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WITNESS PROTECTION PROGRAM

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ABSTRACT

The ability of the courts to punish the culprit and provide justice to the victim can be used to evaluate the effectiveness of criminal justice administration. Courts rely on the evidence presented by the parties, whether it be in oral or written form, to determine guilt. By way of witness versions, the oral testimony is presented. Witnesses provide the courts with important information that helps them prove the guilt of the accused. The testimonies of witnesses help the courts make wise decisions. As a result, the witness is crucial to the administration of the criminal justice system. Whittaker Chambers stated that because of this, "In seeking the truth, he plays that sacred function of the sun, which removes the darkness of ignorance and reveals the face of justice, surrounded by devils of humanity and compassion."¹⁰⁴ But the sad reality is that the state of witnesses in the legal system is getting worse and worse every day. On a daily basis, stories of witnesses being coerced, threatened, harassed, or intimidated are emerging. All of these incidents instill fear in the minds of the witnesses, causing them to hesitate to go forward and help with the legal process and frequently show hostility. Also, a witness may falter because our nation lacks a system for witness protection. The Law Commission of India underlined the difficulties the witness faced over the course of the trial in its numerous findings and suggested incorporating a thorough strategy on witness protection. The Indian legal system's policy about the need for witness protection was revised by the Hon. Supreme Court of India

through its ruling. The purpose of this research paper is to analyse the subject of witness protection in India as well as the difficulties witnesses experience in the criminal court system.

Keywords: Witness, Criminal Justice Administration, Hostile, Witness Protection Regime, etc.

I. Introduction: -

The administration of criminal justice preserves social order. It guarantees that every person living in society has their rights protected. By punishing the perpetrator and supporting the rule of law, it fosters peace and harmony. Only by abiding by the law's due process could this be accomplished. The testimonies of the witnesses are largely relied upon by the courts while delivering justice to the victim. The witness's reliable information helps the court reach the proper conclusions about the case. They serve to open the judges' eyes. As a result, the witness has a crucial function that cannot be overlooked. Criminal trials could not move forward without the gracious assistance of witnesses. Because of this, Jeremy Bentham, a distinguished jurist and philosopher from England, believed that "witnesses are the eyes and ears of justice."¹⁰⁵

India operates under an adversarial system of justice where witnesses actively participate in the court proceedings. On analysing the value of witnesses during a trial in Swaran Singh v. State of Punjab, the Hon. Supreme Court stated that, "For this reason, the witness makes a

¹⁰⁴ <https://www.scconline.com/blog/post/tag/sit-and-cbi-probe/>

¹⁰⁵ Thakur, Rustan Singh, Evidentiary Value of Hostile Witness: Chronological Case Law Study to Address Current Position in India Available at SSRN: <https://ssrn.com/abstract=1985129>



solemn affirmation or an oath in the name of God promising to tell the truth—the whole truth, and nothing but the truth. He or she plays a crucial public role in helping the court determine whether the defendant is guilty or not. He agrees to a cross-examination and is not allowed to object to questions on the grounds that doing so would put him at risk.”¹⁰⁶ The witness thus occupies a key position in the administration of justice. Instead of treating them with the respect they deserve, the accused or their family members threatened or tormented them, which occasionally caused them to become hostile. This also occurred as a result of India's ineffective witness protection laws. But only a few states, including Maharashtra¹⁰⁷ and the National Capital Region of Delhi¹⁰⁸ have their own witness protection laws that apply to their states. In India, there was no national legislation governing witness protection, nevertheless.

II. Who is Witness?

The term witness is not defined under the provisions of the Code of Criminal Procedure, 1973, however, its meaning can be implied from the term „evidence“ which is defined under section 3 of Indian Evidence Act, 1872. The definition of "evidence" in Section 3 is as follows: "evidence" means and includes:

(1) all statements that witnesses are allowed or required to make in front of the court regarding the facts being investigated; these statements are referred to as oral evidence;

(2) all documents, including electronic records, that are produced for the Court's inspection; these documents are referred to as documentary evidence. Section 3 of the Act bifurcated the term „evidence“ into two forms i.e., oral and documentary. It was made explicit in subsection (1) of section 3 that all statements the witness made

throughout the course of the trial had to be admitted as oral evidence.

- According to Black's Law Dictionary, "Witness" is "a person who has knowledge of an incident" in its basic sense. While seeing something is the most direct way to learn about it, the term "witness" now refers to someone who is there during and witnesses a transaction.”¹⁰⁹
- As a result, a witness is someone who can provide specific details regarding how an offense was committed or who can produce supporting evidence.

