

**“Witness Protection Laws in India: An Analysis”***\*Prithivi Raj**Rajiv Gandhi National University of Law,  
Punjab***ABSTRACT**

The Indian Judicial system has been so hard to deal with the problem of witness protection but since there is an absence of such legislation witnesses is not getting that protection as and when needed. Present circumstances are such that it is not being able to provide protection to them. Presently, the vulnerability of the witnesses is very prominent. Provisions in the existing laws are inadequate to meet the need of time. Now-a-days reporting of unceremonious acquittals in sensational criminal cases is on the rise. Most of them are on account of defection of loyalty of witnesses. As there is every chance of manipulating the witnesses and putting them under coercion a strict law is required to be made for the protection of those witnesses. This article will analyse the steps taken by legislature and judiciary for the witness protection and there implementation in society as per law.

**1. INTRODUCTION**

As per Whittaker Chambers “A witness, in the sense that I am using the word, 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.” Witness protection programme: a formally established covert programme subject to strict admission criteria that provides for the relocation and change of identity of witnesses whose lives are threatened by a criminal group because of their cooperation with law enforcement authorities.<sup>1</sup> The witnesses play a very important role in the criminal justice system of any country. Justice Wadhwa said, “A criminal case is built on edifice of evidence, evidence that is admissible in law. For that witnesses are required whether it is direct evidence or circumstantial evidence.”<sup>2</sup> Thus a witness is an important part in case other than accused and complainant. By giving evidence relating to the commission of an offence he performs a sacred duty of assisting the court to discover the truth. It is for this reason that the witness either takes an oath in the name of God or solemnly affirms to speak the truth. He/she performs an important public duty of assisting the court in deciding on the guilt or otherwise of the accused in the case. He submits himself to cross examination and cannot refuse to answer questions on the ground that the answer will incriminate him.<sup>3</sup>

**2. STATUTORY LAWS FOR PROTECTION TO WITNESSES:****2.1 Code of Criminal Procedure, 1973**

Sec. 273 requires the evidence to be taken in the presence of the accused. But, the insertion of a proviso to Section 273 provides to the effect that where the evidence of a woman below 18

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<sup>1</sup> The UNODC Good Practices for the Protection of Witnesses manual, p.5

<sup>2</sup> Swaran Singh v. State of Punjab (2000)5SCC68

<sup>3</sup> Committee on Reforms of Criminal Justice System, headed by Justice Mallimath, Volume I, Page 151

years who is alleged to have been subjected to sexual assault is to be recorded, the Court may take appropriate measures to ensure that such a person is not confronted by the accused.<sup>4</sup> The Code of Criminal Procedure, 1973 provides for trial in open court<sup>5</sup> and also provides for in-camera trials<sup>6</sup> for offences involving rape.

The Supreme Court of India in *Sakshi v. Union of India*<sup>7</sup> observed: “the whole inquiry before a court being to elicit the truth, it is absolutely necessary that the victim or the witnesses are able to depose about the entire incident in a free atmosphere without any embarrassment....The mere sight of the accused may induce an element of extreme fear in the mind of 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 miscarriage of justice. Therefore, a screen or some such arrangement can be made where the victim or witness do not have to undergo the trauma of seeing the body or face of the accused.”

Sec. 299 indicates to the recording of evidence in absence of accused. It empowers the Magistrate to record the statement of certain witnesses in the absence of the accused. Such recording of evidence is given only where an accused person has absconded and there is no immediate chance of arresting him. Procedure for examination and cross-examination of witnesses is specified in the Code under Section 231(2) which provides that at the trial in the Court of Session, the prosecution may produce its evidence on the date fixed and the defence may cross examine or the date of cross examination may be deferred. Section 242(2) permits cross-examination by accused in cases instituted on police report and trial under warrant procedure is by magistrates. Section 246(4) provides for cross-examination of prosecution witness in trials of warrant cases by Magistrates in cases instituted otherwise than on police report. Recording of evidence through video conferencing has been held to be permissible in a recent decision of the Supreme Court in *State of Maharashtra v. Dr. Praful B. Desai*<sup>8</sup> “When a statement is recorded through this method, the victim/witness would feel more comfortable and will give answers without any fear or pressure. Section 171 of the Code says that in order to secure impartial evidence from the witness the witness on his way to court shall not be required to accompany a police officer and shall not subjected to unnecessary restraint or inconvenience or required to give any security for his appearance other than his own bond. Proviso to this section further provides that, if any complainant or witness refuses to attend or to execute a bond as directed in section 170, the officer in charge of the police station may forward him in custody to the Magistrate, who may detain him in custody until he executes such bond, or until the hearing of the case is completed”. The Supreme Court in *Zahira Habibulla Sheikh v. State of Gujarat*<sup>9</sup>, case ordered a shift in venue from Gujarat to Maharashtra. The Code of Criminal Procedure, 1973 contains provisions in respect of transfer

