

THE CASE FOR VERBATIM ARGUMENT TRANSCRIPTS IN COURTS

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ABSTRACT

Verbatim transcripts of arguments are a regular feature of trial Courts in the United States. Besides acting as a device to eliminate bias, unfair practices and browbeating on all sides, verbatim transcripts serve as a useful tool for everyone concerned with the trial process and also as a reference for appellate purposes.

In the present system followed in Indian Courts, the presiding officer records a daily sheet or *roznama* where the bare minimum effective developments in each matter are recorded. The presiding officer not only enjoys complete control over what is recorded in the daily sheet, but such record at times is the only available account of what transpired in Court. The recording of verbatim proceedings within Courts becomes relevant in cases where certain developments which are significant to the justice of the case take place, but are left out either inadvertently or because there is no rule for the recording of such developments unless certain reports are filed.

Even in the case of judgments passed by judges after considering the entire record and after noting down oral as well as written arguments which counsel for adverse parties may file before the Court, certain matters of significance may be left out if not noted down by the presiding judge in his/her note sheet, which is a voluntary act. Verbatim records would serve as a useful resource even to the trial Judge who cannot note down each and every word that is uttered in the Court room during hearings, but who could benefit immensely from referring to such a record of arguments, in finding the crux of the submissions and arguments made in the Court

room. The verbatim transcript and written arguments can supplement each other in the process of identifying the crux of a dispute and assist in arriving at a wholesome adjudication. Verbatim record is maintained in institutions other than Courts, viz. Parliaments and Legislative Assemblies.

The purpose of this article is to explore the practical importance and utility of Verbatim Argument Transcripts in Court proceedings.

Keywords: Argument transcripts, verbatim record, Court proceedings

SIGNIFICANCE OF VERBATIM TRANSCRIPTS

The device of verbatim transcripts of arguments made in Courts is central to the manner in which Court proceedings are conducted in countries like the United States.ⁱ Many Courts including ones in the United States,ⁱⁱ Canada,ⁱⁱⁱ Australia,^{iv} New Zealand,^v Ireland,^{vi} the International Court of Justice,^{vii} and the International Criminal Court^{viii} transcribe and publish records of oral arguments made before them. Houses of Parliament in India^{ix} and the State Legislature^x have specific Rules for maintaining records of proceedings of debates.

Verbatim transcripts allow the Court hearing the matter to glean through all the contentions raised by the parties to an adjudication. It also helps an appellate forum to determine if all the contentions raised by the parties have been dealt with by the trial Court. In India, a plea for the livestreaming of Court proceedings was made in the case of *Swapnil Tripathi v. Union of India etc.*^{xi} for the livestreaming of Court proceedings. A list of suggestions made by the Attorney General recorded in the judgment of the then Hon'ble Chief Justice of India Dipak Misra and Hon'ble Justice A. M. Khanwilkar, includes the following suggestion: '*7. Apart from live streaming, the Supreme Court may, in the future, also provide for transcribing facilities and archive the audio-visual record of the proceedings to make the webcast accessible to litigants and other interested persons who are unable to witness the hearings on account of constraints of time, resources, or the ability to travel long distances to attend hearing on every single date. Such webcasts will also allow students of law to supplement their academic knowledge and gain practical insights into cases of national importance.*'^{xii} (emphasis supplied here)

In the present system followed in Indian Courts, the presiding officer records a daily sheet or *roznama*^{xiii} where the bare minimum effective developments in each matter are recorded. The presiding officer not only enjoys complete control over what is recorded in the daily sheet, but such record at times is the only available account of what transpired in Court. High Courts also record daily orders, which record non-final developments. Advocates can move an application for ‘speaking to minutes’^{xiv} in order to get errors in daily and other orders corrected. The daily sheet or *roznama* is a useful index of the date-wise developments in a matter, but it is functionally and qualitatively not the same as a Verbatim Argument Transcript.

Apart from assisting the trial and appellate Courts in the process of adjudication, verbatim transcripts serve as a permanent record of contentions that arise in a particular type of litigation, which is a useful device for understanding the law especially from the point of view of parties affected by state action.^{xv} This is a practical tool whose utility and import in the process of learning the law cannot be underestimated. The approach that the practicing lawyer can take is to corroborate how a particular argument was dealt with by the Court and to improvise upon it in future cases with similar facts.

The Judge who writes a judgment or order does invariably record the contentions raised by the respective counsel appearing for the disputing parties. However, it is not practically possible for a Judge to personally jot down everything stated by counsel appearing before the Court. Although crucial issues are discussed and settled by way of a record of adjudication, those parts that the Judge may not find to be crucial to decision-making in a particular case and may leave out from discussion in a judgment or order, may nevertheless be helpful for lawyers to study subject-related argumentation so as to be able to decide upon an approach in similar cases, which could be of assistance to the Court. Verbatim argument transcripts thus undeniably assist the process of administration of justice.

