

# Criminal Justice System in India: The Position and Significance of Witness Protection

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## Abstract

Witnesses serve as the foundation of well-functioning criminal justice system as their cooperation with law enforcement and judicial authorities is significant to prosecute crimes successfully. In a case, witness serves as key source of information in discovering the truth and his testimony decides the fate of a trial in any justice delivery system. Protecting witnesses from intimidation or physical threats from crime suspects is thus vital to uphold the rule of law. In India, the position of witness is such that they no longer volunteer to offer testimony owing to various extraneous factors. A witness dithers as he faces wrath, pressure and intimidation to his life from accused part. Further, a creepy feeling that becoming a witness will surely invite troubles, frequent tiresome court visits, besides an action for failure to attend before police and courts often leads to the dubiety of witnesses. The battle of to testify or not which often betides in the mind of witnesses leads to lack of witnesses and ultimately resulting in the miscarriage of justice. There are instances where witnesses are unavailable or if available, they turn hostile in crucial cases as they face continuous threat, harassment and intimidation. Considering the prominence of the witnesses in the working of criminal justice system, although India has come far to ensure their safety and security, however, the want of statutory mechanism with strict penal implications could lead to miscarriage of justice. Keeping this view in mind the present paper focuses on the significance and status of witnesses in the Indian criminal justice system and the need to improve witness protection.

**Keywords:** Criminal, Judicial, Testimony, Witness.

## Introduction

Commission of a crime is a gradational process and is a culmination of set of events and series of acts. The main focus of the criminal justice system is to capture and punish the offender which could possibly happen following a careful and bona fide investigation identifying the series of acts. The series occasionally switch the focus of investigative machinery as the offender could have manipulated the series to outcast criminal liability and punishment. The evidence has a key role in this investigative process. The instrument of evidence is the media by which the evidence of facts, either disputed or required to be proved, are conveyed to the mind of the investigative agencies and the judiciary in civil as well criminal matters. The evidence under examination could be oral or documentary. The oral evidence is mostly given through the witnesses, whether it is a victim himself, the accused or any other individual possessing any information about the matter. A witness consequently has a substantial contribution in the criminal justice system of any country. Justice Wadhwa said, "A criminal case is built on edifice of evidence, evidence that is admissible in law. For that witnesses are required whether it is direct evidence or circumstantial evidence."<sup>1</sup>

Free and fair trial is the very foundation of criminal jurisprudence and certainly among the key facets of democratic polity. Fair trial is recognized<sup>2</sup> as one of the fundamental rights emanating from Article 21 of the Constitution of India and its denial amounts to denial of human rights.<sup>3</sup> For centuries witness has been a key player in the pursuit of justice delivery system and calling a witness to offer his testimony in a case is no longer a new phenomenon. The idea was known even in historical India as well. It is a rule of law that rights of the witness should not be prejudiced by

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using threats, intimidation or corruption therefore, to allow him to testify for or against that case which he had been a witness to with full liberty.<sup>4</sup> In the words of Jeremy Bentham, "Witnesses are the eyes and ears of the justice system". If the witness himself is incapacitated from acting as eyes and ears of justice, the trial gets putrefied and paralyzed, and it no longer can constitute a fair trial. When a witness to an offence is threatened, killed or harassed, it is not only the witness who is threatened, but also the fundamental right of a citizen to a free and a fair trial is vindicated. Hence, it turns into imperative on part of the State to furnish sufficient protection to the witness to ensure ideal working of the wheel of justice.

### **Concept of Witness**

In a criminal trial a witness plays a pivotal role. Yet the word 'witness' has been defined neither in The Code of Criminal Procedure, 1973 nor in the Indian Evidence Act, 1872. The ordinary/ dictionary meaning of the term *witness* is a person present at some event and able to give information about it.<sup>5</sup> The word originates from old English word 'witness' meaning attestation of fact, event, and so on, from personal knowledge. The Black's Law Dictionary defines the witness as:

*"In the primary sense of the word, a witness is a person who has knowledge of an event. As the most direct mode of acquiring knowledge of an event is by seeing it, "witness" has acquired the sense of a person who is present at and observes transactions."*

The Oxford Dictionary defines the word witness as "One who gives evidence in a cause; an indifferent person to each party, sworn to speak the truth, the whole truth and nothing but the truth."

