

A PROPOSAL FOR A MODEL WITNESS PROTECTION PROGRAMME: NEED AND LEGAL RAMIFICATION

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ABSTRACT

In the criminal justice system, witnesses and their testimonies play a decisive role in reaching the conclusion of the case. Witnesses, being the most crucial participants in the procedure, are often threatened or induced by the parties involved in the case to change or retract their statements. Thus, cases do not reach a truthful and rational conclusion. The judicial machinery fails the victims in their quest for justice. The rights given to witnesses and victims are quite limited in comparison to the wide range of rights of the accused. Therefore, protecting the witnesses becomes indispensable for achieving the foremost objective of the criminal justice system. The authors propose a possible model for a witness protection programme in India, keeping in mind such programmes existing across the globe.

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I. INTRODUCTION

“Witnesses are the eyes and ears of justice”- Jeremy Bentham.

A witness is one who sees, knows or vouches for something and gives testimony under oath or affirmation in person, by oral or written deposition or by affidavit.¹ In a criminal justice system, the conviction of a guilty accused depends primarily on the testimonies given by witnesses. Thus, a witness turning hostile is a major problem which plagues the criminal justice system.

Reportedly, twenty- four witnesses have died in the *Vyapam* scam,² nine witnesses have been attacked and three crucial witnesses have been killed in the *Asaram Bapu* case,³ five people connected with the National Rural Health Mission scam died in Uttar Pradesh.⁴ In most of these cases, the deceased had been threatened and subsequently died under mysterious circumstances in ‘accidents and suicides.’ These cases remain unsolved till date. In 2003, the *Supreme Court in NHRC v. State of Gujarat* emphasised the need for protection of witnesses for the successful prosecution of criminal cases.⁵ Later, in *Zahira Habibulla Sheikh v. State of Gujarat*, the apex court for the first time expressly asked for “legislative measures to emphasise prohibition against tampering with witness, victim or informant.”⁶ Recently, the Supreme Court has expressed serious concerns over this problem and has called for a witness protection scheme.⁷

In 2006, the Law Commission of India, in a detailed report, recommended the enactment of a legislative act for the protection of witnesses and their identities.⁸ Following these recommendations, in 2015, the state of Delhi came up with an elaborate and detailed

¹ Witness, Black’s Law Dictionary (6th ed. 1995).

² *Another accused in Vyapam scam dies, number up to 24*, Hindustan Times (June 29 2015), <http://www.hindustantimes.com/bhopal/another-accused-in-vyapam-scam-dies-number-up-to-24/story-41kf0lzQWtVx3ZcQAdA2XO.html>.

³ Security for Asaram witness The Hindu (July 16 2015), <http://www.thehindu.com/news/national/other-states/security-for-asaram-witness/article7426972.ece>.

⁴ *NRHM scam: Supreme Court asks CBI to examine ‘vital witnesses’ in three months* The Hindu (October 18 2016), <http://www.thehindu.com/news/national/other-states/NRHM-scam-Supreme-Court-asks-CBI-to-examine-%E2%80%98vital-witnesses%E2%80%99-in-three-months/article10192840.ece>.

⁵ *NHRC v. State of Gujarat* 2003, (9) SCALE 329.

⁶ *Zahira Habibulla Sheikh v. State of Gujarat*, (2004) 4 SCC 158.

⁷ *Supreme Court pitches for witness protection programme*, Hindustan Times (November 28, 2016), <http://www.hindustantimes.com/india-news/supreme-court-pitches-for-witness-protection-programme/story-sINaQQHH1RxCc19TV1p5nJ.html>.

