
INADEQUACY OF WITNESS PROTECTION UNDER THE LAW: PITFALLS IN PURSUIT OF JUSTICE

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ABSTRACT

In the criminal justice system, witnesses and their testimonies play a decisive role in reaching the conclusion of the case. Witnesses, being the most crucial participants in the procedure, are often threatened or induced by the parties involved in the case to change or retract their statements. Thus, cases do not reach a truthful and rational conclusion. The judicial machinery fails the victims in their quest for justice. The rights given to witnesses and victims are quite limited in comparison to the wide range of rights of the accused. Therefore, protecting the witnesses becomes indispensable for achieving the foremost objective of the criminal justice system.

Keywords: Witness, Hostile witness, Criminal Justice administration, Witness protection programme across the globe, Witness protection programme in India.

INTRODUCTION

Free and fair trial is *sine qua non* of Article 21 of the Indian Constitution. It is an established principle that justice should not only be done but must be seen to be done.

The primary objective of a criminal justice system is to guard the society against criminal conduct, deter the law-breakers and sanction those who violate or attempt to violate the laws of the land. Criminal law consists of substantive and procedural law. Substantive law deals with definition of offences and prescribes punishment while the latter lays down the procedure to be followed by the enforcement agencies. Multiple players are charged with the role of fulfilling this object. Law enforcement agencies, adjudicatory bodies and correctional institutions are the foremost components established by the government to enforce the laws and punish the offenders. Two main statutes that deal with adjudication of criminal cases in our country are the Indian Penal Code, 1860 and the Code of Criminal Procedure, 1973, being substantive and procedural respectively. An effective criminal justice system constitutes methodical investigation in order to identify the course of action leading to the crime. The mechanism of evidence by way of systematic collection and presentation in a court of law, in civil as well as criminal matters, enables the adjudicatory bodies to effectively dispute or prove a fact. This is where the role of a witness comes into play.

A witness may be defined as a person who gives evidence or deposes before a judicial tribunal. The word ‘evidence’ originates from the Latin word *evidens* or *evidere*, which means: “to show clearly; to make clear to the sight; to discover clearly; to prove.”¹ Under the Indian Evidence Act, 1872, evidence has been categorized into:

- a) Oral and;
- b) Documentary evidence.

The provisions of the Code of Criminal Procedure and of the Evidence Act comprehensively provide for depositions of a witness and the procedure and rules regarding their admissibility in the proceedings before a Court. The role of a witness in a criminal trial for administration of justice cannot be overemphasized. The evidence presented before a court helps in proving or undermining the veracity of criminal liability. It is the basis of conviction or acquittal of an

¹ Kahsay & Andualem, MEANING, NATURE AND PURPOSE OF EVIDENCE LAW, Abyssinia Law (2012),

accused person. However, mere establishment of procedures and laws does not ensure accomplishment of justice. Enacting laws is of little use if its implementation is not effective. Gaining the confidence of citizens in the law enforcement agencies and adjudicatory bodies is of utmost importance. The whole system fails in its objective when the society lacks faith and belief in its efficacy. Inordinate delay in deciding a criminal trial, ineffective collection of evidence by the investigating agencies, insufficient protection administered to witnesses constitute some of the factors which affect the functioning of the system.

IMPORTANCE OF WITNESS PROTECTION IN CRIMINAL JUSTICE SYSTEM

Pendency of cases in the Indian District Courts as well as the Apex Court is in a dismal state. As on November 1, 2017 more than 50 thousand cases are waiting to be heard in the Supreme Court.² One of the many factors to which this dismal state of legal affairs can be attributed is the fact that India has one of the worst judges to population ratio in the world with only 17 judges per million population in 2014, as per a 2011 census and sanctioned strength of judges of the Supreme Court, the 24 high courts and numerous subordinate courts, as compared to 50 in most of the developed nations.³ The unfortunate state of litigants and under-trials languishing in the prisons still persists and is far from better. As on February 1, 2018, the 24 high courts have a sanctioned strength of 1,079 judges, but with 403 vacancies, they are functioning with 676 judges. Delay in disposal of cases ranges from 5 to 25 years.⁴ While the sanctioned strength of the judges has gone up in the past few years, the pace of the work hasn't shown considerable or proportionate improvement.

