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# Witness Protection in India: A Fundamental Need in Criminal Justice System

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## ABSTRACT

*The establishment of the judicial system is based on the fact that witnesses are not afraid, partial, and not intimidated or urged by the court. If witnesses are fired out of fear or intimidation, or out of grace or urge, then the foundation of justice will not only be weakened, it may even be eliminated. The public interest in due justice is as important as the defendant's personal interest, and even more important. In this regard, one can refer to the statement of the Supreme Court in Zahira Habibullah Sheikh, in which the court pointed out the importance of the role of witnesses in criminal trials. Therefore, there is a great need to protect witnesses and expand their power in the criminal justice system, especially those who fight against well-known and closely related influential defendants. Sometimes the witness is humiliated by the court, and the defendant or his followers or family members are petrified, and sometimes it may cause the witness to commit suicide. All this happened because India's witness protection mechanism is very weak, and there is no protection for witnesses in such incidents. If this happens, witnesses may lose confidence in the criminal justice system. Therefore, they hesitate or fear to come forward to testify. In this article, I want to focus on the problems faced by witnesses, the mechanisms for protecting witnesses, and the protection of their family members.*

## I. INTRODUCTION

*"Testis oculatus unus plus valet quam auriti decem* (a witness is better than ten eyes and ears)

In the IV Book of Justinian's Institute<sup>4</sup>, page 279, printed around 533 AD, the above Latin motto was discovered, which means that in the absence of evidence and witnesses' evidence and they should act as correspondents to the law and justice in the case of system donations, in emergencies, the judicial system will not stand still. Witnesses reconstructed the incident

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<sup>4</sup> The institutes of Justinian are unit of the Corpus Juris Civilis, the 6<sup>th</sup> century codification of Roman Law ordered by the Byzantine emperor Justinian I. This new version of the Institutes was published on November 21, 533 and promulgated with the digest on December 30, 533.: Source: H.F. Jolowicz & Barry Nicholas, Historical Introduction to the study of Roman law 492-493; published by Cambridge University Press; 3<sup>rd</sup> ed. Edition, October 30, 2008

and confessed in court. Without witnesses, unless there is video or circumstantial evidence, the court cannot accept the facts of simulated events.

Witnesses are people who claim to know about events or other things of interest. In law, a witness provides oral or written testimony evidence voluntarily or under someone's coercion to prove what he/she knew before the official authorized to receive such testimony.

In 1972, Judge Rawlins of the U.S. Supreme Court of Iowa wrote that the term "witness" usually means "in person or by affidavit or testimony, in any court proceedings for oath or confirmation. Provided on or before the person of evidence. Any of its officials, or in front of any court or official established by law, or in any procedure related to any matter or thing that is required or may be required or authorized by law, is sworn or confirmed<sup>5</sup>. Therefore, in a broad sense, A witness is a person who proves disputed facts during judicial proceedings. The Supreme Court of India interprets the term "witness" as a person who can provide information by stating relevant facts, oral or written statements, in court or in other ways.

The witness, in general, is presumed to be unconventional, but he jumps out of a source of potential spoilage, which usually means that the witness has reason to be hostile to the defendant and thus wrongly implicated him<sup>6</sup>. Although informally a witness includes anyone who perceives an event, in law, a witness is different from an informant. Once a person swears to only admit the truth, he is called a witness. Those who appear in court and swear to provide true evidence are called witnesses in the law. The nature of the evidence he provides will shape his character in different ways.

For example, he is a person who has been sworn or confirmed in accordance with the law to testify on the grounds that he knows the disputed facts of the parties, and is called a fact witness. In another interpretation, a witness is understood as someone who needs to attend a transaction, wedding, or make a will. When a person signs his name on a document as a contract, bond, etc., to show that the document is executed in front of him, he is called a witness. The testimony of witnesses can never serve as an example, because they cannot, in fact, often happen, they are wrong, or want to deceive themselves. Therefore, apart from the conclusion drawn from the analogy, no other certainty can be drawn from their testimony. In the calm of passion, we only listen to rational voices and natural impulses. We feel that we are very disgusted with betraying the truth and the prejudices of others. We observe that honest, smart, and selfless people never unite to deceive others with lies. Then, by analogy, we come to a conclusion with certain moral certainty that the credible facts proved by

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<sup>5</sup> State v. Gilroy, 199 NW 2d 63

<sup>6</sup> Rohtash Kumar vs. State of Haryana 2013 (India)

multiple witnesses are true. The full power of this proof comes from the double assumption. First, we assume that the witnesses did not make a mistake; second, we assume that they are honest and that they do not want to cheat. In order to ensure that they are not deceived or misled, we must ascertain as much as possible the nature and quality of the facts proved; the quality and selection of witnesses; and the testimony itself, by comparing it with the testimony of other witnesses or known facts.

