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## **Ensuring Safety and Cooperation: Legal Aspects of Witness Protection Programs in Criminal Cases**

Author  
Manjeet Kaur



# Ensuring Safety and Cooperation: Legal Aspects of Witness Protection Programs in Criminal Cases.

Manjeet Kaur

Advocate

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## Abstract

*In the criminal justice system, witnesses and their testimonies play a decisive role in reaching the conclusion of the case. Witnesses, being the most crucial participants in the procedure, are often threatened or induced by the parties involved in the case to change or retract their statements. Thus, cases do not reach a truthful and rational conclusion. The judicial machinery fails the victims in their quest for justice. The rights given to witnesses and victims are quite limited in comparison to the wide range of rights of the accused. Therefore, protecting the witnesses becomes indispensable for achieving the foremost objective of the criminal justice system.*

**Keywords:** *Witness Protection, Juvenile Witness, Criminal Justice System.*

## Introduction

The role of a witness is paramount in the criminal justice system of any country. In this context **Bentham said that witnesses are the eyes and ears of justice.** Their each and every statement is very important as it has a magic force to change the course of the whole case. Thus a witness is an important party in a case apart from the complainant and the accused. “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 because of this reason that the witness either takes an oath in the name of God or solemnly affirms to speak the truth, the whole of the truth and nothing but 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 the answer will incriminate him”.<sup>1</sup> The ability of a witness to give testimony in a judicial setting or to cooperate with law enforcement investigations without fear of intimidation or reprisal is essential to maintaining the rule of law. Increasingly, countries are enacting legislation

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<sup>1</sup> Committee on Reforms of Criminal Justice System, Headed by Justice Mallimath, Volume I, Page 151.

or adopting policies to protect witnesses whose cooperation with law enforcement authorities or testimony in a court of law would endanger their lives or those of their families. Protection may be as simple as providing a police escort to the courtroom, offering temporary residence in a safe house or using modern communications technology (such as videoconferencing) for testimony. There are other cases, though, where cooperation by a witness is critical to successful prosecution but the reach and strength of the threatening criminal group is so powerful that extraordinary measures are required to ensure the witness's safety.

### **Witnesses and Their Role**

Witness is any person who is acquainted with the facts and circumstances, or is in possession of any information or has knowledge necessary for the purpose of investigation, inquiry or trial of any crime involving an offence and who is or may be required to give information or make a statement or produce any document during investigation, inquiry or trial of such case and includes a victim of such offence.<sup>2</sup>

The witness is an important player in the administration of justice. His role is vital both at the stage of investigation and at the trial stage.<sup>3</sup> Without the witness's active support, the investigation of a crime may not come to a logical end. Underlining the significance of witnesses, **Wadhwa J. in Swaran Singh v. State of Punjab**<sup>4</sup> said, "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." But, due to loopholes in the machinery of the criminal justice system, most of the witnesses are unable to perform this duty as they turn hostile due to various reasons.

### **The Use of Juveniles as Witnesses and the Necessity to Protect Them**

With increasing rates of crime against minors, and crime committed by juvenile offenders, the use of teenagers and children as informants and witnesses in criminal proceedings has become more recurring and wide spread. The rise in gang-related crimes and trafficking of minors over the past decade has further expanded the need to use under-aged witnesses.<sup>5</sup>

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<sup>2</sup> Section 3(ed), The Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015.

<sup>3</sup> <https://sabrangindia.in/article/witness-protection-justice-m-jagannadha-rao>.

<sup>4</sup> (2000)5 SCC 668.

<sup>5</sup> The terms "minor witness," "under-age witnesses," "child witnesses," and "Juvenile witnesses" all refer to individuals under the age of 18 who provide information or testimony in criminal proceedings.

Consequently, prosecutors and witness protection agencies encounter a relatively new phenomenon of the growing numbers of under-aged witnesses to serious crimes seeking protection.

