

PROTECTION OF WITNESSES IN JUSTICE DELIVERY PROCESS IN INDIA: A CRITICAL STUDY

Mrs. Sonakshi Bhagat

Research Scholar (LL.M.), UILS, Chandigarh University

Abstract

A witness is considered to be one of the most essential clues for judiciary to arrive at a rational conclusion while deciding in a criminal case. The judicial system of India has always faced significant difficulty to deal with problems related to witness protection. Witness hostility still continuous to prevail and witness protection remains to be bleak. The major complications faced while conducting trials is witnesses are vulnerable and easily subjected to pressures of withdrawal from the case, the fear of intimidation, the expenditure involved during proceedings and the ultimate fear or any physical or mental hurt. The most concerning fact to the justice delivery system in India is that intimidation is a profound factor having serious impact on the government to enforce witness protection laws in India. The historical background and foundation of the relevance of a true witness has been mentioned and elaborated in one of India's most ancient texts known as the *Dharmashastra*. The concept of witness protection has grown evidently and its study has further been divided in four major parts namely, ancient, medieval, British and modern era. Protection of witnesses has been visibly salient since its first realisation was marked by the 14th Law Commission Report, since then Indian legislation has introduced copious Law Commission Reports which inculcate various aspects for protection of the identity of witnesses as well as their families. The postulation of witness protection is a global notion which is widely conversed and deliberated about. The international aspect of witness protection is of a broader spectrum, it includes numerous organizations and international conventions which work directly in favour of stimulating appropriate legislation in subject of witness protection. The Indian legislature has constructed several laws over the time which provides for diverse witness protection rights. Different statutory laws in India discuss about providing witnesses complete protection such as the Indian Penal Code, 1860, the Code of Criminal Procedure, 1973, the POCSO Act, 2012 and assorted other acts. In order to provide the required protection to all those coming forth to serve information as a witness in court of law the Witness Protection Bill, 2015 was passed in the parliament which finally attained its relevance with the implementation of Witness Protection Scheme, 2018, which was enacted in its true spirit by the Apex Court of India to enable witnesses to dispose truthfully, fearlessly and to strengthen witness protection laws among the citizens of India. It was observed over the years from pre-independence era till 2011 onwards that Indian judiciary has donated tremendously towards safeguarding witnesses by issuing corroborative guidelines in favour of protection of witnesses in various landmark cases. It was observed that the utmost need of witness protection was realised in the very starting of the 21st century and specifically in the case of *Swaran Singh v. State of Punjab*. The Indian Judiciary has played a

pivotal role in furnishing the legislation with safeguarding guidelines in various landmark cases related to witness protection and contributing into further amelioration and upgrading of witness protection laws in India.

Key Words: Witness, Witness Protection, Intimidation, Hostile, Witness Protection Bill, Witness Protection Scheme.

I. Introduction

“A witness is a person whos life and faith are completely one that when the challenge comes to step out and testify for his faith, he does so, disregarding all the risks, accepting all the consequences”

-Whittaker Chambers

Witnesses are considered to play one of the most vital roles in the justice delivery system and their importance can never be overstated. Witness is someone who has significant information to the case relating to events sited by him. This information later becomes a part of the evidence which further helps determining whether the accused actually committed the crime or no.¹With the trailing of providing victim with speedy justice, the testimony of witness is of soul importance, witnesses execute a sacred responsibility by testifying but sadly not everyone agrees to speak before the court due to frequent adjournments, slow trails, threat, intimidation, financial inducements, withdrawal of statements and many other reasons which lead to witnesses turning hostile during proceedings.² The judiciary has now stated and emphasized on the need to safeguard witnesses from all the above stated problems because being forced to give false evidence would lead to an unfair trail which is against principles of natural justice.³Providing witness protection can be tedious as not every witness can be subjected to special protection but with the implementation of recent laws it has become easy to govern witnesses under special provisions.⁴In any civilized society, witnesses are of the utmost importance in the justice dispensation system but the greatest frailty that judiciary faces is the hostility of witnesses in court. The unfortunate happenings such as threat to life and property being served to witnesses, fabrication of evidences and interference of the opposite party in administration of justice are the chief difficulties being faced by witnesses. The government, police, public and media plays a vigilant role in catering justice to the victims. Due to bog down of judiciary, the pendency of cases has eventually increased

¹ The Role of Witnesses, *available at:* <http://www.educaloi.qa.ca> (last visited on December 10, 2023).

² Rashmi RekhaBaug, “Witness Protection Scheme in India- Issues and Challenges”, 11 *International Journal of Creative Research Thoughts* 2 (2023).

³ Varinder Singh, “Witness Protection in India: The Judicial Endeavour”, 4 *International Journal of Advanced Research* 1 (2016).

⁴ Tanuj Bhushan, “Witness Protection in India and United Nations: A Comparative Analysis”, 2 *International Journal of Criminal Sciences* 2 (2007).

and a strong witness protection program is required to carry out all the shortcomings in delivering justice to the deprived.⁵

The above quote applies to the inclusive philosophy which emphasizes mainly on faith and reliability on a witness. The author, Whittaker Chambers, was an unorthodox philosopher he endorsed the idea of free market and the idea of privilege to national security over liberty. ⁶Whittaker Chamber's book called, the Living proof, claimed that, witness is important to the intellectual history. Hannah Arendt wrote a view on Whittaker's autobiography saying that state has two categories of witnesses, firstly, the ones who are privileged to be informers and other who are pressurised or intimidated by the fear of being an informer. He also said that, witnesses are a work of public interrogation and that standing up to someone who has same interests and belief as one has and when any challenges comes their way, they step out and testify for his faith is a true witness.⁷

II. Witness Protection in India

A witness is a person who has direct or indirect involvement in the case, who is well aware about various facts and events about that case and is someone who has seen or witnessed those events in reality, is called a witness.⁸The concept of witness in India originally came from the ancient India source called *dharma*, which is the foundation of Indian jurisprudence. According to *Panini*, which means witness, '*sakin*' in Sanskrit means, 'one who has directly seen'. In various *Smritis* such as *Manu Smriti* and *Katyayana Smriti* it is provide that a proper witness is someone, who himself has either seen, heard or experienced various circumstances leading to a dispute.⁹*Kautilya* also known as *Chanakya* and *Vishnugupta* thrived around 300 BCE was a well acknowledged Hindu statesman and a celebrated philosopher who had later put down the classic polity known as, *Arsthashastra*. This classic polity as played a major in the development of witness protection laws in India.¹⁰

India has seen substantial changes during the British period in laws relating to witness protection in India. There was no systematic law enacted for protection of witness. Outside British presidencies there were no statutory rules of evidence and the laws back then were vague and indefinite. There was no considerable authority other than the use of customary laws. During 1835 to 1853 AD there were series of acts passed by the Indian legislature introducing laws relating to collection of evidence, capacity of witnesses and witness and victim protection.¹¹Lord Denman's Law says that no witness shall give evidence in person or on any affidavit specifically in criminal

⁵ Need of Witness Protection in India: A Legal Analysis, *available at:* <http://www.dehradunlawreview.com> (last visited on December 10, 2023).

⁶ The Claims of Experience, *available at:* <http://www.books.google.co.in> (last visited on December 11, 2023).

⁷ Peter J. Thompson

⁸ Need for Witness Protection in India: A Legal Analysis, *available at:* <http://www.dehradunlawreview.com> (Last visited on December 12, 2023).

⁹ Manu Smriti, *available at:* <http://www.britannica.com> (last visited on December 13, 2023).

¹⁰ Arthashastra, *available at:* <http://www.worldhistory.org> (last visited on December 13, 2023).

