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ABOUT US

“Journal of Unique Laws and Students” (JULS) which shall provide law students, young lawyers and legal professionals to deliberate and express their critical thinking on impressionistic realms of Law. The JULS aims to provide cost free, open access academic deliberations among law students and young lawyers. The ISSUE III of Volume I focuses on three themes i.e. (i) Arbitration Law (ii) Competition Law, and (iii) Criminal Law.

The journal strives to contribute to the community with quality papers on a vast number of legal issues and topics written by authors from various groups that have been reassessed and revised by our editorial team to reach the highest possible standard.

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PREFACE

On looking at today's scenario, there are numerous issues to know about. Our journal's Issue III of Volume I has work on three crucial themes namely *Criminal Law*, *Arbitrational Law* and *Competition Law*. We would like to express our deep appreciation of the co-operation of the contributors, who so willingly devoted their time and energies.

We have tried to cover these wide topics with the relevant research and landmark judgments. We have used standard of words for the explanation, evenly attempted to clear the concepts and presented captivating writing to the readers. The works also contains some suggestions in respective fields.

The views expressed in the articles are purely and solely of the authors and the entire team of the Journal has no association with the same. Although all attempts have been made to ensure the correctness of the information published in the articles, the Editorial team shall not be held responsible for any errors that might have been caused due to oversight or otherwise. It is up to the rest of us to help make the journal a success story in the next several years.

FOREWORD

As a member of the Advisory Board of Journal of Unique Laws and Students (JULS) which seeks to support student dynamism in action, I take pride in writing this very brief Preface to **Issue III of Volume I** of the Journal. Through this sturdy student-led initiative, the Journal provides young lawyers and law students of the opportunity to deliberate on legal issues of contemporary interest and to express their well-researched conclusions in the form of double-peer reviewed articles.

In this issue of the JULS I am happy to see a wide array of articles on *Alternate Dispute Resolution (ADR)*, *Arbitrability*, *Competition Law*, *Juvenile Delinquency*, *Gender Crime*, *Cybercrime*, *Criminalisation of Politics*, *Sedition and Witness Protection*. Laws and legal systems are dynamic in nature and laws evolve or are enacted to suit the changing needs of society. Young lawyers and law students can contribute to this dynamic process and even recommend law reform or analyse existing laws including case law. Young lawyers can also contribute to society as civil society activists engaged in efforts to improve the quality of law and its administration. The inculcation of critical thinking, which is one of the main objectives of the JULS, can no-doubt stand in good stead to young lawyers in moulding their future careers.

While I am happy that the very first issue of the inaugural volume of JULS was a tremendous success and its wide array of articles on diverse topics were well received by the legal fraternity, I take this opportunity to thank the contributors of articles as well as the vigilant and hardworking Editorial Board and my colleagues in the Advisory Board for the high standards achieved. In this Foreword, I take the opportunity to thank the publisher for coming out with another issue of JULS almost in time despite the trying conditions in which lawyers work and law students are placed, and I am glad that JULS through its on-line presence, is able to contribute immensely to this process of dissipation of legal knowledge and skills.

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Judge of the Supreme Court of Fiji

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EDITOR'S NOTE

Unique Law was established in the month of April 2020 and cheerfully brings **Volume 1 Issue III** of **Journal of Unique Laws and Students (JULS)**. This journal has become a successful climb in reaching to our goal of gaining visibility in the academic front and becoming a great platform in education community.

The journal aims to present merit papers on the numerous legal issues and these topics are authored by various groups of individuals that have been reappraise and emended by our team of editors to attend the highest possible excellence. These research papers, case analysis and shortnotes are the result and we feel privileged to have been able to act as editors.

We thank to all our authors for their obedient submission to the third issue of the Journal by Unique Law and also for their productive cooperation with the editorial team to garnish their work with perfection. We would also like to express our gratitude to our diligent editorial board, whose restless support and commitment made this Journal's Issue III a success.

