

Role of Judiciary in protecting hostile witness: a critical analysis

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Abstract

Witnesses are an essential component of a well-functioning criminal justice system since they assist in the administration of justice. Witnesses and their role in deciding case results are critical in courtroom trials. However, the problem of hostile witnesses has become a threat because it is the primary cause of high acquittal rates for criminals charged with heinous crimes such as murder, rape, and other crimes. When a favourable witness becomes hostile, it creates a difficult scenario that can affect the outcome of a case. They change their minds before or during the trial after being threatened and pressured by the accused or his or her family members. This can result in a miscarriage of justice or even the death of justice. If no steps are taken to prevent hostile witnesses, society will lose faith in the justice system, resulting in chaos. The lack of witness protection laws has allowed suspects to commit crimes without fear of repercussions because they are no longer scared of the law.

This paper aims to analyse the role of the judiciary in protecting a hostile witness. It examines the issues of hostile witnesses and their impact on the justice system. It attempted to know as to why and in what circumstances the witnesses turn hostile. The paper also critically reviews the idea of witness protection in the light of relevant legal provisions and the views of the judiciary in protecting the witnesses. The Doctrinal method was followed for conducting research on the topic. The kind of research done was Descriptive and Explanatory in which the role of the judiciary in protecting hostile witnesses has been analysed. Normative research was conducted where various books were referred to and so were many websites, articles, for a clear view on the research paper.

Keywords: *Hostile Witness, Witness Protection, Criminal Justice System, Justice, Judiciary*

1. Introduction

1.1. Introduction

In the criminal justice system, witnesses play a critical role. “Witnesses are the eyes and ears of Justice,” according to Bentham, for any argument they make in front of a court of law aids the Court in delivering justice. Without the active and truthful presence of witnesses in criminal trials, justice cannot be served in the criminal justice system. Despite this, no Indian statute defines the term “witness,” and neither the Code of Criminal Procedure, 1973, nor the Indian Evidence Act describe the term “witness” in any of its provisions. As per the dictionary meaning, a witness is someone who is present at an incident and can provide details about it. *“A witness is described as someone who sees, knows, or vouches for something, or as someone who gives testimony under oath or affirmation in person or by oral or written deposition,” or by affidavit*”. (Garner, 2003)

Witnesses and their role in deciding case results are critical in courtroom trials. When a favourable witness gives favourable evidence, it helps to support the argument of the party that invited the witness. However, during cross-examination of the witness, the opposing party can discredit this testimony. The critical position that the witness can play in some cases can have disastrous consequences if the court is forced to rely on other evidence instead of the testimony. Furthermore, in certain cases where the accused or aggrieved parties are influential citizens of a country, the trial may be hampered by some psychological perceptions about their status, which the court should discard and not allow to guide the case.

1.2. Research Problem

When a favourable witness becomes hostile, it creates a difficult scenario that can affect the outcome of a case. Fear is the main reason behind such hostility. They change their minds before or during the trial after being threatened and pressured by the accused or his or her family members. This can result in a miscarriage of justice or even the death of justice. It becomes difficult to work with one's own witness to transform the case in one's favour. The integrity and impeachment of one's own witness causes the trial to drag on and, in some cases, results in an unfair trial, leaving the court in a frustrating position when it comes to determining the facts in a case. It also depends on whether a witness was a key witness or one who might be overlooked in the interest of a just and fair trial. If a key witness becomes hostile, the court can reconsider relying on his or her testimony and instead rely on circumstantial evidence rather than the witness to determine the case's outcome.

