



# PROTECTION OF VICTIMS & WITNESSES IN THE JUSTICE DELIVERY SYSTEM: INDIAN SCENARIO<sup>1</sup>

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**Abstract--**A witness is the eyes and ears of the court; they are the indispensable aid in the justice dispensation system in any civilized society. Specially, a criminal case is built on the edifice of evidence. Very often we witness acquittal of accused persons in sensational criminal cases. Most of them are on account of defection of loyalty of witnesses. Defection of loyalty may be due to various reasons. Some of the probable reasons are: threatening, abduction, kidnapping and bribing to the witnesses. Their own lives and the lives of their family members may be at stake due to constant threatening by the accused persons and their associates. Again, in case of high profile politically connected cases they are often pressurised by heavy weight political leaders and influential officials. So, with a view to provide justice to the people without any fear and favour, it is necessary to give assistance, protection and support to the victims and the witnesses. Otherwise justice delivery system will be at stake, rule of law will be farce, our judicial system and courts will be on trial and will fail and injustice in the name of justice will prevail. Finally, this national injustice will be the surest road to national downfall.

This paper will discuss some important high profile cases where witnesses were either threatened or killed. The paper will talk about existing legal developments in India to protect witnesses, relevant judicial decisions in this regard and critical analysis with suggestions.

**Key Words:** Evidence, Witnesses, Criminal Trial, Accused, Victims, Justice.

## INTRODUCTION

In India, in most of the cases involving rich influential persons or politicians, crucial witnesses turn hostile and very often they are threatened and even killed. Witness is an important constituent of the administration of justice. Giving evidence is a pious act and responsibility of the witnesses and by giving evidence he/she performs a sacred duty of assisting the court to find out the truth. Witness discharges an important public duty of assisting the court in different cases. In order to discharge this function, the witness sacrifices his/her time, money, invites different types of pain, risks and trouble and incurs displeasure of persons against whom he gives evidence. He takes all these pain and suffering not for his own benefits but for the advancement of the cause of justice and making the rule of law a success. Perhaps, he knows the words of Martin Luther King that "injustice anywhere is a threat to justice everywhere". So, the witness should be treated with great respect and they should be protected under any circumstances not only for their sake but for the sake of the entire society. But, the irony of fate is that, protection of witness has become one of the most vulnerable aspects in our country today. We often get the news in print and electronic media that witness has become hostile or killed in different serious and high profile cases in our country. The situation has reached to its lowest ebb. Now, it has become rule from the exception. The rich, mighty and powerful in the society often resort to adopt this technique to get the judgment in their favour. The witnesses are often harassed in the court room by the lawyers of opposite party in the name of cross examination, their expenses are not paid, they and their family members are threatened and even killed, their properties are forcibly grabbed by the powerful in the society. As a result, they often get fear to give evidence and refuse to go to court. Even if they record evidence in the form of 164 statement under CrPC, but in later point of time they become hostile. As a result, the victims never get justice and criminals become scot free. This is the sorry state of criminal justice system in our country today. If this is continued, people will fast lose faith in justice and law. Rule of law will be teasing illusion to the teeming millions of our country. Lives of poor and weaker sections of the society will be at stake. Injustice will prevail over justice in the society. In the long run, it will bring about catastrophe in the society and swallow everyone in

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the society. Law, justice and legal institutions will lose its importance. Voice of justice will hide and cry along. In the words of Gurudev Rabindra Nath Tagore, -

*“ami je dekhinuprotikaarheenshokteraporadhhe, bicharerbaninirobenibhritekande”*<sup>2</sup>. The words of the justice are vehemently influenced by the so called elite people who have the powers. They influence the law in the society and as a result, authority of law is crying in secrecy. The words of law are stunned to see this situation where the ones who have power shall topple on them who are powerless; the impartiality of the law is vandalized<sup>3</sup>.

However, it is in this socio-legal scenario in our country, the author has ventured to write this article on the topic *“PROTECTION OF VICTIMS & WITNESSES IN THE JUSTICE DELIVERY SYSTEM: INDIAN SCENARIO.”* The author has discussed the importance of protection of witnesses and legislative developments in India with regard to witness protection. The paper has also discussed legislative developments in some of the countries of the world to protect witnesses and victims. The paper has further discussed the judicial approach in India to protect witnesses. Finally, the author has given certain suggestions for the protection of witnesses and victims in our country.

#### IMPORTANCE OF PROTECTION OF WITNESSES IN JUSTICE DELIVERY SYSTEM

Investigation stage in criminal trial is very important and it helps the court to find out the guilt or innocence of the accused. A proper investigation can only expose the truth and can help the court to decide the case with the help of production of witnesses. Witnesses from the key ingredient in a criminal trial and their testimonies establish the guilt or innocence of the accused. The accused persons in our country have a right to an open public trial in a criminal court and also a right to examination of witnesses in open court in their presence. But, these rights of the accused are not absolute and may be restricted to a reasonable extent in the interests of fair administration of justice and for ensuring that victims and witnesses depose without fear<sup>4</sup>. The right of the accused for an open trial in his presence, being not absolute, the law has to balance that right of the accused as against the need for fair administration of justice in which the victims and witness depose without fear or danger to their lives or property or those of their close relatives<sup>5</sup>. The balancing between the rights of the accused and the need for identity protection of witnesses is very crucial and is a subject matter of debate. However, appropriate procedure may be established in the interests of both victims and witnesses in order to balance these two. Protection of witnesses is necessary at the stage of investigation, during inquiry and before recording of evidence at the trial and at the time of recording of evidence during the trial. But, in case of serious offences of high profile cases, protection of witnesses should also be extended beyond that in order to give confidence to them and in order to remove fear from their mind. Protection of witnesses does not mean only protection of witnesses within the court premises. Protection here means protection of the witnesses even outside the court premises. In case of likelihood of danger of his life, the witnesses may be relocated in a different place with his/her dependents till the trial of the case against the accused is completed and if necessary protection should also be given even after that. All the expenses in this regard should be met by the either the State or State or District Legal Service Authority.

