



A CRITICAL STUDY ON WITNESS PROTECTION SCHEME AND CRIMINAL JUSTICE ADMINISTRATION IN INDIA

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ABSTRACT

In our Criminal Justice System, Witnesses play a pivotal role in bringing the criminal justice administration into action. It's been established fact that witnesses are the eyes and ears of the justice system. The testimony of a witness before the court play a key role in deciding the offence against accused but the main agony is that witnesses cannot find any safe place in our judicial system. The various high profile cases sometimes affect the testimony of the witnesses and endanger their lives too, which is the main genesis for the hostile witness. After long struggle finally in 2018 the witness protection scheme has enacted but the question is Can we really say that this scheme has achieved the objective of its creation? The current legal framework is not taking the protection of the witnesses in the serious manner and the criminal jurisprudence only talks about the rights of the accused but neglected somewhere the victim and witnesses. The protection perspective approach is important but here we need to understand one more thing that is, whether the current approach of our

administration toward implementation of policies of criminal justice system is efficient? This paper will attempt to highlight the vulnerability of the witnesses and earnest attempt is made to critically review the witness protection scheme and how administration is lacking behind in implementing it effectively on ground level. The author will also try to understand the problems faced by victims/witnesses during this whole marathon journey of justice.

Keywords: Witness, Criminal Justice System, Victim, Compensation Scheme

Introduction

When man commits crime witness of that crime always highlight the Perpetrator of the Crime.¹ Witnesses are the eyes and ears of justice delivery system. In our Adversarial system of the country, the onus of proving the case always lies on the Prosecution and witness play a significant role in making justice a smooth process. The various judicial pronouncements in the country sometimes depend upon the testimony of the witnesses which play an important role to decide the guilt of the accused and for giving justice to the victim. In our judicial system, both the victim and witnesses are the most neglected party.

Before 2009,² there was no such definition of the word "victim" has been defined in the Criminal Procedure Code. **Wadhwa Justice**,³ for the admissibility of any evidence before the court of law, there is always must be the witness of the crime whose testimony is relevant for the admissibility of the evidence whether direct evidence or circumstantial evidence. The

¹ Edward G. Bulwer

² Sec 2(wa) Criminal Procedure Code, 1973

³ Swaran Singh v. State of Punjab, AIR 2000 SC 2017



oath undertaken by the witnesses makes their statement highly reliable.

Justice delayed is justice denied; in this context the testimony of the witnesses plays a significant role in the delivery of justice to the victim of crime. But in the whole process, from the stage of registering of the case till the stage of trial, there must be some kind of assurance should be there regarding their life's is in the safe hand. The pathetic conditions of the witness with no safety sometimes distract them for appearing before the court. For this one factor cannot be say as responsible there are many factors which can be responsible for neglecting the most reliable person during the whole process. In the justice delivery system, they always faces threat, intimidation, frustration, loss of their valuable time and due to these witnesses turned hostile as we can see in many cases such as Jessica Lal Murder Case, Best Bakery case etc.

Importance of Witness in Criminal justice Administration

The definition of the word "Witnesses" has not been defined in the Criminal Law of our Country. The **Black's Law Dictionary** defines the word 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".⁴

The Delhi high court in this case⁵ defined the word "witness" means a person whose statement can be recorded under Sec 161 of Criminal Procedure Code by the Police Officials pertaining to the crime.

The fundamental principle of criminal law is to prove the case of the accused beyond reasonable doubt but for proving the case we required witnesses and they will be available only when they feel secured in our Criminal Justice System. The physical and the mental agony which the witnesses face in our justice delivery system in the hands of police officials, accused etc are the main agony of our criminal justice system. Witnesses turned hostile are the main hindrance for the timely delivery of the justice in the society.

In our Constitution of India which called as grundnorm as well as in the Criminal Procedure Code, we can find various provision for the Protection of Accused who is the Perpetrator of the Crime but cannot find any place for the victim and witnesses who are vulnerable section of the society in the whole process. The concept "fair trial" means always read in the context of the rights of the accused but why we can't read it in the context of the rights of the victim and witnesses and the rights of the accused always on priority in our judicial system as compared to the rights of victim and witnesses. The approach of our justice delivery system should be to try the balance between the rights of the accused on one side and the rights of the victim or witnesses on the other.

