NATIONAL AND INTERNATIONAL PARAMETERS FOR THE IMPORTANCE OF WITNESS IDENTITY PROTECTION IN CRIMINAL TRIALS

Dr. Geeta Shrivastava*, Ms. Tulika**
*Professor, **Assistant Professor
Department of Law*, Department of Legal Studies**
*Himalayan University, Ita Nagar (Arunachal Pradesh)
**Usha Martin University, Angara (Jharkhand)

Abstract

The commission of a crime is a multifaceted process that is the conclusion of a series of interconnected events and a sequence of activities that come together. One of the primary goals of the criminal justice system is to catch and punish the offender, which can only be accomplished by a thorough and methodical investigation that identifies the series of events necessary to establish the commission of the crime. A competent witness may be compelled to testify in court, but he may not be made to answer specific questions unless the law permits it. Recognizing the importance of police involvement in crime reduction, the Government of Kerala launched the Janamaithri Suraksha Project in March 2008, which was hailed as a very innovative proactive strategy. The experiment began with 20 police stations that were chosen for participation. The necessity of witness identity protection is a subject of heated dispute in a number of jurisdictions. Many times, concealing the identity of the witness during the trial is insufficient, and the witness and his family members may require additional care and protection even outside of the courtroom. This is an absolute necessity in order to save the witness's life and the lives of his family from the potentially fatal consequences of testifying against a wealthy or influential witness.

Keywords: witness, identity, protection, criminal, trial, etc.

1. INTRODUCTION

The commission of a crime is a multifaceted process that is the conclusion of a series of interconnected events and a sequence of activities that come together. One of the primary goals of the criminal justice system is to catch and punish the offender, which can only be accomplished by a thorough and methodical investigation that identifies the series of events necessary to establish the commission of the crime. The systematic collecting and presentation of evidence is crucial to the investigative process since the defence will always attempt to undermine the evidence's veracity in an attempt to exonerate the defendant from criminal responsibility during the trial. Whether in a civil or criminal case, an instrument of evidence is a means via which facts that have been disputed or that must be proven are efficiently presented to the judiciary. There are two types of evidence that can be presented before a court or a judicial body. The first is documentary evidence, and the second is oral testimony. Oral evidence is often provided by the witnesses, who may be the victim himself, the accused, or any other individual who may have information pertaining to the case under consideration. In this setting, the witness plays a crucial role in criminal cases and assists the court in the administration of justice by providing information to the court. Both documentary and material evidence are typically submitted to the court through the testimony of witnesses, and this is true for both. The term "witness" can be defined as "someone who provides testimony to a judicial tribunal in
any capacity.” All quasi-judicial tribunals, as well as all other types of tribunals, receive evidence in the form of witnesses. The definition of a witness, according to Whittaker Chambers, is "a man whose life and faith are so completely intertwined that when the opportunity arises to stand up and testify for his beliefs, he does so despite all risks and accepting all consequences."

1.1 The Witness as a Concept in Contemporary Law

An individual who happens to be present at an incident or series of episodes and is capable of providing information in the appropriate manner is referred to as a witness in the general sense. A witness is someone who has personal knowledge of a crime or dramatic event through their senses (e.g., seeing, hearing, smelling, touching), and who can assist in certifying critical aspects related to the crime or dramatic event in question. It has been correctly stated that witnesses are weighed rather than being numbered. Because the testimony of witnesses gives significant assistance to the courts in determining the truth and putting criminals behind bars, the witnesses are under an ethical and moral obligation to utter the truth and only the truth in their evidence. Reality and specifics of the case can only be established through the correlation of statements made and evidences produced in court by the witnesses of the case, and according to the law of the land, two witnesses are on a par with one hundred if they are successful in proving the facts of the case in their testimony. As a result, witnesses are essentially the foundation stones upon which the pillars of justice proudly rest. Victims could be divided into two major categories:

- Those who were killed in the line of duty; and those who were not.
- Victims of Distributive Injustice
- Victims of Street Crime

2. IMPORTANCE OF WITNESSES IN CRIMINAL TRIALS

The function of witnesses in the criminal justice system of any jurisdiction, whether it is governed by common law or civil law, is critical. Justice Wadhva correctly determined that the fabrication of evidence, particularly that which is permitted under applicable codes of law, serves as the foundation of a criminal prosecution. With the exception of the plaintiff and the defendant, a witness commands a high level of credibility. In his pursuit of truth, he takes on the terrifying role of the sun, which dispels the darkness of ignorance and shines a light on the face of justice, which is surrounded by devils of humanity and compassion. He or she is performing a significant public service by assisting the court in determining whether or not the accused is guilty of the crime. On cross-examination, he must submit himself, and he is not permitted to refuse to answer questions on the grounds that his answers will incriminate him. Section 190 of the Indian Penal Code provides the punishment for witnesses who fail to present the court with accurate information, and sections 190 to 195 of the Indian Penal Code specify the penalties for those who do the same.

