



Witness Protection : Problem Faced and Need for Reform

The study and analysis reveal a bitter fact of truth that if we want that "available evidence" may not become into "unavailable evidence" and the respectable witness may not turned into "a person of disrepute" due to no fault of his/her own, we have to provide several protection programmes with immediate effect.

DR.MANOJ KUMAR JAKHAR

A witness is a person whose presence is necessary in order to prove a thing or incident. According to Bentham, "witnesses are the eyes and ears of justice". The role of a witness is paramount in the criminal justice system of any country. Wadhwa J. said, "A criminal case is built on the edifice of evidence, evidence that is admissible in law. For that, witnesses are required whether it is direct evidence or circumstantial evidence."⁽¹⁾

Each and every Statement of witness is very important as it has a magic force to change the course of the whole case. Therefore, their presence in the court is quite necessary. The European Union, for instance has adopted a Resolution (23 November 1995, 95/C 32704) on the Protection of witnesses in the Fight against International Organized Crime. The prosecution mainly relies on the oral evidence of the witnesses for proving the case against the accused. It is for this reason that witnesses deserve a special treatment in such cases.⁽²⁾

The present judicial system has taken the witnesses completely for granted. Witnesses are summoned to the Court regardless of the fact that they have no money, or that they cannot leave their family, children, business etc. and appear before the Court. But that's not all. On reaching the Court, some are told that the case has been adjourned (for reasons that may run into infinity) and the respective lawyer politely gives them a further date for their next appearance.

In the matter of Swaran Singh v. State of Punjab, the Supreme Court observed, "A witness has to visit the Court at his own cost, every time the case is differed for a different date. Nowadays it has become more or less fashionable to repeatedly adjourn a case. Eventually the witness is tired and gives up."

A walk into the recent past, such as in the famous BMW Hit and Run case, the Best Bakery case, and the Jessica Lal murder case, expressively illustrates an increasing and

regrettable tendency among witnesses to turn hostile. This tendency of witnesses turning hostile is leaving the system as a whole in a bizarre condition. The reasons for hostility of the witnesses include, inter alia, the frequent adjournment of cases, absence of physical protection, absurdly minimal allowance and lack of adequate facilities in courts.

In accordance with Rule 16 of the Rules of Procedure and Evidence the Registrar may negotiate confidential agreements on relocation and provision of support services on the territory of a State on behalf of the Court.

Need of the Hour: A Witness Protection Law ⁽³⁾:

Nevertheless witnesses can be protected from turning hostile if we have provisions in law to secure interest of witness whose life is always at stake in case of heinous and other crimes against the state. We can have provisions like:

- (1) Transferring the witness from his city to of residence to another city.
- (2) Government will provide the witness with a job similar to the same he/she was doing.
- (3) The witness shall be given new name, and identity.

We can see some traces of witness protecting attempts in some of the statues. For example Section 30 Prevention of Terrorism Act states that :

"Since the life of the witness is in danger adequate measures should be taken to keep the identity and address of such a witness a secret. The mention of names and addresses of the witness should be avoided in any records of the case and even in the judgments."

Instances where protection was provided :

- (1) NarodaPatia Case,
- (2) KetanThirodkar Case,
- (3) The Twin Blast Case.

To come up with a better judicial system we should come up with witness protection provisions, this fact was recognised many years back in the various judgements given by Honourable Supreme Court such as in the case of NHRC vs. State of Gujarat 4 where it said that 'no law has yet been

enacted, not even a scheme has been framed by the Union of India or by the State Government for giving protection to the witnesses'.

Accept few provisions of Indian Evidence Act, 1872. Sec. 151 and 152 protects the witnesses from being asked indecent, scandalous, offensive questions, and questions which intend to annoy or insult them.

A witness protection program has two broad aspects :

The first is to ensure that evidence of witnesses that has already been collected at the stage of investigation is not allowed to be destroyed by witnesses resiling from their statements while deposing on oath before a court. This phenomenon of witnesses turning 'hostile', on account of the failure to 'protect' their evidence, is one aspect of the problem. The second aspect states to relieve the physical and mental vulnerability of the witnesses and to take care of his/her physical health at all stages of investigation. Therefore, any law for witness protection must take into account both the aspects.

