



A Study on Highlighting the Pitiful Condition of Witnesses

Rama, Research Scholar, School of Law, MVN University, Palwal, Haryana

ABSTRACT

In criminal trials as well as in the trial of civil cases, testimony of witnesses plays an important role. The whole case revolves around the testimony made by them before the court. They are the backbone of any case, whether it is civil or criminal. The witness built up the case of the contesting parties by giving their testimony before the court. Witness testimony before the court enables the court to reach out or to decide the case on merit. They enable the court to appraise the evidence with clear lances. In some cases, witnesses are the key witness or eye witness, but in some cases, witnesses fill the missing gap which results in the complete conclusion of the case or comprehensive disposal. For complete justice and for the successful functioning of the criminal justice system largely depends upon the testimony given by witnesses in court. However, the condition of witnesses in India is pathetic. Witnesses in India no longer want to come forward to give their testimony before the court. It is often seen that witnesses face pressure and intimidation in their lives and the lives of their loved ones by the accused. They are pressurised to change their testimony before the court. Before 2018, there was no specific scheme for protection of witnesses in India. In the year 2018, the Hon'ble Supreme court of India constructed a witness protection scheme, 2018 in the case of Mahender Chawla V. Union of India.¹ The aim of this paper is to discuss the pitiful condition of witnesses in India and related legislative provisions, reports of the law commission to improve the conditions of witnesses in India. And an attempt has been made to discuss the key points of the witness protection scheme and also a discussion on how laws relating to witness protection will be helpful in legal reform vis-a-vis criminal justice.

Key Words: Criminal, Trial, Testimony, Witness, Protection, Intimidation, Justice

INTRODUCTION

Witness Protection is a very important issue that touches upon the efficacy of the criminal justice system in India. India has an adversarial legal system where the court is supposed to decide the cases on the basis of evidence produced before it. There can be two kinds, one by way of production of a documents before the court for its inspection and the other through oral evidence that is through disposition of witnesses before the court. Hence, evidence, whether it is documentary or by oral evidence of witness, plays an important role in comprehensive disposal of a case and in finding the lies behind the case. Witnesses advance justice in a matter where two sides come up with conflicting versions. The principle applies with more vigor and strength in criminal cases, inasmuch as most of such cases are decided on the basis of testimonies of the witnesses, particularly, eye-witnesses, who may have seen the actual occurrence of a crime. It is for this reason that Bentham stated witnesses are eyes and ears of justice. In the words of Whittaker Chamber, a witness is "a man whose life and faith are so completely one the When the challenge comes to step out and testify for his faith, he does so, disregarding all risks, accepting all consequences." The importance of witnesses, particularly in a criminal trial, is highlighted in the book in the following way:

"In search of truth, he plays that sacred role of the sun, which eliminates the darkness of ignorance and illuminates the face of justice, encircled by devils of humanity and compassion. The value of witnesses can't be denied, keeping in view the dependency of the criminal proceedings on the testimonies and cooperation of witnesses in all the stages of the proceedings, especially in those cases where the prosecution has to establish the guilt with absolute certainty via oral cross-examination of witnesses in hearings open to the world at large. In such cases, the testimony of a witness, even if not as an eye witness, may prove to be crucial in determining the circumstances in which the crime might have been

¹ Mahender Chawla v. Union of India 14SCC615(2019)



committed...”² However, the condition of witnesses in the legal system can be termed as “ pathetic”. Many times threats faced by witnesses at various stages of an investigation and then during the trial of a case. In most of the cases, the witnesses not only face the trauma, but their families face this as well. He may have to face the trauma of attending the court regularly. Due to lack of strict enforcement or execution of provision of witness protection scheme result into pitful condition of witnesses and witness become reluctance in coming forward and making statement during the investigation or testify before the courts.

