

**ANALYSING THE INEFFICIENCIES OF THE WITNESS
PROTECTION REGIME IN INDIA AND THE IMPERATIVE NEED TO
ESTABLISH A ROBUST SYSTEM**

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Introduction

*In search of truth, he plays that sacred role of the sun, which eliminates the darkness of ignorance and illuminates the face of justice, encircled by devils of humanity and compassion.*¹

The above quote was cited by Justice A.K. Sikri in the case of *Mahender Chawla Ors. V. Union of India Ors.*², this quote beautifully highlights the importance of witnesses in a criminal trial. Witnesses play a vital role as their testimony can facilitate the Courts to arrive at precise findings on questions of facts in issue. They play an essential role in the decision-making process especially in cases decided on the basis of testimonies of the witnesses who may have seen the crime being committed.³

An effective witness protection system is said to be a linchpin of the criminal justice system in order to convict the guilty. However, in India the conditions are pathetic as the witnesses and their family members face many threats at various stages of an investigation and the trial of a case.⁴

Witnesses essentially aid the State in convicting the criminal and taking a step towards a crime free society and therefore the State owes a duty to protect such citizens from any harm arising in the process. States are constitutionally obliged to protect the life and liberty of its citizens.⁵ International Courts and other the domestic Courts of other countries have a system or programme in place wherein such witnesses are provided police protection, kept in a safe house or in certain cases the identity of such witnesses is not revealed to the other party.

¹Whittaker Chambers.

²*Mahender Chawla Ors. v. Union of India Ors.*, AIROnline 2018 SC 829.

³GIRISH ABHYANKAR & ASAWARI ABHYANKAR, WITNESS PROTECTION IN CRIMINAL TRIALS IN INDIA (THOMSON REUTERS 2018).

⁴*Mahender Chawla Ors. v. Union of India Ors.*, AIROnline 2018 SC 829.

⁵*Zahira Habibullah Sheikh v. State of Gujarat*, (2006) 3 SCC 374.

With the increased means used by accomplices to threaten the witness and their kin, physically and virtually, the protection to be provided to such witnesses has gone beyond the traditional practices of protecting the witness. Witnesses need to have confidence in the State and need assurance that they and their families would be protected against all wrongs.

The lack of Witness Protection Programme in India and the trauma faced by witnesses, many are often reluctant in coming forward and giving a statement during the process of the investigation or to testify during the trial.⁶

The witnesses who despite all odds, agree to give the requisite information are subject to degrading treatment, abuse, mental and physical torture and in certain cases death. Such witnesses do not have any legal remedy to protect themselves from such happenings.

Witnesses are ill-treated by the present system as often they are summoned constantly to the Court or their statement is taken years after the crime has been committed which affects their credibility and their statement is disregarded.⁷

There have been numerous cases such as the Jessica Lal Murder Case – Shayan Munshi case, Salman Khan Hit and Run Case – Ravindra Patil, AsaramBapu case, Muzaffarnagar case and the recent cases of the Unnao rape case and the Hathras rape case wherein the witness has either gone hostile or have been threatened, seriously injured or dead. Despite having witness protection as concern since the 1950's, the witnesses in India still fear giving the testimony and would let a criminal get away from his/her sentence than to testify and live in the fear of the safety of them and their loved ones.

India is in a dire need of a robust witness protection regime and this project aids that need by analysing the present system, the reports or model laws put forth; studying the ill-practices existing in the country and the challenges faced in implementing a new system; and through this make certain recommendations that can attempt to provide a solution and bring about a change in the status quo.

Chapter I – Witness Protection Regime in India

⁶Mahender Chawla Ors. v. Union of India Ors., AIROnline 2018 SC 829.

⁷Mahender Chawla Ors. V. Union of India Ors., AIROnline 2018 SC 829.

A suitable disclaimer to provide is that India currently does not have a structured witness protection programme, despite a number of judicial pronouncements, Law Commission Reports and other Reports by the Committees, the witness protection is provided in very limited cases.

This chapter would briefly highlight the existing provisions of witness protection available and would also focus provide a timeline of recommendations and reports published for the effective implementation of a witness protection regime in India.

