Role Of Police And Witness Protection In India

Prof. Girish Abhyankar
Assistant Professor, Symbiosis Law School, Pune.

Prof. Asawari Abhyankar
Assistant Professor, Symbiosis Law School, Pune.

5.1 INTRODUCTION

The police play a critical role in witness protection. The functions of police in crime prevention require them to play a plethora of roles. As important as is the role of witnesses is in the crime investigation and prevention, equally important is the role of police in making the witness protection program a success and achieve its desired results.

Witness security measures fall into three categories: (i) police protection/target hardening and good operational practices, (ii) judicial and procedural measures, and (iii) covert witness protection programmes. The role of police is pivotal in all these categories. Adequate training for criminal justice personnel should be provided on protection measures and attendant ancillary procedures. The present section will enumerate the role of police according to ranks and designations respectively in crime prevention and then further explain their role in witness protection. In analyzing the role and functions of Indian Police the fundamental statute i.e. Police Act, Commission Reports and state legislations will be critically analyzed.

This section also deals with the role of society in witness protection. Having explained the relevance and importance of society in crime prevention and in implementation of law, the researcher will explain the specific contribution that elements of society have to make in the witness protection programme.

5.2 ROLE AND FUNCTION OF POLICE IN INDIA

The role, duties, powers and responsibilities of the police with special reference to prevention and control of crime and the maintenance of public order cannot be denied in isolation in absolute terms, but has to be fitted into the overall requirements for the success of the criminal justice system as a whole. The role of police becomes significant in the accusatorial form of criminal justice system Unlike the inquisitorial system which has been followed in Europe from

---


2 Recommendations by UNTOC and UNCAC.

the thirteenth century in which the judge is expected to take the initiative and find out for himself the facts by examining all relevant persons including the accused, i.e., what is the truth and then act according to law, in the accusatorial system the judge is only an umpire between two contesting parties. He will only give his decision on the issues and evidence put before him.\textsuperscript{4} Thus the major responsibility lies upon the police to produce untampered evidences and witnesses before the court.

The role of police has been changing ever since the inception of the police system in India. To understand the role of police in present day context, reference could be made to provisions of the Police Act, 1861\textsuperscript{5}; Model Police Act and National Police Commission Reports. Duties of Police, according to Police Act, 1861, are:

i. Obey and execute all orders and warrants lawfully issued by any competent authority;

ii. Collect and communicate intelligence affecting the public peace;

iii. Prevent commission of offences and public nuisances;

iv. Detect and bring offenders to justice; and

v. Apprehend all persons whom he is legally authorized to apprehend and for whose apprehension sufficient ground exists.

However, the Model Police Act recommended by National Commission of Police in its Eighth Report goes a step ahead of this Act and lays down following duties for the police in light of contemporary changes and developments.

It shall be duty of every police officer to\textsuperscript{6}:

i. promote and preserve public order;

ii. investigate crimes, and where appropriate to apprehend the offenders and participate in subsequent legal proceedings connected therewith;

iii. identify problems and situations that are likely to result in commission of crimes;

\textsuperscript{4} Id. at 14.5.
\textsuperscript{5} Police is a state subject as per the Constitution of India However, the state legislations are based more or less on the Police Act, 1861.
\textsuperscript{6} Section 43, Model Police Act, 2006.
iv. reduce the opportunities for the commission of crimes through preventive patrol and other prescribed police measures;
v. aid and cooperate with other relevant agencies in implementing the prescribed measures for prevention of crimes;
vi. aid individuals who are in danger of physical harm;
vii. create and maintain a feeling of security in the community;
viii. facilitate orderly movement of people and vehicles;
ix. counsel and resolve conflicts and promote amity;
x. provide necessary services and afford relief to people in distress situations;
xi. collect intelligence relating to matters affecting public peace and crimes in general including social and economic offences, national integrity and security; and
xii. perform such other duties as may be enjoined on them by law for the time being in force