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<sup>4</sup> The Criminal Law (Amendment) Act, 2013.

<sup>5</sup> Sec. 327 of the Code of Criminal Procedure, 1973.

<sup>6</sup> Sec. 327 (2) of the Code of Criminal Procedure, 1973

<sup>7</sup> AIR 2004 SC 3566

<sup>8</sup> 2003 (4) SCC 601

<sup>9</sup> 2004 (4) SCC 158

of cases.<sup>10</sup> The Court further held that 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 come when serious and undiluted thoughts are to be bestowed for protecting witnesses so that the ultimate truth presented before the court and justice triumphs and that the trial is not reduced to a mockery” The Court also highlighted the role of the state in protecting witnesses in criminal cases where parties involved are powerful in terms of money and political patronage: “As a protector of its citizens it has to ensure that during a trial in court the witness could safely depose the 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 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.”

The provisions of Section 271 providing for the power to issue commission for examination of witness in prison shall be without prejudice to the power of the court to issue, under section 284, a commission for the examination as a witness of any confined or detained in a prison and the provisions of part B of Chapter XXIII shall apply in relation to the examination on commission of any such person in the prison as they apply in relation to the examination on commission of any other person. Section 280 provides for recording remarks respecting demeanour of witness. When a Presiding Judge or magistrate has recorded the evidence of a witness, he shall also record such remarks (if any) as he thinks material respecting the demeanour of such witness whilst under examination. There is a provision mandating for speedy disposal of cases such that in every inquiry or trial, the proceedings shall be held as expeditiously as possible, and in particular, when the examination of witnesses has once begun, the same shall be continued from day to day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded.<sup>11</sup>

## 2.2 INDIAN EVIDENCE ACT

Section 132 lays down that a witness not to be excused from answering on ground that answer will criminate – “A witness shall not be excused from answering any question as to any matter relevant to the matter in issue in any suit or in any civil or criminal proceeding, upon the ground that the answer to such question will criminate, or may tend directly or indirectly to criminate, such witness, or that it will expose, or tend directly or indirectly to expose, such witness to a penalty or forfeiture of any kind. Provided that no such answer, which a witness shall be compelled to give, shall subject him to any arrest or prosecution, or

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<sup>10</sup> Secs.406 & 407 of the Code of Criminal Procedure, 1973

<sup>11</sup> Sec 309(1), the Criminal Procedure Code, 1973.

be proved against him in any criminal proceeding, except a prosecution for giving false evidence by such answer”.

Section 148 of the Act provides that “if any question relates to matter which is not relevant to the suit or proceedings under hearing except it effects the credit of a witness by injuring his character, then it empowers the court to decide when such questions shall be asked and when such witness be compelled to answer it.”

In exercising its discretion the Court shall have regard to the following considerations;

(i) Questions are proper if they are of such nature that the truth of the imputation conveyed by them would seriously affect the opinion of the Court as to the credibility of the witness on the matter to which he testifies.

(ii) Questions are improper if there is a great disproportion between the importance of the imputations made against the witness’s character and the importance of his evidence.

The court may if it sees fit, draw from the witness’s refusal to answer, the inference that the answer if given would be unfavourable.