1.1 Recommendations and Reports by various Committees/Commissions

The 14th Law Commission Report in the year 1958 first introduced or discussed about witnesses becoming hostile due to lack of sufficient protection. However, the attempts of threatening witnesses in those days were limited and the Commission therefore limited itself to provide recommendations in having appropriate proper arrangements for the witnesses in the Court, the reimbursement of travel and daily allowances, etc.⁸

The National Police Commission had also highlighted in its report of the witnesses turning hostile through the pressures of influential persons having interests in the side of the accused and expressed that the investigation of such cases can be a potential challenge.⁹

The 154th report of the Law Commission in 1996 similar to the National Police Commission raised the concern of witness protection. However, in the present case an entire chapter titled 'Protection and Facilities to Witnesses' was dedicated to the same which provided the allowances and facilities to be provided to the witnesses. It did hint towards providing appropriate protection to the witnesses but further measures on the same were not mentioned.¹⁰

The aforementioned report was followed by the 178th Report of Law Commission of India in 2001 that had a separate chapter dedicate to the problem of hostile witnesses and its aspects. It stated that in case wherein the accused belongs to a rich or influential family, law often bends in their favour as the witnesses require to convict them turn hostile.¹¹

To deter the same, the report suggested three steps to be taken:

⁸LAW COMMISSION OF INDIA, 14TH REFORM ON JUDICIAL ADMINISTRATION (1958).

⁹MINISTRY OF HOME AFFAIRS, EIGHT REPORT OF THE NATIONAL POLICE COMMISSION (1981).

¹⁰LAW COMMISSION OF INDIA, 154th REPORT ON THE CODE OF CRIMINAL PROCEDURE 1973 (1996).

¹¹LAW COMMISSION OF INDIA, 178TH THE LAW REFORMS (MISCELLANEOUS AMENDMENT) BILL, 2001 (2001).

- The witness statement must be recorded by the police at the very start of the investigation as the witnesses have better recollection of the act and at such an early stage the influence of external factors is reduced. Further attempt should be made to get the statement recorded before the Magistrate as well, as that would prove to be a more concrete evidence before the Court.
- In such cases wherein the witness statement differs from the record and that of the trial, the Judge should have the discretion to consider the statement as recorded before the Magistrate after due consideration.
- The last recommendation was an unusual one which stated that the cross-examination of the witness must not be conducted until and unless the Court deems it to be a necessity in furtherance of a fair trial.¹²

The Malimath Committee Report in 2003, highlighted the danger the witnesses and their family members face at different stages. It highlighted that in cases where in the life of the witness or their family is at stake, they will not testify before the Court until they are assured that adequate protection is being provided to them. The Committee recommended keeping the identity of the witness anonymous in cases of threats to their lives and additionally, the setting up of adequate measures by the Court to not affect the fair hearing.¹³

The Witness Protection Scheme, 2018 which was approved by the Supreme Court in the case of *Mahendra Chawla v. Union of India*¹⁴, is the

1.2 Existing Provisions providing Witness Protection

There are certain special legislations that do have provisions with respect to witness protection provided in them. The Terrorist and Disruptive Activities (Prevention) Act, 1987 provides that the accused and its representatives would not be present during the testimony of such witness and the identity of the witnesses in no manner must be disclosed.¹⁵

¹²LAW COMMISSION OF INDIA, 178TH THE LAW REFORMS (MISCELLANEOUS AMENDMENT) BILL, 2001 (2001).

¹³COMMITTEE ON REFORMS OF CRIMINAL JUSTICE SYSTEM, REPORT VOLUME I (2003).

¹⁴*Mahendra Chawla v. Union of India*, (2019) 4 SCC 615.

¹⁵Terrorist and Disruptive Activities (Prevention) Act, 1987 § 16, No. 28, Acts of Parliament, 1987.

