



**WITNESS PROTECTION IN THE CRIMINAL JUSTICE SYSTEM OF INDIA: A STUDY
WITH SPECIAL REFERENCE TO WITNESS PROTECTION SCHEME, 2018**

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Abstract: Witness plays an important role in justice delivery system. He is the foundation of justice and equity. He is therefore deciding the future of the case. Without the evidence of witnesses, prosecution case cannot be built up. If the witness is not ready for testimony before the competent Court then the trial will get handicapped and putrefied. That's why, witness is called the backbone of trial. The condition of the witnesses is very miserable in India. However, neither has the Union of India nor any State Government come forward to frame any law or even a scheme for protecting the interest of witness. The Law Commissions and Committee are set up by the Government for protecting the interest of witness. Such Commissions and Committees highlight the issues, problems and conditions of witnesses, who become a witness in a case through its reports.¹ There are some constitutional, procedural and substantive laws for witnesses, their safety, and security. Some legislations are existed to protect the rights of a victim but very little legislation exist to protect the witness and his rights. The Hon'ble Supreme Court emphasized that the State has the responsibility to make laws regarding the protection of witnesses because it is needed at present. So, our judiciary takes a serious step for protecting the witnesses and held that the Witness Protection Scheme, 2018 will be law under Articles 141 and 142 of the Indian Constitution till suitable legislation are made. It is concluded that there is no sufficient law for the protection of witnesses. It is needed that there must be in law for witness protection.

Keywords: *Witness Protection, Criminal Justice System, Witness Protection Scheme 2018, Supreme Court, Indian Constitution.*

1. INTRODUCTION

Witness acts as an essential role in acquiring justice. In criminal justice system, criminal trial is the most important part which help the prosecution and defence to protect themselves by giving evidence and on the basis of the testimony of the witness. As it is known that in criminal justice system, the prosecution has to prove its case beyond reasonable doubt. In those circumstances, it is only the witness who help prosecution in pursuing for exploring justice. It is said by the honourable court various time that the witness is to be a friend and supporter in the court for accessing justice. It is completely just that the judgment provided by the court of law is followed in India depends on the witness and his behavior or conduct. It is only the capacity of the witness who can divert the case in any direction. By the testimony of the witness, the accused can be hold guilty or innocent. For the speedy trial, it is necessary that the statement of witness must be authentic and reliable.²

Witnesses are the vital part of the criminal justice administration system and they play an anchor role in the prosecution and decisive say in the criminal justice trial and adjudication. Yet, the witnesses to crime tremble on receipt of summon from courts in India for several reasons. The humble witness keeps aside their efforts and follow the court order. He waits for hours and at the end of the day he is to be told to come again. For the next date Inter alia, there is also apprehension that the accused and his associates haunt the witness with techniques of coercion and different grades and varieties of terror so as to gain over the witness by his u turn and become hostile to his very testimony and above all to his own conscience.³

2. MEANING AND DEFINITION OF WITNESS

The witness plays a vital role in criminal justice system. Although, there is no specific definition defined anywhere in the Code of Criminal Procedure, the Indian Penal Code and the Indian Evidence Act. So, it is only the dictionary which can help to understand the meaning of witness. By help of it, it is derived that witness is the person who is present at time of occurrence of the crime.⁴ It is the view of Bentham that the eyes and ears of justice are witnesses. In Sanskrit language, witness is that person who has seen directly the incident. Manu Smriti and other Smritis describe the meaning of witness. As per this, a proper witness is said to be a person either seen the incident or heard from any other.⁵ This means that the evidence of a witness must be required to be direct, it must not be hearsay. The hearsay evidence can be given in a situation when any person appointed as a witness was not alive or not in that country.⁶

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² Dr. Meena Ketan Sahu, *Witness Protection*, 1 (YS Books International, New Delhi, 1st edn., 2014).

³ *Ibid.*

⁴ Illustrated Oxford Dictionary, 958 (DK Publication, Oxford University, 1st edn.,1998).

⁵ P.V. Kane Mahamahopadhyaya, *History of Dharmasastra*, 330 (Bhandarkar Oriental Research Institute, Pune, 1st edn., 1946).

