

A STUDY OF CRITICALLY EVALUATE OF JUDICIARY IN PROTECTION OF THE WITNESSES DURING THE TRIAL

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ABSTRACT

The purpose of this study is to examine the role of society as a whole in ensuring the safety of witnesses during a criminal trial. The Chapter also analyses the participation and the role of various Non-Governmental Organizations in implementation of the witness protection programmes. In the second part, we look at the role of the judiciary in witness protection during trials, including various judgments, guidelines, and recommendations issued by High Courts and the Honourable Supreme Court of India on various provisions relating to witness protection from various legislations such as TADA and POTA. It is concluded the study and makes recommendations in the hope that they will be useful to the Legislature in enacting an updated and wholesome law; the Executive in ensuring its proper implementation; and the judiciary, among other things, in reviewing current Indian standards and comparing them to best practices abroad.

KEYWORDS: Critically Evaluate, Judiciary, Protection, Witnesses, Non-Governmental Organizations, witness protection programmes

INTRODUCTION

"The judiciary, in a democratic set up of our society as embodied in the Constitution, is in one sense not a very large structure, but it is unquestionably a watchtower over all the vast structures of the other limbs of State," he says. For example, the judiciary is viewed as a repository of public confidence and a trustee for the people. The existence of the court is the only thing that can save you when all else fails and your grievances go ignored. The independence and dignity of a temple that is revered by all citizens of our country, regardless of caste, creed, religion, belief, or faith, must be properly protected.

As the constitution makers have often stressed in their numerous arguments, judicial independence can only exist in connection with public trust and the preservation of that sacred trust. Judges as representatives of the judiciary, must operate without fear or favour and be held to the highest standards of integrity and honesty by virtue of their office, consequently being held accountable for all their acts

and decisions. This also highlights the concept of judicial accountability, which is still in its early stages. What we need to understand is that judicial accountability is a side effect of judicial independence. The demand for judicial accountability becomes crucial in the current situation that the judiciary must deal with. Due to a lack of transparency and suspected systematic corruption, the court has been regarded through a prism of suspicion and distrust, where legality does not automatically translate into legitimacy. In a system beset by endemic delays and frequently perceived as an expensive affair, the requirement for judicial accountability becomes vital. A system of checks and balances must arise from within the judiciary, but this concept has always been met with resistance from within the judiciary, which is afraid of losing its independence. However, it is vital to recognise that judicial accountability cannot exist in a vacuum, because citizens can only deposit their trust in an accountable judiciary. An improved public perception of judicial responsibility, which is dependent on personal accountability, can influence the degree of judicial independence. A new era in the history of informational law has begun, in which an institution that has consistently reinforced the idea of information access as a fundamental and human right is questioned as to whether it can be applied to them.

The Supreme Court was requested in 2019 to determine if the office of Chief Justice of India is covered by the Right to Information Act of 2005, and the answer was yes. On the one hand, this may be applauded as a significant step forward in the field of information law, but it also opens the door to a host of new concerns, many of which will need to be addressed in the near future.

The Stages of a Criminal Prosecution

In most criminal cases, an arrest is the first step. The arrest may be the outcome of a police investigation in certain cases, but it may also be the result of a superficial probe in others. In any case, how the cops investigate people and acquire evidence is almost always a source of controversy in a criminal case. During an arrest, a criminal suspect is told of his or her Miranda rights. Two of these are the right to remain silent and the right to an attorney. After being detained, the defendant is subjected to a cursory search for weapons and contraband. The defendant is then transported to the nearest jail, police station, or detention centre to be booked. During booking, the defendant is photographed and fingerprinted, and the arrest is documented in the police log, or blotter. The defendant is informed of the charge or charges if she or he has not already been informed. Furthermore, the defendant is allowed to make one telephone call. In order to await his or her appearance before a magistrate, the defendant may be placed in a holding cell after being stripped of all personal possessions, belts, and shoelaces. For misdemeanours, which are less serious than felonies, the defendant may be released on monetary bond and a promise to appear before a magistrate.

