

Witness Protection and its Need in India

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Abstract: In the law enforcement framework, witnesses and their declarations assume a definitive part in arriving at the end of the case. Witnesses, being the most urgent members in the technique, are undermined or actuated by the gatherings associated with the case to change or withdraw their assertions. In this manner, cases don't arrive at an honest and reasonable end. The victims' quest for justice is hampered by the judicial system. The privileges given to witnesses and casualties are very restricted in contrast with the large number of freedoms of the denounced. Thus, safeguarding the observers becomes imperative for accomplishing the principal objective of the law enforcement framework. Considering these considerations, the author will discuss the significance of witnesses to the rule of law in the criminal justice system in his paper. The creator will likewise bring up the lacunae in our current standards and regulations which have nearly underestimated the obligations of the observer and his well-being and security.

Keywords: Witness, Protection, Human Rights, India, Law, Judicial System.

Introduction - Triangulation is used in India's criminal justice system. It includes three appendages - denounced, casualty and witness. Since old times denounced has been viewed as the 'focal point of mass in the law enforcement framework and offered more consideration than the other two appendages. We have been discussing the freedoms of the charged, their day-to-day environments in jail, and their honesty except if demonstrated blameworthy. In any case, zeroing in just one appendage won't go to further our damaged law enforcement framework. Presently the time has come to zero in onedifferent two. There is a requirement for a change in perspective in our way to deal with the law enforcement framework, the significance of casualties and witnesses should be perceived and given equivalent significance as the blamed. Continuing further, this paper will explicitly manage the significance of witnesses, the issues they face in the law enforcement situation, and their freedoms.

A witness is one who sees, knows or vouches for something and gives testimony under oath or affirmation in person, by oral or written deposition or by affidavit.¹ In a criminal justice system, the conviction of a guilty accused depends primarily on the testimonies given by witnesses. Thus, a witness turning hostile is a major problem which plagues the criminal justice system. The term Witnesses are defined in both the Criminal Procedure Code, 1908 or Evidence Act, 1872 as "Witness is the person who gives or is to give evidence in a cause, a person sworn to speak the truth in a trial, one who attest a document, one who cognizant of something by direct experience" and according

to *Black Law Dictionary* "In the primary sense of the word, a witness is a person who knows the event". "As the most direct mode of acquiring an event is by seeing it, the witness has acquired the sense of a person who is present at and observes a transaction."² India is a country that has an enormous number of forthcoming cases whether common or criminal when an observer is called to the court for any case, he must be there despite the fact that he has no cash or has family, work, and so on. There is likewise a thing that assuming it is truth that a specific observer is essential for the crook case to be settled, so first and foremost the call is given to the individual to be available in the court yet on the off chance that an individual isn't showing up under the steady gaze of the courtroom then after the couple of summonses on the off chance that the observer has not offered any sensible response as far as not showing up then in such cases the capture warrant can be given for the sake of such observer.

Role Of Witnesses: Witness is any individual who is familiar with current realities and conditions, or is in control of any data or has information fundamental with the end goal of examination, request or preliminary of any wrongdoing including an offense and who is or might be expected to give data or say something or produce any report during examination, request or preliminary of such case and incorporates a casualty of such offense.³ Without the observer's dynamic help, the examination of a wrongdoing may not reach an obvious end result. Underlining the meaning of witnesses, Wadhwa J. in *Swaran Singh v. State of Punjab*⁴ said, "A criminal case

is built on the edifice of evidence, evidence that is admissible in law. For that, witnesses are required whether it is direct evidence or circumstantial evidence"

Additionally, while emphasizing the importance of witness, the Delhi High court in *Neelam Katara v. Union of India*⁵ has observed that, *"The edifice of administration of justice is based upon witness coming forward and deposing without fear or favor, without intimidation or allurement in Courts of Law. If witnesses are deposing under fear or intimidation or for favor or allurement, the foundation of the administration of justice not only gets weakened but in cases, it may even get obliterated."*

Consequently, from the above assertions, we can reach the resolution that the observers are an indispensable piece of the preliminary or legal procedure separated from the complainant as well as the blamed. The idea of talking only about reality requires the observer to make a vow. Then, at that point, witnesses need to go for playing out the public obligation by helping and further he submits himself for the interrogation and thus can't decline to respond to the inquiries posed while questioning. The significance of witnesses has been principally recognized in the fear monger classification of offenses, drug dealing and different wrongdoings perpetrated by a few coordinated sorts of gatherings.