It is widely agreed upon that the use of minors as witnesses and informants in criminal investigations and prosecution puts them at risk as a result of escalating occurrences of witness intimidation. Risk of intimidation is particularly severe in gang-related cases, in which minor witnesses and minor victims are frequently involved.<sup>6</sup> In light of this notion, the use of minors is usually restricted to incidences in which it is absolutely necessary, and no other practical alternative exists. Nevertheless, in a growing number of cases, the use of juvenile informants and witnesses is necessary for successful prosecution and assurance of public safety.

The United Nations Economic and Social Council in its Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime has recognized that “the participation of child victims and witnesses in the criminal justice process is necessary for effective prosecutions, in particular where the child victim may be the only witness”.<sup>7</sup> Law enforcement personnel in the United States also stress the necessity of using children and teenagers as informants and witnesses. They argue “that adults cannot penetrate the world of juveniles, law-abiding or otherwise...[, and] cannot comprehend the sub-culture of juveniles.” Thus, “the need for minors is greater when minors are being investigated...[ and] no ‘practical alternative’ to using children as informants is available to achieve successful criminal prosecutions that protect public safety.” Furthermore, “with cases of underage drinking, teen drug-dealing, and gang violence, using teen informants can sometimes be the only entree into a world where only minors are trusted.”

The problem of intimidation against juvenile witnesses cannot be underrated. In gang-related cases for example, in which minor witnesses are particularly common and indispensable, witness intimidation is a significant problem in all parts of the United States and considered to be part of normal gang behavioural dynamics. It affects not only the intimidated witness himself, whose bodily integrity is threatened, but “strikes at the root of the criminal justice system by denying critical evidence to police investigators and prosecutors and by undermining the confidence of whole communities in the government’s ability to protect and represent” the members of the communities.<sup>8</sup> The intimidation of

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<sup>6</sup> <http://nationalgangcenter.gov/Content/Documents/Gang-Related-Witness-Intimidation.pdf>.

<sup>7</sup> Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (July 22, 2005)

<sup>8</sup> <https://www.ncjrs.gov/pdffiles/163067.pdf>.

witnesses in these cases is considered by prosecutors across the United States to be the “single biggest hurdle facing any successful gang prosecution.”

Because children and adolescents are considered to be the most vulnerable group to witness intimidation, assuring their safety and protection is crucial. The U.S. State Department report on Gang-Related Witness Intimidation describes juveniles as particularly vulnerable to intimidation “because they are often less able or less willing to take precautions against being located by would-be intimidators, and because they are more susceptible to family or peer pressure.”<sup>9</sup> Their inability to safeguard themselves may also be attributable to their decreased risk aversion. Moreover, “because of their daily living patterns and inability to relocate on their own, children are commonly in close proximity to neighbours, peers, and community members, including criminals, who might physically harm them.”<sup>10</sup> This vulnerability is further aggravated in cases of unaccompanied minors, who have no familial support or effective supervision by trusted adults. Ironically, the group in greatest need for protection is the most difficult to protect.

### **Legal Mandate to Witness Protection: Lex dabit remedium<sup>11</sup>**

It is ironic that draconian laws like **Terrorist and Disruptive Activities (Prevention) Act 1987** and **Prevention of Terrorism Act 2002**, provided for protection of witnesses. Sec. 13 of TADA 1985 and Sec. 16 TADA 1987 provided for protection of the identity and address of a witness secret. The prosecution as also the Court could direct that the identity and the address of the witness be kept secret. The Court could even avoid the mention of the names and addresses in its order or judgement.

It is generally perceived that these provisions were incorporated not with any concern for the witnesses, but to prevent the accused from preparing an effective defence and to deny fair trial.

Under S.151 and 152 of Indian Evidence Act, 1872, victims and witnesses are protected from being asked indecent, scandalous, offensive questions, and questions intended to annoy or insult them. Otherwise, there is no other provision for protection of witnesses, as against threats, intimidation or any inducement whereby they are prevented from telling the truth.

