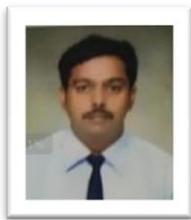


Digitalization and Legal Reforms with Special Reference to Witness Protection in India



Lavalesh Singh
Research Scholar,
Deptt. Of Law,
M.J.P.Rohilkhand,
Bareilly

Abstract

Digitalization is a method to use the electronic device for performing any function in the area of law, art, science, commerce etc. Modern technologies used in this process make the work easier and faster. By the digitization a person gains broader knowledge in the respective field. This process has been enhanced almost all the areas of our system. Specially in legal area it is very useful in providing justice and also spreading legal knowledge. In the justice delivery system it is necessary that the justice must be provided in the just, fair and speedy manner. Digitization of courts & libraries, uploading notices and judgments, e-filing of cases & F.I.R.'s, e-stamping & e-notary is a great step towards the reformation of Indian legal system.

Since witness is the eyes and ears of courts, hence their protection is one of the key aspects of our criminal justice system. In this regard digitization has been provided an ease in recording of statement of witnesses through electronic devices e.g. video conferencing is a great achievement in this field.

Keywords: Digitization, Digitalization, Witness Protection, E-filing, E-F.I.R., Video Conferencing.

Introduction

Digitalization also known as digitization. It is a process in which any information is converted into digital (i.e. computer-readable) format. In digitization the information is organized into bits. It is crucially important in data processing, storage and transmission, because it "allows information of all kinds, in all formats to be carried with the same efficiency". Digital data does not suffer any loss of quality like in analog data and it can be circulated without any degradation. That is why it is favored around the world for the preservation of informations in many organisations.

The Digital India programme has been launched with an aim of transforming the country into Digital India i.e. a digitally empowered society and knowledge hub. The Digital India would ensure the availability of Government services to citizens, electronically. It would also fix accountability through mandated delivery of government's service as Unique ID and e-Pramaan. The Government of India hopes to achieve growth on multiple fronts with the Digital India Programme. Specifically, the government aims to target nine 'Pillars of the Digital India' as--

1. Broadband Highway
2. Universal Access to Mobile connectivity
3. Public Internet Access Programme
4. E-Governance – Reforming Government through Technology
5. E-Kranti - Electronic delivery of services
6. Information for All
7. Electronics Manufacturing
8. IT for Jobs
9. Early Harvest Programmes

Digitization of Indian Legal System

Out of the above stated objects the goals towards E-Governance & E-Kranti suggests that there is a pressing need for digitisation of the legal system of our nation e.g. Using E-Notary, E-stamping, E-filing of cases, E-evidence, E-F.I.R. Government can reduce pendency of cases in courts by using technology and suitable software.

The current Indian legal system relies mostly on paperwork, resulting in thousands ongoing and pending cases, mostly due to insufficient information. It is necessary to state here that the traditional methods of legal documentation, paperwork and court work must be

E: ISSN NO.: 2455-0817

changed through awareness, technology and pursuance by the government. The key idea here is that digital transactions are faster and simplify the process of storing information. The ultimate desired outcome is to increase efficiency and transparency.

Digitization of Courts

In an effort to expedite justice delivery system, the Government is digitizing all of the courts across the country. This reform would not only provide judgments and track proceedings online, but also act as a check on other informations like the next date of hearing, past proceedings, submission of evidences through electronic method as video conferencing, etc. with the E-Notary system, attestation, authentication and verification of legal instruments can be done remotely. This is expected to make paperwork easier, faster and more secure.

In the furtherance of the establishment of E-courts, the Government of India is enabling the courts to use the modern technologies for the control and management of cases through e-filing, e-payment, mobile apps, formation of judicial service centers, and providing laptops to judicial officers.

Digitization and Witness Protection

A witness is a person who have relevant information to criminal proceedings on which he or she is or is about to be testified. They are the eyes and ears of courts. When the witnesses are not able to depose correctly in the court of law, it results in low rate of conviction and many times hardened criminals are acquitted. It shakes the public faith in judiciary.

