



RESEARCH CENTER HIGH COURT OF BALOCHISTAN

COURT: MR. NISAR HUSSAIN (ATC-JUDGE)

SUBJECT: WHETHER THE ARGUMENTS OF AN ADVOCATE IN A PENDING CASE MAY LAWFULLY BE HEARD THROUGH AN ALTERNATIVE DIGITAL PLATFORM, SUCH AS A WHATSAPP VIDEO CALL.

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PROPOSED QUERY

- A. Whether, in situations where a formally established video-link facility (designated technical system) is not available at a particular station or court, the arguments of an Advocate in a pending case may lawfully be heard through an alternative digital platform, such as a WhatsApp video call, and**
- B. Whether such a mode of hearing would be considered valid and procedurally compliant under the applicable law and practice regulating court proceedings.**
- C. Whether recording in the order sheet that the hearing or arguments were conducted through WhatsApp video call, owing to the non-availability of a formal video-link facility, would constitute a proper and legally sustainable practice consistent with procedural requirements and principles of transparency in judicial proceedings.**

1. PERMISSIBILITY OF HEARING ARGUMENTS THROUGH WHATSAPP VIDEO CALL

The superior courts of Pakistan have consistently recognised the admissibility and utility of modern technological means in judicial proceedings, particularly under Article 164 of the Qanun-e-Shahadat Order, 1984, which authorises courts to receive evidence produced through modern devices and techniques.

The **Hon'ble Supreme Court in PLD 2023 SC 211** held that the expression “attendance” of a witness is not confined to physical presence and includes virtual attendance through video conferencing, and that courts must interpret procedural law dynamically to accommodate technological advancement to promote access to justice and fair trial rights under Articles 9 and 10-A of the Constitution.

Furthermore, the Court emphasised that a procedure is not prohibited merely because it is not expressly provided in a statute; rather, it is permissible unless specifically barred by law.

I. Principle laid down in PLD 2023 SC 211: Law must adapt to technological change

The Hon'ble Supreme Court, speaking through **Justice Syed Mansoor Ali Shah** (with **Justice Qazi Faez Isa** concurring), authoritatively held that courts must interpret procedural law in a manner that harmonizes it with evolving technological realities. The Court emphasized that:

“Law is a living organism and must respond to changing social realities... judges must endeavor to bridge the gap between law and society.”

The judgment further clarified that where statutes employ general expressions such as “attendance,” such expressions are not confined to physical presence but extend to **virtual attendance through modern technological means**, provided the legislative purpose is preserved.

This principle has decisive implications for the present query: if “attendance” of a witness can be treated as fulfilled through video conferencing, the appearance of counsel for arguments through digital platforms stands on an even stronger footing, since arguments do not involve oath, evidentiary authentication, or confrontation requirements.

II. Scope of Article 164 Qanun-e-Shahadat Order: Judicial discretion to adopt modern devices

The Supreme Court expressly reaffirmed that Article 164 of the Qanun-e-Shahadat Order confers **wide discretionary authority** upon courts to permit evidence produced through modern devices or techniques.

This discretionary jurisdiction operates on the following principles:

- First, courts are empowered to adopt technological methods wherever such adoption advances the ends of justice.
- Second, insistence upon physical presence may be dispensed with where it causes delay, expense, inconvenience, or procedural hardship.
- Third, procedural provisions must be interpreted purposively to enhance access to justice rather than restrict it.

Although the case concerned recording of evidence through video conferencing, the reasoning applies with greater force to **hearing arguments**, which form part of procedural participation rather than evidentiary proof.

III. Updating the construction of statutes and procedural flexibility

A central doctrinal contribution of **PLD 2023 SC 211** is its reliance upon the principle of **updating the construction of statutes**, under which courts extend statutory language to technological developments not contemplated at the time of enactment.

The Court held that:

Statutory language is presumed to be “always speaking” and capable of applying to new technological conditions if consistent with legislative purpose.

Accordingly, expressions such as:

- “Appearance,”
- “Attendance,”
- “Hearing,” and
- “Recording of proceedings”

must be interpreted in a contemporary technological context and are not confined to physical courtroom presence.

Thus, where institutional video-link infrastructure is unavailable, use of alternative platforms like **WhatsApp video call** may fall within the same genus of permissible technological facilitation.

IV. Recognition of virtual attendance as equivalent to physical presence

The Supreme Court in the aforementioned judgment further expressly held that virtual attendance of a witness through video conferencing fulfils the legislative purpose of attendance in court.

The Court further observed that such attendance:

- allows the judge to observe demeanour,
- preserves adversarial fairness,
- satisfies requirements of open court proceedings,
- and advances constitutional guarantees of fair trial and access to justice.

If these safeguards are satisfied for witnesses, they apply a fortiori to counsel appearing for arguments.

V. Principle that procedural innovation is permissible unless expressly prohibited

Another foundational holding of the Supreme Court is that procedural law operates on the presumption of **permissibility rather than prohibition**. The Court clarified:

Courts are not to proceed on the principle that every procedure is prohibited unless expressly provided; rather, every procedure is permissible unless shown to be prohibited by law.

