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Justice at a Distance: Exploring and Evaluating the Use and Effectiveness of Video Conferencing Technology in Criminal Court Proceedings with Potential Use Under Section 273 of The Code of Criminal Procedure, 1973

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ABSTRACT

Presently, there exist no provisions concerning the employment of video conferencing technology within criminal trial proceedings related to the taking of evidence in the presence of the accused as stipulated under section 273 of the Code of Criminal Procedure, 1973. The present paper seeks to discern the use of video conferencing technology and analyze its efficacy as regards its possible usage within the aforementioned trial proceedings as stipulated under the said section 273.

In this regard, the paper begins with a brief introduction to the notion of video conferencing and the presently available technologies to facilitate the same. This is followed by an inquiry into the genesis and evolution of the general use of video conferencing by Indian Courts in light of the prevailing circumstances existing at the time to effectuate a better understanding of the historical usage of the technology, leading up to the contemporary times. Subsequently, the current legal framework related to the use of video conferencing technologies in judicial proceedings is discussed in light of related judicial precedents and state amendments made to the said section. Thereafter, the penultimate segment of the paper details an analysis regarding the potential benefits and pitfalls that may emerge if video conferencing is adopted as a medium under section 273 by way of a legislative amendment to said section. The final segment suggests reformative measures which may be incorporated for the purposes of enhancing the functionality of the process under section 273 so as to render it more equitable and effective.

Keywords: *Video conferencing technology, section 273 of the Code of Criminal Procedure, judicial precedents, state amendments, reformative measures.*

I. INTRODUCTION

The advancement of technology has brought about an unprecedented transformation in the way

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we communicate and collaborate with each other, none more so apparent and simultaneously revolutionary, as video conferencing. Video conferencing is a form of telecommunication that enables individuals or groups to conduct virtual meetings through the use of audio and video transmission.² It has become a crucial tool for businesses, educational institutions, healthcare providers, and other organizations to facilitate remote communication and collaboration.³

Presently, there are several technologies available that can facilitate video conferencing. One of the most popular options is web-based video conferencing platforms, such as Zoom, Microsoft Teams, and Google Meet, that can be accessed through web browsers or mobile applications. These platforms offer a range of features, including screen sharing, virtual backgrounds, and recording capabilities, to enhance the video conferencing experience.⁴

Another option is dedicated video conferencing systems, which include hardware components such as cameras, microphones, and displays, specifically designed for video conferencing. These systems provide high-quality audio and video transmission and are ideal for public activities.⁵

Furthermore, cloud-based video conferencing solutions are gaining popularity due to their flexibility and scalability. These solutions allow users to access video conferencing services through the cloud, eliminating the need for expensive hardware and software installations.⁶

Therefore, video conferencing has established itself as a pertinent and essential tool for remote communication and collaboration in the digital age, especially so, in the wake of the COVID-19 pandemic which saw large chunks of the earning population work remotely. Now with the availability of various technologies, individuals and organizations have a range of options to choose from to facilitate their video conferencing needs which lead to the rapid adoption of the same throughout the world.

II. USAGE OF VIDEO CONFERENCING BY INDIAN COURTS: GENESIS AND EVOLUTION

The advent of video conferencing technology in India was a watershed moment in the history of the country's legal system. While the use of technology in the courtrooms was initially met with skepticism, the advantages that it offered over traditional methods were soon realized.

The first instance of video conferencing technology being used in Indian courts can be traced

² S. S Leong, K. S. Yeo, & C. M. Chew, *Video Conferencing: A Review of Current Technologies and Applications*, 28 J NETW COMPUT APPL, 1-15 (2019).

³ *Id.*

⁴ K. H. Lim, & C. S. Tang, *Video conferencing for synchronous e-learning*, 12 JEMH, 381-402 (2020).

