



# PROTECTION OF WITNESS & VICTIM COMPENSATION

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# Who is witness ?

## **Witness is a person –**

- “Who has witnessed conduct or is able to provide anything which may be of relevance, in relation to which he has been called to give evidence in a proceedings”

## ***Black’s Law Dictionary-***

- “One who sees, knows or vouches for something or one who gives testimony under oath or affirmation in person or by oral or written deposition or by affidavit.”

## ***Oxford Dictionary-***

- “One who gives evidence in a cause: and indifferent person to its party, sworn to speak the truth , the whole truth and nothing but the truth.”

## WITNESSES : *their importance*

- Witness is vital guide in the criminal equity framework and for smooth running of the criminal equity framework, it is necessitated that witnesses come forward and oust their testimony and statement in free and reasonable situation.
- Witness is therefore inexorable and plays a significant role, on which the faith of a case depends.
- Witness is foundation of a trial, regardless of whether it is civil or criminal.

## CHALLENGES FACED BY WITNESSES:

- Money power and /or Inducement.
- Muscular power/ intimidation
- Political power
- Self - generated fear of police and the legal system
- Absence of fear of law of perjury
- Unsympathetic law enforcement machinery
- Corruption
- Use of stock witnesses (a few alleged witnesses, who depose falsely in favor of the prosecution as and when called).
- Protracted trials.
- Hassles faced by the witnesses during investigation and trial.
- The non-existence of any clear-cut legislation to check hostility of witness

## CONSEQUENCE OF PRESSURES FACED BY WITNESSES:

Reluctance to appear in Court as witness.

Retraction from their earlier statements during trial / Witness turning hostile.

Miscarriage of justice

Vitiation of trial

## NECESSITY OF PROTECTION OF WITNESS

:



- *Restore in the witnesses, a sense of human dignity which stands shattered on the occurrence of a crime*

- *Prevent miscarriage of justice*

**A common place  
critique of the  
criminal justice  
system is that:**

*:it has  
marginalised  
witnesses*

*:taken them for  
granted*

*:given little attention to  
any rights or needs that  
they may have.*

**Given the functional importance of witness to the operation of the criminal justice system and their crucial role in providing evidence, various steps have been taken by several countries.**

# WITNESS PROTECTION LAWS : INTERNATIONAL SCENARIO



## USA

- Witness Protection first came into prominence in USA in 1970's as a legally sanctioned procedure to be used in conjunction of a programme for dismantling mafia style criminal organisations.
- The United States Federal Witness Security Program (WITSEC) is one of the most developed of all existing Witness Protection programs in the world.
- Apart from keeping the witnesses safe, the Program also provides housing, health care, training for jobs and assistance in obtaining employment.



## AUSTRALIA

- Witness Protection Act 1994, is considered to be model legislation for Australia. Several States and territories have enacted regional witness protection schemes complementary to National Witness Protection Programme.



## UNITED KINGDOM

- Legislations such as, The Criminal Justice and Public Order Act, 1994 and the Youth Justice and Criminal Evidence Act, 1999 provide for punishment for intimidation of witnesses and directs the courts to consider special measures for the protection of vulnerable witnesses. The Coroners and Justice Act, 2009 has the procedure for application of Witness anonymity orders.



## CHINA

- Witness Protection Ordinance was enacted in 2000 to provide the basis for protection and other assistance to witnesses and persons associated with witness.



## COLOMBIA

- Witness Protection Program has its origins in the Constitution of 1991, which listed among the main functions of the office of the Attorney General, the obligation to provide protection for witnesses, victims and other parties to criminal proceedings.

## GERMANY



- Such programs have been in place since mid-1980's. In 1988 the Witness Protection Act was promulgated which included provisions like use of video technology for interviewing at risk witnesses. Subsequently the Act to harmonize the Protection of Witnesses at Risk, which now serves as the guidelines for witness protection.

## ITALY



- It was in 1984 when Sicilian Mafioso Tommaso Buscetta turned against the mafia in the country and started his career as a justice collaborator, that witness protection became formalised in Italy. Buscetta was the star witness in the famous Maxi-Trial, which led to 350 mafia members being sent to prison and in exchange for his help, he was re-located under a new identity.

