AN ANALYSIS ON EVIDENCE RELATING TO ELECTRONIC RECORD AND ITS EVIDENTIAL VALUE: TAPE RECORDING CONVERSATION

KUNTA MUKKALA SAI SREE SANJAY
B.A.LLB (HONS)
CHRIST (DEEMED TO BE UNIVERSITY)

ABSTRACT: This study has been undertaken to investigate the inconsistency between Tape Recorded Conversation Evidences and “Right to Privacy”, and also Value, Nature, Admissibility of Tape recorded conversations when submitted as evidence in court of justice. Evidence is the information which the matters requiring proof in a trail are proved. It includes all statements made by witnesses before the court of justice in matters of fact under inquiry or need to be proved, but evidence also includes all the documents produced for examination of the court. This Article aims to inspect the value of such evidences with the help of cases already dealt in court of justice when proving a person guilty. The fact of submitting Tape Recording Conversation before law of courts as evidence, particularly in case of prevention of corruption in the country has developed. There exists such instance relating to Hon’ble Chief Minister of Andhra Pradesh SHRI. Nara Chandra Babu Naidu against whom Corruption charge was filed by the Telangana police department by using Tape recording Evidence will also dealt in this paper. And also brief the importance of such evidences by interpreting sections related in Indian Evidence Act, 1872. This paper also describes the situations where in which the chances of accepted claims of right to privacy made by party or accused as there is no law that completely restricts the recording of conversations either.

KEYWORDS: a) Corruption charge filed by Telangana Police department against Chief Minister of Andhra Pradesh by basing on Tape Recorded Conversation. b) Inconsistency between Article-21 Right to Privacy and Recording of telephonic conversations/Tapping calls.

I. INTRODUCTION:
This Article mainly aims to brief on value, nature, admissibility of Tape recording conversations when such evidences submitted in the court for justice. Evidence is the information with which the matters requiring to proof in a trail are proved, Section-03 of Indian Evidence Act, 1872 defines Evidence as “All the statements which the court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry; All the documents including electronic records produced for the inspection of the court;” which means the definition clause of Evidence includes both a) evidence made by the witnesses-Oral evidence and b) documentary evidence. The word evidence is used in 3 dissimilar senses, they are as follows:

a) As equivalent to evidence;
b) As equivalent to proof. And;
c) As equivalent to the material on the basis of which courts come to conclusion about the existence or non-existence of disputed facts.

According to some philosophers evidence means, “It is any matter of fact, the effect, the tendency, or design of which, when presented to the mind, is to produce in the mind a persuasion concerning the existence of some other matter of fact”

There exist 16 types of evidences such as, oral evidence, documentary evidence, best evidence, circumstantial evidence, corroborative evidence, derivative evidence, direct evidence, hearsay evidence, indirect evidence, original evidence, presumptive evidence, primary evidence, real evidence, secondary evidence, substantive evidence, testimonial evidence. The nature of tape recorded evidence will be judged by the circumstances of which such evidence was submitted, if voice of the person was very clear, it can be substantive evidence. Where in some other situations it can be primary evidence and such primary evidence is

1 Section-03 of Indian Evidence Act, 1872, definition clause.
2 Such as Oral Evidence.
3 Such as Documentary Evidence.
5 BENTHAM’S Judicial Evidence, p.17.
6 TAYLOR Section.1, p.1
7 PETER MURPHY: A PRACTICAL APPROACH TO EVIDENCE, 2nd EDN., 1985, p.1
enough to prove or to judge a person guilty in front of court of justice.\textsuperscript{8} Understanding the relation between law and technology is not that easy, however law always generated in favour of technology whenever it was found needed. There is no limitation as respect to using of Tape recording evidences in civil and criminal cases. Under section 65A and 65B of IEA, 1872 Tape recording conversations can be accepted by the court of justice in proving a person guilty; it can be submitted as primary evidence.

II. **Tape Recording Conversation is against to Article-21 of Constitution “Right to Privacy”? Is call recording without informing the person is legal in India?**

Article-21 of the Indian constitution states that “no person life shall be deprived of his life or personal liberty except according to the procedure established by the law, however the term “Right to privacy” was not mentioned in Article 21, but in many cases it was held that Right to life includes Right to privacy\textsuperscript{9} as well. The point to be noted here is, it is not Absolute right awarded by constitution; it can be infringed with a procedure established by law that too such law should be fair, just and reasonable. In the similar circumstance Supreme Court held that telephonic conversation of an innocent citizen will be protected by the court\textsuperscript{10}. Telephone in the form of a telegraph also falls under the Indian Telegraph Act. In the case of People’s union for civil liberties v. Union of India\textsuperscript{11} Supreme Court laid certain Guidelines, which government is to follow while intercepting messages. As mentioned above Supreme Court always giving directions regarding to aspects whenever Right to Privacy or whenever there exist a violation of any individual fundamental right. But still there always exists a lacuna.