III. Problems faced by the Witness: -

In the criminal trial, the witness plays a crucial role. They have the power to alter how the trial is conducted. The witness thus occupies a significant position within the criminal justice system. In reality, they are in a terrible position. Throughout the duration of the trial, they experience a lot of suffering. They travel a great distance from home, squander their time, and spend money solely to aid in the inquiry and prosecution. The witness is not treated with the appropriate respect and consideration in courts. They are not given access to good infrastructure. For their turn to testify, individuals occasionally have to wait in verandas or outside of courts. Even in the courtroom, there is no access to clean restrooms or potable water (particularly for people with disabilities). In addition to these difficulties, witnesses must endure unjustified adjournments. The travel compensation, or Bhattas, offered to witnesses is extremely meager and possibly impractical given the current situation. In addition, the accused's relatives coerce, harass, and threaten witnesses in order to get them to confess. Sometimes, these torture incidents result in the death of the witness or a member of his family. Since the witness cannot locate any safety net or

¹⁰⁶ Swaran Singh v. State of Punjab AIR 2000 SC 2017

¹⁰⁷ Maharashtra Witness Protection and Security Act, 2017

¹⁰⁸ Delhi Witness Protection Scheme, 2015

¹⁰⁹ Bryan A. Garner (ed.) Black's Law Dictionary, West Group, St. Paul, Minnesota (17th Ed., 1999), P.1596



preventative measure to shield them from these events, the issue only gets worse. All of these instances of poverty instill resentment in the minds of the witnesses, causing them to be reluctant to testify in the court's favor during the trial. There is another factor in the animosity among witnesses.

IV. Hostile witness: -

The threat of hostile witnesses is something that the criminal justice system in India must deal with. Perjury might also take the shape of hostility. The trial's entire objective is defeated as a result of animosity. "According to Mr. Soli J. Sorabjee, a well-known lawyer and former attorney general of India, "nothing undermines public confidence in the administration of criminal justice more than the failure of the prosecution due to witnesses turning hostile and abandoning their past testimony."¹¹⁰ The Indian Evidence Act of 1872 contains no definition of the phrase "hostile witness. Its meaning can also be interpreted as "a person who testifies against the person who calls him as a witness in its own favor" or "a person who exhibits prejudice against the party in whose favor he was called as a witness" for the sake of clarity. In light of the foregoing, the court labels the witness as hostile. Witnesses may turn hostile for a variety of reasons. The absence of a protective mechanism, however, makes a witness feel anxious and uncertain, which makes them hesitant to take part in the judicial process.

V. Witness in need of protection: -

One of the components of a fair trial that is provided by Article 21 of the Indian Constitution is witness protection. The witness's situation is still worse in our justice administration system, nevertheless. When they provide unfavourable testimony against the accused, witnesses are coerced, threatened, and intimidated by them. Furthermore, if a witness speaks out against

the accused, they may potentially be killed. All of these instances of torture were primarily brought on by the absence of a strong witness protection system in our nation. Due to the fact that criminals have little respect for the law, they are able to threaten the witness. This has also contributed to the justice administration system's high acquittal rate and decline in convictions. In *Zahaira Habibulla H. Sheikh & Anor v. State of Gujarat and Others*, the Hon. Supreme Court made the following observations:

"As a guardian of its citizens, it must make sure that a witness can testify truthfully in court without fear of being pursued by the people he testified against. The protection of citizens' lives and liberties is a fundamental constitutional right and duty of every State. It is the essential condition for upholding the rule of law. This criteria cannot be altered because of unrelated elements like caste, creed, religion, political beliefs, or ideologies. Every State should be aware of these fundamental necessities, so there is no need for reprisals."¹¹¹ Given these concerns, it is highlighted that witnesses should be given protection from these difficulties and that the state is obligated to protect their rights in such delicate situations.

VI. Witness protection laws in foreign countries:

Many industrialized and emerging nations have created extensive witness protection policies for their country. The following list of nations is followed by information on their witness protection laws:

United States of America- When other nations are drafting witness protection legislation, they look to the United States Federal Witness Security Program (WITSEC), which is in place in the United States of America. Because of this, it is also known as

¹¹⁰ <https://indiankannon.org/doc/150714978/> last visited on 23/03/2023

¹¹¹ *Zahaira Habibulla H. Sheikh & Another v. State of Gujrat and Others* (2004) 4 SCALE 375



"the paradigm program."¹¹² The Organized Crime Control Act of 1970 established the Federal Witness Security Program, and the Comprehensive Crime Control Act of 1984 later recognized it. Under the program, the Attorney General has the authority to oversee and offer security to the possible witness. The program gives security to the witness of his close companions, such as physical safety, identity protection, relocation of witnesses, giving lodging, financial aid, etc.¹¹³.

