

NATIONAL JUDICIAL ACADEMY



WORKSHOP ON WITNESS PROTECTION

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PROGRAMME REPORT

PROGRAMME COORDINATORS:

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Overview of the Workshop

The workshop was conceived to facilitate deliberations among participant judges on contemporary issues pertaining to witness protection. The workshop included discussions on the evolving jurisprudence of witness protection and the modalities of the Witness Protection Scheme, 2018. The workshop sensitized judges with the procedural framework for protection of witnesses and developing strategies for creating witness friendly courts and recording evidence of vulnerable witnesses in court proceedings. The emphasis was on enabling dialogue through clinical analysis of statutory provisions and relevant judgments. The Workshop provided a forum for participants to deliberate and share solutions for effective implementation of Witness Protection measures.

Session 1 - Witness Protection: An Overview

Speaker: Justice S.G Gokani

On the theme of *Witness Protection: An Overview*, the session commenced by quoting Bentham “witnesses are the eyes and ears of justice” and the need for protection of witness in the criminal justice system was expounded. It was opined that witnesses are taken granted by the system and the Courts must be sensible to the trauma of attending court regularly for a common man. It was suggested that courts must refrain from granting unwarranted adjournments where the witness has travelled from a far-off place as was observed in the case of *Swaran Singh v. State of Punjab, (2000) 5 SCC 668*.

Thereafter, several facets relating to a witness under Cr.P.C were delineated:

- Any police officer conducting an investigation has the power to summon any person who is acquainted with the facts and circumstances of the case under investigation. The summons shall be in writing. The person shall be within the limits of his station or adjoining station. A male witness under the age of fifteen years or a female witness of any age shall not be asked to attend at any place except where such person or resides. [Section 160(1)]
- A person cannot be compelled to give incriminatory statement against oneself. [Section 161(2)]
- Statement of a witness recorded under section 160 Cr.P.C need not be signed. [Section 162]
- The witness on his way to court shall not be required to be accompanied by police. [Section 171]
- The witness shall also be entitled to expenses incurred, as per Rules, by the police officer, if called during instigation to any place other than his residence.

Further, Section 195A of the Indian Penal Code was discussed in the context of fabricating false evidence. Thereafter, while dealing with the issue of hostile witnesses the case of *Ramesh v. State of Haryana, (2017) 1 SCC 529* was highlighted wherein the following reasons were enumerated which leads the witness to turn hostile:

- Threat/Intimidation.

- Deployment of muscle and money power by the accused.
- Use of stock witnesses.
- Protracted trials.
- Hassles faced by the witnesses during investigation and trial.
- Absence of any legislation to check hostility of witness.
- Inducement by various other means.

Further, it was observed that a significant reason for witnesses turning hostile may be what is described as the 'culture of compromise'. In *Zahira H. Sheikh v. State of Gujarat, (2006) 3 SCC 374* it was observed that when witness himself is incapacitated from acting as eyes and ears, trial gets paralysed. Thereafter, the case of *Ashwini Kumar Upadhyay v. Union of India, Writ Petition (Civil) No. 699/2016* (Supreme Court) was discussed wherein it was observed by the Apex Court that the Witness Protection Scheme, 2018 subsequently approved in the case of *Mahender Chawla v. Union of India, (2019) 14 SCC 615* must be strictly enforced by the Union, States and UTs. It was held that in cases involving present as well as former legislators (MPs and MLAs) the Trial Court may grant protection under the said scheme to witnesses without their making any specific applications in this regard keeping in mind the vulnerability of witnesses in such cases. The cases of *Sanjeev Nanda v. State, 2009 SCC OnLine Del 2039* and *K. Anbazhagan v. The Superintendent of Police, (2004) 3 SCC 767* were referred on the aspect that the statement of hostile witness cannot be rejected in its entirety, the part of testimony which is creditworthy may be used by the Court.