Further Section 2(k) of Witness Protection Scheme, 2018 defines 'witness' as: "*witness' means any person, who possesses information or document about any offence."*

Although the term 'witness' is not defined specifically under any law, the Indian Evidence Act, 1872, contains provisions in regard to the competency of a witness. The Act provides that every person is competent to testify, unless the court feels that he is not able to understand the questions, put to him or to give rational answers to them. This may be due to tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind.<sup>6</sup> Thus, nobody is specifically, declared to be incompetent. It is entirely handed down to the discretion of the court to examine whether the individual who appears as a witness is competent to understand the questions put to him and to answer them rationally. The disqualifying factors might also be that he is too young a child or too old a man or suffers from a disease of mind or body. Even a lunatic is not declared to be incompetent until his lunacy prevents him from understanding or answering questions.

A witness is anybody who has firsthand knowledge about a crime or dramatic event through their senses (e.g. seeing, hearing, smelling, touching), and can aid in certifying vital considerations to the crime or event. A witness who has spotted the incident firsthand is recognised as an "eye-witness".

Witnesses are often called before a court of law to testify in trials.

Thus, one who possesses the knowledge of an event and whose declaration under oath is taken as evidence for some reason is termed as a witness. He may be an eyewitness, if he has seen the event by himself, or a hearsay witness, if he has not seen but only heard something concerning the matter in issue or an attesting witness, if he has spotted the execution of an instrument. Therefore, witness is a person whose attendance is fundamental to prove a thing or incident purposes. It is the feature of the witness that, being a person in possession of information he is the most crucial for civil as well as criminal proceedings.

### **Role of Witness in Criminal Justice System**

In any criminal justice system, witness serves as a cornerstone for building the structure of justice and equity. It is his significant part played in a criminal trial based on which the fate of the case is determined. A witness is therefore a necessary and indispensable element in the criminal proceedings. In any matter whether civil, criminal, or the other, witness facilitates the trial. However, in an adversarial system of criminal justice, witness undertakes an extra significance because in such a system, the prosecution is carrying the burden of proving the case and the witness of prosecution becomes crucial in the pursuit of exploring the truth.

In the court of law, the witness holds the status of a friend and supporter of the cause of justice. By testifying before the court, he builds the case of the parties in dispute and his deposition assists the court in determining the case on merits. The authenticity of witnesses' statements thus comes to be the keystone of justice and consequently, the witness is obliged to testify under oath.

His testimony may occasion the conviction or acquittal of the accused. The speedy justice or delay in justice delivery also depends, to a great extent, on the quality of statement given by the witness during a trial. It is not required that the witnesses must consistently depose in favour of the prosecution and against the accused in a criminal trial.<sup>7</sup>

### **Importance of Witness and Their Protection**

Being the paramount source of information in discovering the truth of the case, the witness is regarded as the soul of the justice delivery system as it is his testimony which ultimately decides the fate of a trial. In criminal cases, witnesses have a substantial role to play as the facts cannot be determined without them. It is only the witness who can prove the case if the testimony of the victim is insufficient. In the words of Lord Chief Justice Cockburn:

*"Witnesses are just as necessary for the administration of justice as judge or jurymen, and are entitled to be treated with the same consideration"*<sup>8</sup>

In *Bharat Singh Rawat v. State NCT of Delhi*<sup>9</sup> the Delhi High Court on 12 March, 2014 observes the importance of witness in criminal justice system. "Witnesses" as Bentham said: are the eyes and ears of justice. If the witness himself is incapacitated from acting as eyes and ears of justice, the trial gets putrefied and paralysed, and it no longer

can constitute a fair trial. The incapacitation may be due to several factors, like the witness being not in a position for some inevitable reasons to speak the truth in the Court or due to negligence or some corrupt collusion. Time has become ripe to act on account of numerous experiences faced by Courts owing to frequent turning of witnesses as hostile, either due to threats, lures and monetary considerations at the instance of those in power, political clouts and patronage and innumerable other corrupt practices stifle truth and realities coming out to surface rendering truth and justice. There comes the need for protecting the witness. Time is up when grave and undiluted thoughts are to be bestowed for protecting witnesses with the intent that the ultimate truth is presented before the Court and justice triumphs and that the trial is not reduced to a mockery.<sup>10</sup>

