



RECORDING OF EVIDENCE BY VIDEO CONFERENCING: CHALLENGES WITH REFLECTIONS ON A PATH AHEAD

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ABSTRACT

Government of India has taken an initiative of Digital India to help the country implement digital advantages; thus helping to cut down time in enchanting public services. Corona virus disease (COVID-19) is the chief charioteer of digital revolution. Medical practitioners are one of the frontline warriors and they are facing severe shortage of time during this pandemic situation. In the past the tele-evidence technique had been discussed and followed occasionally in Indian judicial setup; but there is ample trepidation in implementing especially at gross root level citing lack of basic requirements. Throughout the world due to this COVID-19 pandemic, judicial systems are forced to pursue it. It can be a path breaking and also the right time to implement it and through which we can know about the pros and cons associated and steps should be taken to improve it. There should be, proper setting of guidelines about tele-evidence/ video conferencing, which will ensure easy and early disposal of medico-legal cases.

KEYWORDS: video conferencing; tele-evidence; COVID-19; court proceedings; Judiciary.

INTRODUCTION

Medical practitioners are duty bound to assist judiciary system with their expert opinion on legal aspects apart from treating patients. For this reason doctors are summoned to the court of law for giving testimony as per the provisions in Indian Evidence Act.^[1] It is a requisite to honour the court's summons and appear on the scheduled date, time and place without fail.

“Tele-evidence” or video conferencing is an alternative method for physical appearance in the court if permitted. Tele-evidence is an application of technology, whereby service is provided by means of audio-visual technology.^[2] In today's world with improvement of supportive technology, telemedicine and its application are getting bigger.^[3,4] In India diverse courts at different times have accepted testimony through videoconferencing as a legitimate way of depositing evidence.^[5,6]

DISCUSSION

What Is Video Conferencing?

A videoconference (Video teleconference) is a interactive telecommunication technology which allows two or more person from different locations to interact via video and audio transmission simultaneously.^[7]

Video conferencing allows users to have face-to-face interactions without being together at a particular place with use of technology. It is convenient for holding meetings, discussing, interviewing, etc. It saves time, expenses, and hassles associated with it.

Video conferencing – is considered as oral or documentary evidence?

All the statements which court require or permit it to be made before it by the witnesses, regarding inquiry are oral evidence. In video conferencing, if the court has permitted to make these statements through electronic means. Then it is purely a oral evidence in electronic form.

Whether evidence be recorded in legal cases through video conferencing or not?

Section 275 Code of Criminal Procedure (CrPC)

“Evidence of a witness may be recorded by audio-visual electronic means in the presence of defence”. By analyzing this provision, we can state that taking evidence of a witness through video conferencing is acceptable.

Evidence shall be recorded in the presence of accused. In video conferencing both parties with their respective

counsel will be submitting evidence and arguing. Hence, it is apparent that evidence which is recorded in the presence of both plaintiff and defendant would fully meet the requirement of Section 275 CrPC.^[8]

Landmark Judgement relating to Video conferencing:

In *Amitabh Bagchi Vs Ena Bagchi* (All India Reporter 2005 Calcutta 11) sections 65A and 65B of Indian Evidence Act. The court said that the physical presence of person may not be compulsory for purpose of adducing evidence and it can be done through medium like video conferencing also.^[9]

The Honourable Supreme Court, in 2003, approved videoconferencing for depositing evidences; stating that witness attendance can be ensured without delay, expense and inconvenience.^[6]

The Division Bench of Punjab & Haryana High Court on 2012, supported the notion of e-Courts, and suggested deposition of evidence by the doctors in various courts of Punjab, Haryana and Union Territory of Chandigarh can be done via videoconferencing.^[10]

In past audio and video technologies in court were viewed with doubt and suspicion.^[11] But with gradual emergence and acceptance of these technologies, perceptions among people began to change.^[12] This method is now regularly used in most of the Western countries in both criminal and civil trials.^[13,14]

Guidelines for Court Functioning Through Video Conferencing during COVID-19 Pandemic^[15]

The Honorable Supreme Court of India by its Order dated 06/04/2020, acknowledged video conferencing as a method of collecting evidence during this pandemic. The guidelines which are formed aimed mainly to reduce physical presence of lawyers, litigants, court staff, and journalists to ensure the continued dispensation of cases. The apex court, under Article 142 of the Constitution of India directed all the High Courts to frame rules, to use video conferencing method during this period of the pandemic.

