STANDARD OPERATING PROCEDURES ON INTER JURISDICTIONAL TRANSFER OF EVIDENCE IN TRAFFICKING CRIMES THROUGH:

VIDEO CONFERENCING
STANDARD OPERATING PROCEDURES ON INTER JURISDICTIONAL TRANSFER OF EVIDENCE IN TRAFFICKING CRIMES THROUGH: VIDEO CONFERENCING
Time and resources are of essence in the process of justice delivery in any crime. When it is a crime of untold suffering to the victim, like human trafficking, delays will have cascading and perennial adverse impact on the victim, family and even care givers. Hence, any effort to expedite the process of justice delivery, cut down the costs, resources and time, will indeed be a great step in the process of victim care and protection. In this context, the initiative by the Centre for Police Studies ad Public Security and the Tata Institute of Social Sciences, in bringing out an SOP to facilitate video conferencing in the trial of crimes, is indeed a commendable and positive step. The initiative by Dr. P.M Nair and the team including representatives from TISS, SLSA and civil society agencies International Justice Mission and Justice and Care, with professional support from Justice Mrs. Rekha SondurBaldota, Director MJA and Mr. Shrikant Kulkarni, Member Secretary, MSLSA, is indeed admirable. It is a great beginning to institutionalise the process of Video Conferencing and to streamline the entire process.

The SOP will be of tremendous support to the judicial officers, prosecutors, police officers and care givers, who are the process of justice delivery and law enforcement. Though the SOP has been developed from the prism of human trafficking crimes, more so trans-border crimes, I have no doubt that this SOP will be of great support in the justice delivery process in other crimes as well. Further, this will not only enhance the cause of the victim, but also that of the witnesses, the suspects and the accused. The SOP provides for evenness and fair play. It upholds the rights of the victim as well as the defendant. It promotes the cause of the prosecutor and the defense as well. The main mantra behind the SOP is to expedite the process of justice delivery, reduce costs, reduce time, reduce harm and cut down avoidable wastage of all sorts.

I have no doubt that the SOP will be a good and practical tool for all concerned in the criminal justice system across India and even across the countries in the region.

23.11.2017

Dr. Manjula Chellur
Introduction

Irrefutable is the fact that concomitant with advancement and globalisation, crimes have also become global. Criminals know no boundaries. They act beyond the confines of political territories and space. They mould and manage technology and the Internet to their best advantage. The illicit assets, unfathomed in toto, but indicators show it as phenomenal, have subsumed certain legal economies while becoming indistinguishably enmeshed with others elsewhere. And, despite all these, the response systems to crime and criminals, have not shown corresponding development or progress. This increasing void is a major reason for the existing scenario of law enforcement, which is; at a minimum, imperfect, and inadequate. It is time the response systems adopted innovative and ingenious techniques and methods that can rise up to the occasion and address the issues in the better, if not the best, manner. This aspect has been, for quite some time, in the radar of all the concerned stakeholders and with many innovations too. It is in this context, especially with regard to the heinous, trans-border crime of human trafficking that the issue of video conferencing across borders, for transfer of evidence, assumes significance, relevance and importance.

Victims of human trafficking, demolished, distraught and disempowered persons as they inevitably are, have to face a herculean challenge in presenting themselves in the court of law and testify against the accused that have ravished and destroyed them. When the victims are from across borders, they are repatriated or restored within six months of rescue. The call to testify before court is usually after a year or more, as is the ‘normal’ scenario in India and the region, thus most victims refuse to participate in proceedings. And the reasons are plenty. They may have married and are part of a new family; they may have children to look after; they may have a job, which they cannot leave; they may not want to face the ordeal in returning to the place, which was hell for them; they may not want to relive the trauma again; they may not want to face their assailants and so on.

And yet, the fact is that the legal systems in India and the region are adversarial,
which lay so much emphasis on the statement and cross-examination of the victim, as the prime witness. The core issue thus is, how to ensure the victim’s rights and victim’s production in the court? Can it be virtual? Say, in a teleconference? Will it be legally permissible? If so what are the logistics involved? What are the arrangements to be done at both locations? What are the care and precautions to be undertaken? While ensuring rights of victims, how can the rights of the accused also be ensured? Who will and can play a role in ensuring and facilitating these steps? These questions found answers a few years back, when several stakeholders got together in Mumbai and ensured video conferencing across the boundaries of Maharashtra with Hyderabad and subsequently across the borders of India with Nepal. These were followed by a few more instances across India and Bangladesh. While innovations were adopted at certain places, many others were not aware of them. Some wanted to know how to proceed and others wanted protocol and process.

The gap was obvious. It is in this context, and armed with experience in legal proceedings for several crimes in this matter that we, at TISS, decided to draft Standard Operating Procedures (SOP) for stakeholders. Support came from several agencies including Justice and Care and International Justice Mission (IJM). The Hon’ble The Chief Justice Dr. Manjula Chellur, during discussions, appreciated this as an important step in the process of justice delivery and gave approval for us to proceed.

Tremendous is the support by IJM and Justice and Care, besides several other stakeholders. The vibrant team of Ms. Megan Fernandez and Mr. Vivan Gandhi from IJM along with Ms. Nancy Sara Rajan from Justice and Care, Mr. Yatin Game of the MLSA and Ms. Sumati Thusoo from TISS, undertook meticulous and sustained efforts in drafting; Mrs. Melissa Walavalkar from IJM added value and provided support in collation; and many others like Rights Jessore contributed in several aspects. Maharashtra SLSA and Judicial Academy facilitated the process of fine-tuning the SOP. We gratefully acknowledge their immense contribution. We applaud the innovators who together initiated the process, especially, Ms. Swati Chauhan,
esteemed Judge and the then presiding officer of the Special ITPA Court at Mumbai, and the team that worked with her. The victims of trafficking, who are indeed the catalysts of the process, remain the reason for this SOP.

This SOP will be the first of its kind in streamlining the trans-border systems and institutionalise the best practices that emerged from the experiences of concerned stakeholders. This will help stakeholders conduct video conferences across the borders of states and national boundaries, not only in human trafficking crimes but other crimes as well.

Since this is an innovation, there could be omissions and aberrations, despite all care taken by the team. Therefore, we welcome suggestions to improve the document.

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## Abbreviations

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<tr>
<td>Cr.P.C</td>
<td>Code of Criminal Procedure, 1973</td>
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<tr>
<td>Evidence Act</td>
<td>Indian Evidence Act, 1872</td>
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<tr>
<td>IT Act</td>
<td>Information Technology Act, 2000</td>
</tr>
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<td>ITPA</td>
<td>Immoral Traffic (Prevention) Act, 1956</td>
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<td>MEA</td>
<td>Ministry of External Affairs</td>
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<td>NIC</td>
<td>National Informatics Centre</td>
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<td>NGO</td>
<td>Non Governmental Organisation</td>
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<tr>
<td>POCSO</td>
<td>Protection of Children from Sexual Offences Act, 2012</td>
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<td>SOP</td>
<td>Standard Operating Procedures</td>
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<td>VC</td>
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Definitions

i. “Coordinator” refers to **persons at both the Court Point and the Remote Point**, arranging for the VC\(^1\).

ii. “Court Point” refers to a **Court Establishment** where a matter is being heard or **any other place** where the Court is seated or the person appointed by the Court to record the evidence by VC is seated\(^2\).

iii. “Remote Point” refers to the **place** where the witness to be examined via VC is located\(^3\).

iv. “Third Party”, for the purpose of this document, refers to any person or body not directly involved with the case and shall not include a NGO or a person providing psychosocial support to a witness.

v. “Transcript,” for the purpose of this document, refers to the deposition of the witness testifying through VC that has been recorded in writing as under Sec 276 (1) of the Cr.P.C.

vi. “Stakeholder” refers to any person or entity involved in the process of VC. The stakeholders may include any person or entity as enunciated in chapter 3 of this document.

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\(^1\)Guidelines issued by Delhi High Court and Hyderabad High Court on VC  
\(^2\)ibid  
\(^3\)ibid
Chapter 1: Legal Framework Regarding Video Conferencing

In India, the Code of Criminal Procedure (Cr.P.C) governs recording of evidence in criminal cases, while the Information Technology Act, 2000 (IT Act) governs the admissibility of electronic evidence.

1. Video Conferencing: Reliable and Admissible

   i. The IT Act was enacted to pave the way for legal recognition of electronic data. Section 92 of the IT Act has introduced changes to the Indian Evidence Act, 1872 (Evidence Act).

   ii. “Evidence” under Section 3 of the Indian Evidence Act includes in its ambit, oral, documentary and electronic records, which also includes VC⁴.


2. Permissibility of Deposition through Telepresence

   i. The meaning of the word “presence” under section 273 of the Cr.P.C is not limited to actual, physical presence, but also includes virtual presence by electronic means, which would include VC⁵.

3. Inter-Country Video Conferencing

   A. Video Conferencing in Open Court

      i. To conduct VC in open Court, the witness’ country may:

         a. have a written agreement or treaty, which would include an extradition treaty⁶, a Mutual Legal Assistance Treaty or any agreement of a similar nature with India; and

         b. the laws of that country must consider contempt of Court and perjury punishable⁷.

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⁴The State of Maharashtra and P.C. Singh v. Dr.Praful B. Desai and Anr. (AIR2003SC2053)  
⁵ibid  
⁶ibid  
⁷ibid
ii. Thus, if necessary facilities are available in the Courtroom and the above requirements are met, then testimony through VC, between the Court in India and witness in another country, is admissible.

B. Video Conferencing through Court Commissions

i. A witness’ testimony via VC is admissible even if it cannot take place in open Court.

ii. Where the attendance of a witness cannot be procured without an unreasonable delay, expense or inconvenience and is necessary for the ends of justice, the Court may issue a commission in accordance with Section 284 to 289 of the Cr. P.C for the examination of that witness. The commission can record such testimony through VC.

iii. This provision shall apply to the use of VC with witnesses outside the country of India, even if no agreement existed between the Government of India and that country, as long as the witness is willing to testify.

iv. Pursuant to Sections 284-285 of the Cr.P.C, the Court must commission an officer to record the evidence, on satisfaction of the following requirements:

1. the officer possesses the authority to administer oaths; and
2. is commissioned from either:
   a. India; or
   b. the Indian embassy within the witness’ nation.

v. The officer must ensure that the witness is not coached, tutored or prompted.

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8 ibid
9 ibid
10 ibid
11 ibid
Chapter 2:
Stakeholders Involved and their Roles

Stakeholders may include the following:

1. Judicial Magistrate, Executive Magistrate, District Magistrate or Judge at the Remote Point
2. Public Prosecutors
3. Police
4. Coordinators at the Court and Remote Point
5. Ministry of External Affairs (MEA)
6. Non-Governmental Organisations (NGO)
7. Any other competent person, with legal background that the Presiding Officer may appoint as the coordinator at the Remote Point or any other.

1. Judiciary
   i. The Presiding Officer shall pass orders for the summons to be issued to the witness. The Coordinators and the District Judges at the Remote point must be included as copied recipients, to initiate and conduct the VC on the date and time as required.
   ii. In cases where the witness is in another country, the MEA in India, the Indian Embassy in the witness’ country and other relevant stakeholders must also be included as copied recipients on the summons to initiate and conduct the VC on the date and time as required.
   iii. If the witness is overseas, care needs to be taken to issue the summons in the format that is required by the authorities at the Remote Point. Efforts must also be taken to send the summons via e-mail to the witness, and the coordinator, if possible.
   iv. In a case where the witness cannot be reached via e-mail, the summons may be copied to an NGO working in the area in order to contact the witness and assist them in appearing at the premises of the Remote Point and if required, to provide psychosocial support.
v. Where required, the Presiding Officer may pass an order to the effect that the coordinator at the Remote Point may appoint a Translator, Interpreter or Special Educator to support the witness who is to testify via VC.