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WITNESS PROTECTION SCHEME, 2018- A STEP TOWARDS WITNESS PROTECTION

Author: Gargi Ojha*

ABSTRACT

In India, Witness protection legislation was unquestionably necessary since it protects the lives, property, and family members of witnesses. Each of their statements is important because it has the power to alter the whole track of the case. Without their assistance, the Court would be unable to reach to a fair conclusion. Prosecution witnesses are pressed and encouraged to weaken or even destroy the prosecution process by whatever means necessary. Although, it is a harsh reality that the situation of witnesses in the current judicial system is deteriorating nowadays which is why The Scheme for Witness Protection was approved by the Supreme Court on December 5, 2018. Also, The Law Commission of India, in different reports, has underlined the difficulties that witnesses experience during the trial process and has urged that a complete strategy on protection of witnesses be incorporated. However, the scheme fails short of standards several issues, such as online intimidation, financial issues, etc. The objective of this study is to explore the concept of Witness Protection Scheme, 2018, and to highlight the challenges that witnesses face in the judicial system, as well as to study witness protection in India.

Keywords: Witnesses, Legislation, Scheme, Law Commission, Judicial system.

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INTRODUCTION

In any country's judicial administration system, witnesses play a critical role. It is pertinent to remember that the witness's statement is crucial in the quest of bringing justice to the victims.

Witnesses have been very vulnerable and have been subjected to threats to life and property, harm, and harassment. It is necessary to guarantee that threats or intimidation of witnesses do not affect the inquiry, prosecution, or conviction of criminal offences. The need of witness protection has been emphasised by the Hon'ble Supreme Court of India in *Swaran Singh v. State of Punjab*, Justice Wadhwa noted "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".¹ And in the most important Bakery Case, *Zahira Habibulla H. Sheikh and Another v. State of Gujarat*, while defining Fair Trial, the Hon'ble Supreme Court observed that "If the witnesses get threatened or are forced to give false evidence that also would not result in fair trial"²

Further in *State of Gujarat v. Anirudh Singh* the Hon'ble Supreme Court of India held that: "*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.*"³

Definition

In neither the Code of Criminal Procedure Code (1908) nor the Indian Evidence Act (1872), the term "witness" is defined. However, The Indian Evidence Act of 1872 specifies the competency of witnesses and the method of examination of witnesses⁴.

According to Black's Law Dictionary, 'witness' has been defined as: "In the primary sense of the word, a witness is a person who has knowledge of an event. As the most direct mode of acquiring knowledge of an event is by seeing it, 'witness' has acquired the sense of a person who is present at and observes a transaction."⁵

¹ *Swaran Singh v. State of Punjab*. (2000). 5 SCC 668. Indian Supreme Court.

² *Zahira Habibulla H. Sheikh and Another v. State of Gujarat*. (2004) (4) SCC 158 SC.

³ *State Of Gujarat vs Anirudh Singh And Another*. (1997). 6 SCC 514. Indian Supreme Court.

⁴ Chapter X, Sections 135 to 166

⁵ Garner Bryan A. (Ed), *Black's Law Dictionary*, 1596, 17th edn. West Group, St. Paul, Minnesota, 199.

According to The Oxford Dictionary the term defined as “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”⁶

Further, The Witness Protection Scheme defined the term “Witness” under Section 2(k) as “any person, who possesses information or document about any crime regarded by the competent authority as being material to any Criminal proceedings and who has made a statement, or who has given or agreed or is required to give evidence in relation to such proceedings”⁷.

After going over all of the definitions, we've come to the conclusion that a witness is someone who has sufficient knowledge of the event and is capable of testifying in court.

WITNESS PROTECTION SCHEME, 2018

In December 2018, the Supreme Court of India approved the implementation of the Witness Protection Schemes. The Witness Protection Scheme has been approved by the Supreme Court of India. The National Legal Services Authority approved it after receiving comments from 18 states and union territories, and requests for recommendations from police officers, courts, and civil society and then finalised by the National Legal Services Authority (NALSA). This scheme aims to provide the appropriate protection for the witnesses. It also enhances the country's criminal justice system, which will surely boost national security. Section - 9 of the scheme also provides for the Identity change in suitable situations, if the witness requests it, and Part V of the Scheme including section – 11 provides for Shifting of witness to a secured place in any State and Union Territory of India. Also, it Provides a police escort to the witness up to the courtroom, and in more complicated cases, taking extraordinary measures such as, transferring of witness family to a safe place, as well as close protection and regular patrolling around the witness's house. The scheme also claims that the police would monitor the witnesses' social media profiles, emails, and phone conversations. In addition, CCTV cameras would be installed in the victims' homes in order to track down the person threatening them. This scheme allows for review and appeal in the event that a witness or police authority agrees with the Competent Authority's judgement. Within 30 days, a review can be submitted with the

⁶ Catherine Soanes (Ed), Compact Oxford Dictionary, 1049, 14th impression, New York: Oxford University Press, 2005.