Expressing serious concern over the growing trends of witnesses turning hostile, the Supreme Court has called for a witness protection programme, by saying that "it shakes public confidence in criminal justice system".

A bench headed by Justice AK Sikri said that the States' are required to come out with a witness-protection programme, at least in sensitive cases involving political and financial influence, to prevent those trial from being "tainted and derailed".

Witnesses turning hostile may be due to various other factors as fear of deposing against the accused or political pressure or pressure of other family members or other such sociological factors.

The importance of a witness can be understood from the observation of Supreme Court in **the Himanshu Singh Sabharwal Vs. State of Madhya Pradesh and Ors.**¹ case, whereby the court observed that *witnesses are the eyes and ears of the justice system* and when a witness is threatened or killed or harassed, it is not only the witness who is threatened but also the fundamental right of a citizen to a free and fair trial is vindicated. Protection of the witness is the duty of the state and when state fails to protect a witness, it actually fails to uphold the national motto of "Satyamev Jayate".

Similarly, in the **Neelam Katara case**², SC observed that the edifice of administration of justice is based upon witnesses coming forward and deposing without fear or favour, without intimidation or allurements in court of law. If witnesses are intimidated or allured, the foundation of administration of justice gets weakened and even obliterated.

Remarkina An Analisation

India does not have any witness protection programme. The subject was addressed by several committees and commissions in past. But two initiatives have been taken place as –

1). Law commission of India in its 198th report recommended for witness identity protection and witness protection programme. It also recommended to use 'live-link' and 'screen system' for recording the statement of witness. Amendments made in the legislative provisions in Criminal Procedure Code, Indian Penal Code, and Evidence Act are focused on the recording of statement by audio-video linkage and also by video-conferencing system.

Prior to the 198th report of Law Commission of India, its 172nd report recommended the provisions related to the use of technology for the protection of witnesses. In this report commission recommended regarding sexual assault specially in child victims. It was also recommended that prosecution may request the court to provide a screen in such a manner that the child victim will not come in front of the accused person while at the same time providing an opportunity to the accused to hear the testimony of the victim.

2). Delhi witness protection scheme 2015, provides for categorization of eligible witnesses for protection and recommended for protecting measures.

Delhi's witness protection programme puts ban on publication or revealing, the name, address and other particulars leading to the identification of a witness. It provides for changing the identity of a witness; relocating the person, facility for in-camera proceedings and 'live link', in which a witness can depose without coming to court e.g. evidence of witness through video conferencing. Other measures to protect witnesses includes taking steps to prevent an accused confronting the witness or monitor the person's calls and emails and changing the phone number of the witness or providing him or her with an unlisted number. Installing security devices at the person's home, guarding the person's residence, providing escort vehicles to the witness will be some of the other measures for protection.

Besides the above a Witness Protection Bill, 2015 is pending in Parliament. Despite several known cases of intimidation and threat to life of key witnesses, there is no central legislation in India on witness protection to deal with threat to their life from criminals and powerful persons.

NALSA and BPR & D for Ministry of Home Affairs prepared a "Witness Protection Scheme 2018" under the directions of Supreme Court issued in the case of **Prem chand vs. State of NCT Delhi**³. Witness protection draft 2018 proposes certain provisions in the field of digitalization, as are-----

1. There would be arrangements with the telephone company to change the witness's telephone number or assign him or her an unlisted telephone number and also security devices, would be in the witness's home such as security doors, CCTV alarms and fencing.
2. The another provision is the use of specially designed vulnerable witness court-rooms which

E: ISSN NO.: 2455-0817

has special arrangements like "live-links", one way mirrors and screens apart from separate passage for witnesses and accused, with option to modify the face of the witness and to modify the audio of the witness.

In the case of **Sakshi vs Union of India**⁴, the court suggested certain guidelines to deal with the victims of rape. One of the important guideline is that, "a screen or some other arrangements may be made so that the victim or witnesses do not see the body or face of the accused.