Generally speaking, witness protection entails protection to a witness from bodily harm. It is the procedure in which witnesses, such as, those who testify in criminal trials are protected against intimidation earlier than their testimony or criminal retaliation after the trial. In the words of Rosalind Sipos, "The provision of victim and witness protection is fundamental to the credibility of any justice system and to the battle against impunity. Asking victims and witnesses to come forward without the provision of protection may indeed be irresponsible in cases where they face the possibility of re-victimized or becoming victims in their own right by reason of living up to their duty to provide their evidence."<sup>11</sup> However, witness protection in the India scenario has significantly narrow connotations with exclusive reference to the provision of facilities such as protection of witnesses from discomfort and inconvenience. Though in real, the protection of witness might also be appropriate in a tremendous range of situations viz. to prevent the witness from being allured and won over, to stop the witness from coming underneath social/family stress, to get out of the cumbersome routine of making rounds of Court or because of some different pressures instilling fear in them the safety of the witness or some loved one, witness coming under peer group pressure e.g. after noticing the other witnesses finding outcome way to evade the situation he prefers to follow the lead, witness getting tired of the never ending Court proceedings, witness facing threat to his life or property or of his family members, political interference, to prevent the dissemination of information regarding the identity and address of the witness and to ensure that the name, address and identity of the witness are not given publicly in media etc. Protection of witness recounts any or whole of the period beginning from the stage when a person becomes a witness to the period beyond the stage when trial is over and the accused has been convicted.

In *National Human Rights Commission v. State of Gujarat and Ors.*,<sup>12</sup> the Apex Court duly acknowledged the significance of witness protection and emphasized the role played by the State<sup>13</sup> in this respect. After exhaustively reviewing the laws, policies and precedents regarding witness protection

in several parts of the world and absence of any such mechanism in India, the Hon'ble Court was pleased to permit the Special Investigation Team/SIT so constituted in the said case to, *inter alia*, decide, "which witness require protection and the kind of witness protection that is to be made available to such witness."<sup>14</sup>

In *Mahender Chawla & Ors. Vs. Union of India & Ors.*<sup>15</sup> the Court observed that: "Whenever, in a dispute, the two sides come out with conflicting version, the witnesses become important tool to arrive at right conclusions, thereby advancing justice in a matter. In the words of Whittaker Chambers, a witness is "a man whose life and faith are so completely one that when the challenge comes to step out and testify for his faith, he does so, disregarding all risks, accepting all consequences. Because of the lack of Witness Protection Programme in India and the treatment that is meted out to them, there is a tendency of reluctance in coming forward and making statement during the investigation and/or testify in courts. The current legal system takes witnesses totally for granted. They are summoned to court regardless of their financial and personal conditions. Often they are made to appear long after the incident of the alleged crime, which significantly hampers their ability to recollect necessary details at the time of actual crime. They are not even appropriately remunerated for the loss of time and the expenditure towards conveyance etc. It hardly needs to be emphasized that one of the main reasons for witnesses to turn hostile is that they are not accorded appropriate protection by the State."<sup>16</sup>

The crucial part played by witnesses in bringing offenders to justice is central to any modern criminal justice system, since the successful conclusion of each stage in criminal proceedings, from the initial reporting of the crime to the trial itself, commonly depends on the co-operation of witnesses. Their role at the trial is specifically important, in adversarial systems, where the prosecution has to prove its case beyond reasonable doubt. But the pains and troubles he/she has to undergo in aiding the court is noticeable as well. What is essential and subject matter of concern is that a witness must depose out of his or her own free will and consent without any force, fear and pressures. For the sake of protecting the witness from fear, force and pressures, some legal mechanism has been provided under various provisions of law, such as Section 327(2)<sup>17</sup>, Section 312<sup>18</sup>, Section 171<sup>19</sup> & Section 284<sup>20</sup> of Code of Criminal Procedure, 1973. Section 228A<sup>21</sup> and 195A<sup>22</sup> of the Indian Penal Code, 1860. Furthermore Protection for witness is also provided under Section 132<sup>23</sup>, Section 146 (3)<sup>24</sup> and Section 148<sup>25</sup> of the Indian Evidence Act, 1872.

