



Research Article

VIDEO-CONFERENCING IN COURTS IN INDIA: AN EMERGING TREND

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ABSTRACT

Video-conferencing is an advancement in science and technology which permits one to see, hear and talk with someone far away, with the same facility and ease as if he is present before you that is, in your presence. It has nothing to do with virtual reality. It would permit witness to adduce evidence without being physically present in the Court. It will allow the court to record the statement of a witness important to the trial that is unable to appear in the court thus being invaluable to the criminal trial. Thus video-conferencing permits virtual interfacing of a judge with witnesses, holding of conferences, production of under-trial prisoners etc. The facility could be installed in prisons, court premises or in the judge's office. The judge would be able to interact with prisoners. This would definitely save a lot of time and resources, which would have been involved in the physical transportation of prisoners from jail to the court. The policemen and the other concerned authorities could also be spared so that they can utilize their time in other official tasks. The displaying of the evidence in case of video conferencing has been accepted as a valid mean of submitting evidence. However this process is used only in remand cases and not in case of trial. Video conferencing is a step towards disposal of long pendency of cases in the courts. Thus it must be initiated from lower to higher court level.

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INTRODUCTION

Technology is slowly engineering a metamorphosis of justice system in India. Rather than finding in a box, the accused, witness or any other person concerned with the case can now be present in court via-a-video link. The courtroom and a special cell in a distant prison are both fitted with tele- screens and cameras that allow the prosecutors to examine the accused and the accused in turn, to defend himself without there being any physical proximity between the two. A technology that was until recently being used widely to hook up a web cam in one corner of the globe with another is now fostering the on coming of what is being referred to as tele- justice system video- conferencing is here to stay.

Concept of Video-Conferencing

Video-conferencing is an advancement in science and technology which permits one to see, hear and talk with someone far away, with the same facility and ease as if he is present before you that is, in your presence. It has nothing to do with virtual reality. It would permit witness to adduce evidence without being physically present in the Court. It will allow the court to record the statement of a witness important to the trial that is unable to appear in the court thus being invaluable to the criminal trial.

Video-conferencing permits virtual interfacing of a judge with witnesses, holding of conferences, production of under-trial prisoners etc. The facility could be installed in prisons, court premises or in the judge's office. The judge would be able to interact with prisoners. This would definitely save a lot of time and resources, which would have been involved in the physical transportation of prisoners from jail to the court. The policemen and the other concerned authorities could also be spared so that they can utilize their time in other official tasks.

Video-Conferencing and Recording of Evidence in Courts

Court may allow evidence to be taken using video-conferencing facilities. Taking evidence by this means is comparatively straight forward. Its efficacy may, however, depend on the type of witnesses, the nature of the case and the volume and nature of documents which need to be referred to in the course of evidence. Guidelines can be provided for detailing the manner in which video-conferencing facilities may be used in the Court proceedings. If all the parties to the proceeding agree to the use of video-conferencing, then a hearing should be obtained as early as possible in the proceedings. Then such a hearing does not need permission for using video-conferencing facility. The arrangement for video-conferencing is to be made in court rooms designed for this purpose. Apart from the court rooms in which video-conferencing arrangement is made available, arrangement to be made also in the bar associations, legal aid centres, jails, offices of government lawyers etc. for providing the facility of

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convenient mode of hearing appellate in conjunction with electronic appeal book.

When hearing involves the presentation of documents, electronic record of documentary evidence will make it possible to show the relevant document on screen, enlarge it, or highlight some portions with convenience to judges, lawyers, litigants and witnesses, of dealing with the documentary evidence in a way that simply was not available before the advent of the technology. The evidence of expert witnesses like doctors, scientist and engineers, considered to be dispassionate, professional opinion and their testimony could be conveniently received via live video link. Even for the witnesses of fact, it would afford effective means of assessing their demeanour and testimony, with the possibility of viewing the images again by action replays when needed, since the testimony is captured live as against its mere being cast on paper. The possibility of seeing magnified images aided by textual material drawn from the computerized transcripts and incorporation of techniques of electronic confirmation of identity by face scans, fingerprints or DNA prints will make live video- conferencing link an important and indispensable tool to access the evidentiary value of testimony so recorded at trials.

