

A Strict Enforcement and Awareness of Witness Protection Law: Need of Hour

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Abstract:

The witness is an important participant in every trial, whether it is civil or criminal. Testimony of witness is the most widely used and common form of evidence to find the truth of the case and in achieve the goal of complete justice. Witnesses have always been a very important source of prove in a trial, they are compulsory in any system of jurisprudence. The witness executes a “sacred duty” by testifying before the court. In this fight against injustice, it is the crucial duty of the judicial system to provide effective protection for people, informants, witnesses and victims. Right from inception, it is an accepted fact that the main purpose of the judicial system is to find out the truth behind any dispute. Victims and witness co-operation is essential for a fair and successful prosecution, but it is often seen that they do not co-operate out of fear. Therefore, providing protection to witnesses is expedient for law enforcement as well as a fundamental obligation of the legislative body of every country. India’s Supreme Court came up with a witness protection scheme in 2018 in the Mahender Chawla versus Union of India¹ case to protect the witnesses who are giving evidence against the accused persons from any dangers or threats that may affect the process of law. However, lack of awareness among the people and its lack of effective enforcement results in continuance of an emerging threat upon witnesses. The witness still do not feel safe coming to court and giving their testimony before the court. Therefore, it is a need of the hour that the provisions provided in the witness protection scheme should be strictly enforced and awareness among the general public about its provisions should be done. The research paper aims to explain and discuss the laws relating to protection of witnesses provided in different statutes in India and important case laws of supreme court of India as well as different high courts which emphasize the need of witness protection laws in India for achieving the goal of fair trial and for doing complete justice.

Key words: Witness, Justice, Protection, Testimony, Judicial

INTRODUCTION

To effectively function, India’s adversarial criminal justice system relies on witness protection. Witnesses give firsthand information to the court and therefore are central to the uncovering of facts in a case. Bearing the disputed information and enables the determination of right decisions are the backbone of fairness, which is the pillar of due process. Especially in criminal proceedings, witnesses are of significant significance. Their oral depositions serve as primary sources of evidence to assist judges in making decisions on cases. Someone comes forward to testify and put his life at the risk for the truth and conviction – as Whittaker Chambers said. However, witnesses also experience threats or attempts to discourage them from giving their accounts for justice to be served. Sufficient protection mechanisms are therefore required to guard whistleblowers against harm. Protection of witnesses from possible acts of retribution ensures that they offer unadulterated and truthful information to the court. They have to be protected for the legal framework to work effectively.

Witnesses are considered the foundation of India’s courts. Their statements shed light on affairs and their rights are sacrosanct. Witnesses are the backbone of justice, and their safety must be upheld through extensive measures to ensure that laws are enforced fairly and effectively. The protection of the law requires the law enforcers to be protected from the law breakers in order to maintain law and order: -"In search of truth, he plays that sacred role of the sun, which eliminates the darkness of ignorance and illuminates the face of justice, encircled by devils of humanity and compassion. The value of witnesses can’t be denied, keeping in view the dependency of the criminal proceedings on the testimonies and cooperation of witnesses in all the stages of the proceedings, especially in those cases where the prosecution has to

¹ Mahender Chawla V. Union Of India 14 SCC 615(2019)

establish the guilt with absolute certainty via oral cross-examination of witnesses in hearings open to the world at large. In such cases, the testimony of a witness, even if not as an eyewitness, may prove to be crucial in determining the circumstances in which the crime might have been committed.” The state of representation of the witnesses in the Indian legal system is quite appalling and pitiful. For this dire situation, there are several factors that can be attributed to. The Supreme Court has noted and discussed the pathetic condition of the witnesses in several of its judgments. For instance, in the *Swaran Singh vs State of Punjab* 2000, SC, Justice Wadhwa referred to the hardship of witnesses as they suffer demoralization through sit-out, cross examination and many more times shifting of the proceeding, receive nominal payment for travel and emoluments for loss of daily wages in the trial court. They are also at high risk of threats and harassment. Justice Wadhwa highlighted the need to work on this problem to make the justice system functional and fair: “The witnesses are harassed a lot. They come from distant places and see the case is adjourned. They must attend the court many times on their own. It has become routine that cases are adjourned till the witness is tired and will stop coming to court. In this process, lawyers also play an important role. Sometimes a witness is threatened, maimed, or even bribed. There is no protection for the witnesses. By adjourning the case, the court also becomes a party to such a miscarriage of justice. The witness is not given respect by the court. They are pulled out of the court room by the peon. After waiting for the whole day, he sees the matter being adjourned. There is no proper place for him to sit and drink a glass of water. When he appears, he is subjected to prolonged stretch examinations and cross examinations. For these reasons persons avoid becoming a witness and because of this, administration of justice is hampered. The witnesses are not paid money within time. The High Courts must be vigilant in these matters and should avoid harassment in these matters by subordinate staff. The witnesses should be paid immediately irrespective of the fact whether he examined or the matter is adjourned. The time has come now that all courts should be linked with each other through computers. The Bar Council of India has to play an important role in this process to put the criminal justice system on track. Though the trial judge is aware that the witness is telling a lie, he is not ready to file a complaint against such a witness because he is required to sign the same. There is a need to amend section 340(3)(b) of Cr.P.C.” India has provisions for protection of witnesses under different special and procedural laws. The country also launched its first witness protection program in December 2018 to protect witnesses. This paper will discuss the in-detail provisions. However, this also shows that having laws and policies are not sufficient. It is also important that there has to be awareness in the general public about these provisions so that the public in general can avail themselves of the benefits of the scheme and the very purpose of enactment of these laws can be attained that is fair trial.

