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# Efficacy of Witness: A Study from International Perspective

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## ABSTRACT

*In modern times, when organized crimes have enhanced and are becoming dreadful it is the obligation of the state to afford effective protection to the witnesses as they perform the sacred duty of helping out the courts to discover the truth. For the up keeping of the rule of law everyone is entitled to fair trial as it is a fundamental right originating from Article 21 of the Constitution of India and also considered as a human right. It averts the miscarriage of justice. It has been examined that witnesses turn inimical especially in high profile cases, either because of any reprisal or other alluring proposals which ruptures the integrity of the criminal justice system. The society thus holds the perception that the mighty can always get away from the clutches of law. In an effort to rejuvenate people's faith in the criminal justice system they should be assured that state has an obligation to protect them while assisting it in the administration of justice. It is pivotal to state that the statement adduced by the witness aids the court sum up with a rational or judicious decision. In the course of investigation and trial of such crimes, it is crucial that witnesses have confidence in the authority as the statement adduced by them has a catalytic force which can determine the fate of the trial. The witness should be free from all fear and favor at the time of furnishing his testimony. In this article, the authors have endeavored to throw light on the definition of the term witness, framework and procedure of witness protection scheme in different countries. The researchers have made an attempt to draw a comparative study of the scheme among world's most developed, developing and under developed countries.*

**Keywords:** witness, efficacy of witness, witness protection.

## I. INTRODUCTION

The eminent jurist Mr. Jeremy Bentham has appropriately cited that the witnesses are the eyes and ears of justice<sup>3</sup> as their capacity to give testimony in a trial or to help out investigating officials and law enforcement organizations unafraid of terrorizing or retaliation is imperative in keeping up law and order. In cases of the abominable crimes, witnesses turn inimical due to

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<sup>3</sup> Expressed by great jurist Jeremy Bentham; Justice V.S Mallimath in the case of Mahender Chawla &Ors. Vs Union of India &Ors. Writ Petition (Cr) No. 156 Of 2016

threat to life, reputation and property. They feel that the state is not having legal obligations to stretch out security to them. The main causes for which witness turn inimical during trial are threat or intimidation, protracted trials, use of power by the accused or his subordinates, reprisals etc as concluded by the Supreme Court. The word Witness nowhere defined in Law. Oxford English Dictionary outlines Witness as “a person who sees an event takes place.” Black’s Law Dictionary identifies a witness as “a person who has knowledge of an event and has acquired the sense of a person who is present at and observes a transaction<sup>4</sup>.” The Delhi High Court in *Neelam Katara v. Union of India*<sup>5</sup>, has decisively worked out to demarcate witness as an individual whose statement is recorded as per section 161 of Code of Criminal Procedure by the investigating officer.

The Law commission of India in its 198th Report characterized witness very pertinently to incorporate, firstly, “an individual who is in knowledge of facts and circumstances or has any information or knowledge in his possession which may be crucial according to the perspective of investigating, conducting inquiry or trial of any offence including grave ones, and who may be expected to give information or give a statement or procure a document for investigation, inquiry or trial or secondly includes the victim of a serious crime”.

The United Nations Offices on Drugs and Crime (UNODC) has crafted a compilation of good practices in context of witness protection, where it has provided an inclusive demarcation of witness as any individual who is qualified of being admitted to the witness protection program and conforms with eligibility laid down by the concerned statute or policy of a state, independent of their status for example judicial authority, witness agent working undercover or any other person.” Witness Protection Scheme 2018 has defined the term witness as “who possesses any information or document about any offence”<sup>6</sup>.

