

# A Selective Study on the Methods of Witness Protection with special reference to USA, UK, Australia and India

## Abstract

Witnesses are the eyes and ears of the courts. They must be protected so that free and fair trial should be ensured and the guilty should be punished. Special protective measures are required in the high profile cases. Nowadays witness protection is a global problem. Many of countries have developed their own system for providing protection to the witnesses. On the basis of the study of law related to witness protection in different countries, it can be said that there are following types of legislation on this subject-----

- (i). Countries having witness protection programmes i.e. WPP's
- (ii) Countries having witness protection laws in the form of Acts
- (iii).Countries having witness protection schemes

**Keywords:** Witness Protection Program, WPP, POT, TADA.

## Introduction

A Co-operative approach between victim and witness is necessary for ensuring fair and successful prosecution, but people do not want to co-operate out of fear. Therefore providing protection to witnesses as well as to victims is not only necessary for the enforcement of law but also, it is a fundamental legal obligation. This necessity and obligation created challenge before the countries across the world for dealing with politically and ethnically motivated crimes. Sometime investigators and prosecutors favours a party or works under the criminal political power structures which endangers the safety of witnesses, specially in cases of organized crime. State deals with this situation by granting various forms of protection to witnesses. But the scope of protection depends on the type of witnesses and crime, as well as on the level of threat or intimidation. This type of arrangement is not only a practical necessity but also a States' obligation towards its citizens.

Measures provided for the protection of witness is broadly divided into two categories i.e. procedural and non-procedural. Procedural measures like video conferencing, voice and face distortion, in-camera trial and even anonymous testimony used to conceal the identity of witnesses during investigations and court trial procedures. If this is not enough then non-procedural protection measures like patrolling around the witness's resident for guaranteeing his or her physical safety. But due to the frequently changing world, all these measures have turned out to be inadequate specially in cases where prosecution is powerful mafia groups, terrorist organizations etc. This lacuna pressed some countries to introduce a separate and full fledged Witness Protection Program (WPP) which provides for extraordinary protective measures like identity change, re-location, etc to cover the witnesses and victims of serious crimes.

In the recent past years there has been an increase in the number of countries enforcing such Witness Protection Programs i.e. WPP's for the reason of the extraordinary growth in the organized crime, and the involvement of corrupt political and influential authorities in criminal activities.

Before studying about those various method which have been adopted by several countries worldwide for the protection of witnesses under the WPP's, it would be better to know "what is meant by Witness Protection Programs". The United Nations Office on Drugs and Crime (UNDOC) has defined WPP as "formally established covert programmes subject to strict admission criteria that provides for the re-location and



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change of Identity of identity of witnesses whose lives are threatened by a criminal group because of their Co-operation with law enforcement authorities<sup>1</sup>.

According to the definition of WPP's given by UNDOC it can be said that following features should be essentially there in a Witness Protection Program--

1. It must be an established covert programme.
2. It must follow strict admission criteria.
3. It must provide for re-location and identity changes of a witness.
4. Lastly such protection would be provided only to those witnesses whose lives are in danger because of their cooperation with the law enforcement authorities.

Hence the above stated features can be stated as the minimum requirement of a witness Protection Program.

Let us now discuss about the countries having witness Protection Program, specially highlighting the methods of witness protection prevalent there.

#### **US Model**

Perhaps it is first amongst all the countries having Witness Protection Programmes all over the world and it served as a model for other countries. The United States Federal Witness Protection Program, also known as witness security program (WITSEC). This program is being operated by the United States Marshals Service. It provides for protection to the threatened witnesses not only before and during the trial but also after the trial .

Few States of United States of America as California, Connecticut, Illinois, New York, Texas and Washington D.C. have their own witness programs specially covering those offences which were not covered by the federal program.

Organized Crime Control Act of 1970 lays down the foundation for the establishment of WITSEC program in United States of America. This program was originally created as the Federal Witness Protection Program in the mid of 1960's by Gerald Shur. Enforcement of Act, 1970 sets out the manner in which the Attorney General may provide re-location, often coupled with an identity change of witnesses and their immediate families.

#### **UK Model**

Article 6 of the European Convention of Human Rights (ECHR) emphasizes on the fair trial and thus a special concern have been raised about the measures to assist witnesses, in the European countries.

In United Kingdom, threatened witnesses are protected by the law enforcement agencies, and police officers. Such provision for the protection draws its authority from The Serious Organized Crime and Police Act, 2005. The main features of this Act are as follows-

1. Uniform criteria for admission and eligibility regarding the person who can be benefited under this Act.
2. It provide for penalties in case of disclosing the protection arrangements or identity change or relocation etc.

3. It also imposes a duty on public authorities to assist the protection units. Such duties are of transferable nature and transferred to the authority of concerned areas specially in cases of re-location.
4. It provides for the following parameters to be considered by the authorities before granting protection to witnesses etc.-----
  - i. Nature and extent of risk to the person concerned
  - ii. Cost of protection arrangements
  - iii. What are the chances that the protected person can adjust himself towards the changes brought by implementing protective measures
  - iv. Whether the protected person is witness in any other legal proceedings or not. If he or she is, then what will be the impact of such protection in other cases.

Section 82(5)(a) of The Serious Organized Crime and Police Act, 2005 clearly states that " a protection provider is a chief officer of the police force in England.

Thus it can be concluded that in United Kingdom, witness protection issues are dealt exclusively by the police.

