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# WITNESS PROTECTION: AN OVERVIEW OF RECENT SCENARIO

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## ABSTRACT

Today, the inception towards administration of justice has largely centered the witnesses who are coming forward and imposing the fact without pressure or enticement before the court of law. The very institution of the criminal justice system today gets annihilated if witnesses are to be threatened and made incapacitated from tendering substantial evidence in the court of law. Today the criminal justice system must interview to accomplish the various intricate between the balance of conflict interest of the accused, the victim and the society simultaneously. If we talk about the necessity of fairness which permit in every practice and process of law in today's modern society. It is completely beyond the bounds of possibility to pursue truth and preserved backbone of the operating principles of a fair and just trial without credible and valuable evidence before the court. The prevailing state of affairs in our Indian society with respect to conduct any legal proceeding is not very assuring and supportive. Today in the absence

of any statutory protection in the court of law, the witnesses are deviated in every possible manner from giving a truthful testimony before the court of law, which further leads up to the derailment of the entire trial whenever we talk about the delay in getting justice in any case or trial court of law we always forget that how important does the testimony of a witness plays a major role in terms of getting a fair and just, justice to the victim or their parents. In this paper the major aim is to study the significance of the role of a witness criminal trial, the inadequacy of our current laws in India for the protection of witnesses and its implication along with a comparative study with the laws and witness protection programs across the world which is being followed worldwide.

**Keywords:** Hostile, Justice, Fair Trial, Witness Protection, Threat.

## INTRODUCTION

In our society free and fair trial is *sine qua non* of Article 21 of the Indian Constitution. It is to be noted that it is an established that the



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principle of justice should not only be done but must be seen to be done in the society honor regular bases.

One of the primary objective open criminal justice system against the criminal conduct that, punish the lawbreakers and sanction those who violate or attempt do violate the laws of the land. The criminal law consist of substantive and professional log where the substantive law deals with the definition of various offenses and prescribed subsequent punishments while the later lays down the procedure which needs to be followed by the enforcement agency. Various players I start with the role of fulfilling their objects several instances. Today the law enforcement agencies, Africa trip bodies and correctional institution which are the foremost component established by the central government to enforce the law and punish the offenders on a regular basis two of them in statute that deals with criminal cases in our society 1860 and the code of criminal procedure 1973, which are been substantive unprofessional in nature respectively. In our criminal justice system it is very often witness that the effectiveness which constitute methodical investigation in order to identify the various forms of action leading to the crime by way of

systematic collection and presentation of the evidence in a court of law, in civil as well as criminal matter, has enabled aggregated bodies to effectively dispute or prove a fact on various case basis. This is where the role of grotesque comes into place.

In defining the term witness as a person who gives evidence or disposes before a judicial authority or tribunal. The word evidence originates from the Latin word evidence or every year, which means “*to show clearly; to make clear to the sight; to discover clearly; to prove.*”<sup>1</sup>. Under the Indian Evidence Act, 1872, categorized into two parts-

- Oral and;
- Documentary Evidence.

In dealing with the provisions of the code of criminal procedure and the Indian Evidence Act comprehensively it provide for the deposition of a witness and the procedure and rules regarding their admissibility in the proceedings before a court of law. However if we talk about the establishment of procedure and law which does

<sup>1</sup> Kahsay & Andualem, MEANING, NATURE AND PURPOSE OF EVIDENCE LAW, Abyssinia Law (2012), <https://www.abysinnialaw.com/about-us/item/932-meaning-and-nature-of-evidence-law> (Last visited Jul 7, 2018).



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not insure accomplishment of justice the whole of a witness in a criminal trial for administration of justice cannot be neglected in any format. Further the evidence presented before the court last law helps improving or undermining the veracity of a criminal liability. It is the basis of a conviction or acquittal of an accused person. The whole system fails in its objective when the society has to make it effective in terms of providing justice but due to the lack of faith and belief Linda procedure of law it becomes inefficient. In India the concept which not only makes the justice deley but also affect the victims family or the society in getting efficient and meaningful justice, where inordinate delay has played a vital role in deciding a criminal trial, the ineffective collection of evidence is by the investigation agencies, police authorities, insufficient protection Bing administered to all the witnesses who wishes to come forward and provide speedy justice to constitute some of the other factors which affect the functioning of the system in a proper and effective manner.