1.3. Literature Review

The consideration of facts by way of deposition of witnesses necessitates the acquisition and availability of proof, accompanied by the parties' confirmation or rejection. The proof's accuracy is evaluated in light of demonstrative availability, which eliminates errors. Proof of facts is done in terms of the influence of proof rather than statistical applicability. Proof must be presented and made admissible in courts to a degree that can eliminate falsity and aid in exposing the true facts in a courtroom. In a courtroom, factual issues cannot be decided with statistical accuracy. Since what is presented may not be sufficient to carry out the true facts in order for justice to prevail, the court requires witness testimony to assist in clarifying the existing facts and the discover, which may not be available when evidence is presented. It is not a question of determining the facts are wrong, but rather of determining the truth in matters before the court. The provisions of Chapter X of the Indian Evidence Act, 1872, deal with the questioning of witnesses in court who have been made qualified and devoid of rights and may be required to answer questions that are critical to the case. It establishes a regulatory structure that must be followed and that no court can ignore. While it is true that justice deferred is justice denied, if the trial in the courts is rushed, the essence of claims and the falsity or validity of a witness can become hazy. When the process of their investigation is followed in the courts, the accuracy of screening the claims of people called as witnesses necessitates a diligence that can take time. Otherwise, the evil nature, motives, and, ultimately, the facts, may be concealed. (Mahlawat, 2017)

While procedural rules demand that certain rules be followed, the law also demands that a trial be completed quickly. The courts' findings are based on the specifics of the testimony as well as the behaviour of the witnesses during the trial, where they act or choose to act in a way that benefits them. In such cases, the determination of reality can prove to be a difficult task for the courts and judges. A trial's evidence should not be vague, and it should not be conducted in an orderly manner. When the presentation and prosecution are conducted in a structured way, the courts are able to examine the current as well as evolving evidence, as well as their correctness and fairness, in order to assess the outcome of a trial. When a trial is conducted in a disorganised way, the facts become muddled, and consistency is impossible to achieve. When choosing favourable witnesses, a lawyer must ensure that they speak in a way that is appropriate for the trial, even though they are biased in their favour. Some will flee and others will make inane comments, resulting in potentially dangerous situations. The testimony should be such that it clarifies the situation while keeping a favourable attitude toward the party who is giving the argument. It can take a little longer, but once certainty is achieved, the prolonged trial will be worth it if justice is served. The courts' examination of evidence, which includes translucent claims and corroboration or nullification of false statements, aids in the facts of the matter being accepted and upheld by the courts.

1.4. Scope and Objectives

This paper aims to analyse the role of the judiciary in protecting a hostile witness. It attempted to know as to why and in what circumstances the witnesses turn hostile. The paper also examines the evidential value of statement given by a hostile witness. The paper has tried to analyse the impact of witness turning hostile on criminal justice system. The paper also critically reviews the idea of witness protection in the light of relevant legal provisions and the views of the judiciary in protecting the witnesses.

1.5. Research Methodology

The Doctrinal method was followed for conducting research on the topic. The kind of research done was Descriptive and Explanatory in which the role of the judiciary in protecting hostile witnesses has been analysed. Normative research was conducted where various books were referred to and so were many websites, articles, for a clear view on the research paper. Various cases were studied and analysed, which were collected from case law search engines like Manupatra and SCC Online.

1.6. Research Question

- What are the impacts of witness turning hostile on our justice system and how the judiciary looked into it?

1.7. Hypothesis

The problem of witnesses turning hostile is a major reason for declination in conviction rate. In many cases, the truth remains undiscovered and the accused are acquitted due to the availability of lack of evidence against the accused. Due to the decline in the Conviction rate of the accused in heinous crimes, the punishment does not have a deterrent effect. Another impact on our criminal justice system is the loss of people's faith in the judiciary.

2. Concept of Hostile Witness

2.1. Meaning and Definition

Witnesses play an important role in assisting the court in the administration of justice, but the issue arises when they become hostile. Witnesses, on the other hand, are labelled as "hostile" when they give a statement to the police or any entity with the authority to record it, but then back out when called as a witness before a court of law during a court trial. There is no mention of the word "hostile witness" in any Indian statute, including the Indian Evidence Act, the Code of Criminal Procedure, or any other law. Hostile refers to something that is, unfavourable, adverse or alien. These terms are taken from the British legal system. The word "hostile witness" was first used in the Common Law to provide sufficient protection against the "contrivance of an artful witness" who wilfully destroys the cause of the party calling such a witness through hostile evidence. Such activities stifle not just the interests of litigants, but also the courts' efforts to achieve justice. (Chaturvedi, 2016)

