

A STUDY ON PROTECTION OF WITNESSES UNDER INDIAN EVIDENCE ACT

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ABSTRACT

In any criminal case, the witness plays a pivotal role in determining the final outcome. Due to this, the parties often threaten the witnesses, turning them hostile and interfering with the fair administration of justice. Hence, it becomes very important to protect the witnesses so that they do not get intimidated or fear revealing the truth in court. There are witness protection programmes in a large number of countries all over the world. Sadly, India still lacks a well-functioning witness protection programme despite various attempts to improve it. Infrastructure and implementation continue to be poor and there are still a vast number of cases where the witnesses turn hostile. This paper discusses the concept of witness protection, and talks about programmes in a few countries. Further it analyses witness protection in India, the reasons for failure and finally suggestions to improve it. Witness protection program and witness protection laws are simply the need of the hour. In fact, it is the absence of these laws that has helped in further strengthening the criminals and offenders. But ironically in India, such programs and laws are a far cry from reality, where leave alone protection, the witness is not even treated with respect. Today the witnesses are harassed a lot. Not only that the witness is bribed, threatened, abducted but even more.

KEYWORDS : Witness, Protection, Prejudice, Evidence, Hostile.

RESEARCH METHODOLOGY :

Only secondary sources have been referred for this study. Primary sources including interview with people was not possible. Secondary sources including books, research articles and web sources and blogs. This paper was completed through descriptive methodology.

INTRODUCTION

Witness is regarded as most indispensable part of the criminal justice system. He is the foundation on which the building of justice and equity rests and therefore inevitable. A witness in a criminal trial plays an important role on which the fate of the case depends, as it is the backbone of the trial whether it is a civil or criminal or any other trial. It is the witness who builds the case of the contesting parties by deposing before the court. The testimony given by the witnesses enables the court to decide the merit of facts and circumstances of the case. Therefore, the truthfulness of the witness's testimony becomes the cornerstone of justice and hence the witness is made to offer statement under oath. The statement of witness may lead to conviction or acquittal of accused. The speedy justice or delay in justice delivery also depends, to a great extent, on the quality of statement given by the witness during trial. It is not necessary that the witnesses must always depose in favour of prosecution and against the accused in a criminal trial. What is important and subject matter of concern is that a witness must depose without force, fear and pressure and out of his or her own free will and consent.

The successful functioning of criminal justice system largely depends upon the readiness of individuals to furnish information and tender evidence without being threatened or lured[3]. The conditions relating to witnesses in India are highly pathetic. The witnesses in this country are no longer willing to come forward to offer testimony. Witness dithers as he faces wrath, pressure and intimidation to his life and existence from accused party. The situation gets further aggravated when he finds the state does not have any legal obligation to him for extending any security. Witnesses are the cornerstones for successful investigation and prosecution of crime. In today's situation the matter of witnesses is turning hostile in sort of evident. The crucial half compete by the witnesses in transferral offenders to justice is central to any trendy criminal justice system, since the in conclusion of every stage in criminal proceedings from the initial reportage of the crime to the trial itself typically depends upon the cooperation of witnesses.

Their role at the trial is especially necessary in adversarial system wherever the prosecution should prove its case by leading proof, typically within the sort of test of witnesses, which may then be challenged by the defence at a public hearing.

AIM OF THE STUDY:

The aim of this Study is to Protect the witnesses from all sorts of evil and no innocent offender must be punished.

This Study endures effective implementation of evidence Act in protection of witnesses.

RESEARCH MATERIALS:

1. Black's law dictionary (9th standard edition).
2. All India reporter (AIR).
3. Bluebook (19th Ed.) citation method.
4. Criminal Procedure Code, by Kelkar.
5. Principles of the Law of Evidence, by Dr. Avatar Singh, Central Law Publications.
6. Indian Evidence Act bare Act, universal publication.

RESEARCH METHOD:

The topic of this project is such that it will require the researcher more to go through the Doctrinal mode of research with the help of books available and from some of the previous researches and also some authenticated websites present on the Internet.

Primary source: statutes, Bare acts.

Secondary source: Articles on Protection of witnesses and Indian journals.