### VARIOUS FORMS OF WITNESSES

So now we need to understand that how the vast categorisation of the victims could be in a two-fold manner:-

1. Victims of Distributive Injustice
2. Victims of Street Crime

If we analyse the various forms of the injustice done upon the distributive sections which are the victims of the several kinds of trauma and pain which are not foreseeable in nature and even cannot be prevented which are caused by cancer, hurricanes, etc. whereas if we talk about the other street crime which are those who are suffering from other avoidable trauma are causing them much pain and harm by various other crimes, accidents, diseases, and even systematic injustices being happen over them.<sup>2</sup>

There have been another set of categorization being done of the various instances of the witness in India, which can be relative in nature and exhaustive:

1. **Prosecution Witness**<sup>3</sup> – All the persons giving evidence on behalf of the prosecution are prosecution witnesses. The person suffering due to the commission of crime is called as victim.

<sup>2</sup> Ruth Morris, *Two Kinds of Victims: Meeting: Their Needs*, 9 JOURNAL OF PRISONERS ON PRISONS 2 (1998).

<sup>3</sup> Shivam Kumar, *Different Kinds of Evidences & Witnesses under the Indian Evidence Act*, LEGAL INDIA (Last updated on March 14, 2016), <https://www.legalindia.com/different-kinds-of-evidences-witnesses-under-the-indian-evidence-act/>.

Statement made by him is an important piece of evidence and he is the primary prosecution witness. It also includes Investigation officer.

2. **Defence Witness**<sup>4</sup>– Witnesses appearing on behalf of defence are defence witnesses.
3. **Child Witness**<sup>5</sup>– A child even of 6 or 7 years of age may be permitted to give evidence if he has the capacity to answer rationally.
4. **Eye Witness**<sup>6</sup>– Eye witness is the one who has personally act in question and is able to give first-hand description of it.
5. **Partisan or interested witness**<sup>7</sup>– A partisan or interested witness is one who is in a near relationship with the victim of crime and is concerned with the conviction of the accused person.
6. **Chance Witnesses**<sup>8</sup>– If by coincidence or chance a person happened to be at a place of occurrence of the incident, he is a chance witness. The evidence given by

such witness is highly reliable because he is not connected to either party. But if he is related to either party then his depositions may be weighed after considering other facts and circumstances.

7. **Expert as a witness**<sup>9</sup>– The Evidence Act provides that in medical examination it is mandatory in certain cases that a medical officer should give his report accordingly after conducting an examination. For example in cases of post-mortem and the cause of death. Experts from other fields e.g. handwriting experts, could also be called to testify in the case.
8. **Character witness**<sup>10</sup>– A character witness is a person providing information in respect of the reputation of another person.

### WITNESS PROTECTION SCHEME, 2018

Supreme Court on December 6 2018 decided to approve one of the new witness protection scheme where this scheme was prepared with

<sup>4</sup> Supra 3.

<sup>5</sup> Id.

<sup>6</sup> *Types of Witnesses*, CITIZENSINFORMATION (Last Visited on June 23, 2021), [https://www.citizensinformation.ie/en/justice/witnesses/types\\_of\\_witnesses.html](https://www.citizensinformation.ie/en/justice/witnesses/types_of_witnesses.html).

<sup>7</sup> *State Of U.P vs Iftikhar Khan & Ors*, 1973 AIR 863.

<sup>8</sup> *Dalip Kumar and Gudar vs The State*, CRL. A 72/2009.

<sup>9</sup> Supra 3.

<sup>10</sup> Mary McMahon, *What is a Character Witness?*, WISEGEEK (Last Visited on June 23, 2021), <https://www.wise-geek.com/what-is-a-character-witness.htm>.



