
THE URGENT NEED FOR WITNESS PROTECTION IN INDIA

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Introduction

“Witness as the ear and eye of justice”- Jeremy Bentham. The foundation of the administration of justice is largely based on witnesses stepping forward and giving an uninhibited deposition in front of a court of law. If witnesses are intimidated and prevented from providing the Court with relevant evidence, the criminal justice system itself is destroyed. The criminal justice system has a difficult task ahead of it: striking a delicate balance between the competing interests of the accused, the victim, and society. Fairness is essential to all legal procedures and practises. Without reliable and meaningful evidence, it is impossible to pursue the truth and maintain the tenets of a fair and reasonable trial. In India, the current state of affairs regarding the administration of justice is not very secure.

Who is a Witness?

A witness is a person who is present when an act, a sequence of acts, or a scene is occurring. Any person who has the capacity to grasp a fact with their five senses qualifies as a witness. Any conduct may be seen, heard, smelled, felt, or perceived by a competent witness using any reasonable sense.¹ Section 118 of the Indian Evidence Act states that everyone is qualified to testify unless the court determines that their youth, extreme old age, a physical or mental illness, or any other similar cause prevents them from understanding the questions asked of them or from responding to them rationally. Explanation. — A lunatic is not incompetent to testify, unless he is prevented by his lunacy from understanding the questions put to him and giving rational answers to them.

¹ Home: Legislative department: Ministry of law and justice: GoI. Home | Legislative Department | Ministry of Law and Justice | GoI. (n.d.). Retrieved October 31, 2022, from <https://legislative.gov.in/>

Who is a Hostile witness?

A hostile witness is one who appears to be withholding large portions of their testimony in support of the person who called them or who later dramatically departs from their pre-trial testimony. The party calling you as a witness anticipates that you will present the court with proof corresponding to what you could have stated in a pre-trial statement. The person who called you may ask the judge to label you a hostile witness if you refuse to respond to inquiries or change your previous statements.

A hostile witness may have their credibility called into question, and the person who summoned them may cross-examine them and pose leading questions. The person who called you may also use the process in an attempt to persuade you to give evidence that agrees with your previous statement.²When a party summons a witness to testify in its favor but the witness testifies against the party summoning him, this is referred to as a hostile witness. This circumstance occurs frequently when witnesses refuse to provide testimony that is favorable to the party summoning the witness. The witness must be deemed hostile by the court. The option to summon the witness is not up to the party. If the witness' testimony is important to the case and the trial, the court may accept or reject it by referring to the witness' negative remarks about the person who called him.

³In *Gura Singh vs state of Rajasthan* the terms "hostile", "adverse" or "unfavorable" witnesses are alien to the Indian Evidence Act. English law uses the words "hostile witness," "adverse witness," "unfavorable witness," and "unwilling witness." Under common law, the prohibition against allowing a party calling the witness to cross-examine is reduced by the development of the terms "hostile witness and unfavorable witness." According to common law, an unfavorable witness is someone who is called by a party to prove a specific fact in issue or relevant to the issue but fails to prove such fact or proves the opposite test. A hostile witness is defined as someone who is not interested in telling the truth at the instance of the party calling him.

² Scribd. (n.d.). *Hostile witness indian evidence act, 1872*. Scribd. Retrieved October 31, 2022, from <https://www.scribd.com/document/559584873/202004080636590365pcyadav-hostile-witness>

³ *Gura Singh V. the state of Rajasthan, Rajasthan High Court, judgment, law, Casemine.com*. <https://www.casemine.com>. (n.d.). Retrieved October 31, 2022, from <https://www.casemine.com/judgement/in/5609a3b5e4b01497113f4bf4>

Reasons why witnesses turn hostile

1. Use of Threat, force or Intimidation

The unholy alliance of force and money, threats and financial inducement, is typically to blame. The Delhi High Court noted that witnesses in numerous cases were becoming hostile due to "threats and intimidation." In its affidavit, the Home Ministry acknowledged that in all significant cases, witnesses were always in danger from criminals. According to the affidavit, action must be taken to stop harassing witnesses in order to prevent frustration. Additionally, it is necessary to give witnesses proper protection against criminal intimidation.

