

Witness Protection Law in India: Issues and Current Status

Ragini Sarma, Dr. Jai Shankar Ojha
Student B.A. LLB, Assistant Professor
Law College Dehradun,
Uttaranchal University, Dehradun, India

ABSTRACT

Witness is a person who either of its own will or for the need of justice comes forward in the court to present its testimony in order to provide justice in a case. In any criminal case in India, witnesses play a very important character while determining its final outcome. Because of their important position they are threatened the most. They are most of the time threatened by the opposite party and then the parties try either to mould witness in their favor or turn them hostile. Hence it becomes very important to protect the witness so that they don't get intimidated or they are not under fear while revealing the truth in the court. There are witness protection program in various countries around the world. But India still lacks this kind of protection because proper implementation of witness protection is still not being working properly. Infrastructure and implementation continue to be so poor that there are still a vast number of cases where the witnesses turn hostile. This article mainly deals with the concept of witness protection and the importance and treatment to witnesses. Further it also deals with developments in India so far and its analysis in India regarding the challenges faced and suggestions regarding its improvement. In fact, there are very few instances where the witnesses are being provided with protection. Witness protection program and witness protection scheme are a need of hours. But ironically in India, such programs are away from reality, where the witness lacks protection but they are not even treated with respect. The harsh reality is that they are harassed a lot and not only that they are threatened, bribed but much more. Several steps have been taken by the government regarding the protection of witness but today after years of anticipating a concrete system of safeguarding witnesses, the Supreme Court finally approved the draft witness protection plan on December 6, 2018. The first ever plan known to be witness protection scheme was prepared by the government which has to be implemented in all the states.

KEYWORDS: Witness, Protection, Treatment, Threat, Hostile Witness, Law Commission, Development

INTRODUCTION

According to Black's Law Dictionary, "Witness is one who sees, knows or vouches for something or one who gives testimony, under oath or affirmation in person or by oral or written deposition, or by Affidavit".¹

A witness may be defined as one who gives evidence in a case, an indifferent person to each party, sworn to speak the truth, the whole truth and nothing but the truth.² The testimony of a witness may be voluntary or may be involuntary and which may be either oral or written. Witness are said to be a great responsibility in a criminal case. The credibility of any witness in any case either for the prosecution or the defence is the main material for the issue.

According to Bentham," witnesses are the eyes and ears of justice." Hence, a witness is a character who has the first hand information relating to a case. The declaration and statement of a witness are served as some purpose for evidence in the case and all these are made under oath. It is said that the duty of witness is to assist the court in the fair administration of justice so that they could reach at a fair conclusion. The witnesses may be either called by the court as their own to present formally for the prosecution or they may be an eye witness or may be any other kind of witness.

A criminal case is built upon the construction of evidence which is admissible in law. For that the witnesses are required whether it is direct or circumstantial evidence. Therefore, the relevancy of statement of witnesses depends upon the matter in issue. In *Ram Chandra Rambux V. Champabai & Ors*³, it was observed by the court that:

¹ Bryan a Garner (Ed.), Black's Law Dictionary, p.1596.(West group, St. Paul, Minnesota, 17th Edn., 1999).

² P. Ramanatha Iyer "Concise Law Dictionary", p. 896(Wadhwa & company, Nagpur, 8th Edn., 2004).

³ AIR 1965 SC 354 (V.52 C65) from Bombay

"It is open to the court to look into surrounding circumstances. In order to judge the credibility of the witness, the court is not confined only to the way, in which the witnesses have deposed or to the demeanor of witnesses, but it is open to look into the surrounding circumstances, as well as the probabilities', so that it may be able to form a correct idea of the trustworthiness of the witnesses."

A witness who plays a very important role while delivering justice in a case, they are being threatened the most. They are most of the times under fear and then they are being turned hostile by the opposite parties and ends in not having a fair trial. A witness who performs a sacred duty by assisting the court to discover the truth are not at all treated with respect, rather they are being harassed a lot today. They perform an important public duty, sacrifice their time and take all the troubles while giving evidence in the court.

IMPORTANCE OF WITNESS

The importance of a witness can be bore from the observation of a Supreme Court case, whereby the court observed that witnesses are said to be 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 is refuted for a free and fair trial. 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 – Satyameva Jayate.⁴

Similarly, in the case of *Neelam Katara v. Union of India*, it was observed by the Supreme Court that the edifice of administration of justice is based upon witnesses who comes forward and depose without fear or favour, without any kind of instigation or temptations in a court of law. If witnesses are instigated or tempted, the foundation of administration of justice gets weakened and even eradicated.