## OTHER INTERNATIONAL STANDARDS:

**Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power** – adopted by U N General Assembly in **1985** – “States should take measures to minimize inconvenience to victims, protect their privacy, when necessary, and ensure their safety, as well as that of their family and their witnesses on their behalf from intimidation and retaliation”.

**United Nations Convention Against Trans-National Organised Crimes of 2000 and its 3 Protocols** : “State parties are required to take appropriate measures to provide effective measures from potential retaliation or intimidation for witnesses in criminal proceeding, who give testimony concerning offences covered by the Convention ( Money Laundering, Corruption, Trafficking in persons, smuggling of migrants etc.) and for their relatives and other persons close to them”.

**U.N Convention  
Against Corruption  
of 2003**

# INDIAN SCENERIO:

## Provisions under various legislations:

### **(A) Unlawful Activities (Prevention) Act : Section 44 : Protection of witnesses :**

(1) Notwithstanding anything contained in the Code, the proceedings under this Act may, for reasons to be recorded in writing, be held in camera if the court so desires.

(2) A court, if on an application made by a witness in any proceeding before it or by the Public Prosecutor in relation to such witness or on its own motion, is satisfied that the life of such witness is in danger, it may, for reasons to be recorded in writing, take such measures as it deems fit for keeping the identity and address of such witness secret.

(3) In particular, and without prejudice to the generality of the provisions of sub-section (2), the measures which a court may take under that sub-section may include:

(a) the holding of the proceedings at a place to be decided by the court;

(b) the avoiding of the mention of the name and address of the witness in its orders or judgments or in any records of the case accessible to public;

(c) the issuing of any directions for securing that the identity and address of the witness are not disclosed;

(d) a decision that it is in the public interest to order that all or any of the proceedings pending before such a court shall not be published in any manner.

(4) Any person, who contravenes any decision or direction issued under sub-section (3), shall be punishable with imprisonment for a term which may extend to three years, and shall also be liable to fine.

## INDIAN SCENARIO:

### **(B) National Investigation Agency Act, 2008 :**

#### **Protection of witnesses. -**

- (1) Notwithstanding anything contained in the Code, the proceedings under this Act may, for reasons to be recorded in writing, be held in camera if the Special Court so desires.
- (2) On an application made by a witness in any proceeding before it or by the Public Prosecutor in relation to such witness or on its own motion, if the Special Court is satisfied that the life of such witness is in danger, it may, for reasons to be recorded in writing, take such measures as it deems fit for keeping the identity and address of such witness secret.
- (3) In particular, and without prejudice to the generality of the provisions of sub-section (2), the measures which a Special Court may take under that sub-section may include-

  - (a) the holding of the proceedings at a place to be decided by the Special Court;
  - (b) the avoiding of the mention of the names and addresses of the witnesses in its orders or judgments or in any records of the case accessible to public;
  - (c) the issuing of any directions for securing that the identity and address of the witnesses are not disclosed; and
  - (d) a decision that it is in the public interest to order that all or any of the proceedings pending before such a Court shall not be published in any manner.
- (4) Any person who contravenes any decision or direction issued under sub-section (3) shall be punishable with imprisonment for a term which may extend to three years and with fine which may extend to one thousand rupees.

## INDIAN SCENARIO:

### (C) Maharashtra Control of Organised Crimes Act, 1999 :

**Sec 19 (2) –**



Provides that on an application made by a witness in any proceeding before it or by the Public Prosecutor in relation to such witness or on its own motion, take such measures as it deems for keeping the identity and address of the witness secret.

## INDIAN SCENERIO:

### (D) The Code Of Criminal Procedure, 1973 :

**Sec : 195 A – Procedure for witnesses in case of threatening, etc.** – A witnesses or any other person may file a complaint in relation to an offence u/s 195 A of IPC.

**Sec: 195A.** - Threatening any person to give false evidence.— 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 of either description for a term which may extend to seven years, or with fine, or with both; and if innocent person is convicted and sentenced in consequence of such false evidence, with death or imprisonment for more than seven years, the person who threatens shall be punished with the same punishment and sentence in the same manner and to the same extent such innocent person is punished and sentenced.

