
WITNESS PROTECTION LAWS IN INDIA

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I. Introduction

The estimation of importance of a witness may be understood by the fact that the foundation of a trial depends upon the testimony given by a witness. A witness is any person who is well-versed with the conditions and certainties of an offence. He is a person who unveils the hidden agendas and brings forth the truth to turn the tables against wilful abuse of law & power. A witness is expected to be extremely attentive to be able to control any data or learning that may be important during examination, inquiry, or trial of a particular offence to meet the ends of justice. The founder of modern utilitarianism, Jeremy Bentham once said that “witnesses are the ears and eyes of justice.” Therefore, a truthful and honest witness can render assistance to the police as well as the court during trial of an particular case and play the role of a sun that has the capacity to enlighten the substance of mankind and equity.

However, the edifice of administration of justice expects a witness to wilfully come forth and depose the truth without any intimidation or fear. If the witness turns hostile under the influence of money, power or without means of protection then the foundation of a trial becomes paralyzed and putrefied. Now a days, witnesses turning hostile is a common practice because of various means of inducements or threats and a denial of justice not only makes the system weak but also eradicates faith of citizens in administration. The hostility during trial has been given exhaustive review in several precedents by our judiciary, like in the judgment of National Human Rights Commission v. State of Gujarat¹, major reasons of retraction of a witness making statements before the court were elaborated. The hon’ble court observed that a witness turns hostile by various means such as muscle power, threat to their life & family, use of money and most importantly they are not given sufficient means of protection by the State due to which clearly, they may often contract from truth by undue influence, coercion, compulsion etc. Let us look at the current situation of witnesses in our country and whether we have sufficient laws to protect a witness or not.

II. Present Status of Witness Protection in India

¹ National Human Rights Commission v. State of Gujarat 2009, Supreme Court Manu Patra 0713, Writ Petition No. 109/2003

Unfortunately, the conditions in which witnesses are exposed to speak the truth is unfit for a reliable system of administration of India. The present status of witness protection in India can be comprehended from the fact that a witness on getting summons, begins to tremble of the dread that he would be exposed to uncertain confined conditions where he would not be given comfortable environment for examination or cross examination. The present system guarantees fundamental rights that provides legal remedies, but the phenomenon of witness's hostility has now taken a different shape which is for a reason a matter of concern for judiciary in India.

The power of police to arrest a person suspected of a criminal offence, sometimes creates a possibility of ill-treatment or custodial torture. In fact, the Bombay High Court in *Sharif Bai v. Abdul Razak*² held in case police fails to produce an accused before the Magistrate within 24 hours, as stipulated under law, it makes a wrongful detention. In cases of non-bailable offences, where bail is a matter of discretion and the grounds on the basis of which court grants bail are usually, the gravity of the offence, possibilities of tampering of witness or evidence or the probability of absconding. However, the apex court once rule that its is bail and not a jail, therefore it should be a norm in a way that a person should be secured from detention when it is not necessary to detain then unnecessarily.

The instances of ambiguous deliberate testimonies by witnesses are endless and it has made it exceedingly difficult to determine the guilt of an accused. The apex court in the judgment of *Zahira Habibullah Sheikh v. State of Gujarat*³ observed the inevitable need of today to emphasise on legislative measures to prohibit tampering with witnesses, informants, or victims. Most of the instances of hostility may be witnessed where there is a high-profile case and a lot of monetary considerations are at stakes of safety & life, for example in the popular Jessica Lal Murder Case, run case, B.M.W Hit case etc. the list is endless. Sometimes a person becomes so helpless to come forth and become a witness since he is blackmailed to such an extent that no other alternative seems feasible. Protection of a witness is something which is far from present, a witness who comes to the court many times at the cost of his own and his family's safety, does not get anything in return, is indeed a harsh reality. It takes a lot of courage to push out from a crowd and speak in the courtroom where there is no one watching with respectful sight. The trauma can put a witness in a state of shock where he may not be able to address full details of what he knows, and this leads to miscarriage of justice.

