PARLIAMENT ATTACK CASE: CONFESSIONS & EVIDENCE – JUDICIAL ANALYSIS

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I. PROLOGUE TO THE PAPER

Detailed Introduction

Relevant Facts
Facts play a huge role in every case; the significance of facts is such that there are cases which can be decided solely on the basis of the facts. Relevance of facts can be determined through various factors involved. A fact may be considered relevant due to its relationship with the issue, i.e., if the fact is a direct result of cause or effect of the issue / relevant fact or whether a fact falls in time line of the issue / relevant fact. For instance, in the case of R.M. Malkani, the principle of ‘res gestae’ is highlighted whereby a fact is considered relevant as it falls in the similar timeline of the main fact.

Therefore, analysis and correct determination of a relevant fact is very important in every case. The case in hand is no different. As on the basis of the relevant fact in this case multiple accused parties were declared guilty and needed further investigation, whereas the other set of the accused parties were declared not guilty with the issue of relevant fact.

Confessions
This was easily the most controversial issue of the case. Firstly, confession is a statement given by the accused party which provides the accused with an advantage or protects him from certain evil in return for a valuable information which can be further proved. It is important to note that confession provided to a police officer cannot be used against accused as it is believed that such a confession can be easily influenced. If the confession is made in presence of a magistrate member then such a confession made can be used in the court of law. Lastly, confession can be either orally spoken or written, as long as it can be proved that it is the confession of the accused, it shall be admissible.

In the above case the provided confession was in written form provided to a police officer and due to this very reason, this issue was heavily debated whether such a confession can be accepted by the court of law or not. Lastly, if there is joint crime committed then the confession of one party shall bind as a joint confession and represent the common intent among both the offenders, its similar to the principle of conspiracy as provided by Section 10 of IEA. The case of Kotayya was heavily discussed under this segment of the paper.

Electronic Evidence
This provision was added by the IT. Act and it deals with the modern means of evidence, i.e. the digital evidence be it in text, video or audio format. Electronic evidence if it cannot be transported due to its immovable nature or legal protection, then a manually generated copy of the same can be put forth as evidence. However, the question raised was on the professionality and the basic skill set of the witnesses.

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This chapter further deals with the admissibility of electronic evidence as secondary evidence. Abiding by the law precisely section 65B (4) there are prescribed requirements which have to be certified and presented to the court of law, however in the case in hand there was no certification of requirements. Which led to both the counsels representing wither sides list out the various cases supporting their points. The researcher has presented certain more cases to support the decision taken by the court, one in particular namely; Sonu v. State of Haryana³.

**Literature Review**

The researcher has adopted secondary form of research methodology, leading the researcher to approach various secondary sources of literature. The notable literature utilized by this paper are mostly holistic in nature, they are:

i. The researcher has utilised a research paper titled; “Admissibility of electronic evidence: an Indian perspective”⁴ written by “Vivek Dubey”. The researcher has primarily utilised this source for understanding the principle of electronic evidence. Further, the researcher has utilised this source to establish a parallelism among the principle of electronic evidence among the Indian law and US Federal Law, drawing the similarity in the role played by the both the case; Anvar⁵ and Lorraine⁶.

The researcher has further relied upon another research paper titled; “Admissibility of Electronic Records As Secondary Evidence Under Section 65B of the Indian Evidence Act: Recent Judicial Approaches”⁷ written by “Deepa Kharb”. The researcher has utilised this paper to analyse and understand the trends in the recent judgements of electronic evidence. Further, the researcher has cited various cases throughout the paper with the help of this literature.

The researcher has utilised a research paper titled; “Admissibility of Electronic Evidence under the Indian Evidence Act, 1872”⁸ written by “Soni Lavin Valecha” and “Sonika Bhardwaj”. The researcher has primarily utilised this source for understanding the Sections 65 of the Evidence Act. The researcher has also used this paper, to understand the author’s opinion displayed throughout the paper and have been inspired by certain elements of the same. The researcher was also further inspired by the suggestions provided by the authors of the paper.

The researcher has further relied on the report titled, Death penalty through self-incrimination in India⁹. This report has

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⁹ Asian Centre for Human Rights, Death penalty through self-incrimination in India, (October 2014).
further not only analysed the case in hand, but also provided their personal opinion on the case. Providing the researcher with a completely different perspective of the case in hand.