STATUTORY PROVISIONS RELATING TO WITNESS PROTECTION IN INDIA

A. Provisions contained in the Code of Criminal Procedure code, 1973

❖ Section 406: Power of Supreme Court to transfer cases and appeals.

- (1) The Supreme Court may make an order for the transfer of any particular case or appeal from one High Court to another High Court or from a Criminal Court of one High Court to another Criminal Court of equal or superior jurisdiction of another High Court if the Supreme Court considers that the transfer would be in the interests of justice. The grain is that the Supreme Court can only transfer cases and appeals between the High Courts and between Criminal Courts under different High Courts on a binding order basis, where such transfers serve the best overall interests of justice and fairness.
- (2) The High Court may act under this section only on the application of the Attorney General of India or any interested party, and such applications shall be made by motion, provided that the applicant is the Attorney General of India or the Attorney General of India. The public prosecutor must be supported by a declaration or warrant.
- (3) If an application for the exercise of the powers conferred by this section is refused, the High Court may, if it appears to it to be frivolous or vexatious, order the person who asked to pay a fee to someone who demanded a money. more than one thousand rupees If not, or he has objected to the opinion that it is justified in the circumstances of the case. According to these provisions, the Supreme Court and the Supreme Court have the power to transfer cases to the proper trial. If the courts decide that the circumstances of the case make it necessary to transfer the cases from the jurisdiction of one court to another, the court has the power to transfer the cases.

❖ Section 407: Power of High Court to transfer cases and appeals.

- (1) In criminal matters, the High Court has powers to transfer cases from one court to another in circumstances that the trial is likely to be impartial. Specifically, if the High Court believes that a subordinate Criminal Court cannot conduct a fair and unbiased inquiry or trial, or if a complex legal question is likely to come up, or if a transfer is required by the Code of Criminal Procedure or would be more convenient for the parties involved or serves the interests of justice, the High Court can order the following: Specifically, if the High Court believes that a subordinate Criminal Court cannot conduct a fair and unbiased inquiry or trial, or if a complex legal question is likely to come up, or if a transfer is required by the Code of Criminal Procedure or would be more convenient for the parties involved or serves the interests of justice, the High Court can order the following:
 - (i) A case can be transferred from a subordinate Criminal Court to another Criminal Court of equal or higher rank even if that other court would not normally have jurisdiction in that type of case.
 - (ii) Any case or appeal, or group of cases or appeals, can be transferred from one of the subordinate Criminal Courts to the other.
 - (iii) Some criminal cases can be committed to a Sessions Court for trial.
 - (iv) This is through the Transfer of particular criminal cases or appeals to the High Court to be tried directly.

Therefore, the High Court has quite a large discretion when it comes to transfer of criminal cases between the courts on the grounds of justice, efficiency of proceedings or complexity. This enables the High Court to make sure that the Criminal matters are handled in the most fair and appropriate court possible.

- (2) The High Court has the authority to transfer a criminal case from one court to another based on three potential prompts: originally from a lower court, on the instance of an interested party, or on its own volition. But if an application is to be made to transfer a criminal case from one court to another within the same sessions division, an application must first be made to and refused by the Sessions Judge. Thus, the High Court can transfer a criminal case between the courts either on the motion or on its own motion but cannot transfer between courts of the same sessions division unless the Sessions Judge has had an opportunity and has refused to do so. This sets a clear chain of command whereby the High Court retains overall transfer prerogative but to qualify for a lateral transfer, one must first apply to a lower court within the same division.
- (3) Any application for an order under paragraph (1) must be made by motion. Any other such motion needs to be accompanied by an affidavit or an affirmation to affirm the truthfulness of the matters stated in the application by the State Advocate General.
- (4) Where an accused person makes an application for transfer of a case, the High Court may order the accused person to enter into a bond with or without sureties for the payment of such sum of money as the High Court may deem fit in the event the High Court thinks it fit to order for compensation to be paid under subsection (7) of the relevant law. The points to note are that the accused can request transfer of their case, the High Court can order them to produce bond to facilitate payment of potential compensation awards, and this ability of the High Court is due to subsection
- (5) Every accused person who makes an application for bail shall be bound to furnish to the Public Prosecutor a written notice of his intention to make such application at least three days prior to the making of the same. This written notification has to be accompanied by a copy of the grounds on which the bail application is being made. No decision shall be made by the court on the bail application or any order be passed unless and until the lapse of twenty-four hours after the service of such notice to the Public Prosecutor. This is to ensure that the prosecution has sufficient time in which it can gather evidence and build a case as well as counter the arguments against the bail application before the court hears the case. An accused must give the prosecution notice of their bail application coupled with reasons why such application is being sought before the court can decide on it.
- (6) The High Court can order a stay of the proceeding in the subordinate Court when there has been an application made to transfer the case or appeal from that subordinate Court to the High Court. The High Court can grant this stay order only when it is satisfied that the making of such order is necessary in the interest of justice while the transfer application is still pending. The High Court holds this power but restricted to reasonable terms as may be deemed appropriate by the High Court. By this provision, the power of the subordinate Court to remand judicial custody of accused under Section 309 shall not be affected and shall be available even if the proceedings are stayed otherwise. In other words, the High Court can stall the judicial proceedings in a subordinate Court apart from remand orders when the transfer application is pending for hearing but it can do so only when such a stay is necessarily required for the proper administration of justice. This particular one depends on the targeted High Court's discretion depending on circumstances.
- (7) Where an application under sub-section (1) has been dismissed by a High Court, the Court may if it considers that the application was frivolous or vexatious require the applicant to compensate any person who has opposed the application. The compensation amount will not be more than one thousand rupees and it shall be an amount the Court will consider reasonable under the circumstances of the case. The main points are that if the High Court decides that the application is frivolous or vexatious it can order the applicant to pay compensation to the opposing parties of up to 1000 Rupees depending on the circumstances of the case.
- (8) When the High Court orders that a case be transferred to any Court for trial before itself in terms of sub-section (1), the High Court is required to go through the same trial process in the case as the originating Court would have conducted if the transfer had not taken place. The High Court cannot alter or even avoid the existing processes of the original Court in the case during the High Court trial process that arises from the transfer order. The trial process must not be modified by the High Court after ordering the case transfer.
- (9) This section does not affect any government order under Section 197.

