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Explaining Code of Criminal Procedures CrPC 1898 and Suggestions for Amendments

Muhammad Waqar Naeem ¹, Nadeem Ur Rehman² and Asif Malik³

1, MS scholar, Department of Economics, The Islamia University of Bahawalpur, Pakistan

waqarnaem845@gmail.com

2, MS Scholar, Department of Management, UK.

3, Department of Law, Superior University of Lahore, Pakistan.

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Introduction

Code of Criminal Procedure (CrPC), 1898 is the main legislation on the entire legal procedure for investigation of any case under Criminal Law of Pakistan. Thus, the CrPC ensures provision of machinery for the crime investigation, apprehension of suspected criminals, determination of innocence or guilt of accused individual, collection of evidences, and determination of proper procedures (Zaffar, 2021). This Act initially came into force on first day of July 1898 in Pakistan. CrPC is applicable in all the regions of Pakistan but in the absence of any

specific provision to the contrary, special law or jurisdiction, or power conferred by other law for the time being in force.

Understanding with CrPC 1898

The Code of Criminal Procedures are being used to deal with both; cognizable and non-cognizable offences. To better understand, cognizable offences are relatively less serious and thus the police officers may arrest the involve individual without a court mandated warrant. On the other hand, non-cognizable cases are serious in nature and thus police officers may require authorized warrant to arrest the involved individual. These offernces are reported to court under section 154, and 155 CrPC, respectively. However, the Magistrate of the course is competent to direct the police regarding registration of case, investigation, and submission of report for the cancelation (Commission, 2021).

In the absence of confession by the arrested individual, evidence is the sole criteria to judge the case. Thus, the magistrate and the entire court procedure requires strong and authentic evidences to prove either the innocence of guilt of the arrested individual. It is the demand of every court, as no justice system can succeed without ensuring the credibility and authenticity of the evidence related to offence or the case. Moreover, only presence of strong and authentic evidence is not enough but also it must be based on the reality and truth. In an Islamic society deposition, the credibility of the evidence is the religious obligation, and thus any false evidence regarding the case is considered as highest sin because it may divert the magistrate's attention from the facts and may lead to wrong judgement. Therefore, false evidence with impunity is the root cause of injustice and social issues in the society.

Issue with Section 476 of CrPC

Once, the individual is arrested for an offence, and evidences are presented to the court, then the next step is to decide the innocence or guilt of the person and punish the perjurer accordingly. For this purpose, the court sets a panel, who checks the credibility of the evidences and facts and then give punishments to the perjurer. Under the Section 476-A of CrPC, in case of false evidence, the provisions are seldom invoked by the court, which refers the case to another court where the hearing is done to punish the perjurer. As per this section of CrPC, the judge of the court has to stand in the witness box in front of another judge for the false evidence of the perjurer, and prove innocence or guilt of the respective individual. Now, the second court and the judge are also responsible to cross examine the facts before giving the punishment to the perjurer, which may take time and therefore the courts avoid to proceed under Section 476-A of CrPC.

In case of false evidence, if the second court takes suo moto action under section of 476, then it may cause a delay in the case hearing and final decisions are postponed till the decision of the perjurer's appeal. Thus, there must be some effective procedures to deal with the perjurer case and make some amendments in the Sections 476 and 476-A, which keeps the courts helpless to tackle the case effectively.

Changes/Amendments Required

There are two ways to deal with the issue of false evidence and punishment to the perjurer. Firstly, **proper protection must be provided to the witnesses**, so that the truth can be easily spoken to the court and there is less room left for the perjurer, who tell a lie to the court due to threat to their lives. Secondly, **appropriate alternative provision must be done to punish the perjurer** and avoid delay in the hearing process of actual case. This can be done by removing the

restrictions on the power of courts to punish the perjurer, where case forwarding to other courts and presence of judge in witness box must be altered with most suitable procedures.

When considering the first amendment, protection to witness is of great significance. The witness is defined in Section 2(n) of the Sindh Witness Protection Act 2013 as “*A person who has given or agreed to give testimony or has made a statement relating to the commission of the offence(s)*” (Sindh, 2013). The witness is, somehow, associated with giving testimony in a court and thus he is responsible to reveal the truth or the reality of the facts or events in front of the court. However, the position of witness vary with the situation and can be categorized as victim-witness, justice collaborator, and expert witness. In any situation, the witness must play his/her positive role for the provision of justice to the right person and for the better future of the society.

In some cases, the witness refuses to appear in the course or tell a lie as perjurer because of the threat to their lives and lack of protection. All around the world, the witnesses have been facing great challenges in revealing the truth in front of judicial authorities. They face threats, social issues, the murder of their loved ones, the kidnapping of their relatives, and other issues in order to get pressured and either change their statement or do not attend the hearing. That is why the legislative authorities, especially lawyers, are restricted to keep their witnesses under protection and secrecy. However, this does not always work and sometimes leads to the worst situation, such as the murder of a witness.

