

PROTECTION OF WITNESSES IN INDIAN LEGAL SYSTEM

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BEST CITATION – VASHISHTHA MISHRA & MS.EKTA ROSE, PROTECTION OF WITNESSES IN INDIAN LEGAL SYSTEM, INDIAN JOURNAL OF LEGAL REVIEW (IJLR), 4 (1) OF 2024, PG. 1442-1450, APIS – 3920 – 0001 & ISSN – 2583-2344.

Abstract

The term "witness" refers to someone who can testify as essential in legal or criminal litigation; in this context, it points at the significance of testimony itself from the material evidence and the nature of presentation. A witness is essential in the exact placement of the structure of the criminal justice system of any country's establishment. To this end, the factual testimony of witnesses provides necessary direction to the court and catapults it to the stage where the convicted is sentenced to serve time while the victim embarks on a journey of justice. The criminal law and the internal functioning of the witness protection are the two most important sectors to be focused on by the Indian Judiciary. So that this evidence by witnesses is not destroyed, i.e. by the choosing of witnesses to change their testimony and so on, the investigation should be underway for secondly it aims to make that the whole process of gathering and preserving of it is done during the examination. Consequently, it deals with the issue by offering a program in which potential witnesses have their protection and safety assured not only during the trial itself, but also while all the process that takes place in the beginning and until the end of a case. Testimonies of witnesses are the main source of evidence in criminal courts, and Evidence Act of 1872 and Code of Criminal Procedure of 1973 have been formulated in a precise manner to ensure that witness statements are tested and fully substantiated before such statements are marked in the court in question. The main goal of this study is to review the currently available witness protection procedures in India and thus detect the many rights violations related to the insufficient legislation on the matter.

Introduction

First, there is no denying the indisputable significance of the witnesses in the legal field. What Wittaker Chambers conveys is that one who not only talks for the soul of their convictions in spite of the risk but also has a message to live by is referred to as a witness. These hieroglyphic texts are often interviews of the living or spiritual or both making them a means of communication with the gods. Such perspective highlights the role played by witnesses in a criminal justice system as the evidence they give is what forms cases and means of winning. In the manner which Justice Wadhwa has observed that witnesses give their circumstantial and direct testimonies, these stay as the most important parts of the

evidence in criminal trials. The witnesses are consequentially the important figures in judicial proceedings being walk-in-person with the complainant and the accused respectively.

A witness is granted both an ecclesiastical and secular burden to conform the court with the truth, which goes beyond the mere participation in judicial affairs. People give oaths, usually sworn, or oaths, solemnly affirmed, to tell the story as accurately as possible, which facilitates the search for justice. Their testimonial is a crucial instrument for the court which ascertains the position of the accused in the case by examining the manner of inculpatory or exculpatory circumstances. As a result, witnesses take on two roles: what kind: impartial judges and honest prosecutors who are

responsible for the preservation of the public morals and criminal investigators who devote their life to the revealing of the real facts or criminals.

The role of the witness to undergo a cross-examination makes them an important part of this job which makes it feasible for the review of the validity of his testimony. Witnesses should prepare to answer questions posed during cross-examination by opposing counsel, regardless of the fact that this may be contradictory to court proceedings and a potential implication of their involvement in criminal menaces. The witness's mention of the necessity of impartiality implies the witness' dedication to the administration of justice and promotes the idea of the truth search as the ultimate objective, regardless of witnesses' illicit interests.

Furthermore, court witness protection programs stand as the only effective safety nets for people that risk to be beaten because they have graduated with the law police. These schemes with stringent acceptance criteria is aimed at supporting community members in transport and changing of names whereby it becomes difficult for any criminal element in society to ferret them out. Measures of such kind assist witnesses in continuing with their testimony fearless of any reprisal due as they are provided with security and anonymity. Consequently, the witness protection programs functioning alongside the justice system guarantee both the safety of their lives and the self-esteem of those powerless without this guarantee.

