



VIDEO CONFERENCE IN CRIMINAL TRIALS VIS -A-VIS SPEEDY JUSTICE IN INDIA: PROBLEMS AND PERSPECTIVE *

INTRODUCTION

In this era of globalization and rapid technological developments which is affecting almost all economies and presenting new challenges and opportunities, judiciary cannot afford to lag behind and has to be fully prepared to meet the challenge of the age. Using various I.T tools it is possible to carry out bunching /grouping of the cases involving same question of law. If this is done, all such case can be assigned to the same court which can dispose them of by a common order. If point of law involved in the matter is identified in each case, it is possible to allocate subsequently cases involving the same question of law to the same court for being heard along with the previously instituted case.

As of now the courts communicate with the Advocates/litigants through the process serving agency or the conventional postal system. It is possible to generate notices, summons, etc. on computer and serve them through the use of electronic communications such as E-mail. Addresses of advocates and the litigants can be entered in computer for the purpose of communication. Faster communication will lead to faster progress of the case and eventually help in reducing arrears.

Video Conferencing:

It is not uncommon for the criminal cases getting adjourned on account of inability of the police or jail authorities to produce them in the court. Sometimes the witnesses are residing at far off places or even abroad. It is not convenient for them to attend the court at the cost of considerable time and expense.

Video conferencing is a convenient, secure and less expensive option, for recording evidence of the witnesses who are not local residents or who are afraid of giving evidence in open court, particularly in trial of gangsters and hardened criminals besides savings of time and expenses of travelling. Recently, Code of Criminal Procedure has been amended in some States to allow use of Video Conferencing for the purpose of giving remand of accused persons thereby eliminating need for their physical presence before the Magistrate.¹

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¹ See, Justice Sobhag Mal Jain Memorial Lecture on delayed Justice delivered by Hon'ble Sh. Y.K.Sabharwal, CJI on Tuesday, the 25th July, 2006.

The present scenario

In the present scenario, the evidences are collected under the provisions of the Indian Evidence Act of 1872. In criminal proceedings, Sections 230 to 234 of Cr. P.C specifies that when the evidence have to be given and when to be closed and the power has been given to the court to compel the witness to appear before the court to give evidence.² In civil matters, the witnesses are summoned to appear before the court and adduce evidence (Section 30 of CPC)³. Thus, in the present legislative scenario, the attendance of the witness is required for taking evidence from him. However, the provisions of Section 77 of CPC⁴ and Section 284 of Cr. P.C⁵ are exceptions to this general rule, whereby the power has been given to the Courts to issue Commissions for examination of witnesses. It has to be noted however, there is no other method contemplated in and of the aforementioned statute through which evidence can be taken. And therefore, there is no provision to the effect that video conferencing might be used to take evidence. However, after 2003, the situation in India has changed.

Meaning of Video Conferencing.

“A video conference is a televised telephone call whereby two or more parties can speak in real time and also see each other in real time. It necessarily involves a camera, one or more monitors, and microphones for each participant, audio speakers and other necessary equipment. The most important thing needed is a high-speed Internet connection.⁶ Thus, through video conferencing, a person can effectively talk and see another person sitting anywhere in the world and hence, this technology can also be used to give evidences.

² Section 230 of Cr. P.C, 1973 which says” Date for prosecution evidence- if the accused refuses to plead, or does not plead, or claims to be tried, or is not convicted under section 229, the Judge shall fix a date for the examination of the witnesses, and may on the application of the prosecution, issue any process for compelling the attendance of any witness or the production of any document or other thing.

³ **Section 30 of the Code of Civil Procedure says: Power to discover and the like-**Subject to such conditions and limitations as may be prescribed, the Court may, at any time, either of its own motion or on the application of any party,-

- (a) make such orders as may be necessary or reasonable in all matters relating to the delivery and answering of interrogatories, the admission of documents and facts, and the discovery, inspection, production, impounding and return of documents or other material objects producible as evidence;
- (b) issue summonses to persons whose attendance is required either to give evidence or to produce documents or such other objects as aforesaid;
- (c) order any fact to be proved by affidavit.

⁴ Section 77 of Code of Civil Procedure, 1908 says, **Letter of Request:** In lieu of issuing a commission the Court may issue a letter of request to examine a witness residing at any place not within [India].