Video-Conferencing as a Linkage between Prisons and Courts for the Under Trial Prisoners

One of the major problems faced by under trial prisoners is the never ending delay in the commencement and conclusion of their trial. There are many reasons like court and jails are over burdened with cases and prisoners, respectively. For example, on an average, a Metropolitan Magistrate in Delhi has to deal with about 70 Cases in a day and jail staff in Tihar jail sends nearly 1200 prisoners to the different courts in Delhi. Due to a shortage in the number of escort vehicles and police personnel all over the country, many prisoners all not produced in their respective courts either on time or on their due date. But through the Integrated Service Digital Network (ISDN) Technology, courts and prisons can now be connected through a separate room in prison complex, where all the prisoners who have to be produced in a particular court on that particular date, are assembled. Simultaneously, another video set is to be put up in the chamber of presiding magistrate. At the appointed time, the magistrate enters his Chamber and the prisoners can be produced before the video camera, one by one. Thus, if the matter is concerning a simple extension of the remand of the prisoner, this can be done instantly and next date for production can be assigned. For this simple act, the prisoners need not be transported all the way up to the Court, nor mobilize all the financial and manpower resources. At the same time, the magistrate and the prisons can talk to each other, face to face and the magistrate can personally enquire whether the person has field his bail application or not, find out his period of stay in jail, details of crime he is alleged to have committed and other personal details. Where the magistrate feels that it is a deserving case, he can release the prisoner on bail too. This technology can further be tested and improvised to conduct full fledged trial from prisons itself.

Benefit of This Scheme

It can have following benefits

1. All the prisoners can be produced on a timely basis.

2. It obviates the need to need to produce remand prisoners in courts. The extension of remand can place electronically from the prison itself.
3. There is a reduction in the number of adjournments, which is often the result of an accused not being present at all or on time at the hearing.
4. It opens the possibility of digitizing documents and court records thereby systematizing, simplifying and speeding up the whole process.
5. Speedy trial of cases can be ensured due to the time saved in the whole process.
6. An early trial can help check the overcrowding of jails.
7. Speedier adjudication can also check the contamination of first time offenders into becoming full-fledged criminals.
8. Magistrate can personally observe the prisoners and interact with them directly instead of mechanically signing the extension of remand papers forwarded by the court staff and escorting police personnel.
9. Prisoners do not have to wear shackles during the journey to and from courts, to prevent them from escaping.
10. Police do not have to worry about sparing men who are already in short supply, to escort the under trials to courts or to worry about prisoners trying to escape during transit.
11. Safety and security of the prisoners transported to and from courts will vastly improve since it will minimize the interaction and fights between warring gangs in jail vans during transportation and court lock-ups.
12. Prisoners will be relieved of repetitive periodical strains, which they are subjected to while being taken to courts just for the sake of extending their judicial remands.
13. The menace of smuggling in prohibited/contraband articles like drugs, currencies, weapons, and telecom equipments etc. will be contained because of reduced visits of prisoners to the outside world till they are released on bail or discharged or acquitted.
14. It saves a lot of financial and manpower resources.

Thus through the help of this video- link a case in the Supreme Court, where the accused is perhaps in a prison in the North Eastern corner of our country, rather than traveling all the way to Delhi, can now be tried from his location via link. Tihar jail in Delhi is already employing this technology and the state governments of Andhra Pradesh, Karnataka, Tamilnadu, Uttar Pradesh, Madhya Pradesh and Maharastra have also taken the first pioneering steps. Around 40 jails in and around Bombay have been connected to district- level courts via this technology. Video- conferencing for the time being is only being used but only is cases of remand and not full- fledged trials. Thus more and more use of this facility can be made even in other district level courts which have yet not taken the initiative along with the use of this video-link in full-fledged trials as it has advantages of achieving the required justice with more speed, less time and expenditure, with security, without any harassment etc.

Issuance of Commission and Video-Conferencing

Section 284 and 285 of the *Criminal Procedure Code, 1973* provides for the issuance of a commission to take the evidence

of a witness who cannot be present in court. But there are certain impediments in the process of commission.

1. A commission cannot be issued to examine a witness in a foreign country with which India does not have a reciprocal arrangement.
2. Commission is rarely resorted to because the prosecution would have to bear huge cost for the accused and his pleader to attend the examination of the witness in a foreign country, if the witness is a prosecution witness.
3. Commissions are generally not issued for important witnesses as the rule of prudence is to examine such witnesses in the court, commissions are limited to formal witnesses.

