"WITNESS PROTECTION LAWS IN INDIA: NEED OF THE HOUR"

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DISSERTATION

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DECLARATION

I declare that the dissertation entitled **"WITNESS PROTECTION LAWS IN INDIA: NEED OF THE HOUR"** is the outcome of my own work conducted under the supervision of Dr. MAMTA RANA, at College of Legal Studies, University of Petroleum and Energy Studies, Dehradun and this is an authentic record of academic work submitted by me as a part of curriculum.

I declare that the dissertation comprises only of my original work and due acknowledgement has been made in the text to all other material used.

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CERTIFICATE

This is to certify that the dissertation work entitled **"WITNESS PROTECTION LAWS IN INDIA: NEED OF THE HOUR"** is the work done by MONALISA BANERJEE under my guidance and supervision for the partial fulfillment of the requirement of B.B.A. LL.B. (Hons.) degree with emphasis in Corporate Laws at College of Legal Studies, University of Petroleum and Energy Studies, Dehradun.

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ABSTRACT

Law is a social instrument to reach the destination that is justice. To serve justice to the needy and to bring the offenders to their knees for apology or strictly penalize them for the ultimate welfare of the society for which law has to keep pace with the transition in the society, Law has to change and be dynamic every moment so that even the most cunning criminal and a painstakingly carried out crime cannot escape the eagle eyes of laws. Witnesses form the backbone of a case and play the indispensible part in a criminal trial which makes it mandate for both the Executive (State) as well as the Judiciary (the Judge) to strictly take note and enact policies, programmes, distinguished legislations or establish high-level committees or do whatever is required to provide protection to the witnesses or get involve in "Witness Protection Programme".

FEAR, INTIMIDATION, ALLUREMENT, PHYSICAL THREAT TO LIFE OF HIMSELF OR RELATIVES, BRIBERY, NEPOTISM, RELUCTANCE are 'the most factors' which haunt the witnesses akin to evil spirits and chase them as if their own shadows resulting in their turning to hostile out of traumatization and retract from their own statements and observations mortifying the credential worth of their testimony which is to be considered as an edifice for conviction in a criminal trial and this is the sole reason why commission of crime rate in a democratic Country like, India is ceaselessly increasing whilst the conviction rate is abnormally low

With the Vyapam Scam, Self-styled Godman: Asaram Bapu rape case, Jessica Lal murder case still fresh in our memories, the newspapers and journals have been abuzz with articles and papers proclaiming the urgent need to reinforce the Criminal trial by endorsing laws for witnesses' security programmes day in and day out.

The present author has been constrained to attempt on her side to at least catch the attention of the Government of India who has turned a deaf ear to these issues, and to bring an eye on the burning pain of not having firm solutions for these problems and a distinguished legislation for 'Witness Protection' or formulate some specialized programmes for Witness anonymity or constitute High Level Committees to revamp the Criminal Justice delivery setting.

Key Words: Witness protection, witness anonymity, criminal trial, adjournments, India.

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INTRODUCTION

"Witnesses are the Eyes and the Ears of Justice"[1]

It is a myth to think of a crimeless society. Ever since the dawn of human civilization crime has been a baffling problem. There is hardly any society which is not beset with the problem of crime. Commenting on this aspect of crime problem, Emile Durkheim in his treatise '*Crime as a normal phenomenon*' says, "A society composed of persons with angelic qualities would not be free from violations of the norms of that society. In fact, crime is a dynamic concept changing to keep pace with the social transformation. He argues that different groups have variable and often incompatible interests in the society which give rise to conflicts eventually resulting in the incidence of crime." And to jettison the criminal activities from the society thereby, ensuring safety and security of the people and to insulate the society with a layer of protection comes the enactment and existence of criminal law.

Thus, the purpose of criminal law is not just to punish the criminals and ensure protection of the people of the society but to reach the depth of a case in search of truth and unearth the crime so that the victims get justice. In this process of inquest comes into play the crucial role of witnesses, who have been considered through ages, the indispensible part in the pursuit of justice delivery system. The fundamentals of justice necessitate that the truth and impartiality must be quintessence of justice. '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.'[2] It is an established fact that witnesses form the key ingredient in a criminal trial and

[1] Jeremy Bentham, *A Treatise on Judicial Evidence Extracted from the Manuscripts of Jeremy Bentham,* (1st Edn, Baldwin, 1825) 226.

[2] *Swaran Singh* v. *State of Punjab, AIR 2000 SC 2017.*

it is the testimonies of these very witnesses, which establish the guilt of the accused. Witnesses are the fulcrum of evidence on which rests a criminal case. Court must carefully analyze his evidence and see whether that part of evidence which is inconsistent with the prosecution case is acceptable or not.[3] It is, therefore, imperative that for justice to be done, the protection of witnesses and victims becomes essential, as it is reliance on their testimony and complaints that the actual perpetrators of heinous crimes can be brought to book.[4] Ergo it would be a complete anathema if strict protection is not provided for witnesses but unfortunately Protection of Witnesses is still a far cry in India.

There are umpteen laws and rights for the protection and welfare of accused in compliance with the presumption of innocence principle of the Criminal Jurisprudence but ironically the State has yet not taken an active initiative for protecting the persons (witnesses) who are the means to reach the truth of a case. Witnesses should be respected and treated as guest of honour but the sarcasm lies in the fact that they are harassed due to protracted trials defeating the ends of justice. It has become more or less a fashion to have a criminal case adjournment again and again till the witness tires and gives up. Not only the witness is threatened; he is abducted; he is maimed; he is done away with; or even bribed. There is no protection for him. In adjourning the matter without any valid cause, a Court unwittingly becomes party to miscarriage of justice.[5] The great thinker Bentham said that witnesses are the eyes and ears of justice.[6] It is for this reason that when a witness is called in for deposing before the court, it is expected that he/she would depose without any fear.

However, in the present times of politicization of crime and frequent intimidation of the witnesses, the witnesses do not feel safe. It is for this reason that they would either turn hostile in the middle of a trial or may not even come forward to depose before the court. This situation is alarming for the reason that it strangulates and crucifies the very purpose of a criminal trial as a criminal trial is to find out whether the accusation imposed upon the accused by the prosecution is true or not, which in the absence of a true witness is compromised. In such a case the end

[3] *State of Gujarat v. Anirudh Singh, (1997) 6 SCC 514.*
[4] *National Human Rights Commission v. State of Gujarat AIR 2009 (SCW) 3049 para 4.*
[5] *Supra note 2, at p. 11.*
[6] *Dhanaj Singh v. State of Punjab, AIR 2004 SC 1920.*

result of the trial may be something which may not be considered just if proper facts would have been placed before the judge.

Under Section 39 of the Cr.P.C., 1973,[7] citizens are legally and morally duty bound to give information about crime and criminals. It is, however, a harsh reality that willing cooperation and support from public and independent witnesses is hardly available due to the reason that police investigations are tardy and that they are repeatedly harassed when they come before the Court to depose the truth only to find that the case has been adjourned.

The sensational cases like the *BMW case*[8], *Jessica Lal murder case*[9] and the *Best Bakery case*[10], witnessed the exodus of witnesses and the resultant acquittal of the accused persons. Public outcry that the justice dispensation system crumbled at least in those cases deserves keen attention. We need to protect the witnesses who want to submit the truth, nothing but truth, before a Court of law. The fact is that the neither there was and nor there is any programme available under which after the assessment of the need for protection to a particular witness, the administration could give him/her the requisite protective cover as has been provided in countries like United States of America, Canada, Australia and United Kingdom.

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[7] "**Section 39: Public to give information of certain offences, of the Code of Criminal Procedure, 1973.**
(1) Every person, aware of the Commission of, or of the intention of any other person to commit, any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely.
(i) Sections 121 to 126, both inclusive, and section 130 (that is to say offences against the State specified in Chapter VI of the said Code);
(ii) Sections 143, 144, 145, 147 and 148 (that is to say, offences against the public tranquillity specified in Chapter VIII of the said Code);
(iii) Sections 161 to 165A, both inclusive (that is to say, offences relating to illegal gratification);
(iv)Sections 272 to 278, both inclusive (that is to say, offences relating to adulteration of food and drugs, etc.);
(v) Sections 302, 303 and 304 (that is to say, offences affecting life);
(va) Section 364A (that is to say, offence relating to kidnapping for ransom, etc);
(vi) Section 382 (that is to say., offence of theft after preparation made for causing, death, hurt or restraint in order to the committing of the theft);
(vii) Sections 392 to 399, both inclusive, and section 402 (that is to say, offences (if robbery and dacoity);
(viii) Section 409 (that is to say, offence relating to criminal breach of trust by public servant, etc.);
(ix) Sections 431 to 439, both inclusive (that is to say, offence of mischief against property);
(x) Sections 449 and 450 (that is to say, offence of house-trespass);
(xi) Sections 456 to 460, both inclusive (that is to say, offences of lurking house trespass); and
(xii) Sections 489A to 489E, both inclusive (that is to say, offences relating to currency notes and bank notes),
Shall, in the absences of any reasonable excuse, the burden of proving which excuse shall lie upon the person so aware, forthwith give information to the nearest Magistrate or police officer of such Commission or intention;
(2) For the purposes of this section, the term "offence" includes any act committed at any place out of India, which would constitute an offence if committed in India."

[8] *Sanjeev Nanda v. The State of NCT Of Delhi* in Crl. Appeal No. 807/2008.

[9] *State(NCT of Delhi)* v. *Sidhartha Vashisht & others*, 135(2006) DLT 465.

[10] *Zahira Habibulla H. Sheikh and Anr. Vs. State of Gujarat and Ors. 2004(3)BLJR197.*

The present study mainly focuses on the definition and significance of Witnesses in a criminal trial and the dilemma of these witnesses in the process thereby putting light on the crucial issues concerning witnesses turning hostile due to lack of protection and the urgent need to have a statute for a strict safeguard. This Study endeavors to sort out the various measures recommended by the Law Commission through years, to critically analyze through case laws the plight of witnesses and to systematically evaluate witness protection provisions contained in laws of the United States, the European Union and India and then explores in some detail the relevant law and policy on the both sides of the Atlantic and concludes by noting some continuing issues in witness protection laws and presents suggestions for their resolution.

RESEARCH METHODOLOGY

STATEMENT OF PROBLEM

This Study highlights the jurisprudential concept and significance of Witnesses in the pursuit of justice delivery system and the potential reasons behind witnesses turning hostile and retracting from their original statements during the criminal trial defeating the ends of justice. This Paper primarily frescoes and depicts a scenario that exemplifies how due to passivity of the snail paced trial procedures and repetitive adjournments , a witness, despite having stood embedded absolutely firmly in his examination-in-chief, audaciously and, in a way, obnoxiously, throws all the values to the wind, and paves the path of tergiversation. It would not be a hyperbole to say that it is a maladroit and ingeniously designed attempt to strangulate and crucify the fundamental purpose of trial, that is, to arrive at the truth on the basis of evidence on record. Further, the paper brings to light the dilemma the witnesses suffer each time they are summoned to Court and the intimidation, fear and allurement they face by the accused and the highly influenced people in the society for tampering the evidence thereby necessitating the need for the enactment of laws for a strict safeguard of the witnesses in India on which the edifice of the criminal case rests.

OBJECTIVES OF THE STUDY:

The objectives of the Present Study are-

- To explore the concept and the urgent need of "Witness Protection" in the context of criminal law thereby providing a comprehensive study of the development of this concept.
- To explain in seriatim the plight of witnesses and the harassment faced by them during investigation and trial in India and how a criminal case crashes down acquitting the accused and strangulating the very purpose of trial procedure that is to unearth the truth.
- To highlight the credibility and evidentiary value of statements of witnesses.
- To make a comparative and a systematic evaluation of the concept of Witness Protection in India, United States, Australia and United Kingdom.

- To critically examine the issues related to the witnesses turning hostile with the help of case laws and illustrations.
- To make a detailed study thereby discussing and interpreting the relevant provisions of the Evidence Act,1872 and the Code of Criminal Procedure,1973 dealing with the protection of witnesses.

SCOPE AND SIGNIFICANCE OF THE STUDY:

The scope of this dissertation is limited to the study of the fragile provisions concerning witness protection in India and to some extend to the provisions contained in tits and bits in Indian Penal Code, 1860, Code of Criminal Procedure,1973 and Indian Evidence Act, 1872 with short reference to case laws from the Supreme Court and various High Court across India, relevant articles, news reports, Law Commission reports and commentaries on the subject as well the developed laws regarding witnesses' security prevailing across the global village like U.K. and U.S.A.

The regular news flash pointing the unlikely deaths of the key witnesses of the cases, the dismantling of the criminal trial due to hostile witnesses unleashing the potent and heinous criminals to linger around freely, the low conviction rate despite abysmally high commission of crime rate, the intimidated, frustrated, traumatized witnesses retracting from deposing the truth before the Court thereby crucifying the purpose of criminal trial and defeating justice, the unreasonable protracted trials urged or rather instigated the author to ponder on the main reason behind these events which came out to be lack of sufficient and concrete protection for witnesses, absence of a separate legislation for their safeguards and anonymity in India and there lies the significance of this Dissertation in analyzing the current precarious situations through case laws and meticulously researching the possible solutions which can be suggested to protect the witnesses simultaneously trying to catch the attention of the Indian Government to establish high-level committees or develop programmes for witness rehabilitation, or keeping the identity of witnesses highly confidential by encrypting and using code languages within the departments so that witnesses feel safe, comfortable and secure in their home country to come forward voluntarily to testify and aid the Justice enforcement system to unearth the truth and provide justice to the needy.

RESEARCH QUESTIONS:

The crucial issues raised include the following:

1) Whether the witnesses play the role of a fulcrum in procuring evidence and forming the backbone of criminal justice system?
2) Whether the Witnesses turn hostile and retract from their original statements during criminal trial thereby dampening the spirit of fair trial procedure?
3) Whether apart from few provisions in the Indian Evidence Act, 1872 and Code of Criminal Procedure, 1973 there are any statutory laws for a strict protection of witnesses in India?
4) Whether there are any possible ways to shield witnesses and the traumatized victim witnesses from the accused thereby insulating them for rendering authenticated evidence and aiding the victims to get justice?

HYPOTHESIS:

The probable hypotheses of the present study are as follows:

1. Witnesses act as the pivot of evidence which forms the edifice of the criminal justice system.
2. Witnesses are harassed each time they are summoned to Court only to find that the cases are adjourned due to unfathomable reasons.
3. Witnesses and their relatives are intimidated and allured by the accused indirectly through highly influential personalities in the society for which they turn hostile during a criminal trial and crucify the very purpose of fair trial.
4. There are no separate and strict laws yet in India despite several Law Commission Reports for the anonymity and protection of witnesses barring few sections of Indian Evidence Act, 1872.

METHODOLOGY ADOPTED:

The research in this study has been done having relied upon "Doctrinal Method" of research. The methodology adopted for this project work is doctrinal, analytical and descriptive. The researcher mainly depended on the secondary sources like Books, articles, journals, bare acts, case-laws and e-resources on criminal laws. However, some primary data were also been obtained to finalize it. Doctrinal Research is concerned with legal prepositions and doctrines where the sources of data are legal and appellate court decisions and is not concerned with people but documents. The scope of doctrinal research is narrower as compared to non doctrinal since it studies about what the doctrine or the authority says yet more encouragement is given to doctrinal type of research than the non doctrinal.

SURVEY OF THE EXISTING LITERATURE:

1. **Mamta Shukla And Gaurav Shukla, "The Witness Anonymity & Protection: Balancing Under Criminal Law"; (*Journal Of Education And Social Policy)*, VOL. 1, NO. 2, DEC 2014.**

This Article provides a framework and a detailed study of the potential reasons behind witnesses retracting from their original statements and turning hostile in the middle of criminal trial resulting in miscarriage of justice and provides a possible solution for witness anonymity and protection in India.

2. **Hariprasad, "The Witness Protection-Bird's-Eye View"; *(Article Of Kerala Judicial Academy);* 2006(1).**

This Article provides a comprehensive study of the definition of Witness Protection in the context of Criminal Law, the plight of witnesses and offers a critical analysis through celebrated case laws of the urgency of witness protection laws in India.

3. **Tanuj Bhushan, "Witness Protection In India And United States: A Comparative Analysis"; Vol.2 (1) *(International Journal Of Criminal Justice Sciences*) 13 (2007).**

This Paper mainly focuses on the Witness Protection policy under the United States Criminal Law and makes a comparative study concerning the need for it through meticulous research of case laws.

4. **J.H. Suresh, "New Law Needed To Protect Witnesses"; (*In Combat Law)*, Vol. 4, Issue 1 (April-May 2005).**

This Article brings to light as to what are the reasons which necessitates the development of separate laws for the protection of witnesses and why at all the State should take an active initiative to frame laws for shielding witnesses in India.

5. **14th Report Of Law Commission *(Inadequate Arrangements For Witnesses)(*1958)**

This Report pointed out and highlighted the dilemma confronted by witnesses each time they are summoned to Court and recommended that travelling allowances and other facilities should be provided to the witnesses so that proper Justice is sought.

6. **172nd Report Of The Law Commission Of India, *Review Of Rape Laws* (2000).**

The 172nd Report of the Law Commission considered the implications made by the women organizations and NGO concerning that a minor who has been sexually assaulted need not give evidence in presence of the accused thereby introducing the concept of Screen Technique in Criminal trial.

7. **154th Report Of The Law Commission Of India, '*Code Of Criminal Procedure, 1973' (Act No. 2 Of 1974)* (1996).**

The 154th Law Commission[11] has undertaken a study of comprehensive revision of the Code of Criminal Procedure, 1973 so as to remove the germane problems leading to consequential delay in disposal of criminal cases.

8. **198th Report Of The Law Commission Of India, '*Witness Identity Protection And Witness Protection Programme'* (2004).**

[11] Law Commission of India, *The Code of Criminal Procedure, 1973 (Act No. 2 of 1974)*, 154th Report, Fourteenth Law Commission under the Chairmanship of Mr. Justice K. J. Reddy 1995-1997, in 1996.

This Report for the first time tried to cover up the gaps left by the earlier reports and prepared a Consultation Paper on Witness Identity Protection and Witness Protection Programmes (August 2004) inviting responses to the Questionnaire. This Report also made a distinction and provided three categories of witnesses.

9. **Ratanlal Ranchhoddas & Dhirajlal Keshavlal Thakore, *Ratanlal & Dhirajlal's The Law Of Evidence (Act I Of 1872)*, (21st Edn. 2004).**

This is the most authenticated book on Indian Evidence Law dealing with each section in details as well as providing a comprehensive and holistic overview of the Sections pertaining to the competency and compellability of witnesses supplying evidence and protection of witnesses from being asked scandalous questions during examination in a criminal trial.

10. **Dr. N.V. Paranjape, Criminology & Penology With Victimology, (15th Edition); Central Law Publications.**

This book encapsulates the evolution of the concepts of Criminology, penology and victimology as well as focusing on the importance of victim witnesses in a criminal trial as well as the Justice Delivery System in India.

CHAPTERIZATION:

1. INTRODUCTION

Chapter 1 refers to the introduction in which the scope, meaning and a comprehensive concept of 'Witness Protection' in the context of criminal law is being discussed thereby focusing on the significance of witnesses and their crucial role in criminal trial and the efficacy of the statement of witness which acts as the fulcrum of evidence on which rests the entire case.

2. HISTORICAL DEVELOPMENT OF THE CONCEPT OF WITNESS PROTECTION

Chapter 2 systematically deals with the historical perspective of how through Law Commission Reports and case laws developed the conception of witness identity protection and witness

protection programmes in India, its objectives in seriatim and details especially spotlighting on the plight of witnesses and the urgent need for the laws to statutorily protect them.

3. **A COMPARATIVE ANALYSIS OF WITNESS PROTECTION LAWS IN INDIA , U.K. AND UNITED STATES**

Chapter 3 deals with the comparative study of the development of the witness protection laws, the pros and cons of it in India, Common law Countries like U.K. and United States.

4. **LEGAL FRAMEWORK AND JUDICIAL TRENDS PERTAINING TO THE WITNESS PROTECTION**

Chapter 4 meticulously deals with the potential issues of the Witnesses turning hostile thereby frustrating and crucifying the very purpose of arriving at the truth on the basis of evidence on record, of the criminal trial and the plight of witnesses when they turn up before the Court to depose the truth just to find the case to be adjourned and other budding issues with the help of analysis of plethora of case laws.

5. **CONCLUSION AND SUGGESTIONS**

Chapter 5 is the outcome of the present study thereby providing probable solutions. It deals with the concluding part in the light of the study.

CHAPTER 1

"INTRODUCTION"

"Witnesses tremble on getting summons from Courts, in India, not because they fear examination or cross-examination in Courts but because of the fear that they might not be examined at all for several days and on all such days they would be nailed to the precincts of the Courts awaiting their chance of being examined. The witnesses, perforce, keep aside their avocation and go to the Courts and wait and wait for hours to be told at the end of the day to come again and wait and wait like that. This is the infelicitous scenario in many of the Courts in India so far as witnesses are concerned. It is high time that trial Courts should regard witnesses as guests invited (through summons) for helping such Courts with their testimony for reaching judicial findings. But the malady is that the predicament of the witnesses is worse than the litigants themselves…. The only casualty in the aforesaid process is criminal justice."[12]

The tribulations countenanced by the witnesses and the deprecating practices of the Sessions Courts in the country have been sententiously and squarely adumbrated in the sagacious observation made by the Indian Supreme Court. With the Vyapam Scam, Self-styled Godman: Asaram Bapu rape case, Jessica Lal murder case still fresh in our memories, the newspapers and journals have been abuzz with articles and papers proclaiming the urgent need to reinforce the Criminal trial by endorsing laws for witnesses' security programmes day in and day out.

> *"Free and fair trial is sine qua non of Article 21 of the Constitution.*[13] *It is trite law that justice should not only be done but it should be seen to have been done. If the criminal trial is not free and fair and not free from bias, judicial fairness and the criminal justice*

[12] [By Justice K.T. Thomas] in *State of Uttar Pradesh v. Shambhu Nath Singh*, (2001) 4 SCC 667.