Similarly, Section 30 of the Prevention of Terrorism Act (POTA), 2002 also provides that the proceedings are to be held via a camera so as to protect the identity of the witness. In the case of *People's Union for Civil Liberties (PUCL) v. Union of India*¹⁶ the constitutionality of certain provisions of the Prevention of Terrorism Act (POTA), 2002, were challenged. The Court in this process the Court carefully analysed Section 30 of the Act and stated that witnesses often feel scared for their lives and therefore are not willing to testify in the Courts. This Section protects the witness and maintains a balance between the rights of the accused, the witness and the protection of public interest.¹⁷

It is unfortunate that the primary pillar of the criminal justice system such as the Evidence Act, 1872 do not have adequate measures for the protection of witnesses however, the aforementioned acts which had appropriate provisions of witness protection were repealed.

The Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as POCSO)¹⁸ has provisions to ensure the child witnesses are comfortable and not scared while giving their testimony. It provides that the testimony would be conducted in camera and that the child witness will not see the accused at any time while giving their testimony. Further the child witness can be accompanied by their parents or any other special educator.

Section 17 of the National Investigation Agency Act, 2008¹⁹ provides for protection of the witnesses by keeping their identity anonymous and conducting the proceedings via camera.

Chapter X of the Indian Evidence Act, 1872 provides the manner in which the witnesses are to be questioned, in the same chapter it has been stated that no witness can be forced to answer questions that bring back a harsh memory which may cause certain trauma to them certain protection to the witnesses. Additionally, any question aimed to annoy, insult or which are insensitive in nature must not be asked by the professional conducting the examination.²⁰

¹⁶People's Union for Civil Liberties (PUCL) v. Union of India, 2004 SCC 580.

¹⁷Prevention of Terrorism Act (POTA), 2002, § 30, No. 15, Acts of Parliament, 2002 (India).

¹⁸Protection of Children from Sexual Offences Act, 2012, No. 32, Acts of Parliament, 2012 (India).

¹⁹National Investigation Agency Act, 2008, § 17, No. 34, Acts of Parliament, 2008 (India).

²⁰The Indian Evidence Act, 1872, No. 1, Acts of Parliament, 1872 (India).

The Apex Court in the case of *Sunil Kumar Pal v. Phota Sheikh and Other*²¹ held that a re-trial will be allowed in cases of apprehension and threat to the life of witness, in the *Best Bakery Case*²², this remedy was extended to a re-trial being conducted in another jurisdiction altogether. Additionally, the Court in the case of *Ram Govind Upadhyay v. Sudarshan Singh*²³, held the threatening of a witness a valid ground to cancel the bail of the accused. There are certain other remarkable measures taken up by the Court itself over the years, most of these judgements have been referred to and highlighted in the different chapters of this project.

Chapter II – Effects of a non-efficient Witness Protection System

As seen in the previous chapter, India does have certain provisions to protect witnesses. However, numerous reports have stated that the current regime in India is not very effective and this chapter would briefly focus on certain effects of the system.

2.1 Hostile Witnesses

A hostile witness is a witness who either refuses or lies or contradicts their previous statements in a manner that appears to be contrary to the party who called them before the Court. Section 154 of the Indian Evidence Act, 1872²⁴ is the provision which states that in cases where the witness contradicts the party that has called upon them, such party would on the discretion of the Court be given an opportunity to question the witness again. However, such provision has proven to be futile as given a situation where the witness has to choose between committing perjury or safeguarding their life, they would definitely choose the latter.

The Supreme Court in the case of *Mahender Chawla Ors. v. Union of India Ors.*²⁵ highlighted that witnesses often turn hostile due to lack of adequate measures to protect them. Witnesses would ideally not volunteer to give a statement in Court if they are aware of the numerous human rights violations such witnesses experience.

The case of *Ramesh and Others v. State of Haryana*²⁶ studied and reiterated the reasons held by the Court in various past judgements which lead to a witness being hostile, the cases which highlight the discrepancies of the witness protection regimes are given below;

²¹ Sunil Kumar Pal v. Phota Sheikh and Other, AIR 1984 SC 1591.

²² Zahira Sheikh and Anr. v. State of Gujarat and Ors., Appeal (crl.) 446-449 of 2004.

²³ Ram Govind Upadhyay v. Sudarshan Singh, (2002) SLT 587.

²⁴ The Indian Evidence Act, 1872, § 154, No. 1, Acts of Parliament, 1872 (India).

