

## WITNESS PROTECTION IN CRIMINAL TRIAL IN INDIA

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### Abstract

Witnesses play a significant role in the criminal justice system. With their presence and statements, a criminal case has the power to take an entire turn. They are considered as guiding angels of the trial, without their existence, certain prominent facts can go tainted. In a country like India, where every other day thousands of criminal cases are registered, it is enormously vital for the witnesses to stand present in the crime scene. In India, a crime scene majority of the times has the company of a witness nonetheless the problem is, the offenders have the power and audacity to turn the witnesses hostile, resulting in a grave miscarriage of justice. Consequently, there is a noteworthy prerequisite to guard the rights of the witness from such offenders. Numerous acts and statutes have emerged in Indian criminal system; however, their probability of implementation is negligence. The article's aim is to walk through the concept of witness protection in a detailed mechanism. The origin of witnesses in India, will be looked into along with the conditions as to who can qualify to become one will be focused. In addition, certain protruding schemes that have arisen into the system will be observed into, such as the Law commission reports, witness protection schemes report, likewise. Furthermore, the approach of the Indian judiciary in shielding the rights of witness will also be discoursed with the support of certain precedents.

### INTRODUCTION

In a criminal legal system, Witnesses are viewed as one of the most significant figures, for without them, a fair trial mechanism is hard to achieve. They are considered as the eyes and ears of justice<sup>2</sup>. There is no proper definition of Witness under any statute, however, the same has been pronounced in multiple legislations and precedents. In layman's term, a witness is a person who swears under a vow to provide the court only with honest evidence. Witnesses are live evidences of the court, as they give out direct instances of the crime happening, and those instances eventually help in

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<sup>2</sup> Definition of Witness according to Jeremy Bentham.

deciding the acquittal or conviction of the offenders. Their statements have high bearing as they can change the course of a case. Owing to this, the protection of witnesses is of utmost importance; they ought to be safeguarded from the superfluous influences which often are a part of corruption, threats, likewise. These influences usually come from men in power, who have mastered the art of spinning the witness hostile. Hence, it is the obligation on the legislation and the state to check and scrutinize the laws regarding witnesses in order to preserve the path of righteousness.

Presently in India, the vulnerability of witnesses is at its peak. The victims' right to fair trial is dependent on the evidences provided by the witness to a large extent. However, with the evolution of time, the scaling of crime graph is also apparent. Many of the innocent victims are behind bars today because of the reluctance of the witness to deliver evidence or give out false evidences and this majorly takes place under threat or bribe from powerful people. There are cases like the "Best Bakery"<sup>3</sup>, The "Jessica Lal"<sup>4</sup> murder case, wherein the witnesses were forced to be reluctant while deposing or detracting their statements. Crimes like this are ongoing because there is no law in India which protect the rights of witnesses. No doubt, there are relevant reports, notices and guidelines regarding this matter, nonetheless, the judiciary cannot function without a proper legislation.

In the case of "Zahira Habibullah Sheikh & Others v. State of Gujarat"<sup>5</sup>, the Apex court observed that, witness statement tampering, reluctance to disclose facts are becoming imminent nowadays and that the legislation should come up with proper measures for the same<sup>6</sup>. Similarly, in a case of "People's Union for Civil Liberties v. Union of India"<sup>7</sup>, the Apex court opined that, "the need for the existence and exercise of power to grant protection to a witness and preserve his or her anonymity in a criminal trial has been universally recognized"<sup>8</sup>. Moreover, the paper throws light on the essentiality of witness protection laws in India, why the country lacks such a significant legislation and also scrutinizes multiple reports of law commission, police report along with the help of precedents.

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<sup>3</sup>Zahira Habibullah H Sheikh & Anr v. State of Gujarat (2006) 3 SCC 374

<sup>4</sup>Manu Sharma v. State (NCT of Delhi) (2010) 6 SCC 1.