However, the second aspect has hardly received any attention in India. The Law Commission looked for the second aspect in the consultation project on witness protection and has suggested measures like witness anonymity and physical protection to the witnesses. It also drew attention to special statutes on terrorism like TADA and POTA which have provisions for protecting the identity and address of witnesses; and suggested a general law dealing with witness anonymity be implemented. Both the Law commission and the courts are advocating for a witness protection program. India should soon implement a witness protection program if it does not want its criminal justice system to fall.

While the first aspect of protecting the evidence of witnesses from the danger of their turning 'hostile' has received limited attention at the hands of Parliament in some special statutes dealing with terrorism, there is an urgent need to have a comprehensive legislative scheme dealing with the second aspect of physical protection of the witness as well. The 14th Report of the Law Commission highlighted the failure of conviction rates due to lack of protection of witnesses. However, the said Report was very limited in purpose as it dealt with only provision of facilities to the witness as a method for protecting them. The main feature with respect to witness protection under the said Report can be analyzed as follows :

(i) Provision for Adequate Arrangements for the convenience of the witness within the court premises.

(ii) Provision of Allowance enabling them to arrive for testimony promptly and thus avoiding delay.

(iii) There was no mention for the provision of any physical protection for the witness within this report.

Further, in its 154th Report, the Law Commission reiterated upon the recommendations within the abovementioned report. It also tried to provide a basic structure with regards to provision of allowance to witnesses. The main feature of the said report was its qualitative and admmissive nature. It admitted to serious lapses in the judiciary as to not provide for adequate facilities enabling the witnesses to successfully depose off their statements. There are two main features that stand out in the said report :

(i) **General Responsibility :** It talked of creating "necessary confidence" in the minds of the witnesses that they would be protected from the wrath of the accused in any eventuality.

(ii) **Responsibility on the High Court's :** It stated that listing of cases should be done in such a manner that witnesses are able to give their testimony on the said day, and adjournments are suitably thus avoided. Also, it would be the responsibility of the High Courts to provide guidelines to the lower courts to create a schedule that would allow proceedings with trial on a day-to-day basis and the listing of the cases would be on those lines.

Finally, what came into force as a concrete step towards implementation of protection of witness, to a certain extent, was the amendment of the Code of Criminal Procedure, leading to the creation of Section 164 A. This section had two characteristics and helped to create a link between the Magistrate and the Witness to ensure speedier disposal of justice :

(i) **Responsibility of the Police Officer :** Every Police Officer investigating into an offence punishable with imprisonment with note less than ten years was supposed to forward all statements to the Magistrate for the consideration of the recording of statements.

(ii) **Responsibility of the Magistrate :** The statement of any witness would be recorded only when he is produced and examined before the Magistrate. Such recording would be taken in as evidence subject to the principles in Evidence Act, 1872.

Realizing the need of having a better witness protection programme in place, lower judiciary is now working towards creating a new 'vulnerable witness facility' that will help witnesses who are under threat or are likely to be threatened by the accused to come out and depose without any danger. This facility, first to come up in the Tis Hazari court complex, will have a separate room for vulnerable witnesses to provide congenial environment to them during deposition.

What was most comprehensive that provided thorough guidelines in the direction for the implementation of witness protection guidelines has been the Malimath Committee Report. Even though it did not push for stringent laws to be adopted by the country to effectively deal with witness protection, it stated that evolution of a witness programme should be one of the goals in the future of the country so as to plug the loopholes within the judicial system. Further, the said Report gave only brief references to protection of witnesses outside the courtroom. The crux of the protection dealt with the witness being within the court premises. Thus, an effective policy was not pursued with only vague guidelines being set within the said Report.

Physical Protection for witnesses has been a distant dream. The only two effective legislations providing for effective physical protection of witnesses have been the Terrorist and Disruptive Activities (Prevention) Act, 1987 and its avatar, the Prevention of Terrorism Act, 2002. Some of the sections of these Acts provided effective methods to provide for witness protection with respect to specific cases:

(i) **Secrecy of Witness' Identity :** Section 13 of TADA, the Terrorist and Disruptive Activities (Prevention)

Act, 1987 and Section 30 of POTA, the Prevention of Terrorism Act, 2002 (now repealed) provides that the court may take such measures as it deems fit to keep the identity and address of witnesses secret.