⁸ *198th Law Commission Report, Witness Identity Protection and Witness Protection Programmes*, Ministry of Law and Justice, Govt. of India, available at <http://lawcommissionofindia.nic.in/reports/rep198.pdf>.

witness protection scheme which has been implemented successfully.⁹ Acting on the directions of the Bombay High Court, the Maharashtra government drafted the Maharashtra Witness Protection Bill.¹⁰ In April 2016, a private member of Parliament introduced the Witness Protection Bill in Lok Sabha but it remains stuck in the parliamentary logjam.¹¹ Since there was no consensus among the states, the matter was referred to the Bureau of Police Research and Development to examine the feasibility and financial implications of the programme.¹²

This paper attempts to come up with a model witness protection programme in India. Section II examines the role of witnesses in the administration of justice, while Section III analyses the causes of witnesses turning hostile and the consequences thereof. Subsequently, in Section IV, a brief overview of such schemes across the globe have been described, with an examination of the current scenario in India which is far from satisfactory. The authors in Section V then propose a possible model for a witness protection programme in India, keeping in mind the demographics of the country. In Section VI, the article assesses the possible hurdles in the implementation of the model and provides suggestions for bypassing such obstacles. It concludes by recommending the essential steps need to be taken by the Central and State governments for the successful implementation of the scheme.

II. WITNESSES AND THEIR ROLE

Witness is any person who is acquainted with the facts and circumstances, or 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 or make a statement or produce any document during investigation, inquiry or trial of such case and includes a victim of such offence.¹³

⁹ Jatin Anand, *First step towards witness protection*, The Hindu (July 31, 2015), <http://www.thehindu.com/news/cities/Delhi/first-step-towards-witness-protection/article7483593.ece>.

¹⁰ *Extend witness protection scheme to cops: HC to Maharashtra govt.*, Hindustan Times (February 9, 2016), <http://www.hindustantimes.com/mumbai/maharashtra-must-extend-witness-protection-benefits-to-ios-bombay-hc/story-b6N8C9LLDAwU6GfVQnoUsL.html>.

¹¹ Sanjay Hegde, *Witness against the Prosecution*, The Telegraph (August 3, 2016) https://www.telegraphindia.com/1160803/jsp/opinion/story_100145.jsp#.WJwWyv197Dd.

¹² *No consensus among states on witness protection bill: Govt*, The Indian Express (February 3, 2017) <http://indianexpress.com/article/india/no-consensus-among-states-on-witness-protection-bill-govt-4514503/>.

¹³ Section 3(ed), The Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015.

The witness is an important player in the administration of justice. His role is vital both at the stage of investigation and at the trial stage.¹⁴ Without the witness's active support, the investigation of a crime may not come to a logical end.¹⁵ Underlining the significance of witnesses, Wadhwa J. in *Swaran Singh v. State of Punjab* said, "A criminal case is built on the edifice of evidence, evidence that is admissible in law. For that, witnesses are required whether it is direct evidence or circumstantial evidence."¹⁶ But, due to loopholes in the machinery of the criminal justice system, most of the witnesses are unable to perform this duty as they turn hostile due to various reasons.

III. EFFECTS OF WITNESSES TURNING HOSTILE

Witnesses may turn hostile because of a number of reasons,¹⁷ threat being the primary reason in a majority of cases. The cases dealing with offences committed by people who belong to an influential section of the society often end in acquittals due to lack of evidence. In some cases, the investigating officer does not even record witnesses' testimonies under Section 161 of Code of Criminal Procedure, 1973 ("Cr.P.C.") by actually examining them. Important witnesses retract their initial statements which could be crucial in getting the accused convicted.¹⁸ This mainly happens because the witness or someone in whom they are interested might be exposed to some danger if they give a statement which is averse to the interests of the politically influential accused.¹⁹ As a result of the absence of protection from such dangers, witnesses turn hostile.²⁰ In Mau district, two rape victims were shot dead who were due to testify against the accused. Their family members stated that they were being harassed by the accused to withdraw their complaints.²¹

Another prevalent reason is the inducement offered to the witness for changing his statements. A disinterested witness, who is otherwise gaining nothing from the process, can be easily lured by monetary or other inducements. Varun Gandhi, the general secretary of the

¹⁴ Justice M. Jagannadha Rao, *Witness protection* (December 1, 2015), <https://sabrangindia.in/article/witness-protection-justice-m-jagannadha-rao>.

¹⁵ *Id.*

¹⁶ *Swaran Singh v. State of Punjab*, (2000) 5 SCC 668.