❖ **Section 171:** Police officers are barred from forcing witnesses and complainants to accompany them or use restraint on them.

❖ **Section 173(5) and (6):** Once the investigation is complete, the investigating officer should forward to the Magistrate a report and other documents in support of the findings.

- a) The prosecution to bring in more documents that were not produced before the magistrate during the investigation that will in effect summary the case.
- b) The prosecution has some people scheduled to be examined as witnesses. They have taken their statements under section 161 of the said law and intend to present them as proof.
- c) If there is any part of the statement made by a witness which the police officer feels is irrelevant to the proceedings of the case or if making that part of the statement available to the accused would not be in the interest of justice and

would be against the public interest, then the officer must indicate that part of the statement. The officer then adds a note requesting the Magistrate to redact that part from the copies provided to the accused. To make this request regarding the exclusion of part of the witness statement in documents to be tendered to the defence, the note must indicate the officer's reasons. Thus, the officer may decide that some portions of the witness statement contain information which should not be disclosed to the accused, but the rest of the statement should be provided to the court in the best interest of justice and public interest.

❖ **Section 271:** The court can also empower a commission to examine the witnesses who are detained in order to testify:- 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.

❖ **Section 273:** This evidence should be given in front of the person charged with the offence to afford him/her the right to right to cross examine:- 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 woman 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 woman is not confronted by the accused while at the same time ensuring the right of cross-examination of the accused.[Inserted by Criminal Law (Amendment) Act, 2013]Explanation. - In this Section, "accused" includes a person in relation to whom any proceeding under Chapter VIII has been commenced under this Code.

❖ **Section 309:** Any inquiry or trial shall proceed consecutively from one day to another until all witnesses in court will have testified, except when the Court shall find it necessary to adjourn beyond the next day and shall have filed a justified report. Delays or suspensions can only be made when the Court formally allows it, after putting a satisfactory reason on why the proceedings cannot go on the succeeding date rather than proceeding with the daily routine. Provided that when the inquiry or trial relates to an offence under section 376, [section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB of the Indian Penal Code, the inquiry or trial shall] [Substituted by Criminal Law (Amendment) Act, 2013] be completed within a period of two months from the date of filing of the charge sheet.](2)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 :Provided that no Magistrate shall remand an accused person to custody under this section for a term exceeding fifteen days at a time :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 :[Provided also that 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.] [Inserted by Act 45 of 1978, Section 24 (w.e.f. 18-12-1978).][Provided also that-(a)no adjournment shall be granted at the request of a party, except where the circumstances are beyond the control of that party;(b)the fact that the pleader of a party is engaged in another Court, shall not be a ground for adjournment;(c)where a witness is present in Court but a party or his pleader is not present or the party or his pleader though present in Court, is not ready to examine or cross-examine the witness, the Court may, if thinks fit, record the statement of the witness and pass such orders as it thinks fit dispensing with the examination-in-chief or cross-examination of the witness, as the case may be.]Explanation 1. - 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. Explanation 2. - 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.[Inserted by the Code of Criminal Procedure (Amendment) Act, 2008 (5 of 2009), Section 21 (b).]

❖ **Section 327:** The Criminal Court, which is sitting with a view of trying, hearing or otherwise addressing any criminal case shall be deemed to be an open Court. An open Court means that the ordinary members of the public can attend the Court Sitting within the physical constraint of the number of people that a particular Courtroom can hold. That is, the public is allowed to be present during criminal proceedings such as hearings and trials until all spaces and seats are occupied. Public access is important as it provides monitor and check on the criminal justice system. But, of course, there may naturally be some restrictions based on more mundane issues, including available space, such as the size of a court. 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 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB.] of the Indian Penal Code (45 of 1860) shall be conducted in camera :Provided that the 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 or building used by the court.[Provided further that in camera trial shall be conducted as far as practicable by a woman Judge or Magistrate.(3)Where any proceedings are held under sub-section (2), it shall not

be 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 of trial proceedings in relation to an offence of rape may be lifted, subject to maintaining confidentiality of name and address of the parties.] 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.

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

❖ Section 21:

This provision concerns the banning of identifying details of juveniles in connection with proceedings under the Act. Any media report concerning an inquiry into a juvenile in conflict with the law shall not disclose any name, address, school or other particulars likely to lead to the identification of that juvenile or that juvenile's image shall not be published. But the authority conducting the inquiry may allow such disclosure in writing for reasons if the authority considers that it is in the juvenile's best interest. Any person who breaches this non-disclosure provision is subject to a fine not exceeding one thousand rupees. The core purpose is to shield the identity and ensure the media does not cover juveniles in the justice systems unless the authority in charge of the case certifies that disclosure is in the best interest of the juvenile and explains why. The penalty for infringing on a juvenile 's anonymity in media reports is expensive.

C. THE WHISTLE BLOWER PROTECTION ACT,2011

❖ Under section 11 of the Act, a special provision has been enacted for the protection of witnesses and other persons.