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the permission an under the authorization of various states of India and by their valuable inputs. They were also suggestions of various authorities which were taken like ex-policemen, police officers, judge and many other government officers in the state. After overall analysis and drafting under the supervision of various authorities, NALSA finalized this scheme in the year 2018. Inconsistence the bench which consisted of videos judges where they made the statement about the witness and their rights as per the provision under Article 21 of the Indian constitution weather said that the court should conduct the trial in a free and fair manner and everything should be conducted with complete transparency. If somehow they fail in conducting these things for the court of law then it is a clear violation of Article 21 of the Indian constitution. Furthermore it was held at under the article four 141 and 142 of the constitution of India the centre should follow it until and unless further any new legislation or law is been made.

### WHY THIS SCHEME IS NEEDED?

In India there are many cases where the rights of the witness are being violated and the witness cannot do anything about it before the court of

law. There has been a rule of law regarding which the right of witness and in what way it should be dealt has been defined. Many times it has been observed that the witnesses have felt different things which result in the change of statement during the trial. Amongst them there are various instances related to corruption and threat which are the main face which was notice during hundreds of time trials in the court of law. Witness has often called as an eye and ear of the court, if the witness itself has no right to be protected then how will it work and support the court of law in giving speedy justice to the people. Was a strong need of the witness protection scheme and appropriate legislation which should work for the right of the witnesses and their protection?<sup>11</sup>

### IMPORTANCE OF WITNESS PROTECTION

In India there has been a trial of pendency of cases in the various Indian as on the date November 1, 2017 where more than 50,000 cases are waiting to be heard in the Supreme Court. One of the major factor to which the dismissal of state of legal affairs can be

<sup>11</sup> Shrey Verma; *Witness Protection Scheme in India*; IPLEADERS (Last Updated on December 31, 2018), <https://blog.ipleaders.in/witness-protection-scheme-india/>.



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attributed in the present fact that India has one of the worst judges to population ratio in the world with only 17 judges per million population in 2014, whereas as per a 2011 census and sanctioned strength of the judges of the supreme court, there are only 24 high court and various other numerous subordinate court, as compared the almost 20 in the most the developed nations around the world<sup>12</sup>. But unfortunately today the state of litigants and the people under-trials have been suffering in a languishing behind the bars where it still persists and is far from better in the state. Delay in disposal of millions of cases has been ranged from almost 5 to 25 years.<sup>13</sup>

A fair trial is one, in which bias or prejudice form of statement for against accused, the witnesses, or any other calls that is being tried is eliminated.<sup>14</sup> The witness has always been threatened into giving false evidence, where the atmosphere cannot be said to be conducive to

<sup>12</sup> Government of India, APPOINTMENT OF JUDGES (2016), <http://pib.nic.in/newsite/PrintRelease.aspx?relid=137288>. (Last visited June 24, 2021).

<sup>13</sup> C. Nithya, *A Unique Remedy to Reduce Backlog in Indian Courts*, <http://www.manupatrafast.com/articles/PopOpenArticle.aspx?ID=4a5ad044-6b7e-4d1b-93cb-d0f1bf117bcf&txtsearch=Subject:%20Criminal> (Last visited June 24, 2021).

<sup>14</sup> *Zahira Habibulla H. Shiekh & Anr. v. State of Gujarat & Ors.*, (2004) 4 SCC 158

get to a fair trial. Many a times failure to hear material witnesses who are inevitably helps to lead auto denial of the fair trial before the court of law. Almost in every sense the procedure followed should not be detested or any other act as an impeachment for a person becoming a witness before the court of law. It has been regarded that adequate support and protection which leads to requisite cooperation thereby has always enabled the criminal justice system and upbringing the perpetrators of the crime who wants a justice. Almost in every sense where the effective witness protection measures ensure that they are assisted and protected, not only during the trial but before and after the trial as well to give them strength and support for the betterment of the judiciary to get fair, equitable and quick remedy to the society.

### CASES RELATED TO THE TOPIC

There has been numerous reasons call the witnesses when they turn hostile during a trial. In many of the cases, the witnesses face the rage of accused persons who hold power in their hand or are in a position of authority. In one of the famous cases of *Sidhartha Vashisht @ Manu Sharma v. State (NCT of Delhi)*<sup>15</sup>, where almost

<sup>15</sup> 2001 Cri.L.J. 2404.



