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# Anonymous Witness Scope and Protection under Indian Criminal Justice System

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## ABSTRACT

*The purpose of this paper is to study the scope and production of anonymous witness in India and what are the changes it can bring to the final judgement to the case. A person who testifies or offers information in a court proceeding while remaining anonymous is known as an anonymous witness. In cases involving criminal activity, corruption, or delicate topics, this idea is frequently used to preserve the safety and wellbeing of the witness. Allowing witnesses to remain anonymous can make it more difficult for them to be cross-examined and verified, but it can also inspire people to come forward with critical information that they might not otherwise be willing to provide. As it requires weighing the need for secrecy with the accused's right to a fair trial, the use of anonymous witnesses presents ethical and legal questions.*

**Keywords:** Anonymous, witness, production, anonymity.

## I. INTRODUCTION

According to Jeremy Bentham, Witnesses are “the eyes and ears of justice.” Witnesses use the enormous power during a trial. In numerous cases, the testimony of the witnesses will determine whether the case results in convictions or acquittals, if justice is done, and whether the truth is upheld. The witnesses have been very vulnerable and have been subjected to threats to life and property, injury, and intimidation because of their pivotal role in the outcome of a case. Witnesses have been murdered on court grounds to prevent depositions, and many don't come forward to testify in court for fear of actualizing a dangerous threat to their life, limb, or property. It is the court's primary responsibility.

Without witness we can't provide a justice and we can't uplift justice. witnesses play a vital role in our justice system. without witness there won't be any justice served.

To uplift justice, we need protect witnesses from fear and enemies, The legal system should protect witnesses and need to take care of them. In some cases, witness anonymity should be granted for the safety measures of the witness.

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## **II. WHAT IS ANONYMOUS?**

The term “Anonymous” in general means the person whose identity is not revealed.

Anyone who answers a question or asks a question anonymously, hides his/her identity. You will never get to know his/her name and credentials. You can also ask a question or answer a question going anonymous if you don't feel okay to answer it publically with your identity. For example, if you are having issues with your any family member and you want to write an answer related to that, but you fear that your family members might get angry reading this, then Of Course you can go anonymous.

### **(A) Term Witness**

- Person who testifies in courtroom against the defendant.
- Anonymous witness is also known as secret witness
- A witness is allowed to be anonymous in trail stages in courtroom. The Except with the hidden witness consent, neither the defendant nor the public are informed of the witness identity Where the witness face a serious problem and life threat A threat like,
  - Threat to property.
  - Threat to family members.
  - Threat to his identity.
  - Fear of life.

### **(B) Types of Witnesses Anonymity**

- Partial anonymity
- Complete anonymity

#### **a. Partial Anonymity**

When a witness is allowed partial or limited anonymity, the defence may cross-examine him or her in court but is not required to divulge his or her genuine name or other personal facts, such as address, occupation, or place of work. This safeguard is especially effective when hearing the evidence of undercover agents and members of surveillance teams whose real identities would be revealed to the public. A witness of this type typically testifies in court under the assumed name by which he or she was known throughout the operation but specifies his or her genuine function (police officer, investigator).

In the case the witnesses may give some anonymity because of the threat he/she faces during

the testimony in courtroom

- Not only for his/herself but also for the safety of the family members too.
- The testimony of the witnesses is the important for every Prosecution held in the court room cases.
- The anonymity given only to the trustworthy witnesses there is no prima facie evidence.
- The protective care should be taken, must be necessary in what case person give anonymity?

When there is a serious threat and fear, danger and safety, the goodness of persons also taken note to give anonymous it's often given in serious cases like rape, murder, terrorists Activities. And most serious and Notorious offenders where the testimony witness can face threat from these persons. Rights of accused Is neutralized by witness protection.