Lastly, other important cases that were referred in this regard were:

- *Sunil Kumar Pal v. Phota Sheikh, AIR 1984 SC 1591* in which re-trial was allowed due to apprehension and threat to the life of witness;
- *Delhi Domestic Working Women's Forum v. Union of India, (1995) 1 SCC 14* wherein necessity for anonymity for victims in cases of rape was emphasized;
- *State of U.P. v. Shambhu Nath Singh, (2001) 4 SCC 667* which discouraged the practice of obtaining adjournments in cases when witness is present and accused is absent; and
- *Ram Govind Upadhyay v. Sudarshan Singh, (2002) 3 SCC 598* wherein threatening witnesses was held as a ground for cancellation of bail.

Session 2 – Modalities of Witness Protection Scheme, 2018

Speakers: Justice S.G Gokani and Dr. Justice G. Jayachandran

On the theme *Modalities of Witness Protection Scheme, 2018*, the history and evolution of witness protection in India was highlighted. It was stated that the first ever reference to Witness Protection in India came in 14th Report of the Law Commission of India in 1958. Further reference on the subject can

be found in 154th and 178th report of the Law Commission. The 198th Report of the Law Commission of India titled "Witness Identity Protection and Witness Protection Programmes, 2006" is also dedicated to the subject. On the need and justification for such scheme it was opined that in cases involving influential people, witnesses turn hostile because of threat to life and property and the state fails to acknowledge its obligation in extending the protection to witnesses in appropriate cases. In *State of Gujarat v. Anirudh Singh*, (1997) 6 SCC 514 it was held that it is the salutary duty of every witness who has knowledge of the commission of a crime, to assist the State by giving evidence. In *Zahira Habibulla H. Shiekh v. State of Gujarat* 2004, (4) SCC 158 SC while defining Fair Trial the Apex Court observed that "if the witnesses get threatened or are forced to give false evidence that also would not result in a fair trial". Subsequently, in *Neelam Katara v. Union of India* 2003 SCC OnLine Del 952 the Delhi High Court after considering the Witness Protection Schemes in western countries, the 154th and 178th Law Commission Reports and Vohra Committee Report issued the Witness Protection Guidelines. Also, in *Mahender Chawla v. Union of India*, (2019) 14 SCC 615 the witness protection scheme, 2018 was approved and declared to be the law under Article 141 by the Apex Court in absence of any legislation by the centre and the states.

Thereafter, the modalities of Witness Protection Scheme, 2018 was delineated. The scheme has VI Parts; 15 clauses and a Form. Witness is defined as a person who possess information or document about any offence. Offence is defined as those offences which are punishable with death or Life imprisonment or an imprisonment up to 7 years and above and also offences punishable under Sections 354, 354 A to 354 D and 509 IPC. Competent Authority (CA) is defined as a Standing committee in each District chaired by District and Sessions Judge with Head of the Police in the District as Member and Head of the Prosecution in the District as Member Secretary.

Subsequently, the categories of witnesses, witness protection application, powers of the CA and types of protection measures under the scheme was elaborated and provided as follows:

Categories of Witnesses:

- **Category A:** Threat extends to **the life** of the witness or his family members, during investigation/trial or thereafter.
- **Category B:** Threat extends to the **safety, reputation or property** of the witness or his family members, during investigation/trial or thereafter.
- **Category C:** Moderate threat extends to harassment or intimidation to the **safety, reputation or property** of the witness or his family members, during investigation/trial or thereafter.

Witness Protection Application:

- Application to the Member Secretary in the form prescribed with supporting documents.
- Committee shall forthwith call for **Threat Analysis Report (TAR)** from the ACP/DSP in charge of the concerned police Sub-Division.
- ACP/DSP shall forward TAR within 5 working days.
- Application should be disposed off within 5 working days from the date of receipt of TAR.

Powers of the Competent Authority:

- Depending upon the urgency, in the matter owing to imminent threat, CA can pass orders for interim protection, pending decision on the WP application.
- Can interact with the person (witness) preferable in person to ascertain the needs of the witness.
- Proportionate to threat – protection shall be provided for specific period not exceeding 3 months at a time.