Witnesses are known for their abilities. This ability is granted in two ways. One is that a person should be qualified as a witness in law. The legal requirements may depend on the witness's age, mental ability, and connection to the relevant situation. Secondly, his ability depends on his first-hand knowledge of the facts to be testified.

## **II. WITNESS AND EVIDENCES**

In other words, the Supreme Court's "release of witnesses" means "provide evidence." A person can become a witness not only by providing oral evidence, but also by presenting documents or making understandable gestures (for example, a dumb witness (see Article 119 of the Evidence Law), etc.). "Testimony" is nothing more than "providing evidence." Such evidence can be passed on through word of mouth or through items or documents on a subpoena. This is not a witness. However, this part specifies the right of cross-examination. This is not what the term "witness" refers to. But it must be handled and understood according to its natural meaning, that is, the person who provides the evidence. When the certifier is the most important element in the clue, the entire clue depends on the witness's statement. Although the witness may be eligible to file a claim, there is no guarantee that he is reliable or that his evidence is only telling the truth.

On the other hand, the elements of free and voluntary declarations are not affected by any external or internal factors. External factors include coercion, improper influence or other pressure on them; while internal factors include blood relationship, social relationship or political kinship. In contrast, any positive infringement that provides evidence is testimony, and that testimony implies coercion. It controls people's active violation of evidence, not his silence and negative attitude. However, there is no reason to believe that the protection of the evidence so obtained is limited to what happened in court. Competence-One of the qualifications of a "witness" should be assessed by the person in charge of evidence. In other words, the role of witnesses must be understood from the perspective of the quality of evidence. The word "Evidence" is derived from the Latin "evidere", which describes a clear display, making the viewpoint or scene clear, clearly discovering, clearly determining,

confirming, confirming and justifying.

### III. PRESENT SCENARIO IN INDIA

The current situation of witnesses in India can be said to be a "disaster". Because people who testify in court face many life threats, pressures, and sometimes even fatal warnings from the defendant or his side. In these sad situations, he may become hostile and provide testimony in court in favour of the defendant. At first, when a person testified in court, he thought he was helping the judicial system and saving some souls, but in the end, his own life was turned into a tomb by all the threats and warnings/her or his/her. family. Nevertheless, these witnesses may not receive any legal aid or protection, even though the legal system takes them for granted. The increasingly hostile culture of witnesses, as we have seen, makes sense. This worries the defendant, which has become common in recent years.

In India, it is not uncommon for witnesses to become hostile in support of the defendant's testimony. The Supreme Court has stated that "*emphasis on legislative measures prohibiting tampering with witnesses, victims or informants has become an urgent and inevitable need today.*"<sup>7</sup>

During the trial, the witness experienced a lot of trouble and pain. This not only downplays the purpose of the trial, but also violates the basic freedom of witnesses to conduct a transparent trial, which is sworn in Article 21 of the Indian Constitution. The BMW car accident, Aasaram Bapu, Naroda Patia, and VYPAM cases are one of the few major examples of threats and harassment of witnesses. Give false testimony in court. All the possibilities of threats, intimidation and temptation. The reason why this happens is that our country lacks an effective witness protection mechanism.

In the *Zahaira, Habibulla H. Sheikh & Another v. Gujarat and Others* case<sup>8</sup>, the Hon'ble Supreme Court stated that "the state plays a certain role in protecting witnesses, and it must first begin at least in sensitive cases involving power and will. Waving the power of money and money, whoever has political support, purposefully use the power of money and money to avoid pollution and obstruct the trial. The truth has become casualties. As a defender of the aborigines, we must ensure that witnesses appear in court to testify. Every piece Land has constitutional obligations and obligations to defend the lives and freedoms of its citizens. This is the basic requirement of governing the country according to law. This may not be possible due to social order, beliefs, divinity, political knowledge or beliefs. Every country

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<sup>7</sup> AIR 2000 SC 2017. (India)

<sup>8</sup> *Zahaira Habibulla H. Sheikh & Another v. State of Gujarat and Others* (2004) (India)

should Knowing these basic requirements, the country should make every effort to defend human rights.