The object of this section is to prevent the unnecessary action racking up of the past history of a witness, when it throws no light whatsoever on the questions at issue in a case. It protects a witness from the evils of a reckless and unjustifiable cross-examination under the guise of impeaching his credit. In the course of cross-examination, the temptations is always too great to run down a witness’s character, the Legislature has, therefore, wisely provided ample safeguards for the unfortunate witness and placed wholesome checks on the wily cross-examiner.<sup>12</sup>

Section 149 of the Evidence Act lays down that “a question intended to impeach the credit of a witness ought not to be asked, unless the person asking it has reasonable grounds for thinking that the imputation which it conveys is well founded”. The extensive powers which have been granted to the court for protecting witnesses from questions not lawful in cross examination are set out in Sections 146 to 153. Section 150 is the penalty that may ensue against a reckless cross-examination if the court was of the opinion that the questions were asked without reasonable grounds.<sup>13</sup>

### **3. PROTECTION OF WITNESSES UNDER SPECIAL STATUTES**

#### **3.1 The Whistle Blowers Protection Act, 2011**

The provision for protection of witnesses is given under Section 12 as per which the Competent Authority shall issue directions to the Govt. authorities for taking steps to protect complainant on the basis of a application received or information gathered.<sup>14</sup> It also provided

<sup>12</sup> Ratan Lal & Dhiraj Lal ,The Law of Evidence, 20th Ed., Wadhwa & Co., Nagpur, 2004.

<sup>13</sup> Prakash Rajanan v. State of Maharashtra, 1975 Cri.L.J. 1297 Bom.

<sup>14</sup> Section 12 of the Whistle Blowers Act, 2011

for a provision relating to the protection of identity of the complainant, documents furnished by him, which have to be concealed, unless otherwise ordered by the competent authority.<sup>15</sup> If any person reveals the identity of a complainant, he shall be punished as per provisions of Section 16.<sup>16</sup>

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

Section 17 speaks on Protection of witnesses-

“(1) Notwithstanding anything contained in the Code, the proceedings under this Act may, for reasons to be recorded in writing, beheld in camera if the Special Court so desires.

(2) On an application made by a witness in any proceeding before it or by the Public Prosecutor in relation to such witness or on its own motion, if the Special Court is satisfied that the life of such witness is in danger, it may, for reasons to be recorded in writing, take such measures as it deems fit for keeping the identity and address of such witness secret.

(3) In particular, and without prejudice to the generality of the provisions of subsection the measures which a Special Court may take under that sub-section may include—

- a) the holding of the proceedings at a place to be decided by the Special Court;
- b) the avoiding of the mention of the names and addresses of the witnesses in its orders or judgments or in any records of the case accessible to public;
- c) the issuing of any directions for securing that the identity and address of the witnesses are not disclosed; and
- d) A decision that it is in the public interest to order that all or any of the proceedings pending before such a Court shall not be published in any manner.

Any person who contravenes any decision or direction issued under sub-section (3) shall be punishable with imprisonment for a term which may extend to three years and with fine which may extend to one thousand rupees.”

### **3.3 Juvenile Justice (Care and Protection of Children) Act, 2000**

The Juvenile Justice (Care and Protection of Children) Act, 2000 provides for prohibition of publication of name, etc. of Juvenile involved in any proceeding under the Act‘ in Section 21 which reads as follows<sup>17</sup>:

“(1) No report in any newspaper, magazine, news-sheet or visual media of any inquiry regarding a juvenile in conflict with law or a child in need of care and protection under this Act shall disclose the name, address or school or any other particulars calculated to lead to the identification of the juvenile or child nor shall any picture of any such juvenile or child be published: Provided that for reasons to be recorded in writing, the authority holding the

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<sup>15</sup> Section 13 of the Whistle Blowers Act, 2011

<sup>16</sup> Section 16 of the Whistle Blowers Act, 2011

<sup>17</sup> Juvenile Justice (Care and Protection of Children) Amendment Act, 2006

inquiry may permit such disclosure, if in its opinion such disclosure is in the interest of the juvenile or the child.

(2) Any person who contravenes the provisions of sub-section (1), shall be liable to a penalty which may extend to twenty-five thousand rupees.”

