Explainer: Why India needs a strong witness protection program

Manu Sharma, (Top Left) son of former Union Minister Venod Sharma, main accused in Jessica Lall (Top Right) murder case. Zaheera Sheikh, 19, one of the witnesses in the Best Bakery case (Bottom Left). Sabrina Lall, sister of Jessica Lall (Bottom Middle). Vismay Shah main accused of BMW 2015 hit and run case (Bottom Right).

By Udita Arya and Shubhi Rana

The Jessica Lall murder case seemed like it would be an open and shut case on the outset. A woman was shot point blank on the forehead with hundreds of witnesses around. However, what followed
was a seven-year-long battle for justice as the country watched the judicial process crumble due to intimidation, threats, hostile witnesses and corruption.

The murder of Jessica Lall on April 30, 1999, brought to light the reality of criminal justice in India. The policy of innocent until proven guilty combined with power and corruption has allowed for many criminals to avoid punishment for their actions. This case is just one of the many in which witnesses and their statements have turned around the fate of a trial.

**Witness Statements**

**Witness** statements are accounts provided by people familiar with the circumstances of a case and are often the most important in determining the fate of a trial.

Under the **Code of Criminal Procedure** (CrPC) there are two main provision under which witness statements can be recorded. Section 161 (CrPC) provides for the statement being made to the police whereas section 164 (CrPC) provides for the statement to be recorded by a judicial or metropolitan magistrate. There is a major difference in the level of accountability between the two statements. Statements made under 161 need to be reiterated and acknowledged in court to be counted as evidence, however, any statements made under 164 need no such acknowledgement.

**Hostile Witness**

Even with elaborate provisions to provide for transparency in an investigation, there are various loopholes in the system that hamper the investigation process. One of the major problems of this system is the issue a hostile witness.

As per the **Indian Evidence Act of 1872** in a criminal trial when a witness appearing before court doesn’t confirm his/her previous statement/evidence which was priorly collected by the investigative body, is defined as an adverse witness or a hostile witness.

This is very prevalent in India wherein tactics of intimidation and threats force a witness to retract his statement. A landmark judgement that highlights the case of a hostile witness is the Gujarat High Court’s Judgment on the Best Bakery case in 2004. In March 2002, a mob burnt down a Best Bakery in Vadodara, killing 14 people. The main witness in the case, Zaheera Sheikh was compelled to retract her statement in the fast track court after there were threats made to her family. Due to which the 21 accused were acquitted as there was a lack of evidence against them.

Similarly, in the **2015 Ahmedabad BMW hit and run case**, the major witness, a friend of the deceased also turned hostile and retracted his statement. The reason for the same was contemplated to be bribery as the accused was the son of a prominent eye doctor in the city. Such cases highlight the difficulty the prosecution often faces in convicting criminals.
What can be done?

When witnesses testify in a criminal case, they are providing a service to the state by helping in the conviction of state offenders, therefore, it is rudimentary for the state to protect its witnesses. When the state makes no additional provisions for the witnesses, they are more susceptible to threats and violence, making them reluctant to come forward or testify correctly. The lack of a proper witness protection scheme is, therefore, a major disadvantage to the effectiveness of the criminal justice system.

Provisions for witness protection has been a topic of much debate, and in fact, various law commissions have made recommendations for the same over a period of time. The 198th law commission report talks about witness and identity protection and recommends for the anonymity of witnesses and amendments to the law for the addition of witness protection laws.

The Criminal Law (Amendment) Act, 2005 (No.2 of 2006) also provides for provisions in the Indian penal code to punish any person threatening or inducing a person to commit perjury. Though the above provisions have been made and are a step towards a better criminal justice system, there is a lot of room for improvement to ensure a transparent and accountable system.

Several other countries, including the United States, United Kingdom, Canada, Israel and Italy have highly effective and secure witness protection programs. The government has made a step in the right direction with the introduction of the Delhi Witness Protection Scheme of 2015, however, a lot more needs to be done regarding the same. It is critical to introduce such schemes over the country to ensure a reduction in the number of witnesses that turn hostile and restore the staggering faith in the criminal justice system of India.

_Udita Arya and Shubhi Rana are both students at the O.P. Jindal Global University and specialise in studying criminal procedure._

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