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# An Overview of Witness Protection in India

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## ABSTRACT

*Witnesses are the eyes and ears of the justice system and when a witness is threatened or killed or harassed, it is not only the witness who is threatened but also the fundamental right of a citizen to a free and fair trial is vindicated. Protection of the witness is the duty of the State and when State fails to protect a witness, it actually fails to uphold the National motto "Satyamev Jayate". If witnesses are intimidated, the foundation of administration of justice gets weakened and even obliterated. Formulation of witness protection programme to be provided to a witness at all stages i.e. during the course of an investigation, during the process of trial and after the judgment is pronounced. Notwithstanding such importance of witnesses in criminal justice system and immense threat to their life, India does not have a witness protection law as of now. If the witness is not taken care of, he/she may develop an attitude of indifference to the question of bringing guilty to justice. This subject was addressed by several committees and commissions in past for enacting a strong law for witness protection in a manner which ensures a fair trial to both the parties but no concrete action has been taken yet in this direction. Therefore urgent enactment of such law is required for the proper administration of Justice.*

## INTRODUCTION

Crime is an inevitable phenomenon in any society. Every society seeks to limit the occurrence of such phenomenon and penalises those responsible for it. Every criminal justice system requires that the accused should be proved guilty in the court of law beyond any reasonable doubt. Thus a duty is casted upon the prosecution to prove such guilt with the help of direct and indirect evidence proving the guilt of the accused beyond all reasonable doubt in the minds of the judge or the jury.

Witnesses play an important role in deciding the guilt or the innocence of the accused person. Commission of a crime is a multifarious process culmination of set of connected events and series of acts. One of the main objectives of criminal justice system is to apprehend and punish the offender which could be done only after the careful and methodical investigation identifying the series of acts imperative to prove the crime<sup>1</sup>.

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1 *Sakshi v. Union of India*, 2004 (6) SCALE 15

Systematic collection and presentation of evidence is critical to the investigative process as the defence invariably seek to undermine its veracity to cast away the criminal liability during the trial. Due to the delay in the administration of justice and inadequate recognition, allowances and protection of witnesses more often than not witnesses are not ready and willing to participate in the process of law.<sup>2</sup> They are even reluctant in providing information to the police authorities because of fear that they may be called as witness before the court. There are many incidences where the witnesses have given their testimony which is deliberately ambiguous and hence would be of no help in determining the guilt of the accused.

The instrument of evidence is the medium through which facts, either disputed or required to be proved, are effectively conveyed to the judiciary in civil as well criminal matters. The evidence before the court or a judicial authority can be broadly divided into two; documentary evidence and oral evidence. The witness is considered to be the most important element from the point of view of the oral evidence. Oral evidence is generally given by the witnesses, be it the victim himself, the accused or any other person having any information relating to the matter. Here the witness plays an important role in the criminal trials and aids the court in the administration of justice. It is by means of witnesses that both the documentary and material evidences are usually presented to the court. A witness may thus be broadly defined as a person who gives evidence to a judicial tribunal. All quasi-judicial tribunals and tribunals of all other kinds receive evidence through witnesses.

## MEANING AND DEFINITION OF WITNESS

*"A person who sees an event happening, especially a crime or an accident"*

A person to be a competent witness must be able to understand the questions put to him as well as give a rational answer to those questions<sup>3</sup>. A witness is someone who has knowledge about a matter. Basically a witness is a person who has experienced some incidents or perceived something, creating some memory in his mind and who uses to re-enact those past incidents in the court on the basis of his memory. In law a witness is someone who, either voluntarily or under compulsion, provides testimonial evidence, either oral or written, of what he/she knows or claims to know.

**According to Black's Law Dictionary<sup>4</sup>:** *"A Person who sees a document signed and Person called to court to testify and give evidence."*

**According to English law Dictionary<sup>5</sup>,** *"A witness in a trial who has a personal interest in the outcome of the matter on hand"*.