India is not new to the phenomena of backlog and delays. However, where it loses the faith of the citizens, action must be taken. Where the parties to a case perceive the process itself as a punishment and not as a mechanism to resolve disputes, the system needs to be revisited. The number of pending cases keeps mounting and the litigants are faced with even fainter prospects of their cases being disposed of quickly. The legal impasse leading to overcrowded prisons and never ending cases shakes the confidence of the society in the legal system and its efficacy. Major part of the country's progress depends on a strong and effective judiciary system. Cooperation of necessary parties in a criminal trial is indispensable for effective

² S. Kanu., *Vacancies Haunting Supreme Court*, THE NEW INDIAN EXPRESS, March 3, 2018, <http://www.newindianexpress.com/thesundaystandard/2018/mar/03/vacancies-haunting-supreme-court>

³ *Supreme Court pitches for witness protection programme*, Hindustan Times (November 28, 2016), <http://www.hindustantimes/>

⁴ C. Nithya, *A Unique Remedy to Reduce Backlog in Indian Courts*, <http://www.manupatrafast.com/articles>

prosecution. It is the salutary duty of every witness who has the knowledge of the commission of the crime, to assist the State in giving evidence. However, due to dreary state of affairs, getting cooperation from requisite parties is all the more strenuous. Merely increasing the number of judges does not guarantee a faster adjudication of cases because it does not rule out adjournments and inordinate delays in our judicial system.

The exercise of judicial power is sacred. Absence of quality testimonial evidence makes the trial a mere formality and would be violative of the right of the parties to a fair and informed judgement. A layman would quiver at the prospect of getting trapped in the slow moving wheels of Indian judiciary. The impact on people involved in a criminal trial is intense. The victims and witnesses often back out owing to the mental, physical, financial and emotional agony suffered in the legal logjam. Absence of speedy justice gives rise to vigilantism. The need for reforms has never been stronger. By presenting evidence relating to the commission of an offence before a court of law, a witness performs the sacrosanct duty of assisting the court to discover the truth of the matter and come to a conclusion. Owing to this reason, the witness is either made to take an oath in the name of God or solemnly affirms to speak the truth, the whole of the truth and nothing but truth. A fair trial is one in which bias or prejudice for or against the accused, the witnesses, or the cause that is being tried is eliminated.⁵ Where the witness is threatened into giving false evidence, the atmosphere cannot be said to be conducive to fair trial. Failure to hear material witnesses inevitably leads to denial of fair trial. The procedure followed should not be detested or act as an impediment for a person becoming a witness. Adequate support and protection leads to requisite cooperation thereby enabling the criminal justice system in bringing perpetrators of crime to justice. Effective witness protection measures ensure that they are assisted and protected, not only during the trial but before and after the trial as well.

EFFECTS OF WITNESSES TURNING HOSTILE

Witnesses may turn hostile because of a number of reasons⁶, threat being the primary reason in a majority of cases. The cases dealing with offences committed by people who belong to an influential section of the society often end in acquittals due to lack of evidence. In some cases, the investigating officer does not even record witnesses' testimonies under Section 161 of Code

⁵ *Zahira Habibulla Sheikh v. State of Gujarat*, (2004) 4 SCC 158.

