

Witness Protection in India: Some Issues and Challenges

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Abstract

A large number of cases dragging in the courts today are of persons related to mafia , underworld elements indulging in anti-national activities ,arms and drugs smuggling syndicates etc. which on the one hand are detrimental to the safety and security of the nation and on the other hand embolden the criminal elements because of the ineffective approach of the law enforcing agencies .The disinterest shown by the crucial witnesses and the extraordinary long time taken by the courts in deciding the cases are only contributing to this malaise . The presence of a credible witness protection programme can go a long way in helping the cause of justice , encourage people to speak up against the criminals and other anti-national /social elements who flaunts money and muscle and thereby improve the governance in the country and ensure security of the nation.

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Introduction

Every evolving State has three pillars on which the progress of the nation rests, that is judiciary , executive ,and legislature . If any of the pillars gets weaken restlessness emerges in the State, so is the case in finding and convicting the criminals for the social interest. For punishing the culprit , the legislature makes law as per the public policy , the executive as per that law investigates the case and judiciary decides the case by applying judicial prudence as per the law and evidences presented by the police officers , collected by them during the investigation . So, there is equal share of participation by the three pillars of the democracy for criminal justice system to run in a State . If any of the abovementioned pivots of the crime justice system becomes weak , the system will loosen its purpose which is to find and punish the accused.

The legislature after making the law is eased with its duty until amendment in the law is needed but duty of implementing the law always stays with the judiciary and the executive in their respected participatory roles. The executive plays its role in finding the convict and investigating the case and on that investigation the judiciary decides the case . One of the parts of investigation is to collect evidences as evidences are the eyes and ears of a judge as a criminal case is built upon edifice of evidence either circumstantial or direct. It is submitted that justice must not be only done but also seen to be done , that is, an accused should be convicted and punished . The witness are the pivot of the evidences . Witnesses are the one who are needed after the framing of charges done by the court and the stage of trial starts .

According to Bentham , witness are the eyes and ears of justice . Their each and every statement is very important as it has a magic force to change the course of the whole case .The role of a witness is very important in a trial . He is an indispensable aid in the justice dispensation system in any civil society .

Thus a witness is an important party in a case apart from the complainant and the accused .By giving evidence relating to the commissioning of an offence , he performs a sacred duty of assisting the court to discover the truth . It is because of this reason that the witness either takes an oath in the name of God or solemnly affirms to speak the truth , the whole of the truth and nothing but truth . He/she performs an important public duty of assisting the court in deciding on the guilt or otherwise of the accused in the case .He submits himself to cross-examinations and can not refuse to answer the questions on the ground the answer will indiscriminate him.¹

India is a country where all citizens are considered equal in the eyes of law². Every individual whether rich or poor , male or female , literate or illiterate etc. is

given equal rights . The person who is rich and influential should not be given extra privilege or be given any chance to take the law in their hands . Justice should reach to each and every citizen of our society and the trial of a case should be fair . The Hon'ble Supreme court³ has also held that the constitutional mandate⁴ required that the procedure of trial should be "fair , just and reasonable" . The trial procedure should be fair and just for everyone concerned with the case and it should not result against the interest of any person .

Conviction of a guilty person develops devotion and sincerity among the public . And this development leads to good governance . But nowadays in most criminal cases , witnesses turn hostile . Hostility of witness is a menace to the society . Witnesses who support the prosecution story during a criminal investigation do not like to turn up before a criminal court to dispose the true story . Even if they appear in the court they do not intent to put up the true picture of the prosecution due to fear, relations and closeness .⁵

The Supreme court has rightly held that if in a case where the prosecution witnesses are called to depose before the courts to prove the guilt of the accused , and in that process he is made incapable or stopped from giving the true statement before the court , then what is the purpose of trial . It only leads to mockery of justice and guilty remains unpunished . If the high profile or influential people are only the judges of the fate of the cases and they try to manipulate the same , then what is the use of criminal trial ?

If there is such a position where the courts have themselves become incapable of tackling such problems , it has to be of grave nature . In such cases the judiciary should step sforward and stop such injustice to happen and provide justice and fair play in the procedure of criminal trials . It should direct the legislature to draft such provisions regarding the problem which need to be tackled very soon otherwise the law would eventually be controlled by high profile strata of the society .

WHO IS A WITNESS ? – The 'witness' is a person present at some event and able to give information about it ⁶. In other words , a witness is a person whose presence is necessary in order to prove a thing or incident . The word 'witness' has not been defined either in the Indian Penal Code ,1860 or the Code of Civil Procedure ,1973 . The Massachusetts law has defined witness under its act⁷ as ' any person who is participating in a criminal investigation ; or has received a subpoena in the context of a criminal investigation ;or is reasonably expected to give testimony and , in the judgment of the prosecuting officer , is essential to a criminal investigation or proceeding . '

The usage 'hostile witness' does not find a place in the Indian Penal Code, 1860. Authorities are not unanimous with regard to the meaning of the words 'adverse', 'unwilling' or 'hostile' and the draftsman of the Evidence Act has, in view of the conflict, refrained from using any of those words in the Act. The matter is left entirely to the discretion of the court. A witness is considered adverse when, in the opinion of the judge, he bears a hostile animus to the party calling him and not merely when his testimony contradicts his proof⁸.