### **(A) Objective**

The object of the scheme is to assure that the investigation, prosecution or trial of the offences is not influenced because of the intimidation or threats to the witnesses. The Central Government drew up this scheme with the recommendations from all the states, Union Territories, High Court, Police Personnel, National Legal Services Authorities, and civil society. The need to protect the witnesses was emphasized in the case *Zahira Habibulla H Sheik and Anr Vs. State of Gujarat*<sup>7</sup>. The Court held that it is the salutary duty of every witness

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<sup>4</sup>West Group. (1999). Black’s Law Dictionary. United states. Thomson Reuters

<sup>5</sup>CrI WP 247/2002

<sup>6</sup>Sec 2(k) of the Witness Protection Scheme 2018

<sup>7</sup>2004 (4)SCC 158 SC

to assist the state in furnishing evidence and “if the witnesses get threatened or were forced to give false evidence then the objective of fair trial will not be served which is against the essence of our Constitution”.

Therefore, in 2006 the criminal law amendment was introduced where sec 195 A was inserted to IPC which speaks that the offence of criminal intimidation of witness is punishable with seven years of imprisonment. Likewise the Juvenile Justice (care and Protection of children) Act, 2015, Whistle Blowers Protection Act 2011 and National Investigation Agency Act, 2008 also protects the witnesses against the threats and intimidation.

Strict Measures such as relocation of the witnesses under a new identity in an undisclosed place of residence, anonymity etc are required to be taken to safeguard the witnesses in complex cases as the corroboration by a witness helps the court for successful prosecution of a criminal group. As there was no such law comprehensively at the National Level to enforce measures to protect the witnesses so, NALSA and BPR&D<sup>8</sup> drafted the “Witness Protection Scheme” in 2018.

## **II. INTERNATIONAL PERSPECTIVE**

### **(A) Witness Protection Measures In International Criminal Tribunal For The Former Yugoslavia**

The ICTY and ICTR classify the witnesses into three kinds namely insider witnesses, perpetrator witnesses and expert witnesses. Insider witnesses are those persons who are close to the accused during the time of commission of crimes and they are the ones who can furnish the court with evidence about their activities and state of mind at the very time of execution of the offence. The evidence acquired from their testimony is essential to ascertain the charges of the accused. These accused are the ones standing firm in the high ranking position who are charged for scheming out the crimes and ordering others to perpetrate them. The Perpetrator witnesses are the accused by the Tribunal who have pleaded guilty to all or some of the charges they were charged with. They consent to testify for the prosecution to draw out the reality. They also assist the Court by imparting exclusive insight into the planning and perpetration of crimes on a massive scale by the political leaders, military and police officers. The Expert Witnesses are the professionals providing their expert opinion on areas relating to military doctrines, former Yugoslavia law, financial transactions, demographics, forensic evidences etc.

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<sup>8</sup>Meena, S.(2018). Bureau of Police Research and Development.[Online]. (Last Updated 2018). Available at: <https://bprd.nic.in/WriteReadData/CMS/Witness%20Protection%20Scheme-2018.pdf> [Accessed 31 August 2020].

They assist the judges to decide the circumstances in which the crimes were carried out, the accused authority over their subordinates, the identity of the victims found in mass graves, the number of victims killed in an area etc.

The principle of Fair Trial says that witnesses must testify in an open court but in exceptional cases the tribunal or the prosecutor may with the permission of the court take the testimony of witnesses in closed court by applying protective measures. Measures should be taken to prevent the disclosure of identity or the location of the victim or the witnesses by methods like expunging the names and recognizing them from the chamber's public records, non-disclosure of any records identifying the victim, giving testimony through image or voice altering devices or assignment of pseudonym, or closed sessions in accordance with rule 79. These measures will facilitate the testimony of the vulnerable victims and witnesses. The chamber shall take necessary steps to control the manner of questioning to dodge any harassment or intimidation.

### **(B) International Criminal Court**

Witness security is a challenging task in international criminal jurisdiction. The growth of comprehensive witness protection program was inevitable as it ranges from factors like ICC's international status, its dependence on live evidence and state enforcement system, lack of own machinery etc. it is the liability of the Chambers of the Tribunal to sanction protective measures. This task is also shared by the Prosecutor and the chambers along with the Registrar and Registry at the ICC and the Pre Trial Chambers.

