

# Need For Witness Protection Laws in India

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**Abstract :** The root of the Justice system in India, can only stand firm in the soil of the witness protection. This article is all about the need of witness protection law in India and our failure to provide protection to the witnesses. In India, the term “Witness Protection” is reduced to a phantom, a mockery and a myth. During the proceedings and trials, the witnesses either turns hostile, goes missing or gets murdered. Each day, lack of witnesses protection contributes to the failure of our justice system. This article deals with the reasons and consequences of the ever increasing hostile witnesses and why the witness protection law is a must in India and as soon as possible.

This article also discusses how there have been massive decline in the conviction rates and large number of increasing acquittals due to witness hostility. Subsequently leading to the loss of faith in judiciary system and increase of corruption. This article is an attempt to draw the attention of people to the plight of the witnesses, that if goes unchecked, will plague the Criminal Justice System in India.

## I. INTRODUCTION

Criminal law is based on the edifice of evidence, it is due to this reason that Indian Evidence Act, is referred to as *lex fori* of criminal law and judicial system. Indian Evidence Act is strongly based on statements given by witness. They are considered to have relevant and crucial informations about a case, designed to show the case in its strongest and truest light. Their role is inseparable from judiciary. But there is no terrible witness, than a hostile witness.

Standing in 2018, we still fail to focus our attention on one of the darkest sides of the world’s largest democracy, i.e witness hostility and failure to provide witness protection in India. In an era of witness-manipulation, we are still blind towards the struggle of many witnesses that they face due to the deep-rooted corruption and power-struggle. What the ever increasing crimes in India have in common is - the failure of society in general, and law-enforcing institutions in particular, to protect its witnesses in vulnerable situations. Every criminal trial is a voyage in quest of truth for public justice to punish the guilty and restore peace, stability and order in the society.<sup>1</sup> It is blight, which if unchecked, will be the reason for lawlessness and failure of justice-machinery in India.

Witness, as Bentham said, “are the eyes and ears of justice”.<sup>2</sup> Role of witness in enhancing the process of criminal adjudication is important and it is due to this reason that criminal laws have placed a lot of reliance on this subject matter. Examination of witness and cross examination of witness is still prevalent as an important part of a criminal trial, and is still believed to be the deciding factor for any case. It is during this process that the Magistrate examines the witness, who once formed a significant part of crime scene or the place of occurrence.

A “hostile witness” is one who, from the manner in which he gives evidence, shows that he is not desirous of telling the truth to the Court. A witness who is gained over by the opposite party, is a hostile witness. Who refuses to tell the truth in a court of law after having previously sworn that he would; or he speaks against the party who called him as a witness. The Supreme Court in *Sat Paul v. Delhi*

<sup>1</sup> *State Of Gujarat v. Anirudh Singh & Anr.*, AIR 1997 SC 2780

<sup>2</sup> *State of U.P. v. KrishnaGopal*, AIR 1987 SC 2154.

*Administration*<sup>3</sup> held that a hostile witness is described as one who is not desirous of telling the truth at the instance of the party calling him.

Over the years, the number of hostile witnesses have increased to a much larger extent. The Best Bakery trial is one of the best examples where witnesses were not only moulded in favour of influential people but also were threatened, which ultimately led to failure of justice. The statement of Zahira Sheikh<sup>4</sup>, the main witness of the said case in which she admitted turning hostile due to peer pressure from political goons, is an example how the efficiently the justice delivery system of the country is working.

Zahira Sheikh's case is not the only landmark case, where witnesses have turned hostile. The case of Jessica Lal murder<sup>5</sup>, where reportedly 80 witnesses turned hostile, is another such example, where we have witnessed failure of justice.

Involvement of high number of influential people belonging to socially and economically stronger classes, lead a witness to turn hostile, moreover there are many other reasons, which the Apex Court has pointed out, as probable reasons for the witnesses to turn hostile.

The apex court observed<sup>6</sup> that the following could be the reasons that make witnesses retract their statements before the court and turn hostile:

- (i) Threat/intimidation.
- (ii) Inducement by various means.
- (iii) Use of muscle and money power by the the accused.
- (iv) Use of Stock Witnesses.
- (v) Protracted Trials.
- (vi) Hassles faced by the witnesses during investigation and trial.
- (vii) Non-existence of any clear-cut legislation to check hostility of witness.”

Threat, intimidation, inducement, use of muscle power by the accused, has taken a strong stand, upon the weak and vulnerable sections of the society, as the trends of hostility appears to be, courts may soon become a mere spectator of these society losing faith in their system. Access to courts may be for all, but access to justice has turned out to be privilege of the rich.

It is ironic that whenever a case or complaint against an influential person is filed, the witnesses start either disappearing or they end up meeting accidents or are generally found dead. The controversial case of Vyapam scam, where numerous whistleblowers were found missing, many of which were brutally murdered in mysterious circumstances.

Ever since, a complaint was filed against self styled god man, AsaramBapu, three witnesses have been murdered, three have gone missing and one was stabbed inside the court premises, and we speak of witness protection.

<sup>3</sup>*Sat Paul v. Delhi Administration*, AIR 1976 SC 303.

<sup>4</sup>Available at, <https://www.indiatoday.in/magazine/nation/story/20030721-best-bakery-trial-zaheera-sheikh-says-she-lied-under-oath-out-of-fear-for-her-life-792267-2003-07-21>, Last Assessed on 26<sup>th</sup> May, 2018, at 11:54p.m.

<sup>5</sup>*SidharthaVashisti @ Manu Sharma v. State (NCT of Delhi)*, 2001 Cri.L.J. 2404.

<sup>6</sup>*Ramesh &ors.v State of Haryana*, CRIMINAL APPEAL NO. 2526 OF 2014

What needs to be kept in mind is that, lack of witness protection is making the richer and powerful sections of the society more empowered and weaker sections, more prone to the damage done. The apex court has rightly observed that, apart from the above, another significant reason for witnesses turning hostile may be what is described as ‘culture of compromise’. The witnesses these days don’t want to enter into any unnecessary hassles . Thanks to the increase in number of hostile witnesses, there have been massive decline in conviction rates and large number of increasing acquittals, subsequently leading to the loss of faith in judiciary system and increase of corruption. The consequences of witness hostility is beyond imagination and damage done by it to the Indian Judiciary system is beyond repairable.

When “We the people”<sup>7</sup> have given ourselves the constitution of India, we should also respect the law and order of the country and strive for the betterment and security of all its individual, and also ensure that justice has been duly served; but with the lack of protection the witness have turned out to be one of the most vulnerable society of the Criminal Justice system. The absence of such protection not only weakens the country’s structure, but also promote a feeling of disbelief in the judiciary.

India does not have a witness protection law. It is a matter of great urgency that this significant flaw in our law is dealt with, otherwise the hostile witness problem is going to continue to plague our criminal justice system, adding to the already strained judicial workload, making it tougher to convict and endangering lives. A country can not thrive, when so many of its citizens feel intimidated or threatened to assert their right of telling the truth, in the court of law. India has a very low police-to-citizen ratio, its constables are poorly trained and meagrely paid and its court system is clogged with cases. It will take a lot more than, is presently being done to truly protect the witnesses and preventing them from turning hostile. How India deals with this problem, will be vital to its growth – economic, political, demographic and social.

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<sup>7</sup>Preamble, Constitution of India