Further, the model law states the duties of Police Officers towards weaker sections, poor persons and public. It shall be the duty of every police officer to—

i. register all cognizable offences brought to his notice by a complainant in person or by post or from his knowledge and take prompt steps to acknowledge registration of such offences where necessary and proceed with such investigation as is prescribed by law;

ii. aid and cooperate with other agencies for the prevention of all offences and all wanton destruction of public property by violence, fire and accidents;

iii. prevent such conduct in public places as would prove 'to be dangerous for the persons indulging in such acts like overloading of boats during river crossing or spirited youngsters driving dangerously and recklessly;

---

iv. guide and assist members of the public particularly the poor and indigent, disabled or physically weak and children who are either lost or find themselves helpless on the streets or other public places;

v. take charge of intoxicated persons and lunatic at large who in their ignorance may cause harm to themselves or other members of the public and their property;

vi. assist in preventing the poor and indigent persons from exploitation by any organised group;

vii. prevent harassment of women and children in public places;

viii. behave with all members of the public with due decorum and courtesy particularly so in dealing with women and children where strict regard should be paid to decency and reasonable gentleness;

ix. refrain from needless inconvenience to the members of the public in the discharge of his duties;

x. while taking a person into custody to ensure that he is not denied his rights and privileges and in particular ensuring that an arrested person in custody is able to inform a person of his choice the fact of his detention

xi. arrange for legally permissible sustenance and shelter to every person in custody and making known to poor persons in custody provisions of legal aid schemes being enforced in the State and also inform the authority concerned to provide such aid;

xii. provide every kind of assistance to victims of road accidents and in particular ensuring that they are given prompt medical aid without waiting for formalities;

xiii. assist accident victims or their heirs or their dependents where applicable with such information and documents as would facilitate their compensation claims and making the victims of road accidents aware of their rights and privileges; and

xiv. show by personal conduct that it is in the general interest of the society to abide by the law in operation.

Thus the above mentioned specific duties and functions could be broadly enumerated as under-

1. Maintenance of Public Order—Primarily and fundamentally the duty of a police is to maintain the law and order and security of the people at large.

2. Crime categorization
3. Enforcement of Social Legislation
4. Collection of Intelligence and developing information system
5. Counselling
6. Service- Oriented functions

5.3 STAGES OF PROGRAM WHERE ROLE OF POLICE BECOMES IMPORTANT IN WITNESS PROTECTION

5.3.1 Application Stage
The involvement of Police in witness protection would begin right at the stage of application in case the witness protection application is moved by a witness.\(^8\) In a criminal trial, the initial procedural step includes cognizance of a case, it may be at the stage of lodging an FIR or any other stage at which the witness feels the need of witness protection. It would be a duty of the concerned Police Officer to inquire and find out if there is a requirement of witness protection. It is also the duty of the police officer to inform the complainant or prospective witness about the availability of witness protection program and the procedures and rights of the witnesses there under.

The role of police at this stage is crucial because if the witnesses are assured of their safety and security at the stage of application and are convinced about the importance and relevance of their evidence in the given case and the administration of criminal justice at large, then the efficiency of the trial and conviction of the true accused/ criminal will be ensured.

5.3.2 During Investigation
The stage of investigation in criminal administration is an important stage as collection and sequencing of evidence are done at this stage. Investigation primarily consists of ascertaining facts and circumstances of the case. It includes all the efforts of a police officer for collection of evidence: proceeding to the spot; ascertaining facts and circumstances; discovery and arrest of the suspected offender; collection of evidence relating to the commission of offence, which may consist of the examination of various persons including the accused and recording their

\(^8\) The designated court could assure witness identity protection in three instances – on application by witness, on application by prosecution or on its own motion see Kartar Singh v. State of Punjab, 1994 (3) SCC 569.
statements in writing and the search of places or seizure of things considered necessary for the investigation and to be produced at the trial; formation of opinion as to whether on the basis of the material collected there is a case to place the accused before a magistrate for trial and if so, taking the necessary steps for filing the charge-sheet. Investigation ends with a police report to the magistrate.\(^9\)

It is at this stage that there is a possibility of tampering with the evidence and important witnesses in the case. Hence the concerned police officer involved in witness protection programme as well as the concerned investigating officer will be responsible to bring to the court the witnesses and evidences untampered and secured.

