

---

# WITNESS PROTECTION SCHEME IN INDIA

**Mithun Kumar S,**

*Assistant Professor, Department of Management, Center for Management Studies, JAIN  
(Deemed-to-be University), Bangalore, India*

*Email id- mithun\_k@cms.ac.in*

## **Abstract**

*Witnesses are considered one of the most important aspects of the criminal justice system. It is because of them that any material is identified by the trial so as to arrive at a reasonable conclusion. The inputs given by the witness may have a direct effect on an accused's prosecution or acquittal, so it is preferred that such a witness be shielded from the wrath of external considerations that may change his position on a specific case. Extraneous influences form a plurality in the form of corruption or intimidation that result in the witness being aggressive, so it becomes rudimentary for the state to ensure that such a witness is covered such that the prescribed course of justice does not shift. Witness security and the introduction of this scheme have recently been implemented in India. The framework is at the beginning and the positive thing is that India has systems from other countries to learn from and incorporate its policies without having to face any challenges that other countries have already experienced and changed their schemes according to those circumstances. This paper, tries to introduce the concept of witness protection; importance witness protection and witness protection scheme.*

**Keywords:** *Acquittal, Criminal justice system, Prosecution, Witnesses, Protection, Security.*

---

## **I. INTRODUCTION**

A witness's position in the criminal justice system is very significant. His evidence dictates the future of the trial several times and will suffer without his/her support, the widely accepted concept of fair trial. The question of witnesses being violent in the course of the trial, however, is not something hidden or behind the closet. Fear is the primary reason behind such animosity. They change their stand before or halfway through the proceedings, being harassed and pressurized by the accused or his/her closed ones. This leads to a miscarriage of justice, or even death. Reports

from the law committee and the courts have regularly appealed to the legislature to form an all-encompassing law to resolve the above problems [1]. In the Code of Criminal Procedure, 1973, the term 'witness' is not specified anywhere. In addition, regardless of the fact that the Indian Evidence Act, 1872 (hereinafter referred to as IEA, 1872) is the lone law covering evidence, the word 'witness' does not have a precise meaning. All we can gather from IEA, 1872 is section 3(1)- "all statements that the Court allows or requires witnesses to make before it in relation to matters of fact under investigation; such statements are referred to as oral evidence," which involves the witness's reference to oral evidence.

It is therefore fair to rely on other accepted sources of law to get a fair description of the word 'witness'. For example, according to Black's Law Dictionary, "a person who has knowledge of an event is a witness." As the most direct way to gain awareness of an occurrence is to see it, the witness has acquired the sense of an individual who is present and witnesses a transaction. We should also understand, in simple terms, that a witness is a person who has the requisite knowledge of the occurrence of an event and is therefore able to provide his testimony in court. Statements presented by the witness, as obtained from above, are considered oral proof. They allow the court to arrive at a fair decision. It is safe to say that a reliable witness's testimony will ease the judiciary's work to punish evil. Therefore, in the justice administration system, a witness plays an important role. While the law has not laid down any provision for a fixed number of witnesses to highlight the facts, even a credible eye witness is appropriate.

The court noted in the case of *Swaransingh v. State of Punjab* that "A criminal case is based on the building of evidence, evidence admissible in law [3]. Witnesses are required for that, whether it is clear evidence or circumstantial evidence." In addition, the Criminal Law Reform Committee headed by Justice V. S Mallimath proposed, "The witness should be regarded with great respect and considered a guest of honor. Jeremy Bentham, the Great English philosopher, jurist, and social reformer, also shared his interpretation and calculated witnesses as the 'eyes and ears of justice.' Most notably, the witness's voice has a catalytic power that can change a trial's progression. Thus, when giving his testimony, the witness should always be free from both fear and favor.

#### **A. Importance of witness: -**

A witness has a sacred responsibility to help the court find out the facts and rule on guilt or otherwise in the event. In the decision of the court, the witness being neither the accused nor the victim is without danger. He fulfills a significant public obligation, sacrifices his time and takes the trouble to go all the way to the court to provide evidence.

#### **B. Threats to the witnesses: -**

The protection of their family members who face danger at various degrees is also a major issue facing the witness. The opposing party also threatens them, and the gravity of the threat depends

on the nature of the case and the history of the accused and his family. Key witnesses are harassed or injured several times before they testify in court. There have been several notorious cases involving different influential individuals that have all in their favor, with the exception of evidence. The witnesses are then intimidated and either the parties attempt to mould witnesses on their behalf or to make them aggressive [2].

**C. Incidents involving threats to witnesses: -**

1. **Vyapam Scam:** The scam involving major irregularities and corruption in the Madhya Pradesh Professional Examination Board (MPPEB) or MP Vyavsayik Pareeksha Mandal involved admission to medical colleges and recruitment for various government jobs in the very popular Vyapam scam. People saw a lot of accused and witnesses connected to this case dying mysteriously after this scam came into the frame, while others died of serious illness.

In this case, Prashant Pandey, a whistleblower who exposed this massive recruitment and admission scandal, urged the CBI to investigate the deaths of the witnesses to this case, "There must be a CBI inquiry. It is no coincidence that all of the convicted are dying from one or another ailment. Something else is there to it.

A total of twenty-five witnesses have died so far in this high profile Madhya Pradesh Technical Examination Board scam, including the son of Madhya Pradesh Governor Ram Naresh Yadav, Shailesh (MPPEB).

