

HOSTILE WITNESS

Jagjit Kaur

Research Scholar of Law, Punjabi University, Patiala.

Abstract

The need for a comprehensive witness protection law has long been felt in India. In most cases, witnesses are intimidated or injured sometimes even killed before they can testify in court. Sections 151 and 152 of the Indian Evidence Act protect victims from being asked obscene, disgusting, insulting questions and questions that insult or offend them. Many factors responsible for witnesses turning hostile like, Lack of Witness Protection Programs, Prolonged Trials, Lack of Necessary Facilities in the Court, Easy availability of bail to the accused, Threats and Intimidation to witnesses and other factors However, Witness Protection Plan were made and to strengthen the protection of witnesses and our criminal Justice system. But, this scheme has some shortcomings. There is need of protection to victims as well as witnesses because a witness plays an important role in resolving the case during the trial in the courts.

Keywords: Hostile, Witness, Protection, Scheme, Evidence, Threats, Facilities.

INTRODUCTION

A witness plays an important role in resolving the case during the trial in the courts. A witness who is not prepared to tell the truth after taking an oath to testify in a court of law is called an adversary or adversary witness. A witness who discriminates against the case of the party calling the witness. An opposing witness is one who appears to be refusing to tell the truth in a court of law - or a person who, by his actions or statements, is the opposite of the party calling him

¹.Denying one's own statement creates chaos and frustration in the case which often leads to protracted trial and injustice. The opposing witness may be influenced by a powerful person or a third party, which is why the lawsuit is influenced by certain psychological assumptions.

¹Available at: <https://www.lawcrossing.com/article/900041946/What-Does-It-Mean-When-a-Lawyer-Says-Permission-to-Treat--the-Witness-as-Hostile/> (Visited on 10 January, 2022).

This notion was reintroduced in the case of *Sat Pal v. Delhi Administration*², where the Supreme Court interpreted 'enemy witness' to mean a person who is not prepared to speak the truth in favor of the party calling the case had given birth to the problem in judging justice. A person's statement is recorded under section 164 of the Indian Evidence Act, 1872, before a magistrate, which is also considered a public document under section 74 of the Indian Evidence Act, 1872. Written document that is properly signed. Witnesses are also considered truthful under section 80 of the Act. Therefore, section 164 may be used as evidence of an oral statement given by a witness before a magistrate.³

The reliance on considering more or less the ineligible motion of the testimony of the opposing witness in various judgments of the courts is being rejected outright as such witnesses are being summoned by the party for cross-examination. Later, this view was changed in the case of *Proful Kumar v. Emperor*⁴ Chief Justice George Klaus Rankin, who served as a judge of the Calcutta High Court, stating that "there is no rule of law other than that. The jury thinks he is a witness. There may be notoriety at one point which may not give him credit at another. The rule of law is that it is for the jury. There can be no question of rejecting the testimony of such a witness as it is in favor of the party calling the witness as it is in favor of the opposing party. ”

CASE STUDY

Zahira Habibullah Sheikh v. State of Gujarat⁵

In the immediate case, 14 people were killed in a communal riot and 37 government witnesses turned against him. The lower court acquitted 21 convicts and as a result, the High Court dismissed the appeal filed by the state of Gujarat. Reversing the case, the apex court ordered the trial to be held outside the state of Gujarat and a trial was held in the state of Maharashtra in which the court tried the accused and convicted nine of them and sentenced them to life imprisonment.

²1976 AIR 294

³Hostile Witness and Efficacy of Law, Legal Service India, available at: <http://www.legalservicesindia.com/article/1692/Hostile-Witnesses-and-Efficacy-of-Law.html#:~:text=Hostile%20witness%20is%20a%20witness%20who%20testifies%20for%20the%20opposing,to%20the%20Indian%20evidence%20Act> (Visited on 11 January, 2022).

⁴AIR 1931 Cal 401 at 407.

⁵AIR 2004 SC 3114.

In light of this case, the Supreme Court listed the reasons for the opposition of witnesses - threats, coercion, greed and money laundering and other corrupt practices.