When an accused is released on bail, one of the terms and conditions imposed by the Court on the accused is that he shall not tamper the evidence, or approach the witnesses. This, again, is not as a provision for

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<sup>9</sup> Finn & Healey, *supra* note 14, at 9.

<sup>10</sup> Dennis, *supra* note 6, at 1171.

<sup>11</sup> The law will give a remedy.

protection of the witnesses, but only to ensure the trial is not rendered infructuous. Judges also hold in-camera trials to ensure deposition by witnesses without any fear or embarrassment. Recently the Supreme Court has permitted recording of evidence by video-conferencing. All these are inadequate without a specific legal provision guaranteeing protective measures to victims before the trial and also after the trial.

### **Witness Protection Provided in Some Cases**

#### **• Naroda - Patiya case<sup>12</sup>:**

Mohammad Shakur Sayyad, a victim of the Naroda-Patiya carnage in the year 2002, who was also a key witness in that case, was attacked and beaten up brutally by a group of thirty people, while he was sitting outside his shop at the Faisal Park Society in Vatva. According to him Akram Ahmed, an anti social element of that locality while assaulting him along with other people of the above mentioned group was shouting "You are very fond of deposing before the Nanavati Commission, aren't you?" Sayyad, who lost his three children in the Naroda-Patiya massacre, had deposed before the Nanavati Commission on 1st October 2003 naming several persons in the mob. He is one of the key witnesses in the case and had also been provided with one police guard. The guard however had retired for the day when Sayyad was attacked. The neighbours of Sayyad maintain that Akram Ahmed had been threatening others not to depose before the judiciary during the Naroda trial. About forty-five families of Naroda-Patiya have refused to go back to the area after the riots. What is shocking in this case is that such a key witness (in this case Sayyad), was provided with only one police guard who, surely, would have looked to save his own life rather than that of the witness he was protecting, when the crowd of thirty people attacked.

#### **• Ketan Tirodkar case<sup>13</sup>:**

In another instance, the Bombay High Court had given police protection to an ex-journalist Ketan Tirodkar, 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. Tirodkar 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 Tirodkar himself

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<sup>12</sup> 1976 Cri L.J 295 : AIR 1976 SC 294, 2009(3)ACR2927(SC), (2009)2GLR1672(SC), JT2009(6)SC405, 2009(6)SCALE509, (2009)6SCC342, (2009)7SCR23.

<sup>13</sup> <http://www.legalserviceindia.com/article/1339-Hostile-Witnesses.html>, commission of India consultation paper on witness identity protection and witness protection programmes august 2004.

was involved with the underworld. Here the public prosecutor failed to comprehend the fact that:

a) Tirodkar has admitted his links with the underworld and is ready to face the legal consequences.

b) That even former criminals/ mobsters are also given police protection if they turn approver.

The High Court, in this case, had given Tirodkar police protection only for a limited period, not realizing that the persons that he is to implicate would cause serious injury to him the moment the temporary police protection is removed.

- **Twin Blast case<sup>14</sup>:**

The role of witnesses and the issue of their protection has come in for much discussion after Shiv Narayan Pandey, the taxi driver who gave clues in the August 25th 2003 Twin Blast case had to be given extra protection by the Mumbai Police.

The identity of the witness (Pandey) in this case was leaked to the media by an inspector on the day of the blasts. This officer allegedly circulated Xerox copies of a document bearing the name of the witness and the registration number of his vehicle. A couple of days later, a crime branch officer is believed to have leaked his address in Kandivali- a distant Mumbai suburb- to the media persons.

The police had failed to realize that Pandey was an important prosecution witness in a very sensitive case. Since the police are yet to arrest more persons in regard to this case, Pandey is a crucial witness in identifying such persons. In such cases the police should take extra precaution and issue a circular or directive to all officers in the department to maintain silence on all the investigations.

### **Judicial Referendum on Witness Protection**

In recent time the judiciary has been giving significant amount of encouragement to establishing witness protection programs in India.

- On 8th August 2003, in the case of **National Human Rights Commission v. State of Gujarat<sup>15</sup>**, the Supreme Court regretted 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."