¹¹ Ability of a Witness to Give Evidence at Trial, *available at:* <http://www.academia.edu> (last visited on December 13, 2023).

cases the same law mentions that husbands and wives of the concerned parties and all others who were capable enough to understand the nature of the oath and the duty to tell the truth, are qualified and worthy witnesses in the county court.¹²

The relevance of protection of witness in India law has been enshrined in various Indian law statutes such as, in paragraph 6 of article 173 says that the police is capable of forming their own opinion on any fragment of prosecutor's statement, which must not be disclosed to the accused,¹³ section 177 of the Code of Criminal says that in order to ensure the impartiality of statements made by the police, the witness must not be accompanied by the police when going to court, and in some exceptional cases this is also allowed when needed to give them assurance of their presence,¹⁴ section 195A of Code of Criminal Procedure, 1973, provides that witnesses or other persons are entitled file a complaint if there are threats or inducements regarding violations covered by the IPC.¹⁵ Section 200 of the Code of Criminal Procedure, 1973, states that the judge hears the complainant or witnesses under oath so that they answer only honestly and without any fear.¹⁶

Witnesses are the ears and eyes of judiciary. The testimonies to witnesses play an essential role in deciding the culpability of the accused and this becomes the moral duty of the state to ensure that testimonies of witnesses are endured and untainted by fear. It is not unusual to see witnesses turning in hostile in court due to violence, coercion, threats and inducements. When any witness produces false evidence this ceases the concept of fair trails in courts. Article 21 of the Indian Constitution mentions that, state has the constitutional authority to ultimately ensure that India conducts free and fair trails and this cannot be accomplished unless the testimonies of witnesses are truthful in nature and abide with the principles of natural justice.¹⁷

India saw the actual need of witness protection laws in the popular case of *Zahira Habibullah H. Sheikh and Another v. State of Gujarat* also familiar as the Best Bakery case, the Honourable Supreme Court of India stated that, failing to conduct a fair trails or fair hearing to both parties, prosecution and accused leads to violate even the minimum standards of due course of justice.¹⁸

In the case of *Saran Singh v. State of Punjab*, the Honourable Supreme Court called attention for the importance of a witness in judicial justice delivery system. Witnesses, generally face various ordeals in multiple cases during judicial proceedings starting from the pendency of cases to frequent adjournments switching from one date to another. There is also threat to their lives and

¹² Presidency towns, available at: <http://www.advocatekhoj.com> (last visited on December 14, 2023).

¹³ Article 173 of Indian Constitution, available at: <https://www.indianconstitution.guru> (last visited on December 14, 2023).

¹⁴ The Code of Criminal Procedure Code, 1973 (Act 2 of 1974), s. 177.

¹⁵ *Id.* s. 195A.

¹⁶ *Id.* s. 200.

¹⁷ Current Position of Witness Protection in India, available at: <http://www.abbasilegal.com> (last visited on December 14, 2023).

¹⁸ AIR 2006 SCC 353.

there is no specific protection to them, hence this case emphasizes on the importance of witness protection.¹⁹

In the case of *Krishna Mochi v. State of Bihar*, the court stated that in recent times, ethics in people has seen a sharp decline. It was mentioned that even in usual cases, witnesses refuse to testify. They lack courage in deposing against an accused due to fear and threats to their lives and property. It was clearly observed that, if the accused is a habitual offender then the chances of threats and fear substantially increases. These offenders are usually politically influential and are prone to threaten all the witnesses to a case leading to delay in providing justice. Hence, the need of proper witness protection law was recognised in this case.²⁰

III. Indian Law Commission on Witness Protection

Law commissions in India date back to before independence. The first Law Commission was formulated in the year 1834 as a result of the charter of 1833. The main function of Law Commission is to review the current processing laws in the country and conduct legal research on the existing laws in order to bring reforms.²¹ Law Commission of India identifies the existing irrelevant law prevailing in the country and tries to be amendments in it. The essence of witness protection laws was also an establishment of the Law Commission of India.²²

The first reference of witness protection was introduced in the 14th Law Commission Report, 1958. It also dealt with reforms in the administration of justice and problems related to administration of criminal cases and its related aspects.²³ The Chairman of the Law Commission at the time, Shri M.C. Setalvaddi, did an excellent job by conducting the research and compiling its report in two large volumes further divided into two major segments. Part I of the report was related with civil courts and other matters from the lowest to the highest courts. It deals with control, sufficiency, delays, force, procedure etc. in various civil cases. Part II of the report is related with the administration of criminal cases and its further related aspects.²⁴

The further reference of witness protection was mentioned in 154th Report of Law Commission, 1996, stated all the facilities that must be provided to a witness for its well being and protection, facility for witnesses to stay in court premises during judicial proceedings, witnesses should be subjected to due respect as their efforts are made to remove all the reasonable causes for their anguish and they must be protected from any pressured from the accused.²⁵ This report significantly states sometime witnesses have to sit, slay and wait all day and wait for their turn for examination without any proper framework. Witnesses are constantly facing unfair means

¹⁹ AIR 2000 SC 2017.

²⁰ AIR 2002 SCC 81.

²¹ Law Commission of India, *available at*: <http://www.drishtiias.com> (last visited on December 15, 2023).

²² Law Commission of India: Indian Polity, *available at*: <http://www.byjus.com> (last visited on December 15, 2023).

²³ Law Commission of India, "14th Report on Reforms of Judicial Administration" (September, 1958).

²⁴ Reforms of Judicial Administration, *available at*: <http://www.bareactslive.com> (last visited on December 15, 2023).

²⁵ Law Commission of India, "154th Report on Protection and Facilities to Witnesses" (August, 1996).

including delayed court schedules and later not even acquiring proper compensation. Despite of all the troubles, the accused persuades and entices witnesses to testify from the other party which eventually turns them into being hostile. Hence, witnesses should be provided with daily allowance, travel expenses and high quality security for witnesses.²⁶

The 172nd Report of Law Commission of India, 2001, stated and recommended an appraisal of the existing rape laws in India. The reported stated various reforms relating to the subject of rape as well as child abuse. The panel recommended that in such cases trial court testimony should be recorded and, if possible, the victim/witness statement must be recorded using some latest methods such as video or closed circuit television. The report also pointed out that it is the responsibility of the court to make sure that the victim/witness of child abuse should refrain from meeting the culprit face to face during the investigation.²⁷

The 178th Report of Law Commission, 2001 made significant contribution to the witness protection laws which were inserted under section 164A of the Code of Criminal Procedure, which furnished recording of material evidence only in the presence of a Judicial Magistrate on all the offences punishable for 10 years or more.²⁸ The report further put forward that the magistrate should record the versions of testimony of witnesses at the very beginning of the trial in order to avoid any hold or impact. In addition, all witnesses before a police officer must be signed by him and sent to the judge as soon as possible.²⁹

The 198th Report of Law Commission emphasized on the protection of identity of a witness and the Witness Protection Program, 2006 was dedicated to this subject. The first wedge of this report deals with witness identity protection and the second chunk deals with certificate protection programs. The commission did not issue an invoice for the witness protection programs, but it made various directions and proposals on Witness Protection Programs. The committee also suggested sharing the costs of certificate protection programs uniformly between the central and state governments.³⁰

Also in the 4th National Police Commission Report, 1980, it was observed that, prosecution witnesses usually turn hostile due to the pressure of withdrawal or threat to hurt is given by the accused and there is an immediate need legislation to prevent witness manipulation.³¹

The Malimath Committee issued various recommendations and reforms which included ameliorated forms of witness protection subsisting in India. The committee stated that, witness who comes to assist the court are to be treated with complete nobility and it is the duty of the court

²⁶ The Law Commission of India, *available at*: <http://www.cdnbsr.s3waas.gov.in> (last visited on December 16, 2023).

²⁷ Law Commission of India, “172nd Report on Review on Rape Laws” (March, 2000).

²⁸ Law Commission of India, “178th Report on Recommendations for Amending Various Enactments, Both Civil and Criminal” (December, 2001).

²⁹ Law Commission of India, *available at*: <http://www.lawcommissionofindia.nic.in> (last visited on December 16, 2023).

³⁰ Law Commission of India, “198th Report on Witness Identity Protection and Witness Protection Programmes” (August, 2006).