⁶ Supreme Court pitches for witness protection programme, *Hindustan Times* (November 28, 2016), <http://www.hindustantimes/>

of Criminal Procedure, 1973 ("Cr.P.C.") by actually examining them. Important witnesses retract their initial statements which could be crucial in getting the accused convicted⁷. This mainly happens because the witness or someone in whom they are interested might be exposed to some danger if they give a statement which is averse to the interests of the politically influential accused⁸. As a result of the absence of protection from such dangers, witnesses turn hostile⁹. In Mau district, two rape victims were shot dead who were due to testify against the accused. Their family members stated that they were being harassed by the accused to withdraw their complaints. Another prevalent reason is the inducement offered to the witness for changing his statements. A disinterested witness, who is otherwise gaining nothing from the process, can be easily lured by monetary or other inducements. Varun Gandhi, the general secretary of the Bharatiya Janata Party, was exonerated of all charges in the alleged hate speeches he made in 2009. The number of witnesses turning hostile in this case was as large as eighty- eight. Later, an explosive sting operation conducted by Tehelka revealed that most of the witnesses had been bribed to change their statements. Apart from these, the whole machinery of the criminal justice system also discourages witnesses to be truthful and consistent. Frequent adjournments during judicial proceedings frustrate witnesses. Convicting an obviously and visibly guilty accused becomes a cumbersome process because of such procedural difficulties. A witness, who may have been a mere bystander and who has no interest in the victim of the crime does not have any incentive to go through the tiresome judicial process. Witnesses are not provided adequate allowances and have to face humiliation in the courtrooms. Thus, there are no reasons for which they should bear the mental agony caused as a result of the trial. The witnesses are left with two options- either they can turn hostile and save themselves from all the mental or physical harm they may be subjected to, or they can remain resolute and truthful. The tedious judicial process forces a witness to opt for the former alternative. This leads to low conviction rates. According to the latest statistics issued by the National Crime Records Bureau in 2015, out of the 1,05,02,256 cases, trial has been completed in 13,25,989 cases only.¹⁰ The percentage of cases tried by courts to total cases for trial during 2012 to 2015 was around 12.6% whereas three decades ago i.e. in 1984, it was 29.9%.¹¹ The conviction rate, which was as high as 62.7% in 1985, has come down to 46.9%

⁷ 198th Law Commission Report, *Witness Identity Protection and Witness Protection Programmes*, Ministry of Law and Justice, Govt. of India

⁸ Jatin Anand, *First step towards witness protection*, The Hindu (July 31, 2015)

⁹ ° *Extend witness protection scheme to cops: HC to Maharashtra govt.*, Hindustan Times (February 9, 2016),

¹⁰ Sanjay Hegde, *Witness against the Prosecution*, The Telegraph (August 3, 2016)

¹¹ *No consensus among states on witness protection bill: Govt*, The Indian Express (February 3, 2017)

in 2015.¹² In rape cases, victims turning hostile account for over 80 percent of the total acquittals.¹³

The effectiveness of a criminal justice system is measured in terms of its effects on the offending. Reduced conviction rates result in a negligent attitude towards crime in the society. The fear of conviction erodes and criminal incidents rise in number. Thus, the effectiveness of the criminal justice system is compromised. Delay in the administration of justice and punishment of offenders are the causes of increasing apathy and distrust towards the judicial machinery which subsequently results in witnesses turning hostile. Thus, the effect becomes the cause and it results in an endless cycle. The prime consideration before us is to ensure a fair trial which can happen only if the witnesses are able to depose without fear, freely and truthfully. Thus, the current situation urgently calls for a scheme for the protection of witnesses.

WITNESS PROTECTION PROGRAMMES: NATURE AND SCOPE

A Witness Protection Programme is a scheme which aims to ensure that the investigation, prosecution and trial of criminal offences is not prejudiced because witnesses are intimidated or frightened to give evidence without protection from violent or other criminal recrimination. It is aimed to identify a series of measures that may be adopted to safeguard witnesses and their family members from all threats.

