

**WITNESS PROTECTION SCHEME AND ORGANISED CRIME:  
LESSONS LEARNED AND FUTURE CHALLENGES**

**A DISSERTATION TO BE SUBMITTED IN PARTIAL FULFILMENT OF  
THE REQUIREMENT FOR THE AWARD OF DEGREE OF MASTER OF  
LAWS**

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## **LIST OF ABBREVIATION**

AFP	Australian Federal Police
AG	Attorney General
AIR	All India Reporter
AP	Andhra Pradesh
App.	Application
Art.	Article
Bom.	Bombay
BPRD	Bureau of Police Research and Development
C.R.L.J.	Civil Rules For Courts Of Limited Jurisdiction
CCTV	Closed Circuit Television
CJS	Criminal Justice System
CR. PC	The Criminal Procedure Code, 1973
Cri. C	Criminal Cases
Cri. LC	Criminal Law Cases
Cri. LJ	Criminal Law Journal
Cri. LR	Criminal Law Review
DLSA	District Legal Services Authority
EU	European Union
FIR	First Information Report
GOI	Government of India
Guj.	Gujarat
HC	High Court
HP	Himachal Pradesh
IAC	Indian Apex Court
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights, 1966

ICTR	International Criminal Tribunal For Rwanda
ICTY	International Criminal Tribunal For the Former Yugoslavia
IJIL	Indian Journal of International Law
ILI	Indian Law Institute
ILR	Indian Law Reports
IRMCT	International Residual Mechanism for Criminal Tribunals
IPC	The Indian Penal Code, 1860
IEA	Indian Evidence Act, 1872
KLT	Kerala Law Times
Mad.	Madras
Misc.	Miscellaneous
M.P.	Madhya Pradesh
MOU	Memorandum Of Understanding
MCOCA	Maharashtra Control of Organised Crime Act, 1999
NCT	National Capital Territory
NGO	Non Government Organization
NHRC	National Human Rights Commission
NLSA	National Legal Services Authority
NIA	The National Investigation Agency, 2008
NPC	The National Police Commission
NWPP	National Witness Protection Program
Ors.	Others
P&H	Punjab and Haryana
POTA	Prevention of Terrorism Act, 2002
PUCL	People's Union for Civil Liberties
R.	Rule
RPE	Rules of Procedure and Evidence

S.	Section
SAPS	South African Police Service
SC	Supreme Court [Supreme Court of India]
SCALE	Supreme Court Almanac
SCC	Supreme Court Cases
SCR	Supreme Court Reporter
SLSA	State Legal Services Authority
SLP	Special Leave Petition
SCJ	Supreme Court Journal
SWPP	State Witness Protection Program
SOCPA	Serious Organised Crime and Police Act, 2005
TAR	Threat Analysis Report



## LIST OF CASES

- Abhijeet Singh vs State of Punjab Criminal Appeal No(S).1864 Of 2019
- Alakh Alok Srivastava vs. Union of India and Others (2018) 3 MLJ (Crl) 282 (SC) LNIND 2018 SC 254
- Apne Aap Women Worldwide Trust v. The State Of Bihar & Ors (2014) Pat H.C 234
- Babu Rao Patel V. Bal Thackeroy, 1977 Cri.L.J. 1639
- Bachpan Bachao Andolan v. Union of India (2015) SCC 988
- Bandhua Mukti Morcha v. Union of India AIR 1984 SC 820
- Bimal Kaur Khalsa v. Union Of India And Ors. AIR 1988 P H 95,
- Chairman, Railway Board & Ors. v/s Mrs. Chandrima Das & Ors 2000 2 SCC 465
- Delhi Domestic Working Women"s Forum v. Union of India (1995) 1SCC 14
- Gura Singh v. State of Rajasthan 2001 Cri. L.J. 487
- Gurbachan Singh vs. State of Bombay AIR 1952 SC 221
- Himanshu Singh Sabharwal vs State of M.P. And Ors AIR 2008 SC 1943
- Hira Nath Mishra and Ors. vs. The Principal, Rajendra Medical College, Ranchi, and Anr AIR 1973 SC 1260,
- Isarail and another"s vs State of Uttar Pradesh & others Writ - C No. 11301 of 2019
- J.J. Merchant v. Shrinath Chaturvedi AIR 2002 SC 2931
- Jamal Sekh v. State of West Bengal and Others 2019 SCC OnLine Cal 2272 : 2020 Cri LJ (NOC 33) 11
- Jitendra Kumar@ Ajju vs. State (NCT of Delhi) Crl. W.P. 216/99 also available at Duty of The Public Prosecutor
- Kartar Singh v. State of Punjab (1994) 3 SCC 569
- Kuldeep Singh @ Deepa And Another vs State of Haryana CRA-S-1842-SB-2011
- Leelawati v. Ramesh Chand, AIR 2004 SC 1488
- Mahender Chawla & Ors. V. Union Of India & Ors. Writ Petition (Criminal) No. 156 Of 2016 P.27
- Maneka Gandhi v. Union of India, AIR 1978 SC 597: (1978) 1 SCC 248 246

- Maneka Sanjay Gandhi v. Rani Jethmalani (1979) 4 SCC 167
- Mosaref Hossain Mondal v/s The State of West Bengal & Others 2012 CriLJ 2893
- Mukul Dalal v. Union of India (1988 3 SCC 144)
- Nahar Singh Yadav Vs. Union of India reported in (2011) 1 SCC 307
- Naresh Shridhar Mirajkar and Others vs. State of Maharashtra and Another 1966 (3) SCR 744
- National Human Rights Commission v/s State Of Gujarat & Ors Writ Petition (Crl.) No. 109 Of 2003
- Neelam Katara v. Union of India ILR (2003) II Del 377 260
- NHRC v/s State of Gujarat (2008) 16 SCC 497
- People's Union for Democratic Rights v. Union of India A.I.R. 1982 SC 1473
- People's Union of Civil Liberties vs. Union of India 2003 (10) SCALE 967
- People's Union for Civil Liberties (PUCL) v/s Union of India AIR 1997 SC 568
- People's Union for Civil Liberties Vs. Union of India (UOI) (2004) 9 SCC 580
- People's Union for Democratic Rights (PUDR) v/s Union of India (1982) 3 SCC 235
- Prajwala v. Union of India (2005) 12 SCC 136
- Prakash Singh v. Union of India 2006 8 SCC 1; 2006 3 SCC Cri 417
- Prakash V. State of Maharashtra, 1975 Cri.L.J. 1297
- Prerana v. State of Maharashtra 2003(2) Mah.L.J.105
- Ramesh and Others vs. State of Haryana (2017) 1 SCC 529
- Sakshi vs. Union of India (2004) 5 SCC 518
- State of Gujrat v. Anirudh Singh (1997) 6 SCC 514
- State of Maharashtra V. Dr. Praful B. Desai 2003 (4) SCC 601
- State of Maharashtra v. Mangilal (2009) 15 SCC 418
- State of Punjab vs. Gurmit Singh 1996(2) SCC 384
- State of Uttar Pradesh v. Shambhu Nath Singh (2001) 4 SCC 667
- State v. Sanjeev Nanda (2012) 8 SCC 450 : (2012) 4 SCC (Civ) 487

- State vs Hazi Mohd. Altaf <<https://indiankanoon.org/doc/167870521/>>
- State vs. Manu Sharma & Others, Criminal Appeal No. 193/2006
- Sunil Kumar Pal vs. Phota Sheikh and Other; AIR 1984 SC 1591
- Swaran Singh v. the State of Punjab (2000) 5 SCC 68
- Talab Haji Hussain vs Madhukar Purshottam Mondkarand 1958 SCR 1226
- The State of Maharashtra vs. Bandu @ Daulat (2018) 11 SCC 163
- Vineet Narain vs. Union of India: AIR 1998 SC 889.
- Virender Kumar Ohri v/s. Union of India & Ors Writ Petition (C) No. 341/2004
- Vishaka & Ors. v/s State of Rajasthan AIR 1997 SC 3011
- X vs State of Uttarakhand & Others Writ Petition Criminal No. 1495 of 2019
- Zahaira Habibulla H. Sheikh & Another v. State of Gujarat and Others (2004) 4 SCALE 375
- Zahira Habibullah Sheikh and anr. v/s. State of Gujarat and Ors. (2006 (3) SCC 374)

#### Foreign Judgements

- AB (A Pseudonym) v CD (A Pseudonym) [2017] VSC 350
- Attorney General (NSW) v Lipton [2012] NSWCCA 156; 224 A Crim R 177 at [38]
- Attorney General v. Leveller Magazine 1979 AC 440.
- Cain v. Glass (NUL) (1985) NSWLQ 230.
- Cherney v Deripaska [2012] EWHC 1781 (Comm), [2012] All ER (D) 201 (Jul)
- Dagenais v. Canadian Broadcasting Corp [1994] 3 S.C.R. 835
- DPP v Gilligan [2005] IESC 78
- Her Majesty, the Queen v. D.O.L [1995] 4 SCR 419.
- Jarvie & Another v. The Magistrate's Court of Victoria at Brunswick 1995 (1) VR 84.
- Marks v. Beysus (1890) 25 QBD 494.
- Maryland v. Craig (1990) 497 US 836.

- R v Davis [2008] UKHL 36
- R v. Khela's 1995 (4) SCR 201.
- R v. Mentuck 2001 (3) SCR 442
- R v. The Stipendiary Magistrate a Southport ex parte Gibson 1993(2) Qd. R. 687
- R. v. Brassington 2018 SCC 37
- S v. Leepile 1986 (4) SA 187 (W)
- S v. Pastoors 1986 (4) SA 222 (W)
- Scott v. Scott 1913 AC 417
- Smith v. Illinois (1968) 390 US 129.
- State v. Rogerson 855 N.W.2d
- State v. Tucker 231 Ariz. 125
- State v. Turrietta 2013-NMSC-036
- United States v. Yates 438 F.3d 1307
- Van Colle v Chief Constable of Hertfordshire Police [ 2007] EWCA Civ 325
- Waller v. Georgia 467 U.S. 39, 104 S. Ct. 2210, 81 L. Ed. 2d 31 (1984)

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# **CHAPTER 1**

## **INTRODUCTION**

“In search of truth, he plays that sacred role of the sun, which eliminates the darkness of ignorance and illuminates the face of justice, encircled by devils of humanity and compassion.”<sup>1</sup>

### **1.1. INTRODUCTION**

The Criminal Justice System intends to impart justice to every citizen of the country by protecting the rights of the victims and awarding punishment to the guilty.<sup>2</sup> The process adopted by the criminal justice system aims to establish peace and stability in society, which also ensures a sense of security among the citizens.<sup>3</sup> The concept of „the rule of law“ envisages predominance of legal spirit, and this demands the guilty to be punished according to the „due process of law,“ which is integral to the trial process.<sup>4</sup> This has also been directed under various Articles of the Indian Constitution like Article 20 of the Constitution, which offers safeguard with respect to conviction of offences and guarantees protection against ex-post-facto laws, double jeopardy, and self-incrimination.<sup>5</sup> Further, a free and fair trial is a sine qua non of Article 21 of the Constitution,<sup>6</sup> and Article 22 of the Constitution guarantees safeguards against arbitrary arrest and detention.<sup>7</sup> Therefore, the process of the criminal trial should be free from glitches and interruptions. In this regard, the role played by the witnesses during a criminal trial is highly recognized and unprecedented. They assist the courts in the

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<sup>1</sup> Whittaker Chambers quotes in Mahender Chawla v. Union of India, 2018 SCC OnLine SC 2679, available at (last visited on March 27, 2019)

<sup>2</sup> The Criminal Justice System, National Center for Victims of Crime, available at (Last visited on March 27, 2018)

<sup>3</sup> Richard Garside, The purpose of the criminal justice system, Centre for Crime and Justice Studies, March 17, 2008, available at (Last visited on March 27, 2018)

<sup>4</sup> Rahul Kumar Singh, Objectives of Criminal Justice System, Legal Service India.com available at (Last visited on March 27, 2018)

<sup>5</sup> Article 20 – Constitution of India, 1950

<sup>6</sup> Zahira Habibullah Sheikh v. State of Gujarat AIR 2006 SC 1367

<sup>7</sup> Article 22 – Constitution of India, 1950

cause of justice by lending their testimony and bring the guilty behind the bar.<sup>8</sup> Hence, it can be established that the task performs by the witness incredible in the Criminal Justice Administration. Justice Wadhwa in Swaran Singh v/s. State of Punjab recognized the role of witnesses and rightly stated that “criminal cases are decided on the basis of evidence furnished by the witnesses. By giving testimony witness assists the court in determining the truth and finding out the guilt. Therefore, by submitting testimony, witness performs not only a public duty but also a sacred task.”<sup>9</sup>

The Committee on Reform of the Criminal Justice Administration headed by Justice V.S Malimath has expressed its opinion about witness and suggested that “the witness should be treated with great respects and should be considered as a guest of honour during the trial process.”<sup>10</sup> It is noteworthy to mention that India has adopted an adversarial system wherein the Courts decide the cases relying on evidence produced by the parties. The evidence thus presented before the Court can either be in the form of an oral statement adduced by the witness or in the documentary form. Through these statements and documents, the courts decide whether the accused is guilty or not. Hence, the witnesses play a fundamental role in facilitating the Court to discover the truth and often called as the backbone of the judicial system.

Jeremy Bentham once said that the “witnesses are eyes and ears of justice.”<sup>11</sup> They are an important constituent of the criminal trial. However, the paramount purpose of the criminal trial shall defeat if witnesses are incapacitated to furnish their testimony due to the threat, pressure, and allurements. Moreover, to extract the truth in a viable manner, it is necessitated

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<sup>8</sup> G. S. Bajpai, „Witness in the Criminal Justice Process: A study of Hostility and Problems associated with Witness,“ Bureau of Police Research and Development Ministry of Home Affairs, New Delhi, 2009, available at (Last visited on March 27, 2018)

<sup>9</sup> Id

<sup>10</sup> Justice V.S Malimath Committee, „Reforms in Criminal Justice System“, (2003) Vol. I, P.151, available at (Last visited on January 21, 2017)

<sup>11</sup> "Witnesses" and the Criminal Justice System: Role & Importance, Saturday, January 15, 2011, available at (Last visited on January 31, 2017).



that an environment shall be created wherein a witness would be able to submit his version without fear of intimidation.<sup>12</sup> It is pertinent to note that fair investigation and trial is an essence of the rule of law; hence it is desired that witnesses should be treated with great care, and adequate protection should be provided to them during the truth-finding process.<sup>13</sup> The paramount purpose of the justice delivery system shall even be frustrated if the witnesses are not protected.<sup>14</sup> Therefore, the witness protection mechanism is key to address the problems associated with the witnesses in the Criminal Justice System.

## **1.2. STATEMENT OF PROBLEM**

There are several challenges in the area of witness protection under Indian criminal justice system. These problems can be briefly put as under: -

- i. The legislative framework pertaining to witness protection is inadequate from two perspectives, firstly inadequacy exists regarding the statutory recognition of witness protection measures and their probable implications on criminal justice system, and secondly inadequacy regarding the implementation of the witness protection mechanism can also be seen. The Indian legislative framework has dealt with witness protection from very limited perspective of physical security and needs as to the assistance and support to improve the quality of testimony of witness is not addressed at all.
- ii. Judicial endeavour to address the need of witness protection has resulted in issuing of various guidelines as per the requirement of a particular case, however implementing these guidelines itself is a challenge. Further the absence of comprehensive judicial approach itself has created an obstacle in effective witness protection.

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<sup>12</sup> Evidence“ LI Law Review Vol. II, Winter Issue 2017, available at (Last visited on January 31, 2018).

<sup>13</sup> Mashood A. Baderin, „A comparative analysis of the right to a fair trial and due process under international human rights law and Saudi Arabian domestic law,“ The International Journal of Human Rights, Volume 10, 2006 - Issue 3, available at [https://www.tandfonline.com/doi/abs/10.1080/13642980600828586?src=recsys&journalCode=fjhr20%3E\(Las t %20visited%20on%20January%2031,%202018](https://www.tandfonline.com/doi/abs/10.1080/13642980600828586?src=recsys&journalCode=fjhr20%3E(Las%20visited%20on%20January%2031,%202018)

<sup>14</sup> Id.

iii. Inadequate witness protection results either in the victimization of witnesses such as loss of life or limb or they may turn hostile. Hostility of witnesses results in conferring benefit to the accused which may result in his acquittal. Inability of criminal justice system to provide protection to the witness at different stages such as investigation, prosecution and trial results in denial of justice to the victim and low conviction rate. It shatters the faith of society and affects the creditability of criminal justice system as a whole. Thus, the basic purpose of free and fair trial is totally defeated.

iv. Interaction with the investigating agency and the process of testifying before the court of law makes the witnesses to suffer in many ways, particularly in case of victim witnesses. The impact of testifying in case of child witnesses is not at all taken into consideration. The law, has attempted to address the needs of child victims of sexual abuse but the plight of child witness appearing in criminal trial is totally unattended.

v. The peculiar nature of adversarial criminal justice system, itself poses the challenge to an endeavour intended to protect witnesses. Extending the protection to witness very often need to face the challenge of balancing the rights of other stakeholders of criminal justice system such as accused and society at large.

### **1.3. RESEARCH QUESTION**

1. To what extent the witness protection mechanism has been evolved during the different eras of the development of the Indian criminal justice system?
2. How far the present normative and institutional measures in the Indian criminal justice system guarantee protection to the witness? Are they adequate to resolve the problem associated with witnesses?
3. To what extent the Law Commission and Indian judiciary have been successful in recommending and resolving the plight of the witnesses in criminal justice administration?

4. How far the jurisprudence developed by the International criminal justice system facilitates for the growth of witness protection programs? Are these best practices would aid in framing the laws on witness protection in India?

5. Whether the Scheme approved by the Apex Court suitably addresses all the problems faced by the witness in the criminal justice system of the country?

**1.4. HYPOTHESIS** The concept and role of the witness are not new, and it is deep-rooted in the ancient Indian legal system; however, our modern criminal justice administration has ignored the witnesses. The witness suffers various hardships during the course of the trial, and instance of witness turning hostile has substantially enhanced due to a lack of adequate legal protection to the witnesses. The existing legal framework is inadequate to grant enough protection to the witnesses.

### **1.5. OBJECTIVE OF STUDY** Witness plays a crucial role during the criminal trial.

However, deplorably the condition of witnesses is very pathetic. They undertake lots of troubles during the course of the trial, as well as after the trial. Lack of adequate protection is prominent among all the plights. Various substantive, procedural, and special laws provide protection to the witness, but they are very limited. Law Commission of India, in its various reports, urges for the incorporation of a comprehensive law on witness protection. Hon<sup>ble</sup> Supreme Court & High Courts, in its various pronouncement, reiterate the need for witness protection law and to fill the vacuum in its recent judgment approve the Witness Protection Scheme, 2018. This research study will make an endeavour to make an in-depth study to identify the lacunas in the existing law, policy, legal framework pertaining to witness protection in India. Moreover, the research work will come out with alternative strategies in order to fill the gaps in the legal system and contribute to existing literature and give feedback and advise the policymakers to reframe the existing law to address the shortcomings.

- i. To critically evaluate the Indian legislative framework pertaining to protection of witnesses
- ii. To analyse the judicial trend regarding witness protection in India
- iii. To critically analyse measures for protecting witnesses observed under the International Criminal Law.
- iv. To ascertain certain good practices regarding witness protection observed in countries like UK, USA and Germany
- v. To ascertain and evaluate the implementation of witness protection mechanism prevailing under the Indian law.

**1.6. SCOPE OF RESEARCH** It is the general principle of criminal justice that the trial should be free and fair from all the types of hindrances. During the trial process, witnesses play a crucial role in deciding the guilt or the innocence of the accused. Therefore, due care should be taken to protect the witnesses from all the types of external pressure, threats, inducements, and intimidations so that they should come up before Court without fear.

The present research work seeks to study and examine the problems faced by the witnesses during the trial process. Further, it will also evaluate the present law/scheme governing witness protection in India. The research work will also make an endeavour to analyze the Law Commission reports, and landmark judgments of the Supreme Court & High Court wherein the need for witness protection law was highlighted. The study also seeks to analyse the Schemes and programs operating in various other countries only to elucidate arguments in the context of witness protection in India and not proposes to conduct a comparative analysis between India and that in other jurisdictions. The research study will suggest reforms for better implementation for a comprehensive policy on Witness protection.

### **1.7. REVIEW OF LITERATURE**

Mr. B. Guru Rajah Rao, his book „Ancient Hindu Judicature,“ has great importance because it has given an insight into the topic of the ancient judicial system in India, which covers the administration of justice in civil and criminal matters. The legal system as existed in early Hindu and medieval period relating to witnesses was framed in such a way that would arouse confidence and faith in the minds of not only the victims but also witnesses and the accused persons. The treatment that has been given to witnesses in the Courts might be one of the reasons which would have attracted the witnesses to participate in the administration of criminal justice. The book is of great help in finding out the success of the ancient criminal justice system.

Dr. Girish Abhyankar & Ms. Asawari Abhyankar in the book, „Witness Protection in Criminal Trials in India“ provides a comprehensive overview of witness protection in India. The author provides detailed information right from historical developments in India up to international scenarios like the International Bar Association report and International Criminal Court measures, referring to international documents like the International Convention on Civil and Political Rights, etc. The author covers significant developments like the 198th Law Commission report, 2006 and Whistle Blowers Act, 2011. The book also dealt with legislation dealing with witness protection in developing and developed countries like the United States of America, Germany, and Australia for comparative analysis.