¹⁷ Nithya Nagarathinam, *Rape, Compromise, and the Problematic Idea of Consent*, The Hindu Centre (July 20, 2015), <http://www.thehinducentre.com/the-arena/current-issues/article7443765.ece>.

¹⁸ *Truth, lies and red tape- In over 70 per cent of cases in India, witnesses tend to turn hostile*, The Telegraph (December 3, 2006), https://www.telegraphindia.com/1061203/asp/insight/story_7084130.asp.

¹⁹ *Committee on Reforms of Criminal Justice System*, Ministry of Home Affairs, Govt. of India, available at http://www.mha.nic.in/hindi/sites/upload_files/mhahindi/files/pdf/criminal_justice_system.pdf.

²⁰ *Id.*

²¹ Nita Bhalla, *Twin murders of rape victims spark calls for witness protection in India*, Reuters (September 14, 2015), <http://www.reuters.com/article/india-rape-victim-murders-idUSKCN0RE1H520150914>.

Bharatiya Janata Party, was exonerated of all charges in the alleged hate speeches he made in 2009.²² The number of witnesses turning hostile in this case was as large as eighty- eight.²³ Later, an explosive sting operation conducted by Tehelka revealed that most of the witnesses had been bribed to change their statements.²⁴

Apart from these, the whole machinery of the criminal justice system also discourages witnesses to be truthful and consistent.²⁵ Frequent adjournments during judicial proceedings frustrate witnesses.²⁶ Convicting an obviously and visibly guilty accused becomes a cumbersome process because of such procedural difficulties. A witness, who may have been a mere bystander and who has no interest in the victim of the crime does not have any incentive to go through the tiresome judicial process. Witnesses are not provided adequate allowances and have to face humiliation in the courtrooms. Thus, there are no reasons for which they should bear the mental agony caused as a result of the trial.

The witnesses are left with two options- either they can turn hostile and save themselves from all the mental or physical harm they may be subjected to, or they can remain resolute and truthful. The tedious judicial process forces a witness to opt for the former alternative.

This leads to low conviction rates. According to the latest statistics issued by the National Crime Records Bureau in 2015, out of the 1,05,02,256 cases, trial has been completed in 13,25,989 cases only.²⁷ The percentage of cases tried by courts to total cases for trial during 2012 to 2015 was around 12.6% whereas three decades ago i.e. in 1984, it was 29.9%.²⁸ The conviction rate, which was as high as 62.7% in 1985, has come down to 46.9% in 2015.²⁹ In rape cases, victims turning hostile account for over 80 percent of the total acquittals.³⁰

²² Rahul Kotiyal and Atul Chaurasia, *How Varun Gandhi silenced the system*, Tehelka (May 25, 2013), <http://www.tehelka.com/2013/05/how-varun-gandhi-silenced-the-system/>.

²³ *Id.*

²⁴ *Id.*

²⁵ Aditi Prasad, *Witness Hostility sabotaging fair trials and Frustrating the Courts in India*, (November 14, 2011), <http://legalsutra.com/3243/witness-hostility-sabotaging-fair-trials-and-frustrating-the-courts-in-india/>.

²⁶ *Id.*

²⁷ *Crime in India 2015: Compendium*, (2015), National Crime Records Bureau, , Ministry of Home Affairs, Govt. of India, available at <http://ncrb.gov.in/StatPublications/CII/CII2015/FILES/Compendium-15.11.16.pdf>.

²⁸ *Id.* at 72.

²⁹ *Id.*

³⁰ Nithya, *supra* note 17.

The effectiveness of a criminal justice system is measured in terms of its effects on the offending.³¹ Reduced conviction rates result in a negligent attitude towards crime in the society. The fear of conviction erodes and criminal incidents rise in number. Thus, the effectiveness of the criminal justice system is compromised. Delay in the administration of justice and punishment of offenders are the causes of increasing apathy and distrust towards the judicial machinery which subsequently results in witnesses turning hostile. Thus, the effect becomes the cause and it results in an endless cycle. The prime consideration before us is to ensure a fair trial which can happen only if the witnesses are able to depose without fear, freely and truthfully.³² Thus, the current situation urgently calls for a scheme for the protection of witnesses.