#### **b. Complete Anonymity**

When the court grants absolute or complete anonymity, all information about the witness's identity is kept confidential. The witness stands in court but speaks through a shield, disguise, or voice distortion. In practise, the metric is only relevant in cases where witnesses were uninvolved in the crime; thus, such cases rarely include charges of gang leaders, who often instruct others to carry out their violent designs. If the defendant knew the witness, maintaining complete anonymity would be unrealistic, as the defendant may easily reveal his identity.

- In this case the anonymity is completely given to the witnesses because of the dangerous life threat he/she faces from the accused side.
- Those who fear for life, health and safety or concern of family life or social economic factors in such case the magistrate can bring complete anonymity to the witness.
- So, the identity of the witness's kept secret and not shared to anyone.
- During the trail where the judges feel the need.

#### **(C) Meaning and Competency of Witness**

Many people were the reason for justice and court system in some roles. They are, As a party of the Case.

- As a witness.
- As a juror.
- As an advocate or attorneys and they all act as an instrument in the cause of justice.

- A person appears in a court of law to tell what he/she has visualized or what he/she knows about somebody/something.
- Witnesses are crucial in helping the system to reach the justice of the law. This sheds some light on the meaning and competency of witnesses.
- A person who visualizes something that happens and who can tell other people about it later is known as a witness.

### **III. HISTORY OF WITNESS**

- Ancient period.
- Medieval period.
- Present law.

#### **(A) Ancient Period**

When it comes to witnesses, it's related to its origin,

- Narada Smriti
- Manu Smriti
- Yajnavalkya Smriti

The purpose of the study is to get a deep knowledge about witnesses in the ancient era and how it's derived from there.

In the ancient period, there are two types of evidence: *Vilaukika* (i.e., worldly) and *Divya* (i.e., divine) were accepted. *Vilaukika* refers to written documents or other things like witness testimony and possession. While *Divya* consisted of oaths and ordeals.

These laws provided for the competency of witnesses as well as their disqualification (sakidosa), which means disqualified.

#### **a. According to Narada**

When the problem between two persons and parties is doubtful, they should come to an idea by means of witnesses by the knowledge they have seen or heard.

“He/she should be considered as a witness who has testified with his own eyes or ears. If he or she had another person speaking with the eyes he or she saw something himself. Concerning the credibility of witnesses, Narada says the witnesses must be from an honorable family and belong to a noble race; they must be habitually truthful and straightforward and not open to objection to their descent and their fortune. The witness should be honest and true. As regards

of the caste of the witness there is no bar.

The witness may be,

- Brahmana's.
- Kshatriyas.
- Vaisyas.
- Sudras.

But they should not be faulty. Narada advocates is for honesty, so it does not disqualify witness on the ground of caste.

**i. Narada gives a long list of imputable witnesses they are,**

- Acquaintances
- Rivals
- Infamous
- Slave
- Insane man
- A sick person.
- A religious etc.

These witnesses were considered as incompetent under ancient law.

- Chapter 8 of Manu smriti is dedicated to the justice system in this chapter Manu discussed grounds of litigation judicial contact and researching qualification of witnesses questioning to witnesses sign of falls testimony oats and ore deals with punishment of perjury etc...
- Manu will be discussing the qualification of witnesses says witnesses says that witness should be householders having son and should be the country man and Kshatriyas, Vaishya and sudra caste.
- Trustworthy men of all social classes may be called as witness in lawsuits, men who knows the law in its entirety and are free from greed, individual different from these should be excluded
- According to Kautilya wife's brother, co-partner's One who sees, knows, or vouches for something or one who gives testimony, under oath or affirmation in person on by oral or written deposition or by affidavit. A person who sees the event, observes signing of a document like a will or a contract and signs as witness or the document arresting that the

document was signed in his presence is also a witness.

- Kautilya provides that persons other than wife brother enemies and co-partners can be witnesses similarly master's against Sewak, priest or teachers against the disciplines and parents against their son can be witnesses.