2. Bribed by the Accused

The use of money to "bribe" or "buy off" witnesses occurs frequently. In such cases, the victims and/or witnesses are typically low-income individuals in desperate need of financial assistance. A sum of money is then offered to the key witnesses in a case for not cooperating in the investigation and/or they are instructed to take a predetermined position at the trial, either directly by the party or through the attorneys handling that case. However, if the trial has already begun, he will be instructed to retract his earlier remarks or to refute them.

3. Lengthy Trials and harassment of witnesses

Another major reason for this growing menace is lengthy trials. The working of the judicial process is very slow. Several dates are fixed for cross-examination of the witnesses, who become frustrated because of being summoned again and again only to find that the date is adjourned. The frustration takes its toll, & the witness decides to turn hostile to get rid of the harassment.

4. Easy Availability of Bail to the Accused

The courts frequently give bail to the accused in situations involving well-known people or terrible crimes, leaving the witness open to intimidation and threats from the accused. Although the Code of Criminal Procedure's Section 439(2) allows for the arrest of someone who has been released on bail, the State rarely uses this provision where there is a good faith fear that the accused could try to influence the witness.

5. Defaults in Payments of Allowances

Regardless of whether a witness is being interrogated, the compensation offered for their attendance in court is little and slow. The Crimes Code, Section 312 Any Criminal Court may, "if it sees fit, order reimbursement, on the part of Government, of the reasonable expenses of any complainant or witness attending for the purpose of any investigation, trial, or other procedure before such Court under this Code," subject to any restrictions set by the State Government. However, the majority of the time the witnesses are not given the necessary stipend.

6. Lack of Adequate Facilities

The facilities offered to witnesses are scant and insufficient, notwithstanding the essential role they play in criminal cases. The 14th Law Commission Report drew note of the fact that witnesses are frequently required to wait in courthouse verandahs or under trees on court campuses. They are not shielded from the whims of nature. Even the outbuildings in some courts are run-down and used for additional court functions. In addition to going through such humiliations and inconveniences, individuals must spend time and money travelling great distances to the courts.

7. Absence of Witness Protection Programs

The need for comprehensive witness protection legislation has been long felt in India. In most cases, witnesses are threatened or injured-sometimes even murdered-before giving testimony in Court.

In Swaran Singh Vs. State of Punjab -the Apex court also observed, "not only that a witness is threatened; he is maimed; he is done away with; or even bribed. There is no protection for him".The threat to the lives of witnesses is one of the primary reasons for them to retract their earlier statements during the trial. Section 151 and 152 of the Indian Evidence Act, 1872 protect the victims from being asked indecent, scandalous, offensive questions, and questions likely to insult or annoy them. Apart from these provisions, there is nothing in the law to protect witnesses from external threats, inducement or intimidation.

Cases where witnesses turned hostile

India has seen many situations where a conviction was not obtained because of the issue of hostile witnesses. Due to inadequate protection from the accused and sometimes interference with them while testifying truthfully, these witnesses became hostile.

Sidhartha Vashisht @ Manu Sharma Versus State (NCT of Delhi)

1. ⁴Socialite Mrs. Nina Ramani hosted a magnificent celebration in her Tamarind Café restaurant in "Qutub Colonnade" on April 29, 1999. Many socialites, politicians, bureaucrats, etc. from Delhi attended this celebration. The victim, Jessica Lal, worked as a bartender at the gathering. The model was 34 years old. Even though the pub was already closed, Manu Sharma insisted on one more drink. Manu Sharma shot Jessica dead because she rejected him and he became enraged. Jessica was struck by one of the two bullets he fired, one of which struck the ceiling. The police relied on the statements of the key witnesses in the case when they filed the charge sheet. However, all of the witnesses became hostile throughout the trial. For example-Shayan Munshi was the complainant in the case. He had been at the bar with Jessica Lal that night. But during the trial he disowned his own statement saying he didn't know Hindi, not even the word *bayan* (testimony).
2. The prosecution had requested that the high court hear the perjury cases against 19 out of the 31 hostile witnesses, including Munshi. Only 19 of the total 31 witnesses were able to testify during the trial since three had passed away and the court had already dismissed 10 of them previously because there had been no significant differences between their statements to the police and those made to the court, according to the prosecution.
3. The trial court acquitted all the accused due to lack of evidence and witness. It also said that the police could not find the murder weapon. This caused a huge public outcry. The witness had become hostile, as revealed by media sting operations
4. The decision of the trial court was appealed in the High Court by the police. The High Court sentenced the accused to life imprisonment. This decision was appealed by the accused in the Supreme Court of India which upheld the decision of the High Court.