While the defendant awaits their first court appearance, a police officer files a complaint against him. A complaint is a legal document that describes the alleged crime in detail. It is reviewed by prosecutors before being presented to the court. The court looks over the complaint to see if there is enough legal justification to detain the person. The complaint will be dismissed and the individual will be released from custody if the magistrate judges that the circumstances do not give Probable Cause to believe that the suspect committed the offence.

The first appearance should happen as soon as possible. Many jurisdictions have a 24-hour limit on first custody before a hearing, however if the arrest is made on a Friday, the period can be prolonged to 72 hours. At the first appearance, the magistrate tells the defendant of the accusation or charges contained in the complaint. The magistrate also informs the defendant of his or her rights, such as the right to remain silent and the right to an attorney. If a defendant in a felony case is not represented by private counsel and cannot afford private counsel, the court appoints an attorney. This is usually a public defender, although it could also be a private defence attorney who is paid by the court or volunteers. In most cases, the attorney meets with the defendant and represents him or her during the initial appearance. In a criminal proceeding, the defendant may or may not be entitled to a free attorney. Bail is established during the first appearance if the magistrate judges that there is probable cause. Bail is a series of conditions that must be met in order for a defendant to be freed from custody pending trial. Bail is typically paid in cash or other liquid assets. Bail is used to guarantee the defendant's appearance at trial. If a magistrate considers the defendant constitutes a threat to the community or is likely to flee, he or she may refuse to set bail in various nations. In this scenario, the defendant must remain in custody until the case is resolved. If the case is a misdemeanour, the defendant's first court appearance is an Arraignment, where he or she enters a guilty or not guilty plea. After that, the defendant is offered the choice of posting bail or departing on her or his own recognisance, with the understanding that she or he will return for trial. After the first appearance, a felony case advances to a Preliminary Hearing. The prosecution and the defence attorney talk before the hearing to see if a plea bargain or a mutually acceptable resolution of the case is conceivable. If a bargain can be reached that is acceptable to the defendant during the preliminary hearing, it is presented to the court for approval.

STAGES OF CRIMINAL CASES

The trial is the most well-known aspect of a criminal case. Despite the fact that many criminal cases never go to trial as a result of plea bargains, motions to dismiss, and other factors, others do. A trial is simply defined as a meeting of opposing parties in a court, generally before a judge and/or jury, to present evidence and resolve their disagreement. In a civil trial, the parties are people, groups of individuals, or businesses. In a criminal trial, the state, through a prosecutor, brings a criminal case against an individual or group of individuals.

The defence must first decide whether a judge-only or jury-only trial is preferable. Although bench trials are generally quicker and less burdensome for the court than jury trials, most criminal defendants have the right to have their case heard by a jury of their peers because their life, liberty, or property may be at issue. On the other hand, the prosecution is unable to request a jury trial. A jury trial will necessitate the selection of a jury from a pool of qualified individuals. In the voir dire process of jury selection, potential jurors are interrogated to determine their fitness and impartiality. The counsel for both sides must agree on each juror. Following jury selection, the defence and prosecution file motions in limine, asking the court to accept or reject specific evidence. In a criminal trial, the opening statements are the next step. The prosecution's opening statement will lay out the facts surrounding the criminal accusations against the defendant and explain what the prosecution is attempting to prove, followed by the defense's opening statement, which will discuss how the defendant's innocence will be demonstrated. In some cases, the defence will wait until the defence case is underway to make its argument. Key evidence as well as witness testimony will be presented to the judge and jury. The prosecution will submit its evidence and witness testimony to begin the case-in-chief process. The witnesses for the prosecution will then be cross-examined by the defence. Following cross-examination, the prosecution is given the opportunity to re-interrogate its witnesses through redirect. The prosecution will then rest its case. The prosecution may attempt to dismiss the charges if the defence believes there is insufficient evidence to support a guilty verdict. Almost always, the judge will deny the defense's motion to dismiss.