1. International Instruments and Statutes

There are a number of international instruments which recognize the need to protect witnesses from intimidation, threats and harm. Article 24 of the United Nations Convention Against Transnational Organized Crime deals with protection of witnesses from potential retaliation or intimidation.¹⁴ Article 13 of Convention against Torture provides for similar protection.¹⁵ Article 6(d) of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power directs the states to take measures to minimize inconvenience to victims, protect their privacy and ensure their safety.¹⁶ Similar protection is given in Articles 32 and 37(4) of UN

¹² Justice M. Jagannadha Rao, *Witness protection* (December 1, 2015),

¹³ *Id.*

¹⁴ h Convention against Transnational Organized Crime available at <http://www.unodc.org/unodc/treaties/CTOC/>.

¹⁵ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, United Nations, available at <http://www.ohchr.org/EN/ProfessionalInterest>

¹⁶ Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, United Nations, available at <http://www.un.org/documents/ga/res/40/a40r034.htm>.

Convention against Corruption, 2003.¹⁷ UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime provides special protection, assistance and support to child victims and witnesses.¹⁸ In addition to international instruments, major international criminal tribunals provide for such protection in their statutes. Article 68 of the Rome Statute of the International Criminal Court provides for protection of the victims and witnesses and their participation in the proceedings.¹⁹ It empowers the Court to take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses.

II. Witness Protection in Indian statutes

No specific rules, regulations or laws have been enacted by Parliament to protect witnesses. However, various statutes have provisions for witnesses. Sections 151 and 152 of the Indian Evidence Act, 1872 protect the witnesses from being asked indecent, scandalous, offensive questions, and questions which intend to annoy or insult them. Under Section 312 of Cr.P.C. a criminal court may order payment of reasonable expenses of any complainant or witness attending for the purposes of any inquiry, trial or other proceeding before such Court. Section 195A of the Indian Penal Code penalises threatening or inducing any person to give false evidence. It is ironic that draconian penal laws like the Terrorist and Disruptive Activities (Prevention) Act, 1987 ("TADA") and the Prevention of Terrorism Act, 2002 ("POTA") provide for protection of witnesses. Section 16 of TADA empowers the court to take measures for keeping the identity and address of a witness secret. The court may avoid the mention of names and addresses of the witnesses in its judgments or in any records of the case accessible to public and issue directions for securing the identity and addresses of the witnesses. Section 17 of the National Investigation Agency Act, 2008 and Section 30 of POTA have exactly the same provisions. In addition to this, Section 3 of POTA punishes a person who threatens a witness with violence or wrongful restraint or confinement.

EXISTING WITNESS PROTECTION PROGRAMMES

A. In Major Democracies

¹⁷ Convention against Corruption, United Nations, available at <https://www.unodc.org/documents/>

¹⁸ Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, Economic and Social Council, United Nations, available at https://www.unodc.org/pdf/criminal_justice/Guidelines_on_Justice_in_

¹⁹ Article 68, Rome Statute of the International Criminal Court.

The United States has one of the most developed Witness Protection Programs in the world. The U.S. Federal Witness Security Program, commonly known as the Witness Security (WITSEC) Program provides for relocation and other protection of a witness or a potential witness in an official proceeding concerning an organised criminal activity or other serious offence.²⁰ Protection may also be provided to the immediate family of, or a person closely associated with such witness or potential witness.²¹ The services provided to the protected individuals may include physical protection, documents for a new identity, housing, transportation, subsistence for living, assistance in obtaining employment, and other services needed to make the individual self-sustaining.²²

In U.K., Section 51(1) of the Criminal Justice and Public Order Act, 1994 provides that it is an offence to harm and threaten victims or witnesses knowing or believing that they are assisting in the investigation of an offence.²³

Japan has evolved a comprehensive Witness Protection Programme under its Code of Criminal Procedure. An accused may be denied bail if there is reasonable ground to believe that he may threaten or may actually injure the body or damage the property of a victim or of a witness or relative of the victim/witness.²⁴