⁶ *Id* at 297.



The Witness Protection Scheme, 2018 defines “witness” as material individuals to criminal proceedings. Statements by the witnesses directly bear the acquittal or conviction of an accused, therefore, witnesses must be protected from the wrath of threats so as to not alter the justice rendered.⁷

It is clear from the above discussion that a witness is that person who has seen the matter in dispute directly. The witness who wants to give testimony must have declaration under oath. After that the statement of the witness is received as evidence for the purpose of exploring truth of the case. He is a person who can be an eye-witness or a hearsay witness.

3. IMPORTANCE OF WITNESS PROTECTION

The basis of justice is truth and there is no justice without truth. There is no mandatory requirement to balance the evidence with truth. Commitment to the truth is manifested procedurally at a trial. Jurors are sworn to give a true verdict according to the evidence and witnesses are sworn to tell the truth.⁸ Witness is the soul of justice delivery system whose testimony decides the fate of a trial. Witness is known to revert from their testimonies due to complacent attitude of the respect government and due to threat and pressure from the accused.⁹

The witness turned hostile in *The Best Bakery case*¹⁰ is the obvious example of failure of justice as the witnesses turned hostile. However, this is not the first time that the criminal justice system has failed to deliver. It is routine in India for powerful people accused for heinous crimes to be acquitted for lack of evidence, largely because witness in such cases turn hostile with unfailing regularity. *Jessica Lal case*¹¹ and a host of other cases involving high profile personalities have exposed the disquieting truth that the rich and powerful and manipulate criminal justice by intimidating and coercing the witnesses.

A survey is conducted by the Directorate of Civil Rights Enforcement. By this survey, it is concluded that a witness turns hostile due to the low conviction rate and lack of witness protection.¹² In the case of *Zahira Habibulla Sheikh v. State of Gujarat*¹³, it was observed by the Supreme Court that fair trial means a trial which is without treat or pressure on witness, accused or victim. If there are threats or pressure on the witnesses to give false evidence, it cannot be said to be a fair trial.

4. RECOMMENDATIONS OF LAW COMMISSIONS AND COMMITTEES

The 14th report discussed and laid emphasis upon the facilities provided to witnesses in court room and also for monetary advantages to witnesses to cover the losses caused to him due to spending time and money in the court as a witness. This report also laid emphasis upon the importance of witness advantages, amenities as well as the mechanism of his compensation otherwise if such concerns were not given adequate attention then the witnesses may be proved to be futile in bringing the realm of justice in its essence.¹⁴

After the recommendation made in its 14th report in which it was discussed that the major cause for witness turn hostile is the harassment and inconvenience caused. First time in 1971, the issue relating to threatening of witnesses was discussed in 42nd report. 42nd report also discussed the issue relating to threatening and bribing the witnesses. In this chapter the Commission deals with the provisions related to recording of evidence in a fear free environment. It recommends making provisions for the punishment who threatens the witnesses or preventing the witnesses and such public servant is legally authorized to examine the witnesses.¹⁵

In the year 1996, it was recognized that the witnesses must be given a little. It was also suggested that the allowance amount must be realistic. A simple procedure should be followed to avoid unnecessary delay and speedy justice should be provided. It is also stated that witnesses must be treated with dignity at all stages of the trial. Finally, it is said that the Commission in this report discussed the issue relating to protection of witnesses in very brief manner. It further said that the protection be given at stage of investigation till the conclusion of trial. Even Law Commission made the recommendation for the protection of witnesses from hardened criminals but the commission failed to suggest the means how the protection would be provided to witnesses.¹⁶

⁷ The Witness Protection Scheme, 2018, s.2.

⁸ H.O. Hock Lai, *A Philosophy of Evidence Law*, Oxford University Press, Oxford, 1st edn., 2008).

⁹ Dr. Meena Ketan Sahu, *Witness Protection*, 14 (YS Books International, New Delhi, 1st edn., 2014).

¹⁰ (2004) 4 SCC 158.

¹¹ (2010) 6 SCC 1.