Special units including security arrangements are established for the victims and witness issues in the respective Registries. For the purpose of avoiding secondary victimization, there are specialized Registry units which provide support just like social welfare services. The proceedings in the court create fear in the minds of the Victims and witnesses and lack of protection measures results in repudiation by them. Thus the witness protection measures should be carefully monitored. Measures should be taken to safeguard the privacy of the witnesses. The implementation of out of court security of the witnesses seems implausible without the cooperation of the concerned government agencies. In an effort to achieve minimum reliability on state agencies it is advised to refurbish an inexpensive alternative protection and investigation modus operandi. The prospective potential witnesses and highly susceptible witnesses are exposed to minimal contact and communication. Therefore various defensive and secret methods are adopted namely voice and image distortion, photo proscription, prohibiting media to enter into the court, in camera proceedings etc.

The section responsible for the protective measures is the Victim and Witnesses unit. It

exercises its functions and duties in accordance with the Article 43 paragraph 6 of the ICC statute. It should execute these affairs in consultation with the Chamber, the Prosecutor and the Defense as required. The protective measures to be taken are formulating short term or long term plans for witnesses and victims protection, recommending to the organs of the court to adopt these measures, assisting them in finding out the medical facilities, providing counsel with the advice of the prosecutor for amplification as well as code of conduct of various investigating agencies and NGOs involved in the program, taking gender sensitive measures to facilitate the testimony of victims of sexual violence at all the stages etc.

### **(C) Status Of Witness Protection In Various Countries**

#### **1. South Africa**

In Witness Protection Act, 2000, a national Office for witness Protection is created under the Authority of the Ministry of Justice and Constitutional Development. At the national level the head of office is National Director. It has branches in the nine provinces of South Africa. The Office, as an interim measure, was rearranged and named as the Witness Protection Unit in 2001 and was viewed as a piece of the National Prosecuting Authority till the legislative amendments in that behalf took place. The Director has certain powers being the head of the office. He has the sole authority to decide on the admission of a person to this program. Before he decides an application for admission, the National Prosecuting Authority (the head of the branch office) and other law enforcement officers present a report to the Head. The aggrieved person can appeal to the Minister of Justice and the Constitutional Development, if the application is rejected by the Director for any reason or where the witness is to be discharged from the program by serving a notice to him mentioning the reasons. The types of crimes for which a person can claim the protection are numbered in the Act. However the definition given in the Act is inclusive. The Director can grant a protection to a witness in crimes other than enumerated in the Act if the situation warrants so. The act also accentuates to quash any pending civil cases against the witness by hearing an ex parte application in order to avoid the disclosure of his identity or his location. The proceedings can be initiated against such person only in the Office for Witness Protection. The Act has specified strict punishments for any act of disclosure of identity or the whereabouts of a witness admitted in the program. The Head of the Office has the sole authority to decide if any information regarding the witness is to be unveiled but solely after the proper hearing and without contravention of any other law in existence. Ministry of Justice has the duty to make all the legal arrangements for the protection of witness outside the territory of the South Africa. For these arrangements it has to enter into agreement with other countries, international institutions and organizations etc.

## **2. Canada**

Lately Canada amended its witness protection which was aimed at the protection of concerned persons involved in the investigations, proceedings and trials. The purpose of the Act is to boost the law enforcement by expediting the protection of these persons involved in providing assistance in law enforcement matters. This legislation comprises of 21 sections which has been divided into two parts.

The Act defines the term “Witness” as “a person who has given or has agreed to give information or evidence or participates or who has agreed to participate in a matter, relating to an inquiry or the investigation or prosecution of an offence and who may require protection because of risk to the security of the person arising in relation to the inquiry, investigation or prosecution or a person who, because of their relationship to or association with a person referred to, may also require protection for the reasons referred to”.