2 Abhyankar Girish, *"Witness Protection in Criminal Trials in India"*, Indian Print 2018, Hard Back Publications, London, p.117

3 Singh Avtar, *'Principles of Law of Evidence'*, 16th ed.2007, Central Law Publications, Allahabad, p.546

4 Garner Bryan A., *Black's Law Dictionary*, 9th ed. 2009, West Group, p.954.

5 Brown G., *English Law Dictionary*, 2th ed. 2005, Promoting Christian Knowledge, p.1025.

## CONCEPT OF WITNESS

*'A person becomes a witness because he has either seen something or heard something'*

*Manu*

**In Ancient Hindu Law,** There were two forms of proofs which were recognised as valid. The first was human proof which further includes documents (lekhyā), witnesses (sakshi) and possession (bhukti). The second kind of evidence was Divine proof which includes five kinds of Ordeals (divya), ordeal by balance (ghata) ordeal by fire (agni), ordeal by water (udaka), ordeal by poison (visha) and ordeal by drinking water (kosa). The human proof is however, preferred over the Divine proof, especially when one of the parties offers a human proof and the other a divine proof.<sup>6</sup> Witnesses are of two kinds:

**Krita (chosen);** Krita witnesses are of five kinds and Akrita witnesses are of 6 kinds. The Krita witnesses are; Likhita (one who has been purposely brought to attest a written instrument), Smarita, is one who has been asked to witness a transaction and reminded about it every time the transaction takes place, Yadrichchagata, is one who has casually come at the time of the transaction, Goodha Sakshi is one who has been asked by the plaintiff to hide himself in some place and to listen to the words of the adversary, Uttara Sakshi is one who, having listened to the statement of a person who is about to die or to travel abroad, about some disputed transaction, is called upon to speak to it.

**Akrita (casual):** The Akrita witnesses<sup>7</sup> are the villagers, Judge includes the clerk of the court and the members of the assembly, King, the person deputed by the plaintiff and members of the family in matters affecting the family.

**In Mohammadan Law,** the evidence in legal matters is classified as oral and documentary. The oral evidence is sub-divided into direct and hearsay. Witnesses were examined and cross examined separately out of the hearing of the other witnesses. Leading questions were not allowed on the ground that this would lead to suspicion that the court was trying to help one party to the prejudice of the other. But if a witness was frightened or confused, the judge could ask such questions so as to remove the confusion even when they amount to leading questions. It was enjoined that the judge would be liable to the charge of bias if he was putting question in order to get answers to fact which ought to be proved by the witness. Certain classes of witnesses were held to be incompetent witnesses, namely, very close relatives in favour of their own kith and kin, or of a partner in favour of another partner. Certain classes of men such as professional singers, drunkards, gamblers, infants, idiots and blind persons in matters to be proved by ocular testimony, were regarded as unfit for giving evidence.

**In Modern Law,** the term witness denotes a person who happens to be present at incident/incidents and is capable of furnishing information correspondingly. A witness

6 Rao B. Guru Rajah, *'Ancient Hindu Judicature Hardcover'*, 1st ed.(2015), Cosmo Publications, p. 57.

7 Bulhar G., *'The Laws of Manu'*, 2nd ed., 2001, Sri Sat Guru Publications, p. 59.

is someone who has firsthand knowledge about a crime or dramatic event through their senses (e.g. seeing, hearing, smelling, touching) and can help certify important considerations to the crime or event<sup>8</sup>.

It has been rightly reiterated that witnesses are weighed, not numbered. As the testimony of witnesses provides extensive aid to the courts to reach the truth and put the criminals behind bars, the witnesses are under this ethical and sanctimonious duty to speak the truth and only truth. The reality and specifics of the case can only be established with the correlation of declarations made and evidences produced in the court, by witnesses of the case and as per the law of the land, two witnesses are on a par with hundred, if they are successful in proving the facts of the case. Thus witnesses are practically the foundation stones on whom the pillars of justice proudly stand.

### NEED OF WITNESS PROTECTION

In recent years the organized crime has grown. Criminal organizations are becoming stronger and more diverse. They are engaging more and more frequently in systematic forms of cooperation designed to further their criminal activities. In the investigation and prosecution of crime, particularly the more serious and complex forms of organized crime, it is essential that witnesses, the cornerstones for successful investigation and prosecution, have trust in criminal justice systems. Witnesses need to have the confidence to come forward to assist law enforcement and prosecutorial authorities<sup>9</sup>. They need to be assured that they will receive support and protection from intimidation and the harm that criminal groups may seek to inflict upon them in attempts to discourage or punish them from cooperating.