³¹ National Police Commission, “4th Report on Certain Inconveniences and Handicaps Suffered by Witnesses” (June, 1980).

to show due courtesy, a separate place should be properly equipped with seats, they should be provided with rest rooms, toilet, drinking water etc, basically for the comfort of witnesses in the court rooms. The travel expenses and other allowances of the witness should be reviewed so that they are compensated as per requirement. It was also stated that there must an arbitrage procedure provided for the payment of the compensation owed to the witness on the very same day, if the case is adjourned then even though without hearing the witness, they are subjected to be paid on the same day.³²

In the case of *State v. Sanjeev Nanda*, the court observed that, hostility of witnesses in court plays as a crucial element which serves as major disturbing factor in criminal cases in India. There are various reasons which lead a witness in becoming hostile. This is mainly observed in high profile cases involving influential people. This case listed a few reasons due to which witnesses often turn hostile, monetary consideration, fear of death from the other party, fear of property damage and ongoing mental harassment, these are the ultimate reasons due to which witness hostility prevails in the criminal courts of India.³³

It was observed in the case of *State of Gujarat v. Anirudh Singh*, that, it is the mandatory for witnesses involved in a case and who has witnessed the commission of the crime to assist the state in giving rightful evidence for speedy justice.³⁴ In the Malimath Committee on reforms of criminal justice system, 2003, stated in its report that, a witness performs a sacred duty when they assist the court to find the actual truth to the case.³⁵

In the case of *Zahira Habibullah H. Sheikh and Another v. State of Gujarat*, while Hon'ble Supreme Court defined the significance of having a fair trial where both the parties are equally heard, the court also discovered that any witnesses who is forced or pressurised to give false evidence or statement does not amount to a fair trial.³⁶

IV. International Aspect of Witness Protection

It is critically important to provide effective assistance and protection to the witnesses as well as to the victim of a case. It is essential to ensure that the investigation to a case is conducted as per procedure and is successful in the end. In Article 24 of the Organized Crime Convention, the purpose of this article is to protect witnesses in criminal cases from any pressures, fear or

³² The Malimath Committee's Recommendations on Reforms in Criminal Justice System, *available at*: <http://www.thehindu.com> (last visited on December 16, 2023).

³³ AIR 2012 SCC 450.

³⁴ AIR 1997 SCC 514.

³⁵ Hitesh Gupta, "Critical Study of Malimath Committee Report on Indian Criminal Justice Delivery", 11 *International Journal of Food and Industrial Sciences* 4458 (2022).

³⁶ AIR 2004 SCC 158.

intimidation. These protective measures include allowing witness to testify without fear and physical protection such as relocate the witnesses for their safety.³⁷

Witness protection is not confined to boundaries but it is a global issue that almost every country is facing. The international concept of witness protection inculcates a broad aspect of rights and safeguards of an individual serving as a witness in a case. There are various international conventions and cooperation that play a vital role in effective implementation of witness protection laws globally.³⁸

The International Convention on Civil and Political Rights serves as the standard form of establishment of the witness protection globally. The right to a fair trial, as enshrined in various international human rights instruments, is closely tied to witness protection.³⁹ Article 14 of the International Convention on Civil and Political Rights (ICCPR) recognizes the right to a just or fair and public hearing by non-partial tribunal.⁴⁰

The European Convention on Human Rights is another important international instrument that addresses witness protection. Article 6 of the ECHR guarantees the right to a fair trial, which includes the right to examine witnesses and have witnesses examined.⁴¹

The United Nations Office of Drugs and Crime published a handbook on, Good Trains Protection of Witnesses in Criminal Trials organized crime. The target of the publication was to assist the member states of the United Nations to evolve panoramic programs for protecting crime victims and witnesses from any pressure or intimidation.⁴²

International organizations, such as INTERPOL, play a vital role in smoothening the path for international cooperation in witness protection. INTERPOL provides support and resources to member countries for the protection of witnesses and victims of transnational crime. It also assists in the exchange of information and intelligence related to witness protection.⁴³

The Rome Statute of the International Criminal Court (ICC) is an important international treaty that addresses witness protection in the context of international criminal proceedings. The ICC recognizes the vulnerability of witnesses and suffers of international crimes, for example, genocide, war crimes, and crimes against humanity. The Statute includes provisions for witness protection, as well as mechanisms to ensure the security and well-being of witnesses and their families.⁴⁴

³⁷ Witness Protection, *available at*: <http://www.unodc.org> (last visited on December 16, 2023).

³⁸ Daniyal Qureshi, "Witness Protection: An Imperative for Criminal Justice", 4 *Journal of Victimology and Victim Justice* 3 (2022).

³⁹ International Covenant on Civil and Political Rights, *available at*: <http://www.ohchr.org> (last visited on December 16, 2023).

⁴⁰ International Convention on Civil and Political Rights, 1976, art. 14.

⁴¹ European Convention on Human Rights, 1953, art. 6.

⁴² United Nations Office on Drugs and Crime, *available at*: <http://www.unodc.org> (last visited on December 17, 2023).

⁴³ What is Interpol, *available at*: <http://www.interpol.int> (last visited on December 17, 2023).

⁴⁴ S. Arbia, "The International Criminal Courts: Witnesses and Victim Protection and Support, Legal Aid and Family visits", 36 *Commonwealth Law Bulletin* 25 (2010).

The UN Convention against Corruption and the UN Convention against Transnational Organized Crime also contain provisions related to witness protection. These conventions recognize the significance of protecting witnesses in the context of combating corruption and transnational organized crime. They call for measures to ensure the safety of witnesses and their families and to facilitate cooperation among countries in providing witness protection.⁴⁵

Witness Protection Programs have been initiated in a lot of countries for example, Australia in the under the Witness Protection Act, 1991, Canada under the Witness Protection Program Act, United Kingdom under the Youth Justice and Criminal Evidence Act, 1999, Germany in the name of German Crime Prevention forum, South Africa under the Witness Protection Act, 1998, Italy in the name of Italy Witness Protection Program and United States of America in the name of (WITSEC) Witness Security Program.⁴⁶ All these countries have managed to have proper legislature for witness protection, the major security in all these above mentioned programs and Acts is relocation of witnesses during criminal trials.⁴⁷

Throughout the years, the concept of witness protection has gained significant popularity, various countries has brought in witness protection programs, for instance, In the United States, it has a well-settled witness protection program which is also called as the Witness Security Program (WITSEC). It is fundamentally made for witnesses in confederate cases inculcating organized crimes, terrorism, and various other heinous offenses in nature. Witness protection in the United States of America initiates witness relocation, identity protection as well as identity change, financial assistance, and 24/7 protection and security. The U.S. Marshals Service orchestrates the program, which is extremely amalgamated. The legal structure for witness protection in the U.S. inculcates the Witness Security Reform Act of 1984.⁴⁸

South Africa has made evident steps towards magnifying witness protection, peculiarly in reaction to lofty levels of aggressive crime. South Africa has introduced the Witness Protection Program (WPP), which provides relocating the witnesses, providing protection and security and assisting various services to witnesses. The legal structure in South Africa inculcates the Witness Protection Act of 1998, which delineates the course of action and criteria for providing witness protection. This country has gone through significant disputes and challenges connected to resource

⁴⁵ Antonio Argandoña, "The United Nations Convention Against Corruption and its Impact on International Companies", 74 *Journal of Business Ethics* 481 (2007).

⁴⁶ Good Practices for the Protection of Witnesses in Criminal Proceedings Involved in Organized Crime, available at: <http://www.unodc.org> (last visited on December 17, 2023).

⁴⁷ Reneta Mack, "The Federal Witness Protection Program Revisited and Compared", 21 *Journal on Social Science Research Network* 20 (2014).