2. Public Prosecutors
   i. Public Prosecutors at the Court Point must take the initiative to see that the summons is issued to the concerned witness and copied recipients (coordinators and other relevant stakeholders) in the format, as required by authorities at the Remote Point, in case the witness is overseas.
   ii. Public Prosecutors must also follow up with the relevant stakeholders to check whether required efforts are being made, and to avoid any kind of delay in recording of the evidence.

3. Police
   i. The Police having necessary jurisdiction need to ensure summons are served to the witnesses in time, to avoid delay of any kind. They must also ensure security of the witness.
   ii. The Police at the Court Point needs to file its report on the service of summons and availability of witness. The Police need to also coordinate with the Court Point and the Remote Point to get a convenient date for the witness to testify in court through VC.
   iii. The Police need to coordinate with the computer department at the Court Point or the NIC and get necessary approvals to conduct the VC in court.
   iv. The Police shall take steps to send certified copies or soft copies of all or any part of the court record to the coordinator at the remote point sufficiently in advance of the scheduled VC.
   v. In case the documents are in a language different from the language at the Remote Point, the Police need to get the documents translated before sending the relevant Court records to the Remote Point.
4. Coordinators

i. A Coordinator needs to be assigned at the Court Point and the Remote point.

ii. In the Court Point/District Court: The official in charge of the VC facility, holding the post of Senior Assistant/Senior Personal Assistant/District System Administrator or above can be the coordinator for the VC. In a case where there is no official appointed to the said post, an official of the Court may be nominated by the Presiding Officer to act as the coordinator for the VC at the Court Point.

In a situation where an appropriate coordinator cannot be appointed, despite efforts, the Presiding Officer may ask a competent organisation or a competent lawyer to play the role of a coordinator.

iii. At the Remote point:

• Where a witness to be examined is overseas, the Presiding Officer at the Court point may specify the coordinator out of the following:
  - the Official of Consulate/Embassy of India
  - Duly Certified Notary Public/Oath Commissioner
  - District Magistrate
  - Any competent person, in the absence of the above-mentioned people, as decided by the Presiding Officer of such case

• Where, a witness to be examined is in another State or Union Territory, a Judicial Magistrate or an Executive Magistrate or any other responsible official maybe deputed as the coordinator by the District Judge of such State or Union Territory.

• Where a witness to be examined is in a Special Home, Children’s Home or Shelter Home, public or private, the Superintendent in charge of such home may be the coordinator.

• Where the witness to be examined is in a hospital, public or private, the Medical Superintendent of such hospital, or the Additional /Deputy Medical Superintendent in the absence of the Medical Superintendent, maybe the Coordinator.

• In any other case, the Coordinator may be such person as ordered by the Presiding Officer.

12 Guidelines issued by Delhi High Court and Hyderabad High Court on VC
13 ibid 14 ibid 15 ibid 16 ibid 17 ibid 18 ibid
iv. Role of the Coordinator
   i. Arrange for a convenient date and time to conduct the VC.
   ii. Ensure that necessary approvals are obtained to conduct the VC.
   iii. Coordinate the availability of the witness for the scheduled date of VC, with the local police.
   iv. Follow up on whether the summons has been served to the witness.
   v. Need to ensure that a VC test is conducted between both points in advance to avoid any problems during the testimony.
   vi. Coordinator at the Court Point must ensure that all relevant documents, translated if necessary, are sent to the Coordinator at the Remote Point, sufficiently in advance of the scheduled VC.
   vii. Where required, the Coordinator may take steps to ensure that a Translator, Interpreter or Special Educator is appointed at the Court point.
   viii. Acquiring signatures of Coordinators and witnesses on the transcript.

5. National Informatics Centre (NIC)
   i. The NIC provides VC facilities to all Court establishments, District Collectors/Magistrates across India. This facility of the NIC may be utilised for the purposes of inter-jurisdictional transfer of evidence via VC.  
   ii. Arrange for equipment required for VC (laptop, web camera, microphone, speakers, internet connectivity)
   iii. In a case where a Court Point or Remote Point (within India, considering that the jurisdiction of NIC is limited to India) is not equipped with facilities to conduct a VC, the NIC may be approached by the Coordinator to provide its nearest and suitable premises for a witness to testify via VC.
   iv. Further, the deposition recorded at the Court point may be sent to the witness at the Remote Point using NIC facilities, for the witness to sign on, which should thereafter be sent back to the Court Point using the same facilities.
   v. Where a witness is overseas, NIC may provide for the necessary secured software for the VC.

19 Sujoy Mitra v. state of West Bengal 2016(1)Crimes105(SC)
6. Ministry of External Affairs
   i. The MEA must be copied in the summons issued to a witness who is overseas, with the objective of keeping the Ministry informed of the VC that will take place and for appropriate support from the overseas agencies concerned, if necessary.

7. Non Governmental Organisations
   i. An NGO may be appointed by the Presiding Officer or the Coordinator at the Remote Point (with the approval of the Presiding Officer), to provide psychosocial assistance to a witness.
   ii. If necessary, an NGO may be requested by any relevant stakeholder as listed in this document to:
      - Assist with coordinating the issue of summons to the witness
      - Take steps to trace the witness
      - Provide psychosocial assistance to the witness to testify in the said case
      - Provide their equipment required for VC (laptop, web camera, microphone, speakers, internet connectivity, etc.), if available and allowed by the Presiding Officer at the Court Point, provided no VC facility is forthcoming from any government or related source.
Chapter 3: Infrastructural Requirements for Video Conferencing

The following infrastructure and equipment are required to facilitate a VC between the Court point and Remote point.

i. Dedicated room for VC
ii. Uninterrupted Power Supply
iii. A computer or a laptop – with necessary programmes and software installed
iv. Printer
v. Internet connectivity- dedicated 1 Mbps\(^{20}\) for video and audio calls
vi. VC equipment:
   - Projector and Screen, or, minimum 40” screen television
   - Microphone
   - Full HD camera
   - High quality speakers
vii. Adequate lighting
viii. Insulation/sound proofing of rooms
ix. Comfortable seating arrangements for privacy
x. Digital signature for the coordinators, preferably from a licensed certifying authority or any agency, which the Presiding Officer considers appropriate.\(^{21}\)
xi. Videography equipment

\(^{20}\) Minimum requirement for uninterrupted and clear video calls
\(^{21}\) Guidelines issued by Delhi High Court and Hyderabad High Court on VC
Chapter 4:
Process of Conducting Video Conferencing

1. Application for VC
   i. The Presiding Officer may either suo motu or on an application made by either party or by a witness, order summons to be issued to any person to appear before him or give evidence or make submissions to the Court through VC.  
   ii. While preparing the order to issue summons to the witness to testify via VC, the Court should copy all the relevant stakeholders as recipients, directing them to make necessary arrangements to produce the witness to testify in Court through VC.
   iii. The Presiding Officer while making the order for issuance of summons may also request/appoint an NGO to assist with locating the witness and assisting with the entire VC process.

2. Service of Summons
   i. The Public Prosecutor and the Police at the Court Point need to ensure that the summons, along with the Court order directing issuance of summons, is sent through email where possible or by post to the witness.
   ii. In case the witness is not traceable, the Court, the Police or Public Prosecutor may request assistance from an NGO at the Remote Point to trace the witness and serve the summons.
   iii. If the witness is in another country and cannot be traced, summons to appear through VC can be issued in the following ways:
      a. Through the National Central Bureau of INTERPOL (In India, it is the Central Bureau of Investigation (CBI))
      b. Through NGOs involved in the repatriation of the victim or involved in the case.
   iv. Once efforts to serve summons are made, the Police at the Court Point must submit a report on the service of summons.

22 ibid
3. Preparation for VC

i. The Coordinators need to ensure that the prescribed infrastructural requirements for VC are in place at the Court Point and the Remote Point.23

ii. In situations where the Court Point and the Remote Point do not have the same software to facilitate VC, the NIC may provide its software or any suitable and secured software to the remote point to facilitate the VC.

iii. If NIC facilities are not available, the Coordinator (at the Court or Remote Point) may suggest the next appropriate agency, which may include VC facilities at an NGO. The final decision on the use of such facilities shall lie with the Presiding Officer.

iv. A VC test should be conducted between both points in advance, to resolve any technical problems, so that the proceedings are conducted effortlessly.24

v. The Coordinator at the Remote Point needs to ensure that:
   a. the person to be examined or heard is available and ready at the room reserved for the VC at least 30 minutes before the scheduled time.25
   b. no other recording device is permitted except the one installed in the VC room.26
   c. entry into the VC room is regulated.27

vi. The Coordinator at the Court Point needs to ensure that the Coordinator at the Remote Point has certified copies or soft copies of all or any part of the Court record sufficiently in advance of the scheduled VC. In case the documents are in a language different from the language at the Remote Point, the Public Prosecutor shall request the local police to get the documents translated before sending the relevant Court records to the Remote Point.28

vii. The Presiding Office may order the coordinator at the Remote Point or at the Court Point wherever it is more convenient, to provide:
   a. a translator in case the person to be examined is not conversant with the language of the Court;29
   b. an expert in sign language in case the person to be examined is speech and/or hearing impaired.30

23 ibid | 24 ibid | 25 ibid | 26 ibid | 27 ibid | 28 ibid | 29 ibid | 30 ibid
c. for reading of a document in case the person to be examined is visually challenged;\(^{31}\)
d. An interpreter or special educator, as the case may be, in case the person to be examined is temporarily or permanently mentally or physically disabled.\(^{32}\)

viii. VC may ordinarily take place during Court hours. However, the Court may pass suitable directions with regard to timings of the VC as the circumstances may dictate.\(^{33}\)

4. Procedure during VC

i. The Presiding Officer at the Court point may direct the coordinator at the Remote Point to introduce himself and all the other persons present along with him in the room, before the witness starts testifying.\(^{34}\)

ii. Where, for any reason, a person unconnected to the case is present at the Remote Point, then that person may be identified by the coordinator at the remote point at the start of the proceedings and the purpose for his being present should be explained to the Presiding Officer.\(^{35}\)

iii. Third parties may be allowed to be present during VC subject to orders of the Presiding Officer.

iv. In case a victim is testifying, the Presiding Officer may allow a guardian or a social worker to be present during the VC.

v. The Presiding Officer shall confirm the identity of the person to be examined with the assistance of the coordinator at the Remote Point at the time of recording of the evidence.\(^{36}\)

vi. The Presiding Office needs to ensure that the person to be examined at the Remote Point can be seen and heard clearly and similarly, that the person to be examined at the Remote Point can clearly see and hear the Court.\(^{37}\)

vii. The Presiding Officer needs to have, at all times, the ability to control the camera view at the Remote Point so that there is an unobstructed view of all the persons present in the room. In case the person being examined in the Remote Point would need to identify the accused at Court Point, or vice-versa,

\(^{31}\) ibid  \(^{32}\) ibid  \(^{33}\) ibid  \(^{34}\) ibid  \(^{35}\) ibid  \(^{36}\) ibid  \(^{37}\) ibid
the Court would need to ensure that the video camera is positioned in such a way that would allow the person being examined to have a clear and fair view of such individual as if he/she were physically present in the Court room.\textsuperscript{38}

viii. The Presiding Officer may have a clear image of each deponent to the extent possible so that the demeanour of such a person may be observed.\textsuperscript{39}

ix. While recording the evidence in writing, the Presiding Officer along with making note of the demeanour of the witness must record any interruptions due to internet connectivity or any other interference that occurred while the testimony was being recorded.

x. The record of proceedings including transcription of statement needs to be prepared at the Court Point under supervision of the Court and accordingly authenticated. Certain options are in vogue. One is video-recording of the entire proceedings. Another, and a better option, is that the soft copy of the transcript digitally signed by the coordinator at the Court Point shall be sent by e-mail to the Remote Point where a printout of the same may be taken and signed by the deponent. A scanned copy of the statement digitally signed by co-ordinator at the Remote Point be then sent by e-mail to the Court Point. The statement received by the Court Point through email be finally re-endorsed by the Presiding Officer.\textsuperscript{40}

xi. The Presiding Officer may at the request of a person to be examined, or on its own motion, taking into account the best interests of the person to be examined, direct appropriate measures to protect his privacy keeping in mind the witness’ gender and physical condition.\textsuperscript{41}

xii. If, in the course of examination of a person at the remote point through VC, it is necessary to present a document to her/him, the Court may permit such a document to be presented in the following manner:\textsuperscript{42}

a. if the document is at the Court Point, by transmitting a copy of it to the remote point electronically, including through a document visualiser, and the transmitted copy being then presented to the person being examined;

\textsuperscript{38} ibid
\textsuperscript{39} ibid
\textsuperscript{40} Sujoy Mitra v. State of West Bengal 2016(1)Crimes105(SC) and Guidelines issued by Delhi High Court and Hyderabad High Court on VC
\textsuperscript{41} Guidelines issued by Delhi High Court and Hyderabad High Court on VC
\textsuperscript{42} ibid
b. If the document is at the Remote Point, by presenting it to the person being examined and transmitting a copy of it to the Court Point electronically, including through a document visualiser. The hard copy would also be sent, subsequently, to the Court Point by courier/mail.

xiii. The Presiding Officer needs to ensure that the provisions under section 33 of the POCSO Act, is adhered to, while examining a minor victim. This includes:
   a. communicating all questions to the Presiding Officer, who shall in turn put those questions to the minor victim.
   b. creating a victim friendly atmosphere by allowing a family member, a guardian, a friend or a relative, in whom the minor victim has trust or confidence, to be present in the court.
   c. frequent breaks for minor victims,
   d. not permitting aggressive questioning or character assassination of the minor victim and ensure that dignity of the minor victim is maintained at all times during the trial.