Witness protection is an important mechanism in criminal justice proceedings that can help States to bring criminals to justice, especially in cases of organized crime and terrorism<sup>10</sup>. In order to strengthen their capacity to more effectively prosecute the perpetrators of terrorist attacks, many countries have established and use witness protection measures in order to ensure that critical testimony is available as part of related criminal proceedings.

Witness protection covers a range of possible measures, including the concealment of a witnesses' identity or those of his/her family, the use of video-conferencing during the trial, anonymous testimony, physical protection and others<sup>11</sup>. Where necessary, full-fledged witness protection programmes may also include the physical relocation of a witness, the change of their identity as well as their socio-economic

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8 *Dettatreya v. State of Bombay*, AIR 1954 All. 608.

9 Reddy Sudershan B., '*Law on Compensation*', 1st ed., 2018 Deep and Deep Publication, Darya Ganj, New Delhi, p.837

10 A. Laxmikant., '*Criminal Trail and Justice*', 2nd ed., 2003, Alt Publications, Hyderabad, p.619.

11 Reddy Sudershan B., '*Law on Compensation*', 1st ed., 2018 Deep and Deep Publication, Darya Ganj, New Delhi, p.837.

reintegration into a new life. The role of victims in criminal proceedings, as well as their need for support and protection is an important, but often neglected aspect that needs increased attention. Although some countries have established measures that recognize and support the role of victims in criminal proceedings, and to provide them with adequate compensation, such recognition and support through specific legislation and policies is still absent in many countries like India. There is dire need to introduce appropriate measures to prevent witness intimidation, coercion, corruption or bodily injury. Often though, even where such measures have been legislated, implementation remains less than satisfactory and further progress is needed particularly with regard to change of identity and relocation of at-risk witnesses.

Experience has shown that in witness protection there are no easy solutions. However regional meetings with expert representatives from law enforcement, prosecutorial and judicial authorities may assist and support in the establishment and operation of effective witness protection programs<sup>12</sup>. It can provide a useful account of available measures and offer practical options suitable for adaptation and incorporation in the legal system, operational procedures and particular social, political and economic circumstances.

## TYPES OF WITNESS

In *Sampath Kumar v. Inspector of Police, Krishnagiri*,<sup>13</sup> It was held that there are three categories of witnesses. **Those who are wholly reliable:** The court has no difficulty in coming to the conclusion either way. It can convict or acquit the accused on the deposition of a single witness, if it is found to be fully reliable and **those who are wholly unreliable:** There is no difficulty in arriving, at an appropriate conclusion. There is no question of placing any reliance upon the deposition of wholly unreliable witness. Therefore, there are various classes of witnesses who assist to conclude the trial for the deliverance of justice. They are as below:-

**Child Witness**<sup>14</sup>: A child witness, if found competent to depose, to the facts is reliable one such evidence could be the basis of conviction. In other words, even in the absence of oath, the evidence of a child witness can be considered U/s 118 Indian Evidence Act provided that such witness is able to understand the answers. A child even of 6 or 7 years of age may be permitted to give evidence if he has the capacity to answer rationally. Indian jurisprudence has accepted child witnesses as a part of the legal system. In case of *Rameshwar S/o Kalyan Singh v. The State of Rajasthan*<sup>15</sup>, Supreme Court affirmed that the test of competency, if satisfied by a child even as young as 5 years old, would allow him to be a witness. Supreme Court has been to discard age as a deciding factor in terms of disqualification.

12 Reddy Sudershan B., 'Law on Compensation', 1st ed., 2018 Deep and Deep Publication, Darya Ganj, New Delhi, p.835

13 AIR 2012 SC 937

14 <http://www.com/article/129-> <http://lawtimesjournal.in/child-witness/child-witness.html>, last visited on 18/02/2020; at 8:00 am.

15 AIR 1952 SC 54

**Eye Witness**<sup>16</sup>: Eye witness is the one who has personally act in question and is able to give first-hand description of it. Eyewitness testimony is the account a bystander or victim gives in the courtroom, describing what that person observed that occurred during the specific incident under investigation. Ideally this recollection of events is detailed; however, this is not always the case. This recollection is used as evidence to show what happened from a witness' point of view.<sup>17</sup> Memory recall has been considered a credible source in the past, but has recently come under attack as forensics can now support psychologists in their claim that memories and individual perceptions can be unreliable, manipulated, and biased.

