

The Concept and History of Witness Protection Act in India

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Abstract: According to Jeremy Bentham, "Witness is the eyes and ears of Justice". Protection of witnesses from intimidation or harm in the form of security arrangements is imperative to the integrity and success of any judicial process. [Chris Mahony, *The Justice Sector Afterthought: Witness Protection in Africa (Institute of Security Studies Pretoria 2010)*] Without adequate witness protection systems in place there are injustices meted out both to the victims and the state, as many witnesses out of fear of speaking the truth or on the fear of repercussions do not come to depose before the court, leading to miscarriage of justice. Right from ancient times India has given the witnesses their due respect by acknowledging their contribution to prosecution by praising them in smritis and artashastras. However, unlike other countries of the world, India still does not have a witness protection Act enacted by law to protect and safeguard the interests of the witnesses. This paper aims to provide insights on the history of Witness Protection in India, if any and its effectiveness in the current day scenario. The authors rely on secondary sources of data in this paper and try to conclude by pressing for an independent Act which would protect the witnesses under the criminal justice system.

Keywords: Witness Protection in India, Criminal Justice system in India, Sources of witness protection in India, Law, India, Justice, Safeguard to witnesses, Victims and State.

1. Introduction

Maintaining the rule of law depends on witnesses being able to testify in court or work with investigators and law enforcement officials without being afraid of intimidation or retaliation. Witness Protection Act, if enacted will be a boon to both the witnesses and society at large; as the victims will be benefitted when the witnesses depose fearlessly before the courts and the offenders will be behind bars which help the society to flourish.

Since there is no formal legal responsibility on the side of the State to provide any protection to them, witnesses in instances involving horrific crimes often become hostile due to threats to life and property.

Who is a Witness?

One who testifies or submits to questioning before a court may be referred to as a witness.

Meaning of evidence:

The Word 'evidence' is derived from the Latin word 'Evidentia' which means 'the state of being evident, i. e., plain, apparent clear'. It is also related to the Latin expression 'evidence evidere' which means to show clearly, to make plain, certain or to prove.

Section 3 of Indian Evidence Act defines evidence as follows

Evidence means and includes: -

- 1) All statements which the court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry such statements are called oral evidence;
- 2) All documents including electronic records produced for the inspection of the court; such documents are called documentary evidence.

While dealing with criminal cases both substantive and procedural laws apply.

Substantive law deals with defining offences and prescribing punishment, latter law specifies the process that enforcement authorities must follow. Fulfilling this objective is the responsibility of several players.

To enforce the laws and punish offenders, the government primarily formed law enforcement agencies, adjudicatory organisations, and penal facilities.

The Indian Penal Code, 1860, and the Code of Criminal Process, 1973, which are substantive and procedural statutes, respectively, are the two primary ones in our nation that deal with the adjudication of criminal matters.

The Code of Criminal Procedure's and the Evidence Act's provisions cover every aspect of witness depositions, including the process and guidelines for their admissibility in court proceedings. It is impossible to overstate the importance of a witness in the administration of justice during a criminal trial. A court's consideration of the evidence aids in establishing or disproving the truth of criminal responsibility. It serves as the foundation for an accused person's conviction or acquittal.

The view of the Courts and Commission's in witness protection.

In State of Gujarat v. Anirudh Singh (1997) 6 SCC 514¹, the Hon'ble Supreme Court of India stated: "It is the salutary responsibility of every witness who has knowledge of the commission of the crime, to assist the State in delivering testimony. "

"By giving evidence relating to the commission of an offence, he performs a holy responsibility of enabling the court to discover the truth, " the Malimath Committee on Reforms of Criminal Justice System, 2003 stated in its report.

¹(1997) 6 SCC 514 State of Gujarat V. Anirudh Singh.

While defining a fair trial, the Supreme Court of India stated in *Zahira Habibulla H. Shiekh and Others v. State of Gujarat* 2004 (4) SCC 158² that "if the witnesses get threatened or are coerced to give false evidence it also would not result in a fair trial. "

Asaram Babu Case, witness protection.

The Supreme Court of India approved centre's draft of witness protection scheme after a PIL was filed seeking for protection of witnesses who were disappearing in self-styled god man asarambabu's rape case. The plan calls for proper security measures to ensure the protection of the witnesses, precautions to prevent witnesses and accused from confronting one other during the course of an investigation or trial, and all reasonable efforts to hasten the conclusion of case trials. The plan offers identity protection and gives the witness a new identity.

The guidelines suggested by the Delhi High Court in *Ms. Neelam Katara v. Union of India* (CrI. W No.247 of 2002) on 14.10.2003,³ as applicable to cases where an accused is punishable with death or life imprisonment. The fact that the standards do not only apply to rape, sexual offences, terrorism, organized crime is significant. The Court suggested the following scheme:

Definitions: -

- 1) a) "'Witness' means a person whose statement has been recorded by the Investigating Officer under section 161 of the Code of Criminal Procedure pertaining to a crime punishable with death or life imprisonment.
- b) 'Accused' means a person charged with or suspected with the commission of a crime punishable with death or life imprisonment.
- c) 'Competent Authority' means the Secretary, Delhi Legal Services Authority.
- d) Admission to protection: The Competent Authority, on receipt of a request from a witness shall determine whether the witness requires police protection, to what extent and for what duration.
- 2) Factors to be considered in determining whether or not a witness should be provided police protection, the Competent Authority shall take into account the following factors:
 - a) The nature of the risk to the security of the witness which may emanate from the accused or his associates.
 - b) The nature of the investigation in the criminal case.
 - c) The importance of the witness in the matter and the value of the information or evidence given or agreed to be given by the witness.
 - d) The cost of providing police protection to the witness.
- 3) Obligation of the police:

(i) While recording statement of the witness under section 161 of the Code of Criminal Procedure, it will be the duty of the Investigating Officer to make the witness aware of the 'Witness Protection Guidelines' and also the fact that in case

of any threat, he can approach the Competent Authority. This, the Investigating Officer will inform in writing duly acknowledged by the witness.

