A Study on Protection of Witnesses under Indian Evidence Act

Rakhi Pande¹, Vikash Mishra²
Research Scholar¹, ²
Oriental School of Law
Oriental University Indore, Madhya Pradesh, India

Abstract:
In any criminal case, the witness plays a crucial role in formulating the final result. Due to this, the parties regularly intimidate the witnesses, reviving the case hostile and intrusive with the fair administration of justice. Thus, it becomes very vital to defend the witnesses so that they do not get scared or fear informative the truth in court. There are observer assurance programs in countless nations everywhere throughout the world." Sadly, India still lacks a well-functioning witness protection programme although various attempt to improve "Framework and execution keep being poor and there are as of not long ago a titanic number of conditions where the eyewitnesses go compromising." This paper examines the idea of witness assurance, and discusses programs in a couple of nations." Further it analysis witness protection in India, the reasons for failure and finally suggestions to improve it. Witness protection plan and witness protection laws are simply the need of the hour. In fact, it is the deficiency of these laws that has helped in further strengthening the criminals and offender. But incongruously in India, such program and laws are a far weep from reality, where leave only protection, the witness is not even treat with respect. Today the witnesses are harassed a lot. Not only that the witnesses so that they do not get scared or fear informative the truth in court. There are observer assurance programs in countless nations everywhere throughout the world." Sadly, India still lacks a well-functioning witness protection programme although various attempt to improve "Framework and execution keep being poor and there are as of not long ago a titanic number of conditions where the eyewitnesses go compromising." This paper examines the idea of witness assurance, and discusses programs in a couple of nations.

Keywords: Witness, Protection, Perjury, Evidence, Hostile.

I. INTRODUCTION

Witness is regard as most vital part of the criminal justice system. He is the foundation on which the building of justice and equity rests and thus expected. A witness in a criminal trial plays an important role on which the chance of the case depends, as it is the foundation of the preliminary whether it is a common or criminal or some other preliminary. It is the witness who build the case of the contest parties by depose before the court. The evidence given by the witnesses enable the court to decide the merit of facts and conditions of the case. then, the truth of the witness’s testimony becomes the foundation of justice and hence the witness is made to offer statement under oath. The statement of witness may lead to assurance or acquittal of accuse. The speedy justice or deferral in justice conveyance likewise depends, all things considered, on the nature of articulation given by the witness during preliminary." It is not necessary that the witnesses must always remove in favor of prosecution and against the accused in a criminal trial. What is important and subject matter of concern is that a witness must remove without force, fear and pressure and out of his or her own free will and consent. The speedy justice or deferral in justice conveyance likewise depends, all things considered, on the nature of articulation given by the witness during preliminary."

AIM OF THE STUDY:
The aim of this Study is to Protect the witnesses from all sorts of immorality and no innocent offender must be punished.

RESEARCH METHODOLOGY:
The topic of this Paper is such that it will need the researcher more to go through the Doctrinal mode of research with the help of books available and from some of the previous researches and also some authenticated websites present on the Internet.

Primary source: statutes, Bare acts.

Secondary source: previous research paper and articles

CONCEPT OF HOSTILE WITNESS UNDER INDIAN LAW:
A “hostile witness” is one who, from the way in which he give evidence, show that he is not wishing for of telling the reality to the Court. A witness who is gain beyond by the opposed party is a hostile witness. The mere fact that at a Sessions trial, a witness tell a different story from that told by him before the Magistrate does not essentially formulate him hostile. It is interesting to note that the Act does not use the expression “hostile witness”, thus avoiding the confusion prevailing under English law by the use of the term. The section merely confers discretion on the Court to permit a party to cross-examine his own witness. If the evidence of a witness is unfavorable to the party calling him, such a party is not permitted as a matter of right to cross-examine his own witness; he can do so only with the go of the Court. The Court, in such a case, may, in its judgment, permit a party to put any question to his own witness which strength be put in cross-examination by his enemy, i.e., may permit a party to cross-examine his own witness, though the putting of leading questions does not always amount to cross-examination. It is to be remember that the judgment of the Court to permit “cross-examination” is complete and independent of any question of
“hostility” or adverseness. As is clear from a series of decision of the Supreme Court in Ravindra kumar Ray V. State of Orissa, the evidence of a witness is not essentially to be rejected, in whole or in part, just because he is declared to be a hostile witness.