**Interested Witness**<sup>18</sup>: A partisan or interested witness is one who is in a near relationship with the victim of crime and is concerned with the conviction of the accused person. Interested witness, a close relative who is a natural witness cannot be regarded as an interested witness. The term 'interested' postulates that the witness must have some direct interest in having the accused somehow or the other convicted for some animus or for some other reason. In *Kartik Malhar v. State of Bihar*.<sup>19</sup> A witness is not excluded from giving evidence by reason of his interest in the matter in question.

**Chance Witnesses**<sup>20</sup>: If by coincidence or chance a person happened to be at a place of occurrence of the incident, he is a chance witness. The evidence given by such witness is highly reliable because he is not connected to either party. But if he is related to either party then his depositions may be weighed after considering other facts and circumstances

**Expert Witness**<sup>21</sup>: The Evidence Act provides that in medical examination it is mandatory in certain cases that a medical officer should give his report accordingly after conducting an examination. Experts from other fields e.g. handwriting experts, could also be called to testify in the case.

**Character Witness**<sup>22</sup>: A character witness is a person providing information in respect of the reputation of another person. Character evidence is a term to describe any testimony or document submitted for the purpose of proving that a person acted in a particular way on a particular occasion based on the character or disposition of that person.

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16 <https://www.psychologicalscience.org/teaching/myth-eyewitness-testimony-is-the-best-kind-of-evidence.html>, last visited on 16/02/2020; at 9:00 pm.

17 Earley Pete, "*Inside the Federal Witness Protection Program*," 1st ed., 2002, Diane Publications, America, p.93.

18 <https://legalcrystal.com/dictionary/definition/98401/interested-witness?formInputchance%witness>, last visited on 12/02/2020; at 1:30 pm.

19 (1996) 1 SCC 614 (620)

20 <https://?formInput=chance%20witness>, last visited on 12/02/2020; at 11:00 am.

21 [https://en.wikipedia.org/wiki/Expert\\_witness](https://en.wikipedia.org/wiki/Expert_witness), last visited on 14/02/2020; at 11:00 am.

22 <https://www.wisegeek.com/what-is-a-character-witness.htm#didyouknowout>, last visited on 14/02/2020; at 11:00 am.

**Hostile Witness:** It means the “*contrivance of artful witnesses*” who wilfully by hostile evidence “ruin the case” of party calling such witness. A hostile witness is not necessarily a false witness.

**Related Witness:** Any person appearing as a witness either on behalf of the prosecution or defence is related to the party summoning him is addressed as a related witness. *State of U.P. v. Paras Nath Singh*<sup>23</sup>. The court held that: The fact that the witnesses are related to each other is no ground for disbelieving their evidence. Relative should have no interest to falsely implicate the accused or protect the real culprit. “*There is no general rule that the evidence of the relations of the deceased must be corroborated for securing the conviction of the offender. Each case depends upon its own facts and circumstances.*”

**Independent Witness:** The meaning of the terms ‘interested’ postulates that the witness must have some direct interest in having the accused somehow or the other convicted for some other reasons. It is a settled position that the evidence of interested witness is highly unreliable and the same cannot be accepted with corroboration. According to English Law Dictionary<sup>24</sup>, “*A witness in a trial who has a personal interest in the outcome of the matter on hand*”.

**Solitary Witness:** Solitary witness means sole or single witness in a case. Section 134 of Indian Evidence Act, 1872 defines: “*No particular number of witnesses shall in any case be required for the proof of any case.*”<sup>25</sup> Conviction can be based on the testimony of a single witness, if he is wholly reliable. Corroboration is necessary when evidence is partial. If evidence is explicit and free from criticism, and the court is examined that the witness is reliable and speaking the truth, then, conviction can be based only on his evidence.