Besides, the above mentioned laws protection to witness is also available under some special legislations which includes, The Unlawful Activities (Prevention) Amendment Act, 2004, as Section 44 of the Act provides for in camera proceedings and witness identity. The National Investigation Agency Act, 2008<sup>26</sup>, Section 17 of the said Act confers protection to witnesses whose life is

in danger, by keeping the identity of such witnesses confidential and sec 12 & 13 of The Whistle Blowers Protection Act, 2011 which deals with Protection of witnesses and other person.<sup>27</sup>

Witness Protection Scheme, 2018<sup>28</sup> provides for protection of witnesses based upon the threat assessment and protection measures inter alia include protection/change of identity of witnesses, their relocation, installation of security devices at the residence of witnesses, usage of specially designed Court rooms, etc. The scheme calls for preparation of a 'Threat Analysis report' of the witness by the Commissioner/SSP, when witness applies for protection.

The Scheme provides for three categories of witness as per threat perception:

Category 'A': Where the threat extends to life of witness or his family members, during investigation/trial or thereafter.

Category 'B': Where the threat extends to safety, reputation or property of the witness or his family members, during the investigation/trial or thereafter.

Category 'C': Where the threat is moderate and extends to harassment or intimidation of the witness or his family member's, reputation or property, during the investigation/trial or thereafter.

Protective measures like ensuring the witness and accused do not come face to face during the probe, protection of identity, change of identity, relocation of witnesses, witness to be apprised to the scheme, confidentiality, and preservation of records, recovery of expenses etc are set out under the scheme.<sup>29</sup>

#### **Challenges to Witness Protection**

Since the witnesses has a significant role to play in the criminal justice system of any country, the successful functioning of this system generally relies upon the readiness of individuals to furnish information and tender evidence without being threatened or lured. However, the conditions referring to witnesses in India are highly pathetic. The witnesses in this country are no longer willing to come forward to offer testimony. Witness dithers as he faces wrath, pressure and intimidation to his life and existence from accused party. The situation gets further aggravated when he finds the State does not have any legal obligation for extending any security to him. Witnesses are the cornerstones for successful investigation and prosecution of crime. In the investigation and prosecution of crime, particularly the extra serious and complicated form of crime, it is integral that they have trust in criminal justice systems. The courage and conviction of witnesses to offer assistance to the law enforcement and prosecutorial agencies is quite imperative. However, for this purpose, they demand a commitment of support and protection from any kind of injury or intimidation in which criminal elements might attempt to strike against them to exploit them and crush their spirit of cooperation. For a fair and effective criminal justice system, governments must be able to protect the witnesses effectively against intimidation, attacks, and reprisals. A witness is counted as a major clue

that aids the judiciary to conclude a particular case. For this the witness is required to come to the court with full conviction and a sense of duty. The Supreme Court of India in *Swaran singh v. State of Punjab*<sup>30</sup> expressed deep concern about the predicament of a witness in the following words:

*"A criminal case is built on the edifice of evidence, evidence that is admissible in law. For that witnesses are required, whether it is direct evidence or circumstantial evidence. Here are the witnesses who are a harassed lot. A witness in a criminal trial may come from a far-off place to find the case adjourned. He has to come to the Court many times and at what cost to his own-self and his family is not difficult to fathom. It has become more or less a fashion to have a criminal case adjourned again and again till the witness tires and he gives up. It is the game of unscrupulous lawyers to get adjournments for one excuse or the other till a witness is won over or is tired. Not only that a witness is threatened; he is abducted; he is maimed; he is done away with; or even bribed. There is no protection for him. In adjourning the matter without any valid cause a Court unwittingly becomes party to miscarriage of justice. A witness is then not treated with respect in the Court. He is pushed out from the crowded courtroom by the peon. He waits for the whole day and then he finds that the matter adjourned. He has no place to sit and no place even to have a glass of water and when he does appear in Court, he is subjected to unchecked and prolonged examination and cross examination and finds himself in a helpless situation. For all these reasons and others a person abhors becoming a witness. It is the administration of justice that suffers. Then appropriate diet money for a witness is a far cry. Here again the process of harassment starts and he decides not to get the diet money at all."*<sup>31</sup>

In *Zahira Habibullah Sheikh v. State of Gujarat*<sup>32</sup> the Supreme Court observed that: *"Witnesses are the eyes and ears of justice. If they are incapacitated from acting as eyes and ears of justice, the trial gets putrefied and paralysed and it no longer constitutes fair trial. The incapacitation may be due to several factors like witness being not in a position for reasons beyond control, to speak the truth in the court due to negligence or ignorance or some corrupt collusion"*.