(ii) It shall be the duty of the Commissioner of Police to provide security to a witness in respect of whom an order has been passed by the Competent Authority directing police protection. "

The above guidelines laid down by the Delhi High Court are the first of its kind in the country and have to be commended. But, they deal only with one aspect of the matter, namely, protection of the witnesses. They do however not deal with the manner in which a witness's identity can be kept confidential either before or during trial nor to the safeguards which have to be provided to ensure that the accused's right to a fair trial is not jeopardized.

In *Delhi Domestic Working Women's Forum v. Union of India*, maintenance of anonymity of the witnesses for rape Trials was laid down by the Supreme Court.⁴

In *Naresh Shridar Mairajkar v. State of Maharashtra*, evidence publication was permitted to protect the commercial interests of the witness.⁵

Witness Protection under various Acts

Indian Penal Code:

The provisions of Section 228A of the Indian Criminal Code, 1860 (IPC) prohibit publicizing the identity of the victim of certain rape - related offences while defining the situations under which the identity may be divulged. Hence, without the prior approval of the court, no information related to any of the aforementioned offences may be printed or published.

Indian Evidence Act:

The term evidence as defined in Section 3 of the Act covers:

- a) Evidence of witnesses and;
- b) Documentary evidence

According to Section 134 of the Act, "evidence has to be weighed, not counted, " meaning that no specific number of witnesses is necessary to establish a fact. A single witness' testimony is adequate if the court finds it credible even without supporting evidence, so long as his credibility is not compromised by any negative facts that are recorded against him. The quality of the evidence is more important to the courts than its quantity. A defense is provided to the witness by the proviso to Section 132, which states that any answer he is "compelled to provide" shall not result in his arrest, prosecution, or being used against him in any criminal proceedings, with the exception of prosecution for providing false evidence. According to Section 148, the Court has the authority to determine whether a proposed question for a witness is appropriate or unsuitable based on its relevance to the lawsuit or procedure. This section's goal is to spare the witness from needless trouble when it doesn't pertain to the issues at hand. A rape victim is protected under Section 146

²2004 (4) SCC 158 *ZahiraHabibulla H. Shiekh and Others v. State of Gujarat*.

³2003 SCC OnLine Del 952 *NeelamKataravs Union of India and Others*.

⁴1995 SCC (1) 14 *Delhi Domestic Working Women's Forum v. Union of India and others*.

⁵ (1966) 3 SCR 744 *Naresh Shridar Mairajkar and others vs State of Maharashtra and another*

of the Act from pointless and intrusive questions about her prior behavior that are unrelated to the issues in the case.

The Unlawful Activities (Prevention) Amendment Act, 2004:

This Act covers all illegal activity, including terrorist activities. In accordance with S.30 of POTA, 2002, Section 44 of the Act provides for the protection of witnesses.

Prevention of Terrorism Act, 2002:

A witness in serious crimes like terrorist actions who comes forward and testifies in court faces a greater threat to his life, his property, or his family. The Act's Section 30 recognizes the right to afford such a witness protection and maintain their anonymity. Proceedings may be properly conducted behind closed doors when the court provides written justifications or determines that the witness's life is in danger. However this Act was later repealed in 2004.

Juvenile (Care and Protection of Children) Act, 2000:

According to Section 21 of the Act, it is unlawful to publish a juvenile's name, address, or other information if doing so would make it possible to identify the juvenile. In the juvenile's best interests, identity disclosure may be permitted as long as consent is obtained and the reasons are documented in writing. The goal is to achieve a balance between the right of an accused person to a fair trial and the rights of witnesses to their lives and freedom, as well as the community's right to the efficient prosecution of those responsible for terrible criminal offences.

Witness Protection Bill, 2015:

In 2015, this legislation was drafted and presented to the legislature. Its goal was to establish a strict legislation for witness protection that would guarantee both parties a fair trial. The following measures were included in the bill to assure witness protection:

- 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.
- 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.
- Constitution of National Witness Protection Council and State Witness Protection Councils to ensure implementation of witness protection programme in its letter and spirit.
- Providing safeguards to ensure protection of Identity of witness.
- Providing transfer of cases out of original Jurisdiction to ensure that the witness can depose freely.
- Providing stringent punishment to the persons contravening the provisions;
- Prescribing stringent actions against false testimonies and misleading statements.

The above bill has not been passed so far.

2. Conclusion

Absolute power corrupts completely, and power corrupts everything. Separation of powers is fundamental to all democracies, but it is especially important in a nation like India, which has the largest democracy in the world. While the government is the biggest petitioner before the courts in the nation, the judiciary has a greater responsibility to play when it comes to witness protection in India than the legislature. Hence, even while a statute protecting witnesses is necessary, the judiciary also has a responsibility to shield witnesses, particularly in high - profile cases, from any type of threat, harm, or intimidation.

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