

# Use of Video Conferencing; Interference of Technology in Justice Administration

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A video conference is a set of interactive telecommunication technologies which allow two or more locations to interact via two way video and audio transmission simultaneously. It has also been called visual collaboration and is a type of groupware<sup>1</sup>. It was only in the 1980s that digital telephony transmission networks became possible, such as ISDN, assuring minimum bite rate (usually 128 kilobit/s0 for compressed video and audio transmission. The first dedicated system, such as those manufactured by pioneering VTC firms, like Picture Tel, started to appear in the world. Video teleconference system throughout the 1990s rapidly evolved from highly expensive proprietary equipment, software and network requirements to the general public at a reasonable cost<sup>2</sup>. Finally, in the 1990s IP 9internet protocol) based video conferencing became possible, and more efficient video compression technologies were developed, permitted desktop, or personal computer based video conferencing. In 1992 CU-See Me was developed at Cornell by Tim Dorcey et al., IVS was designated at INRIA, VTC arrived to the masses and free services, web plugins and software, such as Net Meeting,MSN Messenger, Yahoo Messenger, Sight Speed ,Skype and other brought cheap, albeit low-quality,VTC.

The core technology used in a videoconferencing system is digital compression of audio and video streams in real time. The hardware or software that performs compression is called a codec (coder/decoder).This device converts analog signal into digital signal and again converts it to analog signal for use in remote areas<sup>3</sup>.

The other components required for a videoconferencing system include:

- **Video input:** video camera or webcam
- **Video output:** computer monitor, television or projector
- **Audio input:** microphones, CD/DVD player, cassette player, or any other source of PreAmp audio outlet.

<sup>1</sup> Fabio Giacomini and Mohd. Hasan Zaidi, *Electronic Evidence* (Lucknow: Alia Law Agency.), 107.

<sup>2</sup> Ibid.

<sup>3</sup> Id. at 108.

- **Audio output:** usually loudspeakers associated with the display device or telephone
- **Data transfer:** analog or digital telephone network, LAN or Internet
- **Computer:** a data processing unit that ties together the other components, does the compressing and decompressing, and initiates and maintains the data linkage via the network.

There are many kinds of video conferencing;

1. **Dedicated system;** This system has all required component packaged into a single piece of equipment, usually a console with a high quality remote controlled video camera.
2. **Desktop system;** Desktop videoconferencing systems bring video communications into your personal workspace. This technology can deliver full-motion videoconferencing from your PC. Desktop systems have been engineered to accommodate the industry's requirements for standards-based videoconferencing.

### 3. **Set-top Videoconferencing**

Set-tops are complete videoconferencing systems designed to sit on a monitor. They are useful in small boardrooms and other small group scenarios. Set-top systems are often maintained on a cart, making it possible to roll them around for use in different rooms.

In Indian courts evidence is recorded under the provisions of Indian evidence act, 1872 under sections 230 to 234 and 284 of Cr.P.C, 1973. Besides this there are several other minor provisions dealing with recording of evidence under Cr.P.C. including some other minor Acts. In civil proceedings order 18 rule 4(3) is applicable for taking assistance of videoconferencing. In general Indian Penal Code, 1860, Indian Evidence Act, 1872, Code Of Criminal Procedure, 1973 with Information Technology Act, 2000 is applicable on video conferencing. 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 thereby eliminating need for their physical presence before the magistrate<sup>4</sup>.

In criminal case video conferencing can be used in jury trial, remand cases, hearing of bail application, initial appearance and where it is fatal to take the accused out of jail etc.

In 2003 our apex court had approved examination of witnesses in criminal case through video conferencing in case **State Of Maharashtra V Dr. Praful B.Desai**<sup>5</sup> by saying 'Thus it is clear that so long as the Accused and/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. Recording of such evidence would be as per "procedure established by law". Court further says 'Recording of evidence by video conferencing also satisfies the object of providing, in

<sup>4</sup> Fabio Giacomini and Mohd. Hasan Zaidi, Electronic Evidence (Lucknow:Alia Law Agency),30.

<sup>5</sup> 2003(2) ALT (Cr.L.J.) 118(SC)

Section 273, that evidence be recorded in the presence of the Accused. The Accused and his pleader can see the witness as clearly as if the witness was actually sitting before them. In fact 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 Court room. They can observe his or her demeanour. In fact the facility to play back would enable better observation of demeanour. 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 play back would give an added advantage whilst 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. Of course, as set out hereinafter, evidence by video conferencing has to be on some conditions”.

In case **Badala Murali Krishna V Smt. Bodala Prathima**<sup>6</sup> Andhra Pradesh High Court held that ‘The amendments carried to the Evidence Act by introduction of Section 65A and B are in relation to the electronic record. Sections 67A and 73A were introduced as regards proof and verification of digital signatures. As regards presumption to be drawn about such records, Sections 85A, 85B, 85C, 88A and 90A were added. These provisions are referred only to demonstrate that the emphasis, at present, is to recognize the electronic records and digital signatures, as admissible pieces of evidence. It is no doubt true that the recording of evidence through the process of video conferencing is not specifically referred to in these provisions.’