**Material Witness:** The witness who speaks about the crucial facts or any of the issue in the suit or prosecution is called material witnesses. Failure to examine material witnesses in civil cases, affect the chances of success of the parties. Failure to examine the material witness by the prosecution in criminal cases may result in clean acquittal of the accused. Persons who are present at the scene of offence in criminal cases and the persons, who are associated with the transactions in civil matters, must be produced as witnesses, since the examination of such witnesses is mandatory. Material witness means a witness in relation to the subject matter of the litigation and does not mean material in relation to parties<sup>26</sup>.

**Trap/Decoy Witness:** Trap witnesses as defined generally means a person who entices or lures another person or thing, as into danger, a trap or a like. Oxford Dictionary defines it as a person or thing used to mislead or lure come one into a trap. Decoy witnesses who are used to trap the accused in police trap. Section 125 of Indian Evidence Act 118 states, “*No magistrate or police officer shall be compelled to say when he*

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23 AIR 1973 SC 1093

24 Brown G., *English Law Dictionary*, 2th ed. 2005, Promoting Christian Knowledge

25 Section 134, Indian Evidence Act, 1872

26 <https://www.wisegeek.com/what-is-a-material-witness.htm#didyouknowout>, last visited on 14/02/2020; at 11:00 am.

got information of the commission of any offence and no revenue officer shall be compelled to say when he got any information as to the commission of any offence against the public revenue”.

## LEGAL PROVISIONS FOR WITNESS

“A person who sees an event happening, especially a crime or an accident”<sup>27</sup>

The value of witnesses can't be denied, keeping in view the dependency of the criminal proceedings on the testimonies and cooperation of witnesses in all the stages of the proceedings, especially in those cases where the prosecution has to establish the guilt with absolute certainty via oral cross examination of witnesses in hearings open to world at large. In such cases, the testimony of a witness, even if not as an eye witness, may prove to be crucial in determining the circumstances in which the crime might have been committed<sup>28</sup>.

In India, there is no law relating to the protection of witnesses as in developed countries like UK, US, Canada and Australia. As a result of this, the witnesses are not getting justice properly and at the same time they and their family members are also not secure since they are sometimes subjected to life threatening intimidations<sup>29</sup>. There are many difficulties faced by the witnesses at various stages of investigation. The trial period prove to be the most difficult of them. He may face the life threatening intimidation to himself and to his relatives. Where witness is a police informer or a police officer, further investigation and crime prevention activities may get affected due to inadequate protection provided to them. In case of *Swarn Singh v. State of Punjab*<sup>30</sup>, Justice Wadhwa regrettably commented upon the conspicuously helpless state of witnesses in India.

The criminal justice system in our Country has been the focus of several studies and reports of expert bodies. The National Police Commission in its 4<sup>th</sup> report raised the issue of witness protection and its effect on legal proclamations. A witness suffering is attributed to no fault of his own but to his mere unfortunate presence on the spot of crime/happening and his foolish choice to be there till the police arrives. The Commission of India in its 154<sup>th</sup> report has commented on the Protection and Facilities to Witnesses like Necessary confidence has to be created in the minds of the witnesses, daily allowance should be fixed on realistic parameters, adequate stay facilities in court premises, adequate arrangement of security etc. The Law Commission in its 198<sup>th</sup> report has suggested comprehensive 'Witness Identity Protection' and 'Witness Protection' programmes to prevent witnesses from turning hostile under threat from the accused and to ensure that criminal trials do not end

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27 *Zahira Habibulla H. Sheikh v. State of Gujarat*, 2004 (4 SCC 158)

28 <https://www.psychologicalscience.org/teaching/myth-eyewitness-testimony-is-the-best-kind-of-evidence.html>, last visited on 16/02/2020; at 9:00 pm.

29 Bhushan Tanuj, 'Witness Protection in India and the United States: A Comparative Analysis', *International Journal of Criminal Justice Sciences*, 2007.

30 (2000) 5 SCC 68

in unjustified acquittals. However, the report has not exhaustively dealt with the problems of witnesses<sup>31</sup>.

At present there is no law holistically at the National level for protection of witnesses. The Witness Protection Scheme<sup>32</sup>, 2018 (Draft) is a first attempt at the National level to holistically provide for the protection of the witnesses which will go a long way in eliminating secondary victimization. This scheme attempts at ensuring that witnesses receive appropriate and adequate protection. This will go a long way in strengthening the Criminal Justice System in the Country and will consequently enhance National Security Scenario. In this scheme the degree of threat has been classified into three categories. The scenario where the threat is graver and extends to life of a witness or his family members, The degree where threat is to the safety, reputation, property of witness or family members and the degree where threats are more moderate as compared to the threats conceptualised in the categories first and second. Last category extends to harassment or intimidation of the witness or his family members reputation. State Witness Protection Fund has been proposed under the Scheme.

