

# Witness Protection in Criminal Justice System in India

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## ABSTRACT

Witness is a person who is having the information about the case. Witness plays major role in the system of criminal justice. The Statement of Witness is essential for each and every case in the court but unfortunately the witness do not come to the court to testify or evidence they feel unsafe. There is no doubt that the some witnesses present in the court they become hostile therefore due to this reason, the accused persons are acquitted. In these days it reveals from the time, circumstances & conduct of human that they are not relying on the required confidence upon the system of criminal justice. The Witnesses are one of the main foundation stone in to deliver the justice in criminal cases in the system of criminal justice. For the smooth functioning of the system of criminal justice, the witnesses' protection is compulsory because without it the delivery of the justice is not possible in the system of criminal justice, subjecting to the Constitution of India .<sup>1</sup>

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## 1. Introduction

Witness is the person who is having the information in respect of the occurrences or events & found present at the time commission of case or offence. The presence and role of witness is important part of the justice delivery system in any country. Great Jurist Bentham said that Witness is the eyes and year of justice. The statement of Witness is having the required force for changing the criminal procedures. The presence of witness is essential & compulsory for each and every case before the court but often it happens that the witnesses do not arrive or reach in the court for providing their testimony or evidences in the case related because of unsafe conditions & insecurity. It has been found in many cases that the witnesses reach to or present in the court but they get the hostility or declared hostile due to aforesaid causes in India. In this paper the objectives of the study to understand the witnesses and provisions relating to made in the favour of witnesses' protection and their significance in the system of criminal justice. In this connection, in the light of all above said the witness protection by making suitable laws with effectiveness is not only necessary but also mandatory in according to the necessity & need of hour in present scenario in our country to ensure the ends of criminal justice.

## 2. Who is Witness?

The person who provides the testimony or statement on oath before the Court of Law is a witness.<sup>1</sup> Witness is the person who looks at the occurrence (s) or event (s) as - the offence or accident get place. As per Black's Law Dictionary- the Witness as a person who knows about an event or occurrence, the person who is getting the knowledge of the events by looking at the same; by looking at, the person proves a thing or accident and has got the sense of the person.<sup>2</sup> In Accordance with the Oxford Dictionary- Witness is the person who looks at an event typically an offence or accident makes

place; a person who is providing the sworn testimony before the Court of Law or the police.<sup>3</sup>

The opinion of witness is the main foundation of the case, the Court decides that the witness is a part & parcel part of the system of criminal justice, the Witness who provides the statement before the court of law or police. The testimony recorded before the court on oath. The truth which has been shown from the testimony of witness it is change in to the foundation of justice. The Witness who is a person who examined for evidence on the oath in a case, a different person to the party, taken swear for speaking only the truth in a case or criminal procedure.

In this relation, the Indian Penal Code 1860, the Code of Criminal Procedure 1973, the Evidence Act 1872 do not provide any kind of definition of the word 'witness.' In this regard, According to Section 118 of the Evidence Act 1872 all persons are capable to give evidences but such person must not be incompetent to under the asked question due to the tender age, the extreme old age, the diseases or any other reason of the same.<sup>4</sup> With this relation, if the witness is the child, women or aged person the protection is essential.

The issues or problems which are or have been faced by the witnesses which as follows-

1. The witness does not willing to arrive to the courts to examine and evidence because of unsafe conditions & insecurity.
2. The Witnesses at the time of cross examination are under a lot of harassment & other similar things. They become under an immense mental pressure or stress when they are asked questions to give answers.
3. In today's era, the acquittal ratio is very high due to the hostility of the witnesses for want of witnesses' protection.

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<sup>1</sup>Enforced on 26 January, 1950

<sup>1</sup> [www.dictionary.com/browse/witness](http://www.dictionary.com/browse/witness)

<sup>2</sup> <https://the.lawdictionary.org/witness>.

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<sup>3</sup> <http://en.oxforddictionaries.com/definition/witness>

<sup>4</sup> Section 118 of Indian Evidence Act 1872

4. In few cases witnesses become hostile because of the influence of rich & corrupt persons which makes the rule of law is mockery.

