

Law Audience Journal, Volume 5 & Issue 1, 6th April 2023,
e-ISSN: 2581-6705, Indexed Journal, Impact Factor 5.497, Published at
<https://www.lawaudience.com/volume-5-issue-1/>, Pages: 151 to 166,

Title: “Witness Protection and its expansion to Vulnerable Witness”,
Authored By: Mr. Venkatesh Kirti (LL.M), Chanakya National Law University,
Patna,

Email Id: venky.cnlu@gmail.com,



Cite this article as:

MR. VENKATESH KIRTI, “*Witness Protection and its expansion to Vulnerable Witness*”, Vol.5 & Issue 1, Law Audience Journal (e-ISSN: 2581-6705), Pages 151 to 166 (6th April 2023), available at
<https://www.lawaudience.com/witness-protection-and-its-expansion-to-vulnerable-witness>.

*Law Audience Journal, Volume 5 & Issue 1, 6th April 2023,
e-ISSN: 2581-6705, Indexed Journal, Impact Factor 5.497, Published at
<https://www.lawaudience.com/volume-5-issue-1/>, Pages: 151 to 166,*

*Title: “Witness Protection and its expansion to Vulnerable Witness”,
Authored By: Mr. Venkatesh Kirti (LL.M), Chanakya National Law University,
Patna,*

Email Id: venky.cnlu@gmail.com,

Publisher Details Are Available At:

<https://www.lawaudience.com/publisher-details/>

Editorial Board Members Details Are Available At:

<https://www.lawaudience.com/editorial-board-members/>

| Copyright © 2023 By Law Audience Journal |

(E-ISSN: 2581-6705)

All Copyrights are reserved with the Authors. But, however, the Authors have granted to the Journal (**Law Audience Journal**), an **irrevocable, non-exclusive, royalty-free and transferable license to publish, reproduce, store, transmit, display and distribute** it in the Journal or books or in any form and all other media, retrieval systems and other formats now or hereafter known.

No part of this publication may be reproduced, distributed, or transmitted in any form or by any means, including photocopying, recording, or other electronic or mechanical methods, without the prior written permission of the publisher, except in the case of brief quotations embodied in critical reviews and certain other non-commercial uses permitted by copyright law.

For permission requests, write to the publisher, subject of the email must be **“Permission Required”** at the email addresses given below.

Email(s): lawjournal@lawaudience.com, info@lawaudience.com,
lawaudience@gmail.com.

Phone: +91-8351033361,

Website: www.lawaudience.com.

Facebook: www.facebook.com/lawaudience.

Instagram: www.instagram.com/lawaudienceofficial.

Contact Timings: 5:00 PM to 9:00 PM.

***Law Audience Journal, Volume 5 & Issue 1, 6th April 2023,
e-ISSN: 2581-6705, Indexed Journal, Impact Factor 5.497, Published at
<https://www.lawaudience.com/volume-5-issue-1/>, Pages: 151 to 166,***

***Title: “Witness Protection and its expansion to Vulnerable Witness”,
Authored By: Mr. Venkatesh Kirti (LL.M), Chanakya National Law University,
Patna,***

Email Id: venky.cnlu@gmail.com,

DISCLAIMER:

*Law Audience Journal (e-ISSN: 2581-6705) and Its Editorial Board Members do not guarantee that the material published in it is 100 percent reliable. You can rely upon it at your own risk. But, however, the Journal and Its Editorial Board Members have taken the proper steps to provide the readers with relevant material. Proper footnotes & references have been given to avoid any copyright or plagiarism issue. Articles published in **Volume 5 & Issue 1** are the original work of the authors.*

*Views or Opinions or Suggestions (**if any**), expressed or published in the Journal are the personal point of views of the Author(s) or Contributor(s) and the Journal & Its Editorial Board Members are not liable for the same.*

While every effort has been made to avoid any mistake or omission, this publication is published online on the condition and understanding that the publisher shall not be liable in any manner to any person by reason of any mistake or omission in this publication or for any action taken or omitted to be taken or advice rendered or accepted on the basis of this work.

All disputes subject to the exclusive jurisdiction of Courts, Tribunals and Forums at Himachal Pradesh only.