Furthermore, Section 118 of the Indian Evidence Act states that a witness's competency to testify as a witness is a prerequisite to testifying as a witness. If a witness is found to be competent, he or she cannot be prohibited from appearing in court and providing testimony. Competency refers to a person's legal ability to provide testimony [14]. If a witness is found to be unfit to testify, the judge is required to dismiss his or her testimony as a matter of legal law[14]. Although it should be emphasised that recent legislation has tended to allow the witness to make his or her claims while leaving the determination of whether or not they are true to be made by the tribunal rather than

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rejecting their testimony outright. So many of the standards that used to assess the competency of witnesses are now only a precondition for determining the credibility or trustworthiness of witness testimony, rather than rules in themselves. A witness may be qualified to testify in court, but he or she may not be compelled to testify in court. A competent witness may be compelled to testify in court, but he may not be made to answer specific questions unless the law permits it. For example, while they are being examined as a witness, magistrates, lawyers, spouses, and other family members have the right to be exempt from answering certain questions.

3. THE ROLE OF SOCIETY AND WITNESS PROTECTION IN INDIA

When it comes to witness protection, the police are indispensable. The activities of the police in crime prevention necessitate the assumption of a diverse range of responsibilities. As critical as the function of witnesses is in crime investigation and prevention, the involvement of police in ensuring that the witness protection programme is successful and achieves the desired objectives is just as critical. Police witness protection/target hardening and good operational practices are divided into three categories: (i) judicial and procedural measures; (ii) covert witness protection programmes; and, (iii) judicial and procedural measures plus good operational practices. In all of these categories, the role of the police is critical. Protection measures, as well as the ancillary processes that go along with them, should be taught to criminal justice workers in an appropriate manner. The purpose of this section is to list the various roles played by police officers according to their ranks and designations in crime prevention, and then to discuss their roles in witness protection in greater detail. It will be necessary to critically examine the fundamental statute, namely the Police Act, Commission Reports, and state legislations, in order to fully understand the role and functions of the Indian Police.

When the role of the police becomes significant in witness protection, there are three stages of the programme:

- **Stage of application**: In the event that a witness initiates a witness protection application, the involvement of the police in the case would commence at the time of filing the application. It is the first procedural step in a criminal trial to recognise that there has been a crime committed. This may occur at the stage of filing a FIR or at any subsequent point at which the witness believes that he or she requires witness protection. It would be the responsibility of the concerned Police Officer to inquire and determine whether or not there is a need for witness protection. It would be the responsibility of the concerned Police Officer to inquire and determine whether or not there is a need for witness protection. Also under his or her responsibility is informing the complainant or potential witness about the availability of a witness protection programme and the processes and rights afforded to witnesses under the program's provisions. When it comes to this stage, the role of the police is critical because if the witnesses are assured of their safety and security during the application process and are convinced about the importance and relevance of their testimony in this particular case as well as the administration of criminal justice in general, the trial will be more efficient and the conviction of the true accused/criminal will be more likely.

- **During investigation**: Because evidence is collected and sequenced during the investigation stage in criminal administration, it is a critical stage in the investigative process. The primary objective of an investigation is to determine the facts and circumstances of the case. It includes all of the efforts made by a police officer to gather evidence, including: going to the scene, gathering facts and circumstances, discovering and apprehending the suspected offender, collecting evidence relating to the commission of the crime, which may include...
interrogating various people, including the accused, and recording their statements in writing, searching for evidence-bearing locations, and seizing evidence. The investigation comes to a close with the submission of a police report to the magistrate.

- **During the Trial:** The trial is the next and most important stage in the criminal procedure. The trial is the judicial determination of a person's guilt or innocence. Under the Criminal Procedure Code, criminal trials are divided into three categories, each with its own set of processes, which is referred to as warrant, summons, and summary trials.

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**4. INTERNATIONAL PARAMETERS FOR THE PROTECTION OF WITNESSES**

Prior to World War II (WW II), the only subjects of international law were states [12, 13], not individuals. This was the case until the end of the war. It was not only the end of World War II and the establishment of the United Nations that laid the groundwork for the advancement of human rights protection, with the rights of individuals being accorded paramount importance, but also for significant advancements in international criminal jurisprudence and fair trial theories, particularly in the arenas of rights for victims as well as rights for those who have been accused. During World War II, Germany and its allies were accused of committing war crimes on a colossal scale that had never before been seen in the history of mankind. The entire world was shocked by the magnitude of the atrocities committed against racial minorities, women, and children, who were estimated to number in the hundreds of thousands. On October 30, 1943, at the Moscow Conference, the major Allied forces adopted a Declaration stating that prominent war criminals whose crimes were committed in whatever area would be prosecuted. As a result, on June 26, 1945, delegates from the governments of the United States, the Soviet Union, the United Kingdom, and France convened in London to decide on a joint cause of action with respect to the trial of the key European war criminals. On August 8, 1945, the Allies reached an agreement for the prosecution and punishment of the European Axis' major war criminals, which was the culmination of the war's events. The Charter of the International Military Tribunal was signed in conjunction with the Agreement. The Charter was short and contained only 30 articles, making it a manageable size. The Tribunal was to be composed of one member from each state, as well as an alternate member from each state. Neither the prosecution nor the defence had the right to object to the appointment of these judges in this matter. The Tribunal was given authority under the Charter to try cases involving crimes against peace, war crimes, and crimes against humanity, among other things.