[13] **Article 21 of the Constitution of India: Protection of life and personal liberty:** "No person shall be deprived of his life or personal liberty except according to procedure established by law."

system would be at stake shaking the confidence of the public in the system and woe would be the rule of law."[14]

Owing to the unjustifiable adjournments sought by the unscrupulous advocates on the drop of their hats resulting in snail paced trials makes the witnesses all the more hostile by the time they appear before the Court to posit their testimony as part of evidence. The credential value of the evidence degrades if a coloured version or a concocted story is introduced by the witnesses by prevaricating in the critical stages of investigation or criminal trial out of certain potential causes which are to be taken care of by the Welfare State but sarcasm lies in the fact, that concrete steps are yet to be taken by our Government for shielding the key players i.e. witnesses from those threats.

The rudiments of justice dictate that the truth and neutrality must be the sine qua non of justice, which in turn entails the prosecution to prove beyond reasonable doubt the facts of the case with the help of evidence. Now, evidence is further ramified into oral or documentary evidence and direct or circumstantial evidence as defined in the Evidence Act, 1872.[15] The testimony of witness comes within the purview of oral and direct evidence (e.g. Eye- witness) which holds a high evidentiary value and conviction is based on the sole testimony of the witnesses sometimes without even corroboration. Thus, this brings into play the role of a third party or an onlooker as an witness to confirm firsthand, the constituents of an incident to the criminal justice agencies and usually the trend is to consider the sanctity of the statements made by the witnesses to be honest and factual as they are made under oath and the veraciousness of witness statements turns out to be the cornerstone of justice.

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[14] [Justice H.K. Sema in K. Anbazhagan v. Supdt. of Police, (2004) 3 SCC 767]

[15] "**Section 3 of The Indian Evidence Act 1872,** defines evidence in the following words-

Evidence means and includes-

(1) All the statements which the court permits or requires to be made before it by witnesses, in relation to matters of fact under enquiry; such statements are called Oral evidence;

(2) All the documents including electronic records produced for the inspection of the court; such documents are called documentary evidence;

The definition of Evidence given in this Act is very narrow because in this evidence comes before the court by two means only-

(1) The statement of witnesses.

(2) Documents including electronic records."

On this aspect, it would be germane to understand, that a witness is conceived to be a major hint and a key performer in bolstering evidence and facilitating the Judiciary to arrive at the conclusion of a case which requires the witness to come and be present to depose before the Court with a sense of duty and full confidence. A witness is the heart and soul of a criminal Justice delivery system whose testimony determines the fate of a trial, he is the only person with no personal interest but to serve justice, a fulcrum around which the Criminal trial spins, but has now become a solitary destitute to have been forgotten by the system. The whole case of the prosecution can fall only on a false statement of the witnesses, for whatever reason it may be.[16]The vacillating attitude of the witnesses can crush rather collapse the justice delivery setting.

FEAR, INTIMIDATION, ALLUREMENT, PHYSICAL THREAT TO LIFE OF HIMSELF OR RELATIVES, BRIBERY, NEPOTISM, RELUCTANCE are 'the most factors' which haunt the witnesses akin to evil spirits and chase them as if their own shadows resulting in their turning to hostile out of traumatization and retract from their own statements and observations mortifying the credential worth of their testimony which is to be considered as an edifice for conviction in a criminal trial and this is the sole reason why commission of crime rate in a democratic Country like, India is ceaselessly increasing whilst the conviction rate is abnormally low.*"People believe that "law is like spider web: if some powerless thing falls into them, it is caught, but bigger one can break through and get away, if witness will not give evidence ,influential criminal will not prosecute or if prosecuted will not be convicted and the administration of justice will suffer."*[17]

"Invariant is the theory that the trauma of a person witnessing a crime starts from the crime scene itself. Aggressors pose open threat with wielded weapons to the so called eye witness right at the time of commission of the crime. During the course of investigation also a witness may suffer harassment, threat etc. at many hands. Pre-deposition and post-deposition periods are generally traumatic for a truthful witness."[18]The current precarious circumstance has made the condition of a poor witness similar to a famous Hindi proverb *"Dhobi ka kutta na ghar ka na ghat ka"* as because if they depose the truth they either get murdered or physically tortured by the high profile goons and if they turn hostile they are punished by the Court under Perjury

[16]Tanuj Bhushan, "Witness Protection In India And United States: A Comparative Analysis"; Vol.2 (1) *(International Journal Of Criminal Justice Sciences*) 13 (2007)
[17]Salmond in laertious in lives of philosophy.
[18] A. Hariprasad; Director of Kerala Judicial Academy, "Witness Protection- Bird's Eye- View"; 2006(1) J.V.

defined in Section 191 of IPC, 1908.[19] Hence, this dysphoric scenario prevailing in India manifests the dilemma of the witnesses for which they prefer to keep themselves absent from the precincts of the Courts.

> *"It is the sacrosanct duty of the Court to arrive at the truth of the case based on the evidence brought on record before it including the testimony of the witnesses and a sacred duty to conduct the trial strictly as per the law but often the accused has been found to make a mockery out of the criminal trial for his benefit resulting in the process to let suffer the witnesses."*[20]

In this context, even the great German philosopher Immanuel Kant who is considered to be the central of the modern philosophy had commented saying that:

"Seek not the favor of the multitude; it is seldom got by honest and lawful means. But seek the testimony of few; and number not voices, but weigh them."[21]

> *"Furthermore, If one is asked a question, what afflicts the legally requisite criminal trial in its conceptual eventuality in this country the two reasons that may earn the status of phenomenal signification are, first, procrastination of trial due to non-availability of witnesses when the trial is in progress and second, unwarranted adjournments sought by the counsel conducting the trial and the unfathomable reasons for acceptation of such prayers for adjournments by the trial courts, despite a statutory command under Section 309 of the Code of Criminal Procedure, 1973 (CrPC) and series of pronouncements by this Court. What was a malady at one time, with the efflux of time, has metamorphosed into*

[19]"**Section 191 of IPC, 1908: Giving false evidence**- Whoever, being legally bound by an oath or by an express provision of law to state the truth, or being bound by law to make a declaration upon any subject, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, is said to give false evidence.
Explanation 1- A statement is within the meaning of this section, whether it is made verbally or otherwise.
Explanation 2- A false statement as to the belief of the person attesting is within the meaning of this section, and a person may be guilty of giving false evidence by stating that he believes a thing which he does not believe, as well as by stating that he knows a thing which he does not know."

[20]*Vinod Kumar v. State of Punjab AIR 2015 SC 1206; (2015) 2 SCC (Cri) 226;(2015) 3 SCC 220.*

[21]Quoted by Immanuel Kant.

malignancy. What was a mere disturbance once has become a disorder, a diseased one, at present."[22]

The three lionized criminal cases of Best Bakery[23], Jessica Lal murder[24] and the BMW Hit and run case[25] poignantly hold up the mirror to the public to show and advert the predicament of the witnesses and how the turning of the key witnesses to hostile at crucial stages of trial under pressure dismantles the legal process thereby unleashing the potent criminals from being convicted and annihilate the very purpose of the criminal trial. The Supreme Court, various High Courts as well as the District Courts in catena of cases pinpointed the significance of witnesses in forming the framework of criminal trial system and reiterated the need for protection of witnesses (both identity and physical) to uphold the pillars of justice.

The politicization of crime and the distressed circumstances desperately call for the Government of India to response to the public outcry and preserve the public faith by looking into the matters concerning grave threats to witnesses' life both in terms of physical and mental condition and to either enact a separate legislation consolidating the provisions pertaining to their safety or to develop programmes of rehabilitation or identity protection of witnesses so that they do not become the cynosure of eyes of the accused and the influential criminals or underground Dons and be pressurized at their gunpoint to testify in their favour thereby crucifying the very purpose of unearthing the truth for justice and putrefying the Criminal trial.

Thesis's, articles, papers have been penned down the bleak witness protection law in India unlike Countries like U.S.A, Australia, U.K. across the global village, the causes behind witnesses turning hostile and abjuring from their earlier statements in the trial stage as well as the dreadful troubles confronted by these very witnesses while appearing before Courts, where some have been maimed or abducted or lured for money or power or even murdered and harping on the same tune, the present author has been constrained to attempt on her side to at least catch the attention of the Government of India who has turned a deaf ear to these issues, and to bring an eye on the burning pain of not having firm solutions for these problems and a distinguished

[22] *Vinod, Supra note 20, at p.25*
[23] *Zahira Habibulla H. Sheikh and Anr. Vs. State of Gujarat and Ors. 2004 (3)BLJ R197.*
[24] *State (NCT of Delhi)* v. *Sidhartha Vashisht & others*, 135(2006) DLT 465.
[25] *Sanjeev Nanda v. The State of NCT Of Delhi in Crl. Appeal No. 807/2008.*

legislation for 'Witness Protection' or formulate some specialized programmes for Witness anonymity or constitute High Level Committees to revamp the Criminal Justice delivery setting.

No doubt there are certain provisions concerning witnesses emphasizing the competency and compellability of witnesses in tits and bits in variety of statutes, codes like Code of Criminal Procedure, 1973, Indian Evidence Act, 1872, Juvenile Justice(Care and Protection of Children) Act, 2000, but unfortunately there is no separate legislation yet in India to consolidate categorically the provisions strictly dealing with the protection of witnesses be it identity protection or physical safeguard of witnesses and despite Supreme Court's judgments in certain 'high-profile' renowned cases canvassing the immediate need for witness fortification, the Indian Parliament however has not been able to come out of its laxity temperament.

Furthermore, the current laws are fragile and apart from few provisions in the special statutes, there is a necessity to have a general law dealing with witness anonymity in all criminal cases especially when there is a threat to the life of the witnesses or of his relatives or to his property but as is evincible from the contemporary scenario or situations of the criminal trial or despite numerous deaths, a separate law for witness protection is still a far cry in India.[26]

Though trailblazing efforts have been taken up by the Law Commission reports off late yet no fruitful suggestion has been put forth pertaining to the corporeal safety of witnesses and their anonymity. Ergo, recommendation of incorporation of a new Section 164-A[27] in Code of

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[26] http://timesofindia.indiatimes.com/india/Deaths-continue-but-witness-protection-law-still-a-far cry/articleshow/48077837.cms (last visited on 1.03.2016)

[27] " **Section 164-A of Cr.P.C. 1973: Medical Examination of the victim of rape:**

(1) Where, during the stage when an offence of committing rape or attempt to commit rape is under investigation, it is proposed to get the person of the women with whom rape is alleged or attempt to have been committed or attempted, examined by a medical expert, such examination shall be conducted by a registered medical practitioner employed in a hospital run by the Government or a local authority and in the absence of such a practitioner, by any other registered medical practitioner, with the consent of such women or of a person competent to give such consent on her behalf and such women shall be sent to such registered medical practitioner within 24 hours from the time of receiving the information relating to the commission of such offence.

(2) The registered medical practitioner, to whom such women is sent shall, without delay, examine her person and prepare a report of his examination giving the following particulars, namely.

(i) the name and address of the women and of the person by whom she was brought;
(ii) the age of the women;
(iii) the description of the material taken from the person of the women for DNA profiling;
(iv) marks of injury, if any, on the person of the women;
(v) general mental condition of the women; and

Criminal Procedure, 1973 has been made by the Malimath Committee on reforms of Criminal Justice System. However, no single line hint has been given concerning the witnesses' bodily security save as that laws should be enacted shielding the witnesses, their family members and relatives as well similar to the laws existing in U.S.A., Australia, U.K. and other countries across the world.

"The Mumbai police had formulated a four – point plan[28]*to protect vital witnesses in the bomb – blasts and other sensitive cases, with the terrorist activities on the rise which are as namely:*

1. Transferring the witness from his city of residence to another city

2. Government will provide the witness with a job similar to the one he is or was doing

3. The witness shall be given a new name, identification, ration card and new passport

4. The Government will accept the responsibility of the witnesses" entire family and provide it with a security cover.[29]" Disappointedly, these guidelines were only meant to be confined to the books and papers and never got implemented in reality.

> *"Witness intimidation has a profound and serious impact on the ability of government to enforce its laws and on society's confidence in the ability of government to protect its citizens. By depriving crime investigators and prosecutors of critical evidence, witness intimidation undermines the criminal justice system's ability to protect its citizens and ultimately undermines the confidence citizens have in their government (Finn & Healey 1996)."*[30]

(vi) Other material particulars in reasonable detail.

(3) The report shall state precisely the reasons for each conclusion arrived at.

(4) The report shall specifically record that the consent of the women or of the person competent to give such consent on her behalf to such examination had been obtained.

(5) The exact time of commencement and completion of the examination shall also be noted in the report.

(6) The registered medical practitioner shall, without delay forward the report to the investigation officer who shall forward it to the magistrate referred to in Section 173 as part of the documents referred to in clause (a) of sub-section 5 of that section.

(7) Nothing in this section shall be construed as rendering lawful any examination without the consent of the women or of any person competent to give such consent on her behalf.

Explanation: For the purposes of this section, "examination" and "registered medical practitioner" shall have the same meanings as in Section 53."

[28]Four – point plan is made on guidelines formulated under the Ministry of Defense in 2006.

[29]Available at http://www.legalserviceindia.com/articles/witness.html (last visited on 17.03.2016)

[30] *Tanuj, Supra note 16, at p. 24*

"This peril of turning hostile of witnesses is hastily increasing, and, if not checked articulately, it will surely create havoc in the system whereby the established norms of the land will crumble and ultimately halt the system to its unfortunate end. Nothing shakes public confidence in the criminal justice delivery system more than the collapse of the prosecution owing to witnesses turning hostile and retracting their previous statements."[31]

WORRYING STATISTICS

	2012	2013	2014	2015 (till Sept 30)
Number of FIR registered:	3,842	9,271	11,209	7,124
Cases in which Chargesheet was filed	2,783	6,053	3,890	324
No. of Cases in which accused was convicted	71	65	9	1

This perturbing statistical data shows the face of aberrantly low conviction rate in India which indicates that unavailability of witnesses due to coercion and other reasons or due to hostile witnesses the case of the prosecutrix breaks down dismantling the whole trial system.

[31] http://www.lawyersclubindia.com/articles/A-Critical-Analysis-on-Hostile-Witnesses 6257.asp#.VjBmJdKrTIU

Owing to the jeopardizing environment filled with fear, wrath, pressure and threat to life and existence from the accused party dissuades the witnesses in our democracy to have faith in the system, step forward and depose in the Court nothing but only the truth. A Criminal Trial is successfully and concretely established when readily available common man (witnesses) render information to the Court and provide evidence without any hesitation, trepidation and with free consent either for the prosecutrix or the accused party and this can be achieved only when the simple common man (witness) feels secure and gets assurance from their own so-called Welfare State of receiving full support and protection from the intimidation and harm that the criminal groups might seek to wreak upon them. The state of affairs get worsened further when witnesses find themselves as poor lone destitute without any security or authoritative protection from their State and bitterly realizing that their Welfare State has no legal obligation to safeguard them from the beasts. Witnesses form the spinal cord of a case and the foundation of a productive investigation and prosecution of crime. The incomplete circuit of a case is completed only when witnesses advance with full confidence having firm reliance on the administration of criminal justice settings to aid the law enforcement and prosecutorial authorities particularly in more complex and serious crimes.

> *"In the fight against crime, it is essential for the justice delivery system to be able to provide effective protection to witnesses. In the interest of a fair and effective criminal justice system governments must be able to protect the witnesses efficiently against intimidation, attacks and reprisals. To buttress the standpoint in the aforesaid context, it is worth to advert to the glaring observation made by the High Court of Delhi*"[32] :

"The edifice of administration of justice is based upon witnesses coming forward and deposing without fear or favour, without intimidation or allurements in Court of law. If witnesses are deposing under fear or intimidation or for favour or allurement, the foundation of administration of justice not only gets weakened, but it may even get obliterated. "[33]

[32] *Mrs. Neelam Katara v. Union of India & Ors., ILR (2003) II Del 377 260*

[33] The landmark observation was made by the High Court of Delhi in the petition filed by Smt. Neelam Katara, mother of Nitish Katara, who was killed by certain influential persons in the night of 16-17 Feburary, 2002. The mother, Smt. Neelam Katara, had filed the petition in the High Court of Delhi, requesting the court to issue directions pertaining to witness protection.

"The Indian Supreme Court has poignantly pointed out that until and unless witnesses are protected, the increase in unmerited acquittals in criminal cases cannot be checked.

'It is unfortunate that this [witness protection] important issue has not received necessary attention, and the time has come for the state to bestow serious attention on it," said a Bench of Justices Ms. Ranjana Desai and Madan B. Lokur. Writing the judgment, Justice Ranjana Desai said: "This appeal [in the instant case], again like many other appeals, presents before us the plight of a woman who has been burnt to death by her husband. Sadly, her parents turned hostile in court. This raises the serious question of witness protection… which is not addressed as yet.'[34]

Citing an earlier judgment, the Bench said: "The state has a definite role to play in protecting witnesses,… at least in sensitive cases involving those in power, who have political patronage and could wield muscle and money power, to avert the trial getting tainted and derailed and the truth becoming a casualty." As a protector of its citizens, the state had to ensure that during a trial, the witness presented the truth without fear of being haunted by those against whom he deposed, the Bench said."[35]

Due to this menace the witnesses hardly muster their valor to come frontward to testify and under such horrendous situations no one can even ensure the witnesses that no additional harassment will be there in the Court. A big question pops up each time that: How can anyone even make certain that corporeal security to be guaranteed to the witnesses not only for the duration of trial but afterwards as well? and how can such a perilous situation be curbed?

This Dissertation aims to critically examine the conditions of witness protection in India, how does the assault on witnesses' acts as hindrances to our Criminal Justice System and what apposite tonics can at all be advocated to wipe out these hurdles during the administration of criminal justice.

[34] *Anjanappa v. State of Karnataka, (2014) 2 SCC 776*

[35] http://www.thehindu.com/news/national/its-for-state-to-protect-witnesses-in-criminal-cases-supreme-court/article5355945.ece?ref=relatedNews (last visited on 17.03.2016)

1.1 CONCEPTUALIZATION OF WITNESS

1.1.1 WHO IS A WITNESS? [INDIAN SCENERIO]

In common parlance, by witness is meant a person who reports a firsthand observation of the ingredients of the incident or the crime to the police or the criminal authority agencies thereby helping the Court to discover the truth. The term witness has not been statutorily defined anywhere, neither in the Indian Evidence Act, 1872 nor in the Code of Criminal Procedure Act, 1973. But, yes mention has been there in the Indian Evidence Act, 1872 in Section 151 and 152 regarding shielding the witnesses from being asked indecent, scandalous, offensive questions, and questions which intend to annoy or insult them.[36]Barring these few sections there are no other alternative arrangements available for the security and tauten safety of witnesses in our India. Nevertheless, for the victims of rape, a special section was inserted wherein the Court shall presume that she (the victim) did not consent if she states in her testimony that she didn't consent.[37]

> "The ordinary meaning of the term ***"witness" is a person present at some event and able to give information about it.***[38]In other words, a witness is a person whose presence is necessary in order to prove a thing or incident. Witness ***is "a person who sees an event take place,"*** defines **Concise Oxford English Dictionary.** He gives sworn testimony to a court of law or the policemen. There is a box or stand from where the witness gives evidence in a court, and the verdict."

[36] Section 151 and Section 152 of Indian Evidence Act, 1872:
"Section 151 of Indian Evidence Act,1872: Indecent and Scandalous questions- T 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.
Section 152 of the Indian Evidence Act,1872: 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."
[37] **Section 114A of the Indian Evidence Act, 1872**, which substitutes the earlier law as provided under Section 155 (4) [omitted by Act 4 of 2003] wherein a man prosecuted for rape or an attempt ravish could show that as a defence that the prosecutrix was generally of immoral character.
[38] **Dorling Kindersley Illustrated Oxford Dictionary**, Dorling Kindersley Ltd. & Oxford University Press,1998 Ed., P. 958

According to Black's Law Dictionary:

> *"A witness is defined as 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"*[39]

Wikipedia[40] explicates that:

> *"A witness who has seen the event firsthand is known as an 'eye-witness'. A witness is someone who has firsthand knowledge about a crime or dramatic event through their senses (e.g. seeing, hearing, smelling, touching), and can help certify important considerations to the crime or event".*

The word has its origin in Old English word 'witnes' which means '*attestation of fact, event, and so on, from personal knowledge*,' also '*one who so testifies*,' originally "knowledge, wit," formed from *wit* (n.) + *-ness* "explains *Online Etymology Dictionary*.[41]

> *"To witness is to countersign a document, affirming the authenticity of a document or a signature on a document by signing it, explains Encarta."A certain number of witnesses are legally required to be present at weddings and certain other official events, and may have to sign a register as evidence of the event having taken place*."[42]

"Witness, therefore, attests, and the word attest has origin in ***Latin testari 'bear witness****.' To witness is to experience important events or changes, to see things happen.*[43] *According to* ***B.P. Ramanatha Aujar,****a witness is, 'one who gives evidence in a cause; an indifferent person to each party, sworn to speak the truth, the whole truth and nothing but the truth.*'[44]"

[39]Bryan A. Garner (ed.) **Black's Law Dictionary**, West Group, St. Paul, Minnesola,(17th Ed.,1999), P. 1596
[40]en.wikipedia.org/wiki/**Online_Etymology_Dictionary**
[41]http://www.etymonline.com/ (last visited on 1.03.2016)
[42]*http://en.wikipedia.org. (last visited on 1.03.2016)*
[43]D. Murali, "**Thou shalt not bear false witness"** Published on 24 Dec 2004 www.blonnet.com/
[44]Concise Law Dictionary, 8th Ed., 1997, P.896; 'On a bare perusal of proviso to Sec. 15 (2) of Immoral Traffic (Prevention) Act, 1956 in the light of Sec. 137 of Indian Evidence Act, 1872, it becomes clear that witness is a person who gives or is to give evidence in a cause, a person sworn to speak the truth in a trial; one who attests a document; one who is cognizant of something by direct experience.'

Certain guidelines called the **"Witness Protection Guidelines"** have been issued by The Delhi High Court[45]wherein *"witness" means a person whose statement has been recorded by the Investigating Officer under Section 161 Cr.P.C.[46]pertaining to a crime punishable with death or life imprisonment.*

> To adumbrate the above elucidations concerning the denotation of witness, we conclusively mean that "*a witness is a person who have the knowledge of an event; a person whose declaration under oath is received as evidence for any purpose. He is a person who has either seen the event, as eye-witness, or who has heard something relating to matter in issue as a hearsay witness, or the one who has seen the instruments being executed in his presence as an attesting witness."*

1.1.2 CONCEPT OF WITNESS UNDER EUROPEAN CONVENTIONS AND TREATIES

The European Convention[47] has not delineated the term witness, but case law grants the term a widest connotation, describing it as an *"autonomous concept"*[48]. This interpretation bestowed by the European Court allows for a broad scope in its appliance not strapping the definition to any specific form of words.