- All courts should have a helpline dedicated to receive any complaint during or immediately after the proceeding.
- The District Courts shall adopt video conferencing advised by the concerned High Court.
- Court plays an important role to notify and make necessary arrangements for video conferencing for people who don't have access to it.
- Till High Courts frame rules, it will be used primarily for hearing arguments at the trial and appellate stage.
- Video conferencing method shall be recorded only if both parties consent.
- The presiding officer shall ensure that appropriate distance is maintained between two individuals, if it is necessary to record evidence in a Court room.

- The presiding officers have the power to restrict entry of persons.
- The presiding officer can adjourn the proceedings if it is not possible to restrict the number of person during hearing.

Court proceeding followed at different parts of the world during COVID 19^[16]

United States of America: Courts in most of the states have suspended or cancelled its jury trial and also number of federal court houses has been closed.

Canada: The majority of courts in Canada are offering reduced service, by dealing only with essential and urgent matters.

United Kingdom: According to the Government's new Corona virus Act it encourages the use of video conferencing. The Supreme Court is closed, whereas the Magistrates' Court and the High Court are covering urgent work.

France: Only 'essential' litigation is allowed like people in custody.

Germany: The General Administrative Court attend one or two cases per day with social distancing. Video conferencing method is rarely used because the courts do not have the capacity to do so.

Italy: The Supreme Court started to deal with urgent matters and issuing judgments remotely.

Brazil: Brazilian National Council of Justice issued a new resolution extending the suspension of certain activities of Brazilian courts.

Argentina: The Supreme Court of the Nation has suspended most judicial activity and providing minimum level of service.

Chile: The Supreme Court has suspended hearings indefinitely in all cases, with the exception of those that require the immediate intervention of a court.

Mexico: The courts are dealing with certain urgent matters.

Australia: The Federal Court is putting in place the technology needed to hear all trials, via videoconferencing facilities.

China (mainland): The Supreme People's Court of China ordered courts at all levels and encouraging judges to make full use of online systems. There are three "internet courts", which handle litigation procedures online from filing a case to issuing judgment documents.

Middle East

- Dubai: Almost all hearings are carried out via video telephone or video link.
- Israel: Courts are dealing with urgent matters only.
- Qatar: Initially many hearings were suspended, but now they are proceeding using video conferencing.
- South Africa: Physical access to the courts is restricted and teleconferences or videoconferences are being used occasionally.

Sri Lanka: Two tourist victims of a case involving the sexual harassment were allowed to Submit their evidence via video conferencing.^[17]

Ideal time for accessing the effectiveness of trial through Video Conferencing

As observed most countries prefer video conferencing method as an ideal method to continue court proceeding, but some countries are still not in favor. But in country like India, where there is already a huge backlog of cases due to its huge population and deficient number of judges, video conferencing can be a facilitating initiative. Although in the past, a lot of judgments have been passed favoring video conferencing it has not been practiced everywhere yet. COVID-19 pandemic has hampered judicial proceedings across the world and this can be an ideal time to access this method and have our opinion with proof.