***Submit your article(s) for Publications at lawaudience@gmail.com, or
lawjournal@lawaudience.com, with subject as “Submission of Paper(s)
for Publication in Law Audience Journal”.***

**Title: “Witness Protection and its expansion to Vulnerable Witness”,
Authored By: Mr. Venkatesh Kirti (LL.M), Chanakya National Law University,
Patna,**

Email Id: venky.cnlu@gmail.com,

ABSTRACT:

“In the criminal justice system, witnesses and their testimonies are crucial in determining the outcome of a case. Witnesses, who are the most important actors in the procedure, are frequently threatened or encouraged to amend or withdraw their testimony by the parties involved in the case. As a result, cases do not achieve a true and sensible conclusion. In their pursuit of justice, victims are let down by the judicial system. In comparison to the accused's extensive rights, the rights granted to witnesses and victims are extremely limited. As a result, safeguarding witnesses becomes critical to achieving the criminal justice system's primary goal.

While there has been significant progress in criminal jurisprudence regarding the rights of the accused, the concept of a fair trial, and evidentiary admissibility, the witness has long been an avoided creature. A fair trial requires a triangulation of the interests of the accused, the victim, and the witness, yet there is a mismatch between the rights of the accused and the witnesses. The accused are entitled to a fair and public trial, freedom of expression and information, and the ability to have evidence recorded in their presence, but these rights are not absolute and may be revoked in the interest of justice. Witness protection programmes are required to achieve a balance in a trial between the rights of the accused and the rights of the witnesses”.

I. INTRODUCTION:

The role of a witness is critical in any country's criminal justice system. Bentham stated in this context that witnesses are the eyes and ears of justice. Their every remark is crucial because it has the power to influence the course of the entire case. A witness, in addition to the complainant and the accused, is thus a crucial party in a case. By testifying about the commission of an offense, he fulfills a sacred duty of assisting the court in discovering the truth. *“Because of this, the witness either takes an oath in God's name or solemnly affirms to say the truth, the whole truth, and nothing but the truth. He or she serves a vital public function by assisting the court in determining the guilt or innocence of the accused in the case. He submits to cross-examination and is not permitted to refuse to answer questions on*

***Title: "Witness Protection and its expansion to Vulnerable Witness",
Authored By: Mr. Venkatesh Kirti (LL.M), Chanakya National Law University,
Patna,***

Email Id: venky.cnlu@gmail.com,

*the grounds that the response will incriminate him."*¹ The capacity of a witness to testify in court or cooperate with law enforcement investigations without fear of intimidation or retaliation is critical to the rule of law. Countries are increasingly creating legislation or implementing policies to protect witnesses whose cooperation with law enforcement agencies or testimony in court would jeopardize their lives or the lives of their families. Protection can be as basic as giving a police escort to the courthouse, providing temporary lodging in a safe house, or using current communications technology (*such as videoconferencing*) for testifying. However, there are circumstances where a witness's cooperation is vital to successful prosecution, but the reach and strength of the threatening criminal gang is so formidable that extreme measures are required to secure the witness's safety.

II. WITNESSES AND THEIR ROLE:

Any person who is acquainted with the facts and circumstances, or who 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, make a statement, or produce any document during such investigation, inquiry, or trial, including a victim of such offence, is a witness.² Witnesses play a crucial role in the administration of justice. His participation is critical both throughout the inquiry and during the trial.³ The investigation of a crime may not be completed logically if the witness does not actively participate. In *Swaran Singh vs. State of Punjab*⁴, Wadhwa J. stated that "*a criminal case is built on the edifice of evidence, evidence that is admissible in law. Witnesses are required for this, whether direct or circumstantial proof.*" However, due to flaws in the criminal justice system's machinery, most witnesses are unable to do this role as they become hostile for a variety of reasons.

¹ Committee on Reforms of Criminal Justice System, Headed by Justice Malimath, Volume I, Page 151.

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

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

⁴ (2000)5 SCC 668.

***Title: “Witness Protection and its expansion to Vulnerable Witness”,
Authored By: Mr. Venkatesh Kirti (LL.M), Chanakya National Law University,
Patna,***