Court further held that ‘When such is the facility accorded in criminal cases, there should not be any plausible objection for adopting the same procedure, in civil cases as long as the necessary facilities, with assured accuracy exist’.

**In** In Twentieth Century Fox Film Corporation v. NRI Film Production Associates (P) Ltd<sup>7</sup> case court held that sufficient safeguards have to be provided for the purpose of recording evidence through Audio Video I Link. Court also given some safe guards in this case which are;

- Before a witness is examined in terms of the Audio-Video Link, witness is to file an affidavit or an undertaking duly verified before a notary or a Judge that the person who is shown as the witness is the same person as who is going to depose on the screen. A copy is to be made available to the other side.
- The person who examines the witness on the screen is also to file an affidavit/undertaking before examining the witness with a copy to the other side with regard to identification.

<sup>6</sup> 2007 (2)ALD72,2007

<sup>7</sup> AIR 2003 Kant. 148

- The witness has to be examined during working hours of Indian Courts. Oath is to be administered through the media.
- The witness should not plead any inconvenience on account of time different between India and USA.
- Before examination of the witness, a set of plaint, written statement and other documents must be sent to the witness so that the witness has acquaintance with the documents and an acknowledgement is to be filed before the Court in this regard.
- Learned Judge is to record such remarks as is material regarding the demur of the witness while on the screen.
- Learned Judge must note the objections raised during recording of witness and to decide the same at the time of arguments.
- After recording the evidence, the same is to be sent to the witness and his signature is to be obtained in the presence of a Notary Public and thereafter it forms part of the record of the suit proceedings.
- The visual is to be recorded and the record would be at both ends. The witness also is to be alone at the time of visual conference and notary is to certificate to this effect.
- The learned Judge may also impose such other conditions as are necessary in a given set of facts.
- The expenses and the arrangements are to be borne by the applicant who wants this facility.
- In these circumstances, this revision is allowed. The order of the learned Judge is set aside..

In **Kalyan Chand V Rajesh Ranjan @ Pappu Yadav**<sup>8</sup> case our apex court has ordered that accused be shifted to jail outside Bihar and trial may take place through video conferencing.

In civil matters O.18 R.4 (3) of Code Of Civil Procedure Code permits recording of evidence by writing or mechanically in presence of judge.

**Amitabh Bagchi V Ena Bagchi**<sup>9</sup> case Calcutta High court held that video conferencing is admissible as evidence. In this case court permitted to give evidence through video conferencing.

This technology is being increasingly used in many types of matters. Lawyers can argue or address court without going to court. It is time of money and power. Witnesses had been killed in past years in various cases.

**Abdul Karim Telgi case** was the first case in which entire trial was conducted through videoconferencing. It is surprising fact that on no occasion Telgi was physically produced before court due to his health and

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<sup>8</sup> 2005 Cr,L,J. 1441(SC)

<sup>9</sup> AIR 2005 Call.11

security reasons.

Law Commission of India in its 185<sup>th</sup> report has said that the time is not ripe for such legislation. In a bill presented before rajyasabha it had been proposed that magistrate may extend detention of an accused in judicial custody through the medium of electronic video linkages except for the first time where the production of the accused in person is required<sup>10</sup>. Views of Members/witnesses was as under;

- Person in judicial custody during video conferencing cannot explain whatever he wants to say had he appeared before the judge;
- Recording of statement through audio/video electronic means can be misused;
- The provision of video linkages should not be implemented unless a foolproof system is in place to ensure that the statement by the witness is made voluntary; and
- An advocate will become a witness if he remains present during Video Conferencing. Then he cannot appear as an advocate. Hence, the amendment is totally opposed.

Law Commission and National Human Rights Commission both has supported that victim (rape of child) be recorded by video conferencing. Video conferencing is a very good tool in justice administration for saving time and transportation charges including preventing other inconveniences, for example an expert can give his services without going to court which will save time as well as money. Judges can sit at two different places and even then can form a bench and decided case<sup>11</sup>. It may also helpful in protecting witnesses which is recommended in 154<sup>th</sup> Report of the Law Commission 1996. Videoconferencing may be a tool of speedy trial and speedy justice guaranteed under Article-21 of The Indian Constitution. Videoconferencing trial should be promoted as it can be an instrument of speedy justice. In present there is no law regarding videoconferencing in India. Although our courts have permitted videoconferencing in some matters but a specific law should be enacted because it is necessity of time.

<sup>10</sup> [http://rajasabha.nic.in/book2/reports/home\\_aff/128threport.htm](http://rajasabha.nic.in/book2/reports/home_aff/128threport.htm) (12 of 24)9/6/2007 2:02:28 PM

<sup>11</sup> Martin E.Gruen Tom Welter; "Courtroom Audio, Video and Video Conferencing" quoted in, Fabio Giacomini and Mohd. Hasan Zaidi; Electronic Evidence (Lucknow:Alia Law Agency),42.