

Need for effective witness protection laws in India: a legal appraisal

Abstract

A witness is an indispensable aid in the justice dispensation system in any civilized society. A witness happens to be the eyes and ears of the Court. Their each and every statement is very important as it has a magic force to change the whole case. The statement given by the witnesses helps the Court to a great extent to frame the facts and circumstances of the case. It is for this reason they are expected to tell the truth¹. But unfortunately in India, the trend is such that the witnesses do not wish to come to Courts to give their statements and evidence because they feel unsafe. Even if they come to the Court they tend to turn hostile, thereby opening avenues for the accused to be acquitted. Causes for defection may be various. Is the lack of witness protection one of them? Yes, because the situation of protection of witness is bleak in India. A few witnesses in cases like Jessica Lal case remained courageous, but due to lack of witness protection in India, many witnesses do not favor the victim or appear in the Court.



Alka Bharati

Assistant Professor
BPSMV
Khanpur Kalan,
Sonapat, Haryana, India

Introduction

“There will be no Zaheera Sheikhs and Shyam Munshis if we have protection for witness”.

This was the statement made by Mr. Ramani after the Delhi High Court had found Mannu Sharma guilty in Jassica Lal’s case. The Court termed this act of Mr. Ramani as courageous. But the question is that whether we can expect all the witnesses to be courageous as Mr. Ramani in the absence of any witness protection programme. A witness is considered to be a major clue which helps the judiciary to arrive at a conclusion in a particular case for this it is necessary that witness comes to the Court with full conviction and sense of duty.

In the case of Swarn Singh V. State of Punjab² Wadhwa J. while delivering the judgment expressed his opinion about the condition of witnesses in the following words:

“The witnesses.....are harassed a lot .A witness in a criminal trial may come from a far off place to find the case adjourned. Not only that a witness is threatened he is abducted even bribed. There is no protection for him. He is not treated with respect in the Court for all these reasons and others a person abhors becoming a witness.”

By giving evidence relating to the Commission of offence, witness performs a sacred duty of assisting the Court to discover the truth³

The prosecution mainly relies on the oral evidence of witnesses for proving the case against the accused. It is for this reason that the witnesses deserves a special treatment in such cases unfortunately we do not have any specific legislation in this regard as in the developed countries like UK, US, Canada and Australia. Now a day the vulnerability of witnesses is so important that even the Courts have broken their silence and have appealed for the witness protection laws.

As discussed above, India does not have a specific comprehensive witness protection programme. Now the basic crux of the problem is that how safe are the witnesses in India and what remedies can be suggested in order to give an effective protection to them in our criminal justice system. There are two broad aspects to the need for witness protection. The main cause for the high acquittal rate in our criminal justice system is the witness turning hostile. Due to the violent and horrific nature of the crime it is not surprising that witness rarely want to testify against offenders. This phenomenon of witness turning hostile on account of failure to protect their evidence is one aspect of the problem. The Best Bakery case has generated a heated debate in this area. It is to be ensured in such cases that evidence of the witnesses that has already been collected at the stage of investigation is not allowed to be destroyed

by witnesses reverting from their statements while deposing on oath before a Court. This in turn would entail special procedure to be introduced in

to the criminal law to balance the need for anonymity of witnesses on the one hand and the rights of the accused on the other.

The other aspect is the physical and mental vulnerability of the witnesses and to the taking care of his or her welfare in various aspects which call for physical protection of the witnesses at all stages of the criminal justice process till the conclusion of the case by introduction of the witness protection programme.

Existing Indian legal statutes and witness protection

Sec. 327 CRPC provides for trial in open Court and 327 (2) provides for in camera trials for offences of rape. Sec. 299 indicates that in certain cases the accused may be denied his right to cross-examine a prosecution witness in open Court under section 173(6) disclosures of some statements of witnesses recorded under section 161 of C.R.P.C. prohibited to the accused.

Sec, 228-A of IPC prescribe punishment if identity of the victim of rape is published likewise sec 21 of the juvenile justice (care & protection of children Act 2000) prohibits publication of the main address and other particulars which may lead to the identification of the juvenile.

Under sec. 33 of the evidence Act in certain exceptional cases where cross examination is not possible previous deposition of the witness can be considered relevant in subsequent proceedings. Sec.16 of TADA 1985 and sec. 16 TADA 1987 provided for protection of identity and address of a witness secret. Sec. 30 POTA is on the same lines as Sec. 16 TADA.