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<sup>14</sup> 2004(2)ACR1400(SC), AIR2004SC456, 2004(1)CTC241, JT2003(10)SC70, 2003(10)SCALE96, (2004)9SCC580.

<sup>15</sup> 2003(9)SCALE329.

- In **Ms Neelam Katara v. Union of India**<sup>16</sup>, the Delhi High Court, has on 14th October 2003, issued certain guidelines to the police in providing protection to the witnesses in cases pertaining to life imprisonment or death sentences. The ruling is an attempt to check witnesses from turning hostile under threats from the accused.
- **The Delhi High Court** has given the following guidelines in giving witness protection:
  - a) The Court has also made it compulsory for the investigating officer of a case to inform the witness about the new guidelines.
  - b) The Court has appointed the Member Secretary of the Delhi Legal Services Authority to decide whether a witness requires police protection or not.
  - c) The competent authority shall take into account the nature of security risk to him/her from the accused, while granting permission to protect the witness.
  - d) Once the permission is granted, it shall be the duty of the Commissioner of Police to give protection to the witness.

**The High Court said that its order would operate until legislation is passed in this regard.**

- **PUCL v. Union of India**,<sup>17</sup> while dealing with the validity of section 30 of the Prevention of Terrorism Act, 2002, the Supreme Court has referred in detail to the subject of ‘protection of the witnesses’ and to the need to maintain a just balance between the rights of the accused for a fair trial (which includes the right to cross examine the prosecution witnesses in open court) and to the need to enable (1) prosecution witnesses whose identity is known to the accused to give evidence freely with being overawed by the presence of the accused in the Court and (2) protection of the identity of witnesses who are not known to the accused, – by means of devices like video-screen which preclude the accused from seeing the witness even though the Court and defence counsel will be able to see and watch his demeanour.
- In the case of **Zahira v. State of Gujarat**<sup>18</sup>, while transferring what is known as the Best Bakery Case, to Mumbai by its Order dated 12th April, 2004, directed: "The State of Gujarat shall also ensure that the witnesses are produced before the concerned court, whenever they are required to attend them, so that they can depose freely without any apprehension of threat or coercion from any person. In case any

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<sup>16</sup> CrI.W.No.247 of 2002.

<sup>17</sup> 2003 (10) SCALE 967.

<sup>18</sup> (2004) 4 SCALE 375.

witness asks for protection, the State of Maharashtra shall also provide such protection as deemed necessary, in addition to the protection to be provided for by the State of Gujarat."

the Supreme Court observed that "Legislative measures to emphasise prohibition against tampering with witnesses, victim or informant, have become the imminent and inevitable need of the day". The Court also referred to "Witness Protection Programmes" formulated in various countries. It said: "The Witness Protection Programmes are imperative as well as imminent in the context of alarming rate of somersaults by witnesses". In fact, the Court has since sought responses from various States on the question of witness protection.

### **Effects of Witnesses Turning Hostile**

Witnesses may turn hostile because of a number of reasons,<sup>19</sup> threat being the primary reason in a majority of cases. The cases dealing with offences committed by people who belong to an influential section of the society often end in acquittals due to lack of evidence. In some cases, the investigating officer does not even record witnesses' testimonies under Section 161 of Code of Criminal Procedure, 1973 ("Cr. P.C.") by actually examining them. Important witnesses retract their initial statements which could be crucial in getting the accused convicted. This mainly happens because the witness or someone in whom they are interested might be exposed to some danger if they give a statement which is averse to the interests of the politically influential accused.<sup>20</sup> As a result of the absence of protection from such dangers, witnesses turn hostile. In Mau district, two rape victims were shot dead who were due to testify against the accused. Their family members stated that they were being harassed by the accused to withdraw their complaints.<sup>21</sup>

Another prevalent reason is the inducement offered to the witness for changing his statements. A disinterested witness, who is otherwise gaining nothing from the process, can be easily lured by monetary or other inducements. Varun Gandhi, the general secretary of the Bhartiya Janata Party, was exonerated of all charges in the alleged hate speeches he made in 2009.<sup>22</sup> The number of witnesses turning hostile in this case was as large as eighty- eight. Later, an explosive sting operation conducted by Tehelka revealed that most of the witnesses had been bribed to change their statements. Apart from these, the whole machinery of the criminal

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<sup>19</sup> <http://thehinducentre.com/the-arena/current-issues/article7443765.ece>.

