A STUDY OF WITNESS PROTECTION LAWS IN INDIA

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ABSTRACT
The role of a witness is crucial in any country's criminal justice system. They are an important part of the legal system in any civilized culture. Each of their comments is crucial because it has the potential to change the outcome of the case. They bring the criminal justice system to life by presenting evidence that is tied to the commission of a crime. Witnesses, who are supposed to be the law's eyes and ears, are getting more hostile regularly. Witnesses frequently become hostile when high-profile persons are involved in the commission of crimes, resulting in the criminal justice system's failure. Unjustified acquittals in high-profile criminal cases are becoming more common. The vast majority are expected to experience allegiance defection. Defection can be caused by several factors. Without a doubt, one among them is the lack of a witness protection program. As a result, this study makes a sincere effort to underline the importance and necessity of proper witness protection procedures in the criminal justice system.

Keywords: Witness, Witness Protection, Victim, Crime, Criminal Justice System

INTRODUCTION
The commission of a crime is a complex process that involves many interconnected events and actions. One of the primary goals of the criminal justice system is to catch and punish the perpetrator, which can only be accomplished after a thorough and methodical investigation that identifies the chain of activities required to prove the crime. Systematic evidence collecting and presentation is crucial to the investigative process, as the defence will almost always try to disprove its veracity in order to avoid criminal liability during the trial. ¹

The current laws are skewed toward allowing the witness to express himself and giving the court the discretion to accept or reject it. Similarly, the standards for determining witness competency are critical in determining the believability or unshakable quality of a witness's claim. As a result of this, the Indian Evidence Act declares that everyone is qualified to testify. Thus, the fact that an individual is of a certain religion, or that he is physically or mentally disabled, or that he is in any way associated with the case, or that he is a co-conspirator in the commission of a crime does not preclude him from testifying in court. The only criterion for determining a witness's competency is his ability to comprehend the nature of the questions posed to him and to respond appropriately to those questions. Even a maniac, according to the sketch connected to the portion, might be able to affirm unless he is prevented by craziness from comprehending the inquiries and providing rational solutions to them. As a result, witness competency is a must, while their inadequacy is an exception. ² Because they are not bound by the lawful cycle, a sovereign or the heads of other sovereign states are not compellable witnesses. Ambassadors and Consular authorities value invulnerability to comparability, whether total or partial.

CONCEPT OF WITNESS

A witness is a person who is not a member of the group who has knowledge of the disputed exchange. According to Manu, a person becomes a witness either because he has seen or heard something. An individual who provides evidence to a court is known as a witness. Witnesses are used in all semi-legal courts and talk of various kinds. Three major considerations occur while managing witnesses as a mechanism of proof:-³

a. Competency and capability of witnesses;
b. Liability of guaranteeing presence and declaration of witnesses in the court; and
c. The reason for exclusion of the declaration

DEFINITION OF PROTECTION

In the same way, that speech denotes either a guarding effort or a push to provide protection, the word "protection" denotes either a guarding effort or a push to provide protection. The term "protection" in law refers to the safeguarding of the defenceless' interests. Taking everything into

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² Madhu Mandal v. State of West Bengal, 2003 Cr. L. J. 73 Cal

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account, the phrase "protection" has no meaning in India. In any case, the general collection of rules in India, as it appears, has not focused on the inadequacy of witnesses until recently. There are provisions for witness character protection in a number of resolutions, including the Terrorist and Disruptive Activities (Prevention) Act of 1987 (TADA), the Prevention of Terrorism Act (POTA), and the Juvenile Justice Act. The Act required the concerned legal official to conduct in-camera processes and to verify the witnesses' identity and address. The Central Government has the authority to transfer any case under the supervision of an assigned court in that state to another state if it believes that directing such a preliminary will cause a breach of the peace or pose a grave danger to the charged, witnesses, public examiner, and appointed authority of the assigned court, or any of them. Nonetheless, the Central Government's decision should be made in tandem with the Chief Justice of India's decision on a motion brought forward for that purpose by the Attorney General. In addition to these arrangements, there is a scarcity of defensive estimates that may be used to assist witnesses in criminal preliminaries.