A commission is issued to and recorded in the country where the witness is present, whereas, video-conferencing could be done in the court itself or at a studio in the same city. In such a case, the court would be issuing commission, to record evidence by video-conferencing to the Chief Metropolitan Magistrate. The magistrate would then depute a responsible officer to proceed to the video-conferencing studio and record the evidence in the presence of the respondent and his council. The officer shall ensure that the respondent is able to observe the demeanour and disposition of the witness and has full opportunity to cross-examine. Such a procedure may not be possible if the witness is out of India a procedure may not be possible if the witness is out of India and is not willing to give evidence. Further, the cost of video-conferencing would not be as prohibitive as the costs of commission to foreign countries to be borne by state in case of prosecution. Thus, if video-conferencing were permissible, these difficulties with commissions could be avoided.

Video-Conferencing and its Present Status in Different Areas

Video-conferencing is perhaps the best alternative to a face to face meeting, in the political system, be it legislature, executive or judiciary. The way the government function is changing dynamically, it can be proved as a big alternative.

The National Informatics Centre (NIC) is a big user of video-conferencing. The organization offers video-conferencing services in 206 India cities over its high speed satellite network called NICNET, the H. 320 standard-compliant NIC studio. Video-conference brings people and information together in a conference room. Using NIC's multipoint connectivity, up to five sites can communicate with each other in a continuous presence mode where each site can see the remaining four sites all the time on different areas of monitor screen.

Video-Conferencing and Government Official

Organizer of NIC unit Mumbai says that the organization also has anywhere, anytime video conferencing services which use portable VSAT technology. It is now available of all NIC users and is ideal for temporary conferencing services of all types of conferences, exhibitions. In Maharashtra, the video-conferencing set up is provided at the Chief Minister and Chief Secretary office, headquarters of state government. Internet and video conferencing support is also provided to VVIP Camp office at Mumbai and it has even been used by President A.P.J. Abdul Kalam. The facility is also provided at all the district control rooms, they now have direct connectivity to Mantralaya 36 district collectors and six divisional commissioner officers are already using this facility.

Chief Minister of Himachal Pradesh has also inaugurated the video-conferencing facility set up by NIC. Himachal Pradesh becomes the fourth state in the country to avail facility after Madhya Pradesh, Chattisgarh and Uttarchanal. It is ensured that all the secretaries and heads of department, district level officers, regularly make use of this facility ministers and senior officers could even interact with the citizens directly, using video-conferencing. Thus video-conferencing facility is being used at different governmental department. They are taking full advantage of this facility so initiative can also be made to enhance the area of this facility to the courts.

Video-Conferencing Facility in Courts

Video-conferencing facility can also be used in the courts itself by chief justice and other judges. It is mainly used to interact with judges of the High Court bench at Aurangabad and Nagpur. This is done by providing point-to-point ISDN lines from Mumbai to the two cities. Video-conferencing is also used regularly between the Mazgaon Court and Arthur Road jail in Mumbai. The city Civil Court and Esplanade Court also use video-conferencing for trials. Even district Courts such as Thane District and Session Court and Taluka Courts, now use video-conferencing facilities. City civil courts computerization project of Kerala is also inaugurated by K.S Radha Krishnan at District Court, Trivandrum. In continuation with the implementation of District Court Information System Package, a multipoint video-conferencing session was also conducted between NIC units in Thiruvananthapuram, Kochi.

Attitude of Court towards Video-Conferencing Facility

The attitude of court towards video-conferencing facility is quite positive. According to the opinion of the Supreme Court which is Apex Court is that recording of evidence by video-conferencing in presence of accused is valid. The court in the judgment held video-conferencing valid. The operative part of the judgment can be real as under:

Virtual reality is a state where one is made to feel, hear or imagine what does not really exist. In virtual reality one can be made to feel cold when one is sitting in a hot room, one can be made to hear the sound of ocean when one is sitting in the mountains, one can be made to imagine that he is taking part in a grand prix race whilst one is relaxing on one's sofa etc. video-conferencing has nothing to do with virtual reality. Video-conferencing is an advancement which permits one to see, hear and talk with some one far away, with the same facility and ease as if he is present before you. Infact he/she is present before and observes as if the party is in the same room. In video-conferencing both parties are presence of each other. The court accepted the contention of prosecution that it is clear that so long as the accused or his pleader are present when evidence is recorded by video-conferencing that evidence is being recorded in the presence of the accused and would thus fully meet the requirements of Section 273, *Criminal Procedure Code*, 1973. Recording of such evidence would be as per procedure established by law. Recording of Evidence by video-conferencing also satisfies the object of providing, in Section 273, that evidence be recorded in presence of the accused. The accused and his pleader can see the witness as clearly as if the witness was actually sitting before them. Infact the accused may be able to see the witness better than he may have been able to if he was sitting in the dock in a crowded courtroom. They can hear and rehear the deposition of the

witness. The accused would be able to instruct his pleader immediately and thus cross-examination of the witness is as effective, if not better. The facility of playback would give an added advantage while cross-examining the witness. The witness can be confronted with documents or other material or statement in the same manner as if he/she was in court. All these objects would be fully met when evidence is recorded by video-conferencing. Thus no prejudice, of whatsoever nature, is caused to the accused.

