

Respected Chair,

Courts and laws in Pakistan have traditionally placed more reliance on direct evidence or ocular testimony. However, overreliance on ocular testimony and disregarding the importance of other critical pieces of evidence have not yield the results that our criminal justice system needs at present. In order to strengthen investigations and prosecution of cases, reliance on digital evidence is necessary.

In the recent past, digital evidence was treated as secondary evidence in Pakistan, however, keeping in view an increasing need to detect and punish crimes in the information age, some critical legislative changes were made to give the status of primary evidence to the digital evidence. It can be argued that the status of digital evidence has become primary to the extent of its admissibility only. In relation to weight or appraisal, it is still regarded as circumstantial evidence requiring corroboration.

Mr. Chair,

Pakistan in order to increase the admissibility of digital evidence promulgated the Electronic Transaction Ordinance 2002 (ETO) and the ordinance brought some fundamental changes to the traditional law of evidence applicable to civil and criminal trials. The ordinance essentially declared such evidence as primary. It also affirmed the originality of electronic documents, information, record and transaction and thereby dispelling the perception that the information stored or exchanged digitally is hearsay evidence. Secondly, the ordinance underscored the fact that digital evidence qualifies the best evidence standard.

However, in view of some observations of the judges of the superior court of Pakistan, it appears that the evidence has been declared primary and capable of qualifying as best evidence to the extent of its admissibility, however, when it comes to its appreciation by the judiciary, or weight it is still left at the discretion of the court. In terms of weight of the evidence it can therefore be said that such evidence is still secondary in nature.

Mr. Chair,

Another change that was brought in the admissibility of digital evidence was affected

through Article 5 of ETO. This article says, ‘if digital evidence is complete and unadulterated, then it will be admissible evidence regardless of the additions caused naturally or by mistake

The use of modern devices as evidence representation seemed and proved useful in judiciary procedures after the amendments in the articles of Qanun-e-Shahadat order 1984 and Electronic Certification Accreditation Council under Section 18. Electronic Certification Accreditation Council (ECAC) is established by Federal Government of Pakistan under Section-18 of Electronic Transaction Ordinance, 2002 (ETO). It is an autonomous body and operates under Ministry of Information Technology & Telecom (MoIT). Several cases have been resolved by evidence from modern technological modes that could be difficult to resolve without modern devices.

Respected Chair,

The Superior Courts in Pakistan have greatly influenced the use of digital evidence in criminal cases. In a case titled *The State vs. Ahmed Omar Sheikh*, the Supreme Court of Pakistan held that video evidence is an important piece of evidence, however, it can be presented before a court of law if the following conditions are met:¹

1. Before getting it admitted, exhibited, it will be necessary to explain how it was acquired or what was its origin or source.
2. A forensic report should be presented that the video has not been edited. Without fulfilling the above conditions, video evidence will have no probative value.

In the eye of law, mobile SMS is deemed to be a weak type of evidence. However, the in *Shafqat Masih vs. The State*, the Lahore High Court laid down a new rule. According to it, under article 164 of QSO 1984, SMS record is strong evidence.² This evidence will be deemed as primary evidence which means the court can deliver judgement on the basis of such evidence.

The Gilgit-Baltistan Chief court in a case titled, *Shoaib Ahmad vs. State*, also admitted the evidence made available via under article 164 of Qanun-e-Shahadat, in which crime

¹ *The State vs. Ahmed Omar Sheikh* 2021 SCMR 873

² *Shafqat Masih vs. The State* 2021 MLD 1415

was detected in CCTV footage and the accused was arrested. In another case, *Salman Ahmad Khan vs. Judge Family Court, Multan*, the Lahore High Court Lahore resolved the matter pertaining to dissolution of marriage in which video recording was presented in front of the court as modern evidence to show the torture of the husband on wife. While article 164 of Qanun-e-Shahadat 1984 was not strictly applicable in the family court, the family court found it not to be bare to receive such evidence.³ Therefore, the modern devices' evidence is also considered in the family court after the verification and inquiry procedure. In *Sadaqat Ullah Khan vs. The State*, the Lahore High Court Lahore resolved the issue of rash driving and neglecting the traffic signals. The evidence was attained in the shape of modern means

³ *Salman Ahmad Khan vs. Judge Family Court, Multan*, 2017 PLD 698