WITNESS: THE TERM EXPLAINED

In Indian criminal law, the term "witness" has no definition. As a result, relying on the standard dictionary definition of the word is crucial. According to the Oxford Dictionary, "one who presents evidence in a cause; an indifferent individual to each party, pledged to say the truth, the whole truth, and nothing but the truth". According to Black's Law Dictionary, "one who sees, knows, or vouches for something, or one who gives testimony under oath or affirmation in person, or by oral or written deposition, or by affidavit".

SIGNIFICANCE OF WITNESSES

The importance of witnesses cannot be underestimated or exaggerated. "A criminal case is predicated on the structure of proof, proof that is permitted in law for that witness, whether it is instant proof or fortuitous evidence," Justice Wadhwa said."
Witnesses serve as cornerstones of equity in each state's criminal justice system, with their quality being the most important factor in putting anything aside for the offended party and charged. He confronts the Constitutional and heavenly peerless character of truth over insidiousness and equity over offence by making a vow for the sake of god and bravely eliminating. The witness fulfills a crucial public duty by assisting the court in determining who is to blame or, in any case, who is responsible for the circumstance. He submits to questioning and is unable to refuse to respond to questions on the grounds that the acceptable response will implicate him.

WITNESSES IN INDIAN CRIMINAL JUSTICE

“Witness protection was sadly disregarded by the Indian Constitution, which provides us with a wide range of essential rights. In any case, India has never had a witness protection program, even though many developed and developing countries (e.g., Albania) do. The necessity for this rule is critical because it will provide witnesses more confidence, protection, and authenticity while also restoring trust in India's criminal justice system. Witnesses have been grossly undervalued under the current legal framework. Witnesses are called to the stand regardless of their financial situation, as well as their familial and professional limits. Witnesses are now exposed to so many hazards and have grown so helpless that the situation has thrown the entire criminal justice system into disarray, highlighting the urgent need for witness protection regulations.”

STAGES OF PROGRAM WHERE ROLE OF POLICE BECOMES IMPORTANT IN WITNESS PROTECTION

Application Stage

“In the case that a witness moves the witness protection application, the police contribution to witness protection would begin immediately at the phase of use. The underlying procedural advance in a criminal preliminary includes case insight, which could be at the stage of housing an FIR or at any other point where the witness feels the necessity for witness protection. It would be the responsibility of the responsible Police Officer to inquire as to whether witness protection is required. It is also the cop's responsibility to inform the complainant or potential witness

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7 Swaran Singh v. State of Punjab, burnishedlawjournal.in
about the availability of the witness protection program, as well as the methods and privileges afforded to witnesses under it.\(^8\)

**During Investigation**

“The examination step in criminal organization is crucial because it involves the gathering and sequencing of evidence. Examining a case entails identifying the facts and circumstances of the case. Combine all efforts made by the police for a variety of tests: continue to the scene; understand reality and conditions; expose and capture suspected criminals; Identify various pieces of evidence of criminal behaviour, which may include different people who remind the accused Evaluating and recording their claims in order to compose and trace or capture things that are considered important to the examination and create them in the preliminary; Arranging to assess whether there is a case based on the collected materials and presenting the accused to the judge for a preliminary evaluation, provided the situation is true, a critical step has been taken to record the indictment form. The inspection is over and the police report to the magistrate.”.

**2.3.3 During Trial**

The preliminary is the next crucial stage in the criminal procedure. The preliminary is a legal determination of a person's guilt or honesty. Criminal preliminaries are divided into three categories under the CrPC, each with its own set of techniques: warrant, request, and outline preliminaries..

**2.3.4 Post Trial**

“In reality, the time between the last dispute and the decision is known as the post preliminary phase. Although the Supreme Court's position, as stated above, is that protection can be granted indefinitely until the judgment, there is a chance that, in extreme instances, protection will be required even after the preliminary. Any terrorizing of the witness following the judgment may have an impact on the general public's sense of peace and harmony. The role of the police is apparent here in ensuring and maintaining lawfulness.”