(ii) Provision for trial of sexual offences : Section 13 of TADA and Section 30 of POTA provide that proceedings of these nature shall be held in camera, so that there is adequate protection of the witnesses who are giving their testimony.

Further, the development of the need for Witness Protection program can be highlighted through the development of the plethora of judgments that have been passed by the various courts in the country.

Public trial and cross-examination of witnesses in open court :

Sec.327 Cr.PC provides for trial in the open court and 327 (2) provides for in-camera trials for offences involving rape under Sec.376 IPC and under Sec.376 A to 376 D of the IPC. Sec. 273 requires the evidence to be taken in the presence of the accused. Sec. 299 indicates that in certain exceptional circumstances an accused may be denied his right to cross-examine a prosecution witness in open court. Further, under Sec.173 (6) the police officer can form an opinion that any part of the statement recorded under Sec.161 of a person the prosecution proposes to examine as its witness need not be disclosed to the accused if it is not essential in the interests of justice or is inexpedient in the public interest.

Sec. 228A IPC prescribes punishment if the identity of the victim of rape is published. Likewise, Sec. 21 of the Juvenile Justice (Care and Protection of Children) Act, 2000 prohibits publication of the name, address and other particulars which may lead to the identification of the juvenile.

Under Sec. 33 of the Evidence Act, in certain exceptional cases, where cross examination is not possible, previous deposition of the witness can be considered that relevant in subsequent proceedings. The Evidence Act requires to be looked into afresh to provide for protection to a witness.

(i) Restraint of Publication of Evidence : The earliest judgment that comes to mind is that in the case of Naresh Shridhar Mirajkar v. State of Maharashtra⁽⁵⁾, wherein protection of publication of evidence of the witness was allowed by the High Court and later re-affirmed by the Supreme Court as otherwise the business interests of the witness would have been hampered.

(ii) Specific Guidelines for victims of Trafficking: The Supreme Court of India in Gaurav Jain v. Union of India⁽⁶⁾ gave various directions for the rehabilitation and welfare of victims crimes related to trafficking. Anonymity of victims: This was provided in the case of Delhi Domestic Working Women's Forum v. Union of India⁽⁷⁾, in cases dealing with specific instances of rape. It was stated that, "anonymity of the victims must be maintained as far as necessary so that the name is shielded from the media and public. The experience of giving evidence in court has been negative and destructive and the victims often expressed that they considered the ordeal of facing cross-examination in the criminal trial to be even worse than the rape itself."

The importance of holding rape trials in camera as

mandated by Sec. 327 (2) and (3) Cr.PC was reiterated in State of Punjab v. Gurmit Singh⁽⁸⁾. In Sakshi v. Union of India⁽⁹⁾ the Supreme Court referred to the 172nd Report of the Law Commission and laid down that certain procedural safeguards had to be followed to protect the victim of child sexual abuse during the conduct of the trial.

(iii) Video-conferencing for recording of statements : This was laid down and allowed in the case of State of Maharashtra v. Dr Praful B. Desai⁽¹⁰⁾. It was stated that when a statement is recorded through this method, the victim would feel more comfortable and will give answers without any fear or pressure.

The most historic and relevant case that brought witness protection back into focus was the Zahira Habibulla Sheikh v. State of Gujarat⁽¹¹⁾. The main points with respect to witness protection within the said case were as follows:

(i) Evolution of a balance of competing interests: It was stated by the Supreme Court that a delicate judicial balancing of competing interests in a criminal trial, the interests of the accused and the public and to a great extent that of (the) victim have to be weighed not losing sight of the public interest involved in the prosecution of persons who commit offences.

(ii) Change in place of trial : In the present case, the Supreme Court decided to shift the venue of the case from Gujarat to Maharashtra since the Court felt that the witnesses would not be able to depose their statements freely in the said state.

Protection of identity of witnesses v. Rights of accused Principles of law developed by the Supreme Court and the High Courts In the pre-Maneka Gandhi phase the Supreme Court, in Gurbachan Singh v. State of Bombay⁽¹²⁾ upheld a provision of the Bombay Police Act, 1951 that denied permission to a detenu to cross-examine the witnesses who had deposed against him. It was held that the law was only to deal with exceptional cases where witnesses, for fear of violence to their person or property, were unwilling to depose publicly against bad character.