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[45] *Neelam Katara, Supra note 21, at p.13*

[46]"**Section 161 of Cr.P.C. 1973**: **Examination of Witnesses by Police-**
(1) Any police officer making an investigation under this Chapter, or any police officer not below such rank as the State Government may by general or special order, prescribe in this behalf, acting on the requisition of such officer, may examine orally any person supposed to be acquainted with the facts and circumstances of the case.
(2) Such person shall be bound to answer truly all questions relating to such case put to him by such officer, other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.
(3) The Police officer may reduce into writing any statement made to him in the course of an examination under this Section; and if he does so, he shall make a separate and true record of the statement of each such person whose statement he records.
[Provided that statement made under this sub-section may also be recorded by audio-vedio electronic means.]"

[47]**Convention for the Protection of Human Rights and Fundamental Freedoms** (European Convention on Human Rights) 1950

[48]*Kostovski, Isgrò*

"**Recommendation R (97) 13 also present a very wide-ranging definition under which a witness is**:"*any person, irrespective of his/her status under national criminal procedural law, who possesses information relevant to criminal proceedings*".

"Therefore it covers those who do not give their evidence at a trial and even those who make a statement to the police only and not to any prosecution or judicial authority (Unterpertinger) or who have disappeared after making an initial statement (Isgrò). It embraces witnesses for the prosecution (including complainers and co-accused who 'turn Queen's evidence') and for the defence (including accused persons) although this is not expressly stated. While a co- accused is certainly a competent witness it is not clear whether he or she can be compelled to give evidence. Most of the case law is concerned with prosecution witnesses. It expressly includes experts and interpreters."[49]

The European Council Resolution of 23 November 1995 on the protection of witnesses in the fight against international crime[50] defines a protected witness as:[51]

"Any person, whatever his legal status, who possesses intelligence or information regarded by the competent authority as being material to criminal proceedings and liable to endanger that person if divulged".

1.1.3 CONCEPT OF WITNESS UNDER INTERNATIONAL LAW: SOME PROMINENT INSTANCES

In International law there is no perfect definition as to who constitutes a "witness". It can be extrapolated from various treaties and plethora of case laws that parties proffering testimony in criminal proceedings are generally subject to some rules and guidelines. These are the parties we in ordinary parlance in the domestic law understand as witnesses, specifically victims where they

[49]Article 6 (3) (e); *Bönisch*; *Brandstetter*
[50]95/C 327/04
[51]European Union document on **Common Criteria for taking a witness into a Protection Programme** December 2002 Europol, 2510-82 rev 3

appear as witnesses in criminal trials and other susceptible categories encompassing children and all those with mental conditions.

"Before the Yugoslav Tribunal both the suspect and accused enjoy the right to silence. Under Article 21(g) of the Statute governing the Tribunal the accused cannot be compelled to testify or confess to guilt. Further guidance is given under the Rules of Procedure and Evidence which state that the suspect should be cautioned and informed of the right to silence before questioning.[52]*The co-accused cannot be compelled into testifying against a fellow accused. The position of the witness is slightly different. Under Rule 90(F), "a witness may object to making any statement which might tend to incriminate the witness." However, if the witness does so object, the Tribunal may compel the witness to answer the question. Testimony compelled in this manner cannot subsequently be used as evidence in a prosecution against that witness except for perjury.*

The Scottish law does not provide us with any specific well designed definition of witnesses, though the duties and obligations required of witnesses can be deduced from statute, for example ss.155 and 291 of the Criminal Procedure (Scotland) Act 1995, and from the common law, as, for instance in the case of ***HMA v. Monson***[53]*. A co-accused is a competent but not compellable witness for another co-accused. In terms of s.266 (9) a co-accused may consent to be called as a witness for the accused or may when giving evidence be cross-examined by the accused. Co-accused become compellable witnesses for both the Crown and Defence if they enter a plea of guilty or have been acquitted or the case against them has been deserted.*[54]

The statement given by the witnesses helps the court to a great extent to frame the facts and circumstances of the case. It is for this reason that they are expected to tell the truth. It is said that witness are weighed, they are not numbered. Their relevance can only be ascertained by the

[52]Rule 42 (A) (iii)
[53](1893) 21 R(J) 5
[54]S.266(10)

statements given by them and also the evidence produced by them though not in quantity but in quality. If a fact is fully proved by two witnesses, it is as good as if proved by a hundred[55]*."*

"'Good Practices in the Protection of Witnesses in Criminal Proceedings Involving Organized Crime' was launched in February 2008 by The United Nations Office on Drugs and Crime (UNODC). It endows with that the definition of "witness" may be at variance according to the legal system under review. *"For protection purposes, it is the function of the witness – as a person in possession of information important to the judicial or criminal proceedings – that is relevant rather than his or her status or the form of testimony."* Concerning the procedural moment at which a person is conceived to be a witness, the judge or prosecutor does not need to officially declare such status in order for the protection measures to apply. Witnesses can be ramified into three main categories:

(a) Justice collaborators;

(b) Victim-witnesses;

(c) Other types of witness (innocent bystanders, expert witnesses and others)."

For purposes of the Good Practices for the Protection of Witnesses in Criminal Proceedings involving Organized Crime, the following definition applies:

> **"*Witness" or "participant": any person, irrespective of his or her legal status (informant, witness, judicial official, undercover agent or other), who is eligible, under the legislation or policy of the country involved, to be considered for admission to a witness protection programme."***

1.1.4 CONCEPT OF PROTECTION UNDER EUROPEAN CONVENTIONS AND TREATIES

'European Convention' does not facilitate a proper definition of 'Protection' but Recommendation R (97)13 define intimidation broadly to cover "*any direct, indirect or potential*

[55]Mr. Justice Buller in *Calliand* v. *Vaughan*, 1798; also see H.L. Menkin's Dictionary of Quotations on **Historical Principles from Ancient and Modern Sources**, Collins, London and Glasgow, 1982 Ed., P.1311

threat to a witness, which may lead to interference with his/her duty to give testimony free from influence of any kind whatsoever".

"The nature and degree of protection afforded to witnesses will depend on the individual circumstances but the Court has accepted the following as permissible in certain circumstances:

- *trial held without the public and/or the media being present*
- *statement read out at trial without witness being present*
- *witness giving evidence at trial wearing disguise*
- *witness giving evidence at trial is not identified/selected details only given*
- *witness's voice at trial is distorted*
- *witness giving evidence at trial but in a separate room via a video link*
- *witness's identity revealed at the latest possible stage of the proceedings.*

Recommendation R (97) 13 demands that handy measures ought to additionally be taken by Member States to shield threatened witnesses, for example, witness assurance projects and expert help, including lawful, mental, social and money related help."

1.1.5THE CONCEPT OF PROTECTION UNDER INTERNATIONAL LAW: SOME PROMINENT INSTANCES

The level or the degree of protective measures which a witness should expect in criminal proceedings is not defined or properly orchestrated in International Law. The Statutes for the Yugoslav and Rwandan Tribunals provide for measures for witness fortification and in the recent past in the newly agreed Statute for the International Criminal Court and arguably these institutions have a duty to provide appropriate protective measures.

Article 68 of the Rome Statute for the International Criminal Court is couched in similar terms.

"Additionally some special measures can be inferred from international agreements relating to children and juveniles. The measures approved by the Yugoslav Trial Chamber include:

- *delaying the disclosure of witness details to the defense*
- *allowing testimony to be given by one way closed circuit television*

- *closed session hearings*
- *the use of voice and image altering devices*
- *total non-disclosure of information relating to the identity of the witness"*

Article 21 of the Statute of the International Criminal Tribunal for Rwanda (1994) provides for the Protection of Victims and Witnesses.

"*The International Tribunal for Rwanda shall provide in its Rules of Procedure and Evidence for the protection of victims and witnesses. Such protective measures shall include, but shall not be limited to, the conduct of, in camera proceeding and the protection of the victim's identity."*

Rule 69 of the Tribunal deals with protection of Victims and Witnesses:

A. *"In exceptional circumstances, either of the parties may apply to a Trial Chamber to order the non-disclosure of the identity of a victim or witness who may be in danger or at risk, until the Chamber decides otherwise.*

B. *In the determination of protective measures for victims and witnesses, the Trial Chamber may consult the Victims and Witnesses Support Unit.*

C. *Subject to Rule 75, the identity of the victim or witness shall be disclosed in sufficient time prior to the trial to allow adequate time for preparation of the prosecution and the defence."*

Article 68 of the Rome Statute (which established the International Criminal Court) sets out the relevant provisions in respect of witnesses. "*Article 68(1) places a duty on the ICC to protect witnesses both physically and psychologically. Factors such as age, gender and the nature of the offences should be taken into account and such measures can be applied during both the investigative and trial stages of proceedings. Article 68(1) also states that these measures should not prejudice the rights of the accused."*

1.2 IMPORTANCE OF WITNESSES IN CRIMINAL TRIALS

In a Criminal Justice delivery system, witness forms the vertebral column of a case upon whose testimony the acquittal or conviction of the accused is determined and around whom the whole case revolves. This simple ordinary man (witness) is an indispensible part, the bulwark of a criminal trial since with his support, the Court is competent to identify the characters of the case and discover the truth thereby doing justice to the needy victims as well as to the society and also finds itself proficient to maintain the public trust in the Judiciary System of the country. Hence, this eminence of the witnesses demand the court authorities to treat them as Guest of Honour and facilitate them with all the privileges so that they find themselves safe, secure and comfortable to efficiently assist the Law enforcement agencies including the administration to proffer their testimony with free consensus and without any fear, apprehension or allurement.

The importance of witness is evident from the morals that the *New Testament* teaches: ***"Thou shalt do no murder, thou shalt not commit adultery, thou shalt not steal, and thou shalt not bear false witness."***

The importance of the witnesses to the trial process could be inferred from the fact that an eminent thinker **Bentham** once mentioned that **"*witnesses are the eyes and ears of justice*."** Highlighting the necessity of people's assistance in detection of crime the Hon'ble Supreme Court in ***State of Gujrat V. Anirudh Singh***[56]

"*It is the salutary duty of every witness who has the knowledge of the commission of the crime, to assist the State in giving evidence*."

Wadhwa J. in **Swaran Singh v. State of Punjab**[57]while commenting on the importance of a witness in the criminal justice system observed:

"*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*."[58]

[56](1997)6 S.C.C. 514
[57](2000)5 S.C.C. 68
[58]Ibid 57.

Thus a witness is a significant party in a case along with the complainant and the accused. Committee on Reforms of Criminal justice System[59] while explicitly emphasizing on the paramount importance of witness says:

"*By giving evidence relating to the commission of an offence, he performs a sacred duty of assisting the court to discover the truth. It is because of this reason that the witness either takes an oath in the name of God or solemnly affirms to speak the truth, the whole of the truth and nothing but truth. He/she performs an important public duty of assisting the court in deciding on the guilt or otherwise of the accused in the case. He submits himself to cross-examination and cannot refuse to answer questions on the ground the answer will incriminate him*".

He has to give all the information correctly otherwise he will have to face the trial under Section 191 of the Indian Penal Code (hereinafter the "IPC") and thereafter may be penalized under Section 193-195 of the same for the aforesaid offence.
Once again in ***Zahira Habibulla H. Shiekh and Another V. State of Gujarat and others***[60]the Supreme Court identified the witnesses' important position with reference to the fair trial:

"*Fair trial means a trial in which bias or prejudice for or against the accused, the witnesses, or the cause which is being tried is eliminated. If the witnesses get threatened or are forced to give false evidence that also would not result in a fair trial. The failure to hear material witnesses is certainly denial of fair trial*."

Diverse additives have brought about increased attention on the part of witnesses in criminal approaches in India, in addition to on the generic level. The two "the most critical factors" have been the development of zest for the eminence of the sufferers and witnesses in criminal technique and the big ascent in terrorist and orchestrated criminalities.

[59]Headed by Justice Mallimath, Volume I, P. 151
[60](2004) 4 S.C.C. 158

"The importance of a witness has been acknowledged particularly in crimes such as terrorist offences, drugs trafficking and crimes committed by organized groups. The European Union, for instance has adopted a Resolution[61] on the Protection of witnesses in the fight against International Organized Crime. The difficulties faced by the witnesses include life-threatening intimidation against themselves and their families. Where such witnesses are police informers or police officers, further investigations and crime prevention activities may be hampered because of inadequate witness protection. However, other witnesses can also face difficulties, including witnesses to crime within the family or close community, witnesses in sexual offence cases and other witnesses who are vulnerable for personal reasons."[62]

The indictment primarily depends on the oral proof of the witnesses for demonstrating the body of evidence against the blamed. It is thus that witnesses merit an exceptional treatment in such cases. Be that as it may, lamentably, what's occurring in the courts is thoroughly turn around particularly in the courts of other nation where there is no law identifying with treatment and security of witnesses.

It is now high time to bestow stern and unadulterated thoughts for protecting and safeguarding the witnesses so that the eventual truth is presented before the court freely without any fear or traumatization and justice triumphs and that the trial is not abridged to a mockery.

The country has a clean rather urgent part to play in securing the witnesses, first of all at any fee in sensitive cases which includes human beings with first rate impact, who've political assist and will wield muscle and cash force, to shrink back trial getting polluted and wrecked and reality turning into a loss. As a defender of its natives it wishes to assure that amid an ordeal inside the court docket the witness could securely oust fact without any trepidation of being spooky through the ones against whom he had deposed. We proportion the above feelings. Unless the witnesses are ensured the ascent in baseless exonerations cannot be checked. It's miles tragic that this important problem has yet not been given vital attention.

[61]Dated 23 November 1995, 95/C 32704

[62]The Scottish Executive Central Research Unit, ***Briefing Paper on Legal Issues and Witness Protection in Criminal Cases,*** by Mark Mackarel, Fiona Riatt and Susan Moody, Department of Law, University of Dundee.

"Witnesses" as Bentham said: are the eyes and ears of justice. Hence, the importance and primacy of the quality of trial process. If the witness himself is incapacitated from acting as eyes and ears of justice, the trial gets putrefied and paralyzed, and it no longer can constitute a fair trial. The incapacitation may be due to several factors like the witness being not in a position for reasons beyond control to speak the truth in the Court or due to negligence or ignorance or some corrupt collusion. Time has become ripe to act on account of numerous experiences faced by Courts on account of frequent turning of witnesses as hostile, either due to threats, coercion, lures and monetary considerations at the instance of those in power, their henchmen and hirelings, political clouts and patronage and innumerable other corrupt practices ingenuously adopted to smoother and stifle truth and realities coming out to surface rendering truth and justice, to become ultimate casualties. Broader public and societal interests require that the victims of the crime who are not ordinarily parties to prosecution and the interests of State represented by their prosecuting agencies do not suffer even in slow process but irreversibly and irretrievably, which if allowed would undermine and destroy public confidence in the administration of justice, which may ultimately pave way for anarchy, oppression and injustice resulting in complete breakdown and collapse of the edifice of rule of law, enshrined and jealously guarded and protected by the Constitution.

Legislative measures to emphasize prohibition against tampering with witness, victim or informant have become the imminent and inevitable need of the day. Conducts which illegitimately affect the presentation of evidence in proceedings before the Courts have to be seriously and sternly dealt with. There should not be any undue anxiety to only protect the interest of the accused. That would be unfair as noted above to the needs of the society. On the contrary, the efforts should be to ensure fair trial where the accused and the prosecution both get a fair deal. Public interest in the proper administration of justice must be given as much importance if not more, as the interests of the individual accused. In this courts have a vital role to play."[63]

[63]Himansu Singh v/s M P 2008 SCR 783

1.3 NEED OF THE STUDY

"Witnesses are the foundation of well- functioning criminal justice systems as their cooperation with law enforcement and judicial authorities is essential to prosecute crimes successfully. Protecting witnesses from intimidation or physical threats from crime suspects is therefore a requirement to uphold the rule of law. The Supreme Court in the case of ***Krishna Mochi v. State of Bihar***[64] *observed that society suffers by wrong convictions and it equally suffers by wrong acquittals*[65].

The main crisis being faced by criminal Justice System relates to intimidation or allurement of victims or witnesses leading to inevitable consequences of collapse of trial. In ***Krishna Mochi***[66] *case the Supreme Court pointed out various reasons why the witnesses are not deposing in the court or why their deposition is not found credible. It was observed that one of the reasons may be that they do not have courage to depose against an accused because of threats to their life, more so when the offenders are habitual criminals or high ups in the Government or close to power which may be political, economical or other powers including muscle power.*[67]"

Remembering[68] this view the present study has been embraced to distinguish the crevices in the insurance of witnesses under household law. Need of the study emerges when we see that regardless of the high rate of wrongdoing and low rate of conviction, there is no simple structure in India to secure witnesses in vital cases. Nonappearance of these laws has helped in further fortifying the crooks and guilty parties. Without sufficient security the witnesses are turning antagonistic. This threatening vibe of witnesses has further convoluted the issue.

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[64] AIR 2003 SC 886
[65] Id. at 2664
[66] Id.
[67] Id.
[68] Shodganga.com

1.4 DEFINITION OF HOSTILE WITNESS AND ITS CHARACTER

It may devastate the most meticulously evolved of instances and cases, it is able to squander the season of courts, and it could allow crooks to stroll loose, creating a shaggy dog story of the investigative process. It is the issue of a witness turning adversarial. Threatening vibe is one main reason behind prevarication. Hostility is one form of perjury. A witness is named adverse, when he gives a selected articulation on his insight about commission of a wrongdoing before the police but disproves it whilst called as witness under the regular gaze of the court amid trial. The expression "Hostile" witness has it is genesis within the Common Law Regulation.

"The function of the term was, to provide adequate safeguard against the "contrivance of an artful witness" who willfully by hostile evidence "ruin the cause" of the party calling such a witness. In Oxford dictionary the word Hostile is defined as "very unfriendly or aggressive and ready to argue or fight". ***This is a Latin origin word derived from "hostlis", from "hostis", means enemy.*** *And while in Wikipedia "A hostile witness is a witness in a trial who testifies for the opposing* party or a witness who offers adverse testimony to the calling party during direct *examination. A hostile witness is sometimes known as an adverse witness or an unfavorable witness." The word "hostile witness" is not defined in the Indian Evidence Act, 1872 as the draftsmen of the Indian Evidence Act, 1872 were not unanimous and acquainted with regard to the meaning of the words "adverse", "unwilling", or "hostile", and therefore, in view of the conflict, refrained from using any of those words in the Act.*

The matter is left entirely to the discretion of the court. A witness is considered adverse when in the opinion of the Judge, he bears a hostile animus to the party calling him and not merely when his testimony contradicts his proof. The Supreme Court of India defined a Hostile Witness as "one who is not desirous of telling the truth at the instance of the party calling him and an unfavourable witness is one called by a party to prove a particular fact, who fails to prove such a fact or proves an opposite fact" in the case of Sat Pal v. Administration."[69]

[69] http://www.lawyersclubindia.com/articles/A-Critical-Analysis-on-Hostile-Witnesses_6257.asp#.VjBmJdKrTIU(last visited on 17.03.2016)

1.4.1 CONCEPT OF HOSTILE WITNESS UNDER INDIAN EVIDENCE ACT

It is intriguing to note that the Act does not utilize the expression "antagonistic witness" or “Hostile Witness”, in this way keeping away from the perplexity prevalent under English law by the utilization of the term. Under Section 154 of the Evidence Act, there is nothing to pronounce a witness as antagonistic or hostile, however it gives that the court in its prudence might allow a man who calls a witness to put any inquiry to him which may be placed in interrogation. This segment permits a gathering, with the consent of the court to interrogate his own witness similarly as the opposite party. Such round of questioning implies that he can be asked, firstly, leading questions under Section 143; secondly, addresses identifying with his past explanation in composing under Section 145; and, thirdly, addresses which tend to test his veracity, to find who he is and what his position in life is or to shake his credit under Section 146. On the off chance that we break down the dialect of Section 154 the below-mentioned points come into picture:-

Firstly, the procurement (Section 154 of the Indian Evidence Act, 1872) just discusses allowing such inquiries as might be asked in round of questioning in cross examination.

Secondly, the law no place says, the need to proclaim a witness as unfriendly or adversarial or adverse, before the provision can be prayed.

Thirdly, the legal thought (under Section 154) is just to be summoned when the court feels that "the demeanor revealed by the witness is detrimental of his obligation to talk reality". All that law tries to do is inspire concealed actuality from the witnesses for the sole reason for deciding reality. At last it is the court, which needs to utilize its caution in allowing the authorization to ask such inquiries as alluded in Section 154 of the Indian Evidence Act. Section 145 of this Act endorses a standout amongst the best modes for arraigning the credit of a witness.

This section takes into consideration the interrogation of any witness as to any past proclamation made by him in composing. The other pertinent provision is Section 157 of the Act, which expresses that any previous explanation made by a witness identifying with the same actuality,

before any power legitimately skilled to examine the truth and investigate the facts, can be utilized to confirm the oral confirmation.

"Merely giving unfavourable testimony cannot be enough to declare a witness hostile, for he might be telling the truth, which goes against the party calling him. He is hostile if he tries to injure the party's case by suppressing the truth. The Court has, by this section (i.e., Section 154), been given a very wide discretion, and is at liberty to allow a party to cross-examine his witness: (1) When his temper, attitude, demeanour, etc., in the witness-box show a distinctly hostile feeling towards the party calling him; or (2) When concealing his true sentiments, he does not exhibit any hostile feeling, but makes statements contrary to what he was called to prove, and by his manner of giving evidence and conduct, shows that he is not desirous of giving evidence fairly and telling the truth to the Court."[70]

1.4.2 EVIDENTIARY VALUE OF STATEMENTS GIVEN BY A HOSTILE WITNESS

The testimony of a hostile witness can't be treated as effaced or washed off the record altogether however the same can be accepted to the extent that their version is found to be dependable on a careful scrutiny thence. Supreme courts in its wide-ranging judgments has held that declaration of a witness to be hostile does not ipso facto reject the evidence and it is now well established that the portion of evidence being advantageous to each of the parties may be taken advantage of- but the court before whom such a reliance is placed shall got to be extraordinarily cautious in such acceptance. Merely because witnesses, after giving evidence in a criminal case, were declared hostile later on after they retracted from their statements, there is no need to reject their evidence in toto, the Supreme Court has held.