According to the Supreme Court, "Time has become ripe to act on account of numerous experiences faced by the court on account of frequent turning of witnesses as hostile, either due to threats, coercion, lures and monetary considerations at the instance of those in power, their henchmen and hirelings, political clouts and patronage and innumerable other corrupt practices ingeniously adopted to smother and stifle truth and realities coming out to surface."<sup>33</sup> On the question of protection of witnesses the Hon'ble Supreme Court observed that "Time has come when serious and undiluted thoughts are to be bestowed for protecting witnesses so that ultimate truth is presented before the court and justice triumphs and that the trial is not reduced to mockery."<sup>34</sup> In the words of the court, "The reluctance and the hesitation of witnesses to depose against

people with muscle power, money power or political power has become order of the day. If ultimately truth is to be arrived at, the eyes and ears of justice have to be protected so that the interests of justice do not get incapacitated in the sense of making the proceedings before courts mere mock trials as are usually seen in movies.<sup>35</sup>

In *Mahender Chawla and Ors. v. Union of India and Ors.*,<sup>36</sup> the Hon'ble Court especially observed that one of the main reasons for the witnesses to turn hostile is that they are not accorded appropriate protection by the State. Clearly, threat to life, induced by coercion, compulsion, violence, etc., may often result in witnesses from contracting from truth, even if the same may go against their conscience or will.

Witness confronts many hardships at various stages of investigation especially during the trial period. They may face the life threatening intimidation to themselves and to their family by reason of which they often revert from their testimonies. The Best Bakery trial<sup>37</sup> is the glaring example of miscarriage of justice:

*"This case is related to a young girl of 19 years who was sitting with her family in Best Bakery on one following the Gujarat riots. Best Bakery was a small bread making unit in 'Vadodara' slum. According to the reports, following the riots a mob shouting anti Muslim slogans gathered around the bakery. That time there were 25, people inside the bakery, who had no option but to run the terrace. For those who would not make it to the terrace locked themselves in a room on the first floor what happened after that because the Best Bakery case leaving Zahira Sheikh as the prime witness of the incident. An incident where 14 people burnt from Zahra's family. She on being brought to the court many a times retracted from her statements. Every time she changed her stand, she brought the case under cloud. Best Bakery trial is the glaring example of miscarriage of justice where the witnesses turned hostile due to external pressures by the rich and powerful accused. Before the newly instituted court, the witness refused to identify any of the accused and was contrary to her previous statement before the police and the National Human Rights Commission. The court recorded a verdict that the prosecution had failed to prove the charges. Later Ms. Sheikh asserted that she had lied to the court under threat and fear for her life. Result: Sessions court acquitted 7 and convicted 10 people out of 21 accused".*

Apart from this case, there are no of cases where witnesses have turned hostile such as Jessica Lal's case<sup>38</sup> and BMW Hit & Run case.<sup>39</sup> The Jessica Lal was allegedly shot dead at point blank range by a drunk Manu Sharma, the son of a Minister in the Narsimha Rao Government, for her refusal to serve a drink to him. Jessica Lal was working there as a celebrity barmaid. At that moment the room was of people who witnessed the incident. As the trial progressed a number of witnesses turned hostile before the court and retracted from the statements, which they had earlier made to the police.<sup>40</sup>

In another case, on January 10, 1999, a BMW driven by Sanjeev Nanda, grandson of the former Chief of Naval Staff and arms dealer admiral S.L. Nanda had allegedly run over sleeping pavement dwellers in Delhi. Three people died on the spot to received serious injuries. As the trial progressed a large number of witness turned hostile- Monoj Mallick, the lone survivor of the Hit & run case, told the court that he was hit by a truck. Key witness Hari Shankar refused to identify the BMW and another witness absconded. In fact, none of the witness supported the prosecution. In the end, Siddhartha and Manik were granted bail.<sup>41</sup>

However, it is not the first time when the criminal justice system has failed to deliver. It is normal in India for influential persons accused for heinous crimes to be acquitted for want of evidence, predominantly because key witnesses in such cases turn hostile with unflinching constancy. The aforementioned cases involving high profile personalities have unveiled the disquieting truth that these powerful moneybags can manipulate criminal justice by intimidating and coercing the witnesses.