The Supreme Court of India⁹ defined a Hostile witness as 'one who is not desirous of telling the truth at the instance of the party calling him and an unfavorable witness is one called by a party to prove a particular fact, who fails to prove such a fact or proves an opposite fact'.

The Black's Law Dictionary defines a hostile witness as 'A witness who is biased against the examining party or who is unwilling to testify'¹⁰. So a person who shows such attitude to the opposite party or even refuses to give evidence in court where he is capable to give the same is known as a hostile witness.

WHEN HOSTILITY:— Now we have to understand the process by which a witness becomes hostile. Chapter XII of the Code of Criminal Procedure, 1973 deals with the police powers to investigate. It vests in police officers the power to record statement of witnesses¹¹. However, these statements are not admissible in court¹². The aim of section 162 is to protect accused persons from being prejudiced by statements made to police officers who may coerce the witnesses. Therefore, the witness has to restate in the court the statements that he made to the police. Here the statements recorded by the police constitute a reference to which the veracity of the witness may be tested.

Now if the witness deposes falsely before the court or gives statement which is different from that which he had given to the police officers, he may have turned hostile. By and large even in heinous crimes, investigation completes within few days of commission of crime. But it is a common thing to see that the investigation agencies take their own time and chargesheets are filed in or about 60 to 90 days and the time in proceedings take its toll. And when the case comes for trial, the witness becomes judgmental¹³. The witness sometimes even gets frustrated with the long drawn procedures during the trial that he decides to back out and refuses to appear before the courts.

The ordinary investigation period is generally very long. During this time, the accused gets enough time to threaten or to manipulate in other ways the witnesses and they often turn hostile and in most of the cases the witness do not support the

previous police statement earlier given and also resile from statement given under section 164 of the Cr.P.C.,1973 . Such hostility may depends upon various factors .Some of these are as follows—

(1)Threat /Intimidation: - In Swaran Singh Case ¹⁴, the Supreme Court said : ‘It has become more or less a fashion to have a criminal case adjourned again and again till the witness tires and he gives up . It is the game of unscrupulous lawyers to get adjournments for one excuse or other till a witness is won over or is tired . Not only that a witness is threatened ;he is abducted , he is maimed ;he is done away with ;or even bribed . There is no protection for him . In adjourning the matter without any valid cause a court unwillingly becomes party to miscarriage of justice . A witness is then not treated with respect in the court. He is pushed out from the crowded courtroom by the peon . He has no place to sit and no place even to have a glass of water . And when does he appear before the court , he is subjected to unchecked and prolonged examination and cross examination and find himself in hapless situation . For all these reasons and others a person abhors becoming a witness .

(2)Inducement by various means :- High profile accused tend to use their money power and try to control the statements made by the accused in their favour . Use of money by the accused is a major hindrance in the criminal justice dispensation system as it comes in the way of fair trial and the rich people take crime in their hands and never take law seriously . Due to this reason it is always believed that wherever there is money , there are hostile witness as it is evident from many cases like BMW case ,Jessica Lal case , Salman Khan case .

(3)Disillusionment caused by the delay in the judicial process :-Witnesses tremble on getting summons from courts in India , not because they fear examination in courts but because of fear that they might not be examined at all for several days and on all such days they would be nailed to the precincts of the courts awaiting their chance of being examined . This is the infelicitous scenario in many of the courts in India so far as the witness are concerned . The malady is that the predicament of the witnesses is worse than the litigants themselves ¹⁵.

(4)Absence of witness protection programmes:-In most cases , witness are threatened or injured ,sometimes even murdered before giving testimony in court .The threat to the lives of witnesses is one of the primary reasons for them to retract their earlier statements during trial .There are no express provisions regarding such protection in India .Sections 151 &152 of Indian Evidence Act protect the victims from being asked indecent, scandalous, offensive question and questions likely to insult or annoy them , which is not a sufficient protection to the witnesses in the

current scenario of India .

(5) Defaults in payment of allowances :-The law commission of India in its 154th report observed that the allowances paid to witnesses for appearing in courts are inadequate and called for prompt payment , no matter whether they are examined or not¹⁶ .

These are some of the reasons where the witnesses often turn hostile in the cases where they are called to give their testimonies in the courts and results in failure of justice .

CONCLUSION

In India , all point towards an increasing tendency of the witnesses to turn hostile because of various reasons nation. A large number of cases dragging in the courts today are of persons related to mafia , underworld elements indulging in anti-national activities ,arms and drugs smuggling syndicates etc. which on the one hand are detrimental to the safety and security of the nation and on the other hand embolden the criminal elements because of the ineffective approach of the law enforcing agencies .The disinterest shown by the crucial witnesses and the extraordinary long time taken by the courts in deciding the cases are only contributing to this malaise . The presence of a credible witness protection programme can go a long way in helping the cause of justice , encourage people to speak up against the criminals and other anti-national /social elements who flaunts money and muscle and thereby improve the governance in the country and ensure security of the nation.

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