THE APEX COURT ON PITFUL CONDITION OF WITNESSES

(1) Swaran Singh v. State of Punjab³; in this case hon’ble Supreme Court in word of Wadhwa, J, express views on pitful condition of witnesses: “The witnesses are harassed a lot. They come from distant places and see the case is adjourned. They have to attend the court many times on their own. It has become routine that cases are adjourned till the witness is tired and will stop coming to court. In this process, lawyers also play an important role. Sometimes a witness is threatened, maimed, or even bribed. There is no protection for the witnesses. By adjourning the case, the court also becomes a party to such a miscarriage of justice. The witness is not given respect by the court. They are pulled out of the court room by the peon. After waiting for the whole day, he sees the matter being adjourned. There is no proper place for him to sit and drink a glass of water. When he appears, he is subjected to prolonged stretch examinations and cross examinations. For these reasons , people avoid becoming a witness and, because of this, the administration of justice is hampered. The witnesses are not paid money within time. The High Courts must be vigilant in these matters and should avoid harassment in these matters by subordinate staff. The witness should be paid immediately irrespective whether he is examined or the matter is adjourned. The time has come now that all courts should be linked with each other through computers. The Bar Council of India has to play an important role in this process to put the criminal justice system on track. Though the trial judge is aware that the witness is telling a lie , he is not ready to file a complaint against such a witness because he is required to sign the same. There is a need to amend section 340(3)(b) of Cr.P.C.”

(2) Krishan Mochi v. State of Bihar⁴; “ It is a matter of common experience that in recent times there has been a sharp decline of ethical values in public life even in developed countries, much less developing ones, like ours, where the ratio of decline is higher. Even in ordinary cases, witnesses are not inclined to be depose or their evidence is not found to be credible by courts for manifold reasons. One of the reasons may be that they do not have courage to depose against an accused because of threats to their life, more so when the offenders are habitual criminals or high-ups in the Government or close to powers, which may be political, economic or other powers including muscle power.”

(3) Zahira Habibullah Sheikh v. State of Gujarat⁵; in present case, the apex court discuss the pitful condition of witness in Para 40 of said judgement it is stated that “Witnesses” as Bentham said: “are the eyes and ears of justice”. Hence, the importance and primacy of the quality of the trial process. If the witness himself is incapacitated from acting as the eyes and ears of justice, the trial gets putrefied and paralysed, and it no longer constitutes a fair trial. The incapacitation may be due to several factors, like the witness being not in a position for reasons beyond control to speak the truth in the court or due to negligence or ignorance or some corrupt collusion. Time has become ripe to act on account of numerous experiences faced by the court on account of frequent turning of witnesses as hostile, either due to threats, coercion, lures and monetary considerations at the instance of those in power, their henchmen

² Witness Protection in Criminal Trial in India by Girish Abhyankar & Asawari Abhyankar

³ Swaran singh v. State of Punjab 5SCC678(2000)

⁴ Krishan Mochi v. State of Bihar(2002) 6 SCC 81 :2002 SCC (Cri) 1220]

⁵ Zahira Habibullah Sheikh and other v. State of Gujrat 4 SCC158(2004)



and hirelings, political clouts and patronage and innumerable other corrupt practices ingeniously adopted to smother and stifle truth and realities coming out to surface.... Broader public and societal interests require that the victims of the crime who are not ordinarily parties to prosecution and the interests of the State represented by their prosecuting agencies do not suffer.... There comes the need for protecting the witness. Time has come when serious and undiluted thoughts are to be bestowed for protecting witnesses so that the ultimate truth presented before the court and justice triumphs and that the trial is not reduced to a mockery.

Para 41. The State has a definite role to play in protecting the witnesses, to start with, at least in sensitive cases involving those in power, who have political patronage and could wield muscle and money power, to avert trial getting tainted and derailed and the truth becoming a casualty. As a protector of its citizens, it had to ensure that during a trial in court, the witness could safely depose the truth without any fear of being haunted by those against whom he was deposed. Every state has a constitutional obligation and duty to protect the life and liberty of its citizens. That is the fundamental requirement for observance of the rule of law. There cannot be any deviation from this requirement because of any extraneous factors like caste, creed, religion, political belief or ideology. Every State is supposed to know these fundamental requirements and this needs no retaliation (sic repetition). We can only say this with regard to the criticism levelled against the State of Gujarat. Some legislative enactments like the Terrorist and Disruptive Activities (Prevention) Act, 1987 (in short "the TADA Act") have taken note of the reluctance shown by witnesses to depose people with muscle power, money power or political power, which has become the order of the day. If the truth is to be arrived at, the eyes and ears of justice have to be protected so that the interests of justice do not get incapacitated in the sense of making the proceedings before the courts into mere mock trials usually seen in movies."