B. In India

On July 30, 2015, Delhi became the first state in the country to enact and notify a Witness Protection Scheme.²⁵ Section 7 of the scheme provides that the witness protection measures shall be proportional to the threat and shall continue for limited duration.²⁶ It provides for protection measures such as installation of security devices in the witness's home, close protection and regular patrolling around his house, temporary relocation by granting financial aids from Witness Protection Fund, escort to and from the court in a state funded conveyance, etc.²⁷ Additionally, specially designed 'vulnerable witness courtrooms' have been established to conceal the identity of witnesses.²⁸ These courtrooms have special arrangements like live links, one-way mirrors, separate passages for witnesses and accused,

²⁰ Section 3521(a)(1), 18 U.S. Code, 2000. 5°

²¹ Sections 3521(b)(1)(A)-(F) and (I), 18 U.S. Code, 2000 (US).

²² *Id.*

²³ Section 51(1), Criminal Justice and Public Order Act, 1994 (UK).

²⁴ Sections 96.1(4), 89(5), Code of Criminal Procedure (Japan).

²⁵ Section 7, Delhi Witness Protection Scheme, 2015.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

option to modify the audio feed and images of witnesses, etc.²⁹ Similar protection has been provided to child victims, sexual offence and disabled in the protocols issued by the Delhi High Court.

The Bombay High Court suggested the Maharashtra government to formulate a witness protection scheme on somewhat similar lines as enacted in Delhi.³⁰ The Government submitted a draft scheme in the High Court which had provision for protection for witnesses, whistleblowers, and RTI activists.³¹ The Witness Protection Bill, 2015 which has not yet been passed, contains provisions for the protection of witnesses. These provisions ensure that there is no harm to the witness' body, property, mind or any associated people and thus maintains their right to life. Such protection is provided during the process of investigation and inquiry, during the trial as well as after the trial as warranted by the court.

Witness Protection Scheme 2018

Witness Protection Scheme, 2018 provides for protection of witnesses based on the threat assessment and protection measures inter alia include protection/change of identity of witnesses, their relocation, installation of security devices at the residence of witnesses, usage of specially designed Court rooms, etc.

The Scheme provides for three categories of witness as per threat perception:

Category 'A': Where the threat extends to life of witness or his family members, during investigation/trial or thereafter.

Category 'B': Where the threat extends to safety, reputation or property of the witness or his family members, during the investigation/trial or thereafter.

Category 'C': Where the threat is moderate and extends to harassment or intimidation of the witness or his family member's reputation or property, during the investigation/trial or thereafter.

²⁹ Guidelines for recording of evidence of vulnerable witnesses in criminal matters 2013, available at:

http://delhihighcourt.nic.in/writereaddata/upload/notification/notificationfile_lcwcd2x4.pdf

³⁰ Guidelines for recording of evidence of vulnerable witnesses in criminal matters 2013, available at:

http://delhihighcourt.nic.in/writereaddata/upload/notification/notificationfile_lcwcd2x4.pdf

³¹ http://delhihighcourt.nic.in/writereaddata/upload/Notification/NotificationFile_LCWCD2X4.PDF.

The Scheme provides for a State Witness Protection Fund for meeting the expenses of the scheme. This fund shall be operated by the Department/Ministry of Home under State/UT Government and shall comprise of the following:

- i. Budgetary allocation made in the Annual Budget by the State Government;
- ii. Receipt of amount of costs imposed/ ordered to be deposited by the courts/tribunals in the Witness Protection Fund;
- iii. Donations/ contributions from Philanthropist/ Charitable Institutions/ Organizations and individuals permitted by the Government.
- iv. Funds contributed under Corporate Social Responsibility.

The Hon'ble Supreme Court of India in its Judgment dated 05.12.2018 in Writ Petition (Criminal) No. 156 of 2016 has endorsed the Scheme. As per Article 141/142 of the Constitution, the Witness Protection Scheme, 2018 endorsed in the said Judgment of the Supreme Court is binding on all Courts within the territory of India and enforceable in all States and Union Territories.