The honourable Supreme Court in the case of *State of Gujarat v. Anirudh Singh*⁵ had held that, it is the salutary duty of every witness who has the knowledge of the commission of the crime, to assist the State in giving evidence.

THREATS TO WITNESSES

One of the major issues regarding a criminal trial is that the witnesses face threat to their life and even also to their families. Their lives are involved with high risk. They are being threatened by the opposite parties most of the time which results in turning them hostile. Witnesses are a major part in a case and they are being mould by the powerful and influential person where the testimony of the witness can put them behind the bars. There are even cases where the witnesses are being killed by the opposite parties so that the truth can't get revealed in the court.

INCIDENTS INVOLVING THREAT TO WITNESSES

VYAPAM CASE

In the very famous Vyapam Case, the scam involving corruption and irregularities in Madhya Pradesh Professional Examination Board while giving admission to students in Medical Colleges. A total of 25 witnesses including the son of Governor of Madhya Pradesh died in this high profile scam of MPPEB.⁶

KURIAKOSE KATTUTHARA RAPE CASE

In October 2018, Kuriakose Kattuthara, a priest who was a witness in the rape case against Bishop Franco Mulakkal, was found dead. His body was found in Dasuya near Jalandhar in northern Punjab.⁷

HIT AND RUN CASE OF SALMAN KHAN

⁴ Himanshu Singh Sabarwal v State of Madhya Pradesh and ORS, 2008

⁵ (1997) 6CC 514

⁶ Indiatoday.in/story/ visited on 8th march, 2019

⁷ News18.in/ visited on march 8th 2019

This case proved to be a testimony that the richer had different laws than the one who is poor. The witnesses in this case was exploited, killed and corrupted in any way it could. The one witness Ravindra Patil who stood by, his testimony was not considered.⁸

TREATMENT TO WITNESSES

The present judicial system has taken the witness totally for granted. They are being called by the court at any time leaving their family. They are made to come at their own cost. They don't get any kind of respect for their assistance to the court but are being threatened. Many a times they come for appearance and the case gets adjourned and then the lawyer politely gives them a further date for appearance.

The irony in India is that the offenders have several rights such as legal and constitutional but the victims and particularly the witnesses have limited rights. Thus this unequal distribution of rights results in a situation where witnesses are rendered helpless as they lack sufficient rights in protecting themselves. The issue of witness protection should be studied in the light of the fact that the conviction rate is low and the acquittal rate is high in India.

The Supreme Court observed in a case that, the procedure which is being followed in the court by the lawyers or of the adjourning of the case makes the witness tired of it.⁹

REASONS FOR WITNESS TURNING HOSTILE

Witnesses in India have much threat to their life and because of this many a times they retract from their earlier statement. Political pressure, self-generated fear of police and the legal system, absence of fear of the law of perjury, an unsympathetic law enforcement machinery and corruption are some of the other reasons for witnesses turning hostile in the course of trial.¹⁰

The Supreme Court in a case observed that, observed that society suffers by wrong convictions and it equally suffers by wrong acquittals. In this case the Supreme Court pointed out that one of the reasons may be that they do not have courage to depose against an accused because of threats to their life, more so when the offenders are habitual criminals or high ups in the Government or close to power which may be political, economical or other powers including muscle power.¹¹

According to the People's Union for Civil Liberties (PUCL), who made a press release on July 2, 2003 pertaining to the Best Bakery Case gave two reasons for witnesses turning hostile. The first is that the police had recorded the statements incorrectly. The second and more plausible was that the witnesses retracted from their previous statements because of "intimidation and other methods of manipulation by accused or defence counsel".

DEVELOPMENTS IN INDIA SO FAR

The subject for the witness protection had been raised in several aspects. Coming to the issue of protection of witnesses in a criminal trial, it would appear that barring rape cases, there are, as of today, no general statutory provisions in the Code of Criminal Procedure, 1973 on this subject. Section 327 (2) of the Code of Criminal Procedure, 1973 deals with 'in camera proceedings'. This section has laid down clearly that the inquiry into and trial of rape under section 376 and cases under sections 376A to 376D, Indian Penal Code shall be conducted in camera. This would enable the victim to be a little more comfortable and answer the questions frankly which could ultimately improve the quality of evidence of the prosecutrix or the victims.