The most recent tragedy in the Unnao rape case, leading to the death of key witnesses in the upcoming trial due to road accident, and placing the victim herself in intensive care, has led to the renewed criticism of many features of India's criminal justice system.<sup>42</sup> The Unnao case has been in the spotlight for weeks where a woman was allegedly kidnapped and raped by BJP MLA Kuldeep Singh Sengar in Unnao in 2017 when she was a minor. The survivor who was the main witness in the case spend almost two months in the hospital when a truck rammed the car she was travelling in with some family members and her lawyer in July 2019. Two of her aunts died in the accident and her lawyer was critically injured.<sup>43</sup> While expressing a deep concern over the safety of the Unnao rape survivor, the Delhi court sought a status report from the CBI on the measures undertaken to ensure security of the women's family members and witnesses in the case.

Currently, the criminal justice system of India is experiencing crises owing to unavailability of witnesses in the court proceedings. Intimidation and manipulation of the witnesses has enormously contributed for number of acquittal in the criminal cases. Often persons who have witnessed the crime do not present themselves to help the investigation. They are reluctant of being dragged into cumbersome court proceedings. Even if some public spirited citizens come forward to record their statement before an investigating officer, in many cases, they are being threatened, coerced or bribed. Methods of intimidation or monetary inducements are used by the politically or economically well-connected accused. Further, the delay in the disposal of case accelerates the ordeal of the witness. Hence, witnesses do not come to testify in the court or retract their statement in the court. The witnesses play very crucial role in the case, as a result of their absence or turning hostile, the prosecution fails to prove the charges and thus accused is acquitted.<sup>44</sup>

It is a matter of grave concern that more often citizens are losing confidence in the effectiveness of the justice delivery system. Witnesses in criminal cases are living in fear or simply turn hostile because of threats and intimidation from the accused undergoing trial. While Countries like US, Australia and South Africa have separate laws to protect witnesses. They have witness protection programmes where witnesses facing a high level of threat are relocated and their identities changed so that they can lead normal lives,<sup>45</sup> India lacks a robust witness protection mechanism. Although earlier in December 2018, the Supreme Court, while hearing a PIL files by witnesses involved in the Asaram Bapu rape case, approved a witness protection scheme floated by central agencies and directed the Centre and the States to implement the same. Yet the new Scheme struggles with some fatal flaws as it requires the same police forces, which we always criticize as being understaffed, to handle investigative work, to devote adequate resources to offer round-the-clock protection required to ensure the safety of witnesses.<sup>46</sup> Besides the protection envisaged therein is limited for a specific duration of three months at a time.

The witness Protection Bill, 2015 in contrast has specific provisions concerning penalties which may be inflicted for the violation of the terms of the said Bill; orders for safety and security of the protectee from the inspection of investigation till the stage after trial on terms, as warranted by the court as per the threat perception of the individual; etc. A similar Bill<sup>47</sup> for identity protection of witness was presented in the Parliament. However unfortunately, both the Bills failed to transform into statute.

The Law Commission has persistently carried out enormous work on the issue of witness security. At first, the Commission has somewhat and sporadically managed this subject while looking after the related issues and witness figured as a key aspect of that procedure. The Reports of the Law Commission, in particular the 14th, 154th, 178th and 198th Reports are mentionable in this specific circumstance. The subject remained the focus of several committees and commissions earlier. In a first, the *14th Report of the Law Commission*<sup>48</sup> had addressed the inadequate arrangements for witnesses and advocated for some travelling reimbursement and other provisions for witnesses. The report asserts that if the witness is not protected, he or she may develop an attitude of indifference to the question of bringing guilty to justice.

The matter was also addressed by *4th National Police Commission (1980)* report which mentioned that while a prisoner suffers for some act, witness suffers for no fault of his own. The report advocated removing inconveniences / handicaps and also a daily allowance payable to witnesses for appearance in the Courts.

Similarly, the Law Commission in its 178th report, 2001 addressed the issue of preventing witnesses turning hostile. The report proposed that Police should take precautionary measures during investigations to check prevarication by witnesses

when they are examined. The noteworthy recommendation of this report was to amend the Code of Criminal Procedure, 1973 and *insert a new section 164-A which would provide for recording of the statement of material witnesses in the presence of Magistrates where the offences were punishable with imprisonment of 10 years and more.* Based on this recommendation, the Criminal Law (Amendment) Bill, 2003 was introduced making it mandatory to record statement before a Magistrate where the sentence for the offence could be seven years or more.

The Justice Malimath Committee on Reforms of Criminal Justice System too addressed the matter and said that a law should be enacted for giving protection to the witnesses and their family similar to the laws in USA and other countries.