²⁵ Mahender Chawla Ors. v. Union of India Ors., AIR Online 2018 SC 829.

²⁶ Ramesh and Others v. State of Haryana, 2015 (1) RCR (CRIMINAL) 692.

The case of *Krishna Mochi v. State of Bihar*²⁷ observed that witnesses often turn hostile in cases involving heinous offences or wherein the accused are influential/ dominating persons having the means to directly or indirectly intimidate the witnesses. Due to lack of effective means to avoid such intimidating acts, witnesses do not attend the Court hearings or make a false/ altered deposition. It also observed that in the recent years such phenomenon was also observed in ordinary cases.

It is important to note that the offence of perjury is often not availed off to prosecute such hostile witnesses, a few selected cases of Shayan Munshi of the Jessica Lal case and that of Zahira Sheikh of the Best Bakery case²⁸ have been convicted of perjury by the Courts.

2.2 Corrupt Practices by Officials

The case of *State v. Sanjeev Nanda*²⁹ highlighted the disturbing practices of corruption especially the bribing of officials to undermine the trial. Often these officials are given compensation to use unfair means to destroy the credibility of the witnesses.

This Court in *Manu Sharma v. State (NCT of Delhi)*³⁰ and in *Zahira Habibullah Sheikh v. State of Gujarat*³¹ highlighted other means used by corrupt officials to overthrow a trial such as the non-recording of the correct statements by the witnesses, the retraction of statements by the witnesses and thereafter through intimidation, inducement and other methods of manipulation influence the witness to adhere to the same.

2.3 Witness Injuries/Deaths

The Malimath Committee Report highlighted the various threats witnesses and their family members were subjected to which included abduction, rape, murder, damage to the witnesses' property, defamation or other ways.³²

²⁷*Krishna Mochi v. State of Bihar*, (2002) 6 SCC 81.

²⁸ *Zahira Sheikh and Anr. v. State of Gujarat and Ors.*, Appeal (crl.) 446-449 of 2004.

²⁹ *State v. Sanjeev Nanda*, (2012) 8 SCC 450.

³⁰ *Manu Sharma v. State (NCT of Delhi)*, (2010) 6 SCC 1.

³¹ *Zahira Habibullah Sheikh v. State of Gujarat*, (2006) 3 SCC 374.

³² COMMITTEE ON REFORMS OF CRIMINAL JUSTICE SYSTEM, REPORT VOLUME I (2003).

In the case of *State v. Sanjeev Nanda*³³ the witness when arrived at the Court was injured and, on the spot, turned hostile. Additionally, in the Justice Malimath Committee Report on Reforms of Criminal Justice System, 2003³⁴ remarked that witnesses and their family members face danger at various stages of a trial. The level of danger often depends on the facts of the case and many times when the witness is susceptible these witnesses or their families are even killed.

The Law Commission report emphasized on the need to have separate provisions for separate class of witnesses and the nature of the criminal act. In certain cases, such as terrorism, sexual offences etc. the victims who are required to testify are very vulnerable persons and therefore must be protected with extra care.

The case of *Mahender Chawla Ors. v. Union of India Ors.*³⁵, was the case in relation to the protection of the witnesses testifying against the God-man Asaram. The witnesses were scared to testify against Asaram as serious consequence were taken against those who spoke up, there were reported incidents of attacks on many witnesses and the murder of three witnesses. The four petitioners in the present case were either those who escaped death in the hands of the God-man and his goons or were close relatives of those who were killed.

Chapter III – Challenges faced in implementing adequate measures

There are a lot of factors that are causing hurdles in establishing an effective witness protection system in India, this chapter emphasis on certain challenges faced which are causing hindrance in the enactment and effective implementation of proper system.

3.1 Inadequate Resources

The State has often cited inadequate sources as a means of non-implementation or ill-implementation of the witness protection programme, financial resources for the establishment and implementation of the witness protection programme.³⁶

³³ *State v. Sanjeev Nanda*, (2012) 8 SCC 450.

³⁴ COMMITTEE ON REFORMS OF CRIMINAL JUSTICE SYSTEM, REPORT VOLUME I (2003).