Need For Protection Of Witness: Witnesses are really the foundation of the case, however, nowadays witnesses waver in approaching and give the declaration from when they come to realize that the state doesn't have a legitimate component for guaranteeing the wellbeing of them and considering that trepidation, witnesses turn threatening. The term unfriendly means, when the observer realizes reality however isn't willing to tell it to the court, it is a result of the simple truth of dread or by the impact of the contrary party. It is additionally simple for the observer to turn threatening because no court can drive the observer to give the declaration. The court can also decide whether to allow a hostile witness to be cross-examined. In the case of *Ravindra Kumar Ray v. State of Orissa*⁶, it was held by the Hon'ble that, "The testimony of a witness is not necessarily be rejected, in whole or in part just because is declared to be a Hostile Witness"

No principles, guidelines or regulations have been authorized by Parliament to safeguard observers. Nonetheless, different resolutions have arrangements for witnesses. Sections 151 and 152 of the Indian Evidence Act, 1872 safeguard the observers from being asked profane, shameful, hostile endlessly questions which plan to disturb or affront them. Under Section 312 of CrPC. A Court might arrange installment of sensible costs of any complainant or witness going to for the motivations behind any request, preliminary or other procedure under the steady gaze of such Court. Area 195A of the Indian Penal Code punishes undermining or prompting any individual to give misleading proof.

The "Witness Protection Scheme, 2018" was developed by the Government of India in collaboration with the National Legal Services Authority (NALSA) based on recommendations from law commissions, directions from the Supreme Court, and reports from several States and UTs. In this way, the High Court vide its judgment dated 05.12.2018 featured the earnest requirement for planning an observer security component conspire for our country. By virtue of the extensive powers granted by Article 141 of our Constitution, the Apex Court has approved the plan and declared it to be law. Nonetheless, the plan has not been given space in the legal book to date. The Witness Protection Scheme, 2018 visualizes implies in this manner guaranteeing the wellbeing of witnesses. Accompanying the observer up to the Court or help of sound video implies recording the assertion of the observer to keep up with privacy, giving transitory home in a protected house, giving new personality, witnesses movement, and so on., some of these measures can be used in extreme cases. The plan characterizes observers into three classifications, viz. Class A incorporates bunches where danger stretches out to the existence of the observer or his relatives, during examination/preliminary or from there on. Class B incorporates bunches where the danger reaches out to the wellbeing, notoriety or property of an observer or his relatives, during examination/preliminary or from there on and Class C integrates bunches where the danger is moderate and stretches out to badgering or terrorizing of an observer or his relative's, the standing of property, during examination/preliminary or from that point, and accommodates the foundation of State Observer Security Asset.

In the year 1958, the fourteenth Regulation Commission report which was alluded to as the 'witness security' appeared with the imperative element of the arrangement of a wide range of satisfactory game plans which are required to have been made for the comfort of the observer inside the court field. The witness's timely and uninterrupted arrival at the court will be facilitated by these provisions. Nonetheless, this regulation commission report neglected to give actual security to the observers. The Security, as well as different offices to the observer, were given under the 154th report of the law commission. One of the essential proposals made by the report expressed that "witnesses ought to be safeguarded from the fury of the blamed in any possibility". Nonetheless, the commission's report neglected to recommend any action concerning the actual insurance of the observers. The presentation of area 195A alongside different other significant changes into the Corrective code, 1860 had been made under the Criminal Regulation Revision Act, 2005 which made compromising or initiating somebody to offer any sort of misleading expressions under the steady gaze of the official courtroom culpable. Other significant changes made under this Act incorporate area 154 and Section 195

of the Proof Demonstration and the CrPC separately.

Witness Protection Scheme, 2018: Introduction, Issues And Suggestion:

Before 2018, there was no proper arrangement for witness security, in any case, there exist a few roundabout arrangements for the insurance of witnesses. Section 436 and 437 of CrPC discuss giving bail in bailable and non-bailable offenses on the state of bail bond which fundamentally incorporates harmless of observers by the blamed. Different arrangements for the insurance of witnesses incorporate area 195 IPC, Juvenile Justice (Care and Protection of Children) Act, 2015, Whistleblowers Protection Act, 2011, Protection of Children from sexual offences (POSCO) Act, 2012, National Investigation Agency Act, 2008 and Schedule caste and Tribes (Prevention of Atrocities) Act, 1989, etc. The fourteenth, fifteenth, 178th, and 198th Regulation commission report additionally referenced the security of observers in high-profile cases. These large numbers of backhanded arrangements were not proficient in that frame of mind from being dispensed with. All things being equal, there had been a rising frequency of witnesses becoming unfriendly, hence expanding their end.