The defence presents and interrogates its witnesses, the prosecution cross-examines, and the defence redirects. After that, the defence takes a break. Following the rebuttal by the prosecution, both the prosecution and the defence meet with the judge to write jury instructions.

The criminal trial moves on to the closing arguments or speeches provided by both parties. Both the opening and closing remarks are very similar. The prosecution will deliver the complete case against the defendant. Following that, the defence will make closing arguments as to why the defendant's conviction is not based on significant evidence. In a criminal trial, the prosecution gets the ultimate say and has the option of refuting the defense's closing argument.

1. Pre-Trial

A pre-trial stage is the initial stage in a criminal prosecution. Pre-trial, as the name implies, is a step before a trial. The case's police officials/investigating officer play a key role at this stage. When a crime is committed, a FIR is filed, and the police begin their investigation. assemble evidence, Arrest of the accused, appearance before the magistrate, bail procedure, and filing of the charge sheet In general, we may conclude that pre-trial is the stage during which the police investigate the entire offence and create a report, while the accused can exercise his rights.

2. Trial

The trial stage is the next step. When a criminal case against an accused person is brought before a court, it is referred to as a trial. The seven steps of a criminal trial are listed below. -

- 1) Commencement of proceedings before court
- 2) Framing of charges
- 3) Prosecution evidence
- 4) Statement of accused
- 5) Defence evidence
- 6) Final arguments
- 7) Judgment

1) Commencement of proceedings before court:

The beginning of proceedings before a magistrate is the initial stage of a criminal trial. At this point, the magistrate takes cognizance of the matter and, if required, orders an investigation based on the police report or a complaint.

The beginning of proceedings before the magistrates is dealt with in Chapter XVI, section 204–210 of "The code of criminal procedure, 1973." A criminal case can be divided into three categories. 1. A warrant is issued, 2. a summons is issued, and 3. a summary is issued. In plain terms, warrant cases are those in which the penalty for the offence is more than seven years in jail. Summons cases are those in which the maximum penalty for the offence is two years in prison. In summary, the maximum penalty for the offence is six months in prison. According to section 2(x), a "warrant-case" is a case involving an offence punished by death, life imprisonment, or a sentence of more than two years in prison. Section 2(w) defines "summons-case" as a case involving an offence that is not a warrant-case.

2) Framing of charges:

The framing of charges is the second stage in a criminal trial. When a matter is brought before a magistrate and the magistrate determines that the case is genuine/true and that the accused should not be released, the court will file charges against him.

The charges are dealt with in Section 211-224 of Chapter XVII of "The Code of Criminal Procedure, 1973." The framing of charges is a crucial phase since it specifies the charges, section, and offence for which the accused will be tried. The drafting of charges informs both the accused and the court on the nature of the offence to be tried. The value of framing charges in jurisprudence is that it allows for a fair trial and informs the accused that he is being tried on these allegations.

3) Prosecution evidence:

The third stage is prosecution evidence, which begins when the court issues charges against the accused. During this stage of prosecution evidence, the public prosecutor, who is essentially the complainant's lawyer, produces evidence against the accused. In a criminal trial, the prosecution's evidence is crucial since it will establish the accused guilty of the crime. At this point, the prosecution will call witnesses to testify in support of the case's facts.

4) Statement of the accused:

The accused's statement is the fourth stage. Simply put, the accused's statement means that he or she must be given the opportunity to be heard. The accused must tell/narrate the court the facts of the case. The statement of the accused is dealt with in Section 313 of the Code of Criminal Procedure of 1973. The text of Section 313 was as follows: Possession of the authority to interrogate the accused.

5) Defence evidence:

Defense evidence is the fifth stage of a criminal trial. The accused in a criminal trial has the right to defend himself, and so has the opportunity to present his evidence in order to prove his innocence. Although the prosecution bears the burden of proof in proving the accused guilty, the accused should be given the opportunity to defend himself in accordance with the rule of law and a fair trial.