⁵ Section 284 says When attendance of witness may be dispensed with and commission issued-(1) Whenever, in the course of any inquiry, trial or other proceeding under this Code, it appears to a Court of Magistrate that the examination of a witness is necessary for the ends of justice, and that the attendance of such witness cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable, the Court or Magistrate may dispense with such attendance and may issue a commission for the examination of the witness in accordance with the provisions of this Chapter. Provided that where the examination of the President or the Vice-President of India or the Governor of a State or the Administrator of a Union Territory as a witness is necessary for the ends of justice, a commission shall be issued for the examination of such a witness.

(2) The court may, when issuing a commission for the examination of a witness for the prosecution direct that such amount as the court considers reasonable to meet the expenses of the accused including the pleader's fees, be paid by the prosecution.

⁶ See David Narkiewicz, Effective Use of Courtroom Technology, 26-APR PALAW 57.

Utility of Video Conferencing in taking evidence.

Video conferencing is a great tool that can be used to take evidences. It can be used in various situations. In the following cases, resort can be had to video conferencing for recording evidences:

1. In a case where the witness resides abroad and it is necessary to have his evidence, for the ends of justice.⁷
2. Video conferencing can be used in the cases where the witness is unable to attain the Court due to his health, therefore, in *M/s. ALCATEL India Limited & Anr. v. M/s. Koshika Telecom Limited & Ors.*⁸, the Court allowed the witness to give evidence through video conferencing as the witness was suffering from severe asthma.
3. It can also be used where the Court on facts and circumstances do not want the witness to personally attend the court and answer. It can happen in cases where the witness (victim) is a child who has been sexually exploited or in case if the child has suffered from unnatural offence against him. Thus, in a case of *Sheeba Abidi v. State & Anr.*⁹ An FIR was lodged against the perpetrator of unnatural offences against child aged 6 years and the child was suffering from Post Traumatic stress disorder , the High Court allowed the examination of the child through video conferencing.¹⁰
4. In the subordinate courts, the Judicial Officer needs to record evidence of the witness in presence of under-trial prisoners. On many occasions, criminal trials get adjourned for absence of the under trials in the Court for want of security escorts from jail resulting in unnecessary and avoidable adjournments. Here again, application of video conferencing facility, from the Court to the prison where the under trials are housed, will be able to take care of the problem. Video conferencing service will not help in avoiding unnecessary adjournments of cases but also save lot of money in transportation.¹¹
5. In cases, where the security of the accused or a witness so warrants, the Court without mandating the witness to come to the court to give the evidence may allow to give the evidence through the video conferencing.
6. In cases, where the situation so warrants.¹² Thus, as a general rule in case where the attendance of a witness cannot be procured without an amount of delay, expense or inconvenience the Court could consider issuing a commission to record the evidence by way of video conferencing.¹³

International Scenario

U.K

Under the English law, the giving of evidence through video conferencing is explicitly provided in the Statute.

In the United Kingdom, in the UK (FAMILY Division) Practice Direction: (2002)(1) WLR 406), procedure for video conferencing has been laid down by means of a Practice Direction.

Under the Civil Procedure Rules, Rule 32 (3) provides that “The Court may allow a witness to give evidence through a video link or by other means” and the Practice

⁷ See *State of Maharashtra v. Dr. Prafulla B. Desai* , 2003, Cri.L.J 2033. See *Alcatel India Limited v. Koshika Telecom Limited* , 2004 CLC 1582; *Tuncay Alankus v. The Central Bureau of Investigation, M.Neelalohithadasan Nadar v. State of Kerala*, 2005 (1) Ker LT 481 ; *Amitabh Bagchi v. Ena Bagchi*, AIR 2005 Cal 11.

⁸ See 2004 CLC 1582.

⁹ Decided by Del HC on October 30, 2004.

¹⁰ See , *Sakshi v. Union of India (UOI)*, AIR 2004 SC 3566.

¹¹ See, A.C.Upadhyay, *Information Technology and Its Impact on Judiciary*, <http://nagaonjudiciary.nic.in/articleacu.htm>.

¹² See, *Kalyan Chandra Sarkar v. Rajesh Ranjan alias Pappu Yadav*, 2005 Cri LJ 2033.

¹³ See, *State of Maharashtra v. Dr. Praful B.Desai*, 2003 Cri LJ 2033.