The Central Government shall also ensure that no victimization is made against any person or public servant who has made the disclosure under this Act through initiating any proceeding or otherwise solely since such person or public servant had made the disclosure or aided an inquiry under this Act. Any person who fears that he/she will be victimized or is likely to be victimized because he/she has filed a complaint, has made a disclosure or has aided an inquiry under this Act, may make an application to the Competent Authority for relief. The authority shall then take appropriate action and provide appropriate directions to the concerned public servant or public authority to safeguard such person from being victimized or the risk of victimization. However, before the Competent Authority gives any direction to a public authority or a public servant, the complainant and the concerned public authority or public servant must be heard. Also, in any such a hearing, the burden of proof rests on the side of the public authority to prove that it has not victimized any person. The Act makes it unlawful for any person to be victimised once he has made a disclosure or has assisted an inquiry under the Act. An arrangement has been made so that anybody who feels that he will be victimized may go to the Competent Authority and seek guidance on how not to be victimized. The Authority has to hear both parties before they pass any directions. And in such hearings, the public authority has to shoulder the burden of proof to prove that his action is not a form of revenge. This offers protection to the potential victims or those who share information or make inquiries under the Act.

(3) The directions issued by the Competent Authority under the said sub-section (2) shall be binding on the public servant or public authority against whom charge of victimization has been made out, in a fair and unbiased manner. These binding directives have to be necessarily followed by the accused public functionary or organisation for the proper disposal of the victimisation case.

(4) Notwithstanding anything contained in any other current law, the powers as granted in subsection (2) relative to a public servant shall also include the power to order the re-employment of the public servant who made the disclosure to the position he held before demotion. Any person who fails to abide by the direction given by the Competent Authority under sub-section (2), shall be punishable with a penalty which may extend to thirty thousand rupees. To put it in other words, regardless of other statutes which may provide otherwise, the competent authority may order that a public servant who makes the disclosure should be restored to the same status as he or she was before. And if any one wilfully fails to obey the order of competent authority under subsection 2, he may be punishable with fine which may extend to 30,000.

Section 12. The Competent Authority can direct any government body to take protective measures, if the Competent Authority feels that protection is necessary for the complainant, public servant, witnesses, or any person who is assisting an inquiry under this Act. This may be as a result of an application to the Competent Authority by the complainant, witnesses or any other person who may be in need of protection or as a result of information initiated by the Authority. However it may be determined, the Competent Authority shall issue appropriate instructions to the said police and governmental agencies to take the necessary actions using their resources and capacity to provide physical protection to the complainant, public servant, witnesses and persons in question assisting the same. Some of the legal entities that may receive protection include the initial complainant in the case, the public service member of concern, the witnesses, and any other person assisting the proceedings under this law.

Section 13. The Competent Authority shall not disclose the identity of any complainant who provides information or documents for an enquiry, and all such information and documents shall also not be disclosed. This confidentiality has to be observed regardless of any other law that may have provisions that conflict with this and will remain until the Competent Authority itself opts to waive it. Privacy of the complainant and his/her submissions is required but not absolute under this Act; it can be set aside only in two circumstances – the Competent Authority has given an order to that effect while conducting the enquiry or there are legally enforceable court directions that the Competent Authority is legally bound to disclose or produce the information that has been earlier protected. In conclusion, although the

complainants have to anonymity during the inquiries in relation to this Act, there is an implication that, the Competent Authority or court rules may provide for same in exceptional circumstances.

D. THE NATIONAL INVESTIGATION AGENCY ACT, 2008

❖ Under Section 17 of the Act, special provisions are enacted where measures are given to keep the identity of witnesses secret.

(1) Notwithstanding any provisions to the contrary in the Code, the Special Court may, if it so desire and for reasons to be recorded in writing, conduct the proceedings under this Act in chambers.

(2) The Special Court has an added power to conceal the identity and address of a witness in the belief that the life of the said witness is in danger. In particular, if the witness has applied to the Special Court; or the Public Prosecutor in connection with the said proceedings against the witness; or the Court has taken cognizance of it on its own motion, if the Court is satisfied that the life of the witness is in danger, then the Court may, after recording its reasons in writing, do everything which the Court considers necessary and expedient for the purpose of concealing the identity and other particulars. The main rationale of this rule is to enable the Special Court to shield witnesses who may be vulnerable to attack or other forms of harm if their identity and other details are disclosed. If witnesses are protected, the Court can act to shield them while still getting useful information concerning certain cases.

(3) Preparations in the form of (a) Conducting of the proceedings at a place deemed appropriate by the Special Court due to security concerns. Such measures include: (b) refraining from including witnesses' names and addresses in the court orders, judgements or records which are accessible by the public. Instructions that prohibit the disclosure of the identity and addresses of the witnesses. Its decision whether, for public interest, none or only some of the court proceedings shall be published in any form in any language. The core purpose is to facilitate Special Courts to safeguard the identity of the witness and the security of the proceedings by regulating the disclosure of names, addresses, and proceedings. Precautions are not restricted but may comprise of controlling hearing premises, removing or masking identification information of a court case, hiding witness information and restricting the public from accessing the case. The underlying premise is serving the public interest by protecting witnesses in trials.

(4) Any person who contravenes any decision or direction made under the said sub-section shall be punishable with imprisonment for a term extending to three years or with fine upto one thousand rupees or with both.