II. CERTAIN LEGAL PROVISIONS DEALING WITH THE OFFENCE OF PREJURY (FALSE EVIDENCE)

Section 193 - Punishment for false evidence. Whoever intentionally gives false evidence in any stage of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine, and whoever intentionally gives or fabricates false evidence in any other case, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Explanation 1
A trial before a Court-martial is a judicial proceeding.

Explanation 2
An investigation directed by law preliminary to a proceeding before a Court of Justice, is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice.

Section 196 – Using Evidence known to be false
Whoever corruptly uses or attempts to use as true or genuine evidence any evidence which he knows to be false or fabricated, shall be punished in the same manner as if he gave or fabricated false evidence.

Section 199 – False statement made in declaration which is by law receivable as evidence
Whoever, in any declaration made or subscribed by him, which declaration any Court of Justice, or any public servant or other person, is bound or authorized by law to receive as evidence of any fact, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, touching any point material to the object for which the declaration is made or used, shall be punished in the same manner as if he gave false evidence. A witness may spin hostile for various reasons, generally it is the combination of cash and influence power, menace / threats, enticement by various means that, allurement/seduction etc. though the primary one being the lack of protection to the witnesses during and when the trial. The witness is worried of facing the wrath of the convict who could also be well related. Witnesses are a unit really liable to coercion within the variety of threats by the suspect. Today, hostility of witnesses in serious crimes and crimes committed by high profile persons has challenge the system of criminal justice. As discovered by the Apex Court: “ever more those are vital cognitive process that laws are like spider’s web: if some light-weight or inundated issue falls into them, it's caught, however a much larger one will break during and acquire away”. Conducts that illegally have an effect on the presentation of witness in procedures before the courts must to be seriously and severely deal with”.

1. Salman Khan Hit & Run Case
In the 2002 hit-and-run case connecting the superstar, an eyewitness who had claim firstly that he had see the actor go out the driver’s seat, deprived of it in 2014.

2. 2007 Mecca Masjid case
Lt Col Shrikant Purohit, who was a NIA observer in the Mecca Masjid case, a while later turned unfriendly and abnegate his announcement of have met the charge, Swami Aseemanand.

Witness Protection Bill, 2015
This bill was set and introduced in parliament in 2015. Its objective was to put in place a strong law for witness protection in an approach which ensure a fair trial to both the parties.

The bill required to ensure protection of witness by the following:

1. Formulation of witness protection programme to be provide to a witness at all stages i.e. through the way of an investigation; during the process of trial; and after the judgment is pronounced
2. Constitution of a “witness protection cell” to prepare a report for the judge of the trial court to examine and grant protection to the witness referred a “protected” after being admitted in the programme.
4. Providing safeguards to ensure protection of Identity of witness
5. Providing transfer of cases out of original Jurisdiction to ensure that the witness can depose freely
6. Providing stringent punishment to the persons contravening the provisions;
7. Prescribing stringent actions against false testimonies and misleading statements

Witness Protection Scheme, 2018
Witness Protection Scheme, 2018 provides for protection of witnesses based on the threat assessment and protection measures inter alia include protection/change of identity of witnesses, their relocation, installation of security devices at the residence of witnesses, usage of specially designed Court rooms, etc.

The Scheme provides for three categories of witness as per threat perception:

Category 'A': Where the threat extends to life of witness or his family members, during investigation/trial or thereafter.

Category 'B': Where the threat extends to safety, reputation or property of the witness or his family members, during the investigation/trial or thereafter.

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 the investigation/trial or thereafter. The Scheme provides for a State Witness Protection Fund for meeting the expenses of the scheme.
This fund shall be operated by the Department/Ministry of Home under State/UT Government and shall comprise of the following:

i. Budgetary allocation made in the Annual Budget by the State Government;
ii. Receipt of amount of costs imposed/ ordered to be deposited by the courts/tribunals in the Witness Protection Fund;
iii. Donations/ contributions from Philanthropist/ Charitable Institutions/ Organizations and individuals permitted by the Government.
iv. Funds contributed under Corporate Social Responsibility.