<sup>5</sup>Supra at 2.

<sup>6</sup>*Ibid.*

<sup>7</sup>People's Union for Civil Liberties v. Union of India (2003) 10 SCALE 967

<sup>8</sup>*Ibid.*

## **RESEARCH QUESTIONS**

1. Whether the prevailing legislations concerning protection of witness are requisite or do they act as a hinderance in the impartial trail procedure?
2. How significant is the role of Indian Judiciary regarding the protection of witness?
3. Whether the Law commission report efficiently deal with the issue of witness protection?  
And, is a fractional scheme of protection of witness required in India?

## **RESEARCH METHODOLOGY**

For the pattern of methodology, doctrinal, analytical and descriptive methodology has been adopted in the paper. Secondary sources inclusive of books, articles, journals, have been acknowledged wherever required in the paper. Case laws, too have been given much importance considering the gravity of the topic itself. The judgements of the High Courts and the Apex Court are given priority in the paper while explaining several topics. All these references were of much use in the paper and have been acknowledged. Use of primary sources is not adopted in the paper.

## **LITERATURE REVIEW**

This sector of the paper aims to encapsulate some of the recent works on witness protection and scrutinize the difficulties that come along with the execution of Witness Protection Programs. For the same, the assistance of several journals, books and commentaries have been taken into consideration.

In an article by H. Suresh, titled “New Law Needed to Protect Witnesses”<sup>9</sup>, the author has centered to focus on the malicious crimes that are meted out on the witnesses. He focused on the crimes normally undertaken by men in power, corrupted government, and habitual offenders in general. The author has referred to certain international forums like the European Commission’s law. He has also raised the issue for bringing in the “Bill of Rights”<sup>10</sup> legislation for appropriate safeguarding of witnesses. In a similar article titled, “Witness Protection – Rights, Needs and

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<sup>9</sup>H. Suresh, New Law Needed to Protect Witnesses, Combat Law, Vol. IV, Issue 1, April-May.

<sup>10</sup>*Ibid.*

Benefits Required to Ensure Effective Victim Testimony”<sup>11</sup>, Justice Jagannadha Rao highlighted that, witnesses and victim despite being a significant figure in a wrongdoing, have limited rights in their protection. He observed that if the witnesses are tarnished, then the while concept of fair trail gets petrified.

In, “Access to Justice: Witness Protection and Judicial Administration”<sup>12</sup> by Justice Madan B. Lokur, the author stated the difficulties that witnesses have to undergo and how, a little corruption can lead to unfair trails and harms the basic principle of natural justice. He has taken the assistance of the Law commission reports and guidelines of Delhi High court to scrutinize the matter and has come to conclusion that, mere documents and provisions of the legislation will never serve the purpose of safeguarding the witnesses unless and until the implementation of the same has been done effectively.

Although these articles have realized the importance of witnesses and their role in getting fair justice, they have failed to analyze the root causes behind the wrongdoings that they are undergoing. Just blaming it on corruption is never the solution; one has to comprehend why the corruption took place in the first instance; whether it was due to threat to life or mere monetary compensation given to the witness? Secondly, till now many reports and notices have been issued in regards to the protecting the witnesses by providing reliefs. Nonetheless, none has mentioned what reliefs will be beneficial for their needs. Will a mere compensation satisfy the need of the hour, or should a stringent action of putting behind bars will work? Some articles have compared the legal framework of India with international legislations; however, one has to remember that the socio-economic conditions of India are not the same as USA, Russia or any other international legislation and that is where people have flawed to understand the need of protection of witnesses considering all the suitable conditions that could be promising for them in India.

## **ORIGIN AND SIGNIFICANCE OF WITNESSES**

Witness is someone who is present in the crime scene and one who is able to deliver information regarding the same in the court of law. He/she is a person who has played an active participation

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<sup>11</sup>Justice Jagannadha Rao, Witness Protection – Rights, Needs and Benefits Required to Ensure Effective Victim Testimony.