Direction- Written Evidence, Para 29.1 and the Annexure to it provide the mode how video conferencing can be utilized to give evidence.

Section 32¹⁴.of the Criminal Justice Act, 1988 provides for the taking of ‘evidence through television link’. Clause (1) of this sub-section states that

“(1) A person other than the accused may give evidence through a live television link in proceedings before Service Courts if –

(a) The witness is outside the United Kingdom ; or

(b) The witness is a child , or is to be cross-examined following the admission under Section 32 A below of a video recording of testimony from him, and the offence is one of which sub-section (2) below applies, but evidence may not be given without the leave of the Court”. Thus, video conferencing is allowed under the English law, provided that the statutory conditions are fulfilled. Herein, I would give the example of a case. The Queen on the Application of *H v. Thames Youth Court, the Crown Prosecution Service*¹⁵, and the Court allowed the use of video conferencing for the purpose of giving evidence where the case involved the giving of evidence by a sexually abused child.

Thus, in English Law, generally it is the discretion of the court to permit recording of evidence through video conferencing, provided that the condition laid down in the respective statutes is satisfied.

U.S.A

In America, the Courts have held that the video conferencing violates the confrontation clause set out in the VIIth Amendment to the US Constitution which provides in part, that “in all criminal prosecutions, the accused shall enjoy the right.... To be confronted with the witnesses against him.”¹⁶

The Confrontation Clause in the US Constitution read with Rules 10 and 43 of the Federal Rules of Criminal Procedure (FRCr.P) provides that the accused shall have a right to be confronted with the witnesses against him. In the case of *Valenzuela Gonzalez v. US DC of Arizona*¹⁷, the Court granted the accused’s petition for writ of mandamus to vacate the District Court’s order amending local rules to allow arraignments conducted by video-conferencing. The Court again in the case of *John Avery coy v. Iowa*¹⁸, did not allow the use of video conferencing in the trial holding it to be violative of VIth Amendment to the US Constitution.

Viseo Conferencing and the Indian law

Unlike US, UK, New Zealand and Singapore, the recording of evidence in a proceeding through video conferencing has nowhere been explicitly provided in statute in India. There is no express provision in Indian Evidence Act, I.P.C or Cr.P.C . So, does that mean through video conferencing evidence cannot be recorded under the Indian law? This would be the wrong conclusion after the recent Supreme Court case of *The State of Maharastra and P.C. Singh v. Dr. Praful B.Desai and anr.*¹⁹

State of Maharastra v. Dr. Praful B. Desai and the developments thereafter

¹⁴ This Section has been amended by Criminal Procedure and Investigations Act, 1996, whereby more powers have been vested in Courts in this regard.

¹⁵ See, 2002 WL 31422132.

¹⁶ See, U.S.C.A Const. Amend. 6

¹⁷ See, 915 F.2d 1276.

¹⁸ See, 487 US 1012.

¹⁹ See, 2003 Cri LJ 2033.

The question for consideration in this case was whether in a criminal trial, evidence can be recorded by video conferencing. It was submitted on behalf of respondents that Section 273, Criminal Procedure Code²⁰ does not provide for the taking of evidence by video conferencing. The term “presence” in Section 273 must be interpreted to mean physical presence in flesh and blood in open Court. The Hon’ble Court held that Section 273 provides for dispensation from personal attendance. In such cases evidence can be recorded in the presence of the pleader. The presence of the pleader is thus deemed to be presence of the accused. Thus, Section 273 contemplates constructive presence. This shows that actual physical presence is not a must. This indicates that the term “presence”, as used in this section is not used in the sense of actual physical presence. A plain reading of Section 273 does not support the restrictive meaning sought to be placed by the Respondent on the word “presence”. One must also take note of the definition of the term ‘Evidence’ as defined in the Indian Evidence Act. Evidence can be both oral and documentary and electronic records can be produced as evidence. This means that evidence, even in criminal matters can also be by way of electronic records. This would include video-conferencing. The Court further held that, “Recording of such evidence would be as per “procedure established by law”²¹ The Court in the Praful Desai case laid down the procedure to be followed when recording evidence through video conferencing. The accused should be permitted to cross-examine the witness. An officer would have to be deputed, either from India or from the Consulate /Embassy in the country where the evidence is being recorded who would remain present when the evidence is being recorded and who will ensure that there is no other person in the room where the witness is sitting whilst the evidence is being recorded. That officer will ensure that the Respondent is not prevented from bringing into the studio the papers/documents which may be required by him or his counsel. The concerned office will ensure that once video conferencing commences, as far as possible, though not necessary, that the witness be asked to give evidence in a room in the Consulate/Embassy . As the evidence is being recorded on commission that evidence will subsequently be read into Court. If it is found that the witness is not attending at the proper time, without sufficient cause, the deputed officer should inform the Magistrate trying the case in India and the Magistrate may disallow the video conferencing. if the officer finds that the witness is not answering the questions, the officer should take a memo to this effect. The Court should take this fact into considerations when determining the veracity of evidence. After this case in the case of *Sakshi v. Union of India*²², the Supreme Court relied on the aforementioned case in providing guidelines for protection to a victim of sexual abuse at the time of recording his statement in Court.