E. INDIAN PENAL CODE, 1860

❖ **Section 228A IPC:** Disclosure of identity of the victim of certain offences etc:-

(1) Any person who publishes or prints the name or any information relating to the victim of offences under sections 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB or 376E of the IPC shall be punished. The punishment may include imprisonment for up to two years and fines. This provision seeks to shield the identity and persona of the victims of sexual related offense such as rape, sexual assault, custodial rape or gang rape. Sharing the name of a victim, or any information that may lead to their identification, with the public, without their permission is traumatic and deters other victims from coming forward. Therefore, issues of anonymity of victims have been put as compulsory measures for the law to enforce since their violation attracts penalties. This aids in establishing a justice system in which victims of sexual crimes can come forward to report without being subjected to further harassment. It thus enhances the right to privacy and dignity of the individuals.

(2) According to the provisions of the law, it is unlawful to print or publish the name or any other identifying features of a victim of specified offenses, with some exceptions. These exceptions allow such printing or publication if it is: These exceptions allow such printing or publication if it is:

The following acts are protected if done by, or on the written order of the officer-in-charge of the concerned police station or the investigating officer, in good faith for investigation purposes; It is done by or with the written consent of the victim.

(c) In case the victim has died, is a minor or mentally incapacitated, done by or with the written consent of the legal guardian of the victim. However, the next of kin can only give such authorization to the chairman or secretary of a recognized welfare institution or organization. A "recognized welfare institution or organisation" means a social welfare institution or organisation which is recognised by the Central or a State Government. The law does not allow a victim to be identified but it is allowed under certain specific circumstances with permission. This is for the purpose of preserving the privacy of victims while at the same time allowing for investigation where necessary.

(3) Whoever causes or procures to be printed or published any matter relating to an ongoing court case for an offense under subsection (1), without the permission of the court, commits an offense and shall be liable to imprisonment for two years or to a fine, or to both. However, printing or publishing any judgments of the supreme court or high court is not an offense under this section.

(4) To sum up, the passage under discussion says that it is illegal to disclose information about a court case that pertains to certain unspecified offences under subsection (1) unless the court has granted permission and that the penalty for doing so is up to two years' imprisonment or a fine. There is an exception for the printing or publishing of High Court or Supreme Court decisions that is allowed. The pith of it is an explicit ban on reporting court cases without prior approval, while the Higher Courts' judgments are exempted.

JUDGEMENT OF HONORABLE SUPREME COURTS AND HIGH COURTS SHOWING THEIR CONCERN OVER THE NEED OF STRICT ENFORCEMENT OF LAWS RELATING TO WITNESS PROTECTION

❖ **SUNEETHA NARREDDY & ANOTHER V. THE CENTRAL BUREAU OF INVESTIGATION AND OTHERS²**

The present writ petition concerns a transfer application of a criminal trial, which is associated with the mysterious death of the uncle of the Chief Minister of Andhra Pradesh. The petition has been filed by the daughter and wife of the deceased, and in prayer, the trial has been sought to be transferred and a direction given to the CBI to complete the probe within a specific time-frame. The petitioners fear that some of the star witnesses and other witnesses are in danger of being killed while some of them have been influenced. Therefore, they conclude that justice will not prevail, and that, there will be no fair trial. The principle was upheld that justice should not only be done, but that it should manifestly be done. A free and fair trial is an important aspect of Article 21 of the Constitution which provides for the right to life and personal liberty. The CBI/investigating agency had stopped further investigation due to apprehension of harassment and false complaints against them. Thus, there appears to be reasonable apprehension that the larger conspiracy and destruction of evidence cannot be properly investigated. One of the key witnesses in the case had given a statement and offered to give a formal statement on the same but was absent when we wanted to take his statement. After this witness had testified, this witness was also found dead in unclear circumstances. The petitioners want justice because as the daughters and wife of the deceased, it is their right to be given justice as victims. It seems this is a right case where the trial as well as further probing into the actual conspiracy and destruction of evidence, if any, should be conducted at a state other than Andhra Pradesh. The trial was directed to be shifted to a CBI Special Court sitting at Hyderabad. This is based on Articles 21 and 32 of the Constitution of India, dealing with right to life and an action for the redress of grievance to enforce fundamental rights.

❖ **SUNIL SAINI & ORS. v. THE STATE OF HARYANA & ORS.³ K. M. JOSEPH AND B. V. NAGARATHNA J.**

An application under Section 406 CrPC was also filed for transfer of the case from the Court of Additional Sessions Judge, Jhajjar to a Competent Court at New Delhi. The case is connected with the incident in Haryana involving Jat community protesting for the reservation issue that reportedly resulted in rioting and destruction of properties. This led to severe and irreparable loss to the petitioners' houses, warehouses, and other belongings through burning.

It led to a total social disorder and much destruction. The prosecuting team has been accused of bias and has not been conducting themselves in an impartial manner. The petitioners who are witnesses have also been threatened by the other side. However, the request to transfer the case was denied. The main reasons were that a lot of times have passed and 42 witnesses have already testified. A Special Public Prosecutor was recently appointed and despite the controversy that has been made over his qualification, it was considered unfavorable to replace him at this juncture. In other words, although the petitioners were justified in their apprehensions on matters of breakdown of law and order, protection of witnesses, and unfair prosecution, the case was not transferred due to the stage of the trial and to prevent additional delays that would be caused if another prosecutor were to be appointed. It also contributed to the decision to allow the Special Public Prosecutor to continue with his work due to the reputation that he had earned.

– The matters for this petition have been disposed of and the decision is that the petitioners may seek recourse to the Director of Prosecution if they consider that the appointed Special Public Prosecutor is not performing his duties in a fair and unbiased manner. The Director (Prosecution) can then intervene and take necessary actions where necessary, depending on the case. In as much as the witness protection is concerned, the petitioners can seek assistance from the presiding Judge, the Special Public Prosecutor or the Superintendent of Police of the District in question. Thus, excluding the present petition, there are still ways for the petitioners to ask for a determination of the Special Public Prosecutor's bias before the Director of Prosecution and to ask for protection for witnesses from officers connected with the case.