Thus, the witness who takes up the role of guardian of justice and maintainer of the truth have a necessary and important role in the criminal justice institution. Their unshakable loyalty to being truthful and taking up the challenges thrown by the adversary witnesses as a mockery depicts their central role during the judicial processes. Additionally, programs for witness protection which come as barriers against coercion and intimidation, not only

make witnesses follow through with the job but also gives them relief from such threats. Therefore, through the witnesses the judicial system is more credible and effective with their striving to protect the sanctity of the moral principles and justice.

Witness Protection Laws in India

The period passed by between witness identity protection laws and the adoption of the Indian constitution was lengthy. The Literary Magistrates under Section 31 of the Bengal Suppression of Terrorist Outrages Act, 1932, had the power to safeguard courtrooms by barring people from the area. Moreover, the names and addresses of witnesses were withheld by the terrorists by acts like Sec. 13 and 16 of the Temporary Acts like TADA, 1987.

In this post-constitutional mode of trial witness safety is compromised. Thus, section 372 of the Criminal Procedure Code (CrPC) was enacted to ensure judicious protection to witnesses in open court and during cross-examination. The provision 2 has in it the exceptional citation of the in-camera trial for certain cases of Section 376, 376A, and 376D of the Indian Penal Code, 1860 (IPC). Physical or real evidence is required to be taken before the accused is section 273 of CrPC but is admissible only if the public cross-examine the witness provided section 299 of CrPC. The convenience of a witness is not to be compromised and, thus, law of evidence requires the witnesses to be summoned by Section 161 of the CrPC. Privacy of the accused is ensured and the interests of the witness are kept in balance with the Section 273 that allows examination of witnesses through the use of a video screen. This can be seen in the case of ***State of Maharashtra v. Dr. Praful B. Desai***²²⁸⁶.

The Indian Penal Code under section 288A stipulates imprisonment as punishment if disclosure is unprofessional and pertaining to witness addresses or other identifiable data is made public without prior authorization. Like Sub-Section 21 of Juvenile Justice (Care and

²²⁸⁶ (2003) 4 SCC 601

Protection of Children) Act, 2000, such special requirements are applicable in all dealings with children/juveniles.

The ***Gurbachan Singh v. State of Bombay***²²⁸⁷ case was decided under the Bombay Police Act, 1951. The provision prohibiting cross-examination of witnesses who had opposed the accused was kept in the act. Only when there were compelling reasons raising the fears of damage to person or property, was it deemed necessary for witnesses when they came to testify against the criminal record holders.

It was under Maneka Gandhi that these duties, such as safeguarding witness identity and further clarifying that the right to cross-examination is not disqualified in certain situations, were granted to the Designated Court.

Besides all that, it is so critical to ensure the safety of the witnesses who could be either physically or permanently exaggerated. They may protect the lives of their families in criminal situations if their life or property are in danger. To make sure reasonable possibilities to have fair trials that respect the interests of witnesses, accused entities, and the public, in general, it becomes crucial to analyze and correct the indeed of the Evidence Act.

The Sections 135 of Indian Evidence Act of 1872 define that only the witnesses who are being called and are questioned in the court room must strictly follow the norms of law for both civil as well as criminal cases. It is the Court which should determine in case there is no legislation in the field. Chapter 138 of the Act portrays all the liabilities involve the witnessing to question, cross-examine, and repeat.

Judgements on Need for Witness Protection Laws in India

A legislative authority makes the decisions on witness protection but judiciary is granted the prerogative of examining the case in the court for the accused innocence, the safety of

witnesses, victims, and serving justice. The major duty of some judges is to guarantee valid trials. The landmark case of ***Delhi Domestic Working Women's Forum v. Union of India***²²⁸⁸ recognized the truth of the saying that protection of anonymity of witness is the ultimate requirement when the cases involve witnesses or female victims of sexual assault. The Supreme Court, it seems, had some far-reaching standards which were supposed to ensure that the press and other people are prevented from naming the people involved. The directives which in a situation similar to ***Neelam Katara v. Union of India***²²⁸⁹ come to light which insist on the part of the witness protection and the maintenance of a form of secrecy doesn't however touch upon the issues in maintaining the required level of safety throughout the trial.