Dr. Avatar Singh, in his book, „Principles of the Law of Evidence,“ has agreeably discussed the various aspects of the law relating to witnesses. This book is an introduction to and a brief study of the principles of the Law of Evidence that underline the provisions of the Indian Evidence Act, 1872. The relevant material has been considered at their appropriate places in the text. The author has tried elaborated his views with the help of various judicial pronouncements and explained the jurisprudential aspects witness. The book does not provide much insight into the problem faced by the witnesses and details of provisions relating to witness protection.

The author Pritam Ghosh, in his research paper, „Hostile Witnesses in India - A Menace to Criminal Justice Administration,“ has critically examined the problem of hostile witnesses in India. Further, the researcher has highlighted the vital role played by the witness in the criminal justice system. Moreover, he had tried to find out the root causes of hostility in witnesses and narrated the consequences wherein the witnesses turn hostile. The author of this research paper has also gone through various judicial pronouncements wherein the Hon“ble Supreme Court has treated „lack of witness protection“ as the reason for the problem of hostility and urge for incorporation effective witness protection policy. The researcher had

also suggested to incorporate a separate witness protection program by carefully observing the similar legislations functioning in various developed and developing nations, as a remedy to resolve the issues relating to hostility in witnesses.

The authors Prof. Girish Abhyankar & Prof. Asawari Abhyankar, in this research paper „Role Of Police And Witness Protection In India“ have focused on the crucial role played by police in the criminal justice system and, in particular, to the protection of witnesses. They had equated the role of both police and witness in the investigation of criminal matters and in arriving considerable results. The authors have also suggested that for successful and efficient working of the judicial system, the witness protection program could be considered as a useful tool. Moreover, focusing on the role of police in witness protection, the author had Stated the various stages of trial where their role becomes prominent. The research paper had also narrated various duties of police officials to be followed during the trial process.

Nevertheless, the role played by the society towards witness protection is also paramount; therefore, one of the segments of the research paper focuses on the importance of society in the prevention of crime and discharge of its duties towards the implementation of the witness protection program.

Ms. Kaazina Kapadia and Mr. Ashish Nath Jha, in their research paper, „The Need for Witness Protection Laws in India: A Necessity or a Luxury?“ focus on the call for the introduction of the legal framework for protection witnesses in India. Further, the research paper tried to find out various mechanisms through which interference of police agencies, judicial officials, and politicians could be clogged in the smooth running of trial processes. Moreover, authors have also weighed the facets of the lengthy process of the trial due to which financial burden incurred on the economy. The research paper has also analyzed the best practices of various witness protection programs operated in countries like South Africa, Hong Kong, and the United States of America. The authors also highlighted the constitutional

mandate under Article 21 to provide for the provision of a fair trial to witness and also recalled the provisions Universal Declaration of Human Rights and International Covenants on Civil and Political Rights, which desires for fair justice.

Prof. (Dr.) G. S. Bajpai, in this research note titled, „Research Note on Witness In The Criminal Justice Process: Problems & Perspectives“ brought forth the problem associated with the witness in the criminal justice system. The research note aimed to bring the possible solution for the hostility of witnesses during the trial process and to provide possible support to them for associated problems. The author of the research note highlights the plight faced by the witnesses during their interface with law enforcement agencies. The researcher has conducted his study by taking samples from the capitals of the State of Madhya Pradesh, Rajasthan, Maharashtra, Karnataka, and came up with the various outcome. While summing up the study, the researcher has recommended to incorporate a comprehensive policy on the protection of witnesses in the same lines as was suggested by the Law Commission of India in its earlier reports. The researcher named that policy as „National Policy for Witness Assistance & Protection,“ which finally would take the shape of legislation.

Mr. Vijai Govind, in a research paper, „The Role of Witnesses in The Ancient And The Modern Indian Judicial System,“ the researcher has taken extensive study about the role played by the witness in the judicial system of the ancient Hindu period and modern Indian judicial system.

The author referred various literary sources like Dharmashastra, Naradasmriti, Manusmrit, YajnavalkyaVishnu Purana, Vasistha Sutra, Goutama Sutras, Sukranitisara, Agani Purana, Kautilya Arthasastra, etc. to understand the rules and regulations governing law Courts in ancient India. Further, the researcher undertook to analyze the concept of witness, their kinds and ground of their competency in the ancient judicial system, way of cross-examination, and every single facet about the role of witness in the ancient Hindu period. While dealing with



the modern Indian judicial system, the researcher examines contemporary legislation concerning the position of witness. Moreover, at the end of his research, the author came up with a comparative analysis of both the judicial systems and pointed out that the ancient Hindu judicial system serves as the basis of the rule of law for the modern judicial system.

Dr. Karen Kramer, in his research paper „Witness Protection as a Key Tool in Addressing Serious And Organized Crime,“ had addressed the problem of serious and organized crime. The research paper has its basis on the manual of „Good Practices for the Protection of Witnesses in Criminal Proceedings Involving Organized Crime“ of the United Nations Office on Drugs and Crime Vienna published in the year 2008. The author has focused on the concept of witness and victim and their security and associated problems. According to the author, witness protection programs could be a possible way for the functioning of the criminal justice system in different parts of the world. Moreover, the research paper also elaborated on the aspect of witness protection in the context of human rights and its need in International Judicial forums and tribunals. The researcher had also observed that the role of society, nongovernmental organization, law enforcement agencies, judicial officials, academicians are very significant for protecting the witnesses of severe organized crimes.

Ms. Shikha Pisal & Mr. Somesh Dixit, in his research paper „Witness Protection: Need of India“s Criminal Justice System“ enlightened the need for witness protection programs in the Indian criminal justice system. The author has analyzed the witness protection programs working in developed countries like Australia, Germany, and the United States of America. Further, the research paper focused on the recommendation of the Law Commission of India and the Supreme Court pronouncements on the protection of witnesses. The author had drawn attention towards the various Indian cases which came into the past few decades wherein the need for a comprehensive policy on witness protection program was felt. The author upholds that the rule of law and fair justice to witness can only be imparted when he came up before

Court to get testified without fear and favor. Moreover, the researcher also emphasized to incorporate effective legislative scheme with the help of police, judiciary, and other governmental machinery.

Justice Saleem Marsoof, in this research paper „Witness Testimony – Some Perspectives From Sharia“at Law“ has very aptly discussed the concept of witness testimony under Shariat law in Sri Lanka. He referred to various books of Islamic jurisprudence wherein the role of the witness is described in the judicial process. The researcher has further elaborated on the conditions for giving evidence and stressed the aspect of competency of the witness by listing various pre-requisites. The researcher has also suggested to incorporate an advisory body to short the complex issues of Shari“at for the smooth working of Sri Lankan Courts.

Mr. Tanuj Bhushan Pranati, in this article, “Witness Protection in India and United States: A Comparative Analysis” the researcher has comparatively analyzed the situation of witness protection in India and the US and provides various recommendations for the improvement of witness protection in India. This research paper is of great help because a detailed analysis has been done about the reasons for the hostility of witnesses.

Ms. Mamta Shukla & Mr. Gaurav Shukla, in this Article, “Witness Anonymity & Protection: Balancing under Criminal Law,” authors had broadly deal with the concept of Hostile Witness, the legal framework of taking evidence, and judicial pronouncement on witness anonymity and protection. Through this article, the authors have highlighted the problem faced by the witnesses during investigation and trial. It also discusses the problem faced by prosecution due to the hostility of witnesses. Law commission recommendation through different reports is used by the author to balance the rights of witnesses against the right of the accused to a fair trial. Finally, the article led emphasis on the importance of witness anonymity & protection.

## **1.8. RESEARCH METHODOLOGY**

The present study shall be conducted by employing the doctrinal method by adopting an analytical approach. Hence the primary source of data shall be gathered from Statues and case laws. Further, secondary sources of data shall be gathered from Books, historical materials, Law Commission Reports, academic writings, leading journals, newspapers, magazines, and the internet. The researcher shall also rely on international documents and the United Nations Convention, Treaties, and Reports. Therefore, there shall be extensive use of legal libraries to collect the data. Finally, in the light of the hypothesis and research questions, the data thus collected and processed shall be analyzed. And at the end of the study, the conclusion shall be drawn, and some concrete suggestions shall be advanced to bring out an effective policy for witness protection in India.

## **CHAPTER 2**

### **HISTORICAL EVOLUTION OF WITNESS PROTECTION**

(Satya means speaking the truth and Dharma means translating it into action)

**- Sankara Bhagavatpada**

#### **2.1. INTRODUCTION**

Victims alone cannot fight for justice in the judicial system, and hence he needs the assistance of the witnesses to prove his case. For this reason, the role played by the witness is inexorable and also fundamental in the criminal justice administration. Witness facilitate the Court to find out the truth by providing credible information.<sup>2</sup> They assist during the trial by providing an insight into the series of facts and furnish the evidence to prove the same.<sup>3</sup> However, the process of examining the witnesses in criminal trials is not new, but it was in function during various stages of development of the judicial system.<sup>4</sup> In the Indian context, the concept and role played by the witnesses during the trial process can be traced from the ancient texts of the Vedic period. However, the role of witness was in developing stages during the medieval period and successfully thrived during the Colonial rule when the Britishers started the process of codifying the penal and procedural laws. Nevertheless, the detailed information regarding the concept and the role of the witness prevalent during those days can be gathered from the thorough examination of the historical data. Moreover, in order to comprehend the significance of witnesses during the course of the judicial process, in particular, a reference can be taken from various phases of the growth of criminal justice administration.

In this chapter, the researcher will study the origin, growth and development concept of witness protection from the Ancient Hindu period to the medieval period and in the modern era viz. pre & post-independence period.

## **2.2. CONCEPT OF WITNESS PROTECTION IN ANCIENT HINDU LAW**

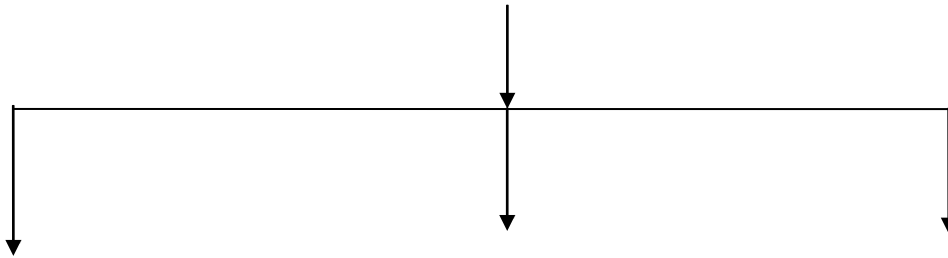
Time and again, the policymakers made multiple efforts to implant a system of judicial administration that could be accustomed to the changing paradigm of human civilization. While going through the various phases of origin and evolution of the legal system, we learned that the system of law and justice is not an advent of the modern era, but its roots are embedded in the ancient era.<sup>5</sup> Indian legal system is one of the finest and ancient judicial systems in the world, which has its glorious chronology.

Concept of Dharma - The ancient judicial system was predominantly ruled by Hindu law.<sup>7</sup> It was functioning through its four limbs. The first limb was „Dharma,“ the second was „Vyavahara,“ the third was „Charitra,“ and the last was „Rájasásana.“<sup>8</sup> During those days, village councils were set-up to adjudicate the dispute at the village-level.<sup>9</sup> A glimpse of these village councils can be spotted in our modern Panchayati raj system. The village councils constituted at villages had jurisdiction to decide the disputes of civil and criminal nature. At the state level, the King’s Courts were established, and they used to decide the disputed through the philosophies of Dharma. <sup>10</sup> The concept of Dharma has distinctive features; at one end, it safeguards the divine philosophy, and on the other end, it recognises the legitimate ethnicity.<sup>11</sup> The ancient legal system widely accepted the concept of the rule of law, and its glimpse can be cited in the transcript of Upanishad.<sup>12</sup> Moreover, it was often said that „Law is the king of the king,“ which means that, although the king rules the State, the law is always superior to the king.

Among all the Smritis, the Manusmriti is considered to be an unfailing source of legal information of the ancient Hindu period.<sup>14</sup> It reveals that the king, i.e., the sovereign head, should be regarded as the fountainhead of justice, and he must please his masses by maintaining equity and imparting fair justice.<sup>15</sup> The king should arrive at reasonable judgment after hearing both the parties and competent witnesses. Kautilya illustrated the function of a Sovereign in his book Arthshastra as- "In the happiness of his subjects lies the King's happiness; in their welfare his welfare; whatever pleases him he shall not consider as good, but whether pleases his people he shall consider to good."<sup>16</sup> In all the segments of judicial administration, the witness holds a central position. Prof. Rao, in his book "Ancient Hindu Judicator,"<sup>17</sup> mentioned that the witness holds a key position in the judicial process. Book further points out that "The ancient system tended to ensure the production of the best evidence available. It was secured by the process of preliminary elimination of ineligible witnesses and by affording sufficient protection to the respectable witnesses compelled to appear."<sup>18</sup> Regarding the eligibility of the witness in a judicial proceeding, the ancient judicial system was a little rigid, and the person who is of high moral character was qualified to be a witness during the trial process.

According to Vasishtha, there were three kinds of "Sakshya (evidence)" i.e. "Lekhya (Document)," "Sakshi (Witnesses)" and "Bukhthi (Possession) "

## Sakshya (Evidence)



“Lekhya (Document)”

“Sakshi (Witnesses)”

“Bukhthi (Possession)”

During those days, witnesses were testified in the presence of the parties, and the judge used to examine the witnesses by way of their appearance, body language, change in eye movement, and colour in the court. Katyayana gave importance to the analytical process of testing the veracity. He said that the Judge and his councillors are bound to verify the testimony of the witness. Narada supplemented and alleged that „the king shall extract the truth by eliminating falsity.“According to him, „justice“ functioned through four limbs viz. (i) Dharma, (2) Vyavahara, (3) Charithram, and (4) Raja Sasana. Dharma rests on truth; Vyavahara rests on truth, Charithram on the written instrument, and Raja Sasanam on the command of the king. He further assumed that the good and evil effects of the case extend to four quarters, viz., the parties, witnesses, judges, and the king.

Competency of witness - Regarding the competence of witness, Sukra opined that a person qualified to be a witness needs to have full-fledged knowledge about the incident, or he would have heard about the incident by some reliable source. Even a person on whom both the parties relies on can be called as a witness.<sup>28</sup> During the trial of the offence of theft or murder, which is happened in the village - the villagers were presumed to be a competent witness. In civil disputes like partition and loans - an unprejudiced member of the family from both the parties can be a competent witness.<sup>29</sup> A person who is of good moral character

can be called a witness in case of an offence relating to the marriage, i.e., adultery, burglary, or aggression. Sometimes it was preferred to have the witness of the same class or caste from which the person belongs.<sup>30</sup> Likewise, in the matters of offence relating to women - a female is presumed to be a competent witness.<sup>31</sup> When any disputes arose between merchants - the other merchants can be a competent witness.<sup>32</sup> In the absence of all the above categories of witnesses, any other person who is competent to get testified can be called as a witness.

Panini has given more importance to the person who has pursued the crime through his senses (e.g., eyewitness). Yajnavalkyasmṛiti and Manusmṛiti mentioned that the person who is god fearing, unbiased, fearless, trustworthy, having a child (or children) or religious can be a competent witness. The idea of having children, according to Manu, was that if a person has offspring, then he will not utter a false Statement in Court due to apprehension of losing them.

Narada describes the „incompetency of witness“ by giving five unique classifications.<sup>34</sup> In the first place, he kept the learned Brahmins and ascetics person.<sup>35</sup> In the second place, he kept the class of a person who is wrongdoer like the thief, robber, or gambler, whose testimony cannot be relied on.<sup>36</sup> In the third category, he kept the people who contradict their own testimony.<sup>37</sup> In the fourth category, he kept people who appear before the Court voluntarily to give testimony.<sup>38</sup> In the last category, Narada kept such people who were nominated by the deceased to act as a witness for him in any transaction.<sup>39</sup> However, primeval law was relatively relaxed on the occasions wherein the crime has happened in an isolated place and could only be testified by the person (witness) who was present at the scene regardless of his competence. According to Vishnudharmasutra and Sukranitisar , eyewitnesses are not required to testify when he is absent, or he has dedicated his authority to



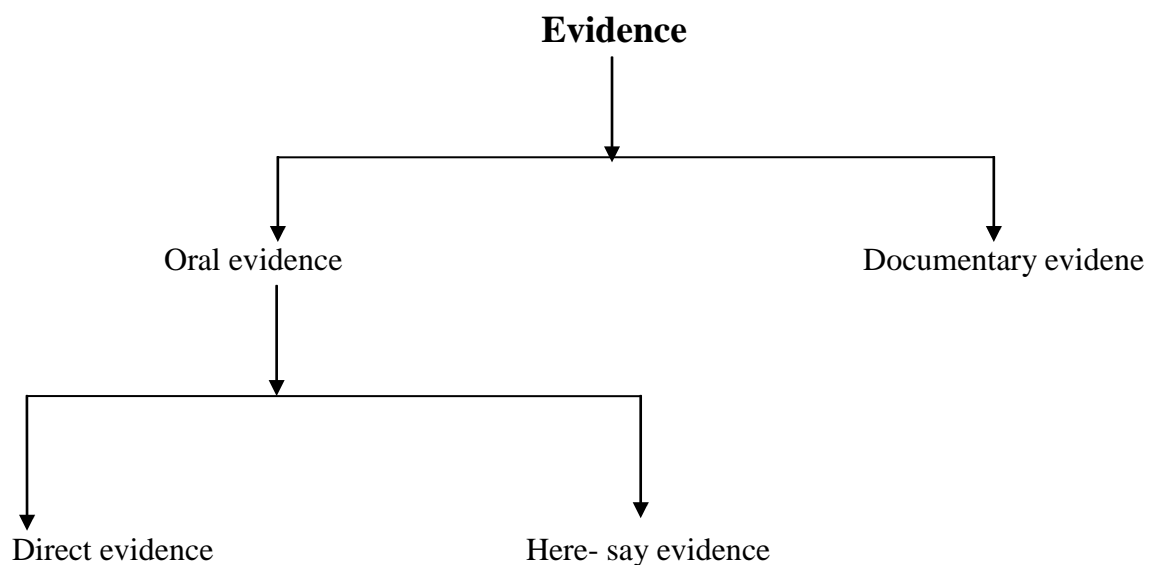
another person before his death or going to abroad. However, hearsay evidence was not treated as valuable evidence in those days.

Number of Witnesses - While comparing modern law with ancient law regarding the number of witnesses during the examination, modern law has not given much importance to the number of witnesses and infer that the testimony of a single witness is considered as pertinent in the case of a sole eye witness. However, ancient law prescribed that there must be at least three (3) witnesses during the examination. According to Naradasmruti, the testimony of a single witness will only be accepted when both the parties have agreed.<sup>41</sup> Kautilya upholds that a single witness is allowed to submit his testimony when the crime is committed in a remote place.

### **2.3. DEVELOPMENT OF WITNESS PROTECTION IN ISLAMIC PERIOD**

Ancient Hindu rule saw its set back around the end of the 11th century. Due to the advent of Muslim invaders in India, the Hindu princely States were conquered, and slowly and steadily, India was under the control of Muslim monarchs. Muslim rule was governed by the rulings of Islamic or Sharia principles of law.<sup>49</sup> The Islamic law found its basis in its holy book, the Quran (ال قرآن). It was assumed to be the direct words of God, which was revealed by Prophet Muhammad.<sup>50</sup> The Holy book Quran laid much stress on the concept of justice. Sunnah (ال سنة), Hadis (ال حديث), Ijma (إجماع), and Qiyas (ال قياس) were also treated as sources of law.<sup>51</sup> Muslim rulers consider „imparting justice“ means „imparting sacred obligation.“ They brought lots of reforms in judicial administration. During Muslim rule, different Courts were set up in the villages, districts, and at the capital level. Village councils were set up to resolve the dispute in villages itself, and in case of appeals, the aggrieved may approach to higher

forums. A separate department of judicial administration was set up to check the proper functioning of the Courts during Mughal rule. The evidence given in any judicial proceeding by non-muslim for Muslims was not admissible. Islamic penal law classified crimes into three categories: i.e. “crimes against God,” “crimes against the State,” and “crimes against private individuals.”<sup>52</sup> The first two categories were considered as a public wrong, and the last category was wrong against the individual. The case can either be instituted by an aggrieved personally or by his recognised agent, the accused was called, and he could be interrogated and examined on oath. In civil suits, the defendant was called in Court, either to accept the claim or for its denial. If the defendant accepts the claim, the order was passed the Court accordingly. However, when the defendant denies the claim, then the issues were framed, and witnesses and documentary evidence were called to prove his claim.<sup>53</sup> Islamic law broadly categorized evidence into two categories. The first, i.e., the oral evidence which includes the statement made by the parties in the Court. The second, i.e., the documentary evidence which includes the documents produced by the parties in the Court. The oral evidence is further classified into two parts, i.e., direct evidence, which is directly persuaded by the witness, and hearsay evidence, which is indirect in nature, and the witness heard it from someone else.





suspicion that the Judge is biased against one party by doing injustice to others. But, it can be asked when the witness needs to refresh his memory during the trial.