The right to a fair trial guaranteed by the Charter enumerated the following rights for every defendant:

- **a.** The indictment must contain complete and accurate particulars specifying in detail the charges against the defendants; and

- **b.** The indictment must include complete and accurate particulars specifying in detail the charges against the defendants. A copy of the indictment, as well as a copy of all papers filed with the indictment, as well as a translation into a language that the defendant understands, must be provided to the defendant in a fair amount of time before the trial.

- **c.** During any preliminary examination or trial of a defendant, he or she will have the right to provide any explanation that he or she believes is relevant to the charges brought against him or her.
d. In order to ensure that a defendant's preliminary examination and trial are conducted in a language that the defendant understands, the proceedings must be conducted in, or translated into, that language.

They were reinforced in numerous conventions established by the United Nations at a later stage, and they were elevated to the status of fundamental principles that must be observed not only by international tribunals but also by governments worldwide. They were elevated to the status of jus cogens. A new age of human rights protection began with the unanimous acceptance of the Universal Declaration of Human Rights, which was the first step in that direction. At the time of its passage, the Declaration was merely a resolution of the United Nations General Assembly, and it was not meant to impose a legally binding obligation on the member states[14]; as a result, no enforcement mechanism was established. It served as a shared benchmark of achievement for all people and all nations around the world. The majority of the rights stated in the treaty were codified into customary international law[12, 13] during a thirty-year period and became binding on all governments.

5. JANAMAITHRI SURAKSHA PROJECT

Recognizing the importance of police involvement in crime reduction, the Government of Kerala launched the Janamaithri Suraksha Project in March 2008, which was hailed as a very innovative proactive strategy. The experiment began with 20 police stations that were chosen for participation. Too far, it has been deployed in 248 Selected Police Stations around the country (20 Police Stations in 2008, 23 Police Stations in 2009, and 105 Police Stations in 2010 and 100 Police Stations in 2012). Members of the community were encouraged to participate actively by creating JanamaithriKendrams in District and Battalion Headquarters to help them understand the working of the scheme and interact with police. These were set up alongside other measures such as distributing pamphlets, booklets, and other printed material, staging a drama to educate them in simple ways, showing short movies depicting the scheme's mission, and distributing pamphlets, booklets, and other printed material. Various other programmes, such as Coastal Vigilance Committees, Road Safety Programs, and so on, have also been created throughout the state on the basis of the same premise as the Janamaithry scheme, including While implementing these programmes, proper training is provided to the relevant authorities, such as Beat Officers, Assistant Beat Officers, and Community Liaison Groups, among others, to ensure that the schemes are effectively implemented. This training is repeated at regular intervals to ensure that the schemes are up to date and can adapt to changing circumstances.

For the Janamaithri Suraksha Project, a total of 1361 people have been trained at the Police Training College to date. The project, which employs a modified version of the concept of Community Policing, attempts to improve the process of contact between the police and the general public. In this process of engagement, the police officials visit the community on a regular basis to learn about their issues and requirements, and to assure them that they will cooperate to the greatest extent feasible in all circumstances. After taking into consideration the efforts made by the police, it has been noted over a period of time that the community has reacted favourably to this procedure. The police authorities hope to use this approach to identify different problems that are prevalent in different communities and to propose appropriate solutions for each of those problems. The informal relationship that the police have formed with the community has a higher impact on the overall crime rate in a society than formal relationships [17].

6. CONCLUSION
The necessity of witness identity protection is a subject of heated dispute in a number of jurisdictions. Many times, concealing the identity of the witness during the trial is insufficient, and the witness and his family members may require additional care and protection even outside of the courtroom. This is an absolute necessity in order to save the witness's life and the lives of his family from the potentially fatal consequences of testifying against a wealthy or influential witness. Despite the fact that the research has exhaustively researched practically all facets of the witness protection programme in India today, unjustified acquittals can be gained by a simple means, specifically, by ensuring that the major witness either does not appear or becomes hostile to the prosecution. Despite the fact that the Supreme Court has ruled that evidence provided by a hostile witness must be evaluated as if it is in the accused's favour, the trial courts continue to have difficulty applying this rule.

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