Hostile witness is a witness who testifies for the opposing party or a witness who offers adverse testimony to the calling party during direct examination. A hostile witness is one who, by the way he provides testimony, demonstrates that he is not interested in revealing the truth to the court.¹ Since he weakens the argument of the side he was defending, the hostile witness is often known as an "adverse witness." The lawyer is the one who asks the judge to find the witness hostile. The court has the power to find a witness hostile, and only the court has that authority. It is important to remember that the court cannot find a witness hostile on its own, but can only do so if the prosecution attorney requests it. (Mahlawat, 2017)

2.2. Historical Perspective

The word "hostile witnesses" has a long history in common law. It was first used in the common law to defend against "Mischiefs of Tricky Witnesses" who purposefully defeat the cause of the party calling such person as a witness by providing false proof. Such behaviour not only harms the litigating party's interests, but it also contradicts the very purpose of the judicial system, which is to bring justice to a conclusion. The "safety net" offered by common law was that witnesses were not permitted to make any statements that contradicted their previous statements. Such a protection was established by declaring such a witness as a hostile witness. For this reason, common law established certain

¹ Panchanan Gogai v. Emperor, (1930) 57 Cal 1566.

characteristics of hostile witnesses, such as “not desirous of telling the truth at the request of the party calling him” or “the presence of a “hostile amicus” to the party calling such witnesses.”. (Suprio, 2000)

The rule and its originality of not impeaching a group of his witnesses cannot be decided with certainty, it is most likely derived from a trial by compurgation. During the Middle Ages, this method of trial was common on the continent as well as in England, where it was known as trial by wager of law. If compurgators swore that they believed he spoke the truth, a party could build his plea of defence by taking an oath. The compurgators were nothing more than character witnesses because they only testified to the validity of the party's oath. In the beginning and later, they were chosen by the party himself from among his immediate kinsmen. The ancient Indian texts have such antiquated viewpoints that were common at the time and were used in ancient societies. False testimony in court has been condemned by the Dharm shastras, pragmatically binding individuals to their duty of speaking the facts, which has bound society. The judge's admonition to witnesses is a unique feature of the Hindu legal system. They warned the witness to regard the truthful statement as his dharma and to uphold its integrity in accordance with the morality prevalent in those societies. A thorough depiction of the moral repercussions of perjury often instilled fear in them. Growing up associating reality with goodness and constructive natural forces with merits made him a witness to speak the truth regardless of his caste status. *"The axiomatic concept is that providing true proof earns you an afterlife in heaven, so perjury earns you a place in hell."* (Mahlawat, 2017)

3. Reasons for Witness Turning Hostile

The issue of hostile witnesses has arisen several times in the current scenario. It has been observed that police witnesses often become hostile during trials, resulting in a weakening of the argument in favour of the parties calling those witnesses. Witnesses being hostile can be caused by a variety of causes. The key reasons for witnesses being hostile are greed, fear, and so on, and in order to satisfy their greed or conquer their fear, witnesses appear to become hostile, i.e., back out of their previous statement.

1. Absence of Witness Protection Programs

Many witnesses do not come forward to provide their evidence in India, either because of excessive delays in police or court proceedings. They can even refuse to come forward if they receive threats or warnings. In India, there has long been a need for comprehensive witness protection legislation. Before giving evidence in court, witnesses are often assaulted, harmed, and even murdered. *“Not only is a witness threatened; he is maimed; he is done away with; or even bribed,”* the Supreme Court said in *Swaran Singh's case*. He is not protected in any way.² The primary reason for witnesses retracting their

² Swaran Singh v. State of Punjab 2000 Cri L.J. 2780 (S.C.).

previous comments made during the trials is the danger to their lives. Sec 151 and 152 of the Indian Evidence Act of 1872 protects witnesses from being asked indecent, scandalous, or insulting questions, as well as questions that are likely to offend or harass them. Aside from that, there are no legal safeguards in place to protect witnesses from external threats, inducement, or intimidation.