Manu Sharma v. State (NCT of Delhi)⁶

The trial court acquitted all the nine accused in the case but they withdrew after the evidence against them was given in the presence of most of the prosecution witnesses. This was one of the high-profile cases involving a large number of people in power who raised the issue of witness protection.

Swaran Singh v. State of Punjab⁷

In the above case, it has been observed that delay in adjournment proceedings is one of the reasons why witnesses get distracted from their earlier statements in court and become adversaries. In addition, this delay in trial frustrates witnesses when they are forced to appear several times to avoid the risk of issuing an arrest warrant if they are summoned.

FAIRNESS OF TRIAL FOR THE ACCUSED AS WELL AS THE VICTIM

Article 10 of the Universal Declaration of Human Rights states that "Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and in any criminal case against him." Article 14 (2) of the International Covenant on Civil and Political Rights recognizes that the accused shall be presumed innocent until proven guilty. In India, the judiciary has defined the right to a fair trial as a fundamental right under Article 21 of the Indian Constitution. It is believed that denial of a fair trial is tantamount to denial of basic human rights. An impartial litigation incorporates the principles of an independent, impartial, and competent judiciary, the right to legal aid, the knowledge of the charge, and so on. Witnesses are an essential element of a criminal trial, as they are the testimonies of witnesses who help the court establish the guilt of the accused.

The ability of witnesses to co-operate with law enforcement agencies and judicial settings and to give true testimony is essential to the administration of justice. The Malimath

⁶2010 6 SCC 1.

⁷(2000) 5 SCC 668.

Committee on Reforms in Criminal Justice 2003 stated that "by providing evidence related to the commission of a crime, it has a sacred duty to assist the court in finding out the truth." In the case of *State of NCT of Delhi v. Shiv Kumar Yadav and Another*⁸, the apex court said, The victim's and society's point of view, therefore, is rooted in the principle of an impartial trial that the evidence presented in court must be independent and independent witnesses.

ROLE OF STATE IN THE WITNESS PROTECTION

For the past several years, the criminal justice system in India has been experiencing the traumatic experience of being hostile to witnesses, and this is happening again and again. The Hon'ble Court in various cases like *NHRC v. State of Gujarat*, *PUCL v. Union of India*, *Sakshi v. Union of India*, *ZahiraHabibullah Sheikh v. State of Gujarat*⁹ has stated that the witnesses have been intimidated, manipulated, or opposed incitement by the accused and emphasis on the issue of protection of witnesses in India.

In the case of *Swaran Singh v. State of Punjab*¹⁰, Wadhwa J. Considered the terms of the witnesses by saying:

"Witnesses are harassed a lot. They come from far and wide to see the case being adjourned. Sometimes they have to appear in court on their own. It has become a routine until the witness till then, the case is adjourned and the proceedings are stopped. Court. Lawyers also play a vital role in this process. Sometimes witnesses are threatened, crippled or even bribed. Witnesses have no protection. By adjourning the case, the court also becomes a party to such judgments. "

*MahendraChawla and Others vs. Union of India and Others*¹¹, the Supreme Court said:

Needless to say, one of the main reasons why witnesses become enemies is that they are not given adequate protection by the state. "

The point is, witnesses become hostile because they do not receive adequate protection from the state. Another major issue is the safety of their family members, witnesses often receive threats against their family members and the severity of the threats depends on the background of the accused. Important witnesses are often threatened or injured before they

⁸(2016) 2SCC 402.

⁹AIR 2004 SC 3114.

¹⁰(2000) 5 SCC 668.

¹¹WP(Cr.) No. 156 of 2016.

can testify in court. If these conditions continue, witnesses will not come forward to testify unless they are guaranteed protection from the law.

In the case of *ZaheeraHabibullah Sheikh v. State of Gujarat*¹², the Hon'ble Supreme Court has said that "as a protector of our citizens, we have to ensure that witnesses can present the truth in a safe and fearless manner during the trial in court without any fear. "Every state has a constitutional responsibility and obligation to protect the lives and liberties of its citizens. This is a basic requirement for the rule of law." The state should take into account the fact that the accused can take revenge against the witness and act accordingly by providing protection to the witness and his family members.

