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Statutory Notifications and Orders issued by
Heads of Departments.

NOTIFICATIONS BY HEADS OF DEPARTMENTS, ETC.

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NOTIFICATIONS BY HEADS OF DEPARTMENTS, ETC.**JUDICIAL NOTIFICATIONS****Video Conferencing Rule issued by the High Court of Judicature at Madras for the State of Tamil Nadu and Union Territory of Puducherry.**

(R.o.c. No. 7062A/2018/Comp4/VC)

No. SRO (C-1)/2019.

Video conference facilities enabling audio and visual communication between persons at different following locations is under implementation in a phased manner:

- The Madras High Court at Chennai for the State of Tamil Nadu and UT of Puducherry.
- All the Court Complexes in the State of Tamil Nadu and UT of Puducherry.
- Central Prisons and District/Taluka Jails in the State of Tamil Nadu.

Video-conferencing facility enables the Courts in the State of Tamil Nadu and UT of Puducherry to record 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 the Court in person. An over-riding factor is that the use of video conferencing in any particular case must be consistent with furthering the interest of justice and should cause minimal disadvantage to the parties. However, ultimately it is for the Court to decide whether evidence should be recorded by video-conferencing.

Even with the advancement of technology, there occurs delay of millisecond between video picture seen and sounds being heard. Such time gap difference has to be taken note of, 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.

In exercise of the powers conferred by Article 227 (1) and (2) of the Constitution of India, and of all other powers hereunto enabling, The Chief Justice, hereby makes the following Rules to regulate the usage of Video Conferencing for the High Court of Madras and Subordinate Courts in the State of Tamil Nadu.

1. Short Title And Commencement :

- (1) These Rules shall be known as "Madras High Court Video Conferencing Rules, 2018 "for the Courts under the Jurisdiction of Madras High Court.
- (2) It extends to the whole of the State of Tamil Nadu and Union Territory of Puducherry.
- (3) These Rules shall come into effect from the 1st day of January 2019.

2. Definitions:

- (1) "Applicant" means applicant to the petition seeking permission for examining either himself or a witness through video conferencing.
- (2) "Chief Justice" shall mean the Chief Justice of the Madras High Court.
- (3) "High Court" shall mean the High Court of Judicature at Madras/Chennai and its Bench at Madurai.
- (4) "Subordinate Court" shall mean all the Courts and Tribunals, falling under the Jurisdiction of the Madras High Court.
- (5) "Code" shall mean Code of Civil Procedure, 1908 and Code of Criminal Procedure, 1973.
- (6) "Government" shall mean the Government of Tamil Nadu/Union Territory of Puducherry.
- (7) "Schedule" means Schedule appended to this Rule.
- (8) "Witness" includes parties to the proceeding;

3. General:

(1) In these Rules, 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 through video conference is sitting.

(2) The '**Remote Point**' is the place where the person to be examined through video conference is located, for example, Prison/Jail or Observation Home/Special Home/Protection Home.

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

(4) Wherever possible, proceedings by way of video conference shall be conducted as judicial proceedings and the same courtesies and protocols shall 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 through video conference.

(5) 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 or overseas. However, these Rules will not apply to the proceedings under Section 164 of Cr.P.C.

(6) The Rules applicable to a Court will mutatis mutandis apply to a Local Commissioner appointed by the Court to record the evidence.

4. Preparatory Arrangements for Video Conference:

(1) There shall be Co-ordinators both at the 'Court Point' as well as at the 'Remote Point'.

(2) In the High Court at Principal seat and its Madurai Bench, respective Joint Registrar (Computer) shall be the co-ordinator at the Court Point.

(3) In the Subordinate Courts, official-in-charge of the Video Conferencing Facility (holding the post of Sheristhar /Grade I Bench Clerk/System Analyst/District System Administrator) nominated by the District Judge shall be the co-ordinator at the Court Point.

(4) The Co-ordinator at the Remote Point may be one among the following:-

(i) Where the person to be examined in overseas, the Court may specify the Official of Consulate/Embassy of India as co-ordinator.

(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 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 women rescue homes, Protection Home, the Superintendent/Officer In-charge of the women rescue homes/Protection Home or any other responsible official deputed by him/her.

(vii) Wherever a co-ordinator is to be appointed at the Remote Point under Clause 4 Sub-Clause (ii), (iii), (iv), (v) & (vi), the Court concerned will make formal request through the District Judge concerned to the concerned official.