### 5.3.3 During Trial

Next crucial stage in the Criminal procedure is the trial. The trial is the judicial adjudication of a person’s guilt or innocence. Under the CrPC, criminal trials have been categorized into three divisions having different procedures, called warrant, summons and summary trials. The common stages involved in a trial are as follows:\(^10\)

a. **Framing of charge** - This is the beginning of a trial. At this stage, the judge is required to sift and weigh the evidence for the purpose of finding out whether or not a *prima facie* case against the accused has been made out. In case the material placed before the court discloses grave suspicion against the accused that has not been properly explained, the court frames the charge and proceeds with the trial. This material placed before the court includes the police report by the Investigation Officer. If the witness protection is given by the Police efficiently then the report will help the court to frame proper charges against the accused. On the contrary, upon consideration of the record of the case and documents submitted, and after hearing the accused person and the prosecution in this behalf, if the judge considers that there is not sufficient ground for proceeding, the judge discharges the accused and records reasons for doing so. There is a possibility that the accused may get

---


\(^10\) *Id.*
discharged due to lack of evidences or witnesses due to inefficient or no witness protection afforded by the police.

The words “not sufficient ground for proceeding against the accused” mean that the judge is required to apply a judicial mind in order to determine whether a case for trial has been made out by the prosecution. It may be better understood by the proposition that whereas a strong suspicion may not take the place of proof at the trial stage, yet it may be sufficient for the satisfaction of the court in order to frame a charge against the accused person.

The charge is read over and explained to the accused. If pleading guilty, the judge shall record the plea and may, according to his discretion, convict him. If the accused pleads not guilty and claims trial, then trial begins. The trial starts after the charge has been framed and the stage preceding it is called inquiry. After the inquiry, the charge is prepared and after the formulation of the charge, the trial starts. A charge is nothing but formulation of the accusation made against a person who is to face trial for a specified offence. It sets out the offence that was allegedly committed. Hence the role of police is of utmost importance here as the framing of charges is based on the complete and proper report prepared by them.

b. Recording of prosecution evidence - After the charge is framed, the prosecution is asked to examine its witnesses before the court. The statement of witnesses is on oath. This is called examination-in-chief. The defence has a right to cross-examine all the witnesses presented by the prosecution. The witnesses may need protection from police at this stage and there might be a need for in camera proceedings and this has to be facilitated by the police. Section 309 of the Cr.P.C provides that the proceeding shall be held as expeditiously as possible and in particular, when the examination of witnesses has once begun, the same shall be continued on a day-to-day basis until all the witnesses in attendance have been examined.11

c. **Statement of accused** - The court has powers to examine the accused at any stage of inquiry or trial for the purpose of eliciting any explanation against incriminating circumstances appearing before it. However, it is mandatory for the court to question the accused after examining the evidence of the prosecution if it incriminates the accused. This examination is without oath and before the accused enters a defence. The purpose of this examination is to give the accused a reasonable opportunity to explain incriminating facts and circumstances in the case. The accused is also competent witness. Hence the role of police becomes relevant in investigating thoroughly to find the authenticity of such incrimination.

d. **Defence evidence** - If after taking the evidence for the prosecution, examining the accused and hearing the prosecution and defence, the judge to his satisfaction finds no evidence that the accused has committed the alleged offence he is required to record the order of acquittal.

However, when the accused is not acquitted for absence of evidence, a defence must be entered and evidence adduced in its support. The accused may produce witnesses who may be willing to depose in support of the defence. The accused person is also a competent witness under the law. The accused may apply for the issue of process for compelling attendance of any witness or the production of any document or thing. The witnesses produced by him are cross-examined by the prosecution.

The accused person is entitled to present evidence in case he so desires after recording of his statement. The witnesses produced by him are cross-examined by the prosecution. Most accused persons do not lead defence evidence. One of the major reasons for this is that India follows the common law system where the burden of proof is on the prosecution, and the degree of proof required in a criminal trial is beyond reasonable doubt.
The police play a major role in safeguarding the interest of the witness throughout this process and if required, also in protecting the identity of the witness and still not letting the process of law getting hampered.

e. **Final arguments** - This is the final stage of the trial. The provisions of the Cr.P.C provide that when the examination of the witnesses for the defence, if any, is complete, the prosecutor shall sum up the prosecution case and the accused is entitled to reply.

f. **Judgment** - The judge pronounces his judgment in the trial after conclusion of arguments by the prosecutor and defence.