#### **IV. PROBLEMS FACED BY WITNESS**

The most basic danger or threat faced by a witness is his/her or his family. Sometimes they are threatened, and the degree of threat depends on the degree of the case. If an influential person is involved, the threat is higher, if not, the threat is lower, but the threat is universal. As we see in the daily life of the judicial system, a witness is the element that provides or acknowledges what he/she sees in any event. He/she especially plays a pivotal role in the criminal justice system. Although they are not addicted to any criminal activities, they can always participate in court proceedings. In the outside world, what we are looking forward to is that they are treated well and accompanied well, but the sad reality is that they are not even treated well, but face all the hardships in the world. Arrived in court to testify.

In fact, the government is obliged to provide the witnesses with money to reach the court from where they live, but they come at their own expense and wait for the case to arrive. But sometimes, the case will not be asked, they have to stay and leave the day. In *Uttar Pradesh v. Shambuna Singh*<sup>9</sup>, the Supreme Court pointed out that witnesses were not prepared/willing to accept court summons, not because they had to be questioned or cross-examined in court, but because they were afraid of not being summoned by the court. They were inspected for days or weeks instead of waiting all day, but at the end of the day, they had to learn from the court staff that the court had adjourned and came to the hearing. As far as witness protection is concerned, this will be a regrettable situation in most Indian courts. It is now a good time for the courts to seriously consider and summon them to appear in court at court fees in order to withstand the criminal justice system of today's society.

But from a larger perspective, another key issue faced by witnesses is that even if they are responding to the party's subpoena, they also face the absence of the other party's client or defender. This caused them to be unfaithful to the judicial system, and later they decided not to go to court even if a subpoena was issued to them. The court administration must provide witnesses with a minimum allowance or monetary funds that are not enough to get them to the court, but are managed from their pockets. The standards of hospitality and facilities provided to witnesses are very low, at least they have not received basic treatment such as seating and drinking water. They had to stand for a whole day, and at the end of the day, they had to leave with great dissatisfaction. As mentioned above, witnesses not only face these

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<sup>9</sup> State of U.P. Vs Shambhu Nath Singh 2001 (4) SCC 667. (India)

problems, but they are also threatened, petrified, and sometimes pressured beyond a threshold frequency to turn their testimony into support for the defendant. Once the Supreme Court observed in *Swaran Singh v. Punjab*<sup>10</sup> that in any criminal cases, witnesses must walk all the way from their place to the court, and when they finally succeed after all difficulties, they must listen to that court has been adjourned, they had to leave there with greater dissatisfaction. Since he is a witness, he must appear in court at his own expense every time he is called, and he does not even know his family status.

It has become common for witnesses to be summoned to appear in court and have to wait until his turn to show up and confess. This happened until the witness got tired of going to court and went home without making a statement. At that time, even though the summons had been served on him, he still decided not to appear in court. This is a routine procedure when witnesses are needed in any criminal cases. Sometimes, in some cases, witnesses are sent to court or driven out of court by jailers. But after all, if the witness crosses all these obstacles and stands before the judge to testify, he will eventually be asked all the irrelevant questions during the cross-examination and cross-examination, which makes him feel dissatisfied with what he has been waiting for a day or two<sup>11</sup>.

In the future, these are the dilemmas faced by witnesses, that is, they are unwilling to testify before the judge. All these situations defeat the true purpose of criminal justice management. Therefore, the High Court should take measures to make judges aware of their responsibility to protect the rights of witnesses through training and supervision.