<sup>12</sup>Justice Madan B. Lokur, Access to Justice: Witness Protection and Judicial Administration.

in the crime, by either seeing, hearing, touching or smelling the event. There is no accurate definition of witness in any criminal legislation, however, some of the provisions and precedents<sup>13</sup> have given out the meaning while adjudicating cases. Witness, according to the Black's law dictionary means, "In the primary sense of the word, a witness is a person who has knowledge of an event. As the most direct mode of acquiring knowledge of an event is by seeing it, witness has acquired the sense of a person who is present at and observes a transaction"<sup>14</sup>. According to the Witness protection scheme, 2018, "Witness means any person, who possesses information or document about any crime regarded by the competent authority as being material to any Criminal proceedings and who has made a statement, or who has given or agreed or is required to give evidence in relation to such proceedings"<sup>15</sup>.

The criminal trial is based on the foundation of evidence, and the witness form the pillar of the procedure in a fair trial. Apart from the evidences gathered from both the parties to a suit, the witness' evidence forms a crucial component in order to reach an impartial conclusion. A witness is bound to produce evidence<sup>16</sup> if he is present at the crime scene, along with that, he/she has to undergo cross examination and is barred from refusing to answer the same. Otherwise, he/she will be liable to be punished under Section 190<sup>17</sup> of the Indian Penal Code. A similar opinion was preached by the Apex court in "State of Gujarat v. Anirudh Singh"<sup>18</sup>, wherein it held, "It is the salutary duty of every witness who has the knowledge of the commission of the crime, to assist the State in giving evidence"<sup>19</sup>. However, there are exemptions for lawyers, advocates, magistrates, spouses wherein they are safeguarded from responding certain questions whenever they are in a position of a witness.

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<sup>13</sup>In the case of *Neelam Katara v. Union of India*, the definition of witness according to Delhi High court is, "Witness means a person whose statement has been recorded by the Investigating Officer under section 161 of the Cr.P.C., 1973 pertaining to a crime punishable with death or life imprisonment".

<sup>14</sup>Definition of Witness as per Black's Law Dictionary.

<sup>15</sup>Witness Protection Scheme: <https://www.iastoppers.com/witness-protection-scheme-mains-article/> (last visited on 4<sup>th</sup> October, 2021).

<sup>16</sup>Section 118 of Evidence Act states, "The competency of a witness to testify as a witness is a condition precedent. If s witness is competent, he cannot be prevented from appearing in the court and giving evidence".

<sup>17</sup>Section 190 of the Indian Penal Code states the punishment of witness in case they furnish wrong information or hesitate to answer the questions.

<sup>18</sup>*State of Gujarat v. Anirudh Singh AIR 1997 SC 2780.*

<sup>19</sup>*Ibid.*

The integrity of witness cannot be questioned considering the reliance of their statements in majority of the stages in a trial. Particularly in cases wherein it is the obligation on the prosecution to establish the malice by taking absolute assistance of the oral evidence of witness. This situation is prominent when the evidence of witness is of utmost importance, even if it is not an eye witness, in order to determine the environments which would have let the crime to be committed. In “Vikas Kumar Roorkewal v. State of Uttarakhand”<sup>20</sup>, the apex court highlighted the significance of witness and held that they form an insignificant part of the criminal trial and if their rights are protected, impartial judgement making process will be smoother<sup>21</sup>. Other than this, in offences relating to human body like rape, murder or any offence that is a threat to the security of the nation, drug trafficking, likewise, the witness has a pivotal standing.