A matter of grave concern, in this case, was that of evidence and witness tampering prevalent in these cases and the role of the court to provide security to witnesses to prevent them from

⁴ *Sidhartha Vashisht @ Manu Sharma v. State (NCT of Delhi)*, (2010) 6 SCC 1; (2010) 2 SCC (cri) 1385.

turning hostile. Especially in such cases where the accused is from such an affluent family, witness tampering is almost a norm. The Jessica Lal murder case was an open shut case with over 30 witnesses present in the scene of crime and yet the case was manipulated to a point where justice was almost not given, this shows the urgent need for witness protection in this country.

Samjhauta Express blast case

1. ⁵On February 18 in 2007, a Hindu right-wing organization carried out an improvised explosive device (IED) blast in the Samjhauta Express – a train which runs between New Delhi and Lahore – at Panipat in India's Haryana state.
2. As many as 68 people including 43 Pakistani citizens, 10 Indian citizens and 15 unidentified people were killed in the blast. 12 people including 10 Pakistanis and two Indians were also injured in the terrorist attack.
3. The primary accused in the case, Swami Aseemanand alias Naba Kumar Sarkar, had been granted bail by the Punjab and Haryana High Court in 2015.
4. In Central Jail Ambala, three suspects—Kamal Chauhan, Rajinder Chaudhary, and Lokesh Sharma—were being held under judicial supervision. Sandeep Dange, Ramchandra Kalsangra, and Amit Chouhan (Ramesh Venkat Malhakar) have all been named as proclaimed perpetrators in the case. In December 2007 in Dewas, Madhya Pradesh, another suspect, Sunil Joshi, who the NIA describes as the mastermind, was murdered.
5. Vikash Narain Rai, a former Haryana police officer who headed the Special Investigation Team (SIT) from 2007 to early 2010, said the police recovered an unexploded bomb from the train. In the course of investigations, it was found that all the parts of that "incendiary device" were purchased by people linked to the RSS and its associate groups.
6. Rai said that the trail of evidence took the team to Indore, where RSS member Sunil Joshi and his two accomplices were found to be complicit in the crime. Before they could

⁵ *Samjhauta Express Blast: Separating fact from fiction*. The Express Tribune. (2022, February 18). Retrieved October 31, 2022, from <https://tribune.com.pk/story/2344153/samjhauta-express-blast-separating-fact-from-fiction>

interrogate Joshi, however, *he was murdered*.

7. In the case 188 witnesses' statements were recorded so far out of which 40 have turned hostile.
8. On March 20, 2019, a special court exonerated Swami Aseemanand and three other people in the Samjhauta train blast case, ruling that the NIA had failed to prove their guilt.⁶ Special Court judge Jagdeep Singh said that the court had to "conclude this judgment with deep pain and anguish as a dastardly act of violence remained unpunished for want of credible and admissible evidence."

Lakhimpur Kheri case

1. On October 3, 2021, MoS (Home) Ajay Mishra Teni and UP Deputy Chief Minister Keshav Prasad Maurya were on a visit to inaugurate a few government schemes in Banbirpur village of U.P.
2. Several protesters were blocking the road to restrict their passage in Tikunia village of Lakhimpur Kheri district of U.P. when an SUV, allegedly belonging to Ashish Teni, son of the Ajay Mishra Teni mowed down the peacefully protesting farmers. Two other vehicles that were part of the same convoy also ran over those who had already been thrown to the ground and crushed by the first SUV resulting in death of four farmers. Clashes ensued between the farmers and BJP workers leading to 4 more deaths including 2 BJP workers and a car driver. One local journalist named Raman Kashyap was also killed in the violence.
3. On October 4, 2021,⁷ a letter PIL was filed in the Allahabad High Court by Swadesh and Prayag Legal Aid Clinic through Advocate Gaurav Dwivedi seeking a CBI enquiry or an independent judicial enquiry monitored by the Supreme Court or by a special investigating

⁶ *Samjhauta Express Case: Special Court Lambasts Nia for 'gaping holes' in prosecution*. NewsClick. (2019, March 29). Retrieved October 31, 2022, from <https://www.newsclick.in/samjhauta-blasts-special-court-criticises-NIA>

⁷ *To, - livelaw.in*. (n.d.). Retrieved October 31, 2022, from https://www.livelaw.in/pdf_upload/pdf_upload-385314.pdf

agency in the matter of the death of 8 persons who died in a dreadful massacre at Lakhimpur Kheri.

