

**“Witness Protection: Need of India’s Criminal Justice System”***Shikha Pisal**Somesh Dixit***ABSTRACT**

It is said by Bentham that “witnesses are the eyes and ears of justice”. The focus of the paper is to bring to the knowledge the need of proper witness protection laws so that the witnesses can give their testimony without any fear of intimidation. Most of the countries have adopted witness protection laws. United States of America has the most well developed witness protection laws. there have been cases in India which draw attention towards the need of witness protection like Best Bakery Case, Jessica Lal case, Asaram Babu case and Vyapam scam.

The research was carried with the main objective to have a better understanding about the topic, to have knowledge about the provisions made in favour of witnesses, their importance in criminal justice system, the current situation of witnesses in India and the need for witness protection laws.

For the proper functioning of the justice system it is necessary that they trust the judicial system. This can happen only if there are laws regarding their protection and the witnesses are ensured of their safety.

Keywords: witness, justice, intimidation, witness protection laws.

## INTRODUCTION

Witness plays a major role in the process of delivering justice. The statement of witness affects the conviction and acquittal. Bentham stated that "witnesses are the eyes and ears of justice". Therefore it is necessary that the interest of the witness should be protected. Witness protection has become the main concern. Nowadays it is very difficult to trace or detect the criminals in organized crimes. Criminal organizations have become stronger. In such circumstances the role of witness becomes very significant in prosecuting the accused particularly in complex and serious crimes. For this witnesses should have trust in the justice system. Their confidence in justice system can be built only if their interest is protected and the protection programs are properly implemented. They should be protected from the harm which can be inflicted upon them by the criminals. Witness should be able to give the testimony without any fear of danger to his life or his loved ones.

In India the judicial system does not function so fluently. Prosecution witnesses turn hostile due to intimidation or fear of harm which can be inflicted upon them or their family members. The issue of hostile witness came in the knowledge after the landmark judgment of Jessica Lal case and the judgment of Best Bakery case.

Police Officers have the power to record the statement of witnesses by virtue of Section 161(3) of the Criminal Procedure Code. But by virtue of Section 162(1) the statements are not admissible in the court. Witness has to restate the statement made to police officer during the trial. If the witness deviates from the statement made earlier, it is said that the witness has turned hostile.

In India, situation of witness protection is miserable. Only a few witnesses have the courage to stand in favor of the victim as happened in Jessica Lal case but most of the witnesses lack courage to favour the victim or appear in the court. The major reason is the lack of witness protection in India. For the proper functioning of justice system it is very important that India should have a proper witness protection program. USA has the most well developed witness protection program.

This paper deals with the role of witness in delivering justice, laws made for the protection of the witness, the current situation of the witnesses and a comparative analysis of witness protection programs in India with different countries.

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## **Definition of Witness and its Role in the justice system**

According to law dictionary a witness is a person who was present there and has the knowledge of the event. Witness testifies under an oath in the trial or a prior deposition can be made. Witness play an important role in the criminal cases as the facts are determined on the basis of their testimony. Witness is the one who has relevant information about the case. The whole case depends upon the testimony of the witness. The role of witness becomes very crucial if in case the victim is dead or the victim's testimony is insufficient in determining the case. Then the conviction and acquisition depends on the statement of the witness. The statement of witness becomes part of the evidence and is considered while giving the judgment. The whole case can fall because of the false statement of the witness.

Witness is one of the essential parts of the justice system, as his statement determines the decision of the case. Therefore, the truth of the witness's testimony becomes the basis of justice and so the witness is required to make his statement under an oath. A witness must be able to depose out of his own consent rather under any fear or pressure.

## **Provisions regarding witnesses in India**

There are certain provisions regarding witness protection but these provisions are not properly implemented in India. In USA witness protection is considered equally important so they have separate legislation for it.<sup>1</sup> But in India there is no separate legislation regarding witness protection. These provisions are stated in different legislations. Furthermore, these laws are not effective to ensure the safety of the witnesses or his relatives.

### **a. Statutory Provisions**

In Criminal Procedure Code, 1973 there is provision for proceedings in the open court<sup>2</sup> and also for in-camera proceedings<sup>3</sup> for offences involving rape.<sup>4</sup> Section 273 of the Code states that evidence to be taken in presence of the accused except in cases mentioned in Section 299 in which the evidence can be recorded in the absence of the accused. Section 173(6) states that if the police officer is of opinion that any part of statement made under Section 161 is not relevant to the subject-matter of the proceedings or that its revelation to

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<sup>1</sup> See Organized Crime Control Act, 1970 (US).