At this stage, the issue was not examined whether the procedure was 'fair'. The decisions in G.X. Francis v. Bankebihari Singh⁽¹³⁾ and Maneka Sanjay Gandhi v. Rani Jethmalani⁽¹⁴⁾ stressed the need for a congenial atmosphere for the conduct of a fair trial and this included the protection of witnesses.

At the end we can conclude that all the study and analysis reveal a bitter fact of truth that if we want that "available evidence" may not become into "unavailable evidence" and the respectable witness may not turned into "a person of disrepute" due to no fault of his/her own, we have to provide several protection programmes with immediate effect.

References :

(1) Wadhwa J. in Swaran Singh v. State of Punjab, (2000)5 SCC 68 at 678. (2) Law relating to hostile witness. (3) hostile Witnesses - a Menace to the Criminal Justice Administration by M.K.Sahu. (4) (2009) 6 SCC 767. (5) AIR 1967 S.C. 1. (6) AIR 1990 SC 292. (7) (1995) 1 SCC 14. (8) (1996) 2 SCC 384. (9) (2004) 6 SCALE 15. (10) AIR 2003 SC 2053; 2003 Cr LJ 9. (11) AIR 2006 SC 1367. (12) CPS (Witness protection and anonymity). (13) AIR 1952 SC 221; 1952 SCR 737. (14) AIR 1958 SC 209.





Degradation of Social-Moral Values and Problem of Elderly People in India

When the winds of change blow all around world, dynamics of the world necessitates new response to achieve a broad national goal. India is also not an exception. We can see a considerable shift in the Indian society with regard to the moral values along with economical changes. It is not only State's liability to cure all social problems by making laws. As a responsible citizen of the society everyone should make effort to secure a social structure based on high moral values and to secure the dignified status of the old age people in the family and in the society as well. In present time, problem of Social-Moral degradation may be appears very tiny to some people but its effect may be huge and dangerous to the society, in future.

NEHA BHARTI

Introduction :

*"When wealth is lost nothing is lost,
When health is lost something is lost,
When character is lost everything is lost"* ⁽¹⁾

- **Billy Graham**⁽²⁾

As rightly said above, without moral values any person, society or Nation, no matter how much economically developed, it will be just like a money making machine. But when the winds of change blow all around world, dynamics of the world necessitates new response to achieve a broad national goal. India is also not an exception. We can see a considerable shift in the Indian society with regard to the moral values along with economical changes. With the increase in population the traditional norms and status of the senior citizens have deteriorated. The traditional Indian society with an age-old joint family system has been instrumental in safeguarding the social and economic security of the elderly people. The result of withering of the joint family system, due to industrialization, globalization etc. is that a large number of parents are not being maintained by their children, as was the normal social practice. In present scenario of our society, since everyone in the household is employed; taking care of the elderly has become a burden on their children or relatives. The traditional norms and values of Indian society also laid stress on showing respect and providing care for the elderly. However with the emerging prevalence of nuclear family set-ups in recent years, the elderly are forced to face number of problems on emotional, physical and financial front.

Basic Reasons Behind Degredation of Social-Moral Values :

Social-Moral degradation along with care and protection of Elderly is a legal as well as social problem. Over the years it has been noticed that the existing laws and provisions for this purpose are good but not uniform, certain and sufficient enough. A sense of financial and social insecurity is growing large in the society. This change is getting a shape of very huge challenge before society these days. Some of very obvious reasons behind Social- Moral degradation are could be :

(i) Changing social setup and breaking of joint family system. (ii) Increase in population of neglected senior citizens. (iii) Lack of family time. (iv) Materialistic approach. (v) Increased prices. (vi) Blind copying of western culture. (vii) Mass media influence. (viii) Dirty politics. (ix) Lack of moral education to respect elders and erosion of traditional values. (x) Gender discrimination among children. (xi) Financial and social insecurity of senior citizens. (xii) Increase in population of elderly people due to development in area of medical science. (xiii) Lack of proper and fast support mechanism for needy persons. (xiv) Implementation of social security provisions and schemes are not prompt. (xv) The creative mind of youth diverted towards unsocial activities due to unemployment. (xvi) People are tending to get more interested into easy way of attainment of wealth, power and fame etc. giving least consideration to human values, etc.

