

WITNESS PROTECTION IN INDIA

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ABSTRACT

Witness protection is introduced in India recently and the implementation of that scheme. The scheme is in the inception and the good point is that India has other countries' programs to learn from and implement their strategies without having to face any problems which the other countries already faced and modified their schemes according to those situations. This paper, tries to include the suggestions, which can make the scheme more fruitful and make itself competent enough to make sure that the witnesses and other members under the scheme are actually protected. The protection should not just be on paper but also in the action, it should be successful. This research paper tries to look into the witness protection programs of different countries and compare it with the Indian scheme for witness protection.

Introduction

Witnesses become most integral part of the justice system because, it is with them testifying that the justice will be delivered. When such important people turn hostile, then the case becomes problematic. The most prominent reason for the witnesses to turn hostile is the threats that they receive from the interested parties in the case warning them of grave consequences in if they testified in the court. In such circumstances, a reasonable human would refrain from testifying because her life is in danger. Hence, protecting such witnesses will stop them from turning hostile. But there should be a definite assurance of safety and this can be done by having a separate scheme of witness protection. In fact, the discussion of the witness protection in India came up in the Supreme Court by a PIL filed by one of the witnesses in one of the most notorious cases in the country. The judgment given by the SC regarding this issue is the starting point of implementing witness protection in the country. This will be implemented until the parliament approves an official legislation for the same.

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While India is still in beginning stage of the witness protection, the other major countries have separate program for protecting their witnesses from turning hostile and facing dangers. Such programs also include the family members of the witnesses also. India can take up some of the measures included and practiced by those countries which are successfully running their programs and then incorporate them in the upcoming legislation to ensure the safety of the witnesses and success of the program.

What is Witness Protection?

Witnesses who are involved in testifying in courts might face threatening situations and even some attempts on them by the interested parties in the cases. Such instances lead to the witnesses turning hostile or giving false witness statement. This would affect criminal justice system in an adverse way this needs to be avoided. Hence, to protect the witnesses from such perils, Witness Protection Programs are implemented by countries. These programs include all the measures to protect the witnesses who receive threats, conceal their identities, providing all sorts of protection to the family members of such witness and if the threats are of more intense nature, then relocation of the witness is also done. Though most of the countries prefer to relocate inside the country, international relocations are done in cases of the immense danger to the lives. This can also be applicable to the family members of the witnesses. But for this to be done, there should be a proof of such threats. Some countries also provide the witnesses with medical checkups and financial help for such health care is covered under the scheme. Some countries also keep track of the person's mental health. This is done mostly in the relocation cases, to ensure the safety of the people who live in the localities where the witness has been relocated to. The scheme most commonly includes the basic financial support, employment support (for the witnesses to find a new job), health care, supply of all the required documents a literal new life, etcetera. Some countries stop providing the financial help, once the witness gets a job. Sometimes the witnesses are mandated to get a job as the nominal financial support would be stopped after sometime. The witnesses should follow rules and restrictions and all the instructions given by the authority and most of the time, social media has

100 percent restriction. All these restrictions are for the welfare of the witnesses and the safety can only be ensured in case the witnesses follow the instructions.

Relocations are never the first resort in the witness protection. The authority dealing with witness protection would only opt for relocation if they are completely sure that the protection measures in local level are totally not useful to the witness and the threat would still be of the same threshold. The international relocations are mostly be done only in some high profile cases which involve celebrities, influential people of that place, when there is threat the country's safety and other such instances. This program is just for the witnesses strictly. This can also be extended to the other parties involved in a case like victims, or one of the parties to the case or if they are involved in the process of investigation. Though this kind of protection is mostly given during investigation, during the trial procedure, this will also continue after the trial is finished. This happens in rare cases and not all the time. The measures involved in witness protection program are applied to the members seeking protection under the scheme, according to the seriousness of the threats, the position of the trial proceedings, the influence of the perpetrator or the person against whom the witness is being examined and other criteria. The medical help that will be provided under the witness protection scheme does not cover mental health unless it is a special case. Only very few countries take mental health into consideration. This is a problematic situation because, when a person changes her identity or changes her lifestyle, because of the threats that she received, such people are prone to get mentally ill and are prone to a lot of psychological pressure. It starts with anxiety and might extend till suicidal tendencies or schizophrenia. In such conditions, if the mental health is not covered under the scheme, it is not only unreasonable, but it also becomes dangerous after a point of time. Hence, the countries should consider including mental health expenses of a witness undergoing protection and also making the regular mental health checkups mandatory would help to a great extent.