## INDIAN SCENERIO:

**(E) Indian Penal Code : Sec 228A** - Disclosure of identity of the victim of certain offences etc.—

(1) Whoever prints or publishes the name or any matter which may make known the identity of any person against whom an offence under section 376, section 376A, section 376B, section 376C or section 376D is alleged or found to have been committed (hereafter in this section referred to as the victim) shall be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine.

(2) Nothing in sub-section (1) extends to any printing or publication of the name or any matter which may make known the identity of the victim if such printing or publication is—

(a) by or under the order in writing of the officer-in-charge of the police station or the police officer making the investigation into such offence acting in good faith for the purposes of such investigation; or

(b) by, or with the authorisation in writing of, the victim; or

(c) where the victim is dead or minor or of unsound mind, by, or with the authorisation in writing of, the next of kin of the victim: Provided that no such authorisation shall be given by the next of kin to anybody other than the chairman or the secretary, by whatever name called, of any recognised welfare institution or organisation. Explanation.—For the purposes of this sub-section, “recognised welfare institution or organisation” means a social welfare institution or organisation recognised in this behalf by the Central or State Government.

(3) Whoever prints or publishes any matter in relation to any proceeding before a court with respect to an offence referred to in sub-section (1) without the previous permission of such Court shall be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine. Explanation.—The printing or publication of the judgment of any High Court or the Supreme Court does not amount to an offence within the meaning of this section.

## INDIAN SCENERIO:

### (F) Indian Evidence Act, 1872 :

**Sec 151** – Indecent and scandalous questions.—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.

**Sec 152** - Questions intended to insult or annoy.—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.

## 198<sup>th</sup> Report of the Law Commission of India :

In its 198<sup>th</sup> Report the Law Commission prepared a Consultation Paper on Witness Identity Protection and Witness Protection Programmes. The commission recommended witness anonymity and protection where there is danger to the witness, to his properties or to those of his relatives, at all stages – investigation, inquiry, trial, appeal – and thereafter also. On the basis of this report, a bill was prepared towards witness protection which is named as the **Witness Protection Bill, 2015**, salient features of which are :

- A detailed witness protection programme should be provided to a witness at all stages of the case: during the course of an investigation, during the process of trial and after the judgement is pronounced;
- A witness protection cell should be constituted which should be responsible for the preparation of a report for the judge of the trial court to examine and grant protection to the witness after being admitted in the programme;
- National Witness Protection Council and State Witness Protection Councils should be constituted for the successful implementation of witness protection programme;
- Adequate safeguards should be in place to ensure protection of Identity of witness;
- Measures for transfer of cases out of original Jurisdiction should be provided to ensure that the witness can depose freely;
- There should be stringent punishment for those who contravene the provisions.

## 198<sup>th</sup> Report of the Law Commission of India :

The Bill was circulated to the state governments and the administrators of the Union Territories but no consensus was received on it. The reason for this non consensus may be that police and public order are State Subjects under the seventh Schedule of the Constitution under which witness protection becomes the responsibility of the States. On the other hand, criminal law and criminal procedure are under concurrent list. Due to non-consensus among the states, the witness protection programme was shelved.

In 2016, the Union Government directed the Bureau of Police Research and Development (BPRD) to examine the concerns raised regarding the feasibility of the programme and to look into the financial implications of the scheme

# WITNESS PROTECTION SCHEME:

On 5<sup>th</sup> Dec, 2018, **Hon'ble Supreme Court of India** in **Mahendra Chawla and Others vs Union of India and Others (2019) 14 SCC 615**, approved the Centre's draft witness protection scheme and **directed all the states to implement it until parliament comes out with a legislation.**

## **Witness Protection Scheme, 2018**

The programme identifies **three categories of witnesses** as per threat perception:

### **Category A:**

- Those cases where threat extends to the life of witness or family members during the investigation, trial or even thereafter

### **Category B:**

- Those cases where the threat extends to safety, reputation or property of the witness or family members during the investigation or trial

### **Category C:**

- Cases where the threat is moderate and extends to harassment or intimidation of the witness or his family members, reputation or property during the investigation, trial or thereafter

## WITNESS PROTECTION SCHEME:

### Witness Protection Fund



- The expenses for the programme will be met from a **Witness Protection Fund to be established by States and Union Territories.**

- The states will make annual budgetary allocation for the fund.