The 198th report of Law Commission most elaborately addressed the issue covering different areas such as Witness Identity Protection v. Rights of accused, Witness Protection Programmers' along the lines of existing laws in New Zealand and Portugal. On the basis of the 198th report and the proposed 'witness identity protection and witness protection programme', a bill known as Witness Protection Bill 2015 was prepared towards witness protection and introduced in parliament in 2015. The Bill aims to introduce a strong law for witness protection in order to ensure a fair trial to both the parties. The said Bill appears to be a major step towards protection of witnesses, but unfortunately this bill has not yet been passed. So far, the above bill was circulated to the State governments and UT administrators but no consensus could be formed.

#### **Aim of the Paper**

The study focuses on the significance and status of witnesses in the Indian criminal justice system and the need to improve witness protection.

#### **Conclusion**

In the context of criminal justice system witness's statement is essential for effective investigation and prosecution of a criminal trial. Hence, intimidation of witnesses should be strictly dealt with under a law on witness protection. It is trite law that justice should not only be done but it should be seen to have been done. In addition to the parties to suit, the witnesses too qualify for fair trial as "free and fair trial is sine qua non of Article 21 of the Constitution." For the purpose of ensuring free and fair trial, the Apex Court of the country often emphasized the need to accord adequate safety to witness. Considering the above mentioned scenario, today the Indian criminal justice system is facing the problem of slow conviction rate due to unavailability of evidences and hostile witnesses. In recent times, in many high profile cases accused were acquitted by reason of material witnesses turning hostile. The eyewitness is becoming a rare species. Even when he is available, he changes colour like a chameleon to such an extent, that in 2006 the Supreme Court had to punish Zahira Habibullah of Gujarat for her kaleidoscopic variations in her versions in various courts. So long as the witnesses continue to turn hostile and desist from making truthful deposition in court, Justice will continue to suffer and people's faith

and credibility of judicial process and justice system will be deteriorated. According to Bentham, witnesses are the eyes and ears of justice. Their each and every statement is crucial containing magic force to change the course of the whole case. Therefore, their presence in the court is quite necessary. But unfortunately, the trend is such that the witnesses are unwilling to approach to the courts to offer their testimonies and evidences because of the fact that they feel unsafe. Even if they come to the court, they tend to turn hostile, thereby opening avenues for the accused to be acquitted. Hence, providing protection to the witnesses is quite essential so that they do not get intimidated or fear by revealing the truth in court. It is the physical and mental vulnerability of the witness and to the taking care of his or her welfare in various respects which call for physical protection of the witness at all stages of the criminal justice process till the conclusion of the case. Otherwise the court will be incapacitated from punishing the guilt which could lead to the miscarriage of justice. But how these ends would be realized is a question of greater significance. Although India has come a long way in ensuring the safety and security of witnesses, however, the dearth of strict formal statutory instrument for witness protection may leave the entire criminal justice system in lurch. Enacting a witness protection scheme appears not enough and perhaps it is time for the State to step into its role of *parens patriae* and to lay out a comprehensive legislation in this direction. It is only then the stream of justice will be able to flow freely and independently.

