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30 Sep 2014

Headquarters
Southern Command
Eastern Command
Western Command
Central Command
Northern Command
Army Trg Command
South Western Command ✓
Strategic Forces Command
Andaman & Nicobar Command

**GUIDELINES FOR EXAMINATION OF WITNESSES BY VIDEO-
CONFERCING DURING INQUIRIES, INVESTIGATIONS
AND TRIALS UNDER THE ARMY ACT**

1. Whereas the Military Law has been modelled for speedy disposal of disciplinary cases and, thus, necessitate speedy dispensation of justice, however, it has been noted with concern that Courts of Inquiry, Summaries of Evidence and Courts-Martial have been taking considerable time in their conclusion and have been getting unduly delayed. These proceedings, more often than not, are adjourned time and again due to non availability of witnesses, thereby prolonging the finalisation of disciplinary cases. With passage of time, the evidence weakens to the advantage of wrong doer. Thus, justice becomes the casualty. The following are the main reasons for the non-availability of witnesses:-

- (a) Posted in CI/active hostility/inaccessible areas.
- (b) Attending career courses.
- (c) Out of India on UN mission/foreign posting.
- (d) Hospitalisation/serious illness.
- (e) Hesitation on the part of victims of sexual assault to appear as witness due to embarrassment, trauma, nature of examination and fear of facing the accused.
- (f) The family of victim/victim shifting to foreign country.

2. In the existing scheme of the Army Act and the Rules made thereunder, with regard to investigations and trials by Courts Martial, the evidence is required to be recorded in the presence and hearing of an accused person. Even in criminal trials, under the Criminal Procedure Code, evidence is required to be led in the presence of the accused.

3. Advances in the science and technology have made the world a global village. Video Conferencing is such 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 personally present. In Video Conferencing, both parties are in the presence of each other. It is thus, not virtual reality but actual reality (State of Maharashtra v/s Dr Praful B Desai (2003 (4) SCC 601)). The Apex Court has held that, presence includes constructive presence and is not restricted to physical presence in flesh and blood. As regards the term 'Evidence', the Apex Court has held that in criminal matters, the evidence would also include evidence recorded through Video Conferencing. The Apex Court has made it clear that so long as the accused and his counsel are present when evidence is recorded through Video-Conferencing, that evidence is deemed to be recorded in the 'presence' of the accused. While deliberating upon the legality of Video Conferencing, the Apex Court has concluded that no prejudice is caused to an accused when evidence is recorded through Video Conferencing.

4. As the legality of recording of evidence through Video Conferencing stands settled in Criminal Jurisprudence, there is a need for us to adopt the same and adapt own proceedings thereto. We ought to make use of Video Conferencing during the conduct of investigation, inquiry and trial under the Army Act and Rules made thereunder. In particular, under the following circumstances, witnesses may be examined through Video Conferencing:-

- (a) Victims of sexual assault/witnesses of tender years.
- (b) Where accused causes disturbance or scares witnesses
- (c) Witnesses located out of country
- (d) Witnesses on Op/CI/CT duties
- (e) Witnesses posted at inaccessible areas/terrain
- (f) Witnesses who are unable to attend due to their illness, hospitalisation, pregnancy, extreme old age, etc.
- (g) Witnesses hesitant to appear due to threat to life, etc

5. It is a matter of common knowledge that Video Conferencing facilities are available at all major military stations and are being used effectively by the commanders at various levels. Needless to say that the existing facility can be utilised for examination of witnesses through Video Conferencing at any stage of the disciplinary proceedings.

6. In order to ensure uniformity in such examination and admissibility of evidence, there is, however, a need to lay down general instructions so that necessary precautions and safeguards are put in place. Keeping in view the specific requirements of the proceedings under the Army Act and Rules made thereunder and the safeguards required to be observed to ensure that evidence recorded through Video Conferencing is taint free, the following instructions should be followed :-

(a) An officer preferably not below the rank of field officer, should be nominated to oversee the recording of the statement of any witness or his evidence through Video Conferencing.

(b) The nominated officer will ensure correctness of the link and render a certificate to the effect that computers are in working order and that video link is duly established, as required by Sec 65B of the Indian Evidence Act, which will be attached to the relevant proceedings.

(c) In respect of a Court-Martial, the Video Conferencing facility, should be preferably set up at the location where the Court is sitting. However, where it is setup in any other place, all the necessary parties to the proceedings, namely, Members, Judge Advocate, Prosecutor, accused, Defending Officer, respective counsels, Officer under Instruction, other officials must be accommodated at the Video Conferencing facility. Similar procedure may be followed during the conduct of Court of Inquiry or recording of Summary of Evidence.

(d) Before recording the statement of any witness or his evidence, his identity will be authenticated by the aforesaid nominated officer and the fact will be recorded in the proceedings appropriately.

