

# CRITICAL ANALYSIS ON CRIMINAL JUSTICE AND WITNESS PROTECTION

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## ABSTRACT

Direct evidence and circumstantial evidence, both provided by witnesses, are the bedrock of every criminal prosecution. The lack of witness protection laws in India is particularly disappointing given that this is a topic that has been addressed by the legislatures of many other modern nations. The Commission highlighted the many challenges the witness faced throughout the trial. The court has played a positive role in many instances by protecting witnesses via a variety of techniques, which has generated a strong push for the development of Witness Protection Programs in India. To combat the hostility, it is suggested that the "National Policy for Witness Support and Protection Witness" be put into place.

**Keywords:** Administration of Justice, Witness, Witness Security, Criminal and Trial

## INTRODUCTION

Witness protection refers to the police's efforts to keep an uninvited or threatened individual safe before, during, and after testifying in court. Although some witnesses only need protection until their trial is complete, others are given a new identity and remain under government protection for the remainder of their life. In cases involving members of organized criminal groups, witnesses often need to be protected from possible coercion by defendants' coworkers. It's also utilized in prosecutions involving espionage, war crimes, and other matters of national security.

The purpose of the criminal justice system is to ensure that all citizens of a nation are treated fairly by upholding the rights of victims and punishing those who commit crimes against them. The criminal justice system is designed to restore order in the community and give people confidence in their safety. Due process of law, a cornerstone of the judicial system, is essential to the notion of "the rule of law," which calls for the guilty to be punished in accordance with the law. Several provisions of the Indian Constitution have mandated this, including Article 20, which protects citizens from being subjected to ex post facto legislation, double jeopardy, and self-incrimination in criminal proceedings. In addition, Article 22 of the Constitution gives protections against arbitrary arrest and imprisonment, while Article 21 of the Constitution mandates a free and fair trial. This means that the criminal trial itself shouldn't have any hiccups or delays. Witnesses in a criminal trial have a unique and historically significant function in this context. By providing testimony in court, they help bring criminals to justice and put them behind bars.

He needs the testimony of the witnesses since victims cannot pursue legal redress on their own. Given this, the function of the witness is not only essential but also inevitable in the administration of criminal justice. By testifying and giving evidence, witnesses help the court get to the bottom of the case. 2 They help out during trial by

elucidating what happened and supplying proof to back it up. 3 Yet, cross-examination of witnesses in criminal cases is not a recent addition to the judicial process and has been used in trials since their inception. 4 The Vedic era ancient writings provide the foundation for the notion and function of witnesses in the Indian setting of the trial process. The function of witness, however, was still evolving throughout the Middle Ages and flourished during the Colonial era as the British began the process of codifying criminal and procedural laws. Yet, by carefully examining the historical records, we may learn what the notion and function of the witness were like back then. Also, different eras of the development of criminal justice administration may be referred to in order to understand the relevance of witnesses throughout the course of the judicial process, in particular.

For the criminal justice system to work, the state must shield witnesses from harm throughout the investigation and trial phases. Nonetheless, on several times, the agony, suffering, and difficulty endured by the witnesses was brought to light. All these incidents illustrate the state's inability to safeguard the witness. The judiciary takes center stage in such a scenario. The Courts' primary duty is to ensure the public's faith in and respect for the "rule of law" and the integrity of the judicial system. But, for many years, the Indian judicial system has been doing its part by safeguarding the rights of witnesses. The issues facing witnesses were brought to light and the need for witness protection was addressed in many landmark judgements handed down by the Hon'ble Supreme Court and High Courts.

## LITERATURE REVIEW

**Prashant Rahangdale (2019)** In the court of law, the function of the witness is crucial. Each trial's result hinges on the credibility of the witnesses. The court could not have come to a fair verdict without his input. Nonetheless, there are several examples of witnesses becoming hostile throughout the course of a trial. In most cases, a hostile witness is one who has been intimidated or pressured by the accused or his family members into testifying in the accused's favor. Sadly, a travesty of justice has occurred here. Thus, the government need a comprehensive and efficient program for protecting witnesses. As a result of the aforementioned problem, the federal government formally announced the Witness Protection Program, 2018, in October. The idea was implemented with much fervor and excitement, however it has failed to achieve its goals. Some nations have formalized some kind of witness protection scheme, including the United States, the United Kingdom, Australia, Germany, Canada, etc. Protecting the witness in Australia has been successful for the witness protection scheme there. In this work, we compare and contrast the witness protection programs in India and Australia to foresee any potential outcomes.