¹² Witness Protection in India, available at : <https://www.livelaw.in/columns/criminal-justice-system-witness-protection-scheme-law-commission-report-hostile-witnesses-184706> (Last visited on Jan. 9,2023).

¹³ (2004) 4 SCC 158.

¹⁴ The Law Commission of India, “14th Report on reform on Judicial Administration”, 650 (1958).

¹⁵ The Law Commission of India, “42nd law commission report on the Indian Penal Code”, 207 (1971).

¹⁶ The Law Commission of India, “154th report on the Code of Criminal Procedure 1973”, 43-44 (1996).



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Further, the 178th Law Commission Report¹⁷ also recommended that laws, specifically dealing with witness anonymity should be implemented. As the use of power and pressure because the puts the life of witness in danger. This matter is directly linked with their identity.. It was recommended by the Malimath Committee that it should be mandatory to provide a copy of the statement given by the witness to him. A law should be enacted for the protection of the witness and family members of the witness as well. The judges should also follow a trial procedure and prevent the harassment of witnesses.¹⁸

The 198th Law Commission Report also discuss the importance of witness protection. It provides three categories of witnesses. First category includes those victim-witnesses who are known to the accused. Secondary category includes those victims-witnesses not known to the accused and third category includes those witnesses whose identity is not known to the accused. Witnesses belonging to second and third category require protection from disclosure of identity.¹⁹

4. LEGISLATIVE PROTECTION TO WITNESS

The Supreme Court stressed upon the witness protection law should be passed by the legislature. The legislature also accepted the need of witness protection for the proper running of criminal justice system. Proviso to section 161(3) of the Criminal Procedure Code permits to record witness's statement by using audio-video recording. As per section 151 and 152 of the Indian Evidence Act, the court has given power to protect witnesses from being asked indecent and insulting questions when the cross examination of the witness is conducted. As per section 195A of the Indian Penal Code, if any person threatens the witnesses to provide false evidence, the person shall be penalized. There are some special statutes such as Juvenile Justice Act, 2015, The Whistleblowers Protection Act, 2011, and The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, among others, have been enacted with provisions for the protection of specific classes of witnesses.²⁰

5. THE WITNESS PROTECTION SCHEME, 2018

The administration of criminal justice in India is deteriorating day by day and laymen are losing faith in the entire system. There is an urgent need to review the entire criminal justice system, especially investigation by the police and the prosecuting machinery. The decline has also been attributed to the lack of continuous and effective co-ordination amongst the law enforcement agencies, i.e., the police, magistracy, judiciary and correctional administration in general, and the police and prosecuting agencies in particular.²¹

It is one of the fundamental principles of adversarial criminal justice adjudication system that the accused is presumed innocent until the crime is established beyond the hilt. The true scope of the principle is that the presumption of innocence signifies no more than that the commission of crime must be proved beyond the reasonable doubt; in other words, as pointed out by Thayer the whole doctrine when drawn out is, first, that a person who is charged with a crime must be proved guilty so that the accused stands innocent until he is proved guilty; and second, that this proof of guilt must displace all reasonable doubt. One would have thought that this principles was firmly rooted in the Indian Evidence Act which lays down (a) that the burden of proof as to any particular fact lies on that person who wishes the court to believe its existence, and (b) that a fact is said to be proved when, after considering the matter before it, the court either believes to be exist, or consider its existence so probable that a prudent man ought, under the circumstance in the particular case, to act upon the supposition that it exists.²²

The first attempt at the national level to grant protection to the witnesses is the Witness Protection Scheme, 2018 which will contribute to eliminating victimization of witnesses and prevent them from becoming hostile. Witnesses play a key role in bringing justice to the victims of heinous crimes. This scheme attempts to ensure that witnesses receive adequate protection and it aims to strengthen criminal and civil justice system in India.²³

The Witness Protection Scheme, 2018 was accepted by the Apex Court and gave a historical judgment by *Mahendra Chawla v. Union of India*²⁴. This is the first time when the Apex court discuss the scope of witness protection. It is settled by the court that the ultimate duty to protect the witnesses lie on the state government. It is the responsibility

¹⁷ *Supra* note 8 at 4.