CONCEPT OF HOSTILE WITNESS UNDER INDIAN LAW

A "hostile witness" is one who, from the manner in which he gives evidence, shows that he is not desirous of telling the truth to the Court. A witness who is gained over by the opposite party is a hostile witness[4]. The mere fact that at a Sessions trial, a witness tells a different story from that told by him before the Magistrate does not necessarily make him hostile. It is interesting to note that the Act does not use the expression "hostile witness", thereby avoiding the confusion prevailing under English law by the use of the term. The section merely confers a discretion on the Court to allow a party to cross-examine his own witness. If the testimony of a

witness is adverse to the party calling him, such a party is not entitled as a matter of right to cross-examine his own witness; he can do so only with the leave of the Court[5]. A discretion is given to the Court to allow or not to allow a person to cross-examine his own witness as hostile. The witness may be asked leading questions[6], or questions as to his previous statements in writing[7], or any questions[8], or his credit may be impeached[9]. The Court, in such a case, may, in its discretion, permit a party to put any question to his own witness which might be put in cross-examination by his opponent, i.e., may permit a party to cross-examine his own witness, although the putting of leading questions does not always amount to cross-examination. It is to be remembered that the discretion of the Court to permit "cross-examination" is absolute and independent of any question of "hostility" or adverseness. As is clear from a series of decisions of the Supreme Court in Ravindra kumar Ray V. State of Orissa[10], the testimony of a witness is not necessarily to be rejected, in whole or in part, just because he is declared to be a hostile witness.

CERTAIN LEGAL PROVISIONS DEALING WITH THE OFFENCE OF PREJURY (FALSE EVIDENCE)

Section 193 - Punishment for false evidence.

Whoever intentionally gives false evidence in any stage of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine,

and whoever intentionally gives or fabricates false evidence in any other case, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Explanation 1

A trial before a Court-martial is a judicial proceeding.

Explanation 2

An investigation directed by law preliminary to a proceeding before a Court of Justice, is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice.

Section 196 – Using Evidence known to be false

Whoever corruptly uses or attempts to use as true or genuine evidence any evidence which he knows to be false or fabricated, shall be punished in the same manner as if he gave or fabricated false evidence.

Section 199 – False statement made in declaration which is by law receivable as evidence

Whoever, in any declaration made or subscribed by him, which declaration any Court of Justice, or any public servant or other person, is bound or authorized by law to receive as evidence of any fact, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, touching any point material to the object for which the declaration is made or used, shall be punished in the same manner as if he gave false evidence.[11]

HOSTILE WITNESS : RECENT JUDICIAL PRONOUNCEMENT

A witness might flip hostile for varied reasons, usually it is the combination of cash and muscle power, threat / intimidation, inducement by various means that, allurements/seduction etc. however the foremost one being the absence of protection to the witnesses throughout and when the trial. The witness is frightened of facing the wrath of the convicts who could also be well connected. Witnesses are a unit extremely liable to intimidation within the variety of threats by the suspect. Today, hostility of witnesses in serious crimes and crimes committed by 'high profile' persons has challenged the system of criminal justice. As discovered by the Apex Court:

“increasingly folks are basic cognitive process that laws are like spider's webs: if some light-weight or inundated issue falls into them, it's caught, however a much bigger one will break through and acquire away”. Conducts that illegitimately have an effect on the presentation of witness in proceedings before the courts ought to be seriously and severely dealt with”.

1. The Sohrabuddin case

In the Sohrabuddin case, the following witnesses have turned hostile. One of the passengers of the bus wherein Sohrabuddin, and his wife Kauser Bi along with associate Tulsiram Prajapati were travelling in November 2005 from Hyderabad to Sangli was Sharad Krushanji Apte who

had deposed that he had seen them in the bus, but denied it later. The bus driver Misbah Hyder, and the cleaner Gazuddin Chabuksawar, had initially stated that the bus had been stopped by an SUV and that the police had taken them away. However they later retracted their statement. The bus operator M J Tours provided CBI with a photocopy of their tickets, but later denied issuing them. The person who had hosted Sohrabuddin in Hyderabad later denied that he had stayed with them.

2. 2007 Mecca Masjid case

Lt Col Shrikant Purohit, who was an NIA witness in the Mecca Masjid case, subsequently turned hostile and recanted his statement of having met the accused, Swami Aseemanand. In Samjhauta Express and Ajmer Dargah blasts cases, almost 40 witnesses turned hostile, which led to Aseemanand's acquittal.

3. Salman Khan Hit & Run Case

In the 2002 hit-and-run case involving the superstar, an eyewitness who had claimed initially that he had seen the actor exit the driver's seat, denied it in 2014.

4. Best Bakery Case

In this case, Zaheera Sheikh initially said that an armed mob had been chanting anti-Muslim slogans, and spoke of "dance of death which continued all night", but turned hostile later. Four others also turned hostile. The Supreme Court sentenced her to a year's imprisonment for perjury, and has ordered that a retrial be held after the 21 accused were acquitted by both the trial court and the High Court.