It is to be seen that till no guidelines for video conferencing were laid down. In the case of *Amitabh Bagchi v. Ena Bagchi*²³, the Calcutta High Court was called upon to decide whether in a matrimonial disputes case, where both Husband and wife reside outside the country and it is not feasible for them to come to India to give evidence , can they give evidence through use of video conferencing . In allowing the use of video conferencing (if justified upon merits), the Court also gave the safeguards which are to be taken care of for purpose of recording evidence through Audio-Video link. The Court further held that the amendment to the Indian Evidence Act (with effect from 17th October, 2000) makes the electronic records admissible and “Therefore there is no bar of examination of witness by way of Video conferencing being essential part of electronic method.”²⁴ After, the case of Praful Desai, the Courts have in

²⁰ **Section 273 of Cr.P.C** says , Evidence to be taken in the presence of the accused-Except as otherwise expressly provided all evidence taken in the course of the other proceeding shall be taken in the presence of the accused or, when his personal attendance is dispensed with, in the presence of his pleader

²¹ Id at para 19.

²² See, AIR 2004 SC 3566,

²³ See, AIR 2005 Cal 11.

²⁴ Id at para 8

number of cases allowed the use of video conferencing. And in *Pappu Yadav's case*²⁵, the Supreme Court, ordered that the accused may be shifted to a jail outside Bihar and the trial in Patna, might be held through video conferencing thus, the Court is using this in mind the Supreme Court in the case of *Som Prakash v. State of Delhi*²⁶ rightly observed that “in our technological age nothing cruder can retard forensic efficiency than swearing by traditional oral evidence only thereby discouraging the liberal use of scientific aids to prove guilt. “ Statutory changes are needed to develop more fully a problem solving approach to criminal trials and to deal with heavy workload on the investigators and judges. One example of such kind of change is the introduction of the concept of Video Conferencing in Indian Criminal Justice. The concept as a tool has been utilized in two ways i.e. firstly for taking evidences in special circumstances and secondly for producing the under trials before the Court for the purposes of extension remand or otherwise from the prison itself. In India also the courts have applied a purposive interpretation to allow video conferencing.

Technology as a tool.

The need for face-to-face communication without the expenses and dangers of transporting inmates.

In March 2003, the Government of Andhra Pradesh was the first Indian state to introduce electronic pretrial's (E-pre trials), whereby criminals alleged is tried in prison using video conferencing, rather than physically appearing in a court of law. Easy to use and manage system allows judges, legal professionals, court officials, inmates and witnesses to seamlessly communicate face to face in real time as effectively as if they were in the same room. AP Prisons Department's advanced Prisons and Courts Network ensures the integrity of the pretrial process is maintained, while mitigating many of the risks and costs associated with transporting prisoners to and from court.

Benefits derived.

The introduction of video conferencing solution has eliminated the need for alleged offenders to physically appear in court to stand for pretrial, leading to a considerably safer and more cost-effective and efficient Criminal Justice system in Andhra Pradesh. Video networking brings the courtroom to the inmate, instead of the other way around, by providing video conferencing equipment to prisoners and their attorneys. By keeping jailed suspects behind bars, e-pre trials eliminate the security risks associated with moving suspects from detention facilities to the courts- preventing smuggling of contraband as well as unauthorized communications.