### **(B) Medieval Period**

Medieval period is mostly Muslim era, evidence during that era was various type,

- Statement.
- Oaths.
- Written document.
- A person who was blind, insane, dumb considered incompetent to give evidence.
- Slaves are also considering as incompetent witness.
- Nearby person and near relations are also considered as incompetent witness.
- Witnesses such as son, in favour of father and grandfather, wife for husband, master for slave.

But as a brother was treated as a competent witness against brother and evidence of a non-believer (Hindu) was not acceptable against the Muslim. Thus, competency of witnesses was based on religion during the medieval period.

### **(C) Present Law**

- “A witness is a men or women who declares as true what he has seen, heard, or known. A witness is a person who testifies to something they have seen and know in true.
- Witness is a guy, who testify under oath in a trial with main evidence or highly knowledgeable evidence. He is the party to the lawsuit (plaintiff or defendant)

### **Black law Dictionary defines a witness as “**

- One who sees, knows, or vouches for something or one who gives testimony, under oath or affirmation in person or by oral or written deposition or by affidavit. A person who sees the event, observes signing of a document like a will or a contract and signs as witness or the document arresting that the document was signed in his presence is also a witness.

## **IV. THE INDIAN EVIDENCE ACT, 1872**

Contains provisions dealing with the competency of a witness 11 It provides is competent to testimony, unless the court feels that he is not understand the question asks to give rational

answers to them. This may be due to tender years,

- Elder age.
- Disease and sick.

Both body and the mind.

- According to the witness (identity) protection bill,2006 in the 198 reports of the law commission of India.
- Witness means any person who is acquainted with the fact and circumstances or in possession of any information or has knowledge necessary for the purpose of Inquiry, Investigation or trial of any crime involving serious offences and who in or may be required to give information.

There is no person is particularly, declared to be unfit. It's up to the court to consider whether the witness is capable to understand the questions put to them.

## **V. CURRENT SCENARIO**

According to the witness (identity) protection bill,2006 in the 198 reports of the commission of India.

- Witness means any person who is acquainted with the fact and circumstances or in possession of any information or has knowledge necessary for the purpose of Inquiry, Investigation or trial of any crime involving serious offences and who in or may be required to give information.
- The ongoing discussion makes it clear that under present laws, the competency of Witnesses does not depend upon caste, creed, religion, social status or sex like ancient Laws. It only depends upon his mental ability to understand the questions and giving Cogent answers to them.

### **(A) Witness in Modern Times**

- The word witness has not mentioned in any of our Indian statues Yeah witness maybe defined as one who give witness in a case. He/she sworn to speak the truth, the whole aspects of the incident which they witnessed.
- The black dictionary defines as one who sees, knows or vouches for something, or one who gives testimony, under oath or affirmation in person or by written deposition or oral, or by affidavit.



**(B) National law on witness and its anonymity**

The various law that are in Indian justice system on anonymous witnesses.

- IPC
- CRPC
- Evidence Act etc.

There are some special laws relating to the witnesses,

**a. Bengal Suppression of Terrorists Outrage Act,1932**

**Sec 31:** Exclusion of persons or the public from the court's precincts is based on the Certificate of the public prosecutor or the advocate general's interest in the public piece and the safety of the witness.

**b. TADA 1985 and TADA 1987**

**Sec 13:**

- Identify protection
- Punishment

**Sec 16(3):** It is mandatory to hold proceedings in private.

**c. Juvenile care and protection of children act,2000**

- **Sec 21:** In protection and care of children there should be restriction on publication National investigation agency act,2008
- **Sec 17:** Witness safeguarding Keeping the identity and address of witnesses hidden during proceedings in camera

Who Qualifies? Only those witnesses whose evidence is found to be crucial to the successful prosecution of a criminal case and in which the witness's life or the lives of his family are in danger are given witness protection. In the criminal justice system, witnesses have a crucial role to play. In the Lakhimpur Kheri case, the Supreme Court of India recently expressed amazement that just 23 eyewitnesses had been located out of hundreds of gatherers. The court ordered the State of Uttar Pradesh to offer protection to the Lakhimpur Kheri violence witnesses on Tuesday. Sadly, there are examples.