2. Delayed and Extensive Trials

Apart from the lack of a victim protection policy, another big cause for witness retractions is long and extensive trials. The judicial system is extremely slow. When the witness arrives in court for cross examination, he is informed that the case has been postponed and given a new date to appear. As a result, the witness becomes frustrated, and he tries to become hostile in order to end his problems once and for all. For a long time, the Indian judiciary has been plagued by the evil of endless adjournments. They are one of the most common causes of difficulty and inconvenience for witnesses. They are expected to travel long distances to the courts on their own cost. They may be unable to travel long distances without leaving their families, or they may lack sufficient funds. This frustrates the witness, giving the opposing party an incentive to threaten or intimidate them into not speaking the truth.

3. Lack of Adequate Facilities in the Courts

Despite the critical and vital role that witnesses play in criminal trials, the facilities available to them are limited and inadequate. In some states, witnesses are forced to wait under trees on court campuses or on the verandas of courthouses, as per the 14th Law Commission Report. They are not shielded from the effects of the weather. And even the courthouse sheds are in poor condition.

4. Defaults in Payment of Allowances

The 154th Report of the Law Commission of India stated that the allowances given to witnesses for appearing before the courts are insufficient and demanded immediate payment regardless of whether they are investigated or not. According to Section 312 of the Criminal Procedure Code, any Criminal Court can “*order payment, on the part of the Government, of the appropriate expenses of any complainant or witness attending for the purpose of any investigation, trial, or other proceeding before such Court under this Code,*” subject to any rules made by the State Government. The majority of the time, however, adequate diet money is not paid to the witnesses.

5. Use of Threat/Intimidation by Accused

The most common tactic used by the accused to get witnesses to turn hostile is threat/intimidation. One of the main factors that caused witnesses and their family members to withdraw their previous statements was the danger to their lives.

In *Krishna Mochi v. State of Bihar*³, “*Wrong convictions and wrong acquittals both damage society,*” the Supreme Court said. In this case, the Supreme Court noted that one of the reasons might be that they lack the confidence to witness against an accused because of threats to their lives, particularly when the defendants are habitual criminals, high-ranking government officials, or people with access to power, whether political, economic, or otherwise, including muscle power.

6. Use of Money Power by the High Profile Accused

In most cases, the accused, who is a high-profile person, uses money to avoid prosecution, and in order to do so, they give handsome money to the witnesses, who, as natural people, are easily influenced by the allurements offered by the accused. In such cases, the money power used by the accused in order to avoid criminal responsibility has an effect on the witnesses as well as the victim. As a result, such offenders in our criminal justice system are often acquitted.

4. Evidential Value of Statements Given by a Hostile Witness

SC in many decisions held that the declaration of a witness to be hostile does not ipso facto deny the proof, and it is now well established that the portion of evidence that is beneficial to all parties can be taken advantage of- but the court before which such reliance is put must be extremely careful in accepting such evidence. The judgement was given by SC in *State of U.P. v Ramesh Prasad Misra and anr*⁴. It is also well-established rule that if a hostile witness gave testimony in favour of the prosecution or the accused, his or her testimony will not be completely dismissed; rather, it will be subjected to close scrutiny, with the part of the testimony that is consistent with the prosecution or defence argument being accepted.

If the court thinks that the witness's credibility has not been shattered during the process, he can allow, in view of other evidence on the record, the part of his testimony that he considers to be creditworthy

³ AIR 1961 Mad 92.

⁴ AIR 1996 SC 2766.

and act on it after reading and evaluating the witness's evidence as a whole with due caution and care. As was decided in the case ***K. Anbazhagan v superintendent of Police***.⁵

According to Indian law, just because an individual has become hostile does not mean that his entire argument should be dismissed.⁶ In ***State of U.P. V. Ramesh Prasad Mishra and anr.***,⁷ “*It is the law that the hostile witness's argument to be taken as evidence would not be fully dismissed only because the individual has strayed from his obligation to speak the truth or has not spoken in the prosecution's favour. However, in such a situation, the court may scrutinise the witness's testimony and dismiss only the parts that are inconsistent with the prosecution's case or arguments.*”