Witness Protection in the Context of International Perspective

The Protection of the witness and assistance also has not been recognized in our country only but also recognized internationally in the International Criminal Justice System which also acknowledges that protective

⁴ Garner Bryan A. (Ed), Black's Law Dictionary', 1596, 17th edn

⁵ **Neelam Katara v. Union of India** ILR (2003) II Del 377.



measures should be adopted by the International Tribunals. The statute of ICTY⁶ which was established in 1993, provides various Articles which deals with the Protection of Witness such as Article 22 which lays down that for the protection of the witness, the procedural rules must be adhere on one side as well as in camera trial proceedings and maintaining confidentiality and the protection from the disclosure of the Identity of the witness on the other.

The study conducted in the aboard reflects the true picture of the condition of the witnesses where 19 percent of witnesses only informed about the progress of the case and 21 percent was threatened by the anti-social element.⁷

Statutory Provisions

No Particular number of witnesses shall in any case be required for the proof of any fact.⁸ It means in the appreciation of the witnesses, the quality of the witness matter not quantity. In **Lallu Manjhi v. State of Jharkhand**⁹ SC observed that for the reliability of the testimony of single witness, corroboration can be acted upon and also by enacting Sec 134 of Indian Evidence Act; the legal system of our country determines the quality of the witnesses.¹⁰ In our Criminal Justice System various privileges has also been given to witness such as “Provided that no such answer which a witness shall be compelled to give, shall subject him to any arrest or prosecution or be proved against him in any criminal proceeding, except a

prosecution for giving false evidence by such answer.¹¹

In **PUCL v. Union of India**,¹² the Court validity of Sec 30 of Prevention of Terrorism Act, 2002 was upheld where the court observed that in the grave nature of offences like terrorism, there is always constant threat or pressure upon the witness that not to depose before the court their testimony and sometimes danger to the life of the family members also. So the anonymity of the witness i.e. not revealing the identity of the witness helps for the administration of justice in a very efficient manner.

“Court to be Open”¹³ it means the trial of Criminal case be held in the open court where public generally may have access but also there is an exception to this rule where if the trial takes place of the Sexual Offences against women, the trial shall be conducted in camera as well as conducted as far as practicable by a woman judge or magistrate. The policy behind enacting this provision is to protect the identity and the dignity of the victim but the criticality we can find that the specific word “witness” also not used here, we can only interpret the victim includes witnesses also.

The Trial through video conferencing in the Case of **State of Maharashtra v. Dr. Praful B. Desai**¹⁴ will enable the victim and witness to give their testimony without any kind of fear or threat.

⁶ International Criminal Tribunal for Yugoslavia, 1993

⁷ ‘No Witness, No Justice’ Programme Office Report (2004), UK

⁸ Sec 134 IEA

⁹ AIR 2003 SC 854

¹⁰ Laxmibai (Dead) through LR’s v. Bhagwantbura (Dead) through LR’s, AIR 2013 SC 1204

¹¹ Proviso to Sec 132 IEA

¹² 2003(10) SCALE 967.

¹³ Sec 327 Criminal Procedure Code, 1973

¹⁴ 2003 (4) SCC 601



The General rule¹⁵ is when witnesses are in attendance, no adjournment or postponement shall be granted without examining them but in how many cases this general rule followed by the court, the advocates always tried for the adjournment of the case which harass mentally to the witnesses who come before the court to depose their testimony after sacrificing so many things.

These flaws should be rectified from the Criminal Law and new provisions should be added in the statutes which talks about the rights of the witnesses as well during the whole trial process. Sec 195 A of Criminal Procedure Code talks about Procedure for witnesses in case of threatening under Sec 195 A IPC but the main loophole in this particular provision is to that it has been added by 2009 amendment before that there was no such provision and the word used in Sec 195 A IPC is “Threatening any person” but not specific word “Threatening to witness”.

Witness Protection in the Criminal Justice Administration and Judicial Response

The whole edifice of the Criminal justice system based on the fair trial rule but it should be fair to the witnesses as well and protection of the witnesses can really be said as a concomitant to the fair trial. In this case,¹⁶ Hon’ble Supreme Court observed that if the witnesses get threatened or are forced to give false evidence that would not result in a fair trial.

In the case of **Maneka Sanjay Gandhi v. Rani Jethmalani**¹⁷ the court observed that

the conduct of fair trial is the part and parcel of the criminal justice administration which includes witnesses’ protection also.

The whole trial process is the cumbersome for the victim and witnesses so the protection should be granted to both of these and the most important to the witness because of whose testimony the guilt of the accused determined by the court. There should be an adequate provision in the Criminal Law for the Protection of the witnesses which help them to testify the truth of the crime before the court of law.