Unless witness protection measures are taken by the government, witnesses will continue to turn hostile in criminal cases. A well designed witness protection programme will encourage witnesses and their family members to give evidence against the accused persons and it will help to establish rule of law in our society.

In many high profile cases in our country, witnesses have become either hostile or killed. In IshratJahan Case the issue of protection of witnesses came before the court. ShamimaKauser, Ishrat's mother and other family members supporting the criminal case against the fake encounter had been receiving threats and they were intimidated. Several attempts were taken to kill them. Despite written and oral complaints to the CBI and the

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<sup>2</sup> [www.poetandpoem.com/articles/meaning-proshno-rabindranath-tagore/](http://www.poetandpoem.com/articles/meaning-proshno-rabindranath-tagore/) (Accessed on 03-07-17).

<sup>3</sup> Ibid.

<sup>4</sup> The Law of Commission of India, 198<sup>th</sup> Report, August 2006, p-3-4.

<sup>5</sup> Ibid.



police no action was taken by the police<sup>6</sup>. In another fake encounter killing of Sohrabuddin Sheikh case, TulsiramPrajapati, a witness to Sheikh's killing had predicted his own death. He was lodged in Udaipur jail and he repeatedly made application to the concerned authorities including to National Human Rights Commission for fear and safety of his life as he was material witness in that case. Finally, he was shot dead and police alleged that he was killed while trying to escape from custody<sup>7</sup>. Again, a key witness in AsaramBapu'sSurat rape case, Akhil Gupta, was shot dead by unidentified assailants while he was walking on the streets of his hometown Muzaffarnagar. Another witness in the same case, Ahmedabad-based AmrutPrajapati also died of bullet wounds in June, 2014 and third witness in the same case Dinesh Bhavchandani who gave a statement against Asaram faced an acid attack in March, 2014<sup>8</sup>. Another important case in this context is the case of Rocky Yadav in Gaya, Bihar. It was alleged in this case that Rocky Yadav, son of an influential politician in Gaya, Bihar, killed AdityaSachdeva, reportedly after the class XII student Aditya's Swift car overtook the Land Rover of the Rocky Yadav<sup>9</sup>. In this case all the six prosecution witnesses, including two policemen, turned hostile. All the four friends of Aditya who were present at the spot backtracked from earlier statement recorded under Section 164 of the CrPC<sup>10</sup>. The trial in this case suffered setback as six witnesses turned hostile in the court<sup>11</sup>. The FIR in this murder case was lodged with police station on the basis of the statement of the four eye-witnesses<sup>12</sup> who later on turned hostile along with other two police personnel. Several witnesses were also killed in Vyapam Case.

However, the above examples are only tip of the iceberg where important witnesses turned hostile or killed in different high profile criminal cases. The actual list is very long. In most of these cases, witnesses are either killed or they turn hostile due to pressure, intimidation or threat by the accused persons. Very often they refuse to give evidence and go to court because of harassment in the court and threat of their lives by the accused persons. Sometimes, even the parent and near and dear one of the victim also turn hostile because of the treat by the accused persons. Absence of witnesses is collapsing the edifice of the criminal justice system in our country slowly but surely.

#### PROTECTION OF WITNESS IN INDIA AND LEGISLATIVE DEVELOPMENTS

##### - Reports of Law Commission of India-

The Law Commission of India in its various reports recommends, in different points of time, the need for protection of witnesses and the necessity of a law in this context. The Law Commission in its 14<sup>th</sup> Report, 1958, suggested that "We suggest that the High court should draw the attention of presiding officers to the necessity of maintain proper decorum in court and ensuring proper treatment of parties and their witnesses whatever their social status. They should be treated with courtesy and dignity and not permitted to be brow-beaten or insulted in court."<sup>13</sup> Law Commission of India, in its 154<sup>th</sup> Report, examined the pathetic conditions which are faced by the witnesses in the court premises. The commission was of the view that in the present system a poor witness is caught between the devil and deep sea<sup>14</sup>. If he fails to attend the court, he shall be penally liable and if he

<sup>6</sup>. A plea for witness protection laws, The Hindu, [www.thehindu.com/opinion/op-ed/a-plea-for-witness-protection-laws/article4944925](http://www.thehindu.com/opinion/op-ed/a-plea-for-witness-protection-laws/article4944925)[Accessed on 30-06-2017].

<sup>7</sup>.Ibid.

<sup>8</sup>.India desperately needs a witness protection law. Just look at the AsaramBapu case, [www.in/.../india-desperately-needs-a-witness-protection-law-just-look-at...html](http://www.in/.../india-desperately-needs-a-witness-protection-law-just-look-at...html).[Accessed on 30-06-2017].

<sup>9</sup>.Hearing put off as witnesses skip court, The Times of India, 12-01-2017, Patna Edition.

<sup>10</sup>.Ibid.

<sup>11</sup>. SC cancels bail to Rocky Yadav, The Times of India, March 7, 2017, Patna edition.

<sup>12</sup>.The Telegraph, 14-12-2016, Patna Edition.