The factors like the nature of the risk to the security of the witness, the danger to the community if the witness is admitted to the program, the nature of inquiry, investigation or prosecution involving witness and the importance of witness in the matter, the value of information or evidence given or agreed to be given or of the participation by the witness, the costs involved in the administration of witness protection program etc, shall be considered for deciding the admission of the witness to the program.

## **3. Australia**

The Parliament of Victoria, in Australia, has enacted an Act called as Witness Protection Act, 1991 to protect the witnesses in criminal proceedings. The term “Witness” is as ‘a person who has given or agreed to give, testimony on behalf of the Crown in proceedings before various authorities and who is in need of protection or assistance from the state’ . The Chief Commissioner of Police is enabled to take action for the protection of the witness and his family members. The order may consist establishing new identity, providing accommodation and transport facility to the witness or his family members, relocation of witnesses to a different place etc<sup>9</sup>. The Chief Commissioner of Police is empowered to decide whether a witness can be included in the Victorian witness protection program.<sup>10</sup> The Chief Commissioner of Police shall enter into a Memorandum of Understanding (MoU) with the witness for the purpose of providing protection to them.<sup>11</sup> This must include all the terms basing upon which the witness

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<sup>9</sup>Section 3A of the Witness Protection Act 1991 provides Victorian Witness Protection Program.

<sup>10</sup> Section 3B of the Witness Protection Act 1991

<sup>11</sup> Section 5 of the Witness Protection Act 1991

may be included in the Victorian Witness Protection Program and if the witness breaches it, it may lead to termination.

### **III. WITNESS PROTECTION SCHEME IN INDIA**

The Law Commission in its 14<sup>th</sup> Report noticed that there is no provision for convenience of the witnesses when they visit courts. The witnesses have to stick around under the trees or have to wait in the verandahs of the court houses. In some states they have witnesses shed which is roofed but uncovered on all sides which, in many places, used for other purposes of the court<sup>12</sup>. The Commission remarked that there should be provision of proper conveniences for the witnesses in the court houses. They should not be herded together and treated like cattle<sup>13</sup>.

In 1958, the Law Commission in its 14th Report discoursed on the issue of persecution and inconvenience caused to witnesses. The issue of threatening the witnesses was deliberated by it in its 42nd Report for the first time. The issue of menacing and bribing of witnesses has been cited in the chapter 11 of the report. The Commission proposed three new sections for penalizing certain unlawful acts which affect the proper administration of justice<sup>14</sup>. The first section proposed by the Commission dealt with interference with witnesses.

The Law Commission in its 154<sup>th</sup> report pointed out some reasons which are responsible for the reluctance of the witnesses to cooperate with the courts to meet the ends of the justice. The reasons were scanty allowance, frequent adjournments and lack of facilities. They have to also incur the wrath of the accused. The risk is inordinate when the accused is a hardened criminal. The main recommendations of the Law Commission are:-

1. Every measure necessary to create a good atmosphere instilling confidence in minds of the witnesses have to be executed.
2. By providing adequate protection for the witness and treating them in friendly manner, all the reluctance on the part of the witnesses should be eliminated.<sup>15</sup>
3. Confidence should be created in the minds of the witness that they would be protected from the accused in any circumstance.<sup>16</sup>

The Law Commission in its 198<sup>th</sup> report prepared a consultation paper on the Witness Identity Protection and Witness Protection Programs where it recommended about the witness anonymity and protection to their lives, property, relatives during the procedure of

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<sup>12</sup>The Law Commission of India. (1958). Reform of Judicial Administration (1958), pp 668-669.