2. **Asaram Babu Case:** In this case, a saint is currently in prison, facing two rape charges. Unidentified assailants in Shahjahanpur fired a primary witness, 35-year-old Kirpal Singh, who died of his injuries. Two witnesses, Amrut Prajapati of Gujarat and Akhil Gupta of Uttar Pradesh, were killed prior to the killing of Kirpal Singh.

**D. Law Commission on Witness Protection: -**

In the legal system of India, the Law Commission of India is a relevant body. Its aim is to ensure that the law keeps up with modern times in order to maximize justice. The Law Commission has also considered the issue of 'witness protection' in some of its reports. In the 14th Law Commission Report in 1958, the primary reference to Witness Security in India was made. Subsequently, it was pointed out in the Commission's 154th report that the condition of the witnesses speaking on behalf of the State was horrible on many accounts.

They not only suffer because of inappropriate facilities and arrangements, but also, to the degree that their very life is threatened, they have to go through the terror of the accused group. In addition, in its 178th report, the Commission also stressed the issue of aggressive witnesses and

the steps that the police could take to avoid such incidents at the later stage of the trial. Accordingly, it can be inferred from the above studies that the topic of witness protection still needs clarification, as it is not adequately discussed in India.

#### **E. Indian Judiciary on Witness Protection: -**

Both strong and potent are the Indian Supreme Court and the State High Courts. Their directives have had and continue to have far-reaching political, economic, and social implications in hundreds of significant cases each year. The need for witness protection has been recognized by these courts time and again. The SC followed extraordinary witness protection steps, especially in the case of *Sakshi vs. Union of India* [3], and developed that "the mere sight of the defendant may induce an element of extreme fear in the mind of the victim or the witnesses or may put them in a state of shock." He or she may not be able to provide full descriptions of the event in such a case, which may lead to a miscarriage of justice.

Therefore, when the victim or witness does not have to experience the trauma of seeing the body or face of the accused, a screen or other provision may be made. In addition, in the case of the *National Human Rights Commission V. State of Gujarat and Ors*, SC stressed that the state has an important role to play in the safety of witnesses [6]. The SC also reiterated "legislative measures to emphasize the prohibition against tampering with witnesses, victims or informants have become the imminent and inevitable need of the day" in the case of *Zahira Habibullah Sheikh V. State of Gujarat* [4].

Additionally, in the case of *State of Gujarat vs. Rajubhai Dhamirbhai Baria and Ors*, the Bombay high court also recognized the role of the State to create a framework for the protection of witnesses in sensitive matters [8]. Most notably, the courts now went to the point of issuing witness protection guidelines unless adequate laws were in effect, such guidelines were provided by, for example, the Hon'ble Delhi high court in the *Neelam Katara vs. Union of India* case [9].

Therefore, since ancient times, the Indian Judiciary has felt the need for states to take effective steps to protect witnesses. In addition, acknowledging the existing needs of society, the judiciary has also taken the initiative, like a father, to include strict guidelines in this matter to ensure adequate protection for witnesses.

#### **F. Witness Protection Scheme, 2018: -**

On December 6, 2018, the Supreme Court gave its nod for approval of the Draft Witness Protection Scheme prepared by inputs from 18 States/Union Territories, various open sources inviting suggestions from police officers, judges and civil society, which was then finally finalized by the National Legal Services Authority (NALSA). "In the context of Article 21 of the Constitution, the bench consisting of Justice A.K. Sikri and Justice S. Abdul Nazeer identified the rights of the witness to testify and stated that "the right to testify in courts in a free and reasonable manner

without any pressure and danger whatsoever is currently under severe assault. "If one is unable to testify in courts because of threats or other pressures, it is a clear violation of Article 21 of the Constitution." Furthermore, under Article 141/142 of the Constitution, the bench found the scheme to be a "law" and it must be enforced by the center and state until a relevant law is made on the same issue [5].

## II. CONCLUSION

A sensitive activity is witness protection. Often it includes changes in the witnesses' whole personalities and lives under the scheme. For the program to be efficient, careful handling of this task is therefore extremely necessary. As the stage in which India is still a starting state, there is an opportunity to commit some mistakes that should not be committed because there is a danger of life involved. India should certainly refine its witness protection system by learning from other nations, so that the system can emerge as one of the finest and best witness protection systems in the world. In the current scheme, India has a lot to add, and it has all the elements that can be included for a perfect action. The safety of lives should not be something that can be compromised upon. By starting a new department to handle the safety of witnesses and not have it done by the already over-burdened police department, the best start would be. It would be more beneficial to appoint a committee to analyze the issues that occur and the inclusions that can be made to the method to approach the scheme and fix the problems before the problems even arise in practicality.

## III. REFERENCES

- [1] Shrey Verma, "Witness Protection Scheme in India," *iPleaders*, 2018.
- [2] S. Kadam, "Witness Protection in India: an idea gathering dust," *SabRang*, 2019.
- [3] Writ Petition (crl.), *Sakshi vs Union Of India*. 1997, p. 33.
- [4] Appeal (crl.), *Zahira Habibullah Sheikh v. State of Gujarat.*, vol. 446–449. 2004.
- [5] Desk, "India now has a witness protection programme," *India Todaydiatoday*, 2018.