6) Final arguments:

Final arguments are the sixth step. Both the prosecution and the accused's lawyer will argue for the last and final time at this stage. At this point, both parties submit their reasons and attempt to persuade the magistrate to believe or prove their case.

7) Judgment:

Judgment is the final stage of a criminal trial. The term "judgment" refers to the court's ultimate ruling. The court will make its verdict after hearing both sides. The accused will either be acquitted or convicted depending on the outcome of the decision. When a court convicts an accused person, he is sentenced to

pay a fine for the crime he has committed. The parties have the right to appeal, review, or revise the judgement after it has been rendered. In a criminal trial, there are a total of seven stages. In a criminal trial, all of these steps are critical. This will ensure that the trial is fair.

3. Post-Trial:

In a criminal case, the post-trial stage is the third stage. After the trial, when the judgement is delivered, this stage enters the scene. Appeals, revision, and review are all part of the post-trial stage.

RESPECTS TO RIGHT AND JUDICIARY

A right is defined as an entitlement or reasonable claim to a particular type of favourable or unfavourable treatment from others, as well as support or non-interference from others. In other words, a right is something that every member of a community is ethically entitled to, and for which the community has the right to disregard or forcefully remove everything that stands in the way of even a single individual obtaining it. Individuals have rights, and no organisation has any rights that are not directly derived from those of its members as individuals; and, just as an individual's rights cannot extend to the point where they infringe on another individual's rights, so must the rights of any organisation, whether inside or outside the organisation, yield to those of a single individual. Rights are the essential conditions of social existence without which no one may achieve his or her full potential. These are the prerequisites for both the individual's and society's health. People can only develop their personalities and provide their best contributions to society when they have and enjoy rights.

1 Right

Every country's judiciary has a commitment and a constitutional role to defend citizens' human rights. This function is delegated to the superior judiciary, namely the Supreme Court of India and the High Courts, by the Constitution of India. The Supreme Court of India is one of the most active tribunals in the world when it comes to human rights protection. It has a strong reputation for independence and trustworthiness. The preamble of the Indian Constitution reflects the Constitution-makers' goals of creating a new socioeconomic order based on social, economic, and political justice for all, as well as equality of position and opportunity for everyone. This fundamental constitutional goal requires every state entity, including the administration, legislature, and judiciary, to work together to achieve the goals outlined in the Fundamental Rights and State Policy Directive Principles. To advance Human Rights jurisprudence, the judiciary must use a creative and purposeful approach to interpreting Fundamental Rights and Directive Principles of State Policy enshrined in the Constitution. A robust and independent judiciary is essential for the promotion and preservation of human rights. The judiciary has made two key

contributions to human rights law: (1) substantive enlargement of the idea of human rights under Article 21 of the Constitution, and (2) procedural innovation in Public Interest Litigation.

Types of Rights

1. Natural Rights:

Many scientists believe in natural rights. They claimed that persons are endowed with a number of natural rights. They used to live in a condition of nature before coming to dwell in society and state. They respected certain natural rights, such as the right to life, liberty, and property, in it. Natural rights are an integral aspect of human nature and logic. According to political theory, every individual is born with certain fundamental rights, which no government may take away. Natural right refers to the objective rightness of the right things in classical political philosophy, whether it is the virtue of a person, the correctness of an action, or the excellence of a regime. No one would call a man happy who lacked courage, temperance, justice, or intelligence, according to Aristotle in Politics (1323a29-33) A man who was easily terrified, unable to control his desires for food or drink, eager to damage his friends for a petty gain, and generally irrational could not possibly have a good life. Even if chance sometimes prevents excellent actions from having their expected outcomes, allowing cowards to outperform brave men, courage is still objectively superior to cowardice.

