

JUDICIAL DECISION FOR A WITNESS PROTECTION IN INDIA

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ABSTRACT

In a criminal case, there is a lot of evidence, whether it comes from witnesses or from other sources. Many countries that are well-developed have laws that protect witnesses, but in India, there is no law that protects witnesses. People are in a bad situation because there isn't enough law to protect them. India's courts have played a positive role in protecting witnesses in many cases. This led to a lot of support for setting up Witness Protection Programs in the country. Rule of law is important when witnesses can give evidence in court without fear of intimidation or reprisal.

KEYWORD: *Protection, witness, criminal, Legislation, Enforcement*

The criminal justice system's concept of fairness isn't difficult to grasp, but implementing it is challenging because of the system's many intricacies. Investigation, inquiry, and trial all fall under the umbrella of "fair justice." Due to the adversarial nature of the Indian judicial system, procedural justice is critical to ensuring that all parties are treated fairly. The goal of process justice is to guarantee that the investigation and trial stages are open to the public by adhering to recognised legal procedures. Many significant considerations must be taken into account, such as the responsible and watchful role of government, law enforcement, and public defenders in order to improve the judicial system. Witnesses are the eyes and ears of justice, according to Jeremy Bentham. A definition for the term "witness," on the other hand, is lacking. A witness is a person who testifies in court and vows to tell the truth under oath. An attempt has been made to define it under the Code of Criminal Procedure, 1973, via its numerous clauses. A police officer conducting an investigation in accordance with Section 161 of the Code, or any police officer not below the rank prescribed by the State Government by general or special order in this regard, acting on the requisition of such an officer, may examine orally any person presumed to be acquainted with the facts and circumstances of the case. In the criminal justice system, it is not difficult to understand the concept of fair justice; nevertheless, owing to different complexity, obtaining it might be challenging. Investigation, inquiry,

and trial all fall under the umbrella of "fair justice." Due to the adversarial nature of the Indian judicial system, procedural justice is critical to ensuring fairness in the proceedings. It is the goal of procedural justice to maintain openness throughout the investigation and trial phases of proceedings by following the rules of evidence prescribed by the law.

LITERATURE REVIEW

Hannah Divyanka Doss (2021) According to the dictionary, a witness is someone who has knowledge that is useful to a legal or criminal process, regardless of their standing or the manner of their testimony. Any country's criminal justice system relies heavily on witnesses. For obvious reasons, the testimonies provided by witnesses about the significant facts lead the court and aid in arriving at any choice that depends on the future of the accused and justice to the cause of the victim. When it comes to criminal legislation and witness safety, India's judicial system is built on two pillars.

Prithivi Raj (2020) The Indian judicial system has struggled to cope with the issue of witness protection, but since such law does not exist, witnesses do not get the safety they require. Because of the current situation, it is unable to provide them any kind of protection. Vulnerability among eyewitnesses is a major issue at the moment. Existing legislation is woefully unprepared to address the challenges of our day. Unceremonious acquittals in high-profile criminal cases are increasingly being reported these days. The majority of them are the result of witnesses who betrayed their allegiance. Because witnesses may be manipulated and coerced, a rigorous legislation is needed to guard against this kind of injustice. The actions taken by legislators and the court to ensure the safety of witnesses, as well as how those steps have been implemented in society, are the subject of this article.

Dr. Varinder Kaur (2019) Static law does not exist. In order to keep up with the times, the law must adapt. Until the last decade or two, the idea of a hostile witness was an exception; today it is the norm in almost every criminal trial. To undermine or perhaps ruin the prosecution process, witnesses are being pressured and influenced by every methods. Due to today's easy methods of obtaining acquittals in criminal cases, the skill of cross-examination in criminal trials has almost lost all of its value. When it comes to evidence, the Supreme Court has pointed down that it is not required that the statement of a hostile witness be interpreted in favour of the defendant.