PRACTICAL DIMENSIONS

The examples of countries and international fora where verbatim transcription of Court proceedings is practiced, are countries or fora with a limited number of official languages. In India the number of official languages recognised under the 8th Schedule to the Constitution is 22.^{xvi} There are many more dialects and microlanguages.^{xvii} This presents the qualitative

problem of interpretational error.^{xviii} Also, a permanent cadre of court reporters with proper expertise would be essential in order to bring any such system into effect. Such a cadre would be tasked with recording, transcription and maintenance of the record of verbatim proceedings, and would therefore imply budgetary allocation. The Lok Sabha^{xix} and Rajya Sabha^{xx} employ specialized cadres of Verbatim Reporting Service. In the case of Courts, the strength of stenographers^{xxi} who are already in service would have to be augmented in order to be able to institute a system of transcribing entire proceedings in Court.

The fact that the Verbatim Reporting Services of the two Houses of Parliament accurately transcribe proceedings in the Parliament, which may not be in English or Hindi alone, shows that it is possible to institute a verbatim transcription system in Courts of law, where there is greater likelihood of proceedings taking place in the official language of and/or in dialects spoken in the particular state or part thereof within which the Court is situated. As things stand, presiding officers and stenographers have to deal with such diversity whenever evidence is recorded and the overall diversity of India does not impinge on the practical viability of recording evidence, as occasions requiring the services of a translator in order to translate the spoken word of a particular witness are limited.

The practical utility of verbatim argument transcripts is of great worth so as to seek a budgetary proposal favoring it.

INSTITUTING A VERBATIM ARGUMENT TRANSCRIPTION SYSTEM

As seen in *Swapnil Tripathi's* case (supra), certain restrictions were laid down whereby cases related to certain types of offences or proceedings of certain nature were exempted from the allowance made for livestreaming. Further, the part where Judges discuss matters with each other and Counsel take instructions from clients is also exempted from livestreaming footage.^{xxii} Such restrictions would have to be followed in case of Verbatim Argument Transcripts as well.

In order to ensure that what goes on record in the form of Verbatim Argument Transcripts is relevant to the case at hand, Courts may in their discretion, regulate the time allotted for advancing arguments.

It would take some amount of training and co-operation of the Bar to make the system of Verbatim Argument Transcripts effective. Such transcripts may in no way be construed to supplant the present system of filing written arguments at the conclusion of a hearing, but as a way to supplement it.

The expertise of reporters working with the respective State Legislatures could be sought by Courts and the Bar in different states in order to institute Verbatim Argument Transcription systems for Courts.

A positive beginning could be made by making such facility of recording Verbatim Argument Transcripts voluntary, on an experimental basis. To begin with, the transcripts could be recorded for final arguments only.

It is hoped that this useful system is gradually sanctioned and adopted on a regular basis in order to serve as a procedural device to assist the administration of justice.

ENDNOTES

ⁱ Louisell, David W. and Pirsig, Maynard E., "The Significance of Verbatim Recording of Proceedings in American Adjudication" (1953). *Minnesota Law Review*. Retrieved from <https://core.ac.uk/download/pdf/217205886.pdf>. Accessed on 16th October 2020.

ⁱⁱ Available at https://www.supremecourt.gov/oral_arguments/argument_transcript/2020, Accessed on 16th October 2020

ⁱⁱⁱ Available at https://www.albertacourts.ca/docs/default-source/ca/policy-on-access-to-transcripts-of-oral-proceedings.pdf?sfvrsn=b33abc80_2, Accessed on 16th October 2020

^{iv} Available at <https://www.hcourt.gov.au/publications/judgments/transcripts>, Accessed on 17th October 2020

^v Available at

<https://www.courtsofnz.govt.nz/search/SearchForm?Search=transcripts&ExcludeJudicialDecisions=1>, Accessed on 17th October 2020

^{vi} Available at <https://www.courts.ie/access-court-records>, Accessed on 17th October 2020

^{vii} Available at <https://www.icj-cij.org/en/case/168/oral-proceedings>, Accessed on 17th October 2020

^{viii} Available at https://www.icc-cpi.int/Transcripts/CR2016_03061.PDF, Accessed on 17th October 2020

^{ix} Available at https://rajyasabha.nic.in/rsnew/rs_rule/rules_pro.pdf, Accessed on 16th October 2020

RAJYA SABHA RULES

PROCEEDINGS OF COUNCIL

260. Preparation and publication of proceedings of Council

The Secretary-General shall cause to be prepared a full report of the proceedings of the Council at each of its meetings and shall as soon as practicable, publish it in such form and manner as the Chairman may, from time to time, direct.

261. Expunction of words from proceedings

If the Chairman is of opinion that a word or words has or have been used in debate which is or are defamatory or indecent or unparliamentary or undignified, he may in his discretion, order that such word or words be expunged from the proceedings of the Council.