³⁵ *Mahender Chawla Ors. v. Union of India Ors.*, AIR Online 2018 SC 829.

³⁶ Bhadra Sinha, *Implementation of witness protection programme hits a bump over funding*, HINDUSTAN TIMES (April 25, 2021, 10:05 AM), <https://www.hindustantimes.com/india-news/implementation-of-witness-protection-programme-hits-a-bump-over-funding/story-KLEFSorYtwv2OQdclVopQJ.html>.

One of the greatest challenges faced in implementing an adequate system is the availability of police personnel to provide protection to such witnesses, while the low number of police personnel is a concern while investigating various crimes in India, there are very few personnel available to provide protection. Additionally, the State lack funds to implement a full fledged scheme awarding adequate remedy.

In the case of *Zahira Habibullah Sheikh v. State of Gujarat*³⁷, the Court stated that in cases wherein the State's resources are not adequate enough, the State must atleast commence protecting the witnesses in sensitive cases involving influential persons who could potentially harm a witness whose testimony can affect the conviction.

3.2 State's Discretion

The issue of the implementation of the before the Law Commission's recommendation on witness protection programme was raised in a Public Interest Litigation before the Supreme Court wherein the Ministry of Women and Child Development stated that the recommendation was to implemented by the States but there seems to be no consensus between the States to implement the programme.³⁸

There are still Petitions being filed in the Court for the implementation of effective witness protection by the State, the recent one is that before the Allahabad High Court seeking for the implementation of the Witness Protection Scheme, 2018. The Madras High Court and the Karnataka High Court have directed their State Authorities for the urgent implementation of the Scheme.³⁹

³⁷ *Zahira Habibullah Sheikh v. State of Gujarat*, (2006) 3 SCC 374

³⁸ Bhadra Sinha, *Implementation of witness protection programme hits a bump over funding*, HINDUSTAN TIMES (April 25, 2021, 10:05 AM), <https://www.hindustantimes.com/india-news/implementation-of-witness-protection-programme-hits-a-bump-over-funding/story-KLEFSorYtwv2OQdclVopQJ.html>.

³⁹ *Rannsam Foundation v. State of U.P.*, P.I.L. CRIMINAL No. - 20887 of 2020.

3.3 Standard System for all Witnesses

A standard system of witness protection for all witnesses will not be as beneficial as different witnesses have different requirements of protection. In cases of abuse, the victims require protection from day one as already they're mentally and physically affected with the abuse, the navigation of the investigative and judicial system can prove a challenge and often since the punishment for such offences are grave in nature, multiple attempts can be made to traumatize the victim to testify.⁴⁰ Besides the victims of a crime, their immediate family also need to be protected from the commencement of trial till the conviction or acquittal of the accused.

The protection provided to children however must be done in a manner to make the child feel safe and comfortable enough to communicate whatever they have witnessed. The case of *Sakshi v. Union of India*⁴¹ also stressed in the need to set guidelines in taking evidence from a child and the need to provide special protection in cases of a sexual abuse victim.

Similarly, in cases of women victims of sexual abuses, their identity must at all times be anonymous⁴² and they must be provided additional protection as compared to other witnesses, the rationale behind the same is that offence with death penalty as a punishment usually pose a higher risk for the victims.

Whereas cases of theft, assault, etc. which have a punishment of less than 7 years and as compared to cases of culpable homicide, murder, rape are less sensitive in nature. In such cases the witnesses need not require an intensive protection system. Further in cases such as trespass, defamation etc. will not require protection until unless certain special circumstances. It has been advised by various experts that witness protection and its quantum must be assessed and decided by the Court through an urgent application.⁴³

Chapter IV – International Comparison

This chapter briefly highlights the measures undertaken by other international organisations and other jurisdictions around the globe to protect their witnesses.

⁴⁰Bhadra Sinha, *Implementation of witness protection programme hits a bump over funding*, HINDUSTAN TIMES (April 25, 2021, 10:05 AM), <https://www.hindustantimes.com/india-news/implementation-of-witness-protection-programme-hits-a-bump-over-funding/story-KLEFS0Rytwv2OQdclVopQJ.html>.

⁴¹*Sakshi v. Union of India*, AIR 2004 SC 3566.

