

Law Commission on Witness Protection

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Abstract: The witness needs a protection program since the beginning of the case. His protection should start right from the commencement till the end of the case. The Law commission in its numerous reports has brought this topic up for safeguarding the rights of witnesses. Law commission has given immense importance to protect these witnesses by submitting various reports. The Supreme Court and other law framers have also taken into account of how important their safety is for the case and otherwise. But there should always be equilibrium between the rights of accused and rights of the witnesses. The law can't give importance to one over the other. The balance should be maintained so that one doesn't suffer the loss because of the involvement in the case. However, despite of weak framework towards the witnesses, the latter has to go through lot of hardships both physically and mentally. That is why there is dire need to set different protection programs and policies for catering the need of the vulnerable witnesses. The primary part is to shield the identity of witnesses from any kind of threat. The parliament has showed relevancy in making more authoritative plan managing this issue rather than fear based oppression program. Every witness should be guaranteed his security without disclosing his identity. Further, the two parts of secrecy and witness protection should be guaranteed in every single criminal case including grave violations not constrained to fear based oppressor wrongdoings. The usage of such a law would include drawing up (a) methodology for giving secrecy to witnesses and furthermore (b) presenting Witness Protection Programs too in which individual protection is conceded to the witness; now and then by moving the witness to a better place or even an alternate nation; or by giving some cash to support or even by giving work somewhere else. The Law Commission has taken up the subject suo-motu by virtue of the perceptions of the Supreme Court in certain essential cases and furthermore on account of quick significance of the subject in our nation.

Keywords: Witness Protection, Law Commission Report, Cross-Examination, Code of Criminal Procedure, 1973, Hostile witness.

I. INTRODUCTION

The Law commission has critically analyzed the concept of witness protection. This commission has briefed about the procedure established for the protection of witness and other issues related to witnesses like (1) Protection of witness from threats (2) physical and mental wellbeing of witness. The prime perspective of witness protection has been given consideration because of the amendment in the Code of Criminal Procedure, 1973¹.

Section 164A has been added by 178th Report in 2001, which includes material witness and offences which is punishable for 10 years of imprisonment. The Criminal Law (Amendment) Act, 2005² was also passed on the basis of this amendment. In any case, the second viewpoint has scarcely gotten any consideration in India. On the recommendation of Law Commission certain parameters have been taken proposed like secrecy of witness and providing physical protection for witnesses. Few mandates should be taken care of as far as witness is concerned i.e. Protection of his identity, his security, his cross-examination and other rights etc. He should be given utmost care as he is a prime individual in any case. In the

countries like U.S showdown of witness is prerequisite. The protection of witness should be made accessible in three parts: first at the time of investigation and where there is apprehension that there might be danger after disclosing the identity of witness then magistrate demands the safeguarding of the witness. Second protection should be done in the middle of inquiry and at the time of trial and third stage of protection comes in between of trial and at the time of recording.

The main issue remains that which part of Criminal Justice System is structured to protection the witness. The law commission has conducted a survey from different segments like legal executives, bar, police to gain their perspective on witness protection. The suggestions and recommendations can be drawn from these perspectives; the foremost is that witness protection program should be taken seriously when it is linked with some serious crime. There are four stages i.e. investigation, inquiry, trial, post-trial where the need of witness is recommended.

The best way to ensure that witness identity is safe and protected is to provide him with different personality. The purpose of this program will establish an extensive support and help to the witnesses. Legal framework should be established

¹ Act No. 2 of 1974, Section.164

² Act NO. 2 OF 2006

to manage the program of witness protection. All the different types of witnesses should be covered under the umbrella of this protection program so that the maximum protection to the witness can be granted. The witness programs should work at both domestic and international level so that there is proper execution of it.

