

Witnesses Problems in Criminal Law

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Abstract: A Witness has magic force to change the course of the whole case. Now the question that arises is how to protect a witness to ensure the justice? In the most of the cases victims are the witnesses. When the witnesses are children women or old persons there is a necessity the protection of such witnesses.

Key Words: Witness, Witnesses Protection, Witnesses Problems.

Introduction

Witnesses play major role in deciding the guilt or innocence of the accused.¹ Crime has always been considered as a wrong against the State. The State has the right to sanction the defaulter. The rationale behind this philosophy is as it is the duty of the state to maintain peace and tranquility in a society.

Whenever any offender commits a crime, it renders a breach on the duty of the state. This is followed by the loss of public confidence on the state.² Subsequently the state have liabilities to maintain lost reputation impose sanctions. The offender is subjected to a comparative punishment with respect to the offence committed according to the retributive justice theory.³

Who is Witness

A person who has knowledge of an event. As the most direct mode of acquiring knowledge of an event is by seeing it. Witness has acquired the sense of a person who is present at and observes a transaction.⁴

Witness means any person who is acquainted with facts and circumstances or is in possession of any information or has knowledge necessary for the purpose of investigation,

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¹ State of Rajasthan Versus Shambhu Kewat and others (2004) 4 SCC 149

² Krishna Lal Dutta Versus State of W.B. (1974)3 SCC 783

³ State of Bombay Versus Dattraya (2014) SCC online Bombay, 409

⁴ Prem & Saharay's Judicial Dictionary of Words and Phrases, Second Edition, Dr. H.K. Saharay, Vol. IV, 2016, Thomson Reuters

inquiry or trial of any crime involving an offence under this ordinance and who is or may be required to give information or make a statement or produce any document during investigation, inquiry or trial of such case and includes a victim of such offence.⁵

Witness can be defined as “A person who gives evidence in a cause, an indifferent person to each party, sworn to speak the truth, the whole truth and nothing but the truth.”⁶

Witness one who gives evidence in a cause

1. One, who see, knows or vouches for something
2. One who gives testimony under oath or affirmation?⁷

According to the Witness (Identity) Protection Bill, 2006, proposed in the one hundred ninety eight report of the Law Commission of India. “Witness means any person who is acquainted with the fact and circumstances, or is in possession of any information or has knowledge, necessary for the purpose of investigation, inquiry or trial of any crime involving serious offence, and who is or may be required to give information or make a statement or produce any document during investigation, inquiry or trial of such case and includes a victim of such serious offence.”⁸

The Delhi High Court while issuing guidelines for witness protection in Ms. Neelam Katara Case defined witness as, “A person whose statement has been recorded by the Investigating Officer under Section 161 of the Code of Criminal Procedure pertaining to a crime punishable with death or life imprisonment”

Witness can be defined as, “A person who gives evidence in a cause, an indifferent person to each party, sworn to speak the truth, the whole truth and nothing but the truth.”⁹

One who gives evidence in a cause, a witness must attend in court according to the requirement of his subpoena. If he has not been paid his lawful expenses, he may refuse to be sworn, but if he is once sworn, he must give his evidence, a witness is not obliged to answer any question which tends to criminate him. On the application of either party all the witnesses

⁵ Section 3 (1)(ed) of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act 1989

⁶ Available at <http://legal-dectionary.thefreedictionary.com/witness>

⁷ Black’s Law Dictionary, 7th Edition, page no. 1596

⁸ Section 2 (g) of the Witness (Identity) Protection Bill, 2006

⁹ B.L. Bansal and Rajive Raheja, Capitals Legal and Medical Dictionary, Vol. 2, Capital Law House, Dehli, 2006, page no 1853

on both sides are ordered to leave the court until called and each is only called when his evidence is actually required. If a witness who has been ordered out of court remains, it is contempt, if willful and may be treated as such, but his evidence is not rejected. Each witness remains in court after he has given his evidence and is expected not to communicate with those outside to be present throughout, though he be about to give evidence. The application is made either before opening of the case or before the first witness is called. A witness cannot leave the precincts of the court without leave after the evidence of the side is over, nor even when the judge has begun to sum up, for any witness may at the discretion of the judge be recalled at any time before the verdict is given.¹⁰

The Word protect means to cover shield or defend from injury, harm or danger of any kind to defend or guard from injury or danger, to shield, to keep safe, to take care of .¹¹