The Statement of Witness provides the clue for reaching at the finding in criminal procedures. The Witness do not arrive before court for giving the statements. The Apex Court of India in *Swaran Singh v. State of Punjab*<sup>5</sup> expressed the view with regard to the plight of witness in the system of criminal system. In relation to the protection of witness, there is no law has been made not even a scheme has been framed by the State Government or Union Governments.<sup>6</sup> In criminal trial or case, the presence of witnesses before the court is very necessary but the witnesses do not arrive in the court for giving their statement or evidence because of unsafe conditions & insecurity. If the witness arrives in the court they become hostile so they provide the opportunity to accused for acquittal. In this regard, Some special legal provisions are in existence with respect to the protection of witnesses as- Section 16 of the TDA P Act 1987, Section 30 of the Prevention of the Terrorism Act, 2002, Section 44 of the Unlawful Activities Prevention Act, 2005 & Section 17 of the National Investigation Agency Act 2009 the Court for keeping the identification of the witness secrecy if the life of the witness is in danger.

Witness give their statement freely and fearlessly before the court the Apex Court in the *National Human Rights Commission v. State Of Gujarat & Ors*<sup>7</sup> for ensuring of the sense of believe in the mind of the victim persons & their relatives the following measurements shall be taken

1. To ensure the safe passage for the witnesses to and from the court precincts.
2. To provide the security to the witnesses in their place of residence wherever considered necessary, and
3. Relocation of witnesses to another state wherever such a step is necessary.

Central and State Government does not enact a law for Witness Protection Despite the order of the Apex Court. In the Case of *Zahira Habibullah Sheikh v. State of Gujarat*<sup>8</sup> the apex Court held that if the witness becomes hostile either because of criminal intimidation, threats, coercion, money, political pressure & others reasons. It has been revealed that by the Court that due to these or such type of circumstances the witnesses' protection is essential & mandatory.

### 3. Recommendations by Commissions-

The Law Commission in its 14<sup>th</sup> Report, 1958 included the witnesses' protection in limited sense as-

- (i) Witnesses should be given proper arrangement (s) in the court house.
- (ii) To provide travelling allowance for the attendance of the court

- (iii) To Provide daily allowances for the witnesses & others.

The National Police Commission in its 4<sup>th</sup> Report, 1980 accedes the hardships which are being suffered by the witnesses for attending procedures in the court. The he Law Commission in its 154<sup>th</sup> Report, 1996 contained that essential believe is to be made in the minds of the witnesses that they will be provided protection from the crushing of the accused in any eventuality<sup>9</sup>.

The 178<sup>th</sup> Law Commission Report respective the fact of witnesses becoming hostile & recommend the prevention of becoming hostile and recommend the recording the statements relating to the witnesses in the presence of magistrate and insertion in the Code of Criminal Procedure, 1973 under section 164A. The Law Commission in India 198<sup>th</sup> report respective on the witness Identification Programme and the Witness Protection Programme in the case of all serious offences. The Criminal Justice Reform Committee under the chairmanship of Justice V. S. Malimath provided the recommendations about the witnesses' protection without specifying any provision or scheme whatsoever. The Law should be made for the protection of witnesses & their relatives. Section 151 and 152 of The Indian Evidence Act 1872 is only provision which protect the witnesses with regard to the questions which are asked about indecent or scandalous questions and questions which has intention for the insult or annoyance.

Thus the Law Commission was having also the recommendations on witnesses' protection in all stages of investigation & trial and still even for post trial. But there has been very little action on its findings while witnesses' intimidation and harassment are being in existent.

### 4. Witness Protection under International Law and Other Countries- which is as under-

#### United Kingdom-

Under the English Law to threat the witness with respect to the provide evidence is considered as a contempt of Court therefore also the threat or revenge against a witness after he has examined in evidence before the court is also covered as contempt.<sup>10</sup> The Justice relating to Criminal and Public Order Act 1994 of U K Government shows the punishment in respect of the intimidation of witnesses if the witnesses going to provide the evidence before the court and also provides the help to the persons who co-operates the investigation of offence.