5. Impact of Witnesses Turning Hostile on Criminal Justice System

In recent years, India has seen a sharp rise in the number of hostile witnesses, raising concerns about witness safety in criminal trials. It is important to note that India lacks an effective law to protect witnesses of crimes, as a result of which many witnesses have become hostile during trials, obstructing the path that reach towards the justice. In few cases like Jessica Lal, BMW case and ***Best Bakery case***⁸, owing to a lack of witness protection, several witnesses declined to testify in court in favour of the victim and became hostile, resulting in the acquittal of those convicted of heinous crimes. In ***Swaran Singh case***⁹, the Supreme observed while explaining the importance of witness in criminal justice system, that a criminal case is based on the edifice of evidence, evidence that is admissible in law. For that, witnesses are essential for both in direct evidence as well as in circumstantial evidence.

The public is obligated under Section 39 of the Code of Criminal Procedure Act of 1973 to provide police with details regarding the commission of a specific crime. When the information has reached the police through that person or in any other way, the task is completed. Failure to comply with this provision is punishable under sections 176 and 202 of the Indian Penal Code, and providing false information is punishable under section 177. The person's obligation to notify the police occurs only when he is aware of the commission of an offence mentioned in clauses I to (xii) of section 39. As a result of providing inaccurate information, citizens will lose faith in the criminal justice system, which is supposed to deliver justice to victims. Victims will still suffer as long as the witness is hostile and

⁵ AIR 2004 SC 524.

⁶ Syed Akbar V. State of Karnataka 1980 (1) S.C.C. 30 (India).

⁷ 7 (1996) 10 S.C.C. 360.

⁸ 2004 Cri LJ 2050.

⁹ 2000 Cri LJ 2780.

does not provide truthful testimony in court, and people's confidence in the justice system's efficacy and integrity will be eroded and shattered.

It is a moral principle that a person who does something wrong should be punished in order to deter potential criminal behaviour and to set an example for those who commit similar crimes. The rate of criminal conviction, or the number of cases that result in a conviction of the accused, is a good indicator of how well the Criminal Justice System is functioning. The problem of hostile witnesses is a big reason for the drop-in conviction rates. In certain cases, the truth is never revealed, and the accused is convicted due to a lack of evidence against them. The punishment has little deterrent impact due to the reduction in the conviction rate of those convicted of heinous crimes. The best way for an accused to avoid criminal liability is to convince witnesses to become hostile and then get the case dismissed by the court due to a lack of evidence. As a result, they will be motivated to commit more horrific crimes because they are no longer scared of the law, resulting in a state of complete chaos in society.

People's faith in the courts is also diminished as a result of the issue of witnesses turning hostile toward the criminal justice system. The rising rate of acquittals would give the impression to the general public that the court is determining the case on the basis of extraneous considerations, weakening the community's trust in the administration of justice and causing citizens to lose faith in the judiciary. In certain cases, an accused's acquittal has been based on the testimony of hostile witnesses, particularly when a high-profile personality is involved.

In *Priyadarshani Mattoo case*¹⁰, Priyadarshani Mattoo was raped and murdered, and the accused was charged with rape and murder. At his appeal, the prosecution's witnesses gave false testimony in front of the judge. During the trial, the accused's father served as the Commissioner of Delhi. Owing to a lack of availability, the trial court granted the accused the benefit of the doubt and acquitted him. According to the trial court, the accused's father, who was in a powerful role at the time of the trial, may have abused his position. While delivering the verdict, Additional Session Judge G.P. Thareja said, "*Though I know he is the man who committed the crime, I was compelled to acquit him in the benefit of doubt.*"

The above sentences by the Additional Session Judge demonstrate that even though the whole nation knows who the criminal is, the Court is unable to interfere because, in the justice system, conviction is based on the prosecution's evidence against the accused that proves his guilt beyond a reasonable doubt,

¹⁰ (2010) 9 SCC 747 (India).

not on public opinion. Thus, if a witness becomes hostile and falsely deposes before the court during the trial, the court's search, i.e., to reach the end of justice, would be greatly hampered.

