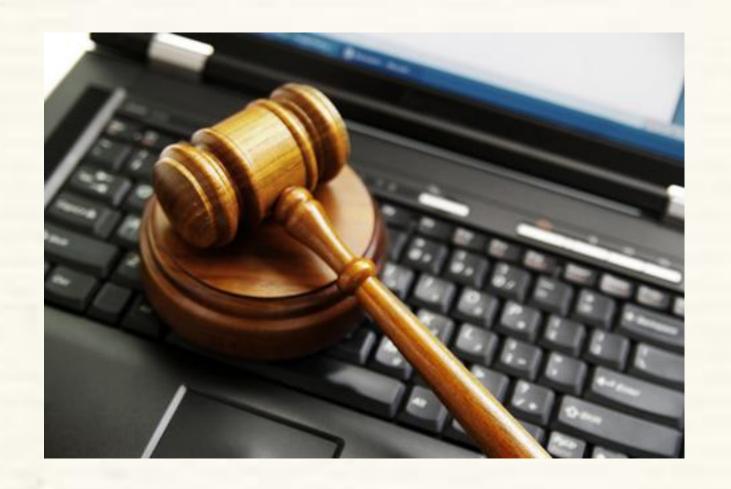
## *'Make in India'* series Emerging Trends - International Arbitration:

- (i) E- discovery
- (ii) Hot tubbing





e-Discovery It's Time!

#### Discovery

- Order XI Rule 12 of CPC Application for discovery of documents
- At any stage including ad-interim stage
- Documents which are or have been in the possession or power relating to the matter in question
- Object of Discovery:
  - Fairly dispose the matter
  - Save costs/ avoid lengthy trail
  - Throw light on the controversy in the matter
  - Destroy the other party's case



#### e-Discovery

- Identification, collection and production of 'ESI'
- In response to or anticipation of a request for production in a law suit or investigation
- ESI: emails, documents, presentations, databases, voicemail, audio and video files, social media, web sites, etc.
- On par with physical discovery (Better or Worse depends on ...)



#### 'Electronic record' as evidence

- Courts in India recognize electronic evidence
- Section 3 of IT Act defines 'Evidence' and Section 4 IT Act gives legal recognition to electronic evidence
- Evidence Act amended
- Acceptability of evidence on the basis of 'authenticity' and relevance



#### What is different about e-discovery?

- Not circumscribed
- There will be too many Smoking Guns
- Technology including AI



#### Litigation Hold - obligation to preserve

- Preservation of all forms of <u>relevant information</u>
- Maximize defensibility:
  - sound, repeatable methodology
  - consistency in the process
- Claim of privilege
- Spoliation adverse inference
  - 'Smoking gun' principle



#### Challenges

- Unfamiliarity
- Confuse with 'fishing and roving' enquiry
- Confuse with 'search and seizure'



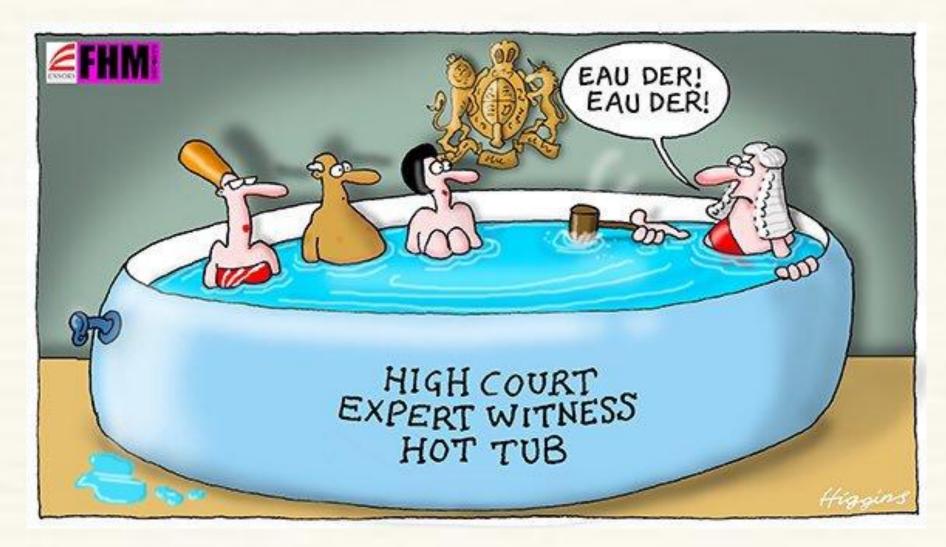


### Hot Tubbing: Is it time to take the plunge?

Source: <a href="http://www.lawgazette.co.uk/pictures/603xAny/4/2/1/4421\_Expert-witness-cartoon.jpg">http://www.lawgazette.co.uk/pictures/603xAny/4/2/1/4421\_Expert-witness-cartoon.jpg</a>



#### What is Hot Tubbing?!





#### Hot Tubbing

- Hot Tubbing = Concurrent Evidence / Dueling Experts
- Focus on search for truth v/s siding party that hired you
- Pros and Cons
- Will Hot tubbing work for me?



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