- A. United Kingdom- The United Kingdom enacted the Serious Organised Crime and Police Act, 2005 which protects a witness who is being threatened. United Kingdom police services is responsible to give protection to the witness. The Act established a number of requirements for accepting someone into the witness protection program. The program offers the witness or his family members physical protection, identity protection, accommodation, and other forms of safety¹¹⁴.
- B. Australia- The Witness Protection Act (1994) in Australia provides for the safety of witnesses during the court case. The National Witness Protection Program is authorized to offer witness protection. The Commissioner of Australia Federal Police will decide whether to accept a person into the program. The protection offered by the Act includes giving the witness or his family members physical protection, identity protection, and other accommodations.
- C. South Africa- The Witness Protection Act 112 of 1988 provides for witness protection in South Africa. It outlines the creation of an Office for the Act's witnesses and related parties' protection, placement,

and service. The Act gave authority for the creation of the Office for Witness Protection, which will work via the Director to offer protection (including temporary protection) to the witness or anybody else connected. The Director shall issue an order of protection by entering into a Protection agreement after taking into account relevant factors. A protected person is covered by the Act's protection even if they move, change their identity, or receive other aid or services.

- D. Canada- The Witness Protection Program Act, 1996 was passed by Canada with the intention of creating a program that would allow individuals to get protection in connection with certain inquiries, investigations, or prosecutions. The Act specifies that the Commissioner is the principal administrative and maintenance authority for the Witness Protection Program.¹¹⁵ and decide if the witness qualifies for program admission. The nature of the risk to the witness' security, the risk to the community if the witness is admitted to the program, the nature of the inquiry, investigation, or prosecution involving the witness, etc. are just a few of the factors the Commissioner must take into account when issuing the order of protection. The protections provided by the Act include relocation, housing, a change in identity, counseling, and financial assistance for the witness to re-establish or become self-sufficient.¹¹⁶

VII. Judicial pronouncements pertaining to witness protection:

- A. Swaran Singh v. Punjab State - The difficulties the witness endured during the trial were underlined by the honourable Supreme Court in this landmark decision. The witness plays a crucial role in the administration of

¹¹² Roberts- Smith,2000

¹¹³ H. Suresh, New Law Needed for Witness Protection, Combat Law, Vol. 4, Issue 1, April-May 2005, available at <www.indiatogether.org/combatalaw/vol4/issue1/witness.htm>

¹¹⁴ Good Practices for the Protection of Witnesses in Criminal Proceedings Involving Organised Crime, p.45.

¹¹⁵ Section 4 – Witness Protection Program Act,1996

¹¹⁶ Witness Protection Program Act, 1996



justice. Nonetheless, a witness has significant suffering from the start of an inquiry to the end of the trial or even beyond the trial. They go a great distance to the court proceedings, wasting their time and money, as well as their day's pay. But all they receive in exchange is mistreatment and abuse. They receive friendly treatment in court but are not even rewarded with a sufficient travel allowance. They endure unjustified adjournments in addition to occasionally being threatened and harassed by the accused for testifying against them, in contrast to all these difficulties. Thus, it is essential that the witness's rights be upheld and that they receive the necessary protection.¹¹⁷

- B. *Union of India v. Neelam Katara* – The importance of witness protection was reiterated by the Delhi High Court in this significant decision. When it came to making its ruling, the High Court cited a number of legal committee conclusions as well as international witness protection regulations. Additionally, it provided guidance until the required laws were passed by the Delhi government. According to the rules, the police must demonstrate that the witness has adequate protection based on the nature of the threat.¹¹⁸
- C. *State of Maharashtra vs Praful Desai* – In this decision, the Honourable Supreme Court approved the appellant's argument that the testimony of the witness should be recorded using videoconferencing technology. The Supreme Court stated that the concept of "evidence" includes evidence in electronic form and used section 3 of the Indian Evidence Act, 1872 in support of its position. Hence, in an emergency, video conferencing can be used to capture a witness' evidence.¹¹⁹