PROPOSED LEGISLATIVE REMEDIES

The issue of witness protection has been addressed in

- the Fourteenth Report of the Law Commission (1958),

- the Fourth Report of the National Police Commission (1980) and
- the 154th Report of the Law Commission (1996).

The 178th Report of the Law Commission (2001) gave recommendations based on which the Criminal Law (Amendment) Bill, 2003 was developed. The draft Bill was approved in 2003 but failed to make further progress as the Vajpayee's government lost power in 2004. A report of the Justice V S Malimath Committee suggested that a law for witness protection must be put in place[12]. The Supreme Court asked the government In the Best Bakery case to provide information on steps being taken with respect to witness protection. The Delhi government set up a witness protection scheme in 2015. In 2017, MoS (Home) Hansraj Ahir informed the Rajya Sabha that on the subject of witness protection there was no consensus, and that the law and order is a state subject.[13] In November 2017, the Supreme Court enquired as to why witness protection rules similar to the NIA Act, 2008, were not framed.

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. The bill sought to ensure protection of witness by the following:

1. Formulation of witness protection programme to be provided to a witness at all stages i.e. during the course of an investigation; during the process of trial; and after the judgment is pronounced
2. Constitution of a "witness protection cell" to prepare a report for the judge of the trial court to examine and grant protection to the witness referred a "protectee" after being admitted in the programme.
3. Constitution of National Witness Protection Council and State Witness Protection Councils to ensure implementation of witness protection programme in its letter and spirit.
4. Providing safeguards to ensure protection of Identity of witness
5. Providing transfer of cases out of original Jurisdiction to ensure that the witness can depose freely
6. Providing stringent punishment to the persons contravening the provisions;
7. Prescribing stringent actions against false testimonies and misleading statements.

EVIDENTIARY VALUE OF STATEMENT GIVEN BY HOSTILE WITNESS

The evidence of a hostile witness cannot be discarded as a whole. In 2012, the Hon'ble Apex Court [14] held that the law can be summarised to the effect that the evidence of a hostile witness cannot be discarded as a whole, and relevant parts thereof which are admissible in law, can be used by the prosecution or the defence.

In *Balu Sonba Shinde v. State of Maharashtra* [15], the Supreme Court held that the declaration of a witness to be hostile does not ipso facto reject the evidence. The portion of evidence being advantageous to the parties may be taken advantage of, but the Court should be extremely cautious in such acceptance.

In *State of U.P v. Ramesh Prasad Misra*, it was held that it is equally settled law that the evidence of a hostile witness would be totally rejected if spoken in favour of the prosecution or the accused, but it can be subjected to close scrutiny and that portion of the evidence which is consistent with the case of the prosecution.

CHALLENGES TOWARDS WITNESS PROTECTION

There are many practical problems like costs of implementation and infrastructure. When talking about providing bodyguards, security, relocation to another area etc., the costs that are involved are bound to be enormous [16]. But the more pertinent problem is that of corruption in the administration and judiciary. The first step in developing a witness protection law is to acknowledge that witness protection is a duty of States. Other problem is whether the statements of the witnesses should be recorded by a Judicial Magistrate. It is practically not viable in the present set-up with the low number of Courts and staff deficient Judiciary.

At present in India even the expert witnesses of the various forensic disciplines do not have any protection. A witness in Indian situation, who is living comfortably with a job and family may not intend to undergo such drastic changes in his life for the sake of being a witness in a Court of law. In the Indian situation, where we have so many social obligations and relatives to attend to,

proper implementation of the Witness protection programmes will not be possible for a variety of reasons.

In the 198th Report of the Law Commission[17], a Consultation Paper on Witness Identity Protection and Witness Protection Programmes' was prepared. In the Final Report, the Commission identified three categories of witnesses: (i) victim-witnesses who are known to the accused; (ii) victims-witnesses not known to the accused (e.g. as in a case of indiscriminate firing by the accused) and (iii) witnesses whose identity is not known to the accused. Category (i) requires protection from trauma and categories (ii) and (iii) require protection against disclosure of identity.[18] The committee comprising Members of Parliament from the Rajya Sabha was reviewing the status of promises made by the government in 2009 to amend necessary laws to protect witnesses. The commission recommended witness anonymity and protection where there is danger to the witness, to his properties or to those of his relatives, at all stages – investigation, inquiry, trial, appeal.