The protection to witnesses by the police should be ensured during the whole trial at least. If required in special circumstances it should be extended after the judgment also. The stand of Supreme Court on the issue is that the protection needs to be given only till the case is over.\(^\text{12}\)

### 5.3.4 Post Trial

Post trial, technically, is the period between the final argument and the judgment. Though the stand of the Supreme Court as stated above is that the protection can be assured only till the judgment, there is a possibility that, in extreme cases, there is a requirement of protection even after the trial. Any intimidation to the witness after the judgment might affect this peace and tranquillity in the society. The role of police becomes evident here in ensuring and maintaining law and order.

**CONCLUSION**

Recognizing the need of an active involvement of police in reducing the crime rate, Government of Kerala in March 2008 introduced a very innovative proactive approach by way of *Janamaithri Suraksha* Project. The project started in 20 selected Police Stations. Till date it is been implemented in 248 Selected Police Stations (20 Police Stations in 2008, 23 Police Stations in

2009, 105 Police Stations in 2010 and 100 Police Stations in 2012).\textsuperscript{13} To invite active participation of members of community \textit{Janamaithri Kendrams} were set up in District and Battalion Headquarters to enable people to understand the working of the scheme and interact with police apart from other measures like, distributing pamphlets, booklets and other printed material, staging a drama to educate them in simple ways, showing short movies depicting the mission of the scheme etc.

Various projects like Coastal Vigilance Committees, Road Safety Programs, etc. have also been introduced in the State based on the same concept as that of \textit{Janamaithry} scheme.

While executing these programs a proper training is given to the concerned authorities like Beat Officers, Assistant Beat Officers, and Community Liaison Groups etc for the effective implementation of these schemes at regular intervals in order to update them and cope with the changing situations. Till date 1361 persons are trained in Police Training College for \textit{Janamaithri Suraksha} Project.\textsuperscript{14}

While adopting the concept of Community Policing in a modified way the project aims at a better interaction process between the police authorities and the community. In this process of interaction, the police authorities visit the community on regular basis understanding their problems, requirements and assuring them the fullest of cooperation wherever possible. In turn realising the efforts taken by the police it is observed over a period of time that the community has responded quite positively to this process. Under this scheme the police authorities also seek to identify different problems prevailing in different communities and to suggest suitable solutions for them. The informal relationship developed by the police with the community has a greater impact on the crime rate within the society.

we will have to make alterations and amendments to some existing legislations in India. These amendments would make it possible to fulfil the roles enumerated above. They are the following:

\textsuperscript{13} http://www.keralapolice.org/newsite/janamaithri.html last accessed on 15/04/2014 at 10.00 am
\textsuperscript{14} \textit{Id}
1. Amendment in Police Act—Relevant section should be added to Police Act, imposing duties on the police to confer protection on the witnesses as per the requirement of the witness protection programme. The part could be titled as “Duties of Police towards Witnesses.” These duties should be specifically enumerated under the classification of duties at the application stage, duties during the trial, and duties after the trial and any other duties.

2. Amendment in Cr.P.C. and Indian Evidence Act—The procedural provisions need to be amended in the relevant part of Cr.P.C. and Indian Evidence Act.

3. Change in the police training strategy—The implementation of Witness Protection Program necessitates that the police personnel be given a special training for executing the program efficiently. They need to be trained in being more discreet with their activities and also human resource skills for handling and dealing with the sensitive and vulnerable witnesses. Schemes like Janamaithry Suraksha must be introduced in all states with proper training given to the concerned officers in its effective implementation to reduce the crime rate.

4. Advocacy programmes for training general public -The participation of people in making witness protection a success has been explained above. It is very important that awareness drives are conducted at various level to spread awareness about the role society has to play in witness protection program. There has to be sensitization on the rights of witnesses, and how a person should approach the legal recourse in case he has witnessed a crime or an offence. The government should hold training sessions for layman to be equipped to situations involving commission of a crime and to assist the court in dispensing justice.