Research Methodology
In this paper, the researcher has primarily opted for “doctrinal” method of research. As the basic legal tone of this paper, further since the very issues sought after by this paper stands to be in legal nature. The major sources that the researcher has relied upon are the bare act Evidence Act, 1872, the official judgement of the Parliament attack cases and lastly the various other judgements of other cases (cited under the reference / citation / source head of the paper). The researcher further has relied upon some more secondary sources like articles and online news database. The researcher has further looked out for the comments revolving around this case by various renowned lawyers and officials. Hence, “doctrinal” technique is omnipresent throughout the entire paper. Further alongside the “doctrinal” technique, the researcher has also adopted a “qualitative” approach to this research paper. As this paper shall lay down the focus on hunting for the details. To answer the specific research questions, the researcher has utilized the same method of research.

NOTE: The researcher has going forward addressed the “Indian Evidence Act, 1872” as “IEA.” Further “Prevention of Terrorism Act, 2002” as “POTA.”

Research Questions
- What is evidence and its importance in the Criminal Justice System?
- What is the evidentiary value of Confessions of accused and co-accused?
- What contributes as relevant facts and what is the probative value of the same?
- What is the legal standing of the admissibility of electronic records in a trial?

II. FACTUAL MATRIX
This case in one of the most influential case in the modern law, as it was with the help of this case that the court of law took a step towards the “21st century”. This is the case that has led the court of law to consider an electronic evidence as permissible evidence and pass the law supporting the same. However, this case has had its own fair share of implications both positive and negative in nature.

2.1. Statement of Facts
The 13th of December 2001, what seemed like a regular day of the Parliament House, was only to be interrupted in a brutal manner. During the noon it was reported that five heavily armed individuals made the attempt to enter the Parliament House Complex. In an attempt to do so this group of individuals attacked the immediate security official who was on his duty at that time. As a result of this altercation the security official was found dead.

(Heavily armed was expanded upon by the High Court as, “The fire power was awesome enough to engage a battalion and had the attack succeeded, the entire building with all inside would have perished.”)

The entry into the Parliament House Complex, led to an all-out gun battle between these five individuals and the security guards. This gun battle lasted on for nearly 30 long minutes. The repercussions of the same was
death of all the 5 intruders alongside, the death of 9 individuals (8 of the security guards, and one gardener who got caught in the cross fire). Following this incident there were further 16 individuals who were reported injured.

These events led to an immediate summoning of the bomb squad, who after a search of the entire area declared the area safe. Shortly into few days of investigation, a banned organization of terrorists claimed the entire responsibility of this attack at the parliament house. This organizations name was “Jaish-E-Mohammed”.

The investigation of this attack lasted for 17 hectic days; however, it did lead to fruitful results. Following the investigation there were 4 individuals arrested with the titles of the accused, the individuals were; “Mohd. Afzal” (hereafter referred as to A1), “Shaukat Hussain” ((hereafter referred as to A2), “S.A.R. Gelani” ((hereafter referred as to A3) & “Afsan Guru” (Navjot Sandu) (hereafter referred as to A4).” The notable observations at the time of the arrest of A1 and A2 was the finding of a trunk of a car full of Rupees 10 Lakhs alongside a laptop, this arrest was made at Srinagar.

A4 further successfully identified bodies of the intruders of the parliament attack namely; Mohammad, Raja, Haider, Rana & Hamza.

2.2.  Procedural History
Following all the above events, the various courts were approached with this case. In the entirety of the proceedings of this case, there were in total three courts approached in this respective order, the chart below signifies the same;

The Special Court
It was held that A1, A2 & A3 were awarded "Death Penalty", whereas A4 was awarded five year imprisonment along with fine.

The High Court
It was held that A1 and A2's awarded death penalty shall stand valid, however, A3 and A4 were acquitted of all the charges.

The Supreme Court
It was held that A1’s awarded death penalty shall stand upheld. A2’s plea was partly allowed, with his new awarded punishment being ten years imprisonment. A3 and A4’s acquittal stood upheld.

