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# Law Relating to Witness Protection

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## ABSTRACT

*Right to fair trial has been recognized as the heart of Criminal jurisprudence and one of the most important facets of democratic polity. Fair trial is also recognized as one of the fundamental rights emanating from Article 21 of the Constitution of India (constitution"). It has been further acknowledged<sup>4</sup> that denial of the fair trial amounts to a denial of human rights. Fair trial encapsulates, principles of fair prosecution, independent and impartial judiciary/ Judge, atmosphere of judicial calm, etc. Witnesses form key ingredients in a criminal trial, for it is the testimonies of the witnesses, which establish the guilt of the accused. The Indian Judiciary has, time and again, emphasized on the need for witness protection. In National human rights commission v. State of Gujarat and Ors. Hon'ble Apex Court duly acknowledged the importance of witness protection and highlighted the role to be played by the State in this regard. After exhaustively reviewing the laws, policies and precedents regarding witness protection in several parts of the world and lack of any such mechanisms in India. It is not quite uncommon that witnesses turn hostile during trial.*

## I. INTRODUCTION

A witness is regarded as the most requisite part of any judicial proceeding. They help the court by providing their testimony which is free from any personal benefit. They go through a lot of hurdles and problems while assisting the court. Thus, their immense contribution in serving justice to the sufferer cannot go unnoticed. Whittaker Chambers once said, "In search of truth, he plays that sacred role of the sun, which eliminates the darkness of ignorance and illuminates the face of justice, encircled by devils of humanity and compassion." Hence, a witness should be placed at the topmost place of honour. However, in India witnesses suffer through immense stumbling blocks on their way of aiding the courts of law. They are not provided with adequate allowances nor are they given proper facilities in the cases of groundless adjournments. On the top of these, they are intimidated and unnecessarily bothered by the court officials and sometimes they even lose their lives while the trial is in process. The main reason for their suffering is the lack of proper and effective mechanism for

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witness safety. As a result the witnesses hesitate to come to the court for giving their testimony or they turn hostile. Thus, it is extremely important for a developing nation like India to provide for appropriate legislation for the protection of witnesses.

**(A) Existing laws and-legal provisions of witness protection**

The Law Commission in its 14th Report (1958) referred to 'witness-protection', but that was in a limited sense. That related to proper arrangements being provided in the Courthouse, the scales of travelling allowance, their daily allowance etc. The National Police Commission Report (1980) again dealt with the inadequacy of daily allowance for the witnesses, but nothing more. The 154th Report of the Law Commission 1996 contains a chapter on *Protection and facilities to Witnesses*. The recommendations mostly related to allowances and facilities to be made available for the witnesses. However, one of the recommendations was: "Witnesses should be protected from the wrath of the accused in any eventuality", but, again, the Commission did not suggest any measures for the physical protection of witnesses. The 178th Report of Law Commission, again, referred to the fact of witness turning hostile, and the recommendations were only to prevent witnesses from turning hostile. The Report suggested an amendment to insert S.164 A to the Code of Criminal Procedure, as under:

164 A (1) Any police officer making an investigation into any offence punishable with imprisonment for a period of ten years or more (with or without fine) including an offence which is punishable with death, shall in the course of such investigation, forward all persons whose evidence is essential for the just decision of the case, to the nearest Magistrate for recording their statement.

(2) The Magistrate shall record the statements of such persons forwarded to him under sub-section (1) on oath and shall keep such statements with him awaiting further police report under Section 173.

(3) Copies of such statements shall be furnished to the investigating officer.

(4) If the Magistrate recording the statement is not empowered to take cognizance of such offence, he shall send the statements so recorded to the magistrate empowered to take cognizance of the case.

(5) The statement of any person duly recorded as a witness under sub-section (1) may, if such witness is produced and examined, in the discretion of the court and subject to the provisions of the Indian Evidence Act, 1872, be treated as evidence.

No Government has accepted this. The latest is Mali-math Committee Report which contains a casual statement that a law should be enacted for giving protection to witnesses and their family members, without specifying any provision or scheme whatsoever.

It is ironic that draconian laws like Terrorist and Disruptive Activities (Prevention) Act, 1987, and Prevention of Terrorism Act, 2002, provided for protection witnesses The prosecution as also the Court could direct that the identity and the address of the witness be kept secret. The Court could even avoid the mention of the names and addresses in its order or judgement. It is generally perceived that these provisions were incorporated not with any concern for the witnesses, but to prevent the accused from preparing an effective defence and to deny fair trial.