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

(5) The co-ordinators at both points as mentioned in the Rule 4, clause 1 to 4, shall ensure the minimum requirements both at the Court Point and at 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 co-ordinator at the Remote Point that:-

(i) The person to be examined or heard, 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 be regulated.

(7) It shall be ensured by the co-ordinator at the Court Point that the co-ordinator at the Remote Point has the certified copies or soft copies of all or any part of the court records directed by the Court in a sealed cover sufficiently in advance of the scheduled time of video conference.

(8) The court shall order the co-ordinator at the Remote Point and/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 the 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.

5. 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 Visualizer

(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 co-ordinators at the Court Point and at the Remote Point.

6. Application for Video Conferencing:

(1) Any party to the proceeding or witness, except in suo-motu direction by Court, may move a petition/application for examination of a witness through video conferencing. In all cases, except suo-motu direction, the petition/application must be supported by an affidavit, as prescribed in the Schedule, and must contain, among others, averments on following aspects;

(a) Reasons for inability of the witness to appear before the Court.

(b) That the cost of video conferencing shall be borne by the party applying for video conferencing.

(2) On receipt of the application and upon hearing both sides, the Judge, for reasons to be recorded in writing, that the attendance of the witness in person will cause inordinate delay and expenses, and that, it is expedient in the interest of justice to allow recording of evidence through video conferencing, may allow the prayer, specifying the cost to be borne by the party, if any.

(3) The cost, if applicable, shall be deposited within 3 days from the date of the order allowing the prayer for recording of evidence through video conferencing, as per Rule 10.

7. Service of Summons:

When summons are issued to a witness, proposed to be examined through video conferencing, the summons must mention in specific the date, time and venue of the video conferencing center directing the witness to attend in person at the center along with identification affidavit. The existing rules regarding service of summons and the consequences for non-attendance, as provided in the Code, shall apply with respect to service of summons.

8. Recording of Evidence:

(1) Before a party to proceedings/witness is examined through video conferencing, he/she has to file a proof of identity, as mentioned in the Schedule, or if he/she is not in possession of an identity proof, as mentioned in the Schedule, he/she shall file an affidavit or an undertaking duly verified before Authorities mentioned in Section 139 of Civil Procedure Code (CPC) / Section 297 of Criminal Procedure Code (Cr. PC) that the person, who is shown as the party to proceedings/witness, is the same person, who is going to depose on the screen. A copy of identity proof is to be made available to the other side.

(2) The witness has to be examined during the working hours of Indian Courts. Oath is to be administered through the media by the Judge in the Court Point.

(3) The witness should not plead any inconvenience on account of time difference.

(4) Before examination of the witness, the document, if any, must be sent to the Witness, so that the witness has acquaintance with the documents and an acknowledgement is to be filed before the Court in this regard by the applicant.

(5) If the witness is examined with reference to document then the summons to witness must accompany a duly certified photocopy of the document. The practice of exhibiting the documents should be done in the original document at the Court Point according to the deposition of the Witness.

(6) The Presiding Judge may record such remarks as is material regarding the demeanor of the witness while on the screen.

(7) The Presiding Judge must note the objections raised during recording of witness and to decide the same at the time of arguments.

(8) Though the Code does not specifically provide for obtaining the signature of the witnesses, yet for abundant precaution, if the Presiding Judge requires the signature of the witness, he may send a copy of the deposition to the witness after recording the evidence and his signature may be obtained in the presence of Authorities mentioned in Section 297 of the Code of Criminal Procedure Section 139 of the Cr.P.C. and thereafter the signed copy of deposition will form part of the record of the suit proceedings.

(9) The audio visual is to be recorded and the record would be at both points. The recorded data should be secured by administrative password and shall be retrieved only when the Presiding Judge at the Court Point orders its retrieval. The administrative password shall remain with the District Judge.

(10) The Presiding Judge shall ensure that there is/are no other person present in the Room, except the witness being examined at both the points.

(11) The Presiding Judge may also impose such other conditions as are necessary in a given set of facts for effective recording of evidence.

(12) The expenses and the arrangements, subject to the exceptions made hereinbefore, are to be borne by the applicant who avails this facility.

(13) The witness examination, as far as practicable, be proceeded without any interruption without granting unnecessary adjournments. However, discretion of the Court or the Commissioner will be respected.

(14) The Court, as far as practicable, shall be guided by statutory Section, orders/Rule of CPC and Chapter XXIII Part B of the Cr.P.C. while examining a witness through video conferencing.