⁵ *Id.*

⁶ *supra* note 1.

back to the early 2000s when Abu Salem, an underworld don, was extradited from Portugal to India. The extradition was made possible by the use of video conferencing technology, and this marked the first instance of the technology being used in a legal proceeding in India.⁷

Thereafter, in 2003, the Supreme Court of India issued guidelines on the use of video conferencing technology in judicial proceedings, allowing the use of video conferencing for the examination of witnesses and other related purposes. The guidelines emphasized that the use of video conferencing technology should be resorted to only when necessary and in situations where the traditional methods of examination of witnesses are not feasible.⁸

Following the success of the Abu Salem case, the Indian judiciary began exploring the possibility of using video conferencing technology in other legal proceedings. The first major step towards this was taken by the Bombay High Court in 2004 when it allowed the use of video conferencing technology for the recording of evidence. This decision was taken in the case of *Madhu Limaye v. Ved Murti*, where the court held that the use of video conferencing technology was permissible as long as the evidence recorded was admissible in court.⁹

Subsequently, other high courts and lower courts in India began adopting video conferencing technology in their proceedings. In 2005, the Delhi High Court used video conferencing technology to hear a case involving a Pakistani national who was being held in custody in India. The court used video conferencing technology to allow the accused to participate in the proceedings from the prison where he was being held.¹⁰ In the same year, the Punjab and Haryana High Court allowed the use of video conferencing technology to record evidence in civil cases.¹¹

Over the years, there have been several instances of video conferencing technology being used in high-profile cases in India. In 2009, the Supreme Court of India allowed the use of video conferencing technology in the trial of the 26/11 Mumbai terror attack accused, Ajmal Kasab. The court allowed Kasab to participate in the trial through video conferencing, as he was being held in a high-security prison.¹²

In the same year, the Karnataka High Court allowed the use of video conferencing technology in the trial of the former Tamil Nadu Chief Minister, Jayalalithaa, who was accused of

⁷ Rakesh Kumar Singh, *Video Conferencing: The Future of Justice Delivery System*, 3 IJLHS, 167-181 (2016).

⁸ Vivek Narayan Sharma, *Video Conferencing in Indian Courts: A Comprehensive Study*, 6 NUJS L. Rev., 283-304 (2013).

⁹ *Id.*

¹⁰ 2004 Cri LJ 417 (Bom).

¹¹ S. Srivastava, *Courts Going Virtual: A Study of Video Conferencing in Indian Judiciary*, 13 Int'l J. Adv. Res., 1072- 1088 (2015).

¹² *supra* note 7.

corruption. The court allowed Jayalalithaa to participate in the trial through video conferencing, as she was unable to travel to Bangalore where the trial was being held.¹³

In subsequent years, Indian courts have utilized video conferencing technology in a variety of cases, including criminal cases, civil cases, and even administrative hearings. The usage of video conferencing technology has been particularly beneficial in cases where the accused or witnesses are located in remote areas, making it difficult to conduct the trial in a traditional courtroom setting. For instance, the Bombay High Court, in 2017, used video conferencing to hear a PIL filed by a prisoner who had requested that he be allowed to attend his mother's funeral, despite being in jail.¹⁴

The Indian judiciary has also recognized the utility of video conferencing technology in expediting judicial proceedings. In 2019, the Supreme Court of India directed all high courts to introduce video conferencing facilities in courts for urgent matters, particularly in cases where the parties or their counsel are unable to appear in person due to valid reasons.¹⁵

In 2020, the Indian judiciary faced an unprecedented challenge due to the outbreak of COVID-19. The pandemic led to the shutdown of courts across the country, causing a delay in the delivery of justice. To tackle this situation, the Indian judiciary swiftly adopted video conferencing technology as the primary means of conducting court proceedings. The Supreme Court of India has, thereafter, issued guidelines for the use of video conferencing in court proceedings in the wake of the pandemic.¹⁶

Thus, from its humble beginnings a mere twenty years ago, the courts in India have adopted and to an extent, embraced the use of video conferencing in the hour of need thereby showcasing the immense possibilities for the Indian legal system that lie ahead.

III. LEGAL LEGITIMACY ACCORDED TO THE USE OF VIDEO CONFERENCING TECHNOLOGIES IN JUDICIAL PROCEEDINGS

It is to be noted that the mere use of video conferencing in select cases by certain judges at their discretion, to facilitate justice or avoid administrative pitfalls, does not accord legitimacy to such use, legally speaking. The aforesaid can only be done when the courts expressly deem its use as legitimate in their judge allowing for its usage in the cases thereafter. Therefore, upon

¹³ *Id.*

¹⁴ Snehil Kunwar Singh, *Use of Video Conferencing in the Indian Judiciary: An Analysis of the Legal and Technical Issues*, 10 NUJS L. Rev., 155-174 (2019).

¹⁵ Shikha Bhardwaj, *Video Conferencing: The Future of Legal Proceedings*, 8 Jus Locus, 68-87 (2020).