IV. WITNESS PROTECTION PROGRAMMES: NATURE AND SCOPE

A Witness Protection Programme is a scheme which aims to ensure that the investigation, prosecution and trial of criminal offences is not prejudiced because witnesses are intimidated or frightened to give evidence without protection from violent or other criminal recrimination.³³ It is aimed to identify a series of measures that may be adopted to safeguard witnesses and their family members from all threats.³⁴

A. Statutory Recognition

1. International Instruments and Statutes

There are a number of international instruments which recognize the need to protect witnesses from intimidation, threats and harm. Article 24 of the United Nations Convention Against Transnational Organized Crime deals with protection of witnesses from potential retaliation or intimidation.³⁵ Article 13 of Convention against Torture provides for similar protection.³⁶ Article 6(d) of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power directs the states to take measures to minimize inconvenience to victims, protect their privacy and ensure their safety.³⁷ Similar protection is given in Articles

³¹ Anthea Hucklesby and Azrini Wahidin, *Criminal Justice* 6 (2009).

³² State of Bihar v. Rajballav Prasad, Criminal Appeal No. 1141 of 2016.

³³ Delhi Witness Protection Scheme 2015.

³⁴ *Id.*

³⁵ Convention against Transnational Organized Crime available at <http://www.unodc.org/unodc/treaties/CTOC/>.

³⁶ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, United Nations, available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx>.

³⁷ Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, United Nations, available at <http://www.un.org/documents/ga/res/40/a40r034.htm>.

32 and 37(4) of UN Convention against Corruption, 2003.³⁸ UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime provides special protection, assistance and support to child victims and witnesses.³⁹

In addition to international instruments, major international criminal tribunals provide for such protection in their statutes. Article 68 of the Rome Statute of the International Criminal Court provides for protection of the victims and witnesses and their participation in the proceedings.⁴⁰ It empowers the Court to take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses.⁴¹

B. Witness Protection in Indian statutes

No specific rules, regulations or laws have been enacted by Parliament to protect witnesses. However, various statutes have provisions for witnesses. Sections 151 and 152 of the Indian Evidence Act, 1872 protect the witnesses from being asked indecent, scandalous, offensive questions, and questions which intend to annoy or insult them.⁴² Under Section 312 of Cr.P.C. a criminal court may order payment of reasonable expenses of any complainant or witness attending for the purposes of any inquiry, trial or other proceeding before such Court.⁴³ Section 195A of the Indian Penal Code penalises threatening or inducing any person to give false evidence.⁴⁴

It is ironic that draconian penal laws like the Terrorist and Disruptive Activities (Prevention) Act, 1987 (“TADA”) and the Prevention of Terrorism Act, 2002 (“POTA”) provide for protection of witnesses. Section 16 of TADA empowers the court to take measures for keeping the identity and address of a witness secret.⁴⁵ The court may avoid the mention of names and addresses of the witnesses in its judgments or in any records of the case accessible to public and issue directions for securing the identity and addresses of the witnesses.⁴⁶ Section 17 of the National Investigation Agency Act, 2008 and Section 30 of

³⁸ Convention against Corruption, United Nations, available at https://www.unodc.org/documents/brussels/UN_Convention_Against_Corruption.pdf.

³⁹ Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, Economic and Social Council, United Nations, available at https://www.unodc.org/pdf/criminal_justice/Guidelines_on_Justice_in_Matters_involving_Child_Victims_and_Witnesses_of_Crime.pdf.

⁴⁰ Article 68, Rome Statute of the International Criminal Court.

⁴¹ *Id.*

⁴² Sections 151, 152, Indian Evidence Act, 1882.

⁴³ Section 312, Code of Criminal Procedure, 1973.

⁴⁴ Section 195A, Indian Penal Code.

⁴⁵ Section 16, Terrorist and Disruptive Activities (Prevention) Act, 1987.