(e) The nominated officer will ensure and certify that during examination through Video Conferencing, the concerned witness is secluded from others to ensure that he is free from any extraneous influence which could taint his statement or evidence.

(f) The evidence of a witness after its recording will be read over to him and he will confirm the correctness of the same. An appropriate record thereof will be made in the concerned proceedings.

(g) If there is a loss of the link during the examination of any witness, it will be duly recorded and may be treated as an adjournment. On resumption of the link, the recording may be resumed.

(h) Hard copy of statement or evidence of the witness so recorded through Video Conferencing will be made part of the proceedings.

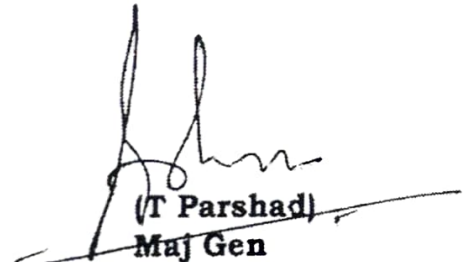
(j) The soft copy of the record of Video Conferencing shall be made part of the proceedings.

(k) In the case of a witness who is outside India, his statement may be recorded or evidence may be taken through Video Conferencing by issuing a Commission in accordance with Section 137 and 138 of the Army Act, 1950.

7. The suggested formats of Certificates to be rendered as regards the identity of witness(es) and witness(es) being free from extraneous influence in physical/electronic or any other form and Certificate under Section 65B of the Indian Evidence Act as regard video-conferencing facility functioning properly and regularly, to be rendered by the Officer-in-Charge Video-Conferencing facility are attached herewith as Appendices 'A' and 'B' respectively.

8. These guidelines are mainly illustrative and not exhaustive. If any situation so warrants, these may be suitably modified ensuring, however, the fairness of the proceedings and conformity with the law laid down by the Apex Court. The process of examination of witnesses through Video Conferencing should be made use of whenever required to avoid unnecessary adjournments and speeding up the dispensation of justice.

9. This policy letter is being issued with the approval of the competent authority.


(T Parshad)
Maj Gen
JAG

Encls : As above

Copy to:-

Dy JsAG
Headquarters
Southern Command
Eastern Command
Western Command
Central Command
Northern Command
South Western Command
Andaman & Nicobar Command

Internal

ADG DV - For information and necessary action, please.

**CERTIFICATE OF OFFICER-IN-CHARGE, VIDEO CONFERENCING
REGARDING IDENTITY OF WITNESS AND WITNESS
BEING FREE FROM EXTRANEOUS INFLUENCE**

(TITLE OF THE PROCEEDINGS)*

1. Before examination of No./JC/IC/MR/MS etc. _____ by Video Conferencing by the *C of I/S of E/Court Martial in r/o (Title of the proceedings), I the undersigned, as OIC Video Conferencing have checked and verified the Identity of No./JC/IC/MR/MS etc..... with the following docus produced by him/her, and satisfied myself that he/she is the same person who is to give evidence as a witness before a (*Name of proceedings).

- (a) Service Identity Card.
- (b) PAN Card or,
- (c) Voter ID Card or,
- (d) Official photo identity Card or,
- (e) Driving Licence or,
- (f) Aadhar Card or etc.

2. I further certify that the above mentioned person during his/her entire examination has been kept away from other witnesses and was free from any extraneous influence in physical/electronic or any other form, which could taint his/her statement or evidence.

(Signature of OIC
Video-Conferencing)

* Court of Inquiry/Summary of Evidence/Court Martial

CERTIFICATE OF OFFICER-IN-CHARGE, VIDEO CONFERENCING
UNDER SECTION 65B OF THE INDIAN EVIDENCE ACT

(TITLE OF THE PROCEEDINGS)

I _____ OIC Video Conferencing do hereby certify as follows:-

(a) That the link for Video-Conferencing set-up was duly established under my supervision by using the (name of the link/equipment) from the _____ (*Name of the proceedings) _____ location to the _____ location, where the witness is located.

(b) That the said link was used for the examination of witness(es) (Name of witness) before the said (Title of the proceedings) _____.

(c) That the said video-conference link was operating properly, continuously and throughout the examination of witness(es) without any break in the link up and did not affect the electronic record or accuracy of its contents.

(d) That the evidence of witness examined was regularly transmitted from the (*Name of the proceedings), to the location of the witness and vice-versa through the said video-conf link set-up. ✓

(e) That the evidence of witness (Name of the witness) was also recorded as soft copy during the course of examination through video conferencing.

(f) That any break in the link up had been duly recorded.

* (C of I/S of E/Court Martial in r/o)

(Signature of OIC
Video-Conferencing)