**LEGISLATIVE PROCESS RELATING TO RIGHTS OF VICTIM AND WITNESSES**

\(^8\) Satya Prakash Sagar, *Crime and Punishment in Mughal India* 47(Reliance Publishing House, Delhi, 1967)

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According to the Evidence Act, statements given to a cop are not admissions, but rather confirmations. This was done so that police enforcement officers, who are often viewed as terrible because of their use of and large looking downward on them, can also abuse their function as witness recorders. In any event, as the right to crime has evolved and the occurrence of crime has increased, it has become clear that in certain cases such as mental oppression, the risk must be addressed using all available resources. Similarly, in 1987, the Terrorist and Disruptive Activities (Prevention) Act (TADA) was enacted, granting cops vast powers over a specific duty and allowing any statement made to them to be used as admissible evidence. The use of a gadget to protect witnesses has been discussed. On application, an atypical justice of the judicial docket was given the warning to pay the fee of protection to witnesses.

**Terrorist and Disruptive Activities (Prevention) Act, 1987**

The Act was one of the exceptional modifications passed by the Indian Parliament to prevent and adapt to the psychological oppressor and troublesome workouts, as well as other issues associated with them. This was approved in 1987, when India was threatened by psychological militant exercises both within the country and from neighbouring countries. The Code of Criminal Procedure was found to be insufficient in dealing with the threat of illegal intimidation and rebuffing those involved in unpleasant activities, and exceptional forces were required for leaders and legal executives to effectively deal with the threat of psychological warfare.

One of the fantastic features of this sanctioning was the formation of a group dedicated to witnessing protection. The Code of Criminal Procedure preparations in unique problems were abrogated by section sixteen of the Act. Section sixteen granted unusually assigned courts the option to instruct in digital digicam ways to a matter at its inception. It provided security to all of the people involved in a case, based on their personalities.

**Prevention of Terrorism Act, 2002 (POTA)**

POTA was established on March 28, 2002, after TADA was revoked. The vast bulk of TADA's arrangements were preserved verbatim in POTA as well, including TADA's Section 16, which was POTA's Section 30.

**The Unlawful Activities (Prevention) Amendment Act, 2004**
Lately, the Indian Parliament repealed POTA and reinstated the antiquated Unlawful Activities (Prevention) Act 1967 by making minimal changes to it. Through the Extrade Act of 2004, Section 22 has built up Section 3 (7) of the POTA. In addition, the Act's Section 44 contains witness personas.

**Juvenile Justice (Care and Protection of Children) Act, 2000**

It's a fantastic status quo when it comes to dealing with adolescent crime. It was established to expand business for antisocial teenagers and teenagers who require care and safety while undergoing re-socialization and restoration. The Act's Section 21 deals with the safety of a teenager's man or woman. It states that no file in any newspaper, magazine, information sheet, or appearance of any request for an adolescent in trouble with the law will reveal the juvenile's name, address, or school, or any other details necessary to trigger the identification of the juvenile.⁹

**Judicial Trends**

To some extent, the Code of Criminal Procedure mimics the general legislation on remuneration for crime victims. Section 357 of the Code governs the payment of compensation to casualties.

In Nand Balabh Pant v. State¹⁰, whereby the accused was indicted under section 304A of the Indian Penal Code, the zenith courtroom docket lowered the penalty but increased the fine to Rs. 1000/with a heading that is equivalent to be paid to the deceased's partner through salary.

The Supreme Court declared in Palaniappa Gounder v. State¹¹, where the High Court ordered Rs. 20,000/as pleasant to be paid to the beneficiaries of the deceased, that the degree of pay must no longer be needless. Furthermore, the courtroom docket stated that it isn't usually appropriate to choose what remuneration must be paid first and then push pleasure that is greater than pay.

The courtroom held in Swaran Singh v. State of Punjab¹², that while providing pay, it is critical for the courtroom to determine whether or not the case is in shape for compensation to be paid,

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⁹ Section 16 , TADA and section 30, POTA.
¹⁰ AIR 1977 SC 892
¹¹ AIR 1977 SC 1323
¹² AIR 1978 SC 1525

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and if so, the limit of the cost to pay must be addressed. Another point is that the item at the end of Section 357(2) of the Code of Criminal Procedure isn't always fulfilled.

The Supreme Court held in Guruswami v. State of Tamilnadu\textsuperscript{13} that criminal equity can be measured in a variety of ways, including conviction, sentencing, vindication, and guiltlessness. The casualty should not be overlooked, but should be turned to the maximum extent possible.