The ultimate goal of the judiciary is to reach the truth and deliver justice, and the eyes and ears of justice must be protected so that the interests of justice are not compromised.

WITNESS PROTECTION IN INDIA

The need for witness protection in India was first mentioned in a 1958 report of the 14th Law Commission of India. In addition, the 154th and 178th reports of the Law Commission of India mentioned the issue of witness protection. The report of the 198th Law Commission, published in 2006, was entitled "Witness Identity Protection and Witness Protection Program, 2006" and covered a wide range of issues related to the protection of witnesses in India.

In addition, there are laws such as the Whistleblowers Protection Act, 2011, the Protection of Children against Sexual Offenses Act, 2012, the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and the Juvenile Justice (Care and Protection of Children) Act, 2015. Are Provisions for protection of witnesses against threats. In 2006, the Legislative Assembly introduced Section 195A of the Indian Penal Code, which made intimidation of witnesses a criminal offense. However, there was no formal law or program to fully address the issue of witness protection.

In 2018, the Union Government finalized the Witness Protection Plan in consultation with the National Legal Services Authority. The Hon'ble Supreme Court in its judgment in the case of *MohinderChawla and others v. Union of India and others*¹³ said that in view of the absence of any legislative system for the protection of witnesses, the scheme was adopted

¹²AIR 2004 SC 3114.

¹³WP(Cr.) No. 156 of 2016.

as law under Section 141 of India and was declared. Directs the Constitution and the States and Union Territories to implement the Witness Protection Plan, 2018.

The scheme aims to provide protection and security to witnesses, including the perceptions of threats, such as, "Category A - where the threat extends to the life of the witness or his family members, during or after the trial / trial. After; Category B - where the security, reputation or property of the witness or his / her family members is threatened during or after the investigation / trial; Category C - where the threat is moderate and extends to harassment or intimidation of the witness or his family member's reputation or property during or after the investigation / trial. According to the scheme, the basis of the witness protection order is to apply for it. In addition, Section 5 of the said scheme states that the application can be filed in the prescribed form before the competent authority of the concerned district where the offense is committed by its member secretary. The scheme provides for creation of State Witness Protection Fund (Section 4), Section 6 of the scheme directs the Additional Commissioner of Police / Deputy Commissioner of Police in charge of the concerned police station to prepare a 'Risk Analysis Report'. Depending on the application received for witness protection and the urgency of the threat, the competent authority may pass an order for the provision of interim protection of witnesses and their family members and the witness protection measures outlined in Section 7 of the Witness Protection Measures Scheme. Is This includes mail and telephone calls, taking the witness to court, prosecuting on camera, regular patrolling around the witness's home and any other form of security that may be deemed necessary. The scheme also has provisions regarding protection of identity (Section 9), transfer of identity (Section 10), transfer of witness (Section 11), confidentiality and protection of records (Section 13), giving to each State as per Section 12. Should Extensive publicity of the scheme and it is incumbent on the Investigation Officer and the court to inform to the witness about the existence of this scheme.

FACTORS RESPONSIBLE FOR WITNESSES TURNING HOSTILE

1. Lack of Witness Protection Programs - The need for a comprehensive witness protection law has long been felt in India. In most cases, witnesses are intimidated or injured sometimes even killed before they can testify in court. In *Swaran Singh v. State*

of Punjab¹⁴, the Supreme Court also observed, "Not only one witness is intimidated; He is crippled; He is gone; even paid a bribe. There is no security for him. The threat to the lives of witnesses is one of the main reasons for withdrawing their earlier statements during the trial. Sections 151 and 152 of the Indian Evidence Act protect victims from being asked obscene, disgusting, insulting questions and questions that insult or offend them.

