

# **WITNESS PROTECTION LAW: A HUMAN RIGHTS PERSPECTIVE**



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**“Witness Protection Law: A Human Rights  
Perspective”**

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Dr. Aditi Sharma

## **Preface**

A thought that has been enduring in mind when becomes real is truly an interesting and exciting experience. This book is one such cherished work that has its roots in the persuasion of many authors, contributors and also mentors which has now embellished to become the snapshot of the innumerable efforts put in since months. This book serves to reinforce increased awareness, improved interaction and integration among all of us.

As the Editor of this book entitled “Witness Protection Law: A Human Rights Perspective”, I wish to thank the researcher, who has submitted her contributions. The main aim of this book is to enhance knowledge among researchers, students and the legal fraternity at large and to provide an opportunity for creative research and multi-level consideration of broader issues related to legal insight from both national and interdisciplinary perspective.

It has been indeed a pleasure going through the journey of compiling and editing this book. This maiden issue will surely inspire all of us for a new beginning and enlighten the minds of young scholars with hope, confidence and faith.

Happy reading!

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## **ABBREVIATIONS**

<b>AC</b>	<b>Appeal Cases</b>
<b>ACSA 2001</b>	<b>Anti-Terrorism Crime and Security Act 2001</b>
<b>AD</b>	<b>Apex Decisions</b>
<b>AFP</b>	<b>Australian Federal Police</b>
<b>AG</b>	<b>Attorney General</b>
<b>AIAMP Ibero</b>	<b>American Association of Attorney General Offices</b>
<b>AIR</b>	<b>All India Reporter</b>
<b>AJA 1999</b>	<b>Access to Justice Act 1999</b>
<b>BA 1976</b>	<b>Bail Act 1976</b>
<b>BAA</b>	<b>Bail (Amendment) Act 1993</b>
<b>Bom.</b>	<b>Bombay</b>
<b>BPRD</b>	<b>Bureau of Police Research and Development</b>
<b>C(S)A</b>	<b>Crime (Sentence) Act (1997 and 2000)</b>
<b>CA 1960</b>	<b>Children Act 1960</b>
<b>CAA</b>	<b>Criminal Appeal Act (1968 and 1995)</b>
<b>CAR</b>	<b>Criminal Appeal Reporter (SC)</b>
<b>CAR-1968</b>	<b>Criminal Appeal Rules 1968</b>
<b>CAR-1982</b>	<b>Crown Court Rules 1982 (SI 1982 No.1109)</b>
<b>CC Cases</b>	<b>Chandigarh Criminal Cases</b>
<b>CDA-1998</b>	<b>Crime and Disorder Act 1998</b>
<b>CJA</b>	<b>Criminal Justice Act (1948, 1961, 1967, 1972, 1982, 1987, 1988, 1989, 1991, 2001).</b>
<b>CJCSA-2000</b>	<b>Criminal Justice and Court Service Act, 2000</b>
<b>CJPA-2001</b>	<b>Criminal Justice and Police Act 2001</b>
<b>CJPOA-1994</b>	<b>Criminal Justice and Public Order Act 1994.</b>
<b>CJS</b>	<b>Criminal Justice System</b>
<b>CLA-1977</b>	<b>Criminal Law Act-1977</b>
<b>CMC</b>	<b>Crime and Misconduct Commission</b>
<b>CPLA-1996</b>	<b>Criminal Procedure and Investigation Act 1996</b>
<b>CPR-1998</b>	<b>Civil Procedure Rules 1998 (SI 1998 No.1262)</b>