- D. *Zahaira Habibulla H. Sheikh & Another v. State of Gujarat and Ors. (The Best Bakery Case)* – The Best Bakery Case is another name for this case. In this historic decision, the Apex Court noted that Article 21 of the Indian Constitution recognizes the right to a fair trial for witnesses as a basic right. Nonetheless, it frequently occurs that witnesses are intimidated and threatened to give false testimony while the trial is ongoing. Thus, it is the state's responsibility to protect the witness and offer appropriate safety from these difficulties.¹²⁰
- E. *National Human Rights Commission v/s State of Gujarat and Ors.* – Hon'ble Supreme Court in this landmark judgement discusses the aspect of a fair trial. It was mentioned that if the witness is not able to depose freely in the court of law, then the very purpose of trial gets frustrated. The court should therefore establish a procedure to guarantee that the witness is given a setting where he can testify without feeling threatened.¹²¹
- F. *Bandu vs. the State of Maharashtra at Daulat* – An appeal was filed against the High Court's judgment of acquittal in this rape trial before the Supreme Court. The Supreme Court maintained the conviction order and recommended that the state government establish special centres for the examination of vulnerable witnesses in order to provide a welcoming environment for the victim or witness to freely testify.¹²²
- G. *Mahender Chawla v. Union of India* – One of the important rulings that has paved the way for India's comprehensive witness protection system. Although various Acts, like as

¹¹⁷ Supra note 4

¹¹⁸ *Neelam Katara v. Union of India* ILR (2003) II Del 377 260

¹¹⁹ *State of Maharashtra vs. Praful Desai* (2003 4 SCC 601)

¹²⁰ *Zahaira Habibulla H. Sheikh & Another v. State of Gujrat and Others* (2004) 4 SCALE 375

¹²¹ *National Human Rights Commission v/s State of Gujrat and Ors.* (2009) 6 SCC 767

¹²² *The State of Maharashtra vs. Bandu @ Daulat* (2018) 11 SCC 163



TADA, POTA, and UAPA, and even a few Indian States, such as National Capital Region of Delhi, provided for the provision of witness protection¹²³ both Maharashtra¹²⁴ has a local witness protection statute that applies in their areas. On witness protection, there was, however, no centralized legislation. The Hon. Supreme Court and the Law Commission of India have repeatedly emphasized the necessity for a comprehensive witness protection program; however, the Union government has not taken these points into consideration. As a result, in this historic decision, the Hon'ble Supreme Court approved the Witness Protection Program, 2018, which will be regarded as Indian law under Articles 141 and 142 until Parliament develops a suitable law in this area.

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The Union of India, State governments, and Union Territories were ordered to implement the Witness Protection Program, 2018, in letter and spirit. There must be vulnerable witness deposition facilities in every district of the States and Union Territories. The Scheme's rules must all be followed exactly.¹²⁶

VIII. Conclusion:

A crucial part of the criminal justice system is the witness. They collaborate during the legal proceedings by providing testimony. It is frequently asserted that by testifying, a witness truly fulfils a religious responsibility.¹²⁷ They should therefore be treated with respect as a result. Nonetheless, other incidents have come to light that reveal the predicament of witnesses. In addition to being mistreated and harassed in court, they also endure intimidation and torture at the hands of the accused while they are on trial. They have no remedy for any of these miseries. In its several findings, the Law Commission of India frequently brought up the issue the witness encountered throughout the trial. The dilemma that the witnesses encounter is discussed by the honourable Supreme Court in its numerous rulings, and it is acknowledged that facilities must be made available to them. Because there was no Central legislation dealing to the protection of witnesses, the Supreme Court recently approved the Witness Protection Plan, 2018. According to the ruling, the Plan will be regarded as the law until the Parliament drafts the necessary legislation. The Union Government, State Governments, and Union Territories are therefore required to make every effort and take every step to execute the Plan in letter and spirit. The goal of the Criminal Justice Administration can only be achieved if the witness is given a setting where he can testify freely without experiencing psychosis. Additionally, this will ensure him the fair trial he is entitled to under Article 21 of the Indian Constitution. However, the witness's anguish and distress can only be alleviated by making them feel satisfied, by treating them with the

¹²³ Delhi Witness Protection Scheme, 2015

¹²⁴ Maharashtra Witness Protection and Security Act, 201

¹²⁵ Mahender Chawla v. Union of India, 2018 SCC Online SC 2679

¹²⁶ Id.

¹²⁷ Supra note 4



respect and protection they deserve throughout the entirety of the investigation and trial processes.

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