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ Witness Protection Mechanisms in the Indian Criminal Justice System, *available at* : <https://www.nujssacj.com/post/witness-protection-mechanisms-in-the-indian-criminal-justice-system> (Last visited on Jan. 9,2023).

²¹ K.I.Vibhute, *Criminal Justice*, 142 (Eastern Book Co., Lucknow, 1st edn., 2004).

²² Dr. Meena Ketan Sahu, *Witness Protection*, 104 (YS Books International, New Delhi, 1st edn., 2014).

²³ What is Witness Protection Scheme, 2018?, <https://lawcirca.com/what-is-witness-protection-scheme-2018/> (Last visited on Jan. 9, 2023).

²⁴ 2019 14 SCC 615.



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of the State responsible to implement witness protection scheme with caution. The court took this step due to the several attack on the witnesses.

6. JUDICIAL TRENDS

The judiciary has always understood the plight of the victim and witness and the same was highlighted in numerous instances. When it comes to protectional safeguards of victim and witness they fall on the same footing, law is not silent on the point but has not come up with intact solutions. The efforts of the judiciary can be seen from the judicial pronouncements to improve the administration of criminal justice system.

It was noted by the Supreme Court in *Swaran Singh v. State of Punjab*²⁵ that the most harassed part of Criminal justice system is witness. A witness comes from remote areas and see that the case is postponed. He has to go to court many times alone. It has now become a routine for the case to be suspended until the witness is tried and stops going to court.

The Apex Court highlighted the importance of Witness Protection Scheme in *Hari v. State of Uttar Pradesh*²⁶ and observed that right to life provide to the people of this country also includes the right to live in a peaceful society. The right of witnesses to testify in Courts must be without fear or threat.

The Supreme Court of India in *Smruti Tukaram Badade v. State of Maharashtra and Anr.*²⁷, noted that the need and importance for setting up special facilities which provide a safe and barrier-free environment for recording the evidence of vulnerable witnesses. The Supreme Court had issued comprehensive directions in this regard of vulnerable witnesses.

The Supreme Court had also directed all the High Courts to bring in their respective schemes within two months of the date of the order. The High Courts were directed to have due regard to the scheme which has been formulated by the High Court of Delhi, duly approved in the judgment of the Supreme Court in *State of Maharashtra v. Bandu @ Daulat*²⁸ in which this Court directed that special centres be set up in each state in order to facilitate depositions by vulnerable witnesses, including victims of sexual offences.

7. CRITICAL APPRAISAL

Witness is said to be the soul of criminal justice system. It is the testimony of the witness which decide the future of the trial. Witness is hostile from testimonies due to the pressure and threat given by the accused. from the accused. A witness always wants that he/she must be live in safe and secure environment. The welfare and security must be the priority in criminal justice system and for that purpose the witness protection scheme implemented properly.

In India, there is no special provision for protection of witnesses. Instances of tampering of evidences are alarming a feature in high-profile cases. With the changing times, there is no matching provision in the Criminal Procedure Code 1973 or in the Indian Evidence Act 1872 or in the Indian Penal Code 1860 for protection of witness from such harassment, threats, intimidation and other external influences. The strategy of Criminal legislation has been to abate and deter 'lying witnesses' with penal consequences and but to protect those who are traumatized, pressurized and vulnerable.

Witness protection has been discussed by Indian legislatures and the judiciary for over half a century. A few recommendations have been made; some have been enacted and put to practice, while others remain ignored. Governments have been elected and dissolved, crime has gone from physical to cyber, and it is high time that we wake up and act for the protection of the citizens who appear before the courts to testify so as to render a helping hand in the dispensation of justice. Though the Witness Protection Scheme has been evolved in the year 2018, still the system is not providing confidence to the witnesses to come out with the truth as against the hard-core criminals.

²⁵ Criminal Appeal No.721 of 1993.

²⁶ Criminal Appeal No. 186 of 2018 decided on 26/11/2021.

²⁷ Criminal Appeal No. 1101 of 2019 decided on 25/10/2021.

²⁸ Criminal Appeal No. 1120 of 2017.