

# Desirability of Protective Safeguards for Victim and Witness in India

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## ABSTRACT

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Legal mechanism safeguards the interest of victims and of witnesses who made themselves available for the effective and efficient administration of Criminal Justice System. Victims sets in motion the process for prosecuting the accused and thereafter witnesses take lead to assist in the later stage of the prosecution. Need for the protective safeguards to the victim and witness is due to the rise in atrocities by the scaremongers who are in the position to influence them with an intent to suppress and overpower them. It is contended that the safety be extended not only to the immediate victim or the witness but to their family members, near- ones and any person associated to them. The court proceeding often are the daunting episodes in the life of victims and witness, they being important part of the Criminal Justice System has to be handled in a way during the process that may not hamper their will to proceed further in the process.

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## I. INTRODUCTION

The immediate result of the commitment of a crime is the formation of two poles, that of the guilty or accused and that of the victim and witness. When we think about the commitment of a crime we normally start thinking of the investigation objectives but what we need to realize is that the safety and well-being of victims and witness are the important parts of a crime and without them the accused might never be proved guilty and justice might never be served. Due to ill-willed acts and other tactics the criminal cases are stalled for years in the Indian courts making our judicial system one of the world's busiest and inefficient courts. It is high time that our society and

justice system brings to reality the importance of the rights and safeguards of victim and witness.

"If police, the justice system and communities can offer victims of crime safety, access, information, support, continuity and voice- the justice will result. You will find that with all the good efforts of police, the justice system, and the community to date – we still of plenty of ground to cover to satisfy victims need ."

Out of many factors in the administration of criminal justice the foremost is the victims decision as to whether he should initiate the judicial process. As the topic in hand deals with two problems, one is the desirability to have protective measures for the victims

and other is of the witnesses. First the researcher is discussing the problem of victims and need to protect them from the atrocities of the different legal mechanisms and in later part of the chapter issues concerning witness protections were discussed.

Victim approaching police for reporting the crime for obvious reasons depends on the likely response of the police and victims perception regarding their efficiency. Judicial viewpoint as reflected in the delivering punishments also appears tractable to the personal facet and characteristics of victims. Over a period of hundred years, there have been profound changes in Criminal justice system with respect to the rights of accused during inquiry, investigations and trial. Extensive care is taken safeguard accused human rights, but on the contrary no effort is made to even collect data about the denial of justice to victim. Regardless of an intricate justice process, the victims of crime continue to be a vulnerable section in the criminal justice system.

Crime is an offence against the State, the State and the accused are in conflict because of the structure of the criminal justice system. Therefore, when a victim sets criminal justice in motion his role stretches to that of a circumferential witness whereas the State befit the role of "surrogate victim." Rarely, the plight of victims are considered by the professionals involved in a trial proceedings. The system is laden in favor of the accused. Ample of documents, books and volumes have been written favoring accused rights and the victims are lost in the system.

There is a concord that the crime related issues are not dealt properly by the machineries involved in our criminal justice system inclusive of police, prosecution and court. The spurn of belief in the system of public law and order has a bad impact as victim were not coming forward to report crimes to the police because they were aware of them being unresponsive. After

knowing all the defects of the criminal justice system, victim's outlook in regard to judicial process is that the system is based on a fiction where he is not considered as an injured party. Since soon he comprehends that he has no viewpoint in the court proceeding and voice in the disposal of the case where he is the one who suffered.

## II. NEEDS OF VICTIM

The below mentioned factors covers the victims need and also of their family members and the communities they belong to –

- [1]. Safety : Protection from the scaremongers or the perpetrators and be subject to victimization again; prevention of crime through combined problem solving; a sense of reinstated as an individual and safe environment in the community.
- [2]. Access : be competent to take part in the criminal justice system process and receive information and assistance, regardless of any circumstantial constraints based on individual of family.
- [3]. Information : well informed and equipped with all the legal provisions related to the case and victims services that is comprehensible, visible, concise and userfriendly.
- [4]. Support : assistance and facilities to understand and participate in the justice system; to heal from the harm and pull through the mental trauma caused by the crime.
- [5]. Continuity : steadiness in approaches and procedure adopted by the agencies; firm support throughout the criminal proceeding and trauma recovery.
- [6]. Voice : Enabling to speak out about the whole incident and allegations ha has against the accused without any fear; being able to influence

the agencies and policies and practices system wide.

Justice is attained when all stakeholders are content with process.

### III. WITNESS PROTECTION

Witness protection can serve as a critical mechanism that augments the criminal justice procedures and aid State in order to bring inculcate before court, particularly when the inculcate is a direct or indirect scaremonger and endeavor to exploit the witness. Thus, in order to bolster their potential more than ever to judiciously arraign the inculcates of crime, various nations have come with effective witness protection programs so as to ensure safety as basic rights be available to most important source to help deliver justice under criminal system. The purview of witness protection covers plausible measures, which includes shrouding witness identity or of his/her near ones who may be in imminent danger as being associated to witness, putting emphasis on opting for video-conferencing for testimony and extending personal security to witness and his/her closed ones etc. It is not adequate to call for traditional techniques to control atrocities of scaremongers. A role of witness in criminal case is daunting to their life, they are worried not only for their life but also life of family members and all the worrisome makes a witness not to come forward to depose or when willing to depose pressure by the family or on his own accord due to trepidation may not do so. Going through all such mental agony it is an arduous task to satisfy the job as a witness. Sadly, Indian Criminal System still has no definite or exhaustive provisions concerning the ways and pattern to safeguard the interests of witness.