<sup>13</sup>.The Law Commission of India, 14<sup>th</sup> Report, Volume-1, Chapter-14, Page-326, para-27.[www.lawcommissionofindia.nic.in](http://www.lawcommissionofindia.nic.in)(Accessed on 28-06-2017).

<sup>14</sup>.The Law Commission of India, 154<sup>th</sup> Report on the Code of Criminal Procedure, 1973, Volume-1, 1996, Chapter-x, 'Protection and Facilities to witness', Page-43-44, para-4 [www.lawcommissionofindia.nic.in](http://www.lawcommissionofindia.nic.in)(Accessed on 28-06-2017).



attends, he undergoes an agonising experience resulting in great inconvenience and loss<sup>15</sup>. According to Commission, the witnesses used to face the wrath of the accused, particularly hardened criminals which results in their life being at great peril and because of this traumatic time consuming and humiliating experiences, many witnesses keep themselves away from giving evidences<sup>16</sup>. The Commission recommended that all the measures necessary in the minds of the witnesses had to be immediately chalked out and implemented<sup>17</sup>. The Commission further recommended that an effort should be taken even from the stage of their examination by the police by treating them in friendly manner and giving self-confidence by giving adequate protection for them<sup>18</sup>. It also recommended that “the allowances payable to the witnesses for their attendance in courts should be fixed on a realistic basis and that payment should be effected through a simple procedure which would avoid delay and inconvenience. Section 312 of CrPC and the rules made thereunder will have to be suitably amended. They should be paid allowances for all the days they attend. Adequate facilities should be provided in the court premises for their stay. The treatment afforded to them right from the stage of investigation up to the stage of conclusion of the trial should be in a fitting manner giving them due respect and removing all causes which contribute to any anguish on their part. 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.<sup>19</sup>” Other important aspects recommended by the Law Commission in its 154<sup>th</sup> Report are the establishment of separate investigating agency<sup>20</sup> and an independent prosecuting agency<sup>21</sup>. In the words of Law Commission<sup>22</sup> “investigation of crime is a highly specialized process requiring a lot of patience, expertise, training and clarity about the legal position of the specific offences and subject matter of investigation and socio-economic factors. It is basically an art of understanding hidden facts with the purpose of linking up different pieces of evidence for the purpose of successful prosecution. It requires specialization and professionalism of a type not yet fully perceived by police agencies. For discharging such a task efficiently, a separate investigating wing of the police which replenishes its knowledge and skill from developing technology is a desideratum.” The commission recommended that the police officials entrusted with the investigation of grave offences should be separate and distinct from those entrusted with the enforcement of law and order and other duties<sup>23</sup>. The Commission in its 158<sup>th</sup> Report also recommended for the establishment of an independent prosecuting agency and autonomy of the public prosecutor<sup>24</sup>. The Law Commission of India, in its 178<sup>th</sup> Report<sup>25</sup> discussed the problem of hostile witnesses and the need to ensure a fair investigation. It says<sup>26</sup> “where the accused happens to be rich and/or influential persons or members of mafia gangs, the witnesses very often turn hostile either because of the inducements offered to them or because of the threats given to them or may be on account of promises that may be made to them. To protect public interest and to safeguard the interests of society, measures need to be devised to eliminate, as far as possible, scope for such happenings.” The Commission in this Report recommended the following amendments to the Code of Criminal Procedure:

(a) Insertion of sub-section (1A) in section 164 CrPC:

Evidence of material witnesses to be recorded by Magistrate in certain cases-

<sup>15</sup> . Ibid.

<sup>16</sup> .Ibid, para-2.

<sup>17</sup> . Ibid.

<sup>18</sup> .Ibid, para-5.

<sup>19</sup> .Ibid, para 6.

<sup>20</sup> .Ibid, Chapter-II, page-5-7.

<sup>21</sup> .Ibid, Chapter-III, page8-11.

<sup>22</sup> .Ibid, Chapter-III, Page-5, para-2.

<sup>23</sup> .Ibid, Chapter II, P-7, para-9.

<sup>24</sup> .Ibid, Chapter-III, Page-8, para-2.

<sup>25</sup> .Law Commission of India, 178<sup>th</sup> Report on “Recommendation for amending various enactments, both civil and criminal”, December, 2001, Sl.no.-16, problem of hostile witnesses and the need to ensure a fair investigation, page-111-119

<sup>26</sup> .Ibid, page 116.



“164A (1) Any police officer making an investigation into any offence punishable with imprisonment for 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 statements.

(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.”

(b) Insertion of section 311A:

S.311A: The statement of the witness duly recorded under subsection (1) of section 164 of this Code may, in the discretion of the presiding judge, if such witness is produced and examined, be treated as evidence in the case for all purposes subject to the provisions of the Indian Evidence Act, 1872.

The Commission in this Report has also given emphasis upon implementation of the recommendations of 154<sup>th</sup> Report and 14<sup>th</sup> Report.

The 198<sup>th</sup> Report of Law Commission of India deals with witness identity protection and witness protection programme. This report says in most of the countries governed by democratic constitutions and rule of law, the right to an open ‘public trial’ in the immediate presence of the accused is fundamental but is not treated as absolute<sup>27</sup>. There are certain laws in our country which also provide exceptions to the right of the accused for open public trial as against the right of the victim for a fair trial<sup>28</sup>. The state has also an interest in the fair administration of justice. That interest of the State requires that victims and witnesses depose without fear or intimidation<sup>29</sup>. The report also says that the need for protection of victims and witnesses is not necessarily confined to cases of terrorism, or sexual offences against women or children in respect of whom special statutes exist so that they may give evidence without fear and the prosecution witnesses may also depose without fear<sup>30</sup>. The principle has been extended generally to cases of serious offences where the Court is satisfied that there is evidence about the likelihood of danger to the lives or property of the victim or to their relatives or to the lives or property of the witnesses or of their relatives<sup>31</sup>.