<sup>2</sup> See S. 327, The Code of Criminal Procedure, 1973.

<sup>3</sup> See S. 327 (2), The Code of Criminal Procedure, 1973.

<sup>4</sup> See S. 376 and S. 376 A to 376 D, The Indian Penal Code, 1861.

the accused is not necessary in the interests of justice and is inexpedient in the public interest then he can request the Magistrate to exclude that part from the copies.<sup>5</sup>

It is punitive to publish the identity of the rape victim.<sup>6</sup> Similarly it is prohibited to publish the identity of the juvenile.<sup>7</sup> The Indian Evidence Act, 1872 states that in exceptional cases, witness can make a previous which can be considered relevant in subsequent proceedings.<sup>8</sup> Terrorists and Disruptive Activities Act, 1985<sup>9</sup>, Terrorists and Disruptive Activities Act, 1987<sup>10</sup> and Section 30 of the Prevention of Terrorism, 2002 states that the identity of the witness must not be revealed to ensure his safety.

#### **b. Reports of the Law Commission of India**

In the 14<sup>th</sup> Report of the Law Commission<sup>11</sup> the issue was providing adequate facilities to witnesses. The 154<sup>th</sup> Report of the Law Commission<sup>12</sup> stated that, "*Necessary confidence has to be created in the minds of the witnesses that they would be protected from the wrath of the accused in any eventuality*". In the 172nd Report of the Law Commission<sup>13</sup> the issue was rape laws. This report proposed that in the cases of sexual abuse of the child the testimony of the minor should be recorded as soon as possible in the presence of Judge. Videotaped interview or allowing the child to give his testimony by closed circuit television should be permitted by the court and the cross examination of the minor should be conducted by the Judge on the basis of written questions submitted by the defence. Another recommendation was to insert a proviso to Section 273 of the Code of Criminal Procedure that the prosecution can request the court to provide a screen so that the child does not see the accused during the trial. The 178th Report of the Law Commission recommended inserting Section 164A in the Code of Criminal Procedure to record the statement of witnesses in the presence of Magistrates in such cases where the punishment

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<sup>5</sup> See S. 173 (6), The Code of Criminal Procedure, 1973.

<sup>6</sup> See S. 228A, The Indian Penal Code, 1861.

<sup>7</sup> See S. 21, The Juvenile Justice (Care and Protection of Children) Act, 2000.

<sup>8</sup> See S. 33, The Indian Evidence Act, 1872.

<sup>9</sup> See S. 13, Terrorists and Disruptive Activities Act, 1985.

<sup>10</sup> See S. 16, Terrorists and Disruptive Activities Act, 1987.

<sup>11</sup> Refer, Law Commission of India, Reform of Judicial Administration, 14th Report, First Law Commission under the Chairmanship of Mr. M. C. Setalvad 1955-1958, in 1958.

<sup>12</sup> Refer, Law Commission of India, The Code of Criminal Procedure, 1973 (Act No. 2 of 1974), 154th Report, Fourteenth Law Commission under the Chairmanship of Mr. Justice K. J. Reddy 1995-1997, in 1996.

<sup>13</sup> Refer, Law Commission of India, Review of Rape Laws, 172nd Report, Fifteenth Law Commission under the Chairmanship of Mr. Justice B. P. Jeevan Reddy 1997-2000, in 2000.

prescribed for the offence was 10 years imprisonment or more.<sup>14</sup> These recommendations were considered in Criminal Law (Amendment) Bill, 2003.

In the 178th Report<sup>15</sup> of the Law Commission the issue was preventing witness from turning hostile. It suggested:

(1) Insertion of 164(1A) in criminal Procedure Code to record the statement of the witness in the presence of Magistrate.

(2) To introduce some checks to prevent the witness from turning hostile

(3) In the offences where the punishment prescribed is imprisonment of 10 years or more, the statement of the witness vital for the fair decision should be recorded by Magistrate as soon as possible. The Law Commission considered the last two options and recommended to insert Section 164A in the Code of Criminal Procedure.<sup>16</sup>

But these Reports of the Law Commission are not yet implemented.