Costs for Video Conferencing
The expenses of VC facility, i.e., the expenses of preparing soft copies or certified copies of the Court record for sending to the Coordinator at the Remote Point, the fee payable to the Translator/Interpreter/Special Educator and the fee payable to the Coordinator shall be borne by such party as is prescribed in the relevant rules or instructions regarding the payment of expenses to complainant and witnesses, as may be prevalent from time to time. In case there is no clarity on such provision the Presiding officer may decide on such costs.43

43 ibid
Case Studies and Best Practices

Inter-State Video Conferencing

In 2004, the Delhi High Court passed a landmark ruling in Writ Petition 1467/2004 allowing VC to record evidence of victims. Victim girls were rescued from brothels in Delhi and were rehabilitated and repatriated to their hometowns in various parts of India including Andhra Pradesh. When the case came up for trial before the Tis Hazari Courts in Delhi, it was seen that the victims were reluctant to travel to Delhi to give their testimony for various reasons including being re-exposed to the trauma they had undergone.

This was an initiative of the NGO, Prajwala. They requested the Additional Sessions Judge, Tis Hazari Courts, Delhi to allow the recording of the testimony of the victims through VC. It was denied for want of adequate infrastructure in the Court and with the State Government to conduct the same. On filing an application before the Delhi High Court, the Court directed the Government Standing Counsel to look for modes to conduct the VC. An enquiry with the National Informatics Centre revealed that they too did not possess adequate facilities at the time. The applicants however informed the court that they had received a communication by the Principal Secretary to the Government of Andhra Pradesh, Women Development Child Welfare Department stating that the Andhra Pradesh Government had VC facilities in Andhra Bhavan situated in New Delhi. The Andhra Pradesh government agreed to provide this facility, which they have in Delhi and the concerned district headquarters in Andhra Pradesh. The High Court confirmed the availability of these facilities at Andhra Bhavan by Judicial Officers and then gave orders for recording the evidence of the victims through VC. The court also directed that the state of Andhra Pradesh make appropriate arrangements for the same and that the trial court ensure adequate safeguards enumerated in the decision of the Supreme Court in State of Maharashtra vs. Dr. Praful B. Desai, 2003 4 SCC 601.
1. **State of (D.B. Marg Police Station, Mumbai) v. Shobha @ Ratikumari Jogeshwar Pujari & Anr.**

*Criminal Case no. 703/PW/2010, 54th Metropolitan Magistrate Court, Mumbai*

Three victims were rescued by D.B Marg Police station in 2010 and two accused were arrested. One victim was from Bangalore, the other from Rajasthan and the third from Hyderabad. They were repatriated to their home states. The victim who hailed from Hyderabad was placed in Prajwala Home at Hyderabad.

The trial began in 2011 in the Special ITPA Court presided by Hon’ble Magistrate Swati Chauhan. Summons was issued for the victims to testify and the police informed the court that the two girls had been repatriated. The victim who had been sent to Prajwala was available to testify, the other victim was untraceable.

The Hon'ble Magistrate agreed with the prosecution that bringing the victim to Mumbai to testify would involve considerable costs and most importantly would hamper rehabilitation of the victim.

The Hon'ble Magistrate thus passed a detailed order for recording the testimony of the victim through VC. In the said order the Hon'ble Magistrate requested the assistance of Dr. Sunita Krishnan from Prajwala to coordinate logistics from the Hyderabad end and the Hon'ble Magistrate and Prosecutor from the ITPA court Mumbai coordinated with the NIC at the District Collectors Office at Mumbai.

On 7th March, 2011 the Magistrate, Prosecutor, Defence Lawyer, the two Accused in the case, Judicial Clerk, Court Typist and Complainants Advocate gathered at the District Collectorate in Mumbai. The victim girl and Dr. Sunita Krishnan were present at the Hyderabad NIC Centre at the District Collectorate. Dr. Sunita Krishnan was asked to translate for the victim girl.

The victim was able to testify and also identify the accused. Her testimony was crucial in this case as the other victim was not traceable. The Hon’ble Magistrate
was able to convict both the accused to 3 years imprisonment. The facilitators for this VC were IJM at Mumbai and Prajwala at Hyderabad.

2. State of Maharashtra (through Bhandup Police Station) v. Rubi Munshi and Ors.
   Sessions Case 331/2014, Sessions Court, Thane

An adult victim was trafficked from Bangladesh and brought to Mumbai, where she was brutally abused. In 2014, she was found unconscious during her rescue and had to go through intense medical treatment. A suo motu petition was filed in the Supreme Court, who ordered for her speedy repatriation once she had recovered. The victim was moved to Delhi for treatment and later repatriated to Bangladesh.

Although the victim was doing well, when it came closer to the time she had to testify, she became mentally unstable since it was traumatic for her to recall the brutal abuse she had been through in the past. Hence she was unable to testify.

A doctor who was part of the team who treated the victim in Delhi was called to testify in this case. This had to take place over VC, since the doctor was in Delhi. Applications were moved to issue summons to the doctor in Delhi and orders were issued to NIC, Delhi HQ, to coordinate the VC. The summons were served with the help of Justice and Care, Delhi. In September 2017, the doctor testified via VC from the NIC HQ in Delhi. Justice and Care was a facilitator in this VC.

Inter-Country Video Conferencing

1. The State (V.P. Road Police Station Mumbai) v. Asha Bahadur Thapa.
   Criminal Case No. 226/PW/2009, 54th Metropolitan Magistrate Court, Mumbai

On 10th January 2009, based on the information received, the Police from V.P Marg Police Station rescued two girls from a brothel on P.B Road, Mumbai. One of the victims was repatriated to Nepal. Having found a good job, she moved on with her life in Nepal. It was difficult for the victim to travel to Mumbai for her testimony.
The Judge was convinced that the victim's inability to travel from Kathmandu to Mumbai, to testify in Court, was genuine. However, the victim was the prime witness and the most important link in this case. Various options were considered and VC seemed most feasible.

Rescue Foundation applied for the girl’s testimony to be recorded via VC. There was no precedence of VC across the borders. Therefore the Court sought administrative approval from the High Court and the VC was held at the premises of Rescue Foundation, Mumbai, on 9th November 2011, where the Public Prosecutor, the court staff and the defence lawyer were present. During the VC, the Metropolitan Magistrate successfully recorded the testimony of the victim girl over Skype.

Based on the testimony of the victim, the Hon’ble Judge was pleased to convict the accused on 24th July 2012. The facilitators for this VC were Rescue Foundation at Mumbai and Maiti Nepal at Kathmandu.

Sessions Case 380/2013, Sessions Court at Greater Bombay

This was a case of trafficking, where a minor victim from Bangladesh was rescued from a brothel in Mumbai, in 2013. The victim was later repatriated to Bangladesh.

The Trial Court had passed an order to record the statement of the victim girl from Bangladesh, via VC. Summons were issued by the Presiding Officer at the Trial Court to the victim in Bangladesh copying the District Magistrate in Jessore, Bangladesh, who coordinated the VC. Facilities were tested well in advance and a dry run was conducted between the Court point and the remote point overseas. In February 2015, on the assigned day, the testimony of the repatriated victim was recorded; making it the very first time a testimony was recorded via VC between India and Bangladesh. Justice and Care was a facilitator in this VC.

In January 2016, the Assistant Public Prosecutor at the Sessions Court in Mumbai requested IJM’s assistance in arranging a VC with a Bangladeshi victim of trafficking in order to record her testimony. The Assistant Public Prosecutor directed the Investigating Officer from Nagpada police station, Mumbai, to provide IJM with the necessary summons and documentation for the testimony to take place.

The victim was trafficked by her husband from Bangladesh to Mumbai and rescued by the Nagpada Police in 2014. Nagpada Police provided IJM with the summons for the victim girl along with a letter addressed to the Deputy High Commission of Bangladesh dated 28th December 2015. Thereafter, in January 2016, IJM contacted Rights Jessore requesting the status of the victim girl and if she would be willing to testify in court. After sending a scanned copy of the summons and letter to the Deputy High Commission, Rights Jessore confirmed their willingness to arrange a VC with the victim girl as well as the victim’s willingness to testify. In February 2016, the testimony of the girl was successfully recorded through VC after a number of unsuccessful attempts (due to bad internet connectivity).

Since the present case was a High Court time-bound case, the VC took place within three months from the date the summons was issued.

4. State of West Bengal vs. Dilip Das and Ors. Sessions Case 06/2015, ADJ, 2nd Bench, Sessions Court at Howrah

In this case of trafficking, minor victims from Bangladesh were rescued from a brothel in Kolkata, in 2015. The victims were later repatriated to Bangladesh.

NIC suggested the use of software called “VIDYO”44 for security purposes;

44 A secured software used for VC
however the Additional District Magistrate (ADM) in Jessore, Bangladesh had no access to this software. After both parties mutually agreed on using “VIDYO”, NIC shared the link to download the software to the ADM in Jessore. Coordinators at both points were appointed to facilitate the VC. A dry run was conducted. The VC was successfully completed in August 2016, on the assigned date, without any delay. Justice and Care was a facilitator in this VC.

5. State of Maharashtra vs. Sujoy Ramesh Mandal and Anr.
Sessions Case 369/2014, Sessions Court at Greater Bombay

In January 2014, D.B Marg Police, based on information from IJM, arrested one male and one female accused who had been providing two young Bangladeshi victims, including one minor, to customers for the purpose of Commercial Sexual Exploitation at Jamuna Mansion on Grant Road. The trial proceedings before the Sessions Court began only in 2015, after the repatriation of both the victim girls. When the time came for the victim to testify before the court it seemed impossible for the police to bring her back to India.

The sessions Judge accepted the application of the Additional Public Prosecutor to have the victim witnesses depose before the court through VC, and the Judge copied Rights Jessore Bangladesh, IJM, and the Home Affairs Bangladesh Deputy Commissioner on its order.