### **(B) Statement of problem**

In a country like India, the witnesses face ample of difficulties and problems. First being, their family members are detained so as to prevent the person from giving his deposition. Many a times, the witnesses are given bribes so that he turns hostile or gives a false statement in the court of law. Every so often, it is found that a witness has been murdered if he shows courage to give his testimony in front of a judicial officers. Witnesses are not given enough security that they can freely state what they have seen or heard as there are no laws in place for their security let alone safety of their family members and even if there are certain What are the various factors which lead to the hostility of witnesses? Why are the witnesses compelled to give false evidences? What are the existing laws on the protection of witnesses in India and Canada? How effective are these laws in providing safety and security to the witnesses and to their family members? An organised investigation into some of these questions is proposed in this study. A comparative study is proposed between two nations, India and Canada, for this regards.

### **(C) Research Question**

What are the laws for the protection of witnesses in India and Canada with proper references to Case law and In which country protection of witness laws are more effective And more Flexible and Comparative difference between both the countries regarding witness protection laws.

### **(D) Hypothesis**

The following hypothesis would be examined in this study:

The Laws which indirectly aim at protecting the witnesses in India are not sufficient in order to provide proper protection to the witnesses in comparison to the laws in Canada for safeguarding witnesses.

### **(E) Objective of the study**

Witnesses in India do not feel secure enough to give their deposition in front of judicial officers. This has led to lower conviction rate resultantly it has acted as a boon for the law breakers. Witnesses either turn hostile or tend to give false evidence due to the pressure of suspects.

Thus, in respect of finding the appropriate solution for this problem, the present day study has been proposed to accomplish the following objectives:-

- i. To understand the meaning, scope and nature of witness protection and to whom this scheme should benefit
- ii. To understand the historical aspects which lead to the formulation of Witness protection act, 1996 in Canada.
- iii. To understand the need and importance of such laws in India
- iv. To analyze the concept of hostile witnesses and to understand the reason for the same.
- v. To make a comparison with Canadian legal system and adopting their successful mechanisms for curbing this problem
- vi. To give practical solution for improving the conditions of witnesses in India.

### **(F) Review of Literature :**

1. Y. H. Rao & Y. R. Rao: This book provides us with the information regarding the criminal trial, i.e., what are the basic fundamental rules we have to follow while the proceedings are going on. It also lays down certain evidentiary aspects we need to consider in a criminal trial before Court.
2. Ratanlal & Dhirajlal: It gives us immense information regarding the laws relating to evidence. It gives the importance of the witnesses, provides us the rules how to examine witnesses.
3. R. Shamasastri: This book deals with some of the principles prevailing in the ancient period, relating to the witnesses. Basically, this book is the translation of the Kautilya's Arthashastra. It lays down certain types of witnesses who cannot be the witnesses in the criminal trials. The witnesses as such played an vital role in the criminal administration

system, thus it is necessary to see whether the witnesses who are giving their testimony are competent to give testimony, or not.

4. Sunanda Y. Shastri: This book specifically provides for the Yajnavalakya Smriti, which has devoted a full chapter for the discussion of witnesses and sixteen verses are focused on witnesses; which provides us the imminent knowledge regarding the conditions, competency, etc., of the witnesses which were prevailing at that particular time period.

5. Witness Protection Programs in Selected Countries: this article dealt with the procedure and the result of witness protection programs in Australia, the United Kingdom (UK) and the United States (US) and judge against them with both central and regional programs in Canada.