2. Moral Rights

Moral rights are founded on human awareness. They are backed up by the moral force of the human mind. These are based on a human sense of justice and goodness. This is not aided by the force of the law. Moral rights are sanctioned by a sense of goodness and public opinion. No legal action can be taken against someone who violates a moral right. These rights are not enforced by the government. These rights are not recognised by its courts. Rules of good conduct, civility, and moral behaviour are included in moral rights. These represent the people's moral excellence. Before being included in the Berne Convention for the Protection of Literary and Artistic Works in 1928, moral rights were first recognised in France and Germany. The Copyright Act of Canada established moral rights. In 1989, the United States signed the convention and incorporated a form of moral rights into its copyright law, Title 17 of the United States Code. Under the United States Copyright Act, there are two major moral rights. The right of attribution, often known as the right of paternity, and the right of integrity are two among them.

3. Legal Rights:

Legal rights are those that are recognised and enforced by the government. Any violation of a legal right is punishable under the law. The state's law courts uphold legal rights. These rights can be used to hold

people accountable as well as the government. Legal rights differ from moral rights in this way. All citizens have equal access to legal rights. Without exception, all citizens adhere to their legal rights. They have the option of going to court to have their legal rights enforced.

Features of Rights

1. Rights are social constructs. These are the outcomes of social interaction.
2. Individual claims for social advancement are referred to as rights.
3. Rights are acknowledged by society as universal claims made by all people.
4. People's rights are reasonable and moral claims they make on their community.
5. Because rights are only present in society, they cannot be used against it.
6. People must utilise their rights for their own growth, which entails their advancement in society through the promotion of social good. Rights can never be used against the greater good.
7. All people have equal access to their rights.
8. With the passage of time, the contents of rights change.
9. There are no absolute rights. These are always subject to restrictions judged necessary for the preservation of public health, security, order, and morals.

Judiciary

Apart from freedoms, equality, and fraternity, the Indian judiciary has ensured justice for all of its citizens since its inception in the Indian constitution. The duty of the judiciary in Indian democracy is to protect citizens' fundamental rights, especially the administration of fair justice. A democratic state's soul is justice, and it must be administered without fear or favour. An independent judiciary in a democracy must have attributes such as integrity, impartiality, and intelligence. In this post, we'll go over the basics of the judiciary, including its role and independence, as well as other topics. In the higher classes, you will learn about the powers of the judiciary in India, as well as various statutes, leading cases, and publications on the independence of the judiciary in India. The judiciary (also known as the judicial system, judicature, judicial branch, judicative branch, and court or judiciary system) is a court system that resolves legal disputes and interprets, defends, and implements the law in legal matters. The judiciary is the branch of government responsible for interpreting the law, resolving disputes, and providing justice to all citizens. The judiciary is seen as the custodian of the Constitution as well as the watchdog of democracy. It is

critical for democracy to function properly to have an unbiased and independent court. In your social environment, you may come across several events in which people contact the local courts, the High Court, or the Supreme Court. The country of India is governed by the rule of law. The judiciary is an essential component of our government and plays a crucial role in the functioning of our democracy.

FUNCTIONS OF INDIAN JUDICIARY

The functions of the judiciary in India are:

- 1) **Administration of justice:** The judiciary's primary job is to apply the law to specific cases or to resolve disputes. When a dispute is brought before the courts, the evidence produced by the participants is used to "judge the facts." The law then decides which law applies to the situation and applies it. The court will impose a penalty on the accused person if they are proven guilty of breaking the law during the trial.
- 2) **Creation of judge-case law:** In many circumstances, judges are unable or unwilling to choose the most appropriate law for application. In such instances, judges use their wisdom and common sense to determine what the right legislation is. Judges have accumulated a large body of 'case law,' or 'judge-made law,' as a result of their actions. According to the doctrine of 'stare decisis,' prior judicial decisions are often considered binding on subsequent
- 3) **Guardian of the Constitution:** The Constitution is guarded by India's highest court, the Supreme Court (SC). The court resolves questions of jurisdiction between the federal government and state governments, as well as between the legislature and the executive branch. The judiciary declares any statute or executive order that violates any section of the constitution invalid or null and void. This is referred to as "judicial review." Judicial review has the merit of protecting individuals' fundamental rights and maintaining a balance between the union and the constituent parts of a federal state.
- 4) **Protector of Fundamental Rights:** The judiciary ensures that the State and other agencies do not infringe on people's rights. Writs are issued by superior courts to enforce Fundamental Rights.
- 5) **Supervisory functions:** The higher courts also perform the function of supervising the subordinate courts in India.