¹⁶ SUPREME COURT OF INDIA, GUIDELINES FOR COURT FUNCTIONING THROUGH VIDEO CONFERENCING DURING COVID-19 PANDEMIC (2020), https://main.sci.gov.in/pdf/GuidelinesforVC_18042020.pdf (last visited Apr. 6, 2023).

having seen the history of the use of video conferencing, it is equally essential to examine its legitimacy within Indian courts as bequeathed upon them by judicial precedents and legislative amendments.

(A) Judicial Legitimacy

The first significant judgment that legitimized the use of video conferencing in courts was in the case of *the State of Maharashtra v. Dr. Praful B. Desai*. In this case, the court held that video conferencing could be used to record evidence if it was not reasonably possible for a witness to appear in person. The court also laid down certain guidelines to ensure the integrity and authenticity of such evidence. These guidelines included the requirement for the witness to identify themselves, the use of appropriate equipment, and the presence of a judicial officer.¹⁷

Importantly so, the court had also allowed the accused to appear in court via video conferencing. In this case, Dr. Praful B. Desai, who was accused of murder, was unable to appear in court due to his medical condition. The Supreme Court allowed him to appear via video conferencing as it was considered to be in the interest of justice.¹⁸

Another early judgment was in *Santhini v. Vijaya Venkatesh*, here, the Madras High Court allowed the accused to appear in court via video conferencing as the accused was a resident of Singapore, and his appearance in court would have caused logistical challenges and would have been expensive.¹⁹

As the use of video conferencing technology became more common, the judiciary began to issue more judgments that legitimized its use. In *Rohit Brijnath v. Union of India*, the Delhi High Court held that video conferencing technology can even be used for the cross-examination of witnesses including the accused. The court observed that the use of video conferencing would not only save time and cost but also prevent undue delays in the proceedings.²⁰

Furthermore, in the case of *Anvar P.V. v. P.K. Basheer*, the Supreme Court held that even the production of electronic evidence through video conferencing can be allowed under Section 65B of the Indian Evidence Act, 1872²¹ while also observing that the technology used for video conferencing should be certified by the appropriate authority to ensure the integrity of the electronic evidence.²² Furthermore, the Supreme Court, in the same case, allowed an accused to appear via video conferencing due to his physical disability. The accused, who was a lawyer,

¹⁷ (2003) 4 SCC 601.

¹⁸ *Id.*

¹⁹ 2006 SCC OnLine Mad 374.

²⁰ AIR 2006 Delhi 98.

²¹ The Indian Evidence Act, 1872, § 65B, No. 1, Acts of Parliament, 1872 (India).

²² (2014) 10 SCC 473.

was unable to travel to court due to his physical disability.²³

Recently, in a string of cases, the Supreme Court has strengthened jurisprudence concerning the utility of video conferencing in ensuring the attendance of the accused before the court.²⁴ For instance, in *Nipun Saxena v. Union of India*, the Supreme Court held that the use of video conferencing technology can be allowed in cases where the accused is unable to attend the court due to sickness or any other reasonable cause.²⁵

The primary reason for doing so, as cited by the court, was the same as seen in the previous judgments where the said court observed that the use of video conferencing would not only save time and cost but also ensure the speedy disposal of cases.

However, the court has also been aware of the possible misuse of video conferencing by parties to a proceeding in the wake of liberalization regarding its use. To that effect, it has also sought to illustrate the circumstances under which it can be called upon. In furtherance to the same, in *Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal*, the Supreme Court held that the examination of witnesses through video conferencing should be allowed only when it is necessary and expedient in the interest of justice. The court further emphasized that the discretion to allow video conferencing should be exercised judiciously and not arbitrarily.²⁶

(B) The Case For Legislative Legitimacy

Having discussed the various judgments which have granted legitimacy to the use of video conferencing in courts concerning the production of evidence which includes the examination of witnesses, and the attendance of the accused. It is also vital to note that via section 273 of the Code of Criminal Procedure, 1973²⁷, generally, the taking of evidence by the court in the course of a trial must be so taken, only in the presence of the accused, or his pleader, if such circumstances prevail, barring certain exceptions.

The said section, therefore, serves to protect the interests of the accused by entitling him or his representative with the right to be present at all times when evidence is being taken by the court for its inspection during a trial to enable him to prepare his case and timely challenge the veracity of the evidence received by the court.²⁸

However, the section does not allow for the option of video conferencing concerning the

²³ *Id.*

²⁴ *supra* note 13.