The Police then requested the assistance of Rights Jessore to make arrangements for the victim to testify without having to leave her home country. Rights Jessore had to make two trips, one to trace the girl and the second trip was on 6th June 2017, to bring the minor victim in the case to depose before the Court through VC. The victim identified and implicated the accused in the case as her traffickers. This testimony along with the witness testimonies were relied on as evidence against the accused and both the accused were convicted to 10 years rigorous imprisonment. The facilitators for this VC were IJM at Mumbai and Rights Jessore at Bangladesh.
Appendix

CASE NO.:
Appeal (crl.) 476 of 2003
Appeal (crl.) 477 of 2003

PETITIONER:
The State of Maharashtra
P. C. Singhi

RESPONDENT:
Dr. Praful B. Desai
Dr. Praful B. Desai and another

DATE OF JUDGMENT: 01/04/2003

BENCH:
S.N. Variava & B.N. Agrawal

JUDGMENT:

J U D G M E N T

(Arising out of SLP (Crl.) No. 6814 of 2001)
(Arising out of SLP (Crl.) No. 6815 of 2001)

Variava, J.

1. Leave granted
2. Heard parties
3. These Appeals are against a Judgment of the Bombay High Court dated 23rd/24th April 2001. The question for consideration is whether in a criminal trial, evidence can be recorded by video conferencing. The High Court has held, on an interpretation of Section 273, Criminal Procedure Code, that it cannot be done. Criminal Appeal (arising out of SLP (Criminal) No 6814 of 2001) is filed by the State of Maharashtra. Criminal Appeal (arising out of SLP (Criminal) No 6815 of 2001) is filed by Mr. P. C. Singhi, who was the complainant. As the question of law is common in both these Appeals, they are being disposed of by this common Judgment. In this Judgment parties will be referred to in their capacity in the Criminal Appeal (arising out of SLP (Criminal) No 6814 of 2001). Mr. P. C. Singhi will be referred to as the complainant.

4. Briefly stated the facts are as follows:

The complainant’s facts was suffering from terminal cancer. It is the case of the prosecution that the complainant’s wife was examined by Dr. Ernest Greenberg of Sloan Kettering Memorial Hospital, New York, USA, who opined that she was inoperable and should be treated only with medication. Thereafter the complainant and his wife consulted the Respondent, who is a consulting surgeon practising for the last 40 years. In spite of being made aware of Dr Greenberg’s opinion the Respondent suggested surgery to remove the uterus. It is the case of the prosecution that the complainant and his wife agreed to the operation on the condition that it would be performed by the Respondent. It is the case of the prosecution that on 22nd December 1987 one Dr. A. K. Mukherjee operated on the complainant’s wife. It is the case of the prosecution that when the stomach was opened ascetic fluids oozed out of the abdomen. It is the case of the prosecution that Dr. A. K. Mukherjee contacted the Respondent who advised closing up the stomach. It is the case of the prosecution that Dr. A. K. Mukherjee accordingly closed the stomach and this resulted in intestinal...
fistula. It is the case of the prosecution that whenever the complainant’s wife ate or drank the same would come out of the wound. It is the case of the prosecution that the complainant’s wife required 20/25 dressings a day for more than 3 1/2 months in the hospital and thereafter till her death. It is the case of the prosecution that the complainant’s wife suffered terrible physical torture and mental agony. It is the case of the prosecution that the Respondent did not once examine the complainant’s wife after the operation. It is the case of the prosecution that the Respondent claimed that the complainant’s wife was not his patient. It is the case of the prosecution that the bill sent by the Bombay Hospital belied the Respondent case that the complainant’s wife was not his patient. The bill sent by the Bombay Hospital showed the fees charged by the Respondent. It is the case of the prosecution that the Maharashtra Medical Council has, in an inquiry, held the Respondent guilty of negligence and strictly warned him.

5. On a complaint by the complainant a case under Section 338 read with Sections 109 and 114 of the Indian Penal Code was registered against the Respondent and Dr. A. K. Mukherjee. Process was issued by the Metropolitan Magistrate, 23rd Court, Esplanade, Mumbai. The Respondent challenged the issue of process and carried the challenge right up to this Court. The Special Leave Petitions filed by the Respondent was dismissed by this Court on 8th July 1996. This Court directed the Respondent to face trial. We are told that evidence of six witnesses, including that of the complainant and the investigating officer, has been recorded.

6. On 29th June 1998 the prosecution made an application to examine Dr. Greenberg through video-conferencing. The trial court allowed that application on 16th August 1999. The Respondent challenged that order in the High Court. The High Court has by the impugned order allowed the Criminal Application filed by the Respondent. Hence these two Appeals.

7. At this stage it is appropriate to mention that Dr. Greenberg has expressed his willingness to give evidence, but has refused to come to India for that purpose. It is an admitted position that, in the Criminal Procedure Code there is no provision by which Dr. Greenberg can be compelled to come to India to give evidence. Before us a passing statement was made that the Respondent did not admit that the evidence of Dr. Greenberg was relevant or essential. However, on above-mentioned facts, it prima-facie appears to us that the evidence of Dr. Greenberg would be relevant and essential to the case of the prosecution.

8. Ms. Jaisingh, senior counsel argued for the State of Maharashtra. The complainant, except for pointing out a few facts, adopted her arguments. On behalf of the Respondent submissions were made by Senior Counsels Mr Sundaram and Mr Ashok Desai.

9. It was submitted on behalf of the Respondents, that the procedure governing a criminal trial is crucial to the basic right of the Accused under Articles 14 and 21 of the Constitution of India. It was submitted that the procedure for trial of a criminal case is expressly laid down, in India, in the Code of Criminal Procedure. It was submitted that the Code of Criminal Procedure lays down specific and express provisions governing the procedure to be followed in a criminal trial. It was submitted that the procedure laid down in the Code of Criminal Procedure was the "procedure established by law". It was submitted that the Legislature alone had the power to change the procedure by enacting a law amending it, and that when the procedure was so changed, that became "the procedure established by law". It was submitted that any departure from the procedure laid down by law would be contrary to Article 21. In support of this submission reliance was placed on the cases of A. K. Gopalan versus State of Madras reported in AIR 1950 S. C. 27, Nazir Ahmed versus Emperor reported in AIR 1936 Privy Council 253 and Siva Kumar Chadda versus Municipal Corporation of Delhi reported in AIR 1975 S.C. 915. There can be no dispute with these propositions. However if the existing provisions of the Criminal Procedure Code permit recording of evidence by video conferencing then it could not
be said that "procedure established by law" has not been followed.

10. This Court was taken through various sections of the Criminal Procedure Code. Emphasis was laid on Section 273, Criminal Procedure Code. It was submitted that Section 273, Criminal Procedure Code does not provide for the taking of evidence by video conferencing. Emphasis was laid on the words "Except as otherwise provided" in Section 273 and it was submitted that unless there is an express provision to the contrary, the procedure laid down in Section 273 has to be followed as it is mandatory. It was submitted that Section 273 mandates that evidence "shall be taken in the presence of the accused". It is submitted that the only exceptions, which come within the ambit of the words "except as otherwise provided" are Sections 284 to 290 (those dealing with issue of Commissions); Section 295 (affidavit in proof of conduct of public servant) and Section 296 (evidence of formal character on affidavit). It is submitted that the term "presence" in Section 273 must be interpreted to mean physical presence in flesh and blood in open Court. It was submitted that the only instances in which evidence may be taken in the absence of the Accused, under the Criminal Procedure Code are Sections 317 (provision for inquiries and trial being held in the absence of accused in certain cases) and 299 (record of evidence in the absence of the accused). It was submitted that as Section 273 is mandatory, the Section is required to be interpreted strictly. It was submitted that Section 273 must be given its contemporary meaning (Contemporanea exposition est optima et fortissimm - The contemporaneous exposition is the best and the strongest in law). It was submitted that video conferencing was not known and did not exist when the Criminal Procedure Code was enacted/amended. It was submitted that presence on a screen and recording of evidence by video conferencing was not contemplated by the Parliament at the time of drafting/amending the Criminal Procedure Code. It was submitted that when the Legislature intended to permit video conferencing, it has expressly provided for it, as is evident from the Ordinance passed by the State of Andhra Pradesh in December 2000 permitting the use of video conferencing under Sec. 167(2) Criminal Procedure Code in remand applications. It is pointed out that a similar amendment is being considered in Maharashtra. It is submitted that Section 273 is analogous to the Confrontation Clause set out in the VIth Amendment to the US Constitution. It is submitted that Courts in USA have held that video conferencing does not satisfy the requirements of the Confrontation Clause.

11. This argument found favour with the High Court. The High Court has relied on judgments of various High Courts which have held that Section 273 is mandatory and that evidence must be recorded in the presence of the accused. To this extent no fault can be found with the Judgment of the High Court. The High Court has then considered what Courts in foreign countries, including Courts in USA, have done. The High Court then based its decision on the meaning of the term "presence" in various dictionaries and held that the term "presence" in Section 273 means actual physical presence in Court. We are unable to agree with this. We have to consider whether evidence can be led by way of video-conferencing on the provisions of the Criminal Procedure Code and the Indian Evidence Act. Therefore, what view has been taken by Courts in other countries is irrelevant. However, it may only be mentioned that the Supreme Court of USA, in the case of Maryland vs. Santra Aun Craig [497 US 836], has held that recording of evidence by video-conferencing was not a violation of the Sixth Amendment (Confrontation Clause).

12. Considering the question on the basis of Criminal Procedure Code, we are of the view that the High Court has failed to read Section 273 properly. One does not have to consider dictionary meanings when a plain reading of the provision brings out what was intended. Section 273 reads as follows:

"Section 273: Evidence to be taken in presence of accused. Except as otherwise expressly provided, all evidence taken in the course of the trial or 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.

Explanation: In this section, "accused" includes a person in
relation to whom any proceeding under Chapter VIII has been
commenced under this Code.

Thus 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. Section 3 of the Indian Evidence Act reads as follows:

"Evidence----Evidence means and includes------

(1) all statements which the Court permits or requires to be
made before it by witnesses, in relation to matters of fact
under inquiry;
such statements are called oral evidence

(2) all documents including electronic records produced for the
inspection of the Court;
such documents are called documentary evidence"

Thus 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.

13. One needs to set out the approach which a Court must adopt in deciding
such questions. It must be remembered that the first duty of the Court is to
do justice. As has been held by this Court in the case of Sri Krishna Gobe
versus State of Maharashtra [(1973) 4 SCC 23] Courts must endeavour to
find the truth. It has been held that there would be failure of justice not only
by an unjust conviction but also by acquittal of the guilty for unjustified
failure to produce available evidence. Of course the rights of the Accused
have to be kept in mind and safeguarded, but they should not be over
emphasized to the extent of forgetting that the victims also have rights.

14. It must also be remembered that the Criminal Procedure Code is an
ongoing statute. The principles of interpreting an ongoing statute have been
very succinctly set out by the leading jurist Francis Bennion in his
commentaries titled "Statutory Interpretation", 2nd Edition page 617:

"It is presumed the Parliament intends the Court to apply to an
ongoing Act a construction that continuously updates its
wordings to allow for changes since the Act was initially
framed. While it remains law, it has to be treated as always
speaking. This means that in its application on any day, the
language of the Act though necessarily embedded in its own
time, is nevertheless to be construed in accordance with the
need to treat it as a current law.

...........

In construing an ongoing Act, the interpreter is to presume that
Parliament intended the Act to be applied at any future time in
such a way as to give effect to the original intention.
Accordingly, the interpreter is to make allowances for any
relevant changes that have occurred since the Act’s passing, in
law, in social conditions, technology, the meaning of words and other matters.. That today’s construction involves the supposition that Parliament was catering long ago for a state of affairs that did not then exist is no argument against that construction. Parliament, in the wording of an enactment, is expected to anticipate temporal developments. The drafter will foresee the future and allow for it in the wording.

An enactment of former days is thus to be read today, in the light of dynamic processing received over the years, with such modification of the current meaning of its language as will now give effect to the original legislative intention. The reality and effect of dynamic processing provides the gradual adjustment. It is constituted by judicial interpretation, year in and year out. It also comprises processing by executive officials.