**Sweta Sapar (2018)** Justice is first administered when witnesses testify in court without fear of reprisal or promise of reward. If witnesses are intimidated and rendered unable to provide the Court with significant evidence, the whole criminal justice system collapses. The criminal justice system must work hard to achieve the difficult balancing act between the interests of the accused, the victim, and society as a whole. A commitment to fairness is essential to all facets of the legal system. Without reliable and important evidence, a fair and just trial cannot be conducted. The current situation in India is not very encouraging in terms of the administration of justice. The trial would be derailed if the witnesses were not hampered in every possible way from testifying truthfully due to the lack of legislative protections for

them. The purpose of this paper is to examine the value of witnesses in a criminal trial, the shortcomings of existing laws in India to protect such witnesses and the consequences of these shortcomings, and to make comparisons between the laws of different countries and witness protection programs around the world. By using a literature review, this paper aims to contribute to discussions about the importance of witness protection in the criminal justice system and the current efforts being made to that end around the world. In conclusion, the author emphasizes the need of separate laws for witness protection in order to defend and sustain the principle of fair trial.

**Wekgari Dulume (2016)** Witnesses are crucial members of the judicial process. Justice depends on the testimony of witnesses, as stated by Bentham. They help the judge decide whether or not the accused is guilty. They play an essential role in the criminal justice system, from the time a crime is reported until when the accused is brought to trial. Convincing evidence relies heavily on testimony from eyewitnesses. Those under criminal investigation or prosecution may attempt to thwart justice administration and absolve themselves of responsibility by intimidating witnesses and/or their families. Thus, it's crucial to safeguard witnesses so they don't feel threatened and testify truthfully in court. Using comparisons within, Good Practices of Witness Protection, UNODC draft model law, and some countries' laws where witnesses are protected well, this article discusses the concept of witness protection in Ethiopia and analyzes its protection law, focusing on provisions that are very essential for effective implementation. The results of this comparison shed light on the obstacles to law enforcement, such as a lack of resources, a disorganized workforce, and a general lack of knowledge of the statute. To ensure the legislation is effectively enforced, steps such as raising public awareness, assigning sufficient funding for the protection program, adopting regulation, and developing a protection procedural guideline for the courts are required.

**Varinder Singh (2016)** More than a million Tutsi and moderate Hutu were massacred during the genocide against the Tutsi in Rwanda from April 6th to July 4th, 1994 (MINALOC, 2004, 21) [1]. The vast majority of offenders and victims lived nearby, and in many instances they knew each other well. Government officials in Rwanda have made it clear that genocide perpetrators would be held personally responsible for their actions since the genocide. In keeping with the promise to "Never Again," most of the offenders were brought to justice. For this end, the government instituted judicial sector reforms, set up Gacaca jurisdictions, and drafted laws to criminalize genocide in order to strengthen and modernize the country's court system. The Rwandan government was able to bring the perpetrators of the 1994 genocide to justice because to their efforts. The United Nations also created the International Criminal Tribunal for Rwanda (ICTR) to try the genocide fugitives who are now living outside of Rwanda.

**Suzzie Onyeka Oyakhire (2019)** In order to encourage witness cooperation and address concerns about witness safety, "witness protection" has been implemented in the criminal judicial systems of a number of countries across the globe. While witness protection is nothing new, the way it is actually practiced varies widely from one state to the next. The need of witness protection in Nigeria's criminal justice system is becoming more widely recognized. Scholarly writing on the topic of witness protection is mostly descriptive, narrow in scope, and devoid of overarching conceptual clarity. Recent events in Nigeria have brought to light the necessity for the



of a fair trial. Article 14102 of the Indian Constitution guarantees a person a trial in which he or she would be treated fairly. To be considered a fair trial, there can be no outside influences. By adhering to the rules of natural justice, a fair trial ensures that all parties, including witnesses, are treated fairly throughout the proceedings.

**Code of Criminal Procedure, 1973** - Criminal trials are governed by certain rules laid forth in the Code Criminal Process, 1973 (hence referred to as "the Code"). Witnesses are an integral part of criminal proceedings, and this is officially acknowledged by the Code. The Code provides detailed guidelines concerning the witness's presence, how testimony should be recorded, and other elements of the witness's role in the investigation, inquiry, and trial.

**COMMITTEE ON REFORMS OF CRIMINAL JUSTICE SYSTEM<sup>29</sup> (2003)** - The "Ministry of Home Affairs, Government of India" established the Committee on Reforms of the Criminal Justice System in 2003, and Dr. Justice V.S. Malimath<sup>30</sup> presided over its deliberations. The purpose of the Committee is to examine the current justice delivery system and provide recommendations for improvement in order to restore the trust of the general public in the judicial system. Poor conviction rate in criminal trials and exceptional delay in disposing of cases are two of the systemic issues plaguing the criminal justice system. In Chapter 11 of Volume I, Part III of the Report, the topic of "Witnesses and Perjury" is discussed in depth. The importance of witnesses to the administration of justice was emphasized. Throughout the trial, they help determine whether or not the accused is guilty. This witness has sacrificed his time and resources in order to bring those responsible to justice. Yet no one recognizes the value of these unsung heroes' work. Because of this, the situation for the witnesses has deteriorated.