⁴⁸ Shruti Sharma, "Witness Protection in India, the USA and China: A Comparative Study", 11 *International Journal of Creative Research Thoughts* (2023).

restrictions and the requirement to stabilize witness security with the rights of the accused in the post-apartheid legitimate environment.⁴⁹

Italy has a vigorous witness protection program, singularly known for its potency in fighting against organized crime. The Italian witness protection program centralizes on giving witnesses and their families with brand new identities, financial assistance, provision of housing and psychological or emotional support. Italy has also employed pentiti, which is an Italian word that denotes any person who is involved in organized crime and later becomes an informant to the police in order to get resistance from prosecution in court, previous members of criminal organizations converted informants, as witnesses. The legal structure for witness protection in Italy inculcates rules, laws and directives addressing the rights and duty of protected witnesses. A noteworthy feature in Italy witness protection provisions is, the powerful role of the Ministry of the Interior in supervising witness protection.⁵⁰

The Witness protection program in Canada, well known as the Witness Protection Program Act, provides for the relocation of witnesses and securing or changing the identity of witnesses. The Royal Canadian Mounted Police (RCMP) manages the program, which is accessible to witnesses in federated cases. The legal structure focuses on the privacy of witness protection and information that is to be provided by them in court and the need for judicial sanctions for certain protective measures. Canada, like any other country, faces various problems related to monetary funding and resource allotment for witness protection.⁵¹

The United Kingdom has executed witness preventive measures through laws such as the Youth Justice and Criminal Evidence Act 1999 and the Coroners and Justice Act 2009. Witness obscurity orders and particular measures for in peril witnesses are the important components of the UK's approach. United Kingdom also has provisions for witness subduing offenses. The UK's approach is distinguished by attempts to balance and support witness protection with open justice and the rights of the accused. Witness protection measures are often customized certain needs and vulnerabilities of witnesses.⁵²

Australia's approach to witness protection differs across its states and territories, with each having its own law and witness protection programs. Witness protection in Australia frequently inculcates relocation of witnesses, providing witnesses with new identities in order to safeguard their original identity, and various witness support services. The Witness Protection Act 1991 gives a systematic

⁴⁹ A. Minnaar, "Witness Protection Programmes- Some Lessons from the South African Experience", 15 *African Journal of Criminology and Victimology*(2022).

⁵⁰ Accomplice Witnesses and Organized Crime: Theory and Evidence Crime: Theory and Evidence From Italy", 116 *The Scandinavian Journal of Economics* (2014).

⁵¹ AjitKaushal, "Witness Protection in Contemporary Society", 6 *Journal of Positive School Psychology* (2022).

⁵² Nicholas R. Fyfe, "Desperately Seeking Safety: Witnesses Experience of Intimidation, Protection and Relocation", 40 *The British Journal of Criminology* (2000).

structure for federal witness protection. Australia locates the significance on making sure that the rights of witnesses are given respect while also addressing the risks of witness intimidation.⁵³

The witness protection structure under in Chinese law is full of flaws, and the application of the current witness protection program is satisfactory in nature and not as expected. This leads to the apocalyptic consequence that the witnesses are not wanting to testify or does not have the gallantry to be present in the court and fight for justice. Momentous measures should be taken to improve the witness protection system through empirical and extensive protection for witnesses in China. The provisions of the alteration of the Criminal Procedure Law of the People's Republic of China on witness protection are further ahead than the current existing law, but are still too straightforward and inadequate and is something which cannot substitute the feeble and poor set of circumstances of witness protection laws and must be fortified in legal elucidation after acceptance of the proposed alteration. The betterment of China's witness protection system is virtually necessary, which till now pivots on the reform of China's legal structure and up and running mechanism, even if the amendment bill is proceeded after the fact in order to upgrade its witness protection system, China should implement the provisions stated by the UN Convention against Transnational Organized Crime and the Convention against Corruption, and acquire knowledge from the acquaintances of other countries and regions to ameliorate its witness protection system.⁵⁴

The Thai government asserts to go through with the International Covenant on Civil and Political Rights and has an indistinguishable constitution that protects those rights. This designates the existing law and witness protection organization. But the law is defective, the office is undermanned and witnesses and victims of flagrant human rights misuses are not efficaciously safeguarded. According to the Thai criminal law, the accused is considered to be guiltless unless proven culpable and the burden of proof then rests with the prosecutor. The accused should be specified the benefit of the doubt. If a defendant is declared guilty of a crime, then judgement is passed as per the punishment prescribed by law. The fundamental provisions on crimes are located in the Thai Criminal Code and the Code of Criminal Procedure. The duty of the official prosecutor is to dispatch the facts and data of the case to the court to know the guilt of the accused and to request the court to penalise the accused as per the provisions of the law. The resolution to entreat guilty or not guilty is completely up to the accused. If the defendant beseech guilty then the law permits the court to deduct the sentence up to half. The state prosecutor doesn't have the right to advocate a sentence. The legal system also does not assist plea bargaining or any lesser framed charges. The Thai legal system involves of three courts kinds of court: the Court of First Instance, the Court of Appeal and the Supreme Court. All cases should begin in

⁵³ Prashant Rahangdale, "Witness Protection: A Comparative Analysis of India and Australia Legislation", 21 *Journal of the Gujarat Research Society* (2019).

⁵⁴ Shruti Sharma, "Witness protection in India, The USA and China: A Comparative Study", 11 *International Journal of Creative Research Thoughts* (2023).

the Court of First Instance. In common, the law specifies that all trials should take place in public and in the existence of the accused.⁵⁵

V. Emergence of Witness Protection Program in India

The major reason to uphold the rule of law is lack of capacity of a witness to cooperate with investigations and testify in court without fear or intimidation. So far, the circumstances for witnesses have been inhuman. They are not treated with due respect and consideration.⁵⁶ Hostility of witnesses has played a major role in delayed justice system and this developed greater opportunity for the accused to win without fear of conviction. Witnesses have to suffer long waiting hour in court, no travel expenses bared by the court, no physical protection provided all these conditions called for a proper witness protection program in India.⁵⁷

Hostility of witnesses in Indian criminal courts served as major reasons due to which establishments of witness protection laws were required, in the case of *State of Uttar Pradesh v. Ramesh Prasad*, it was held that, evidences presented by a hostile witness cannot be denied completely some part of it must be considered by the court while deciding a criminal case. The evidence presented can undergo serious scrutiny before taken into complete consideration by the court and any portion of the evidence found consistent with case is will be taken into account.⁵⁸

It was held in the case of, *K. Anbazhagan v. Supt. of Police*, that, credibility of a witness to the case can be trusted completely. Sometimes the evidences presented by the witnesses cannot be taken into consideration completely, but any part of the testimony that feels fit to be considered, preserved and is creditworthy only then the court recounts such evidence in decision making. This was also seen in the case of *Sanjeev Nanda v. State*, where later the accused was found guilty.⁵⁹

Promoting the relevance of witness protection in Indian courts have been highlighted through judgement in various highlighting the protection of identity of witnesses and establishment of witness protection programmes have been initiated in number of cases laws for example, ⁶⁰*NHRCv. State of Gujarat* and *People's Union for Civil Liberty v. Union of India*, these two cases majorly contributed in setting up the witness protection programmes, importance of witness protection and protecting their identity.⁶¹

⁵⁵ Recommendations on Witness Protection in Thailand, available at: <http://www.humanrights.asia> (last visited December 18, 2023).

⁵⁶ Sinya, "Witness Protection Jurisprudence in India: A Critical Analysis", 10 *Journal of Research in Humanities and Social Sciences* 36 (2022).

⁵⁷ YashSaxena, "Witness Protection in India: A Fundamental Need in Criminal Justice System", 3 *International Journal of Legal Science and Innovation* 300 (2022).

⁵⁸ AIR 1996 SCC 360.

⁵⁹ AIR 2004 SCC 767.

⁶⁰ Criminal Original Jurisdiction, available at: <http://www.main.sci.gov.in> (last visited on December 18, 2023).

⁶¹ Best Bakery Case, available at: <http://www.advocatekhaj.com> (last visited on December 18, 2023).