In *Zahira Habibulla Sheikh v. State of Gujarat*,¹¹ "A fair trial" is described by the Supreme Court as a trial in which bias or prejudice for or against the accused, witnesses, or the cause being tried is eliminated. A fair trial would also be impossible if witnesses were threatened or forced to give false testimony. The failure to hear material witnesses is undoubtedly a violation of the right to a fair trial.

Witness hostility in serious crimes and crimes committed by "high-profile" people has placed the criminal justice system under strain today. Because of the high acquittal rates in high-profile trials, poor people believe that the legal system is not for them because they cannot afford to buy justice. As a result, they have lost confidence in the legal system.

6. Witness Protection

6.1. Legal Provisions in Witness Protection

The need to provide adequate protection to witnesses has been repeatedly stressed by the country's supreme court in order to ensure a free and fair trial. Though the dust on this topic does not appear to be settling, there are many interconnected legal and procedural issues that involve agreement. The Supreme Court has ruled in many cases that the witness must be treated with care and consideration, and that the state is responsible for his protection. However, the method for achieving these goals has yet to be determined. Since India lacks a formal mechanism for witness protection, the issue becomes critical.

In India, there is no clear law that protects witnesses, as there is in many other countries. The Indian Evidence Act of 1872, on the other hand, has a few clauses. Ss. 151 and 152, which protect witnesses from indecent, scandalous, or insulting questions, as well as questions intended to offend or insult them. Apart from these provisions, there is no provision in India for witness protection. In *NHRC vs. State of Gujarat*¹² the SC said that 'No law has yet been passed, not even a scheme has been framed by the Union of India or by the state government for providing security to the witnesses.' The Supreme Court said, "There comes a time when serious and undiluted thoughts are to be bestowed for witness protection so that ultimate truth is brought before the Court, justice triumphs, and the trial is not

¹¹ 2004 Cri LJ 2050.

¹² 2003(9) SCALE 329.

reduced to a sideshow. Legislative steps to ensure that tampering with witnesses, victims, or informants is prohibited have become an urgent and unavoidable need of the day.”

The Criminal Law (Amendment) Act, 2005 (No.2 of 2006) went into effect on April 16, 2006. The Penal Code, the Code of Criminal Procedure, and the Evidence Act have all been amended by the said Act. The Indian Penal Code has been amended to include Section 195A, which makes it illegal to force or induce someone to provide false proof. Section 195 of the Cr.pc. has also been amended as a result of the aforementioned amending Act. The court has the authority under Section 154 of the Evidence Act to allow the individual who calls a witness to ask him any question that may be asked in cross examination by the opposing party. Judicial pronouncements exist to support the idea that a hostile witness' testimony does not have to be dismissed solely because of his or her hostility. The amending Act added a subsection to Section 154 of the Evidence Act, incorporating the aforementioned theory into the law. The consequences of these clauses have yet to be determined. The issue of hostility in many key cases has raised serious doubts about the country's legal system.

6.2. Judicial Response

In reality, it appears that the higher judiciary's activism for the cause of witness issues is taking shape. The Supreme Court has highlighted the importance of witness protection in a number of decisions in a variety of cases. In *Zahira Habibullah H Sheikh and Others vs. State of Gujarat*,¹³ “Legislative measures emphasising the prohibition against tampering with witnesses, suspects, or informants has become an urgent and unavoidable need of the day,” the court said. “Witness protection programmes are imperative as well as inevitable in the light of the alarming rate of witness somersaults,” it added.

In *Delhi Domestic Working Women's Forum v. Union of India*,¹⁴ The Supreme Court emphasised the importance of maintaining the identity of rape victims who will be the key witnesses in rape trials.

In *Zahira Habibulla H. Sheikh and Another Vs. State of Gujarat and Others*¹⁵, The Supreme Court was clear about the government's position in witness protection. As a protector of its people, it has been noted that the state must ensure that during the trial in court, the witness can safely depose the facts without fear of being pursued by those against whom he has deposed. The Supreme Court reminded the government that it has a constitutional responsibility to protect citizens' life and liberty.

Apart from physical protection from the accused party, the witness must also protect his or her identity, particularly if the accused does not know who the witness is. Witnesses could only come forward in such a situation if there was a way for them to testify without having to face the accused. In two cases,

¹³ 2004(4) SCC 158 (India).

