WITNESS PROTECTION SCHEME 2018- A CRITICAL ANALYSIS

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Abstract

Law cannot be Static. Changing times require necessary changes in the law. The concept of Hostile witness was an exception, decade or two ago, whereas it has now become the rule in every criminal trial. Prosecution witnesses are being pressurized and persuaded by all means to dilute or even destroy the prosecution process. The art of cross-examination in criminal trials has virtually lost all its worth for the simple reason that today; unworthy acquittals can be secured by easy means, making sure that the prosecution witnesses turn ‘hostile’. Though the Supreme Court while dealing with section 154 of the Evidence Act has laid down that it is not necessary that the statement given by the hostile witness is treated in favour of the accused.¹

INTRODUCTION

Law cannot be Static. Changing times require necessary changes in the law. The concept of Hostile witness was an exception, decade or two ago, whereas it has now become the rule in every criminal trial. Prosecution witnesses are being pressurized and persuaded by all means to dilute or even destroy the prosecution process. The art of cross-examination in criminal trials has virtually lost all its worth for the simple reason that today; unworthy acquittals can be secured by easy means, making sure that the prosecution witnesses turn ‘hostile’. Though the Supreme Court while dealing with section 154 of the Evidence Act has laid down that it is not necessary that the statement given by the hostile witness is treated in favour of the accused.²

“There is perhaps no better test than the efficiency of the judicial system to test the excellence of the government. Since judiciary is the custodian of the rights of the citizens, any maladministration would result in jeopardy of civil liberties. As Bryce has put it succinctly; if the lamp of justice goes out in darkness, how great is that darkness. Drawing from herein, one cannot neglect the role of a witness in the administration of justice in a country. Justice Wadhwa in Swaran singh v. State of Punjab [AIR 2000 SC 2017] termed the witnesses to be the basis of both direct and circumstantial evidences which form the edifice of any criminal investigation. Witnesses are the eyes and ears of the Court and thus their protection becomes paramount to the judicial decision being rendered.”

Sensational cases involving the rich and the powerful are typical cases for expecting that the witnesses will certainly be made to turn hostile. There are such shocking cases in Delhi, Bombay, Hyderabad and everywhere.
The witness holds a very prominent place in the Criminal Justice System. "According to Bentham witnesses are the eyes and ears of justice. In the words of Justice, Wadhwa, A criminal case is built on the edifice of evidence, evidence that is admissible in law. To prove the prosecution’s case witnesses are required either direct or circumstantial evidence. Each and every statement of the witness is very crucial that have the capacity to change the course of the case. But it is very unfortunate in our country that no witness want to come to court to the testimony because they do feel it is safe for them."

The witnesses are always have important place in Administration of Criminal Justice System but in India the witnesses turn hostile because of which prosecution fails to prove charges against the accused. For that we can’t blame the witness alone for turning hostile but to whole legal system of India because no proper care and protection has been given to witness who are important evidence in a criminal case.

"Unfortunately in India, there is no law relating to the protection of witnesses as in developed countries like UK, US, Canada and Australia. As a result of this, the witnesses are not at all treated properly. And at the same time they and their family members are also not secure since they are sometimes subjected to life threatening intimidations. Now-a-days the vulnerability of the witnesses is so prominent, that even the courts have broken their silence and have appealed for the witness protection law. The Supreme Court acknowledged that Criminal Law in India requires considerable reforms. SC stated, no law has yet been enacted, not even a scheme has been framed by the Union of India or by a State Government for giving protection to the witnesses. The only provision is Chapter XII of the Code of Criminal Procedure, 1973, which pertains to the powers exercised by the police to investigate a criminal case. As per The Criminal Procedure Code, police officers have power to record the statement of witnesses, but these statements are not admissible in court."

WHO CAN BE A WITNESS?