<sup>20</sup> Committee on Reforms of Criminal Justice System, Ministry of Home Affairs, Govt. of India.

<sup>21</sup> <http://www.reuter.com/article/india-rape-victim-murders-idUSKCN0RE1H520150917>.

<sup>22</sup> <http://www.tehelka.com/2013/05/how-varun-gandhi-silenced-the-system/>.

justice system also discourages witnesses to be truthful and consistent.<sup>23</sup> Frequent adjournments during judicial proceedings frustrate witnesses. Convicting an obviously and visibly guilty accused becomes a cumbersome process because of such procedural difficulties. A witness, who may have been a mere bystander and who has no interest in the victim of the crime does not have any incentive to go through the tiresome judicial process. Witnesses are not provided adequate allowances and have to face humiliation in the courtrooms. Thus, there are no reasons for which they should bear the mental agony caused as a result of the trial.

The witnesses are left with two options- either they can turn hostile and save themselves from all the mental or physical harm they may be subjected to, or they can remain resolute and truthful. The tedious judicial process forces a witness to opt for the former alternative.

This leads to low conviction rates. According to the latest statistics issued by the National Crime Records Bureau in 2015, out of the 1,05,02,256 cases, trial has been completed in 13,25,989 cases only.<sup>24</sup> The percentage of cases tried by courts to total cases for trial during 2012 to 2015 was around 12.6% whereas three decades ago i.e. in 1984, it was 29.9%. The conviction rate, which was as high as 62.7% in 1985, has come down to 46.9% in 2015. In rape cases, victims turning hostile account for over 80 percent of the total acquittals.<sup>25</sup>

The effectiveness of a criminal justice system is measured in terms of its effects on the offending.<sup>26</sup> Reduced conviction rates result in a negligent attitude towards crime in the society. The fear of conviction erodes and criminal incidents rise in number. Thus, the effectiveness of the criminal justice system is compromised. Delay in the administration of justice and punishment of offenders are the causes of increasing apathy and distrust towards the judicial machinery which subsequently results in witnesses turning hostile. Thus, the effect becomes the cause and it results in an endless cycle. The prime consideration before us is to ensure a fair trial which can happen only if the witnesses are able to depose without fear, freely and truthfully.<sup>27</sup> Thus, the current situation urgently calls for a scheme for the protection of witnesses.

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<sup>23</sup> Aditi Prasad, Witness Hostility sabotaging fair trials and Frustrating the Courts in India, (Nov 14, 2011)

<sup>24</sup> <http://ncrb.gov.in/StatePublications/CII/CII2015/FILES/Compendium-15.11.16.PDF>.

<sup>25</sup> Nithya, supra note 17.

<sup>26</sup> Anthea Hucklesby and Azrini Wahidin, Criminal Justice 6 (2009).

<sup>27</sup> State of Bihar Vs. Rajballav Prasad, Criminal Appeal No. 1141 of 2016.

## **Witness Protection Programmes: Nature and Scope**

A Witness Protection Programme is a scheme which aims to ensure that the investigation, prosecution and trial of criminal offences is not prejudiced because witnesses are intimidated or frightened to give evidence without protection from violent or other criminal recrimination.<sup>28</sup> It is aimed to identify a series of measures that may be adopted to safeguard witnesses and their family members from all threats.