2. Prolonged Trials - Apart from the absence of a witness protection program, another major reason for this growing threat is the lengthy trial. The work of the judicial process is very slow. Several dates are fixed for the cross-examination of witnesses, who, due to repeated summons, are disappointed that only the date has been postponed. Disappointment takes its toll and the witness decides to be the opponent to get rid of the trouble. Section 309 of the Code of Criminal Procedure regulates adjournment. It says "action will be taken as soon as possible" and that the court will record the reasons for the adjournment. If, after the commencement of the trial or after taking notice of an offense, the court finds out the reasons for the adjournment, it may do so by recording such reasons. Proviso 2 of section (2) states that when witnesses are present, any adjournment or adjournment will be granted only after examining them, except for special reasons when it may be done without examining them will be kept in writing. The purpose of the section is to expedite litigation and to eliminate the lax practice of magistrates who hear many adjournment cases.¹⁵

Unless absolutely necessary, courts must not grant adjournments. However, the Code does not prescribe any remedy if the Courts do not adhere to the general or particular direction in sub-section (1).¹⁶ The Report of the Justice Malimath Committee on Criminal Justice Reforms suggested that Section 309 of the Code of Criminal Procedure should be amended to make it obligatory to award costs against the party who obtains the adjournments.¹⁷

3. Easy availability of bail to the accused - In many cases of high profile personalities or heinous crime, the courts easily grant bail to the accused, leaving the witness to face

¹⁴*Swaran Singh v. State of Punjab* 2000 Cri LJ 2780 (SC).

¹⁵*The Code of Criminal Procedure, 1973* (2 of 1974), Section 309(1).

¹⁶ S.N. Misra, *The Code of Criminal Procedure, 1973* 457 (Central Law Publications, Allahabad, 17th edn., 2010)

¹⁷Law Commission of India, 178th Report on Law Reforms in Civil & Criminal Laws in Courts (December, 2003).

threats and intimidation by the accused. Undoubtedly, Section 439 (2) of the Criminal Code provides for the arrest of a person who has been released on juvenile, rarely used by the state in cases where there is a reasonable suspicion that May try to influence it. Witnesses

4. Defaults in Allowance Payments - The 154th report¹⁸ of the Law Commission of India found that the allowances paid to witnesses for appearing in court were insufficient, and called for immediate payment, whether they were investigated or not. Section 312 of the Code of Criminal Procedure states that "under any rules framed by the State Government, any criminal court may, if it deems fit, order the Government to pay a reasonable fee for the presence of a complainant or witness." Can For the purpose of any inquiry, trial or other action before such a court under this Code. However, in most cases witnesses are not paid for the proper food.

5. Lack of Necessary Facilities in the Court - Despite the important role of witnesses in criminal cases, the facilities provided to them are meagre and inadequate. The 14th report of the Law Commission states that in many states, witnesses are made to wait under the trees on the court campuses or in the verandahs of the court houses. They are not protected from bad weather. Even some court sheds are in ruins and are used for court purposes. In addition to suffering such inconveniences and inconveniences, they have to spend time and money to get to the courts from afar.¹⁹

6. Use of Stock Witnesses - 'Stock witnesses' refer to certain persons with dubious credentials who are available to serve as 'witnesses' to the police where the actual witnesses are not present. Applying such flexible witnesses as prosecution witnesses becomes antithetical to such witnesses as they can be procured at a low price. The result is a failure to acquit all the accused in the case, there is no evidence or credible evidence in the record.

7. Use of money by the accused - In many cases witnesses are bought or "bought" using money. In such cases the victims / witnesses are mostly poor who are in dire need of money. The procedure is simple. The key witnesses in a case are contacted either directly by the party or by the lawyers prosecuting the case and are then offered money for not cooperating in the investigation and / or pre-trial decision asked to take a stand.

¹⁸Law Commission of India, 154th Report on Amending of Code of Criminal Procedure (August, 1996).

¹⁹ Law Commission of India, 14th Report on Reform of Judicial Administration (September, 1958).

If, however, the trial has already begun, he is said to have recanted or refuted his own statement.

