

The Virtual Court Act, 2020



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Introduction

1. On 09.05.2020, the Hon'ble President of the People's Republic of Bangladesh promulgated আদালত কতৃক তথ্য-প্রযুক্তি ব্যবহার অধ্যাদেশ, ২০২০ (hereinafter referred to as 'the Ordinance')¹. The Hon'ble President being satisfied exercised the ordinance making power under provisions of Article 93(1) of the Constitution of Bangladesh² since the Parliament was not in session. The purpose of the Ordinance is to empower the Court to use information-technology in order to ensure virtual presence of the parties during trial, inquiry, or hearing of application or appeal, or taking evidence, or argument, or order or judgment of the case.³ The Ordinance incorporates as many as five sections. The Ordinance has been given immediate effect.⁴ As required by law, on 23.06.2020, the Minister of Law, Justice and Parliamentary Affairs placed আদালত কতৃক তথ্য-প্রযুক্তি ব্যবহার বিল, ২০২০⁵ before the Parliament and the same bill was sent to the Parliamentary Standing Committee for the report. The Bill contains statement of purpose to be discussed in a separate paragraph. On 08.07.2020, the Bill was passed in the Parliament and became Act and titled as আদালত কতৃক তথ্য-প্রযুক্তি ব্যবহার আইন, ২০২০ (hereinafter referred to as 'the Act')⁶. The Act received the assent of the Hon'ble President on 09.07.2020 and accordingly the gazette was published on the same day. The Act is the verbatim of the Ordinance except the provisions of section 6. It contains as many as six sections.
2. The Act defines 'Court' meaning all subordinate Courts or Tribunal including High Court Division or Appellate Division of the Supreme Court. It defines 'virtual

¹ Ordinance No. I of 2020.

² Article-93(1)- (1) At any time when Parliament stands dissolved or is not in session, if the President is satisfied that circumstances exist which render immediate action necessary, he may make and promulgate such Ordinances as the circumstances appear to him to require, and any Ordinance so made shall, as from its promulgation have the like force of law as an Act of Parliament:

Provided that no Ordinance under this clause shall make any provision –

(i) which could not lawfully be made under this Constitution by Act of Parliament;
(ii) for altering or repealing any provision of this Constitution; or
(iii) continuing in force any provision of an Ordinance previously made.

³ Preamble of the Ordinance.

⁴ Section 1 of the Ordinance.

⁵ বা. জা. স. বিল নং ১৫/ ২০২০

⁶ Act No. 11 of 2020

presence' as presence or participation of any person in judicial proceedings through audio-video or other similar electronic method.⁷

3. The Act empowers the Court to try, or enquire, or hear application or appeal, or take evidence, or take argument, order or pronounce judgment ensuring virtual presence of the parties or their counsels or concerned person or witnesses through audio-video or other electronic method subject to the Practice Direction (Special or General) notwithstanding anything contained in the Code of Criminal Procedure or the Code of Civil Procedure or any other existing laws.⁸ The Court is required to follow the Code of Criminal Procedure or in particular cases, the Code of Civil Procedure in all other cases except ensuring virtual presence under section 3(1) of the Act.⁹
4. If the virtual presence of any person is ensured under the provisions of section 3 of the Act, his presence shall be deemed to have fulfilled the requirements of physical presence before the Court under the Code of Criminal Procedure or Code of Civil Procedure or any other law.¹⁰
5. The Appellate Division or in particular cases, High Court Division of the Supreme Court of Bangladesh has been empowered to issue Practice Direction (Special or General) time to time to realize the purpose of sections 3 and 4 of the Act.¹¹ On 10.05.2020, in the exercise of the power as provided in section 5 of the Ordinance, the Hon'ble Chief Justice of Bangladesh with the approval of the Appellate Division and the High Court Division of Bangladesh issues separate Practice Directions to be followed by the Appellate Division and High Court Division of Bangladesh while conducting court proceedings remotely through videoconferencing.¹² Further, on 10.05.2020 in the exercise of the said power the Hon'ble Chief Justice with the approval of the High Court Division issued Practice Direction to be followed by the subordinate courts to dispose of bail application only through virtual hearing.¹³

⁷ Section 2(1) of the Act

⁸ Section 3(1) of the Act

⁹ Section 3(2) of the Act

¹⁰ Section 4 of the Act

¹¹ Section 5 of the Act.

¹² Supreme Court of Bangladesh, Notification No. 407/2020SC(AD) and 213, 10 May'2020

¹³ Supreme Court of Bangladesh, Notification No. 214, 10 May'2020

6. The statement of purpose speaks that in the existing legal system, trial of judicial proceedings is performed through physical presence of the parties or counsels and witnesses; Amid Covid19 pandemic, the Government announced general holidays and prohibited all sorts of public gatherings and activities; in the given situation, the Hon'ble President made and promulgated the Ordinance to ensure access to justice of the citizens. Further, government and private institutions including Courts have resumed their functions but the public gatherings have been discouraged; in the given circumstances, the Act is being enacted to continue the Court proceedings through digital system including video conferencing. It transpires from the statement of the purpose that the Act has been enacted to tackle the current Covid19 pandemic and continue the Court proceedings and other functions.
7. The Act by the virtue of its provisions repealed the Ordinance.¹⁴ The act done or steps taken shall be deemed to have been done or taken under the provisions of the Act.¹⁵

Conclusion

8. The concept of establishment of virtual Court is not new. The Law Commission of Bangladesh proposed and made draft of সাক্ষ্য ও বিচার কার্যক্রমে তথ্য প্রযুক্তির ব্যবহার আইন, ২০১৯¹⁶. The purpose of the proposed draft is to make the trial proceedings including production of evidence easier by using Information-Technology. The proposed draft is more exhaustive than the Act and it contains as many as 22 sections. The proposed draft defines Audio-Video Conference, Court Point, Electronic Records, Electronic Form, Data, Digital Evidence, Documents, Remote Point, Physical Presence. The proposed draft categorically incorporates provisions for admissibility of electronic record, visual presence and physical presence in the case, extra-territorial jurisdiction, applications, test of necessity of virtual hearing, fee, deeming remote site as Court, proof of documents by audio-video conference, right of the accused in audio-video conference, presence of counsels and experts in audio-video conference, identification and oath of persons through audio-video conference, establishment of technological

¹⁴ Section 6(1) of the Act

¹⁵ Section 6(2) of the Act

¹⁶ <http://www.lc.gov.bd/reports/PDF%2025.08.19.pdf>

support in Court, Jail and other institutions and framing Rules. The Court will direct audio-video conference if the Court is confirmed that such conference is necessary for the ends of justice, it can reasonably be complied with and all the concerned parties have been communicated.¹⁷ The Law Commission proposed the draft after due scrutiny. The draft is for general purpose whereas the Act is for tackling the Covid-19 pandemic. So, it can be suggested that the Act can be made effective for regular Court too for the betterment of the judiciary. The rest provisions left in the draft can be incorporated to make the Act exhaustive; alternatively, the proposed draft can be promulgated by repealing the Act.



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¹⁷ Section 8 of the proposed draft.