The Supreme Court in four recent judgements, viz. NHRC v State of Gujrat¹², PUCL v Union of India¹³, Zahira Habibulla H. Sheikh and Another v. State of Gujarat¹⁴ and Sakshi v. Union of India¹⁵ has dealt exhaustively with the subject of 'Witness Anonymity' and 'Witness Protection Programmes'. The Supreme Court has also stated that Parliament must consider making a law on the subject at the earliest.

⁸ Indianexpress.com/article/india/ visited on 8th march, 2019

⁹ Swaran Singh v. State of Punjab AIR 2000 SC 2017

¹⁰ Lawctopus.com/article/ visited on 11th march, 2019

¹¹ Krishna Mochi v State of Gujrat

¹² 2003(9) SCALE 329

¹³ 2003 (10) SCALE 967

¹⁴ 2004(4) SCALE 375

¹⁵ 2004(6) SCALE 15

The Supreme Court has noticed that, apart from cases of trials of terrorists or those involved in organized crime, it is today recognized in several countries that even in the case of other serious offences, “Witness Anonymity” and “Witness Protection Programmes” are necessary wherever there is evidence that the life and property of the witness or his relatives are in grave danger.

14th Report of Law Commission 1958

‘Witness protection’ was considered from a different angle. The Report referred to inadequate arrangements for witnesses in the Courthouse, the scales of traveling allowance and daily allowance paid for witnesses for attending the Court in response to summons from the Court. This aspect too is important if one has to keep in mind the enormous increase in the expense involved and the long hours of waiting in Court with tension and attending numerous adjournments.

4th Report of National Police Commission 1980

In June 1980, in the Fourth Report of the National Police Commission, certain inconveniences and handicaps from which witnesses suffer have been referred to. The Commission again referred to the inconveniences and harassment caused to witnesses in attending courts. The Police Commission also referred to the meager daily allowance payable to witnesses for appearance in the Courts. It referred to a sample survey carried out in 18 Magistrates’ Courts in one State, which revealed that out of 96,815 witnesses who attended the Courts during the particular period, only 6697 were paid some allowance and even for such payment, an elaborate procedure had to be gone through.

154th Report of the Law Commission 1996

The Commission, while dealing with ‘Protection and Facilities to Witnesses’, referred to the 14th Report of the Law Commission and the Report of the National Police Commission and conceded that there was ‘plenty of justification for the reluctance of witnesses to come forward to attend Court promptly in obedience to the summons’. It was stated that the plight of witnesses appearing on behalf of the State was pitiable not only because of lack of proper facilities and conveniences but also because witnesses have to incur the wrath of the accused, particularly that of hardened criminals, which can result in their life falling into great peril.

172nd Report of the Law Commission 2000

In March 2000, the Law Commission submitted its 172nd Report on ‘Review of Rape Laws’. The Law Commission took the subject on a request made by the Supreme Court of India (vide its order dated 9th August, 1999, passed in Criminal Writ Petition (No. 33 of 1997), Sakshi v. Union of India).

178th Report of the Law Commission 2001

In December, 2001, the Commission gave its 178th Report for amending various statutes, civil and criminal. That Report dealt with hostile witnesses and the precautions the Police should take at the stage of investigation to prevent prevarication by witnesses when they are examined later at the trial.

Witness Protection Bill, 2015

This bill was prepared and introduced in parliament in 2015. Its objective was to put in place a strong law for witness protection in a manner which ensures a fair trial to both the parties.

Provisions in India regarding Identity and protection of Witness

1. Terrorist and Disruptive Activities Act, 1985

However, there are certain provisions present; our legislature has made provisions to allow the witness to remain anonymous. The first such law was the Terrorist and Disruptive Activities Act, 1985 (commonly known as TADA). This Act states that if the witness desires, the court “may” take steps to keep the “identity and address of the witness secret”, the violation would result in, a fine of Rs 1,000 and punishment of up to one year in the case of violation.

2. Prevention of Terrorism Act, 2000

A similar provision was made in the Prevention of Terrorism Act, 2002 (repealed in 2004), and continued in The Unlawful Activities (Prevention) Amendment Act, 2004. The provision for the protection of the identity of the victim and witnesses is also present in the Juvenile Justice Act and in laws that deal with sexual offences.