"Giving this ruling, a Bench of Justices P. Sathasivam and Ranjan Gogoi said: The evidence of hostile witness can be relied upon at least to the extent it supported the case of the prosecution. It is clear that even in the absence of eyewitness, if various circumstances relied on by the

[70] Supra note 69, at p. 45

prosecution relating to the guilt (of the accused) are fully established beyond doubt, the court is free to award conviction.[71]

Where a witness who is declared hostile, contradicts his own statement made to the police, his evidence could be rejected as unworthy of credit. The credit could be impeached in the manner under Section 155 read with Section 145 of the Evidence Act and Section 162(1),Cr.P.C. If a witness chooses to withdraw support from the prosecution case that would not ipso fact result in throwing out the prosecution case. The courts have to see the relative effect of the testimony of a hostile witness in the case. If it is such, as would upset the balance of the prosecution evidence, then it may be a fact in favour of the defence.

On the other hand, if the rest of the prosecution evidence is balanced, natural and believable, the withdrawal of support by one witness should not materially affect the merits of the remaining evidence. While it is true that merely because a witness is declared hostile his evidence cannot be rejected on that ground alone, it is equally well settled that once the prosecution declares a witness hostile, it clearly exhibits its intention of not relying on the evidence of that witness, and hence his version cannot be treated to be the version of the prosecution.

On a combined reading of the aforesaid decisions of the Supreme Court, it emerges clearly that even in criminal proceedings when a witness is cross examined and contradicted with the leave of the court, by the party calling him, his evidence cannot, as a matter of law be treated as washed off the record altogether. It is for the judge to consider in each case whether as a result of cross examination and contradiction, the witness stands thoroughly discredited or can still be believed in regard to a part of his testimony. If the judge finds that in the process, credit of the witness has not been completely shaken, he may, after reading and considering the evidence of the witness, as a whole, with due regard, that part of his testimony which he finds to be creditworthy and act upon it."

[71] *Also, much recently, the Supreme Court in Atmaram and Ors.v. State of Madhya Pradesh, has made it aptly clear that every inconsistency in the statement of a witness cannot contradict the case of the prosecution per se.*

1.4.3 REASONS FOR WITNESSES TURNING HOSTILE

One of the most important reasons for the massive share of acquittals in criminal cases is of witnesses turning hostile and giving false testimony in criminal cases. However, why do the witnesses twist and turn hostile. There are umpteen reasons for a witness turning hostile, the foremost being the absence of police protection throughout and subsequent to the trial. The witness is apprehensive of confronting the wrath of convicts who may be well connected. Another cause is the unwarranted delay in disposal of cases. It stretches out the witnesses' ordeal. Intimidation is additionally one amongst the causes of witnesses turning hostile. Nevertheless it is hard to just accept that what they understand as harassment from the long trial and the means they are treated in court can make them hostile. Inducements in cash and kind emerge to perform an important and conspicuous role in witnesses turning hostile. It was observed by Wadhwa, J ,

> ***"Here are the witnesses who are a harassed lot. A witness is not treated with respect in the Court. He is pushed out from the crowded courtroom by the peon. He waits for the whole day and then finds the matter adjourned. He has no place to sit and no place even to have a glass of water. And when he does appear in the Court, he is subjected to prolonged and unchecked examination and cross-examination and finds himself in a hapless situation. For all these reasons and others a person abhors becoming a witness".***

Comprehensive observations of the High Court of Delhi that witness in an exceedingly sizable amount of cases were turning hostile attributable to "intimidation and threat" needs to be poignantly noted and also put into action and not meant only to be confined in judgments . The thriving functioning of the criminal justice system depends critically on the keenness of folks to furnish information and tender proof without being intimidated or bought. However it is not intimidation alone that makes witnesses turns hostile. As studies have shown, what witnesses perceive as harassment alienates them as well. The prolonged length of the trial and the way they are treated in court have a bearing on shifting testimonies. As the Supreme Court has observed, A witness is not treated with respect in the Court... He waits for the whole day and then finds the

matter adjourned... And when he does appear, he is subjected to unchecked examination and cross-examination and finds himself in an exceedingly miserable condition.

1.4.4 CONSEQUENCES OF WITNESSES TURNING HOSTILE

The social and legal consequences of witnesses turning hostile are:

"(a) Perjury: *Under S.191 of the Indian Penal Code(IPC), A person is legally bound to answer a question truly, not only on oath, but also on being bound by some law, and if he makes some statement which he know or believes to be false, he may be giving false evidence under S.191 and may be punished under S.193.*

Similarly, if a person makes a statement under S.164, Cr.P.C. and contradicts himself during the trial, he may be convicted of giving false evidence intentionally. S.164 explains about the phenomena of making Extra-judicial Confessions and Statements before any Magistrate. There are high chances that statements made before a magistrate under S.164 may be totally changed by a witness during trial proceedings. In all the above cases of contradictory statements and confessions, S.191 acts as a safeguard against retracted statements and confessions given by witnesses who may have turned hostile at some point in the trial. They may be convicted of the offence of perjury.

(b) Decline in Conviction Rates: *The calibre of a Criminal Justice System is ascertained by the rate of conviction in criminal offences, which implies percentage of cases that resulted in conviction of the accused to the number of cases in which trials were completed during a particular year. The National Crime Records Bureau reveals that the Conviction rate which was 36.2% in 2004 went down to 26% by 2007, because of the problem of hostile witnesses. This means that along with other reasons, the problem of hostile witnesses is also one of the major reasons for which there has been a decline in conviction rates. Very often, the truth remains uncovered and the accused are acquitted due to lack of evidence available against them.*

(c) Cross-examination by the Party who called the witness: *When the prosecution Counsel feels that the witness is making statements against the interest of his party, a Court may permit a party to cross-examine his own witness, when his temper, attitude, demeanour etc., in the witness-box shows a deliberately hostile feeling towards the party calling him, or he does not exhibit any hostile feeling but makes a statement contrary to what he was called or expected to prove or what he had purposely said previously.*

(e) Loss of faith in the judiciary: *The large number of acquittals in criminal trials, will seriously erode the faith imposed on the judiciary by the common man. Judgments have been influenced in the past as a result of witnesses turning hostile at crucial points in Criminal Trials, especially in cases where there has been involvement of high profile parties."*[72]

Thus, our first hypothesis that witnesses act as the pivot of evidence which forms the edifice of the criminal justice system hence get proved in this chapter.

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[72] Supra note 69, at p.45.

CHAPTER 2

"HISTORICAL DEVELOPMENT OF THE CONCEPT OF WITNESSES"

2.1 INTRODUCTION:

History is replete with instances that Witnesses have unremittingly performed the role of a key character, since time immemorial in completing the circuit of a case right from the starting to endpoint by identifying the co-characters and inter-connecting the events through his valuable testimony in the Court thereby facilitating the administration of justice to ascertain the truth and grant speedy justice to the society. Thus, calling of witness for proffering testimony forming the edifice of evidence is not a pioneering notion and was even in existence in ancient India.
Even '***Arthasastra***', the renowned work of ***Kautilya*** commented:

> ***"The parties shall themselves produce who are witnesses and who are not far removed either by time or place. Witnesses who are far away or who will not stir out shall be made to present themselves by the order of the judge."***[73]

In primeval scriptures various means of proof were categorized as human and celestial. The human means of proof were sub-categorized into documents, possession and witnesses. The prominent work of Yajnavalkya[74] enumerates three means of proof. It also directs even for the comparison of handwriting[75]. However, in order to understand the role played by the witness in Indian Criminal Justice System we have to trace the history of Law of Evidence in the country. For this we have to analyze the subject referring to three different periods, namely:-

[73]Kautilya, **Arthasastra**, Book J, Chapter 11, Verse 50; Kangle, Kautilya **Arthasastra**(University of Bombay) (1970) Part IInd, P. 230
[74]Yajnvalkya, II, 22(100 A.D.); Kane, **History of Dharmasastra**, Vol. 3, P. 304
[75]Vishnu,VIII,12; M.K.Sharan, **Court Procedure in Ancient India**,(1978) P. 96

1) Witness in Ancient Hindu period
2) Witness during Muslim Rule
3) Witness during British Rule

2.2 ANCIENT HINDU PERIOD:

The Hindu Dharma Shastra is mainly the origin of the evidence law in primordial Hindu Period. The Hindu Dharma Shastra exhibited that the sole purpose of a criminal trial is the desire to decipher nothing but the truth. Yajnavalkya states:

> ***"Discarding what is fraudulent; the King should give decisions in accordance with the true facts."***[76]

The Hindu Law giver took every possible steps and precautions to trace the truth from the conflicting claims demanded by the two parties in a case. The Shastras literally ordered the parties coming to the Court to depose only truth. On this aspect Manu commented:

> ***"The King presiding over the tribunal shall ascertain the truth and determine the correctness of the testimonies of the witness, the description, time and place of the transaction or incident giving rise to the case as well as the usages of the country, and pronounce the true judgment."***

"Vasistha recognizes three kinds of evidence: Likhitam Sakshino Bukhti Parmanam Trividham Smritham i.e.

a) Lekhya (Document)
b) Sakshi (Witnesses)
c) Bukhthi (Possession)"[77]

[76] V. Krisnamachari, **The Law of Evidence**, 2003, P. 2
[77] http://shodhganga.inflibnet.ac.in/bitstream/10603/8788/11/11_chapter%202.pdf

a) **Lekhya:** This constituted the documentary evidence including the documents which were executed in the King's Court and duly attested and sealed by the presiding officer, private documents written down by one's own hand by the witnesses, and documents which were written and submitted by the parties themselves amounting to admissibility.

b) **Sakshi:** This meant the witnesses which got embraced within the oral evidence category. The Shastra in detail elucidated that at what time, in what ways and manner, the witnesses were to be examined, cross-examined and how their testimony were to be tested and sharply pointed out the difference between the adduction of oral evidence in civil and criminal matters. The Shastra also discussed pertaining to the credibility and compellability of witnesses and which statement of the witness to be considered as concrete evidence and which to be ignored.

c) **Bhukthi:**"Disputes regarding possession of landed property constituted the bulk of litigation, in an agricultural economy prevalent in ancient Hindu India. Possession was acknowledged as evidence of right and title and one of the modes of proving along with the documents and witnesses, even in the present Evidence Act, 1872 also there is a presumption that the possessor of anything is the lawful owner of that thing."[78]

Section 151 and 152 of the current Evidence Act, 1872 sensibly finds its traces in earlier times wherein the Presiding officers of the Court were enjoined to treat the witnesses gently and persuasively while examining them.

> *"It is shrewdly remarked that if the witness is harshly treated, he might take fright and thus lose the thread of his narrative and become unable to remember material details and unfold the entire narrative in its logical sequence."*[79]

[78] Section 110, The Indian Evidence Act,1872
[79] Supra note 77, at p. 53

2.3 MUSLIM PERIOD:

Sir Abdur Rahim's **"*Muslim Jurisprudence*",** Wahed Husain's **"*Administration of Justice during the Muslim Rule in India*"** (University of Calcutta Publication) and M. B. Ahmad, I.C.S. on**, "*Administration of Justice in Medieval India*"** (Aligarh Historical Research Institute Publication) cumulates the Muslim Rules of evidence. The *Al-quran* lays immense strain on justice wherein it declares that the creation is established on justice and that one of the excellent attributes of God is "just". Concomitantly, the notion of Justice in Islam is that the administration of justice is a divine dispensation. Therefore, the rules of evidence are advance and modern. The Muhammadan Law-givers deal with evidence divided into oral and documentary evidence, with oral evidence further classified as direct and hearsay evidence.

In pursuance to oral evidence, the Quran enjoins truthfulness. It says:

> ***"O true believers, observe justice when you appear as witnesses before God, and let not hatred towards any induce you to do wrong: but act justly: this will approach nearer unto piety, and fear God, for God is fully acquainted with what you do."***[80]
>
> ***"O you who believe, be maintain of justice when you bear witness for God's sake, although it be against yourselves, or your parents, or your near relations; whether the party be rich or poor, for God is most competent to deal with them both, therefore do not follow your low desire in bearing testimony, so that you may swerve from justice, and if you swerve or turn aside, then surely God is aware of what you do."***[81]

"Witnesses were examined and cross-examined separately out of the hearing of the other witnesses. Leading questions were not allowed on the ground that this would lead to the suspicion that the court was trying to help one party to the prejudice of the other; but if a witness was frightened or got confused, the judge could put such questions so as to remove the confusion, though they may be leading questions. It was enjoined that the questions should be

[80] **Holy Quran**, Chapter 5, Verse 8
[81] **Holy Quran**, Chapter 4, Verse 135

put in such a manner as not to make the judge liable to the charge of partiality and that he was purring questions in order to get answers to facts which should be proved by the witness."[82]

2.4 BRITISH PERIOD:

The Law regarding evidence was disorganized and there was no methodical and proficient enactment on this subject, before the prologue of the Indian Evidence Act, 1872.The presidency towns of Calcutta, Madras and Bombay were mainly governed by the English rules of evidence created by the Royal Charter.*"Such of these rules, as were contained in the Common Law and the Statutory Law, which prevailed in England before 1726, were introduced in Presidency towns by the Charter".*[83]The law was blurred and imprecise having no greater authority than the use of customs outside the presidency towns. Nevertheless, they developed a practice to follow the rules of evidence based on customs and usages of Muslims.

> *"The British rulers, though they do not have any codified or consolidated law of evidence in their country, thought fit to frame some rules to be followed by the courts in India. During the period of 1835 to 1853 A.D., a series of Act were passed by the Indian legislature introducing some reforms of these Acts which superficially dealt with the law relating to the witness."*

"Sec 4 of the Evidence (further amendment) Act of 1869 eliminates the disability attached to the atheist and such infidels (i.e. on Christians) as were atheist to be reason and to testify they were declared competent witness to testify. These reforms had a great impact on the working of the courts in British India." However, despite these reforms the administration of Law of Evidence in the Mofussil Courts was not satisfactory and was still governed by the customary laws, mostly vague and blurred. Though the Acts XIX of 1853 and II of 1855 made the law followed by the Presidency Courts applicable to the Mofussil Courts but these rules were not sufficient to grapple the troubles pertaining to hostile witness and evidence of an accomplice. Thus, Sir James Stephen prepared a new billin the year 1870, which was passed by the parliament in 1872 which

[82] Supra note 77, at p. 53
[83]Bunwaree V. Het Narain 7, MIA 148

codified consolidating the rules relating to admissibility of fact competency of witness, examination and cross-examination of the witness.

2.5. WITNESSES IN MODERN TIMES

"The Halsbury's Laws of India classified witnesses into different categories viz;[84]

- *Eye witnesses,*
- *Natural witnesses,*
- *Chance witnesses,*
- *Official witnesses,*
- *Sole witnesses,*
- *Injured witnesses,*
- *Independent witnesses,*
- *Interested, related and partisan witnesses,*
- *Inimical witnesses,*
- *Trap witnesses,*
- *Rustic witnesses,*
- *Child witnesses,*
- *Hostile witnesses,*
- *Approver, accomplice etc."*

2.6. WITNESS UNDER INDIAN EVIDENCE ACT, 1872

Chapter IX titled "OF WITNESSES" of the Indian Evidence Act, 1872 consists of seventeen Sections spreading from Sections 118 to 134 deals with:

i. Competency;

ii. Compellability;

iii. Privileges; and

iv. Quantity of Witnesses required for judicial decisions

[84] Supra note 77, at p.53

"Sections 118 to 121 and Section 133 of this Act provide for competency of witnesses whereas Section 121 (Judges and Magistrates) and Section 132 (Witness not excused from answering on the ground that answer will criminate) refers to the compellability of the witnesses. Privileges of the various witnesses find place in various forms in Section 122 to 131 of this Act. Section 134 of the Indian Evidence Act 1872 envisages that no particular number of witnesses is required for proof of any fact. The last Section 134 of the Chapter IX enshrines the well recognized magazine that Evidence has to be weighed and not counted."

2.7 LEGISLATIVE TRENDS:

This elucidates how the concept of witness protection evolved through Law Commission Reports gradually. Witness Protection in common parlance implies corporeal protection means security from physical harm but in the Indian Context protection of witnesses generally adverts to protection from embarrassment and inconvenience and therefore has had references only to provision of facilities.

EFFORTS TO IMPLEMENT WITNESS PROTECTION IN INDIA
(Commissions & Committees on Witness Protection):

2.7.1 14th REPORT OF LAW COMMISSION (1958) *(Inadequate Arrangements For Witnesses):*

The Law Commission in its 14th Report[85] adverted to "Witness Protection" in a constricted sense as it only propounded for making provision pertaining to sufficient arrangements for the convenience of the witnesses within the Court precincts and provision for adequate allowance so that the witnesses could reach the Court to proffer testimony promptly thereby avoiding any sort of delay, after specifically taking into consideration the below mentioned situation:

[85]Law Commission of India, *Reform of Judicial Administration*, 14th Report, First Law Commission under the Chairmanship of Mr. M. C. Setalvad 1955-1958, in 1958

"Inadequate arrangements for witnesses in the Courthouse, the scales of traveling allowance and daily batta (allowance) paid for witnesses for attending the Court in response to summons from the Court."

Thus the chief feature of this Report was to give due respect to the witness's convenience, comfort and compensation for sparing their valuable time selflessly only to serve justice as long hours of waiting in Courts with tension and unnecessarily attending adjournments is indeed painful. If the witness is not taken care of or if not properly catered to, he or she is likely to develop an attitude of indifference to the question of bringing the offender to justice. However, no mention was made regarding the corporeal safety of the witnesses within this Report.

2.7.2 FOURTH REPORT OF THE NATIONAL POLICE COMMISSION (1980) *(Handicaps Of Witnesses)*

The Fourth Report of the National Police Commission[86] too made a constrained interpretation concerning 'Witness Protection' and its impact on judicial administration. The Police Commission referred to the inconveniences and the harassment countenanced by the witnesses daily rather every moment in attending Courts for deposing their testimony. In addition to it, The Commission also reproduced a rather critical and trenchant letter it received from a senior District and Sessions Judge. The learned judge gave a litany of grievances and complaints that a witness may have and then said that:

"A prisoner suffers from some act or omission but a witness suffers for no fault of his own. All his troubles arise because he is unfortunate enough to be on the spot when the crime is being committed and at the same time 'foolish' enough to remain there till the arrival of the police."

Another aspect given ear to by the Police Commission was the payment of daily allowance payable to witnesses for appearance in the Courts. The Commission also commented on the

[86]National Police Commission, 4th Report, 1980

woefully inadequate monetary compensation or meager allowances paid to the witnesses thereby pointing out the handicaps and plight of the witnesses.

2.7.3 154TH REPORT OF THE LAW COMMISSION (1996) (*Lack Of Facilities And Wrath Of Accused)*

The 154th Law Commission[87] has undertaken a study of comprehensive revision of the Code of Criminal Procedure, 1973 so as to remove the germane problems leading to consequential delay in disposal of criminal cases. In this report several measures have been suggested to improve the quality of investigation and to reduce the delays in the disposal of criminal trials and appeals and also to alleviate the suffering of under trial prisoners.

The Commission in its 154th Report in Chapter X while dealing with *'**Protection and Facilities to Witnesses'***, referred to the 14th Report of the Law Commission[88] and the Report of the National Police Commission[89] and conceded that there was "*plenty of justification for the reluctance of witnesses to come forward to attend Court promptly in obedience to the summons".* It stated the deplorable predicament of the witnesses appearing on behalf of the State which was not only because of lack of proper facilities and conveniences but also because witnesses have to encounter the intimidation, inducement, torture, the wrath of the accused, particularly that of hardened criminals, which can result in their life falling into great danger. The Law Commission recommended as follows:

> ***"6. We recommend that the allowances payable to the witnesses for their attendance in courts should be fixed on a realistic basis and that payment should be effected through a simple procedure which would avoid delay and inconvenience. … Adequate facilities should be provided in the court premises for their stay. The treatment afforded to them right from the stage of investigation up to the stage of conclusion of the trial should be in a fitting manner giving them due respect and removing all causes which contribute to any anguish on their part. Necessary confidence has to be created in the minds of***

[87] Law Commission of India, *The Code of Criminal Procedure, 1973 (Act No. 2 of 1974)*, 154th Report, Fourteenth Law Commission under the Chairmanship of Mr. Justice K. J. Reddy 1995-1997, in 1996.
[88] *Supra note 77, at p. 53.*
[89] *Supra note 85, at p. 58.*

the witnesses that they would be protected from the wrath of the accused in any eventuality.

7. Listing of the cases should be done in such a way that the witnesses who are summoned are examined on the day they are summoned and adjournments should be avoided meticulously. …The courts also should proceed with trial on day-to-day basis and the listing of the cases should be one those lines. The High Courts should issue necessary circulars to all the criminal courts giving guidelines for listing of cases."

However, the Report has not suggested how the witnesses should be safeguarded from the wrath of the accused.

2.7.4 172ND REPORT OF THE LAW COMMISSION (2000) (*Screen Technique)*

"The Fifteenth Law Commission took the subject of 'Review of Rape Laws' on a request made by the Supreme Court Of India (vide its order dated 9th August, 1999, passed in Criminal Writ Petition (No. 33 of 1997), **Sakshi v. Union of India**[90]. The women organizations submitted their suggestions for amendment of Cr.P.C. and the Evidence Act and also I.P.C. One of the views put forward by the organizations was that a minor complainant of sexual assault shall not have to give his/her oral evidence in the presence of the accused, as this will be traumatic to the minor. It was suggested that appropriate changes in the law should be brought about for giving effect to this provision. The Commission considered the suggestions in respect of the evidence given by a minor who has been sexually assaulted along with other issues raised and the order of the Supreme Court and submitted its 172nd Report on 25th March, 2000.[91] Accordingly, the Law Commission in para 6.1 of its 172nd Report recommended for insertion of a proviso to section 273 of the Cr.P.C. 1973 to the following effect":

"*Provided that where the evidence of a person below sixteen years who is alleged to have been subjected to sexual assault or any other sexual offence, is to be recorded, the Court may, take appropriate measures to ensure that such person is not confronted by*

[90] 2004(6) SCALE 15

[91] Law Commission of India, **Review of Rape Laws**, 172nd Report, Fifteenth Law Commission under the Chairmanship of Mr. Justice B. P. Jeevan Reddy 1997-2000, in 2000.

the accused while at the same time ensuring the right of cross examination of the accused".

