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RIGHT TO STATUTORY INTEGRITY OF A WITNESS IN CIVIL CASES:

LEGAL DISCOURSE

(By: Vaibhav Kartikeya Agrawal)

ABSTRACT:
The Code of Civil Procedure 1908 (hereinafter 'CPC') provides procedure for adjudication of disputes of civil nature.\(^1\) Order XVI of CPC provides procedure related to summoning of witnesses in order to record their evidence before the Court of law. It empowers the Court to require the party at whose instance the witness is summoned to deposit reasonable expenses of his attendance, etc. before the Court. This paper endeavours to constitutionally analyse the legal connotation of the term 'detention' of a witness with reference to the rights of a witness before the Court of law. The interpretation in this research is based on golden rule of construction of the statutes.

INTRODUCTION:
The Code of Civil Procedure 1908 (hereinafter 'CPC') provides procedure for adjudication of disputes of civil nature.\(^2\) It consists of 158 sections and the First Schedule. The First schedule of CPC consists of fifty one Orders along with its rules and the Appendix to the First Schedule.

Order XVI of CPC provides procedure related to summoning of witnesses in order to record their evidence before the Court of law. It empowers the Court to require the party at whose instance the witness is summoned to deposit reasonable expenses of his attendance, etc. before the Court. This paper endeavours to constitutionally analyse the legal connotation of the term 'detention' of a witness with reference to the rights of a witness before the Court of law.

PROCEDURE OF SUMMONING AND ATTENDANCE OF A WITNESS IN A CIVIL CASE:

There is an adversarial form of adjudication of disputes in India. This necessitates filing of a statement of lis or cause in the form of a plaint.\(^3\) The person who files the plaint is known as plaintiff and the person against whom the plaint is filed is known as the defendant. The Court issues summons to the defendant to ascertain whether the defendant admits the claim of the plaintiff.\(^4\) The summons issued directs the defendant to file a written statement within thirty days from the date of service of summons to it.\(^5\) The defendant may, with the leave of the Court, file the written statement within ninety days from the date of service of summons to it.\(^6\)

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1. Section 9 of CPC.
2. Section 9 of CPC.
3. Order 7 rule 1 of CPC provides contents of plaint.
4. Order 5, rule 1 read with Order 8, rule 1 of CPC.
5. ibid.
6. ibid.
The Court issues summons to the defendant to appear either in person or through its respective pleader to answer and defend the cause against it. The defendant has authority to file set-off or counter-claim against the plaintiff. The plaintiff and the defendant have opportunity to file documents upon a notice for production of documents. Then the Court frames issues each on questions of fact and law. The parties shall submit a list of witnesses within fifteen days of the framing of issues on questions of fact and law in order to enable the Court to summon them for the purpose of giving evidence or to produce documents. The parties may issue summons within five days of presentation of the list of witnesses before the Court. However, if a party fails to mention the name of any witness or witnesses, the Court on sufficient cause being shown, may issue summons for the purposes of its attendance.

The party who applies for issuance of summons is required to deposit in the Court, the expenses that may be incurred in travelling and residence by the witness. Also it shall deposit any expense which the witness may incur on account of its appointment as an expert for the purposes of evidence in the case.

ORDER XVI, RULE 4 OF CPC ON PROTECTION OF WITNESSES:

Laws can be divided into two groups: (1) Substantive law, and (2) Adjective or Procedural law. Whereas substantive law determines rights and liabilities of parties, adjective or procedural law prescribes the practice, procedure and machinery for the enforcement of those rights and liabilities. This section endeavours to state the rights of a witness during the stage of evidence with reference to liability of the party at whose instance the witness has been summoned. The witness is summoned by the rules contained in Order XVI of CPC.

Order XVI, rule 4, sub-para (2) of CPC states:

**Expenses of witnesses detained more than one day:** Where it is necessary to detain the person summoned for a longer period than one day, the Court may, from time to time, order the party at whose instance he was summoned to pay into Court such sum as is sufficient to defray the expenses of his detention for such further period, ad in default of such deposit being made, may order such sum to be levied by attachment and sale of the movable

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7 Order 9, rule 1 read with Order 10, rule 1 of CPC.
8 Order 8, rule 6 of CPC.
9 Order 8, rule 6-A to 6-G of CPC.
10 Order 8, rule 9 of CPC.
11 Order 12, rule 2 read with Order 13 of CPC.
12 Order 14, rule 6 of CPC.
13 Order XVI, rule 1 of CPC.
14 Order XVI, rule 4 of CPC.
15 Order XVI, rule 3 of CPC.
16 Order XVI, rule 2 of CPC.
17 ibid.
property of such party, or the Court may discharge the person summoned without requiring him to give evidence or may both order such levy an discharge such person as aforesaid.\(^{19}\)

Order XVI, rule 2, sub-rule (4) of CPC specifically authorises the party who applies for issuance of summons, to pay the expenses deposited in the Court, to such witness directly. Similarly, Order XVI, rule 3 of CPC mandates a payment of such sum to the person summoned at the time of serving the summons, if it can be served personally. Further, the Court issuing the summons have authority to direct payment of such sum as it seems necessary and in case of default in such payment, it has jurisdiction to direct levy of such sum by attachment and sale of the movable property of the party obtaining the summons or may direct discharge of the person summoned\(^{20}\) without requiring him to give evidence in the case or may both order such levy and discharge the person summoned. Thus, this provision confers wide discretion on the Court in order to protect the interests of the witness summoned.