Regarding the competency of a witness, a particular class of individuals like worker standing for co-worker, nearby relatives, a person in favour of his kin, slaves, professional singers, lunatic, blind, infants were treated to be unfit. Moreover, Muslim criminal law recognized a few sets of laws for evidence and specifies that, if a non-muslim was called as a witness in a matter concerning the offence committed by Muslim, then the Court cannot impose death punishment. However, the evidence given by two non-muslim was considered equivalent to the evidence of one Muslim.<sup>60</sup> Therefore, the reliability of testimony was also based on religion.

In the event where a woman was called as a witness - the evidence furnished by two female witnesses was treated to be equivalent to that of one man. Even in case of an offence of murder, hadd, or kisa, the statement submitted by a woman was not permissible. However, a woman was permitted to submit testimony only in those instances wherein she alone was expected to have specialized knowledge about the occurrence. Moreover, the testimony furnished by an eyewitness (i.e., direct evidence) was considered to be more reliable than that of hearsay evidence. Like the ancient Hindu principle, Muslim law also stipulates the number of witnesses required to prove a conviction. In case of an offence of rape, the testimony submitted by sole eye witness was not sufficient, and four other witnesses were required to prove the offense.<sup>61</sup> Therefore, the concept of witness and recording evidence in the judicial proceedings during the medieval period seems to be more modern than that ancient period.

## **2.4. PRE-INDEPENDENCE APPROACH**

The Courts during Colonial rule have also recognised the importance of witnesses during criminal trials. They assist the Courts in finding out the guilt of the accused. However, the concept of witness has seen a considerable shift from the prehistoric period to the medieval period and during Colonial rule. Before the Indian Evidence Act, 1872, there was no codified law governing the law of evidence, and English Courts followed Common Law principles in the Presidency towns of Calcutta, Bombay, and Madras. "Such rules were contained in the Common Law and the Statutory Law, which prevailed in England before 1726, were introduced in Presidency towns by the Charter." 62 Apart from these Presidency towns, the law governing evidence was imprecise and ambiguous. Nevertheless, in some or other territorial areas, ancient Hindu and Muslim customary laws relating to admissibility of evidence were followed. However, many a time, Britishers felt a problem in dealing with the aspect of the admissibility of proof in the judicial process, as the rules and regulations which was prevailing in Mufassil Courts were different from Mayor's Courts. Suffice it to mention that there was no codified law governing evidence in non-Chartered Courts outside the Presidency towns. Undoubtedly, few reforms were brought in Act XIX of 1853, but they were limited to the Presidency town of Calcutta. Therefore, Chief Justice Peacock in *R v. Khairulla*, observed, "English Law of Evidence was not the law of the mufassil Courts, and it was further held that Hindu and Muslim laws were also not applicable to those Courts. There are no fixed and definite rules of evidence; the administration of the law of evidence was far from being satisfactory."

During mid of 18th century, though, the Britishers do not have their own law governing evidence in codified form, but they made efforts to frame some rules and regulations for Indian Courts. The role of the witness was very aptly dealt with in the Acts passed by the

British Indian legislature. The book written by Woodroffe & Ameer Ali on „Law of Evidence in India“ provides an insight into the reforms which were made in relation to witness during those days.<sup>64</sup> According to Woodroffe & Ameer Ali’s Book “The Lord Denman's Act, 1843 contemplates that no witness should be excluded from giving evidence either in person or by deposition by reason of incapacity for crime or interest.”<sup>65</sup> Similar provisions were made applicable to Her Majesty’s Courts in the Presidency towns of Calcutta, Bombay, and Madras through Act VII introduced in the year 1844. Further, regarding competency, in the year 1846, the Statute 9 and 10 Vict., cap. 95 contemplates that the parties, including their spouse and the person who understands the importance of an oath, shall be declared as a competent witness in courts.<sup>66</sup> A person who brought or defended the suit on behalf of the other person shall also be declared as competent. Lord Brougham’s Act of 1853 declares the spouse to be a competent witness.<sup>67</sup> Regarding competency, Her Majesty’s Courts followed similar rules in India.

It is noteworthy to mention that the third pre-independence Law Commission recommended to incorporate the Evidence Act in the year 1861. Thus, the British Parliament passed a codified law that contains rules regarding the permissibility of evidence in the year 1872. “Sir James Fitzjames Stephen” is regarded as the father of the Evidence Act as it was his efforts that lead the foundation of the codified Act.

### **Indian Penal Code, 1860 –**

To adjudicate the disputes between the parties, the Britisher incorporated several Court in presidency towns. However, during those days, the penal law in India was not in codified form. To overcome this problem, the First Law Commission recommended to codify the penal laws. The task of codification was entrusted to Lord Thomas Babington Macaulay, who

submitted a draft of a comprehensive penal code to the Governor General of India. The Indian Penal Code took the shape of law in the year 1860 and came into effect from January 01, 1862. The Code comprises of the different chapters to deal with different crimes. However, there were very few provisions pertaining to the protection of the witnesses. Section 195A of the IPC penalized the person who intimidates the witness to give false evidence.<sup>70</sup> The provision makes it very clear that the person who threatens another person to give false testimony by injuring him or his reputation or damage his property or of the other whom he has an interest shall be penalised under this section. Similarly, section 228A of IPC, though, does not protect the witness directly but punishes the person who discloses the identity of the victim under Section 376, Section 376A, Section 376B, Section 376C, or Section 376D of IPC.<sup>71</sup> As the term victim includes witnesses, therefore this section shall also provide protection to the witnesses who are victims of the crime. The section contemplates that the person shall be penalised for 2 yrs. imprisonment and fine if he reveals the identity of the rape survivor by printing or publishing her name and whereabouts. The provision provides privacy to the rape survivor from the general public by keeping her identity undisclosed and saving her from secondary victimization.

### **India Evidence Act, 1872 –**

The India Evidence Act, 1872, does not provide for definition the term „witness.“ Nevertheless, Section- 3 of the Act has defined the term „evidence,“ and the meaning of the term „witness“ can be interpreted from the said definition. Section - 3 of the Act categorised 'evidence' into two forms, i.e., oral evidence and documentary evidence. Oral evidence means the statements made by the witness relating to any fact under an enquiry with the permission of the Court. Moreover, documentary evidence means all the documents brought before the court for its inspection.<sup>72</sup> Clause I of Section - 3 makes clear that the statements adduced by

the witness in the Court of law are covered under the category of oral evidence. Further, Chapter – IX of the Act is titled as “Of Witness,” which contains seventeen Sections (Section 118-134). The Chapter provides an insight into the aspect of competence of witness, the person who can be compelled to answer; privileges given to some individuals; and the number of witnesses required during the Court proceeding etc. Section 118 of the Act gives discretion to the Court to permit an individual to get testified if he can understand the question asked by the Court and answer them rationally. This Section has also considered a lunatic person as incompetent to get testified.<sup>73</sup> However, under Section 120 of the Act, the spouse of the party is considered to be a competent witness to get testified in both civil and criminal proceedings.<sup>74</sup> Further, an accomplice is also considered a competent witness.<sup>75</sup> Moreover, there are a few categories of individual/relation/situations wherein a person cannot be compelled to answer in the judicial proceedings. For instance, a judge or magistrate cannot be compelled to answer about his conduct during the judicial proceedings;<sup>76</sup> a person cannot be compelled to answer any communication made during the marriage;<sup>77</sup> a police officer or magistrate cannot be compelled to give information about the commission of an offence. Moreover, a person cannot be forced to answer any official communications<sup>78</sup> or professional communications<sup>79</sup> or confidential communication<sup>80</sup> or be obligated to produce title-deeds<sup>81</sup> or produce documents which other person has possession<sup>82</sup> . <sup>83</sup> Moreover, under section 132 of the Act, a witness shall not be exempted from giving answers to the substantial questions which are pertinent in a suit or proceeding on the ground that he may be incriminated by answering such questions. However, the same can be asked during the prosecution for giving false evidence. Regarding the number of witnesses in Court proceeding, Section – 134 of the Act provides that no fixed number of witnesses are required to prove any fact, and even a sole eyewitness is enough to establish the fault of the accused.<sup>84</sup> Therefore, the Supreme Court has rightly said that “the legal system has laid



emphasis on value provided by each witness, rather than the multiplicity or plurality of witnesses.”

### **Bengal Suppression of Terrorist Outrages Act, 1932 –**

Bengal Suppression of Terrorist Outrages Act, 1932, was probably the first special legislation during the pre-independence period that provides for protection to the witnesses during the trial process. Section 31 of the Act empowers the Special Magistrate to hold the proceeding in-camera, which means the general public shall not have access to the Courtroom during the course of the trial. The Special Magistrate shall pass the above order after the certificate of Public Prosecutor or Advocate General in the interests of the public peace or safety of any of the witnesses.<sup>94</sup> However, it is pertinent to note that this section provides discretion to the Special Magistrate to order for the exclusion of the general public in the courtroom.

It is noteworthy to mention that although the above legislations were incorporated during British rule in India, but they continue to dominant even after independence.

### **2.5. DEVELOPMENT OF WITNESS PROTECTION DURING POST INDEPENDENCE PERIOD**

The witness being the essence of the criminal justice system, occupies a prominent place. Therefore, there are various provisions in procedural laws, Acts, rules, and regulations incorporated by the Indian legislature to deal with the aspects of witness after independence. The Constitution of India was incorporated in the year 1950. It is regarded as the law of the land. Constitution guarantees to protect the fundamental rights of the citizen. Constitution

also ensures reasonable and fair trial to the witness, which is protected under Article 14 and Article 21. Further, the Code of Criminal Procedure was the first procedural law to provide a detailed process to govern criminal courts incorporated during British rule in the year 1861. However, few amendments were made in the year 1872, 1882, 1898, to bring reform in the Code. The Code of Criminal Procedure of 1898 continued in operation after India's independence until the new Code was formulated by replacing the old one. Finally, it took a comprehensive shape as a Code of Criminal Procedure in the year 1973. The Code provides various provisions that deal with aspects of witness protection (though not directly), which are discussed in detail in later paragraphs. However, there are various special laws like The Unlawful Activities (Prevention) Act, 1967, The Terrorist & Disruptive Activities (Prevention) Act, 1987, The Maharashtra Control of Organised Crime Act, 1999, Prevention of Terrorism Act, 2002, The National Investigation Agency, 2008, The Juvenile Justice (Care and Protection of Children) Act, 2015 etc. that provides for a specific provision which safeguards the rights of witnesses during the course of the trial. Moreover, few Private Member Bills were introduced past few years in Lok Sabha and Rajya Sabha such as "The Witness Protection Bill, 2015",<sup>95</sup> "The Witness (Protection of Identity) Bill, 2015",<sup>96</sup> "The National Witness Protection Bill, 2016",<sup>97</sup> "The Witness Protection Program Bill, 2016",<sup>98</sup> "The Compulsory Protection of Witnesses and Victims of Crimes Bill, 2017"<sup>99</sup> and "The Compulsory Protection of Witness and Victims of Crimes Bill, 2018"<sup>100</sup> pertaining to the protection of the witness. However, out of these Bills, only one bill is in pending status, and all the other bills have lapsed.

## **Constitutional Provisions and Interpretation –**

Soon after India's independence, the Constitution was adopted in the year 1950. The Constitution of India is regarded as Supreme lex and also acknowledged as the mother of all

the law. The Constitution of India guarantees fundamental rights to every citizen of the country. Various rights have been recognized in the category of fundamental rights under the Indian Constitution, which also includes the right to a reasonable and fair trial. Fair trial is an essence criminal justice system. The Constitution of India has recognized the right to a fair trial under Article 14<sup>102</sup>, and it is a sine qua non of Article 21.<sup>103</sup> A trial to be called a fair trial should be free from any hindrances. Fair trial not only gives an equal opportunity to the accused and victim but also to the witnesses to participate in the trial by following the principle of natural justice. A fair trial, in other way, means a trial that is conducted by an independent prosecutor, impartial magistrate, and in a free environment.<sup>104</sup> Therefore, it has significance in the criminal justice system.

It is noteworthy to mention that witness has a substantial role in the criminal justice system. However, incidences of witness turning hostile during the trial process came in the limelight for past decades. These issues generally happened due to a variety of reasons, but threat and inducement to the witnesses are prominent amongst them. If the witnesses are deterred, threatened, harassed, or intimidated to give false testimony before the Court during the trial, then it will not amount to a fair trial.<sup>105</sup> Even if Courts fail to record evidence of key witnesses, it will amount to the denial of a fair trial. Therefore, the Court has to ensure a fair trial to the witnesses also.

## **Code of Criminal Procedure, 1973 –**

The Code Criminal Procedure, 1973 (hereinafter referred to as "the Code") provides a detailed procedure for the trial of criminal cases. The Code has recognized the role of a witness during the course of criminal trials. The Code has provided exhaustive rules for attendance of the witness, method of recording testimony, and various other aspects related to witness during investigation, inquiry, and trial. Few relevant provisions relating to the concept of witness are discussed in subsequent paras. Section 160 of the Code provides for the “power of police officers to call for attendance of a witness.” Any person who is having enough knowledge about the occurrence of an incident may be called as a witness for an investigation by the police officer. Moreover, this section also made provision for the payment of reasonable travel expenses incurred by the person to travel to the place where he was called.

Code of Criminal Procedure, 1973, provides for a detailed procedure for inquiry and trial of criminal offences. It has provided various provisions for the protection of the accused; however, there are very few provisions that provide protection and safeguard to the witnesses. Therefore, a fresh look into the provision by the legislature would afford adequate protection to the witnesses during the course of the trial.

## **The Unlawful Activities (Prevention) Act, 1967 –**

The Unlawful Activities (Prevention) Act (hereinafter referred to as "the Act") was passed by Parliament in the year 1967 (Act No. 37 of 1967) to combat unlawful and terrorist activities. Moreover, the United Nations Security Council adopted various Resolution wherein the member States were required to take adequate measures to combat international terrorism. The Resolution also mandates to prevent certain individuals or groups who are involved in terrorist activities by stopping them from using their economic resources for such activities. It also aims to put off the entry, transit, supply, sale, transfer of weapons to a person or body specified in the Schedule.<sup>126</sup> There are two provisions in this Act that deals with the aspect of witness. Section 22 of the Act penalizes the person who threatens the witnesses. It states that any person who threatens a witness by any violent act or puts any wrongful restrain or confines the witness or does any unlawful act to threaten him shall be penalised. This section also applies to a person on whom the witness is interested. <sup>127</sup> Moreover, Section – 44 of the Act protects the rights of the witnesses.<sup>128</sup> The section empowers the Court to conducted proceedings in-camera. There are two types of protection given to witness under this Section, i.e., identity protection and maintaining the address of witness secret. The witness who seeks the protection may make an application on his own accord or through his prosecutor. Even the Court, by suo moto, act if it presumes that the life and safety of the witness are at peril. Further, the section also penalizes the person who contravenes the provisions of this Act. In the year 2004 & 2008, the Unlawful Activities (Prevention) Act, 1967, was amended and made more stringent. It was revised to overcome the difficulties in its enforcement and to apprising it in consonance with international norms. The Act penalizes the act of making arrangements of resources for terrorist activity, attachment of the earnings from terrorist acts, involvement in a terrorist organisation, funding to a terrorist organisation etc. The time limit for filing the charge sheet was also increased to 6 months from 3 months. In such a situation,

Act provides provision for the protection of witnesses during the terrorist-related trial would certainly afford them to furnish their testimony in a free and fearless environment.

### **The Terrorist and Disruptive Activities (Prevention) Act, 1987 –**

To make more stringent legislation to curb the problem of terrorism in India, the Parliament took an initiative to formulate The Terrorist & Disruptive Activities (Prevention) Act, 1987 (hereinafter referred to as "the Act") came into force on 03 September 1987. The Act intended to fight against terrorist activities in India by imposing severe penalties. Moreover, the Act was declared constitutionally valid by the Supreme Court in Kartar Singh v/s State of Punjab.<sup>129</sup> However, the Act contains stringent provisions that become the tool of misuse for the police machinery. Which is why the Act lapsed in the year 1995. The Act also provides two provisions for the protection of witnesses. Section 16 of the Act contemplates that the Designated Court is empowered to conduct in-camera proceedings. Under Sub-Section - 2, the order of witness identity protection and keeping the address of any witness undisclosed can be passed. The application under this section can be made by the witness or by his prosecutor, and even the Court may take suo moto cognizance of the matter.<sup>130</sup> Moreover, the section also penalizes the person who contravenes the provisions of this Act. The Terrorist and Disruptive Activities Act, 1985, was probably the first law that made provisions to permit witnesses to be anonymous. The witness is at liberty to make an application before the Court to keep his identity and whereabouts undisclosed. Similar provisions were made to protect the witness in the Prevention of Terrorism Act, 2002, and Unlawful Activities (Prevention) Amendment Act, 2004.

## **Prevention of Terrorism Act, 2002 (POTA) –**

To fight against the terrorist activities and other associated matters, Parliament enacted the Prevention of Terrorism Act, 2002 (hereinafter referred to as "the Act"), which was notified on 28.03.2002. POTA was incorporated on the same line of TADA; however, to stop the misuse, the Act provides various provisions to safeguard the rights of the individual (like the Court shall not take action on the offence under the provisions of this Act unless with the prior permission of Central or State government). The Act also protects the witness during the course of the trial. Moreover, the police officer not below the grade DSP shall investigate the offence committed under the Act. Hon'ble Supreme Court upholds the constitutional validity of the Act in People's Union for Civil Liberties v/s. Union of India (UOI) and declare it constitutional. However, POTA was abrogated in the year 2004 by the Parliament. Nevertheless, Section 3(7) of the Act provides for punishment to a person who threatens the witness by a violent act or puts any wrongful restrain or confines the witness or does any unlawful act to threaten him.<sup>132</sup> The Act also provides provisions for the protection to the witness. Section 30 of the Act empowers the Special Court to conduct the proceedings in-camera. Further, the Special Court under Sub-Section - 2 can take appropriate measures to keep the identity, address of the witness confidential. The application under this section can be made by the witness or through his prosecutor, and even the Court may take suo moto cognizance of the matter. Moreover, the section also penalizes the person who contravenes the provisions of this Act. POTA revived various provisions of TADA due to which it enhances the chance of its misuse and defeats its very purpose. The definition of "terrorist" and "terrorist activities" was nebulous under POTA. Further, it increased police powers and permits the confessions made in police custody as evidence. Therefore, incorporating provisions for witness protection under such a stringent terrorist Act would undoubtedly enhance the moral of witnesses to come forward and submits their versions before the Court.

## **The National Investigation Agency Act, 2008 –**

The National Investigation Agency, 2008 (hereinafter referred to as "the Act") was incorporated by the Parliament after a terrible attack at Mumbai to combat terrorist activity. The Act constituted to form a National Investigation Agency (NIA), which directly works under the realm of the Government of India. The Act was enacted to create nationwide investigation machinery to investigate and try the offences which affect the sovereignty, integrity, and safety of India.<sup>133</sup> NIA Act also provides provisions for witness protection. The Act empowers the Special Court to conduct the proceedings in-camera u/s 17. The Court may take appropriate actions like keeping the identity and address of the witness confidential if the life of the witness or the person on whom the witness has an interest is in danger.<sup>134</sup> The application under this section can be made by the witness or by his prosecutor, and even the Court may take suo moto cognizance of the matter. Moreover, the section also penalizes the person who contravenes the provisions of this Act. The NIA Act laid the foundation of a central agency, i.e., "National Investigation Agency," – to investigate the cases related to the terrorist act. The Act establishes the Special Courts to try the terror cases, which become the tool for misuse, as proved under TADA. Besides, this the offences which are made punishable under NIA Act are similar to the offences in UAPA due to which the offences registered under UAPA may be prosecuted in Special Courts (even though Special courts are not constituted under UAPA). However, like TADA, the NIA Act also provides provisions for the protection of identities of witnesses, which encourage the witness to furnish his testimony without fear.



## **The Protection Of Children From Sexual Offences Act, 2012**

### **(POCSO Act) –**

The Protection Of Children From Sexual Offences Act, 2012 (hereinafter referred to as "the Act") was incorporated by the Parliament by adhering the obligations of United Nation's Convention on the Rights of the Child adopted in the year 1989. The Act was incorporated with an aim to provide safeguards to the children from offences of sexual assault, sexual harassment, and pornography. Further, the Act also aims to ensure the integrated development of the child by protecting his right to privacy during all stages of a trial. The Act also provides provisions to safeguard victims and witnesses. Section 23 of the Act provides protection from disclosure of identity and whereabouts of the child (victim or witness as the case may be) in media. Even this section penalises the person who contravenes the provision and is punished with imprisonment.<sup>135</sup> Section 24 of the Act also prohibits the disclosure of the identity of a child by the police officer in media during the recording of the statement.<sup>136</sup> Section 33 of the Act mandates that during the point of examination, the counsel of the accused shall communicate questions to the Special Court and shall not put questions directly to the child. Moreover, the Special Court shall guarantee that the identity of the child shall not be disclosed in any manner during the process of investigation or trial.<sup>137</sup> However, the Act also empowers the Special Court to hold trial in-camera.<sup>138</sup> The Protection Of Children From Sexual Offences Act, 2012, in a special and a sensitive Act passed by the Parliament to provide protection to the child who is a victim of sexual offences. Looking upon the gravity and severity of the issue, time and again, various amendments were made in the Act. Hence, the present Act provides a full proof mechanism to protect and safeguard the child who may be either victim or witness of crime from secondary victimization.