⁴⁶ *Id.*

POTA have exactly the same provisions.⁴⁷ In addition to this, Section 3 of POTA punishes a person who threatens a witness with violence or wrongful restraint or confinement.⁴⁸

V. EXISTING WITNESS PROTECTION PROGRAMMES

A. *In Major Democracies*

The United States has one of the most developed Witness Protection Programs in the world. The U.S. Federal Witness Security Program, commonly known as the Witness Security (WITSEC) Program provides for relocation and other protection of a witness or a potential witness in an official proceeding concerning an organised criminal activity or other serious offence.⁴⁹ Protection may also be provided to the immediate family of, or a person closely associated with such witness or potential witness.⁵⁰ The services provided to the protected individuals may include physical protection, documents for a new identity, housing, transportation, subsistence for living, assistance in obtaining employment, and other services needed to make the individual self-sustaining.⁵¹

In U.K., Section 51(1) of the Criminal Justice and Public Order Act, 1994 provides that it is an offence to harm and threaten victims or witnesses knowing or believing that they are assisting in the investigation of an offence.⁵²

Japan has evolved a comprehensive Witness Protection Programme under its Code of Criminal Procedure. An accused may be denied bail if there is reasonable ground to believe that he may threaten or may actually injure the body or damage the property of a victim or of a witness or relative of the victim/witness.⁵³

B. *In India*

On July 30, 2015, Delhi became the first state in the country to enact and notify a Witness Protection Scheme.⁵⁴ Section 7 of the scheme provides that the witness protection

⁴⁷ Section 17, The National Investigation Agency Act, 2008; Section 30, Prevention of Terrorism Act, 2002.

⁴⁸ Section 3, Prevention of Terrorism Act, 2002.

⁴⁹ Section 3521(a)(1), 18 U.S. Code, 2000.

⁵⁰ *Id.*

⁵¹ Sections 3521(b)(1)(A)-(F) and (I), 18 U.S. Code, 2000 (US).

⁵² Section 51(1), Criminal Justice and Public Order Act, 1994 (UK).

⁵³ Sections 96.1(4), 89(5), Code of Criminal Procedure (Japan).

⁵⁴ Jatin Anand, *First step towards witness protection*, The Hindu (July 31, 2015), <http://www.thehindu.com/news/cities/Delhi/first-step-towards-witness-protection/article7483593.ece>.

measures shall be proportional to the threat and shall continue for limited duration.⁵⁵ It provides for protection measures such as installation of security devices in the witness's home, close protection and regular patrolling around his house, temporary relocation by granting financial aids from Witness Protection Fund, escort to and from the court in a state funded conveyance, etc.⁵⁶

Additionally, specially designed 'vulnerable witness courtrooms' have been established to conceal the identity of witnesses.⁵⁷ These courtrooms have special arrangements like live links, one-way mirrors, separate passages for witnesses and accused, option to modify the audio feed and images of witnesses, etc.⁵⁸ Similar protection has been provided to child victims, sexual offence and disabled in the protocols issued by the Delhi High Court.⁵⁹

The Bombay High Court suggested the Maharashtra government to formulate a witness protection scheme on somewhat similar lines as enacted in Delhi.⁶⁰ The Government submitted a draft scheme in the High Court which had provision for protection for witnesses, whistleblowers, and RTI activists.⁶¹

The Witness Protection Bill, 2015 which has not yet been passed, contains provisions for the protection of witnesses. These provisions ensure that there is no harm to the witness' body, property, mind or any associated people and thus maintains their right to life. Such protection is provided during the process of investigation and inquiry, during the trial as well as after the trial as warranted by the court.

VI. SUGGESTED MODEL

As stated above, there is no Central or State Act or scheme regarding protection of witnesses in India except in Delhi. To come up with a feasible scheme for witness protection

⁵⁵ Section 7, Delhi Witness Protection Scheme, 2015.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ Guidelines for recording of evidence of vulnerable witnesses in criminal matters 2013, available at http://delhihighcourt.nic.in/writereaddata/upload/Notification/NotificationFile_LCWCD2X4.PDF.

⁶⁰ *Extend witness protection scheme to cops: HC to Maharashtra govt.*, Hindustan Times (February 9, 2016), <http://www.hindustantimes.com/mumbai/maharashtra-must-extend-witness-protection-benefits-to-ios-bombay-hc/story-b6N8C9LLDAwU6GfVQnoUsL.html>.