(15) Mode of digital signature, if can be adopted in this process, such signature will be obtained immediately after day's deposition.

(16) In case of perjury, Court will be able to take cognizance not only about the Witness who gave evidence, but who induced to give such evidence.

9. Under Trial Prisoner (S) :

(1) In cases where the accused is tried as under trial prisoner, the evidence may be recorded through video conferencing.

(2) The production of accused during the pre-trial stage may be obtained through video conferencing.

10. 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 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 Criminal Rules of Practice and Circular orders 1948, including, any amendment, if any.

(2) In civil cases, as general rule, the party making the request for recording evidence through 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 the complainant and witnesses, as may be prevalent from time to time.

11. General Procedures:

(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.

(2) In civil cases, party requesting for recording statement of the person to be examined through video conferencing, shall confirm to the court, location of the person, his willingness to be examined through video conferencing, time, 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 defense witness, the defense counsel will confirm to the court his location, willingness to be examined by video conferencing, time, place and facility of such video conferencing.

(4) In case person to be examined is an accused, prosecution will confirm location of the accused 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 the 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 Service Provider (owned by State/Central) 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 the 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 recording, by the co-ordinator at the Remote Point to the Court Point by courier/post.

(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, if deems fit

(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 safe location for backup in the event of any emergency (Disaster Recovery). 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 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.

(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.

12. Exhibiting/Showing Documents to Witness/Accused at Remote Point :

If in the course of examination of a person at a Remote Point through video conference, it is necessary to show a document to him, the court may permit the document to be shown 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 visualizer and the copy so transmitted be shown to the witness;

(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 visualizer, the hard copy would also be sent subsequently to the Court Point by courier/post

13. Access to Legal Aid Clinics/Camps/Lok Adalats/Jail Adalats :

(1) In conformity to the provisions of the Legal Service Act and nothing contrary to the law in force, person at the Remote Point (Jail/Prison) shall be examined by the Chairman/Secretary of DLSA/TLSC, members of Lok adalats and award/orders shall be passed in accordance with law.

(2) Such award/order shall have the same force as if passed by the regular Lok adalat/Jail adalat.

(3) Copy of the award/orders like the record of Proceedings be sent to the Remote Point as envisaged under Rule 4 (7).

14. Persons Unconnected with the Case :

(1) Third parties may 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 co-ordinator at the Remote Point at the start of the proceedings and the purpose for his being present explained to the court.

15. 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 the person to be examined at the Remote Point can clearly see and hear the court.

16. 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.

17. Power to Relax :

When the Chief Justice is satisfied that the operation of any rule causes undue hardship, he/she may by order, dispense with or relax the requirements of that rule to such extent and subject to such conditions, if any, as is necessary to deal with the case in just and equitable manner.

18. Repeal and Savings :

These rules governing recording of evidence through Video Conferencing may stand repealed at the discretion of Hon'ble Chief Justice. However, any act done or proceedings initiated with respect to the Rules prevalent hitherto, shall be saved as if action done or proceedings initiated have been done under the present Rule.

19. Residuary Clause :

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

SCHEDULE**PROOF OF IDENTITY**

[See Rule 6(1),]

National

- (i) Permanent Account Number
- (ii) Aadhar Card,
- (iii) Driving Licence
- (iv) Voter's Identity Card,
- (v) Passport

International

- (i) Permanent Account Number
- (ii) Driving Licence
- (iii) Passport

FORM OF AFFIDAVIT

[See Rule 6(1)]

I,.....aged.....years S/o.....,a resident of Vill.....,P.O....., P.S.....in the district of..... State.....Country.....do hereby solemnly affirm/state on oath as follows;

1. Statement whether the applicant is a party or a witness including the case and Court details
2. Statement of reasons under 6(1)(a) & 6(1)(b)
3. Statement of exemptions from payment of cost, if applicable.
4. Statement about the contents of application for recording evidence via conferencing.

Deponent

Signature of Authorities mentioned in Section 139 CPC/Section 297 CrPC

FORM OF AFFIDAVIT

[See Rule 6(1)]

I,.....aged.....years S/o....., a resident of P.O....., P.S.....in the district of.....State..... Country.....do hereby solemnly affirm/state on oath as follows;

1. Statement whether the applicant is a party or a witness including the case and Court details
2. Statement about his identity

Deponent

Signature of Authorities mentioned in Section 139 CPC / 297 CrPC

High Court, Madras-600 104,
27th December 2018.

C. KUMARAPPAN,
Registrar General.