Testimonies of essential witnesses who get disappeared or arrested could weaken the prosecution and lead to acquittals of culprits as *Turnor Morrison Co. & Co. v. K.N. Tapuria*²²⁹⁰ illustrate. Continuous number of prosecution witnesses have denied their witnesses in front of Judge either by side effect of pressure or money, pointing the wide-range of witness tampering in the country of India. Anomicity of witness is very much credible factor in delivering justice, as revealed in such instance where witness refused to give testimony against an accused who had earlier warned to take a revenge.

But a level field, especially for women was raised in the ***Maneka Gandhi v. Rani Jethmalan***²²⁹¹, Justice Krishna Iyer pointed out the need for courts to not tolerate interruptions in courtroom and risks to individual safety and emphasizes the role of courts as a favourable trial conditions creator. Procedural justice will be sustained by having cases trialed outside a given jurisdiction for unhealthy working environments or widespread societal securities.

²²⁸⁸ 1995 SCC (1) 14

²²⁸⁹ CrI WP 247/2002

²²⁹⁰ 1993 (3) BOMCR 187

²²⁹¹ 1979 AIR 468

²²⁸⁷ 1952 AIR 221

In the *Kartar Singh Vs. State of Punjab*²²⁹² case, which was tried under the act of the Terrorist and Disruptive Activities (Prevention), it was an order of the Supreme Court that such designated courts may withhold the witness addresses and identities on the request of the witness, the Public Prosecutor or the court itself.

As a result, statutes in the system are addressed as the first level of Witness Protection, judges are then needed to accomplish these procedures successfully in their courtrooms. The moral and soundness of the judicial system as we know it and the continuation of justice ideals might be disrupted if witness anonymity fails and the courtroom environment is compromised.

Steps towards application of Witness Protection Laws in India

1. A new approach to witness protection was presented in the 14th Law Commission Report of 1958, which focused on inadequate courthouse accommodations and inadequate travel reimbursements for witnesses testifying in court. While acknowledging these technical flaws, the study primarily focused on the physical components of witness protection, ignoring the psychological and emotional pain that witnesses endured. The study, which was overseen by Mr. M.C. Setalvad, stressed the need to compensate witnesses for the difficulties they had to suffer in order to testify in court. It emphasized the potential consequences of ignoring witness welfare and emphasized how crucial it is to honor and thank witnesses for their priceless contributions to the legal system. According to the paper, neglecting to sufficiently attend to the requirements of witnesses may lead to animosity and erode their desire to cooperate with the court in the pursuit of justice.

2. The 1980 National Commission Report clarified the special predicament of witnesses in the criminal justice system and made strong arguments in support of passing witness protection laws. It succinctly described, via a quote from the study, the extreme differences in the conditions that witnesses and convicts confront. A witness has difficulties without their own fault, but a prisoner may face penalties due to their own acts or inactions. Their problems arise from the unfavorable scenario of being present at the crime scene, which is frequently beyond of their control. The research made a dramatic comparison between the predicament of witnesses and that of inmates, highlighting the fact that witnesses—despite their innocence in the events that transpire before them—become essential players in the judicial system.

The study effectively emphasized the involuntary character of a witness's engagement in criminal proceedings by drawing a comparison between inmates and witnesses. Just by being there when a crime is being committed, witnesses become involved in judicial proceedings, in contrast to inmates who could incur consequences for their acts. This unintentional involvement serves to emphasize the moral duty witnesses have to assist the court in pursuing justice, especially in cases when they have no responsibility for the underlying circumstances.

The research also stressed that witnesses are not specifically chosen to be at the scene of a crime; rather, they end themselves there by accident or circumstance. Witnesses have an obligation to support the court in its pursuit of the truth and a just conclusion even in the face of this lack of will. The paper effectively communicated the innate feeling of duty that witnesses

²²⁹² 1994 SCC (3) 569

experience, highlighting their vital position as participants in the legal system.

Hence, The National Commission Report from 1980 made a strong case for the adoption of witness protection laws by emphasizing how involuntary witness participation in court cases is. The research presented compelling arguments in favor of granting legal safeguards to guarantee witnesses' safety and wellbeing while they are involved in the criminal justice system by highlighting the particular difficulties they encounter and highlighting their moral obligation to support the court.

