

## Right and Protection of Witness



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### ABSTRACT

*There is no clear provisions concerning with protection of witnesses in Indian law except the sections 151 & 152 of Indian Evidence Act, 1872 which protects the witness from being asked indecent, scandalous, offensive questions, and questions which intend to annoy or insult them is no provision for the protection of witnesses in India. It is to be needed that physical & emotional protection to witnesses.*

**Keywords:** Predominantly Problem, Miscarriage of Justice, Hardened Criminals, irreparable loss, Harassment during Examination, Hostile Witnesses.

### Introduction:-

Today the major problem before the justice dispensation system, especially in criminal case, is the reluctance of witness to come forward to dispose before a Court regarding an incident on being threatened such witness talk the easily course of turning hostile. The process comes under miscarriage of justice, this social demand on the issue of witness protection. It is not that witnesses are averse to quality justice but the facts that they are more concerned about their own safety and honor disposing of against hardened criminals may result in irreparable loss of life and property to a witness. It is also happened that repeated visits to courts and a volley of questions which are some-times insulting, cause embarrassment to witness the problem has to be increase day to day and some solution has to be worked out so that the system may remain effective regarding witness protection issues, the Supreme Court commented in Zahira Habibullah Sheikh case<sup>1</sup>.

That the process of fair trial which is condition precedent for dispensation of justice is being seriously affected because in most of the cases witnesses stand incapacitated from action as eyes and ears of justice in such circumstance, the SC observed that trial gets to corrupt and paralyzed and it no longer can constitute a fair trial. The fears may be due to various reasons including lack of adequate protection to witness inside and outside court.

In this it has been seen that time has come when serious and undiluted thoughts are to be best toward for protection of witnesses so that ultimate truth is presented before the court and justice being victorious and the trial is not reduced to mockery. The question for protection of a witness outside the court is predominantly a problem to be address by the law and order enforcing bodies, protection of witness during his examination is basically a responsibility of

courts. It is fundamental principal that the purpose of cross examination is to bring out the truth on record, but if the cross examination is aimed at harassing the witness by putting unnecessary question or irrelevant questions, the purpose is defeated and frustrated<sup>2</sup>.

### The protection of witness from harassment during his examination is as follows:

1. The provisions which provided that a witness cannot be compelled to answer a question, which is inter to shake his credit by injuring his character if the question is not reasonable<sup>3</sup>.
2. The protection against questions which are indecent or scandalous subject to the discretion of the court<sup>4</sup>.
3. The bar against putting questions which though proper are insulting, annoying or needlessly offensive in form<sup>5</sup>.
4. Lastly right of a witness to reprise memory from earlier writing<sup>6</sup>.

The aforesaid provision about the issue of protection a witness from harassment during examination and outlining, the duty of a court in this case the SC said in Makhnallal Bangal v/s Manas Bhunia & Other<sup>7</sup>. That the "A Judge presiding over a trial needs to effectively control examination, cross examination and re-examination of the witness so as to exclude such questions being put to permit and to relieve the witnesses from the need of answering such questions which they are not bound to answer.

The Court has power to disallow questions should be effectively exercised by reference to section 146, 148, 150, 151 & 152 of the evidence Act by excluding improper and impermissible question. The examination of the witnesses should not be protected and the witness should not feel harassed to the cross-examination must not be allowed to bully or take under advantage of witness-witnesses attend the court to discharge the sacred duty of rendering and to justice. Witnesses are entitled to be treated with respect and it is the judge

who has to see that witnesses feel confident in the court". The question relating as right to refresh memory by referring to earlier document is concerned, a conjoint reading of section 159 and 160 reveals that these two sections do cover following sections:

- a) Refreshing memory by referring to any writing made by the witness all the time of transaction.
- b) Refreshing memory by referring to any writing made by the witness soon after the transaction.
- c) Right to refresh memory by referring to any writing made by any other person and read by the witness at the time of transaction or soon after words, provided the witness knew it to be cored.
- d) Refreshing memory by referring to a copy of the aforesaid document but with the permission of the court.
- e) Test tying the facts from the documents referred to in above when witness has no specific recollection of the facts mentioned in the document but it is shown that the facts were correctly recorded.