Order XVI, rule 4, sub-rule (2) of CPC provides provision on 'Expenses of witnesses detained for more than one day'. It reads:

Where it is necessary to detain the person summoned for a longer period than one day, the Court may, from time to time, order the party at whose instance he was summoned to pay into Court such sum as is sufficient to defray the expenses of his detention for such further period, and, in default of such deposit being made, may order such sum to be levied by attachment and sale of the movable property of such party, or the Court may discharge the person summoned without requiring him to give evidence or may both order such levy and discharge the person summoned.

Order XVI, rule (4), sub-rule (2) of CPC provides for detention of the person summoned if the evidence of it is not completed within one day. Such 'detention' may be contemplated on following grounds:

1. The term 'detention' is penal in nature and is aimed to make good a wrong done by a person. This term connotes 'confinement'. However, there cannot be any reason or implication to confine or detain the witness or the person summoned except for reasons specifically recorded by the Court.

2. Sections 55 to 59 of the Code of Civil Procedure 1908 and Order 21, Rule 37 to 47 of it provides provisions related to arrest and detention in civil prison of the judgment-debtor. A judgment-debtor is a person liable for payment of money or damages in respect of the decree issued against it by the Court of law. The position of a judgment debtor cannot be compared to the witness and both have completely different rights and obligations before the Court. A witness can become a judgment debtor but it is only after adjudication of the

\(^{19}\) Order XVI, rule 4, sub-rule (2) of CPC.

\(^{20}\) ibid.
dispute. However, the witness appears during the continuation of proceedings, i.e. after the framing of issues (in a civil case). So, there cannot be any question of civil or penal liability in respect of a witness who appears before the Court of law.

3. Order XVI, rule 4, sub-rule 3 of CPC empowers the Court to order the party at whose instance the witness has been summoned to deposit such expenses into Court as is sufficient to defray the expenses of his 'detention' for such further period as may be required. However, Order XVI, rule 2, sub-rule 1 of CPC specifically requires the party applying for issuance of summons to deposit in the Court expenses including those for 'one day's attendance'. This show that the person at whose instance the witness has been summoned is under a liability to deposit the travelling, appearance and other expenses and the witness is not under any liability for the same.

4. A witness is a person who provides its testimony before the Court in order to assist the Court in adjudication of the case. Further, a witness may not be concerned in any manner with the prospective decision or issue involved in the case for which he has been summoned.

5. It is the duty of the party in a civil case to submit list of witnesses and deposit the fees for summoning them. Also, the Court may require the party to provide reasonable remuneration to the witness. So, Order XVI, rule 4, sub-rule (2) of CPC has been enacted as a provision for welfare of witnesses rather than to punish them.

6. The authority of Court to direct for proper expenses to the witness in cases of their requirement of stay for more than one day is to ensure the proper expenditure for diet, and other necessities without hardship to its family as a cluster of it.

7. If the term 'detention' is literally construed, it would necessitate issuance of a decree or order stating the period and the cause for such confinement in civil prison. However, there are no such provisions and there cannot be any apprehension of it.

8. In *Ghanshyam Dass v. Dominion of India*\(^{21}\), Hon'ble Supreme Court held that the provisions of the Code of Civil Procedure, therefore, must be interpreted in a manner so as to sub serve and advance the cause of justice rather than to defeat it.

Thus, in light of these observations, it may be inferred that the term 'detention' is obscure and does not correctly signify the intention of the legislature.

CONCLUSION:

Order XVI of CPC provides provisions related to summoning and attendance of witnesses before the Court of law. It requires the party at whose instance the witness is summoned to deposit in the Court such expenses as the Court directs for the purposes of travelling, attendance and other expenses of such witness. Sir Jeremy Bentham stated, 'witnesses are the eyes and ears of justice'\(^{22}\). So, the term 'detention' of a witness in cases where the evidence is not completed on the day of his appearance in Order XVI, rule 4, sub-rule (2) of CPC connotes particularly to the 'residence' or 'stay' of such a witness for there cannot be any reason to confine him or impose any civil or penal liability upon him. This interpretation is imperative in order to ensure that the rights of such a witness are in consonance in textual terms too with the spirit of Article 21\(^{23}\) of the Constitution of India. Such an interpretation is based on golden rule of construction of the statutes. Thus this provision may be reviewed by the Parliament in the light of legal jurisprudence and rights of a witness in a civil case.

\(^{22}\) Zahira Habibullah H. Sheikh(5) v. State of Gujarat, Appeal (Crl)/446-449/2004 of Supreme Court of India.

\(^{23}\) Article 21 of the Constitution of India states: 'No person shall be deprived of his life or personal liberty except according to the procedure established by law'.