- Malimath Committee Report-

Committee on Reforms of Criminal Justice System (Malimath Committee Report) discusses miserable condition of witnesses in our country and recommends certain measures to the government to remove these. The Committee inter alia says<sup>32</sup> “In most of the courts in India there is no designated place with proper arrangements for seating and resting while waiting for his turn to be examined as a witness in the court. Toilet facility, drinking water and other amenities like food and refreshment are not provided. The witness is not adequately compensated for the amount of money he spends for his travelling and staying in the town where the court is located....”The report recommended that effective steps should be taken to ensure that payment of the allowances to the witness is neither denied nor delayed. Fool proof arrangements should be made to see that the allowances are paid immediately. An official should be designated to attend to the witnesses and be responsible

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<sup>27</sup> . Law Commission of India, 198<sup>th</sup> Report on witness Identity Protection and witness protection programmes, August 2006, Part-I, Chapter-II, P-20.

<sup>28</sup> .Ibid, p-31.

<sup>29</sup> .Ibid.

<sup>30</sup> .Ibid, Chapter III, P-83.

<sup>31</sup> .Ibid.

<sup>32</sup> .Committee on Reforms of Criminal Justice System(Malimath Committee Report), Ministry of Home Affairs, Government of India, Volume-I, March, 2003, Part-III, Sl. No.11, p-151.



for paying the allowances promptly<sup>33</sup>. The report also discussed the problem about the safety of witnesses and their family members who face danger at different stages and who are often threatened. The committee in this context recommended that “if, however, the circumstances indicate that the life of any particular witness is in danger, the court must take such measures as are necessary to keep the identity of the witness secret and make arrangements to ensure protection to the witness without affecting the right of the accused to cross-examine him<sup>34</sup>”. The report admitted that there is a growing tendency of subjecting the witness and his family members to serious threats to life, abduction or raping, or damaging the witness’s property or harming his image and interest in other ways. The committee has also admitted that time has come for a comprehensive law being enacted for protection of the witness and members of his family<sup>35</sup>. With regard to repeated adjournment of the cases creating trouble to witnesses, the report recommended that “there is need to infuse sensitivity in the minds of the court and the lawyers about the hardship and inconvenience which the witness suffers when the case is adjourned.....Time has now come to hold the Judge accountable for such lapses. Appropriate remedial measures through training and supervision may have to be taken in this behalf by the respective High Courts”. With regard to conditions of victims and witnesses under the existing criminal justice system in India, the report admitted that “the situation is alarming in respect of victim-witnesses who belong to vulnerable sections of society. The adversarial trial built around cross-examination of witnesses often result in adding insult to injury against which even the court may not be of much help<sup>36</sup>.”

Indian Evidence Act, 1872 contains nothing in this regard to protect the victims and witnesses from harassment, threats, intimidation and torture. However, Section 151 of the Act says the court may forbid any questions or inquiries which it regards as indecent or scandalous, although such questions or inquiries may have some bearing on the questions before the Court, unless they relate to facts in issue, or to matters necessary to be known in order to determine whether or not the facts in issue existed<sup>37</sup>. Again, the Act also says the Court shall forbid any question which appears to it to be intended to insult or annoy, or which, though proper in itself, appears to the Court needlessly offensive in form<sup>38</sup>.

- The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989-

Chapter IVA of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act 1989 (Act no. 33 of 1989) deals with rights of victims and witnesses. It says,<sup>39</sup> it shall be the duty and responsibility of the State to make arrangements for the protection of victims, their dependents, and witnesses against any kind of intimidation or coercion or inducement or violence or threats of violence. A victim shall be treated with fairness, respect and dignity and with due regard to any special need that arises because of the victim’s age or gender or educational disadvantage or poverty<sup>40</sup>. The Act also says<sup>41</sup>, notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the Special Court or the Exclusive Special Court trying a case under this Act shall provide to a victim, his dependent, informant or witnesses— (a) the complete protection to secure the ends of justice; (b) the travelling and maintenance expenses during investigation, inquiry and trial; (c) the social-economic rehabilitation during investigation, inquiry and trial; and (d) relocation. As per this Act, the State shall inform the concerned Special Court or the Exclusive Special Court about the protection provided to any victim or his dependent, informant or witnesses and such Court shall periodically review the protection being offered and pass appropriate orders<sup>42</sup>. Section 15A(8) of the Act says, without prejudice to the generality

<sup>33</sup>. Ibid, p-152.

<sup>34</sup>. Ibid, at p-152.

<sup>35</sup>. Ibid, at P-152.

<sup>36</sup>. Committee on Reforms of Criminal Justice System (Malimath Committee Report), Ministry of Home Affairs, Government of India, Volume-I, March, 2003, Part-I, Sl. No.6, p-79.

<sup>37</sup>. Indian Evidence Act, 1872, Section 151,

<sup>38</sup>. Ibid, Section 152,

<sup>39</sup>. The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, Section 15A(1).

<sup>40</sup>. Ibid, Section 15A (2).

<sup>41</sup>. Ibid, Section 15A (6).