⁶¹ *Id.*

in consonance with the Indian criminal procedure, it is essential to identify the hurdles faced by witnesses.

1. No incentives- A person who has merely witnessed a criminal incident but is not related to the victim in any way, would not be interested in going through a tiresome process to assist the court to arrive at a truthful conclusion. In the absence of any incentives, such persons would not participate, leading to acquittals due to lack of evidence. Although several High Courts have implemented provisions for allowances in their rules, such provisions are not complied with.⁶²
2. Inconvenience- Witnesses face inconvenience during every stage of the procedure including investigation and trial. They are humiliated and harassed as they are asked indecent and irrelevant questions. This discourages them from going ahead and giving their testimony.
3. Threat and Inducement- Witnesses fear getting involved, particularly in cases involving influential and muscle power wielding accused,
4. Delay- The case remains pending for an unreasonable period of time due to frequent adjournments. As a result of which witnesses have to deal with aforementioned problems till the conclusion of the case, thus, magnifying their effect. Due to such delay, sometimes either their memories get distorted or they meet their natural death.⁶³

After taking a holistic view of the aforementioned problems and protection given to witnesses under various protection schemes across the world, an attempt has been made to formulate a suitable model.

A. Framework

Independent National and State Witness Protection Councils may be established as proposed under the Witness Protection Bill, 2015.⁶⁴ They will have the same constitution as prescribed in the Bill.⁶⁵ In addition to this, a District Protection Council may be established on the same lines to implement the scheme at the ground level. Further, a separate and independent police unit may be allotted to councils to carry out the investigation and provide

⁶² See Rule 38, Allahabad High Court General Rules (Criminal); Chapter 9, Delhi High Court Rules.

⁶³ See Article 3, International Covenant of Civil and Political Rights; Article 21, Constitution of India.

⁶⁴ Sections 8, 12, The Witness Protection Bill, 2015.

⁶⁵ Sections 9, 10, 11, 13, 14, The Witness Protection Bill, 2015.

protection to the witnesses. Funds may be allocated to these councils in the manner provided under the 2015 Bill.⁶⁶

B. Measures under the proposed scheme

The measures in the scheme may be provided at the following three stages -

1. During investigation

The time at which the incident has happened is very crucial as this is the stage when the person who has witnessed the crime makes his decision regarding participation in the process. Therefore, the scheme should have a provision for adequate arrangements for the convenience of the witness and a provision of allowance to enable them to arrive for testimony promptly and thus avoiding delay.⁶⁷

Apart from incentives, they should be assured of guaranteed protection and anonymity, otherwise, they would not come forward to give evidence.⁶⁸

- The witnesses may be provided state funded conveyance for the purpose of escorting them to the police station. If such arrangement is not possible then provision should be made for reimbursing the cost incurred in transportation.
- Since they are already traumatized, they should not be made to go through any humiliation or harassment once they reach the police station. The surroundings of the station should be welcoming. Necessary confidence has to be created in the minds of the witnesses that they would be protected from the wrath of the accused.⁶⁹
- They should not be asked irrelevant and indecent questions. Questions expressing doubts on their character should not be asked especially in cases of victims or witnesses of sexual offences.
- Arrangements should be made so that witness and accused do not come face to face.⁷⁰ Efforts should be made for isolating both the parties from each other from the time of the incident.

⁶⁶ Sections 9, 13, The Witness Protection Bill, 2015.

⁶⁷ See 14th Law Commission Report, *Reform of Judicial Administration*, Ministry of Law and Justice, Govt. of India, available <http://lawcommissionofindia.nic.in/1-50/Report14vol1.pdf>.

⁶⁸ Committee, *supra* note 19.

⁶⁹ 154th Law Commission Report, *The Code of Criminal Procedure*, Ministry of Law and Justice, Govt. of India, available at <http://lawcommissionofindia.nic.in/101-169/Report154Vol1.pdf>.

⁷⁰ *State of Punjab v. Gurmit Singh*, (1996) 2 SCC 384; *Delhi Domestic Working Women's Forum v. Union of India*, (1995) 1 SCC 14.