Apart from these provisions there is a need for general law dealing with witness anonymity in all criminal cases where there is danger to life of the witnesses or of his relative or to his property.

Recommendations of the Law Commission of India

1. The 14th Report (1958) examined the question of providing adequate facilities like travel allowance and diet money to witnesses deposing in the Courts.
2. The 37th Report (1967) examined the question of providing adequate protection to victim-witnesses deposing in Sexual and other heinous cases.
3. The 154th Report (1996) similarly talked about the physical protection of witnesses.
4. The 172nd Report (2000) dealing with the review of Rape Laws in India suggested that the testimony of a minor in case of a Child Sexual Abuse should be recorded at the earliest in the presence of a Judge and a child support person. It further urged that the Court

should permit video-taped interview of the child or allow the child to testify by a Closed-circuit television and that the cross-examination of the child should be carried on by the Judge based on written questions submitted by the defense.

5. In its 178th Report (2001) the Law Commission had recommended the Insertion of S.164A in Cr.P.C. which was later given effect in 2005.
6. In its 185th Report (2003) the Commission suggested further amendments to Cr.P.C., 1973 on the basis of which the Criminal Law (Amendment) Act, 2005 was brought into force, containing provisions for proper recording of evidence given by witnesses.
7. In its 198th Report (2006) dealing with "Witness Identity Protection and Witness Protection Programmes", the Commission has talked about a multi-phase implementation of a concrete Witness Protection Programme, which will help to keep the whereabouts of important witnesses in a case, a secret and will punish anyone who discloses important information relating to a Witness.

c. Principles of Law Developed by the Courts: Anonymity of the Witnesses and the Rights of the Accused

In the *pre-Maneka Gandhi* phase the Supreme Court, in *Gurbachan Singh v. State of Bombay*⁴, upheld a provision of the Bombay Police Act, 1951 that denied permission to a detenu 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. At this stage, the issue was not examined whether the procedure was 'fair'. The decisions in *G.X. Francis v. Banke Bihari Singh*⁵ and *Maneka Sanjay Gandhi v. Ram Jethmalani*⁶ stressed the need for a congenial atmosphere for the conduct of a fair trial and this included the protection of witnesses.

In *Kartar Singh v. State of Punjab*⁷ the Supreme Court upheld the validity of Sec. 16 (2) and (3) of the Terrorist and Disruptive Activities (Prevention) Act, 1987 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 in *People's Union of Civil Liberties v. Union of India*⁸

In *Delhi Domestic Working Women's Forum v. Union of India*⁹ the Supreme Court emphasized the maintenance of the anonymity of

the victims of rape who would be the key witnesses in trials involving the offence of rape. The importance of holding rape trials in camera as mandated by Sec. 327 (2) and (3) of the Code of Criminal Procedure, 1973 was reiterated in *State of Punjab v. Gurmit Singh*¹⁰ In *Sakshi v. Union of India*¹¹ the Supreme Court referred to the 172nd Report of the Law Commission and laid down that certain procedural safeguards had to be followed to protect the victim of child sexual abuse during the conduct of the trial. In the *Best Bakery Case*¹², 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.*”

Although, the guidelines for Witness protection laid down by the Delhi High Court in *Neelam Katara v. Union of India*¹³ require to be commended, they do not deal with the manner in which the identity of the Witness can be kept confidential either before or during the trial. The judgment of the Full Bench of the Punjab and Haryana High Court in *Bimal Kaur Khalsa*¹⁴, which provides for protection of the Witness from the media, does not deal with all the aspects of the problem. These judgments highlight the need for a comprehensive legislation on Witness protection as there is in the United States.

Witness Protection Programme in other Countries

1. The Federal Witness Protection Program of USA, which talks about non-disclosure of the identity of prime witnesses in criminal trials and the punishments for failing to protect their identity.
2. The Witness Protection Act, 1994 of Australia which talks about the recording of video-testimony given by witnesses and providing sufficient police protection to prime witnesses.
3. The Criminal Justice and Public Order Act, 1994 of UK which again talks about police protection of witnesses and non-disclosure of their identity.
4. The Witness Protection Act, 1996 of Canada which talks about the recording of witness' statements through video or other electronic means and their physical relocation to an undisclosed place, to keep them away from the pressures of the accused or anyone else related to him.
5. The Witness Protection Act, 1998 of South Africa provides for the establishment of an office called the Office for Witness Protection within the Department of Justice. The Director of this office is responsible for the protection of witnesses and related persons and exercises

control over Witness Protection Officers and Security Officers [Section 4].