<sup>42</sup>. Ibid, Section 15A(7).



of the provisions of sub-section (6), the concerned Special Court or the Exclusive Special Court may, on an application made by a victim or his dependent, informant or witness in any proceedings before it or by the Special Public Prosecutor in relation to such victim, informant or witness or on its own motion, take such measures including— (a) concealing the names and addresses of the witnesses in its orders or judgments or in any records of the case accessible to the public; (b) issuing directions for non-disclosure of the identity and addresses of the witnesses; (c) take immediate action in respect of any complaint relating to harassment of a victim, informant or witness and on the same day, if necessary, pass appropriate orders for protection: Provided that inquiry or investigation into the complaint received under clause (c) shall be tried separately from the main case by such Court and concluded within a period of two months from the date of receipt of the complaint: Provided further that where the complaint under clause (c) is against any public servant, the Court shall restrain such public servant from interfering with the victim, informant or witness, as the case may be, in any matter related or unrelated to the pending case, except with the permission of the Court. It shall be the duty of the Investigating Officer and the Station House Officer to record the complaint of victim, informant or witnesses against any kind of intimidation, coercion or inducement or violence or threats of violence, whether given orally or in writing, and a photocopy of the First Information Report shall be immediately given to them at free of cost<sup>43</sup>. All proceedings relating to offences under this Act shall be video recorded<sup>44</sup>.

So, from the above provisions of the Act, it is clear that there are enough provisions in the Act, to protect the witnesses and victims against any kind of intimidation or coercion or inducement or violence or threats of violence etc. This law may be considered as a marked departure with regard to witness protection on behalf of the Indian Legislature from the past.

The Criminal Law (Amendment) Act, 2005 (Act no.2 of 2006) has incorporated section 195A in the Indian Penal Code. This section deals with threatening any person to give false evidence. This section says whoever threatens another with any injury to his person, reputation or property or to the person or reputation of any one in whom that person is interested, with intent to cause that person to give false evidence shall be punished with imprisonment<sup>45</sup>. This section prescribes severe punishment.

Besides the above, the repealed Terrorist and Disruptive Activities (Prevention) Act (TADA) and The Prevention of Terrorism Act, 2002 (POTA) had sections dealing with witness protection. The Unlawful Activities (Prevention) Amendment Act, 2004, Juvenile Justice (Care and Protection of Children) Act, 2000 also contains some provisions to protect the witnesses.

#### WITNESS PROTECTION IN OTHER COUNTRIES

Victims and witnesses are important players in the administration of criminal justice. Many countries in the world have specific laws to protect the victims and witnesses from intimidation or coercion or inducement or violence or threats of violence etc. However, following are some of the examples in this context:

In UK, the Criminal Justice and Public Order Act, 1994 prescribes punishment for intimidation of witnesses. It inter alia says<sup>46</sup> a person who does to another person (a) an act which intimidates, and is intended to intimidate that other person; (b) knowing or believing that the other person is assisting in the investigation of an offence or is a witness or potential witness or a juror or potential juror in proceedings for an offence; and (c). intending thereby to cause the investigation or the course of justice to be obstructed, perverted or interfered with, commits an offence. However, the section has also prescribed strict punishment.

Besides the above, the Criminal Injuries Compensation Act 1995 and Victims of Crime Assistance Act 1996 (No. 81 of 1996) are also important to be mentioned here.

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<sup>43</sup>. Ibid, Section 15A(9).

<sup>44</sup>. Ibid, Section 15A(10).

<sup>45</sup>. Section 195A, Indian Penal Code.

<sup>46</sup>. Criminal Justice and Public Order Act, 1994, U.K., Section 51.



Purpose of Victims of Crime Assistance Act 1996 is to provide assistance to victims of crime. The objectives of this Act are<sup>47</sup>— (a) to assist victims of crime to recover from the crime by paying them financial assistance for expenses incurred, or reasonably likely to be incurred, by them as a direct result of the crime; and (b) to pay certain victims of crime financial assistance (including special financial assistance) as a symbolic expression by the State of the community's sympathy and condolence for, and recognition of, significant adverse effects experienced or suffered by them as victims of crime; and (c) to allow victims of crime to have recourse to financial assistance under this Act where compensation for the injury cannot be obtained from the offender or other sources.

In USA, the **Victims and Witness Protection Act, 1982** was enacted to provide additional protections and assistance to victims and witnesses in Federal cases. The purpose of the Act says<sup>48</sup> that without the cooperation of victims and witnesses, the criminal justice system would cease to function; yet with few exceptions these individuals are either ignored by the criminal justice system or simply used as tools to identify and punish offenders. Victim of a serious crime is forced to suffer physical, psychological, or financial hardship first as a result of the criminal act and then as a result of contact with a criminal justice system unresponsive to the real needs of such victim<sup>49</sup>. The Congress declares that the purposes of this Act are<sup>50</sup>—

(1) to enhance and protect the necessary role of crime victims and witnesses in the criminal justice process; (2) to ensure that the Federal Government does all that is possible within limits of available resources to assist victims and witnesses of crime without infringing on the constitutional rights of the defendant; and (3) to provide a model for legislation for State and local governments. The Act has also prevented intimidation, physical force, threats and other form of interference to the witnesses and made these punishable offences under the Act.

However, besides the above law there are other laws in USA which also protect the witnesses and victims. Some of these Acts are- Victims' Rights and Restitution Act, 1999, Organized Crime Control Act, 1970 and Comprehensive Crime Control Act, 1984.

In Canada, there is witness Protection Act, 1996. The purpose of this Act<sup>51</sup> is to promote law enforcement, national security, national defence and public safety by facilitating the protection of persons-

(a) who are involved directly or indirectly in providing assistance in law enforcement matters in relation to-(i) activities conducted by the Force, other than activities arising under an arrangement entered into under section 20 of the Royal Canadian Mounted Police Act, or(ii) activities conducted by any law enforcement agency or international criminal court or tribunal in respect of which an agreement or arrangement has been entered into under section 14;

(b) who are involved directly or indirectly in providing assistance to a federal security, defence or safety organization; or

(c) who have been admitted to a designated program.