Notwithstanding, the situation after 2018 is exceptionally clear. Following rising instances of unfriendly observers and after the terrible episode against observers in the Asaram Bapu case, the pitch to present an observer security conspire made progress. Service of Home Undertakings in meeting with different states and Government bodies, presented Witness Protection Scheme, in 2018. The scheme was approved by the Supreme Court on 05/12/2018, by Justice A.K. Sikri in *Mahender Chawla v. Union of India*.⁷

The plan gives assurance considering danger discernment and examination reports ready by the head of police in the Locale exploring the case. The plan gives three classifications of witnesses considering danger discernment during the preliminary examination, and from that point —

Category A: when threat extends to limb and life

Category B: when threat extends to safety, reputation, and property

Category C: when threat extends to intimidation and harassment

The Witness Protection Scheme of India is the preeminent step towards compelling assurance of witnesses anyway there are different limits in something very similar. First and foremost, the period of safeguarding observers is restricted to a time of 90 days just, which means keeping an impermanent cap on span which no place gets the fate of the observer, and the chance of danger doesn't end following three months of insurance. Furthermore, the observers have been ordered according to the discernment as well as the chance of the risk they experience the ill effects of. In such an order, no plans will succeed ever. Correspondence will win in the security of observers too. Ultimately, even though the plan of witness

security points towards the insurance of the personality of the observers, in any case, no data with respect to punishment has been given assuming that there is an infringement of the equivalent. The strength of safeguarding the observers through this plan is from now on decreased and neither can this assistance in the avoidance of witnesses turning antagonistic.

Witness Security Plan 2018 is a right positive development, yet at the same time, we can't presume that it has filled the need for which it is made. In high-profile cases, such as the high-profile cruise drug case in 2021, the PIL filed disclosed the attempt to bribe the witness. However, even after the scheme was implemented, there has been no stoppage in the chain of elimination of witnesses. In this way, the inquiry emerges of the amplex of the observer assurance plot, 2018 in the counteraction of the disposal of witnesses. The scheme itself is the problem; first, even though it is legally binding on government agencies, violating it will not result in punishment. Furthermore, there is no distinct wellspring of subsidizing, the middle has no commitment to financing the plan, and it is left at kindness of the state reserves. Thirdly, the scant assets of subsidizing and labor will make the execution of the plan troublesome. Fourthly, the police faculty accused of the security of witnesses may themselves be bad and can pass the data of the whereabouts of witnesses. The head of police accused of the planning of a danger discernment report, under political tension, may not play out his obligation appropriately in high-profile cases. The removal of witnesses will continue while all these issues remain in the scheme. These determined issues show that the observer security conspire 2018, isn't satisfactory in that frame of mind of the end of witnesses.

The best arrangement is to deal with and work on the lacunae currently called attention to in the observer assurance conspire 2018 however what is more significant is to chip away at the underlying drivers of these issues. The issue of hauled prosecution methodology and postpone in conviction needs serious consideration, this issue can be tackled by taking care of the issue of foundation and staff smash in the Indian legal executive and expanding the labor supply by filling the opening of Judges. The utilization of innovation is like a logical technique for examination utilizing DNA and fingerprints and so on. could adequately resolve the issue of antagonistic observers. Yet, the legitimate progress to a logical examination can be conceivable simply by expanding exceptionally prepared labor supply to deductively explore the case. These extraordinarily prepared cops should be not quite the same as 'beat constables'. Given these arrangements we should likewise remember that innovation can't totally supplant the observer and their significance in the law enforcement framework. Witness protection laws must be strengthened because technology can only reduce witness dependence.

Conclusion: The aggression of witnesses is a significant

test in the law enforcement organization of our country. Impacts and tensions frequently bring about going threatening to key observers and in this manner, they become hesitant to affirm before the adjudicators. The frequently talked about cases like the Jessica Lal murder case, Best Pastry shop case and so forth. are proof of a similar which features the earnest need to manage this aspect of the law enforcement framework which has flopped pitifully. The American model would serve as a torchbearer at this point. It should be noticed that there is no finished void, a portion of the arrangements are set up. However, in the absence of a legally binding written law with stringent penalties, the entire mechanism is adopted by judicial pronouncements. Witness security is the need of great importance. Absence of assets and HR will not be the reason for its appropriate execution. The time has come for the parliament to become aware of the witness's situation, pass comprehensive legislation to protect the witness and punish those who break the law. Underscoring the significance of observers in the Law Enforcement

Framework, Equity Malimath Panel Report 2003 expressed that the "Opportunity has arrived for a complete regulation being sanctioned for the security of the observer and his relatives". This will support the certainty of the observer to dismiss current realities of the case with practically no apprehension or favor fair-mindedly.

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