In the Case of **State of Gujarat v. Anirudh Singh**,¹⁸ the SC has observed that there is duty of every witness of the crime to depose before the court the true facts which can be admissible in the evidence.

The Hon’ble SC in this case observed the importance of the witness protection and the lack of any protective measures in our country, ordered to be constituted the Special Investigation team which would decide the category of witnesses which required protection in the criminal justice administration.¹⁹

In the case of **Sakshi v. Union of India**,²⁰ the court felt the need for ensuring the witness protection, “ The accused and witnesses or victim confront with each other sometimes create apprehension in the form of fear in the mind of the victim as well as witnesses which resulted in the miscarriage of justice. For the effective administration of justice some kind of arrangement should be there so that victim

¹⁵ Sec 309 Criminal Procedure Code, 1973

¹⁶ *Zahira Habibullah Sheikh & Anr. V. State of Gujarat & Ors.* (2006) 3 SCC 374

¹⁷ (1979) 4 SCC 167.

¹⁸ (1997) 6 SCC 514.

¹⁹ *National Human Rights Commission v. State of Gujarat and Ors*

²⁰ AIR 2004 SC 3566.



or witnesses cannot undergo the second victimization after seeing the accused.

Justice J.M. Panchal, in the case **Vikas Kumar Roorkewal v State of Uttrakhand**²¹ observed that in the dispensation of justice, witnesses play an integral role and thus required the protection through legislative measures.

The honest witness sometimes back out from the case due to the treatment given in the system not as witness but as the accused. The protection perspective approach and witness assistance approach in the light of constant threat and intimidation is required so that without any fear, they can depose before the court.

The criminal case conviction rate always low as due to the witnesses turned hostile due to constant threat, intimidation and sometimes induced by the accused. In *Priyadarshini Mattoo case*, the court observed that sometimes the shoddy investigation played by the Police Officials also weakens the case of the victim.²²

The various factors can be responsible for the hostile witnesses in most of the cases such as position of the accused in the society as well as sometimes the economic condition of the witness plays an important role in hostility during trial. In the most of cases witnesses turned hostile due to which lower court gave acquittal in the cases and also in the *Sohrabuddin fake encounters case* similar kind of the situation happened which portray

the true picture of our country where due to hostile witness, prolonged trials take place.

If the threat to the witnesses continued after the end of trial, the authorities should take into consideration and effective protective measures should be applied.²³

WITNESS PROTECTION SCHEME, 2018

Before 2018, there was no such Protection Scheme for the witnesses but in 2018 in this case,²⁴ due to the filling of PIL the judges of the Supreme Court i.e. the bench comprising of **Justice A.K. Sikri and Justice S. Abdul Nazeer** identified that there is a need for witness protection scheme and lies in the ambit of Right to Life means right to testify before the court without any kind of fear, threat and intimidation also which has been Guaranteed Under Article 21 of the Constitution of India.

The Scheme relating to Protection of witness which has laid emphasis in the said judgment,²⁵ according to which it is binding on all over the courts within the territory of India and enforceable in all the States as well as Union Territories.

In this landmark judgment the key observation made by the judges of the Supreme Court which noted below:

“In every criminal trial the two parties is there, one side accused on the other the victim and in resolving the discourse between the accused and victim, witnesses becomes

²¹ (2011) 2 SCC 178.

²² *State (Through Cbi) vs Santosh Kumar Singh* on 17 October, 2006

²³ *Paramjit Kaur v. State of Punjab*, (2008) 152 PLR 185

²⁴ *Mahender Chawla & Ors. Vs. Union of India & Ors* 2018 SCC Online SC 2679

²⁵ *Supra* note 26



an important tool to arrive at the just decision of the case and also helpful for the court to give justice in the case.”²⁶

Earlier before the enactment of this witness scheme, various reports of the Law Commission of India emphasized the need for the witness protection as well as protection scheme such as 14th Law Commission which talks about the issues related to witness protection, 154th Report, 172nd Report as well as 174th Report.

The scheme for the witness protection should not be limited to the cases of sexual offences and terrorism but also extended to all other serious nature of offences as well.²⁷

The objective for the enactment of the witness protection scheme, 2018 is to ensure that the trial of any criminal case will not hampered if the witnesses do not receive any kind of threat or constant pressure from the accused and also to encourage the people of our society to come forward whether directly or indirectly to depose before the court the true picture of a particular crime. For example, in the road accident cases, no witness come forward because of the fear of victimization in the hands of police officials or the other authorities and for preventing this fear, ‘Good Samaritan’ law was enacted so that the witness as well as who helps the victim will not get any kind of harassment from any agencies in our country.