262. Indication of expunged words in proceedings

The portion of the proceedings of the Council so expunged shall be indicated by asterisks and an explanatory footnote shall be inserted in the proceedings as follows:

"Expunged as ordered by the Chair."

http://164.100.47.194/loksabha/rules/RULES-2010-P-FINAL_1.pdf, Accessed on 16th October 2020

LOK SABHA RULES

379. Preparation and publication of proceedings.

The Secretary-General shall cause to be prepared a full report of the proceedings of the House at each of its sittings and shall, as soon as practicable, publish it in such form and manner as the Speaker may, from time to time, direct.

380. Expunction.

If the Speaker is of opinion that words have been used in debate which are defamatory or indecent or unparliamentary or undignified, the Speaker may, while exercising discretion order that such words be expunged from the proceedings of the House.

381. Indication in proceedings regarding expunction.

The portion of the proceedings of the House so expunged shall be marked by asterisks and an explanatory footnote shall be inserted in the proceedings as follows:

‘Expunged as ordered by the Chair’

382. Printing and publication of Parliamentary papers.

(1) The Speaker may authorize printing, publication, distribution or sale of any paper, document or report in connection with the business of the House or any paper, document or report laid on the table or presented to the House or a Committee thereof.

(2) A paper, document or report printed, published, distributed or sold in pursuance of sub-rule (1) shall be deemed to have been printed, published, distributed or sold under the authority of the House within the meaning of clause (2) of article 105 of the Constitution.

(3) If a question arises whether a paper, document or report is in connection with the business of the House or not, the question shall be referred to the Speaker whose decision shall be final.

383. Custody of papers.

The Secretary-General shall have custody of all records, documents and papers belonging to the House or any of its Committees or Lok Sabha Secretariat and the Secretary-General shall not permit any such records, documents or papers to be taken from the Parliament House without the permission of the Speaker.

^x Available at http://mls.org.in/pdf/ebooks/Assembly_Rules_10edition_2015.pdf, Accessed on 16th October 2020

MAHARASHTRA STATE LEGISLATIVE ASSEMBLY RULES

312. Official Report of Proceedings.

An official report of the proceedings of the Assembly shall published and issued under the supervision of the Secretary and a copy thereof shall be sent to every member.

313. If the Speaker is of opinion that a word or words has or have been used in debate which is or are defamatory or indecent, or unparliamentary or undignified, he may, in his discretion, order that such word or words be expunged from the proceedings of the Assembly. Available at

http://mls.org.in/pdf/ebooks/council_rules_en.pdf, Accessed on 16th October 2020

MAHARASHTRA STATE LEGISLATIVE COUNCIL RULES

280. Official Report of Proceedings.

An official report of the proceedings of the Council shall be Published and issued under the supervision of the Secretary and a copy thereof shall be sent to every member.

281. Expunging of words from debates.

If the Chairman is of opinion that a word or words has or have been used in debate which is or are defamatory or indecent, or unparliamentary or undignified, he may in his discretion, order that such word or words be expunged from the proceedings of the Council.

^{xi} *Swapnil Tripathi v. Union of India*, Writ Petition (Civil) No. 1232 of 2017 etc. decided on 26th September 2018

^{xii} *Ibid*, page 42

^{xiii} Available at <https://court.mah.nic.in/courtweb/criminal/pdf/chapter3.pdf>, Accessed on 17th October 2020

^{xiv} Available at <https://bombayhighcourt.nic.in/libweb/rules/BHCASRulesPDF/BHCASRules11.pdf>;
https://gujarathighcourt.nic.in/hccms/sites/default/files/rules_files/GUJ.__H.C._RULES,1993_amended_on_16.09.2019_91.pdf, Accessed on 16th October 2020

^{xv} Available at http://users.soc.umn.edu/~samaha/cases/miranda_v_arizona_oral_arguments.htm. Also, at <https://www.oyez.org/cases/1965/759>, Accessed on 16th October 2020

^{xvi} Available at <http://legislative.gov.in/sites/default/files/coi-4March2016.pdf>, Accessed on 18th October 2020

^{xvii} Available at https://censusindia.gov.in/2011Census/C-16_25062018_NEW.pdf, Accessed on 18th October 2020

^{xviii} Available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4465445/pdf/nihms693991.pdf>, Accessed on 16th October 2020

^{xix} Available at http://164.100.47.194/loksabha/writereaddata/RTI/total_emoluments.pdf, Accessed on 18th October 2020

^{xx} Available at http://164.100.47.194/loksabha/writereaddata/RTI/total_emoluments.pdf, Accessed on 18th October 2020

^{xxi} Available at https://court.mah.nic.in/courtweb/static_pages/rti/mumbai.pdf, Accessed on 18th October 2020

^{xxii} *Swapnil Tripathi v. Union of India*, Writ Petition (Civil) No. 1232 of 2017 etc. decided on 26th September 2018