In case of **State of Maharashtra Vs. Dr. Praful B. Desai**⁵, the court observed that the protection of witness is necessary to ensure justice. This can be done by using modern technologies in recording testimony of a witness.

Some of the provisions of Criminal Procedure Code got changed according to use the digital method during the trial of case. According to **S.161(3)**, an insertion made by the Amendment Act, 2008; provides for the recording of statement of witnesses by police officer by audio-video electronic means. **S.164** also strengthens the role of digitalization in recording the statement of witness or accused. This provides that if the person making the statement is temporarily or permanently, mentally or physically disabled, the statement is to be made by the assistance of an interpreter or a special educator shall be videographed. **Section 275** of the Criminal Procedure Code is also a complimentary provision regarding the witness protection. After the Amendment Act 2008 a proviso has been added to section 275(1), which promotes the recording of evidence by electronic means before the magistrate. Section 275(1) provides thus "in all warrant cases tried before a magistrate the evidence of each witness shall, as his examination proceeds be taken down in writing either by the magistrate himself or by his dictation in open court or, where he is unable to do so owing to a physical or other incapacity under his discretion and superintendence by an officer of the court appointed by him in this behalf. Therefore the proviso of this section provides that evidence of a witness under this sub-section may also be recorded by audio video electronic means in the presence of the advocate of the person accused of an offence.

So the proviso confer a power on the court to record the statement of witnesses before it through audio video electronic means in the presence of the advocate of an accused person.

Recent amendments in the Indian Evidence Act, Criminal Procedure Code, Indian Penal Code have been introduced the concept of digitalization. Sections 17, 22A, 34,35,39, 45A, 47A, 53A 65A, 65B, 67B, 73A,81A, 85A, 85B, 85C, 88A, 90A, 119 etc. of the Indian Evidence Act , section 164 , 167,etc. Cr. P. C., sections 175, 191, 192, 228A of Indian Penal Code are referable here.

There are well-defined witness protection laws in all developed countries which include changing identity of the witness to providing them security, shelter and livelihood. For instance, in the US, protection is provided not only to a witness but even to his or her close relatives. The laws in US and

Remarkina An Analisation

Canada make it incumbent on the government to provide housing, medical care, job training, employment and subsistence funding. In Canada, Philippines, and Australia also legislated in regard to witness protection.

In 55th session of General Assembly of United Nation, a resolution was adopted relating to the convention against trans-national organized crime. The convention was focused on the significant advancement on the matter of witness protection by the use of modern technologies such as video linkage.

Objective of The Study

In this paper, an attempt has been made to find out the impact of digitization on the Indian criminal justice system regarding the protection of witnesses. This article emphasizes on the amended provisions of the Criminal Procedure Code 1973, Indian Penal Code 1860, and the Evidence Act 1872 which provides for the use of digital methods for recording evidences e.g. Video-conferencing, videography of evidence given by mentally and physically challenged persons etc.

Review of Literature

On reviewing the existing literature, this research paper aims at highlighting the challenges before Indian criminal justice system in the field of witness protection. In a number of cases Supreme Court and several High Court have issued direction for the digitisation of our legal system and using modern technologies to cure the problem of hostility of witnesses specially in high profile cases.

Supreme Court in the case of **Ramesh and others versus State of Haryana**⁶, said that " we find that it is becoming a common phenomena..... that in criminal cases witnesses turning hostile".

In **Ajmer Dargah case, Samjhauta Express blast case, and Mecca Masjid blast case, 2007**, the three blast occurred within months of each other in which 40 witnesses turned hostile resulting into the acquittal of main accused Aseemanand.

Concept and Hypothesis

Digitization has been proved itself as one of the greatest achievement in the public service sectors along with the reforms in the legal system to curb the biggest problem of present day, relating to the protection of witnesses so that court proceedings may run smoothly and will achieve the goal of full, fair and speedy justice to all.