### c. Principles developed by the Courts in various cases

In *Gurbachan Singh v. State of Bombay*<sup>17</sup>, detinue was denied to cross examine the witness according to a provision of Bombay Police Act which was upheld by the Supreme Court. It was to deal only with the cases in which the witnesses feared to depose publicly. *G.X. Francis v. Banke Bihari Singh*<sup>18</sup> and *Maneka Sanjay Gandhi v. Rani*

<sup>14</sup> Refer, 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, (2016).

<sup>15</sup> Recommendations for Amending Various Enactments, Both Civil and Criminal. Published in December 2001.

<sup>16</sup> Section 164A – (1) Any police officer making an investigation into any offence punishable with imprisonment for a period of ten years or more (with or without fine) including an offence which is punishable with death, shall in the course of such investigation, forward all persons whose evidence is essential for the just decision of the case, to the nearest Magistrate for recording their statement. (2) The Magistrate shall record the statements of such persons forwarded to him under sub-section (1) on oath and shall keep such statements with him awaiting further police report under section 173. (3) Copies of such statements shall be furnished to the investigating officer. (4) If the Magistrate recording the statement is not empowered to take cognizance of such offence, he shall send the statements so recorded to the magistrate empowered to take cognizance of the case. (5) The statement of any person duly recorded as a witness under subsection (1) may, if such witness is produced and examined, in the discretion of the court and subject to the provisions of the Indian Evidence Act, 1872, be treated as evidence.

<sup>17</sup> See *Gurbachan Singh v. State of Bombay* AIR 1952 SC 221.

<sup>18</sup> AIR 1958 SC 209.

*Jethmalani*<sup>19</sup> stressed that the trial must be conducted fairly which includes protection of witnesses. In *Kartar Singh v. State of Punjab*<sup>20</sup> the Supreme Court upheld the validity of Section 16 (2) and (3) of Terrorist and Disruptive Activities (Prevention) Act, 1987 were upheld by the Supreme Court which state that the court has the discretion to keep the identity of the witness secret, to decide the place to hold the proceedings and can refuse to disclose the identity of the witnesses in its orders. In this case the court held that the accused does not has an absolute right to cross examine the witnesses rather it is subjected to some exceptions. For the same reason Section 30 of the Prevention of Terrorism Act, 2002 was upheld in *People's Union of Civil Liberties v. Union of India*.<sup>21</sup> In *Delhi Domestic Working Women's Forum v. Union of India*<sup>22</sup> the Apex Court stressed that the identity of the rape victims should be kept anonymous. In *State of Punjab v. Gurmit Singh*,<sup>23</sup> Section 327(2) and (3) was reiterated which mandated in camera rape trials. In *Sakshi v. Union of India*<sup>24</sup> it was laid down by the Supreme Court that some procedural safeguards have to be followed to protect the child victim of sexual abuse during the trial. In the Best Bakery Case,<sup>25</sup> one of the issue was witnesses turning hostile due to intimidation. In this case Supreme Court reiterated that "*legislative measures to emphasize prohibition against tampering with witness, victim or informant, have become the imminent and inevitable need of the day.*" Delhi High Court laid down guidelines for witness protection in *Neelam Katara v. Union of India*<sup>26</sup> but these strategies do not state anything about the manner by which the anonymity of the witness could be maintained. Likewise in *Bimal Kaur Khalsa*<sup>27</sup> the judgment of the full Bench of Punjab and Haryana High Court which provides for protecting witnesses from the media, does not deal with every aspect of the problem.

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<sup>19</sup> (1979) 4 SCC 167.

<sup>20</sup> (1994) 3 SCC 569.

<sup>21</sup> 2003) 10 SCALE 967.

<sup>22</sup> (1995) 1 SCC 14.

<sup>23</sup> (1996) 2 SCC 384.

<sup>24</sup> (2004) 6 SCALE 15.

<sup>25</sup> (2004) 4 SCC 158,

<sup>26</sup> See *Neelam Katara v. Union of India* (judgment dated 14.10.2003).

<sup>27</sup> *Bimal Kaur Khalsa v. Union Of India And Ors.* AIR 1988 P H 95,

In *NHRC v. State of Gujrat*<sup>28</sup>, Supreme Court said that "no law has yet been enacted, not even a scheme has been framed by the Union of India or by the State Government for giving protection to the witnesses".

### **Why is there a need for witness protection?**

The witness is one of the important sources of information and discovering the truth about the case, but he has to face a lot of pains and troubles to help the court.