The Special Court
The first court approached by the State was the special court, all the four accused individuals were brough forward to the court. All the accused parties faced charges from “The Indian Penal Code”, “Prevention of Terrorism Act” and the “Explosive Substance Act”. Following the examination of evidence presented to the court of law, the following were the prescribed punishments by the Special Court;

a. A1 and A2 were all held on to all the charges claimed by the State, awarding them the punishment of death penalty (“under Section 302 r/w Section 120-B IPC and Section 3(2) of POTA ”).

b. A4 was also acquitted from all the charges claimed by the State but one Section 123 of “The Indian Penal Code”, leading to awarded
punishment of five years imprisonment alongside fines.

All the individuals accused were obviously not happy with the decision of the special court and hence put forth an appeal towards the High Court for acquittal from all the charges. The State put forth the appeal before the court to uphold the decision of the Special Court for A1, A2 and A3. Whereas regarding A4 who was acquitted of all but one charge, the State appealed for a longer sentence of imprisonment for this individual.

The High Court
Following the judgement of the Special Court, the High Court was approached through the appeals from both the accused parties and the State. The bench formulated by the court adhered to this matter and awarded the following punishments;

a. The decision of the Special Court was held in respect to A1 and A2, therefore the punishment of death penalty awarded, still standing upheld.

b. However, there was a new decision graced by the court upon A3 and A4, accepting the pleas of both these parties and completely acquitting them of all the charges.

This judgment of the High Court led to a huge number of appeals being filed by all the various parties involved, the premise of these appeals from the side of A1 and A2, was acquittal from the charged offence. The premise from the side of the State was to; uphold the decision in case of A1 and A2, and further bring upon imprisonment upon A3 and A4.

The Supreme Court

The apex court took into account all the various appeals brough to the court and the following was the judgement as presented by the bench of “R.M. Lodha”, “Kurian Joseph” & “R.F. Nariman JJ”;

a. The decision of the High Court, was upheld with respect to A1 and the final awarded punishment was that of death penalty.

b. The plea put forth by A2 was partly graced, as his punishment was reduced from death penalty to imprisonment of 10 years, alongside a fine of Rupees 25,000, other than the Rupees 10 Lakhs which were withheld by the State (under Section 6 of the “Prevention of Terrorism Act”).

c. The decision of the High Court, was upheld with respect to A3 and A4, and they were acquitted against all the charges as presented in the plea of the State.

Following the judgement of the Supreme Court, A1 filed for a “mercy petition”, which was dismissed by the court of law, and hence he was hanged to death.

Issues Raised
After going through all the three judgement of the respected courts, the following are the main issues from the researcher’s point of view;

a. The reliability and the acceptance of the confessions made to the police.


All the issues deal primarily with the Evidence Act, and hence the following chapters of paper shall revolve around the interpretation of the various sections of the IEA with respect to the above issues, and the case in hand.
ISSUE - RELEVANT FACTS

3.1. **Explanation of the Section & Application**

**Section 7 of IEA.**

“Facts which are the occasion, cause, or effect, immediate or otherwise, of relevant facts, or facts in issue, or which constitute the state of things under which they happened, or which afforded an opportunity for their occurrence or transaction, are relevant.”

Section 7 of the IEA, as stated above clarifies as to what can be considered as a relevant fact of the case. It further lays down the principle of “res gestae” which basically states that statements or act contemporaneous with the litigated act, given the constructive contribution of such acts or statements in the litigated acts are admissible under this section giving such a fact the title of relevant fact.

This section plays a huge role in reference to the second issue of the case primarily. The Supreme Court has used this section in the above case to state the electronic evidence in form of tape as a relevant fact to the case. The apex court further in their judgement have supported the above statement with the help of a cited case.

In the case of **R.M. Malkani v. State of Maharashtra**\(^{11}\), it was held that with the help of section 7 of the IEA, it was stated that a tape-recording conversation was to be held as a relevant fact following the principle of ‘res gestae’. The relevancy of this case with the case in hand is the fact that with the help of this case the controversial tape presented as evidence can be accounted as a relevant fact primarily as well.

**Section 8 of IEA.**

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

Section 8 of the IEA, as stated above states that an individual’s motives and conducts can also act as an evidence. This section was applicable with to the above case with respect to the actions of A1. The fact that A1 was able to identify the bodies of all the five intruders, the conduct of A1 shall hence be considered as a relevant fact.