4. On October 6, 2021, the Hon'ble Supreme Court took suo moto cognizance of the Lakhimpur Kheri incident and the case was listed before a three-judge bench led by the Chief Justice of India NV Ramana. Justice Suryakant and Justice Hima Kohli are the other judges on the bench.
5. ⁸The Supreme Court on Wednesday asked the Uttar Pradesh government to protect the witnesses in this case. The bench was hearing a plea seeking to cancel the bail granted by the Allahabad High Court to Union minister Ajay Mishra's son Ashish Mishra, who has been accused of murder and criminal conspiracy in the case.

Importance of Witness Protection

A robust and efficient judicial system is essential to the nation's progress. Effective prosecution in a criminal trial depends on the cooperation of all required parties. Every witness who has knowledge of the crime's commission has a moral obligation to help the State by testifying. ⁹Getting the necessary parties' participation is difficult, nevertheless, because of the grim situation. Simply adding more judges does not ensure that cases will be decided more quickly because it does not eliminate adjournments and excessive delays in our judicial system.

Without strong testimony evidence, the trial becomes merely formal and would violate the parties' entitlement to a just and informed decision. A common man would be terrified at the prospect of becoming involved in the lengthy Indian legal system. Effective witness protection strategies guarantee their assistance and protection not only during the trial but also before and after.

The lack of witness protection is also a reason that the crime rates are appalling in India, as there is no deterrence, people with money and muscle power and those who come from affluent

⁸ Staff, S. (2022, March 16). *Ensure Lakhimpur Kheri case witnesses are protected, Supreme Court tells up government*. Scroll.in. Retrieved October 31, 2022, from <https://scroll.in/latest/1019638/ensure-lakhimpur-kheri-case-witnesses-are-protected-supreme-court-tells-up-government>

⁹ Sagar, S. (2018). Statutory Witness Protection in India: A Cardinal Urgency. *IJLMH*, 1 (3). <https://doi.org/https://www.ijlmh.com/wp-content/uploads/2019/03/Statutory-Witness-Protection-in-India-A-Cardinal-Urgency.pdf>

families feel like they can easily manipulate the judicial system by threatening the witnesses or bribing them.

Hon'ble Supreme Court in¹⁰ *Swaran Singh vs. State of Punjab* expressed deep concern about the predicament of a witness in the following words:

“A criminal case is built on the edifice of evidence, evidence that is admissible in law. For that witnesses are required, whether it is direct evidence or circumstantial evidence. Here the witnesses are a harassed lot. A witness in a criminal trial may come from a far-off place to find the case adjourned. He has to come to the Court many times and at what cost to his own-self and his family is not difficult to fathom. It has become more or less a fashion to have a criminal case adjourned again and again till the witness tires and he gives up. Unscrupulous lawyers play the game of getting adjournments for one reason or another until a witness is won over or tired. Not only is a witness threatened, but he is also abducted, maimed, killed, or bribed. There is no defence for him. A Court unwittingly contributes to a miscarriage of justice by adjourning the case without a valid reason. The witness is then not treated with dignity in court. The peon pushes him out of the crowded courtroom. He waits all day, only to discover that the case has been postponed. He has nowhere to sit and nowhere to even drink a glass of water. And when he does appear in Court, he is subjected to unchecked and unending examination and cross-examination, leaving him in a vulnerable position. A person despises being a witness for all of these and other reasons. The administration of justice suffers as a result. Appropriate diet money for a witness, on the other hand, is a far cry. Again, the harassment begins, and he decides not to accept the diet money.”