## **The Juvenile Justice (Care and Protection of Children) Act, 2015**

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United Nations Convention on the „Rights of the Child,“ mandates all the signatory States to incorporate domestic legislation in the interest of the child. India is also a signatory to the Convention since 11th December 1992. Further, the standards prescribed in the “UN Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (the Beijing Rules)”, the “UN Rules for the Protection of Juveniles Deprived of their Liberty (1990)”, the “Hague Convention on Protection of Children and Co-operation in Respect of Inter-country Adoption (1993)”, and other related international instruments<sup>139</sup> also directed to incorporate law for the welfare of the child who is in need of protection. Therefore, the Parliament enacted an Act called as the Juvenile Justice (Care and Protection of Children) Act (hereinafter referred to as "the Act") in the year 2015. The Act prohibits disclosure of the identity of children u/s 74. The section prohibits the reporting of any proceeding which reveals the name, address, picture, or school or any other particulars during the trial through print or audio-visual medium.<sup>140</sup> Moreover, the Section also penalizes the person who contravenes the provisions of this Act. The Act has a unique feature that prohibits the discloser of the identity of a child victim or witness, which will also include a deceased minor insensitive crime through media or police officials. Such protection gives a sense of security among the child victim or witness who is in conflict with the law to stand before Board or a Committee and furnish his version without fear.

### **2.6. CONCLUSION**

The exhaustive study of all the phases of judicial administration, i.e., ancient to medieval and modern and from classical to contemporary, it can be suggested that the role of the witness is very prominent. Nevertheless, the procedures adopted by the Court to deal with the criminal

matters during those days vary from one another, but the role played by the witness is highly acknowledged. The comparative study of all the literary sources has shown the differences in the procedure for the examination of the witnesses in the Court, their competency, and the number of witnesses required to prove the guilt. However, it can be demonstrated that the modern judicial administration found its basis from the ancient judicial system of administration.

Moreover, the legislation incorporated during pre-independence and post-independence periods seems to be significant in developing the criminal justice system in India. Most of the prominent legislations incorporated during the British period continue to operate in the post-independence era. The Constitution of India builds the foundation of all substantive and procedural law after independence. In the context of witness protection, Article 21 of the Constitution envisages fair trial, which should be free from any hindrance. However, it is an irony that there are barely few provisions under general and special law which provides for witness protection. Legislations like the Indian Penal Code, Indian Evidence Act, Code of Criminal Procedure do not provide a full proof mechanism to protect the rights of witnesses. Thus, the time has come when there is a need to incorporate the procedural amendment to embraces the demand of the present legal system. Apart from the above-mentioned legislation, few special Acts like UAPA, TADA, POTA, NIA, JJAct etc. provides unique provisions like witness identity protection during the trial of the offence of terrorism. However, they are even unequipped to provide ample protection to the witnesses. Nevertheless, most of the other jurisdictions in the world have consolidated the provisions relating to witness protection and made sperate legislation in this regard, but, same is missing in India.

### **WITNESS PROTECTION: INTERNATIONAL PERSPECTIVE**

#### **3.1. INTRODUCTION**

Most of the nations in the world are commonly facing the problem of corruption, terrorism, human rights violations, and other organised crime. To combat these problems, judicial systems play a prominent role. Moreover, if the potential witnesses are provided adequate protection, then these problems could be handled in a more cogently way. In this regard, the United Nations Organisation had acted considerably and adopted various Convention and Treaties, which provides several protective mechanisms for the witnesses. Even the Statues of International Judicial Institutions made the provision for witness protection. Also, there are several developed and developing nations who have come up with a firm witness protection policy in their domestic legislation.

In this chapter, the researcher will critically analyse the policy adopted by various International Conventions like the United Nations Convention against Transnational Organized Crime and the United Nations Convention against Corruption incorporated by United Nations Office on Drugs and Crime for protection and safeguards to the witnesses during criminal trials. Further, International Judicial Institutions like International Criminal Court, International Criminal Tribunal for the former Yugoslavia, International Criminal Tribunal for Rwanda, etc. will highlight the various facets of law and procedure adopted by these globally recognized institutions in the arena of witness protection. Moreover, a closed examination of global practices for the development witness protection regime, especially related to the selected developed and few South Asian legal systems, will aid to formulate a comprehensive law on witness protection in India.

### **3.2. INTERNATIONAL CONVENTIONS GOVERNING WITNESS PROTECTION**

United Nation is an international organization which was incorporated to promote peace and harmony among the nations after World War - II.<sup>15</sup> United Nations has various organs, including International Judicial Institutions, which were formed to mediate disputes between or among the nations.<sup>16</sup> International Conventions like the UNCTOC and UNCAC were constituted to control organized criminal activity and corruption internationally.<sup>17</sup> Apart from these Conventions, there are various International judicial bodies like the International Criminal Court, which is a global intergovernmental body that was constituted to decide the disputes relating to international crimes.<sup>18</sup> The Tribunals like ICTY, ICTR, IRMCT were established to resolve the matters concerning crime against humanity and genocide.<sup>19</sup> The Statute of these Conventions and International Judicial Institutions provides various Articles/Sections concerning the witness protection. The research study will analyze in detail the provisions relating to the safeguards and protections of witnesses globally.

United Nations Office on Drugs and Crime (UNODC) –

The office of the United Nations established the United Nations Office on Drugs and Crime (hereinafter referred to as “The Office”) in the year 1997. The Office was incorporated with a view to providing an assistance to the United Nations in the matters associated with illicit drugs, international crime, terrorism, and corruption.<sup>20</sup> There are two crime-related Treaties wherein the Office played an instrumental role. They are named as the United Nations

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<sup>15</sup> History of the UN, „United Nations 70th Anniversary“ United Nations © 2015, New York, NY 10017, available at (Last visited on June 22, 2018)

<sup>16</sup> Uphold International Law, United Nations, available at (Last visited on June 23, 2018)

<sup>17</sup> United Nations Convention against Transnational Organized Crime and the Protocols Thereto, United Nations Office On Drugs And Crime Vienna, UNITED Nationsnew York, 2004 available at (Last visited on June 23, 2018)

<sup>18</sup> Preamble, Rome Statute Of The International Criminal Court, Children And Armed Conflict, available at (Last visited on June 23, 2018)

<sup>19</sup> Ad hoc Criminal Tribunals, UN Documentation: International Law, United Nations available at (Last visited on June 23, 2018)

<sup>20</sup> About the United Nations Office on Drugs and Crime available at (Last visited on June 11 2019)

Convention against Transnational Organized Crime and United Nations Convention against Corruption. These two treaties are a milestone in the path of the fight against the problem of transnational organized crime and corruption.

### **United Nations Convention against Transnational Organized Crime (UNCTOC) –**

To impede the practice of organized criminal acts globally, the United Nations took the initiative and adopted a Convention called as United Nations Convention against Transnational Organized Crime in the year 2000 in the city of Palermo, Italy.<sup>21</sup> Article 24 of UNCTOC provides for the provision of witness protection. The provision obligates the signatory States to ensure the safety of the witness during the course of the criminal trial. The protection granted under the Article shall include the shifting of the witnesses from one place to another, protection of identity and address of the witnesses. Apart from giving safety to the witnesses, the Article also permits to use of modern technologies in the recording of evidence by video linkages<sup>22</sup>. This provision shall also apply to victims/witnesses. It is pertinent to note that the provisions for witness protection under the Convention are although very few, but they are undoubtedly favourable for the person who is assisting the fight against organized criminal acts. At present, 190 nations are a party to the Convention.<sup>23</sup> India is a signatory of the Convention since 12th December 2002 and rectified it on 5th May 2011.<sup>24</sup>

The United Nations Convention against Corruption (UNCAC) –

Yet another Convention wherein the United Nations Office on Drugs and Crime contributed was the United Nations Convention against Corruption. The Convention came into effect in

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<sup>21</sup> United Nations Convention against Transnational Organized Crime and the Protocols Thereto, United Nations Office on Drugs and Crime, available at (Last visited on June 11 2019)

<sup>22</sup> United Nations Convention against Transnational Organized Crime, Article 24 United Nations Convention against Transnational Organized Crime, United Nations Treaty Collection

<sup>23</sup> United Nations Convention against Transnational Organized Crime, United Nations Treaty Collection available at

[https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XVIII12&chapter=18&clang=\\_en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII12&chapter=18&clang=_en)  
>(Last visited on June 11 2019)

<sup>24</sup> Supra note 22

the year 2005. Article 32 of the Convention made the provision for witnesses, experts, and victims protection.<sup>25</sup> It mandates the signatory States to initiate appropriate steps to provide enough protection to the witnesses from intimidation in domestic laws. The actions may include strong physical safety, shifting of witness from one place to another, protection of identity, and address of witnesses.<sup>26</sup> Moreover, modern technics like video linkage shall be used while the recording of the testimony of witnesses. The preceding provisions shall also apply to victims/witnesses. Further, Article 60 of the Convention obligates the member states to provide technical assistance and conduct training programs for the witness and victims who cooperate in the Court process. It is noteworthy to mention that the provisions made in the Convention pertaining to witness's protection though limited, but they are proved to be fruitful in providing a remedy in the form of safeguard to the witnesses. At present, there are approximately 186 states party to the Convention. India is a signatory to the Convention since 9th December 2005 and ratified it on 9th May 2011.<sup>27</sup>

Good Practices for the Protection of Witnesses in Criminal Proceedings involving Organized Crime - Moreover, the United Nations Office on Drugs and Crime, Vienna launched a compilation on Good Practices for the Protection of Witnesses in Criminal Proceedings involving Organized Crime. Good Practices mandates the ministerial and legislative bodies of the signatory States to incorporate a comprehensive policy relating to witness protection. Moreover, Good Practices aims to guarantee safeguard to the witnesses who were threatened and intimidated during the trial of organized criminal acts. Further, it stressed upon the measures like alteration of identity and relocation of witnesses from one place to another. The manual for Good Practices defined "Witness" or "participant" as "any person, irrespective of his or her legal status (informant, witness, judicial official, an undercover agent or other),

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<sup>25</sup> The United Nations Convention against Corruption, Article 32

<sup>26</sup> Ibid.

<sup>27</sup> United Nations Convention against Corruption, United Nations Treaty Collection, available at [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=XVIII-14&chapter=18&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XVIII-14&chapter=18&lang=en) (Last visited on April 21, 2019)

who is eligible, under the legislation or policy of the country involved, to be considered for admission to a witness protection program.”<sup>28</sup> This signifies that the scope of the definition is broad, and it has included every individual who is eligible under the policy instead of his legal standing. It is noteworthy to mention that in the justice delivery system, the State is duty-bound to ensure protection to the witnesses when they are intimidated or threatened by the accused. In this regard, adopting a comprehensive policy on witness protection seem to be a useful tool to curb these issues.

### **Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime –**

United Nation’s Economic and Social Council adopted the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime through a resolution in the year 2005.<sup>29</sup> The Guidelines intended to assist the nations in framing laws, rules, and regulations regarding the protection of rights of “child victims and witnesses.” The guidelines define child victims and witnesses as “children and adolescents under the age of 18 who are victims of crime or witnesses to crime regardless of their role in the offence or the prosecution of the alleged offender or groups of offenders.” The Guidelines endeavors to ensure few fundamental rights which are essential for safeguarding child victims and witnesses. These rights include - “The right to be treated with dignity and compassion, the right to be protected from discrimination, the right to be informed, the right to be heard and to express views and concerns, the right to practical assistance, the right to privacy, the right to be protected from hardship during the justice process, the right to safety, the right to reparation, the right to special preventive measures.”<sup>30</sup> To ensure these rights, the States are obligated to conduct learning and training programs for the individuals and experts who are working in the field of child victims and

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<sup>28</sup> Good Practices for the Protection of Witnesses in Criminal Proceedings Involving Organized Crime, United Nations Office on Drugs and Crime, Vienna, United Nations New York, 2008 available at (Last visited on August 28, 2018)

<sup>29</sup> Id.

<sup>30</sup> ECOSOC Resolution 2005/20, „Justice in Matters involving Child Victims and Witnesses of Crime“, United Nations Office On Drugs And Crime, Vienna



witnesses protection.<sup>31</sup> From the through perusal of Guidelines, it can be adduced that they were proved to be beneficial for the member states while farming law on witness protection. Hence, the member states, while incorporating the law on witness protection, may follow the mandate of the Guidelines.

International Criminal Court - International Criminal Court (ICC) is a global intergovernmental body that was set up to decide the disputes relating to international crimes. Before the establishment of the ICC, Security Council in the early "90s set up two ad hoc tribunals called the International Criminal Tribunal for the former Yugoslavia (1993) and the "International Criminal Tribunal for Rwanda (1994).<sup>32</sup> ICC is governed by the Rome Statute of the International Criminal Court" (hereinafter referred to as „the Statute“). Article 57 of the Statute empowers the Pre-Trial Chamber to grant the safeguard to the victims and witnesses where ever it is necessary.<sup>33</sup> Further, the Statute imposed the duty on Trial Chamber to make sure that the rights of the victim and witnesses are protected, and on the other side, the accused be imparted speedy and fair justice during the course of inquiry and trial.<sup>34</sup> The Statute also provides for the provision of witness protection under Article 68.<sup>35</sup> The Statute obligates the Court to take suitable actions to safeguard the witness by giving him security, respect, physical and psychological well-being, and solitude to the witnesses.<sup>36</sup> However, the measures taken shall not discriminate against the rights of the accused. Further, in case of emergency, the Court is empowered to conduct in-camera proceedings and record the evidence through an electronic medium. Moreover, the Prosecutor and the Court, on the advice of the Victim and Witness Unit,<sup>37</sup> may decide to counsel, assist, suitable shielding

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<sup>31</sup> Id.

<sup>32</sup> Coalition for the International Criminal Court. "History of the ICC" Archived 7 March 2007 at the Wayback Machine. Retrieved 31 December 2006.

<sup>33</sup> Rome Statute of the International Criminal Court, Article 57

<sup>34</sup> Rome Statute of the International Criminal Court, Article 64

<sup>35</sup> Rome Statute of the International Criminal Court, Article 68

<sup>36</sup> 2Comparative analysis of witness protection within the ICC (Last visited on July 19, 2019)

<sup>37</sup> Rome Statute of the International Criminal Court, Article 43 Paragraph 4

actions and safety measures. The Statute also obligates the States parties to make provisions for adequate protection to the victim and witness in their domestic laws.<sup>38</sup> Article 100 of the Statute provides provision for the payment of cost, which shall be bare by the Court for the amount incurred for travel and security of the witnesses.<sup>39</sup> It also made provision for payment of allowances for attendance, subsistence, clothing, etc. The attendance allowances are paid on a daily basis, i.e., Five Euros. Further, subsistence allowances are also paid to meet the basic need for human survival; however, it excludes the expenses for rental, health, education fee. Moreover, clothing allowances are paid to adults one times per year and to the adolescent twice per year. Even there is a provision to pay cultural allowances, which are paid equal to fifty percent of the 01-month of overall subsistence allowance.<sup>26</sup> It is noteworthy to mention that provisions pertaining to witness protection in the Rome Statute of the International Criminal Court immensely deal with the aspect of safety and security to the witnesses during the trial of international crimes. Hence, it is the duty of the Court to implement the provision in true letter and spirit. As of now, 122 nations are a signatory to the Statute. However, Asian countries like China, India, Pakistan, etc. are not signatory to the Statute.<sup>27</sup>

### **International Criminal Tribunal for the former Yugoslavia (ICTY) –**

International Criminal Tribunal for the former Yugoslavia is<sup>28</sup> a first war crime Tribunal that was established in the year 1993 by a resolution passed by the United Nations Security Council. The Tribunal was set up with an objective to give voice to the victims whose human rights were denied during the Yugoslav Wars. Article 13 (1) of the Statute empowers the Judges to frame Rules and regulations to provide protection to the victim and witnesses.<sup>29</sup> Moreover, the Statute imposed the duty upon the Trial Chamber to provide fair and speedy justice to the accused without denying the right of the victim and witnesses for protection.<sup>30</sup> The Statute also provides for the protection of the identity of the witness.<sup>31</sup> In addition to

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<sup>38</sup> Rome Statute of the International Criminal Court, Article 93

<sup>39</sup> Rome Statute of the International Criminal Court, Article 100

this, the Tribunal is also empowered to conduct in-camera proceedings and adopt various other mechanisms to provide adequate protection to the witness. The Tribunals also maintains the archives of information and documents; however, while doing so, it should uphold the secrecy of information related to protected witnesses.

The International Criminal Tribunal for the former Yugoslavia was incorporated to deal with the cases relating to war crimes. The Tribunal is proved to be benevolent by imparting justice to the victim and bring criminals behind the bar. The Tribunal was dissolved in the year 2017 after the last verdict on fugitive criminals.

### **International Criminal Tribunal for Rwanda (ICTR) –**

International Criminal Tribunal for Rwanda (ICTR) was incorporate in the year November 1994 to prosecute the people who are involved in the Rwandan genocide. The Tribunal adopted the use of various modern technics like an audio-visual recording of the trial process. The Statute urges for a fair method of trial for accused, victim, and witness. Article 14 of the Statute empowers the Judge to formulate Rules of procedure and evidence wherein provision for the protection of victims and witnesses shall be made.<sup>32</sup> Article 19 of the Statute obligates the Trial Chambers to guarantee the speedy and fair process of trial, which shall be followed by the Rules of procedure and evidence keeping in mind the rights of the accused and protection to victim and witness.<sup>33</sup> Article 21 of the Statute provides for the provision for the protection of victims and witnesses.<sup>34</sup> The Rules also provide for the protection of the identity of the witnesses and hold in-camera proceedings.

International Criminal Tribunal for Rwanda was incorporated in the year 1994 to try the cases pertaining to genocide. A glimpse of modern courts can be cited in the working of the Tribunal as it had adopted the use of an audio-visual recording of the trial in the year 2010. The Tribunal ceased to operate from 31 December 2015.

### **International Residual Mechanism for Criminal Tribunals (IRMCT) –**

The task, which was left unperformed by International Criminal Tribunal for the former Yugoslavia and International Criminal Tribunal for Rwanda, was put in place by the resolution of the United Nations Security Council by incorporating an International Tribunal called as International Residual Mechanism for Criminal Tribunals in the year 2010. The Tribunals shall have jurisdiction to take cognizance of all those offenses which ICTY and ICTR had earlier.<sup>35</sup> The Statute of the International Residual Mechanism for Criminal Tribunals<sup>36</sup> comprises thirtytwo Articles, which also provides for provision for fair and expeditious trial. Article 13 of the Statute provides for regulations of process and proof. Under this Article, the Judge of the Mechanism shall be empowered to make rules and regulations regarding victims and witnesses protection.<sup>37</sup> Article 18 of the Statue compels the Presiding officer of the Chambers to guarantee the protection to the victims and witnesses and assuring fair and speedy justice to the accused.<sup>38</sup> Moreover, the Statute also provides for the provision for Victims and Witnesses Protection in ICTY, ICTR & IRMCT. The Article also provides identity protection to the witness and empowers the Judge to hold in-camera proceedings.<sup>39</sup> The Statues also mandates the Mechanism to maintain confidentiality in relation to protected witnesses.

Since the inception of the Mechanism, it is following the legacy of the two former ad hoc tribunals, i.e., ICTY and ICTR, in the protection of rights of victims. The Mechanism took the pioneering step to protect the witness during the trial process by adopting protective measures like witness identity protection. Even the Judges of the Mechanism were empowered to hold incamera trials to protect the victim and witnesses.

### **3.3. CRITICAL ANALYSIS OF WITNESS PROTECTION LAWS OF FOREIGN JURISDICTIONS**

The witnesses in the criminal justice system should always be ready to come forward and depose their testimony in a free environment without any fear of threat. For that purpose,

witness protection is a paramount need of a present judicial system. The issue of witness's intimidation during the course of the trial is commonly experienced by all most all the nations of the world. However, to combat these problems, various foreign jurisdictions have come up with special laws in the form of witness protection programs in their domestic legislation. The programs so formulated provide safeguards to the witnesses whose life is in danger due to participating in the Court process.

The review and detailed analysis of global practices especially related to the selected developed and South Asian countries like the USA, UK, Australia, Canada, Brazil, South Africa, Sri Lanka, and Pakistan, will give an insight into the growth and development of the witness protection regime in those countries. Moreover, after conducting an extensive research review, the researcher has chosen these countries keeping in mind the similarity in the legal system. Although much development has not been taken within South Asian counterparts pertaining to witness protection, but there are still unique features of law in Sri Lanka and Pakistan; hence, they can be taken for comparison. Since criminal law falls within the preview of public law and based upon the similarities of constitutionalism, a written constitution, democratic form of governance, and dominance of the rule of law, the researcher has thought to refer these countries. Moreover, the Constitution of these countries have also recognized the values of criminal law jurisprudence; hence, a comparative analysis of witness protection regime in these countries will be an aid to the research study.