15. At this stage the words of Justice Bhagwati in the case of National Textile Workers’ Union v. P.R. Ramakrishnan, (1983) 1 SCC 228, at page 256, need to be set out. They are:

"We cannot allow the dead hand of the past to stifle the growth of the living present. Law cannot stand still; it must change with the changing social concepts and values. If the bark that protects the tree fails to grow and expand along with the tree, it will either choke the tree or if it is a living tree, it will shed that bark and grow a new living bark for itself. Similarly, if the law fails to respond to the needs of changing society, then either it will stifle the growth of the society and choke its progress or if the society is vigorous enough, it will cast away the law which stands in the way of its growth. Law must therefore constantly be on the move adapting itself to the fast changing society and not lag behind."

16. This Court has approved the principle of updating construction, as enunciated by Francis Bennion, in a number of decisions. These principles were quoted with approval in the case of Commissioner of Income Tax, Bombay versus M/s Podar Cement Pvt. Ltd. [(1997) 5 SCC 482]. They were also cited with approval in the case of State versus S. J. Chowdhury [(1996) 2 SCC 428]. In this case it was held that the Evidence Act was an ongoing Act and the word "handwriting" in Section 45 of that Act was construed to include "typewriting". These principles were also applied in the case of SIL Import USA versus Exim Aides Silk Exporters [(1999) 4 SCC 567]. In this case the words "notice in writing", in Section 138 of the Negotiable Instruments Act, were construed to include a notice by fax. On the same principle Courts have interpreted, over a period of time, various terms and phrases. To take only a few examples:- "stage carriage" has been interpreted to include "electric tramcar"; "steam tricycle" to include "locomotive"; "telegraph" to include "telephone"; "bankers books" to include "microfilm"; "to take note" to include "use of tape recorder"; "documents" to include "computer database’s".

17. These principles have also been applied by this Court whilst considering an analogous provision of the Criminal Procedure Code. In the case of Basavaraj R. Patil v. State of Karnataka [(2000) 8 SCC 740] the question was whether an Accused needs to be physically present in Court to answer the questions put to him by Court whilst recording his statement under Section 313. To be remembered that under Section 313 the words are "for the purpose of enabling the accused personally to explain" (emphasis supplied). The term "personally" if given a strict and restrictive interpretation would mean that the Accused had to be physically present in Court. In fact the minority Judgment in this case so holds. It has however been held by the majority that the Section had to be considered in the light of the revolutionary changes in technology of communication and
transmission and the marked improvement in facilities for legal aid in the
country. It was held, by the majority, that it was not necessary that in all
cases the Accused must answer by personally remaining present in Court.

18. Thus the law is well settled. The doctrine "Contemporanea exposition
est optima et fortissimm" has no application when interpreting a provision of
an on-going statute/act like the Criminal Procedure Code.

19. At this stage we must deal with a submission made by Mr Sundaram. It
was submitted that video-conferencing could not be allowed as the rights of
an accused, under Article 21 of the Constitution of India, cannot be
subjected to a procedure involving "virtual reality". Such an argument
displays ignorance of the concept of virtual reality and also of video
conferencing. Virtual reality is a state where one is made to feel, hear or
imagine what does not really exists. 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 sofa etc. Video conferencing has nothing to do with virtual reality.
Advances in science and technology have now, so to say, shrunk the world.
They now enable one to see and hear events, taking place far away, as they
are actually taking place. To take an example today one does not need to go
to South Africa to watch World Cup matches. One can watch the game, live
as it is going on, on one’s TV. If a person is sitting in the stadium and
watching the match, the match is being played in his sight/presence and
he/she is in the presence of the players. When a person is sitting in his
drawing-room and watching the match on TV, it cannot be said that he is in
presence of the players but at the same time, in a broad sense, it can be said
that the match is being played in his presence. Both, the person sitting in the
stadium and the person in the drawing-room, are watching what is actually
happening as it is happening. This is not virtual reality, it is actual reality.
One is actually seeing and hearing what is happening. 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 i.e. in your presence. In fact he/she is present before you
on a screen. Except for touching, one can see, hear and observe as if the
party is in the same room. In video conferencing both parties are in presence
of each other. The submissions of Respondents counsel are akin to an
argument that a person seeing through binoculars or telescope is not actually
seeing what is happening. It is akin to submitting that a person seen through
binoculars or telescope is not in the "presence" of the person observing.
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".

Recording of evidence by video conferencing also satisfies the object
of providing, in 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 re hear 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.
Reliance was then placed on Sections 274 and 275 of the Criminal Procedure Code, which require that evidence be taken down in writing by the Magistrate himself or by his dictation in open Court. It was submitted that video conferencing would have to take place in the studio of VSNL. It was submitted that this would violate the right of the Accused to have the evidence recorded by the Magistrate or under his dictation in open Court. The advancement of science and technology is such that now it is possible to set up video conferencing equipment in the Court itself. In that case evidence would be recorded by the Magistrate or under his dictation in open Court. If that is done then the requirements of these Sections would be fully met. To this method there is however a drawback. As the witness is now in Court there may be difficulties if he commits contempt of Court or perjures himself and it is immediately noticed that he has perjured himself. Therefore as a matter of prudence evidence by video-conferencing in open Court should be only if the witness is in a country which has an extradition treaty with India and under whose laws contempt of Court and perjury are also punishable.

20. However even if the equipment cannot be set up in Court the Criminal Procedure Code contains provisions for examination of witnesses on commissions. Sections 284 to 289 deal with examination of witnesses on commissions. For our purposes Sections 284 and 285 are relevant. They read as under:

"284 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 or 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.

285 COMMISSION TO WHOM TO BE ISSUED.

(1) If the witness is within the territories to which this Code extends, the commission shall be directed to the Chief Metropolitan Magistrate or Chief Judicial Magistrate, as the case may be, within whose local jurisdiction the witness is to be found.

(2) If the witness is in India, but in a State or an area to which this Code does not extend, the commission shall be directed to such Court or officer as the Central Government may, by notification, specify in this behalf.

(3) If the witness is in a country or place outside India and arrangements have been made by the Central Government with the Government of such country or place for taking the evidence of witnesses in relation to criminal matters, the commission shall be issued in such form, directed to such Court or officer, and sent to such authority for transmission, as the Central Government may, by notification, prescribe in this
Thus in cases where the witness is necessary for the ends of justice and 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 may dispense with such attendance and issue a commission for examination of the witness. As indicated earlier Dr. Greenberg has refused to come to India to give evidence. His evidence appears to be necessary for the ends of Justice. Courts in India cannot procure his attendance. Even otherwise to procure attendance of a witness from a far of country like USA would generally involve delay, expense and/or inconvenience. In such cases commissions could be issued for recording evidence. Normally a commission would involve recording evidence at the place where the witness is. However advancement in science and technology has now made it possible to record such evidence by way of video conferencing in the town/city where the Court is. Thus in cases 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.

21. It was however submitted that India has no arrangement with the Government of United States of America and therefore commission cannot be issued for recording evidence of a witness who is in USA. Reliance was placed on the case of Ratilal Bhanji Mithani v. State of Maharashtra [(1972) 3 SCC 793]. In this case a commission was issued for examination of witnesses in Germany. The time for recording evidence on commission had expired. An application for extension of time was made. It was then noticed that India did not have any arrangement with Germany for recording evidence on commission. At page 798 this Court observed as follows:

"25. The provisions contained in Sections 504 and 508-A of the Code of Criminal Procedure contain complimentary provisions for reciprocal arrangements between the Government of our country and the Government of a foreign country for Commission from Courts in India to specified courts in the foreign country for examination of witnesses in the foreign country and similarly for Commissions from specified courts in the foreign country for examination of witnesses residing in our country. Notifications Nos. SRO 2161, SRO 2162, SRO 2163 and SRO 2164 all, dated November 18, 1953, published in the Gazette of India Part II, Section 3 on November 28, 1953, illustrate the reciprocal arrangements between the Government of India and the Government of the United Kingdom and the Government of Canada for examination of witnesses residing in the United Kingdom, Canada and the examination of witnesses residing in India.

26. In the present case, no notification under Section 508-A of the Code of Criminal Procedure has been published specifying the courts in the Federal Republic of West Germany by whom commissions for examination of witnesses residing in India may be issued. The notification, dated September 9, 1969, in the present case under Section 504 of the Code of Criminal Procedure is not based upon any existing complete arrangement between the Government of India and the Government of the Federal Republic of West Germany for examination of witnesses residing in West Germany. The notification, dated September 9, 1969, is ineffective for two reasons. First, there is no reciprocal arrangement between the Government of India and the Government of the Federal Republic of West Germany as contemplated in Sections 504 and 508-A of the Code of Criminal Procedure. Secondly, the notification under Section 504 is nullified and repelled by the affidavit evidence adduced on behalf of the State that no agreement between the two countries has yet been made."
27. In the present case, extension of time was granted in the past to enable the State for examination of witnesses in West Germany and return of the commission to this country. The State could not obtain the return of the commission. Now, a question has arisen as to whether any extension of time should be made when it appears that reciprocal arrangements within the contemplation of Sections 504 and 508-A of the Code of Criminal Procedure are not made. The courts do not make orders in vain. When this Court finds that there are no arrangements in existence within the meaning of Sections 504 and 508-A of the Code of Criminal Procedure this Court is not inclined to make any order."

This authority, which is of a Constitution Bench of this Court, does suggest that no commission can be issued if there is no arrangement between the Government of India and the country where the commission is proposed to be issued. This authority would have been binding on this Court if the facts were identical. Ms. Jaising had submitted that notwithstanding this authority a difference would have to be drawn in cases where a witness was not willing to give evidence and in cases where the witness was willing to give evidence. She submitted that in the second class of cases commissions could be issued for recording evidence even in a country where there is no arrangement between the Government of India and that country.

22. In this case we are not required to consider this aspect and therefore express no opinion thereon. The question whether commission can be issued for recording evidence in a country where there is no arrangement, is academic so far as this case is concerned. In this case we are considering whether evidence can be recorded by video-conferencing. Normally when a Commission is issued, the recording would have to be at the place where the witness is. Thus Section 285 provides to whom the Commission is to be directed. If the witness is outside India, arrangements are required between India and that country because the services of an official of the country (mostly a Judicial Officer) would be required to record the evidence and to ensure/compel attendance. However new advancement of science and technology permit officials of the Court, in the city where video conferencing is to take place, to record the evidence. Thus where a witness is willing to give evidence an official of the Court can be deported to record evidence on commission by way of video-conferencing. The evidence will be recorded in the studio/hall where the video-conferencing takes place. The Court in Mumbai would be issuing commission to record evidence by video conferencing in Mumbai. Therefore the commission would be addressed to the Chief Metropolitan Magistrate, Mumbai who would depute a responsible officer (preferably a Judicial Officer) to proceed to the office of VSNL and record the evidence of Dr. Greenberg in the presence of the Respondent. The officer shall ensure that the Respondent and his counsel are present when the evidence is recorded and that they are able to observe the demeanour and hear the deposition of Dr. Greenberg. The officers shall also ensure that the Respondent has full opportunity to cross-examine Dr. Greenberg. It must be clarified that adopting such a procedure may not be possible if the witness is out of India and not willing to give evidence.

23. It was then submitted that there would be practical difficulties in recording evidence by video conferencing. It was submitted that there is a time difference between India and USA. It was submitted that a question would arise as to how and who would administer the oath to Dr. Greenberg. It was submitted that there could be a video image/audio interruptions/distortions which might make the transmission inaudible/indecipherable. It was submitted that there would be no way of ensuring that the witnesses is not being coached/tutored/prompted whilst evidence was being recorded. It is submitted that the witness sitting in USA would not be subject to any control of the Court in India. It is submitted that the witness may commit perjury with impunity and also insult the Court
without fear of punishment since he is not amenable to the jurisdiction of the Court. It is submitted that the witness may not remain present and may also refuse to answer questions. It is submitted that commercial studios place restrictions on the number of people who can remain present and may restrict the volume of papers that may be brought into the studio. It was submitted that it would be difficult to place textbooks and other materials to the witness for the purpose of cross-examining him. Lastly, it was submitted that the cost of video conferencing, if at all permitted, must be borne by the State.