Critically assessing the Scheme

It would not be wrong to say that the said Scheme, which is somewhat modelled on legislations that prevails in foreign jurisdictions, is definitely a welcomed step. However despite dealing comprehensively with protection issue, there are strong limitations of this exceptional Scheme also.

To start with, firstly, it is in nature of a policy rather than statute. The UNODC manual, 2008 merely describes that witness protection is given through statute or policy in different countries, and suggests that protection programmes should be well grounded in either legislation or policy.³² However the manual nowhere advocates a particular way out of these two (i.e. policy or statute). However it is submitted that the author is of the opinion that a statute/Act is far better than a policy for the purpose of witness protection. This is because of two reasons and they are:

- (a) There is an important difference between a scheme and an Act. Schemes may come and go but laws are more durable. A scheme can be trimmed or even cancelled by an official

³² *Supra* note 17 at p.43

order, whereas changing a law requires an amendment by legislature.³³

- (b) It is not the case that executive has no role, once a statute comes for a particular subject. It is submitted that a statute which enables formation of Rules by the concerned Government, to such a statute rules can be appended for day to day modalities, and additional guidance. This makes law more comprehensive and alive to the practical needs.

The second limitation of this scheme is that it is limited to Delhi region and no other State, or Central Government has come up with similar scheme or statute.

The third limitation or drawback that seems is that the Scheme demands coordination between Delhi State Government and Delhi Police. We know that the Delhi Police reports to the Home Ministry of Central Government.

Witness Anonymity & Protection; Judicial Pronouncement

Law Commission in its 154th Report draws the attention regarding protection and facilities to witnesses. The normal mode of giving evidence is by examining the witness in Court.³⁴ Report highlighted the problems faced by the witnesses, such as, adjourning the case at the fag end of the day after keeping the witnesses waiting for the whole day, while fixing the next date, witnesses' convenience is not at all kept in view and if he fails to turn up next date, harsh steps are taken against him. Even if a witness appears on the adjourned date, the chances are that the case would be adjourned again.

In **Javed Alam v. State of Chhattisgarh**,³⁵ deceased girl a student of B.A. in Govt. Girls College was run over by jeep driven by accused along with other accused who were accompanying the accused on board. The incident took place in broad daylight at the college campus witnessed by other students. The Apex Court while allowing the criminal appeal filed by other accused, except the main accused, on the ground that, "there is no evidence, much less credible, which has been salvaged from the onslaught on the witnesses which suggests that there was any meeting of minds, because everything appears to have happened suddenly."³⁶

³³ See generally <http://rural.nic.in/sites/downloads/our-schemes-glance/faqsmgnrega.pdf> (last visited on 22 March 2016)

³⁴ State of Punjab v. Naid Din, AIR 2001 SC 3955

³⁵ SCC-2009-6-450/AIR (SCW)-2009-0-3918/JT-2009-8-4.

³⁶ Ibid.

Court further viewed that this case is a classic case of deficiency in the criminal justice system to protect the witnesses from being threatened by accused. Court observed that witnesses backed out from what was stated during investigation. The statement made before the police during investigation is no evidence. Unfortunately, in cases involving influential people the common experience is that witnesses do not come forward because of fear and pressure. The plight of the girls who were under pressure depicts the tremendous need for witness protection in our country if criminal justice administration has to be a reality.

In **Delhi Domestic Working Women's Forum vs. Union of India**³⁷ Supreme Court, while indicating the broad parameters that can assist the victims of rape, emphasized that in all rape trials “anonymity” of the victims must be maintained as far as necessary so that the name is shielded from the media and public. The Court also observed that the victims invariably found the trial of an offence of rape trial a traumatic experience. The experience of giving evidence in court has been negative and destructive and the victims have often expressed that they considered the ordeal of facing cross-examination in the criminal trial to be even worse than the rape itself.