Laws regarding witness protection in India

Code of Criminal Procedure, 1973

1. Sec. 273 requires the evidence to be taken in the presence of the accused. But, the insertion of a proviso to Section 273 provides to the effect that where the evidence of a woman below 18years who is alleged to have been subjected to sexual assault is to be recorded, the Court may take appropriate measures to ensure that such a person is not confronted by the accused. The Code of Criminal Procedure, 1973 provides for trial in open court and

¹⁰ *Swaran Singh vs. State of Punjab* 2010 SCC OnLine P&H 8376

also provides for in- camera trials for offences involving rape

2. ¹¹Sec. 299 indicates the recording of evidence in absence of the accused. It empowers the Magistrate to record the statement of certain witnesses in the absence of the accused. Such recording of evidence is given only where an accused person has absconded and there is no immediate chance of arresting him
3. Section 171 of the Code says that in order to secure impartial evidence from the witness the witness on his way to court shall not be required to accompany a police officer and shall not be subjected to unnecessary restraint or inconvenience or required to give any security for his appearance other than his own bond. Proviso to this section further provides that, if any complainant or witness refuses to attend or to execute a bond as directed in section 170, the officer in charge of the police station may forward him in custody to the Magistrate, who may detain him in custody until he executes such bond, or until the hearing of the case is completed.
4. Section 280 provides for recording remarks respecting demeanor of witnesses. When a Presiding Judge or magistrate has recorded the evidence of a witness, he shall also record such remarks (if any) as he thinks material respecting the demeanor of such witness whilst under examination.

Indian Evidence Act

1. ¹²Section 132 lays down that a witness not to be excused from answering on ground that answer will criminate – “A witness shall not be excused from answering any question as to any matter relevant to the matter in issue in any suit or in any civil or criminal proceeding, upon the ground that the answer to such question will criminate, or may tend directly or indirectly to criminate, such witness, or that it will expose, or tend directly or indirectly to expose, such witness to a penalty or forfeiture of any kind. Provided that no such answer, which a witness shall be compelled to give, shall subject him to any arrest or prosecution

¹¹ *Code of Criminal Procedure, 1973* <https://legislative.gov.in/sites/default/files/A1974-02.pdf>

¹² *Indian Evidence Act* <https://legislative.gov.in/sites/default/files/A1872-01.pdf>

2. Section 148 of the Act provides that “if any question relates to matter which is not relevant to the suit or proceedings under hearing except it effects the credit of a witness by injuring his character, then it empowers the court to decide when such questions shall be asked and when such witness be compelled to answer it.”
3. Section 149 of the Evidence Act lays down that “a question intended to impeach the credit of a witness ought not to be asked, unless the person asking it has reasonable grounds for thinking that the imputation which it conveys is well founded”.
4. The extensive powers which have been granted to the court for protecting witnesses from questions not lawful in cross examination are set out in Sections 146 to 153.
5. Section 150 is the penalty that may ensue against a reckless cross-examination if the court was of the opinion that the questions were asked without reasonable grounds.

Indian Penal Code

¹³Section 195A of the Indian Penal Code states that whoever threatens another with any injury to his person, reputation or property or to the person or reputation of anyone in whom that person is interested, with intent to cause that person to give false evidence shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both; and if an innocent person is convicted and sentenced in consequence of such false evidence, with death or imprisonment for more than seven years, the person who threatens shall be punished with the same punishment and sentence in the same manner and to the same extent such innocent person is punished and sentenced

The Law Commission of India Reports

1. ¹⁴The Law Commission of India ("Law Commission") in its 14th Report and the National Police Commission in its 4th Report, thoroughly examined and recommended substantive measures to alleviate the difficulties of witnesses. In its 154th Report, the Law Commission

¹³ *Indian Penal Code* <https://legislative.gov.in/sites/default/files/A1860-45.pdf>

¹⁴ Kumar, S. (2020, April 23). *Witness protection: Safeguarding the eyes and ears of justice* - trials & appeals & compensation - india*. Witness Protection: Safeguarding The Eyes And Ears Of Justice* - Trials & Appeals & Compensation - India. Retrieved October 31, 2022, from https://www.mondaq.com/india/trials-appeals-compensation/914274/witness-protection-safeguarding-the-eyes-and-ears-of-justice#_ftn9

specifically observed, "necessary confidence has to be created in the minds of the witnesses that they would be protected from the wrath of the accused in any eventuality."