Email Id: venky.cnlu@gmail.com,

III. WITNESS PROTECTION:

While there has been considerable development in the criminal jurisprudence around the rights of the accused, the concept of a fair trial and admissibility of evidence, the witness has for long been an avoided entity. A fair trial is one which entails a triangulation of interests of the accused, the victim and the witness, but there exists a mismatch of rights between the accused and the witnesses.⁵The accused are entitled to, a fair and public trial⁶, the freedom of expression and information⁷, to have evidence recorded in their presence⁸but these rights are not absolute and maybe withdrawn in the interest of justice.⁹. Witness protection programs are necessary to strike a balance between the rights of the accused and the witnesses in a trial. Though witnesses by deposing before a court carry out a service to the State, out of which they obtain no personal benefit, the State seems to have no obligation to provide security to witnesses in the legal scheme. Their rights are almost non-existent and protection under the law meager. There are no concrete provisions in the law to protect the witnesses from external threats, inducements or intimidation and also no clear-cut legislation to punish or deal with a hostile witness.¹⁰ Witnesses turn hostile under monetary incitements or under threat, intimidation from defense especially when the accused wields power. Sometimes witnesses refuse to depose out of fear of becoming a target due to lack of rights and protection or even out of hesitation to be involved in the long and cumbersome judicial process. Witness protection is thus necessary to prevent hostility of witnesses and to ensure a fair trial. The question of why witness protection program was the need of the hour in India has been in discussion since 1958 when the law commission in its 14th report examined the factors that prevented witnesses from deposing before a court. Since then, the Apex Court, the law commission and several other committees have deliberated upon ‘Witness Identity Protection and Witness Protection Programs’ and have in their judgments and reports have

⁵ *Zahira Bibi Sheikh v. State of Gujarat*, 2004 CriLJ 771.

⁶ International Covenant on Civil and Political Rights 1966, Article 14.

⁷ The Constitution of India, Article 19 (1)(a).

⁸ The Criminal Procedure Code 1973, s. 273.

⁹ The Law Commission of India, *Witness Identity Protection and Witness Protection Programs* (Law Com No.198, 2006), p.85.

¹⁰ *Ramesh and Others v. State of Haryana*, (2017) 1 S.C.C. 529.

***Title: "Witness Protection and its expansion to Vulnerable Witness",
Authored By: Mr. Venkatesh Kirti (LL.M), Chanakya National Law University,
Patna,***

Email Id: venky.cnlu@gmail.com,

emphasized on its requirement, suggested a framework and extensively discussed its application in India drawing inspiration from the 'Witness Protection Program' models of countries such as New Zealand, Netherlands, UK, USA to name a few.

IV. VULNERABLE WITNESS AND EXPANSION OF THE MEANING:

Minors under the age of 18 who are unable to testify or produce evidence in court due to extra problems such as mental diseases, physical disabilities, or an inability to function due to intellectual disability. These people are referred to as Vulnerable Witnesses. Furthermore, they included witnesses suffering from mental diseases, those who saw a threat to themselves or others, and victims of sexual abuse of any age or gender. The Union Government's 2018 Witness Protection Scheme currently includes these categories. For the first time, the Supreme Court broadened the concept of a "vulnerable witness" to include individuals who record testimony in civil proceedings, such as family disputes, and those heard by Juvenile Justice Boards (JJBs), which deal with runaway and delinquent children. A bench led by Justice D.Y. Chandrachud issued detailed instructions in January 2022 for the implementation of a *Vulnerable Witness Deposition Centre (VWDC)* scheme in every high court. The bench also established a committee to supervise the process, which would be overseen by former Jammu and Kashmir High Court Chief Justice Gita Mittal¹¹.

The January order further broadened the definition of a "vulnerable witness," which is contained in Delhi High Court guidelines used by district courts in the Capital to record testimony of "vulnerable witnesses." It stated that the definition should cover not only people under the age of 18, but also sexual assault victims of either gender, as well as those suffering from mental illness, a witness with danger perception, and those who are deaf or have any other impairment. In its most recent order, issued on April 8, 2022, the Supreme Court

¹¹ SC expands 'vulnerable witness' definition, those in civil cases, family matters join list too, <https://theprint.in/judiciary/sc-expands-vulnerable-witness-definition-those-in-civil-cases-family-matters-join-list-too/920842/>.

***Title: "Witness Protection and its expansion to Vulnerable Witness",
Authored By: Mr. Venkatesh Kirti (LL.M), Chanakya National Law University,
Patna,***

Email Id: venky.cnlu@gmail.com,

directed that the use of VWDCs (*Vulnerable Witness Deposition Centers*) be permitted in other jurisdictions as well. Only a witness deposing in a criminal case is considered a "vulnerable witness" under the current definition, subject to meeting the criteria outlined in the high court's January decision. Following this month's order, persons testifying in civil trials can also record their statements using the VWDCs program. "*Permission should be granted for recording the evidence of vulnerable witnesses in all cases,*" the court ruled. This means that VWDCs will now be permitted in additional jurisdictions, such as civil, family, and juvenile justice boards, as well as courts. The court's decision to expand the VWDC system outside criminal jurisdiction is based on Justice Mittal's latest report, which she presented to the bench this month, in which she referenced the opinions of health experts to argue for the scheme's expansion beyond criminal jurisdiction. "*It is critical to recognize that vulnerable witnesses interact with the court system in multiple jurisdictions,*" Justice Mittal's report stated. "*Health experts have opined that the adverse impact of court appearances by vulnerable witnesses remains serious and grave, regardless of the jurisdiction in which such a witness testifies,*" it continued.