- Fund will also be free to accept donations from national and international philanthropic organizations and amounts contributed as part of Corporate Social Responsibility.

- The said Fund will be operated by the **Department/Ministry of Home under the State/UT Government**

## WITNESS PROTECTION SCHEME:

### Threat Analysis Report (TAR)

The Witness Protection Scheme, 2018 calls for preparation of a **'Threat Analysis Report' of the witness by the Commissioner/SSP**, when witness applies for protection.

TAR will categorize on the level of threat perception and will submit suggestions.

The Witness Protection Order passed by the Competent Authority will be **implemented by the Witness Protection Cell of the State/UT.**

It provides for protective measures like ensuring that the **witness and accused do not come face to face during the probe, protection of identity, change of identity, relocation of witnesses, witnesses to be apprised of the scheme, confidentiality, and preservation of records, recovery of expenses etc.**

## WITNESS PROTECTION SCHEME:

### Change of Identity:

In appropriate cases, where there is a request from the witness for the change of identity and based on the threat perception by the Commissioner of Police in Commissionerates/ SSP in District Police investigating the case, a decision can be taken for conferring a new identity to the witness by the Competent Authority.

Conferring new identities includes new name/profession/parentage and providing supporting documents acceptable by the Government Agencies.

# WITNESS PROTECTION SCHEME:

## Types of Protection Measures – Clause (a) to Clause (o)

The magnanimity of protective measures taken up by the competent authority shall always be proportional to the threat faced by the witness for the given period of time. They may include but is not limited to the following:

- To ensure that the accused and the witness are not put up together during a trial or investigation
- Contacting the telephone company to allot the witness an unlisted telephone number;
- Giving adequate security to the witness in form of body protection, regular patrol and by use of security devices such as CCTV, fencing, security doors in his home;
- Change in identity of the witness and suppressing the original identity;
- Changing the residence of the witness to somewhere else;
- Providing a conveyance in a Government vehicle to and from the court on the date of hearing;
- To ensure the presence of an additional person at the time of recording statements of the witness;
- Holding of in-camera trials;
- Using specially designed courtrooms equipped with one way mirrors, separate passage for the accused and the witness along with options to modify the face or using voice change mechanisms through software, of the witness to suppress his identity;
- Giving timely financial aids for the subsistence of the witness from the Witness Protection Fund;
- Apart from the above protection measures, other miscellaneous measures may be taken up at the request of the witness;

## WITNESS PROTECTION SCHEME:

### Protection of Identity

During the course of investigation or trial or any offence, an application for seeking identity protection can be filed in the prescribed form before the competent authority, whereupon the threat analysis report will be called for, witness/family members/or any other person will be examined to ascertain whether there is necessity to pass an Identity Protection order.