24. To be remembered that what is being considered is recording evidence on commission. Fixing of time for recording evidence on commission is always the duty of the officer who has been deputed to so record evidence. Thus the officer recording the evidence would have the discretion to fix up the time in consultation with VSNL, who are experts in the field and who, will know which is the most convenient time for video conferencing with a person in USA. The Respondent and his counsel will have to make it convenient to attend at the time fixed by the concerned officer. If they do not remain present the Magistrate will take action, as provided in law, to compel attendance. We do not have the slightest doubt that the officer who will be deputed would be one who has authority to administer oaths. That officer will administer the oath. By now science and technology has progressed enough to not worry about a video image/audio interruptions/distortions. Even if there are interruptions they would be of temporary duration. Undoubtedly 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 witness is not coached/tutored/prompted. It would be advisable, 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. Thus no question arises of the witness insulting the Court. If on reading the evidence the Court finds that the witness has perjured himself, just like in any other evidence on commission, the Court will ignore or disbelieve the evidence. It must be remembered that there have been cases where evidence is recorded on commission and by the time it is read in Court the witness has left the country. There also have been cases where foreign witness has given evidence in a Court in India and that then gone away abroad. In all such cases Court would not have been able to take any action in perjury as by the time the evidence was considered, and it was ascertained that there was perjury, the witness was out of the jurisdiction of the Court. Even in those cases the Court could only ignore or disbelieve the evidence. The officer deputed will ensure that the Respondent, his counsel and one assistant are allowed in the studio when the evidence is being recorded. The officer will also ensure that the Respondent is not prevented from bringing into the studio the papers/documents which may be required by him or his counsel. We see no substance in this submission that it would be difficult to put documents or written material to the witness in cross-examination. It is now possible, to show to a party, with whom video conferencing is taking place, any amount of written material. The concerned officer will ensure that once video conferencing commences, as far as possible, it is proceeded with without any adjournments. Further if it is found that Dr. Greenberg is not attending at the time/s fixed, without any sufficient cause, then it would be open for the Magistrate to disallow recording of evidence by video conferencing. If the officer finds that Dr. Greenberg is not answering questions, the officer will make a memo of the same. Finally when the evidence is read in Court, this is an aspect which will be taken into consideration for testing the veracity of the evidence. Undoubtedly the costs of video conferencing would have to be borne by the State.

25. Accordingly the impugned judgment is set aside. The Magistrate will now proceed to have the evidence of Dr. Greenberg recorded by way of video conferencing. As the trial has been pending for a long time the trial
court is requested to dispose off the case as early as possible and in any case within one year from today. With these directions the Appeals stand disposed of. The Respondent shall pay to the State and the complainant the costs of these Appeals.
REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1620 OF 2015
(Arising from SLP(Criminal) No.8157/2015)

Sujoy Mitra ..Appellant

versus

State of West Bengal ..Respondent

JUDGMENT

JAGDISH SINGH KHEHAR, J.

Leave granted.

2. The appellant before this Court is an accused, who is facing trial in ST No. 1(8) of 2014 arising out of Kalighat police station Case No. 164/2013 dated 1.6.2013, inter alia, under Section 376 of the Indian Penal Code. The complainant in the above case is a citizen of Ireland, resident in Dublin. Four witnesses were examined by the trial Court before examining the prosecutrix-PW5. The trial Court accepted to record the testimony of the prosecutrix, through video conference.

3. The appellant before this Court raised a challenge to the procedure adopted by the trial Court, while recording the statement of PW5 on various grounds, by filing a petition under Section 482 of the Code of Criminal Procedure. The learned Single Judge of the High Court of Calcutta, disposed of Criminal Revision No. 1285 of 2015, by passing the impugned order dated 16.06.2015. Alleging,
that the postulated procedure was not fair to the appellant, the appellant has approached this Court.

4. We have heard learned counsel for the rival parties at some length, and are satisfied, that the following procedure should be adopted, in addition to the steps and safeguards provided in the impugned order, while recording the statement of PW5:

I) The State of West Bengal shall make provision for recording the testimony of PW5 in the trial Court by seeking the services of the National Informatic Centre (NIC) for installing the appropriate equipment for video conferencing, by using “VC Solution” software, to facilitate video conferencing in the case. This provision shall be made by the State of West Bengal in a room to be identified by the concerned Sessions Judge, within four weeks from today. The NIC will ensure, that the equipment installed in the premises of the trial Court, is compatible with the video conferencing facilities at the Indian Embassy in Ireland at Dublin.

II) Before recording the statement of the prosecutrix-PW5, the Embassy shall nominate a responsible officer, in whose presence the statement is to be recorded. The said officer shall remain present at all times from the beginning to the end of each session, of recording of the said testimony.

III) The officer deputed to have the statement recorded shall also ensure, that there is no other person besides the concerned witness, in the room, in which the testimony of PW5 is to be recorded. In case, the witness is in possession of any material or documents, the same shall be taken over by the officer concerned in his personal custody.
IV) The statement of witness will then be recorded. The witness shall be permitted to rely upon the material and documents in the custody of the officer concerned, or to tender the same in evidence, only with the express permission of the trial Court.

V) The officer concerned will affirm to the trial Court, before the commencement of the recording of the statement, the fact, that no other person is present in the room where evidence is recorded, and further, that all material and documents in possession of the prosecutrix-PW5 (if any) were taken by him in his custody before the statement was recorded. He shall further affirm to the trial Court, at the culmination of the testimony, that no other person had entered the room, during the course of recording of the statement of the witness, till the conclusion thereof. The learned counsel for the accused shall assist the trial Court, to ensure, that the above procedure is adopted, by placing reliance on the instant order.

VI) The statement of the witness shall be recorded by the trial Court, in consonance with the provisions of Section 278 of the Code of Criminal Procedure. At the culmination of the recording of the statement, the same shall be read out to the witness in the presence of the accused (if in attendance, or to his pleader). If the witness denies the correctness of any part of the evidence, when the same is read over to her, the trial Court may make the necessary correction, or alternatively, may record a memorandum thereon, to the objection made to the recorded statement by the witness, and in addition thereto, record his own remarks, if necessary.
VII) The transcript of the statement of the witness recorded through video conferencing (as corrected, if necessary), in consonance with the provisions of Section 278 of the Code of Criminal Procedure, shall be scanned and dispatched through email to the embassy. At the embassy, the witness will authenticate the same in consonance with law. The aforesaid authenticated statement shall be endorsed by the officer deputed by the embassy. It shall be scanned and returned to the trial Court through email. The statement signed by the witness at the embassy, shall be retained in its custody in a sealed cover.

VIII) The statement received by the trial Court through email shall be re-endorsed by the trial Judge. The instant statement endorsed by the trial Judge, shall constitute the testimony of the prosecutrix-PW5, for all intents and purposes.

5. We are satisfied, that the aforesaid parameters will meet the ends of justice, and that no further inputs are required. Needless to mention, that the procedure for recording the statement of PW5, as noticed above, was finalised with the invaluable assistance of the learned counsel for the rival parties.

6. In recording our conclusions in regulating the above procedure, the learned senior counsel for the appellant emphasised, that recording of the video-graphic testimony of the witness should be furnished to the appellant, and it is only thereupon, that the direction contained in the judgment rendered by this Court in State of Maharashtra vs. Dr. Praful B. Desai (2003) 4 SCC 601, can be deemed to have been fully complied with. The instant contention of the learned senior counsel for the appellant is based on a variety
of reasons including the fact, that the statement may be recorded in a language which is not known, and/or is not properly understandable to the accused. And even if the statement of the witness is recorded in English, because of different accents of English (based on the countries of their origin), it may not be possible to fully understand the testimony of the concerned witness.

7. Having given our thoughtful consideration to the instant contention advanced at the hands of the learned senior counsel for the appellant, we find no reason whatsoever to agree with the same. In case of there being any difficulty in recording the testimony of the concerned witness, it is always open to the trial Court to seek appropriate assistance (based on, or independently of such plea raised by a party to the proceeding), as may be required by the trial Court, for a truthful recording of the testimony of the concerned witness. We are of the view, that furnishing recorded video-graphic testimony to an accused may eventually turn out to be a cumbersome process, if the same has to be replicated in all cases. Specially because this procedure is increasingly being adopted, by allowing the accused to participate in their trials, from jail premises also (at certain stages of the trial). And further more, it is likely to lead more record, which will also have to be maintained for its safe custody. What has been allowed to the accused herein, is what an ordinary accused would be entitled to, had the statement been recorded by the trial Court itself.

8. The instant appeal is accordingly disposed of. The trial
Court shall fix the date of hearing, as and when the video-conferencing facilities have been provided for in the premises of the trial Court, and after the same have been synchronized with the facilities available at the Indian Embassy in Ireland at Dublin.

9. The trial Court shall forward the instant order through the Sessions Judge, 24 Parganas, Alipore to the Ambassador of the Indian Embassy in Ireland at Dublin for compliance.

10. The instant parameters have to be adopted to record the testimony of the prosecutrix-PW5, in addition to the procedure and safeguards provided for in the impugned order. Accordingly, it will be imperative to record her testimony afresh.

..................................J.
[JAGDISH SINGH KHEHAR]

NEW DELHI;
DECEMBER 02, 2015.

..................................J.
[R. BANUMATHI]
ITEM NO.4       COURT NO.3       SECTION IIB

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Crl.) No(s). 8157/2015
(Arising out of impugned final judgment and order dated 17/06/2015
in CRR No. 1285/2015 passed by the High Court Of Calcutta)

SUJOY MITRA         Petitioner(s)

VERSUS

STATE OF WEST BENGAL        Respondent(s)
(with appln. (s) for permission to file addl. documents)

Date: 02/12/2015 This petition was called on for hearing today.

CORAM:
HON’BLE MR. JUSTICE JAGDISH SINGH KHEHAR
HON’BLE MRS. JUSTICE R. BANUMATHI

For Petitioner(s)       Mr. Basant R, Sr. Adv.
                        Mr. Manoj V. George, Adv.
                        Mr. Francis Samson Correa, Adv.
                        Mr. Arvind Kumar Singh, Adv.
                        Mr. Siju Thomas, Adv.
                        Mr. Rohit Adlakha, Adv.
                        for Mr. Zulfiker Ali P. S,AOR

For Respondent(s)       Mr. Joydeep Mazumdar, Adv.

UPON hearing the counsel the Court made the following
ORDER

Leave granted.

The appeal stands disposed of in terms of the reportable
judgment, which is placed on the file.

(Tapan Kr. Chakraborty)         (Parveen Kr. Chawla)
Court Master                    AR-cum-PS
VIDEO CONFERENCING GUIDELINES ISSUED BY THE HIGH COURT OF DELHI

Guidelines for the Conduct of Court Proceedings between Courts and Remote Sites

Introduction

Video conference facilities enabling audio and visual communication between persons at different locations have now been installed in:

- Delhi High Court
- All the District Courts in Delhi, i.e. Tis Hazari, Patiala House, Karkardooma, Rohini, Dwarka and Saket Courts
- Prisons in Delhi i.e. Tihar and Rohini Prison Complex

Video-conferencing facilities provide Courts in Delhi with the capacity to receive evidence and submissions from witnesses or persons involved in Court proceedings in circumstances where it would be expensive, inconvenient or otherwise not desirable for a person to attend a Court in person. An over-riding factor is that the use of video-conferencing in any particular case must be consistent with furthering the interests of justice and should cause minimal disadvantage to the parties. However, it is for the Court to decide whether evidence should be recorded by video-conferencing.

Even with the advancement of technology, there is a delay of milliseconds between video picture seen and sounds being heard. Allowances appropriate to this time gap need to be made to avoid one participant talking over another.