NEED FOR WITNESS PROTECTION

The road to safety of the witnesses seems to be like a tough one. The judiciary had raised concerns about it. In India, presently, there is no legislation that provides the standard operating procedure to ensure the safety of witnesses who feel threatened. At present, a witness who feels threatened has three avenues. Firstly, a person has the opportunity to approach the local police and ask for protection. Secondly, the witness can file a writ petition in the High Court and ask for a directive to the police to provide protection. Third, the witness can ask the trial court judge to order the police to provide security. But this is a very laborious process because the police only provide protection after carrying an audit of threat perception.¹⁶ But these laws do not take into consideration any possible threat to witness's family or property. If a member of the family is feeling threatened, there is no procedure or law available for tackling this situation. The challenge remains in the implementation of the witness protection law.

CURRENT STATUS

In November 2016, expressing serious concern over the growing trend of witnesses turning hostile, the Supreme Court has called for a witness protection programme, saying "it shakes public confidence in criminal justice system". A bench headed by Justice A.K. Sikri said that the state should come out with a witness-protection programme, at least in sensitive cases that involve those who have political and financial muscle, so that the trial does not get "tainted and derailed".

The Supreme Court, on December 6, 2018 approved the Centre's draft for a witness protection scheme. A bench, headed by Justice A.K. Sikri, said that they had also made some changes to the scheme. Approving the scheme, the Supreme Court bench comprising Justices A.K. Sikri and S. Abdul Nazeer said, "The right to testify in courts in a free and fair manner without any pressure and threat whatsoever is under serious attack today. If one is unable to testify in courts due to threats or other pressures, then it is a clear violation of Article 21 of the Constitution." The right to life guaranteed to the people of this country also includes in its fold the right to live in a society, which is free from crime and fear, and the right of witnesses to testify in courts without fear or pressure, as per report by Indian Express.

According to the judgement, the scheme identifies "three categories of witnesses as per threat perception":

Category A: It includes those cases where threat extends to life of witness or his/her family members during investigation, trial, or even thereafter.

Category B: It includes those cases where the threat extends to safety, reputation, or property of the witness or family members during the investigation or trial.

Category C: It involves cases where the threat is moderate and extends to harassment or intimidation of the witness or his family members, reputation, or property during the investigation, trial, or thereafter.¹⁷

Delhi's Witness Protection Scheme

Authorities in Delhi introduced a Witness Protection Scheme in 2015. The Delhi State Legal Services Authority (DSLISA) passes protection orders in each case after thoroughly evaluating the threat. The commissioner of Delhi police is responsible for the overall implementation of the witness protection orders. Protection measures could include armed police protection, regular patrolling around witnesses' house, installing closed-circuit television cameras, and relocation.

¹⁶ [Businessstandard.com/article/visited](https://www.businessstandard.com/article/visited) on 11th march, 2019

¹⁷ Witness Protection Scheme, 2018 Part II

SUGGESTIONS

There are various countries around the world like USA, UK, Canada, Israel, China etc have witness protection program but India still lacks the proper implementation of the scheme. So India should properly implement its law so that it could help in proper functioning. Most importantly the people should be aware of this kind of schemes.

There is a greater indiscriminate in the laws of our country because the accused had got both legal and constitutional rights but the witnesses are provided with limited rights. The witness should be provided with more rights so that they don't turn hostile and retract from their previous statements. They don't remain under any kind of fear from the parties who are in a dominating position.

The witnesses should not be made to appear in the court at their own cost. There should be funds from the government so that the witnesses don't hesitate to come forward.

Adjournments in the case should be stopped when the witnesses are made to appear in the court because repeated adjournments made the witness tired of appearing in the court again and again.

The witnesses should be treated with respect always rather than exploiting them. The government should provide with all the access that is required for protecting the witnesses especially in cases of heinous crimes. The police should never neglect to register cases which involve cases of high profile politicians.

CONCLUSION

In so far as such the rest of the country hadn't had a witness protection program till date, excluding Delhi. Now this scheme is here to fill the loopholes, but it is still uncertain how many law-abiding citizens would come forward to let the justice be delivered in time. India still seems to be seen that it is being surrounded by politics, and court cases can be a painfully long and frightening process for many. An important aspect that needs to be kept in mind, despite this scheme, is the insidious issue of caste, and social discrimination of Dalits. Dalits continue to be hesitant to come out as witnesses, and the police tend to remain disinclined to register cases against those with political power.

According to a report by Human Rights Watch, girls and women who report sexual violence are often more vulnerable, especially because in most cases, the perpetrators are not strangers, but known to the victims. As a result, they face extreme pressure and direct threats from the accused. This is the reason a scheme like witness protection is necessary to fill the lacuna in the justice delivery system and it is necessary to be followed according to the rules laid down therein.