2.7.5 178TH REPORT OF THE LAW COMMISSION (2001) (*Preventing Witnesses Turning Hostile)*

"The 178th Report specifically dealt with hostile witnesses and the precautions which should be taken by the Police at the stage of investigation to prevent tergiversation by witnesses when they are examined at the trial. The Law Commission recommended the insertion of Section 164A[92] *in the Code of Criminal Procedure, 1973 to provide for recording of the statement of material witnesses in the presence of Magistrates where the offences were punishable with imprisonment of 10 years or more.*[93]*On the basis of this recommendation, the Criminal Law (Amendment) Bill, 2003 was introduced in the Rajya Sabha. The Commission recommended three alternatives and submitted its report in December, 2001. The Commission recommended three alternatives, (in modification of the two alternatives suggested in the 154th Report)."* They are as follows:

1) ***"The insertion of sub-section (1A) in Section 164 of the Code of Criminal Procedure (as suggested in the 154th Report) so that the statements of material witnesses are recorded in the presence of Magistrates" [This would require the recruitment of a large number of Magistrates].***
2) ***Introducing certain checks so that witnesses do not turn hostile, such as taking the signature of a witness on his police statement and sending it to an appropriate Magistrate and a senior police officer.***
3) ***In all serious offences, punishable with ten or more years of imprisonment, the statement of important witnesses should be recorded, at the earliest, by a Magistrate under Section 164 of the Code of Criminal Procedure, 1973. For less serious offences, the second alternative (with some modifications) was found viable."***

[92] Supra note 27, at p. 27, 28.

[93] Law Commission of India, Recommendations for Amending Various Enactments, Both Civil and Criminal, 178th Report, Sixteenth Law Commission under the Chairmanship of Mr. Justice B. P. Jeevan Reddy 2000-2001 & Mr. Justice M. Jagannadha Rao 2002-2003, in 2001.

However, even this report did not make any suggestions concerning the physical protection of witnesses from the wrath of accused nor did it provide any probable implications pertaining to keeping secrecy of the witness identity.

2.7.6 THE CRIMINAL LAW (AMENDMENT) BILL, (2003) (*Preventing Witnesses Turning Hostile*)

> *"In the Criminal Law (Amendment) Bill, 2003, introduced in the RajyaSabha in August, 2003, the above recommendations have been accepted by further modifying the recommendation (3) of recording statement before a Magistrate to apply where the sentence for the offence could be seven years or more. A further provision is being proposed for summary punishment of the witness by the same Court if the witness goes back on his earlier statement recorded before the Magistrate. Another provision is also being made to find out whether the witness is going back on his earlier statement because of inducement or pressure or threats or intimidation.*"[94]

2.7.7 REPORT OF THE JUSTICE MALIMATH COMMITTEE ON REFORMS OF CRIMINAL JUSTICE SYSTEM

The Committee on Reforms of Criminal Justice System[95]under the chairmanship of Dr. Justice V. S. Malimath, submitted a Report containing 158 recommendations. It contains a casual statement that a law should be enacted for giving protection to witnesses and their family members, without specifying any provision or scheme whatsoever. The prosecution and the Court could direct that the identity and the address of the witness be kept secret. The Court could even avoid the mention of the names and addresses in its order or judgment.

A chapter of the report named, *"A Hybrid System of Criminal Justice"* has sought to incorporate certain features of the 'inquisitorial" system of trial into the 'adversarial' system, namely

[94] Supra note 77, at p. 53.

[95]Government of India, Ministry of Home Affairs, *Committee on Reforms of Criminal Justice System*, March 2003 (Chaired by Dr. Justice V. S. Malimath).

"empowering judges further with the duty of leading evidence with the object of seeking the truth and focusing on justice to victims." It is felt that, focusing on "justice to victims" is possible, only if careful consideration is paid to "the rights of witnesses", "considering them as a special category of victims" and acknowledging their insecurity and vulnerability in general.
The committee only asked what to do but not how to do. Though it has highlighted the miserable and wretched conditions of the witnesses in India and made recommendations for their protection, but it has not gone into much details. As regards physical protection to a witness, the Justice Malimath Committee makes only a single line recommendation at page 284, which is as follows:

> ***"(81) 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."***

Thus, the above analysis of the various recommendations of the Law Commission made from time to time, including the 178th Report[96] shows that they do not address the issue of 'protection' and 'anonymity' of witnesses or to the procedure that has to be followed for balancing the rights of the witness on the one hand and the rights of the accused to a fair trial.

2.7.8 198TH REPORT OF THE LAW COMMISSION (2006) (Witness Identity Protection And Witness Protection Programmes)

In the **198th Report of the Law Commission**[97], a Consultation Paper on ***'Witness Identity Protection and Witness Protection Programmes'*** was prepared. The Commission prepared this Consultation Paper in order to invite responses from all sections of society which if found fit, would be incorporated in the recommendations to be sent to the Government along with the Draft Bill on Witness Protection.

[96] Supra note 93, at p. 62.
[97] 198th Report of the Law Commission of India, *Witness Identity Protection and Witness Protection Programme* (2004). Seventeenth Law Commission under the Chairmanship of Mr. Justice M. Jagannadha Rao 2003-2006, in 2004.

FINAL REPORT:

The Commission in its final report has explicitly discussed the reactions and given its recommendations, both in regard to Witness Identity Protection and WitnessProtection Programmes. So far as the Witness Identity Protection is concerned, it has also annexed a Draft Bill as Annexure I. The Commission has not given any Draft Bill in regard to Witness Protection Programmes. The observation of the Law Commission on Witness Identity Protection and Witness Protection Programme is worth mentioning here:

"*I. Witness Identity Protection:*

The accused in our country have a right to an open public trial in a criminal court and also a right to examination of witnesses in open court in their presence. But, these rights of the accused are not absolute and may be restricted to a reasonable extent in the interests of fair administration of justice and for ensuring that victims and witnesses depose without any fear. The right of the accused for an open trial in his or her presence, being not absolute, the law has to balance that right of the accused as against the need for fair administration of justice in which the victims and witness depose without fear or danger to their lives or property or those of their close relatives.

The Final Report thus identified three categories of witnesses:

- *(i) victim-witnesses who are known to the accused;*
- *(ii) victims-witnesses not known to the accused (e.g. as in a case of indiscriminate firing by the accused) and*
- *(iii) witnesses whose identity is not known to the accused.*

Category (i) requires protection from trauma and categories (ii) and (iii) require protection against disclosure of identity.

In category (i) above, as the victim is known to the accused, there is no need to protect the identity of the victim but still the victim may desire that his or her examination in the Court may be allowed to be given separately and not in the immediate presence of the accused because if he or she were to depose in the physical presence of the accused, there can be tremendous trauma and it may be difficult for the witness to depose without fear or trepidation. But, in categories (ii)

and (iii), victims and witnesses who are not known to the accused have a more serious problem if there is likelihood of danger to their lives or property or to the lives and properties of their close relatives, in case their identity kept secret at all stages of a criminal case, namely, investigation, inquiry and trial.

Fortunately, after the decision of the Supreme Court in ***State of Maharashtra v. Dr. Praful B Desai,***[98] *such evidence by video-link is admissible.*

II. Witness Protection Programmes:

Witness Protection Programmes refer witness protection outside the Court. At the instance of the public prosecutor, the witness can be given a new identity by a Magistrate after conducting an ex parte inquiry in his chambers. In case of likelihood of danger of his life, he is given a different identity and may, if need be, even relocated in a different place along with his dependents till be trial of the case against the accused is completed. The expenses for maintenance of all the persons must be met by the State Legal Aid Authority through the District Legal Aid Authority. The witness has to sign an MOU which will list out the obligations of the State as well as the witness. Being admitted to the programme, the witness has an obligation to depose and the State has an obligation to protect him physically outside Court. Breach of MOU by the witness will result in his being taken out of the programme."[99]

Hence, a detailed structure for Witness Identity Protection and Witness Protection Programmes is recommended in seriatim by the Law Commission of India in its 198th Report.

2.7.9. RESEARCH STUDY UNDER THE SUPERVISION OF *BUREAU OF POLICERESEARCH AND DEVELOPMENT* (B.P.R.D)

Off late in 2009 a research study about the witnesses; their problems, hostility and assistance has been conducted by the Research Division of Bureau of Police Research and Development (BPRD), Ministry of Home Affairs. The title of the study *is '****Witness in the Criminal Justice***

[98] *2003 (4) SCC 601 and Sakshi, 2004 (6) SCALE 15,*
[99] Supra note 97, at p. 64.

Process: A Study of Hostility and Problems associated with Witness'[100]The key intention of the study was to bring to light the miserable predicament of the witnesses, the problems faced by the witnesses in their interaction with criminal justice agencies. The need and shape of witness protection relevant to Indian context has also been examined. The focal point of the research was on the following four areas:

1. Problem of witnesses at various levels
2. Hostility of witness
3. Protection of witness
4. Assistance to witnesses

"It was seen in the study that witnesses are frequently pressurized in the course of their testimony. Majority of witnesses (69.8 percent) of the witnesses were pressurized by their acquaintances followed by social pressure (13.4 percent), and only 3.4 percent by money power. Similarly muscle power was also faced by these people in many cases (20.3percent) as against general classes (19 percent).The study indicated that several types of pressures were used to make the witnesses to twist their statements in the trial. As data suggested the money (31.6percent) and muscle power (39.3 percent) was predominantly faced by the respondents. The witnesses with relatively poor educational background had excessive chances to be physically pressurized in relation to their testimony. These classes were also seen to have been pressurized, to a large extent, by money power."

The Committee comprising Members of Parliament from the RajyaSabha was reviewing the status of promises made by the government in 2009 to amend necessary laws to protect witnesses. 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.

This is how the sine qua non issue of the protection of witnesses has been conceptualized through the Law Commission Reports and Committees through ages nonetheless keeping loopholes in the process and leaving a space for improvisation.

[100]*By Dr. G.S. Bajpai, Department of Criminology & Forensic Science, Sagar (MP).*

CHAPTER 3

"COMPARATIVE ANALYSIS OF WITNESS PROTECTION LAWS IN INDIA, U.K. AND U.S.A."

3.1 INTRODUCTION

The current precarious state of affairs all around and the environment already polluted with the infectious air of threat, intimidation, fear, allurement, coercion, followed by the unlikely deaths of the material witnesses desperately beckons the Government Of India to draw its attention to this alarming situation and immediately take steps to grant security and protection to the witnesses so that they feel comfortable and secure within their own State and feel free to depose nothing but the truth in the Court to solve the case. Therefore, it is high time to compare the witness protection laws prevalent in other countries like United Kingdom, and United States of America across the global village with Indian laws so that the Executive of India can further strengthen and enact a concrete law for safeguarding witnesses.

The author has already in great detail discussed the statutory provisions, Law Commission Reports and Judicial pronouncements pertaining to witness protection in India in her earlier chapters. So, only a recapitulation regarding the Indian legal statutes has been adumbrated in this Chapter and laws of other countries have been dealt in great detail.

3.2 INDIAN LEGAL STATUES AND WITNESS PROTECTION

A. PROVISIONS IN STATUTES

The Code of Criminal Procedure, 1973 provides for trial in the open court[101] and also provides for in-camera trials[102] for offences involving rape.[103] Sec. 273 requires the evidence to be taken in the

[101] *See, Sec. 327 of the Code of Criminal Procedure, 1973.*
[102] *See, Sec. 327 (2) of the Code of Criminal Procedure, 1973.*

presence of the accused. Sec. 299 indicates that in certain exceptional circumstances an accused may be denied his right to cross-examine a prosecution witness in open court. Further, the police officer can form an opinion that any part of the statement recorded u/s 161 of a person the prosecution proposes to examine as its witness need not be disclosed to the accused if it is not essential in the interests of justice or is inexpedient in the public interest.[14]

Indian Penal Code, 1861 endorses discipline if the personality of the casualty of assault is *published.* Likewise, Sec. 21 of the Juvenile Justice (Care and Protection of Children) Act, 2000 disallows distribution of the name, address and different particulars which might prompt the distinguishing proof of the adolescent. The Indian Evidence Act, 1872 states that in certain excellent cases, where round of questioning is unrealistic, past testimony of the witness can be viewed as that significant in consequent *proceedings.* The Evidence Act requires to be investigated once again to accommodate insurance to a witness.

In the pre-established period, the Bengal Suppression of Terrorist Outrages Act, 1932 engaged the extraordinary Magistrate to bar persons or open from the areas of the *court.* Terrorists and Disruptive Activities Act, 1*985* and Sec. 16 Terrorists and Disruptive Activities Act, *1987*given to assurance of the character and keep the location of a witness mystery which eventually permits the witness to do his/her obligation viably. Sec. 30 of the Prevention of Terrorism, 2002 is on the same lines as Sec. 16 of the Terrorists and Disruptive Activities Act, 1987.[104]

B. PRINCIPLES OF LAW DEVELOPED BY THE COURTS: ANONYMITY OF THE WITNESSES AND THE RIGHTS OF THE ACCUSED

In the pre-Maneka Gandhi stage the Supreme Court, in Gurbachan Singh v. State of Bombay[105], maintained a provision of the Bombay Police Act, 1951 that denied consent to a detenue to interrogate the witnesses who had declared under oath against him. It was held that the law become simply to control top notch situations in which witnesses, due to a paranoid fear of savagery to their man or woman or property, have been unwilling to proffer testimony openly in

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[103] *See, Sec. 376 & Sec. 376 A to 376 D of the Indian Penal Code, 1861.*
[104] *Supra note 16, at p. 24.*
[105] *Gurbachan Singh v. State of Bombay* AIR 1952 SC 221

public contrary to the awful character. At this level, the issue was not analyzed whether or not the approach was 'affordable'. The selections in G.X. Francis v. Banke Bihari Singh[106] and Maneka Sanjay Gandhi v. Rani Jethmalani[107] centered at the requirement for an amicable air for the conduct of an inexpensive trial and this integrated the warranty of witnesses.

In *Delhi Domestic Working Women's Forum v. Union of India*[108] the very Supreme Court docket underlined the aid of the namelessness of the victims of assault and rape who might be the material witnesses in trials together with the offense of assault and rape. The importance of preserving assault trials in camera as ordered by means of Sec. 327 (2) and (3) of the Code of Criminal Procedure, 1973 become repeated in *State of Punjab v. Gurmit Singh*.[109] In the excellent and infamous *Best Bakery Case*,[110] on the aspect of breakdown of the trial by using virtue of witnesses turning antagonistic as a result of intimidation, the Apex Court docket retold that "authoritative measures to strain preclusion towards messing with witness, casualty or source, have was the impending and inescapable want of the day."

In spite of the fact that, the guidelines for witness warranty set across the Delhi excessive courtroom in Neelam Katara v. *Union of India*[111]require to be lauded, they don't manage the way in which the persona of the witness can be kept categorised either before or amid the trial. The judgment of the full Bench of the Punjab and Haryana high courtroom in Bimal Kaur *Khalsa,*[112] which incorporates assurance of the witness from the media, does no longer manage each one of the components of the problem. Those judgments highlight the requirement for a much achieving enactment on witness security as there is within the United States of America.[113]

[106] *G.X. Francis v. Banke Bihari Singh* AIR 1958 SC 209
[107] *Maneka Sanjay Gandhi v. Rani Jethmalani*(1979) 4 SCC 167
[108]*Delhi Domestic Working Women's Forum v. Union of India* (1995) 1SCC 14.
[109] *State of Punjab v. Gurmit Singh* (1996) 2 SCC 384
[110] *Best Bakery Case* (2004) 4 SCC 158.
[111] *Neelam Katara v. Union of India* (judgment dated 14.10.2003).
[112]*Bimal Kaur Khalsa,* AIR 1988 P&H 95.
[113] *Supra note 16 at p.24.*

3.3 WITNESS PROTECTION LAWS IN UNITED KINGDOM

"The U.K. Government established the Criminal Justice and Public Order Act, 1994 which accommodates discipline for intimidation of witnesses. S.51 of the Act not just secures a man who is really going to give proof at a trial, additionally ensures a man who is assisting with or could help with the examination of a wrongdoing. Additionally, Sections 16 to 33 of the Youth Justice and Criminal Evidence Act, 1999 requires the court to consider unique measures of different sorts for the security of helpless and scared witnesses.

The procedure for utilization of Witness anonymity orders is given in the Coroners and Justice Act, 2009. Witness anonymity order ensures that specified measures are taken in relation to a witness in criminal proceedings as the court considers appropriate to ensure that the identity of the witnesses are not uncovered to guarantee their safety[114].

"Witness", in relation to any criminal proceedings, means any person called, or proposed to be called, to give evidence at the trial or hearing in question.[115]*The personal details of witnesses may be withheld*[116] *or removed from the documents disclosed to the parties*[117]*or he may use a pseudonym*[118]*, and it will also be ensured that he will not be asked any leading questions that will disclose his identity*[119]*. The witness will also be screened in a manner that the judges and/ or jury can see him*[120] *and also his voice will be subjected to modulation to some extent*[121].

Under section 17 (1), witnesses are eligible for assistance on grounds of fear or distress about testifying. A child witness (who is below the age of 17 at the time of hearing) may be accompanied by a witness supporter."

3.4WITNESS PROTECTION IN THE UNITED STATES

[114] *Halsbury's Laws (5th edn, 2010)*
[115] *Coroners and Justice Act, 2009, s. 97 (1)*
[116] *Id. s 86(2)(a)(i)*
[117] *Id.s 86(2)(a)(ii)*
[118] *Id. s 86(2)(b)*
[119] *Id. s 86(2)(c)*
[120] *Id. s 86(2)(d)*
[121] *Id. s 86(2)(e)*

The law in the United States is far more developed and updated in the field of 'protection of witnesses' unlike India. On one hand, the legal system in India is yetgrappling and struggling with trying to have efficiently Witness Protection Programmes, particularly with regard to the 'witness intimidation'. On the other hand, the law in the United States is so advanced and is at such a stage that the Congress has come up with the Organized Crime Control Act way back in 1970 and since then, their Courts have only been trying to perfect by addressing as many lacunae as possible.

1. Federal Programme

In the late 1960s, the United States Department of Justice recognized that victim and witness intimidation had become a serious impediment to obtaining testimony in organized crime cases. (Healey, 1995) This concern was also fueled by statistics that revealed that a staggering number of crimes were never reported (Tomz & Mc Gillis 1995). In response, Congress enacted the Organized Crime Control Act of 1970, which laid the basis for the Federal Witness Protection Program (Healey 1995).

The Federal Witness Protection Program[122]was authorized by the Organized Crime Control Act of 1970.[123]Originally, the program was formulated to purchase and maintain housing

[122]18 U.S.C. §§ 3521-3528 (2000).

[123]*Organized Crime Control Act of 1970*, Pub. L. No. 91-452, §§ 501- 504, 84 Stat. 922, 933-34 (1970). Title V authorizes the United States Attorney General to protect and maintain federal or state organized crime witnesses and their families. Sections 501 through 504 provide:

Sec. 501 - The Attorney General of the United States is authorized to provide for the security of Government witnesses, potential Government witnesses, and the families of Government witnesses and potential witnesses in legal proceedings against any person alleged to have participated in an organized criminal activity.

Sec. 502 - The Attorney General of the United States is authorized to rent, purchase, modify, or remodel protected housing facilities and to otherwise offer to provide for the health, safety, and welfare of witnesses and persons intended to be called as Government witnesses, and the families of witnesses and persons intended to be called as Government witnesses in legal proceedings instituted against any person alleged to have participated in an organized criminal activity whenever, in his judgment, testimony from, or a willingness to testify by, such a witness would place his life or person, or the life or person of a member of his family or household, in jeopardy. Any person availing himself of an offer by the Attorney General to use such facilities may continue to use such facilities for as long as the Attorney General determines the jeopardy to his life or person continues.

Sec. 503. As used in this title, "Government" means the United States, any State, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, any political subdivision, or any department, agency, or instrumentality thereof. The offer of facilities to witnesses may be conditioned by the Attorney General upon reimbursement in whole or in part to the United States by any State or any political subdivision, or any department, agency, or instrumentality thereof of the cost of maintaining and protecting such witnesses.

Sec. 504. There is hereby authorized to be appropriated from time to time such funds as are necessary to carry out the provisions of this title.

facilities for protected witnesses, but that approach was discarded.[124]The legislative intent was *twofold*: to create an incentive for persons involved in organized crime to become informants[125]and to recognize "*a felt moral obligation to repay citizens who risk life by carrying out their duty as citizens to testify*."[126]Again, as originally formulated, services were to be limited to witnesses of organized crime,[127]but in its current form, the program provides protective services to witnesses and family members in cases involving organized crime "*or other serious offense, if the Attorney General determines that an offense involving a crime of violence directed at the witness . . . is likely to be committed*."[128]Those services may be provided as long as the danger to the protected individual continues.[129]

The administrations given to the ensured people might incorporate physical assurance, records for another character, lodging, transportation, subsistence for living, help with getting livelihood, and different administrations expected to make the individual self-managing.[130]Consequently, the character and area of the individual won't be unveiled, unless law authorization authorities demonstrate the individual is under a criminal lawful offense investigation.[131] Knowing, unapproved divulgence subjects a man to a fine of $5000 and/or detainment for a long time of five years.[132]

"Prior to admission into the program, an evaluation of the individual's suitability must be performed and the individual also must undergo a psychological examination.[133]Further, the individual must execute a memorandum of understanding that outlines his duties, obligations and responsibilities--to testify in and provide information to law enforcement concerning the criminal proceedings, to refrain from committing any crime, to avoid detection and to cooperate with all reasonable requests of those protecting the person.[134]The Attorney General may terminate protection if the protected person "substantially breaches" the memorandum of

[124]See, *Franz v. United States*, 707 F.2d 582, 586-87 (D.C. Cir. 1983)
[125]Id. at 586
[126]See, *Garcia v. United States*, 666 F.2d 960, 963 (5th Cir. 1982)
[127]See, *Organized Crime Control Act*, § 501.
[128]18 U.S.C. § 3521(a)(1) (2000).
[129]18 U.S.C. § 3521(b)(1).
[130] 18 U.S.C. § 3521(b)(1)(A)-(F).(I) (2000)
[131] See, 18 U.S.C. § 3521(b)(1)(G). (2000)
[132] 18 U.S.C. § 3521(b)(3).
[133]18 U.S.C. § 3521(c)
[134]18 U.S.C. § 3521(d)(1)(A)-(E)

understanding, or provides false information.[135]*Physical protection for those who enter the program is provided by the United States Marshal's office".*[136]

2. The California Witness Protection Program

In 1997, the State of California enacted its witness protection program,[137]administered by the attorney general. It provides for the protection and relocation of witnesses "*where credible evidence exists that they may be in substantial danger of intimidation or retaliatory violence because of their testimony*."[138]The reason for the enactment was the legislature's recognition that retaliation against witnesses has a serious negative impact on the prosecution of crime.[139]

The California witness assurance program approves the lawyer general to manage the project and to repay state and nearby organizations for the expenses of giving witness security administrations.[140] Dissimilar to the government program, which has its own particular requirement organization, the state must depend on neighborhood authorization divisions to give whatever administrations they choose are proper and important.[141] Those administrations incorporate outfitted assurance and equipped escort some time recently, amid, and after legitimate procedures; physical movement; lodging costs; another character; transportation; subsistence recompense; and different administrations as required.[142] The security is constrained to a time of six months. In the event that extra security is justified, in any case, an expansion might be allowed.[143]Once more, this varies from the government program, which has no time impediment for its administrations. Besides, the time of security is moderately short, in light of the fact that the time range of dominant part of homicide cases most recent one year or more from the season of commission of the wrongdoing until a decision are rendered.