Microphones set up at the bench, the bar table and at the witness box are highly sensitive. Persons during a video conferencing should assume from the time the video conference is activated until the same is disconnected that microphones are "live" and as such all remarks are audible to the Court.
1. **General**

1.1 In these guidelines, reference to the 'court point' means the Courtroom or other place where the Court is sitting or the place where Commissioner appointed by the Court to record the evidence by video conference is sitting and the 'remote point' is the place where the person to be examined via video conference is located, for example, a prison.

1.2 Person to be examined includes a person whose deposition or statement is required to be recorded or in whose presence certain proceedings are to be recorded.

1.3 Wherever possible, proceedings by way of video conference shall be conducted as judicial proceedings and the same courtesies and protocols will be observed. All relevant statutory provisions applicable to judicial proceedings including the provisions of the Information Technology Act, 2000 and the Indian Evidence Act, 1872 shall apply to the recording of evidence by video conference.

1.4 Video conferencing facilities can be used in all matters including remands, bail applications and in civil and criminal trials where a witness is located intrastate, interstate, or overseas. However, these guidelines will not apply to proceedings under section 164 of Cr. P.C.

1.5 The guidelines applicable to a Court will *mutatis mutandis* apply to a Local Commissioner appointed by the Court to record the evidence.

2. **Appearance by video conference**

A Court may either *suo moto* or on application of a party or a witness, direct by a reasoned order that any person shall appear before it or give evidence or make submissions to the Court through video conference.
3. **Preparatory arrangements for video conference**

3.1 There shall be Co-ordinators both at the court point as well as at the remote point.

3.2 In the High Court, Registrar (Computers) shall be the co-ordinator at the court point.

3.3 In the District Courts, official-in-charge of the Video Conferencing Facility (holding the post of Senior Judicial Assistant/Senior Personal Assistant or above) nominated by the District Judge shall be the co-ordinator at the court point.

3.4 The Co-ordinator at the remote point may be any of the following:-

(i) Where the person to be examined is overseas, the Court may specify the co-ordinator out of the following:-

   (a) the official of Consulate/Embassy of India,

   (b) duly certified Notary Public/ Oath Commissioner,

(ii) Where the person to be examined is in another State/U.T, a judicial Magistrate or any other responsible official as may be deputed by the District Judge concerned or Sub-Divisional Magistrate or any other responsible official as may be deputed by the District Collector concerned,

(iii) Where the person to be examined is in custody, the concerned Jail Superintendent or any other responsible official deputed by him,

(iv) Where the person to be examined is in a hospital, public or private, whether run by the Central Government, the State Government, local bodies or any other person, the Medical Superintendent or In-charge of the said hospital or any other responsible official deputed by him,
(v) Where the person to be examined is a juvenile or a child who is an inmate of an Observation Home/Special Home/Children’s Home/ Shelter Home, the Superintendent/Officer In-charge of that Home or any other responsible official deputed by him,

(vi) Where the person to be examined is in Nirmal Chhaya, the Superintendent/Officer In-Charge of the Nirmal Chhaya or any other responsible official deputed by him,

(vii) Wherever a co-ordinator is to be appointed at the remote point under Clause 3.4 sub-Clause (ii); (iii), (iv), (v) & (vi), the Court concerned will make formal request through the District Judge concerned to concerned official.

(viii) In case of any other person, as may be ordered by the Court.

3.5 The co-ordinators at both the points shall ensure that the minimum requirements as mentioned in the Guideline No.4 are in position at the court point and the remote point and shall conduct a test between both the points well in advance, to resolve any technical problem so that the proceedings are conducted without interruption.

3.6 It shall be ensured by the co-ordinator at the remote point that:-

(i) the person to be examined or heard is available and ready at the room earmarked for the video conference at least 30 minutes before the scheduled time.

(ii) no other recording device is permitted except the one installed in the video conferencing room.

(iii) entry into the video conference room is regulated.
3.7 It shall be ensured by the co-ordinator at the court point that the co-ordinator at the remote point has certified copies or soft copies of all or any part of the court record in a sealed cover directed by the Court sufficiently in advance of the scheduled video conference.

3.8 The Court shall order the co-ordinator at the remote point or at the court point wherever it is more convenient, to provide:-

(i) a translator in case the person to be examined is not conversant with Court language;

(ii) an expert in sign language in case the person to be examined is speech and/or hearing impaired;

(iii) for reading of documents in case the person to be examined is visually challenged;

(iv) an interpreter or special educator, as the case may be, in case the person to be examined is temporarily or permanently mentally or physically disabled.

4. **Minimum requisites for video conference**

(i) A desktop or laptop with internet connectivity and printer

(ii) Device ensuring uninterrupted power supply

(iii) Video Camera

(iv) Microphones and speakers

(v) Display unit

(vi) Document visualizer

(vii) Comfortable sitting arrangements ensuring privacy

(viii) Adequate lighting

(ix) Insulations as far as possible/proper acoustics
(x) Digital signatures from licensed certifying authorities for the co-ordinators at the court point and at the remote point

5. **Cost of video conferencing**

5.1 In criminal cases, the expenses of the video conference facility including expenses of preparing soft copies/certified copies of the Court record for sending to the co-ordinator at the remote point and fee payable to translator/interpreter/special educator, as the case may be, and to the co-ordinator at the remote point shall be borne by such party as the Court directs taking into account the Delhi Criminal Courts (Payment of Expenses to Complainant and Witnesses) Rules, 2015.

5.2 In civil cases, as a general rule, the party making the request for recording evidence by video conference shall bear the expenses.

5.3 In other cases, the court may make an order as to expenses as it considers appropriate taking into account rules/instructions regarding payment of expenses to complainant and witnesses as may be prevalent from time to time.

6. **Procedures generally**

6.1 The identity of the person to be examined shall be confirmed by the court with the assistance of the co-ordinator at remote point at the time of recording of the evidence.

6.2 In civil cases, party requesting for recording statement of the person to be examined by video conferencing shall confirm to the Court location of the person, his willingness to be examined by video conferencing, place and facility of such video conferencing.

6.3 In criminal cases, where the person to be examined is a prosecution witness or court witness, the prosecution and where person to be examined is a defence
witness, the defence counsel will confirm to the Court his location, willingness to be examined by video conferencing, place and facility of such video conferencing.

6.4 In case person to be examined is an accused, prosecution will confirm his location at remote point.

6.5 Video conference shall ordinarily take place during the court hours. However, the Court may pass suitable directions with regard to timings of the video conferencing as the circumstances may dictate.

6.6 The record of proceedings including transcription of statement shall be prepared at the court point under supervision of the Court and accordingly authenticated. The soft copy of the transcript digitally signed by the co-ordinator at the court point shall be sent by e-mail through NIC or any other Indian service provider to the remote point where printout of the same will be taken and signed by the deponent. A scanned copy of the statement digitally signed by co-ordinator at the remote point would be sent by e-mail through NIC or any other Indian service provider to the court point. The hard copy would also be sent subsequently, preferably within three days of the recording, by the co-ordinator at the remote point to the court point by courier/mail.

6.7 The Court may, at the request of a person to be examined, or on its own motion, taking into account the best interests of the person to be examined, direct appropriate measures to protect his privacy keeping in mind his age, gender and physical condition.

6.8 Where a party or a lawyer requests that in the course of video-conferencing some privileged communication may have to take place, Court will pass appropriate directions in that regard.
6.9 The audio-visual shall be recorded at the court point. An encrypted master copy with hash value shall be retained in the Court as part of the record. Another copy shall also be stored at any other safe location for backup in the event of any emergency. Transcript of the evidence recorded by the Court shall be given to the parties as per applicable rules. A party may be allowed to view the master copy of the audio video recording retained in the Court on application which shall be decided by the Court consistent with furthering the interests of justice.

6.10 The co-ordinator at the remote point shall be paid such amount as honorarium as may be decided by the Court in consultation with the parties.

6.11 In case any party or his/her authorized person is desirous of being physically present at the remote point at the time of recording of the evidence, it shall be open for such party to make arrangements at party’s own costs including for appearance/representation at the remote point subject to orders to the contrary by the Court.

7. **Putting documents to a person at remote point**

If in the course of examination of a person at a remote point by video conference, it is necessary to put a document to him, the Court may permit the document to be put in the following manner:-

(a) if the document is at the court point, by transmitting a copy of it to the remote point electronically including through a document visualizer and the copy so transmitted being then put to the person;

(b) if the document is at the remote point, by putting it to the person and transmitting a copy of it to the court point electronically including through a document visualizer. The hard copy would also be sent subsequently to the court point by courier/mail.
8. **Persons unconnected with the case**

8.1 Third parties may be allowed to be present during video conferencing subject to orders to the contrary, if any, by the Court.

8.2 Where, for any reason, a person unconnected with the case is present at the remote point, then that person shall be identified by the co-ordinator at the remote point at the start of the proceedings and the purpose for his being present explained to the Court.

9. **Conduct of proceedings**

9.1 Establishment and disconnection of links between the court point and the remote point would be regulated by orders of the Court.

9.2 The Court shall satisfy itself that the person to be examined at the remote point can be seen and heard clearly and similarly that the person to be examined at the remote point can clearly see and hear the Court.

10. **Cameras**

10.1 The Court shall at all times have the ability to control the camera view at the remote point so that there is an unobstructed view of all the persons present in the room.

10.2 The Court shall have a clear image of each deponent to the extent possible so that the demeanour of such person may be observed.

11. **Residuary Clause**

   Such matters with respect to which no express provision has been made in these guidelines shall be decided by the Court consistent with furthering the interests of justice.
Sir/Madam.

SUB:- Guidelines for the conduct of Court Proceedings through Video Conference between Courts and Remote Sites - Regarding.

***

I invite your attention to the subject cited.

The guidelines framed by the Hon'ble High Court of Judicature at Hyderabad for the States of Telangana and Andhra Pradesh for conduct of Court Proceedings through Video Conference between Courts and Remote Sites are herewith furnished for your information.

I request you to circulate the same to all the Presiding Officers of the Courts of your unit for their guidance.

Yours faithfully,

Registrar (I.T.-cum Central Project Coordinator).

Encl: Above said Guidelines.
VIDEO CONFERENCING GUIDELINES ISSUED BY THE HIGH COURT OF JUDICATURE AT HYDERABAD FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

GUIDELINES FOR THE CONDUCT OF COURT PROCEEDINGS BETWEEN COURTS AND REMOTE SITES

Introduction:

Video conference facilities enabling audio and visual communication between persons at different locations have now been installed in:

- The High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh.

- All the District Courts in the States of Telangana and Andhra Pradesh and the Subordinate Courts in the units of City Civil Court, City Small Causes Court, Metropolitan Sessions Judges Court, Hyderabad.

- District Jails in the States of Telangana and Andhra Pradesh.

Video-conferencing provides Courts in the States of Telangana and Andhra Pradesh with the facility to receive evidence and submissions from witnesses or persons involved in Court proceedings in circumstances where it would be expensive, inconvenient or otherwise not desirable for a person to attend a Court in person. An over-riding factor is that the use of video-conferencing in any particular case must be consistent with furthering the interests of justice and should cause minimal disadvantage to the parties.
However, it is for the Court to decide whether evidence should be recorded by video-conferencing.

Even with the advancement of technology, there is a delay of millisecond between video picture seen and sounds being heard. Allowances appropriate to this time gap need to be made to avoid one participant talking over another.

Microphones set up at the bench, the bar table and at the witness box are highly sensitive. Persons during a video conferencing should be mindful that the video conference is activated until the same is disconnected and that microphones are “live” and as such all remarks are audible to the court.

1. **GENERAL:**

1) In these guidelines, reference to the ‘court point’ means the Courtroom or other place where the Court is sitting or the place where Commissioner appointed by the Court to record the evidence by video conference is sitting and the ‘remote point’ is the place where the person to be examined via video conference is located, for example, a prison.