In *Swaran singh v. State of Punjab*<sup>29</sup> the Supreme Court stated the situation of a witness as-

*"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."*

There have been instances of intimidation of witnesses in India yet there is no proper law on witness protection. In Jessica Lal case several witnesses turned hostile as a result of intimidation. Many witnesses died mysteriously in Vyapam scam and in Asaram case.

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<sup>28</sup>*National Human Rights Commission v. State of Gujarat* (2009) 6 SCC 767.

<sup>29</sup>*Swaran singh v. State of Punjab* AIR 2000 SC 2000.

Vyapam scam was a massive scam involving politicians, bureaucrats and middlemen. In this case about 48 witnesses died mysteriously. Similarly in Asaram Babu Case 9 witnesses have been attacked so far and 3 have died. In November 2015 another witness against this rape case went missing from Lucknow.

In India still there are no laws to protect the witnesses of criminal cases and ensure their safety.

The main problem is about ensuring the security of the witnesses and their family members who are vulnerable at different stages. If the witness does not agree he/she may even be forced by political pressure. Fear of police and the legal system, absence of fear of the law of perjury, corruption and unsympathetic law enforcement machinery are some of the other reasons for witnesses turning hostile during the trial<sup>30</sup>. In such situations the witness will not come forward to give evidence unless he/she is ensured of protection or is assured anonymity of some form of physical disguise. If the circumstances are such that the life of a particular witness is in danger then the court must take such measures that are necessary to keep the identity of the witness undisclosed and should ensure protection of the witness without affecting the right of cross examination of the accused. The menace from the accused side may be either before he gives his statement before the police officer or evidence in the court or after the conclusion of the trial. Witness and their family members are subjected to serious threats to life, abduction or rape or damage to the witnesses' property or harming his reputation and interest in other ways. The witness has no protection whatsoever. Many countries in the world have enacted laws for the protection of witnesses.

According to the People's Union for Civil Liberties (PUCL), press release on, 2003 pertaining to the Best Bakery case<sup>31</sup> there are two major reasons for witnesses turning hostile.

1. Incorrect statements recorded by the police or the fear of intimidation by accused.
2. Witnesses be likely to frustrate because of being summoned repetitively only to find that the date is delayed.

Supreme Court stated the factors which act as deterrents in the Criminal Justice System –

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<sup>30</sup> Witness Protection: Problems Faced and Need for a Protection Programme in India - Academike, [http://www.lawctopus.com/academike/witness-protection-problems-faced-and-need-for-a-protection-programme-in-india/#\\_edn11](http://www.lawctopus.com/academike/witness-protection-problems-faced-and-need-for-a-protection-programme-in-india/#_edn11) (last visited Jan 30, 2016).

<sup>31</sup> *Zahira Habibullah Sheikh & Anr. v. State of Gujarat and Ors* (2004) 4 SCC 158.

*"Witnesses tremble on getting summons from Courts, in India, not because they fear examination or cross-examination in Courts but because of the fear that they might not be examined at all for several days and on all such days they would be nailed to the precincts 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.... The only casualty in the aforesaid process is criminal justice."*<sup>32</sup>

### **Problems in Application of Witness Protection Program in India**

There are many challenges to the practical efficacy of the witness protection program in India.

- The foremost important challenge is with respect to anonymity of witnesses and the balancing of interests of the prosecution to indemnify the witness and the rights of the true accused. Section 327 of the Code of Criminal Procedure classifies and syndicates the significance of an open trial. Thus, the rights of the accused in knowing who is giving statement against him are very essential, principally if he has to defend and secure himself against such testimony. Section 299 of the same statute gives few assumptions to this rule and says that only if the accused is not available or has escaped and cannot be found by all reasonable means, then the court can direct the prosecution witnesses to give the statement in the absence of the accused.

- There are several problems related to such an extensive program.
  1. The most obvious is the cost of implementation and infrastructure. While talking about providing safety and concerned security to another area etc., the cost involved in providing such security is very high. The fact may remain that no cost is appreciative when it comes to providing justice, but everyday realities should be kept in mind. Countries like Thailand and Puerto Rico have also successfully implemented witness protection, though they are not developed countries. The same cannot be said in the case of India, because in comparison with these countries India is much more vast and unwieldy. However, the problem could be solved

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<sup>32</sup>*State of Uttar Pradesh v. Shambhu Nath Singh*, (2001) 4 SCC 667.

by carefully selecting the cases, which value protection, and not every other case. Thus by reviewing cases which may be communally charged, high profile, involving drugs or organized crime syndicates or cases in which grave offences are involved and there is a possible threat, protection could be provided.