❖ **KRISHAN MOCHI V. STATE OF BIHAR³**; “It is a matter of common experience that in recent times there has been a sharp decline of ethical values in public life even in developed countries, much less developing ones, like ours, where the ratio of decline is higher. Even in ordinary cases, witnesses are not inclined to be depose or their evidence is not found to be credible by courts for manifold reasons. 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 powers, which may be political, economic or other powers including muscle power.”

❖ **ZAHIRA HABIBULLAH SHEIKHS v. STATE OF GUJRAT⁴**; The Supreme Court underscored the worrisome situation of witnesses, referring to them as the ‘eyes and ears of justice’ as posited by Bentham. Therefore, the quality of

² SCC Online® | The Surest Way To Legal Research ³ SUNIL SAINI ORS. v. THE STATE OF HARYANA & ORS. (Transfer Petition (Criminal) No.125 of 2019) JANUARY 30, 2023SC

³ Krishna Mochi v. State of Bihar, AIR 1961

⁴ Zahira Habibullah Sheikh and other v. State of Gujrat 4 SCC158(2004) 6 Sakshi v. Union of India(2004) 5 SCC 518 : 2004 SCC (Cri) 1645]

the trial process is crucial. If a witness cannot function as the eyes and ears of justice, the trial decomposes and becomes frozen, denying fairness. The incapacitation may be as a result of one or many factors such as being unable to tell the truth due to factors beyond their control or lack of integrity through negligence, ignorance or the whistle blower has been induced to compromise. Finally, it was concluded that the witnesses are essential, but they can hardly be reliable due to various circumstances that influence the trials. It became very imperative that witnesses, who are willing to testify the truth, should do so without being killed or harmed in the process. The Court opined that the witness experience should be enhanced in order to actualize the key significance of the witnesses in the system of justice. Time has become ripe to act on account of numerous experiences faced by the court 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 ingeniously adopted to smother and stifle truth and realities coming out to surface.... Broader public and societal interests require that the victims of the crime who are not ordinarily parties to prosecution and the interests of the State represented by their prosecuting agencies do not suffer.... There comes the need for protecting the witness. Time has come when serious and undiluted thoughts are to be bestowed for protecting witnesses so that the ultimate truth presented before the court and justice triumphs and that the trial is not reduced to a mockery.

Para 41. The role of the State in the protection of witnesses cannot be overemphasized, especially when the accused persons have political influence and can use money or muscle power to frustrate cases and delay justice. Being the protector of its citizens, the State must guarantee that witnesses who want to present the truth about the case to the court cannot be threatened or attacked by the accused. It is the constitutional duty of every State to protect life and liberty of the citizens as a minimum precondition of the rule of law irrespective of religion or ideology. It is expected that states should appreciate and act on these duties as part of their inherent responsibility without being prompted.

Criticism that can be leveled at Gujarat must be viewed within the context of these basic obligations that are common to all States. Laws such as the Terrorist and Disruptive Activities (Prevention) Act 1987 state that it is a common occurrence, which is why witnesses are afraid to testify against people who are rich, have power and or are politically connected. Thus, the eyes and ears of the judicial system have to be 'blinded' so that truth does not turn into a farcical trial as seen in motion pictures.

For justice to be done, anyone has to be able to testify against even the most influential without much worry. This is the constitutional requirement of every State in ensuring the rule of law and protection of the citizen's right to life and person. There can be no reason why people can be deprived of these fundamental rights based on factors such as caste, religion, or political affiliations. These criticisms must be seen in this backdrop of fundamental obligations applying to all States alike. There are specific laws, which recognize the fact that witnesses may require protection against influential accused persons. These are some of the realities states must help their citizens avoid miscarriage of justice and mockery of the rule of law.

❖ **SAKSHI V. UNION OF INDIA**⁶: in the present case described the menace of witnesses turning hostile “ The mere sight of the accused may induce an element of extreme fear in the mind of the 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 a miscarriage of justice. Therefore, a screen or some such arrangement can be made where the victim or witnesses do not have to undergo the trauma of seeing the body or the face of the accused. Often, the questions put in cross examination are purposely designed to embarrass or confuse the victims of rape and child abuse. The object is that out of the feeling of shame or embarrassment, the victim may not speak out or give details of certain facts committed by the accused. It will, therefore, be better if the questions to be put by the accused in cross-examination are given in writing to the presiding officer of the court, who may put the same to the victim or witness in a language which is not embarrassing. There can hardly be any objection to the other suggestion given by the petitioner that whenever a child or victim of rape is required to give testimony, sufficient breaks should be given as and applied in inquiry or trial of offences under Sections 354 and 377 IPC.”

❖ **In MAHENDER CHAWLA V. UNION OF INDIA**⁵ The apex court approved a witness protection scheme in 2018 in the case of Mahender Chawla v. Union of India, known as the Asaram Bapu Case. In this instance, the Court ordered the respective central and state governments to initiate and enforce witness protection measures. The case arose out of the incident that took place in April 2018 wherein Mahender Chawla who was an associate of Asaram Bapu, a self-styled godman, stated that he had received threats to his life from Asaram and his followers. Chawla was an important testimonial in a rape case of 2013 that involved Asaram and his son.