Some Possible Solutions :

(i) Parents are the first school for children and then teachers play very important role, they must be role model

for children to emulate morality.

(ii) The legislature should legislate to control media, who publish indecent action in their publication. As media plays a role of fourth pillar of our National system, they better be careful about their responsibility and eventually reduces the stress of moral decay.

(iii) The educational system should provide compulsory moral and ethnic classes together with some social work activities, to all students.

(iv) Teaching method should not just exam oriented but also practical with continuous education and evaluation.

(v) Children in schools should practice and learn rituals, custom, tradition, religion and social work activities as well as modernization should be simultaneously maintained.

(vi) Parents should ensure the environment around children in such a manner, so that children from their childhood get in touch of everybody within a society.

(vii) Social organizations should concentrate on value based moral character of the society and accordingly steps have to be taken to organize common people irrespective of age.

(viii) Nationalism, patriotism, value based education should be incorporated within the existing curriculum as compulsory matter at all stage.

(ix) Political organizations should think about their activities and avoid dirty politics. They should realize their great responsibility given by public along with tremendous power.

(x) One of the ways to improve the situation of elderly would be, if they received a higher, more regular pension by the government, in order to meet their needs without being burden on others.

(xi) Economic stability, employment and anti-depressive, peaceful atmosphere, financial security and essential infrastructure should be provided as much as possible to the younger generation of society, to directing youth energy in positive way.

(xii) Government should ensure the proper implementation of various social security schemes running at present time within the country, to prevent vagrancy in society.

(xiii) Government and people should support NGOs working in grass-root level in society, to improve the condition of the elderly people in the society.

But more over all these things, people should have love and affection and a sense of responsibility towards their aged parents and society.

Present Legal and Social Situation of Elderly in India:

As far as the Indian law is concerned, there are various provisions which provide for the care and protection of the dependants and elderly people, under personal and other laws like :

(i) Hindu Adoption and maintenance Act, 1956.⁽³⁾

(ii) The Hindu Marriage Act, 1955.⁽⁴⁾

(iii) Provisions under Muslim Law.⁽⁵⁾

(iv) Provisions under personal laws of other minor communities in India.

(v) Criminal procedure code, 1973.⁽⁶⁾

(vi) Juvenile Justice (Care and Protection) of Children Act, 2000.

(vii) Constitution of India, 1950⁽⁷⁾ and

(viii) Other social security laws.

Though, these provisions are based on very pious ideas of Welfare State, but these are very much in scattered form. There was no concrete and uniform law, especially for the elderly people, prior to the Maintenance and Welfare of Aged parents and Senior citizen Act, 2007. Unfortunately this Act is also not sufficiently fulfil, the needs of the senior citizen who do not have either children or property. Proper implementation of these laws is also a very huge issue. It should be the constitutional duty of the State to make some laws for the welfare and extra protection of senior citizens including palliative care. Central and State Government both should also take initiative to promote these laws and scheme through mass media, so that common man could aware about these provisions and got benefited. Sufficient awareness and sense of responsibility in society, is also plays a very essential role in successes of any social security provisions and schemes.

Suggestions and Conclusion :

It is not only State's liability to cure all social problems by making laws. In between today's fast track life style, we should slow down for a while to think about our families and loved ones along with degradation of social-moral values taking place in our society. All these emerging problems, in our society indicate the social and cultural degradation in our country and blind copying of western culture. Since it is not only a legal problem but a social problem as well so without the awareness and support of the people in the society all provisions made by Government would be futile. As a responsible citizen of the society everyone should make effort to secure a social structure based on high moral values and to secure the dignified status of the old age people in the family and in the society as well.

References :

- (1) <https://www.brainyquote.com>
- (2) *An American Christian evangelist.*
- (3) *The Hindu Adoption and Maintenance Act, 1956, Chapter III, Section- 3 and 18-28.*
- (4) *The Hindu Marriage Act, 1955, Section- 24,25.*
- (5) *Text book on Muslim Law- by Rakesh kumar Singh, page 185.*
- (6) *Criminal Procedure Code, 1973, chapter IX, Section 125-128.*
- (7) *Constitution of India, 1950, chapter III, IV.*