2. The other major problem is that of deep rooted corruption in the administration and judiciary. Witness protection program cannot function properly with such a degraded supervision. If in the greed of money someone sold the information about the identity of the witness then whole programme will be of no use. Thus, corruption and political pressure is the major problem while addressing the problem of hostile witness.

Therefore, it is recommended that a different body should be set up that is outside political control to ensure the protection of witnesses during the trial. Almost all countries that have enacted witness protection have established a Witness Protection Cell. Witness Protection Cell must have provision for fake and illegal identities.

- But if the witnesses are not informed about their rights then these provisions will become baseless. Witnesses must be informed about the judicial process, their role and the forms of protection available to them and they must be informed about their rights by the magistrate or the public prosecutor.<sup>33</sup>

### **International Perspective**

The issue of witness protection is not limited in few parts of the world. It is the international issue because of this The International Criminal Tribunal for Rwanda has framed rules for witness protection. Like provisions exist in the Law for the formation of International Criminal Court. They have recognized that protection of witness is important so as to there is no miscarriage of justice; but protection is also essential to restore human dignity as it stands shattered because of the crime. The duties which are included in the Statutes for the Yugoslav and Rwandan Tribunals and recently in the newly agreed Statute for the International Criminal Court are<sup>34</sup>.

- delaying the disclosure of witness details to the defense

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<sup>33</sup> Need For A Witness Protection Programme - The Solution To The Problem of Hostile Witness, <http://www.legalserviceindia.com/article/I259-Witness-Protection-Programme.html> (last visited Jan 10, 2016)

<sup>34</sup> India Together: New law needed for witness protection, from Volume 4, Issue 1, of Combat Law, <http://indiatgether.org/combatalaw/vol4/issue1/witness.htm> (last visited Jan 30, 2016)

- allowing testimony to be given by one way closed circuit television
- closed session hearings
- The use of voice and image altering devices
- Total non-disclosure of information relating to the identity of the witness

The International Criminal Court has established a separate unit that provides support to the witnesses and replies instantly if there is a threat to witnesses. Moreover, the protection and support services are provided not only during the trial stage, but at all stages of the criminal proceedings if required, from investigation to post-trial<sup>35</sup>.

The following countries made remarkable laws for the protection of witness for the better of justice.

### **Australia**

In Australia protection of witness is a very serious matter. Because of this some place emphasis on 24-hour protection and others prefer relocation of witnesses under new identities. A joint parliamentary committee conducted an inquiry into the issue of witness protection and its report led to the introduction at the Commonwealth level of the Witness Protection Act 1994 and the enactment of similar legislation in several other states and in the Australian Capital Territory. The Act:

- (a) Establishes the National Witness Protection Program (NWPP) and sets threshold criteria for a person to be considered a witness eligible for inclusion in NWPP. A witness becomes a "participant" once accepted into the program
- (b) Vests the Australian Federal Police with the authority to govern the placement of witnesses under and their removal from NWPP, including the signing of memorandums of understanding, the creation of new identities and the restoration of former identities;
- (c) Mandates the establishment of a register of participants currently or previously under NWPP, which must contain information such as the person's name and new identity and details of offences of which the participant has been convicted;

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<sup>35</sup> Warisha Farasat, Plea for witness protection laws, *The Hindu*, July 23, 2013 available at <http://www.thehindu.com/opinion/op-ed/a-plea-for-witness-protection-laws/article4944925.ece> (last visited September 19, 2013).

(d) Safeguards the integrity of Commonwealth identity documents (tax file numbers, passports) by providing that identity documents for participants in subnational witness protection program may not be issued unless complementary legislation and ministerial arrangements are in place in the state or territory relating to the issue of identity documents;

(e) Creates offences relating to the unlawful divulging of information about participants and creates offences for participants who disclose information related to NWP<sup>36</sup>.

