

## **DEFENDING JUSTICE**

### **India desperately needs a witness protection law. Just look at the Asaram Bapu case**

**Providing witness protection may be difficult in a country with a limited police force, but it is a key aspect of justice.**

[Aarefa Johari](#) | Jan 13, 2015 · 06:45 am

A key witness in Asaram Bapu's Surat rape case was [shot dead](#) on Sunday by unidentified assailants while he was walking on the streets of his hometown Muzaffarnagar.

The victim, Asaram's cook Akhil Gupta, is the third witness in the arrested godman's rape case to have been attacked and the second to have been killed since Asaram was arrested in September 2013. Ahmedabad-based witness Amrut Prajapati [died](#) of bullet wounds in June 2014 after being attacked several times in just a few months. Dinesh Bhavchandani, another witness who gave a statement against Asaram in the Surat case, faced an [acid attack](#) in March 2014.

Despite this, it is not likely that other witnesses in the [Jodhpur](#) and [Surat](#) rape cases – in which Asaram has been accused of sexually assaulting girls in his ashrams – will get police protection to safeguard their lives and ensure a fair trial. India may be working on a Whistleblower Protection Act to ensure the safety of individuals who expose corruption, but it still has no laws to protect the lives of witnesses in criminal cases. Across the country, conviction rates for crimes are low and a large number of witnesses turn hostile in court, and yet governments have not felt the need to create legal provisions for witnesses to feel secure so that justice is not compromised. The latest witness killing in the Asaram case begs the question: is a witness protection law long overdue in India? And even if such a law was to be passed, is it possible to actually implement it?

#### **Not a new debate**

Various courts and authorities in India have raised the issue of witness protection several times since Independence. In 2006, after the Supreme Court emphasised the need for some legislation on the subject, the Law Commission published a detailed [report](#) about the protection of witnesses and their identities. The report contained an elaborate analysis of witness protection laws in other countries and argued that measures for keeping witnesses secure should be provided at every stage of investigation. More recently, in August 2014, the Madras high court expressed the need for at least statutory witness protection, given the low conviction rates and multiple instances of witnesses turning hostile. There are a handful of cases in which some degree of protection is provided to witnesses, through special statutes for specific situations. Some examples would be the Terrorist and Disruptive Activities (Prevention) Act and the Prevention of Terrorism Act,

which have provisions to hold court proceedings in camera in order to protect the identity and address of a witness. In addition to these, witness protection has been given in certain high-profile, exceptional cases, such as the ones related to the Gujarat communal riots of 2002.

“The fact that 570 witness survivors of 2002 were given CISF [Central Industrial Security Force] protection along with me by the Supreme Court in 2004 ensured that 117 persons were convicted to life imprisonment in connection with the Gujarat carnage,” said Teesta Setalvad, secretary of Citizens’ for Justice and Peace, an organisation fighting for justice for the victims of the riots.

### **Difficult in practice**

Setalvad describes witness protection as “one of the four critical ingredients that ensures integrity of the testimony”, along with an independent investigation, integrity of the prosecution and police reform. “It is particularly important in a country like ours, where there is often a nexus between state actors, corporations and the police,” said Harsh Dobhal, former executive director of the Human Rights Law Network, who believes a witness protection law is as important as a Whistleblower Protection Act. “Often, witnesses turn hostile because they are coerced to do so.”

While experts unanimously agree on the urgent need to introduce official witness protection, they also agree that implementing it would be an overwhelming task in an over-populated country with an understaffed police force. “It would be impossible for the police to physically guard every witness in every criminal cases – there are lakhs of such witnesses all over the country,” said Y P Singh, a former police official-turned-lawyer based in Mumbai.

### **Redirect politicians' protection cover**

“What we need is a new set of laws for critical cases, that will enhance punishments for those who threaten or attack witnesses, to deter them,” said Singh. “The law should also create a system of expeditious trials.” But how does one decide which cases are critical enough to warrant special attention by way of witness protection? Prioritising only high-profile cases or those that have garnered media attention would be an unfair solution – Singh admits that a vast number of attacks on witnesses in criminal cases are reported from rural India, which is largely ignored by mainstream media. Dobhal, however, believes a simpler solution might lie in re-directing the focus of India’s short-staffed police and security forces. “Politicians and VIPs enjoy large security covers, so why can’t we have some of them protecting witnesses?” he said.

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