According to law all persons are presumed to be qualified to be a witness in any trial. If any person’s testimony is sought then he has to appear before court to serve as a witness:

1. If he is a crime victim,
2. If he a person has knowledge of a particular act/crime,
3. If a person has called an 'expert witness',
4. If a person know the other person who is connected with the case i.e. 'character witness'

There certain rules according to law that which person can give the testimony:

a) Judge and Juror are not qualified to give testimony in which they are serving in same capacity;
b) in jurisdiction with a dead man statute, a person is deemed not competent to testify as to statements of or transaction with a deceased opposing party.
c) If the witness is not qualified to act, it can’t be a fair trial;
d) A witness can be incapacitation because many reasons it can be due a witness is not able to speak the truth.
IMPORTANCE OF WITNESSES

“By giving evidence relating to the commission of an offence, he performs a sacred duty of assisting the court to discover the truth. It is because of this reason that the witness either takes an oath in the name of God or solemnly affirms to speak the truth, the whole of the truth and nothing but truth. He/she performs an important public duty of assisting the court in deciding on the guilt or otherwise of the accused in the case. He submits himself to cross-examination and cannot refuse to answer questions on the ground that the answer will incriminate him.”

Indian Penal Code

If a witness gives the wrong information in any trial then he has face the consequences under section 191 IPC and he can also be penalized under section 193-195 of the same Act. Section 191 of IPC is applicable only when a statement is made by a person who is bound by an oath or by an express provision of law to state the truth, or who is bound by law to make declaration upon any subject.

The Indian Oaths Act, 1873

The Indian Oaths Act, 1873 empowers all courts and all persons of having, by law or consent of parties, authority to receive evidence. The prosecution’s case is dependent on the oral evidence of the witness to prove the case against the accused so the testimony of the witness is very important. For this reason witness deserves a special treatment and protection.

NEED OF WITNESS PROTECTION LAW

“It is imperative that we come up with a better justice system, one that provides adequate safeguards to the witness. There is no law for the protection of witness in India except barring few sections of Indian Evidence Act, 1872. Section 151 and Section 152 protects the witnesses from being asked indecent, scandalous, offensive questions, and questions which intend to annoy or insult them. Apart from these sections, there is no provision for the protection of witnesses in India. This fact was acknowledged by Supreme Court in the case of NHRC v. State of Gujarat where it said that no law has yet been enacted, not even a scheme has been framed by the Union of India or by the State Government for giving protection to the witnesses. It is high time that India introduced a witness protection programme. In fact the Law Commission recognised the need for the same and came up with a consultation paper on witness protection on 13, August, 2004. There are two broad aspects to the need of witness protection in India.

a) To ensure that the evidence of witnesses is protected from the danger of them turning hostile.

b) To relieve the physical and mental vulnerability of the witnesses.”

CAUSES OF WITNESS PROTECTIONS

1. The absence of Witness Protection: there are many loopholes in the Witness protection Act that is not able to give the protection to the witness properly.

2. Prolonged trials: in criminal cases procedure is very lengthy that’s why nobody wants to waste his crucial time by involving himself into it.
3. Easy bail of the rich accused: procedure of accused getting bail is easy that’s why every witness thinks that it is worthless to give the testimony as the accused always gets the benefit of doubt.

4. The absence of adequate facilities of the court to the witnesses: there is lack of facilities for witnesses in the Court complexes. Like drinking water, waiting rooms etc.

5. Usage of the money and power by the accused: the major reason for the witness getting hostile or they are not ready give the evidence against the accused is that sometimes the accused is in a dominating or powerful position. And he uses the many to corrupt the witnesses.

6. Threat by the accused: sometimes accused used his power and threaten the accused from giving the evidence against him

7. Other factors like, fear of police or legal system, political fear, etc are also there which stops the the witnesses from giving the testimony against the accused.

REPORTS OF LAW COMMISSION OF INDIA

1. “The 14th Report of the Law Commission (1958): The 14th Report can be considered as the starting point. It highlighted the failure of conviction rates due to lack of protection of witnesses. However, the said Report was very limited in purpose as it dealt with only provision of facilities to the witness as a method for protecting them. The main feature with respect to witness protection under the said Report can be analyzed as follows:

   a) Provision for adequate arrangements for the convenience of the witness within the court premises.
   b) Provision of allowance enabling them to arrive for testimony promptly and thus avoiding delay.”