**Section 190<sup>33</sup>** specifies the punishment for those witnesses who fail to provide the court correct information. According to section 190 of Indian penal code, *“Whoever holds out any threat of injury to any person for the purpose of inducing that person to refrain or desist from making a legal application for protection against any injury to any public servant legally empowered as such to give such protection, or to cause such protection to be given, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.”*

**Section 118<sup>34</sup>** mentions the competency of a witness to testify as a witness is a condition precedent. If a witness is competent, he cannot be prevented from appearing in the court and giving evidence. Competency denotes legal capacity to give evidence. If a witness is deemed incompetent to give evidence then the judge is bound as a matter of law to reject his testimony. However, it is to be noted that the tendency of modern legislation has been to allow the witness to make his statements leaving the truth to be estimated by the tribunal rather than reject his testimony altogether. A witness may be competent but still may not be compelled to depose before the Court but law may not force him to answer certain questions. For instance, magistrates, lawyers, spouses etc. have right to be protected from answering certain questions when they are being examined as witness.

**Section 195A<sup>35</sup>** was inserted in 2005 to Indian Penal Code. It renders this offence as cognizable and non-bailable. The co-relative procedure for this substantive provision is laid down in section 195A of Code of Criminal Procedure. It is significant to note that there is the only a single provision under Indian legal system which directly

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31 A. Laxmikant, *“Criminal Trail And Justice”*, 2nd ed. 2003, Alt Publications, Hyderabad.

32 Mahender Chawla v. UOI, 2018 SCC 2679

33 Indian Penal Code, 1860

34 Indian Evidence Act, 1872

35 Criminal Law (Amendment) Act, 2005.

relates to witness protection. However, this does not confer any kind of protection to the witness as merely giving him an opportunity to file a complaint does not take away the threat posed to his life. The Magistrate potentially does not have the power to secure the witnesses life. This amendment aims at tackling the problem of hostility. But this provision is inadequate in protecting the witnesses for obvious reasons. The problem of witnesses cannot be solved unless and until the witnesses, his family members or close relatives are afforded complete protection from any threats whatsoever that adversely affect their ability to speak the truth.

## REVIEW OF LITERATURE

**G. Buhler**<sup>36</sup>, in his book *"The Laws of Manu"* has given detailed account of the Ancient Hindu Law and the administration of justice in Hindu Law. He has done an extensive research of all the Smritis and other Vedic documents explaining the criminal procedure applied in the ancient Hindu law. The book has given a detailed law relating to witnesses, his qualifications, disqualifications, procedure for the giving testimony but not discuss the penalties for giving false testimony or for refusal to give testimony.

**B. Guru Rajah Rao**<sup>37</sup>, in his book *"Ancient Hindu Judicature"* talks about the ancient judicial system. The book gives a detailed account of the ancient legal system in India which covers the administration of justice in civil and criminal matters but he did not talk about the legal system as existed in the medieval period and after the independence of India.

**B. Sudershan Reddy**<sup>38</sup>, Hon'ble Justice in his book *"Law on Compensation"* has dealt with the various aspects of protection of rights of victims and accused persons through compensation covering international perspective of law of compensation but he has failed to mention about the idea of compensation to witnesses.

**Dr. Avatar Singh**<sup>39</sup>, in his book *"Principles of the Law of Evidence"* discussed in detail the various aspects of the law relating to testimony of witnesses. The state protects witnesses in various ways, sometimes going as far as to relocate them and give them new identity through participation in witness protection programmes.

**Prof. A. Laxminath**<sup>40</sup>, in his book *"Criminal trial and Justice"* has referred to the various aspects of compensation to victims, making it a statutory right. He refers to

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36 Bulher G., *"The Laws of Manu"*, 2nd ed. 2001, Sri Sat Guru Publications , Ashok Vihar, New Delhi p.59

37 Rao B. Guru Rajah , *"Ancient Hindu Judicature Hardcover"*, 1st ed. 2015, Cosmo Publications, Darya Ganj, New Delhi, p.57.