On the contrary, to deal with the perjurer, the power of court must be expanded and the existing court must be allowed to take immediate decision regarding punishment to the perjurer and the case must not be forwarded to another court under Section 476 of CrPC. Even if the case is forwarded to other court and judge has to present in the witness box, then there must be some amendments in Section 476, according to which the decision must be taken by the court within

first three hearings regarding false evidence by the perjurer, and the main court must complete its hearing to take decisions in the Criminal Courts under CrPC.

Literature Support

The literature (Gluscic, 2006; Mackarel, Raitt, & Moody, 2001; Masood, 2018) also shows that reluctance and fear of the witnesses to give the testimony in front of legislative authorities is the result of threats and intimidation of the accused persons or powerful authorities. A number of witnesses are recorded with great threats and even murdered (Masood, 2018; Gluscic, 2006) after revealing the truth against the powerful authorities in the courts. Thus, there is a strong need to establish a witness protection program to ensure the protection to the ones who dare to stand for justice in courts. Almost all developed countries have adopted great frameworks to ensure the protection of witnesses and therefore they enjoy the better provision of justice in their society where people feel fear before attempting any criminal activity. Vermeulen defined Witness protection program as *“It is a program which is regulated by the legislation, intended to protect the witnesses and victim in all cases of severe threats that cannot be addressed by any other protective methods, and where evidence is of much importance for the criminal proceeding”* (Gluscic, 2006; Gul & Ali, 2015).

Already, several authorities have considered this amendment and protection to the witness. In 2013, the legislative authorities of Pakistan took action to protect the witnesses and resultantly Sindh Government passed the Sindh Witness Protection Act 2013. This Act proved to be a great step in the improvement of the Judicial system of Pakistan and served as precedent, as no such law existed earlier in the legislative framework of Pakistan. The Act included the following measures;

Establishing new Identity: This Act aimed to provide confidentiality to the witnesses by hiding their personal information and appearances. According to this Act, the witnesses will present in court by hiding their actual identity, via either wearing a mask or any other way. Also, the witnesses can be called separation during trial and investigation process to avoid any sort of threat to the witnesses.

Allowing Distance Testimony: According to this type, the witness can be with high protection and they can participate in the hearing process via video conferencing or other arrangements. The Act introduced several advance technology implementations during the hearing to avoid any sort of social issues and personality threats to the witnesses.

Relocating Witnesses: In some cases, when the witness is under high threatening conditions, the Act protects the witnesses via relocating them. With such type, the government of Pakistan provides a separate place to the witnesses to live during the case hearing. There they are entertained with a highly secure environment and full protection to their families.

Financial Assistance: In case, the witness cannot arrive at court due to financial issues, the court is responsible to meet all expenses of the person and facilitate him to ensure his/her participation in the hearing procedure.

Provision of Special Security: This Act provides complete protection to the witnesses, and in case the witnesses face threat or challenging condition, the government is responsible to provide additional special security, including police protection and agencies' protection.

Also in 2021, the Commission of Justice Law of Pakistan proposed the amendments to witness protection for the cases under CrPC. According to this proposal, audio and video recordings of testimonies have been made admissible in situations where it is not possible for a witness to attend Court in person or have a threat to his/her life.

Several developed countries have also kept their focus to the witness protection to ensure the quality hearing of the case and quick decision making of the cases. The United States of America follows the Witness Security Program (WITSEC) which follows most advance methods for witness protection than any other witness program worldwide (Gul & Ali, 2015). Also, the Witness Act of Australia was established in 1991, according to which the legislative authorities hide the identities of the witnesses, including birthday, name, address, marriage, and other identities. In this way, the witnesses record their statement in a protected and peaceful environment and also do not face any social challenge in the future (Karimjee, 2012).

In the United Kingdom, the legislation like the Youth Justice and Criminal Evidence Act 1999 allows the witnesses to ask for the special security measures. The government of the UK also offers all possible protection measures to ensure that witnesses are in the position to be intimidated. Moreover, to keep the procedure more secure and authentic developed countries follow high secured evidence collection patters, such as screening from accused, evidence given in private, concealing the names, hearing in-camera, and evidence by live link. In this way, the authorities not only protect their witnesses but also ensure that the evidence and witnesses' statement has reached to the judicial authorities at the right time and in great protection (UNODC, 2018). Not only the UK but also the Republic of Korea established its Witness and Victim Protection Law in 2000, according to which the not only witnesses but also the victims and their families are protected by the legislative authorities of Korea (Gul & Ali, 2015). The government is aware of

the fact that criminals threaten the witnesses by harming their family members, such as kidnapping them or sometimes by killing them. That is why the government not only provides protection to the witnesses but also to their families. Moreover, Korea also adopts advanced technology methods for hearing process to avoid any sort of unethical issue or security issue to the witnesses (Gul & Ali, 2015; UNODC, 2018).