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[135]U.S.C. § 3521(f)
[136]*United States Marshals Service*, 28 C.F.R. § 0.111 (2001). See also *Tanuj Bhusan and Pranati, Witness Protection in India and United States: A Comparative Analysis, IJCJS, Vol.2, Issue 1*
[137]*California Penal Code*, §§ 14020 through 14033
[138]Id. § 14026(a)
[139]*Assembly Comm. Report* on AB 856, 1997-98 Reg. Sess., at 3 (Cal. Apr. 22, 1997), available at http://www.leginfo.ca.gov/pub/97-98/bill/asm/ab_0851-0900/ab856_cfa_19970421_073716_asm_comm.html (last visited Nov. 15, 2015)
[140] *Cal. Penal Code* § 14022 (West 2002)
[141] Id § 14024. (West 2002)
[142] Id § 14024(a)-(g)
[143] Cal. Dep't of Justice, *Policy and Procedures Manual for Local and State Prosecuting Agencies* 9 (2000)

Like the government program, the witnesses secured under the California program must go into a composed understanding that determines the obligations of the ensured individual, including the commitment to affirm and give data concerning the subject procedures, to find a way to dodge location, to collaborate with sensible solicitations, and to persistently illuminate program authorities of his or her exercises and current location.[144] Need for acknowledgment into the project is given to witnesses included in matters identified with sorted out wrongdoing, criminal road groups, drug trafficking, and different cases including a high level of danger.[145]

All information about witnesses in the program is confidential and not subject to disclosure.[146]This raises the question of whether defense counsel is prevented from inquiring of a protected witness's true name, new identity, or current address when the witness testifies at trial. There is a possibility that this issue will arise in a future proceeding. In federal court, trial judges have allowed witnesses in the program to testify without revealing their new identity when a sufficient showing of danger to the witness has been presented to the court,[147]and have restricted questions on cross-examination about the protection program.[148]Questions about payments and other government support have been allowed, but information about the protection itself has not.[149]

[144] *Cal. Penal Code* § 14025 (West 2002)
[145] Id. 14023.
[146]Id. 14029.
[147]*United States v. Watson*, 599 F.2d 1149, 1157 (2d Cir. 1979)
[148]*United States v. Tarantino*, 846 F.2d 1384, 1407 (D.C. Cir. 1988)
[149]Id.

CHAPTER 4

"LEGAL FRAMEWORK AND JUDICIAL TREND PERTAINING TO WITNESS PROTECTION"

4.1 INTRODUCTION

The British Government with the sole intention of facilitating repression of Indians and to prevent the 'natives' from acting against the colonial masters codified criminal law in India. Independent India inherited and has continued to use a substantial body of criminal law as was codified by the British Parliament. Therefore, rights of witnesses and provisions relating to their protection scarcely features under the existing criminal laws.[150]

No doubt there are certain provisions concerning witnesses emphasizing the competency and compellability of witnesses in tits and bits in variety of statutes, codes like Code of Criminal Procedure, 1973, Indian Evidence Act, 1872, Juvenile Justice(Care and Protection of Children) Act, 2000, but unfortunately there is no separate legislation yet in India to consolidate categorically the provisions strictly dealing with the protection of witnesses unlike other jurisdictions having separate legislation be it identity protection or physical safeguard of witnesses and despite Supreme Court's judgments in certain 'high-profile' renowned cases canvassing the immediate need for witness fortification, the Indian Parliament however has not been able to come out of its laxity temperament.

An elaborated study of these provisions will show whether the existing laws are adequate enough or there is need for a general law dealing with witness protection in all criminal cases where there is danger to the life of the witness or of his relative or to his property.

[150]Uma Saumya, "**Towards a legal regime for protecting the rights of victims and witnesses**" Combat Law, Vol. 2, Issue 5, Dec-Jan 2004

4.2 STATUTORY PROTECTION TO WITNESS: POSITION UNDER INDIAN LAW

4.2.1 THE CODE OF CRIMINAL PROCEDURE, 1973

1. **Section 327:** The Crpc, 1973 provides for trial in open Court and also facilitates for camera trials especially in rape[151] cases so that victim/witnesses feel secure and comfortable and can offer testimony without any shyness or fear in accordance with Section 327[152] of Crpc, 1973.

The Supreme Court in ***State of Punjab V. Gurmit Singh***[153]

> ***"If the witness or victim is protected it would enable the victims of crimes to be a little comfortable and answer the questions with greater ease in not too familiar surroundings. Trial in camera would not only be in keeping the self-respect of the victim of (the) crime and in tune with legislative intent but is also likely to improve the quality of evidence of a prosecutrix because she would not be so hesitant or bashful to depose frankly as she may be in the open court, under the gaze of (the) public. The improved quality of her evidence would assist the court in arriving at the truth and sifting truth from falsehood"***

[151] Section 376, Section 376A to Section 376D of the Indian Penal Code, 1860.

[152] "**Section 327 of Cr.P.C.,1973: Court to be open**: (1) The place in which any criminal court is held for the purpose of inquiring into or trying any offence shall be deemed to be an open Court, to which the public generally may have access, so far as the same can conveniently contain them:
Provided that the Presiding Judge or Magistrate may, if he thinks fit, order at any stage of any inquiry into, or trial of, any particular case, that the Public generally, or any particular person, shall not have access to, or be or remain in, the room or building used by the Court.
(2) Notwithstanding anything contained in sub-section(1), the inquiry into and trial of rape or an offence under Section 376, Section 376A, Section 376B, Section 376C, Section 376D, or Section 376E of the IPC, 1860 shall be conducted in camera:
Provided that Presiding Judge may, if he thinks fit, or on an application made by either of the parties, allow any particular person to have access to, or be or remain in, the room of building used by Court:
[Provided further that in camera trial shall be conducted as far as practicable by a women Judge or Magistrate.]
(3) Where any proceedings are held under Sub-section(2), it shall not lawful for any person to print or publish any matter in relation to any such proceedings, except with the previous permission of the Court:
[Provided that the ban on printing or publication on trial proceedings in relation to an offence of rape may be lifted, subject to maintaining confidentially of name and address of the parties.]"

[153] 1996 (2) SCC 384

2. Section 207: This section ensures that for a fair trial the copies of the police report and other documents should be supplied to the accused.

3. Section 208: This section assures that copies of statement and documents should be supplied to the accused in other cases triable by Court Of Sessions.

4. Section 273[154]: This Section furnishes that evidence to be taken in presence of the accused provided further that a person below the age of 16 years alleged to have been sexually assaulted should give evidence in such way that she is not confronted by the accused for which the court is to take appropriate measures. The Supreme Court of India in ***Sakshi V. Union of India[155]***observed:

> ***"the whole inquiry before a court being to elicit the truth, it is absolutely necessary that the victim or the witnesses are able to depose about the entire incident in a free atmosphere without any embarrassment….The mere sight of the accused may induce an element of extreme fear in the mind of victim or the witnesses or can put them in a state of shock. In such a situation he or she may not be able to give full details of the incident which may result in miscarriage of justice. Therefore, a screen or some such arrangement can be made where the victim or witness do not have to undergo the trauma of seeing the body or face of the accused"***

5. **Section 299:** This Section deals with the record of evidence in the absence of the accused.

> *"This Section unquestionably empowers the Magistrate to record the deposition of certain witnesses in the absence of the accused. Such recording of evidence in absence of an accused has been provided only where an accused person has absconded and there is no immediate prospect of arresting him. In such cases, the competent court may examine*

[154]"**Section 273 of Cr.P.C., 1973: Evidence to be taken in presence of accused**: Except as otherwise expressly provided, all evidence taken in the course of the trial or other proceeding shall be taken in the presence of the accused, or, when his personal attendance is dispensed with, in the presence of his pleader.
Provided that where the evidence of a women below the age of eighteen years who is alleged to have been subjected to rape or any other sexual offence, is to be recorded, the Court may take appropriate measures to ensure that such women is not confronted by the accused while at the same time ensuring the right of cross-examination of the accused.
Explanation- In this Section, "accused" includes a person in relation to whom any proceeding under Chapter VIII has been commenced under this Code."

[155]2004 (6) SCALE 15

the witnesses produced on behalf of the prosecution and record their depositions and such depositions may be given in evidence against him on the inquiry into or trial for the offence with which the accused is charged, if the deponent is dead or incapable of giving evidence or cannot be found or his presence cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable."

While the right to cross examine the prosecution witnesses is normally guaranteed under Section 299 itself, there are certain exceptional circumstances in which an accused may be denied his right to cross-examine a witness of the prosecution in open court.

6. Section 177: Section 177 of the Code says that in order to secure impartial evidence from the witness the witness on his way to court shall not require to accompany a police officer and shall not subject to unnecessary restraint or inconvenience, or required to give any security for his appearance if needed.

7. Section 200: Section 200 of the Code of Criminal Procedure provides that a Magistrate shall examine upon oath the complainant and the witnesses present, if any.

8. Section 202: Section 202 (2) of the Code of Criminal Procedure, in an inquiry, the Magistrate may, if he thinks fit, take evidence of witnesses on oath.

9. Section 204: Section 204 (2) of the Code provides that no summons or warrant shall be issued against accused unless a list of the prosecution witnesses has been filed.

10. Section 242 and Section 244: For the examination of witnesses, the Magistrate shall fix a date under Section 242 in case of warrant cases instituted on police report and under Section 244 in cases other than those based on police report.

11. Section 173: Section 173 which deals with the report of the police officer on completion of investigation, provides under sub-Section (5) (b), that the police officer shall forward to the Magistrate along with his report the statements recorded under Section 161 of all the persons whom the prosecution proposes to examine as its witnesses. However, sub-Section (6) of Section 173 provides that if the police officer is of opinion that any part of any such statement is not relevant to the subject matter of the proceeding or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interest, he shall indicate that

part of the statement and append a note requesting the Magistrate to exclude that part from copies to be granted to the accused and stating his reasons for making such request. Thus, while the requirement of providing information to the accused is the rule, the exception to the extent permitted as above under Section 173 (6) is limited only to a part of the statement made under Section 161 of the Code and not to the entire statement deposed to by any person including a prosecution witness under Section 161 of the Code.

12. Section 231: Section 231(2) of the Code provides that at the trial in the Court of Session, the prosecution may produce its evidence on the date fixed and the defence may cross examine or the date of cross examination may be deferred.

13. Section 242: Section 242(2) permits cross-examination by accused in cases instituted on police report and trial under warrant procedure is by magistrates.

14. Section 246: Section 246(4) provides for cross-examination of prosecution witness in trials of warrant cases by Magistrates in cases instituted otherwise than on police report. But witnesses can now be examined by video conference procedure as well as per the judgment of the Supreme Court in ***State of Maharashtra V. Dr. Praful B. Desai***[156].

15. Section 406 & 407: The Code of Criminal Procedure, 1973 contains provisions in respect of transfer of cases as evincible from **Zahira Habibulla Sheikh V. State of Gujarat**,[157] case wherein the Supreme Court had ordered a shift in venue from Gujarat to Maharashtra.

16. Section 195A: *"Recently the* ***Code of Criminal Procedure (Amendment) Act,2008*** *inserted a new section 195A.This section will empower the witness or any other person to file a complaint in response to the offence covered under IPC for threatening or inducing any person to give false evidence."*

"195A. Procedure for Witnesses in case of threatening etc.

[156] 2003 (4) SCC 601
[157] 2004 (4 SCC 158)

- A witness or any other person may file a complaint in relation to an offence under section 195A of the Indian Penal Code.(45 of 1860)."

17. Section 171: This section provides that Complainant and witnesses not to be required to accompany police officer and not to be subjected to restraint.[158]

18. Section 271: This Section deals with the power to issue commission for examination of witness in prison.[159]

19. Section 273: This Section provides for evidence to be taken in presence of accused. Except as otherwise expressly provided, all evidence taken in the course of the trial or other proceeding shall be taken in the presence of the accused, or, when his personal attendance is dispensed with, in the presence of his pleader.

20. Section 280: *"This Section deals with the remarks respecting demeanor of witness. When a presiding Judge or Magistrate has recorded the evidence of a witness, he shall also record such remarks (if any) as he thinks material respecting the demeanor of such witness whilst under examination."*

21. Section 287: This Section provides that Parties may examine witnesses.[160]

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[158] "**Section 171 of Cr.P.C, 1973:** This section provides that no complainant or witness on his way to any Court shall be required to accompany a police officer, or shall be subjected to unnecessary restraint or inconvenience, or required to give any security for his appearance other than his own bond. Proviso to this section further provides that, if any complainant or witness refuses to attend or to execute a bond as directed in section 170, the officer in charge of the police station may forward him in custody to the Magistrate, who may detain him in custody until he executes such bond, or until the hearing of the case is completed."

[159] "**Section 271 of Cr.P.C., 1973 :**The provisions of this Chapter shall be without prejudice to the power of the Court to issue, under section 284, a commission for the examination, as a witness, of any person confined or detained in a prison; and the provisions of Part B of Chapter XXIII shall apply in relation to the examination on commission of any such person in the prison as they apply in relation to the examination on commission of any other person."

[160] "**Section 287:**(1) Sub section 1 of this section provides that the parties to any proceeding under this Code in which a commission is issued may respectively forward any interrogatories in writing which the Court or Magistrate directing the commission may think relevant to the issue, and it shall be lawful for the Magistrate, Court or officer to whom the commission is directed, or to whom the duty of executing it is delegated, to examine the witness upon such interrogatories.
(2) As per sub section 2 of this section any such party may appear before such Magistrate, Court or officer by pleader, or if not in custody, in person, and may examine, cross- examine and re- examine (as the case may be) the said witness."

22. Section 309: This Section deals with the Power to postpone or adjourn proceedings:

"1. There is a mandate in sub section 1 for speedy disposal of cases that in every inquiry or trial, the proceedings shall be held as expeditiously as possible, and in particular, when the examination of witnesses has once begun, the same shall be continued from day to day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded.

2. Sub section 2 says that if the Court, after taking cognizance of an offence, or commencement of trial, finds it necessary or advisable to postpone the commencement of, or adjourn, any inquiry or trial, it may, from time to time, for reasons to be recorded, postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable, and may by a warrant remand the accused if in custody. There are three provisos attached to this section. First proviso provides that that no Magistrate shall remand an accused person to custody under this section for a term exceeding fifteen days at a time. Under second proviso it is provided further that when witnesses are in attendance, no adjournment or postponement shall be granted, without examining them, except for special reasons to be recorded in writing. According to third proviso no adjournment shall be granted for the purpose only of enabling the accused person to show cause against the sentence proposed to be imposed on him. If sufficient evidence has been obtained to raise a suspicion that the accused may have committed an offence, and it appears likely that further evidence may be obtained by a remand, this is a reasonable cause for a remand.[161]

The terms on which an adjournment or postponement may be granted include, in appropriate cases, the payment of costs by the prosecution or the accused."[162]

23. Section 311: This Section of the Code empowers the Court to summon material witness, or examine person present.[163]

[161] *Explanation 1* to section 309 Cr.P.C,1973

[162] *Explanation 2* to section 309 Cr.P.C,1973

[163] "**Section 311 of Cr.P.C.:** Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re- examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case."

24. Section 312: This Section of the Code provides for the expenses of the complaints and witnesses. ***"Subject to any rules made by the State Government, any Criminal Court may, if it thinks fit, order payment, on the part of Government, of the reasonable expenses of any complainant or witness attending for the purposes of any inquiry, trial or other proceeding before such Court under this Code."***

25. Section 315: Accused Person To Be Competent Witness:

> *"Sub Section 1 says that any person accused of an offence before a Criminal Court shall be a competent witness for the defence and may give evidence on oath in disproof of the charges made against him or any person charged together with him at the same trial. As per proviso -*
>
> *a. he shall not be called as a witness except on his own request in writing;*
>
> *b. his failure to give evidence shall not be made the subject of any comment by any of the parties or the Court or give rise to any presumption against himself or any person charged together with him at the same trial.*
>
> *Under Sub Section 2 any person against whom proceedings are instituted in any Criminal Court under section 98, or section 107, or section 108, or section 109, or section 110, or under Chapter IX or under Part B, Part C or Part D of Chapter X, may offer himself as a witness in such proceedings. Provided that in proceedings under section 108, section 109 or section 110, the failure of such person to give evidence shall not be made the subject or any comment by any of the parties or the Court or give rise to any presumption against him or any other person proceeded against together with him at the same inquiry."*

26. Section 316: This Section ensures that No influence to be used to induce disclosure.[164]

4.2.2 INDIAN PENAL CODE, 1860:

[164] *"**Section 316 of Cr.P.C., 1973:** Except as provided in sections 306 and 307, no influence, by means of any promise or threat or otherwise, shall be used to an accused person to induce him to disclose or withhold any matter within his knowledge."*

"Section 228A of the Indian Penal Code provides that the Court shall impose a sentence of two years imprisonment and fine upon any person who prints or publishes the name or any matter which may identify the person against whom rape has been found or alleged to have been committed. This protection is given with a view to protect the rape victim's privacy from general public and so that the media may not cast stigma on the victim by disclosure of her identity."[165]

4.2.3THE INDIAN EVIDENCE ACT, 1872

"The provision relating to witnesses appears in ***Chapter IX 'Of Witnesses' (****from Section 118 to 134) and* ***Chapter X 'Of the Examination of Witnesses****'(from Section 135 to 165) of the Act. The Evidence Act refers to direct evidence by witnesses. As to proof of facts, direct evidence of a witness who is entitled to full credit shall be sufficient for proof of any fact (Section 134), and the examination of witnesses is dealt with in Sections 135 to 166 of the Act (both inclusive)."*

Section 134 of the Indian Evidence Act, 1872 deals with the issue of quantity of legitimate evidence required for judicial decision. The well-known maxim that '*Evidence has to be weighed and not counted* 'has been given statutory recognition in Section 134 of the Evidence Act. Indeed, the courts insist on the quality, and not in the quantity of evidence.[166]

*"**Section 135** provides that the order in which witnesses are produced and examined shall be regulated by the law and practice for the time being relating to civil and criminal procedures respectively, and, in the absence of such law, by the discretion of the Court. In other words, the order in which evidence has to be produced by the parties is regulated by the Criminal Procedure Code [Chapter XX (Procedure for summons cases),*

[165]***"Section 228A: Disclosure Of Identity Of The Victim Of Certain Offences Etc.***
(1) Whoever prints or publishers 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."

[166]Kartik Malhar V. State of Bihar, 1996Cri.L.J. 889 (891) (S.C.); Shankar V. State of Rajasthan, 2004 Cri.L.J.1608 (Raj.)

Chapter XXI (Procedure for As per Section 132 of the Act a witness shall not be excused from answering a question on the ground that such answer will criminate or may tend directly or indirectly to criminate such witness or that it will expose or tend directly or indirectly to expose such witness to a penalty or forfeiture of any kind.

Proviso to the section engrafts a protection to the witness that any answer he is "compelled to give" shall not subject him to any arrest or prosecution or be proved against him in any criminal proceeding other than prosecution for giving false evidence."

Section 132 of the Act is a facsimile of the English Law as to privilege of a witness from being compelled to answer questions which was taken away by Section 32 of Act 2 of 1855.

Section 138 of the Evidence Act not only lays down the manner of examining a particular witness but also impliedly confers on the party, a right of examination in- chief, cross-examination and re-examination. On the importance of the right of cross-examination, the Supreme Court in ***Nandram Khemraj vs. State of M.P.***[167] observed:

> ***"The weapon of cross-examination is a powerful weapon by which the defence can separate truth from falsehood piercing through the evidence given by the witness, who has been examined in examination-in-chief. By the process of cross-examination the defence can test the evidence of a witness on anvil of truth. If an opportunity is not given to the accused to separate the truth from the evidence given by the witness in examination-in-chief, it would be as good as cutting his hands, legs and mouth and making him to stand meekly before the barrage of statements made by the witnesses in examination-in-chief against him or sending him to jail. Law does not allow such things to happen".***

Under the Evidence Act, in certain exceptional cases, where cross examination is not possible, then the previous deposition of a witness can be considered relevant in subsequent proceedings.

