidence to Indian Courts by adding Sections 65A and 65B, which describe the procedure to produce electronic evidence in courts during criminal trials and the admissibility of the same. These sections minimize the risk of falsification of digital evidence through various stipulations. Therefore, there exists two positions of law presently. One laid down by the *Anvar* case which enforces strict compliance with the Section 65B and one in the latest case of *Shafhi Mohammad vs State of Himachal Pradesh*, which holds that the requirement may be foregone in the interest of justice. We would like to conclude by saying that in the recent cases it was held by the Supreme Court that recorded evidence are the secondary evidences but in the cases in which there is no primary evidence then the court can rely on the secondary evidences which can be considered as primary evidence in the given situation. Thus, the audio forensics discipline stands firm as a great investigative tool and voice is a crucial biometric tool in establishing the identity of the individual and carries lot of evidentiary value in the judicial proceedings in court of law in the country.