Tadesse Melaku (2018) International human rights law and Ethiopia's constitution both recognise the human right to cross-examination in criminal trials. The protection of prosecution witnesses who could be threatened or even put in danger if they provide testimony in the administration of criminal justice is becoming an increasingly serious legislative issue for governments. The freedom to cross-

examine witnesses has been restricted because witness safety has become a significant public concern. As a result, several nations (including Ethiopia) have implemented procedures prohibiting face-to-face examination by, among other things, the concealing of witness identification, in order to ensure that witnesses are cooperative because they fear retaliation. The freedom to cross-examine witnesses is protected by international scholarly literature and case law, according to a survey of those sources. Courts use extreme care when evaluating requests for anonymity. It's argued by the author that a recent constitutional judgement by the Council of Constitutional Inquiry favouring the concealment of prosecution witnesses' identities has failed to properly balance between the ability to cross-examine and witness protection. The decision is likely to have a severe impact on India's fair trial system and the basic rights of those accused.

J. Dirk Nelson (2015) Martha Stout says that about 1 in 25 people in the workplace are sociopaths. They don't have a conscience and don't care about what they do. They don't feel bad or guilty about what they did. As long as there is a chance, a workplace sociopath is going to play with the facts; hide evidence; stab others in the back; fabricate compelling lies; try to ruin the reputations of others; steamroll the weak; and try to bring down people who are smarter or more accomplished or more classy or more admirable. All in the name of fun, adrenaline, and revenge.

WITNESS

In criminal cases, a witness might testify in court about what he or she saw when the crime was committed. The word witness is defined in Section 118 of the Indian Evidence Act 1872 as a person who is able to comprehend the questions posed by the judge. If they are unable to comprehend and respond to the questions posed to them, any individual may serve as a witness.

For the purposes of criminal investigations and trials, a witness is anyone who has knowledge of the events surrounding the alleged crime and who is required to provide information or testify or produce documents as part of those investigations and trials. A witness may also include a victim of the alleged crime.

An essential role is played by the testimony of witnesses in the administration of the law. In both the inquiry and the trial, he plays a crucial role. Unless a witness actively participates in the investigation, it is unlikely that a crime will be solved in an efficient manner. Underlining the significance of witnesses, **Wadhwa J. in Swaran Singh v. State of Punjab** said, "Evidence is the foundation upon which a criminal case is constructed. That necessitates the presence of witnesses, whether they provide direct or indirect evidence." A large number of potential witnesses are unable to do their jobs because of flaws in the criminal justice system, and they become hostile for a variety of reasons.

Teenagers and children are increasingly being used as informants and witnesses in judicial processes due to an increase in the number of crimes perpetrated against minors and crimes committed by juveniles. Over the last decade, gang-related crimes and the trafficking of juveniles have increased the demand for underage witnesses. A new phenomenon has emerged: an increasing number of underage witnesses to severe crimes are seeking safety from prosecutors and witness protection organisations.

An increasing number of incidents of witness intimidation have been linked to the increasing number of adolescents being used as witnesses or informants in criminal investigations and prosecution. In gang-related cases, when juvenile witnesses and minor victims are regularly involved, the risk of intimidation is especially acute. It is common practise to limit the employment of minors to situations when it is absolutely essential and no other viable option available. However, the use of juvenile informants and witnesses is becoming more vital for effective prosecution and public safety guarantee.

NEED OF WITNESS PROTECTION LAW

As a society, we need a better judicial system that offers proper protections for witnesses. Except for a few parts of the Indian Evidence Act, 1872, there is no legislation that protects witnesses in Indian courts. To ensure that witnesses are not harassed or insulted by the questions they are asked under Section 151 and Section 152, they are protected by these two sections. In addition to these clauses, witnesses in India are not protected. **NHRC v. State of Gujarat** xii said that no legislation had been adopted or even a plan had been drafted by the Union of India or the State Government to safeguard witnesses. It is past time for India to implement a system of witness protection. Indeed, the Law Commission recognised the necessity for witness protection and issued a consultation document on August 13, 2004. In India, the requirement for witness protection falls under two basic categories.

- a) To make sure that witnesses' evidence is safe from the risk of them becoming hostile.
- b) To protect the witnesses' physical and mental safety.