So, It's a high time to think whether the amendment is sufficient in the existing laws to tackle the problem or a separate effective legislation is required to provide Protection to the witnesses. As reiterated by the Honorable supreme court several Times that witnesses are the prime factors proper administration of justice their Statements are very crucial there by an effective redressal mechanism is the need of the hour

Bibliography

- 1 Dr. Pallwal Anand, “witness protection programme, necessary to ensure justice”, Cr LJ., Vol-II, May 2008.
- 2 www.lawcommissionofindia.nic.in” Consultation paper on witness identity protection and witness protection programme by law commission of India”.
- 3 Rai Mahindra Nath, “Hostility is Menace,” Indian General of Criminology, Vol.-IV, 2005.
- 4 Committee on reforms of criminal justice system headed by Justice Malimath, Vol.-I page 151.
- 5 Law commission of India, 185th report on “Review of the Indian Evidence Act,1872” 2003 page 486.
- 6 Law commission of India, review of rape laws, 172th report.
- 7 Vohra committee report, Ministry Of Home affairs, 5th oct. 1993.
- 8 198th report (2006) of law commission dealing with a witness identity protection programmes.
- 9 Suprio bose, “Hostile witness, A critical analysis of key aspects Hitheto ignored in Indian Law”
- 10 Mr. Kumar Sairam Sanath, “The menace of hostile witnesses in criminal trials in India- A closer look”, Cr LJ Vol-III July-2006.

References

1. Mr. Justice Bulelr in Calliand v. Vaugham, 1798
2. Refer (2000)5 SCC 68 at 678
3. Refer Committee on Reforms of criminal justice system headed by Justice Malimath, Volume 1, page 151
4. Refer Gurbachan Singh v. State of Bombay AIR 1952 SC 221.
5. Refer G.X. Francis v. Banke Bihari Singh AIR 1958 SC 209.
6. Refer and Maneka Sanjay Gandhi v. Rani Jethmalani (1979) 4 SCC 167
7. Refer Kartar Singh v. State of Punjab (1994) 3 SCC569
8. Refer People's Union of Civil Liberties v. Union of India (2003) 10 SCALE 967S
9. Refer Delhi Domestic Working Women's Forum v. Union of India (1995) 1 SSC 14
10. Refer State of Punjab v. Gurmit Singh (1996) 2 SCC 384

11. Refer Sakshi v. Union of India (2004)6 SCALE 15
12. Refer Best Bakery Case (2004) 4 SCC 158
13. Refer Neelam Katara v. Union o India (judgment dated 14.10.2003)
14. Refer Bimal Kaur Khalsa, AIR 1988 P&H 95.

Foot Notes

1. Mr. Justice Bulelr in Calliand v. Vaugham, 1798
2. Refer (2000)5 SCC 68 at 678
3. Refer Committee on Reforms of criminal justice system headed by Justice Malimath, Volume 1, page 151
4. Refer Gurbachan Singh v. State of Bombay AIR 1952 SC 221.
5. Refer G.X. Francis v. Banke Bihari Singh AIR 1958 SC 209.
6. Refer and Maneka Sanjay Gandhi v. Rani Jethmalani (1979) 4 SCC 167
7. Refer Kartar Singh v. State of Punjab (1994) 3 SCC569
8. Refer People's Union of Civil Liberties v. Union of India (2003) 10 SCALE 967S
9. Refer Delhi Domestic Working Women's Forum v. Union of India (1995) 1 SSC 14
- 11 Refer State of Punjab v. Gurmit Singh (1996) 2 SCC 384
- 12 Refer Sakshi v. Union of India (2004)6 SCALE 15
- 13 Refer Best Bakery Case (2004) 4 SCC 158
- 14 Refer Neelam Katara v. Union o India (judgment dated 14.10.2003)
- 15 Refer Bimal Kaur Khalsa, AIR 1988 P&H 95.