Types of protection measures:

- Monitoring the mail and telephone calls of the witness.
- Arrangement with Telephone Companies to assign an unlisted telephone number.
- Installing CCTV /security doors/alarms/fencing etc in the witness home.
- Emergency contact persons for the witness.
- Close protection. Regular patrolling around the witness house.
- Concealment of identity of the witness by referring him with the changed name or alphabet. (coded witness)
- Ensure witness and accused do not come face to face during investigation or trial.
- Holding *in camera* trial.
- Escort to and from the court.
- Allowing a support person to remain present during recording of statement and deposition.
- Usage of special designed vulnerable witness court rooms. Special arrangements for live video links, one way mirrors and screen apart. Separate entrance. Modify image or voice of the witness.
- Financial assistance for relocation.
- Any other form of protection necessary as per the facts and circumstances of the case.

Monitoring and review:

- Witness Protection Cell (WPC) shall file a monthly follow up report before Competent Authority (CA).
- CA shall review the Witness Protection Order (WPO) on a quarterly basis based on the monthly follow up report submitted by Witness Protection Cell.
- In case, CA finds that there is need to revise the WPO on application or on completion of trial, a fresh Threat Analysis Report (TAR) shall be called from ACP/DSP and revise the WPO.

Review against the WPO:

- If the witness or the Police Authorities aggrieved by any WPO, shall within 15 days of passing of the order by the CA, shall seek for review of the decision.

Session 3 – Protection of Witnesses under Special Legislations

Speaker: Dr. Justice G. Jayachandran

On the theme of *Protection of Witnesses under Special Legislations*, the deliberations commenced by citing *Vadivelu Thevar v. State of Madras, AIR 1957 SC 614* wherein it was held that oral testimony of a witnesses may be classified into three categories - wholly reliable; wholly unreliable; and neither wholly reliable nor wholly unreliable.

Further, in *Bhagwan Singh v. State of Haryana, AIR 1976 SC 202* it was observed that the evidence of a hostile witness is no bar to convict an accused and the veracity of testimony by a hostile witness can be assessed without discarding it totally. Similarly, in *State of UP v. Ramesh Prasad Misra, (1996) 10 SCC 360* it was held that evidence of hostile witness should not be totally rejected in entirety, if spoken in favour of the prosecution or the accused, but can be subjected to scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defence may be accepted.

Thereafter, an interesting case of *Aghnoo Nagesia v. State of Bihar, AIR 1966 SC 119* was expounded. In this case the accused murdered 7 members of his family and informed the police about the crime. His statement was treated as first information and the FIR was registered. He was convicted both by the Trial court and High Court. The Apex Court divided the FIR into 18 parts and held that the substantial part of the information in the FIR is hit by section 25 of Evidence Act.

On the aspect of Stock Witness the case of *Prem Chand (Paniwala) v. Union of India, (1981) 1 SCC 639* was highlighted. In this case Premchand Paniwala with the indulgence of the local police used to park his mobile refrigerated water-carts on the road side and in return for the indulgence shown to him by the police he gave false testimony in as many as 3000 cases. Even though Courts had dubbed him as a stock witness and passed severe strictures and disbelieved his testimony, Premchand Paniwala continued to act as a tool in their hands for the survival of his business. When he wanted to give up being a stock witness, the police avenged themselves by passing an externment order. Consequently, Premchand Paniwala moved the Supreme Court for quashing of the externment order, with the damning confession and produced few hundred witness summons he received from various courts in Delhi.

Justice V.R.Krishna Iyer observed that Premchand Paniwala became a regular peddler of perjury "on police service". However, the crisis came when he declined to oblige with perjury since he felt his wealthy station in life and the character-building stage of his children warranted giving up the profession of stock witness. The Court directed the State to issue clear orders to the Police Department to free the processes of investigation and prosecution from the contamination of concoction through the expediency of stockpiling of stock-witnesses. Justice Iyer quoted Justice Brandeis, "Crime is contagious. If the government becomes a law breaker, it breeds contempt for law".