### **Statutory Recognition**

#### **a) International Instruments and Statutes**

There are a number of international instruments which recognize the need to protect witnesses from intimidation, threats and harm. Article 24 of the United Nations Convention Against Transnational Organized Crime deals with protection of witnesses from potential retaliation or intimidation.<sup>29</sup> Article 13 of Convention against Torture provides for similar protection. Article 6(d) of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power directs the states to take measures to minimize inconvenience to victims, protect their privacy and ensure their safety. Similar protection is given in Articles 32 and 37(4) of UN Convention against Corruption, 2003. UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime provides special protection, assistance and support to child victims and witnesses.

In addition to international instruments, major international criminal tribunals provide for such protection in their statutes. Article 68 of the Rome Statute of the International Criminal Court provides for protection of the victims and witnesses and their participation in the proceedings. It empowers the Court to take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses.

#### **b) Witness Protection in Indian statutes**

No specific rules, regulations or laws have been enacted by Parliament to protect witnesses. However, various statutes have provisions for witnesses. Sections 151 and 152 of the Indian Evidence Act, 1872 protect the witnesses from being asked indecent, scandalous, offensive questions, and questions which intend to annoy or insult them.<sup>30</sup> Under Section 312 of Cr.P.C. a criminal court may order payment of reasonable expenses of any complainant or witness attending for the purposes of any inquiry, trial

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<sup>28</sup> Delhi Witness Protection Scheme 2015.

<sup>29</sup> Convention against Transnational Organized Crime

<sup>30</sup> Sections 151, 152, Indian Evidence Act, 1882.

or other proceeding before such Court.<sup>31</sup> Section 195A of the Indian Penal Code penalises threatening or inducing any person to give false evidence. It is ironic that draconian penal laws like the Terrorist and Disruptive Activities (Prevention) Act, 1987 (“TADA”) and the Prevention of Terrorism Act, 2002 (“POTA”) provide for protection of witnesses. Section 16 of TADA empowers the court to take measures for keeping the identity and address of a witness secret.<sup>32</sup> The court may avoid the mention of names and addresses of the witnesses in its judgments or in any records of the case accessible to public and issue directions for securing the identity and addresses of the witnesses. Section 17 of the National Investigation Agency Act, 2008 and Section 30 of POTA have exactly the same provisions. In addition to this, Section 3 of POTA punishes a person who threatens a witness with violence or wrongful restraint or confinement.<sup>33</sup>

## **Existing Witness Protection Programmes**

### **a) In Major Democracies**

The United States has one of the most developed Witness Protection Programs in the world. The U.S. Federal Witness Security Program, commonly known as the Witness Security (WITSEC) Program provides for relocation and other protection of a witness or a potential witness in an official proceeding concerning an organised criminal activity or other serious offence.<sup>34</sup> Protection may also be provided to the immediate family of, or a person closely associated with such witness or potential witness. The services provided to the protected individuals may include physical protection, documents for a new identity, housing, transportation, subsistence for living, assistance in obtaining employment, and other services needed to make the individual self-sustaining.<sup>35</sup>

In U.K., Section 51(1) of the Criminal Justice and Public Order Act, 1994 provides that it is an offence to harm and threaten victims or witnesses knowing or believing that they are assisting in the investigation of an offence.<sup>36</sup>

Japan has evolved a comprehensive Witness Protection Programme under its Code of Criminal Procedure. An accused may be denied bail if there is reasonable ground to believe that he may threaten or may actually injure

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<sup>31</sup> Section 312, Cr.P.C, 1973.

<sup>32</sup> Section 16, Terrorist and Disruptive Activities (Prevention) Act, 1987.

<sup>33</sup> Section 3, Prevention of Terrorism Act, 2002.

<sup>34</sup> Section 3521(a)(1), 18 U.S. Code, 2000.

<sup>35</sup> Section 3521(b)(2)(A)-(F) and (I), 18 U.S. Code, 2000 (US).