### **CONDITIONS OF WITNESS IN INDIA**

All the aforementioned significances fall flat in today’s trial procedures. The situation in which witnesses in India are presently, is tremendously pitiful. It is primarily because, India lacks laws concerning to the protection of witnesses. It is not easy for a witness to appear before the court and utter the truth always, owing to the pressure of either politics or any life-threatening conditions. And in such situation who is liable for the life of a witness? When there are no laws, the witness has no other option but to take the wrong path towards partial justice and all this is leading to the degrading beliefs of society towards justice and fair trials. The landmark cases of “Jessica Laal Murder”<sup>22</sup> and “B.M.W. Hit and run”<sup>23</sup> cases are prime instances of turning the witness’ hostile. In these cases, the witnesses were in an extremely vulnerable state, jeopardized between the furnishing the truth and the threat to life and integrity. This audacity arises due to zero legislations for their safeguarding.

The Supreme court in “Swaran Singh v. State of Punjab”<sup>24</sup>, voiced the need for protection of witness considering the existing environments they are put to. It observed that, they are not respected in the court owing to poor management, their travel and physical expenses needed for

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<sup>20</sup>*Vikas Kumar Roorkewal v. State of Uttarakhand* 2011) 2 SCC 178.

<sup>21</sup>*Ibid.*

<sup>22</sup>Supra at 3.

<sup>23</sup>*State v. Sanjeev Nanda* (2012) 8 SCC 450.

<sup>24</sup>*Swaran Singh v. State of Punjab* AIR 1957 SC 637

the trial are overlooked because of which they have to pay from their own pockets, and is a main reason for their resistant conduct<sup>25</sup>. Likewise, in “Zahira Habibullah Sheikh v. State of Gujarat”<sup>26</sup>, the top court observed, they are forced to furnish false evidences leading to the miscarriage of fair trials<sup>27</sup>. It is virtuous to see the courts liberating the need for a legislation for safeguarding their rights however, it is on the legislation to work out the same.

## **SCHEMES FOR PROTECTION OF WITNESS IN INDIA**

As earlier discussed, there is no regarding the protection of witness in India. However, there are certain reports and schemes that have been taken into play in order to hasten the process of bringing in the desired legislation.

### **1. The Law Commission reports:**

Time and again, the reports of Law commission of India has endorsed ways to safeguard the right to the witnesses. In its first report dealing with witness, i.e., the 14<sup>th</sup> report, in 1958, it prioritized the witness from a different perspective. According to the report, the witness was considered as individuals of utmost importance in criminal trial and therefore, respecting their rights and making sure of their safety was to be dealt with first. The report viewed that for a fair trial to take place, the witness has to undergo a lot of sacrifices for instance, it has to manage its time by coming to the court at a specified time, further in most of the cases, there is a long pending hour of waiting, and in such scenarios, witnesses are not even offered a seat, or even water owing to inadequate measures in court. Apart from this, there is travelling expenses, which he/she has to pay for and likewise. An issue of giving respect to the witness was raised in this report. Generally, no one in the court comprehends their significance in the case and hence they are sidelined continuously.

In the second report of Law commission, i.e., the 154<sup>th</sup> report, the commission referred to the 14<sup>th</sup> law commission report along with the Nation Police commission report and opined that, “plenty of justification for the reluctance of witnesses to come forward to attend Court promptly in obedience to the summons”<sup>28</sup>. It further suggested that not only was the flaw on the part of the

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<sup>25</sup>*Ibid.*

<sup>26</sup>Supra at 2.

<sup>27</sup>*Ibid.*

<sup>28</sup>Reform of Judicial Administration, Law Commission of India, 14th Report, 1958

state while providing adequate support to the witness, but also the malice tangled by the habitual criminals resulting in turning the witness hostile. Subsequently in the 172<sup>nd</sup> and 178<sup>th</sup> report, several amendments of statues and legislations was recommended by the commission. The report also highlighted the harassment meted out on the witness by the police officials and suggested methods to prevent the same. In fact, the 172<sup>nd</sup> report derived its origin from the case of “Sakshi v. Union of India”<sup>29</sup>, wherein the court had advised for open camera hearings in order to protect the witness from the wrath of the accused or any other malicious minded person so that he/she can testify the trial in an impartial manner. Later the 198<sup>th</sup> report, the commission advocated for the protection scheme to extent up to all serious offences and not limited up to sexual or terrorism offences, thereby widening the scope of the scheme.

