Video Conferencing a Criminal Injustice

K.Balagopal
26-10-2000

The provision of video-conferences of the accused with the Magistrate - in lieu of physical production in Court - has been hailed as a significant innovation that solves the problem of shortage of police escort to take prisoners to Court for extension of remand.

The measure is on the contrary quite typical of the cavalier attitude towards the rights of crime suspects that is characteristic of the prevalent mood in our society today. Most people feel irritated by the solicitude of the law towards `criminals', and believe in their heart of hearts that it is misplaced – until they find themselves some day at the receiving end of criminal justice.

The Criminal Procedure Code as amended in 1973 says that `no Magistrate shall authorise detention in any custody under this section unless the accused is produced before him'. This was necessitated by a certain ambiguity in the matter under the original Cr.P.C. Such ambiguity is unsettling because the suspect is innocent in the eyes of the law until guilt is proved, and whatever restraint he or she is subjected to in the meanwhile must be the minimum consistent with effective investigation. Blind extension of remand on the mere asking of the police without hearing the accused in person is anathema to this view.

Because the matter was left somewhat ambiguous under the Cr.P.C as it originally was, those who had concern for civil liberties sought judicial decision on the issue. It was Raj Narain, the bete noir of the Nehru family who took the matter to the Supreme Court. It is perhaps to the credit of the Supreme Court that it did not treat it as a silly matter but a seven judge Constitution Bench that was hearing Raj Narain's challenge to certain provisions of the Cr.P.C heard and passed an elaborate order on this matter too. The law being what it was at that point of time, the majority of the Bench said that extension of remand without physical production of the accused is undesirable and should not normally be resorted to, but there is nothing per se illegal about it. (The view of the minority, written by Justice Vaidialingam, would however repay reading by those who today believe that video-conference can be a substitute for physical production).

Parliament paid back the compliment by taking the view of the Supreme Court sufficiently seriously and incorporating the provision quoted above while rewriting the Cr.P.C in the year 1973. Yet it is a routine feature of Criminal Courts in our country that police obtain extension of remand without producing the accused physically, on the lame ground that there is not enough police force to escort every undertrial. The higher Courts too have not shown the determination to say that such extension of remand is illegal, though they continue to say as of old that it is undesirable.

The unfortunate fact is that the police have the more important duty of escorting free people: all and sundry have police escort these days, not because there is any threat to their lives, but because it is symbolic of their importance in public life. Our rulers can think of no way of putting a stop to this but are prepared to `innovate' in the matter of prisoners.

For prisoners, however, video-conferences can never be an adequate substitute for physical production in Court. There are many reasons for this, all of them legitimate but not all of them comprehended by the law makers who put that provision in the Cr.P.C. Most suspects cannot afford to have an advocate until the trial starts. Up to that time they are their own advocates, and they utilise the occasion of production in Court to plead for many things: quick disposal of the case, bail, supply of copies of papers relevant to the case, etc. If anybody thinks this can be done equally well in a video-conference, they may please ask any advocate friend of theirs whether one can convince a judge to see the point as effectively in a video-conferences as when one argues in person. Unlike a face to face dialogue, a video conference can be shut off whenever those who control it wish to. In the case of prisoners, that will be the jailor and the Magistrate.

Another very important use that prisoners put the occasion to is the airing of complaints against the prison and prison authorities. The time when they are before the Court is the only time they are free to complain about ill-treatment by the prison authorities. They cannot do so in a video-conference with the jailor standing by the side.

It is also the occasion for prisoners to meet advocates of the Bar and arrange a counsel for themselves, instruct the counsel if they already have one, meet and talk to their friends and relatives more freely than in the highly controlled interviews allowed in the jails, which is mostly across thick wire meshes these days.

All things considered, it is perhaps unfortunate that a number of judges of our High Court, including the Chief Justice, have seen it fit to involve themselves in the inauguration of this innovation, for they well have to sit in judgment some day over the plea of some prisoners that this innovation robs them of their rights. They may or may not agree with the plea, but they will have to pass an unprejudiced judgment.

(Published in Indian Express)