WITNESS PROTECTION LAWS IN INDIA

In industrialised nations like the United Kingdom, the United States, Canada, and Australia, witnesses are protected by law. It is a consequence of this that witnesses and their families do not feel safe, since they have been exposed to life-threatening intimidation on a regular basis. Even the courts have broken their silence and made a plea for a witness protection statute in today's world when witnesses are so vulnerable. Several studies and publications by professional groups have focused on the criminal justice system in the United States. The Indian Law Commission has

published a number of studies on various parts of the criminal justice system, both substantive and procedural. The Law Commission has taken a new look at witness protection in its 19th report. Witnesses' daily bhatta (allowance) and travel allowance (bhatta) were mentioned in the report, as were problems with the court's insufficient preparations for witnesses. Keeping in mind the huge rise in costs and the lengthy hours spent in court with anxiety and several adjournments, this element is also significant. The witness's convenience, comfort, and recompense for his time are at stake in this situation. An apathy to prosecuting the wrongdoer will emerge if the witness is not given enough attention.

In the Fourth Report of the National Police Commission, which was published in June 1980, witnesses' difficulties and handicaps were mentioned. The Commission raised the issue of witnesses being harassed and inconvenienced while testifying in court once again.

SUPREME COURT OF INDIA ON WITNESS PROTECTION

It was Wadhwa, J., who spoke out for the Supreme Court of India in this case and stated his worry over the witness's plight as follows: "A criminal case is founded on evidence, evidence that is acceptable under law. For this reason, both direct and indirect evidence involving witnesses is necessary. Here are some of the most persistently pestered eyewitnesses. When a witness in a criminal trial travels long distances just to discover that the case has been postponed, this may be frustrating. It's not hard to imagine how many times he'll have to appear in court, and how much it will cost him and his family. More often than not, criminal cases are postponed until a witness becomes weary and gives up. Adjournments are the game of unscrupulous attorneys to obtain till the witness is convinced or exhausted. A witness is not only intimidated, but also kidnapped, injured, eliminated, or even paid. He is completely unprotected. When a judge adjourns a case without a good reason, it unknowingly contributes to a wrongful conviction. After that, a witness in court is dealt with contempt.

WITNESS PROTECTION LAW A CONCOMITANT IN RIGHT TO FAIR TRIAL

Offenders are brought to justice and the accused are given a fair trial by criminal procedure's principal goal. The presumption of innocence in favour of the accused is the starting point of every criminal trial. Indian law stipulates that a criminal trial must begin and be regulated by an important assumption, which is outlined in the Code of Criminal Procedure, 1973. Democracy is founded on the principle of fair trials for persons accused of criminal offences. Fair trials are advantageous to both the accused and the general public. The idea of justice is violated if a person is convicted as a consequence of an unfair trial. To be found guilty of a crime in India, you must establish your

innocence beyond a reasonable doubt under our adversarial legal system. Our justice system, in a nutshell, revolves on the accused.

EXAMINATION OF WITNESSES AND LAW IN INDIA

One of the four fundamental procedures in a criminal trial is the examination of witnesses. There has been a law in place since 1932 that allows a Special Magistrate to keep some witnesses out of court in order to safeguard their identities. In addition to this, there are additional regulations in Indian law pertaining to witness management.

S.151 and 152 of the Indian Evidence Act, 1872 prevent victims and witnesses from being harassed or insulted with indecent, scandalous, or insulting inquiries. Other than that, there is no safeguard in place to protect witnesses from being coerced or threatened into not stating the truth. Frequently, a condition of a defendant's release on bail is that he refrain from tampering with evidence or approaching witnesses.

Dealing with hostile witnesses is addressed under Evidence Act Section 154. The Act does not define a hostile witness. To be considered "hostile" by the court, an individual must present testimony in such a way that indicates he or she has no desire to tell the truth¹⁶. When a witness is either hostile or reluctant to answer questions addressed to him, a party requesting cross-examination might ask the Court for authorization to pose questions to him. Witness intimidation is on the rise, in part due to the absence of adequate safeguards against hostile witnesses.

CONCLUSION

One of the most important components of a case's outcome is the testimony of the witnesses. The care and trouble he has to go through to aid the court is a lot, but he is a crucial source of information for discovering the truth about the case. The witness aids the courts in rendering fair and accurate judgments by providing evidence. The lives of the witnesses and the families they leave behind are in grave jeopardy. They also face the risk of their own homes. In order to give testimony, people must deal with a great deal of anxiety. Despite their efforts, they get little in return. Thus, it is clear that the courts are careless in their treatment of witnesses. A number of efforts have already been taken to ensure the safety of potential witnesses. It is possible that these tools may encourage even more people to come forward and testify in the sake of the greater good. As a result, it is imperative that witnesses be given the respect and thanks they really deserve.

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