⁴² *Delhi Domestic Working Women's Forum v. Union of India*; (1995) 1 SCC 14.

⁴³Jagdeep S Chhokar, *Witnesses in the wilderness: Why India needs a witness protection programme we can trust*, FIRSTPOST (April 25, 2021, 10:15 AM), <https://www.firstpost.com/india/witnesses-in-the-wilderness-why-india-needs-a-witness-protection-programme-we-can-trust-2633652.html>.

International Organisations

The International Criminal Tribunal for Rwanda and Yugoslav along with the Statute of the International Criminal Court have similar measures in providing protection to witnesses. The International Criminal Court has gone a step ahead and established a unit dedicated to provide support to the witnesses. Measures are undertaken to provide immediate responses to the threats or intimidation received and such services are provided from the investigation stage up till the post-trial.

The measures provided are witness anonymity by not disclosing the details of the witness, using technology in not only recording by to also distort the image and voice of the witness testifying, having closed session hearings, etc.⁴⁴

United States

The Witness Protection Scheme in the United States is pretty advanced as besides providing adequate protection in certain cases if need be, the State relocates the witness giving them a new identity and providing assistance till they become self-sufficient in the new town.⁴⁵ The Witness Security Reform Act, 1984 provides for relocation of witnesses in cases of serious or organized crime, in such cases protection to immediate family is also provided.⁴⁶

South Africa

South Africa has set up the Office for Witness Protection under the Witness Protection Act, 1998 which provides protection to any witness whose safety is a concern. Such person can address their concern to the Investigating Officer, Public Prosecutor or any police personnel in charge who would conduct a preliminary investigation based on the nature and extent of the risk, nature of proceedings and the importance and relevance of the witness' testimony.⁴⁷

Australia

The Australian Witness Protection Act, 1991 has provided a comprehensive system which has contemplated all necessary concerns. The definition of witness is wide and therefore includes any person who might require protection or other assistance. The Act provides a

⁴⁴Rome Statute of the International Criminal Court, 1998, United Nations, Treaty Series, vol. 2187, No. 38544, Depositary: Secretary-General of the United Nations.

⁴⁵The Comprehensive Crime Control Act, 1984, Pub.L. 98-473 (United States).

⁴⁶Witness Security Reform Act, 1984, Pub. L. 98-473 (United States).

⁴⁷Witness Protection Act, 1998, No. 112, Acts of Parliament, 1998 (South Africa).

comprehensive mechanism for endangered witnesses to completely change their identities and adequate support is provide from other departments.

The law in such case provides the original documents or that any document regarding the first identity be maintained by a small security circle, however the Act has ensured that such information cannot be leaked by imposing a punishment of 10 years of rigorous imprisonment for preaching the security circle.⁴⁸

United Kingdom

The U.K. Government through the Criminal Justice and Public Order Act, 1994 punishes any person who intimidates witnesses. The protection under the Act extends to witness testifying and those aiding the process of investigation. Further special measures are to be implemented for the protection of vulnerable and intimidated witnesses. Special measures are taken to protect the identity of the witnesses in any criminal proceedings.⁴⁹

Conclusion

This chapter is largely divided in two parts: the first part is wherein the author has highlighted the key findings through the research conducted and the corresponding suggestions by the author that can help in providing a remedy to the same and the second part which is brief conclusion to the project.

Key Findings and Suggestions

There is a constant danger to the lives of the witnesses and their family members, physical and mental tortures, sexual abuse and even at times murder are few common means of intimidating and turning a witness hostile.

These incidents often cause fear in the public, which deters them to act as witnesses in criminal cases. This issue can be remedied only if the such person acting as a witness is guaranteed absolute anonymity or is provided sufficient protection from the State.

The protection provided should differ with respect to the nature of the crime as the witnesses' part of trial involving a grievous crime would require intensive protection for a longer duration whereas those involved in less grievous crime would comparatively require limited protection and therefore resources can be conserved in the same manner.

⁴⁸Witness Protection Act 1991, No. 15, Acts of Parliament, 1991 (Australia).

⁴⁹Criminal Justice and Public Order Act, 1994 c.33. (United Kingdom).

