

Supreme Court Extends Use Of Vulnerable Witness Deposition Centres To All Jurisdictions Including Civil, Family Cases

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The Supreme Court, recently (8th April), requested the High Courts to respond to the Model Guidelines for Vulnerable Witnesses Deposition Centres (VWDCs) circulated to the Chief Justices of High Courts by 20th May, 2022, so that the Committee, chaired by Justices, Ms. Gita Mittal, former Chief Justice of the Jammu And Kashmir High Court, appointed to implement an All India VWDC Training Programme, can provide a uniform national model for implementation.

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A Bench comprising **Justices D.Y. Chandrachud and Aniruddha Bose** also noted that apart from criminal cases, VWDCs should also be utilised and permission should be granted to record evidence of vulnerable witnesses in cases in civil jurisdictions, family courts, juvenile justice boards and Children's courts. The Bench accepted a suggestion made by amicus curiae Senior Advocate Vibha Datta Makhija in this regard.

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"The use of VWDCs should, in addition to criminal cases, be allowed for other jurisdictions, including, civil jurisdictions, family courts, juvenile justice boards and Childrens' courts. Permission should be granted for recording the evidence of vulnerable witnesses in cases across all jurisdictions. This suggestion in the report is appropriate and is accepted."

The said Committee is also empowered to engage with the High Courts on creation of infrastructure for VWDCs. The Bench observed, that in view of the same, it developed drawings and guidelines and forwarded the same to the High Courts to consider if any fresh construction or modification to the existing set up is required for establishing VWDCs.

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Senior Advocate, Ms. Vibha Datta Makhija and **Ms. Aditi Choudhary**, Registrar (Vigilance) of the High Court of Delhi apprised the Bench that the Committee is in the process of formulating a training module which would require engagement of domestic as well as international experts. The Bench noted that in case the Committee consults experts outside the country, it can do so by way of video conferencing platform for the time being.

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Additionally, the Bench asked Ms. Mittal to share the developments in respect of the VWDCs with the Secretary in the Union Ministry of Women and Child Development.

On January 11, 2022, the Court had expanded the definition of "vulnerable witnesses" while accepting the guidelines framed by the Delhi High Court. It said the definition should include not just those below the age of 18 years but also other categories of vulnerable persons such as :

a. age neutral victims of sexual assault read with section 273 and 327 of the Cr. P. C. and section 354 of the IPC;

b. gender neutral victims of sexual assault read with section 2(d) of the POCSO Act;

c. age and gender neutral victims of sexual assault under section 377 of the IPC read with paragraph 34(1) of the decision in Sakshi v. Union of India;

d. witnesses suffering from mental illness as defined under section 2(s) of the mental healthcare act of 2017 read with section 118 of the Indian evidence act;

e. any witness deemed to have threat perception under the witness protection scheme 2018 of the union government as approved by this court in Mahendra Chawla v union of India 2019 14 SCC 615;

- f. any speech or hearing impaired individual or a person suffering from any other disability who is considered to be a vulnerable witness by the competent court;*
- g. any other witnesses deemed to be vulnerable by the court concerned*

Background

In *State of Maharashtra v. Bandu @ Daulat*, the Supreme Court had asked the High Courts to take necessary steps to set up one centre for vulnerable witnesses in every district in the country. It directed that at least two such centres in the jurisdiction of each High Court may be set up within three months. The issue of recording of evidence of vulnerable witnesses arose prior to to the order in *Bandu* (supra) in several judgements of the Apex Court, including *Sakshi v. Union of India* (2004) 5 SCC 518 and *State of Punjab v. Gurmit Singh* (1996) 2 SCC 384.

While hearing a Miscellaneous Application dealing with setting up of such centres, in 2019, notices were issued to the High Court to submit a status report with regard to the establishment of the VWDCs in compliance with its directions.

Considering the suggestions of the Amicus Curiae and some of the Counsels appearing for the High Courts, the Apex Court issued direction, on 11.01.2022, in exercise of jurisdiction under Article 142 of the Constitution of India in furtherance of its earlier decisions, for setting up special facilities to cater to creation of a safe and free environment for recording evidence of vulnerable witnesses. It directed the High Courts to adopt and notify the VWDC Scheme. In view of conducting periodic training programmes for manning and managing the VWDCs and sensitising all stakeholders, including judicial officers, members of the Bar and the staff of the court establishment, the Court appointed the Committee chaired by Justice Gita Mittal. She was requested by the Apex Court to seek the assistance of NALSA and SLSAs in her endeavour to implement the scheme for effective training. Instead of restricting the definition of vulnerable witnesses contained in clause 3 of the VWDC scheme formulated by the Delhi High Court to child witnesses, the Court had expanded it to age neutral witnesses suffering from mental illness; other disabilities; those who have apprehension of threat to life and victims of sexual offence, irrespective of their age and gender.

[Case Title: Smruti Tukaram Badade v. The State Of Maharashtra and Anr]

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