### IV. CRIMINAL JUSTICE SYSTEM AND WITNESS PROTECTION

“If witnesss are deposing under fear or intimidation or for favor or allurements, the base of administration of justice not only weakens but it may even get obliterated.”

The Hon'ble High Court of Delhi in the above mentioned observation very aptly highlighted the significance that a witness or his/her statement serve in a hearing of litigation. The gathered evidence from the witness deposition and the veracity of the same formulate the base on which the entire procedure of criminal justice depends. The Hon'ble Supreme Court of India in the infamous case of Zahira's and case of State of Gujarat v. Anirudh Singh emphasized the prominence of truthful and sincere witness for the sake of ensuring fair trial. In a perusal of Criminal law with regard to India, it comes to light that the wont of witnesses turning hostile is one of the major barriers accountable for the not so smooth administration of justice delivery in our nation. Insistence on witness protection programme shall be the priority of the hour for adhering to the rule of fairplay in delivering justice to the innocent as it is rightly said that the witnesses plays pivotal role in a criminal trial. Indian judiciary in regard to Criminal cases still following laws enacted by the British Government which do not put much efforts on protecting the interest of witnesses as since time immemorial much preference was given to the accused.

Witnesses turning hostile due to the lack of security extended to them is an alarming situation as it fails to serve the purpose of entire criminal justice system as it involves more effort as to find out whether the accusation pressed upon the accused is true or not, which in the absence of honest witness is compromised in all aspects. The final outcome of the trial in such a case is something which may not be considered just and fair if proper deposition from the witness is extracted and made available to the judge. Hiding witness identity (witness anonymity) and protection is the best possible solution for fighting such sitch as it

will stamp out the likely chances of any intimidation to the witness and witness then can give his true statement before the court without any fear. Witness protection is important as it raise potential threat to the integrity of the judiciary and on serious note jeopardize the efficacy of the Courts proceeding. Howsoever our legal system has various rights to know the identity of the witness.

The entire episode of witnesses turning hostile grabbed public attention and went through public scrutiny after the landmark judgment of Jessica Lal and the Best bakery case . These cases were eye-opener and has manifested the obtrusive flaws prevalent in the judicial system

#### **V. TRACING THE VOID IN INDIAN CRIMINAL SYSTEM WITH RESPECT TO WITNESS PROTECTION**

As fresh air is necessary to live healthy, similarly for the sake of fair and sound administration of justice, witnesses are required. Although, the sense of vulnerability and threat to life make them think numerous times to produce themselves before court. Witnesses are often compared to eye and ear of the system what makes them so important. It is considered that its them who come up with the exact facts that happened apart from what the other two parties accused and the victim has to say. It is the witness who helps the court to deliver justice by ascertaining the deposition and other evidences and concluding as which party, to the case in hand, is telling the truth. Witnesses let the court see what happened exactly at the crime scene. After rinsing available laws on topic, it is a affliction of criminal justice system that no law-maker has ever worked on defining witness. Every now and then one can read an article when a witness is left unattended by the system and is mishandled by the accused, who is in a position to extract testimony from him as required for his acquittal. The

intimidation or threat to life lead a witness to turn hostile as it is rightly said that “ Life has greatest worth on Earth.” It is important to mention here that the witness are more prone threats and lure due to the fact that there is no duty or obligation on the part of State to ensure safety for the integral most element as required in present legal scheme. Thus, there ensue a need for a law protecting interest of witnesses in India.

The witnesses who are the vital part to play in criminal proceedings, faces numerous hurdles during the administration of criminal justice system. Few of them are enlisted below:-

1. At first, when a witness attend the court to depose his testimony they sometimes have to travel far distance from them respective village or sub-urban areas where they live. Witness doesn't get any compensation for his travelling expenses if he belongs to a lower class of society or say of daily wage labor, then he has to give up his one day wage and need to attend the court to be examined by the court. Even in this case witness never gets compensation nor does the court entertains any of his travel expenditure.
2. When witness produce himself before the court he never gets fair and proper treatment. The Malimath Committee articulate its opinion about such witnesses by saying – “ the witness should be treated with great respect and should be considered as a guest of honor.” Whenever a witness attends the court to provide statements and evidence, he/ she is left unattended, never gets help by any authority to direct him where he needs to go or to give him any sort of assistance he is in need. In almost all of the courts there are no proper facilities to take rest while waiting outside the court room for their them to be called by the court clerk. In the same way witness never gets basic amenities like- refreshments or toilet facilities in waiting for their turn for a day long.

And this is not a case for a day or two, due to the various adjournments and lengthy technical procedure of the trial make them experience this numerous of times.

3. All the above mentioned things makes the witness agitated and frustrated at the same time. This becomes more demotivating when the witness gets to know that the for which he came all the way long, has been adjourned. Case adjournment has been seen as a trend in criminal justice system. This is also one of the prominent reason why Indian judiciary has too many pending cases. Delaying case hearings demotivates witness to such extreme level, so from next time onwards he thinks twice for making any appearance in further hearings or other cases.
4. Now even if any witness agrees voluntarily for appearing before the court for the examination, he ends up suffering harassment from the way the questions the defence lawyer framed and ask them which at times give mental trauma to them.

## VI. CONCLUSION

Thus the witness protection is a band aid to fill the hole created in the criminal justice system, though it will not serve the purpose as major surgery confined to law is required. The need of an hour is to provide an atmosphere which empowers the subjects of the State to manage their own security. The availability of recommendations addressing issues related to witness protection are in numbers. Still no proper legislation is into existence. A policy should be formulated on creating a law-abiding culture. The role of police must be morally uplifted alongwith understanding sensitivity of the witness role in the Criminal justice system and they should also enhance the community security as different from criminalizing people.

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