<b>CPS</b>	<b>Crown Prosecution Service</b>
<b>CR LJ</b>	<b>Criminal Law Journal</b>
<b>CR R</b>	<b>Criminal Rulings</b>
<b>CrPC</b>	<b>Criminal Procedure Code</b>
<b>CYPA</b>	<b>Children and Young Persons Act (1993 and 1969)</b>
<b>DLT</b>	<b>Delhi Law Times</b>
<b>DPP</b>	<b>Director of Public Prosecutions</b>
<b>DRJ</b>	<b>Delhi Reported Judgments</b>
<b>ECHR</b>	<b>European Convention on Human Rights</b>
<b>FIR</b>	<b>First Information Report</b>
<b>GJR</b>	<b>Gujarat Law Reporter</b>
<b>HC</b>	<b>High Court</b>
<b>ICC</b>	<b>International Criminal Court</b>
<b>ICTR</b>	<b>International Criminal Tribunal for Rwanda</b>
<b>ICTY</b>	<b>International Criminal Tribunal for the Former Yugoslavia</b>
<b>ILI</b>	<b>Indian Law Institute</b>
<b>ILR</b>	<b>Indian Law Reports</b>
<b>IPC</b>	<b>Indian Penal Code</b>
<b>ISISC</b>	<b>International Institute of Higher Studies in Criminal Sciences</b>
<b>Mad.</b>	<b>Madras</b>
<b>MOU</b>	<b>Memorandum of Understanding</b>
<b>NCT</b>	<b>National Capital Territory</b>
<b>NHRC</b>	<b>National Human Rights Commission, India</b>
<b>NWPP</b>	<b>National Witness Protection Program</b>
<b>OAS</b>	<b>Organization of American States</b>
<b>OEO</b>	<b>Office of Enforcement Operations</b>
<b>OPCO</b>	<b>Osservatorio Permanente sulla Criminalita' Organizzata</b>
<b>POTA</b>	<b>Prevention of Terrorism Act, 2002</b>
<b>PUCL</b>	<b>People's Union for Civil Liberties</b>
<b>RCMP</b>	<b>Royal Canadian Mounted Police</b>
<b>RCR</b>	<b>Recent Criminal Reports</b>
<b>RPE</b>	<b>Rules of Procedure and Evidence</b>
<b>SC</b>	<b>Supreme Court</b>
<b>SCALE</b>	<b>Supreme Court Almanac</b>
<b>SCC</b>	<b>Supreme Court Cases</b>
<b>SCR</b>	<b>Supreme Court Reporter</b>
<b>SDU</b>	<b>Special Detective Unit</b>
<b>SECI</b>	<b>Southeast European Cooperative Initiative</b>
<b>SLP</b>	<b>Special Leave Petition</b>
<b>SWPP</b>	<b>State Witness Protection Program</b>
<b>TADA</b>	<b>Terrorist and Disruptive Activities (Prevention) Act, 1987</b>
<b>UJ</b>	<b>Unreported Judgment</b>
<b>UNAFEI</b>	<b>United Nations Asia and Far East Institute</b>
<b>UNCTOC</b>	<b>United Nations Convention against Transnational Organized</b>
<b>UNICRI</b>	<b>United Nations Interregional Crime and Justice Research</b>
<b>UNODC</b>	<b>United Nations Office on Drugs and Crime</b>
<b>VWS</b>	<b>Victims and Witnesses Section</b>
<b>WITSEC</b>	<b>Witness Security Program</b>

<b>WP</b>	<b>Writ Petition</b>
<b>WPP</b>	<b>Witness Protection Programme</b>
<b>WPPA</b>	<b>Witness Protection Program Act</b>



# **CHAPTER I**

## **INTRODUCTION**

### **1.1 OVERVIEW**

Justice is a damsel's idol cullet out of the clay of witness-testimony joined with a methodical and imaginative greatness depicted by the brushes of legal counsellors and judges blending the paints of various types of evidence.<sup>1</sup> The administration of criminal justice is quite possibly the main organ of the constitutional based democracy system to secure individuals' rights along with the interests of the State.<sup>2</sup> The justice framework of criminal law is to keep up with law and order and to advance a conviction that all is good among the individuals present in the society.<sup>3</sup> This is finished by punishing the liable and thereby restores the confidence of the average person in the criminal justice framework.

The Law Commission of India, in its own wordings said, "The criminal justice system in our country has been the focus of several studies and reports of expert bodies. The Law Commission of India has itself submitted several reports on topics related to the substantive and procedural aspects of the criminal justice system. Among the problem areas that have been highlighted is the one relating to intimidation or allurement of victims or witnesses for the prosecution leading to the inevitable consequence of the collapse of the trial."<sup>4</sup>

In the case of *R.K. Anand v. Registrar, Delhi High Court*<sup>5</sup>, the Hon'ble Supreme Court gave light to the issue of obstruction in criminal proceedings by the manner of witness intimidation in the words given below:<sup>6</sup>

"Every now and then one would come across reports of investigation botched up or of the trial being hijacked by some powerful and influential accused, either by buying over or intimidating witnesses or by creating insurmountable impediments for the trial court and not allowing the trial to proceed. The trial would fail because it was not protected from external interferences.

Every trial that fails due to external interference is a tragedy for the victim(s) of crime. More importantly every frustrated trial defies and mocks the society based on the rule of law. Every subverted trial leaves a scar on the criminal justice system. Repeated scars make the system unrecognizable and it then loses the trust and confidence of people."

These words given by the Supreme Court highlighted the requirement of preventing intimidation of witness so that every trial may reach an end of justice. The cornerstones of a

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<sup>1</sup>Ravulapati Madhavi, "Witness Attack on Justice", Justitia, Osmania University Law Quarterly, Faculty of Law, Osmania University, Vol. I Part I, p. 83.