## **2. Witness protections scheme, 2018**

The paper has already discussed the importance of witness in a fair trial, following which the schemes were also adopted in its support. Now, the paper will discuss some of the rights of witness that have been reiterated by the reports and schemes<sup>30</sup>.

- Right to proper seating and waiting area arrangements during court proceedings.
- Right to know about the appraises in investigation and information status of a case.
- Right to dignity, respect and privacy to be given
- Right to protection against any harm or intimidation
- Right to furnish evidences without disclosing identity
- Right to protection of place and transportation during the pending suits in court.

The Witness protection scheme,2018 was accepted by the supreme court in the case of “Mahendra Chawla & Ors. v. Union of India”<sup>31</sup>, keeping in to consideration the above-mentioned rights of the witness and how significant it is to protect those same rights. The apex court in the aforementioned

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<sup>29</sup>Sakshi v. Union of India 1999 (5) SCALE 376.

<sup>30</sup>Naveena Varghese, National University of Advanced Legal Studies, Kochi; “Witness Protection: Problems Faced and Need for a Protection Programme in India”- [lawctopus.com/academike/witness-protection-problems-faced-andneed-for-a-protection-programme-in-india/](http://lawctopus.com/academike/witness-protection-problems-faced-andneed-for-a-protection-programme-in-india/) (last visited on October 4th, 2021).

<sup>31</sup>Mahendra Chawla & Ors. v. Union of India 2018 SCC Online SC 1778



case recognized the rights of witness under Article 21<sup>32</sup> and opined, “If one is unable to testify in courts due to threats or other pressures, then it is a clear violation of Article 21 of the Constitution. The scheme is regarded as a law within Article 141/142 of the Constitution and the center and state need to follow it until a competent legislation is made on the same subject”<sup>33</sup>.

### **Loopholes in the scheme, 2018**

No doubt the scheme had paid heed to the technicalities of legislation while drafting it, nonetheless, it has missed out on some important points. They include<sup>34</sup>:

- Only three months’ time frame is allocated for the functioning of the Witness Protection Order.
- Implementation of the scheme would be difficult in those states which do not have adequate resources. Although an option for seeking relief from the center is available, it is not prudent to do so, because the scheme nowhere mentions regarding fiscal matters from the center in relation to witness protection.
- Police is delegated to investigate the threat reports, who will be under pressure in influential cases. The police might be bound to furnish the evidences of the witness to the men in power thereby diminishing the chances of a fair trial.

### **APPROACH OF JUDICIARY TOWARDS WITNESS PROTECTION**

The courts in India have shown their sustenance for the need of witness protection in many judgements and have also given guidelines in some cases for suitable methodologies to be implemented regarding the same. Let us see some of the precedents in for of witness protection in India.

The Apex court in the case of “State v. Sanjavev Nanda”<sup>35</sup> highlighted how the witnesses are dodging to give factual statements in the court leading to a growing trend in the country. The court opined, “Witness turning hostile is a major disturbing factor faced by the criminal courts in India.

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<sup>32</sup>Article 21 of Indian Constitution states that “No person shall be deprived of his life or personal liberty except according to a procedure established by law.” Thus, article 21 secures two rights: Right to life, and. 2) Right to personal liberty.

<sup>33</sup>Supra at 30.

<sup>34</sup>*Ibid.*

<sup>35</sup>*Ibid.*

Reasons are many for the witnesses turning hostile, but of late, we see, especially in high profile cases, there is a regularity in the witnesses turning hostile, either due to monetary consideration or by other tempting offers which undermine the entire criminal justice system and people carry the impression that the mighty and powerful can always get away from the clutches of law, thereby eroding people's faith in the system"<sup>36</sup>. Similarly, in Jessica Lal's<sup>37</sup> case, all witnesses, despite being aware of the facts of the crime scene accurately, denied to recognize the offender, a son of a minister in Haryana. This case is an instance of the men in power turning the witness's hostile and vulnerable.