This report had not mentioned anything regarding physical protection for the witness.

1. The 154th Report of the Law Commission (1996): this report suggested that there should be to provisions with regards to provision of allowance to witnesses. It also admitted the serious loopholes in the judiciary as it does not provide enough facilities to enable the witnesses to give his evidence. There two important points were highlighted.

   • This report said the system should create a confidence in the minds of the witness that he protected from the accused.
   • It also told that there should be less adjournments. Courts take statement on the same date which is fixed for the testimony of the witness. It should not be delayed in any manner.

2. The 178th Report of the Law Commission (2001): This Law Commission recommended the addition of section 164A in the Criminal Procedure Code where the punishment of the offence is 10 years or more the evidence of the witness should be recorded in the presence of Magistrates. On the recommendation the section was inserted in the Code of Criminal Procedure, through amendment.

3. The report of the Law Commission of India (2003): Malimath Committee Report was the most comprehensive report that provided the detailed guidelines for the implementation of witness protection. It
has been stated the Witness Protection Programme should be one of the aim of the judicial system to fix the loopholes.xiii

“Protection of identity of witnesses v. Rights of accused – Principles of law developed by the Supreme Court and the High Courts in the pre-Maneka Gandhi phase the Supreme Court, in Gurbachan Singh v. State of Bombayxiv upheld a provision of the Bombay Police Act, 1951 that denied permission to a detenue to cross-examine the witnesses who had deposed against him. It was held that the law was only to deal with exceptional cases where witnesses, for fear of violence to their person or property, were unwilling to depose publicly against bad character.”

The decisions in G.X. Francis v. Banke Bihari Singh xv and Maneka Sanjay Gandhi v. Rani Jethmalani xvi stressed the need for the conduct of a fair trial and which included the protection of witnesses.

“In Kartar Singh v. State of Punjab xvii the Supreme Court upheld the validity of ss.16 (2) and (3) of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (TADA) which gave the discretion to the Designated Court to keep the identity and address of a witness secret upon certain contingencies; to hold the proceedings at a place to be decided by the court and to withhold the names and addresses of witnesses in its orders.”

“The court held that the right of the accused to cross-examine the prosecution witnesses was not absolute but was subject to exceptions. The same reasoning was applied to uphold the validity of Sec. 30 of the Prevention of Terrorism Act, 2002 (POTA) in People’s Union of Civil Liberties v. Union of India xviii. In the Best Bakery Case in the context of the collapse of the trial on account of witnesses turning hostile as a result of intimidation, the Supreme Court reiterated that legislative measures to emphasize prohibition against tampering with witness, victim or informant, have become the imminent and inevitable need of the day.”

In Bimal Kaur Khalsa’s case xix P&H High Court, this Judgment laid stressed on the factor of protection of witness from media only and also highlight the importance for a comprehensive law on the witness protection.

WITNESS PROTECTION SCHEME, 2018

Witness protection is the area where is need of the hour. In Criminal cases witnesses are play very important role if the prosecution witness turns hostile the accused gets acquittal easily. Witnesses turn hostile due to many reasons like threat, fear, and inducement from the accused. Sometimes accused by using his power and money compel the witness to turn hostile. There is need of strong witness protection laws in India. In sensitive cases like terrorism and sexual offences witnesses and victims should be given protection from the police or magistrate. Police should be given proper training to handle such sensitive cases. Although there is Witness Protection Scheme, 2018 but it suffers from major loopholes:

- Limited time frame: it provides that the witness will be get the protection only for the period of three months.
No categorization: there is prescribed no category of offences or types of threat for which the protection will be provided. It all dependent on the will of the police officers that to whom the protection will be given.

No penal provisions: although this scheme protects the identity of the witness by maintaining the confidentiality of the personal information but it does not provide any penal provisions for the persons who violate this provision.

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