**d. Indian Evidence Act**

**Section 138:**

- Witness interrogation

- This section says about the investigation method to witnesses.

**Section 148:**

- Necessary and not necessary questions.
- The court should not ask non relevant and unwanted questions to witnesses.

**Section 149:**

- Disputing the credibility of witnesses
- Witness credibility won't be affected in anyways and they won't be distributed by any means

**Section 150:**

- Punishment for rash cross examination
- Awkward questions and cross examination with rash behaviour will be punishable

**Section 151:**

- Indecent and scandal inquiries.
- Witness must give respect and they should be treated in good manner; the reputation won't be vanished in any means.

**Section 152:**

- Questions to irritate and insult a person.
- No one should irritate witness and insult them in court room with all due respect they should treated in good manner.
- These are the section mentioned in Indian evidence act regarding witness and their protective measures

**e. Indian Penal Code****Section 228A:**

- Penalize for revealing the victims of offences, etc.
- Anyone who knowingly insults or disturbs a public official while that official is participating in any stage of a judicial action is subject to a period of simple imprisonment that may not exceed six months or a fine that may not exceed one thousand rupees.

**Section 195A:**

- Punishment for intimidating somebody into providing testimony.

- Anyone who threatens someone with harm to their person, reputation, property, or the person or reputation of anyone in whose person or reputation they have an interest will be punished by imprisonment of either description for a term that may not exceed seven years.

## **VI. WITNESS PROTECTION**

**Section 273:** Commission for jail witnesses' examination. There should be a separate commission for witnessing in prison and particular authority is responsible for the enquiry whatever happen

**Section 280:** Evidence will be collected with the accused present. All the evidence which left will be collected in the presence of the accused person.

**Section 284:** Remarks regarding the witness's behaviour. A remark whether he is good in behaviour or bad in behaviour will be taken note.

**Section 312:** Costs for witnesses and compliments. All the costs will be funded, and it will be compliment to the persons those who also accompany him or her in the court hall.

### **(A) The Condition for Anonymity**

The prerequisites are as follows:

#### **Condition A:**

The injunction must be required to safeguard the safety of a witness, substantial property damage, or actual harm to the public interest.

#### **Condition B:**

The order must comply with the defendant's right to a fair trial.

#### **Condition C:**

The witness' testimony is crucial enough that, in the interests of justice, the witness should testify; additionally, the witness would not testify if the proposed order weren't made, or there would be significant harm to the public interest; or the witness would testify if the proposed order weren't made.

### **(B) Law Relating to Anonymous Witness**

The 1973 Code of Criminal Procedure (2 of 1974) is referred to as the "Code"; "Concealment of Identity of Witness" refers to any circumstance that forbids publishing or revelation of the name, address, or other information that could be used to identify the witness during the

investigation, trial, or post-trial stage;

The term “Competent Authority” refers to the district’s head of police and prosecutor both serve as members and the secretary of the standing committee in each district, which is presided over by the district and sessions judge.

“Family Member” refers to the witness’s parents or guardians, spouse, live in partner, siblings, children, and grandkids; “Form” refers to this Scheme’s annexed “Witness Protection Application Form” .