¹⁴ (1995) 1 SCC 14 (India).

¹⁵ 2004(4) SCC 158 (India).

the Supreme Court made some insightful remarks on this issue. In *Sakshi vs. Union of India*¹⁶ in the absence of a statute, judges have accepted 'video conferencing' and 'written questions' in sexual and other trials. In the *State of Maharashtra vs. Dr. Praful B. Desai*¹⁷, allowed the evidence of a foreign medical expert to be received by video-conferencing.

It would be erroneous to believe that the judiciary has only recently, and in certain highly publicised cases, shown an interest in witness protection. The process had actually started back 1952 in *Gurbachan Singh v. State of Bombay*¹⁸ case where the court ordered the accused to be moved or transferred due to a lack of security. Also, in case of *Talab Haji Hussain v. Madhukar Purushottam Mondka*¹⁹, SC said that witnesses should be able to provide testimony without fear of being blackmailed or threatened by the prosecutor or the defence. In *Ms Neelam Katara v. Union of India*²⁰ Delhi High Court gave some guidelines for witness protection. In a defamation case, a peculiar aspect of witness protection came up before the Supreme Court in unusual circumstances.

7. Findings

One of the major issues in India's justice delivery system is witness hostility, and one of the major reasons for this is witness safety during and after trial. Witnesses in cases involving well-known individuals are particularly prone to criminal intimidation. This includes criminals using force or money to persuade witnesses to withdraw statements made about criminals during the trial. In the current situation, it is critical to provide witness protection, especially in cases of heinous crimes such as rape, murder, and other socio-economic offences, but unfortunately, most countries around the world, including India, lack adequate laws relating to witness care and protection. For the safety of witnesses, a comprehensive law is needed. Witnesses are not only insecure in the absence of comprehensive legislation, but they also have no remedy for the injuries they have suffered.

The need to provide adequate protection to witnesses has been repeatedly stressed by the country's supreme court in order to ensure a free and fair trial. Though the dust on this topic does not appear to be settling, there are many interconnected legal and procedural issues that involve agreement. The Supreme Court has ruled in many cases that the witness must be treated with care and consideration,

¹⁶ 2004(6) SCALE 15 the Court (26.5.2004).

¹⁷ AIR 1952 SC 221.

¹⁸ Appeal (cry.) 561-62 of 2005.

¹⁹ AIR 1958 C 374.

²⁰ CrI.WP 247 of 2002

and that the state is responsible for his protection. However, the method for achieving these goals has yet to be determined. Since India lacks a formal mechanism for witness protection, the issue becomes critical.

In recent years, India has seen a sharp rise in the number of hostile witnesses, raising concerns about witness safety in criminal trials. It is important to note that India lacks an effective law to protect witnesses of crimes, as a result of which many witnesses have become hostile during trials, obstructing the path that reach towards the justice. People's faith in the courts is also diminished as a result of the issue of witnesses turning hostile toward the criminal justice system. The rising rate of acquittals would give the impression to the general public that the court is determining the case on the basis of extraneous considerations, weakening the community's trust in the administration of justice and causing citizens to lose faith in the judiciary.

8. Conclusion and Suggestions

Witnesses need much more support than they are currently receiving. We need to pass strict witness protection laws that take into account the needs of witnesses in our system. The media, too, bears a great deal of responsibility. Rather than misrepresenting the case, they should try to provide a positive and analytical account of it. The courts and the legislation should make arrangements to ensure that witnesses are protected. The more protection offered to witnesses, the more witnesses would appear in court to give their testimony.

Protracted trials should be stopped at all costs. This backlog of cases that take a long time to resolve, as well as the regular adjournment of cases, should be eliminated. The rules governing the payment of allowances should be improved so that a poor witness does not become hostile as a result of his or her frustration at having lost a large sum of money. The ease with which bail is granted to the accused in exchange for him threatening the witness should be investigated. There is an urgent need for police reforms in the way inquiries are carried out. If and until the witness is made to understand that the system is designed for him and that he is at ease with it, hostile witnesses would be a frequent phenomenon in any case.

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