Even the Asian countries, such as Japan has established its strong Witness Protection Program under section 96(4) and 89(5) of the Criminal Procedure Code (Gul & Ali, 2015). According to this Program, the legislative authorities may also cancel the bail of the accused person, if they have doubt that he/she may harm the witnesses or their families. Though under this Program, the legislative authorities keep the witness information confidential and provide witnesses with high security, still they take all measures to prevent any sort of security issue or harm to the witnesses of criminal cases. However, to win this race and for the establishment of peace in the region, Pakistan is also trying to improve its justice system but a lot more is required to meet the standards.

Significance of Change/Amendment

Witness system is not just associated with the witness instead the Justice Delivery System consists of judicial authorities and law enforcement agencies to prosecute criminal proceedings. It starts from arresting the person to complete investigation, and then to the hearing process in the Judicial court. However, in this, all process different individuals play their significant role, including the police force, law agencies, investigation team, forensic team, lawyers, registrars, witness, Judge, and other legal advisors. However, in this, all process, the role of witness remains very prominent, as legislative authorities judge the cases on the basis of witnesses' statement and physical evidence. In Pakistan, the major issues are that the authorities, as well as nation, do not

understand the importance of witness protection. There are no strong measures to protect the witness, even in sensitive cases, and that is why either witness are being killed by powerful people or turn hostile due to threat to their lives and lack of protection.

Improvement in the witness protection program is crucial because a witness protection program acts as the cornerstone for the Justice of any country. Witness and evidence are the only sources which bring truth or reality in front of the court of law. Thus, there must be strong measures for the protection of witnesses in order to ensure the provision of justice to the right person (UNODC, 2018). Also, it affects the fundamental rights of others, who are living in the same society. Thus, it is essential to reconsider the existing judicial policies and to re-frame or revise the Acts which need improvements or upgrading.

Now it is recommended that for the slow and steady improvement in the justice system, the Commission must focus on the adoption of technology advancement in the hearing process, as permitted under Article 164 of the Qanoon-e-Shahadat Order. This will bring great advantages for the justice system of Pakistan. Thus, there is no requirement to implement further improvements in the system. More specifically, it is important to implement the defined Witness Protection Acts in Pakistan successfully and take a proper follow up of how these Acts are performing in the regions and what improvements can make their implementation successful. This will help the authorities to get benefits from these introduced legislation pieces and ensure security provision to the witnesses.

It is a lack of innovation in the system that still there are no measures to protect the witnesses and keep their information confidential. Through the literature, it becomes clear that there exist several successful frameworks and models, through which different developed countries have maintained their highly secure justice system. In such frameworks witness

protection is kept as a priority. For example, the United Kingdom Youth Justice and Criminal Evidence Act 1999 offers all possible protection to the witnesses to ensure that they are in the position to be intimidated. Also, this system use advance technology and advance protection patterns to keep the information about witnesses confidential and provide them high security.

Moreover, in Pakistan, the highly successful judicial framework will not work immediately instead the authorities need to take simple steps for starter, which will give some sense of witness protection in the judicial system and further advancement can be implemented with time. These simple steps may include offering temporary residence in a safe environment or police escorting for witness protection. The review of existing legislative pieces regarding witness protection also makes it clear that government has been trying hard to introduce witness protection Acts in each province and at the federal level in Pakistan, in which it has implemented advanced technology, special protection, financial aid, and relocation of the witnesses. However, the gap relied in the successful implementation of the legislative pieces. This simply means that the great flaw existed in the implementation of the legislative Acts. Thus, special training of legislative powers is crucial to make them aware of these Acts and restrict them with the strict follow up these Acts, when it comes to the witnesses. Also, in case any legislative power does not follow the Act or leaks witness related information to any party, he/she must be punished and dealt with strict hands.

Conclusion

Conclusively, a delay in the case hearing due to false evidence of the perjurer and court decision under Section 476, and Section 476-A of CrPC can only be dealt by ensuring the credibility of shared information by the witness in court. This can be done by ensuring protection to the witnesses and making amendments in the Section 476 of CrPC. The protection to the witness can be ensured by implication of Witness Protection Act, under which the Commission must focus

on the adoption of technology advancement in the hearing process, as permitted under Article 164 of the Qanoon-e-Shahadat Order. through this adaption, the audio and video recordings of testimonies must be made admissible in situations where it is not possible for a witness to attend Court in person or facing any protection issues for presenting the true and credible evidence to the court. On the other hand, the amendments in the Section 476 of CrPC can be made by changing power of courts to deal the perjurer associated cases, and judges must be imposed with restrictions to finalize the case within three hearings to avoid delay in justice associated procedures. With such amendments, it is expected that a positive change will be observed in Pakistan, regarding the assurance to justice for all.

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