### Relocation of Witness

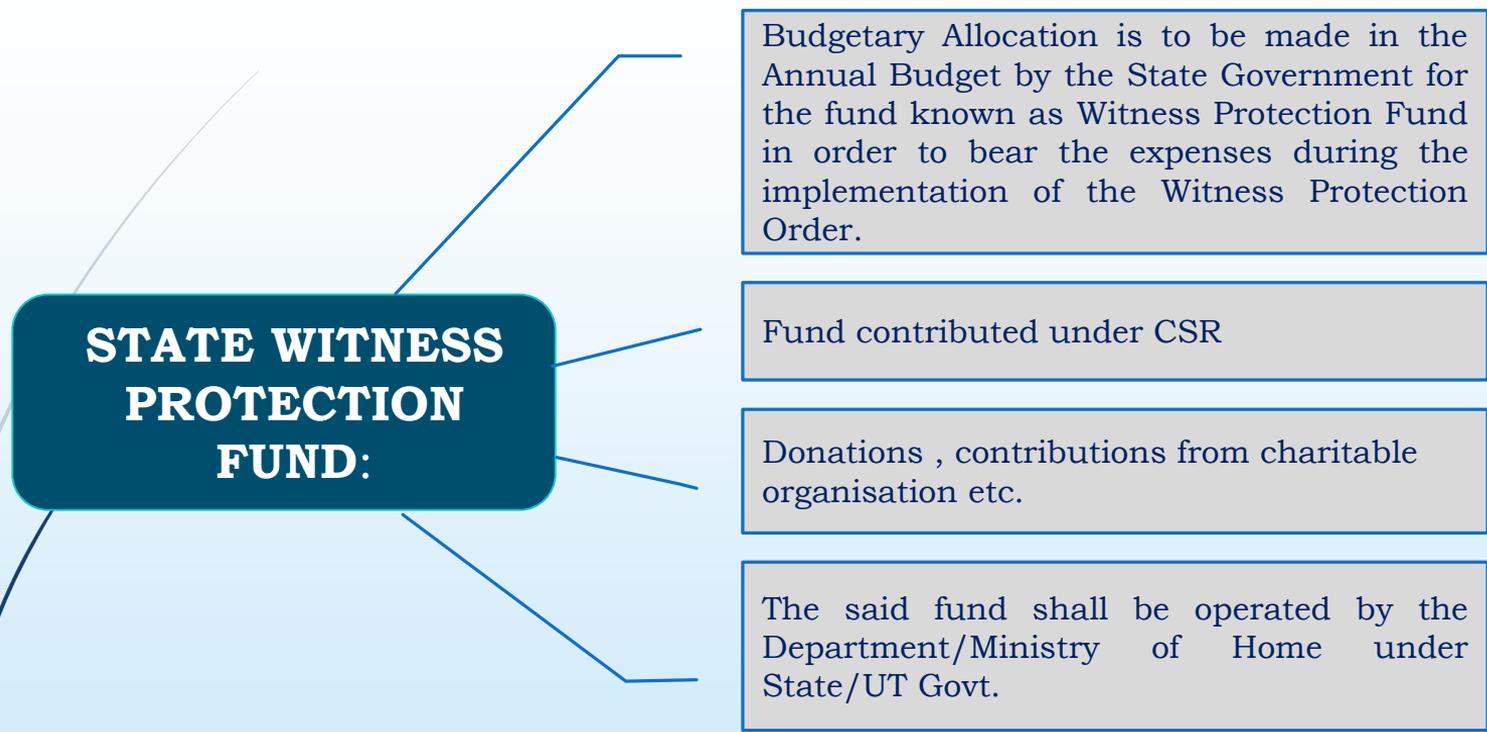
in appropriate case where there is a request from the witness and based on the Threat Analysis Report, a decision can be taken for relocation of the witness to a safer place, keeping in view the safety, welfare and wellbeing of the witness. The expenses will be borne from the Witness Protection Fund.

### Monitoring and Review

Once protection order is passed, its implementation is to be monitored and reviewed in terms of the follow up report received from Witness Protection Cell.

## WITNESS PROTECTION SCHEME:

### STATE WITNESS PROTECTION FUND:



Budgetary Allocation is to be made in the Annual Budget by the State Government for the fund known as Witness Protection Fund in order to bear the expenses during the implementation of the Witness Protection Order.

Fund contributed under CSR

Donations , contributions from charitable organisation etc.

The said fund shall be operated by the Department/Ministry of Home under State/UT Govt.

## OTHER IMPORTANT JUDGMENTS :

- **Zahira Habibullah Sheikh (5) and Another v. State of Gujarat and Others - (2006) 2 SCC 374 – Para 40,41,42 :**
  - 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 the ultimate truth is presented before the court and justice triumphs and that the trial is not reduced to a mockery
- **Neelam Katara v. Union of India & Ors ILR- (2003) II Delhi 377 :**
  - Guidelines issued by Delhi High Court for witness protection.

## Way Forward

In words of Jeremy Bentham, ***“Witnesses are eyes and ears of justice”***.

The scheme is a step in the right direction in ensuring the confidence of witnesses in trusting the criminal justice system of the nation.



# **VICTIM COMPENSATION**



**THANK YOU**