<sup>2</sup> Renu Sharma, "Criminal Justice System in India: Some Reflections", Third Concept, April 2011, p. 41.

<sup>3</sup>Meenakshi Sinha, "Criminal Justice System: Issues and Concern for Witness Protection in India", Cri.L.J, January 2009, journal section, p.11.

<sup>4</sup> The Law Commission of India, Consultation paper on 'Witness Protection and Witness Identity Protection', 2004, p. 15.

<sup>5</sup> (2009) 8 SCC 106 at p. 207.

<sup>6</sup> Ibid.

criminal case are witnesses. The Apex Court in *Swaran Singh v. State of Punjab*<sup>7</sup> presented the dire need of witnesses in the words given below:

“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.”

The worth of witnesses in the criminal procedure actually remains despite the appearance of new resources of accessible proof, for example, CCTV cameras and DNA profiling.<sup>8</sup> Without witness involvement, present day innovation and science can't, by themselves, help the prosecution in demonstrating its case past the reasonable doubt.<sup>9</sup>

In the case of *Zahira Habibullah Sheikh v. State of Gujarat*<sup>10</sup>, the Apex court remarked that, “Witnesses are the eyes and ears of justice. If they are incapacitated from acting as eyes and ears of justice, the trial gets putrefied and paralysed and it no longer constitutes fair trial. The incapacitation may be due to several factors like witness being not in a position for reasons beyond control, to speak the truth in the court due to negligence or ignorance or some corrupt collusion”<sup>11</sup>

As of late, in numerous high-profile cases, accused were cleared of their charges because of material witnesses turning hostile. The eyewitness is turning into an uncommon species. In any event, when he is accessible, he changes its colour like a chameleon to such an extent, that in 2006 the High Court needed to penalize *Zahira of Gujarat* for her vivid varieties of her form of version in different courts. The Red Herring of a 'hostile' eyewitness (paid off, compromised, supported or won) had completed numerous cases which were open and shut in nature.<sup>12</sup> In accordance to the Apex Court, “Time has become ripe to act on account of numerous experiences faced by the court on account of frequent turning of witnesses as hostile, either due to threats, coercion, lures and monetary considerations at the instance of those in power, their henchmen and hirelings, political clouts and patronage and innumerable other corrupt practices ingeniously adopted to smother and stifle truth and realities coming out to surface.”<sup>13</sup> .....

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<sup>7</sup> AIR 2000 SC 2017 at p. 2022

<sup>8</sup> Judge, Lord Chief Justice, “Vulnerable Witnesses in the Administration of Criminal Justice?” (17th Australian Institute of Judicial Administration Oration in Judicial Administration, 7 September 2011) : available at <http://www.judiciary.gov.uk/media/speeches/2011/lcj-speechvulnerablewitnesses-in-admin-criminal-justice> (last visited on 15 August 2019), quoted in Bala Reddy, Victim and Witness Protection in Singapore, available at [www.gov.mu/portal/sites/dpp/docs/ReddyPaper2.pdf](http://www.gov.mu/portal/sites/dpp/docs/ReddyPaper2.pdf), last visited on 19th January, 2018.

<sup>9</sup> Ibid.

<sup>10</sup> (2004) 4 SCC 158.

<sup>11</sup> Id., p.187.

<sup>12</sup> B.R. Sharma, Scientific Criminal Investigation, Universal Law Publishing Company Private Limited, Delhi, 2006, p. (v).

<sup>13</sup> (2004) 4 SCC 158.

## About the Author

Dr. Aditi Sharma is an Assistant Professor at School of Law, Mody University, Lakshamngarh, Sikar, Rajasthan, where she teaches law to undergraduate and postgraduate students. She earned her Ph.D. from School of Law, Mody University, Lakshamngarh, Sikar, Rajasthan. She has published various research papers in reputed National and International journals. Her research work has been widely cited in multiple academic literature. She has also presented numerous papers at International and National Seminars and Conferences.

Dr. Aditi Sharma has assisted in preparing the book titled “Supreme Court on Women Justice - Cases and Material” written by Eminent Law Scholar Prof. Satish C. Shastri, Dean School of Law, Mody University, Lakshamangarh, Sikar, Rajasthan. Her contribution to the book has been invaluable, as she has helped in the research and editing process of the book.

Dr. Sharma is an accomplished scholar and an expert in her field. Her expertise in the domain of law has made her an asset to the academic community. She is highly respected by her colleagues and peers for her dedication and contributions to legal research and scholarship.



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