#### United States-

The Witnesses Security Reform Act 1984 shows the relocation & other protection to a witness or a potential witness in an official proceeding in concerning an organized criminal activity or other serious offences.<sup>11</sup> The Protection may also be provided to the person associated with the witness and

<sup>5</sup> 2000 CriLJ 23780, AIR 2000 SC2017 retrieved from <https://www.manupatrafast.in/pers/viewDocByManuidPop.aspx?>

<sup>6</sup> National Human Right Commission v. State of Gujarat 2003(9) SCALE 329 <http://www.legalserviceindia.com/article/I259-Witness-Protection-Programme.html>

<sup>7</sup> (2008) 16 SCC 497 see also <https://www.manupatrafast.in/pers/viewDocByManuidPop.aspx?manuid>

<sup>8</sup> 2006Cr.L.J. 1694(SC)

<sup>9</sup> <http://lawcommissionofindia.nic.in/101-169/Report154Vol1.pdf>

<sup>10</sup> H Suresh ,Combat Law, Volume 4, Issue 1 , April-May 2005 <http://www.indiatogether.org/combatlaw/vol4/issue1/witness.htm>

<sup>11</sup> H Suresh ,Combat Law, Volume 4, Issue 1 April-May 2005 <http://www.indiatogether.org/combatlaw/vol4/issue1/witness.htm>

immediate family member if he has feelings that the involvement of witness in the procedures relating to judicial are at risk. The U S Attorney General provides decision whether to grant a person or qualify for the witness security programme.

#### **Australia-**

Australia Witness Protection Act 1994 reveals the National Witness Protection Programme for the country. The Federal Police Commissioner of Australia shall provide the arrangements orco-operations and protection to the witnesses. The Commissioner of the Federal Police Australia is considered solely responsible to decide whether a witness should be included in this programme.

#### **South Africa-**

In South Africa the Witness Protection Act 1998 gives the witnesses' protection. This Act shows the establishment of the office called office for witnesses' protection within in the Department of Justice.<sup>12</sup> The Director of the office with relation to the Witnesses' Protection takes into account the following factor give to witness protection or not as the extension and nature of the risk for the safety of the person respective, the Nature of procedures in the witnesss' evidence is requisite the Nature of the evidence & its relevancy.

#### **5. Witness Protection under the International Law-**

The Rome Statute of International Criminal Court of Justice is one of the main explanatory lists of due process guaranty to the witnesses' protection. Its covers the protection of victims & witness is presumed of innocence, right to counsel right to produce the evidence & confront witness's right to remain silent right to be produced in the trial and the right to have charges proved without reasonable doubt in this relation, also requires the victims and witnesses unit (VAW) which is give sufficient protective and security measures for victims & witnesses may be at risk due to their testimony and assistance them ingesting medical psychological or other kind of assistance. The U N Declaration of fundamental Principles of Justice for Victims of Crime and Abuse of Power 1985 states that administrative & judicial measures should be taken for minimizing inconvenience, protection of privacy & guarantees the safety of the victims & witnesses. These Declaration states victims should be treated with mercy and respect for their dignity. It is implied that victims physical and psychological treatment as witness in criminal procedures given.<sup>13</sup>

#### **6. The Necessity for Witness Protection Programme in India-**

The crime ratio is high & conviction rate is low and the measurement of acquittals is increasing in criminal cases. This is because of absence of witnesses' protection programme. So the witnesses' protection programme in India is essential. The investigation procedure by the police takes a long time & the trial proceedings is so long due to important witnesses lose interest in the case. The transnational nature of organized crime presents the law enforcement agencies in the world with a growing challenge today. This is because it is difficult to