⁷The Witness Protection Scheme, 2018, https://www.mha.gov.in/sites/default/files/Documents_PolNGuide_finalWPS_08072019.pdf

Competent Authority, and if the review order issued by the Secretary of DLSA is unsatisfactory, an appeal can be made with the Chairperson of DLSA. If in case a witness files a fraudulent complaint, the State Legal Service Authority might file a lawsuit to recuperate the costs associated with the Witness Protection Fund.

PROCEDURAL FRAMEWORK

- Section – 6 of the Witness Protection Scheme 2018, deals with the procedure for filing an application- The applicant seeking protection under this programme must file an application with supporting documentation with the relevant body with territorial jurisdiction, either through the Superintendent of Police or at the time of the trial; When the Competent Authority receives an application in the prescribed form, the Commissioner will prepare a Threat Analysis Report, keeping the information contained therein completely confidential, and transmit the report to the Competent Authority within five working days.
- An interim order for the protection of the witness and his family members might be issued depending on the urgency of the situation due to an imminent threat.
- The Threat Analysis Report must be completed expeditiously by the Commissioner of Police in Commissioners/SSP in District Police investigating the matter And will have a threatening perspective to it, with appropriate measures to protect witnesses and family members as contained in clause 7 of the scheme or any other measure found appropriate.
- The hearing of the claims in connection with the application for Witness Protection will be recorded on approved confidentiality cameras.
- The State/UT/Witness CPO's Protection Cell is responsible for enforcing the Competent Authority's Witness Protection Order.
- If the Competent Authority determines that the Witness Protection Order previously issued has to be revised, the Competent Authority may submit it to the Commissioner of Police, who will prepare a new Threat Analysis Report.

PROTECTION MEASURES

The scope of protective measures taken by the competent authorities must always be proportional to the threat faced by the witness throughout the defined time period, according to the rules of the Witness Protection Scheme, 2018. They are:-

- Ensuring that witnesses and defendants are not confronted during the investigation or trial;
- Monitoring of mail and telephone calls;
- Make arrangements with the phone provider to change the witness's phone number or provide them with an unlisted number;
- Installation of security equipment such as security doors, CCTV, alarms, fences, and so forth at the witness's home;
- The witness's identity has been changed, and his or her previous identity has been suppressed.
- Changing the witness's address to a different location.
- Close protection, as well as regular patrolling surrounding the witness's home;
- Allowing a support person to stay present while the statement and deposition are being recorded;
- The Witness Protection Fund provides timely financial assistance for the witness's subsistence.
- Utilisation of specially constructed vulnerable witness courtrooms with specific preparations such as live connections, separate route for the accused and the witness, and possibilities to modify the face or utilise voice alteration methods through software, so that he/she is not recognised;

Apart from the above-mentioned measures, the witness may request that other measures be implemented.

THE LAW COMMISSION REPORTS

The Law Commission of India is an executive body of the Indian government that was established to provide recommendations on existing laws and the need for new laws.

14th Law Commission Report- The 14th Report serves as a great starting point. The committee noted in its report that there were "inadequate arrangements for witnesses in the

Courthouse."⁸It also goes through the causes for the longer delays in criminal cases. According to the law commission, the delays are mostly caused by the public's lack of participation in aiding in the court process when they are summoned as witnesses. This is due to the fact that witnesses often wait for hours before being taken into the courtroom. Witnesses are rarely compensated for their travel expenses and are not given travel allowances, which is extremely inconvenient⁹. Witnesses are unwilling to engage in the judicial process for all of these reasons. However, the objective of the aforementioned Report was quite limited, as it solely concerned with providing amenities to the witness as a means of protecting them.

Whereas the 14th Law Commission report concentrated on witness harassment and ill-treatment, the Law Commission of India proposed reworking on the Indian Penal Code in its **42nd report**. In the report, the commission proposed the addition of three new sections to the Indian Penal Code¹⁰, The commission suggested that the conduct of intimidating or inducing witnesses throughout the course of the trial be punished.

When discussing 'Protection and Facilities to Witnesses,' the **154th Law Commission of India Report (1996)** refers to the 14th Law Commission Report and the National Police Commission Report. The report suggested that there should be measures for providing compensation to witnesses. The report detailed the discomfort and lack of facilities, as well as the accused's threat to the witnesses. It also recognised that the judiciary had severe flaws, such as not providing enough facilities for witnesses to give evidence. However, in the said report, the law commission failed to define the criteria and structure for granting witness protection.