The government of Australia started some witness protection schemes complementary to National Crime Authority, Witness Protection which are as following-

1. *Australian Capital Territory: Witness Protection Act 1996*
2. *New South Wales: Witness Protection Act 1995*
3. *Northern Territory: Witness Protection (Northern Territory) Act 2002*
4. *Queensland: Witness Protection Act 2000 South Australia:*
5. *Witness Protection Act 1996*
6. *Tasmania: Witness Protection Act 2000*
7. *Victoria: Witness Protection Act 1999 Western Australia:*

## **Germany**

In Germany the protection of witness program were introduced in the mid of 1980<sup>37</sup>. Protection of witness is done at the federal level in every state of the country. Police is answerable for the protection of witnesses in federal cases and for directing functions at the national and international levels, including<sup>38</sup>

1. Prepare an annual reports of the witness protection program
2. Organization and conduct of training and continuing education;
3. Organization of regular conferences involving the directors of federal and state witness protection offices;
4. Cooperation between states, federal agencies and offices located abroad.

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<sup>36</sup> Australia Parliamentary Joint Committee on the National Crime Authority, Witness Protection: Report by the Parliamentary Joint Committee on the National Crime Authority, Parliamentary paper No. 193/88 (Canberra, Australian Government Publishing Service, 1988).

<sup>37</sup> Report of Good Practices for the Protection of Witnesses in Criminal Proceedings Involving organized Crime.(2015)

<sup>38</sup> Witness protection: origins and selected approaches Report of Good Practices for the Protection of Witnesses in Criminal Proceedings Involving organized Crime

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## United States of America

In USA witness protection program is commonly known as United States Federal Witness Protection Program (WITSEC). It is the one of the advanced program in the world. But few state of USA like California, Illinois, New York, and Texas, have their own witness protection programs for crimes not covered by the federal program<sup>39</sup>,

The aim is to keep the witnesses safe so that they can testify at trials so that the members of the organized crime, terrorists or dangerous criminals could be convicted. The Program assists in providing with facilities like housing, job training, medical care, and assistance for obtaining employment and continuous funding till the witness becomes self-sufficient.

Before witness protection funds are provided, law enforcement must make an assessment which includes an analysis of the extent the person or persons threatening seem to have the, motivation, intention and resources to carry out the threats and how serious the threats look to be.

In 1984, more than a decade later of operations, a number of inadequacies that the WITSEC Program experienced were addressed by Witness Security Reform Act. The issues dealt under this Act are still considered to lie at the heart of all witness protection program viz.

- (a) Strict admission criteria, involving an analysis of the risks that can be posed to public by relocated former criminals;
- (b) Creation of a fund to compensate victims of crimes committed by participants after their admission to the program;
- (c) Signature of a memorandum of understanding outlining the witness's obligations upon admission to the program;
- (d) Development of procedures to be followed in case the memorandum is breached by the participant;
- (e) Establishment of procedures for the disclosure of information regarding program participants and penalties for the unauthorized disclosure of such information;

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<sup>39</sup>California Witness Relocation and Protection Program

(f) Protection of the rights of third parties, especially the honoring of the witness's debts and any non-relocated parent's custody or visitation rights.

## CONCLUSION

It is high time that India should have proper witness protection laws. It has a long way to go as far as these laws are concerned. Ensuring the safety of the witnesses is the vital element in providing justice. India needs to tackle the problem of witnesses turning hostile due to intimidation. Appropriate measures should be taken to provide protection to witnesses who courageously come forward and help in rendering justice. If cases like Best Bakery, Jessica Lal, Asaram case and Vyapam scam are repeated then it will shatter the credibility of the justice system and no witness will come forward to testify against the criminal.

Witnesses may be given protection before, during and/or after the trial. India should develop an effective legislation for witness protection involving police, government and judiciary. Government should implement the necessary Acts, legal aspects would be looked by the judiciary and police should execute them.

To protect the identity of the witnesses, a witness protection cell could be constituted. Witnesses must be treated fairly and with dignity. They should not be subject to intimidation, abuse or harassment. They should be provided information about the status of investigation and the trial. They should be provided with medical facilities, compensation, social services or other support which they may require. If violations are found to exist on the part of witnesses enrolled in this programme then they should be penalized. Police should be able to take basic steps to protect the witnesses like escorting, surveillance etc. Anonymity of the witnesses should be maintained by using voice and face distortion techniques or concealing the information about their identity.

Law is a means to achieve justice. In this dynamic world laws cannot remain stagnant. They should also be amended as per the need of the society. It will be unfair to expose the persons to harassment simply because they testified against the wrong. In India, situation of witness protection is miserable. Only a few witnesses have the courage to stand in favor of the victim. For the proper functioning of judiciary, it is necessary that India legislate laws for witness protection.

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