By not transporting inmates to trial, AP Prisons Department has saved tangible time and AP Police has saved costs, allowing the department to make more efficient use of the courts and the officers' time.

About the Department of Prisons and Correctional services in Andhra Pradesh.

“Our judges, court officials and prison personnel have been very satisfied with video conferencing system. It is an efficient, cost effective and safe way to conduct pretrial proceedings, without having to transport prisoners from jail to the courts and back. Our state-of-the-art Prisons and Courts Network is India's first of such kind, enabling us to hold E-pre trials and bring more efficiency and transparency to the justice system.”²⁷

²⁵ See, *Kalyan Chandra Sarkar v. Rajesh Ranjan @Pappu Yadav and Anr.* 2005 Cri LJ 1441 (SC)

²⁶ See, 1974 Cri.LJ 784.

²⁷ Director General & Inspector General of Prisons and Correctional Services , Andhra Pradesh Department of Prisons and Correctional Services.

Another major problem is about safety of witnesses and their family members who face danger at different stages. They are often threatened and the seriousness of the threat depends upon the type of the case and the background of the accused and his family. Many times crucial witnesses are threatened or injured prior to their testifying in the court. If the witness is still not amenable he may even be murdered. In such situations the witness is still not come forward to give evidence unless he is assured of protection or is guaranteed anonymity of some form of physical disguise.

Conclusion and Suggestions

To conclude , we will have more litigation in future when those sections of the society , who have remained oppressed and unaware of their rights, become more aware of their rights due to spread of legal literacy, and increased awareness equipped by effective legal aid and advice. While laying stress on the urgent need of elimination of delay and reduction of backlogs, we cannot afford to act in undue haste so as to substitute one evil for another one. Stress on speed alone at the cost of substantial justice may impair the faith and confidence of the people in the system and cause greater harm than the one caused by delay in disposal of cases. It is not to say that law needs to progress in all manners with science and technology. Video conferencing is much needed since it saves the time of the court and also of under trials and ultimately helps in administration of justice. The advent of the concept will enable recording of evidence and do away with the risk in moving the high-risk prisoners who face trial in different Courts across the country. This will also enable recording of evidence of experts and also witnesses who reside abroad without it the enormous cost of bringing them to the trial Court. It is the need of the complexities of the modern times that the law also keeps on amending with the pace of the technology. The concept of video conferencing would definitely be a boon for justice as it would help judges to be correct as possible and understand the case with the help of all video recordings. These innovative methods of linking prison and Court through video linkage will ensure speedy trial and remove the hardships of the under trials. It should also be kept in mind that if the law Courts do not permit technology development in the court proceedings it would be lagging behind compared to other sectors. Unlike US, in India there is no express constitutionally protected right to confront the witnesses. Section 273 of the Cr.P.C , however, does provides that all the evidence shall be taken in the presence of the accused. Where the personal presence of the accused has been dispensed with, the lawyer of the accused must be present when the evidence of prosecution witnesses is taken. Non- compliance of this requirement vitiates the trial. The Supreme Court in the case of *State of Maharastra v. Praful B.Desai*²⁸, while recognizing this fact paved the way for recording of evidence through video conferencing. This case has really marked a progressive development in the legal history of India. This would certainly reap benefits. The Supreme Court has though laid down the procedure to be followed in case of recording of evidence through video conferencing; the court has not identified the situations in which this method might be adopted. The situations in which it might be used have been identified earlier, however, in the absence of a clear dicta and any statute to this effect, the position that when it might be used for recording of evidence remains uncertain. Though the Law Commission of India, in its 185th report have suggested that the time has yet not come to make law on this aspect, yet in light of the aforementioned observations, it is strongly suggested that the parliament may make a law to clearly define the scope for the use of video conferencing. At the same time it is to be kept in mind that, similar to UK law , the Court should have the final power to decide to have resort to this mode , even after all the statutory requirements are fulfilled which would depend upon case to case situation.

²⁸ See, 2003 Cri LJ 2033.

I will conclude by referring to the observation made by Justice Warren Burger, former Chief Justice of American Supreme Court observed in the American context:

“.....The notion that ordinary people want black-robed judges, well dressed lawyers, and fine paneled courtrooms as the setting to resolve their disputes, is not correct. People with legal problems like people with pain, want relief and they want it as quickly and inexpensively, as possible.”