Legislature has introduced witness protection laws over the years, establishment of section 195A of the Indian Penal Code, 1860, in the year 2006 making criminal intimidation a criminal offence with punishment extending up to 7 years of imprisonment. This modification was the first step towards the correct path.⁶²Section 228A basically provides for penalization if the identity of rape victim is revealed. This offence gives punishment for two-year and also fine on any person who reveals the identification of a rape victim.⁶³

In the Indian Evidence Act, 1872, inculcates various sections which deal with witness protection. In section 145 d the Indian Evidence Act, 1872, it states that, it allows witnesses to clarify their previous given statements in court, to respond to challenges, and ensure the accuracy and integrity of their testimony, this also works as a matter of right. Section 149 of the Indian Evidence Act, 1872, mentions that, no question can be asked without having a rational ground but can only be asked when the person who's asking as reason to think that the imputation conveys is justifiable. Section 153 of Indian Evidence Act, 1872, states that, questions inquired in the examination of a witness should show the facts relating to the case and must not be inquired simply to erode his or her confidence or cause damage to their character. It states that if a question was inquired and the witness responded to it, and it will only harm the character of the witness, no evidence can be given to deny them unless they answers incorrectly, in which case he is charged with perjury.⁶⁴In the case of *Karnataka v. Yarappa Reddy*, the Supreme Court added that the basic requirement for such conflicting evidence is that the witness whose impartiality is called into question must be presented and questioned regarding the evidence and should have denied it.⁶⁵Indian Evidence Act, 1872, contains a number of provisions that outstandingly affect witness protection in India. These provisions connects with the capability of witnesses, the sincerity of oral evidence, the series of production and examination of witnesses, the use of leading questions, cross-examination of witnesses and handling of witness statements made to police officials. It primarily focused on the applicability and appreciation of evidences, these provisions play a central role in protecting witness's rights and making sure that the integrity of their testimony in recognized in the justice system.⁶⁶

West Bengal Law of 1932, section 31 of this act mentions and provides that the judge has ability to put down the public to enter to the courtroom or a particular person at any stage of the events on the application by the prosecutor or counsel in general to safeguard the absorption of witnesses or the public.

The Unlawful Activities (Prevention) Act, 1967, is a esoteric legislation directed at protecting unlawful activities, inculcating diverse acts of terrorism and organized crime. While the principle

⁶² The Indian Penal code, 1860 (Act 45 of 1860), s. 195A.

⁶³ The Indian Penal code, 1860 (Act 45 of 1860), s. 228A.

⁶⁴ The Indian Evidence Act, 1872 (Act 1 of 1872), ss. 145, 149, 153.

⁶⁵ AIR 2000 SCC 715.

⁶⁶ Examination and Cross-Examination of Witnesses under the Indian Evidence Act, *available at*: <http://www.blog.ipleader.in> (last visited on December 18, 2023).

focal point of this act is on protection and prosecution, it inculcates various provisions for safeguarding witnesses. Section 44(2) of the act mentions that in a special court, if at the solicitation of a witness in one of the processes or at the appeal of the witness if the prosecutor is contented with respect to such a witness is in danger, he can take such preventive measures for reasons to be written down keeping the identity and address of such witness private. Undersection 43D of this act permits for protection of witnesses who comply with investigating agencies in cases related to unlawful activities. This provision ensures that witnesses in cases of terrorism and organized crime are provided with protection against threats and intimidation.⁶⁷

The Code of Criminal Procedure, 1973, is a panoramic law statute that reign over criminal procedure followed in India. It contains various provisions and mechanisms designed specially to protect witnesses. In this code, we explore the various aspects of witness protection as provided for under its various sections and will emphasize over key provisions and laws that are instrumental in protection witnesses.⁶⁸ Some of those sections are, section 164 of the Crpc, 1973, empower witnesses to furnish statements before a magistrate. This provision is pivotal for witness protection, as it adds a layer of security and reliability for witnesses who may be uneasy or anxious about interacting with law enforcement officers during an investigation. Statements made previously before a magistrate are frequently considered more reliable and are less receptive to external influence. Under section 171 of the Crpc, 1973, it is stated that, no complainant or witness on his way to court shall go accompanied by the police, it shall not be put through unwanted restraint or trouble nor shall any security is needed of him except his own bond. In section 195 of the Crpc, 1973, relates to the prosecution for contempt of lawful authority of public servants. It inculcates offenses against public justice and policy and offenses related to documents given as evidence. This section is pertinent for witness protection, as it addresses offenses that can affect witnesses directly, such as intimidation or tampering with evidence.⁶⁹

Prosecution under section 231(2) of the Crpc, 1973 is allowed to act as an obstacle to those who seek to barge into witnesses or the judicial process. Section 231(2) of the Crpc, 1973 states the procedure for examination and cross examination of the witness who provides that, at the hearing in the Court of Session, the prosecution is capable of presenting its evidence on the given date and the defence cross-examination may be managed or the date of cross-examination may be delayed or deferred.⁷⁰ In the case of *State of Kerelav. Rasheed*, the court held that, the application based on section 231(2) gives the Judicial Magistrate discretion to delay the cross-examination of witnesses and stability must be struck between the rights of the accused and the prerogatives of the prosecution to lead evidence. The honourable Supreme Court held that, there is no insistent formula explaining the grounds on which a court can exercise its discretion under Section 231(2)

⁶⁷ Protection of Witnesses Under UAPA and NIAA in India, *available at*: <http://www.writinglaw.com> (last visited on December 18, 2023).

⁶⁸ The Code of Criminal Procedure, 1973, *available at*: <http://www.byjus.com> (last visited on December 18, 2023).

⁶⁹ The Code of Criminal Procedure, 1972 (Act 2 of 1974).ss. 164, 171, 195.

⁷⁰ *Id.* s. 231(2).

of the Code of Crpc. The discretion must be exercised on the basis of the important and guiding principle. The Judicial Magistrate is to find the party looking for any delay makes a loss if the request is otherwise denied. The honourable Supreme Court listed exemplifying factors to guide the discretion of the magistrate under this section. The court also listed "practice guidelines" that "courts must, whenever possible, follow in such criminal cases."⁷¹

In the Terrorist and Disruptive Activities (Prevention) Act, 1987, section 16 of the TADA, 1987, successor to the 1985 Act, also provided for the protection of the identity of witnesses mentioned in section 16 of the act. Section 16 is varied from section 13 of the TADA, 1985 in two diverse respects. Firstly, while in camera hearing was compulsory under section 13 of the TADA, 1985 and under section 16 of the TADA, 1987 that camera hearing could be held only if the designated court so desired.⁷²

The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, all kinds of offenses committed against members of Scheduled Castes and Scheduled Tribes inclusive of provisions for witness protection. Section 15A of this act permits for safeguarding witnesses and complainants in cases of atrocities perpetrated against members of these diminished communities. This provision makes sure that witnesses in such cases are provided with safeguards against threats and intimidation.⁷³

The NIA Act, 2008, established the National Investigation Agency (NIA) as a specialized agency to investigate, intrude and prosecute offenses related to terrorism and other specified and stated illegal activities. While the ultimate focal point of this act is investigation and prosecution, it also indirectly contributes to witness protection. Under section 17 of the NIA Act authorizes this act to provide protection to witnesses, both during the investigation and while ongoing trial period. This provision makes sure that all the witnesses in high-risk cases, inclusive of terrorism cases, gets the necessary protection and support to testify efficaciously.⁷⁴

The Whistle Blowers Protection Act, 2011, is an essential statute made by the legislation of India that looks forward to provide protection to individuals who are involved in the acts of corruption, malpractice, or wrongdoing within government and public sector corporations. While the chief focus of this act is on safeguarding whistleblowers, it indirectly contributes to witness protection by heartening individuals to come forward in the trial as witnesses and providing them with safeguards against vengeance or harm. In this section, we explore the Whistleblower Protection Act, 2014, and its pertinent provisions, emphasizing all the key sections and laws that are instrumental in safeguarding witnesses.⁷⁵ Section 3 of the Whistleblower Protection Act, 2014,

⁷¹ AIR 2006 SC 2667.

⁷² The Terrorist and Disruptive Activities (Prevention) Act, 1987 (Act 28 of 1987), s. 13, 16.

⁷³ The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (Act 33 of 1989), s. 15A.

⁷⁴ The National Investigation Agency Act, 2008 (Act 34 of 2008), s. 17.