<sup>13</sup>The Law Commission of India. (1958). Reform of Judicial Administration (1958), Pp 670

<sup>14</sup>The Law Commission of India. (1971). Indian Penal Code (1971), pp 206-207

<sup>15</sup>The Law Commission of India. (1971). Indian Penal Code (1971). pp 62

<sup>16</sup>The Law Commission of India.(1996).Code of Criminal Procedure,1973. pp 62



investigation, inquiry, trial and even after that. Basing on this report a bill was prepared named as Witness Protection Bill, 2015. In this bill it was mentioned that witnesses must be provided with a comprehensive witness protection program at all the stages of the case and even after the pronouncement of the judgement. After being admitted to the program, a report should be prepared for the judge of the trial court to examine and grant protection to them. This report should be prepared by the Witness Protection Cell. It was also mentioned in the bill that National Witness Protection Council and State Witness Protection Councils should be established for the smooth functioning of the witness protection program. Sufficient safeguards should be taken to ensure protection of Identity of witness. Measures for transfer of cases out of original Jurisdiction should be provided to ensure that they can depose freely. Those who contravene these provision must be dealt with strict punishment. The Bill was circulated to all the State Governments and the Administrators of the Union Territories. However no consensus was received on it as the police and public order are the state subjects under the seventh schedule of the Constitution according to which the responsibility of the protection of witness are the states and criminal law and criminal procedure are under concurrent list. Therefore the witness protection program was shelved. The Union Government directed the Bureau of Police Research and Development to scrutinize the issues regarding the feasibility of the program and also to examine the financial implications of the said scheme in 2016. The SC in *Mahendra Chawla and ors v Union of India*<sup>17</sup>, approved the draft of witness protection scheme and gave direction to all the states to implement it until Parliament comes out with a legislation.

#### IV. FRAMEWORK

The scheme consists of six parts. Part I deals with the meaning of the various terms like witness Protection Application, Witness Protection Cell etc used in this scheme. Part II consists the categories of witness, filing of application, funds, monitoring and review. Part III to V comprises of the special witness protection measures and the last part of the Act speaks about the operational aspects of the scheme and the right to review and appeal.

The scheme demarcates three categories of witness according to the threat perception. Among the three categories, the first is Category A which categorizes those cases where the threats causes harm to witness and his family members either during the trial or the investigation or after that. The second category that is Category B specifies those threats which affect the safety, reputation or property of the witness or family members during the investigation or trial. The third being Category C includes the threats which are moderate or ordinary in nature that

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<sup>17</sup>(2019) 14 SCC 615

extends to harassment or intimidation of the witness or his family member's reputation or property during the investigation, trial or thereafter.

This scheme has proposed state witness protection program. Therefore the sources of the State witness protection fund are budget allocated in the Annual Budget by the State Government and Union Territories, the donations from the different organizations, the receipt of amount imposed under section 357 of the CrPC, amounts contributed as a part of the corporate responsibilities. These funds are to be regulated by the Ministry of Home under State or Central Government.

## **V. THE PROCEDURE**

A person seeking protection order under this scheme has to file an application before the Competent Authority in the place where the offence has been committed. Then the Competent Authority shall pass an order for calling the Threat Analysis Report from the ACP/DSP of the concerned district or sub-division. During the pendency of the application the Competent Authority can pass orders for interim protection of the witness or his family member in case of the urgency. The Threat Analysis Report prepared by the ACP/DSP by keeping the full confidentiality shall reach the Competent Authority within five working days of the receipt of the order. This report shall categorize the threat and contain all the adequate protective measures for the witness and his family members. The Competent Authority shall interact with the witness in person or through electronic media to ascertain the kind of protection the witness needs. All the hearings shall be held in camera by the Competent Authority keeping full Confidentiality. After receiving the report from the Police authorities every application shall be disposed of within five working days. A Witness Protection order will be passed by the Competent Authority which will be implemented by the witness protection cell of the state. The head of the police in the state or UT will be responsible for the implementation of all the witness protection orders passed by the Competent Authority and the Department of Home of the concerned state or UT will implement the orders relating to change of identity or/and the relocation of the witness. A monthly follow up report will be filed by the Witness Protection Cell before the Competent Authority after passing the order. A fresh Threat Analysis Report may be called from ACP/DSP of the concerned district or subdivision if it is found by the Competent Authority that there is a need to revise the Witness Protection Order or the application which is moved in this regard.