The witness protection programs should be given protection outside the court also as proposed by the Law Commission" At the occasion of people in general investigator, the witness can be given another personality by a Magistrate in the wake of directing a specialist inquiry in his chambers. The Commission expressed its view that in all cases triable by Courts of Session and Courts of equal designation or Special Courts, wherever there is proof of danger to the life or property of the witness or of his relative, witness identity protection must be available. The Commission observed that it is not necessary that witness protection be confined only to cases of terrorism and sexual offences. The Commission observed that the accused has a right to know the names and addresses of prosecution witnesses, so that he may inquire whether the witnesses were competent to give evidence with regard to the offence and to exercise his right of cross-examination, but it observed that the said right of the accused is not absolute. The Commission, therefore, suggested that it has to be balanced against the rights of the victims and other prosecution witnesses so that they can depose without any fear or danger to their lives or property or to the lives or property of their close relatives. No doubt, this procedure must be resorted to in exceptional circumstances and provided further if the Court is satisfied that the victim or witness's evidence is credible. The Commission recommended that in such cases, the victim can be permitted to depose with an intervening screen or through video-link so that he need not face the accused; and the prosecution witnesses may depose by an arrangement under which the accused will not be able to see them and their identity will not be disclosed to the accused or his lawyer.

If there should arise an occurrence of probability of risk of his life, he is given an alternate personality and may, if require be, even moved in a better place alongside his dependents till the trial of the body of evidence against the denounced is finished. The costs for upkeep of the considerable number of people must be met by the State Legal Aid Authority through the District Legal Aid Authority. The witness needs to sign a MOU which will drill down the commitments of the State and in addition the witness. Being admitted to the program, the witness has a commitment to dismiss and the State has a commitment to secure him physically outside Court. Rupture of MOU by the witness will result in his being removed from the program". To cause impact in this whole instrument, the Law Commission has proposed an enactment for 'Witness Identity protection Act' which deals with both procedural and authoritative part of this framework.

II. CRITICAL REVIEW

Law commission has done extensive work related to witness protection which is worth noticing. It has examined all the intricacies of witness protection and put out in comparison with different countries of the world. In addition to that this commission is keen to develop effective program for protection of witnesses by managing hostile witness and opting different ways of cross examinations. The most difficult part is to supervise hostile witnesses which are out of the ambit of this commission report yet this issue can be addressed without actually changing the basic elements of criminal justice system of India. There are numerous hardships that the witness has to suffer that includes their dealing with police, unnecessary harassment in the court, misconduct, wastage of money ,time and efforts and furthermore dismissal of cases causes more distress to witness than any comfort.

The law commission has skipped some major points from their report. It has failed to commit to any present plan and its future plan remains not discussed. There are numerous cases where witness has turned hostile like Asaram case, Jessica Lal case³ because of which the whole case goes upside down. There are two main reasons 1) distorting evidences 2) hostile witnesses to make the justice delayed and sometimes denied. The witnesses are sometimes dusted under the carpet. There are many reasons for witnesses to turn hostile like the whole process is troublesome and time consuming, then the situation becomes a life threatening one for them, there is lot of money and time wastage etc. that's why certain protection of witness program needs to be established so that there is no chance of travesty of justice rather the whole sanctity of justice is maintained.

The few fundamental needs to be checked while framing any policies or programs related to witness protection these are:

1. To provide detailed format of witness assistance and protection programs with their functionality by giving these programs comprehensive structure.
2. The issue of witnesses like hostile and other factors affecting witnesses should be strengthened up and their scope should be enlarged in the proposed as well as in the upcoming plans.
3. The law commission and few decisions of Supreme Court has put light on the various concerns of witness. That is why many provisions have been incorporated related to these witnesses. In like manner, a Criminal Law (Amendment) bill 2003,⁴ was issued. The issue is that this law is currently in presence and certain provisions are now there to manage hostile witness and the proposed law by the Law Commission to handle protection issue may catch a portion of these game plans to make it increasingly comprehensive.
4. The witness protection is not only backed up by amalgamation of legal provisions but it is recommended that it should serve as a governing

³ Manu Sharma v. State (NCT of Delhi) (2010) 6 SCC 1

⁴ Bill No. LX of 2003

body comprising of legal officers, NGOs, social activists and other eminent person specialized in the field of criminology and other spheres.

5. While working in assisting and protecting the witnesses the staff at local and national level both should be adequately knowledgeable and efficient.
6. As observed by the Supreme Court in several decisions that witness tries to sway away from the main case as the people associated with the case becomes insensitive and emotionless. It is very important to critically analyze these issues of witnesses if providing justice is most rightful thing that the society demands. To keep witness associated with the case his security and protection becomes the foremost consideration. Different laws have been granted to the protection of witnesses yet the implementation is not upto the mark. The law commission has however tried to bring this topic of grave importance on the table so that it can be

discussed, analyzed and implemented in best possible way.

III. REFERENCES

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