The **172nd Report**, in particular, drew heavily on the decision in *Sakshi v. Union of India*¹¹, which argued for in camera trials to keep witnesses away from the accused and guarantee their evidence was obtained without fear of the public. According to this report, 'The present rules pertaining to Rape laws in India should be reviewed, Despite the fact that the study concentrated on the element of rape, it did recommend certain improvements in the situation of child abuse.

In December 2001, the Commission issued its **178th Report** for revising several civil and criminal statutes. The panel recommends three options in the aforementioned report. The Law Commission proposed the inclusion of section 164A to the Criminal Procedure Code, which

⁸ The Law Commission of India, Reforms in Judicial Administration (Law Com No, 14, 1958) P.687-689

⁹ The Law Commission of India, Report no.14, Reforms of Judicial Administration, 16 September 1958

¹⁰ 21 Law Commission of India, Report no. 42, Indian Penal Code, June 1971

¹¹ *Sakshi v. Union of India*, (2004) (2) ALD Cri 504.

states that if the penalty for the offence is ten years or more, the witness' testimony shall be recorded in the presence of Magistrates. The report also addressed hostile witnesses and the safeguards that the police should take during the investigation stage to avoid witness obfuscation during the hearing. The Hon'ble Supreme Court has also emphasised the need of providing witness security on several occasions.

The **198th report** of the Law Commission on Witness Protection is perhaps the most detailed of the commission's studies on the issue. Aspects of 'Witness Identity Protection and Witness Protection Programs' were discussed by the legislation commission. The Commission suggested that witnesses' identities be safeguarded in all major crimes in which his life is at risk. The Law Commission was of the opinion that not all witnesses deserve the same level of protection, Section – 3 of the Scheme classified three categories, which have been developed based on the severity of the threat, namely:¹²

Category A: Comprises those cases in which a witness's or family member's life is threatened during the investigation, trial, or even thereafter.

Category B: Those cases in which the witness's or family members' safety, reputation, or property is threatened during the investigation or trial.

Category C: When compared to the dangers imagined in categories A and B, Category C include threats that are milder. Threats in this category includes harassing or intimidating the witness or his family members, reputation, or property throughout the investigation, trial, or afterward.

In its **239th report**, the Law Commission of India emphasised the need of quick investigation and trial of criminal cases involving prominent public figures. Furthermore, the Commission suggested that courts undertake a few infrastructure upgrades, such as integrating separate witness rooms and offering basic courthouse amenities such as seating, drinking water, snacks, and restrooms.

¹²Ministry of Home Affairs. (2018). Witness protection scheme, 2018. New Delhi: Ministry of Home Affairs.

RIGHTS OF WITNESS

The witness who comes forward to testify must provide some sense of security to the state, and it is the State's responsibility to provide appropriate safety to the witnesses. A witness has the following rights, as stated by different Law Commission Reports and the Witness Protection Scheme:

- Right to Information what is happening with the investigation and prosecution of a crime;
 - Right to a Secure waiting area during court hearings;
 - The Right to be treated with compassion and decency, as well as the right to privacy;
 - The Right to be safe from violence and intimidation;
 - Right to testify without disclosing identity; and
 - The Right to a secure residence and mode of transportation
- The Investigating Officer/Court is required to tell each and every witness of the existence and characteristics of the "Witness Protection Scheme."

JUDICIAL PRONOUNCEMENTS

*Zahira Habibulla H. Sheikh and Others v. Gujarat State and Others*¹³, The Supreme Court Bench of Honourable Justice Raju Doraiswamy and Justice Arijit Pasayat noted that threatening or forcing a witness to provide false testimony will not result in a fair trial. We must recognise that the judiciary's role in providing total protection to a witness in a case is restricted.

In *Delhi Domestic Working Women's Forum v. Union of India*,¹⁴ the Supreme Court underlined the need of maintaining the anonymity of a rape victim who would be a crucial witness in rape cases.

In *Hira Nath Mishra v. Principal, Rajendra Medical College*,¹⁵ the court stated that in instances when the accused is a hardened criminal, care must be taken to ensure that the name of witnesses is not revealed.