⁷⁵ Sinya, "Witness Protection Jurisprudence in India: A Critical Analysis", 10 *Journal of Research in Humanities and Social Science* 37 (2022).

provides definitions for all the vital terms used in this act. While not being directly related to witness protection, these definitions set the stage for comprehending the scope of the act, inculcating who can be contemplated as a whistleblower and all kinds of disclosures covered by the legislation. This clarity indirectly donates to a concerned environment for witnesses to come forward with whatever information they possess. Section 6 of the act decidedly prohibits any action or retaliation against whistleblowers for making a public interest disclosure. While its primary focus is on protecting whistleblowers, this provision indirectly benefits witnesses who might provide supporting evidence in whistleblower cases. Witnesses can be assured that they will not face adverse consequences for cooperating with the disclosure process.⁷⁶Section 7 of the Whistleblower Protection Act, 2011, directs situations where individuals construct false or malicious complaints. While this provision is mainly concerned with false whistleblowing, it indirectly donates to witness protection by dispiriting false acquisition against witnesses. Witnesses are not much likely to face harassment or any legitimate action based on groundless complaints. Section 9 of the Whistleblower Protection Act, 2011, implies certain restrictions on the revelation of information connected to public interest. While it most importantly applies to whistleblowers, it secondarily affects witnesses by making sure that sensitive information is secured and not compromise the safety or protection of witnesses involved in the disclosure process.⁷⁷ In conclusion, the Whistleblower Protection Act, 2014, is a critical piece of legislation in India that encourages individuals to expose acts of corruption, malpractice, or wrongdoing. While its primary focus is on protecting whistleblowers, it indirectly supports witness protection by creating a legal framework that discourages retaliation against individuals who provide information or evidence related to public interest disclosures. The act's provisions ensure that witnesses can cooperate with investigations and disclosures without fear of harm or adverse consequences, contributing to the overall integrity and accountability of government and public sector organizations.⁷⁸

The POCSO Act, 2012, is a specific codification made to prevent and protect children from sexual offenses and molestation. This act ultimately focuses on protecting child victims of sexual abuse and it also indirectly addresses witness protection. This act inculcates provisions for conducting trials in a child-bearing and a friendly manner, including utilizing of screens to shield child witnesses from the accused. These provisions subscribe to witness protection by making corroborative and non-threatening surroundings for child witnesses. Section 151 of Indian Evidence Act, 1872, states that, the court may prohibit any question or inquiry which it considers to be improper or scandalous in nature, although such question or inquiry may relate to the

⁷⁶ The Whistleblower Protection Act, 2014 (Act 17 of 2014), ss. 3,6.

⁷⁷ *Id.* ss. 7, 9.

⁷⁸ Whistleblower Protection Act, *available at*: <http://www.drishtias.com> (last visited on December 18, 2023).

questions referred to the Court, unless they relate to the relevant facts or facts to be known or determine whether the facts exists or not.⁷⁹

The Sexual Harassment of Women at Workplace Act, 2013, is a specific legislation which aims at protecting and addressing sexual harassment of women at their workplaces. While the ultimate centre of this act is on protecting and redressing sexual harassment, it inculcates provisions for the protection of witnesses. Section 16 of this act provides for witness protection and complainants in cases related to sexual harassment. This provision makes sure for the fact that witnesses in such cases are provided with safeguards to protect reprisal and intimidation.⁸⁰

In the Juvenile Justice (Care and Protection of Children) Act, 2015, under section 74, the act establishes care and protection for child and prohibits the identity of a child by the media. The section specifies that no report in any communication related medium shall disclose the name, address or school or any other particulars of a child who is in conflict with law or is a child witness or a victim to a case in order to safeguard his rights and protect him from any physical harm.⁸¹

In the case of *MahenderChawlav. Union of India*, the Apex Court of India recognized the Witness Protection Scheme, 2018 and proclaimed that, in Article 141 and 142 of the Constitution of India unless there is a competent legislation on the subject of witness protection this subject is going to be covered under the program of 2018.⁸²

VI. Witness Protection Scheme, 2018

To mark various challenges faced by witnesses, India immediately needed legislative reforms that introduced an encyclopedic and committed legal structure for witness protection. Such amendments must inculcate the following segments. Witnesses rights and prerogatives should be clearly defined, direct control and commitments of law organizing agencies, courts, and other stakeholders, various procedures for evaluating witness susceptibility and discovering valid protective measures, apparatus for observing and accessing the efficacy of witness protection measures, wider relevancy of witness protection provisions over all types of criminal cases, legitimate protection against threats, intimidation, and reprisal faced by witnesses.⁸³

The insufficiency of the lawful structure for witness protection in India poses pivotal challenges in making sure that the protection and coloration of witnesses in criminal cases. Fractured provisions, deficiency of specificity, restricted scope, unavailability of extensive procedures and the emerging risk to witnesses involve urgent legislative amendments. An exhaustive and devoted

⁷⁹ Khushbo Hotchandani, "Every Child is Special- Study of Child Sexual Abuse and the Law (POSCO) in India" 6 *International Journal of Creative Research Thoughts* (2018).

⁸⁰ The Sexual Harassment of Women at Workplace Act, 2013 (Act 14 of 2014), s. 16.

⁸¹ The Juvenile Justice (Care and Protection of Children) Act, 2015 (Act 2 of 2015), s. 74.

⁸² AIR 2019 SCC 615.

⁸³ Witness Protection: Problems Faced and Need for a Protection Program In India, *available at*: <http://www.lawoctopus.com> (last visited on December 18, 2023).

Witness Protection Act is significant to provide comprehensible and systematized legal protective measure, promoting witness cooperation, and building up the whole justice system in India. Such lawful amendments would not only safeguard witnesses but also upgrade the reliability and productiveness of the criminal justice system as complete.⁸⁴

The Witness Protection Bill, 2015 was made to establish Witness Protection Agency in order to provide for a Witness Protection Program and other matters related to it. The main object of this agency was to provide an appropriate legal framework for giving witnesses special protection on behalf of the state to any person who is subjected to intimidation or threats person witness to a case.⁸⁵

Witness Protection Scheme of 2015 was the ultimate result of the case, *Neelam Katarav. Union of India*, it was observed that while the process of trial is on going there were visible threats to the witness and this resulted as a significant delay in delivering justice. This case was associated people with renowned background and major political influence, it was a highly influential case and the Delhi High Court contemplated the privations faced by the witnesses who are part of this trial. The Delhi High Court judgment had put down the requirement and notion of witness protection, setting rules that will stay in place till new law is drafted on this subject. In this case, however, it could be expressed that the court contemplated long time ago an issue that even the government considered. The court also had to identify that although it was confirmed that the accused must get a fair and proper trial in an antagonistic system, but the establishment of such a system always leads up the way to persecution of the accused or his abetter or witness intimidation. In this case, the Delhi High Court observed the actual requirement of a witness protection program.

The Witness Protection Scheme, 2018 was introduced in order to provide proper legislation to the subject to witness protection. The honourable Supreme Court of India approves the Witness Protection Scheme, 2018 on December 5th and was enacted in the hope of providing witnesses the appropriate protection for protection.⁸⁶

This scheme is India's first Witness Protection Scheme aimed to provide protection on behalf of the state. The Draft of Witness Protection Scheme, 2018 was finalized with the consultation of National Legal Services Authority and Bureau of Police Research and Development. The scheme identifies 3 major categories, category A inculcate cases involving threat to lives of witnesses and their families, category 2 deals with threat to ones safety of property and reputation and category 3 is where threat is moderate and extends to harassment or intimidation to witness's family or witness itself. Witness Protection is provided through moving of an application and then the competent authority passes the threat analysis report and according to its result protection is

⁸⁴ Judgement, available at: <http://www.main.sci.gov.in> (last visited on December 18, 2023).

⁸⁵ Witness Protection Bill, 2015, available at: <http://www.ir.parliament.gh> (last visited on December 18, 2023).