## **V. FEW LEGAL MECHANISMS FOR WITNESS PROTECTION**

### **1. Public trial and Cross-examination of witnesses in public court: Indian law:**

As mentioned above, few statutory bodies regard chapter acts as a subordinate or subsidiary element of the witness protection system in the main criminal law. According to section 327 of Cr. PC, the clause says that stalking must be done in open court, 327(2) insists that in-camera stalking must occur in the case of rape crimes, which is read together with Articles 376 to 376(d)). These may not be directly related to the witness protection system, but they can provide the witness with additional powers or help to make him/her feel safe under the protection of the law. These laws or chapters may come from different codes, but they are related to each other and should be read from each other to achieve justice.

Here, from a broader perspective, Article 273 of the Indian Evidence Act seems to have no

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<sup>10</sup> *Swaran Singh v. State of Punjab*, (2000) 5 SCC 668 (India).

<sup>11</sup> *Supra* note 6.

objection to Article 299, that is, in Article 273, it says that evidence must be conducted in the presence of the defendant, but at the same time, the same bill Article 299 of the United States describes that the defendant has the right to refuse cross-examination before a judge in court under any given circumstances. These two parts should not go hand in hand. If the defendant takes advantage of Article 299, then the case may be viewed in a completely new image, leading to a deviation of the case. In addition, the defendant can easily escape.

In any rape case, according to Article 228 of the IPC, if any information about the rape victim is released, then the court must treat it as a serious issue and take legal action against anyone who discloses it to the public.

Similarly, Article 21 of the Juvenile Justice Act of 2000 stipulates that there shall be no indication that the name, address and other information related to the juvenile witness shall be disclosed. If it occurs, it may increase the risk rate. That special boy. Therefore, it must be kept confidential under this section. More or less, the law of evidence must be updated more and more to ensure that witnesses are safe under the law.

## **2. Protection of Identity of Witnesses: Special Statutes in India**

Before India enacted its constitution, the state of Bengal had a decree called the Bangladesh Suppression of Terrorist Atrocities in 1933. In the bill, section 31 deals with the activation of a special justice of the peace to prevent the occurrence of people or the public from the area. court. Before there was a bill called TADA in 1985 and 1987, Article 13 and Article 16 of which were respectively going hand in hand. According to these sections, in order to protect the witness, the identity and address must remain confidential until the case is closed. POTA, 2000 is a substitute for replacing TADA. Among them, section 30 fully explains what TADA section 16 says. To remain isolated, there must be general laws to deal with this witness protection, in case it is in the criminal law of witnesses and their families and relatives.

## **3. Witness Protection Scheme, 2018:**

The Supreme Court approved the "Draft Witness Protection Plan<sup>12</sup>" on December 6, 2018. The draft is a service management (NALSA) developed by the opinions of 18 states/federal territories and several public sources inviting suggestions from the police, judges, and secular civilization. Judge Sikri and Judge S. Abdul Nazeer, composed of AK judges, determined the witness's right to testify within the scope of Article 21 of the Constitution, and said: "Today, without any pressure or threat, the right to testify in court is free the method of impartiality

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<sup>12</sup> Shery Verma, Witness Protection Scheme in India, December 31, 2018, <https://blog.ipleaders.in/witness-protection-scheme-india/>

has been severely attacked. If the inability to testify in court due to threats or other pressures is clearly in violation of “Article 21 of the Constitution.” In addition, in Article 141/142 of the Constitution, the judge considers the plan to be a "Law", the central and state need to follow the plan until qualified legislation is made on the same subject.

## **VI. CONCLUSION**

The criminal justice system is established and implemented in society to maintain the balance of criminal law and maintain peace and harmony under the control of the rule of law. If all these are dealt with, then the victim/witness should receive the highest sense of security, belief, etc., and the defendant should be punished by the rule of law in a way that seems appropriate. However, witnesses play a huge role in providing any evidence that is helpful to the case and can be provided in any way during the judicial service process. In order for this to happen, the victim/witness should show positive signs by cooperating with the judicial process when recording the statements in the lead process. In this process, if the witness is threatened or petrified by the defendant or his associates, it may cause the witness to provide false evidence, and even if it goes the wrong way, it may not be regarded as fair. From now on, the state government has the responsibility to take care of the witness and enable him/her to provide a true statement by providing him/her. Prior to the Mahendra Chawla case, India did not have such a witness protection system. However, after or during the case, the Supreme Court considered that the system was very needed in action and provided protection for witnesses in criminal proceedings. In the second half, the Supreme Court approved the witness protection plan in 2018.

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