In Hari Kishan and the State of Haryana v. Sukhbir Singh\textsuperscript{14}, the accused were taken to the submitted trial system, but each was ordered to pay Rs. 2500 to one victim who was truly affected. The Supreme Court observed that the purpose of Section 357 is to achieve the goal of social equity. Despite the fact that it is a massive agreement, the courts have only summoned it on a few occasions. The courthouse docket's pressure to give payment is not just a result of the unusual penalties, but it is also a result of them.

The Supreme Court's various decisions clearly show a trend in which after-factors play a crucial role in determining whether or not a casualty is entitled to compensation.

- The offender's financial limit
- General apprehension in going to court for a criminal law interaction of pay, as well as obliviousness to legal advisers and customers.
- Maximum fines have been set for many infractions that have been in place for a long time, and the maximum amount is little.
- Conviction is required for payment installments. Regardless, the conviction rate is modest.

Aside from that, if there is a violation of critical rights, the court appears to have loosened up the specialized modus operandi, as seen in Rudul Shah v. State of Bihar.\textsuperscript{15} Despite the fact that it was a writ appeal, the Supreme Court awarded compensation to a victim who had spent years in a penitentiary facility without explanation.

\textsuperscript{13} AIR 1979 SC 1177
\textsuperscript{14} AIR 1988 SC 2127
\textsuperscript{15} AIR 1983 SC 1086
The court in Chandrima Das v. Senior Supervisor Railway Board\textsuperscript{16} granted remuneration to a rape survivor. Regardless, these are the cases that relate to infringement of fundamental rights. As part of Section 357's overall law cure, the courts must step up and play a positive role.

The judicial docket in Chandrima Das v. Senior Manager Railway Board granted rape victims compensation. However, they are the cases where core rights are infringed upon. As a basic regulation remedy under Section 357, the courts desire to take a big step forward and hope for the best.

Whether it's a criminal preliminary or a civil case, proof plays an important role in assisting the court in reaching a final decision on the presence of certainty in dispute between the parties.

It is a descriptive law that fully adapts to the methodology of how, when, and how to present evidence in court. It clearly contains what kind of evidence, questionable truths, relevant realities, etc... It is an evidence guide applicable to criminal cases, just like common ones. In this sense, it is a proven general legal accommodation system.

There are certain chapters under the Evidence Act that are most useful for non-anomalous cases and more practical for criminal cases. For example, Articles 24 to 30 relate to recognition, Articles 53 and 54 relate to the defendant's individual, and Article 120 relates to the ability of a lifestyle partner to act as a witness for any other spouse. Section 155 Personal preparations with prosecutors in cases of rape, etc.

CONCLUSION

The current investigation is being conducted to assess the situation with witnesses in criminal preliminary proceedings in India, the degree and need for the protections provided to them by current public and international standards, and to consider and evaluate the Law Commission's proposals for establishing a witness protection program in India. The investigation also looked into whether the current laws imposed by the legal executive, as well as the practices of a few other developed and agricultural countries, could be used to develop an elite witness protection plan in India. In the second segment, the analyst has discussed the role of the witness in a criminal justice system. In India, the role turns out to be more important as a result of the several

\textsuperscript{16} AIR 2000 SC 988
flaws in the criminal justice system. The economic, social, and political realities in India are major factors influencing the perseverance, consistency, and type of witnesses who leave with little feelings.

The Indian Constitution mandates reasonable preliminary and fair equality, as well as the ability of the criminal justice system to function effectively through the ethical implementation of many provisions such as articles 14, 20, and 21. In the fourth part, the structure of criminal justice under the protection of the Indian Constitution is discussed. This section looks at the flaws in the criminal organization that could have a negative impact on the established command if there isn't a precise witness. In India, there is protection. It is unassumingly argued that the Constitution's creators' efforts to provide a reasonable preliminary are thwarted by the lack of protection afforded to witnesses or survivors of a crime.

Without the assistance and assistance of the police and society at large, any witness protection program is ineffective. In the fifth section, the role of the police and society has been extensively discussed. The findings of the research into the role of the police and society in witness protection show that present arrangements identifying with the work of the police force include a tangled obligation to ensure the safety and well-being of witnesses throughout particular stages of the investigation. These responsibilities must be highlighted before, during, and after the preliminary cycle while establishing an exceptional witness protection program. Furthermore, few adjustments should be familiarized with the cost of comprehensive witness protection through the police and cultural assistance.

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