## **VI. TYPES OF PROTECTION MEASURES**

Sec 7 of the scheme provides for various types of protection measures. The measures provided

for the protection of the witnesses include the following:-

- a) Ensuring that witness and accused do not come face to face during investigation or trial
- b) Monitoring of mail and telephone calls
- c) Arrangement with the telephone company to change the witness's telephone number or assign him or her an unlisted telephone number
- d) Installation of security devices in the witness's home such as security doors, CCTV, alarms, fencing etc
- e) Concealment of identity of the witness by referring to him/her with the changed name or alphabet
- f) Emergency contact persons for the witness
- g) Close protection, regular patrolling around the witness's house
- h) Temporary change of residence to a relative's house or a nearby town
- i) Escort to and from the court and provision of Government vehicle or a State funded conveyance for the date of hearing

Apart from the above measures, any other types of protection measures considered essential, and explicitly, those mentioned by the witness can be ordered by Competent Authority.

Some different measures, which can be depended to in graver situations are 'Protection of Identity', 'Change of Identity' and 'Relocation of Witness For protection of identity, an application for seeking identity protection can be filed in the prescribed form before the Competent Authority. The Competent Authority, keeping in view the 'Threat Analysis Report and after examining the witness, his family members, relatives or any other person can pass an order for concealment of identity of witness. Similarly, at times keeping in view the threat perception report a new identity may be conferred. In appropriate cases relocation of witnesses can also be ordered to a more secure place inside the State/UT or territory of the India Union.

Malimath Committee report amends the criminal justice system in 2003 and proposed that:-

1. Law should be amended to the effect that the literate witness signs the statement and illiterate one puts his thumb impression thereon. A copy of the statement should be mandatorily given to the witness.
2. Audio/video recording of statements of witnesses, dying declarations and confessions should be authorized by law.
3. Presence of witnesses of the locality or other locality or neighborhood is required under different provisions of the existing laws. The committee recommends that such

provisions be deleted and substituted by the words “the police should secure the presence of two independent witnesses.”

4. Witness who comes to assist the court should be treated with dignity and shown due courtesy. An official should be assigned to provide assistance to him.
5. A law should be enacted for giving protection to the witnesses and their family members on the lines of the laws in USA and other countries
6. The judge should be vigilant and regulate cross-examination to prevent the witness being subjected to harassment, annoyance or indignity. This should be ensured through training and proper supervision by the High Courts.

## **VII. LEGISLATIVE ENACTMENTS**

### **(A) Code Of Criminal Procedure, 1973**

Under the CrPC the witness is paid with all the reasonable travel expenses incurred by him for the attendance before the investigating police officer<sup>18</sup>. Whenever the court feels that the attendance of the witness is required without any delay for the examination during trial it may dispense the personal attendance of a witness and may issue a commission. The expense for the issuance of the commission for the examination shall be borne by the accused<sup>19</sup>. The inquiry or trial shall be continued from day to day until the all the witnesses are examined and the court finds adjournment the proceedings for suitable reasons<sup>20</sup>. The Criminal Court may direct the order for payment of reasonable expenses incurred by the complainant or the witnesses for attending the proceedings and it will subject to the rules made by the state Government<sup>21</sup>.

### **(B) Unlawful Activities (Prevention) Act, 1967**

The Unlawful Activities (Prevention) Act has two provisions that deals with the aspect of witnesses. it specifies that any person who threatens a witness by any violent act or puts any wrongful restraint or confines the witness, shall be punished with imprisonment<sup>22</sup>. It also postulates that if the court desire then in camera proceedings will be held. The two types of protection that is given to the witnesses are identity protection and keeping the location of the witness secret. The application made under this section can be made by the witness or his public prosecutor or court by suo moto action on the ground that there is menace to the life of the

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<sup>18</sup>Section 160 of CrPC