<sup>36</sup> Section 3521 (a)(1), 18U.S. Code, 2000.

the body or damage the property of a victim or of a witness or relative of the victim/witness.<sup>37</sup>

## **b) In India**

On July 30, 2015, Delhi became the first state in the country to enact and notify a Witness Protection Scheme.<sup>38</sup> Section 7 of the scheme provides that the witness protection measures shall be proportional to the threat and shall continue for limited duration.<sup>39</sup> It provides for protection measures such as installation of security devices in the witness's home, close protection and regular patrolling around his house, temporary relocation by granting financial aids from Witness Protection Fund, escort to and from the court in a state funded conveyance, etc. Additionally, specially designed 'vulnerable witness courtrooms' have been established to conceal the identity of witnesses. These courtrooms have special arrangements like live links, one-way mirrors, separate passages for witnesses and accused, option to modify the audio feed and images of witnesses, etc. Similar protection has been provided to child victims, sexual offence and disabled in the protocols issued by the Delhi High Court.<sup>40</sup> The Bombay High Court suggested the Maharashtra government to formulate a witness protection scheme on somewhat similar lines as enacted in Delhi.<sup>41</sup> The Government submitted a draft scheme in the High Court which had provision for protection for witnesses, whistle blowers, and RTI activists.

The Witness Protection Bill, 2015 which contains provisions for the protection of witnesses. These provisions ensure that there is no harm to the witness' body, property, mind or any associated people and thus maintains their right to life. Such protection is provided during the process of investigation and inquiry, during the trial as well as after the trial as warranted by the court.

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<sup>37</sup> Section 96.1(4), 89(5), Code of Criminal Procedure (Japan).

<sup>38</sup> <http://www.thehindu.com/news/cities/Delhi/first-step-towards-witness-protection/article7483593.ece>.

<sup>39</sup> Section 7, Delhi Witness Protection Scheme, 2015.

<sup>40</sup> Guidelines for recording of evidence of vulnerable witnesses in criminal matters, 2013

<sup>41</sup> Extend witness protection scheme to cops: HC to Maharashtra Govt., Hindustan Times

## **Conclusion**

A witness protection program is critical not only in riot cases, which are known for their abysmally low rate of conviction, but also in combating organized crime. Protection of witnesses is very important in the investigation and prosecution of organized crime as they (witnesses) are subject to intimidation by the accused, many of whom are mafia dons and underworld elements indulging in nefarious anti-national activities like arms and drugs smuggling, human trafficking, terrorism, and money laundering.

The key to a witness protection program is the safety and security of witnesses before, during and after trial, which is missing in all these areas. Security after trial is virtually non-existent in India.

Witness protection program and witness protection laws are simply the need of the hour. In fact, it is the absence of these laws that has helped in further strengthening the criminals and offenders. But ironically, in India, such programs and laws are a far cry from reality, where leave alone protection, the witness is not even treated with respect or asked for water. Most developed countries have well formulated and comprehensive witness protection programs to safeguard witnesses in important criminal cases.

Thus we conclude that we need to enact strict laws on witness protection keeping in mind the needs of the witnesses in our system. Meanwhile the step taken by the Delhi High Court in laying down the guidelines regarding witness protection is worth appreciating. These guidelines should be considered by the legislature while enacting the suitable legislation.

## References

- Committee on Reforms of Criminal Justice System, Headed by Justice Mallimath, Volume I, Page 151.
- The Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015.
- <https://sabrangindia.in/article/witness-protection-justice-m-jagannadha-rao>.
- <http://nationalgangcenter.gov/Content/Documents/Gang-Related-Witness-Intimidation.pdf>.
- Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (July 22, 2005)
- <https://www.ncjrs.gov/pdffiles/163067.pdf>
- Terrorist and Disruptive Activities (Prevention) Act 1987
- Prevention of Terrorism Act 2002
- Delhi Witness Protection Scheme 2015
- <http://www.legalserviceindia.com/article/1339-Hostile-Witnesses.html>
- <http://thehinducentre.com/the-arena/current-issues/article7443765.ece>.
- Committee on Reforms of Criminal Justice System, Ministry of Home Affairs, Govt. of India.

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