V. THE LAW COMMISSION REPORTS:

The 14th Law Commission was the first to identify witnesses as legal entities entitled to dignity, rights and protections. In its report the commission noticed that there was '*inadequate arrangements for witnesses in the Courthouse*'.¹² In many states, witnesses have to wait under trees in the Court grounds or in the verandah's of the court house exposed to the elements. The Commission In some courts witnesses are herded together as cattle in structures known as witness sheds and wait for hours before they are taken into the court room. Witnesses are also not provided with travel allowances and are rarely compensated for their travel expenses which is gravely inconvenient and unjust to a witness especially those of lower means who have to frequent the court due to constant adjournments. The Commission sated that courts must ensure that '*due respect is rendered to the convenience and comfort of*

¹²The Law Commission of India, *Reforms in Judicial Administration* (Law Com No, 14, 1958) P.687-689.

***Title: “Witness Protection and its expansion to Vulnerable Witness”,
Authored By: Mr. Venkatesh Kirti (LL.M), Chanakya National Law University,
Patna,***

Email Id: venky.cnlu@gmail.com,

witnesses and must be provided with compensation for sparing their valuable time’.¹³ The commission further opined that if such conveniences are not provided, witnesses have no incentive and may become indifferent to assisting the court in the dispensation of justice. While the 14th Law Commission report focused on harassment and ill-treatment of witnesses the 42nd report highlighted the issue of the growing frequency of threats being meted out to witnesses discouraging them to depose before the court. In the report, the commission proposed the addition of three new sections to the Indian Penal Code¹⁴, one of which penalized the act of interfering with the witness. The proposed provision i.e., Section 229-A read, ‘Whoever, by threats, bribes or other corrupt means, dissuades or attempts to dissuade any person from giving evidence before a public servant, legally competent to examine him as a witness, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.’¹⁵

The commission also opined that merely punishing the offender was not sufficient. It observed that in order to eradicate the problem of hostile witnesses, they must be ensured adequate relief and protection in the form of identity security, anonymity and physical protection. The 154th law commission referring to the 14th law commission report stated that there was ‘plenty of justification for the reluctance of witnesses to come forward to attend Court promptly in obedience to the summonses. The Law Commission was of the view that inconveniences meted out to the witnesses coming to courts, lack of facilities to the witnesses, frequent adjournments and inadequate allowances are the reasons behind the reluctance of the witnesses to cooperate with the law enforcement agencies¹⁶. The commission considered the plight of the witnesses who were caught between the devil and the deep sea for they would have to bear the penalty if they refused to depose but would have to incur the wrath of the accused (specifically if they are government higher-up or habitual or hardened criminals), putting their life at peril, if they deposed incriminating the

¹³*Id.* p.670.

¹⁴The Law Commission of India, ‘*Indian Penal Code* (Law Com No. 42, 1971), pp. 206-207.

¹⁵*Id.* p.207.

¹⁶The Law Commission of India, ‘*The Code of Criminal Procedure*’ (Law Com No. 154, 1996), p.62.

***Title: “Witness Protection and its expansion to Vulnerable Witness”,
Authored By: Mr. Venkatesh Kirti (LL.M), Chanakya National Law University,
Patna,***

Email Id: venky.cnlu@gmail.com,

accused. The Commission observed that it is necessary to build confidence in the system of criminal trial and laid down the following recommendations for better protection and convenience of witnesses.

