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A Study of Witness Protection under the Indian Evidence Act

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ABSTRACT

In any criminal case, the witness is vital in shaping the final outcome. As a result, the parties often intimidate the witnesses, making them hostile and obtrusive to the administration of justice. As a result, it is critical to defend the witnesses so that they are not afraid or fearful of telling the truth in court. There are observer assurance systems in numerous countries all around the world." Unfortunately, despite numerous attempts to improve, India still lacks a well-functioning witness protection program. "Framework and execution continue to be poor, and there are as of late a titanic number of conditions where the eyewitnesses go compromising. "This paper investigates the concept of witness assurance and discusses programs in a few countries." It then examines witness protection in India, the causes for failure, and lastly, recommendations for improvement. Witness protection plans and legislation are simply necessary at this time. In reality, the lack of these regulations has aided in the continued strengthening of criminals and offenders. But incongruously, such programs and laws are a far cry from reality in India, where the witness is not even treated with respect. Today, witnesses are frequently harassed. Not only is the witness bribed, weak, and abducted, but there is more.

Keywords: *Witness, Protection, Perjury, Evidence, Hostile.*

I. INTRODUCTION

Witnesses are regarded as the most important component of the criminal justice system. He is the expected foundation for the construction of justice and equity. In a criminal trial, a witness plays a vital role on which the case's outcome is dependent.

as it is the foundation of the preliminary, whether it is common, criminal, or other. By deposing before the court, the witness builds the contestants' case.

The testimony of the witnesses allows the court to assess the merits of the facts and circumstances of the case.

All things considered, the sort of articulation offered by the witness during preliminary hinges

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on the speed of justice or delay in justice conveyance."In a criminal trial, witnesses do not always have to be removed in favor of the prosecution and against the accused. What is significant and cause for concern is that a witness must leave without force, fear, or coercion and of his or her own free will and consent. All things considered, the sort of articulation offered by the witness during preliminary hinges on the speed of justice or deferral in justice conveyance."

(A) Objective

The goal of this research is to protect witnesses from all types of immorality, and no innocent perpetrator should be punished.

(B) Methodology of research

The topic of this Paper is such that the researcher will need to go through the Doctrinal mode of study with the help of existing books and prior investigations, as well as certain verified websites present on the Internet.

Statutes and bare acts are the primary sources.

Previous research papers and articles used as secondary sources.

Witness safety is ensured.

In Indian Law, The Concept of Hostile Witness is as Follows:

A "hostile witness" is someone who, by the way he gives evidence, shows that he does not want to speak the truth to the Court. A hostile witness is one who is influenced by the opposing party. The fact that a witness tells a different tale in a Sessions trial than he did before the Magistrate does not automatically make him hostile. It is worth noting that the Act does not utilize the phrase "hostile witness," so avoiding the misunderstanding caused by the term in English law. The clause simply gives the Court the authority to allow a party to cross-examine his own witness. If a witness's testimony is unfavorable to the party calling him, that party is not entitled to cross-examine his own witness; he can only do so with the Court's permission. The Court makes a decision whether or not to allow a person to cross-examine his own witness as hostile. The witness may be asked leading questions, inquiries about his earlier written statement, or any other questions, or his credit may be impeached.

In such a case, the Court may, in its judgment, allow a party to put any question to his own witness that could be put in cross-examination by his opponent, i.e., may allow a party to cross-examine his own witness, even though the putting of leading questions does not always amount to cross-examination. It is important to recall that the Court's decision to allow "cross-

examination" is full and independent of any question of "hostility" or adverseness. As is clear from a series of Supreme Court decisions in Ravindra kumar Ray V. State of Orissa, a witness's evidence is not to be rejected, in whole or in part, simply because he is declared to be a hostile witness.

II. CERTAIN LEGAL PROVISIONS CONCERNING THE OFFENSE OF PREJUDICE (FALSE EVIDENCE)

Section 193 - Penalty for falsifying evidence³

Whoever intentionally gives false evidence in any stage of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished with imprisonment of either description for a term that may extend to seven years, and shall also be liable to fine, and whoever intentionally gives or fabricates false evidence in any other case, shall be punished with imprisonment of either description for a term that may extend to seven years, and shall also be liable to fine.

Explanation No. 1

A court-martial trial is a legal proceeding.

Explanation No. 2

A judicial proceeding includes an investigation directed by law prior to a proceeding before a Court of Justice, even though that inquiry does not take place before a Court of Justice.

Section 196 - Using Falsified Evidence⁴

Anyone who corruptly uses or attempts to use as true or genuine evidence evidence he knows to be false or fabricated will be punished in the same way as if he gave or fabricated false evidence.

Section 199 - False statement made in a declaration that is legally admissible as evidence⁵

Whoever makes any false statement in any declaration made or subscribed by him, which declaration any Court of Justice, or any public servant or other person, is bound or authorized by law to receive as evidence of any fact, and which he either knows or believes to be false or does not believe to be true, touching any point material to the object for which the declaration is made or used, shall be punished in the same manner as if he gave false evidence. A witness may become hostile for a variety of reasons, including a combination of cash and influence

³ [https://Indiankanoon.org-178th Report of the Law Commission \(2001\)](https://Indiankanoon.org-178th Report of the Law Commission (2001))

⁴ [https://indiankanoon.org-Criminal Law \(Amendment\) Bill, 2003](https://indiankanoon.org-Criminal Law (Amendment) Bill, 2003)

⁵ Salman Khan Hit & Run Case A.I.R. 2002

power, menace / threats, enticement by various ways, allurements/ seduction, and so on, with the principal one being a lack of security for the witnesses during and after the trial. The witness is concerned about confronting the anger of the criminal, who may be connected to him. Witnesses are a group that is particularly vulnerable to persuasion in the face of the suspect's threats. Today, the hostility of witnesses in serious crimes and crimes committed by high-profile individuals has called into question the criminal justice system.