- In case of non-compliance, the witnesses can approach the District Council online or offline and get their grievances redressed.
- In case of any threat received by the witness, he can immediately report to the District Council. The council may be made accessible through helpline numbers, instant messaging applications like WhatsApp, etc.
- The council will make a preliminary inquiry and if the complaint is found to be genuine then it will register the witness and make him sign a Memorandum of Understanding (MoU).⁷¹ The MoU will list out the obligations of state and the witnesses. Breach of MoU by the witness will result in his being taken out of the programme. The witnesses can demand different levels of protection (like CCTV cameras around his house, patrolling at night, personal guard, tapping of phone, relocation, protection of identity, etc.) and can nominate people (like family members or nearby relatives) for whom he wants such protection. The council will take into consideration the following factors: *Firstly*, the gravity of threats which depends upon the type of the case and the background of the accused⁷²; *secondly*, significance of their testimonies; *thirdly*, whether they are sole witness in that case or any other factor the council deems fit. After examination of these factors, the council will decide the level of security and the persons to whom it may be provided.
- After registration, the council will bear the complete responsibility for the protection of convenience of witnesses.
- In case of any irregularity in compliance, the police officer in charge of the investigation shall be personally accountable and would be subjected to departmental enquiry and disciplinary action.

2. During Trial

- Victims and witnesses do not get the respect that they are worthy of and are prone to double victimization. Thus, during the proceedings, the outlook of advocates and judges towards the witnesses and victims should be sensitive. The procedure should be made pro-victims and pro-witnesses because the whole machinery has been established to protect and serve them.

⁷¹ Law Com No 198, *supra* note 8.

⁷² Committee, *supra* note 19.

- Indecent, scandalous, offensive questions and questions which intend to annoy or insult them should not be asked.⁷³ The questions to be put by accused in cross-examination should be given in writing to the presiding officer of the court, who may put the same to the victim or witnesses in a language which is not embarrassing.⁷⁴
- The court should keep the identity and the address of the witness as secret and avoid the mention of the names and addresses in its order or judgment.⁷⁵ During the proceedings, the accused and the witnesses should not come face to face as the mere sight of the accused may induce an element of extreme fear in the mind of the witnesses.⁷⁶ In such a situation he or she may not be able to give full details of the incident which may result in a miscarriage of justice.⁷⁷ A screen or some such arrangement should be made where the victim or witness do not have to undergo the trauma of seeing the body or face of the accused.
- If the safety of the witnesses and victims is in peril by commotion, tumult, or threat on account of pathological conditions prevalent in a particular venue then the venue of the trial can be changed.⁷⁸
- To reduce the probability of witnesses getting threatened or induced within the court campus, arrangements regarding security should be made. CCTV cameras and metal detectors should be installed in every courtroom and within the premises.
- The diversion of personnel from the Police Stations for various relatively unimportant duties such as ‘*Bandobust*’ is a common phenomenon.⁷⁹ Therefore, a police unit independent from the main unit may be provided which is under the control of the District Judge.
- Efforts should be made to record the statements of witnesses in one hearing to save them from the inconvenience of multiple visits to the court.
- ‘Vulnerable Witness Courts’ having special arrangements should be established following the Delhi scheme.⁸⁰ Trials in these courtrooms should take place in special

⁷³ Sections 151, 153, Indian Evidence Act, 1872.

⁷⁴ *Sakshi v. Union of India*, AIR 2004 SC 3566.

⁷⁵ Committee, *supra* note 19.

⁷⁶ *Sakshi*, *supra* note 74.

⁷⁷ *Id.*

⁷⁸ *Maneka Sanjay Gandhi v. Rani Jethmalani*, (1979) 4 S.C.C. 167; *Zahira Habibulla Sheikh v. State of Gujarat*, (2004) 4 SCC 158. *See* Sections 406, 407, Code of Criminal Procedure, 1973.

⁷⁹ 239th Law Commission Report, *Expedition Investigation and Trial of Criminal Cases Against Influential Public Personalities*, Ministry of Law and Justice, Govt. of India, available at <http://lawcommissionofindia.nic.in/reports/report239.pdf>.