A witness must endure significant harm by losing out on time with loved ones, money, and potential earnings in order to testify in court. They aren't paid enough to make up for all the difficulties they've had to endure. In addition, the witness had a difficult time getting to court. There is no comfortable seating, clean water, or rest area available to them in the courtroom. In addition, unnecessary adjournments deter witnesses from testifying in court. In addition to the difficulties associated with being tied down, the witness also has to deal with the wrath of the defendant against whom he testified. All these issues make witnesses wary of participating in the trial process, and occasionally they even become hostile because of a lack of proper protection. The Commission suggested treating the witness with dignity in court as a means of resolving these problems. He should be reimbursed for his time and money spent traveling to and from court. Allowance should be rethought structurally, and they need to be safeguarded well during the experiment.

It is ironic that after a decade, the recommendations of the Malimath Committee to reform the criminal justice system have not been implemented in their entirety. It seems that the current judicial system is still struggling with how to properly protect victims and witnesses. Nonetheless, the Committee's advice on the need for witness protection remains unaddressed, despite the fact that the Central government approved the idea to pay compensation to the victim of a crime by revising Cr.P.C. The Malimath Committee's recommendations to reorganize the criminal justice system were recently revisited, however, by the Central government.

### **Witness in the Criminal Justice Process:**

Witness in the Criminal Justice Process: A Study of Hostility and Issues Associated with Witness was the subject of a 2009 study by "Prof. (Dr.) G. S. Bajpai"<sup>40</sup>. The "Bureau of Police Research and Development" provided funding for the research. The purpose of the research was to examine the significance of witnesses in the administration of criminal justice and to highlight the issue that witnesses present. Hostility in criminal trials is a concern for India's legal system. The trial's stated goal is defeated by the participants' hatred. It also sheds light on the problem of inadequate witness protection, which is a central theme of the study. The Committee examines the information gathered from all across India to determine the root causes of the animosity and the nature of the difficulties experienced by the witnesses.

At first glance, the research seems to indicate that witnesses from the targeted states have lower levels of education than is ideal. In addition, witnesses are often inconvenienced by the Indian legal system owing to the frequent need for adjournments throughout trials. This caused the witness financial hardship, and they are not even being paid for their losses.<sup>41</sup> More importantly, the accused, who comes from a dominant group, has repeatedly utilized coercion, harassment, violence, and intimidation to silence the witnesses. To top it all off, the witness's sense of isolation is exacerbated by the lack of support they get from law enforcement and the judicial system. All these factors contributed to the witness being uncooperative throughout the trial. The Committee recommended this because they wanted to make sure there was a set procedure in place to safeguard the witnesses.

Moreover, witness-friendly procedural procedures should be enacted, and cutting-edge technology should be employed to capture evidence throughout the trial.<sup>42</sup> In his paper, Professor (now Dr.) G. S. Bajpai conducted significant research and gathered empirical data from many Indian states to depict the challenges experienced by the witness. According to the results, witnesses in India do not want protection but do want care and assistance from the criminal justice system. Nevertheless, the same is lacking in our legal system. Thus, the government should reexamine the suggestions provided by Prof. (Dr.) G. S. Bajpai in his research paper "Witness in the Criminal Justice Process: A study of Hostility and Issues connected with Witness" if it really intends to design a humane legislation on witness protection.

### **CONCLUSION**

Due process of law and a fair trial procedure are the bedrock of the criminal justice system. The goals of the criminal justice system, as implemented by the State, are to reduce crime, ensure victims are treated fairly, and hold offenders accountable for their actions. When it comes to the administration of justice, witnesses are the unsung heroes. Assisting the Court in its quest for the facts. Yet instead of being cared for and protected, the witness faces a great deal of difficulty and suffering throughout the inquiry and trial. The anguish felt by the witness must be taken into account. Aside from the typical issues, like as delays in case disposition, unnecessary adjournments, insufficient Bhattas or allowances, lack of infrastructure amenities, etc., witnesses face a wide range of additional challenges. It has been established that in many cases involving powerful persons and politicians, the witness who speaks out against the repeaters suffers the consequences. Witnesses and their families are often killed as a result of physical and psychological abuse, kidnapping, mutilation, and acid assaults.

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