Witness Protection Laws in the United States of America –

Pertaining to the aspect of fair procedure of trial, in the United States, the Sixth Amendment ensures fair trial to the accused, giving him the right to open public trial, details of accuser and witnesses against him etc.<sup>57</sup> Even the court is empowered to order for the in-camera trials to protect the witness from threats caused to him by the accused. However, the order of the in-camera trials should be made with great care and causation. As in the landmark

judgment of *Waller v. Georgia*, 58 Hon<sup>ble</sup> Supreme Court in Turrietta set out the standard called “Waller standard” for closer of courtrooms. The standard requires that “(1) the party seeking to close the hearing must advance an overriding interest that is likely to be prejudiced, (2) the closure must be no broader than necessary to protect that interest, (3) the district court must consider reasonable alternatives to closing the proceeding, and (4) it must make findings adequate to support the closure.” The same standards were followed by the Supreme Court of New Mexico in *State v. Turrietta*, 59 wherein the trial court ordered for courtroom closer during the testimony of two witnesses. However, the same was challenged by the defendant as it violates U.S. Constitution Amendment VI. The Supreme Court held that the applicants were unable to prove that the defendant has threatened the witness to give testimony. Hence, Waller<sup>s</sup> standard was not satisfied in the present case, and therefore the judgment was reversed by the Supreme Court, and the case was remanded for a fresh trial. The same was settled by the Court of Appeals of Arizona in *State v. Tucker* case. 60

Nevertheless, in various pronouncements of the Supreme Court right to confront witnesses was treated as an absolute right. However, in the recent decision of the *Maryland v. Craig* case, Supreme Court accepted the view that this right is not absolute, and in cases where a child victim is involved, the testimony may be recorded through CCTV. 61 This would help the witness to give his version without fear during the trial process. Nevertheless, in *State v. Rogerson*<sup>62</sup> , the Court reaffirmed the constitutional validity of the rule set out in *Maryland v. Craig*'s case by declaring the two-way videoconferencing process as a substitute for in-person testimony. However, the State has failed to follow the mandate in the instant case. Therefore, the court ordered the district court to remand the case for further proceedings. However, while describing the right of the accused to confront witness face to face in *United States v. Yates*, 63 the examination and crossexamination of two witnesses, were in question as they were testified by video conferencing method. Based on their testimony, the

defendants were convicted by the trial court. However, the defendant challenged the order of the trial court, holding that recording of testimony of witness through videoconferencing would violate the defendant's right to confront witnesses face to face, which is guaranteed under the Sixth Amendment. The Court held that as the confrontation of witness face to face is not significant to public policy, the defendants were denied the right guaranteed under the Sixth Amendment. In relation to identity protection, the Courts have inherent powers to protect the witness/victim in cases wherein the safety and security of the witnesses are in question. In *Smith v. Illinois* case Supreme Court held that the witnesses might be exempted from disclosing his identity or whereabouts in a case where there exists a threat or peril to the life of witnesses.<sup>64</sup> Therefore, it is the duty of the Court to protect the victim/witnesses by invoking its inherent powers.

### **3.4. CONCLUSION**

Jeremy Bentham said that "witnesses are the eyes and ears of justice." They assist the Court in the truth-finding process. However, it is commonly perceived from the global scenario that witnesses are harassed, intimidate, threatened, and induced by the influential personality, which often leads them to turn hostile. Moreover, various Statues of the United Nations and International Convention made provision to provide adequate protection to the witnesses. The detailed analysis of the International Conventions of the United Nations and Judicial Institutions provides an insight into the rules and regulations regarding the safety and protection to the witnesses. The United Nations Office on Drugs and Crime played an instrumental role in drafting International Conventions like the United Nations Convention against Transnational Organized Crime and United Nations Convention against Corruption, which was formulated to protect witnesses deposing in organized crime and international corruption. The core focus of the judicial institutions like ICC, ICTY, ICTR, IRMCT etc. was to provide a healthier environment wherein the witnesses could appear freely to depose their

testimony and assist the Courts in imparting justice to the victim. Moreover, United Nations Organisation also made efforts by launching a compendium on Good Practices for the Protection of Witnesses in Criminal Proceedings involving Organized Crime and the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime to develop the measure to protect the witnesses. The provisions relating to witness protection in Conventions though limited, become an effective tool to fight against the violation of rights of the witnesses.

The close scrutiny and analysis of the practices adopted by the Witness Protection Program operating in a few developed nations reveal that almost all these countries adopted witness protection laws with common features. However, the witness protection program adopted by the United States of America, i.e., WITSEC, was first among all and one of the most excellent programs operating in other countries. The program provides 24x7 protection to the witness and a lot many other protections, including financial support. The success of the program can be perceived from the increase in the conviction rate since its incorporation. However, very recently, countries in South Asia like Sri Lanka, Pakistan, India have incorporated witness protection laws/schemes in their territories, and Bangladesh is yet to incorporate an independent law on witness protection.<sup>154</sup> The witness protection laws in these countries have resembling features; however, it depends upon the socio-economic situations of these countries how they implement these provisions. Some countries are economically developed; therefore, they are quite able to fulfill the mandate of domestic laws and International Statutes/Convention on witness protection. However, the problem strikes with the developing countries, which are economically weak to implement such requirements.



## **CHAPTER 4**

### **WITNESS PROTECTION LAWS, SCHEME, REPORTS: INDIAN PERSPECTIVE**

“Witness is a man whose life and faith are so completely one that when the challenge comes to step out and testify for his faith, he does so, disregarding all risks, accepting all consequences.”

**- Whittaker Chambers**

#### **4.1. INTRODUCTION**

The task performed by the witness in criminal justice administration is phenomenal. However, law enforcement machinery and judicial authorities have always focused on protecting the rights of the victim and accused, and completely overlooked the plight of witnesses.<sup>2</sup> Witnesses are amongst the most unprivileged class who are completely ignored in the judicial system. Apart from various tethering problems, witness undergoes lots of pain and hardships during the investigation and trial process. Incidences of threatening and harassment to the witnesses often come in the limelight. This is also one of the prominent reasons due to which the witnesses turn hostile during the trial process. All these incidences happened due to the inadequacy of the law to protect the witnesses. It is pertinent to mention that the issue of problems faced by the witnesses, incidences of witness turning hostile, and inadequacy of law to protect witnesses have been discussed in various reports of the Law Commission and Legislative committees. However, the Indian legislature has not paid considerable attention to resolve the issue, and there were very few provisions in substantive and procedural laws to grant adequate protection to the witnesses. Nevertheless, to fill the vacuum, some states in India like Delhi and Maharashtra took the initiative and incorporate

separate law on witness protection before the approval of the Witness Protection Scheme, 2018

In this chapter, the researcher will primarily elaborate on the recommendations made by the Law Commission of India and various Committees pertaining to witness protection and then discuss the prominent features of State legislations and the Witness Protection Scheme, 2018 approved Hon<sup>ble</sup> Supreme Court in the landmark decision of Mahendra Chawala vs. Union of India.

#### **4.2. ANALYSIS OF LAW COMMISSION REPORT WITH RESPECT TO WITNESS PROTECTION**

Time and again, the concern regarding the problems faced by the witness has been raised, debated, and discussed in various reports of “Law Commission of India” and “Legislative Committees.” Law Commission is an advisory body that was incorporated with an aim to study and analyze the existing legal system and suggest potential reforms.<sup>3</sup> The Law Commission works with an objective to “transform the Law for imparting justice in society and uphold good governance under the principle of the Rule of Law.”<sup>4</sup> Although the recommendations made by the Law commission do not have binding force, yet Parliament takes due note of these recommendations and amend the in law if needed.<sup>5</sup> Nevertheless, the witness is a fundamental part of the criminal justice administration. But due to the apathetic attitude of the criminal justice system towards witnesses, they hesitate to come forward to lend testimony and developed an indifferent attitude, which often tends them to turn hostile.<sup>6</sup> Therefore, for the first time, the issue of protection of rights of the witnesses was argued in the “Fourteenth Law Commission” report. <sup>7</sup> Since then, there were various reports which revealed the want of concern and due safeguard to be provided to the witness..

**Law Commission of India –Fourteenth Report8 (1958)** - The “First Law Commission of India” submitted its “Fourteen Report” under the Chairmanship of an eminent jurist Mr. Motilal Chimanlal Setalvad, on 16 September 1958 on the title „Reforms of Judicial Administration.“ The Report attempted to analyze the civil, criminal, revenue, substantive or procedural laws and to suggest recommendations for revision and modification of these laws to cope with the challenges of the modern legal system in India. The report was submitted in two volumes, and Chapter – XXXVI was titled „Delay in criminal trials and inquiry.“ Para 4 of this chapter, though very briefly, dealt with the aspect of delay in criminal trials with a different angle and stated in detail about the hardships faced by the witnesses during the trial process. It was mentioned that the witness is not provided with a convenience facility when they reach the Court. The witness undertook great pain to attend the Court process, waste their time, and even money, but they are not provided with the proper facilities in the Courtroom. Sometimes they have to sit under the tree or verandas and wait for a whole day in open spaces in sunlight or rain to get their turn to get examined by the Court.<sup>9</sup> Even the travelling allowance or Battas paid to the witness are inadequate and were fix way back to compensate them for the cost they incur to reach the Court. Moreover, in some places, it has been found that it is not even paid. Instead of these adversities, if the witness due to genuine reasons unable to attend the Court process, then he is prosecuted u/s 174 of IPC.<sup>10</sup> Therefore, the “Law Commission of India” recommended that the government shall take initiatives to mitigate the hardships faced by the witness during their visit to Court. Moreover, they should be provided with adequate travel allowances or Battas where they are paid deficiently and undertake action where it is not even paid.<sup>11</sup> The report has suggested various reforms in the judicial system apart from the problems faced by the witnesses. Few of the recommendations were accepted by the government and followed by amendments in the Indian Penal Code and

Criminal Procedure Code. Moreover, the Government of India accepted the recommendations of the Law Commission and constituted a National Mission for Justice Delivery and Legal Reforms with an aim to reduce the delay and arrears in the system and increase the level of accountability through basic changes.

**Law Commission of India – Forty Second Report<sup>12</sup> (1971)** - Mr. Kalyan Vaidyanathan Kuttur Sundaram, the chairman of the “Fifth Law Commission of India,” submitted its “Forty Second report” in June 1971. The report was titled “Indian Penal Code.” Law Commission in this report made suggestions to revise the existing provisions of the “Indian Penal Code.” The Commission recommended to insert various provisions in the different chapters of IPC and also suggested a draft Bill to implement the recommendations. The Commission in Chapter 11 of the report discussed the problem of threatening or inducement to witnesses for the first time. The Commission proposed to insert three new Sections in this Chapter. Out of these, the first section was pertaining to the witnesses. The proposed section stated as "Whoever, by threats, bribes or other corrupt means, dissuades or attempts to dissuade any person from giving evidence before a public servant, legally competent to examine him as a witness, shall be punished with imprisonment."<sup>13</sup> The insertion of the new section was the first attempt made by the law commission to criminalise the act of threatening and bribing the witness. However, the punishment prescribed under the section is only six months, which was significantly less. Though, the section has declared the threatening and inducement to witness as an offence but never made any efforts to grant adequate safeguards to the witness.<sup>14</sup> The Law Commission made various suggestions to amend the provisions of the Indian Penal Code to suit the want of the present legal system. The Commission also recommended to repeal some of the provisions of IPC and enhance the

punishments for few of the offences. However, the Government of India did not accept the recommendations Law Commission of India - Forty Second Report.

### **National Police Commission - Fourth Report (1980)**

- "National Police Commission" submitted its "Fourth Report" in the year 1980. The "Ministry of Home Affairs, the Government of India," appointed the "National Police Commission" to suggest reforms in the functioning of police administration. Moreover, the Commission was appointed with an objective to adjudge the reasons for the delay in Court proceedings (from the point of investigation and till the prosecution). The para 28.14 and 28.15 are the relevant paras of the report wherein concern was raised on the two aspects, i.e., "facilities for witnesses in Courts" and "disbursement of daily allowance to the witnesses." In para 28.14, the Commission mentioned that the witness in our country is disinterested in assisting in the Court process. The reason behind this lack of interest was due to the inconvenience and hardships faced by the witnesses to attend Court proceedings.<sup>16</sup> To portray the miserable situation of witness, the Commission stated that "The biggest single hurdle which inhibits the citizen from coming forward to help the police is the deplorable conditions prevailing in Courts of law.<sup>17</sup> Many witnesses appearing on behalf of the State against a criminal is certainly pitiable. More often than not, the case in which he is to appear is adjourned on one pretext or the other.<sup>18</sup> This is invariably done at the fag end of the day after keeping the witnesses waiting for the whole day. While fixing the next date, the convenience of all concerned, except the witness, is kept in view. If the witness fails to turn up on the next date, coercive steps are taken against him. If he appears on the adjourned date, the chances are that the case will be adjourned again. When ultimately the evidence is recorded, the witness is browbeaten by an<sup>19</sup> overzealous defence counsel or declared hostile or unreliable by the prosecutor"<sup>20</sup>. The dissatisfaction in the mind of the public to come

forward to become a witness will not only hinder the Court process but also hamper the intent of the criminal justice system. Therefore, the Commission recommended to provide adequate facilities to the witnesses in the Court. This will, in turn, create a sense of satisfaction to the public and discourage them from showing hostile attitudes to the police and Court when they are in need of their assistance.

**Law Commission of India** – One Hundred and Seventy Eighth Report<sup>27</sup> (2001) - Under the chairmanship of Justice B.P. Jeevan Reddy, “Sixteenth Law Commission of India” submitted its “One Hundred and Seventy Eighth Report” on “Recommendations for Amending Various Enactments, both Civil and Criminal” in the year 2001. The Commission dedicated para 16 on the topic of the Problem of hostile witnesses and the need to ensure a fair investigation.

Fair trial is an essence of the criminal justice system. However, it is commonly observed that the witness turns hostile during trial processes. The principal reason behind such hostile behaviour is that sometimes witnesses are threatened and persuaded by the hooligan or an influential or politically strong accused. Therefore, the Commission has suggested to insert Section 164-A to Cr.P.C to set out precautionary measures. Moreover, to deal with the aspect of the hostility, the Commission suggested that, at the very first instance, when trial commences, the Magistrate should record the version of witnesses so that the truth could be recorded without any lure and influence. Further, the statements made by witnesses before police official should be signed by him and send to the magistrate earliest.<sup>28</sup> Law Commission, in this instant report, highlights the problem of hostility in the criminal justice system. The commission narrated various reasons due to which the witnesses turn hostile and also suggested various measures to resolve the same. Now it is the duty of the government to

follow the recommendations of the commission by making suitable amendments in the procedural laws. However, the status of the report is still pending before the Government of India.

### **Committee on Reforms of Criminal Justice System<sup>29</sup> (2003) –**

The Committee chaired by Dr. Justice V.S. Malimath<sup>30</sup> was constituted by “Ministry of Home Affairs, Government of India,” which submitted its report on Reforms of Criminal Justice System in the year 2003. The Committee was set up to review and suggest reforms in the existing justice delivery system and to regenerate the faith of the ordinary public in the legal system. The two underlying problems which surrounded the criminal justice system are “Low conviction rate in criminal trials” and “unusual delay in disposal of cases.” The Report gives an insight into the aspect of „Witnesses and Perjury“ in Chapter 11, Part – III, Volume – I. It mentioned that the witness is an essential attribute of the criminal justice system. They assist in deciding the guilt of the accused during the trial process. Witness forgo his time and dissipate his money only to provide justice to the victims. However, no one appreciates the efforts made by these unsung heroes. For that reason, the situation of witnesses worse.<sup>31</sup> The Commission highlighted the various problems faced by the witness during the trial process. Witness sustains a lot of pain to travel to Court, waste their time, money, and even wages for the day to come to Court to give testimony. For all these hardships, they are not even adequately compensated. Further, the witness faced many inconveniences when they reach the Court. They are not provided with the proper place to sit, good drinking water, and refreshment facility in the Court. Moreover, the witness has to face unwarranted adjournments, which, in turn, discourage them from involving in the trial process. Apart from these tethering problems witness faces the anger of the person against whom he has given the testimony in the Court of law. Due to all these problems, witness hesitates to get involved in

the trial process or sometimes turn hostile due to inadequate protection. To resolve these issues, the Commission recommended that the witness should be treated with due respect when they reach the Court. They should be adequately compensated for the expenses he incurred to travel to Court. The structure of allowance should be reframed, and they should be provided with ample protection during the course of the trial.

Malimath Committee has suggested various reforms in the criminal justice system; however, it is an irony that a decade has passed, but the recommendation of the committee has not been followed entirely. It seems the existing legal system still in a dilemma to recognise the rights of victims and witnesses. Nevertheless, the Central government accepted the recommendation of the Committee to grant compensation to the victim of a crime by amending Cr.P.C, yet, the Committee's suggestion on the want of witness protection remain unattended. However, recently the Central government decided to go back and revisit the Malimath Committee restructure the criminal justice system.

**Law Commission of India – One Hundred and Ninety Eighth Report<sup>33</sup> (2006)** - Justice M. Jagannadha Rao, an eminent jurist and the chairman of the “Seventeenth Law Commission,” submitted its “One Hundred and Ninety Eighth Report” on “Witness Identity Protection and Witness Protection Programmes” in the year 2006. This would probably be the first report of the “Law Commission,” which was dedicated entirely to deal with the aspect of witness protection. There were various judgments of the Apex Court like “Sakshi v/s Union of India,”<sup>34</sup> wherein it was urged to incorporate a stringent law on witness protection. The “Law Commission” considered the gravity of the situation and submitted its report to the “Government of India.” The Commission undertook detailed research on the subject, prepare consultation paper, circulated questionnaires, and held a seminar on the topic. The report



contains a critical analysis of judicial pronouncements and witness protection legislation operating in various developed and developing countries. The report was divided into two parts and enclosed with two Annexure. Annexure – I contain a proposal on “Witness Identity Protection” and Annexure-II contains a consultation paper on the “Witness Protection Programme.” The aspect of “Witness Identity Protection” was discussed in the Part – I of the report wherein the Commission suggested that the identity of witnesses should be safeguarded in all the severe offences wherein his life is in danger. The Commission classified the witnesses into three categories: (i) “victim-witnesses who are known to the accused;” (ii) “victims-witnesses not known to the accused” (iii) “witnesses whose identity is not known to the accused.” For the “First category” of witness identity fortification is not needed. However, for the “Second and Third categories,” witnesses may need identity protection.<sup>3</sup>Part – II of the report discussed the aspect of the “Witness Protection Programme.” Though the report has not proposed the draft bill but suggested various recommendations. The witness is in need of protection out of Court; hence a new identity can be given to the witness. Further, a witness can be “relocated” to a different place until the conclusion of the trial. The state government shall make funds for the expenses of relocation. An MOU shall be signed between the witness and State, making a compulsion on the State to provide safeguard to the witness and compel the witness to depose truth. All the expenses under the program shall be bear by the Central and the State government.<sup>36</sup> This was the first report which was dedicated entirely to address the problem faced by the witness in the criminal justice system and suggested to incorporate comprehensive legislation on witness protection. The Law Commission did substantial research on the subject by analyzing the witness protection laws of various developing and developed nations and suggested the best out of those laws. The Commission mainly focused on the aspect to witness identity protection as a tool to provide safeguards to the witness. However, the status of the report is

still pending before the Government of India. Nevertheless, the glimpse of the same can be identified in the Witness Protection Scheme, 2018, approved by the Hon<sup>’</sup>ble Supreme Court.

## **CONCLUSION**

The protection of witnesses is a paramount necessity of the Indian criminal justice system. However, it is commonly experienced that witnesses are harassed, intimidated, threatened, and induced by the accused during the course of investigation and trial. All these incidences discourage the witnesses from assisting in the truth-finding process and which often leads to turning them hostile. Law Commission of India, in its various reports, raised the concern regarding the problem associated with the witnesses during the course of the investigation and trial and incidences of witnesses turning hostile. Various Committees constituted by the Central government like the Malimath Committee and Madhava Menon Committee and a research study conducted by “Prof. (Dr.) G. S. Bajpai also has suggested several reforms in substantive and procedural law to cope up with the problem faced by the witnesses. Law Commission’s 198th Report (2006) was solely dedicated in relation to the witness protection. And it has also recommended the Central government to incorporate a separate law to protect the witnesses. It seems the legislative lethargy due to which the demand for Central law on witness protection was unattended. Although few states in India, like the National Capital Territory of Delhi<sup>123</sup> and Maharashtra, <sup>124</sup> came up with the law especially pertaining to the protection of the witness, but there was no Central legislation in this regard. Therefore, Hon<sup>’</sup>ble Supreme Court, in its historic judgment, Mahendra Chawla v. Union of India approved the “Witness Protection Scheme, 2018”. The incorporation of the Witness Protection Scheme, 2018, is marked as a historic moment for the Indian judicial system because it has embarked with ample opportunities for the protection of witnesses. The Scheme got overwhelming responses all over India. Moreover, States like Rajasthan,<sup>125</sup> Odisha, <sup>126</sup> and Jharkhand<sup>127</sup> came up with separate legislation in their states, and the other notified the Scheme. However, the Scheme suffers from various lacunas and loopholes, which made the implementation of the Scheme doubtful. Henceforth, it is up to the Court and law enforcement machinery how they overcome these hurdles and implement the Scheme in its true letter and spirit.

## **CHAPTER 5**

### **WITNESS PROTECTION AND JUDICIAL PRONOUNCEMENTS**

“Laws are like spiders' webs: if some light or powerless thing falls into them, it is caught, but a bigger one can break through and get away”<sup>40</sup>

#### **5.1. INTRODUCTION**

In the criminal justice system, the state is bound to provide protection to the witnesses from the hardships which they sustain during the course of investigation and trial. However, the issues of torture, discomfort, and inconvenience faced by the witnesses often came into limelight on various occasions. All these incidences signify the failure of the state to protect the witness. In such a situation, the role of the judiciary becomes prominent. The foremost responsibility of the Courts is to uphold the “rule of law” in society and create a sense of assurance among the masses on the functioning of the legal system. However, since decades Indian judiciary has fulfilled its responsibility by playing a pivotal role in the protection of the rights of witnesses. Hon“ble Supreme Court and High Courts, through their landmark decisions, made an endeavor to highlight the problems faced by the witnesses and fill the gap for want of witness protection.