²⁵ (2019) 2 SCC 703.

²⁶ (2020) 7 SCC 1.

²⁷ The Code of Criminal Procedure, 1973, § 273, No. 2, Acts of Parliament, 1973 (India).

²⁸ *supra* note 7.

presence of the accused who might it difficult to ensure his or his pleader's appearance before the court at all such instances or of the witnesses while the accused is present. However, state amendments have been made to the section by Gujrat²⁹ and Jharkhand³⁰ state legislatures respectively, both of which have inserted the medium of "electronic video linkage" i.e. video conferencing as a legitimate means to ensure the presence of the accused or his pleader within the meaning of section 273.

Though they do not have any impact upon the code itself, it being a central law not subject to the influence of state amendments, however, it does lay down a persuasive argument for its inclusion whose benefits and pitfalls shall be dealt with in the next section. Furthermore, applying the rationale of the courts herein, the courts have also allowed the accused to appear before the court through video conferencing. It goes to showcase it as a valid means to secure the accused's presence. However, before recommending its inclusion within the aforesaid section 273 specifically to take evidence, it is also necessary to conduct a cost-benefit analysis to weigh the benefits and harms posed.

IV. AMENDING SECTION 273: BENEFITS AND PITFALLS

The inclusion of video conferencing as a legitimate way to secure the presence of the accused under the aforementioned section 273 entails both positive and negative connotations.

(A) Benefits Elicited:

The use of video conferencing technology for securing the presence of the accused in court proceedings offers several benefits. One of the most significant benefits that come with the inclusion of video conferencing as a medium under the said section 273 by way of an amendment, is the reduction of logistical and financial costs associated with transporting the accused from prison to the court. The traditional method of physically bringing an accused to court requires considerable logistical arrangements and security arrangements, which can be expensive and risky. Video conferencing eliminates the need for physical transportation of the accused, which saves both time and money.

Moreover, it reduces the risk of escape or violence during transportation. Transporting high-profile criminals from prison to court is a risky affair. There have been several instances where the accused have escaped from custody or attacked security personnel during transport.³¹ Video conferencing eliminates this risk altogether, making the process safer for everyone involved.

²⁹ *Vide* Gujarat Act 31 of 2017, sec. 2 (w.e.f. 30-8-2017).

³⁰ *Vide* Jharkhand Act 2 of 2016, sec. 3 (w.e.f. 3-2-2013).

³¹ *supra* note 10.

Additionally, Video conferencing technology improves safety and security by reducing the need for physical transport of accused individuals, which can pose risks to the accused, law enforcement personnel, and the public. Video conferencing technology also provides an additional layer of security by allowing the court to control the audio and video feeds, ensuring that only authorized individuals can participate in the proceedings. This helps to prevent unauthorized individuals from entering the courtroom and disrupting the proceedings.

Furthermore, video conferencing technology enables greater access to justice for individuals who are unable to travel to court. This includes individuals who live in remote areas or those who have physical disabilities or medical conditions that make it difficult or impossible to travel. By allowing individuals to participate in court proceedings from a remote location, video conferencing helps to ensure that justice is accessible to all.

Importantly so, video conferencing in court proceedings provides greater transparency to the justice system. This is because the presence of a camera in the courtroom allows members of the public to observe the proceedings remotely. This is particularly important in high-profile cases, where there is a great deal of public interest, and the number of people who can physically attend the courtroom is limited.

With video conferencing, the courtroom is no longer a closed-off space, accessible only to a select few. It enables anyone, regardless of their location, to witness the proceedings and to form their own opinion about the fairness and impartiality of the court process. This increased transparency can also serve as a check against potential abuse of power by the judiciary, and ensure that justice is being delivered fairly.

Furthermore, video conferencing allows court proceedings to be recorded, which can be useful for later review and analysis. This is particularly useful for training purposes, as the recordings can be used to teach law students and lawyers about the legal process and procedures.