8. Threats / Intimidation - In *NeelamKatara v. Union of India*, the Delhi High Court²⁰ has ruled that in a large number of cases, witnesses are becoming hostile due to "intimidation and threats". The Home Ministry acknowledged in its affidavit that witnesses in all important cases were being constantly threatened by criminals. "Steps need to be taken to prevent harassment of witnesses so that they do not become disillusioned," the affidavit said. There is also an urgent need to protect witnesses from intimidation by criminals.

9. Other factors - political pressure, self-produced fear of the police and legal system, lack of fear of the law of perjury, non-compassionate law enforcement machinery and other reasons for opposing witnesses during a corruption trial. . Psychological studies of witnesses indicate that serious cross-examination, repeated adjournments, and threats in the courtroom are some of the major factors that compel a witness to be hostile. The successful functioning of the criminal justice system depends on the willingness of individuals to present information and compelling evidence without fear or favor.

CONCLUSION

However, the Witness Protection Plan 2018 is the right move to strengthen the protection of witnesses and our criminal justice system. However, the scheme has some shortcomings; As the security defined in the bill is only for three months at a time, the security order under the scheme appears to depend entirely on TARs (threat analysis report) made by the concerned police officers who are often victims of corruption. Political or high pressure etc. In addition, the scheme envisions the confidentiality of witnesses and the protection of records, but there are no penal penalties if these provisions are violated.

It is fair to say that the appearance of witnesses and their appearance in court without any fear or favor is a matter for the judiciary. India has a long way to go to ensure the safety and security of witnesses. The criminal justice system has developed the protection of witnesses as a major duty. However, the absence of a statutory mechanism with appropriate penalties and appropriate security measures could prevent the desired outcome of the scheme, which was implemented by the judicial process. Thus, for speedy and

²⁰*NeelamKatara v. Union of India* ILR (2003) II Del 377.

efficient administration of justice, it is time for the state to enact a comprehensive law on witness protection in India.²¹

Contradiction of witnesses at different stages of the trial a witness may be antagonistic at any stage during the trial, which may be the preliminary stage, or during the investigation-in-chief or cross-examination. In some cases, even if the witness is an adversary and has been declared an adversary witness under section 154, the testimony will not be rejected out of full consideration, simply because the witness is adversary. The court will examine the evidence, if it can be corroborated by any other facts or credible evidence, so that the truth prevails in the case presented²². In some cases, witnesses have answered questions from the opposition which does not completely discredit them, but their testimony cannot be trusted by the court if it is shown to be biased and demanded to be presented does not reflect the true facts of the case.²³ He may also be cross-examined in court to have his testimony rejected. The effect of witnesses becoming adversaries at any stage is not killed at all as they can find conclusive evidence or corroborate or discredit other evidence available on record²⁴. It will be up to the courts to decide in each case on the basis of the evidence before them whether the testimony of an opposing witness should be relied upon. This may be admissible or if other evidence is available then the testimony of the opposing witness cannot be taken into account.²⁵

Witness enmity in crimes has challenged the country's criminal justice system. Although the Criminal Law Amendment Bill 2003 was introduced to address this problem, it is imperative that a statement of a person be sworn in by a magistrate immediately during the investigation and recorded in a manner that would be of clear value in the eyes of the law. Even if the witness denies his statement, his statement will serve as solid evidence against the accused. However, the value of the statement should be left to the discretion of the court for consideration after considering those statements.

²¹ Available at: <https://www.ijalr.in/2021/12/hostile-witnesses-and-need-for-witness.html#:~:text=Fairness%20of%20trial%20for%20the,regarding%20witness%20protection%20in%20India> (Visited 17 January, 2022).

²² KrishanChander v. State of Delhi, AIR 2016 SC 298.

²³ AmritlalHazara v. Emperor, AIR 1916 Cal 188

²⁴ Chhotu Ram v. State of Rajasthan, 1995 Cr LJ 819 (Raj.)

²⁵ Chandrika v. Rajaram, 1995 Cr LJ 2587 (MP)