Attorney General KK Venugopal has highlighted that the COVID-19 pandemic and the lockdown forced the legal fraternity to adopt e-filing of cases and hearing through video conferencing. Suggestion of video streaming of cases may create a possibility for all lawyers to witness cases which are being conducted in courts including lower courts, district courts, high courts and the Supreme Court. This would assist to judge the competence of judges and lawyers involved in it. Supreme Court judge, Justice DY Chandrachud, released a training manual, video tutorials and brochures in regional languages with regard to e-court services on 25th July 2020.^[18]

Video Conferencing for Doctors at Institute level for depositing evidence

Doctors have been attending courts all over India as one of their duties. In Western countries, depositing medical evidence is a painless procedure but in India, doctor's waste a lot of time in commuting to the courts and waiting endlessly for their turn. After reaching the court, they are given various reasons due to which deposition of their evidence becomes impossible on that particular day and alternate date is given. If doctor attends the court near to his work-place, half of the day gets wasted and if it is outside his place of work or state, a minimum of 1-3 days gets wasted depending on the distance between the work place and court and the mode of travel used. India is a country where there is a huge disparity ratio between doctors and patients and a lot many patients travel everyday from different places to meet doctors for various ailments or medico-legal certificates. If the

doctor is not available on that day patients need to plan their visit next on alternate day or week as various units are handled by departments on a particular day of a week. Such situation creates an unhealthy environment for doctors that can affect their way of carrying out professional work in a peaceful manner.

The best way to get out of this is to adopt video conferencing. When a doctor remains at his workplace and tenders evidence in a court of law through live audio-video electronic means, known as video conferencing, it can be profitable for both doctors and patients.

Setting up or streamlining video conferencing at institute level

- All institutes with assistance from their Information Technology Department can set up their own Video Conferencing Centre.
- Time slot can be fixed on working days in morning hours.

Benefits of depositing evidence through video-conferencing

- Doctors can attend court proceedings from their own institute at a fixed timing. This helps to avoid wasting time in travelling to places. Hence doctors will be available for the patients at all times which increase the quality of health care.
- Due to professional commitments, sometimes doctors are in a position to attend courts, but with video-conferencing, courts can avoid delay in resolution of pending cases for want of doctor's evidence.

Preparatory arrangements^[19]

- There should be a coordinator both at the court point and at the remote point from which any required person is to be examined or heard.
- Co-ordinators can be nominated by High Court or the concerned District Judge.
- Co-ordinators at remote point can ensure no unauthorised recording device is used and no unauthorised person enters the video-conference room when the video conference is in progress.

Procedure to be fulfilled for recording evidence through video conferencing.

The Honorable Karnataka High court in the case related to Twentieth Century Fox Film Corporation had laid down certain conditions for video-recording of evidence

- Before a witness is examined by Audio-Video Link, he has to file an affidavit or an undertaking verified before a notary or a Judge, stating that the person who is shown as the witness is the same person who is going to depose. Then a copy is to be made available to the other side. (Identification affidavit).^[20]
- The person who is going to examine the witness on the screen also required to file an

affidavit/undertaking with a copy to the other side with regard to identification.

- The witness has to be examined during working hours of Courts. Oath is to be administered through the media. The witness should not plead any inconvenience on time difference after accepting summons.
- Before examination, written statement and other documents must be sent to the witness so that he has acquaintance with the documents and an acknowledgement is to be filed before the Court in this regard.
- After recording the evidence, the same is to be sent to the witness and his signature to be obtained in the presence of a Notary Public.
- The visual is to be recorded and the record should be at both ends. The witness should be alone at the time of visual conference.

Challenges in video conferencing^[21]

- Lack of Infrastructure- Computers, uninterrupted Internet and electricity in many parts of the country.
- Evaluation of demeanor of the witness.
- Lack of rules for cross examination at certain places.
- Lack of fluency with technology.
- Absence of clearly laid down procedures in various states or countries.

CONCLUSION

At present there is a predictable dependence on technology, and there should be a change in law in a way so as to enable a more easy transition to online mode. Recording of expert evidence through video conferencing, with proper law and procedure, will make the process less time consuming and cost efficient. Judges are beginning to recognize and appreciate the importance of digital evidence in legal proceedings. The Honorable Supreme Court and various High Courts have repeatedly used technology whenever the need and its possibility have coincided, hence a clear and elaborate rules and procedure for such processes is the need of the hour.

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