2) Person to be examined includes a person whose deposition or statement is required to be recorded or in whose presence certain proceedings are to be recorded.

3) Wherever possible, proceedings by way of video conference shall be conducted as judicial proceedings and the same courtesies and protocols will be observed. All relevant statutory provisions applicable to judicial proceedings including the provisions of the Information
Technology Act, 2000 and the Indian Evidence Act, 1872 shall apply to the recording of evidence by video conference.

4) Video conferencing facilities can be used in all matters including remands, bail applications and in civil and criminal trials where a witness is located intrastate, interstate, or overseas. However, these guidelines will not apply to proceedings under Section 164 of Cr.P.C.

5) The guidelines applicable to a Court will mutatis mutandis apply to a Local Commissioner appointed by the Court to record the evidence.

2. APPEARANCE BY VIDEO CONFERENCE:

A Court may either suo moto or on application of a party or a witness, direct by a reasoned order that any person shall appear before it or give evidence or make submissions to the Court through video conference.

3. PREPARATORY ARRANGEMENTS FOR VIDEO CONFERENCE.

1) There shall be Coordinators both at the court point as well as at the remote point.

2) In the High Court, Registrar (I.T-cum-Central Project Coordinator) shall be the coordinator at the court point.

3) In the District Courts, official-in-charge of the Video Conferencing Facility (holding the post of Senior Assistant/Senior Personal Assistant/District System Administrator or above) nominated by the District Judge shall be the coordinator at the court point.
4) The Coordinator at the remote point may be any of the following:

i. Where the person to be examined is overseas, the Court may specify the coordinator out of the following:

(a) The official of Consulate/Embassy of India,
(b) Duly certified Notary Public/ Oath Commissioner,

ii. Where the person to be examined is in another State/U.T, a judicial Magistrate as may be deputed by the District Judge concerned.

iii. Where the person to be examined is in custody, the concerned Jail Superintendent or any other responsible official deputed by him.

iv. Where the person to be examined is in a hospital, public or private, whether run by the Central Government, the State Government, local bodies or any other person, the Medical Superintendent or In-charge of the said hospital or any other responsible official deputed by him,

v. Where the person to be examined is a juvenile or a child who is an inmate of an Observation Home/Special Home/Children’s Home/ Shelter Home, the Superintendent/Officer In-charge of that Home or any other responsible official deputed by him,

vi. Where the person to be examined is in women rescue homes, the Superintendent / Officer In-charge of the women rescue homes or any other responsible official deputed by him/her.
vii. Wherever a coordinator is to be appointed at the remote point under Clause 3(4) Sub-Clause (ii); (iii), (iv), (v) & (vi), the Court concerned will make formal request through the District Judge concerned to concerned official.

viii. In case of any other person, as may be ordered by the Court.

5) The coordinators at both the points shall ensure that the minimum requirements as mentioned in the Guidelines No.4 are in position at the court point and the remote point and shall conduct a test between both the points well in advance, to resolve any technical problem so that the proceedings are conducted without interruption.

6) It shall be ensured by the coordinator at the remote point that:-

(i) The person to be examined or heard is available and ready at the room earmarked for the video conference at least 30 minutes before the schedule time.

(ii) No other recording device is permitted except the one installed in the video conferencing room.

(iii) Entry into the video conference room is regulated.
7) It shall be ensured by the coordinator at the court point that the coordinator at the remote point has certified copies or soft copies of all or any part of the court record in a sealed cover directed by the Court sufficiently in advance of the scheduled video conference.

8) The court shall order the coordinator at the remote point or at the court point where it is more convenient, to provide:

(i) a translator in case the person to be examined is not conversant with Court language;

(ii) an expert in sign language in case the person to be examined is speech and/or hearing impaired;

(iii) for reading of documents in case the person to be examined is visually challenged;

(iv) an interpreter or special educator, as the case may be, in case the person to be examined is temporarily or permanently mentally or physically disabled.

4. MINIMUM REQUISITES FOR VIDEO CONFERENCE

1) A desktop or laptop with internet connectivity and printer
2) Device ensuring uninterrupted power supply
3) Video camera
4) Microphones and speakers
5) Display unit
6) Document visualize
7) Comfortable sitting arrangements ensuring privacy
8) Adequate lighting
9) Insulations as far as possible / proper acoustics
10) Digital signatures from licensed certifying authorities for the coordinators at the court point and at the remote point.
5. **COST OF VIDEO CONFERENCING:**

1) In criminal cases, the expenses of the video conference facility including expenses of preparing soft copies/certified copies of the court record for sending to the coordinator at the remote point and fee payable to translator/interpreter/special educator, as the case may be, and to the coordinator at the remote point shall be borne by such party as the court directs taking into account the Criminal Rules of Practice and Circular orders 1990.

2) In civil cases, as general rule, the party making the request for recording evidence by video conference shall bear the expenses.

3) In other cases, the court may make an order as to expenses as it considers appropriate taking into account rules/instructions regarding payment of expenses to complainant and witnesses as may be prevalent from time to time.

6. **PROCEDURES GENERALLY:**

1) The identity of the person to be examined shall be confirmed by the court with the assistance of the coordinator at remote point at the time of recording of the evidence.

2) In civil cases, party requesting for recording statement of the person to be examined by video conferencing shall confirm to the court location of the person, his willingness to be examined by video conferencing, place and facility of such video conferencing.
3) In criminal cases, where the person to be examined is a prosecution witness or court witness, the prosecution and where person to be examined is a defence witness, the defence counsel will confirm to the court his location, willingness to be examined by video conferencing, place and facility of such video conferencing.

4) In case person to be examined is an accused, prosecution will confirm his location at remote point.

5) Video conference shall ordinarily take place during the court hours. However, the Court may pass suitable directions with regard to timings of the video conferencing as the circumstances may dictate.

6) The record of proceedings including transcription of statement shall be prepared at the court point under supervision of the court and accordingly authenticated. The soft copy of the transcript digitally signed by the coordinator at the court point shall be sent by e-mail through NIC or any other Indian service provider to the remote point where printout of the same will be taken and signed by the deponent. A scanned copy of the statement digitally signed by coordinator at the remote point would be sent by e-mail through NIC or any other Indian service provider to the court point. The hard copy would also be sent subsequently, preferably within three days of the recording, by the coordinator at the remote point to the court point by courier/mail.

7) The court may, at the request of a person to be examined, or on its own motion, taking into account the best interests of the person to be
examined, direct appropriate measures to protect his privacy keeping in mind his age, gender and physical condition.

8) Where a party or a lawyer requests that in the course of video conferencing some privileged communication may have to take place, Court will pass appropriate directions in that regard.

9) The audio-visual shall be recorded at the court point. An encrypted master copy with hash value shall be retained in the court as part of the record. Another copy shall also be stored at any other safe location for backup in the event of any emergency. Transcript of the evidence recorded by the Court shall be given to the parties as per applicable rules. A party may be allowed to view the master copy of the audio video recording retained in the Court on application which shall be decided by the Court consistent with furthering the interests of justice.

10) The coordinator at the remote point shall be paid such amount as honorarium as may be decided by the Court in consultation with the parties.

11) In case any party or his/her authorized person is desirous of being physically present at the remote point at the time of recording of the evidence, it shall be open for such party to make arrangements at party’s own costs including for appearance/representation at the remote point subject to orders to the contrary by the Court.
7. PUTTING DOCUMENTS TO A PERSON AT REMOTE POINT:

If in the course of examination of a person at a remote point by video conference, it is necessary to put a document to him, the court may permit the document to be put in the following manner:

1) If the document is at the court point, by transmitting a copy of it to the remote point electronically including through a document visualize and the copy so transmitted being then put to the person;

2) If the document is at the remote point, by putting it to the person and transmitting a copy of it to the court point electronically including through a document visualize. The hard copy would also be sent subsequently to the court point by courier/mail.

8. PERSONS UNCONNECTED WITH THE CASE:

1) Third parties may not be allowed to be present during video conferencing subject to orders to the contrary, if any, by the Court.

2) Where, for any reason, a person unconnected with the case is present at the remote point, then that person shall be identified by the coordinator at the remote point at the start of the proceedings and the purpose for his being present explained to the court.
9. **CONDUCT OF PROCEEDINGS:**

1) Establishment and disconnection of links between the court point and the remote point would be regulated by orders of the court.

2) The court shall satisfy itself that the person to be examined at the remote point can be seen and heard clearly and similarly that the person to be examined at the remote point can clearly see and hear the court.

10. **CAMERAS:**

1) The Court shall at all times have the ability to control the camera view at the remote point so that there is an unobstructed view of all the persons present in the room.

2) The court shall have a clear image of each deponent to the extent possible so that the demeanour of such person may be observed.

11. **RESIDUARY CLAUSE:**

Such matters with respect to which no express provision has been made in these guidelines shall be decided by the Court consistent with furthering the interests of justice.
PRL.DISTRICT COURT, WEST GODAVARI: ELURU : DT. 18.07.2017

Communicated to all the Judicial Officers in the Unit of West Godavari through emails of the Officers and also placed in District Court’s website i.e., ecourts.gov.in/westgodavari and requested to follow the guidelines scrupulously.

PRL.DISTRICT JUDGE,
W.G., ELURU.
বিষয়: Video Conferencing এর মাধ্যমে তিনটি / সাফল্যের সাক্ষাৎ প্রদানের প্রস্তাব।

উপরূপক বিষয়ের প্রেক্ষিতে জানানো যাচ্ছে যে, পাতারকৃত নারী ও পিতা তিনটিমাত্রকে উদ্ধারের জন্য Video Conferencing এর মাধ্যমে সাক্ষাৎ প্রদানের বিষয়ে গত ০২-০৪ সেপ্টেম্বর, ২০১৪ তারিখে বাংলাদেশ ও ভারতের স্বর্গীয় সত্তীর পর্যায়ে সত্য অনুষ্ঠিত হয়। উক্ত সভায় সিদ্ধান্ত নক্ষত্রযান নির্মিত, জেলা মানব পাঠার প্রতিরোধ কমিটির সভাপতি হিসেবে জেলা প্রশাসকের কার্যালয়ে Video Conferencing এর মাধ্যমে তিনটি / সাফল্যের সাক্ষাৎ গৃহীত হয়।

২। এমতাবস্থায়, Video Conferencing এর মাধ্যমে তিনটি / সাফল্যের সাক্ষাৎ প্রদানের লক্ষ্যে জেলা মানব পাঠার প্রতিরোধ কমিটির সভাপতি হিসেবে জেলা প্রশাসকের কার্যালয়ে কার্যক্রম সম্পাদনের প্রতি সম্মতি করার জন্য নিদর্শনক্রমে অনুরোধ করা হল।

মূলনীতি চিহ্নিত
(রহমান হাসিন) ২৯/১২/২০০৮
উপস্থিত
ফোন ৪ ৯৫৫১৯৭১

জেলা প্রশাসক,........................
সভাপতি, জেলা মানব পাঠার প্রতিরোধ কমিটি।

# A translation of the above order is available on Page 64 of this SOP
Subject: In context of Video Conferencing of Victim/ Witnesses

In the abovementioned subject it is informed to you that, in the context video conferencing of trafficked victim and children, on 02-04th September, 2014, Home Ministries of Bangladesh and Indian Government had a meeting. In the said meeting for the said implementation, Chairman of District Anti Human Trafficking Committee, has decided that at the office of the District Administration shall be used for recording of testimony of the victim/ witness through Video Conferencing.

Meanwhile, for the purpose of recording of evidence of the victim/ witness with the help of Video Conferencing Victim/ Witness, the Chairman of the Anti Human Trafficking Committee directs the Office of the District Administration to complete the said process.

(Ruksana Hasin)
Deputy Secretary.
Ph. No. : 9669471

District Administrator ..........,
President, District Anti Human Trafficking Committee

**Disclaimer: This document has been translated for internal use by Justice and Care. It shall not be considered an official translation**