(4) Sakshi v. Union of India⁶: in the present case described the menace of witnesses turning hostile "The mere sight of the accused may induce an element of extreme fear in the mind of the victim or the witnesses or can put them in a state of shock. In such a situation, he or she may not be able to give full details of the incident, which may result in a miscarriage of justice. Therefore, a screen or some such arrangement can be made where the victim or witnesses do not have to undergo the trauma of seeing the body or the face of the accused. Often, the questions put in cross examination are purposely designed to embarrass or confuse the victims of rape and child abuse. The object is that out of the feeling of shame or embarrassment, the victim may not speak out or give details of certain facts committed by the accused. It will, therefore, be better if the questions to be put by the accused in cross-examination are given in writing to the presiding officer of the court, who may put the same to the victim or witness in a language which is not embarrassing. There can hardly be any objection to the other suggestion given by the petitioner that whenever a child or victim of rape is required to give testimony, sufficient breaks should be given as and applied in inquiry or trial of offences under Sections 354 and 377 IPC."

(5) State v. Sanjeev Nanda⁷; in the present case, the Court reiterated the growing disturbing trend relating to witnesses turning hostile in Para 99. it stated that ". Witness turning hostile is a major disturbing factor faced by the criminal courts in India. There are many witnesses turning hostile, but of late, we see, especially in high-profile cases, there is a regularity of witnesses turning hostile, either due to monetary consideration or to other tempting offers which undermine the entire criminal justice system and people carry the impression that the mighty and powerful can always get away from the clutches of law, thereby eroding people's faith in the system."

⁶ Sakshi v. Union of India(2004) 5 SCC 518 : 2004 SCC (Cri) 1645]

⁷ State v. Sanjeev Nanda(2012) 8 SCC 450 : (2012) 4 SCC (Civ) 487 : (2012) 3SCC (Civ)899]



(6) The Apex court suggests that central and state governments should establish a special center for examination of vulnerable witnesses ; In the State of Maharashtra V.Bandu@Daulat{2018}⁸ In the present case, an appeal has been filed before the supreme court against the order of acquittal passed by the High Court in the Rape Case. The Supreme Court upheld the conviction order and suggested that state government should establish a special center for examination of vulnerable witnesses where favourable environment should be provided to them, where these witness can disclose their testimony freely and comfortably. In present case hon'ble Supreme court direct that "there should be special centres for examination of vulnerable witnesses in criminal cases in the interest of conducive environment in Court so as to encourage a vulnerable victim to make a statement. Such centres ought to be set up with all necessary safeguards. Our attention has been drawn to guidelines issued by the Delhi High Court for recording evidence of vulnerable witnesses in criminal matters and also the fact that four special centres have been set up in Delhi for the purpose.¹² The directions of Delhi High Court and setting up of special centres for vulnerable witnesses as noted above are consistent with the decision of this Court and supplement the same. We are of the view that all High Courts can adopt such guidelines if the same have not yet been adopted with such modifications as may be deemed necessary. Setting up of one center for vulnerable witnesses may be perhaps required almost in every district in the country. All the High Courts may take appropriate steps in this direction in due course in phases. At least two such centres in the jurisdiction of each High Court may be set up within three months from today. Thereafter, more such centres may be set up as per decision of the High Courts."

(7) The Apex court in Satyama Dubey v. Union of India⁹ asked for affidavit from state government of Uttar Pradesh to clarify whether the witnesses in the case are being given with adequate protection in Hathras gang rape and murder case. The facts of the case are such that on 14 September 2020, a 19 year old Dalit woman was allegedly gang rape in Hathras District, Uttar Pradesh, India by four upper caste men. She died two weeks later in a Delhi hospital. The incident took place on 14th September, when the victim, a 19 year old Dalit woman went to a farm to collect cattle fodder. The four accused dragged her away by dupatta around her neck injuring her spinal cord in the process. The violence left her paralyzed with a severe spinal code injury. The Apex court in the present case stated that Hathras gang rape and murder of a Dalit women was a horrible and extraordinary incident and asked the Uttar Pradesh government to clarify whether witnesses in the case are being protected and given adequate protection. A three judge bench headed by CJI S.A Bobde asked Uttar Pradesh government to file an affidavit while clarifies saying that it will try to ensure that the investigation into the incident is smooth. "We want to know from you whether witness protection is in place. File an affidavit."