- *‘The allowances payable to the witnesses for their attendance in courts should be fixed on a realistic basis and that payment should be affected through a simple procedure which would avoid delay and inconvenience.*
- *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.*
- *Listing of the cases should be done in such a way that the witnesses who are summoned are examined on the day they are summoned and adjournments should be avoided meticulously.’¹⁷*

However, the law commission in its 154th report failed to elucidate the criteria and framework for providing protection to the witnesses. The concept of witness protection was further discussed, rather narrowly in the 172nd Law Commission Report which was the result of a writ petition¹⁸ filed by a women’s group, Sakshi which demanded that amendments be made to the Indian Penal Code, Indian Evidence Act and the Criminal Procedure Code. The Supreme Court requested the Law Commission ‘to examine the issues submitted by the petitioners and examine the feasibility of making recommendations for amendments of the Indian Penal Code or to deal with the same in any other manner so as to plug the loopholes.’ The petitioner prayed for an amendment in the definition of the term ‘sexual intercourse’ and also requested that where the witness or victim to a sexual assault is a minor; he/she shall not be compelled to give oral evidence in the presence of the accused as this would be traumatic to the minor. The petitioner requested that the law be amended for such procedure to take

¹⁷Law Commission of India, *The Code of Criminal Procedure* (Law Com No.154, 1996) p. 78.

¹⁸*Sakshi v. Union of India*, 2004(6) SCALE 15.

***Title: “Witness Protection and its expansion to Vulnerable Witness”,
Authored By: Mr. Venkatesh Kirti (LL.M), Chanakya National Law University,
Patna,***

Email Id: venky.cnlu@gmail.com,

effect. Under section 273 of the Code of Criminal Procedure all evidence is to be recorded in the presence of the accused, but *‘the Law Commission took the view that this general principle, which is founded upon natural justice, should not be done away with altogether in trials and enquiries concerning sexual offence. However, in order to protect the child, witness the Commission recommended that it may be open to the prosecution to request the Court to provide a screen in such a manner that the victim does not see the accused, while at the same time providing an opportunity to the accused to listen to the testimony of the victim and give appropriate instructions to his advocate for an effective cross-examination’*.¹⁹

The law commission recommended the insertion of a provision to section 273 which read, *‘Provided that where the evidence of a person below sixteen years who is alleged to have been subjected to sexual assault or any other sexual offence, is to be recorded, the Court may, take appropriate measures to ensure that such person is not confronted by the accused while at the same time ensuring the right of cross-examination of the accused’*²⁰.’ The commission opined that the screening technique need not be confined to minor witnesses in cases of sexual assault but may also be applied for by the prosecution for the protection of their witnesses by concealing the identity of the witness. The 178th report of the Law Commission found a brief mention of the issue of witness hostility where the commission observed, *‘the experience shows that where the accused happens to be rich and/ or influential person or member 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.’*²¹ **The Law Commission its report laid down the following recommendation to prevent witnesses from turning hostile,**

- *Introducing certain checks so that witnesses do not turn hostile, such as taking the signature of a witness on his police statement and sending it to an appropriate Magistrate and a senior police officer.*

¹⁹The Law Commission of India, *Review of Rape Laws*(Law Com No, 172, 2000) p.83.

²⁰*Id.*84.

²¹The Law Commission of India, *Recommendations for Amending various Enactments, both Civil and Criminal* (Law Com No. 178, 2001), p.62.

***Title: “Witness Protection and its expansion to Vulnerable Witness”,
Authored By: Mr. Venkatesh Kirti (LL.M), Chanakya National Law University,
Patna,***

Email Id: venky.cnlu@gmail.com,

- *In all serious offences, punishable with ten or more years of imprisonment, the statement of important witnesses should be recorded, at the earliest, by a Magistrate under Section 164 of the Code of Criminal Procedure, 1973.*

While it identified the existence of a problem, in its report the Commission did not take into consideration the physical protection or method of maintaining the anonymity of the witnesses. Perhaps the most comprehensive of the law commission reports on the subject of witness protection, is its 198th report. The law commission dealt with aspects of ‘Witness Identity Protection and Witness Protection Programs’. Witness Identity Protection involves taking steps to maintain the anonymity and conceal the identity of the witness from the accused and his lawyer. By this method of witness protection, the screen technique is used and their name does not appear on documents of the court. ***The Law Commission was of the opinion that not all witnesses require the same degree of protection, for this, the commission classified witnesses into 3 categories:***

1. *Victim-witnesses who are known to the accused;*
2. *Victims-witnesses not known to the accused;*
3. *Witnesses whose identity is not known to the accused.*

Category (1) requires protection from trauma and categories (2) and (3) requires protection against disclosure of identity. In category (i) above, as the victim is known to the accused, there is no need to protect the identity of the victim but still the victim may desire that his or her examination in the Court may be allowed to be given separately and not in the immediate presence of the accused because if he or she were to depose in the physical presence of the accused, there can be tremendous trauma and it may be difficult for the witness to depose without fear or trepidation. But, in categories (ii) and (iii), victims and witnesses who are not known to the accused have a more serious problem if there is likelihood of danger to their lives or property or to the lives and properties of their close relatives, in case their identity kept secret at all stages of a criminal case, namely, investigation, inquiry and trial.”²²

²² Law Commission of India, *Witness Identity Protection and Witness Protection Programs*(Law Com No. 198, 2006)p. 92.