Right to privacy was being used as exception for every crime. To justify statement made, it is needed to examine the situation which was happened recently in State of Andhra Pradesh, where the Chief Minister of State was charged against Corruption by basing on such tape recorded evidence, on July 28\textsuperscript{th} 2015 Telangana police department filed a charge sheet of 25 pages. Here, the question is whether Chief Minister was committed crime of Corruption or not. Before that is it legal to go with a “sting operations”, tapping the phone conversations of a Chief Minister of a State? This was the primary question which was in front of the court. However, Indian Supreme Court made Right to Privacy as a part of Basic structure\textsuperscript{12}, it cannot be infringed until and unless there should be a procedure established by Law which needs to be just, fair and reasonable. In the above case his right got infringed, but there also exist a reasonable reason to avoid crime (Corruption). And regarding to the tapping of Chief Minister Phone conversation, this made after getting an information of crime against him, and moreover no person is above the Law, and also there is no particular procedure to say that tape recorded conversation is violation of Right to Privacy when it actually proving a crime or when it used to prevent any crime.

Article-21 is not absolute right it was subjected to certain reasonable restrictions in which National security will also include. In the case of telephone it was held that tapping phone conversation would infringe Article21, unless it is permitted by procedure established by law\textsuperscript{13}, Supreme Court issued guidelines for the exercise of powers of interception of telegrams under Indian Telegraphs Act, 1885.\textsuperscript{14}

III. **Whether Indian Evidence Act, 1872 detailed or described the importance, value, nature and admissibility of such evidence in aspect of proving a person guilty?**

\textbf{a) Admissibility of Tape recorded conversation evidence:}

The law of evidence must be adapted to realities of contemporary practice. The very admissibility of evidences in electronic format has to fulfil conditions as mention in the 65B of Indian Evidence Act, 1872. In the case of Ram singh & ors v. Col. Ram singh\textsuperscript{15} Justice Fazal Ali with Justice Sabyasachi Mukharjee agreed to lay down the following tests to determine admissibility of Tape recorded conversations:

1) Accuracy of tape recorded statement must be proved by the maker of the record by satisfactory evidence.
2) Possibility of altering of any part of the tape recorded statement must be excluded.
3) Tape recorded statement must be relevant.
4) Recorded cassettes must be sealed and must be in official custody.
5) Voice of particular speaker must be clearly audible and must not distorted by other sounds.

These are the 5 steps laid down by the Supreme Court in regarding to the aspect of submitting Tape recorded conversation as evidence.

\textbf{b) Value, nature of Tape recorded conversation evidence:}

The nature of Tape recorded conversation evidence depends upon the situation or the circumstances taken place. For instance in the above case, Tape recorded evidence submitted by Telangana Police Department as a primary evidence in the court, which means submitted as the top most class evidence, and in the case of Ram singh & ors v. Col. Ram singh it was submitted as a substantive evidence. So, in such a way depending upon the circumstance of the case nature of such evidence will be made, that too the case of Chief Minister of Andhra Pradesh grabbed more public intention, because it relates to the personal respect of

\textsuperscript{8} Ziyauddin Burhanuddin Bhukari v. Brijmohan Ramdas Mehta AIR 1975 SC 1788
\textsuperscript{9} People’s union for civil liberties v. Union of India AIR 1997 SC 568.
\textsuperscript{10} R.M.Malkani v. State of Maharashtra AIR1973 SC 157
\textsuperscript{11} Supra.
\textsuperscript{12} Justice K S Puttuswamy & anr v. Union of India
\textsuperscript{13} AIR 1997 SC 568
\textsuperscript{14} Section-5(2) of Indian Telegraphs Act, 1885.
\textsuperscript{15} 1985 supp scc 611.
people of Andhra Pradesh as case was filed against the Chief Minister of the state who is a represents the state on behalf of People.

Value of tape recorded evidence will be considered as enough evidence when it was submitted as primary evidence with a certain restriction laid down in a case\(^{16}\) that if tape recorded cassette was not sealed or was not produced to the court immediately, and if transcription of the tape recorded conversation was also not produced then it cannot be considered as evidence. Source and authenticity are the two major key factors for electronic evidence; if tape recorded conversation is the only evidence to prove that any person accepting the bribe or demanding the bribe it should be proved by following the steps/ procedure laid down in the case of Ram singh & ors v. Col Ram singh, if such evidence was said audio is not clear or any other issue by the forensic department such evidence will not be considered by the court.\(^{17}\) However there exist many cases\(^ {19}\) where the court of justice was completely relied upon the electronic evidence submitted to the court. In similar case Supreme Court said that Provisions of 65A are to be considered with provisions of 65B\(^{19}\) in aspect of any criminal contempt.

IV. CONCLUSION:

The law regarding to the conversation by one of parties must be clear, the one who didn’t gave his consent then the issue of privacy will weighs, as the party claims for violation of such aspect. Two things 1) At least one person has to give consent; 2) if none has given any consent then the court weighs the aspect of privacy of the parties by comparing with public interest, and if such public interest has more impact than privacy issue of an individual will not be considered, then tape recording conversation will be legal.