In the case of **Prakash Chand v. State (Delhi Admn.)**\(^{13}\), it was held that “There is a clear distinction between The conduct of a person against whom an offence is alleged, which is admissible under Section 8 of the Evidence Act”. The relevancy of this case with the case in hand is that with the help of this case the conduct displayed in the act of identification of bodies of A1 could be stated as a relevant fact.

**Section 10 of IEA.**

“Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an

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\(^{10}\) Section 7 of the Indian Evidence Act, 1872.


\(^{12}\) Section 8 of the Indian Evidence Act, 1872.

\(^{13}\) Prakash Chand v. State (Delhi Admn.), 1979 SCR (2) 330.
actionable wrong, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it.”14

Section 10 of the IEA, as stated above states that if a conspiracy can be established, then any act ‘said’, ‘done’ or ‘written’ by either of the parties or all parties, shall represent the ‘common intention’ of such a conspiracy. This section stands to be omnipresent in this case, as all the accused parties were constantly alleged to have an established conspiracy under any and every appeal made by the State to all the various courts of law.

This section was heavily disputed throughout the proceedings, as this section was deemed to be the most influential section to ensure A3 and A4’s acquittal from all the charges, they were accused through the plea of the State.

The lead counsel for the State made an argument to use section 10 in terms of the confession made by A1. Their argument further stated that the confession from A1 abides with section 10 to prove existence of a conspiracy among all the accused parties.

However, this argument was strongly objected with the help of the case; Mirza Akbar v. King Emperor15. Whereby in this case it was stated that; “Section 10 is not capable of being widely construed so as to include a statement made by one conspirator in the absence of the other with reference to past acts done in the actual course of carrying out the conspiracy, after it has been completed”. This case further stated that; ‘comment intent’ is in the past, and it fails to signify the comment intent at the time. The relevancy of this case with the case in hand is that this case defines the scope of section 10.

Further in the case of State of Gujarat v. Mohammed Atik and Ors16, it was held that; “Thus, the principle is no longer res integra that any statement made by an accused after his arrest, whether as a confession or otherwise, cannot fall within the ambit of Section 10 of the Evidence Act.”

The previous case broadly defined the scope of section 10; however, this case draws a parallel with the case in hand as it shows that statement made under similar situation as present was not accounted under the purview of section 10.

Following the enlistment of the above cases, the counsel representing accused stated that anything stated by A3 and A4 following the High Court judgement shall not be considered to be brought into the court proceedings and to support the same stated the case of Nalini17. This case assists the defense counsel’s plea to not account for any statements made by A3 and A4 post acquittal.

The lead counsel for the state stated a number of cases to establish a conspiracy among all the accused parties, as doing the same would allow the counsel to put forth the evidence of confession by A1 as a ‘common intent’ of all the accused parties. If the same was proved then the repercussions would be;

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14 Section 10 of the Indian Evidence Act, 1872.
i. A2’s prescribed punishment possibly being greater than a 10-year imprisonment term alongside fine of Rupees 25,000.

ii. However more importantly, this would ensure that A3 and A4 who were acquitted of all the charges were accounted for, and possibly awarded a punishment of 5 years imprisonment.

However, as it was proven by the counsel representing the accused parties that, the mere statement of confession in the first place cannot be submitted in the court as an evidence to reflect the common intent of the group. Leading to “the question of applicability of Section 10 fades into insignificance.”

Section 11 of IEA.

“Facts not otherwise relevant are relevant;
(1) if they are inconsistent with any fact in issue or relevant fact;
(2) if by themselves or in connection with other facts they make the existence or non-existence of any fact in issue or relevant fact highly probable or improbable.”

This section has been used with respect to the whole ‘Aaj Tak TV Channel’ controversy. The lead counsel for the State used section 11 to put forth the statements made by A1 in an interview to Aaj Tak to be brought in as an evidence.

In Jagjit Singh vs. State of Haryana, it was held that “the speaker of the Legislative Assembly of the State of Haryana disqualified a member for defection. When hearing the matter, the Supreme Court considered the digital evidence in the form of interview transcripts from the Zee News television channel, the Aaj Tak television channel, and the Haryana News of Punjab Today television channel.” Hence following this judgement, the transcripts of A1’s interview were considered as a relevant fact even though, this interview stood opposing some of the earlier statements of A1. And this was further accounted as digital evidence which will be acknowledged further ahead in this paper.