Subsequently, the various provisions for the protection of witnesses under special statutes viz., Unlawful Activities (Prevention) Act, 1967 (UAPA), Prevention of Terrorism Act, 2002 (POTA), National Investigation Agency Act, 2008 (NIA), Prevention of Children from Sexual Offences Act, 2012 (POCSO), Juvenile Justice (Care and Protection of Children Act) Act, 2015 (JJ Act) and Scheduled Caste and the Scheduled Tribe (Prevention of Atrocities) Act, 1989 (SC-ST Act) were delineated. It was stated that UAPA provides the most robust protection for witnesses as apart from providing protection to witnesses under Section 44 it also provides for punishment for threatening witnesses under Section 22 of the Act. Other special statutes like NIA, POCSO, JJ Act, SC-ST Act, etc provides for protection of witnesses, however a provision like Section 22 of UAPA is absent in those statutes. It was opined that despite protection to witnesses provided in these special enactments, the ill of intimidation or allurement for witnesses have not abated. Witnesses under these special statutes are not extended protection as desired. Lastly, the cases *K. Anbazhagan v. Superintendent of Police (supra)*, *Sidhartha Vashisht alias Manu Sharma v. State (NCT of Delhi)*, (2010) 6 SCC 1, *NHRC v. State of Gujarat*, (2010) 15 SCC 22 and *Swaran Singh v. State of Punjab (supra)* were referred. Thereafter, the cases of *Kartar Singh v. State of Punjab*, (1994) 3 SCC 569 and *People's Union for Civil Liberties v. Union of India*, (2004) 9 SCC 480 were discussed in light of the constitutionality of TADA and POTA respectively.

Session 4 - Courtroom Security and Examination of Vulnerable Witnesses

Speakers: Justice C.V. Karthikeyan and Justice G.R. Swaminathan

On the theme of *Courtroom Security and Examination of Vulnerable Witnesses* the participants were suggested that the recording of statement of vulnerable witnesses should be undertaken just before the commencement of the daily proceedings of the court so that witnesses are able to depose comfortably before the courts get crowded. Further, it was suggested that judges should also make regular visits to the state run shelter homes or *Nari Niketans* to understand the conditions of the victims residing there and undertake steps to ameliorate their hardships. It was opined that sometimes the accused tries to influence victims/witnesses at these shelter homes and therefore, it is imperative that adequate protection is provided. It was suggested that it is important that a comfortable courtroom environment is created so that the victim is able to give evidence without fear and it was advised that judges should showcase elements of empathy, compassion and sensitivity while dealing with victims. The infrastructural requirements of deposition complexes was also discussed and it was stated that it should have separate entrance, pantry, room for children and proper videoconferencing facilities. The model courtroom created by Delhi High Court was cited as an example which should be emulated in all the states. It was highlighted that according to the judgment in *State of Maharashtra v. Bandu @ Daulat*, (2018) 11 SCC 163 each district should have one vulnerable witness deposition centre. It was suggested that an anatomical doll or hand drawings could be used in cases wherein the victim is not able to communicate the series of events. It was stressed that the process and the infrastructure should actually be made child and victim friendly rather than superficial changes to the courts. The choice, appointment and role of "support person" under the rules notified by the states was also subject to intense deliberations by the participants. It was stated that it is also important that the judge records the demeanor of witness during examination under Section 280 of the Code of Criminal Procedure, 1973. Further, the directions in *Sakshi v. Union of India*, (2004) 5 SCC

518; *Mahender Chawla v. Union of India*, (supra) and *Smruti Tukaram Badade v. State of Maharashtra*, 2022 SCC Online SC 78 were discussed to highlight various practices which should be employed by the judges.

Session 5 - Issues and Challenges in Effective Implementation of Witness Protection Measures

Speakers: Justice C.V. Karthikeyan and Justice G.R. Swaminathan

On the theme of *Issues and Challenges in Effective Implementation of Witness Protection Measures* the discussions revolved around the concerns and issues affecting the implementation of Witness Protection Scheme, 2018. The participants shared their experiences regarding practice of recording of statements of witnesses through video conferencing and exhibiting evidence through use of technology. The participants highlighted the lack of high speed internet facilities and absence of proper infrastructure and it was opined that there are inherent difficulties in examination of vulnerable witness through video conferencing. The facilities of the vulnerable witness deposition complexes in Delhi was highlighted as one of the best in the country. The participants discussed the status of the implementation of the scheme in various states and it was revealed that apart from a couple of states, the implementation of the witness protection scheme is almost non-existent due to financial and infrastructural hindrances/drawbacks. It was suggested that scheme should be given wide publicity to the public for effective implementation. Further, the participant judges were advised that the scheme should be translated in the vernacular language and should be affixed at various places in the court complex so that the litigants become aware of their rights.