² AIR 1961 Bom 42

³ *Zahira Habibullah Sheikh v. State of Gujarat*, Supreme Court, 2004 (4) SCC 158

III. Steps towards Witness Security

Visualising the present unfortunate times, the courts focus is slowly and steadily shifting towards witness security and today we have several judgments that addresses witness protection to be a need of an hour. In the investigation, inquiry, and trial of a case, it is imperative to ensure that it is not necessary to always terrorize the witness. For a successful prosecution, cooperation by a witness is important and it requires extraordinary measures to ensure their safety, relocation of their new identity, anonymity, and undisclosed place of residence as well.⁴

Holistically, there is no law at the National level for the protection of witnesses, however, the apex court approved India’s first Witness Protection Scheme 2018 through the landmark judgement of Mahendra Chawla & Others v. Union of India⁵ wherein, it shall be considered as the ‘law’ under the ambit of Article 141/141 of the Indian constitution until parliamentary legislation comes into force on this subject. The scheme recognised the rights of witness affirmed under Article 21 of the Indian constitution and if one is unable to testify in the court of law due to undue influence or any sort of threats then it would be a clear violation of fundamental right of a person. The scheme ensures that a witness is not prejudiced to give evidence under pressurized circumstances and is given enough protection from unlawful practices.⁶ The scheme believe that a witness must be encouraged by assurance of safety because they are directly or indirectly giving major assistance to administration of justice to end trial on merits. The State Witness Protection Fund has been allocated as a budgetary means under section 357 of the Code of Criminal Procedure for the purpose of this scheme. It classifies witnesses under three categories based on their perception as follows:

Category A	Instances where threat extends to life & safety of witness and his family during investigation, inquiry, or trial.
Category B	Instances where threat extends to reputation or property of witness and his family during investigation, inquiry, or trial.
Category C	Instances where the threat extends to intimidation or harassment of witness and his family members during investigation, inquiry, or trial.

⁴ Sampath Meena, Witness Protection Scheme,2018: The New Paradigms (July 21, 2019, 11:00 AM)

⁵ Supreme Court, Mahendra Chawla & Others v. Union of India 2016, Writ Petition (Crl.) No. 156

⁶ <https://www.insightsonindia.com/2018/12/06/witness-protection-scheme>

Apart from the witness protection scheme, the Law Commission of India and the National Police Commission in their 14th and 4th report respectively, precisely suggested several substantive measures to combat the grave uncertainties that a witness face. A necessary amount of confidence must be created in the minds of a witness of their protection in case of any eventuality. The Law Commission also from time to time carries out Witness Protection and Witness Identity Protection Programmes outside court proceedings whereafter it proposed the idea of a Witness (Identity) Protection Bill 2006 as well, however, no draft of the same was proposed.

Subjective Satisfaction

The question of subjective satisfaction of a detaining authority is amenable to judicial review and cannot be absolute in nature. While the legislative intent of a particular statute may express entrustment over such authority with the power to detain a citizen, still an authority cannot merely state that they are satisfied that the person is to be detained. An authority is expected to go further, and state reasons of its satisfaction based on material scrutinized by him. Such supply of reasons is what covers subjective satisfaction of detaining authority along with legitimacy to deprive a person of his fundamental rights guaranteed by the constitution. In absence of supply of reasons, there is possibility that a detenu does not gets an opportunity to enforce his right to make representation against the detention or to rebut reasons of his detention. In case, subjective satisfaction is not based on some material reasons, then such a detention order can be set aside and for this the court would ascertain whether material reasons are in compliance with safeguards against detention or not. Such ascertainment by the court does not indicate that the court would substitute its opinion with respect to detaining authority but is done objectively only to access material reasons.

IV. Conclusion

The role that a witness plays in our country, lacks the respect and dignity that a witness deserves in the process of trial. Therefore, it is important to restore the lost dignity to ensure fair trials. Justice must not only be done, but also seen to be done in true seen. The rate of crime is increasing at an erroneous rate, witnesses need to have the confidence to bring forth the truth. There is no doubt about the fact that there still is a lack of statutory mechanism with strict penal outcomes in our judicial system to stop the growing menace. They must be given protection from criminals and undue influencers so that their statements may be reliable in deposing before the court of law. To make a comfortable environment for a witness to speak, a screen

may be arranged, with constant vigilance on the screen to protect them from trauma while examination and cross-examination. The witness protection scheme is indeed an important step towards this major concern, and it must be holistically implemented at the national-level, and it will surely go a long way in eradicating victimization in our country. The implementation of the scheme will not only strengthen criminal justice system but will also consequently uplift the national security status. In addition, the principles of natural justice and rule of law must be adhered to respectfully and strictly. Hence, the witness identification bill and the witness protection scheme must as soon as possible be given legal status so that with their implementation our administration and judiciary is able to protect right of foundation builder of a trial i.e., a witness.