My hypothesis for writing this research paper is that, whether digitalization of services in India in the form of, providing facilities for filing E- F.I.R's , digitization of the court case files in High Court's, getting case listing updates via e-mails, displaying the number of disposed cases on the websites of respective courts, is upgrading our criminal justice system to tackle the problem of hostility of witnesses and ensuring protection to witnesses against threat.

Research Design

This article is based on the study made on the basis of "Digital India Programme" and its consequential impact on the criminal procedure laws regarding protection of witnesses. Bare Acts, text books, law journals, law reviews as well as authentic

E: ISSN NO.: 2455-0817

internet sites have been consulted. Doctrinal method of research has been adopted in writing this research paper.

Findings

On analyzing all the available material it is found that digitization has been tried to upgrade the Indian legal system, after which the condition of witnesses assisting in the court proceedings have become a little bit convenient for the reasons of using E-Notary, E-stamping, E-filing of cases, E-evidence, E-F.I.R., video-conferencing etc. But that is not enough for the maintenance of witness protection. A strong piece of legislation is highly needed.

Conclusion

In regard to provide fair justice it is necessary that truth comes before the court through evidence either oral or documentary. For such it is necessary that the security of such evidence is maintained. The digitalization is proved as a boon for protection of these means of evidences. As a concluding remark it can be stated that digitization has been accelerated the theme of delivering justice at the door-step. And it has been proving itself as a boon for good governance.

Suggestions

On the basis of the above study, following suggestions are proposed from my side-

1. Court should provide highly technological equipments and secured system for recording the statement and assisting the court procedure.
2. A cyber cell shall be established in every district especially for the inspection and protection of witnesses.
3. High speed internet facility should be provided for court proceedings.
4. All type of court records should be kept in high security zone under the superintendence of reliable officers of court.

References

Legislations

1. *The Criminal Procedure Code, 1973*
2. *The Indian Penal Code, 1860*
3. *The Indian Evidence Act, 1872*
4. *Delhi Witness Protection Scheme, 2015*

Remarkina An Analisation

5. *Witness Protection Scheme, 2018 (Draft prepared by NALSA and BPR&D)*

6. *The Witness Protection Bill 2015*

Articles and Reports

7. *172nd Law Commission Report, 2000*
8. *198th Law Commission Report, 2006*
9. *M. L. Sharma, Protection of witness- Need to legislate a Law, CBI Bulletin, 1994*
10. *Prof. Dr. R Venkata Rao, Witness Protection and its challenges, Bangalore University Law Journal, Vol. 5, 2015*
11. *Dr. Yuvakumar Reddy & Mr. Girish Abhayankar, The Code of Criminal Procedure (Amendment) Act 2008 VIS-À-VIS Witness Protection, Criminal Law Journal Vol.3, 2014*

Websites

12. <https://en.wikipedia.org/wiki/Digitization>
13. national-issues/digital-india-programme-importance-and-impact
14. <http://pn.ispirt.in/discussion-on-digitisation-of-the-indian-legal-system>
15. <http://www.livelaw.in/government-takes-digitization-subordinate-courts-across-country/>
16. <http://www.hindustantimes.com/india-news/supreme-court-pitches-for-witness-protection-programme/>
17. [dlsa.org/wp-content/uploads/2015/12 Delhi Witness Protection Scheme2015](http://dlsa.org/wp-content/uploads/2015/12/Delhi-Witness-Protection-Scheme2015)
18. http://nalsa.gov.in/sites/default/files/documents/suggestions_on/20-witness_Protection_Scheme
19. <http://legaldesk.com/blog/digitalization-of-the-indian-legal-system>
20. <http://timesofindia.indiatimes.com/india/Law-panel-to-reiterate-need-for-broad-witness-protection-programme-in-report-on-death-penalty/articlehow/48717839.cms>

Footnotes

1. AIR 2008 SC 1943.
2. ILR 2003 11 Del 377
3. SLP Criminal no. 674/2017.
4. AIR 2004 SC 3566
5. 2003 4 SCC 601
6. Criminal appeal no. 2526 of 2014 available at Indian kanoon .com