In this chapter, the researcher would analyse various landmark decisions of the Supreme Court and High Courts, wherein concerns regarding protection to be provided to the witness during the trial were raised. Apart from the issue of witness protection, the other problems associated with the witnesses, such as unwarranted adjournments, inadequate allowances, and lack of infrastructural facilities in the court etc. were also discussed in various judgments. The Indian judiciary, through its pronouncements, has tried to provide possible solutions to the problems faced by the witnesses and directed the State to fulfill its responsibilities. In many of the instances, Courts have also suggested to amend the existing legal provisions and

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<sup>40</sup> 1 Zahira Habibullah Sheikh & Anr vs State Of Gujarat & Ors on 8 March, 2006

adopt modern practices which will, in turn, help the criminal justice system to function smoothly and effectively to safeguard the rights of the witnesses.

Thus, the pronouncement of Hon<sup>ble</sup> Supreme Court & High Court is elaborated in detail in the below paragraphs on various problems faced by the witnesses and different facets of witness protection in India.

## **5.2. Accused's Right To Cross-Examination Vis-À-Vis Witness Identity Protection - Judicial Appraisal –**

The accused is provided with the right to cross-examine the witness in his presence under the provisions of Cr.P.C. However, this right is not absolute, and in exceptional circumstances, the witness may be examined in the absence of the accused. The issue was elaborated in detail by Hon<sup>ble</sup> Supreme Court in Gurbachan Singh vs. State of Bombay case,<sup>41</sup> wherein an externment order passed under S. 27 (1) of the City of Bombay Police Act (1902) was challenged. Apart from various contentions, it was contended by the petitioner that he was not allowed to cross-examine the witnesses who gave testimony against them. In this regard, the Hon<sup>ble</sup> Supreme Court held that the intension of the legislature in this extraordinary legislation is very apparent. The legislation has tried to address those exceptional cases wherein the witnesses hesitate to come forward to lend testimony against a person who usually of bad character. The object of the legislation will undoubtedly defeat if the suspected person is allowed to cross-examine the witnesses. Therefore, the procedure followed under the Act seems to be beneficial for the witness, and it does not infringe on the right of the suspected person.

Yet in another case, i.e., Hira Nath Mishra and Ors. vs. The Principal, Rajendra Medical College, Ranchi, and Anr.<sup>42</sup> Hon<sup>ble</sup> Supreme Court came across an identical issue wherein the statement of witnesses was not recorded in the presence of the accused, and the same was

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<sup>41</sup> Gurbachan Singh vs. State of Bombay AIR 1952 SC 221

<sup>42</sup> Hira Nath Mishra and Ors. vs. The Principal, Rajendra Medical College, Ranchi, and Anr AIR 1973 SC 1260, (1973) ILLJ 111 SC, (1973) 1 SCC 805

challenged before Court on the ground of violation of the principle of natural justice. It was held by the Court that there was no violation of the principle of natural justice as the accused cannot be given the opportunity to examine the witnesses when there has been a constant fear of being intimidated. The Court relied upon the provisions of the Goonda Acts wherein the care has been taken that the accused could not identify the witnesses. In the instant case, the girl witnesses were under constant fear of molestation by the accused. Therefore, the restriction imposed was in order to protect the witnesses from secondary victimization.

Moreover, various special legislation contains provisions for witness identity protection and incamera trials. The constitutional validity of the in-camera trial conducted under section 16 of the Terrorist and Disruptive Activities (Prevention) Act, 1987, was challenged in Apex Court in *Bimal Kaur Khalsa vs. Union of India And Ors*<sup>43</sup> case. The Act empowers the Designated Court under section 16 to conduct in-camera proceedings and also to undertake preventive measures to safeguard the rights of the witnesses. The petitioner argued that section 16 (2) of the Act curtails the “right of accused to cross-examine the witness.” Hence, it abridges the right to a fair trial, which is guaranteed under “Article 21 of the Constitution of India”. In para 113 of the judgment, the Hon“ble Supreme Court observed that a witness performs a public duty by assisting the Court. While doing so, he takes the risk to oneself. In such a situation, the Court may take few precautionary measures by like: “impede the dissemination of the information concerning the address and identity of a prosecution witness by ensuring that the media do not give his name and address and the identity publicity; that in the public record the name of the witness may be merely mentioned as Prosecution witness -1 or Prosecution witness – 2” and the documents identifying as to who are prosecution witnesses may be kept confidential. Moreover, Apex Court mentioned that “The Court may also allow the shielding of a witness from the public watch when he is brought to the

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<sup>43</sup> *Bimal Kaur Khalsa v. Union Of India And Ors.* AIR 1988 P H 95, available at (Last visited on December 27, 2018)

Courtroom where of course he would be made to depose openly and not from behind the purdah and in any case, where the trial is in open Court, the identity of the witness shall not be screened from the accused, his counsel and the Court.”<sup>44</sup> Section 16 (2) of the Act left the prudence on the magistrate to decide whether the identity of the witness shall be revealed to the accused or not for cross-examination. Consequently, it is left upon the Court to decide in what cases the “identity and address of the witness” shall be made undisclosed. Therefore, the impugned section is not violative of the fundamental rights of the accused.

## **2. Concern regarding the problem of a hostile witness: Supreme Court’s view –**

The Indian criminal justice system is facing the problem of the hostility of witnesses in a variety of cases. Hon’ble Supreme Court, in the famous case *State v. Sanjeev Nanda*,<sup>45</sup> is also called a

BMW hit and run case, deal with the aspect of hostility in length. Apex Court, in this instant case, opined that the Indian judicial system is facing the problem of hostility in witnesses. This scenario has developed from past decades and majorly seen in high profile matters. This happens due to several reasons. In many cases, witnesses are threatened, induced, harassed, or intimidated by the accused or by his family members. Due to these terrible issues, the common public is losing faith and these defeats the very purpose of the judicial system. Further, the Court mentioned that “We cannot, however, close our eyes to the disturbing fact in the instant case where even the injured witness, who was present on the spot, turned hostile. This Court in *Sidhartha Vashisht @ Manu Sharma v. State (NCT o Delhi)* [(2010) 6 SCC 1] and in *Zahira Habibullah Shaikh v. State of Gujarat* [AIR 2006 SC 1367] had highlighted the glaring defects in the system like nonrecording of the statements correctly by the police and the retraction of the statements by the prosecution witness due to intimidation, inducement and other methods of manipulation. Courts, however, cannot shut their eyes to

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<sup>44</sup> Id. Para 113

<sup>45</sup> *State v. Sanjeev Nanda* (2012) 8 SCC 450 : (2012) 4 SCC (Civ) 487 : (2012) 3 SCC (Civ) 899 available at (Last visited on January 19, 2019)

reality. If a witness becomes hostile to subvert the judicial process, the Courts shall not stand as a mute spectator, and every effort should be made to bring home the truth. Criminal judicial systems cannot be overturned by those gullible witnesses who act under pressure, inducement, or intimidation. Further, Section 193 of the IPC imposes punishment for giving false evidence but is seldom invoked.”<sup>46</sup> Therefore, the Court should not merely behave like an outsider, and they should act in a case where the justice system is defeated due to the instances of witnesses turning hostile.

Further, the Apex Court in *Ramesh and Others vs. State of Haryana*<sup>47</sup> highlighted the problem of the hostility of witnesses during the trial process and gave possible reasons for hostility. The Lower Court passed the order of acquittal in favour of the accused, who was charged u/s 302, 498A, 34 of IPC. The High Court reversed the order of the Lower Court, and the accused was convicted. The accused filed an appeal in Apex Court, alleging that the prosecution witness seems to be won over. The Apex Court held that the judicial system in India is undergoing the problem of hostility. This may, in turn, hamper the Court process. There may be diverse reasons because of which witnesses turn hostile. Hon’ble Supreme Court discussed the various previous decision wherein the reason for the hostility of witnesses was discussed and opine that “we find that it is becoming a common phenomenon, almost a regular feature, that in criminal cases witnesses turn hostile. There could be various reasons for this behavior or attitude of the witnesses. It is possible that when the statements of such witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 by the police during the investigation, the Investigating Officer forced them to make such statements and, therefore, they resiled from there while deposing in the Court and justifiably so. However, this is no longer the reason in most cases. This trend of witnesses turning hostile is due to various other factors. It may be fear of deposing against the

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<sup>46</sup> Id. para 41

<sup>47</sup> *Ramesh and Others vs. State of Haryana* (2017) 1 SCC 529 available at <https://indiankanoon.org/doc/191444115/> (Last visited on January 21, 2019)

accused/delinquent or political pressure or pressure of other family members or other such sociological factors. It is also possible that witnesses are corrupted with monetary considerations.”<sup>48</sup> Moreover, the Supreme Court also discussed various reports of the Law Commission and other Committees wherein problems and reasons for witnesses turning hostile were discussed. The Court came up with an opinion that the withdrawal of witnesses from his previous statement occurs due to fear of threat to life, monetary inducement, and lack of legal protection. Therefore, the witness should be provided with ample protection during the course of the trial.

### 3. Unnecessary adjournments and inadequate allowances: Judicial response –

The issue of unwarranted adjournments and inadequate allowance paid to the witness during the trial were commonly seen in the Indian legal system. In various instances, the law commission of India highlighted the issue. Moreover, Hon<sup>’</sup>ble Supreme Court, in the landmark case of Swaran Singh v. the State of Punjab,<sup>49</sup> underlined the role played by the witness in the criminal trial. Justice D.P Wadhwa, while elaborating on the above idea, discussed the problem faced by the witnesses in criminal trials and observed that the evidence placed by witnesses has a significant role in the criminal justice administration. However, the condition of the witnesses is very pathetic. They are ill-treated and harassed due to the tedious Court process. They travel a long way to attend the Court proceedings, waste their time and money only to assist the Court. However, many a time they had to face unnecessary adjournments without any genuine reason, and for that, they are not even sufficiently paid. Apart from these hardships, witnesses are sometimes threatened by influential and politically strong personalities to tender testimony in their favour, and if they resist for the same, they are even killed. All these incidences happened due to the inefficacy of law in our country to safeguard the witness. If the witness has to go through these adversities, then they will

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<sup>48</sup> Id

<sup>49</sup> Swaran Singh v. the State of Punjab (2000) 5 SCC 68 at 678 available at (Last visited on December 29, 2018)



hesitate to support in the trial process. Therefore, the time has come when the Courts have to act with caution and provide ample measure for the protection of the witnesses. The Court should disallow the practice of undue adjournment, keep a check whether witnesses are adequately paid or not. Moreover, the High Court should supervise daily the working of Lower Courts. Even the District and State Bar Council should play their part by cooperating in the successful operation of the criminal justice administration.

Yet, in another case, the problem of unnecessary adjournments in criminal trials came up for consideration in the landmark judgment of the State of Uttar Pradesh v. Shambhu Nath Singh.

<sup>50</sup> The Court observed that a witness takes lots of pain to appear before the Court to lend his testimony. Instead of greeting them, they are placed in hardships. Frequent adjournment is commonly seen during the trial process. Due to which the witnesses had to visit the Court again and again and waste their precious time as well as money. This is a common practice that happens in almost all the Lower Courts. Apex Court, with regret, mentioned in one of the para that “witnesses tremble on getting a summons from Courts, in India, not because they fear examination or cross-examination in Courts but because of the apprehension that they might not be examined at all for several days and on all such days they would be fastened to the boundaries of the Courts awaiting their chance of being examined. The witnesses, perforce, keep aside their avocation and go to the Courts and wait and wait for hours to be told at the end of the day to come again and wait and wait like that. This is the infelicitous scenario in many of the Courts in India so far as witnesses are concerned. It is high time that trial Courts should regard witnesses as guests invited (through summons) for helping such Courts with their testimony for reaching judicial findings. But the malady is that the predicament of the witnesses is worse than the litigants themselves. This case demonstrates the agony and ordeal suffered by witnesses who attended a Sessions Court on several days

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<sup>50</sup> Good Practices for the Protection of Witnesses in Criminal Proceedings Involving Organized Crime, United Nations Office on Drugs and Crime, Vienna, United Nations New York, 2008 available at (Last visited on August 28, 2018)

and yet they were not examined in full. The party who succeeded in dodging examination of such witnesses finally enjoyed the benefit when the Sessions Court acquitted them for want of evidence. The only casualty in the process described above is criminal justice.”<sup>51</sup> Therefore, the Lower Court should come forward in the protection of rights of a witness and discourage the practice of granting an unwarranted adjournment of proceeding during the course of the trial.

#### **4. The Best Bakery case verdict – Way ahead**

Witness protection is a paramount necessity in judicial processes. The same was affirmed by the bench comprising of Justice Doraiswamy Raju & Justice Arijit Pasayat of the Supreme Court in the famous case of Zahaira Habibulla H. Sheikh & Another v. State of Gujarat and Ors.<sup>52</sup> commonly known as The Best Bakery Case. In an instant case, an appeal was made before the Apex Court to decide the issues of the fresh trial. The petitioner Zahaira made a contention that she was intimidated and threatened to give bogus testimony in Court. The Apex Court mentioned that the fundamental purpose of the judicial process is to provide a fair trial to the parties. However, the witness plays an essential role in the trial process. If the witnesses are induced or harassed to give false testimony, then the fundamental purpose of the trial would be frustrated. Supreme Court further opined that "Witnesses as Bentham said: are the eyes and ears of justice. Hence, the importance and primacy of the quality of the trial process. If the witness himself is incapacitated from acting as eyes and ears of justice, the trial gets putrefied and paralysed, and it no longer can constitute a fair trial. The incapacitation may be due to several factors, like the witness being not in a position for reasons beyond control to speak the truth in the Court or due to negligence or ignorance or some corrupt collusion. Time has become ripe to act on account of numerous experiences faced by Courts on account of the frequent turning of witnesses as hostile, either due to

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<sup>51</sup> Id.

<sup>52</sup> ECOSOC Resolution 2005/20, „Justice in Matters involving Child Victims and Witnesses of Crime“, United Nations Office On Drugs And Crime, Vienna

threats, coercion, lures and monetary considerations at the instance of those in power, their henchmen and hirelings, political clouts and patronage and innumerable other corrupt practices ingeniously adopted to smother and stifle truth and realities coming out to surface rendering truth and justice, to become ultimate casualties.”<sup>53</sup> Considering the issue the Supreme Court emphasised to grant protection to the witness from these hardships. Moreover, in such issues, it is the duty of the State to protect the witness. Supreme Court inter alia opines that “The State has a definite role to play in protecting the witnesses, to start with at least in sensitive cases involving those in power, who have political patronage and could wield muscle and money power, to avert trial getting tainted and derailed and truth becoming a casualty. As a protector of its citizens, it has to ensure that during a trial in Court, the witness could safely depose truth without any fear of being haunted by those against whom he had deposed. Every state has a constitutional obligation and duty to protect the life and liberty of its citizens. That is the fundamental requirement for the observance of the rule of law. There cannot be any deviation from this requirement because of any extraneous factors like caste, creed, religion, political belief, or ideology. Every State is supposed to know these fundamental requirements, and this needs no retaliation.”<sup>54</sup> However, legislative intent should also be clear in this regard. Although various laws dealing with the terrorist acts already incorporated the provision of protection of witnesses but, they are Special Acts and do not cover the other offences. Therefore, it is necessitated that a separate law shall be incorporated to deal with the aspect of witness protection.

**5. Guidelines on Witness Protection** - Due to the dearth of law on witness protection, two judges bench comprising of Hon“ble Justice Usha Mehra and Justice Pradeep Nandrajog of Delhi Hight Court in Neelam Katara v. Union of India<sup>23</sup> case issued various guidelines to be followed by the Court during the investigation and trial of the case. In the instant case, it was

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<sup>53</sup> Id.

<sup>54</sup> Coalition for the International Criminal Court. "History of the ICC" Archived 7 March 2007 at the Wayback Machine. Retrieved 31 December 2006.

alleged by the petitioner that her son was kidnapped from a marriage party and subsequently killed by the son of Rajya Sabha MP. As the matter involved an influential personality, the petitioner, due to fear that witnesses may be threatened or the trial may not be conducted in a free and fair environment, prayed before the Delhi High Court to issue guidelines on the protection of witnesses. The High Court discussed the various recommendation of Law Commission reports and witness protection programs governing several countries in the judgment. Also, it issued the guidelines called as “Witness Protection Guidelines,” which shall be in enforcement till any appropriate law incorporated by the State of Delhi. The Guidelines provide for various provisions in which the competent authority shall decide whether witnesses should be provided police protection or not. Further, if the order is made to provide police protection, then for how much duration. While considering the issue of protection, the nature of the threat to the witness, the mode of investigation, the significance of the protection, and the cost incurred for protection to the witness shall be considered. Moreover, it is an obligation on the part of the IO to inform the witness about the “Witness Protection Guidelines.”

Moreover, the issue of safety and security to the witnesses was discussed in the State of Maharashtra v. Mangilal. 24 Hon'ble Supreme Court stressed the aspect of granting police protection to the witness in the present case. The trial court passed an order of conviction u/s 302 and 201 of IPC basing upon circumstantial evidence as to the sole eyewitness, which turned hostile during the trial. The High Court does not find the complete chain of circumstances and acquits the accused. The Respondent/State, in an appeal to the Apex Court, alleged that the High Court had ignored a fact that, in case of a terrible offence of murder, the star witness was turned hostile as he was threatened by the accused. Apex Court validates the order passed by the High Court and dismissed the appeal due to a lack of chain of incidents, which tend to prove that the accused had killed the deceased. However, the

Court came up with an observation that, in case of a heinous offence like murder, the witnesses should be provided with enough police protection so that they could come freely before the Court to provide justice to the victim. Otherwise, the accused would be in a position to lure the witness, and ultimately, the moto of the justice delivery system will be defeated.

#### **6. Order of transfer of cases – To ensure a fair trial and impartial trial**

Fair trial is an essence of the criminal justice system. It is the duty of the court to ensure fair trial to the parties involved in a case. Hon'ble Supreme Court discussed the issue of a fair trial in *Maneka Sanjay Gandhi v. Rani Jethmalani*.<sup>25</sup> The Court, while deciding a transfer petition, came up with an observation that while imparting justice to the citizens, the Court must consider to assure fair and impartial trial.

Moreover, in *Leelawati v. Ramesh Chand* case,<sup>26</sup> a petition was filed in Supreme Court to transfer the case from Faridabad to Delhi as one of the eyewitnesses was scared of giving testimony against the accused/father. It was alleged by the petitioner that there is no free and fair environment for the witnesses to depose in Faridabad court. Therefore, the case should be transferred to any other Court in Delhi. The Respondent/State contended before the Court that they would provide adequate protection to the witnesses. Hon'ble Supreme Court held that witness shall be provided adequate police security as assured by the Respondent/State to furnish their version in a fearless environment.

Likewise, in the *Himanshu Singh Sabharwal v. State of Madhya Pradesh*<sup>27</sup> case, the petitioner filed this petition to transfer the case from Ujjain Sessions Court to any other place. It was alleged that the witnesses were coerced and threatened by the respondent. Many of the eyewitnesses changed their version from initial submissions during the trial. It is pertinent to note that an impartial trial is an essence of the legal system. The Courts have a participatory role during the trial process. The judge is bound to maintain the balance between the rights of

the accused and the victim. At that juncture, the witness helps the Court to bring out the truth. If the witnesses are forced and compelled to give a false statement in the Court, then vary purpose trial could not be accomplished. The Court opined that "Witnesses, as Bentham said: are the eyes and ears of justice. Hence, the importance and primacy of the quality of the trial process.

### **7. Cancellation of bail if a witness is threatened –**

The provisions for granting bail to the accused under the Criminal Procedure Code, 1973, is a temporary relief that also obligates the accused to observe the conditions of bail. However, the Court has the power to cancel the bail if the accused fails to abide by the conditions on which the bail was granted. Hon<sup>ble</sup> Supreme Court decided the very fundamental question in Talab Haji Hussain vs. Madhukar Purshottam Mondkarand's<sup>29</sup>case. Accused has committed a bailable offence, and he was released on bail. However, subsequently, it was found that he does not follow the terms of the bail bond. Subsequently, his bail was cancelled by invoking the "Inherent powers of the High Court," and the same was challenged in the Supreme Court. The Supreme Court affirmed the order passed by the High Court and observed that the purpose of the criminal trial is to guarantee impartial justice to both victims and accused. "The test of fairness in a criminal trial must be judged from this double point of view. It is therefore of the utmost importance that, in a criminal trial, witnesses should be able to give evidence without any inducement or threat either from the prosecution or the defence. A criminal trial must never be so conducted by the prosecution as would lead to the conviction of an innocent person; similarly, the progress of a criminal trial must not be obstructed by the accused so as to lead to the acquittal of a really guilty offender."<sup>30</sup> Moreover, in such a situation, the High Court was correct by invoking the "Inherent power" to provide justice to the sufferer. Therefore, the termination of the bail of the accused was reasonable on the

ground that he had broken the terms of a bail bond by inducing the witness to furnish testimony in his favour.<sup>31</sup>

Moreover, the Hon<sup>ble</sup> Supreme Court in *Ram Govind Upadhyay v. Sudarshan Singh*<sup>32</sup> held that the Court, while granting bail to the accused, shall consider the fact that if bail is granted, the witnesses shall not be tempered or threatened by the accused. In the instant case, the two basic grounds for cancellation of bail were satisfied, i.e., the evidence was tempered, and the witnesses were threatened by the accused. Therefore, the Hon<sup>ble</sup> Supreme Court cancelled the accused's bail order.