This principle directly supports the legality of adopting WhatsApp video calls as an alternative hearing mechanism where:

- no statutory prohibition exists, and
- judicial control over proceedings is maintained.

VI. Comparative international precedents supporting the use of modern technology

In *Meera Shafi v Ali Zafar*, *supra*, expressly referred to foreign precedents recognizing technological participation in judicial proceedings, including decisions from **India, Hong Kong**, and **common-law jurisdictions**.

In particular, reliance was placed upon **State of Maharashtra v. Praful Desai**, where the Supreme Court of India held that recording evidence through video conferencing satisfies the statutory requirements of attendance in court and is legally valid.

Similarly, the Hong Kong High Court decision in **Cyberworks Audio Video Technology Ltd v. Mei Ah (HK) Co Ltd** recognised the legitimacy of remote testimony through digital means as consistent with procedural fairness.

Earlier international criminal jurisprudence, including proceedings before the **International Criminal Court**, has also accepted video-link testimony as compatible with confrontation rights where procedural safeguards exist.

These authorities demonstrate a consistent transnational judicial trend toward integrating technology into courtroom practice.

VII. Constitutional dimension: Access to justice and fair trial

The Supreme Court further held that technological facilitation of participation in proceedings advances fundamental rights under:

- Article 9 (security of person),

- Article 10-A (fair trial), and
- Article 37(d) (expeditious justice)

of the **Constitution of Pakistan 1973**.

Accordingly, courts are constitutionally encouraged to adopt technological mechanisms that:

- reduce delay,
- minimize expense,
- remove logistical barriers,
- and enhance procedural accessibility.

2. DISCRETIONARY AUTHORITY UPON COURTS TO UTILISE MODERN TECHNOLOGICAL

2025 P Cr.LJ 837 reiterates that Article 164 QSO confers wide discretionary authority upon courts to utilise modern technological devices where necessary for just adjudication.

Therefore, where a formal video-link system is unavailable, hearing arguments through an alternative digital platform such as **WhatsApp video call** may be considered legally permissible as an exercise of judicial discretion, particularly when:

- parties consent or no prejudice is caused,
- identity of counsel is known,
- proceedings remain transparent,
- and the purpose is to facilitate expeditious justice

3. LIMITATIONS REGARDING WHATSAPP VIDEO CALL (DISTINCTION FROM FORMAL VIDEO-LINK SYSTEM)

However, **PLD 2021 Peshawar 105** draws an important distinction between structured video-link proceedings conducted under judicial supervision and informal communication through mobile applications such as WhatsApp. The Court observed that recording statements through WhatsApp or similar platforms may create procedural difficulties relating to:

- supervision of proceedings,
- identification of the person appearing,
- administration of oath,
- preservation of court decorum,
- and prevention of tutoring or external influence.

For this reason, the Court held that evidence through such platforms should ordinarily not be recorded unless proper safeguards and coordination mechanisms exist, preferably through another court or authorized officer.

Importantly, this restriction relates primarily to **recording evidence**, not to **hearing arguments of counsel**, which involve fewer evidentiary risks.

4. EFFECT OF VIDEO-LINK SOP CIRCULARS

The **Video-Link SOP Circular (High Court of Sindh)** clarifies that virtual hearings are ordinarily to be conducted through officially approved video-link facilities upon application and approval of the Court, and that such arrangements remain subject to availability of infrastructure and judicial discretion.

The Circular further provides that:

- video-link hearings are not a matter of right,
- they require justification,
- and all protocols applicable to physical hearings apply equally to virtual proceedings.

Thus, the preferred method remains the institutional video-link facility, but the Circular does not prohibit alternative interim arrangements where justice so requires.

However, the position regarding the judicial encouragement of technology-enabled hearings has been further clarified by the **Press Release No. 45/2026 dated 26 March 2026 issued by the Supreme Court of Pakistan**, which explicitly records that the Supreme Court has adopted coordinated strategic measures to enhance access to justice through technology-enabled hearings and improved case-management practices. The Press Release notes that the Court is increasingly facilitating lawyers and litigants to appear through video-link from different cities, specifically including participation from Quetta, Hyderabad, and Karachi, demonstrating the practical and effective institutional acceptance of remote participation in judicial proceedings.

5. WHETHER SUCH A MODE CAN BE RECORDED IN THE ORDER SHEET

In view of the principle affirmed by the Supreme Court that procedural flexibility is permissible unless expressly prohibited by law, recording in the **order sheet** that arguments were heard through WhatsApp video call due to non-availability of formal video-link infrastructure would be **legally sustainable**, provided that:

- the reason for adopting such a mode is recorded,
- parties were aware or consented (where required),
- identity of counsel was verified,
- and proceedings remained under judicial supervision.

Such a recording enhances transparency rather than undermines procedural propriety.

NOTE: As of now, there are no comprehensive, codified Video-Link Hearing Rules formally notified by the High Court of Balochistan comparable to the detailed SOP frameworks issued by some other High Courts (the High Court of Sindh Video-Link SOP Circular, 2023) and the Supreme Court of Pakistan Press Release dated 26 March 2026 also confirms that the superior judiciary is actively expanding video-link participation from cities including Quetta, particularly to facilitate access for litigants in geographically remote regions.