According to the Supreme Court, "ever more those are critical cognitive processes that laws are like spider's web: if some lightweight or inundated issue falls into them, it's caught, but a much larger one will break through and acquire away." Conducts that have an illegal impact on witness presenting in court procedures must be dealt with seriously and sternly."

1. The Salman Khan Hit-and-Run Case

In the 2002 hit-and-run case involving the superstar, an eyewitness who claimed first that he saw the actor exit the driver's seat was denied in 2014.

2. The Mecca Masjid case from 2007.

Lt Col Shrikant Purohit, an NIA observer in the Mecca Masjid case, eventually turned hostile and reneged on his declaration that he had met the charge, Swami Aseemanand." Almost 40 witnesses turned hostile in the Samjhauta Express and Ajmer Dargah blast cases, leading to Aseemanand's acquittal.

2015 Witness Protection Act⁶:

In 2015, this measure was established and introduced in parliament. Its goal was to enact a strong statute for witness protection in a way that ensured a fair trial for both parties.

The bill requires the following to assure witness protection:

1. Development of a witness protection program to be provided to a witness at all phases, including during the investigation, trial, and after the judgment is rendered.
2. Establishment of a "witness protection cell" to compile a report for the trial court judge to evaluate and award protection to the witness referred to as a "protected" following admission to the program.
3. Establishment of a National Witness Protection Council and state Witness Protection Councils to ensure that the witness protection policy is carried out in its entirety.
4. Providing precautions to assure witness identity protection.

⁶ 2007 Mecca Masjid case

5. Allowing cases to be transferred out of the originating jurisdiction to allow witnesses to testify freely.
6. Imposing severe penalties on those who violate the provisions.
7. Strict actions against false testimony and deceptive statements

Witness Protection Scheme⁷:

Witness Protection Scheme, 2018 provides for witness protection based on threat assessment, with protection measures including witness protection/change of identity, relocation, installation of security devices at witnesses' residences, use of specially designed Court rooms, and so on.

According to danger perception, the Scheme allows for three types of witnesses:

Category 'A': Where the threat extends to the witness's or his family members' lives, either during the investigation/trial or afterwards.

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

Category 'C': When the threat is moderate and includes harassment or intimidation of the witness or a family member's reputation or property during or after the investigation/trial. The Scheme establishes a State Witness Protection Fund to cover the scheme's expenses.

III. OBSTACLES TO WITNESS PROTECTION

There are some realistic issues, such as execution costs and infrastructure. When it comes to bodyguards, security, relocation to a different area, and other expenses, the costs are bound to be enormous. However, there is also the issue of dishonesty in the administration and judiciary.

The first step in drafting a witness protection law is to acknowledge that witness protection is a state obligation.

Another issue is whether the witness statements should be recorded by a Judicial Magistrate. It is virtually impossible in the current setup, given the small number of Courts and the lack of Judiciary personnel. Currently, expert witnesses from a variety of forensic disciplines are not protected in India. A witness in Indian dress who is well-off thanks to a job and family may not intend to undergo such drastic changes in his life for the sake of testifying in court. In the Indian context, where we have so many social obligations and relations, focusing on proper implementation of Witness protection programs will be impossible for a variety of reasons. A

⁷ Witness Protection Scheme²⁰¹⁸

Consultation Paper on Witness Identity Protection and Witness Protection Programs was created for the Law Commission's 198th Report.

The Commission identified three types of witnesses in the Final Report: (i) victim witnesses known to the accused; (ii) victim-witnesses unknown to the accused (for example, in a case of indiscriminate firing by the accused); and (iii) witnesses whose identity is unknown to the accused. Category (i) requires trauma protection, whereas categories (ii) and (iii) require identity protection. The committee, comprised of Rajya Sabha members, was assessing the status of the government's 2009 promises to alter essential laws to safeguard witnesses. At all levels - investigation, inquiry, prosecution, and appeal - the commission advised witness confidentiality and protection if there is danger to the witness, his property, or that of his relatives.

IV. FINAL REMARKS

One of the most important aspects of justice is the witness. He is one of the most important sources of information in determining the facts of the case, but the care and problem he must endure in order to assist the court is considerable. The witness's testimony assists the courts in rendering accurate judgment and justice. The witnesses' lives, as well as the lives of their families, are in jeopardy. They are also at danger of losing their properties. When they arrive to give evidence, they have to deal with a lot of anxiety. Even after all of this, they receive nothing in return.

As a result, it is clear that the courts are careless in their treatment of witnesses. Witness protection should be implemented, and numerous initiatives have already been done in that direction. Many countries, including Canada, New Zealand, and Australia, have well-developed mechanisms for witness protection. These procedures may encourage even more witnesses to come forward and provide evidence for the greater good. Witnesses should so be exposed to the respect and admiration that they truly deserve.

Perjury is also an issue, and it is up to the witness to put a stop to it. Otherwise, it may contribute to the wrong person being convicted while the true criminal and perjurer walk free.