<sup>19</sup>Section 284 of CrPC

<sup>20</sup>Section 309 of the Crpc

<sup>21</sup>Section 312 of the Crpc

<sup>22</sup>Section 22 of the Unlawful Activities (Prevention) Act,1967

witness<sup>23</sup>

### **(C) Terrorist And Disruptive Activities (Prevention) Act, 1987**

The Terrorist and Disruptive Activities (Prevention) Act, 1987 had been enacted to fight against the terrorism in India. It states that in camera proceeding can be held if the designated Court desires so.<sup>24</sup> The designated court can take measures to protect the identity of the witness and keep the address of any witness undisclosed on an application made by a witness or his prosecutor or court on *suo moto* cognizance. If any person disobeys the provisions of the section then he shall be punished.

### **(D) Prevention Of Terrorism Act, 2002**

The Prevention of Terrorism Act, 2002 provides for the punishment to a person who threatens witness by any violent act or puts any wrongful restraint or confines or does any unlawful act to threaten him shall be punished with imprisonment.<sup>25</sup>

If the Special Court feels so then in camera proceedings can be held.<sup>26</sup> Under subsection 2 the Court can take measures to protect the identity of the witness and maintain confidentiality about the address of the witness. This will be done on an application made by the witness or his prosecutor or court on *suo moto* cognizance. If any person breaches the provisions of the section then he shall be punished.

### **(E) The National Investigation Agency Act, 2008**

The National Investigation Agency, 2008 was incorporated to combat terrorist activity. Here the court has the power to hold in camera proceedings<sup>27</sup> and if it feels the life of witness is in danger the protection will be granted to the witness. The witness, prosecutor or even the court on *suo moto* cognizance can file an application for providing such witness.

### **(F) Delhi Witness Protection Scheme, 2015**

Delhi Witness Protection Scheme 2015 is the first legislation where the term witness has been defined. It defines witness as a person who is having the knowledge about any criminal act or possesses any document about the same and he has made or agreed to make the statement in a criminal proceedings.<sup>28</sup> In this Act the witness is categorized into three different categories

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<sup>23</sup>Section 44 of the Unlawful Activities (Prevention) Act, 1967 Act

<sup>24</sup>Section 16 of the Terrorist and Disruptive Activities (Prevention) Act, 1987

<sup>25</sup>Section 3(7) of the Prevention of Terrorism Act 2002

<sup>26</sup>Section 30 of the Prevention of Terrorism Act, 2002

<sup>27</sup>Section 17 of the National Investigation Agency Act 2008

<sup>28</sup>Section 2(m) of the Delhi Witness Protection Scheme 2015

basing upon the threat perception.<sup>29</sup> The Competent Authority shall pass the order of witness protection basing upon the TAR i.e. Threat Analysis Report prepared by the police authorities.<sup>30</sup> The different types of protection may include measures like concealing the identity and address of the witness, in camera proceedings, patrolling around the witness's house, no meeting of witness and accused during trial, financial assistance to the witness etc.<sup>31</sup> A separate application shall be filed under this section to the Competent Authority and the order of protection shall be passed by competent authority according to the TAR. This order shall be in enforcement during the course of the investigation or trial.<sup>32</sup>

### **(G) Maharashtra Witness Protection And Security Act, 2017**

The Maharashtra Witness Protection and Security Act 2017 define a witness as a victim and his near relative under threat in the trial for serious offense.<sup>33</sup> The Committee is enabled to provide protective measures to the witness if he or his relatives or by other authorities files an application.<sup>34</sup> The District Committee has the authority to take any action on an application made by the witness in a criminal trial.<sup>35</sup> The committee shall prepare an enquiry about the threat perception before granting protection. The Committee shall direct the protection during investigation and trial which is provided under section 8 and section 9 of the Act. The investigation officer, till the disposal of the case, shall not disclose the names and address of the witnesses and if they do will be punished with imprisonment as provided under section 13 of the Act.<sup>36</sup>

## **VIII. STATUS OF WITNESS PROTECTION IN THE STATE OF ODISHA**

The Witness Protection Scheme 2019 defines witness as any person who possesses information or document about any offence. Part I of the Scheme defines the important terminologies relating to the Witness Protection Scheme. Part II of the Act categorizes the witness into three types, witness protection fund and the procedure for filing an application. The procedure for availing the protection for a witness is similar to that of the Centre's witness Protection Scheme.