#### **8. Legal position as to witness identity protection –**

In the case of *People's Union of Civil Liberties (PUCL) v/s. Union of India*<sup>33</sup>, the constitutional validity of "Section 30 of the Prevention of Terrorism Act, 2002 (POTA)," was challenged by the petitioner. Section 30 of POTA provides "protection of witness & non-disclosure of the name and address of the witness." The petitioner argued that the accused right to cross-examination is an essential ingredient of an impartial trial, backed by Article 21 of the Constitution of India. In response to the argument of the petitioner, the respondent argued that Section 30 of POTA does not violate fundamental rights and constitutionally valid. In fact, it protects the freedom of the witness. Section 30 of POTA not only protects the right of witness but also of the ordinary citizen because, in case of terrorist acts, people fear to come forward and lend testimony against the offender. Further, in case of grave emergency right of cross-examination of the accused, being an essential ingredient of the fair trial can be suspended in the protection of the larger public interest. Moreover, the Courts, while giving protection under Section 30, shall ensure that protection of the life of the witness. Therefore, Section 30 of POTA is constitutionally valid. The Court opined that the witnesses in our country are not willing to assist the Court in heinous offenses, due to fear of life threat. Section 30 of POTA, in other ways, has tried to maintain equilibrium between the rights of

both. Section 30 is apparent in its sense that only in an exceptional circumstance wherein the Court is of the opinion that the life of the witness is in danger, whereabouts of the witness shall be kept undisclosed. In para 57, Hon<sup>ble</sup> Supreme Courts observed that “In order to decide the constitutional validity of Section 30, we do not think, it is necessary to go into the larger debate, which learned counsel for both sides has argued, that whether the right to cross-examine is central to a fair trial or not. Because the right to cross-examination per se is not taken away by Section 30 of the Act. The Section only confers discretion to the concerned Court to keep the identity of witness secret if the life of such witness is in danger. In our view, a fair balance between the rights and interests of witnesses, rights of accused, and larger public interest have been maintained under Section 30. It is also aimed to assist the State in justice administration and encourage others to do the same under the given circumstance. The anonymity of witnesses is not the general rule under Section 30. The identity will be withheld only in exceptional circumstances when the special Court is satisfied that the life of witness is in jeopardy.”<sup>34</sup> The Court further observed in para 59 that “The present position is that Section 30 (2) requires the Court to be satisfied that the life of a witness is in danger to invoke a provision of this nature. Furthermore, reasons for keeping the identity and address of a witness secret are required to be recorded in writing, and such reasons should be weighty. In order to safeguard the right of an accused to a fair trial and basic requirements of the due process, a mechanism can be evolved whereby the Special Court is obligated to satisfy itself about the truthfulness and reliability of the statement or deposition of the witness whose identity is sought to be protected.”<sup>35</sup> In its judgment, the Supreme Court also referred to the legal position in other developed and developing countries and finally upheld Section 30 of POTA as constitutionally valid.



## **9. Measures for recording evidence by video conferencing –**

The evidence furnished by the witness in the judicial process plays a crucial role in deciding the guilt of the accused. However, the traditional practice of recording of evidence may fail in the contemporary scenario. There may come a situation before the court wherein the witness resides in a far away place, and it is difficult for him to appear before the court to furnish his version. Sometimes witnesses also hesitate to come forward and appear before the court due to fear. In such situations, the court may use modern technologies to record the version of the witnesses. A similar question arises before Hon<sup>ble</sup> Supreme Court in *J.J. Merchant v. Shrinath Chaturvedi*.<sup>36</sup> The Hon<sup>ble</sup> Supreme Court held that the cases in which it is expedient to cross-examine the witness who is a doctor or an expert, the Court can adopt the modern technique of video conference.

Due to a lack of substantive provision in the law, the Courts were in a dilemma to grant permission for the use of modern technology while recording evidence. Hon<sup>ble</sup> Supreme Court came across a similar question in *State of Maharashtra vs. Praful Desai*<sup>37</sup> case wherein it was debated that whether evidence could be recorded by the modern technic of video conferencing in the criminal trials or not. The testimony of the witness who was a doctor in the USA was required in the instant case. He was ready and willing to furnish his version but refused to come to India. An application was made to record the evidence of the “Video-conferencing” in the Trial Court. However, the Trial Court accepted the request, but the High Court refused it on the ground of a lack of legal framework on the subject. On an appeal to the Supreme Court, the definition of the term “Evidence under Section 3 of the Indian Evidence Act, 1872” was referred for discussion. The Supreme Court suggested the term evidence includes evidence in an oral, documentary as well as in electronic form. Therefore, it will also include recording the version of witnesses through the electronic medium. However, the same was opposed by the appellant as it violets the fundamental rights of the

accused. In response to this contention, the Supreme Court in para 14 mentioned that “Recording of evidence by video conferencing also satisfies the object of providing, in Section 273, that evidence be recorded in the presence of the accused. The accused and his advocate can see the witness as clearly as if the witness was sitting before them. In fact, the accused may be able to see the witness better than he may have been able to if he was sitting in the dock in a crowded Courtroom. They can observe his or her demeanour. In fact, the facility to playback would enable better observation of demeanour. They can hear and rehear the deposition of the witness. The Accused would be able to instruct his pleader immediately, and thus cross-examination of the witness is as effective, if not better. The facility of playback would give an added advantage while cross-examining the witness. The witness can be confronted with documents or other material or statements in the same manner as if he/she was in Court. All these objects would be fully met when evidence is recorded by video conferencing. Thus, no prejudice, of whatsoever nature, is caused to the Accused. Of course, as set out, evidence by video conferencing has to be on some conditions.”<sup>38</sup> Therefore, recording the evidence through videoconferencing does not infringe the accused right to record statements in his presence.

#### **10. Supreme Court’s guidelines on conduction of Rape Trials –**

Anonymity of the victims. In a landmark verdict of Delhi Domestic Working Women’s Forum vs. Union of India<sup>39</sup>, the bench comprising of Chief Justice M.N. Venkatchalliah & Justice S.B. Majmudar of the Apex Court, set out norms to provide relief to the rape survivors. The Court indicated the need for anonymity protection of rape victims during the trial. The Court emphasized that when the offence of rape is committed, the survivor is harmed not only physically but also mentally. The trauma undergone by a rape victim during the trial in Courts is worse than the offence of rape. Therefore, there is a dire need that rape victims should not be exposed to the public or media until the completion of the trial.

### **Emphasis on in-Camera proceedings.**

The accused has the right to have an open trial under section 327 of Cr.P.C. This means that the trial shall be open, and any person from the public can access the proceedings of the courtroom during the trial. However, this right of the accused is not absolute, and it is not applicable in the trial of the offence of rape u/s Section 376, Section 376-A, Section 376- B, Section 376-C or Section 376-D of the IPC. The Hon<sup>ble</sup> Supreme Court State of Punjab vs. Gurmit Singh<sup>40</sup> observed that section 327(2) of Cr.P.C cast a duty on the court to conduct a trial of the offence of rape in camera. Conduction of an in-camera trial will provide a comfortable environment for the rape survivor to submit her version freely. This will also improve the quality of evidence and remove the hesitation of the prosecutrix. Therefore, the Supreme Court ordered the High Courts to advise the trial court to follow the mandate of Section 327(2) of Cr.P.C during rape trials. As far as possible, the lady judges shall conduct the trial of sexual offences. The Court shall avoid the use of the name of a rape survivor and maintain anonymity during the course of the trial. And now it would be a settled rule that the trial of rape cases should be in camera and an open public trial in such cases an exception.

### **Use of modern techniques like Closed-Circuit Television for recording evidence.**

Hon<sup>ble</sup> Chief Justice Rajendra Babu & Justice G.P. Mathur of the Apex Court in Sakshi v. Union of India<sup>41</sup> discussed the menace of witness turning hostile in criminal trials. The Supreme Court also stressed to incorporate a stringent law to safeguard the witness. Further, it was also alleged in the judgment that special protection at the time recording of evidence should be provided to the “Victim of sexual assault.” Moreover, a few suggestions were given concerning the recording of testimony in case of sexual abuse of a child. For instance, the testimony of a child should be recorded by a videotaped interview in the presence “child-support person.” Further, a child can be testified by “Closed-Circuit Television.” Only the magistrate has the power to cross-examine the child basing upon the question submitted to

him by the defence in writing etc. Moreover, the Apex Court mentioned in para 32 that “The mere sight of the accused may induce an element of extreme fear in the mind of the victim or the witnesses or can put them in a state of shock. In such a situation, he or she may not be able to give full details of the incident, which may result in the miscarriage of justice. Therefore, a screen or some such arrangement can be made where the victim or witnesses do not have to undergo the trauma of seeing the body or the face of the accused. Often the questions put in cross-examination are purposely designed to embarrass or confuse the victims of rape and child abuse. The object is that out of the feeling of shame or embarrassment, the victim may not speak out or give details of certain acts committed by the accused. It will, therefore, be better if the questions to be put by the accused in cross-examination are given in writing to the presiding officer of the Court, who may put the same to the victim or witnesses in a language which is not embarrassing. There can hardly be any objection to the other suggestion given by the petitioner that whenever a child or victim of rape is required to give testimony, sufficient breaks should be given as and when required. The provisions of sub-Section (2) of Section 327 CrPC should also apply in enquiry or trial of offences under Sections 354 and 377 IPC.”<sup>42</sup> Therefore, the guidelines, as mentioned in the above paragraphs, should strictly adhere.

**11. Supreme Court verdict on establishment of centres for the examination of vulnerable witnesses -** In the case of *State of Maharashtra vs. Bandu @ Daulat*,<sup>43</sup> the Appellant/State challenge the acquittal order passed by the High Court u/s 376 of IPC in Apex Court. The Apex Court restores the conviction of the accused. Considering the gravity of the heinous offense of rape of a child, the Apex Court acknowledged that the State should incorporate “Special Centres for the Examination of Vulnerable Witnesses” to provide a pleasant atmosphere to victims/witnesses to depose freely. Hon<sup>“</sup>ble Supreme Court also pointed out that the Delhi High Court has already followed the guideline, and four Special Centres are set

up in Delhi. Moreover, the Supreme Court reaffirmed the directions given in “Sakshi v. Union of India and Ors.”<sup>44</sup> case and suggested that these Centres for vulnerable witnesses should be open in at least two districts under each High Court of the States within 03 months.

## **12. Judicial mechanism to ensure fair trial by protecting witnesses –**

The three judges’ bench of comprising of Justice Arijit Pasayat, Justice P. Sathasivam & Justice Aftab Alam of the Apex Court in National Human Rights Commission v/s State of Gujarat and Ors.<sup>45</sup> discussed two main issues pertaining to fair trial and mechanisms to ensure the witness to depose in a free environment. Fair trial is an essence of the justice delivery process. Nevertheless, it is not only the right of the accused to have an impartial trial, but the victim/witness also possesses this right. If the witness is not able to submit his statement in a fearless environment, then the outcome of the trial would be null. Nevertheless, it has been observed in various instances that in a case where politically robust and influential people are involved, the witnesses are threatened or hesitate to give testimony in the Court of law. The witness undergoes unnecessary pain and suffering due to these issues. The bench cited “Salmon quoted by Diogenes Laertius in Lives of the Philosophers,” that the “Laws are like spiders’ webs: if some light or powerless thing falls into them, it is caught, but a bigger one can break through and get away.”<sup>46</sup>

The witness is an essential component of the criminal justice system; therefore, they should be provided adequate protection. Moreover, other measures like restricting the entries of unwanted people in the courtroom, providing security in the house of the witness, or their relocation to another place can also be made to protect the witness.

Moreover, the Apex Court, while discussing about the problem of hostility in Javed Alam v. State of Chhattisgarh<sup>47</sup> observed that mostly the witnesses overturned their version during the trial due to threat and pressure. In the instant case, when the matter was before the High Court, it was highlighted that something happened after the investigation, which leads the

witnesses to change her statement. The witness was under great pressure to furnish false testimony. Further, when the matter came up before the Supreme Court, it observed that the instant case is a classic example to portray the failure of the criminal justice system to protect the witness from the accused. It emphasized that usually, the cases in which influential personalities are involved, witness hesitate to speak against them due to fear of threat or intimidation. Therefore, there is an immense need to devise a concrete mechanism to protect the witnesses in India.

### **13. Invoking Article 141 & 142 - Judicial endeavour as to Witness Protection Scheme, 2018-**

The bench comprising of Justice A.K. Sikri & Justice S. Abdul Nazeer of Hon<sup>ble</sup> Supreme Court in *Mahender Chawla v. Union of India*<sup>48</sup> approved the “Witness Protection Scheme, 2018” (hereinafter called as Scheme) in its landmark judgment dated 05th December 2018. The issue of protection to witness was brought before the Court in one of the famous Godman Asaram rape case. The Court supported the argument that witnesses in the present criminal justice system are facing various problems. Their condition is very pitiable. Witnesses are summoned by the Courts to assist during the trial process. But many a time it has been found that they harassed or intimidated by the accused or his family members. Therefore, they are in need of safeguards and protection. In “*State of Uttar Pradesh v. Shambhu Nath Singh*,” Apex Court expressed that “The witnesses are harassed a lot. They come from distant places and see the case is adjourned. They have to attend the Court many times on their own. It has become routine that the case is adjourned until the witness is tired and will stop coming to Court. In this process, lawyers also play an important role. Sometimes witness is threatened, maimed, or even bribed. There is no protection to the witnesses. By adjourning the case, the Court also becomes a party to such miscarriage of justice. The Court does not give due respect to the witness. They are

pulled out of the Courtroom by the peon. After waiting for the whole day, he sees the matter is adjourned. There is no proper place for him to sit and drink a glass of water. When he appears, he is subjected to prolonged examinations and cross-examinations. For these reasons, persons avoid becoming a witness, and because of this, the administration of justice is hampered. The witnesses are not paid the money within time. The High Courts must be vigilant in these matters and should avoid harassment in these matters by subordinate staff. The witnesses should be paid immediately irrespective of the fact whether the matter is examined or the matter is adjourned. The time has come now that all Courts should be linked with each other through the computer. The Bar Council of India has to play an important role in this process to put the criminal justice system on track. Though the trial judge is aware that the witness is telling a lie still, he is not ready to file a complaint against such a witness because he is required to sign the same. There is a need to amend Section 340(3)(b) of Cr.P.C.”. 49 These all reasons sometimes inclined witness to turn hostile. Moreover, due to deficient witness protection mechanisms, the courage of the influential and dominating accused has increased. This regretful situation has also arisen due to the incompetency of the state to protect the rights of witnesses from these adversities. The petitioners brought this issue before the Court for want of protection from the life threat imposed on them by the snipers of said godman. They alleged that ten witnesses are attacked, and out of them, three are already murdered. The Respondent/Union of India (hereinafter called as Respondent) understands the gravity of the situation and submitted the draft of the Scheme, which was prepared from the inputs given from various States, UTs, and National Legal Service Authority which is attached in the judgment. The judgment declared that the “Scheme to be treated as „Law“ within the meaning of Article 141/142 of the Constitution of India” till the government frame a suitable law on the subject. Hon“ble Supreme Court also gave few directions in para 35 that “This

Court has approved the Scheme and directed the Union of India, as well as States and Union Territories, shall enforce the Witness Protection Scheme, 2018 in letter and spirit.”

Moreover, Vulnerable Witness Deposition complexes shall be set up with the aid of the Central Government in all the District Courts of the States and Union Territories in India within 01 years from the judgment.<sup>50</sup> Therefore, the guiding principle in this landmark judgment shall strictly adhere.



## 5.2. CONCLUSION

Fair trial is not the only a quintessence of the Criminal justice system but also a fundamental right guaranteed under the Constitution of India. If witnesses are not protected, then the very purpose of the Criminal trial shall be diminished. Zahira's case, VYPAM Scam, and Asharam rape cases are classic examples wherein whistle-blowers, journalists, and witnesses were tortured, harassed, threatened, intimidated, and even killed.<sup>51</sup> Who is responsible for these deaths no one knows. However, these incidents of threat and intimidation lead to creates fear psychosis and dissatisfaction in the minds of ordinary citizens to come forward and assist in the judicial process. On the other hand, the legal system would be failed if witnesses hesitate to appear before the court due to fear.

Since decades Indian judiciary highlighted the problem of hostility, hardships faced by the witnesses, and inadequacy of law on witness protection in Indian criminal justice administration. Moreover, it can be adduced from the thorough discussion of the above-mentioned landmark decisions that the State has failed to comply with its responsibility to protect the witnesses. However, the judiciary has performed a commendable job through its pronouncements and time and again recalled the state to follow its duty towards the criminal justice system in general and witness in particular. India judiciary has acted as a torchbearer to raise the problem faced by the witnesses and tried to provide a proper remedy to the witnesses in the form of reliefs. It was through a judicial endeavour that the Courts have changed their conventional modus operandi and adopted the use of modern techniques for examination of the witnesses. Further, in various pronouncements, the Supreme Court has given strict guidelines to avoid the delay in the disposal.

## **CHAPTER 6**

### **WITNESS PROTECTION SCHEME AND ORGANISED CRIME: LESSONS LEARNED AND FUTURE CHALLENGES**

#### **INTRODUCTION**

Witness protection schemes play a crucial role in combating organized crime by ensuring the safety and cooperation of witnesses who are willing to testify against criminal organizations. However, as organized crime evolves and adapts to new challenges, witness protection programs also face future challenges. Here are some potential challenges they may encounter:

**Technological Advancements:** Organized crime groups are increasingly leveraging technology to carry out their activities, such as cybercrime and digital surveillance. Witness protection schemes must stay ahead of these advancements to protect witnesses from digital threats and ensure their anonymity in the digital realm.

**Globalization and Transnational Crime:** Organized crime networks operate across national borders, making it more challenging to protect witnesses who may be required to testify in different jurisdictions. Coordinating efforts and maintaining consistent levels of protection across multiple countries can be complex and requires international cooperation.

**Insider Threats:** Witnesses may come from within criminal organizations or have close ties to them, making them vulnerable to intimidation, corruption, or betrayal from within. Witness protection programs must be vigilant in identifying and mitigating the risks of insider threats to ensure the safety and security of witnesses and maintain their trust.

**Adequate Funding and Resources:** Witness protection programs require substantial resources to provide comprehensive protection to witnesses. Adequate funding is crucial to maintaining safe houses, providing relocation services, ensuring round-the-clock security, and offering support services. Budget constraints and competing priorities may pose challenges in allocating sufficient resources to witness protection programs.

**Long-Term Sustainability:** Witness protection is not a short-term commitment. Witnesses may need to remain in protective custody for extended periods, potentially for the rest of their lives. Ensuring the long-term sustainability of witness protection programs, including ongoing funding, personnel, and operational support, is essential to protect witnesses effectively.

**Emerging Threats and Criminal Tactics:** Organized crime groups continuously evolve their strategies and tactics, adopting new methods to intimidate witnesses, infiltrate protection programs, or exploit vulnerabilities. Witness protection schemes must stay vigilant and adapt to these emerging threats by regularly updating protocols, training personnel, and collaborating with law enforcement agencies to stay one step ahead.

**Cooperation and Information Sharing:** Effective witness protection requires seamless cooperation and information sharing between different agencies, including law enforcement, judicial bodies, social services, and healthcare providers. Overcoming bureaucratic hurdles and fostering a culture of collaboration is crucial for the success of witness protection programs.

Psychological Support: Witnesses often face significant psychological trauma due to their involvement in organized crime cases. Providing comprehensive psychological support services, including counseling and therapy, is crucial for their well-being and long-term cooperation. Witness protection programs must prioritize mental health support to ensure witnesses can navigate the emotional challenges they may encounter.

## **CONCLUSION**

Witness protection programs face future challenges due to technological advancements, globalization, insider threats, funding constraints, long-term sustainability, emerging criminal tactics, cooperation and information sharing, and psychological support requirements. Adapting to these challenges is crucial to maintaining the effectiveness of witness protection schemes in combating organized crime and ensuring the safety of witnesses who come forward to testify against criminal organizations.

No laws, schemes, rules, and regulations shall be beneficial and fruitful to society unless it is implemented in its true letter and spirit. If the legislations are not put into action, then the very purpose of the criminal justice system shall be frustrated. Therefore, all the stakeholders of the criminal justice system must take initiatives to implement these laws. The Witness Protection Scheme, 2018, is incorporated to provide justice to the witness by giving him adequate protection. The Scheme shall attain its objectives only when it is implemented in its true sagacity.