#### Endnotes

1. *Singh v. Punjab*, 5 S.C.C 68 (2000).
2. *Yadav v. India*, 1 SCC 307 (2011).
3. Hon'ble Supreme Court in *Jayalithaa v. Karnataka*, 2 SCC 401 (2014)., has held, "Right to get a fair trial is not only a basic fundamental right but a human right also".
4. Shrey Verma, *Witness Protection Scheme in India*, Available at: <http://blog.ipleaders.in/witness-protection-scheme-india/amp/>. (last modified on 6 July, 2020).
5. Available at: <http://www.lawctopus.com/academike/Witness-Protection-Problems-faced-and-need-for-a-protection-programme-in-india> (last modified on 6 July, 2020).
6. *Indian Evidence Act, Section 118 (1872)*.
7. Available at: [https://shodhganga.inflibnet.ac.in/bitstream/10603/8788/10/10\\_chapter%201.pdf](https://shodhganga.inflibnet.ac.in/bitstream/10603/8788/10/10_chapter%201.pdf) (last modified on 19 September, 2020).
8. Francis Lewis Wellman, *The Art of Cross-examination* 69 (1<sup>st</sup> ed., 2018).
9. CRL.A. 830/2013
10. *Ibid*.
11. Rosalind Sipos, <https://www.cpalanka.org/the-draft-bill-for-the-assistance-and-protection-of-victims-of-crime-and-witnesses-critique-and-recommendations/> (last modified on 7 July, 2020).
12. MANU/SC/0713/2009, *Writ Petition (Crl.) No. 109/2003 dated 01.05.2009 (Supreme Court)*
13. "As the protector of its citizens it has to ensure that during a trial in the court the witness could safely depose the truth without any fear of being haunted by those against whom he had deposed."
14. Available at: <https://www.mondaq.com/india/trials-appeals-compensation/914274/witness-protection-safeguarding-the-eyes-and-ears-of-justice> (last modified on 8 July, 2020).
15. *Writ Petition (Criminal) No. 156 of 2016*.
16. *Ibid*.
17. *The inquiry into and trial of rape or an offence under section 376, section 376A, section 376B, section 376C, Section 376D or section 376E of the Indian Penal Code (45 of 1860) shall be conducted in camera*.
18. *Expenses of complainants and witnesses*.
19. *Complainant and witnesses not to be required to accompany police officer and not to be subject to restraint*.
20. *When attendance of witness may be dispensed with and commission issued*.
21. *Disclosure of identity of the victim of certain offences, etc*
22. *Threatening any person to give false evidence*.
23. *Witness not excused from answering on ground that answer will criminate. Provided that no such answer, which a witness shall be compelled to give, shall subject him to any arrest or prosecution, or be proved against him in any criminal proceeding, except a prosecution for giving false evidence by such answer*.
24. *Proviso to section 146 (3), the Indian Evidence Act, 1872, provides that "in a prosecution for rape or attempt to commit rape, it shall not be permissible to put questions in the cross-examination of the prosecutrix as to her general immoral character*.
25. *Court to decide when question shall be asked and when witness compelled to answer*.
26. *Section 17 deals with Protection of witnesses*
27. *The provision for protection of witnesses is given under Section 12*
28. *The Witness protection Scheme, 2018 became a law under Article 141 and 142 of the Constitution of India by Supreme Court's Judgement in Mahender Chawla & Ors. Vs. Union of India & Ors., Writ Petition (Criminal) No. 156 of 2016*
29. Available at: <https://indianexpress.com/article/what-is/witness-protection-scheme-supreme-court-5480930/> (last modified on 19 September, 2020).
30. AIR 2000 SC 2017
31. Available at: <http://kja.nic.in/article/witnessProtection.pdf> (last modified on 19 September, 2020).
32. AIR 2004 4 SCC 158
33. *Zahira Habibulla v. State of Gujarat*, (2006) 3 SCC 374
34. *ibid*.
35. *ibid*
36. AIR 2019 (14) SCC 615
37. (2004) 4 SCC 158

38. *State and etc. V. Siddhartha Vishist alias Manu Sharma and Others*, 2001 Cri.L.J. 2404
39. *Maruti Rama Naik V. State of Maharashtra*, (2003)10 S.C.C.670
40. *Supra note 11*
41. *Supra note 12*
42. Available at:  
[https://www.google.co.in/amp/s/m.hindustantimes.com/analysis/it-is-time-to-rethink-india-s-witness-testimony-process/story-BgvzEGQNAAyjwsqw70Q8YL\\_amp.html](https://www.google.co.in/amp/s/m.hindustantimes.com/analysis/it-is-time-to-rethink-india-s-witness-testimony-process/story-BgvzEGQNAAyjwsqw70Q8YL_amp.html) (last modified 2 August, 2020).
43. Available at:  
<https://m.thewire.in/article/law/unnao-case-delhi-court-seeks-report-on-security-of-witnesses-arrangements-for-family/amp> (last modified 2 August, 2020).
44. *Plight of witness*, available at, Available at:  
<http://www.lawyersclubindia.com/articles/Plight-of-witness-5739.asp> (last modified 2 August, 2020).
45. Available at:  
[https://www.telegraphindia.com/1150128/jsp/opinion/story\\_10267.jsp](https://www.telegraphindia.com/1150128/jsp/opinion/story_10267.jsp) (last modified 2 August, 2020).
46. *Supra Note 39*
47. *The Witness (Protection of Identity) Bill, 2015*.
48. *M.C. Setalvad, Law Commission, submitted on 26.09.1958*