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Remote Notarisation Of Documents

The enactment of rules on notarization through videoconferencing can help keep the law updated with modern technology. It can help prevent delays associated with the execution of documents by making the traditional concept of personally appearing before notaries unnecessary, especially during a pandemic with travel restrictions write Krrishan Singhania, Managing Partner, K.Singhania and Co; and Aatir Saiyed, Associate, K.Singhania and Co.

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Notarization is an official process for verifying the authenticity of a document. In India notarization is performed under the Notaries Act of 1952. Under Indian Law, a document needs to be notarized to be valid. Thus, a person has to be physically present in presence of a notary authorized by the central or state government. Some documents that need to be notarized include:

- (i) Affidavit,
- (ii) Power of attorney,
- (iii) Hundi or bill of exchange for acceptance,
- (iv) Business documents such as registration documents etc.

With the advent of the pandemic, isolation and social distancing measures constantly advocated by governments, the manner in which work was being done was challenged, forcing the society to reconsider other mechanisms through which the same could be completed. Thus, online mechanisms had to be resorted to grapple with the effects of the pandemic.

In the wake of the pandemic, courts also shifted to videoconferencing for hearing matters. While e-courts were launched as a part of the National e-Governance Plan (NeGP) in 2006 itself, the pandemic accelerated the progress of the same. Through this project, the main object was to provide an accessible and cost efficient mechanism for the delivery of justice.

As has been stated by Professor Richard Susskind in his book on Online Courts and the Future of Justice, “global access to justice can be solved by the adoption of modern technology.” The adoption of technology can help bridge the gap and facilitate the completion of certain procedures associated.

Online mechanisms can also be introduced in notarization and can help in reducing costs associated with it. In order to avoid any inconvenience to people who need to get documents notarized but due to covid or any geographical difficulties are not able to visit a notary in a personal capacity, it is important that there be a change and update in law. As courts have become liberal and government is using e-governance mechanisms, law has to change with current times.

US ADOPTION OF REMOTE NOTARIZATION:

Keeping in view the difficulties in these challenging times, US has already passed a law which authorizes documents to be electronically notarized. In view of the same, a Bill called the Securing and Enabling Commerce Using Remote and Electronic Notarization Act of 2020 was introduced in the Senate as, “to authorize notaries public to perform, and to establish minimum standards for, electronic notarizations and remote notarizations that occur in or affect interstate commerce, to require any Federal court to recognize notarizations performed by a notarial officer of any State, to require any State to recognize notarizations performed by a notarial officer of any other State when the notarization was performed under or relates to a

public Act, record, or judicial proceeding of the notarial officer's State or when the notarization occurs in or affects interstate commerce [...]”. Section 4 of the Bill allows the notary to perform a notarization that occurs in or affects interstate commerce for an individual not in the physical presence of the notary public subject to meeting certain requirements.

While the bill was not enacted into law, some of the basic components of Remote Online Notarization (RON) enactments in the US include:

- (i) Using audio visual communications when the individual is outside the state where the notary is located;
- (ii) Recording of the audio visual communication; and
- (iii) The notary authenticating the person signing the document.

SUGGESTIONS THAT COULD BE IMPLEMENTED:

Having regard to international practices, we need to keep up with the changing times.

Enacting a legislation or RON rules which provide the mechanism detailing how the person who wants to notarize a document online when it is difficult for the concerned person to be physically present can help clarify the procedure, documents required and any other pre-requisites needed for online notarization.

The following process could be followed during notarization-

1. The notary should organize a videoconference for the remote notarization of documents
2. During the videoconference, the notary must authenticate the deponent's identity and location. There should be direct interaction between the deponent and the notary during the videoconference.
3. The deponent should sign the document to be notarized during the videoconference in front of the notary. Subsequently the deponent should scan the document and email it to the notary.
4. The document could also be uploaded in an electronic format such as PDF to the online technology platform used to perform the notarization.
5. For electronic documents, electronic signatures and an electronic version of the notary's seal would be required.
6. A snapshot of the videoconference should be taken for proof of the participants in the performance of the notarization. A time and date stamp should be put on the snapshot.
7. The notary must keep the details of the notarization such as:
 - Name and address of deponent
 - Date of notarization
 - Document that has been notarized
 - Documents for identification of the deponent
 - Portal on which the videoconference had been conducted such as skype, zoom etc.

The recording should be uploaded on the same day it is notarized.

8. After completion of the above steps, the notary should issue a notarial certificate, sign it with his official signature and affix his official seal. The notarial certificate must declare that the notarization has been done through videoconferencing in accordance with the RON Rules.

9. The notarized document could be sent through courier or must be downloaded from the portal, depending on the case.

10. The notary must record the entire videoconference which should be maintained for a minimum period of 10 years.

11. The list of notarization of documents through electronic means should be maintained in a separate book and in electronic form.

CONCLUSION

The enactment of rules on notarization through videoconferencing can help keep the law updated with modern technology. It can help prevent delays associated with the execution of documents by making the traditional concept of personally appearing before notaries unnecessary, especially during a pandemic with travel restrictions.

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