The court also rejected the contention of respondent that video-conferencing violates the *Sixth Amendment* (confrontation clause) of American Constitution. The court cited that in case of *Maryl and USA Cray*, the Supreme Court of America has held that recording of evidence by video conferencing was not violative of Sixth Amendment.

Thus the Supreme Court fortunately in *Praful Desai* case adopted an updating and purposive interpretation of the Cr.P.C and allowed video-conferencing for recording the important evidence of an important witness who is in USA and is unable to come to India to submit his testimony due to old age and poor health in a criminal trial and permitted video-conferencing. The court held that video-conferencing is in conformity with the requirements of Section 273 of Cr.P.C and is a procedure established by law mandatory for saving the fundamental rights of an accused under Article 14 and 21 of the constitution.

International Scenario of Use of Video-Conferencing in the Court

Video-conferencing is increasingly been used extensively in foreign countries as it provides a convenient and economic means of communication between persons indifferent location, especially for testimony of vulnerable witnesses, bail video link, remote chamber hearings, remote hearings and consultation, remote interpretation services, international co-mediation etc. The Singapore Courts are amongst the frontrunners of technologically advanced courts. The district courts there, have found video-conferencing to be a most versatile and productive technology. The video-conferencing applications include bail applications by arraigned persons, evidence of vulnerable witnesses, remote interpretation services, virtual hearings and consultations for small claim matters, family violence applications from remote sites, referral of cases to external agencies, International co-mediation for the Court Dispute Resolution International (CDRI) regime, applications by lawyers from their offices to magistrates and distance learning programme for judicial officers and court administrators. The district courts in Singapore are the heaviest users of video-conferencing enhanced video-conferencing infrastructure is also implemented to serve all courtrooms and chambers. The use of video-link has been so enhanced in the foreign countries that recently Judge Valerie Pearlman at Southwark Crown Court, South London, who was hospitalized due to a broken leg concluded a criminal trial over the Internet right from her hospital bed and created legal history by directing the jury from a distance of 60 miles via a video link.

Another instance of use of video-conferencing can be depicted by referring to a mock trial which took place in America and reflects the court room of the future complete with two-way remote testimony, three-dimensional images of evidence and automatic speech transcription. From a College in England, a

barrister questions his star witness, an aging green-haired hippie whose answers are beamed across the globe from Australia. Jurors murmur with surprise as prosecutors recreate an in-flight jet collision with life like digital animation, and a judge supervises it all from Virginia, at times talking in a camera that transmits his image to the prosecutor across the ocean, watching on a monitor. The fake case involved a terrorist bomb attack abroad a US military plane, which then collided in the air with a civilian airlines. Courtroom experience was named as courtroom 21. It is ringed with flat plasma television screens including one behind the witness stand and one at the prosecutor's desk and smaller LCD monitors are installed on every desktop. Several camera domes hang from the ceiling to record and project every move and every document and piece of evidence can be digitally projected on monitors for the jurors and audience in room or on the other side of the world. The crucial evidence of trial, a photo realistic animation held the courtroom stunned by its authenticity. The video depicted a US Air force cargo plane and passenger jet flying over London, both dodging violent weather and moving with in several hundred feet of each other. Suddenly, a small bomb on military plane explodes, hurtling the disabled aircraft into the civilian air lines causing a catastrophic collision that rains debris over downtown London.

CONCLUSION

Thus, this experience shows that up to what extent, the use of video-conferencing can be made possible in a trial. Thus a virtual courtroom is one which need not exist anywhere but electronically. Using internet technology a courtroom can be configured without requiring parties to spend a fortune on additional hardware and software. In United States, Courtroom 21, The Courtroom of 21st century today located at college of William and Mary Law school, is arguably the would most technologically advanced trial and appellate court room. The Singapore Supreme Court has also successful set up a virtual courtroom known as the technology court which has a Local Area Network (LAN) with an internet connection and which allows the use of imaging, multimedia and video-conferencing.

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