MEASURES ADOPTED BY JUDICIARY TO IMPROVE THE PITFUL CONDITION OF WITNESSES

To improve the pitful condition of witnesses the Apex court has approved witness protection scheme in year 2018 in case Mahender Chawla V. Union of India¹⁰; This case is known as Asaram Babu's case. In the present case in hand, the Apex court directed the union and the state government to enforce the witness protection scheme in their respective states. In April 2018, self-styled god-man Asaram Babu's former aide Mahender Chawla alleged that he was receiving death threats from Asaram and his supporters. Chawla demanded more security for him and his family. He is one of the key witnesses in a rape case, for which Asaram and his son were sent to custody in December 2013. The Apex court has approved the witness protection scheme in the present case. The silent features of the scheme are as follows:-

⁸ State of Maharashtra v. Bandu @ daulat 11SCC163(2018)

⁹ Satyama Dubey v. Union of India order dated 27oct2020

¹⁰ Mahender Chawla V. Union Of India 14 SCC 615(2019)



- a. The scheme describes categories of threat perception.
- b. The State witness protection funds
- c. Filling of application to competent authority
- d. Time of protection measures
- e. Protection of identity
- f. Change of identity
- g. Relocation of witness
- h. Witness to apprised of the scheme
- i. Confidentiality and preservation of record
- j. Recover of expenses

LEGISLATIVE PROVISIONS PROVISIONS RELATING TO WITNESS PROTECTION

1. Provisions contained in the Code of Criminal Procedure code, 1973
 - a. Section 406 and 407: As per these provisions, Hon'ble Supreme court and High court have power to transfer the cases for fair trial. Where courts find that circumstances in that present case are such that it is required to transfer the cases from the jurisdiction of one court to another, then the court has power to transfer the cases.
 - b. Section 171: Complainants and witnesses are not required to accompany police officer and not to be subjected to restraint.
 - c. Section 173(5) and (6): Report of police officer on completion of investigation. The police officer should forward to the Magistrate alongside the report
 - a) all documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation;
 - b) the statements- recorded under section 161 of all the persons whom the prosecution proposes to examine as its witnesses.
 - c) If the police officer is of the opinion that any part of any such statement is not relevant to the subject- matter of the proceedings or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interest, he shall indicate that part of the statement and append a note requesting the Magistrate to exclude that part from the copies to be granted to the accused and stating his reasons for making such request.
 - d. Section 271: Power to issue commission for examination of witnesses in prison.
 - e. Section 273: Evidence to be taken in presence of the accused.
 - f. Section 309: Power to postpone or adjourn proceedings.
 - g. Section 327: Court to be open. The place in which any criminal court is held for the purpose of inquiring into or trying any offence shall be deemed to be an open.
2. The Juvenile Justice (Care and Protection of Children) Act, 2000
 Section 21: This provision prohibits the publication of the names of juveniles involved in any proceeding under the Act.
3. The Whistle Blower Protection Act, 2011
 Under section 11 of the Act, a special provision has been enacted for the protection of witnesses and other persons.
4. The National Investigation Agency Act, 2008
 Under Section 17 of the Act, special provisions are enacted where measures are given to keep the identity of witnesses secret.
5. Indian Penal Code, 1860
 Under section 228A IPC, special provisions are enacted to protect the identity of victims of certain offences.

REPORTS OF LAW COMMISSIONS

The Indian criminal justice system in our country has been evolved through studies of several reports of law commissions and expert bodies. The law commission has itself considered the issue of witness protection in its various reports. In its 14th Report, the 1958 law commission



considered the issue from different angle. The commission in its report referred the inadequate arrangements for witnesses in the courtroom, the scales of travelling allowance and daily bhata paid for witnesses for attending the court in response to summons from the court. In present report commission analysis the pitful condition and challenges faced by witnesses in court. These conditions result in the development of an attitude of indifference to the questions of bringing the offender to justice.

In the 4th report of the National Police Commission in June 1980, inconveniences faced by witnesses have been discussed. In the 178th report of the law commission in December 2001, commission submitted the report for the amendment of various statutes, civil and criminal law. The report also referred to the increase in cases of witnesses turning hostile.

CONCLUSION AND SUGGESTION

After going through various judgements of hon'ble supreme court and high courts, it is a undeniable fact that witnesses in India living a pathetic life due to their pitful condition which is a result of lack of effective and stringent laws for their protection. The witness protection schema, however, gave some support, but it is itself not sufficient unless it is strictly enforced by the executing authority and by the court. Therefore, there is paramount need to have witness protection regime with help of which pitful condition of witnesses could improve and protected.

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