The issue of relevant fact had made the acquittal of A3 and A4 from all the proposed charges justifiable. This issue further provided more certainty in the involvement of A1 and A2 in the parliament attack as the all the circumstances provided by these facts pointed towards the same.

IV. ISSUE - CONFESSION

4.1. Explanation of the Section and Application

This issue of the case was the most controversial section of this paper, as it dealt with an alleged confession of A1. The counsel for the accused parties pleaded stating that both A1 and A2 were constantly pressurized by the police forces to put forth a confession with constant threat given to sue the accused parties under section 3 of POTA. It was further pleaded by the counsel that the submitted confession was not made by the accused parties, as there is clear discrepancy in the language that accused parties used to that of confession, claiming that the confession was written without any knowledge of the accused parties.

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19 Section 11 of the Indian Evidence Act, 1872.

Section 24 of IEA.
“A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the Court to have been caused by any inducement, threat or promise, having reference to the charge against the accused person, proceeding from a person in authority and sufficient, in the opinion of the Court, to give the accused person grounds, which would appear to him reasonable, for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.”

The counsel for the accused parties approached the court under Section 24 as it is clearly stated under section 24 that any confession if made under a threat shall be irrelevant in criminal proceedings, which is the principle argument of the counsel. The counsel has constantly claimed that the accused parties have made such a confession due to the threat of police forces and further due to the traumatizing threat of section 3 of POTA, which the accused parties were reminded of the same constantly. Hence, this claim was put forth in the court under section 24.

Section 25 of IEA.
“No confession made to a police officer, shall be proved as against a person accused of any offence.”

In the case Queen Empress v Babulal and Anr, it was held that; “The primary purpose behind the enactment of such a provision is to put a stop to the malpractices of the police officers to extort confessions and avoid the peril of false confessions being admitted.”

The counsel for the accused parties further made an attempt to strengthen their case with the help of section 25 of IEA. As stated in the above case that the sole purpose for establishment of section 25 is to protect the accused parties against the possibilities of forced confessions.

Section 27 of IEA.
“When any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.”

Section 26 and 27 act as hard counters or exception to Section 25. Section 27 stands as one of the most heavily scrutinized section during the proceedings. This section was torn apart by both the counsels as each presented their own version of scope presented by the section. This segment of the judgement has heavily disputed three major cases and the judgment is visibly inspired by this set of cases; Inayatullah, Damu and the most important case of Kotayya.

The arguments abiding to this section was fundamentally on;

i. Scope
ii. Basic requirement of proof

21 Section 24 of the Indian Evidence Act, 1872.
22 Section 25 of the Indian Evidence Act, 1872.
23 Queen Empress v. Babulal and Anr. (1884) ILR 6 All 509.
24 Section 27 of the Indian Evidence Act, 1872.
The scope of the section was constantly questioned with emphasis on the validity of mental knowledge acting as a self-sufficient i.e. basically a battle between mental fact and material fact. This dispute on the nature of the fact which was to be accepted lasted for a long time in this proceeding. The counsel for the defense contended that in the above scenario there was no material fact involved, leading the section not applicable. However, the State countered by stating the case of ‘Kotayya’ where by it was clearly stated that the term fact shall involve both the mental and the material fact. This case was heavily disputed throughout the proceedings; however, this case was the sole reason as to how the first half of the section stood valid. Kotayya’s judgement was heavily disputed in the proceedings as it used the term “discovery of a fact”.

This term was further interpreted in the case of Damu28, where it was held that; “supporting the interpretation that the ‘fact discovered’ envisaged in the section embraces the place from which the object was produced, the knowledge of the accused as to it, but the information given must relate distinctly to that effect.”

Further in the case of Inayatullah29 it was stated that; “the expression ‘fact discovered’ in Section 27 is not restricted to a physical or material fact which can be perceived by the senses, and that it does include a mental fact, explained the meaning by giving the gist of what was laid down in Pulukuri Kotayya’s case.”

Section 30 of IEA.
“When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other person as well as against the person who makes such confession.”30

Section 30 was very much applicable in the present scenario, as the provided confession by A1 if proved to be valid, following section 30 would be applicable even to A2. However, this could only be applied if the confession was held valid by the court.

Following the plea by both the parties regarding their presented set of interpretation of section 27, it was further brought to the attention of the court that the accused A1 was only provided 10 minutes to formulate the said confession.