[167] *1995 Cr.L.J. 1270*

This is provided in Section 33 of the Evidence Act.[168]

> ***"<u>Section 148</u>****of the Act provides that if any question relates to matter which is not relevant to the suit or proceedings under hearing except it effects the credit of a witness by injuring his character, then it empowers the court to decide when such questions shall be asked and when such witness be compelled to answer it. The Section itself has given out the consideration in form of three clauses to decide whether a question proposed to be asked is proper question or improper question. What questions are proper, they are to be decided with reference to the consideration rule laid down in clause one. Whereas question, which are to be termed as improper, are to be decided with reference a consideration rule contained in clauses two and three. It may also be stated here that this section has classified questions to be put in cross-examination only in two categories: (1) proper questions, and (2) improper questions.*
>
> *The object of this section is to prevent the unnecessary action racking up of the past history of a witness, when it throws no light whatsoever on the questions at issue in a case. It protects a witness from the evils of a reckless and unjustifiable cross-examination under the guise of impeaching his credit. In the course of cross-examination, the temptation is always too great to run down a witness's character, the Legislature has, therefore, wisely provided ample safeguards for the unfortunate witness and placed wholesome checks on the wily cross-examiner."*[169]

"<u>Section 149</u>*of the Evidence Act lays down that a question intended to impeach the credit of a witness ought not to be ask, unless the person asking it has reasonable grounds for thinking that the imputation which it conveys is well founded. The extensive powers which have been granted to the court for protecting witnesses from questions not lawful in cross examination are set out in*

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[168] ***"<u>The essential requirements of Section 33 are as follows:</u>***
a) that the evidence was given in a judicial proceedings or before any person authorized by law to take it;
b) that the proceeding was between the same parties or their representatives in- interest;
c) that the party against whom the deposition is tendered had a right and full opportunity of cross-examining the deponent when the deposition was taken;
d) that the issues involved are the same or substantially the same in both proceedings;
e) that the witness is incapable of being called at the subsequent proceeding on account of death, or incapable of giving evidence or being kept out of the way by the other side or his evidence cannot be given without an unreasonable amount of delay or expense."

[169] *RatanLal & DhirajLal ,The Law of Evidence, 23rd Ed. 2011*

Sections 146 to 153.Section 149 of the Act is a warning signal to the person putting the question and indicates in suing liability."[170]

Section 150 is the penalty that may ensue against a reckless cross examination if the court was of the opinion that the questions were asked without reasonable grounds.[171] Section 150 of the Evidence Act is enacted to keep a check on the lawyers if they ask any question without any reasonable ground.

*"**Section 149 to 152 together with Section 148, ante were intended to protect a witness against improper cross-examination, a protection which is often very much required. It has however, been said that the protection afforded by section 148 is not very effectual because an innocent man will be eager to answer the question, and one who is guilty will by a claim for protection merely confess his guilt, and that the threats contained in Section 149, 150, do not carry the matter much further."***[172]

The aforesaid provisions of the Evidence Act have been sagaciously designed so that a fair trial is assured to the accused who is presumed to be innocent till proven guilty beyond reasonable doubt in pursuance to the Criminal Jurisprudence. Nevertheless, there are myriad instances where without any notice the key witnesses or material witnesses, disappear either before or during a trial or a witness is coerced, induced, pressurized, abducted or done away with for which majority of the times the case of the prosecution breaks down.[173]
The aforesaid precarious scenario makes it imperative for the State to look afresh the provisions of the Evidence Act so that injustice can be checked thereby ensuring fair trial by affording protection to a witness so that true and correct facts come up before the trial Court.

As a consequence, a survey of the provisions of the Code of Criminal Procedure, 1973 and the Indian Evidence Act, 1872 famous that the accused has a right of open trial and also a right to cross-examine the prosecution witnesses in open courtroom. There are a few exceptions to these

[170] *Shodganga.com*
[171] *Prakash V. State of Maharashtra, 1975 Cri.L.J. 1297*
[172] *Mark by Evidence p.107*
[173] *Turnor Morrison & Co. V. K.N. Tapuria, 1993 Cr.L.J. 3384 Bom.*

principles and the excellent court docket has declared that the right to open trial isn't always absolute and video-screening techniques can be hired and the sort of manner could no longer amount to violation of the proper of the accused for open trial. The Code of crook method consists of a provision for exam of witnesses in digicam and this provision can be invoked in cases of rape and child abuse. There is, however, want for extending the gain of these unique provisions to other instances where the witnesses are either received over or threatened, so that justice is carried out now not best to the accused however also to victims. The proof Act requires to be seemed into afresh to offer for protection to a witness.

4.3SPECIAL STATUTES IN INDIA

Granting of protection to witnesses in terms of both physical and mental safety, so far as it is concerned, there is an urgent necessity to have a general power for preserving the witnesses' anonymity in a criminal case in the larger interest of the society as well as administration of justice as witnesses for the edifice of a criminal trial and to ascertain that grave offences like terrorist acts or orchestrated crimes are efficaciously prosecuted and punished. It is a bitter truth that witnesses by offering evidence against the accused in a trial say, a terrorist offence expose themselves to severe act of vengeance which can even result in their unlikely deaths or grave bodily smite to them or their relatives, close and dear ones. It therefore, becomes essential to take a note of the special statutes handling specific types of offences where such protection to witnesses is accorded.

4.3.1. THE WEST BENGAL ACT OF 1932

Section 31 of the *Bengal Suppression of Terrorist Outrages Act, 1932* empowered a Special Magistrate to exclude persons or public from precincts of the Court, in the pre-constitutional era.

4.3.2.TADA 1985 AND TADA 1987: PROTECTION OF IDENTITY

With the increase in terrorist activities recently, primarily, the *Terrorist and Disruptive Activities (Prevention) Act, 1985* and thereafter the *Terrorist and Disruptive Activities*

(Prevention) Act, 1987 were enacted. These Acts contained specific provisions concerning the protection of witnesses. Section 13 of the Terrorist and Disruptive Activities (Prevention) Act, 1985 refers to protection of the identity and address of the witness and in camera proceedings.

4.3.3 TERRORIST AND DISRUPTIVE ACTIVITIES (PREVENTION) ACT, 1987

Terrorist and Disruptive Activities (Prevention) Act, 1987 which succeeded the Act of 1985 provided similar provisions for the protection of identity of witnesses in Section 16 with a few charges. The validity of sec 16 was even challenged but was upheld in **Kartar Singh V State of Punjab**[174]**.**

4.3.4*POTA 2002* (REPEALED W.E.F. 21.9.2004):

The TADA, 1987 was repealed by POTA, 2002. Section 30 of the *Prevention of Terrorism Act, 2002*, is on the same lines as Section 16 of the *Terrorist and Disruptive Activities (Prevention) Act, 1987* referred to above. The validity of Section 30 has been upheld in **PUCL vs. Union of India**.[175]The POTA has been repealed by the Prevention of Terrorism (Repeal) Act, 2004, w.e.f. 21.9.2004.

4.3.5 THE UNLAWFUL ACTIVITIES (PREVENTION) AMENDMENT ACT,2004 AMENDED (W.E.F. 21.9.2004)

The Act applies to 'unlawful exercises' furthermore to 'terrorist acts'. Section 44 (1) to (4) of the above Act bears the heading 'Protection of Witness' and is in indistinguishable dialect as Section 30(1) to (4) of the POTA, 2002.

[174]1994(3) SCC 569
[175]2003(10) SCALE 967

4.3.6 THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2000

Section 21 of The Juvenile Justice (Care and Protection of Children) Act, 2000 provides for 'prohibition of publication of name, etc. of Juvenile involved in any proceeding under the Act.

4.3.7 THE NATIONAL INVESTIGATION AGENCY ACT, 2008

This Act Provides for protection of witnesses in its Section 17.

The above examination of the condition of the statute law, both the general and extraordinary law, demonstrates that there is no broad law on assurance of character of witnesses in criminal cases – separated from the procurements for security of witnesses in the unique statutes administering terrorist-violations, for example, the Prevention of Terrorism Act, 2002 and so on. As of late, the situations where witnesses are turning threatening at trial because of dangers, is no more kept to instances of terrorism. Indeed, even in different sorts of offenses falling under the Indian Penal Code or other uncommon statute, this marvel has achieved disturbing extent. There is consequently require, as in different nations, to for the most part engage the Court in such cases - where muscle influence, political influence, cash power or different techniques utilized against witnesses and casualties - with the end goal of ensuring the witnesses so witnesses could give prove with no trepidation of backlashes and witnesses don't turn unfriendly because of dangers by the charged.

JUDICIAL TREND

Law is a social instrument to reach the destination that is justice. To serve justice to the needy and to bring the offenders to their knees for apology or strictly penalize them for the ultimate welfare of the society for which law has to keep pace with the transition in the society, Law has to change and be dynamic every moment so that even the most cunning criminal and a painstakingly carried out crime cannot escape the eagle eyes of laws.

Witnesses form the backbone of a case and play the indispensible part in a criminal trial which makes it mandate for both the Executive (State) as well as the Judiciary (the Judge) to strictly take note and enact policies, programmes, distinguished legislations or establish high-level committees or do whatever is required to provide protection to the witnesses or get involve in "Witness Protection Programme". It is not at all surprising if a Judge takes the initiative to bring reforms through judicial pronouncements in the field of "witness protection" or "witness anonymity" as it is the duty of the Court to conduct a fair trial and deliver final verdict based on the record on table. Thus, Judge holds a prominent position to bring change and a significant role to play in "Witness Protection".

The responsibility of a Judge becomes all the more important as he endeavours to strike a balance between a fail trial to the accused as well as to the prosecution or the victims or witnesses. To bring the law-breakers to books and to ensure a fair trial to the accused persons and the victims and witnesses thereby serving a fair justice is the principle goal of a Criminal procedure. A fair trial has two objectives i.e. it should be fair to accused and should also be fair to the prosecution or to the victims. We find catena of rights available to the accused in consonance with the principle of presumption of innocence of criminal jurisprudence but on the contrary there is barely any concrete rights existing for the victims as well as the witnesses safeguarding them to offer their testimony boldly and fearlessly. This fragile situation calls for or rather brings into play the trailblazing and crucial role of the Judge in transmitting a just trial and reminds his duty to ensure that witnesses are not traumatized while giving evidence and freely without any intimidation, threat, coercion, physical injury comes to Court to depose the truth and also to provide necessary protection if required.

Under the heading 'Judicial Trends' an attempt has been made to critically analyze the cases pertaining to witness protection and how the judiciary played a constructive role to provide different means and methods to the protection of witnesses.

4.4 ENUNCIATION OF WITNESS PROTECTION BY INDIAN JUDICIARY

4.4.1 Protection of Witnesses from Media

In **Bimal Kaur Khalsa v/s Union Of India**[176] , the Full Bench of the Punjab and Haryana High Court held that the personality, names and addresses of the witnesses might be revealed to the charged before the trial initiates; however the court might want to qualify it by watching that it ought to be liable to a special case that the Court for profound reasons in its astuteness might choose not to uncover the character and addresses of the witnesses particularly if the potential witnesses whose life might be in peril." It might stop the scattering of the information in regards to the location and personality of an arraignment witness by guaranteeing that his name and address and the personality are not given exposure by the media. Along these lines the High Court accommodates security of the witness from the media yet does not manage every one of the parts of the issue.[177]

4.4.2 Anonymity of Victims in Rape trial judgments by the Court.

In ***State of Punjab v/s Ramadev Singh***[178]the Supreme Court held that retaining in view the social object of stopping social victimization or ostracism of the sufferer of a sexual offence for which section 228-A IPC has been enacted, it would be suitable that during judgment, be it of Supreme Court docket, high Court or lower Court, the identity of the sufferer need to no longer be indicated.

*"In the **Delhi Domestic Working Women's Forum v. Union of India**[179], the Supreme Court, while indicating the broad parameters that can assist the victims of rape, emphasized that in all rape trials "anonymity" of the victims must be maintained as far as necessary so that the name is shielded from the media and public."*

[176] AIR 1988 P&H 95.
[177] *Varinder Singh, Witness Protection in India: The Judicial Endeavour, International Journal of Advanced Research, (2016); Volume 4 Issue 1.*
[178] AIR 2004 SC 1290
[179](1995) 1 S.C.C. 14

4.4.3 Protection Against Publication of Evidence

"A rather interesting aspect of witness protection came up for consideration before the Supreme Court in somewhat unusual circumstances in a defamation case. In ***Naresh Shridhar Mirajkar v. State of Maharashtra***[180]***,*** *a witness for the defence repudiated in the witness box all statements earlier made by him. With the permission of the High Court, he was cross-examined by the defence, but he maintained his stance. Later the defence came to know of some other proceedings where the witness had substantially stated what was alleged by the defence. Accordingly, the defence recalled him to the witness box. At that stage, the witness sought protection of the High Court against the publication of his evidence because, he said, the publication of his earlier evidence had caused him business losses. Protection against publication of his evidence was given by the High Court and affirmed by the Supreme Court because it was "thought to be necessary in order to obtain true evidence in the case with a view to do justice between the parties."* ***This may well be the only case in which the business interests of a witness were sought to be protected rather than the witness himself. It is a novel and unexplored dimension to witness protection."***[181]

4.4.4 Preventive Detention in the Interests of Maintaining 'Public Order'

Harpreet Kaur v. State of Maharashtra[182] arose under the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers and Drug offenders Act (1981). The Supreme Court held that the activities of the detenue affected the even tempo of the society by creating a feeling of insecurity among those who were likely to depose against him as also the law enforcement agencies. The fear psychosis created by the detenue in the minds of the witnesses was aimed at letting the crime go unpunished. It was held that these activities fell within sec. 2(a) of the Act, as to permit the detenue's preventive detention in the interests of maintaining 'public order'.[183]

[180](1996) 3 SCR 744
[181] *Supra note 178, at p. 92.*
[182]A.I.R. 1992 SC 779
[183] Shodganga.com

4.4.5 Terrorist and Disruptive Activities (Prevention) Act, 1987 (TADA)

In ***Kartar Singh v/s State of Punjab***[184] *case*, the Hon'ble Supreme Court maintained the legitimacy of section 16(2) and (3) of the Terrorist and Disruptive activities (Prevention) Act 1987 (TADA) which gave the choice of preference to the nominated court docket to maintain the persona and place of a witness mystery upon precise possibilities; to preserve the techniques at a niche to be pick out by way of the courtroom and to withhold the names and addresses of witnesses in its orders and judgments. The court docket further held that the privilege of the blamed to interrogate the arraignment witnesses turned into not ideally suited however alternatively changed into vulnerable to unique instances.

4.4.6 Cancellation of Bail for Continuance of Fair Trial

The High Court, in exercise of its inherent power, allowed an application by the complainant for cancelling the bail on the ground that "it would not be safe to permit the appellant to be at large" despite the fact that the offence committed by the accused was bailable in ***Talab Haji Hussain V. Madhukar Purushottam Mondkar***[185]. The Supreme Court confirmed the order of cancellation and observed that the primary purpose of the Criminal Procedure Code was to ensure a fair trial to an accused person as well as to the prosecution. The Court observed:

> ***"It is therefore of the utmost importance that, in a criminal trial, witnesses should be able to give evidence without inducement or threat either from the prosecution or the defence….the progress of a criminal trial must not be obstructed by the accused so as to lead to the acquittal of a really guilty offender…. there can be no possible doubt that, if any conduct on the part of an accused person is likely to obstruct a fair trial, there is occasion for the exercise of the inherent power of the High Court to secure the ends of justice…. and it is for the continuance of such a fair trial that the inherent powers of the High Courts, are sought to be invoked by the prosecution in cases where it is alleged***

[184] 1994 Cr.L.J. 3139 (SC)
[185] A.I.R. 1958 SC 376

that accused person, either by suborning or intimidating witnesses, or obstructing the smooth progress of a fair trial."

4.4.7 Plight of Witnesses in Criminal Cases

The expenses payable to witnesses provided in sec. 312 of the Code of Criminal Procedure, 1973 came up for discussion in ***Swaran Singh s. State of Punjab***[186]The Supreme Court of India expressed deep concern about the predicament of a witness in the following words:

"A criminal case is built on the edifice of evidence, evidence that is admissible in law. A witness in a criminal trial may come from a far-off place to find the case adjourned. He has to come to the Court many times and at what cost to his own-self and his family is not difficult to fathom. It has become more or less a fashion to have a criminal case adjourned again and again till the witness tires and he gives up. It is the game of unscrupulous lawyers to get adjournments for one excuse or the other till a witness is won over or is tired. There is no protection for him. In adjourning the matter without any valid cause a Court unwittingly becomes party to miscarriage of justice. A witness is then not treated with respect in the Court. He is pushed out from the crowded courtroom by the peon. He waits for the whole day and then he finds that the matter adjourned. He has no place to sit and no place even to have a glass of water. And when he does appear in Court, he is subjected to unchecked and prolonged examination and cross examination and finds himself in a hapless situation. For all these reasons and others a person abhors becoming a witness. It is the administration of justice that suffers. Then appropriate diet money for a witness is a far cry. Here again the process of harassment starts and he decides not to get the diet money at all."

4.4.8 Criminal Trial on Day to Day Basis:

[186] AIR 2000 SC 2017

The Supreme Court in **State of UP v. Shambhu Nath Singh** [187] observed that section 309 of the Code of Criminal Procedure, 1973 requires that the criminal trial must proceed from day to day and should not be adjourned unless 'special' reasons are recorded by the Court. In that case, after several adjournments, PW1 was not examined even when present. The Supreme Court observed:

> ***"If any Court finds that day to day examination of witnesses mandated by the legislature cannot be complied with due to the noncooperation of the accused or his counsel, the Court can adopt any of the measures indicated in the sub section, i.e. remanding the accused to custody or imposing costs on the party who wants such adjournments (the costs must be commensurate with loss suffered by the witnesses, including the expenses to attend the Court). Another option is, when the accused is absent and the witness is present to be examined, the Court can cancel his bail, if he is on bail."***

"Vinod Kumar v. State of Punjab[188]*has emphasized the section 309 of Cr.P.C., 1973 and beautifully frescoed the reasons which afflict the legally requisite criminal trial and has depicted a scenario that exemplifies how due to passivity of the learned trial Judge, a witness, despite having stood embedded absolutely firmly in his examination-in-chief, has audaciously and, in a way, obnoxiously, thrown all the values to the wind, and paved the path of tergiversation. The Court said that it would not be a hyperbole to say that it is a maladroit and ingeniously designed attempt to strangulate and crucify the fundamental purpose of trial, that is, to arrive at the truth on the basis of evidence on record."*

4.4.9JUDICIAL DIRECTIONS & GUIDELINES FOR THE PROTECTION OF WITNESSES Direction to Central and State Government:

In **NHRC v/s State of Gujarat**[189], the Apex court watched, no law has yet been established, not even a plan has been confined by the Union of India or by States in assurance to the witnesses. The Court has set out specific rules for guaranteeing of a feeling of trust in the brain of the

[187] 2001 (4) S.C.C. 667
[188] *Vinod, Supra note 20, at p. 25.*
[189] *(2008) 16 SCC 497*

victims and their relatives, and to guarantee that witnesses depose uninhibitedly and bravely under the steady gaze of the court. At that point, on the topic of insurance of witnesses, the Supreme Court alluded to the non appearance of a statute on the subject, as below[190]:

> ***"No law has yet been enacted, not even a scheme has been framed by the Union of India or by the State Government for giving protection to the witnesses. For successful prosecution of the criminal cases, protection to witnesses is necessary as the criminals have often access to the police and the influential people. We may also place on record that the conviction rate in the country has gone down to 39.6% and the trials in most of the sensational cases do not start till the witnesses are won over. In this view of the matter, we are of opinion that this petition (by NHRC) be treated to be one under Article 32 of the Constitution of India as public interest litigation."***

Following are the stairs will be taken:
(a) Guaranteeing secure entry for the witnesses to and from the court areas,
(b) Giving security to the witnesses in their place of house wherever needful, and
(c) Relocation of the witnesses to every other country anywhere any such step is important. Yet regardless of the earlier instructions of the Apex court docket, given on this regard to the relevant and the kingdom government to enact a regulation for witness protection, no action has been taken by either of the two Governments.

Direction to the Police and Delhi Legal Service Authority :

It's far the responsibility of the executive to fill the vacuum by means of government orders due to the fact its area is coterminous with that of the legislature, and wherein there's in action even by the government, for anything cause, the judiciary should step in exercise of its constitutional obligation to offer a solution until such time as the legislature acts to carry out its position with the aid of enacting right rules to cowl the sector of witness protection. In Ms. Neelam Katara v/s

[190] *Supra note 167, at p. 76.*

Union of India[191], the High Court of Delhi issued positive hints which perform for the safety of witnesses until enactment of a suitable regulation.

Direction to Court :

*In **Harish C. Tiwari v/s Baiju**[192] , the ideal court determined that if want be the courts have the essential energy, via issuing directions for the safety of witnesses to fill the vacuum until such time the legislature steps in to cowl the gap or the executive discharges its role.*[193]

4.4.10 ROLE OF THE STATE IN PROTECTING THE WITNESS

The apex court was emphatic on the role of the State to play in safeguarding the witnesses, In ***Zahira Habibulla H. Sheikh and Another v/s State of Gujarat and Others***[194]. It has been pragmatically observed that as a protector of its citizens, the State has to ensure that during the trial in the Court the witness could safely depose the truth without any fear of being haunted by those against whom he had deposed. Supreme Court reminded the State that it has a constitutional obligation and duty to protect the life and liberty of the citizen.

4.4.11 IMPORTANCE OF WITNESS IN CRIMINAL JUSTICE SYSTEM

In criminal cases, witnesses act as the fulcrum around which the case revolves and the facts cannot be interlinked and established without them. In the absence of sufficient evidence of the victim the only resort is the witnesses who can prove the case.

In ***Bharat Singh Rawat vs State Nct Of Delhi***[195]*on 12 March, 2014,* the Delhi High Court observes the importance of witness in criminal justice system.

> ***"'Witnesses' as Bentham said: are the eyes and ears of justice. If the witness himself is incapacitated from acting as eyes and ears of justice, the trial gets putrefied and paralysed, and it no longer can constitute a fair trial. The***

[191] ILR (2003) II Del 377 260
[192] *2002 (5) SCC 294*
[193] *Supra note 178, at p. 92.*
[194] *(2006) 3 SCC 374*
[195] CRL.A. 830/2013

incapacitation may be due to several factors, like the witness being not in a position for reasons beyond control to speak the truth in the Court or due to negligence or some corrupt collusion. Time has become ripe to act on account of numerous experiences faced by Courts on account of frequent turning of witnesses as hostile, either due to threats, lures and monetary considerations at the instance of those in power, political clouts and patronage and innumerable other corrupt practices stifle truth and realities coming out to surface rendering truth and justice. There comes the need for protecting the witness. Time has come when serious and undiluted thoughts are to be bestowed for protecting witnesses so that ultimate truth is presented before the Court and justice triumphs and that the trial is not reduced to a mockery. Doubts are raised about the roles of investigating agencies."