3. 'Protection and Facilities to Witnesses' was the only topic of the 154th Law Commission Report of 1996, which acknowledged the grave repercussions of insufficient witness protection measures, which frequently led to offenders avoiding punishment. The study included extensive suggestions to rectify these inadequacies.

Establishing reasonable compensation for witnesses who attend court hearings and making sure that payments are distributed via a streamlined process to reduce delays and annoyance were two important recommendations. The study also emphasized the significance of treating witnesses with respect and dignity throughout the legal process and argued for the provision of suitable facilities for witness lodging inside court premises. From the start of the inquiry until the end of the trial, it emphasized the need of removing any causes of anxiety for the witnesses so that they feel secure in the knowledge that they won't be targeted by the accused for revenge. The study also underlined how urgent it is to address the psychological and physical difficulties that witnesses encounter, acknowledging that witness protection is a fundamental right that

demands the highest regard in addition to being a matter of need. It emphasized how crucial it is for lawmakers to step in and provide confidence to witnesses so they may participate fully in court without fear of retaliation. The necessity of prompt case management, which promoted the prompt questioning of called witnesses and the avoidance of needless delays, was at the center of the report's recommendations. It recommended that courts use a daily trial schedule with case listings that are planned to reduce interruptions and maximize effectiveness. Furthermore, it demanded that High Courts provide orders to all criminal courts outlining best practices for efficient case listing processes.

Therefore, the 154th Law Commission Report emphasized the vital significance of witness protection and pushed for significant changes to protect witnesses' rights and welfare. The study prioritized efficient processes, reasonable allowances, and courteous treatment in order to create an atmosphere that would encourage witness cooperation and judicial efficacy.

4. In response to the historic **Sakshi v. Union of India**²²⁹³ case, the 172nd Law Commission Report examined significant changes in the laws pertaining to rape. The report's goal was to define 'rape' more broadly to include any type of forced penetration. Within this framework, the study put up a noteworthy clause pertaining to the testimony of minors who have purportedly been victims of sexual assault or other comparable offenses. The study recommended measures to preserve minor victims' dignity and wellbeing while their testimonies were being recorded. It specifically suggested that the court be given the authority to

²²⁹³ Supp(2) SCR 723

put policies in place that protect these young victims from direct interaction with the accused while yet upholding the accused's right to cross-examine. This crucial suggestion was subsequently incorporated into the Criminal Procedure Code of 1973.

The paper also emphasized how crucial it is to exercise flexibility while defending the natural justice principles, especially when dealing with situations involving underage victims of sexual assault. It underlined how important it is to let these defenseless people give their evidence behind a curtain or other kind of security in order to prevent additional psychological harm. By supporting this strategy, the study aimed to achieve a careful balance between the need to protect the victim's mental health, the rights of the accused, and procedural fairness. The 172nd Law Commission Report's recommendations, taken together, essentially sought to improve the legal framework around rape laws by providing more protection for victims—especially minors—and maintaining the values of justice and fairness in judicial procedures.

5. The 178th Law Commission Report highlighted the critical role that law enforcement plays in protecting witnesses and keeping them from turning hostile. The study suggested adding Section 164 A to the 1973 Code of Criminal Procedure in order to remedy this problem. This clause required that witness testimony be recorded in front of a magistrate, but only in situations where the offense was penalized by more than ten years in jail, a fine, or the death sentence.
6. The report's recommendations were modified when the Criminal Law (Amendment) Bill of 2003 was introduced in the Rajya Sabha. Notably, the measure reduced the 10-year period

for witness statement recording in front of a magistrate to seven years. The measure attempted to do this by balancing the interests of the accused, victims, and witnesses. The measure also stressed how crucial it is to carefully examine witness testimony in order to determine whether any retractions or changes were the result of coercion, enticement, or other outside influences.

7. The Justice Malimath Committee's report, Reforms of Criminal Justice System, had 158 recommendations that went into great detail about the necessity of witness protection in order to enhance the frequency of legitimate convictions and advance societal justice.