Due to threats to his and his family's life, Chawla called for improved protection. In response, the Supreme Court cleared the way for a national witness protection scheme by giving its approval. This scheme seeks to protect victims who are at risk or have been coerced to testify against criminals because of their life. In supporting mandatory witness protection, the Court aimed at encouraging witness to testify to assist the justice system without putting their lives in danger. The approval shows that the judiciary is ready to reform and strengthen the witness protection mechanism in all over India. The silent features of the scheme are as follows:-

⁵ Mahender Chawla V. Union Of India 14 SCC 615(2019)

A. The scheme describes categories of threat perception:

Category 'A': If there is danger to the life of the witness or his family as a result of the threat during investigation, during the trial or after, then protective measures should be taken.

Category 'B': This means that if the witness or family members are threatened with safety, reputation or property during or after the investigation/trial, then that is a reason for withholding identity.

Category 'C': When the threat level is moderate, which encompasses threats of harm to the witness or members of his or her family, the witness's reputation or the witness's property during or after the investigation or trial.

B. The State witness protection funds:

(a) A Witness Protection Fund will be created to enable the putting of money into meeting expenses associated with the execution of Witness Protection Orders by the authorized entities with the aim of protecting witnesses. This Fund will provide financial assistance to certain important witness protection procedures as outlined in such Orders.

(b) The Witness Protection Fund will therefore be financed by several sources of funding. Firstly, there shall be a provision made by the State Government in the Annual Budget. Secondly, the Fund will receive amounts ordered by the court/tribunal including costs to be deposited. Thirdly, Charitable Institutions/Organizations and individuals will be allowed to make donations/contributions as per the decisions of Central/State Governments. Last but not the least, funds can also be given under Corporate Social Responsibility schemes. The core purpose is to have multiple sources of funds in the form of budgetary provisions, amount awarded by the courts and through donations in the form of charity and corporate social responsibility from the corporate as well as individuals.

(c) The Fund shall be managed by the Home Department or Ministry of the respective State or Union Territory.

C. Filling of application to competent authority:

The application for protection order under this scheme has to be made on a prescribed form to the Competent Authority of the District where the offence has been committed. In the case of the application, it should be filed through the Member Secretary of the Competent Authority together with any documents that may be attached to it.

D. Type of protection measures:

The protective measures to be provided to the witness should be reasonable and in proportion to the threat, and should be for limited period, preferably not more than three months at a time. Possible measures include:

Some of the remedies that are granted to the victim include; (a) Restraining the witness from making contact with the accused during investigation or trial.

In the same regard, other forms of communication such as mail and phone calls are also under surveillance.

The third way to compromise the identification of the witness is by (c) transferring the phone number of the witness to an unknown one.

; Self protection measures that can be taken by the witness like putting security gadgets in his or her home for example alarms, cameras, fencing amongst others.

Some of the techniques that may be applied in the process include the following: (e) Substituting the actual name of the witness with another name or with a different code in the alphabet.

Emergency contacts in case of any harm that might befall the witness.

: (g) Police presence around the house of the witness.

(h) Temporary change of location of the witness.

Escort the witness to/from court and provide government transport on hearing dates.

(j) Holding in-camera trials.

(k) Permitting the witness to be accompanied by a support person during the time the witness is being recorded.

It includes specially designed courts with video links, screens, witnesses/accused different passages, and modifying the witness's visible/audible form.

Recording of witness statements on a daily basis including no adjournment.

The option to allow reimbursement of funds from the Witness Protection Fund for moving, living expenses, or establishing a new occupation at regular intervals.

Any other procedural protection measures that may be required.

Consequently, the protection measures should be reasonable and temporary with the objectives of masking the witness's identity, increasing the witness's security, providing him or her with logistics/financial support, and establishing the working circumstances for the witness to safely and comfortably testify against the accused comfortably. For this purpose courts should employ all possible technology and procedural measures.

E. Protection of identity:

From the current provisions of the law, the Competent Authority can make an order for the withholding of the identity of the witness. Once such order is passed, the Witness Protection Cell stands accountable for the protection of identification particulars of that witness and of the family members of that witness. This comprised their name, parentage, occupation, address or anything that would signify them in the online world. The Witness Protection Cell will ensure that the witness is provided with emergency contact information of persons that the witness can contact in cases of emergencies for as long as the protection order is in force.

Hence, an application can be made to conceal the identity of a witness during the investigation or trial of an offence. The Competent Authority will consider whether such protection is warranted in the light of threat perception. If identity protection is ordered, then the Witness Protection Cell would fully shield the witness and his/her family member's identification. The witness will also be given other emergency contacts for their own security.

F. Change of identity:

In certain circumstances, witnesses may apply for a change of identity due to perceived threats. If such requests are made, the Competent Authority can use the Threat Analysis Report to determine whether the witness should be provided with a new identity. When the application is granted, the witness is issued with a new name, occupation, claimed parentage and government-issued identification to support the new persona. The guidelines of this new identity include the preservation of the witness's rights and accomplishments without loss. They retain their educational degrees, professional licenses, and property ownership. Finally, these changes of identity are meant to safeguard the witness, as the records would have been verified to obscure the witness's true identity. Still, measures are always put in place to ensure that the social and civil liberties of these people are not greatly interfered with. It means that the new credentials should not lose their qualified status and such assets in the process, which would be quite humiliating for them.

G. Relocation of witness:

Where a witness seeks relocation the Competent Authority may order the witness to relocate based on the Threat Analysis Report. The Competent Authority has the power to make an order for the transfer of the witness to another place in the state, the union territory or any other territory in India. In arriving at the decision to relocate the Competent Authority shall consider the best interest of the witness in terms of safety and welfare. If relocation is ordered, the witness will be shifted to a region that is considered safer within the country of India. All expenses in relation to relocation will be met out of the Witness Protection Fund. The primary aim here is to enable the Competent Authority to transfer witnesses who are in genuine danger to other places in India; expenses of transfer will have to be provided from the Witness Protection Fund.

