

MAHENDRA CHAWLA & ORS V UNION OF INDIA & ORS: ENSURING “RULE OF LAW” BY PROTECTING WITNESSES

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“A witness is a man whose life and faith are so completely one that when the challenges come to step out and testify for his faith, he does so, disregarding all the risks, accepting all consequences.”

- Whittaker Chambers

India follows the adversarial form of judicial system where judges decide the matter on the basis of evidences produced before it. Evidence whether in the form of documentary or oral are essential for arriving at definite conclusion and ensuring that justice is done. Hence witnesses play a prominent role in dispensing justice, even more so in criminal cases where oral testimonies play a dominant role. Hence their protection is sine qua non of a modern judicial structure.

The need for witness protection was hence a long overdue. It was emphasized by Law Commission in its 198th Report (Witness Identity protection and witness protection programme). This sad situation was reiterated by Malimath Commission in 2003 which also advocated for witness protection legislation. Supreme Court asked centre and states to implement the witness protection scheme 2018. This was ordered in the wake of increasing number of attacks on the witnesses and numerous witnesses turning hostile (witness in legal case that supports opposite side)¹. Such incidents led to an increase in arrears of criminal cases pending in the court since witnesses hesitate to come before the court. Over 22 lakhs which

¹ Webster dictionary

are over a decade old are pending in various subordinate courts of the country. These cases constitute 8.29 per cent of the total nearly 2.50 Crore cases pending in the lower courts².

Protection of witness is a pre-requisite for an efficient judicial system in a country which in turn is required for sustenance and proper functioning of state governed by rule of law. Prevailing feeling of fear in the country seriously impairs the right of the people of the country to live in a free society governed by rule of law. If one is unable to testify in courts due to threats or other pressures, then it is a clear violation of Article 21 of the Constitution. The right to life guaranteed to the people of this country also includes in its fold the right to live in a society, which is free from crime and fear and right of witnesses to testify in courts without fear or pressure.

The courts have, during a course of development, adopted various measures to ensure witness protection:

- A. Publication of evidence of the witness only during the course of trial and not after [Naresh Shridhar Mirajkar and Others vs. State of Maharashtra and Another;³
- B. Re-trial allowed due to apprehension and threat to the life of witness [Sunil Kumar Pal vs. Phota Sheikh and Other;⁴
- C. Necessity of anonymity for victims in cases of rape [Delhi Domestic Working Women's Forum vs. Union of India;⁵
- D. Discouraging the practice of obtaining adjournments in cases when witness is present and accused is absent. [State of U.P. vs. Shambhu Nath Singh;⁶
- E. Making threatening of witnesses as a ground for cancellation of bail [Ram Govind Upadhyay v. Sudarshan Singh;⁷

However Supreme Court guidelines failed to meet their desired results (as per records).

Many a time witnesses are reluctant to give evidences because they fear for their and their family's well being. The accused belonging to power strata of hierarchy use their resources to threaten, induce or compel the witnesses to give false evidence or abstain from giving witness.

² National judicial data grid, Sept 17, 2018.

³ [1966 (3) SCR 744]

⁴ AIR 1984 SC 1591

⁵ (1995) 1 SCC 14)

⁶ (2001) 4 SCC 667]

⁷ (2002) SLT 587]

Hence we usually see the more “powerful” easily getting away which tarnishes the image of judiciary and dents the trust of people in their judicial system. There needs to be a balance between natural law principle that witnesses be produced before the accused and the protection of witness for proper dispensation of justice.

The said petition was filed in the light of criminal case pending against the self-proclaimed Godman Asaram Bapu wherein till now 4 witnesses have been killed. One of the petitioner has himself narrowly escaped a murder attempt. Looking in this context court felt the utmost necessity of taking immediate steps to stop this hooliganism. Accordingly the scheme was submitted by the Ministry of Home Affairs in November 2018. The states and union territories have also accepted the said scheme and forwarded their recommendations for consideration.

The scheme’s main objective is to ensure that the investigation, prosecution and trial of criminal offences is not prejudiced because witnesses are intimidated or frightened to give evidence without protection from violent or other criminal recrimination. It aims to promote law enforcement by facilitating the protection of persons who are involved directly or indirectly in providing assistance to criminal law enforcement agencies and overall administration of Justice. The Scheme categorizes the witnesses in three categories based on the extent of danger to them and lays down detailed procedure for the protection of the respective categories.

The Scheme however doesn’t provide answers to all the questions and leave some ends open giving wider discretionary power to the adjudicating authority. When the privacy issues are in debate the Witness Protection Scheme 2018 needs to be applauded for striving to ensure that witnesses’ privacy are upheld without prejudice to the justice dispensation system.

The court in its operative part gave following guidelines,

1. Approved and gave effect to the Witness Protection Scheme 2018.
2. Directed Union and states to implement the scheme in letter and spirit.
3. It shall be the law under article 141/142 of the Constitution till suitable legislation is enforced by the legislature.
4. All the district courts shall have vulnerable witness deposition complex.

CONCLUSION

Bentham said that “witnesses are the eyes and ears of a justice”. There is an ever increasing effort to shut these eyes and ears by hook or by crook. There is a continuous decline in the ethical values of witnesses and number of witnesses turning hostile is on increase. So it appears that it is the most crucial juncture when legislature shall come up with a rigid and structured law. The United States Federal Witness Protection Programme or Witness Protection Programme or WITSEC serves as an ideal model for inspiration for attaining or said objectives.

The court’s order and scheme provide only a temporary respite. There is a dire need for permanent structured legislation and redressal mechanism for its proper implementation and, to ensure that principle of natural justice and rule of law, as envisaged by our constitution, is upheld in its true spirit.