## **II. WITNESS PROTECTION LAWS: EVOLUTION IN CANADA AND INDIA**

Witnesses are the base of judgments and justice system. They are those persons who either voluntarily or under compulsion comes to the court for giving his testimony which can either be oral or in writing for the facts that he has seen or heard. Safeguarding witnesses from physical threats to them and to their families from suspects and their gangs is thus indispensable to maintain the integrity of rule of law. The Supreme Court of India in the landmark case of Krishna Mochi v. State of Bihar 2002 6 SCC 81 examined that the social order suffers equally by erroneous convictions and wrong acquittals and discharges. The biggest reason of such a situation is the intimidation, threats and hostility of the victims and the witnesses which consequently leads to miscarriage of justice. In Krishna Mochi Case, the honorable Supreme Court of India also illustrated few causes as to why the witnesses abandon to give their statements in the courts or why their testimonies are not found reliable. One of the main reasons for the same is that the witnesses do not have the courage to stand against the accused especially if the person has given the witness life threats or the suspect is a habitual offender, has political links or is strong financially. Taking into consideration these points the present day research is proposed to acknowledge the gaps in the safety and security of witnesses in a developing country like India in comparison with that of a developed country like Canada. The need of this study arises because in India, the crime rate is increasing rampantly but the rate of conviction is far less in comparison. The main reason for such a low conviction rate is the absence of proper laws and regulations for witness protection. This reason has empowered the accused as they would know how to tackle the witnesses. This research, thus, proposes to make a contrast between the laws in India with that of Canada in terms of witness protection and also to be able to find out the answers as to

why the witnesses do not come to the court for giving their testimony. No Government has accepted this. The latest is Mali-math Committee Report which contains a casual statement that a law should be enacted for giving protection to witnesses and their family members, without specifying any provision or scheme whatsoever. It is ironic that draconian laws like Terrorist and Disruptive Activities (Prevention) Act, 1987, and Prevention of Terrorism Act, 2002, provided for protection of witnesses.

### **III. COMPARATIVE STUDY OF INDIAN AND CANADIAN WITNESS PROTECTION LAWS**

#### **Code of Criminal Procedure, 1973:**

The detailed procedure for the trial of criminal cases is provided under the Code of Criminal Procedure. It is pertinent to note that Cr.P.C being modern law has recognized the role of witness in criminal trials. Section 160 of Cr.P.C provides for the power of a police officer to ask for attendance of a witness. Under this section the payment of reasonable travel expenses incurred by the person for travelling shall be paid. Section 284 of Cr.P.C provides that, whenever it appears to the court that without any delay the attendance of the witness is required for examination during the course of the trial, the court may dispense the personal attendance of a witness and issue a commission to meet ends of justice. Moreover, the expenses for the issuance of commission for examination shall be borne by the accused. Section 309 of Cr.P.C provides that every inquiry or trial shall be held as expeditiously and once the examination of witnesses begun, it should continue in day to day basis unless the Court adjourns the proceeding for sufficient reasons. Section 312 of Cr.P.C gives power to criminal court to order payment of reasonable expense incurred by complainant or witness for attending court proceedings. The amount shall be paid by the Government.

#### **The Unlawful Activities (Prevention) Act, 1967:**

The Unlawful Activities (Prevention) Act was passed by Parliament in to combat unlawful and terrorist activities of certain individual and association. There are two provisions in this Act which deals with the aspect of Witness. Section 22 of the Act provides for punishment for threatening a witness. It states that any person who threatens a witness by any violent act or puts any wrongful restrain or confines the witness etc. shall be punished with imprisonment. Moreover, Section – 44 of the Act grants the protection of witnesses. This section provides that if the court desires, the proceeding can be conducted in camera. There are two types of protection given to witness under this section i.e. identity protection and maintaining the address of witness secret. The application under this section can be made by

the witness on his own account or by his public prosecutor or court by suo moto action on the ground that there is a threat to the life of witness. The WPPA was enacted in 1996, amended in 2014, and gives the Commissioner of the Royal Canadian Mounted Police (RCMP) the responsibility to promote law enforcement, national security, national defence and public safety by protection of persons who are at risk of harm due to their assistance on criminal A formal Protection Agreement sets out the basis of participation in the WPP and the obligations of the parties, and is signed by the individual and by the RCMP authority. Between April 1, 2018 and March 31, 2019, seven individuals were admitted into the WPP. The number of individuals referred to the WPP for assessment fluctuates each year based on factors beyond the WPP's control such as law enforcement activities that lead to requests for protection by the WPP.

#### **IV. CONCLUSION**

The witness protection scheme 2018 was approved by Supreme Court in its land mark judgement of Mahendra chawala vs union of India making its first attempt to bring the protection of witness under ambit of law and putting the responsibility on state to implement effectively. Witness plays a very important role in the criminal justice system. The outcome of any trial is based on the testimony witness. Without his assistance Court could not sum up with a judicious decision. However, it has been seen in various instances that witnesses turn hostile during the course of a trial. The main reason behind hostility is that the witness is threatened and being pressurised by the accused or his family members to offer testimony in his/her favour. As In Canada the laws for protecting the witness are more effective and disiplinary as compare to India.

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