In Australia, there is witness Protection Act, 1994. This is an Act to establish a program to give protection and assistance to certain witnesses and other persons. Section 4 of the Act deals with Establishment of the National Witness Protection Program. Under this Section-

(1) The Commissioner is to maintain a program, to be known as the National Witness Protection Program, under which the Commissioner, and persons who hold or occupy designated positions, arrange or provide protection and other assistance for witnesses.

(2) That protection and assistance may include things done as a result of powers and functions conferred on the Commissioner under a complementary witness protection law.

However, the Act contains many provisions for the protection and welfare of the witnesses.

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<sup>47</sup> .Victims of Crime Assistance Act 1996, Part-I, Purpose and Object of the Act, P-1.

<sup>48</sup> .Victims and Witness Protection Act, 1982, Findings and Purposes, Section 2(a)(1).

<sup>49</sup> .Ibid, Section 2(a)(2).

<sup>50</sup> .Ibid, Section 2(b).

<sup>51</sup> .he witness Protection Act, 1996, Canada, Section 3.



In South Africa, there is Witness Protection Act, 1998. The Act was enacted to provide for the establishment of an office for the protection of witnesses; to regulate the powers, functions and duties of the Director: office for witness protection; to provide for temporary protection pending placement under protection to provide for the placement of witnesses and related persons under protection; to provide for services related to the protection of witnesses and related persons; to amend the Criminal Procedure Act, 1977; so as to make provision for witness services at courts; and to provide for incidental matters<sup>52</sup>. Section 2 of the Act deals with establishment of the office of witness protection.

So, from the above discussion, it is clear that with a view to protect witness different countries of the world have enacted various laws. These laws have not only ensured their protection but their welfare also.

#### JUDICIAL DEVELOPMENTS IN INDIA

In **National Human Rights Commission v. State of Gujarat**<sup>53</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. For successful prosecution of the criminal cases, protection to witnesses is necessary as the criminals have often access to the police and the influential people. We may also place on record that the conviction rate in the country has gone down to 39.6% and the trials in most of the sensational cases do not start till the witnesses are won over.”

The Supreme Court, with regard to importance of protecting witnesses, also observed that<sup>54</sup> “The State has a definite role to play in protecting the witnesses, to start with at least in sensitive cases involving those in power, who have political patronage and could wield muscle and money power, to avert trial getting tainted and derailed and truth becoming a casualty. As a protector of its citizens it has to ensure that during a trial in the court the witness could safely depose the truth without any fear of being haunted by those against whom he had deposed. Every State has a constitutional obligation and duty to protect the life and liberty of its citizens. That is the fundamental requirement for observance of the rule of law. There cannot be any deviation from this requirement because of any extraneous factors like caste, creed, religion, political belief or ideology. Every State is supposed to know these fundamental requirements and this needs no retaliation (sic repetition).....If ultimately the truth is to be arrived at, the eyes and ears of justice have to be protected so that the interests of justice do not get incapacitated in the sense of making the proceedings before the courts mere mock trials as are usually seen in movies.”

In **Zahira Habibulla H. Sheikh and Another v. State of Gujrat and others**<sup>55</sup>, the Apex Court explaining the importance of witnesses in fair trial observed that-

“The principles of rule of law and due process are closely linked with human rights protection. Such rights can be protected effectively when a citizen has recourse to the Courts of law. It has to be unmistakably understood that a trial which is primarily aimed at ascertaining truth has to be fair to all concerned. There can be no analytical, all comprehensive or exhaustive definition of the concept of a fair trial, and it may have to be determined in seemingly infinite variety of actual situations with the ultimate object in mind viz. whether something that was done or said either before or at the trial deprived the quality of fairness to a degree where a miscarriage of justice has resulted. It will not be correct to say that it is only the accused who must be fairly dealt with. That would be turning Nelson's eyes to the needs of the society at large and the victims or their family members and relatives. Each one has an inbuilt right to be dealt with fairly in a criminal trial. Denial of a fair trial is as much injustice to the accused as is to the victim and the society. Fair trial obviously would mean a trial before an impartial Judge, a fair prosecutor and atmosphere of judicial calm. Fair trial means a trial in

<sup>52</sup> .Purpose and preamble of the Witness Protection Act, 1998.

<sup>53</sup> .2003(9) SCALE 329, Decided on 8<sup>th</sup> August, 2003, (W.P.Cr.No. 109/2003).

<sup>54</sup> .National Human Rights Commission v. State of Gujarat, 2009(6)SCALE 509, Decided on:01-05-2009(W.P.Cr.No. 109/2003).