2. The Law Commission, further, in its 198th Report carried out an exhaustive study on Witness Identity Protection and Witness Protection Programmes, inter alia, observing that there was an absence of Witness Protection Programmes in India, dealing with the protection of victims and witnesses, outside Court proceedings. Accordingly, the Law Commission proposed and annexed "Witness (Identity) Protection Bill, 2006" along with its Report. However, no Draft Bill regarding Witness Protection Programmes was proposed.

Witness Protection Scheme, 2018

¹⁵Witness Protection Scheme, 2018 provides for protection of witnesses based on the threat assessment and protection measures inter alia include protection/change of identity of witnesses, their relocation, installation of security devices at the residence of witnesses, usage of specially designed Court rooms, etc.

The Scheme provides for three categories of witness as per threat perception:

Category 'A': Where the threat extends to the life of a witness or his family members, during investigation/trial or thereafter.

Category 'B': Where the threat extends to safety, reputation or property of the witness or his family members, during the investigation/trial or thereafter.

Category 'C': Where the threat is moderate and extends to harassment or intimidation of the witness or his family member's, reputation or property, during the investigation/trial or thereafter.

The Scheme provides for a State Witness Protection Fund for meeting the expenses of the scheme. This fund shall be operated by the Department/Ministry of Home under State/UT Government and shall comprise of the following:

¹⁵ *Witness protection scheme*. Press Information Bureau. (n.d.). Retrieved October 31, 2022, from <https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1578108>

- i. Budgetary allocation made in the Annual Budget by the State Government;
- ii. Receipt of the amount of costs imposed/ordered to be deposited in the Witness Protection Fund by the courts/tribunals;
- iii. Donations/ contributions from Philanthropist/ Charitable Institutions/ Organizations and individuals permitted by the Government.
- iv. Funds contributed under Corporate Social Responsibility.

The Scheme provides for the procedure for processing of such applications, a basic Threat Analysis Report ("TAR"), prepared by the Additional Commissioner of Police/ Deputy Commissioner of Police in charge of the concerned Police Station and its disposal within a period of five working days from the receipt of said Report. The said Clause also empowers the Competent Authority to issue interim protection orders until a final decision on the witness' application is made, as well as to conduct monthly follow-up and review of the final order of protection issued. Witness Protection Order, proportionate to the threat and for specific duration and subject to monitoring/ review, which may be passed may include: monitoring of mails/ telephone calls; ensuring witness and accused do not come face to face during investigation/ trial; concealment of identity; holding in-camera trial; regular patrolling around witness' house, etc. The Scheme also makes provisions regarding protection of identity of witness (Clause 9); change of identity (Clause 10); relocation of witness (Clause 11); Confidentiality and preservation of Records (Clause 13); etc. Further, as per Clause 12 of the Scheme, it has been made incumbent on every state to give wide publicity to the scheme and on the Investigation Officer and Court to inform the witnesses about the existence of the Scheme and its salient feature.

Even while the 2018 Witness Protection Scheme is a good development in the right way for witness/victim security, there are still inherent gaps in it. First off, the protection envisioned therein is only valid for three consecutive months at a time. Second, the basis for any orders that may be issued under the Scheme appears to mostly depend on the suggestions or advice provided in TAR(s) by the relevant police employees, who are frequently subject to corruption, pressure from superiors or politicians, etc. Although the Scheme also calls for the secrecy of information and the maintenance of records, there are no penalties for transgressing these rules.

The Scheme does not include any provisions for the witnesses' employment, training, or education during this time.

The witness protection programme is unlikely to inspire confidence in witnesses because of its significant flaws. It also cannot remedy the issue of hostile witnesses. The corruption and political favoritism are factors in the hostile witness turnout. It takes perfect safeguards to protect witnesses.

Conclusion

We have observed that both the legislative branch and the judicial branch keep offering a number of guidelines. But in this case, it is unclear whether these rules are actually followed. India has made significant progress when it comes to protecting witnesses, who are seen as a crucial component of the criminal justice system. However, the absence of a statutory mechanism with harsh legal consequences could leave the entire mechanism that was accepted through the judicial process in a precarious position. In order to effectively administer justice, witnesses must come forward and testify in courtrooms without fear of reprisal, favor, intimidation, or inducement. Therefore, merely stating that there is an effective and stringent Witness Protection Scheme is insufficient. It is now incumbent for the State to assume its responsibilities and to offer comprehensive laws in this regard. The stream of justice won't be able to flow freely and independently until that happens.