



भारतीय विधिज्ञ परिषद् BAR COUNCIL OF INDIA

(Statutory Body Constituted under the Advocates Act, 1961)

21, Rouse Avenue Institutional Area, Near Bal Bhawan, New Delhi - 110002

Extracts of minutes of the Meeting of the General Council of the Bar Council of India held on 02.8.2020 under item no. 333/2020 .

The order dated 20.7.2020 passed by the Hon'ble High Court Delhi in W.P.(C) No. 4360/2020 titled as Akhil Hasija Vs. Bar Council of India & Ors was placed for consideration before the General Council of Bar Council of India on 2.8.2020 by way of video-conference. The perusal of the order reveals that the Hon'ble Court has directed the Bar Council of India and the other respondents to treat this writ petition as a representation and decide the same in accordance with law, rules, regulation and Government policies applicable to the facts of the case as expeditiously as possible. Perusal of the issues raised by the petitioner reveals the following:-

1) Issue a writ, order or direction to the Respondents to form an Expert Committee to make appropriate rules/amendments, which will adequately protect and safeguard data containing any privileged communication between lawyers and their clients while using third-party applications for conducting video/virtual meetings and conferences;

2) Issue a writ, order or direction to the Respondent No. 1 to certify specific third-party applications/technology which are safe for conducting privileged communication between the lawyers and their clients:

And

3) Issue a writ, order or direction to the Respondent No. 1 to issue rules/guidelines/notification to make the lawyers aware regarding privacy concerns associated with privileged and confidential communication between them and their clients and the safeguards which need to be taken by every lawyer/advocate while conducting a privileged communication with their clients.



As regards the first point/prayer of the respondent mentioned at Sr. No.(1), it is submitted that the rules/amendments, if any which are further required to be framed to adequately protect and safeguard data containing any privileged communication between lawyers and their clients, while issuing third party application conducted video/virtual conferences would require to be incorporated in Indian Evidence Act, 1872 which may be substantiated by further provision made in this regard in IT Act/laws. As far as Bar Council of India is concerned, it would request the Union Government to specify the use of any App/Apps, which may be use for

such purposes and which may ensure the confidentiality of the privileged communication between an Advocate and a client or with respect to any conference. The second prayer of the petitioner has already been replied to in the para above.

As regards the third prayer relating to Bar Council of India issuing rules, guidelines, notification to make the lawyer aware regarding privacy concerns associated with privileged and confidential communication between them and their clients and the safeguards which need to be taken by every lawyer/Advocate while engaging in privileged communication with their clients, it is noted and observed that Advocates are well aware about the privileged and confidential communication between them and their client as had already had envisaged in the Indian Evidence Act, 1872. However, in view of the present circumstances whereby owing to the pandemic COVID-19, virtual hearings, conference have become a norm and necessity and owing to the issue of concerns of data confidentiality or privileged and confidential communication, it is observed that till the time the Government of India does not stipulate or specify any App to be used for such purposes till such time Advocates visiting their clients in Jail, Lockups, may be, if feasible, advised to communicate with their clients by way of Whatsapp call(video/audio) and in fact Advocates would be advised to purchase an extra hand-set which can be provided while visiting the clients in lockup/jail and thereafter the same may be taken back sanitized and used for another client.



Certified to be a True Copy

Srimanto Sen
(Srimanto Sen)
Secretary