The Supreme Court was of the opinion that, the lack of any material implication of the said confession alongside just mental fact itself were self-sufficient for the confession to not stand valid in front of the court of law.

30 Section 30 of the Indian Evidence Act, 1872.
The Supreme Court regarding this issue held that;

“All these lapses and violations of procedural safeguards guaranteed in the statute itself impel us to hold that it is not safe to act on the alleged confessional statement of Afzal and place reliance on this item of evidence on which the prosecution places heavy reliance.”

Hence, the issue of confession stood not applicable to both the accused parties A1 and A2.

V. ISSUE - ELECTRONIC EVIDENCE

5.1. Explanation of the Section and Application

Electronic evidence, in form of the tapes and manual copies, both stood as the lead substantial evidence in this case as the other gathered evidence were all mostly circumstantial in nature. Hence admissibility of these records was a huge question before the court.

Section 63

“Secondary evidence means and includes—(2) Copies made from the original by mechanical processes which in themselves insure the accuracy of the copy, and copies compared with such copies.”

The first contention from the defense counsel was that the mechanical copies of the transcript can be easily influenced, and the question of accuracy was raised. Which was countered by the Section 63 (2) as under this the law testifies that the accuracy of the copy shall be that of the original transaction. Which led the counsel for the accused to question the witness which were under examination, as they were not equipped with the professional insights of operation of a computer.

Further in the case of R v. Shepard, it was held that;

“I suspect that it will very rarely be necessary to call an expert and that in the vast majority of cases it will be possible to discharge the burden by calling a witness who is familiar with the operation of the computer in the sense of knowing what the computer is required to do and who can say that it is doing it properly.”

The Supreme Court was of the similar opinion as the witness were respected employees with good conduct and were aware about the basics of computers to do the standards that were to be.

Section 65B (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 sub-section (2) relate, and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the

31 Section 63 of the Indian Evidence Act, 1872.

certificate; and for the purposes of this subsection it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.\(^{33}\)

In the case of **Dharambir v. Central Bureau of Investigation\(^{34}\)**, the court held that “when Section 65-B talks of an electronic record produced by a computer it is referred to as the computer output”.

There are primarily three kinds of electronic evidence; audio, video and text, in the case in hand the applicable forms were that of audio and text. The counsel for the accused brought it to the court’s attention that for the electronic evidence to be considered admissible in the court as secondary evidence, the State has to provide a ‘certificate containing the details in section 65B (4)’. And the State failed to meet this requirement of the law. To expand on the same, consider the cases of;

In the case of **Anvar P.V. v. P.K. Basheer and others\(^{35}\)**, where it was held that, “secondary data in CD/DVD/Pen Drive are not admissible without a certificate u/s 65B (4) of Evidence Act. It has been elucidated that electronic evidence without certificate U/s 65B cannot be proved by oral evidence and also the opinion of the expert U/s 45A Evidence Act cannot be resorted to make such electronic evidence admissible.”

Further in the case of **Jagdeo Singh Vs. The State and Ors\(^{36}\)**, it was held that; “while dealing with the admissibility of intercepted telephone call in a CD and CDR which were without a certificate u/s 65B Evidence Act, the court observed that the secondary electronic evidence without certificate u/s 65B Evidence Act is inadmissible and cannot be looked into by the court for any purpose whatsoever.”

However, the lead counsel for the state presented his argument stating that such a requirement doesn’t disqualify from acceptance as secondary evidence, as the circumstances in the case in hand abide by the Section 63 and 65 and hence the electronic transcription and the tape can be accounted as secondary evidence. The same can be seen in the following case;

In the case of **Sonu v. State of Haryana\(^{37}\)**, it was held that; “the electronic document relied upon were not certified under Section 65B and hence were invalid technically. The appellant therefore sought that his conviction for abduction and murder should be set aside. However, in this pernicious decision a CDR, without any Section 65-B certification, could be relied upon to support the conviction.”

The argument of the circumstances in the case in hand abiding by the Section 63 and 65 and leading to the admissibility of secondary evidence was accepted by the apex court leading to the acceptance of all the evidence without certification.

The repercussions of the acceptance of secondary evidence was that interception of the phone call was Accounted for leading to a very compelling case against A1 with a significant involvement of A2.