***Title: “Witness Protection and its expansion to Vulnerable Witness”,
Authored By: Mr. Venkatesh Kirti (LL.M), Chanakya National Law University,
Patna,***

Email Id: venky.cnlu@gmail.com,

According to the report protection must be provided to witnesses over three stages- before trial, during trial (*while recording evidence*) and after trial. The Commission has recommended the adoption of in-camera sessions, anonymity and concealment of identity as methods to protect witnesses before and during trial and the creation of ‘Witness Protection Programs’ for protection of witnesses post-trial i.e., outside the court. The objective of Witness Protection Programs is to make the witness disappear and to make them untraceable. Under these programs, witnesses whose life and property are under threat or where there exists potential for threat due to a deposition, such witnesses are provided with a new name and identity and re-located to another State or Country to protect them from the accused. The Commission suggested the following model of Witness Protection Programs to be adopted in India, *‘At the instance of the public prosecutor, the witness can be given a new identity by a Magistrate after conducting an ex parte inquiry in his chambers. In case of likelihood of danger of his life, he is given a different identity and may, if need be, even relocated in a different place along with his dependents till the trial of the case against the accused is completed. The expenses for maintenance of all the persons must be met by the State Legal Aid Authority through the District Legal Aid Authority. The witness has to sign a Memorandum of Understanding (MOU) which will list out the obligations of the State as well as the witness. Being admitted to the program, the witness has an obligation to depose and the State has an obligation to protect him physically outside Court. Breach of MOU by the witness will result in his being taken out of the program.’*²³ The Witness Protection Scheme, 2018 is vaguely based on the categorizations and the framework proposed in the 198th Law Commission Report.

VI. JUDICIAL TRENDS:

The Supreme Court of India and High Courts in the country have over the years through their judgment emphasized on the importance of witness protection for a fair trial and their favour towards the adoption of ‘Witness Protection Programs’ in India. The prime objective of any Court is to arrive at the truth. When witnesses due to external influence fear and intimidation do not depose truthfully, it defeats the purpose of a trial and does a great injustice to the

²³*Id.p.95.*

***Title: “Witness Protection and its expansion to Vulnerable Witness”,
Authored By: Mr. Venkatesh Kirti (LL.M), Chanakya National Law University,
Patna,***

Email Id: venky.cnlu@gmail.com,

victims and to the witness themselves. In the landmark case of *Neelam Katara vs. Union of India*,²⁴ the Supreme Court while stressing on the importance of an environment of judicial calm during trial, stated that, *if witnesses are deposing under fear or intimidation or for favour or allurements, the foundation of administration of justice not only gets weakened, but it may even get obliterated.* In *Swaran Singh vs. State of Punjab*²⁵, it was held, ‘when a witness is threatened, maimed, done away with or even bribed and there is no protection for him, the purpose of a criminal jurisprudence is defeated’. In the case of *Talab Haji Hussain vs. Madhukar Purushottam Mondka*²⁶, the Supreme Court observed that ‘witnesses should be able to give evidence without inducement or threat either from the prosecutor or the defence’.

The Supreme Court in the case of *Zahira Bibi Sheikh vs. State of Gujarat*, emphasized on the need for witness protection programs to ensure a fair trial, stating that, *if the witnesses get threatened or are forced to give false evidence that also would not result in a fair trial.* Further, the Court emphasized on the role of the State in protecting witnesses. The court opined that the State has a constitutional obligation to protect the life and liberty of citizens, and all witnesses are citizens entitled to protection of life, limb and property. The Court held that ‘the State has to ensure that during the trial in the Court the witness could safely depose the truth without any fear of being haunted by those against whom he had deposed’. The Court opined that ‘Witness protection programs are imperative as well as imminent in the context of alarming rate of somersaults by witnesses’. In *Hira Nath Mishra vs. Principal, Rajendra Medical College*²⁷, the court held that care must be taken in cases where the accused is a hardened criminal, to ensure that the identity of witnesses is not exposed. In the case of *National Human Rights Commission vs. State of Gujarat*²⁸, highlighted the legislative void on the subject of witness protection and emphasized on the necessity of the immediate introduction of legislation for the protection of witnesses. The Court stated, ‘No law has yet been enacted, not even a scheme has been framed by the Union of India or by the

²⁴ILR. (2003) II Del. 377.