"Another major problem is about safety of witnesses and their family members who face danger at different stages. They are often threatened and the seriousness of the threat depends upon the type of the case and the background of the accused and his family. Many times crucial witnesses are threatened or injured prior to their testifying in the court. If the witness is still not amenable he may even be murdered. In such situations the witness will not come forward to give evidence unless he is assured of protection or is guaranteed anonymity of some form of physical disguise. Sometimes holding of in-camera proceedings may be sufficient to protect the interest of the witness. If, however, the circumstances indicate that the life of any particular witness is in danger, the court must take such measures as are necessary to keep the identity of the witness secret and make arrangements to ensure protection to the witness without affecting the right of the accused to cross-examine him. The threat from the accused side may be before he gives his statement before the police officer or

evidence before the court or after the conclusion of the trial. There is a growing tendency of subjecting the witness and his family members to serious threats to life, abduction or raping, or damaging the witnesses' property or harming his image and interest in other ways. The witness has no protection whatsoever. Many countries in the world have enacted laws for witnesses' protection. There is no such law in India. Time has come for a comprehensive law being enacted for protection of the witness and members of his family."

The urgent matter of the safety of witnesses and their families or dependents was thoroughly examined in the report. It emphasized that protective measures do not always need to be implemented consistently by using a logical approach. Rather, the choice need to be based on elements including the seriousness of the offense, the existence of threats, and the accused's past. In cases when the violation is very serious, the court ought to have the authority to provide permission for the witness to have their identity changed. In addition, the study recommended that "in-camera" procedures be implemented cautiously, at the judge's discretion, in order to respect the witness's rights and enable reasonable cross-examination. The committee also stressed how common strict Witness Protection Laws and Programs are in other developed nations and emphasized the urgency for India to adopt similar measures without delay.

Witness Protection Scheme

One of the most crucial evolutions regarding the welfare of witnesses in court cases is the Witness Protection Scheme of 2018 which has already helped hundreds of witnesses plan a safe and secret life in new places. This plan encompasses some safety measures aiming at facilitating specialist courtrooms, housing aid,

setting up security equipment on behalf of the witness' home, witness protection and identity modification for those affected by crime, and relocation assistance to those who have been affected by it.

According to the plan, witnesses are divided into three categories according on the estimated threat level they face: According to the plan, witnesses are divided into three categories according on the estimated threat level they face:

Category 'A': Establish it for cases in which the witness may be in danger, or rather wherein the life of their relatives is in stake before, during, and after the investigation and trials.

Category 'B': The counsel works with your attorney to streamline the witness' life in case the defendant or his associates could disrupt the witness' property, reputation or safety during the case, and the period following the trial.

Category 'C' on the other side, has the moderated danger level covering acts like depicting one as uncooperative, intimidation, making threats to the witness's property or reputation that happens during legal processes or after.

The Supreme Court of India's move towards adopting the Witness Protection Scheme, 2018 nullifies all criticism that may have been there and further makes the scheme genuine and valid. Article 141/142 of the Constitution lays down that all courts subject to such geographical territorial jurisdiction are obliged to follow the principle enunciated in the ruling of the Supreme Court. This regulatory guideline makes the scheme enforceable in every state or union territory despite it being enacted and therefore it increases the efficiency of the court in safeguarding the rights and wellbeing of any witness.

Indian Judiciary on Witness Protection Programme

In the context of every civilized society, witnesses are essential building blocks of the

legal system. Talk in the modern era frequently centers on controversial exonerations in high-profile criminal cases, many of which result from witness defection. The Hon'ble Supreme Court, in the case of *Swaran Singh v. State of Punjab*, highlighted the various causes that lead to this defection and showed deep concern for the circumstances facing the witnesses. The Court skillfully detailed the difficulties witnesses undergo, showing how they suffer great hardship and frequently travel great distances just to run into adjournments and procedural hold-ups caused by dishonest attorneys. With little to no security, witnesses are vulnerable to intimidation, kidnapping, and even bribery. In addition, witnesses are often treated disrespectfully in court, and their situation is made worse by subpar facilities and drawn-out interrogations.