identify the true culprit of such organized crime that they do not directly involve and it is difficult to collect evidence. In India there are many cases such as murder case of Nitish Katara, Best Bakery Case, Priyadarshani Matto Case & Jesica Lal Case, Vyapam Scam indicate the increasing tendency of the witnesses to turn hostile and dead for no apparent reason. In Vyapam scam most of the witness accused or beneficiaries are found dead. Exceeding 40 of the accused persons or witnesses in the case has died. Therefore there is an urgency for bringing the provisions with regard to the the witnesses' protection not only in the trial but there after the trial. No reform is possible if the protection of witness is not providing under system of criminal justice. Recently the Apex Court in the case of *Mahender Chawla v. Union of India Writ Petition (Criminal) No. 156 of 2016 decided on 5 December 2018* approves the Witness Protection Scheme 2018 drafted by the NALSA (National Legal Services Authority) and Bureau of Police Research and Development (BPRD) for Ministry of Home Affairs New Delhi with consultation of Union of India comes into effectat once. The Apex Court has passed directions to the Union of India with also State & Union Territories shall enforce the Witness Protection Scheme 2018 in letter & spirit. The Court also stated that it shall be the 'law' under Article 141 and 142 of the Constitution till the enactment of suitable parliamentary and or State legislation in respect of the Witnesses' Protection.<sup>14</sup> Hence the Witness's Protection Scheme 2018 provides that the witnesses obtain appropriate and ample protection. This scheme will go a long way for strengthening the system of criminal justice in India.

#### **7. Conclusion-**

It is major time that the witnesses whose evidence is crucial to the successful prosecution of criminal cases and criminal justice system to have a good witness protection programme. Where the life of witness and his family member are also at risk effectively measures shall be adopted for the protection of the witnesses who appears in the court hence the witnesses can help to the delivery of justice. Witness plays important role in the criminal justice system. The Witnesses are the eyes and ears of court. For the protection of witnesses many programme should be conducted towards the protection of witnesses and family members. Protection should be given before and after the proceeding. The witnesses should be free from intimidation, harassment or abuse throughout the proceeding and treated with fairness respectful and dignified manner. All the facilities may be provided to the witnesses like medical facilities social services, counseling, treatment and support services etc. Stringent law is being made for the protection of witnesses and proper and enough steps shall be taken to protect witnesses appearing before the court and after the judicial process complete. Justice will suffer if the witnesses do not make truthful deposition in court and becoming hostile. The Law commission of India recommending the witness protection programme for India like many countries like USA, UK Australia and so many more. The Indian System relating to the Criminal Justice has been ignoring the necessity of the witnesses' protection for a long time. The time has come for the witness must be treated properly and respected. In

<sup>12</sup> H Suresh ,Combat Law, Volume 4, Issue 1 April-May 2005  
<http://www.indiatogether.org/combatlaw/vol4/issue1/witness.htm>

<sup>13</sup> U N Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power 1985

<sup>14</sup> Retrieved from  
[https://www.sci.gov.in/supremecourt/2016/34388/34388\\_2016\\_Judgment\\_05-Dec-2018.pdf](https://www.sci.gov.in/supremecourt/2016/34388/34388_2016_Judgment_05-Dec-2018.pdf)

effective witness measures can affect the outcome of not only prosecution but whole judicial system. If witnesses are protected by law they can give evidence without fear and these with enable the court of justice for convicting the accused. Therefore the necessity of the hour is for coming up with legislation relating to witnesses' protection in criminal trial in India. The Witness must be provided the required protection at the time of investigation, inquiry and trial and after the trial. The Victims persons & witnesses are having the most significant role in the trial of criminal cases & that is to be protected. It is inevitable that the witnesses' protection & victim persons become extremely significant for the justice because it relies on their statement, testimonials & complaints before the court that the actual criminals of heinous crimes can be book.<sup>15</sup> The central legislature of India should take up the Apex Court directions in the case of *Mahender Chawala* should make the laws which will be commonly related to the witness's anonymity & Protection within a time.

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<sup>15</sup> National Human Rights Commission v. State of Gujarat AIR 2009 (SCW) 3049 Para 4