²⁵1957 AIR 637.

²⁶AIR 1958SC 374.

²⁷AIR 1973 SC 1260.

²⁸Writ Petition(s)(Criminal)No(s).109/2003.

***Title: “Witness Protection and its expansion to Vulnerable Witness”,
Authored By: Mr. Venkatesh Kirti (LL.M), Chanakya National Law University,
Patna,***

Email Id: venky.cnlu@gmail.com,

State Government for giving protection to the witnesses. Legislative measures to emphasize prohibition against tampering with witnesses, victims or informants, have become imminent and inevitable need of the day’. In the *Delhi Domestic Working Women’s Forum v. Union of India*²⁹, the Supreme Court, while indicating the broad parameters that can assist the victims of rape, emphasized that in all rape trials “anonymity” of the victims and witnesses must be maintained as far as necessary so that the name is shielded from the media and public.

Obligation of Police:

- While recording statement of the witness Under Section 161 Cr.P.C., it will be the duty of the Investigating Officer to make the witness aware of the “Witness Protection Guidelines” and also the fact that in case of any threat he can approach the Competent Authority. This the Investigation Officer will inform in writing duly acknowledged by the witness.
- It shall be the duty of the Commissioner of Police to provide security to a witness in respect of whom an order has been passed by the Competent Authority directing police protection.’

15 years after, the Delhi High Court laid down these guidelines, the Witness Protection Scheme, 2018 was passed by the legislature propelled by the circumstances of *Prem Chand vs. State of NCT Delhi*³⁰. During the trial of this case, a witness was shot dead inside the court complex for having refused to turn hostile, despite having a police escort. The court held that these incidents pose a ‘grave threat to security of Courts and interfere with the administration of justice’. Such incidents affect the ‘willingness of witnesses to state the truth’. The Apex Court issued a notice to the Union of India for the expeditious drafting of the scheme. Consequently, upon the order of the Ministry of Home Affairs, the NALSA and BPR&D drafted India’s First Witness Protection Scheme, 2018.

²⁹(1995) 1 SCC 14.

³⁰SLP (Cr) No. 647/2017.

**Title: “Witness Protection and its expansion to Vulnerable Witness”,
Authored By: Mr. Venkatesh Kirti (LL.M), Chanakya National Law University,
Patna,**

Email Id: venky.cnlu@gmail.com,

VII. WITNESS PROTECTION SCHEME, 2018:

Witnesses must be given full assurance of safety before coming forward to help law enforcement and judicial authorities. The scheme's goal and purpose are to ensure that the investigation, prosecution, and conviction of criminal offenses are not hampered because witnesses feel intimidated or fearful of giving evidence in the absence of protection from violent or other criminal consequences. The initiative aims to boost law enforcement by facilitating the protection of those who are directly or indirectly involved in giving support to criminal law enforcement authorities and the administration of justice in general. It establishes mechanisms to protect and secure witnesses and their family members against threats to their lives, reputation, and property. **The technique categorizes witnesses based on their threat perception. The three categories based on possible threat are as follows:**

- *Category A: Pertains to the scenario where the threat is graver and extends to life of a witness or his family members;*
- *Category B: Comprises that degree where threat is to the safety, reputation, property of witness or family members*
- *Category C: Comprises of the degree where threats are more moderate as compared to the threats conceptualized in the categories A and B. Category C extends to harassment or intimidation of the witness or his family members reputation*

Procedural Framework:

- *The first step involves the filing of an application for seeking a protection order before a competent authority as per jurisdiction. A ‘Competent Authority’ under the clause 7 of the definition clause includes, the Secretary, District Legal Services Authority (DLSA). The competent authority alone can pass witness protection order for the witness protection ,issue orders for protection of identity/change of identity/relocation of a witness, categorization of threat, duration and types of protection to be rendered.*
- *Upon receiving an application for protection of witness, the competent authority may pass an order for a Threat Analysis Report from the Commissioner of Police of the district where the case is being investigated. Depending upon the degree of imminent*

***Title: “Witness Protection and its expansion to Vulnerable Witness”,
Authored By: Mr. Venkatesh Kirti (LL.M), Chanakya National Law University,
Patna,***

Email Id: venky.cnlu@gmail.com,

threat, the Authority may pass an interim protection order for the witness and family members during the pendency of the application.