### **(C) Places Where Anonymity Can Bring in Place**

- a. **Terrorists:** A group of organized persons who brings evil to the society by no means killing innocent and taking with dangerous bomb attacks and guns machineries.
- b. **Drug related crimes:** Drug pledgers are all over the world they have connection in every nuke and corner and if the person try to figure him then they become vulnerable to witness
- c. **Child Abuse:** Child below age of 18 who suffers from abuse even by the close family members (dad, mom, neighbours, brother etc... the child can’t face them to testify what they have done to her in a court room.
- d. **Sexual Assault:** A women or men who sexually abused and torched by a group of people or individual can’t face the person who that evil it will affect the person mentally. So, in these aspects' anonymity should bring.
- e. **Murder:** Serious murder offender we give a threat to the witness and his family that he/she may testimony the matter which happen and blackmail them.
- f. **Rape:** Rape victim have no morale will power to say who are all raped and how they did this before a crowd or the cowards so they should give special permission or screening
- g. **Serious Offences:** Other offences which are very serious in Nature, and which may lead to threat of the witness and their friends and family members too.

## **VII. CASE LAWS**

### **1. Ishrat Jahan case:**

“Even in the past attempts have Been made on the life of Shamima Kauser, Rauflala and Moinuddin Ismail Syed. Despite written, verbal and Oral complaints to the CBI and the police, no serious action or inquiry has been initiated into the matter.” Ms. Grover wants witness

protection for Ishrat' s family. There is a lack of witness in this case.

## **2. BMW Hit and Run Case:**

- There will always be disagreement over whether justice was done or not, but the Sanjeev Nanda case will always be remembered as another notorious instance in which wealthy individuals exploited legal loopholes.
- This raises even more concerns about the need to strengthen the rule of law and the institutions of justice.
- A bill to amend section 304A was also introduced in the parliament in 2007, 2015, 2016, and most recently in 2019, but it has yet to become a reality. The need to amend section 304A has been raised repeatedly in the courts and the parliament. The supreme court supported amending this section in 2007 and again in 2019.

## **3. Jessica Lal Case:**

- Furthermore, we have demonstrated that working legal systems can actually make witness tampering worse by doing little to stop it. What affects the media's propensity to report on witness tampering and the willingness of regular people to testify in the face of threats, real or imagined, remains a significant unanswered question. Public indignation rarely occurs completely on its own; it is frequently purposefully sparked. Politicians may do this to gain an electoral advantage or media outlets may do it to boost ratings or circulation.
- A crucial component of our study is absent, and that is an understanding of this process and how the contentiousness of Indian politics results in such circumstances. This article's main takeaway is that efficient judicial systems necessitate a balance between exit and voice; legal institutions alone cannot deliver justice.

## **VIII. CONCLUSION**

India is the biggest democracy, so it's very difficult to contain crime rate and India ranked 106 in the safest country to live so in that aspects witness are afraid to come forward to make that happen we need to make some efforts to improve so they come forward. India is also ranked most dangerous place for women to live day by day things getting very worse in same case witnesses need to be protected. When the punishment is stronger the crime will decrease, for punishing a person the judiciary should have evidence and witness

Witness is the backbone of our justice system. As now of current situation the witnesses play a vital role in court and judiciary. Without witness there won't be any justice. The main evidence in the court is witness .so witnesses should be taken care by the legal authority. So, they come

out of fear and bravely testimony the court proceedings. Anonymity of witnesses can be unfair at one side but it's very effective that lots of witnesses can turn over to bring light of justice.

Rebuild of faith in common people so they can believe in our judiciary and come forward. In 10 witness 8 turns to hostile witness because of fear of life, blackmailing the witnesses not to Testify in court room. More cases witness was afraid and even in some case they don't even file a fir or complaint them because they have a fear these persons can do something bad to us and our surroundings and they won't turn over to testify the court proceedings.

Bringing a strong ANONOMITY and anonymous witness In India is not a big deal. It was already in ICC INTERNATIONAL CRIMINAL COURT. India is not a member of ICC even though we can take some good from an international perspective though.

Anonymous witnesses are needed for the country judiciary system so, the culprits who have the guts that no one can point them, and we can easily escape and do more offences future if these witnesses taken into testimony the crime rate will also decrease. The nation is developing so fast, so we need to implement more idea and bring ANONYMITY as a regular court proceeding in future.

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