- 6) **Advisory functions:** In India, the Supreme Court also serves as a consultative body. It has the authority to issue advisory opinions on constitutional issues. When there are no disputes and the executive desires it, this is done.
- 7) **Administrative functions:** Some of the courts' responsibilities are non-judicial or administrative in nature. The courts have the power to issue licences, administer estates (property), and appoint receivers. Marriages are registered, and guardians for minor children and lunatics are appointed.
- 8) **Special role in a federation:** In a federal system like India's, the judiciary also performs the important task of settling disputes between the centre and states. It also serves as a mediator in inter-state issues.
- 9) **Conducting judicial enquiries:** Judges are frequently appointed to lead commissions that investigate cases of public servant errors or omissions.

INDIAN JUDICIARY – CIVIL COURTS

Civil cases are heard in civil courts. In practically all instances other than criminal cases, civil law is referred to. When a crime such as robbery, murder, or arson is committed, criminal law is applied.

- When one person sues another person or entity, civil law is invoked. Divorce, eviction, consumer issues, debt or bankruptcy are all examples of civil lawsuits.
- The powers of judges in civil and criminal courts are distinct. While a judge in a criminal court can sentence a convicted person to prison, a judge in a civil court can order the guilty to pay fines and other penalties.
- District Judges sitting in District Courts, Second Class Magistrates, and Civil Judges (Junior Division) are at the bottom of India's judicial structure.
- The court of district judges is a district's highest civil court, with administrative and judicial authorities.
- The District Judge's court is located in the district headquarters.
- The judge is known as a District and Sessions Judge because he or she can try both criminal and civil cases.
- The Sub-Judge, Additional Sub-Judge, and Munsif Courts are all part of the district courts.

- The Munsif's court handles the majority of civil cases.

CONCLUSION

In every criminal trial, the law ensures that no innocent person suffers at the hands of the state, and so provides him with different rights to defend himself before being sentenced. This is also to ensure that he has an equal opportunity to face an open and fair trial in order to uncover the truth and accomplish the goals of justice. By interpreting Constitutional principles and using numerous legislative laws in this regard, the judiciary has repeatedly given various orders to the state and police to preserve the dignity of the accused not only during the trial but also after the conviction. Unfortunately, in order to protect the sanctity of the principle of fair trial, the legislators and courts overlook the by-product of the crime, i.e. the victim and witness who support the justice delivery system. It should be noted, however, that while some legislation exists to protect the rights of victims, there is very little legislation safeguarding the rights of witnesses. The Law Commission of India's attempt to bring the subject of witness protection to the attention of the public has stalled and consequently remains unanswered to a considerable extent. To begin, the Delhi government's witness protection system, which was presented in April 2013, and the Maharashtra government's scheme, which was introduced in April 2014, may prove to be watershed moments in the process. However, as reported in the news, the plans do not appear to be foolproof, and their implementation is cynical. In India, the Supreme Court has attempted to grant witness protection. In some circumstances, the Courts' work in establishing a few rules in the context of the procedural aspects of witness protection is laudable. However, without the substantive rights of witnesses and victims given out in the form of separate legislation, these procedural components are inadequate or feeble. Even if the Honble High Court of Delhi's recommendations in the landmark case of Neelam Katara have garnered widespread approval, they still require legislative support. While these rules address the most important aspects of witness protection, they are insufficient to the point where the witness's identity is jeopardised due to a lack of proper procedures for safeguarding the witness's anonymity and confidentiality before and throughout the trial.

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