Supreme Court accepted the plight of the witnesses in the country in **Swaran Singh vs. State of Punjab**.³⁸ The judgment focused upon some important issues such as that of payment of allowances to the witness and stressed the need of a dedicated funding for it. The court observed that the witnesses are a suffered lot it went on to say: “Not only that a witness is threatened; he is maimed; he is done away with; or even bribed. There is no protection for him.”⁸¹

While dealing with the case of child sexual abuse **Sakshi vs. Union of India** the Supreme Court held: “The whole inquiry before a Court being to elicit the truth, it is absolutely necessary that the victim or the witnesses are able to depose about the entire incident in a free atmosphere without any embarrassment. Sec. 273 Cr.P.C. merely requires the evidence to be taken in the presence of the accused. The Section, however, does not say that the evidence should be recorded in such a manner that the accused have full view of the victim or the witnesses. Recording of evidence by way of video conferencing vis-à-vis Sec. 272 Cr.P.C. There is a major difference between substantive provisions defining crimes and providing punishment for the same and procedural enactment laying down the procedure of trial of such offences. Rules of procedure are hand-maiden of justice and are meant to advance and not to obstruct the cause

³⁷ (1995) 1 SCC 14

³⁸ AIR 2000 SC 2017. Supra note 4.

of justice. It is, therefore, permissible for the Court to expand or enlarge the meaning of such provisions in order to elicit the truth and do justice with the parties.”

In **National Human Rights Commission v. State of Gujarat**,³⁹ Supreme Court while constituting Special Investigation Team (SIT) for investigation in cases related to Gujarat riots 2002 observed that, a few important aspects concerning the cases need to be noted; (1) Fair trial (2) Modalities to ensure that the witnesses depose freely and in that context the need to protect the witnesses from interference by persons connected with it is the protection of victims who in most cases are witnesses. (3) Able assistance to court by competent public prosecutors.

This judgment exemplifies the courts power to protect the anonymity of the witnesses in order to elicit the truth or to meet the ends of justice. In recent judgment pronounced by Supreme Court in **Anjanappa v. State of Karnataka**⁴⁰ observed that the serious question of witness protection which is not addressed as yet.

Conclusion

Once the statute comes into existence, the general public of the country should be made aware of its scope and extent. The facilities and rights available to the witnesses in the scheme should be published in widely circulated vernacular newspapers, on websites, etc., in easy and accessible language. This would help in minimizing the social stigma attached with going to courts. The State has the paramount duty to preserve the confidence of public in the justice system. The Courts of law administering justice must not overlook any oppressive and unjust conduct in the proceedings that jeopardizes the criminal justice system in general and rights of the parties involved, in particular. It cannot be denied that a trial that aims to discover and establish the truth in its entirety ought to be fair in every aspect to all the parties. Every matter should be adjudged before impartial adjudicators. It is not solely the accused that must be dealt fairly with. The idea of a fair trial entangles in it the interests of the accused, the victim, the witnesses and the society. Obstacles that hamper the process of determining the truth are manifold and multilayered. When a witness is threatened or coerced to depose falsely before a court, the trial does not remain to be fair. Use of influence, muscle power, money or threat in order to change the witness testimony is not unheard of, to the extent that it has become a routine. It can be inflicted upon the witness or his family. Failing to hear the testimony of

³⁹ AIR 2009 (SCW) 3049. Supra note. 71.

⁴⁰(2014) 2 SCC 776.

credible witnesses tantamounts to miscarriage of justice. Safeguarding the witness is tremendously imperative in combating crime and criminals.

If the statute is implemented in the desired manner, then greater number of witnesses will give their testimonies fearlessly and there would be a decrease in number of witnesses turning hostile. But, this is not enough. There is a general perception among people that criminals will be acquitted despite their testimonies due to flawed investigation. Thus, there is a need for an impartial and fair criminal investigation mechanism. Witness protection is only one aspect of this mechanism.

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