⁸⁰ Section 7, Delhi Witness Protection Scheme, 2015.

cases such as a child under 18 years of age, a witness of a sexual offence,⁸¹ a disabled person or any witness who comes under the category of vulnerable witnesses in the opinion of the council.

- To prevent witnesses getting lured by monetary or other inducements, the council may conduct an inquiry if it finds that the statements of the witnesses have changed ludicrously. If they are found guilty of taking a bribe, then the council can impose fine and separate criminal proceedings under Section 344 of Cr.P.C. can also be initiated. Persons found guilty of intimidating the witnesses or offering inducements should be penalized. The accused should be denied bail if there are chances that he would threaten or harm the witness once he is out of jail.⁸²
- If the procedure prescribed by the scheme is not followed during the trial, then the witness can approach District Judge for the redressal of the grievances. The District Judge while coordinating with the District Council will ensure the proper implementation of the scheme. He will submit a monthly report to the concerned High Court and will be answerable for the implementation.

3. After Trials

- After the conclusion of the case, the protection will continue for a reasonable period of time decided by the council depending on the circumstances of the case. The scheme can be revised either by the council or on the application of the witness if the chances of threat reappear.
- If the council is of the opinion that the threat is so high that the expenses incurred to provide appropriate protection would be unreasonably high, then it would relocate the witnesses permanently. They will be provided a new residence, new identity and new profession or vocation for their sustenance.⁸³
- The council will provide for reimbursements and allowances to the witness for all the expenses (medical, travel, etc.) incurred by him during the whole procedure.

VII. COMPLEXITIES IN IMPLEMENTATION

⁸¹ See 172nd Law Commission Report, *Review of Rape Laws*, Ministry of Law and Justice, Govt. of India, available at <http://www.lawcommissionofindia.nic.in/rapelaws.htm>.

⁸² Akhtar v. State of U.P., 2014 (87) AllCC 482.

⁸³ Law Com No 198, *supra* note 8.

There can be following problems in the implementation of the Witness Protection Scheme:

- Huge amount of funds will be required for its implementation. However, such expenditure would only enhance the efficiency of the criminal justice system and would assist in the fulfilment of its primary objective.
- In the year 2015, there were 91,76,267 criminal cases pending in Indian courts. Providing protection to all the witness is not practically possible.⁸⁴ Therefore, the scheme will only provide protection to certain witnesses and not all of them. The degree of protection will depend upon the level of threat which will be examined by the council.
- The scheme cannot be used for ulterior motives and frivolous reasons as the persons applying for protection and incentives will be registered after a preliminary investigation by the council.
- Tapping of phones, CCTV camera near witnesses' house, constant monitoring, etc. will not be done without their consent as it would infringe their privacy.

VIII. CONCLUSION

The Witness Protection Bill, 2015 which is still pending in the Lok Sabha provides only the constitution and functioning of the authorities responsible for implementation. It lacks a detailed substantive framework as to what measures the scheme will employ and under what circumstances. The Parliament may either amend the Bill or come up with supplementary regulations which contain such framework. Moreover, police and public order are State Subjects while criminal law and criminal procedure are concurrent subjects under the Seventh Schedule to the Constitution. Therefore, the state governments are also responsible for protecting the life and property of the citizens including witnesses. Thus, all the state governments may also frame rules which are compatible with the geographical and political atmosphere of their respective states.

Once the scheme comes into existence, the general public of the country should be made aware of its scope and extent. The facilities and rights available to the witnesses in the scheme should be published in widely circulated vernacular newspapers, on websites, etc., in

⁸⁴ Compendium, *supra* note 27.

easy and accessible language. This would help in minimizing the social stigma attached with going to courts.

If the scheme is implemented in the desired manner, then greater number of witnesses will give their testimonies fearlessly and there would be a decrease in number of witnesses turning hostile. But, this is not enough. There is a general perception among people that criminals will be acquitted despite their testimonies due to flawed investigation. Thus, there is a need for an impartial and fair criminal investigation mechanism. Witness protection is only one aspect of this mechanism.