In this scheme “witnesses” categorized into three categories such as:²⁸

Category A: Those cases where threat extends to the life of witness or family members during the investigation, trial or even thereafter.

Category B: Those cases where the threat extends to safety, reputation or property of the witness or family members during the investigation or trial.

Category C: Cases where the threat is moderate and extends to harassment or intimidation of the witness or his family members, reputation or property during the investigation, trial or thereafter.

The various types of protective measures has been provided in this scheme such as in camera trial proceeding, concealment of the identity of the witness and also there must be friendly court rooms for the vulnerable witness during the whole process. There is also provision for the funds to be allocated to the witnesses under the Witness Protection Fund as well as other measures such as relocation of the witness due to the threat of life of the witness.

But the main question arises regarding the adequacy as well as implementation of the scheme because the main loophole which can be identified in this particular scheme, the protection given to the witness for only three months period make the scheme within the limited time frame manner. The other criticality we can find in the scheme only witnesses’ category has been specifically created but not the category of offences as such in which the witnesses required protection and maintaining the confidentiality of the identity of the witness

²⁶ Supra note 27

²⁷ 198th Law Commission Report on “Witness Identity Protection and Witness Protection Programmes”

²⁸ Witness Protection Scheme, 2018



is the main purpose for the scheme but what will kind of criteria will be observed if someone who violates this. Is there any kind of penalty for those who violates and don't maintain the confidentiality regarding the identity of the witness. In the scheme, the relocation of witness can actually be possible after analyzing the various multiple factors such as family, employment etc.

The scheme was a good initiative and at the national level provides the protection to witnesses who help them to overcome from the second victimization but still there is a need for effective legislation on the "Witness Protection." which means concrete statutory provisions for the protection and a uniform standard should be laid down. There should not be any kind of protection within the time frame manner as in the witness protection scheme but the protection should be available until the threat remains and ceases protection only when there is no such threat or fear remain on the life of the witness.

CONCLUSION

The Protection of the witnesses is the need of the hour but the failure of the criminal justice administration plays a significant role in delayed justice. Due to shoddy investigation done by the police officials helps the accused to be set free by the court. There is a need for the speedy investigation done by the Special Investigating Agencies as well as justice should be delivered in the time bound manner but what is the time bound manner is still a question of fact which has decided by the court according to the facts and circumstances of the case. If there will be speedy trial, the threat to the witnesses' life will get over and the court hearing through video-conferencing can contribute in the speedy investigation because the threat to the

life of witness will not be as such as compared to the physical court hearing.

In during the Covid-19 Pandemic the video-conferencing mode has been employed by the Judicial system of our country which should be prevailed in future also with the physical hearing through which witnesses can depose their testimony before the courts without facing accused as well as without any kind of intimidation or will save their valuable time for going to the court proceedings. Right to life with Right to live with dignity is the concomitant of the Article 21 of the Constitution which should also accorded to the witnesses so that they can live with their dignity after witnessing any crime committed in the society. The witness protection scheme 2018 was enacted for this objective but can we really say that this scheme has achieved the objective of its creation? The current legal framework is not taking the protection of the witnesses in the serious manner because only emphasize on the protection of the witness will not give a better result, with the protection there must be some kind of assistance should be there with the witnesses so that they do not feel the vulnerable in the justice administration.

An effective legislation should be enacted with the stringent penal provision for not only witness protection but as well for their assistance and for the smooth functioning of the criminal administration in India. In the absence of strict penal provision, the miscarriage of justice happens in the society. There is a need for an empathetical approach so that access to justice can be granted to the victim as well as witnesses. In not only the most sensitive cases like terrorism or sexual offences, the witness need protection, in other offences also some cautious approach should be followed by the authorities.



The idea of fair trial is to provide fairness in the criminal justice administration is to not only to the accused centric, the balanced approach should be followed by the courts to determine the rights of the accused on the one hand as well as rights of the victim and the witnesses on the other. The Supreme Court has been playing a tremendous role for implementing this balanced approach but unless and until, no Legislation should be there, only at some extent, the judicial pronouncement will be effective in the dispensation of justice. In the Present scenario, a strong and effective witness protection legislation, apart from the scheme will assist the advancement of the criminal justice administration and in this background, the problem arises from the turning witness hostile will resolve and the perpetrator of the crime will not be set free which result in his conviction.