4.4.12 CRITICAL SCRUTINY OF CASES RELATING TO PROTECTION OF WITNESSES

In **Naroda- Patia case**[196]; Mohammad Shakur Sayyad, a victim/setback of the Naroda-Patia phlebotomy in the year 2002, who was similarly a key witness in light of current circumstances, was struck and walloped savagely by a gathering of thirty people, while he was sitting outside his shop at the Faisal Park Society in Vatva. Sayyad, who lost his three adolescents in the Naroda-Patia butcher, had deposed before the Nanavati Commission on first October 2003 naming a couple of persons in the group. He is one of the key witnesses for the circumstance and had moreover been given one police screen. The guard however had surrendered for the day when Sayyad was attacked. Around forty-five gatherings of Naroda-Patia have declined to do an inversion to the district after the fits of commotion. What is dazzling for this circumstance is that such a key witness (for this circumstance Sayyad), was outfitted with one and just police screen who, unquestionably, would have wanted to extra his own specific life rather than that of the witness he was guaranteeing, when the swarm of thirty people attacked.

[196]Dhruv Desai, "Treatment and Protection of Witnesses in India" retrieved from <http://www.legalserviceindia.com/articles/witnesses.html> (last visited at Nov 29, 2015)

In ***Ketan Thirodkar case***[197]**,** the Bombay High Court, in this case, had given Thirodkar police protection only for a limited period, not realizing that the persons that he is to implicate would cause serious injury to him the moment the temporary police protection is removed.

"Beant Singh Assassination Case: The case of Balwinder Singh, a prime witness in Beant Singh (former Chief Minister of Punjab) assassination case, shows the state of witness protection in the country. In September 2003, the Punjab and Haryana High Court ruled that it would be appropriate for both the Central and State Government to expeditiously adopt a programme for the protection of witnesses[198].

> ***Court said: 'Since it is not for us to direct the administration to formulate the guidelines, rather than leaving the decision on the absolute discretion of the district authorities, who may or may not like to draw upon secret service funds, we would like to bring on record the desirability of the legislature or the administration to try and emulate the advances in this field made in other countries."***'

Self-styled Godman 'Asaram Bapu' Rape Case: A pivotal witness in the assault body of evidence against the Asaram has been given police security, four days after one of the witnesses for the situation was shot dead. A seat of Justices A. R Dave and A. K Goel guided the trial courts to pass proper orders for giving witness security, on the off chance that they are undermined.

4.4.13 GUIDELINES FOR WITNESS PROTECTION ISSUED BY DELHI HIGH COURT

Certain rules were issued by the Delhi High Court in **Ms. Neelam Katara v. Union of India**[199] to the police on giving assurance to witnesses to check the threat of their turning antagonistic prompting exoneration of denounced in dreadful crimes. This choice given by a seat containing Justice Usha Mehra and Justice Pradeep Nandrajog on an appeal recorded by Neelam Katara whose child Nitish was purportedly abducted from a marriage party in Gaziabad by Rajya Sabha

[197] *Dayanand B. Nayak v/s Ketan K. Tirodkar And Anr.2004 CriLJ 2177 (Bom. HC)*
[198] *Retrieved from< http://shodhganga.inflibnet.ac.in/bitstream/10603/8788/13/13_chapter%204.pdf>visited on 21-12-2015*
[199] ILR (2003) II Del 377 260

MP DP Yadav's child Vikas and his nephew Vishal and murdered. Obviously, expecting that the examination may not be free or reasonable and the resulting trial might likewise be influenced, Mrs. Katara documented a writ petition praying, entomb alia, for the issuance of bearings for insurance of witnesses.

4.4.14 STATUTORY PROTECTION TO WITNESS: POSITION UNDER INDIAN LAW

The Supreme Court in ***State of Punjab V. Gurmit Singh*** [200]held that Trial in camera would not simply be in keeping the certainty of the sufferer of (the) offense and tuned into definitive objective yet in the meantime is inclined to improve the way of affirmation of a prosecutrix in light of the way that she would not be so hesitant or bashful to reject sincerely as she may be in the open court, under the look of individuals when all is said in done. The upgraded way of her affirmation would help the court in getting in contact at reality and separating truth from deception.

SPECIAL PROVISIONS FOR TRIAL IN CHILD SEX ABUSE OR RAPE CASES

The Supreme Court of India in ***Sakshi V. Union of India***[201]observed:

> ***"the whole inquiry before a court being to elicit the truth, it is absolutely necessary that the victim or the witnesses are able to depose about the entire incident in a free atmosphere without any embarrassment….The mere sight of the accused may induce an element of extreme fear in the mind of victim or the witnesses or can put them in a state of shock. In such a situation he or she may not be able to give full details of the incident which may result in miscarriage of justice. Therefore, a screen or some such arrangement can be made where the victim or witness do not have to undergo the trauma of seeing the body or face of the accused."***

[200] 1996(2) SCC 384
[201] 2004(6) SCALE 15

4.4.15 NEED FOR LAW OF WITNESS PROTECTION

In ***Rishipal versus State Of U.P.***[202], the Justice Yatindra Singh watched that the occurrence happened at twelve. Six homicides were conferred. It is unrealistic that it was not seen by the irrelevant or free witnesses. Yet, nobody approached to offer the truth. While examining sub-heading 'No Unrelated or Independent Witness - Not Fatal' under third point, we have watched the reasons concerning why nobody approached. The IO stated that nobody was approaching even to get the assertion recorded. Indeed, even the spouse of the Pradhan was threatened. This shows everything is not well with our criminal conveyance framework. Unless cured, it might be its demise chime. So Witness security system is the need of great importance. Witnesses need to have certainty that framework will secure them; the framework needs to ingrain trust in them. Witness insurance project is a vital part of criminal equity framework: without it, no changes are conceivable. On the off chance that witnesses are hesitant to approach then regardless of any measures equity can't be regulated. This case is a pointer. Witness Anonymity and witness insurance Program are critical parts of criminal statute.

The second hypothesis that Witnesses are harassed each time they are summoned to Court only to find that the cases are adjourned due to unfathomable reasons hence gets proved through catena of case laws.

The third hypothesis that Witnesses and their relatives are intimidated and allured by the accused indirectly through highly influential personalities in the society for which they turn hostile during a criminal trial and crucify the very purpose of fair trial therefore gets established in this Chapter.

The fourth and the last hypothesis that there are no separate and strict laws yet in India despite several Law Commission Reports for the anonymity and protection of witnesses barring few sections of IPC, Indian Evidence Act, 1872 and Cr.P.C, 1973 also gets proved through the instances and cases and the current precarious situations in this Chapter.

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[202] 2011 Cr.L.J. 2346 (All.)

CHAPTER 5

"CONCLUSION AND SUGGESTIONS"

FEAR, INTIMIDATION, ALLUREMENT, PHYSICAL THREAT TO LIFE OF HIMSELF OR RELATIVES, BRIBERY, NEPOTISM, RELUCTANCE are 'the most factors' which haunt the witnesses akin to evil spirits and chase them as if their own shadows resulting in their turning to hostile out of traumatization and retract from their own statements and observations mortifying the credential worth of their testimony which is to be considered as an edifice for conviction in a criminal trial and this is the sole reason why commission of crime rate in a democratic Country like, India is ceaselessly increasing whilst the conviction rate is abnormally low.*"People believe that "law is like spider web: if some powerless thing falls into them, it is caught, but bigger one can break through and get away, if witness will not give evidence ,influential criminal will not prosecute or if prosecuted will not be convicted and the administration of justice will suffer."*[203]

Thus the current precarious state of affairs all around and the environment already polluted with the infectious air of threat, intimidation, fear, allurement, coercion, followed by the unlikely deaths of the material witnesses desperately beckons the Government Of India to draw its attention to this alarming situation and immediately take steps to grant security and protection to the witnesses so that they feel comfortable and secure within their own State and feel free to depose nothing but the truth in the Court to solve the case. Therefore, it is high time to compare the witness protection laws prevalent in other countries like United Kingdom, and United States of America across the global village with Indian laws so that the Executive of India can further strengthen and enact a concrete law for safeguarding witnesses.

Crimes and acts of terrorism take place in public view and still the public who has seen the same do not come forward to give evidence out of fear and on account of frustrating Court procedures. The net result of the unwilling attitude of the public is that the accused invariably manages to get off the hooks and the criminal justice fails. In such circumstances and scenario in recent past a

[203]Salmond in laertious in lives of philosophy.

deep concern was expressed indifferent quarters for suitable legislation and measures for bold witness protection.[204]

The Indian Judiciary has been making a decent attempt in order to bargain out with the issue of witness assurance yet since there is a nonappearance of such enactment, witnesses are not getting that security as and when required. Existing circumstances are so delicate and tricky that witnesses can't be solidly protected from the evildoers and brutes meandering around uninhibitedly. In the late case, in trial of Mukhtar Ansari (administrator Bahujan Samaj Party, Lucknow), who was striven for the homicide of Jail Superintendent, was vindicated as all the 36 witnesses turned unfriendly. It was maybe because of the insufficiency of security conceded to witnesses. Today, under the current circumstance, our Judiciary is assessing the American laws relating to witness security. In America, the Federal Witness Protection Program has been made in light of the issues confronted by the witnesses who affirmed against mobsters. Indeed, even Canada has sanctioned Witness Protection Act 1996 (Kanishka Bombay Case) and the legal is acting as needs be. In this way the Indian Parliament ought to too take a note on this issue and institute a lawmaking body for the same and on the same side legal should likewise enjoy it subsequently ensuring witnesses so that the cases like Jessica Lal ought not be rehashed which are shattering the validity of our criminal equity framework.

As we are aware, investigation in a criminal trial assumes important role and it helps the court to determine the guilt or innocence of the accused. A fair and objective investigation can unearth the crime committed and as well collect the material which can prove the guilt or innocence of the accused. It is an established fact that witnesses form the key ingredient in a criminal trial and it is the testimonies of these very witnesses, which ascertain the guilt of the accused. Law regarding admissibility of hostile witness is established in large number of case, as evidence of witness does not become effaced from record merely because he turned hostile.[205] However, court has to be very careful, as prima facie, a witness who makes different statements at different times, has no regard for truth.[206]

[204]Tr. T. Bala Sundaram, *Need for Witness Protection*, Criminal Investigation Department Review – April 2007.
[205]Paramjeet Singh v. State of Uttarakhand, (2010) 10 SCC 439. PARA 15 TO 20; State of U.P v. Chet Ram, AIR 1989 SC 1543; Khujji alias Surendra Tiwari v. State of M.P., AIR 1991 SC 1853.
[206]Ibid note 205.

Court should deliberately dissect his proof and see whether that some portion of proof which is conflicting with the indictment case is adequate or not.[207] It is, in this manner, basic that for equity to be done, the security of witnesses and casualties gets to be vital, as it is dependence on their affirmation and protests that the real culprits of egregious wrongdoings can be conveyed to book.[208]

President of India, as empowered by clause (1) of Art 123 of Constitution of India passed an Ordinance called as Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment 2014 on March fourth 2014. This ordinance comprises of a chapter IVA, which manages "Rights of Victims and Witnesses". It obliges the State to make courses of actions for the security of victims, their wards and witnesses against any sort of intimidation or compulsion or impelling or viciousness or dangers of brutality.[209]Ordinance guarantees treatment of sufferer in noble way and a legitimate notification of any Court procedures.[210] Ordinance under sub-sec. (6) of Sec. 15A enables the Special Court built up for the trial of offences under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 to provide victim, his needy, source or witnesses complete assurance to secure the ends of justice voyaging and upkeep costs amid examination, request and trial.

The Ordinance compels the Investigating Officer and the Station House Officer to record the objection of victims, source or witnesses against any sort of intimidation, pressure or impelling or savagery or dangers of roughness, whether given orally or in composing, and a photocopy of the FIR might be instantly given to them at free of expense. This statute has still not been gone from the Parliament; however it is great stride by the enactment to secure the casualty and the witnesses. These sorts of law are earnestly expected to set up confidence in Criminal Justice framework. Parliament ought to take up the suggestions given in 198th Law Commission report and ought to establish a Law, which would by and large manage the Witnesses obscurity and security.[211]

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[207] State of Gujarat v. Anirudh Singh, (1997) 6 SCC 514.
[208] National Human Rights Commission v. State of Gujarat AIR 2009 (SCW) 3049 para 4
[209]Sec 15A of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment 2014
[210]Ibid, Sub-sec. (2) & (3)
[211] Mamta Shukla and Gaurav Shukla, Witness Anonymity and Protection: Balancing under Criminal Law, Journal of Education and Social Policy, Vol.1

Man is a peace-adoring creature. He needs to lead a strain free life and has learnt the craft of trading off with circumstances to buy mental peace for himself and for his friends and relatives. 'Disregard and overlook' is significant expression which the vast majority of us follow in our everyday life. This happens in criminal procedures additionally particularly in instances of insignificant offenses.[212] The common position of law makes witnesses to sway amid trial. Wavering witnesses have dependably been a hindrance to the stream of equity and a vexing issue for the Courts of law. Testimony in the witness of a Court is recorded at the phase of trial, frequently years after the event. By then the memory of the witnesses has effectively blurred. The police then again records articulation of witnesses, as a piece of examination, not long after the event and it places separates under the steady gaze of the concerned Court. Under Section 161 and Section 162 of the Cr.P.C., 1973 if such proclamation of witness is recorded the same ought not be under vow; nor be got marked by the witness. The reason for existing is to maintain a strategic distance from controls on account of the police who can possibly remove even bogus articulations of their decision and to bind the witness amid imminent trials. An unfavorable branch of this restriction is the flexibility of witness to give false confirmation. Weights and impacts including cash power, risk, political obstruction and so on might add to this inevitability. It is not simply the unskilled and the poor who respect such weights, even VIPs and government officials succumb to them. Confronted with serious dangers to life of self or dear ones, or under generous enticing offers, a customary individual would be slanted even to give an untrue adaptation in the witness of the Court since he doesn't stand to lose much in this manner.[213]

Apparently a witness is harried on the grounds that he is sufficiently awful to be on the spot when the wrongdoing is being committed and in the meantime sufficiently stupid to remain there till the landing of the police. So it is our obligation to give him the best as he is helping the organization of equity. Assurance is additionally important to restore a feeling of human poise. Different standards or rules for security of witnesses have been laid however they can't and are not finished and, in any event, cannot be as powerful as the procurements of a unique statute on the subject would otherwise be.

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[212]Dr. K.P. Singh, IPS, Urgent Need for Witness Protection, Human Rights wing of the Institute of Social Sciences, Vasant Kunj, N. Delhi.

[213]Sonika Kapila, Thesis: Witnesses in the Criminal Justice System in India: A Critique of the Strategies for their Protection, 2010.

According to Justice Madan B. Lokur, physical protection of a witness has become necessary not only in cases involving serious offences, hardened criminals and other bad characters, but also in less serious cases and cases where the accused are socially acceptable persons wielding influence.[214]

In the meantime, it can't be over-underscored that actualizing a Witness Protection Scheme is to a great degree demanding undertaking in India and different nations. Both the stakes and dangers are high. The accomplishment of real criminal examinations and indictments, the wellbeing of the witnesses and cops included, and in addition the uprightness and adequacy of the system itself rely on upon the sound configuration and watchful execution of the plan set up.

At the point when a senior legal counselor Vivek Tankha, showing up for a NGO, Country First - which had documented the appeal for sanctioning enactment on witness insurance - said the nation can't be permitted to endure the threat of hostile witnesses, Chief Justice K.G. Balakrishnan observed that it was not possible to provide protection to every witnesses, as there were too many pending cases. The bench commented, *"How can there be a blanket protection? Do you (petitioner) have an idea how many witnesses would be required to be protected?"* The Supreme Court, while directing Delhi Courts to conduct a sample survey of Criminal Courts and also the pending cases, asked them to file a status report on the feasible option of instances where witnesses can be given protection.[215]

However the fact remains that a nation cannot afford to expose it's righteous and morally elated citizens to the peril of being haunted or harassed by anti social elements, for the simple reason that they testified the truth in a Court of law. Dearth of funds should never be an excuse. If our society fails to be alive to the reality, the plight of an honest witness will be catastrophic and calamitous.[216]

It is pertinent to mention that not only unavailability of witnesses which afflict the Indian Judiciary System and make it inefficient but also the snail paced or rather prolonged trials due to

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[214] *Access to Justice: Witness Protection and Judicial Administration, Delhi Judicial Academy (Quarterly Journal), Volume 3 (Issue 1), 2004.*

[215] *All witnesses can't be protected: SC, (Supreme Court bench comprising Chief Justice K G Balakrishnan and Justice D K Jain), The Times of India, New Delhi, 23.1.2007.*

[216] *Ibid note 204.*

unwarranted adjournments add salt to the inoperability of the proceedings. Thus the Supreme Court quite sagaciously and conscientiously observed and expressed its deep concern that it is the obligation of the Court to not only protect the interest of the accused according to the rule of law but also to safeguard the societal and collective interest of the public at large. It is upsetting to note that in spite of heap of judgments of Supreme Court, the propensity for conceding suspensions spreads as a disease proceeds. How long the Apex Court insists on the lower Courts to be ARISE! AND AWAKE! On this very aspect, the Supreme Court commented in the case of ***Vinod Kumar v. State of Punjab***[217] that:

> ***"There is no cavil over the proposition that there has to be a fair and proper trial but the duty of the court while conducting the trial to be guided by the mandate of the law, the conceptual fairness and above all bearing in mind its sacrosanct duty to arrive at the truth on the basis of the material brought on record. If an accused for his benefit takes the trial on the path of total mockery, it cannot be countenanced. The Court has a sacred duty to see that the trial is conducted as per law. If adjournments are granted in this manner it would tantamount to violation of rule of law and eventually turn such trials to a farce. It is legally impermissible and jurisprudentially abominable. The trial courts are expected in law to follow the command of the procedure relating to trial and not yield to the request of the counsel to grant adjournment for non-acceptable reasons. In fact, it is not all appreciable to call a witness for cross-examination after such a long span of time. It is imperative if the examination-in-chief is over, the cross-examination should be completed on the same day. If the examination of a witness continues till late hours the trial can be adjourned to the next day for cross-examination. It is inconceivable in law that the cross-examination should be deferred for such a long time. It is anathema to the concept of proper and fair trial……for it eventually makes the trial an apology for trial and compels the whole society to suffer chicanery. Let it be remembered that law cannot allowed to be lonely; a destitute."***

Finally, this exploration work circles across the plan to assessment of legal guidelines at the situation in different countries and to scrutinize the proposals given by different forums of

[217] *Supra note 29, at p. 28.*

committees on the situation too to suggest appropriate measures for witness protection so that it will urge witnesses to approach the Court voluntarily.

To ensure witness assurance is a current global issue which has drawn the consideration of generic powers. Along those traces to fathom the problem with top need on the country wide and global level, the concern in the present research is an issue of grave and colossal noteworthiness. As it is evincible from the Best Bakery case, the individual who is well on the way to endure is Zahira, herself. She had seen the wrongdoing; she had seen the offenders, yet when time sought her to be sufficiently intense to oust in the witness of the Court, she found that she was in a climate which was entirely threatening to her - the prosecutor, the guard legal counselor, the denounced, the supporters of the blamed - maybe the judge whom she was not certain of. The trial turned into a joke. Later on, when she was revived by the endeavors of good natured N.G.Os, and the Supreme Court transferred the case to Mumbai, obviously there was an inclination that equity will be done to the casualties. Lamentably, she is again gotten in the same predicament. Along these lines, again she turns into an antagonistic witness, subject for prevarication furthermore at risk for scorn of court. Is there any legitimately just and reasonable answer for this problem of these occasions?

POSSIBLE SUGGESTIONS:

In this way, there is a pressing need to deliver a bill of right to safeguard and secure casualties'/witnesses' rights, equity and due procedure. Such a bill ought to incorporate the accompanying: To be treated with decency, appreciation, and respect, and to be free from intimidation, badgering, or manhandle, all through the criminal equity process.

- To be educated, upon request, when the denounced or indicted individual is discharged from custody or has gotten away.
- To be available at and, upon solicitation, to be educated of every single criminal proceedings where the blamed has the privilege to be available.
- To be heard at the time of the granting of bail to the accused and sentencing.
- To meet with the indictment, after the wrongdoing against the victim/sufferer has been charged, in the criminal court.

- To get brief compensation from the individual or persons indicted of the criminal offence that brought on the casualty's misfortune or harm.
- To be heard at any procedure when any post-conviction bail from judicial custody is being considered by an equipped court of law.
- To a rapid trial and quick and final conclusion of the case after the conviction and sentence.
- To outline rules and accommodate a witness insurance program which will stay in power before the trial, as well as from that point. The tenets ought to additionally accommodate recording of confirmation of such witnesses, promptly on documenting the charge-sheet, while whatever is left of the trial could be held at the appropriate time. Since video chat has been perceived, such witnesses could be inspected and interrogated through video chat strategies. And more all,
- To be educated of victims' sacred rights.[218]

- The author feels that based on the laws prevalent in other jurisdictions, in India also witness anonymity ought to be followed like, witnesses should be given all total new names for the purpose of proceedings and that new names only will be kept as a record in the files of the Court and the actual identity and address of the witness can be encrypted as code language and kept as utmost secrecy with the inner house departments of the Court and should not be available even with the investigating officers.

To adumbrate the necessitous circumstances and the crying need to have a witness protection law it is germane to note that just like every country is expected to make laws to meet the situations prevalent in that country, India also needs to imbibe the spirit shown by other countries in the matter of witness protection. No nation can afford to expose its righteous and morally elated citizens to the peril of being haunted or harassed by anti social elements, for the simple reason that they testified the truth in a court of law. Dearth of funds should never be an excuse. If our society fails to be alive to the reality, the plight of an honest witness will be catastrophic and calamitous.

[218] *H. Suresh, Urgent Need For Witness Protection Laws, Combat Law, Volume 4, Issue 1 April-May 2005 (published May 2005 in India Together).*

"Tail piece: - "You cannot witness for me, being slain"[219]

Hence, a piece of the author's mind to bring an end to the critical evaluation of cases, instances and analysis of the existing situation in India and hoping for the best that soon a distinguished law for fortifying the witnesses from the evils will be brought into reality to put an end to the misery of the witnesses (the common man).

"Days passed away; as the undulate ocean wave

Life galloped; with the swiftness of a horse

As the tulips; await its autumn spring

So shall the law; evolve with the efflux of time."

It is now the right time for the Government of India to come out of its hibernation phase and

"BE A VOICE NOT AN ECHO", thereby preserving the firm trust of public in the Indian Judiciary System and a belief in their own Welfare State**.**

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[219] By ***William Shakespeare (Henry VI Part I)***

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