38 Reddy B. Sudershan, *"Law on Compensation"*, 1st ed. 2018, Deep and Deep Publication, Darya Ganj, New Delhi, p.150.

39 Singh Avtar, *"Principles of Law of Evidence"*, 16th ed. 2007, Central Law Publications, Allahabad , p.85.

40 A. Laxmikant, *"Criminal Trail And Justice"* , 2nd ed. 2003, Alt Publications, Hyderabad.

the definition of victim adopted by United Nations General Assembly in Article 1 and 2 of its resolution on dated 29 November 1985. He describe the term victim includes immediate family or dependents of the direct victims or persons who have suffered harm in intervening to assist victim but It does not include witness. He did not point out that Indian judiciary has risen to the occasion by introducing the compensation to victims of crime as integral and main component of sentencing process as a social defence system.

**Pete Earley**,<sup>41</sup> deals in his book **“Inside the Federal Witness Protection Program”** the issue of balancing the rights of an accused, victims and witnesses. It also furnishes many recommendations including bringing about a change in the law The major challenges are before the Court that how to strike a perfect balance in the participation rights of victims/witnesses without causing any prejudice to the rights of the accused in respect of fair trial. It also throws light on the issues of determination of victim status and approach towards the assessment of risk faced by the witness but he did not acknowledge the problems concerning lack of infrastructure and lack of manpower and it tended to be vaguely biased in favour of the defendant.

**Girish Abhyankar**,<sup>42</sup> in his book **“Witness Protection in Criminal Trials in India”** has discusses various kinds of witnesses and the rules relating to their testimony. He point out that various state agencies including police takes charge to provide the much needed protection to the victims/witnesses/informants involved and deposing in diverse categories of serious offences mainly syndicate crimes, sexual assaults, terrorist attacks etc., against various degrees of threats, aggression and assault, to secure fair and just criminal proceeding.

**Tanuj Bhushan**<sup>43</sup>, in his article **“Witness Protection in India and the United States: A Comparative Analysis”** has apparently taken the reference from the Law Commission Reports. He concluded that Indian laws are literally ancient and we have to strive hard to enact the witness protection law. Though we have laws but the development process is not at the equivalent rate as the offence itself. The article fails to realise that India’s socio-economic conditions are different from that of the US and therefore its feasibility and workability is still under question.

**Piotr Bakowski**<sup>44</sup>, in his article **‘Witness Protection Programmes: EU Experience in the International Context’** writes about the need for cooperation between states/ member states in order achieve effective witness protection. He offers some recommendations. He commented on the sorry state of affairs of witness protection,

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41 Earley Pete, *“Inside the Federal Witness Protection Program,”* 1st ed.2002, Diane Publications, Darby(U.S.A.)

42 Girish Abhyankar, 43 *“Witness Protection in Criminal Trials in India”*, Indian Print 2018, Hard Back Publications

43 Bhushan Tanuj, *‘Witness Protection in India and the United States: A Comparative Analysis’*, International Journal of Criminal Justice Sciences, 2007.

44 Bakowski Piotr, *‘Witness Protection Programmes: EU Experience in the International Context’*, International Journal of Criminal Justice, 2014

which is resulting in loss of confidence in public at large, to cooperate with criminal justice system in India. He expressed concern over the fact that justice will never be done until unless witnesses are ensured safety and security while deposing in court. Due to lack of proper witness security system, people are getting indifferent towards the spirit and sanctity of justice.

## CONCLUSION

Every criminal justice system requires that accused should be proven guilty without any reasonable doubt in the court of law. But due to delay in administration of justice and inadequate allowances and protection of witness, witnesses are not willingly ready to participate in process of law and turn hostile or have absconded an account of intimidation of family's life or respect of trauma suffered by witnesses during the trial.

The situation relating to the witnesses is getting worsen day by day but neither Central Government nor the State Government has come forward to frame any law for the protection of witnesses. This article focus on the various problems of witness, their compensation, and loopholes in the witness protection scheme and try to give suggestions to resolve them. Therefore, there is needed to make the law for the witness protection as they are also important part of Indian criminal justice system.

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