H. Witness to apprised of the scheme:

Every state has to go out of its way to ensure that people are informed of the existence of this Witness Protection Scheme. The Investigating Officer and the Courts has a duty to inform witnesses appearing before them in matters concerning this program that their security and identity is protected so that witnesses do not have to fear for their own safety or that of their families before coming forward.

I. Confidentiality and preservation of record:

It is mandatory that every person who participates in the proceedings under this scheme, from the Police, Prosecution Department, Court Staff right up to the Lawyers, should not disclose any information in this scheme. The finality of these proceedings is that no records, documents or any information relating to these proceedings can be disclosed to any other party or any third party in any form whatsoever except to the Trial Court/Appellate Court on their specific written request for the purpose. The records of the proceedings which are regarded as confidential must be carefully stored during the trial connected with the given case and any possible appeals that could be made by the courts. The physical records can be destroyed one year after all court proceedings have been completed and the last appeal has been concluded by the Competent Authority. Nevertheless, the soft copies that are actually scanned should be kept for the files. This rewrite addresses the elementary principles of non-disclosure, limitations on the sharing of information, archive retention, and legal disposal of paper records while maintaining electronic copies.

J. Recover of expenses :

If a protected witness is found to have falsely accused someone or to have fabricated the entire story then the Home Department of the respective government can initiate action for the recovery of the expenses incurred from the Witness Protection Fund to secure such witness. As for the authorities, they can try to recover the amount spent on ensuring the protection of a witness who provided false information in the initial report.

❖ **In STATE OF MAHARASHTRA V. BANDU@DAULAT{2018}**⁶ The Apex court suggests that central and state governments should establish a special center for examination of vulnerable witnesses ; In the State

⁶ State of Maharastra v. Bandu @ daulat 11SCC163(2018)

of Maharashtra V.Bandu@Daulat{2018}⁷ In the present case, an appeal has been filed before the supreme court against the order of acquittal passed by the High Court in the Rape Case. The Supreme Court upheld the conviction order and suggested that state government should establish a special center for examination of vulnerable witnesses where favourable environment should be provided to them, where these witness can disclose their testimony freely and comfortably. In present case honourable Supreme court direct that “there should be special centers for examination of vulnerable witnesses in criminal cases in the interest of conducive environment in Court so as to encourage a vulnerable victim to make a statement. Such centers ought to be set up with all necessary safeguards. Our attention has been drawn to guidelines issued by the Delhi High Court for recording evidence of vulnerable witnesses in criminal matters and also the fact that four special centers have been set up in Delhi for the purpose.¹² The directions of Delhi High Court and setting up of special centers for vulnerable witnesses as noted above are consistent with the decision of this Court and supplement the same. We are of the view that all High Courts can adopt such guidelines if the same have not yet been adopted with such modifications as may be deemed necessary. Setting up of one center for vulnerable witnesses may be perhaps required almost in every district in the country. All the High Courts may take appropriate steps in this direction in due course in phases. At least two such centers in the jurisdiction of each High Court may be set up within three months from today. Thereafter, more such centers may be set up as per decision of the High Courts.”

❖ **In SATYAMA DUBEY V. UNION OF INDIA⁸** ; The Apex court in Satyama Dubey v. Union of India⁹ asked for affidavit from state government of Uttar Pradesh to clarify whether the witnesses in the case are being given with adequate protection in Hathras gang rape and murder case. The facts of the case are such that on 14 September 2020, a 19 year old Dalit woman was allegedly gang rape in Hathras District, Uttar Pradesh, India by four upper caste men. She died two weeks later in a Delhi hospital. The incident took place on 14th September, when the victim, a 19 year old Dalit woman went to a farm to collect cattle fodder. The four accused dragged her away by dupatta around her neck injuring her spinal cord in the process. The violence left her paralyzed with a severe spinal code injury. The Apex court in the present case stated that Hathras gang rape and murder of a Dalit women was a horrible and extraordinary incident and asked the Uttar Pradesh government to clarify whether witnesses in the case are being protected and given adequate protection. A three judge bench headed by CJI S.A Bobde asked Uttar Pradesh government to file an affidavit while clarifies saying that it will try to ensure that the investigation into the incident is smooth. “We want to know from you whether witness protection is in place. File an affidavit.”

CONCLUSION AND SUGGESTION:

On the same note, it is only possible to safeguard the vulnerable parties in society through the implementation of measures that check and balance the powers of the strong. The enforcement of laws is the affair of the government while the obligation to obey laws is on the lawmakers. The government also has a role in ensuring that laws are not infringed on. While it is true that enforcement can be an effective way of preserving a given country's democracy, it is equally important to understand that it is not always the most desirable solution. Just as important is raising the population's awareness of laws, as it helps create a legal culture. When the public is informed of the laws, they are more careful and cease engaging in unlawful activities, thus being safe from violence and fraud. I think that the laws for protection of witnesses are important for perfect justice because people who witnessed the crime should testify without pressure, therefore, the trial would be fair. Just passing of laws is not enough unless they are properly implemented and the public is informed of them. According to article 21, every citizen of India has the right to speak and depose before a court without threats or pressures of any nature. Since Article 21 ensures that the right to life is protected, it also contains the right of witnesses to testify freely. After studying the judicial pronouncements of the honourable Supreme court and legislative provisions provided in various procedural laws and substantive laws, strict enforcement and awareness of these law in the public at large is need of hour. This will also help in achieving the goal of any judicial system that is doing complete justice by fair trial.

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