The research study has analyzed the role of civil society and governmental institutions in the implementation of the witness protection scheme. In light of the discussion made in the above paragraphs, it can be established that all these institutions have their own significance in the criminal justice system. These institutions may act fundamentally in attaining the aims and objectives of the scheme. The effective role played by society in providing a fearless

environment and vigorous support to an individual would undoubtedly give him an opportunity to come forward voluntarily and lend support in the cause of justice by acting as a witness. Further, Non – Governmental Organisations have also acted significantly in the fight for justice. Several instances can be cited wherein NGOs functioned meticulously to bring the issues in the limelight by filing public interest litigations in High Courts and Supreme Courts. The cases like Vishaka, Sakshi, Delhi Domestic Working Women’s Forum etc. have set an example in the Indian legal system wherein the NGOs acted proactively to reform the outdated laws. Therefore, NGOs may even support in implementing the witness protection scheme by creating a mass campaign about the benefits of the scheme to the common public so that they could be willing to assist the court in the truth-finding process. Moreover, Police machinery also plays a constructive role in the implementation of witness protection legislation. The Scheme, which was approved by the Apex Court, had clearly specified the powers, functions, and duties of police officials. Hence, the overall responsibility to execute the provisions of the scheme lies in the shoulders of the police department. Likewise, the prosecutor and the Court can play a pivotal role during the implementation of the scheme by assisting and lending support to the witness and giving him a favorable atmosphere wherein he gives a true account of crime without fear. Therefore, if all these institutions perform their function and duties in a phased-out manner, then undoubtedly, the Witness Protection Scheme, 2018, shall become a benevolent piece of legislation meant for the welfare of the witnesses.

### **CONCLUSION AND SUGGESTIONS**

#### **7.1. CONCLUSION**

Witnesses are unsung heroes of criminal justice administration. They assist the Court during the truth-finding process. However, instead of care and protection, witness undergoes lots of trouble and hardships during the investigation and trial process. The distress which the witness sustains cannot be overlooked. Apart from the tethering problems like delay in disposal of cases, unwarranted adjournments, inadequate Bhattas or allowances, lack of infrastructural facilities, etc., witness undergoes through various other adversities. In the variety of instances where influential people and politicians are involved, it has been found that the witness who raises the voice against the repeaters has to face ill effects. Sometimes they sustain physical and mental torture, abduction, maiming, acid attacks, which often lead to the loss of life of the witnesses or his family members. For this reason, witnesses hesitate to come forward and assist in the trial process. This is also one of the reasons due to which witnesses turn hostile and resulted in a low conviction rate in India.

To trace the history of witness protection in India, two categories were formed one is historical introspection during pre-independence and other is during post-independence and the former is sub-divided and studied under two head namely, Ancient Hindu Law, Islamic Law and under British rule. The historical introspection in regard to protecting the rights and interests of victim and witness suggests that they were in far better condition than the present time but this better condition is not extended to the Post-independence period. The present Criminal Justice System is accused-centric, back than the importance was given to victim and primary consideration was to ensure the satisfaction of the victim. As accused is suppose to expiate but that was not satisfactory to the victim and reparation was also introduced. Reparation was followed to ensure materialistic satisfaction to the victim. The

victim was not categorized on the basis of offence; it is gravity of the crime committed which was considered.

The present research is conducted to evaluate the status of witnesses in criminal trials in India, the extent and need of protection given to them by virtue of the existing national and international norms, and to study and evaluate the Law Commission's recommendations in context of witness protection program in India. The research also sought to study if the existing guidelines laid down by the judiciary and practices of a few other developed and developing nations could be adopted in creating an exclusive policy in India for witness protection.

The Constitution of India mandates fair trial and impartial justice and ensures the criminal justice system to function efficiently by virtue of various provisions like articles 14, 20 and 21. The administration of criminal justice under the auspices of Constitution of India has been elaborated in fourth chapter. This chapter indicates at the flaw in the criminal administration which may have adverse impact on the constitutional mandate in absence of a systematic witness protection in India. It is humbly submitted that efforts of the makers of the Constitution as regards ensuring a fair trial are paralysed due to lack of protection given to the witnesses or victims of a crime.

Witness protection programme in any system is incomplete without the support and assistance of the police and society at large. The role of the police and society has been extensively dealt in the fifth chapter. The findings of the study of role of police and society in witness protection specify that the existing provisions relating to the functioning of the police impose an indirect duty to ensure protection and safety of witnesses during certain stages of trial. These duties have to be reiterated in context of a special witness protection

programme, before, during and after the trial process. And few amendments need to be introduced to afford comprehensive witness protection through the police and societal assistance.

## **PROBLEMS IN THE CRIMINAL JUSTICE SYSTEM IN INDIA**

1) Low Conviction- The biggest contributing factor and the root cause of increasing number of crimes is the low conviction rate in India. Various surveys<sup>403</sup> conducted across the country signify that the conviction rates in India are abysmally low. Of all the factors responsible for low rates of conviction, one of the important and most ignored factors is the lack of effective witness protection programme that would imbibe confidence in the witness to come and depose fearlessly before courts and investigating authorities.

2) Corruption: Corruption in any given legal system affects the efficiency of the justice delivery too and the result is that investigations are not carried out properly. False evidence is gathered against the accused and intentional delays are a usual occurrence during investigations. At times, monetary inducements influence the authorities to falsely implicate a person. These malaises strongly influence public perception on the ability of police to perform their duty impartially.

The lack of an efficient witness protection programme contributes to these corrupt practices as in its absence there is no transparency and accountability in the trial process and economically or politically influential criminals get ample chances to subvert criminal justice system to their favour.

3) Hostile Witnesses: The evolution of the term "hostile" witness lies in the Common Law evaluation. The term was articulated to avoid the system of deceitful or conniving witness affecting adversely and ruining the cause of the party calling the witness. Such



activities were considered anathema to the process of justice and destructing the interests of the parties involved in the litigation. Lack of protection given to witnesses in India is one of the major reasons for hostility of witnesses, which in turn affects the justice delivery process.

The witnesses normally revert from their statements made during the initial stages of the trial owing to the threats caused to their person or property or kith and kin. Moreover, at times the witnesses are threatened or injured or even killed before appearing in the court.

### **LAW COMMISSION'S EFFORTS TO LEGISLATE WITNESS PROTECTION LAW**

Taking into account the above mentioned problems and various other problems that persist in context of witness protection in India, several constructive suggestions were made calling for legislation on witness protection. One of such attempts is the 198th Report of the Law Commission of India wherein norms for enactment of an witness protection law was put forward. . Though this attempt is appreciated for being quiet comprehensive, the researcher is of the opinion that on the following counts the Law Commission has left few questions unanswered:.

1. The Law Commission only deals with witness identity protection, A mere provision of witness identity protection will not by itself take care of the witness protection problem in India.

2. The report suggests that the duty of witness protection should be that of the police personnel So there will no separate entity created for running the witness protection programme unlike the other nations. According to 2007 figures, there are only 130 police personnel per 1, 00,000 citizens of India. The estimated shortage of policemen amounts to more than 6 lakhs.<sup>405</sup> Given these facts, tan exclusive obligation to manage a comprehensive witness protection programme will create additional burden on the police

which would adversely affect the quality and efficiency of the task.

3. The witness protection programme will have to be implemented in stages owing to the economic and social factors in India. .

Witness protection in India is not disputed, the only questions that need to be answered is how and to what extent. An analysis of the existing dispersed provisions in India pertaining to witness protection, the judicial guidelines, various law commission reports and other developing and developed nations and international instruments dealing with witness protection help us to conclude that Indian legal system is matured and ready to adopt and change the policies in light of contemporary needs and social development. However, this understanding is limited by the Indian economic situation of being a developing economy and hence having various other grave issues apart from witness protection in its list of priorities. Hence it is inevitable to balance the conflict between these priorities and within available resources making provisions for tackling each of these issues simultaneously. This task of balancing though difficult is not impossible.

It is high time that the discussions and deliberations in the form of Law Commissions and judicial verdicts have to be materialised and implemented without any further delay, hence the research recommends a comprehensive witness protection programme, *a lexscripta* to be enacted as soon as possible in order to ensure the urgently needed reformation to take place in the Criminal Justice Mechanism. The judicial verdicts and the jurists deliberations and discussions manifest the popular intention towards the imminent need for a comprehensive witness protection law. This mere intention is not sufficient unless and until it is manifested in the form of a complete code in itself dealing with all aspects of witness protection.

Though the research has extensively studied almost all the aspects of witness protection programme in India, however, the findings are subject to the limitations of the research. Firstly, witness protection is suggested only for grave crimes to begin in its initial stage owing to economic status of the nation.

## **7.2. SUGGESTION**

The researcher has carried on extensive research to address the role played by the witness, the problems associated with the witnesses, and elaborated the need for the protection from the threat and intimidation caused to them during the course of investigation and trial in the criminal justice administration. It has been found in research that the witness sustains lots of trouble and hardships due to the dearth of law on witness protection, which is also highlighted in several reports of Law commission and judicial pronouncements. Nevertheless, there are various legislations which explicitly provides provisions for the protection of witnesses, but they are scattered and inadequate to fulfill the want of protection. Even a few states in India have incorporated witness protection legislation but, the scope of these legislations is restricted within the state boundaries, and there is no Central legislation on the same lines. However, to fill the vacuum, Hon<sup>ble</sup> Supreme Court approved the Witness Protection Scheme, 2018, in its landmark judgment, Mahender Chawla v/s Union of India & Ors. 36 Incorporation of the Scheme seems to be a pioneering step initiated by the Supreme Court to address the issue of inadequacy of law and procedure on witness protection. However, there are several unaddressed issues, which made its implementation doubtful. Therefore, the researcher proposes the following suggestion to overcome the gaps.

**I. Witness's privacy should be protected** - The Scheme made the provision to take protective measures like the installation of Closed-Circuit Television Cameras in the witness's home and monitor the email and telephone calls of the witness. Installing CCTVs in the witness's home may abridge the witness's privacy and, in turn, violates his fundamental right embedded under the provisions of the Indian Constitution, which guarantees the "right to Privacy" to every citizen.<sup>37</sup> Therefore, it is suggested that prior permission should be

taken by the witness before such monitoring or the provision shall be repealed if it is declared as unconstitutional by the judiciary in the near future.

**II. Need to reassess the protective measure like witness identity protection and relocation** - The Scheme adopted protective measures like protection of the witness' identity and their relocation to another place. However, protecting or concealing the witness identity and relocating them does not seem practical in the Indian scenario. As in a country like India, where the offenses took place between the individuals who are known to each other or who are in nearby relations, the Scheme failed to answer how it will guarantee such protections. Moreover, as per the Scheme, the protection task, and preparation of a threat analysis report is entrusted with police officials. There may be a possibility that the corrupt police official in high profile matter where influential and political personalities are involved may disclose the whereabouts of witnesses due to greed and pressure. Therefore, it is suggested that the police officials who are involved in witness protection tasks shall be sensitized before they are entrusted with the protection task. Even the Scheme may be amended to insert a separate provision to penalize the police officer with severe punishment who discloses the information about the protected witness.

**III. Call for financial aid from Central government** - Though the Scheme is a Central legislation, the burden of the financial expenses for the "witness protection fund" shall be borne by the states only. However, some of the States in India may not have adequate budgetary allocations to implement the Scheme due to lack of funds. In such a situation, the Scheme does not provide an alternative to grant assistance from the Central government. As a matter of fact, the function of the administration of justice falls under the concurrent list of the Indian Constitution; therefore, the responsibility to share financial expenditure lies in both Central and State governments. Therefore, it is suggested that the Scheme shall be amended,

and a new provision shall be inserted to impose a duty on the Central government to share the witness protection funds to bear the expenses of the Scheme.

**IV. A limited time frame of protection should be removed** - The prominent deficiency in the Scheme is with the scope of its operation. Section 7 of the Scheme mentions that the duration of the order of witness protection shall last for not exceeding three months at a time. And there is no clarity as to how the witness shall be granted protection after the span of three months. Moreover, the accused may take advantage of the provision and harass or intimidate the witness after the stipulated duration. This limited time frame of protection in other way offers temporary protection to the witness, which in turn will not serve the purpose of the Scheme. Therefore, the researcher suggests that Section 7 of the Scheme shall be amended, and the limited time frame of three months shall be removed so that the witness should be provided with the protection in all the stages of trial as well as after the judgment until the cessation of threat.

**V. Imposition of penalty for disclosure of information** – The Scheme offers various protective measures like witness identity protection, change of identity, or relocation, which shall be guaranteed only when confidentiality of information shall be preserved. However, the Witness Protection Programs operating in different countries has the provision for penalty for nondisclosure of the information. But the Witness Protection Scheme, 2018, does not provide any such provisions. Therefore, it is suggested that the Scheme shall be amended to include such restrictions by imposing a severe penalty for disclosure of any information of protected witness.

**VI. Necessity to rationalize the exercise of wide discretionary power to police officials** - The Scheme has given wider discretionary powers to the police officials to prepare and decide the contents of the Threat Analysis Report. This has enhanced the chance of its misuse as there may be a possibility that in high profile matter where influential people,

muscle-powered and political personalities are involved, the police officials may temper with the contents of the report or understate the threat caused to the witness. Therefore, it is suggested that the task of categorizing the witness should be performed by the District Legal Service Authority (DLSA) or by an independent body so that there should not be any interference and tampering with the process of categories the witness.

**VII. Need to upgrade and strengthen police force** – The law enforcement machinery in India is over-flooded with official tasks as well as understaffed. Instead of this fact, police officials are also indulged in lots of work, including bandobast for political rallies, festivals, etc. However, for the effective implementation of the Scheme, an adequate police force who are well trained with the protection task is required. Moreover, the ground-level reality is that the ratio of police and citizen is terribly low as well as they are not well trained.<sup>38</sup> Also, there may be a possibility that these untrained police staff may inadvertently demean the significant purpose of the Scheme. Therefore, it is suggested that the government shall take the initiative to appoint an adequate number of police officials and trained them to maintain the efficacy of the Scheme. Moreover, as per the direction of Hon<sup>“</sup>ble Supreme Court in Prakash Singh v. Union of India case<sup>39</sup> Indian criminal justice system must rethink to separate investigation agencies from the maintenance of law and order function.

**VIII. Strengthening infrastructural facilities** - The Scheme made the provision for recording the testimony of witnesses in specially designed “Vulnerable Witness Deposition Complexes.” These complexes shall have special arrangements like live video links, oneway mirrors, and screens, etc., so that witness identity is not revealed. However, as per the Mahendra Chawala<sup>“</sup>s verdict, all the States and UT<sup>“</sup>s shall incorporate such complexes in all the district Courts within one year. However, as of now, very few States like Delhi, Gujrat, Union Territory of Jammu & Kashmir, Chandigarh has incorporated these complexes in District Courts. Therefore, it is recommended that immediately separate funds shall be

allocated by the governments to set up such complexes as per the mandate of judgment without further delay.

**IX. Creation of awareness campaign -** India is a developing country where the literacy rate is low. Due to the lack of education, people may not have acquaintance about this Scheme. Therefore, it is suggested that the government shall make a mass campaign of Witness Protection Scheme by organising awareness programs in the district, tehsil, and village level or display posters and banners about the benefits of the Scheme in the Court's corridors which exactly is missing.

**X. Immediate measure to address concerns of hostility -** The Scheme has made exertions to address the issues related to witness protection. However, it does not address the other associated problems due to which the witness turns hostile like unwarranted adjournments, inadequate allowances, lack of infrastructural facilities in court etc. Therefore, it is suggested that the procedural amendments should be made in Cr.P.C to speed up the investigation process and avoid unwarranted adjournment. Further, the High Court should closely monitor the mode of trials conducted in lower Courts. Moreover, in the matters of the heinous crime, Fast Track Courts shall be constituted. Even the magistrate may take preventive steps when the witnesses are harassed and annoyed by the defence lawyer by asking unnecessary questions. Likewise, the Bar Councils may play a crucial role by preventing and sensitizing the lawyers about the hardships caused to the witness due to undue adjournments, lingering on the trials, and other associated issues.

**XI. Amendment in substantive and procedural law -** The Witness Protection Scheme, 2018, approved by Hon'ble Supreme Court in Mahendra Chawal's case, has seen several setbacks, and therefore it has not fulfilled the forgotten demand to provide adequate protection to the witnesses. However, instead of making separate legislation on witness protection, an amendment in substantive and procedural law would undoubtedly aid to curb

multiplicity of legislation on the same subject matter. Therefore, in an alternative, to address the above concern and to overcome the hitches of the Scheme, an appropriate amendment could be made in the Code of Criminal Procedure 1973 and Indian Penal Code, 1860, and Indian Evidence Act, 1872. Hence, it is suggested that a new subheading shall be added in “Chapter XXIII – Evidence in Enquiries and Trials” as “C – Witness Protection” in Cr.P.C to deal with all the aspects of protection and safeguard of the witness during the course of the enquiries and trial. Moreover, section 195 A of the Indian Penal Code, 1860, shall be amended to include the term „harassment“ and „inducement“ with the term „threatening,“ and the severe punishment should be given to the person who is involved in such act. Likewise, the Indian Evidence Act, 1872, shall be amended to include the definition of „witness“ in the interpretation clause. The amendment in substantive and procedural law would undoubtedly aid in bringing out all the aspects of witnesses within one umbrella of the law.



## **BIBLIOGRAPHY AND REFERENCES**

### BOOKS

- Basu, N.D., “Code of Criminal Procedure”, Volume 1 & 2, 9th Edition, 2001, Ashoka Law House, New Delhi
- B. Guru Rajah Rao, „Ancient Hindu Judicature“, Ganesh & Co., Madras. 1920
- “Halsbury“ Law of India”, Butterworths, 2000 Ed. Vol.15
- Kautilya, Arthasastra, Book J, Chapter 11, Verse 50; Kangle, Kautilya Arthasastra (University of Bombay) (1970) Part IInd, P. 230
- Kelkar R. V, “Criminal Procedure”, Dr. K. N. Chandrasekharan Pillai (Ed.), Eastern Book Company, Lucknow, (4th Ed., 2004)
- Mathur, Ashutosh Dayal Oxford, „Medieval Hindu Law-Historical Evolution and Enlightened Rebellion“, Oxford University Press, New Delhi, 2007, p. 205.
- Mitakehara, Bombay Edition, page 107.
- Mandlik, Vishwanath Narayan & Mayukha Vyavahara „Hindu Law“, Asian Publication Service, New Delhi, Page no. 22
- Rattan Lal & Dhiraj Lal , “The Law of Evidence”, 20th Ed., Nagpur : Wadhwa & Company, 2004
- Shastri, Dr. Sunanda Y. „Naradasmriti“ Bharatiya Kala Prakashan 2002
- Singh, Dr. Avatar „Principles Of The Law Of Evidence“ 2013, 22nd Edition, Central Law Publication.
- Woodroffe, Sir John & Ali, Ameer „Law of Evidence in India“ Thirteenth edition Vol. 01 Law Book Company, Allahabad
- Yajñvalkyā, II, 22(100 A.D.); Kane, “History of Dharmasastra”, Vol. 3, P. 304

## REPORTS

- Law Commission of India „Reforms of judicial administration“ Report no.14  
Vol.02, September1958
- Law Commission of India, Indian Penal Code, Report no. 42, June 1971
- The Vohra (Committee) Report was submitted by the former Indian Union Home Secretary, N.N. Vohra, in October 1993.
- Law Commission of India, Code of Criminal Procedure, 1973, Report no. 154,  
1996
- Law Commission of India, Review of Rape Laws, Report no.172, 2000
- Law Commission of India, Recommendations for Amending Various  
Enactments both Civil and Criminal, Report no.178, 2001
  
- Dr. Justice V.S. Malimath, Report of Committee on Reforms of Criminal  
Justice System, 2003 Chapter 11, Part – III, Volume – I
- Law Commission of India, Witness Identity Protection and Witness Protection  
Programmes, Report no. 198, 2006
- Prof. (Dr.) N.R. Madhava Menon, Report of Committee on Draft National  
Policy on Criminal Justice, Ministry of Home Affairs Government of India, July 2007
- Prof. (Dr.) G. S. Bajpai, Report of Witness in the Criminal Justice Process: A  
study of Hostility and Problems associated with Witness, 2009
- Law Commission of India, Expeditious Investigation and Trial of Criminal  
Cases Against Influential Public Personalities, Report no. 239, 2012

## RESEARCH PAPERS AND NEWS PAPER ARTICLES

- Abdulmalik Abubaker, „Source of Islamic Law“, Abyssinia Law, July 15, 2013
- Akanksha Jain, Vulnerable Witnesses Being Examined In Courtrooms: Circular Asks Delhi Judges To Use Vulnerable Witnesses Deposition Complex, livelaw.in, May, 2019
- Akash Anurag, „Witness Protection in India – The Need for an Effective Legislation to Achieve a Fair Criminal Trial“, Centre for Criminal Law Studies, National Law University, Jodhpur, September 29, 2018
- Amy Burchfield , International Criminal Courts for the Former Yugoslavia, Rwanda and Sierra Leone: A Guide to Online and Print Resources, October 2005
- Alok Kumar, Criminal Justice System of India – Is it time to implement the Malimath Committee Report?
- Amit Anand Choudhary, „Witness turning hostile serious threat to justice delivery system“ Time of India, November 27, 2016
- Ankit Kejriwal, „Need For A Witness Protection Programme - The Solution To The Problem of Hostile Witness,“ Legal Service India.com
- Aparna Srinivasan and K.Roja, „A Detailed Study On Eyewitness Testimony In India,“ International Journal of Pure and Applied Mathematics, Volume 120 No. 5 2018, Page no. 983-995, ISSN: 1314-3395 (on-line version)
- Belarus : Belarus Ratified Agreement with Hong Kong for the Avoidance of Double Taxation.” MENA Report, Albawaba (London) Ltd., May 2017, p. n/a.
- Bhawna Gera and Kashish Makkar, „Due to major loopholes, the witness protection scheme does not instil confidence“ The Telegraph online edition, February 22, 2019