The last provision which is there in section 160 is mentioned to covered situation where the witness has to tally forgotten about the facts mentioned in the document which can be testified from the document itself. The SC following observation made in the case of " The state of Andhra Pradesh v/s Cheemalapati Ganewara Rao and other<sup>8</sup> " are guilty opposite "where a witness has to depose to a large number of transaction and those transaction are referred to or mentioned either in the account books or in other documents there is nothing wrong in allowing the witness to refer to the account books and the documents while answering the questions put to him in his examination he cannot be excepted to remember every transaction in all its details and Section 160 specifically permits a witness to testify the facts mentioned in the documents referred to in Section 159 although he has no recollection of the facts themselves if he is sure that the facts were correctly recorded in the documents".

One main distinction between the provisions of Section 159 & 160 appears to be is that for using a document or its copy under Section 159 it is not necessary that the document itself has been put on record or made part of the evidence or be admissible while it will be so in the case under section 160. This is clearly borne out from the observation made in Emperor v/s Mahadeo Dewoo<sup>9</sup>, to the effect that for refreshing

memory from a writing or memorandum it is not necessary that the writing of a memorandum should be one which is admissible in evidence one of the modes to protect a witness deposing before the court in a heinous case may be keep his identify undisclosed, provided here is an enabling statutory provision to that effect under POTA Act<sup>10</sup>, In people's union for Civil Liberties v/s union of India<sup>11</sup>. The SC observed that need for existence and exercise of power to grant protection to a witness and preserve his or anonymity in a criminal trial has been universally recognized.

#### **Witness Protection Program to be needed:**

In the case of Asif Mamu v. State of M.P.<sup>12</sup>, the Supreme Court delivered the judgment through B.N. Agrawal J. that the prosecution has failed to prove its judgment of acquitted as the view taken by the trial court was responsible one and the same could not be said to the perverse in any manner. We are unhappy to note that such a ghastly crime of brutal murder of three persons in broad light in the temple of justice, which is campus of district court in Bhopal, capital city of the state Madhya Pradesh is going unpunished because of laches on the part of the prosecuting agency in conducting the investigation in trial, apart from uncooperative attitude of the private prosecutors. Priors the Appeal has been filed in Supreme Court by Asif Mamu and Mukhtiyar Malik against the conviction passed by High Court which reversing the separate judgment passed by the Session trial.

The case is completely hostile of both the parties to their own interest. The honorable court remarked that the whole case said that there was absolute murder but hostile of the witnesses the trial court was bound to acquit to the appellants because there was no any evidence against them.

#### **Conclusion:**

The first important problem is with regard to anonymity of witnesses and the balancing of interests of the prosecution in protecting in the witness and the rights of the accused. Now a witness is not treated with respect in the court. He is pushed by the peon out from the crowded court room. Witness wait for the whole day and then he finds that the matter adjourned. He has no space to sit and no place even have to get a glass water and when the witnesses appear in court, he is subjected to unchecked and prolonged examination, cross-examination and finds himself in a alone and helpless situation.

### **REFERENCE**

- 1) Zahira Habibullah Sheikh case
- 2) Govind v/s State of MP, 2005(1) MPLJ 549
- 3) Section 148,149 & 150 Evidence Act.
- 4) Section 151 Evidence Act
- 5) Section 152 Evidence Act ,
- 6) Section 159& 160 Evidence Act

- 7) AIR 2001 SC 490, ,
- 8) AIR 1963 SC 1850
- 9) AIR 1946 Bomb. 189
- 10) Section 30 In POTA Act,
- 11) AIR 2004 SC 456
- 12) Asif Mamu v/s State of M.P. 2008 (14) SCALE 442