⁸⁶ Witness Protection Scheme, 2018, available at: <http://www.drishtias.com> (last visited on December 18, 2023).

provided. This application should be disposed of in 5 working days.⁸⁷ The scheme is supervised by its Authorized which is meant as a standing committee in every district is presided over by the District and Sessions Judge. The Witness protection Program is made to ensure that the witnesses and their families to seek adequate protection, to facilitate camera trials and providing support to the threatened and vulnerable witnesses.⁸⁸

The main motivation of establishment of the Witness Protection Scheme was to deduct the count of hostile witnesses coming and testifying in court. In the case of *Ramesh v. State of Haryana*, the court intelligibly mentioned that some of those causes or ground which work as instigation for a witness to turn hostile in court.⁸⁹

In the case of *Krishna Mochiv. State of Bihar*, the court had stated and discussed on the deviant behaviour of witnesses leading towards hostility in court. The court also mentioned that, there has been a decrease in the moral values relating witnesses testifying in court, even in standard cases witnesses are inclined towards either dispose of or their evidences are never to located and this is the exact reason what heartens the habitual offenders to manage each time to get ridoff easily. Hence, this behaviour should no be motivated or lifted any further.⁹⁰

In the case of *Balkishan A. DevidayalEtcv. State of Maharashtra* it was held that, no person accused of a crime could be forced to testify inimical to himself and an analysis of this clause actually divulge three principle things, first is protection is only given to the person accused of the crime and second is protection against intimidation coercion and threat is to be judiciously provide and thirdly, this protection is useful for itself⁹¹

In the case of *Manu Sharma v. State (NCT of Delhi)*, being a highly influential case, court noticed that, justice was delayed due to all the 300 witnesses becoming hostile after acknowledging the mishappenings in the police statement. Due to the reason of hostility of witnesses,justice was accomplished years after the case first ever started. This case signified the use of political power in protecting the accused as well as giving one of the key reasons as to why witnesses in this case ultimately turned hostile.⁹²

In the case of *Indal Singh v. State of Madhya Pradesh*, as per the petitioner's situation the court granted protection to him under the offence committed in section 304-B of the Indian Penal Code. Here, he witness protection scheme played a vital role, the scheme provides for filing up for the application necessary under scheme, it mentions that the application filed by the witness should be

⁸⁷ GirishAbhiyankar, "Security of Witness in Criminal Justice System: Critical Evaluation of the Witness Protection Scheme, 2018", 4*International Journal of Law Management and Humanities* 30 (2020).

⁸⁸ SimranAggarwal and Shina, "Witness Protection in India: A Fundamental Need in Criminal Justice System", 3 *International Journal of Legal Science and Innovation* 299 (2022).

⁸⁹ AIR 2017 SCC 529.

⁹⁰ AIR 2002 SCC 81.

⁹¹ AIR 1981 SCR (1) 175.

⁹² AIR 2010 SCC 1.

filed in the format as per prescribed and to be filed before he adequate authority to get the order required for witness protection. This can be successfully moved by the witness or his family.⁹³

In the case of *Israil and Another v. State of Uttar Pradesh*, the petitioner relates his case with the case of *Mahendra Chawla v. Union of India and Others* quoting that, giving security is common and general in nature whereas the in Mahendra chawla case, the Apex Court particularly accepted the scheme for witness protection as court was ought to provide adequate protection to witnesses. This case demanded the same as it was granted in Mahendra Chawla case.⁹⁴

In the case of *Mithlesh Narayan Tiwari v. State of Uttar Pradesh*, the court explained the meaning of a witness, explains the witness protection application and how it is supposed to be moved by the witnesses, it explains the witness protection fund that has been created by the concerned committee under Witness Protection Scheme, 2018, it explains the witness protection order which means it that this order explained various measures taken to protect witnesses during the trial period, it explains that, witness protection cell is where state police is given the responsibility to implemented witness protection order and this case also explained three different categories according to witness threat perception inclusive of kinds of protective measure that are to taken.⁹⁵

In the case of *Abhijeet Singh Alias Ankur Likhari v. State of Punjab*, the court stated intimidation and threat are two crucial reasons that cause a witness to turn hostile during trials. The courts also mentioned that hostility of witnses during criminal trials wrecks the confidence of public in the justice delivery system. This is the ultimate concern that has to a lot of discussions related to protection of witnesses. Protection of witnesses is majorly involved in the sensitive cases involving influential people, political power involving people having political furtherance and those with monetary powers. Such people tend to threaten witnesses or try to turn aside the trails by fabricating the evidence and taking truth as casualty.⁹⁶

In the case of *Smt. Pooja Pal v. State of Uttar Pradesh*, mentions the remarks given by the Malimath Committee Report of Criminal Justice System, 2003, mentioning all the major problems that are to be faced by witnesses and their families during the course of trial. The solemnity of the threats purely depends upon the background of the case. If the case involves an accused belonging to an influential family then various attempts are made to threaten witnesses including threat to the lives of the witnesses and their family. This case also discussed the 198th Report of Law Commission of India which was focused on securing the identity of witnesses. It also mentioned that serious offences under the Indian Penal Code, 1860 are those cases which are more likely to have experienced threats to the victim and witnesses of those cases. This report focuses not only

⁹³ AIR 2021 MP 839.

⁹⁴ Writ 24444 of 2019.

⁹⁵ Writ 18204 of 2021.

⁹⁶ AIR 2019 HC 396.

on witnesses but also on victims and suggested that protection should be given to both victims as well as witnesses.⁹⁷

In the case of *Saranya v. State by Inspector of Police*, Justice M. Jagannadha Rao, explained the importance of protection of witness identity. It discussed the requirement of using DNA and that hostile witnesses should undergo DNA finger printing test in every case if required. The use of DNA testing has advanced the process of trial. DNA test brings probability to a criminal case. It increases the chances of speedy discovery of the culprit and of the justice delivery system. DNA system will eventually bring stability in the crisis created by hostile witnesses.⁹⁸

In the case of *C. Hindumathi v. State of Andhra Pradesh*, it was stated that State is to play a major role in protection of witnesses and to safeguard them from being hostile in courts due to threat intimidation from the other party. This case too discussed reforms quoted by the Malimath Committee. It discusses witness protection as well as witness hostility, various reasons leading to witness hostility and all sorts of preventive measure taken to secure witnesses.⁹⁹

Witness Protection Scheme, 2018, has constructed a significant landmark in donating to India's judicial reforms, but this scheme also comes with significant drawbacks, for example, there are no facilities to safeguard the stateliness of a witnesses and lacks providing an official to continuously assist the witness as recommended by the Malimath Committee, vaguely mentions the assistance provided to witnesses in the courtrooms such as, restrooms, drinking water, seats etc, scheme does not cover any discussions connected to the discontinuation of cases also the witness protection scheme does not consist any specific facility in order to protection against persecution. All these drawbacks indicate that the Witness Protection Scheme, 2018 requires changes in its best interest for witnesses and their families.¹⁰⁰

One of the major challenges experienced by witness protection programs in India is the inadequate financial allotment by central and state government both. Proper monetary funding is vital to hold up witness protection measures, inculcating relocation of witnesses, protective arrangements and furnishing of fresh identities whenever required. Without sufficient financial assistance, witness protection programs may grapple to give the required protection and assistance to witnesses.¹⁰¹

To identify endangered witnesses seeks to be the major characteristic of witness protection in India. The witnesses who are endangered, this inculcates individuals who face evident danger or threat when they give testimony in various criminal cases. While witness protection programs basically pointed at protecting these individuals, number of legal issues and disputes makes the process of

⁹⁷ AIR 2017 SCC 280.

⁹⁸ AIR 2015 SCC 497

⁹⁹ AIR 2017 HYD 217.

¹⁰⁰ Rashmi Rekha Baug, "Witness Protection Scheme in India- Issues and Challenges", 11 *International Journal of Creative Research Thoughts* 448 (2023).