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<sup>29</sup>Section 3 of the Delhi Witness Protection Scheme 2015

<sup>30</sup>Section 6 of the Delhi Witness Protection Scheme 2015

<sup>31</sup>Section 7 of the Delhi Witness Protection Scheme 2015

<sup>32</sup>Section 9 of the Delhi Witness Protection Scheme 2015

<sup>33</sup>Section 2( e) of the Maharashtra Witness Protection and Security Act 2017

<sup>34</sup>Section 6 of the Maharashtra Witness Protection and Security Act 2017

<sup>35</sup>Section 7 of the Maharashtra Witness Protection and Security Act 2017

<sup>36</sup>Section 11 of the Maharashtra Witness Protection and Security Act 2017

## IX. REVIEW AND APPEAL

This scheme has a provision for review and appeal when the witness or the police authority is concurred by the choice of the Competent Authority. If the witness is aggrieved by the review order passed by the Secretary, DLSA the review can be recorded before the Competent Authority within 30 days and an appeal can be filed before the Chairperson of DLSA. The appeal against the orders delivered by the Competent Authority can be recorded before Member Secretary and State Legal Services. If the witness has lodged a false complaint the State Legal Authority can initiate a proceeding for recovering the expenditure incurred to recuperate the Witness Protection Fund.

## X. JUDICIAL ANALYSIS

In *National Human Rights Commission Vs. State of Gujarat and Ors*<sup>37</sup>, the Supreme Court acknowledged the significance of the witness protection and emphasized on the role of the State in this regard. The State's role to develop machinery for protecting the witness in sensitive matters was held in *Rajubhai Dhamirbhai Baria and ors v. State of Gujarat and ors.*<sup>38</sup>

In *Neelam Katara Vs. Union of India*<sup>39</sup>, the Delhi High Court issued guidelines for the protection of witnesses until the enactment of the Legislation.

In *Mahender Chawla and Ors Vs. Union of India*<sup>40</sup>, approved the draft on the Witness Protection Scheme 2018. It directed the Central, State government and Union Territories to enforce the scheme as it is. It also declared to consider it as a law under Article 141 and 142 of the Constitution until the any legislation is enacted.

The recent case of *Asha Ram Babu* is the best example wherein not only the prime witnesses but also various journalists and other individuals who were associated with the case were killed. Many innocent witnesses have lost their lives due to lack of effective Witness Protection mechanism in the Indian Criminal Justice System.

## XI. CONCLUDING OBSERVATION

The Witness Protection Scheme, 2018 is the first endeavor at the National Level to provide protective measures for the witnesses which will lead to wipe out auxiliary exploitation. The

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<sup>37</sup>Writ Petition (Crl.) No. 109/2003

<sup>38</sup>2012 (114) BomLR 3549

<sup>39</sup>LR (2003) 2 Del 377

<sup>40</sup>Writ Petition (Crl) No. 156 Of 2016

witness being eyes and ears of justice, and assume a significant part in dealing with culprits of wrongdoing. This will go far in fortifying the Criminal Justice System in the Country and will thus upgrade National Security Scenario. Looking into the economic status of the nation it is proposed to give security fundamentally in grave offences at the same that it is strongly recommended to create a separate exclusive authority for the protection of Witness. Discussing all the major Acts dealing with Witness Protection in the world, we can articulate that Australia has a strong Witness Protection program regime in their country. After making a study the provisions of this scheme, we can conclude that this is indeed a good initiative taken by the central government and the state governments to safeguard the witness against the threats from the accused during the investigation and trial.

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