### **3.4 The Unlawful Activities (Prevention) Amendment Act, 2004**

Section 44 says about Protection of witnesses.- “(1) Notwithstanding anything contained in the Code, the proceedings under this Act may, for reasons to be recorded in writing, be held in camera if the special Court so desires.

(2) A Special Court, if on an application made by a witness in any proceeding before it or by the Public Prosecutor in relation to such witness or on its own motion, is satisfied that the life of such witness is in danger, it may, for reasons to be recorded in writing, take such measures as it deems fit for keeping the identity and address of such witness secret.

(3) In particular, and without prejudice to the generality of the provisions of subsection (2), the measures which a Special Court may take under that subsection may include –

- a) the holding of the proceedings at a place to be decided by the Special Court;
- b) the avoiding of the mention of the names and addresses of the witnesses in its orders or judgments or in any records of the case accessible to public;
- c) the issuing of any directions for securing that the identity and address of the witnesses is not disclosed;
- d) A decision that it is in public interest to order that all or any of the proceedings pending before such a Court shall not be published in any manner.

(4) Any person who contravenes any decision or direction issued under sub section (3) shall be punishable with imprisonment for a term which may extend to one year and with fine which may extend to one thousand rupees.”

## **4. REPORTS OF VARIOUS COMMISSIONS AND COMMITTEES ON WITNESS PROTECTION**

### **4.1 14th Report of Law Commission on Reform of Judicial Administration (1958)**

The 14<sup>th</sup> Report of the Law Commission examined, inter alia, the question of providing adequate facilities to witnesses attending cases in courts. The Report referred to inadequate arrangements for witnesses in the Courthouse, the scales of travelling allowance and daily batta (allowance) paid for witnesses for attending the Court in response to summons from the Court. This characteristic too is significant if one has to keep in mind the colossal increase in the expense concerned and the extended hours of waiting in Court with tension and attending numerous adjournments. Here the question of giving due respect to the witness’s convenience, comfort and compensation for his sparing valuable time is involved. If the

witness is not taken care of, he or she is likely to develop an attitude of indifference to the question of bringing the offender to justice.<sup>18</sup>

#### **4.2 The 4<sup>th</sup> Report of the National Police Commission**

The Report acknowledged the troubles undergone by witnesses attending proceedings in courts, inconveniences and handicaps from which witnesses suffer have been referred to. The Commission again referred to the problems and harassment caused to witnesses in attending courts.<sup>19</sup>

#### **4.3 The 154<sup>th</sup> Report of the Law Commission**

In the 154th Report of the Commission (1996), in Chapter X, the Commission, while dealing with Protection and Facilities to Witnesses, referred to the 14th Report of the Law Commission and the Report of the National Police Commission and conceded that there was plenty of justification for the reluctance of witnesses to come forward to attend Court promptly in obedience to the summons. It was stated that the plight of witnesses appearing on behalf of the State was pitiable not only because of lack of proper facilities and conveniences but also because witnesses have to incur the wrath of the accused, particularly that of hardened criminals, which can result in their life falling into great peril. The Law Commission recommended,<sup>20</sup> inter alia, as follows:

- (a) Realistic allowance should be paid to witnesses for their attendance in Courts and there should be simplification of the procedure for such payment.
- (b) Adequate facilities should be provided to witnesses for their stay in the Court premises. Witnesses must be given due respect and it is also necessary that efforts are made to remove all reasonable causes for their anguish.
- (c) Witnesses should be protected from the wrath of the accused in any eventuality.
- (d) Witnesses should be examined on the day they are summoned and the examination should proceed on a day-to-day basis.<sup>21</sup>

#### **4.4 172<sup>nd</sup> Report of the Law Commission on Review of Rape Laws, 2000**

The report dealt with the review of rape laws suggested that the testimony of a minor in the case of child sexual abuse should be recorded at the earliest possible opportunity in the presence of a Judge and a child support person, which may include a family friend, relative or