- The Threat Analysis Report must be prepared in full confidentiality and expeditiously within five days of receipt of the order. The report must categorize the degree of threat perception and shall provide suggestive measure for providing adequate protection to the witness and their family.*
- In order to ascertain the degree of protection requirement of the witness, during the processing of the application, the Competent Authority shall interact with the witness and their family members in person or through electronic means.*
- All the hearings on Witness Protection Application shall be held in-camera by the Competent Authority while maintaining full confidentiality.*
- An application shall be disposed of within five working days of receipt of Threat Analysis Report from the Police authorities.*
- The Witness Protection Order passed by the Competent Authority shall be implemented by the Witness Protection Cell of the State or Union Territories. While the overall responsibility of implementation of the scheme lies upon the Head of Police in the State, orders passed by the authority for change of identity or relocation shall be implemented by Department of Home of the State or Union Territory.*
- Upon passing of a Witness Protection Order, the Witness Protection Cell shall file a monthly follow-up report before the Competent Authority.*
- In case the Competent Authority finds that there is a need to revise the Witness Protection Order or an application is moved in this regard, a fresh Threat Analysis Report may be called for from the Commissioner of Police in the District.*
- Review can be filed before the Competent Authority within 30 days, and an appeal can be filed before the Chairperson of DLSA in case aggrieved by the review order passed by Secretary, DLSA. The appeal against the orders passed by Competent Authority under Parts IV & V of the Scheme can be filed before Member Secretary, State Legal Services Authority.*

*Title: “Witness Protection and its expansion to Vulnerable Witness”,
Authored By: Mr. Venkatesh Kirti (LL.M), Chanakya National Law University,
Patna,*

Email Id: venky.cnlu@gmail.com,

One of the salient features of the scheme is the State Witness Protection Fund, put in use for all the expenses incurred in the witness protection procedure. The sources of the State Witness Protection Fund are: Budgetary allocation made in the Annual Budget by the State Government; Receipt of amount of fines imposed (under Section 357 of the CrPC) ordered to be deposited by the courts or tribunals in the Witness Protection Fund; Donations or contributions from International/National/Philanthropist/Charitable Institutions/Organizations and individuals permitted by Central/State Governments and Funds contributed under Corporate Social Responsibility scheme. In case the witness has lodged a false complaint, the State Legal Service Authority can initiate proceedings for recovery of the expenditure incurred to recoup the Witness Protection Fund.

VIII. CONCLUSION:

While the Scheme was written with the best intentions of conferring rights on and protecting witnesses before, during, and after the trial, there appear to be some inherent weaknesses and loopholes in the Scheme that do not inspire confidence in its efficiency. One of the most erroneous assumptions made by the Scheme's drafters is that police officers are objective and sincere. A protection order is issued under the Scheme based on the Threat Analysis Report prepared by the Head of Police in each area. These police officers may be put under pressure to produce a false report and categorize the witness into the categories specified in the plan, particularly in cases involving powerful individuals such as politicians or business tycoons. No strategy can succeed if a corrupt administration or police department is given the authority to reduce threat perceptions and then categorize witnesses based on its findings. The second blunder is putting a time limit on the duration of protection. A protection order is only valid for three months, after which the witness is once again susceptible to the accused's threats. This makes it obsolete because the prospect of a threat from the accused cannot be eliminated once protection is withdrawn. Instead, then imposing a fixed cap on every witness, protection must be provided until it can be shown that there is no urgent or probable harm to the witness's life, limb, or property. Where the threat has ceased to exist, the witness's protection under the Scheme may likewise be seized. In addition, despite protection, the

***Title: “Witness Protection and its expansion to Vulnerable Witness”,
Authored By: Mr. Venkatesh Kirti (LL.M), Chanakya National Law University,
Patna,***

Email Id: venky.cnlu@gmail.com,

Scheme does not sanction threats made to witnesses. The third problem is a lack of infrastructure for the Scheme's implementation. The functional criminal justice system is the duty of the state, and certain states may lack sufficient resources to adequately administer this scheme. Lower courts, where all witnesses must attend, may lack the infrastructure to meet the Witness Protection Scheme's purpose.