#### **Australian Model**

A Parliamentary Joint Committee was constituted to enquire into Witness Protection in Australia in 1988. Reports of the committee laid a basis for the drafting of the Witness Protection Act 1994. A National Witness Protection Program (NWPP) was created under this Act and the Commissioner of the Australian Federal police (AFP) was entrusted with the responsibility for its maintenance. Features of the Witness Protection Act, 1994 are as follows-----

1. It provides statutory basis for the protection and assistance to persons who have either given or agreed to give evidence and also to those person who are related with such persons.
2. NWPP provides for the operating methods specially designed to safe integration of witnesses and their families back into the community.
3. Act contains all the regulatory mechanisms for the maintenance of integrity of the NWPP.
4. Act sets out criteria for considering a person as "witness". And once a witness is accepted in NWPP becomes participant.
5. Section 10 and section 10-A of this Act are the special features as they allow the inclusion of foreign nationals or residents in the NWPP at the request of foreign law enforcement agencies or the international Criminal Court.
6. And the administration of NWPP is regulated through the Witness Protection Committee and Coordinator Witness Protection.
7. Act ensures the maintenance of integrity and accountability of the NWPP.

#### **Witness Protection in India**

India is a developing and fast growing country. It is exchanging higher ranks with the leading countries in the areas of economy, export-import, manufacturing, science-technology, and legal reforms etc.

Like other countries India too you have a big problem of witness protection but it still does not have any firm law on the issue. But we have certain measures for protecting witnesses which are scattered under Code of Criminal Procedure, Indian Penal Code, Evidence Act, POCSO Act, POTA, TADA etc. Many recommendations have been made by the law commission in its 14<sup>th</sup>, 154<sup>th</sup>, 178<sup>th</sup> and 198<sup>th</sup> report for the legislation on the issue of witness protection is it in India. This issue was also addressed by the National Police Commission in its 4<sup>th</sup> report. Infact J.Malimath Committee recommended for the enactment of certain law regarding the burning issue of witness protection in India.

In the recent past years National Capital Territory of Delhi have passed a law named "Delhi Protection Scheme" which is exclusively applicable in the state of Delhi. And in the year 2015 a Witness Protection bill was prepared by the parliament and circulated to the State Governments and the Union territory administrators. But in the absence of consensus the bill has not been passed and is still pending in the Parliament.

In Year 2016 the Central Government entrusted the BPR&D (Bureau of Police Research and Development) to examine the issues raised in the feasibility of the program.

But on 6th December 2018 a long time wait for the witness protection law was ended when Supreme Court approved The Witness Protection Scheme, 2018 in the landmark judgment of Mahendra Chawla vs. Union of India<sup>2</sup>. Scheme was prepared by NALSA on the basis of inputs from 18 States and Union Territories and suggestions from police authorities and judges.

The scheme was approved by the bench of J. A.K. Sikri and J. S. Abdul Nazeer. The bench laid the basis of judgment on Article 21 of the Indian Constitution and regarded the scheme as "law" within the Article 141 and Article 142 of the Indian Constitution. And also held that the centre and state need to follow it till the framing of competent legislation on the subject. Highlighting features of the Witness Protection Scheme, 2018 are as follows-----

1. Accused and witnesses should be put far from each other during trial or investigation.
2. Allotment of unlisted telephone numbers to the witnesses.
3. Providing security measures to witnesses in the form of bodyguard, patrolling, installing security devices example CCTV, security doors etc. at his house.
4. Change of Identity.
5. Providing conveyance for attending court proceedings.
6. Holding in-camera trials.
7. Specially designed courtrooms with the separate passage for accused and witnesses, technological support to modify face and voice change etc.
8. Financial aid to be paid to the witness from the Witness Protection Fund.
9. A witness may also ask for miscellaneous measures for his protection.

## The Main Text

### Objective of the Study

In this paper an attempt has been made to find the different methods of witness protection adopted in the countries worldwide. At the same time the study would be helpful in framing witness protection laws for our country.

### Review of Literature

On reviewing the existing literature this paper aims at highlighting the various methods of witness protection to be used in different countries. And also to know about the pros and cons of those methods on the legal system of the country.

### Concept and Hypothesis

Witness protection is a global challenge in the present time. Countries are trying to solve the issue either by operating witness protection programs or by enforcing witness protection schemes.

My hypothesis for writing this paper is whether there is any similarity in the methods adopted for the protection of witnesses around the world.

### Research Design

I have gone through Bare Acts, and the study material available in the authentic articles, journals, and websites for writing this paper. Thus I adopted doctrinal method for writing this article.

### Findings

In the course of writing this paper I found that more or less all the countries are facing the problem of witness protection. Some of them developed a system for protecting those witness, who testified in the favour of state. And the fascinating fact is that the methods adopted for the protection of witnesses and victims are almost same in all the countries.

### Conclusion

On the basis of the study of the witness protection laws in other countries it can be said that there is hardly any difference in the types of protection offered to the witnesses. Some of the countries have legislated on this subject whereas some of the countries have launched witness protection programs. In India recently a bill on witness protection has been approved by the Supreme Court. It can be said that the provisions made in the bill have their basis in the established laws of other countries.

### Suggestions

On the basis of above study following suggestions are proposed from my side----

1. A firm law should be framed on the priority basis for India on the basis of witness protection bill,2018.
2. Penal provisions for the disclosure of protection arrangements should be made.
3. Arrangements for the payment of financial aids to the witnesses and victims should be so made that delay should be avoided.
4. Protection arrangements should cover the family and near relatives of the protected person.

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**Footnotes**

1. *Good practices for the protection of witnesses in Criminal Proceedings involving Organised crime/ UNDOC, 2008, p.5, catched copy at <http://www.unodc.org>*
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