The Hon’ble Supreme Court of India in its Judgment dated 05.12.2018 in Writ Petition (Criminal) No. 156 of 2016 has endorsed the Scheme. As per Article 141/142 of the Constitution, the Witness Protection Scheme, 2018 endorsed in the said Judgment of the Supreme Court is binding on all Courts within the territory of India and enforceable in all States and Union Territories. This was stated by the Minister of State for Home Affairs, Shri Nityanand Rai in a written reply to question in the Rajya Sabha today.

III. CHALLENGES TOWARDS WITNESS PROTECTION

There are various realistic problems like costs of execution and infrastructure. When talking about provided that bodyguards, security, relocation to a different area etc., the costs that are concerned are bound to be enormous. But the further relevant problem is that of dishonesty in the administration and judiciary. The first step in developing a witness protection law is to recognize that witness protection is a responsibility of States. Other problem is whether the statements of the witnesses should be record by a Judicial Magistrate. It is virtually not feasible in the present set-up with the low number of Courts and staff lacking Judiciary. At present in India still the expert witnesses of the a variety of forensic discipline do not have any protection. A witness in Indian condition, who is living comfortably with a job and family may not intend to experience such drastic changes in his life for the sake of being a witness in a Court of law. In the Indian situation, where we have so several social obligations and relatives to focus to proper execution of the Witness protection programmes will not be feasible for a variety of reasons. In the 198th Report of the Law Commission a Consultation Paper on Witness Identity Protection and Witness Protection Programmes” was prepared. In the Final Report, the Commission identified three categories of witnesses: (i) victim-witnesses who are known to the accused; (ii) victims-witnesses not known to the accused (e.g. as in a case of indiscriminate firing by the accused) and (iii) witnesses whose identity is not known to the accused. Category (i) requires protection from trauma and categories (ii) and (iii) require protection against disclosure of identity The committee comprising Members of Parliament from the Rajya Sabha was reviewing the status of promises made by the government in 2009 to amend necessary laws to protect witnesses. The commission recommended witness anonymity and protection where there is danger to the witness, to his properties or to those of his relatives, at all stages – investigation, inquiry, trial, appeal.

IV. CONCLUSION

Witness is one of the mainly vital part of justice. He is one of the most vital source of information in discover the fact about the case, but the care and dilemma he has to experience to help the court is a lot as well. By give evidence the witness helps the courts to give exact judgment and justice. The witnesses have the danger of their lives as well as that of their families They have the danger of their properties as well. They have to endure lots of worry when they come to give evidence. Even after doing all this they do not get whatever thing in return. hence it can be obviously seen that the courts are negligent in the way that they treat the witnesses. Witness protection should take place and before now various steps have been taken towards it. Many countries like, Canada, New Zealand, Australia, etc. have a well developed mechanism for witness protection. These mechanisms may support even more witnesses to come forward to give their evidence for the larger good. Witnesses hence should be exposed the respect and gratitude which they are really value of. The problem of perjury also prevail and it depends upon the witness himself to stop it. Otherwise it can contribute to the wrong person being convict while the true criminal and a perjurer walk on the street in freedom.

V. SUGGESTION

Various of the option evaluate in Protection of witnesses are as follows:
1. Target harden - safety from the police to protect the witness and family members use of careful premises brief and interview the witness.
2. Procedural witness protection - trial to avoid certain categories (a) avoid face to face argument with defendants (b) difficult to outline and identity witness through crime (c) psychological pressure and public bound the disclosure of witness.
3. Self Protection - witness support to tool on their own safety and security.

VI. REFERENCES

[7]. https://indiankanoon.org-Criminal Law (Amendment) Bill, 2003
[8]. Salman Khan Hit & Run Case A.I.R. 2002
[9]. 2007 Mecca Masjid case

BIOGRAPHY

[1]. Section 143 of the Indian Evidence Act


[5]. AIR 1976 S.C.C. 566

[6]. Section 193 of the Indian Evidence Act

[7]. Section 196 of the Indian Evidence Act

[8]. Section 199 of the Indian Evidence Act

[9]. http://164.100.47.4/billtexts/lsbilltexts/AsIntroduced/3109 L.S.pdf

[10]. Witness Protection Scheme 2018