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80 witnesses had turned hostile, which led to his acquittal by the lower court, though reversed by the High Court in the further proceedings before the court of law. In another landmark judgment of *Zahira Habibulla*<sup>16</sup>, in this matter it throws light on the issues of witness protection apart from the quality and credibility of the evidences which is put before the court of law. The trial for the infamous Sohrabuddin Fake Encounter case was also facing the set back. There has been number of hostile witness at which types are staggering 80 effect during the trial.<sup>17</sup>

### JUDICIAL TREND

Today it is one of the foremost function of the state end of the court simultaneously before the law to conduct a free and fair trial and everyone who comes for a final verdict after pursuing all the records presented, in a fair and justified man. The aim of a criminal trial or the role been put by the prosecution is not to induct the accused but also to ensure a fair procedure being followed during the trial. In order to achieve the highest form of justice the judges should see

<sup>16</sup> Supra Note 14.

<sup>17</sup> PTL, *Sohrabuddin Encounter: Number of Hostile Witnesses Reaches 80*, THE NEW INDIAN EXPRESS, July 5, 2018, <http://www.newindianexpress.com/nation/2018/jul/05/sohrabuddin-encounter-number-of-hostile-witnesses-reaches-80-1838857.html> (Last visited June 24, 2021).

into the tap that the witnesses are not intimidated or influenced by any external force of person or authority to manipulate their deposition before the court of law. The judiciary has always been found time and again commented on the dire need and significance of the witness protection scheme in India.

In one of the major case of honourable Supreme Court where they observed in the case of *NHRC v. Gujarat*<sup>18</sup>, the court observed that granting protection to witnesses is one of the most essential as well as the most of the sensational and controversial cases with the trials do not begin until witnesses or one over. The criminals have often witness that they have contact with the police and influential people causing which their distress and conversion to the witness into changing his or her statement before the court of law always make that trial delayed all the justice is not been served on a timely basis. Again in the case of *Bhagwan Singh v. State of Haryana*<sup>19</sup>, in this case download Supreme Court observed that the evidence of hostile witness is no bar to the conviction of an accused during the course of trial. In another judgment in the case of *State of U.P. v. Ramesh Prasad*

<sup>18</sup> (2010) 15 SCC 22.

<sup>19</sup> AIR 1976 SC 202.



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*Misra*<sup>20</sup> & *Shyama v. State of Rajasthan*<sup>21</sup>, the Supreme Court observed that evidence off such a witness who must be scrutinised closely and observed, will not be discarded formerly, whether in favour of accused or the prosecution. Where are the testimony of such a witness should be assessed exactly in the same manner as the way any other witnesses.

### CONCLUSION

It is often tops up that the state has apparel on duty towards the society to preserve the confidence of the public in the justice system. Where are the court of law administering justice must never be overload in any form of oppressive an unjust conduct during the preceding that jeopardizes the criminal justice system in general as well as towards the right of the parties involved. It is not solely the accused that must be dealt fairly with but also the idea of Fair trial in tangles in the interest of the accused, whereas the victim, the witnesses and the society in total. There has been various obstacles that hamper the process of determining the truth which are manifold multi-layered. Today there is an extreme need to have a robust and effective witness protection law in

place towards the society to check and eliminate search why later factors or loopholes that acts as a barriers to a fair and free trial. The very purpose is to make the trial point of view and aims to safeguard the investigation procedure and ensure the witnesses do not go back on the statements given before a court of law during the trial. A criminal trial should never be so undertaken by the prosecution or the opposite party which would result into the conviction of an innocent person during the trial. The advancement of a criminal trial must not be hindered by the accused in any form of manner which leads to the acquittal of a fugitive. Behind the loopholes of the law which acts as a backdrop of disturbing rises in witness turning into hot styles, the major significance of having a law that caters to protection of witnesses cannot be overstressed in any such form of scenario during the trial before the court of law.

<sup>20</sup> AIR 1996 SC 2766.

<sup>21</sup> 1977 WLN 278.





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