Word protection under federal Statute prohibiting federal court from staying proceedings in state court except where necessary to protect its judgments means protection against loss of the substantial rights.¹²

All witness, that is to say, all persons who may lawfully be examined or give or be required to give evidence by or before any court or person having by law or consent of parties, authority to examine such person or to receive evidence.¹³

In the view of the definition it is clear that the term witness includes person giving evidence before a court as well as persons giving evidence whether orally or in the form of a declaration before an authorized commissioner of affidavits or Commissioner appointed to examine a witness or an arbitrator appointed by consent of parties.¹⁴

Witnesses Assistance may be divided as follows:

1. Psychological Support
2. Proper Allowances
3. Facilities in court Premises
4. Social support

¹⁰ The Law Lexicon with Maxims, Sumed Malik Eastern Book Company, Lucknow, page no. 1228

¹¹ Section 126 of Indian Evidence Act, Article 60 of Indian Constitution, Section 13 (e) (ii) of Indian Partnership Act, Article 46 of Indian Constitution.

¹² Commerce Oil Refining Corporation Versus Miner 303 F. 2nd 125- Courts 494. Word and Phrases Volume 34 B. Thomson West 2003

¹³ Ranjit Singh Versus State of Punjab AIR 1959 SC 843

¹⁴ Katipada Maity Versus Suknniar AIR 1962 Cal. 639

5. Other kind of professional assistance

The problems faced by the witnesses are multifarious:

1. The witness does not wish to come to the courts to give their statements and evidence because of the fact that they feel unsafe.
2. In India there is no law relating to protection of witnesses and also no remedy for injuries caused to them.
3. When witnesses come for cross examination he is subjected to a lot of harassment, he is under an immense mental pressure when they are asked to answer the questions.
4. At present acquittal rate is high in our criminal justice system because the witnesses are turning hostile due to lack of witness protection.
5. In India most of the cases involving rich influential persons or corrupt politicians, makes crucial witnesses turn hostile, which makes the rule of law a mockery.
6. Direct intimidation, threat, physical assaults to witness by the accused or those close him, makes the witnesses retract and force than to work according to the accused
7. Protections of witnesses are necessary not only before but also during and after the trial.
8. When witnesses examined by the prosecution side and defense side at court there are not provided drinking water, toilet facility or other amenities like food and refreshment which discourages the witnesses.
9. There are worse situations for witnesses when fixed the allowances are not paid to them immediately which are allotted to them. This is un-pardonable act against the witnesses.
10. Witnesses face very critical situation when case gets adjourned and given next date for witness. In this situation often allowances are not paid to witness.
11. In India witness turning hostile is very common, thus judiciary fails to give proper judgment and criminal gets acquittal.
12. The court does not give any respect to witness; he/she is pushed out from the courtroom by the authorities.
13. The Witness waits the whole day to register his evidence; finally the find out case finds often the matter has got adjourned.
14. Hostile witness is not defined in evidence Act, 1872 it's depending on the judge to decide who is hostile?

15. Thailand and Puerto Rico have successfully implemented witness protection despite they are not developed countries. India is comparatively much vaster and better but has no witness protection programme or law; this is the lacuna of our criminal justice system.
16. The Peoples Union for Civil Liberties (PUCL) made a press release on 2 July 2003 pertaining to the Best Bakery case saying there were two reasons why witnesses turn hostile – (i)The police had recorded the statements incorrectly (ii) The police had recorded the statements correctly but were retracted by the witnesses because of intimidation and other methods of manipulation. It means that when our executive body will not function according to law, the Indian law has no provision for punishment to such executive.
17. Witnesses are informers of police who do not provide protection to the witnesses after a certain period of time.

In India protection of witness is bleak. A few witnesses get ready to give witness against the accused but the most of the witness does not present himself/herself before the court due to lack of witness protection in India. A Witness has magic force to change the course of the whole case. Now the question that arises is how to protect a witness to ensure the justice? In the most of the cases victims are the witnesses. When the witnesses are children women or old persons there is a necessity the protection of such witnesses. Witnesses assist the court to discover the truth those witnesses perform an important public duty of assisting the court in deciding who are guilty or innocent. **Former Attorney General Mr. Soli Sorabjee** said that – Nothing shakes public confidence in the criminal justice delivery system more than the collapse of the prosecution owing to witnesses turning hostile and retracting their previous statements.¹⁵

¹⁵ The Indian Express, Oct 26 2003, The columnists, Witness Protection by Soli Sorabjee.

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