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<sup>18</sup> Law Commission of India, *Reform of Judicial Administration*, 14<sup>th</sup> Report, First Law Commission under the Chairmanship of Mr. M. C. Setalvad 1955-1958, in 1958 available at <http://lawcommissionofindia.nic.in/1-50/Report14Vol1.pdf>

<sup>19</sup> National Police Commission, 4<sup>th</sup> Report, 1980 available at [http://www.humanrightsinitiative.org/publications/police/police\\_reform\\_debates\\_in\\_india.pdf](http://www.humanrightsinitiative.org/publications/police/police_reform_debates_in_india.pdf)

<sup>20</sup> Law Commission of India, 154th Report, Fourteenth Law Commission under the Chairmanship of Mr. Justice K. J. Reddy 1995-1997, in 1996 available at <http://lawcommissionofindia.nic.in/101-169/Report154Vol1.pdf>

<sup>21</sup> Ibid.

social worker whom the minor trusts. It further urged that the court should permit the use of video-taped interview of the child or allow the child to testify by a closed circuit television and that the cross examination of the minor should be carried out by the Judge based on written questions submitted by the defence.

The Commission considered the above suggestions along with other issues raised and the order of the Supreme Court and gave its 172nd Report on 25<sup>th</sup> March, 2000.<sup>22</sup> In respect of the suggestion that a minor who has been assaulted sexually, should not be required to give his/her evidence in the presence of the accused and he or she may be allowed to testify behind the screen, the Law Commission referred to section 273 of the Cr.P.C, which requires that “except as otherwise expressly provided, all evidence taken in the course of a trial or other proceeding, shall be taken in the presence of the accused or when his personal attendance is dispensed with, in the presence of his pleader”. The Law Commission took the view that his general principle, which is founded upon natural justice, should not be done away with altogether in trials and enquiries concerning sexual offence. However, in order to protect the child witness the Commission recommended that it may be open to the prosecution to request the Court to provide a screen in such a manner that the victim does not see the accused, while at the same time providing an opportunity to the accused to listen to the testimony of the victim and give appropriate instructions to his advocate for an effective Cross- examination. The Commission also recommended insertion of a proviso to Sec. 273 of the Code of Criminal Procedure, 1973 to the effect that it should be open to the prosecution to request the court to provide a screen so that the child victim does not see the accused during the trial.

#### **4.5 178<sup>th</sup> Report of the Law Commission, 2001**

The Commission gave its 178th Report for amending various statutes, civil and criminal. It dealt with hostile witnesses and the precautions the Police should take at the stage of investigation to prevent prevarication by witnesses when they are examined later at the trial. The Commission recommended three alternatives, they are as follows:

- (i) “The insertion of sub-section (1A) in Section 164 of the Code of Criminal Procedure so that the statements of material witnesses are recorded in the presence of Magistrates.
- (ii) Introducing certain checks so that witnesses do not turn hostile, such as taking the signature of a witness on his police statement and sending it to an appropriate Magistrate and a senior police officer;

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<sup>22</sup> <http://www.lawcommissionofindia.nic.in/rapelaws.htm>



(iii) In all serious offences, punishable with 10 or more years of imprisonment, the statement of important witnesses should be recorded, at the earliest, by a Magistrate under Section 164 of the Code.”<sup>23</sup>

#### **4.6 Justice Malimath Committee on the Reforms of Criminal Justice System, 2003**

The Report stated that: unfortunately the witnesses are treated very shabbily by the system.<sup>24</sup> There are no facilities for the witnesses when they come to the court and have to wait for long periods, often their cross-examination is unreasonable and occasionally rude. They are not given their TA/DA promptly. The witnesses are not treated with due courtesy and consideration; nor are they protected. Witnesses are required to come to the court unnecessarily and repeatedly as a large number of cases are posted and adjourned on frivolous grounds.<sup>25</sup> To overcome these problems, the Committee has made the following recommendations:

- (i) “Witness who comes to assist the court should be treated with dignity and shown due courtesy. An official should be assigned to provide assistance to him.
- (ii) Separate place should be provided with proper facilities such as seating, resting, toilet, drinking water etc. for the convenience of the witnesses in the court premises.
- (iii) Rates of travelling and other allowance to the witness should be reviewed so as to compensate him for the expenses that he incurs. Proper arrangements should be made for payment of the allowances due to the witness on the same day when the case is adjourned without examining the witness he should be paid T.A and D.A. the same day.
- (iv) A law should be enacted for giving protection to the witnesses and their family members on the lines of the laws in USA and other countries.
- (v) Courts should list the cases in such a manner as to avoid the witnesses being required to come again and again for giving evidence.
- (vi) The trial should proceed on day to day basis and granting of adjournments should be avoided. The Judge should be held accountable for any lapse in this behalf. High Court should ensure due compliance through training and supervision”.<sup>26</sup>

#### **4.7 198<sup>th</sup> Report of the Law Commission on Witness Identity Protection and Witness Protection Programmes, 2006**

The Law Commission had prepared a Consultation Paper on "Witness Identity Protection and Witness Protection Programmes" (August 2004) and invited responses to the Questionnaire.<sup>96</sup>

<sup>23</sup> Law Commission of India, Recommendations for Amending Various Enactments, Both Civil and Criminal, 178th Report, Sixteenth Law Commission under the Chairmanship of Mr. Justice B. P. Jeevan Reddy 2000-2001 & Mr. Justice M. Jagannadha Rao 2002-2003, in 2001 available at <http://lawcommissionofindia.nic.in/reports/178rpt1.pdf>

<sup>24</sup> [http://www.mha.nic.in/hindi/sites/upload\\_files/mhahindi/files/pdf/criminal\\_justice\\_system.pdf](http://www.mha.nic.in/hindi/sites/upload_files/mhahindi/files/pdf/criminal_justice_system.pdf)

<sup>25</sup> Justice Malimath Committee on the Reforms of Criminal Justice System, 2003

<sup>26</sup> Ibid.

The Consultation Paper contained three parts: Part I – General (Chapter 1 to IV), Part II – Witness Identity Protection v. Rights of accused (Chapters V, VI) and Part III – Witness Protection Programmes (Chapter VII). So far as the Witness Identity Protection is concerned, it dealt with it:

- (i) At the stage of investigation,
- (ii) During inquiry and before recording evidence at the trial, and
- (iii) Recording evidence during the trial in the Sessions Court: two-way closed circuit television<sup>27</sup>

## 5. INDIAN JUDICIARY ON WITNESS PROTECTION PROGRAMME

A witness is an indispensable aid in the justice dispensation system in any civilized society. Now-a-days we hear a lot of squabble about unceremonious acquittals in sensational criminal cases. Most of them are on account of defection of loyalty of witnesses. Causes for defection may be various. Hon'ble Supreme Court in *Swaran Singh vs. State of Punjab*<sup>28</sup> expressed deep concern about the predicament of a witness in the following words:

“A criminal case is built on the edifice of evidence, evidence that is admissible in law. For that witnesses are required, whether it is direct evidence or circumstantial evidence. Here are the witnesses who are a harassed lot. A witness in a criminal trial may come from a far-off place to find the case adjourned. He has to come to the Court many times and at what cost to his own-self and his family is not difficult to fathom. It has become more or less a fashion to have a criminal case adjourned again and again till the witness tires and he gives up. It is the game of unscrupulous lawyers to get adjournments for one excuse or the other till a witness is won over or is tired. Not only that a witness is threatened; he is abducted; he is maimed; he is done away with; or even bribed. There is no protection for him. In adjourning the matter without any valid cause a Court unwittingly becomes party to miscarriage of justice. A witness is then not treated with respect in the Court. He is pushed out from the crowded courtroom by the peon. He waits for the whole day and then he finds that the matter adjourned. He has no place to sit and no place even to have a glass of water. And when he does appear in Court, he is subjected to unchecked and prolonged examination and cross-examination and finds himself in a hapless situation. For all these reasons and others a person abhors becoming a witness. It is the administration of justice that suffers. Then appropriate diet money for a witness is a far cry. Here again the process of harassment starts and he decides not to get the diet money at all.”<sup>29</sup>

The Supreme Court in *Sakshi v. Union of India*<sup>30</sup> referred to the argument of the petitioner that in case of child sexual abuse, there should be special provisions in the law to the following effect:-

- (i) “permitting use of videotaped interview of the child’s statement by the judge (in the presence of a child support person).