For witnesses suffering from severe mental trauma or are victims of abuse, the testimony must be done via videotape by the Judges itself. Such witness must be given sufficient intervals and be accompanied by a family member or any person which can aid the Court in cases where the witness is negatively affected through the questioning.

For a child witness, the rules shall remain the same, however testimony of the child must be taken in any place suitable for the child under the guidance of a close relative and a child psychologist. As a general rule the witnesses must either give their testimony via a videotape or another alternative is to create a barrier between the witness stand and the public at large so that the witness is not visible. Additionally, in sensitive cases, any questions to be asked by the advocates conducting the examination of the witness that may trigger any trauma must first be verified by the Court.

The 'Friends of Police' is an organisation through which volunteers are given training and to aid the police in basic functions. Such organisations can be used to source personnel and train them to provide protection to the witnesses. Additionally, appropriate training with psychologists must be provided to such offers to sensitize them and so as to help the witnesses, especially the victims, children, senior citizens and any other witness facing trauma.

In my opinion, the Justice Malimath Committee Report on Reforms of Criminal Justice System, 2003 and then the Law Commission Reports both have provided certain concrete suggestions that can help boost the witness protection scheme in India, but the Witness Protection Scheme of 2018 is the ideal law on paper that can help remedy the current situation.

There is a need for the Centre to mandate and in certain cases even aid the State Governments to set up the Protection Scheme. The funding seems to be a major concern by various Governments in setting up the protection regimes, this can be resolved by creating a fund wherein the Centre, State and other non-State actors such as Companies, Philanthropists etc. can donate.

These recommendations provide a perfect blend of standards internationally recognized and adopted and clauses that will suit the Indian status quo and hopefully bring an improvement in the same.

Concluding Remarks

Witnesses as highlighted above play an essential role in the process of a trial as they act as the eyes and ears of the Court. Often the quality of the trial process depends on the credibility of the witness's testimony and adequate measures must be taken by the State to preserve such credibility by protecting the witnesses.

There have numerous reports in the past highlighting instances of corruption, threats and other abhorrent acts done by persons to forcefully influence the witness to turn hostile in order to putrefy and paralyse the trial. Besides the Court in several cases over these years has reiterated the issues and emphasized on the need to taken immediate measures to implement a witness protection mechanism, yet due to lack of initiative by the States the problems faced decades ago are still existing.

A concrete witness protection system cannot be built in a short period of time but the abundance of data collected and studied by the Courts, Law Commission and other parties is sufficient enough to point the issues on which the legislature has to negate while making a suitable statute for the protection of witnesses. The aim of the criminal justice system is to maintain a balance and give equal importance to ensure that 'no innocent person' is convicted for an offence and on the other hand must also ensure that the witnesses are to protected so as to ensure that they depose without any fear to ensure fair trial.

Additionally, given the Witness Protection Programme will not meet its objective if the standard rules are applicable for all witnesses. It is here that the **hypothesis stated above does not stand**, as the level of protection to be provided to a witness in case of grievous offences such as rape, murder, etc. would be higher than that provided to those in cases of assault, theft, etc. Moreover, the level of protection provided to victims, women, children, senior citizens will also differ.

To further this analysis, it must be noted that all cases mentioned above present a variety of methods through which witnesses were harassed, therefore it becomes necessary to provide appropriate protection to such witnesses. India faces an issue in implementing an effective system as it does not have the adequate financial resources and manpower for the same. Therefore, to provide adequate protection for all, it would be prudent to divide the resources between different classes of witnesses and provide each witness of a different class the adequate support required.

Currently, we do have a model law set forth by the Union and approved by the Supreme Court, the implementation of this scheme can actually resolve a majority of the issues faced in the coming years but due to the lack of initiative by the State and other political agendas the same has been ignored. Therefore, there must be appropriate action taken to ensure the adoption and the effective implementation of the Scheme.

It is about time for the Centre and State Governments to take the requisite measures to curb the obnoxious behaviour the witnesses are subjected too as the situation is getting worse day-by-day and requisite measures need to be taken immediately so that the criminal trials in India are not reduced to a mockery.



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