¹³ (2004) 4 SCC 158

¹⁴ (1995) (1) SCC 14

¹⁵ AIR 1973 SC 1260

In the case **NHRC v. State of Gujarat**,¹⁶ The issue of witness identity protection and the necessity for a witness protection programme has been addressed.

In the case of **Bimal Kaur Khalsa**,¹⁷ the High Court emphasised the necessity of a complete legislation on witness protection while simultaneously emphasising the importance of witness protection from the media.

The **State of Maharashtra vs. Bandu @ Daulat**¹⁸ - In this case, an appeal was brought in the Supreme Court against a High Court decision of acquittal in a rape prosecution. The Supreme Court affirmed the conviction decision and recommended that the state government should establish specific centres for the examination of vulnerable witnesses in order to provide a conducive environment for victims and witnesses to freely testify.

Neelam katara v. Union of India¹⁹ - The Delhi High Court underlined the importance of witness protection in this important decision. The High Court referred to numerous Law Commission's studies and witness protection laws in different nations before formulating its decision, and gave recommendations until the Delhi government enacted an adequate statute. According to the rules, police officers must provide appropriate security to the witness based on the severity of the threat.

In **Naresh Shridhar Mirajkar and others v. State of Maharashtra and others**,²⁰ the High Court approved the protection of witness testimony from publication, which was later reaffirmed by the Supreme Court since the witness's commercial interests would have been harmed otherwise.

LOOPHOLES

- The programme is heavily reliant on police participation and covers the behaviour of police personnel at all levels. A protection order is issued under the Scheme based on the Threat Analysis Report prepared by the Head of Police in each area. As a result, in high-profile cases involving politicians or prominent persons, the police officer may be pressured to reveal information about the witness to those individuals. Despite the fact

¹⁶ (2009) 6 SCC 767

¹⁷ AIR 1998 P&H 95

¹⁸ (2018) 11 SCC 163

¹⁹ ILR (2003) II Del 377 260

²⁰ 1966 (3) SCR 744.

that the scheme provides significant relief to witnesses in terms of their safety during the course of the trial and, in exceptional cases, even after the trial is completed, there appear to be some inherent flaws and loopholes in the scheme that raise doubts about its effectiveness.

- The second blunder is the limitation on the length of time for which protection is granted. A protection order is only effective for three months, after which the witness is once again exposed to the accused's threats. As a result, the three-month restriction should be reduced, and the witness should be protected until the danger perception is no longer present.
- The lack of infrastructure for the Scheme's implementation is the third loophole. The state is responsible for maintaining a functional criminal justice system, and some states may lack the resources necessary to carry out this programme successfully. The alternative is for the centre to provide help, yet nowhere in the programme does the centre have the authority to contribute even a single amount to the Witness Protection Fund.
- Also, cameras, travel and banking services, ordinary travel, and changing one's identification are also difficult. This needs efficiency as well as privacy. They necessitate a time and location that India does not rule out due to its lack of courts and personnel.

SUGGESTIONS

We need an effective law not just a scheme or guidelines; also there should be a separate witness identity cell to prohibit witnesses' identities from being forged. The government should raise awareness of the Witness Protection Scheme in rural regions, as witnesses who are unfamiliar with the scheme are hesitant to come forward and testify in court. They must be allowed the freedom to adopt basic witness protection measures such as monitoring, escorting witnesses to work and court, and so on, while maintaining the witness's privacy. Police officers must be made more effective and free of political and social influence.

CONCLUSION

In India's criminal justice system, provisions for witness protection have mostly been neglected. The examination of witnesses is crucial in every case, whether civil or criminal, and both procedural statutes outline how to conduct an examination of witnesses. However, This scheme aims to provide witnesses with enough and appropriate protection. This will help to strengthen the country's criminal justice system and, as a result, improve the national security situation. Witness protection is a pressing issue, and India must pass appropriate and comprehensive legislation to protect witnesses in order to improve the administration of criminal justice. Provisions should be established so that witnesses do not have to ask for protection or live in fear all the time. In several reports, the Law Commission of India has frequently underlined the witness's difficulties during the trial. The difficulties that witnesses encounter are discussed by the Supreme Court in numerous declarations, and the need for facilities to be provided to them is acknowledged. Furthermore, the witness's grief and suffering caused by aiding in the court process can only be alleviated by instilling a sense of pleasure in their minds and treating them with respect and protection at all phases of the investigation and trial.