Many a times our judiciary too falls in to the hands of powerful men like in the case of "Ambica Prasad v. State"<sup>38</sup>, wherein the witness from the prosecution side was threatened by the accused's family leading to which an FIR was filed by the witness. Nonetheless, it was later known that the accused belonged to an influential family because of which the witnesses' stand was lost in the court. Contrarily, there are also instances where the court has asked for a suitable execution of the law for witness protection like in "State of UP v. Shambhu Nath Singh"<sup>39</sup>, wherein the court had asked to implementation of Section 309 of the CrPC, 1973. It held, "It is the requirement of Section 309, that the trial must continue, without any kind of adjournments and where the adjournment is necessarily required, then only it shall be given with special reasons are there and that too, to be recorded by the Court. Otherwise, taking adjournments would become a usual practice and it would harm or affect the just decision of the case"<sup>40</sup>.

In the case of "National Human Rights Commission v. State of Gujarat"<sup>41</sup>, the apex court the Apex court issued certain guidelines as follows<sup>42</sup>, to make the implementation of fresh laws probable in India for witness protection.

- Committee to be formed at district or lower levels.

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<sup>36</sup>Supra at 22.

<sup>37</sup>*Ibid.*

<sup>38</sup>Ambica Prasad v. State 1992 CriLJ 1478.

<sup>39</sup>State of UP v. Shambhu Nath Singh 2001 (4) SCC 667.

<sup>40</sup>*Ibid.*

<sup>41</sup>National Human Rights Commission v. State of Gujarat (2009) 6 SCC 767.

<sup>42</sup>*Ibid.*

- For the need of protection, anyone having a legal right, can apply for witness including police, advocate, activists, likewise.
- Police is responsible to recheck the protection phase after 90days.
- Protection should be free of cost and sufficient time must be given to witness to present its statement appropriately.
- In case witness withdraws from furnishing evidence, the safety is also withdrawn.

## **CONCLUSION AND RECOMMENDATIONS**

The protection of witness from harassment and unequal treatment is the dire need of the hour. The legislation should change with the change in society. The manner in which cases are arising with regards to witness protection, the legislation ought to come up with a set of laws to look in to the same. Owing to the deep-rooted silence of the legislation in this matter, has led to the deteriorating rate of 'losing faith' in the judiciary. It is high time that the reports and schemes be implemented and not just lie in a corner after being approved. The courts have shown tremendous backing in this regard too, nonetheless, it all goes in vain, if it is not manifested towards a proper legislation for protecting their rights.

Witnesses have an undeniable significance in the trial, however, due to lack to law, and less stringent methodologies, innocent offenders fall prey to such traps, thereby leading to miscarriage of judicial system. Therefore, whenever, the witness, despite all rights being well protected towards them, commits an offence of lying to the court, or furnishing false evidences, he/she should be punished equally, for the life of innocent accused is in their hands. There should be appropriate investigation backed up by effective evidence while adjudicating a case; relying merely on the witnesses' statement can often led to prejudice towards blameless offenders. The statements of the witnesses ought to be recorded in technical manner so that they are not beleaguered later. In order to prevent the witness from prolonging visiting hours of the court, the legislation should come up with fast-track courts, which deliver fair judgements. The witnesses should be granted a fixed sum of money from the witness protection fund to bear the expenses during the trail days. In future, once the schemes and reports become functional, there will not be any harm towards to the witnesses' rights. The limitations in law always create a scope for better

researching in future thereby throwing light on new technicalities of law that ought to be implemented for improved running of the legislation and judiciary.

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