<sup>55</sup> .Decided on 12-04-2004, Criminal Appeal No.446-449/2004 and Criminal Appeal No. 450-452/2004, (2004)4 SCC 158, 2004(3)ACR2126(SC), AIR2004SC346, 2004(3)BLJR1971, 2004CriLJ2050, (2004)2GLR1078, JT2004(Suppl1)SC94, 2004(2)RCR(Criminal)836, 2004(4)SCALE375, (2004)4SCC158, [2004]1SCR1050, 2004(2)UJ1041



which bias or prejudice for or against the accused, the witnesses, or the cause which is being tried is eliminated. If the witnesses get threatened or are forced to give false evidence that also would not result in a fair trial. The failure to hear material witnesses is certainly denial of fair trial". The Supreme Court explaining the impact of hostile witness upon the society and role of state in protecting witnesses also observed in this case that- "Witnesses" as Bentham said: are the eyes and ears of justice. Hence, the importance and primacy of the quality of trial process. If the witness himself is incapacitated from acting as eyes and ears of justice, the trial gets putrefied and paralysed, and it no longer can constitute a fair trial. The incapacitation may be due to several factors like the witness being not in a position for reasons beyond control to speak the truth in the Court or due to negligence or ignorance or some corrupt collusion. Time has become ripe to act on account of numerous experiences faced by Courts on account of frequent turning of witnesses as hostile, either due to threats, coercion, lures and monetary considerations at the instance of those in power, their bench men and hirelings, political clouts and patronage and innumerable other corrupt practices ingenuously adopted to smother and trifle truth and realities coming out to surface rendering truth and justice, to become ultimate casualties. Broader public and societal interests require that the victims of the crime who are not ordinarily parties to prosecution and the interests of State represented by their prosecuting agencies do not suffer even in slow process but irreversibly and irretrievably, which if allowed would undermine and destroy public confidence in the administration of justice, which may ultimately pave way for anarchy, oppression, and injustice resulting in complete breakdown and collapse of the edifice of rule of law, enshrined and jealously guarded and protected by the Constitution. There comes the need for protecting the witness. Time has come when serious and undiluted thoughts are to be bestowed for protecting witnesses so that ultimate truth is presented before the Court and justice triumphs and that the trial is not reduced to mockery. The State has definite role to play in protecting the witnesses to start with at least in sensitive cases involving those in power, who has political patronage and could wield muscle and money power, to avert trial getting tainted and derailed and truth becoming a casualty. As a protector of its citizens it has to ensure that during a trial in court the witness could safely depose truth without any fear of being haunted by those against whom he has deposed. Some legislative enactments like the Terrorist and Disruptive Activities (Prevention) Act, 1987 (in short the "TADA Act") have taken note of the reluctance shown by witnesses to depose against dangerous criminals-terrorists. In a milder form also the reluctance and the hesitation of witnesses depose against people with muscle power, money power or political power has become the order of the day. If ultimately truth is to be arrived at, the eyes and ears of justice have to be protected so that the interests of justice do not get incapacitated in the sense of making the proceedings before Courts mere mock trials as are usually seen in movies."

In another case Supreme Court emphasising the importance of witness protection in fair trial and in following the principle of natural justice, observed that<sup>56</sup>

"We cannot shy away from the unpleasant reality that often witnesses do not come forward to depose before Court even in serious cases. This precarious situation creates challenges to our criminal justice administration in general and terrorism related cases in particular. Witnesses do not volunteer to give evidence mainly due to the fear of their life. Ultimately, the non-conviction affects the larger interest of community, which lies in ensuring that the executors of heinous offences like terrorist acts are effectively prosecuted and punished." The court also observed in this case that "The need for the existence and exercise of power to grant protection to a witness and preserve his or her anonymity in a criminal trial has been universally recognised. Provisions of such nature have been enacted to protect the life and liberty of the person who is able and willing to give evidence in support of the prosecution in grave criminal cases. A provision of this nature should not be looked at merely from the angle of protection of the witness whose life may be in danger if his or her identity is disclosed but also in the interest of the community to ensure that heinous offences like terrorist acts are effectively prosecuted and punished. It is a notorious fact that a witness who gives evidence which is unfavourable to an accused in a trial for terrorist offence would expose himself to severe reprisals which could result in death or severe bodily

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<sup>56</sup> .PUCL v. Union of India, 2003(10) SCALE 967, 2004(2)ACR1400(SC), AIR2004SC456, 2004(1)CTC241, JT2003(10)SC70, 2003(10)SCALE967, (2004)9SCC580.



injury or that of his family members. If such witnesses are not given appropriate protection, they would not come forward to give evidence and there would be no effective prosecution of terrorist offences and the entire object of the enactment may possibly be frustrated, under compelling circumstances this can be dispensed with by evolving such other mechanism, which complies with natural justice and thus ensures a fair trial”.

**In Sakshi v. Union of India and others**<sup>57</sup>, the Supreme Court of India, explaining the importance of alternative screen arrangement etc. to take evidence of the child and rape victims to protect them from extreme fear from giving evidence observed that-

“The mere sight of the accused may induce an element of extreme fear in the mind of the victim or the witnesses or can put them in a state of shock. In such a situation he or she may not be able to give full details of the incident which may result in miscarriage of justice. Therefore, a screen or some such arrangement can be made where the victim or witnesses do not have to undergo the trauma of seeing the body or the face of the accused. Often the questions put in cross-examination are purposely designed to embarrass or confuse the victims of rape and child abuse. The object is that out of the feeling of shame or embarrassment, the victim may not speak out or give details of certain acts committed by the accused. It will, therefore, be better if the questions to be put by the accused in cross-examination are given in writing to the Presiding Officer of the Court, who may put the same to the victim or witnesses in a language which is not embarrassing. There can hardly be any objection to the other suggestion given by the petitioner that whenever a child or victim of rape is required to give testimony, sufficient breaks should be given as and when required. The provisions of Sub-section (2) of Section 327 Cr. P. C. should also apply in inquiry or trial of offences under Section 354 and 377 IPC.”