<sup>27</sup> 198<sup>th</sup> Report of the Law Commission, 2006

<sup>28</sup> AIR 2000 SC 2017

<sup>29</sup> Ibid.

<sup>30</sup> AIR 2004 SC 3566

- (ii) allowing a child to testify via closed circuit television or from behind a screen to obtain a full and candid account of the acts complained of.
- (iii) that the cross examination of a minor should only be carried out by the judge based on written questions submitted by the defence upon perusal of the testimony of the minor.
- (iv) that whenever a child is required to give testimony, sufficient breaks should be given as and when required by the child”<sup>31</sup>

The court observed 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 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.”<sup>32</sup>

In *Zahira Habibulla H. Sheikh and Another v/s State of Gujarat and Others*<sup>33</sup>, the apex court was emphatic on the role of the State to play in protecting the witnesses. It has been observed that “as a protector of its citizens, the State has to ensure that during the trial in the Court the witness could safely depose the truth without any fear of being haunted by those against whom he had deposed. Supreme Court reminded the State that it has a constitutional obligation and duty to protect the life and liberty of the citizen”<sup>34</sup>.

In *Bharat Singh Rawat vs State NCT Of Delhi*<sup>35</sup> on 12 March, 2014, the Delhi High Court observes “the importance of witness in criminal justice system.” “Witnesses” as Bentham said: are the eyes and ears of justice. 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 some corrupt collusion. Time has become ripe to act on account of numerous experiences faced by Courts on account of frequent turning of witnesses as hostile, either due to threats, lures and monetary considerations at the instance of those in power, political clouts and patronage and innumerable other corrupt practices stifle truth and realities coming out to surface rendering truth and justice. There comes the need for protecting the witness. Time has come when serious and undiluted thoughts are to be bestowed for protecting witnesses so that ultimate truth is presented before the Court and justice triumphs and that the trial is not reduced to a mockery. Doubts are raised about the roles of investigating agencies”<sup>36</sup>.

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<sup>31</sup> Ibid.

<sup>32</sup> Ibid.

<sup>33</sup> (2006) 3 SCC 374

<sup>34</sup> Ibid.

<sup>35</sup> CRL.A. 830/2013

<sup>36</sup> Ibid.

In *Dayanand B. Nayak v/s Ketan K. Tirodkar And Anr.*<sup>37</sup>, the Bombay High Court had given police protection to an ex-journalist Ketan Thirodkar, because he had been under threats soon after he had filed the police complaint, which disclosed a series of illegal acts allegedly committed by the police in connivance with the underworld. Thirodkar had filed a petition seeking police protection as well as a police enquiry into the police underworld nexus. However, the public prosecutor opposed the grant of police protection on the ground that Thirodkar himself was involved with the underworld.<sup>38</sup>

*Beant Singh Assassination Case*<sup>39</sup> The case of Balwinder Singh, a prime witness in Beant Singh (former Chief Minister of Punjab) assassination case, shows the state of witness protection in the country. In September 2003, the Punjab and Haryana High Court ruled that it would be appropriate for both the Central and State Government to expeditiously adopt a programme for the protection of witnesses.<sup>40</sup> The Court said: “Since it is not for us to direct the administration to formulate the guidelines, rather than leaving the decision on the absolute discretion of the district authorities, who may or may not like to draw upon secret service funds, we would like to bring on record the desirability of the legislature or the administration to try and emulate the advances in this field made in other countries.”<sup>41</sup>

*Self-Styled Godman “Bapu Asaram” Rape Case*<sup>42</sup> A crucial witness in the rape case against the Asaram has been provided with police security, four days after one of the witnesses in the case was shot dead.<sup>43</sup> A bench of Justices A. R Dave and A. K Goel directed the trial courts to pass appropriate orders for giving witness protection, if they are threatened.<sup>44</sup>