The Supreme Court has argued for special safeguards that accommodate the requirements of child victims of sexual assault, such as those stated in *Sakshi v. Union of India*²²⁹⁴, in recognition of the particular vulnerability of certain witness populations. The Court has pushed for strategies like closed-circuit testimony and the use of screens to conceal witnesses from the accused, emphasizing the need to protect vulnerable witnesses from the anguish of confronting their abusers. Furthermore, the Supreme Court emphasized the state's constitutional duty to protect witnesses in *Zahira Habibulla H. Sheikh and Others v. State of Gujarat and Others*²²⁹⁵, emphasizing the necessity of guaranteeing witnesses to testify without fear of retaliation.

A number of court rulings emphasize how important witnesses are to maintaining the credibility of the criminal justice system. In *Bharat Singh Rawat v. State NCT of Delhi*²²⁹⁶, the Delhi High Court underlined the importance of witnesses in enabling fair trials and the necessity of shielding them from intimidation and coercion. In order to avert an injustice, the

Court implored legislators to enact strong witness protection laws.

Events like the Beant Singh Assassination Case highlight how urgently thorough witness protection protocols need to be put in place. The Punjab and Haryana High Court's order for the creation of guidelines for witness protection is indicative of a rising understanding of the necessity of imitating global best practices in this area. In a same vein, the Supreme Court underlined the necessity of offering witness protection in the face of threats in the self-dubbed Godman "*Bapu Asaram*" Rape Case, demonstrating the judiciary's dedication to guaranteeing the safety of witnesses.

In addition, court observations in instances such as *Mahender Chawla & Ors. Vs. Union of India & Ors.*²²⁹⁷ emphasize the negative consequences of not having witness protection programs, emphasizing the unwillingness of witnesses to come forward because of fear and insufficient assistance from the legal system. The importance of witnesses in the search for justice and the truth has been emphasized by the courts, who also underline that strong witness protection laws are necessary to preserve the rule of law.

Therefore, the preservation of the rule of law and fair trials depend heavily on the testimony of witnesses, whose testimony is essential to the administration of justice. The difficulties that witnesses encounter have been made clear by judicial interventions, which also highlight the critical need for comprehensive witness protection frameworks to preserve their rights and make it easier to find the truth throughout legal procedures.

Conclusion

Law provides the fundamental framework for society's operations, promoting development and upholding social order. It is the duty of states to protect victims and witnesses from harm, to ensure that their special needs are met, and to protect their basic rights. Protocols

²²⁹⁴ Supp(2) SCR 723

²²⁹⁵ 2004 (4) SCC 158

²²⁹⁶ CRL.M.C. 75/2016

²²⁹⁷ AIR 2018 SC (SUPP) 2561

must be put in place in all criminal justice systems to protect those who assist with investigations or prosecutions since doing so might put them or their close friends at serious danger for physical or psychological harm. Fears of intimidation or threats are a common reason behind witnesses' hesitation to provide information or evidence, especially when they belong to disadvantaged demographics. Even while certain nations may have strong laws protecting witnesses, these defenses might not be sufficient to fend off dangers arising from international criminal activity.

The necessity of increased international collaboration in resolving witness protection concerns is highlighted by the intricacy of this global subject. A state's consideration of establishing a witness protection program necessitates a thorough evaluation of a number of factors, such as the volume and type of criminal activity occurring within its borders, the frequency of violence against litigants, the government's ability to prosecute high-profile crimes, and the availability of resources. For example, the existence of powerful criminal groups that are committed to concealing their illegal activities and opulent lifestyles funded by criminal gains highlights the need for strong witness protection programs to support prosecution efforts.

India's witness protection scene is very different from other countries', with a primary focus on physical safety, which gives the notion of witness protection a more constrained application. The need for comprehensive laws that address the various needs of witnesses, such as protecting their anonymity, facilitating relocation in cases of life-threatening risks to themselves or their families, and protecting their property, is becoming more and more apparent, even though India has previously passed specialized legislation governing witness protection. As a result, India must immediately create comprehensive legislative frameworks to handle witness protection issues and guarantee the security and safety of those who are vital to the criminal justice system.