CONCLUSION

Witness is one of the most important constituent of justice. He is one of the most important sources of information in discovering the truth about the case, but the pains and troubles he has to undergo to help the court is a lot as well. By giving evidence the witness helps the courts to give correct judgement and justice. The witnesses have the danger of their lives as well as that of their families[19]. They have the danger of their properties as well. They have to undergo lots of discomfort when they come to give evidence. Even after doing all this they do not get anything in return. Therefore it can be clearly seen that the courts are negligent in the way that they treat the witnesses. Witness protection should take place and already various steps have been taken towards it. Many countries like, Canada, New Zealand, Australia, etc. have a well developed mechanism for witness protection. These mechanisms may encourage even more witnesses to come forward to give their evidence for the greater good[20]. Witnesses therefore should be shown the respect and gratitude which they are actually worth of. The problem of perjury also prevails and it depends upon the witness himself to stop it. Otherwise it can contribute to the wrong person being convicted while the true criminal and a perjurer walk on the streets in freedom.

SUGGESTION

Some of the alternative measure in Protection of witnesses are as follows:

1. Target hardening - Security from the police to protect the witness and family members use of discreet premises brief and interview the witness.
2. Procedural witness protection - Measures to avoid certain categories (a) avoid face – to – face confrontation with defendants (b) difficult to trace and identify witness through crime (c) psychological stress and public limit the exposure of witness.
3. Self Protection - witness support to tool on their own protection and security.
4. In camera proceedings - In some of abhorrent offences, the witness may be child, minor and girl need for special protection Sec 352 Cr.Pc says, judge may direct to leave from court, take other protection that in reasonable interest for the witness protection given by the separate law.

REFERENCES

1. www.legalserviceindia.com by Dhru Desi
2. www.lawctopus.com by Sinji, Articles on legal Issue, 14.2.2015
3. www.jurisedge.com – by Jurisedge, 11.1.2017
4. <https://indiankanoon.org> – 198th Report on Witness protection
5. www.racolblegal.com by Gazal Talwar, Article on Witness Protection, 12.3.2016
6. www.legallyindia.com by Kishitiz Karje, Silent Witness, 21.3.2016
7. www.lawnn.com by Lawn, Protection Law for ensuring justice in India, 20.12.2017
8. <https://papers.ssm.com> by Vijay Kumar Singh, GNLU Law Review Vol 1 Issue 2, 2.3.2009
9. www.2thepoint.in , Witness Protection laws in India, 15.11.2017
10. www.indianexpress.com , 8.2.2017
11. State of Maharashtra v. Dr.Praful Desi – AIR 2003 (4) SCC 601
12. Narayana Ayya v. Verappa Pillai – AIR 1951 MAD 34 IIMLJ 648
13. The Law of Evidence – by M.Monir, 10th Edition, Universal Law Publication
14. The Law of Evidence – by Ratanlal and Dhirajlal, 24th Edition, Lexis Nexis
15. Law of Evidence by S.R.A.rosedar, 2nd Edition, Lexis Nexis
16. Principles of Law of Evidence – by Dr. Avatar Singh, Central law Publications

17. The Law of Evidence – by S.R.Myneni, Asia Law House
18. Koil Nana Bhana v. State of Gujarat – 1986 Cri.LJ 571
19. State of Uttar Pradesh V. Nath singh – AIR 2001 SCC 667
20. Black’s law dictionary (9th standard edition).
21. All India reporter (AIR).
22. Bluebook (19th Ed.) citation method.
23. Dr.Lakshmi T and Rajeshkumar S “In Vitro Evaluation of Anticariogenic Activity of Acacia Catechu against Selected Microbes”, International Research Journal of Multidisciplinary Science & Technology, Volume No. 3 , Issue No. 3, P.No 20-25, March 2018.
24. Trishala A , Lakshmi T and Rajeshkumar S,“ Physicochemical profile of Acacia catechu bark extract –An In vitro study”, International Research Journal of Multidisciplinary Science & Technology, Volume No. 3 , Issue No. 4, P.No 26-30, April 2018.

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[3] www.legalserviceindia.com

[4] www.lactopus.com

[5] www.jurisedge.com

[6] Section 143 of the Indian Evidence Act.

[7] Section 145 of the Indian Evidence Act.

[8] Section 146 of the Indian Evidence Act.

[9] Section 155 of the Indian Evidence Act.

[10] AIR 1976 S.C.C. 566

[11] <https://indiankanoon.org>

[12] www.racolblegal.com

[13] www.legallyindia.com

[14] Ramesh Harijan v. State of U.P

[15] AIR 2003 SCC 112

[16] www.lawnn.com

[17] Witness Identity Protection and Witness Protection Programme (2004).

[18] <https://papers.ssrn.com>

[19] www.2thepoint.in

[20] www.indianexpress.com