Which means, to the question whether Tapping telephonic conversation is legal or not? Will be depending upon the disturbance happened to the public interest because of some particular issue. In the case of Andhra Pradesh Chief Minister SHRI. Nara Chandra Babu Naidu it grabbed the people’s attention a lot, as it was related to the people’s representative of the state, so if we consider the public interest as the main aspect then tapping of Chief Minister conversation is legal, because act committed to prevent crime of corruption or to prove crime of corruption, and in the eyes of law everyone are equal. Therefore chances of claiming for privacy in such cases will be less than there is no law which exclusively restricts the tape recording conversations.

However, world was developing rapidly with technology, there is no end for technological world, to provide justice in such situations, and to create way for providing justice, it is needed to review the Indian evidence Act, 1872 sections- 59, 60, 62, 65A, 65B. Because danger of Right to privacy will originate in the technological world not only from the state actors but also from the non-state actors as well. And this aspect requires a rule or command or system which can balance individual interests carefully and sensitively and fulfils the concerns of the state, the concerns of the state should be protecting the national security, preventing and investigating the crime, encouraging the innovation and distributing the knowledge.

Now, it’s time to Supreme Court to open up in such aspect of Right to Privacy v. Tape recorded conversations to give proper clear picture in aspect regarding to such evidence, and to avoid any sensitive situations further.

However, this case (Andhra Pradesh Chief Minister SHRI. Nara Chandra Babu Naidu) was transferred to CBI for further investigation to get more accuracy regarding to the case because it was not between individuals, it was between state of Andhra Pradesh People’s leader and deep beliefs, faith of people of Andhra Pradesh on their leader. The most important thing to noted, SHRI. Nara Chandra Babu Naidu is a most senior Politician, his reputation will be damaged if any wrong committed by the investigation department in this case, it should be handled with more sensitively, carefully, or else it effect the security of a two states.

So, speedy trail need to be conducted in such cases, and the court should also lay down a proper guideline in regarding to this aspect. And Indian Evidence Act, 1872 was enacted at the time of British Empire, now days are changed; circumstances changed, and amount of crimes also increased. So in order to provide a proper justice regarding to the cases which grabs the public attention, a proper interpretation is needed.

BIBLIOGRAPHY

BOOKS:

- Y P BHAGAT, LAW ON DOCUMENTARY EVIDENCE, Sections-65A & 65B.
- DURGA DAS BASU, INTRODUCTION TO THE CONSTITUTION OF INDIA, 22nd ed.
- M P JAIN, INDIAN CONSTITUTIONAL LAW, 8th ed.
- PETER MURPHY: A PRACTICAL APPROACH TO EVIDENCE, 2nd EDN., 1985, p.1
- JEREMY BENTHAM’S, JUDICIAL EVIDENCE, p.17

CASES:

\(^{16}\) Lalji bansanarayan choubey v. jiyalal chavan, AIR 2009 (NOC) 1230 (BOM).
\(^{17}\) Sanjay singh Ramrao chavan v. dattatray gulabrao phalke (2015) 3 SCC 123 ( para 16)
\(^{18}\) Anvar P.V. v. P.K. Basheer (2014) 10 SCC 473
\(^{19}\) Kamal Patel v. Ram Kishore Dogne
Kalyan Kumar Gogoi v. Ashutosh Agnihotri, [AIR 2011 SC 760]
Anvar P.V. v. P.K. Basheer [(2014) 10 SCC 473]
Kamal Patel v. Ram Kishore Dogne
Sanjay singh Ramrao chavan v. dattatray gulabray phalke [(2015) 3 SCC 123 (para 16)]
Lalji bansanarayan choube v. jiyalal chavan, [AIR 2009 (NOC) 1230 (BOM)].
Justice K S Puttuswamy & anr v. Union of India
Ziyauddin Burhanuddin Bhukari v. Brijmohan Ramdas Mehta [AIR 1975 SC 1788]
People’s union for civil liberties v. Union of India [AIR 1997 SC 568].

STATUTES:
- INDIAN EVIDENCE ACT, 1872, Sections- 3, 59, 62, 63, 65A, 65B.
- INDIAN CONSTITUTION, ART. 21.
- INDIAN TELEGRAPH ACT, 1885, Section-5(2).

JOURNAL ARTICLES:
- Gary s Jacobson, Sharon T. Jacobson, A PRIMER ON THE USE OF TAPE RECORDED EVIDENCE, Vol: 06 no: 03, pp: 30-33, 68
- Edward M. Genson, Mark W. Martin, TAPED EVIDENCE IN CRIMINAL CASES, Vol. 20 no: 02, pp: 45-48,71
- Stephen Mason, THE FOUNDATIONS OF EVIDENCE IN ELECTRONIC FORM, pp: 36-69