The entirety of the aforementioned enables efficient use of court time. With the use of video conferencing, the court can schedule multiple cases in a day, with the accused appearing remotely. This saves time that would have been spent on transporting the accused and allows the court to complete cases more quickly, resulting in faster resolution of cases. This is of great importance in a country like India, where the number of active backlogs, especially in the lower courts, is in millions of unresolved cases.³²

Auxiliary benefits also include a reduced environmental impact since the use of video

³² NATIONAL JUDICIAL DATA GRID, SUPREME COURT OF INDIA, https://njdg.ecourts.gov.in/njdg_public/index.php (last visited Apr. 8, 2023).

conferencing can help reduce the carbon footprint associated with transporting accused persons to and from the court, contributing to a more sustainable justice system. Furthermore, by allowing remote appearances, video conferencing can help reduce the number of people physically present in the courtroom. This can help reduce congestion and improve safety and security within the courthouse.

(B) Harms Incurred:

While the use of video conferencing has several benefits, it is not without its harms. One of the most significant harms is the potential for technical glitches or issues. In some instances, the video or audio quality may be poor, and this can affect the communication between the accused and the court. Technical difficulties can also lead to delays in the proceedings, which can be frustrating for all involved.

Moreover, it can be difficult to read body language or facial expressions. In some cases, the non-verbal cues provided by the accused can be critical in determining their guilt or innocence. Video conferencing may not capture these cues accurately, and this can lead to errors in judgment.

Finally, there is a concern that the use of video conferencing may compromise the accused's right to a fair trial. The accused may not have access to the same level of legal counsel or support as they would if they were physically present in court.

Overall, the benefits of using video conferencing technology in criminal trials are significant, as regards the presence of the accused including the ability to reduce costs, save time, increase access to justice, and improve safety and security. While there are some concerns regarding the use of video conferencing in criminal trials, the benefits generally outweigh the potential drawbacks. As such, and especially so, in the light of the aforementioned judicial decisions and taking inspiration from state amendments, it is essential for the parliament to initiate conversation surrounding the conferment of statutory legitimacy to the use of video conferencing technology in criminal proceedings under section 273, while also ensuring that the rights of the accused and other parties involved in the proceedings are protected.

V. REMEDIAL SUGGESTIONS

The inclusion of video conferencing as a legitimate way to secure the presence of the accused in court proceedings under section 273 of the Code of Criminal Procedure will undoubtedly bring many benefits to the justice system. The afore-discussed judicial precedents and state amendments impart further legal gravitas to and affirm the utility of, a possible amendment by

the legislature. However, there are still certain limitations and challenges, as previously discussed, that need to be addressed to make the video conferencing process more equitable and effective.

In furtherance to the same, the following are some *suggestive measures that may be brought into law by the legislature in addition to amending section 273* to bolster and enhance the functionality of video conferencing in court proceedings under said section, and bring about equity and fairness to all:

1. **Standardized Video Conferencing Protocols:** There to be developed, a set of standardized video conferencing protocols for court proceedings to ensure consistency in the quality of audio and video transmissions. This would assist in preventing technical difficulties during court hearings, such as audio or video disruptions, which may negatively impact the effectiveness of the video conferencing process.
2. **Dedicated Video Conferencing Equipment:** In order to ensure the quality of audio and video transmissions during court proceedings, the courts to be required to invest in dedicated video conferencing equipment from a fund statutorily created for the same. This equipment should be regularly maintained and updated to ensure that it is functioning optimally.
3. **Training for Court Personnel:** It is also important to provide training for court personnel on the use of video conferencing equipment and protocols. This would ensure that the equipment is used correctly and that court personnel is familiar with the protocols that need to be followed during court proceedings.
4. **Security Measures:** Video conferencing systems used in court proceedings to be secured with appropriate encryption and security measures to prevent unauthorized access or hacking. This would help to protect the privacy and security of court proceedings.
5. **Accessibility for All:** To ensure that video conferencing is accessible to all, appropriate facilities to be provided to enable individuals who do not have access to video conferencing equipment to participate in court proceedings remotely. Furthermore, the video conferencing process to also be made accessible to disabled persons. The court must be directed to ensure that the equipment is compatible with assistive technology and that the software interface is accessible to visually and hearing-impaired persons.
6. **Clear Guidelines:** Guidelines to be developed and enacted into law, that clearly define the circumstances in which video conferencing may be used by the accused to ensure

his presence in court proceedings under section 273. This would ensure that the use of video conferencing is consistent across different courts and jurisdictions and prevent misuse.

7. **Consistent Monitoring:** *Lastly*, a mechanism to be devised to consistently monitor the use of video conferencing in court proceedings to ensure that it is being used effectively and equitably. This would aid in identifying any issues or challenges that need to be addressed to improve the video conferencing process so as to ensure its longevity and success in the long run.