**In Swaran Singh v. State of Punjab**<sup>58</sup>, explaining the plight of witnesses in criminal cases and in court premises and role of unscrupulous lawyers and their policy of taking adjournment of cases, Supreme Court observed that-

“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 witnesses tries 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 tried. 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 witnesses is a far cry. Here again the process of harassment starts and he decides not to get the diet money at all. High Courts have to be vigilant in these matters. Proper diet money must be paid immediately to the witness (not only when he is examined but for every adjourned hearing) and even sent to him and he should not be left to be harassed by the subordinate staff. If the criminal justice system is to be put on a proper pedestal, the system cannot be left in the hands of unscrupulous lawyers and the sluggish State machinery. Each trial should be properly monitored. Time has come that all the courts, direct courts, subordinate courts are linked to the High Court with a computer and a proper check is made on the adjournments and recording of evidence”.

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<sup>57</sup> .2004(6) SCALE 15, 2005(2)ACR1537(SC), AIR2004SC3566, 2004(2)ALD(Cri)504, 2004(2)BLJR1378, 98(2004)CLT491 (SC), 2004CriLJ2881, 112(2004)DLT457(SC), 2004(77)DRJ390, 2004(2)OLR239, 2004(3)RCR(Criminal)702, RLW2004 (3)SC402, 2004(6)SCALE15, (2004)5SCC518, [2004]Supp(2)SCR723, 2004(2)U.D.113, 2005(1)UJ37.

<sup>58</sup> .AIR 2000 SC 2017.



**In Ms. Neelam Katara v. Union of India**<sup>59</sup>, Delhi High Court observed that society has an interest in the administration of justice and it may be true that let a 100 accused escape but let not an innocent be punished, but this cannot be stretched to mean an escape route should be provided to the accused to hijack administration of justice and secures his innocence, not as a result of a fair adversarial litigation but as a result of 'might being right'. The also observed that at least, in two categories of cases namely, organised crime and a crime punishable with the capital sentence or imprisonment for life witness protection is required. It observed that in heinous crimes the witnesses and sometimes the victim turns hostile and there is strong material from which it can be guessed that cause is fear and compulsion. However, the Court, in this case, has given a "Witness Protection Guidelines" and directed that till a suitable Legislation is brought on the Statute book these guidelines shall operate for protection of the witnesses.

So, in almost all above cases, Indian judiciary has expressed its deep concern for the plight of witnesses in our country. Judiciary has also suggested several times to frame a law for the protection of witnesses and victims in line with other foreign countries. Witnesses are compared with eye and ear of the justice and Courts have given emphasis upon their protection as this will strengthen administration of justice and which in turn will establish rule of law in the society.

#### CONCLUSION AND SUGGESTIONS

A cursory glance to the above discussion, it is clear that protection of the witnesses and victims is sine qua non for the administration of criminal justice in India. A comprehensive witness protection programme should be framed. The government should provide sufficient fund for this purpose. Witness protection programme should be extended not to the witnesses but their other family members and relatives who are under threat of their lives. Witness protection measures include relocation of witnesses, change of identity, police escorts and financial assistance. In relocation of witnesses, witnesses are removed together with their families from the place where they live to a place where they are not easily recognized. Relocation of witnesses will depend upon many factors including seriousness of the offence.

However, it is the need of the hour to enact a law which will preserve and protect rights and interests of victims and witnesses. It should be kept in mind by protecting witnesses we are not showing favour to them, rather this is the duty of the state. This will allow victims and witnesses to participate in the legal process without fear and favour making the justice delivery system impartial, dependable, authentic, trustworthy and reliable. Protection may be given to them before, during and/or after the judicial proceedings which will depend upon nature of risks associated, type of witnesses and gravity of the offence etc. Provision of speedy trial and quick disposal of cases should be incorporated so that the protected witnesses can complete their deposition as soon as possible. Unnecessary adjournment of case should be prohibited and it can only be allowed in exceptional circumstances. Discretion should be given to the court to keep secret the address and identity of the witnesses if the situation so warrant. Witnesses should be treated with dignity and respect should be shown to them in the court. A special officer should be appointed to assist them. A separate room should be given to them along with basic facilities of water, air and urinal etc. They should be compensated for their expenditure and they should be paid allowance on each and every day basis. The court should be very vigilant towards the protection and safety of the witnesses and should also prevent their harassment. Provision of trial in camera and trial through video conferencing should be incorporated. In appropriate situation court should give direction in this regard. At present, there is no special arrangement in the court premises for handicapped, old aged, child and infirm witnesses. But, they may be witnesses any time in any criminal and civil cases. The existing witness box system in Indian Courts is not suitable for these persons. The new law should incorporate the provision for protection of witnesses who are vulnerable in the society. The law should contain detail mechanism and process to protect witnesses and victims in this regard. Police personnel have an important role to play in witness protection programme. So the law must assign the responsibility of the police in witness protection programme and they must discharge their functions accordingly.

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<sup>59</sup> . (2003)ILR 2Delhi377.



However, several reports of the Law Commission of India and other commissions have also suggested to enact a law in this regard. Indian Judiciaries, in different judgements, have also expressed views in favour of a strong law to protect witness. If we are really interested to give respect to our Constitution and to protect the weaker section, poor, downtrodden and helpless then reform in criminal justice system is sine qua non. Steps should immediately be taken by the government to enact a law to protect the victims and witnesses in our country and thereby making a strong criminal justice delivery system in India. Otherwise justice delivery system will be at stake, rule of law will be farce, our judicial system and courts will be on trial and will fail and injustice in the name of justice will prevail. Finally, this national injustice will be the surest road to national downfall.

In fine, I put my inmost appeal to the concerned authorities and to the government to take appropriate steps in this direction. Because, any further delay will only aggravate the situation.