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\(^{33}\) Section 65 B (4) of the Indian Evidence Act, 1872.  
\(^{34}\) Dharambir v. Central Bureau of Investigation, 148 2008 DLT 289.  
\(^{36}\) Jagdeo Singh Vs. The State and Ors, 2015 SCC Online Del 7229.  
VI.
THE PARLIAMENT ATTACK: 2001 – CONCLUDED ANALYSIS

6.1. Official Judgement of the case
Official Judgment of the case by all the three courts are provided under the procedural history, however in this section of the paper, the researcher shall lay down a summarizing judgement under each issue on the basis of researcher’s understanding:

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<tr>
<td>ISSUE I [Relevant Fact]</td>
<td>Found Guilty</td>
<td>Found Guilty</td>
<td>Not Guilty</td>
<td>Not Guilty</td>
</tr>
<tr>
<td>ISSUE II [Confession]</td>
<td>Not Considered</td>
<td>Not Considered</td>
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<td>FINAL JUDGEMENT</td>
<td>Death Penalty</td>
<td>10 years Imprisonment + 25,000 Fine.</td>
<td>Acquitted of all charges</td>
<td>Acquitted of all charges</td>
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6.2. Conclusion & Suggestions
This case primarily deals with three major topics of the IEA being; Relevant Facts, Confessions and Electronic Evidence. Overall, in the researcher’s opinion all the issues produced the right result, however the independent analysis of each issue stands as;

i. Relevant Facts
This was the first issue analyses and in the researcher’s opinion this was the most open-ended issue and hence was the easiest for the court to deal with. Majority of this issues raised here were easily dealt with the rule of law. The only minor problem that the researcher observed under this issue was with Section 11 of the IEA. The problem with Section 11 is not that of application of the same, because following the law the court applied the Section 11 accurately. However, the researcher has the problem with the very fundamental of Section 11. In researcher’s point of view, Section 11 acts as a gateway to raise a lot of contradictions among the facts of the case.

The contradictory nature of this Section that has been omnipresent, as in the case R v. Prabhudas, even West, J. expressed that if Section 11 is purely driven by logic then it’s a self-sufficient section dealing with relevant fact and there is no requirement for other sections dealing with relevant facts. The researcher wouldn’t be as extreme with his point of view; however, the researcher does stand concerned with the contradictory and unpredictable nature of this section. As even in the above case even though the interview was contradictory to all the other statements made by the accused parties which was clearly point by the counsel for the
ii. Confessions
This issue was evidently the messiest segment of the case. With the contentions being on the confession in the first place being forged, threatened and to add to the fire such a confession was made only in the presence of the police officer, leading to all the mess. The icing to this situation was the constant discussion of the case of Kotayya. However, in the researcher’s opinion the outcome of this issue was fair and just. There were no fundamental problems that the researcher could identify in this issue ii. although the application by both the parties was not idea it still got the work done.

iii. Electronic Evidence
This issue was the most troublesome in the researcher’s opinion. Firstly, in the researcher’s opinion there is no clarity to the contention raised by the lead counsel representing the accused parties on the ‘lack of adequate skill set of the witnesses’ it was dismissed with a very vague clarification and by stating that the witnesses were respected employees of the company. Second and more importantly the researcher felt that application of Section 65B lacked a backbone, i.e. it was not stern in its application. It has been clearly stated that as per law there is an adequate certification. required for admissibility of electronic evidence. However, in the above case theiii. electronic evidence was considered secondary evidence despite the lack of their certificate. Which is the clear violation of Section 65B (4) which lays down thev. requirements of the certificate. Further this was not the first judgement to account for invii. similar circumstances, i.e. lack of certificate.

The researcher does not have many suggestions to make, but a few important once;

The criticism on Section 11 by West J, stands valid and the researcher would push for a formulation of criteria to limit the scope of this section, as how the section stands now the scope out of logic is quite vast leading to unpredictability and contradictions.

The researcher obviously understands the need of the section in the extreme case of alibi, self-harm, etc. However, some kind of control over this section is highly needed.

The section 65B needs some form of retention guidelines to exert a stern application of this section. The researcher understand that the activity of violation of the section by failing to provide the certificate doesn’t take place often. However, the fact that such stunt has already been pulled out in the court of law and with existing precedents making the same possible some manner of retention of the section as well as the retention of the application is desperately needed.

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