¹⁰¹ Rashmi Rekha Baug, "Witness Protection Scheme in India- Issues and Challenges", 11 *International Journal of Creative Research Thoughts* (2023).

identifying such witnesses very complex. In this section, we searched into various problems faced in identifying endangered witnesses and their involvement in witness protection attempts.¹⁰²

One of the main problems faced in identifying endangered witnesses in India is the truancy of a systemized definition or basis to know the vulnerability. Various statutes and legal findings are used to vary different definitions, making it a difficult task to identify who actually is eligible as an endangered witness. This lack of clarification can end up in inconsistency in the treatment of witnesses and obstruct the execution of valid protection measures.¹⁰³

Witnesses, especially in backward areas and undervalued sections, may not be conscious of their rights or the extant of witness protection programs. In addition law organizations agencies, legal professionals, and judicial jurisdiction not always be appropriately affected to acknowledge endangered witnesses. As a consequence, the possible witnesses in need of protection are not identified soon in the legal process.¹⁰⁴

Sensitivity among witnesses can exhibit in various forms, such as fear of retaliation, psychic damage, age-related problems or bodily disorders. In order to know witnesses who fall into various different classification of vulnerability needing a delicate and multilayered approach. The absence of systematize procedures for such identification constitutes different challenges in providing protection ways according to the requirements of witnesses.¹⁰⁵

Witnesses, mainly in cases inculcating fragile matters like crimes involving sexual offenses or human trafficking, may fright reprimand or social denounce if their identities are divulged. The constant fright is capable of demoralizing witnesses from putting a foot forward and revealing their problems. As a result, identifying such witnesses challenges increases, as they may not willingly self-identify.¹⁰⁶

Legitimate and procedural obstructions can also hamper with the identification of endangered witnesses. For example, in cases where the person is accused basically constitutes a high powered or powerful organization, witnesses may be tentative to reveal their sensitivity due to various concerns about legal outcomes or to understand the worth of proper witness protection.¹⁰⁷

In few cases, the identification of the endangered witnesses might be attended late in the legal process, certainly after they have so far already been revealed to fear and threats. Obstruction or

¹⁰² Witness Protection Scheme, 2018, *available at*: <http://www.mha.gov.in> (last visited on December 19, 2023).

¹⁰³ Witness Protection: Problems Faced and Need for a Protection Program in India, *available at*: <http://www.lawoctopus.com> (last visited December 19, 2023).

¹⁰⁴ Judgement, *available at*: <http://www.main.sci.gov.in> (last visited on December 20, 2023).

¹⁰⁵ Vulnerable and Intimidated Witnesses, *available at*: <http://www.popcentre.asu.edu> (last visited on December 20, 2023).

¹⁰⁶ Witness Protection Scheme, 2018, *available at*: <http://www.mha.gov.in> (last visited on December 20, 2023).

¹⁰⁷ Chris William, "Evidence, Procedure and the Upside of Cognitive Error", 57 *Journal Storage* (2004).

delay in identification can compensate the consequences of protective measures, as early and swift mediation is vital to make sure that witnesses are safe and sound.¹⁰⁸

The States and Union Territories in India are differentiated in their resource allotment and allocation for witness protection programs. In few regions it may have a strongly funded and well staffed programs, while in the others it may face challenges due to its limited resources. This polarity can end up in various inconsistencies in the standard and availability of witness protection facility around the country.¹⁰⁹

Non Government Organizations and various civil societies arrange and play an important role in assisting witness protection efforts, their participation can also establish various challenges connected to coordination. These organizations frequently function independently, and their assets and techniques may not always be arranged with those of government organizations. To make sure that cooperation and coordination between these government bodies and NGOs is important.¹¹⁰

Witness allotment, relocation and rehabilitation are pivotal elements of witness protection programs in India. These methods are executed to protect witnesses who have to go through adverse threats or endangerment to them due to their testimony later being or already being presented in criminal court. However, number of legal problems and challenges border around witness allotment, relocation and rehabilitation, affecting their effectiveness. It is explored that these challenges and their involvement is vital for witness protection in India.¹¹¹

The procedure of allotment and relocation of a witness to a latest or new location is complicated and inculcates various rational challenges. It is essential to identify a proper relocation site, later making sure that witness's protection is safeguarded during shifting to location and introducing them to their new identity needing diligent planning and implementation. In the absence of any proper procedures and guidelines, the relocation techniques can be subjected to various errors and undue delays.¹¹²

Witness allotment and relocation frequently inculcates giving witness with a protected and safe house or a well secured accommodation to safeguard them from any potential threats. Introducing and keeping safe houses with appropriate and required security methods is crucial. However, the accessibility of such safe houses can be restricted or limited which leads to various challenges in accommodating witnesses in need.¹¹³

¹⁰⁸ Current Position of Witness protection in India, *available at*: <http://www.abbasilegal.com> (last visited on December 20, 2023).

¹⁰⁹ Witness Protection Scheme, 2018, *available at*: <http://www.drishtiias.com> (last visited on December 20, 2023).

¹¹⁰ Key Issues- State Cooperation with Civil Society, *available at*: <http://www.unodc.org> (last visited on December 20, 2023).

¹¹¹ Witness Protection Scheme, 2018, *available at*: <http://www.loksabhadoc.nic.in> (last visited on December 20, 2023).

¹¹² Good Practises for the Protection of Witnesses in Criminal Proceedings Involving Organized Crime, *available at*: <http://www.unodc.org> (last visited on December 20, 2023).

¹¹³ Witness Protection Scheme, *available at*: <http://www.mha.gov.in> (last visited on December 20, 2023).

VII. Conclusion

In order to safeguard the Rule of Law and to procure the Principles of Natural Justice it is essential for a witness to testify in his true consciousness and participate in legal investigation without any fear of being threatened or intimidation. India has shown a progressive ideology and improved legislation towards the subject of witness protection throughout the years and still has room for further improvement. Witness Protection Scheme, 2018, is a recent enactment in order to provide appropriate protection to witnesses and their families but this scheme excludes almost all the recommendations made by the Malimath Committee nor the 198th Law Commission Recommendations. Witnesses still continues to be hostile in courts and still remain partial, pressurised and intimidated, which leads to a delay in the justice delivery system. Despite all the flaws in Witness Protection Scheme, 2018, the scheme has constructed evident benefaction to India's judicial reforms but still there is hope for improvement. In order to revamp the witness protection laws in India it is essential that values related to encouraging fair trial should be embedded in the judicial process while hearing a case, strict protective measures should be taken in order to safeguard the identity of witnesses and their families, if officials appointment by the concerned authority fail to comply with rules and regulations of the Witness protection Program, 2018, then in such case strict actions should be taken against the designated official, it is significant that witnesses and their families are provided with security without asking for it frequently or making nonessential efforts, in this way they do not have to worry about their safety throughout the trial process, witnesses are usually driven away due to constant apprehension about facing threat to their lives and property by the opposite party or especially when the case is against an influential or powerful person, in such cases witnesses do not come forward to testify in court due to persistent fear, it is important for witnesses to come in light in their true sense and provide sincere testimony so that a fair trial can be conducted, hence this can only happen when the concerned authority under WPS provides for a strongbox and secure environment, the emotional being of witnesses and their families ought to be in sound conditions to further conduct the trial, hence, psychologists should be appointed under WPS for social and psychological wellbeing of witnesses, mostly there are witnesses under murder and rape cases and usually witnesses who have witnessed any horrific moment connected to such cases are mentally traumatised and require to be connected to a NGO or professional help from people who can deal with such horrendous ordeals. Poverty has played a paramount role in contributing towards hostility of witnesses. The desire and impulse to gain monetary benefit out of cases which significantly captures attention of the public as well as media due its high profile nature becomes a pivotal platform for poverty stricken to earn unfair means of monetary gains. The WPS must consist of some fiscal reward for those who come forward to stand beside the truth and testify honestly. Such changes can really donate benevolence a variety of cases which inculcate poor as a part of testimonial dependency in order to fulfil the need and justice. Though India falls under some of those countries who possesses its own Witness Protection Scheme, but with more diligence towards this scheme it can be intensified and upgraded additional legislative efforts and execution of the WPS, 2018.