In *Mahender Chawla & Ors. Vs. Union of India & Ors.*<sup>45</sup> the Court observed that: “Whenever, in a dispute, the two sides come out with conflicting version, the witnesses become important tool to arrive at right conclusions, thereby advancing justice in a matter. In the words of Whittaker Chambers, a 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. Because of the lack of Witness Protection Programme in India and the treatment that is meted out to them, there is a tendency of reluctance in coming forward and making statement during the investigation and/or testify in courts. The present legal system takes witnesses completely for granted. They are summoned to court regardless of their financial and personal conditions. Many times they are made to

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<sup>37</sup> 2004 CriLJ 2177 (Bom. HC)

<sup>38</sup> Ibid.

<sup>39</sup> <https://scroll.in/latest/945666/ex-punjab-cm-beant-singh-assassination-convicts-death-penalty-not-commuted-says-amit-shah>

<sup>40</sup> [http://shodhganga.inflibnet.ac.in/bitstream/10603/8788/13/13\\_chapter%204.pdf](http://shodhganga.inflibnet.ac.in/bitstream/10603/8788/13/13_chapter%204.pdf)

<sup>41</sup> Ibid.

<sup>42</sup> <https://www.financialexpress.com/india-news/asaram-bapu-rape-case-verdict-live-news-updates-jodhpur-court/1144252/>

<sup>43</sup> <http://www.ndtv.com/india-news/key-witness-in-asaram-bapu-rape-case-gets-security-781731>

<sup>44</sup> Ibid.

<sup>45</sup> Writ Petition (Criminal) No. 156 of 2016

appear long after the incident of the alleged crime, which significantly hampers their ability to recall necessary details at the time of actual crime. They are not even suitably remunerated for the loss of time and the expenditure towards conveyance etc. It hardly needs to be emphasised that one of the main reasons for witnesses to turn hostile is that they are not accorded appropriate protection by the State”<sup>46</sup> The Court, while quoting from a judgment in *Swaran Singh v. State of Punjab*<sup>47</sup> emphasized upon and reiterated several hardships that witnesses have to undergo in criminal cases like how the witness is not given any respect by the court, there is no proper place assigned for them to wait until the hearing begins, during the trial the witness is subjected to prolong stretched examinations and cross examinations. The court rightly observed that “criminal justice is closely associated with human rights”. “Whereas, on the one hand, it is to be ensured that no innocent person is convicted and thereby deprived of his liberty, it is of equal importance to ensure, on the other hand, that victims of crime get justice by punishing the offender. In this whole process, protection of witnesses assumes significance to enable them to depose fearlessly and truthfully. That would also ensure fair trial as well, which is another concomitant of the rule of law.” The Court also interpreted Article 21 of the Constitution as follows: “If one is unable to testify in courts due to threats or other pressures, then it is a clear violation of Article 21 of the Constitution. The right to life guaranteed to the people of this country also includes in its fold the right to live in a society, which is free from crime and fear and right of witnesses to testify in courts without fear or pressure.”<sup>48</sup>

## 6. WITNESS PROTECTION SCHEME<sup>49</sup>

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

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

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

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

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

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

- i. Budgetary allocation made in the Annual Budget by the State Government;

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<sup>46</sup> Ibid.

<sup>47</sup> AIR 2000 SC 2017

<sup>48</sup> Ibid.

<sup>49</sup> <https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1578108>

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

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

This was stated by the Minister of State for Home Affairs, Shri Nityanand Rai in a written reply to question in the Rajya Sabha today".<sup>50</sup>

## CONCLUSION

We have read that many guidelines are issued by the both the legislature and judiciary from time to time. But here the question arises whether those guidelines are plastically implemented or are there in pen and paper. Now the authority who will give the new identity to the witness if he becomes hostile then naturally the witness will no more safe and will be naturally in danger. If the authority issuing new name and identity to the witnesses will get corrupted then there will be no meaning of such programmes and laws. We should make the protection programmes and laws untouched by the corruption and hostility.

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<sup>50</sup> Posted on 10 JUL 2019 3:48 PM by PIB Delhi.