The Honorable Supreme Court of India on Witness Protection

In the month of December, 2018, the Supreme Court of India had given its assent to the draft plan for witness protection, prepared by the government and finalized under

the consultation of NALSA (National Legal Services Authority).² This plan, like USA, will be called the Witness Protection Scheme and will be in implementation till the parliament approves this draft to be a law. This was a result of the PIL *Mahender Chawla v. Union Of India*,³ filed in the SC by one of the witnesses in Asaram Bapu's case, where the witness sought for protection. Mr. Mahender Chawla was lucky enough to survive a murder attempt on him and he filed the PIL for protection. The two judge bench consisting of Justices A.K. Sikri and S Abdul Nazeer held that this would be made a law in practice under Articles 141 & 142 of the Constitution on India. The judgement says that one of the main reasons for the witnesses to turn hostile is lack of protection for them in the system. This system would ensure that the criminal justice system in the country will be improved. The Court said that the State governments can take assistance of the Central government in case of any requirement and the Central government has a responsibility as to such issues.

The basic feature of this scheme is concealing the identities of the witnesses who face threats and prohibition of revealing of their identities in any form or manner, during the investigation, during the trial and post-trial. Justice Sikri described the position of the witnesses in our criminal justice system as 'pathetic'⁴ and they require proper protection. Under this scheme, the measures that would be taken would vary from case to case basis, depending on the nature and intensity of the threats received by the witnesses. This will be calculated by preparing a Threat Analysis Report. The measures under this scheme include identity protection, relocating, recovery expenses. Confidentiality is an obvious inclusion.

Witness Protection in other major countries

²SUPREME COURT APPROVES CENTRE'S DRAFT WITNESS PROTECTION SCHEME | INDIA NEWS - TIMES OF INDIA THE TIMES OF INDIA, <https://timesofindia.indiatimes.com/india/supreme-court-approves-centres-draft-witness-protection-scheme/articleshow/66949570.cms> (last visited Sep 29, 2019).

³*Mahender Chawla v. Union Of India*, 2018 SCC SC 2679.

⁴BS Web Team, *With SC nod, India gets witness protection scheme; here are the highlights*, BUSINESS STANDARD INDIA, Dec. 6, 2018, https://www.business-standard.com/article/current-affairs/with-sc-nod-india-gets-witness-protection-scheme-here-are-the-highlights-118120600190_1.html (last visited Oct 1, 2019).

I. United States of America

The United States follows a Federal Witness Protection scheme, which is called as Witness Security Program (WITSEC). This scheme came into place with the aim to protect the witnesses testifying against the murders performed by the Ku Klux Klan, in the name of ritualistic sacrifices. Since its inception in 1971 to the present day, this scheme has protected nearly 8.6 thousand witnesses and 9.9 thousand family members of those witnesses.⁵ This scheme provides the witnesses and their families with new identities and all the necessary documents that are needed for their new life. Basic expenses, housing, health benefits and employment opportunities will also be provided. The protection for the persons under this program will be given 24/7 in all sorts of situations. The US Marshals claim that the witnesses and their family members who have followed all the instructions and guidelines given by the department, have never been harmed in any way. The scheme has certain listed eligibility criteria to be fulfilled for a person to claim the witness protection. Under this scheme, the psychological evaluation of the witness is done to ensure that, that person would not pose any potential threat to the people living the place of the relocation.⁶ This ensures the safety of the people who are living in that area. This is one of the notable features of this scheme.

The whereabouts of the persons involved in the scheme, the procedures, the information about the witnesses is highly confidential in nature. This whole complicated and confidential system of protection was created by Gerald Shur.⁷ This program is absolutely voluntary and the people who were once under the protection can return to their old identities at their peril. This program is based on the cost of the living. The witnesses will get paid only for the basic needs and sometimes, after a point of time, when they get jobs, the money from the government will be stopped. The value of the testimony as such has nothing to do with the program and the money given to the witness. The program has been modifying itself according to the needs of the new age technology and lifestyle. This is a quality, which is much needed for such

⁵U.S. MARSHALS SERVICE, <https://www.usmarshals.gov/witsec/> (last visited Oct 1, 2019).

⁶9-21.000 - WITNESS SECURITY, <https://www.justice.gov/jm/jm-9-21000-witness-security> (last visited Sep 29, 2019).

⁷INSIDE THE WITNESS PROTECTION PROGRAMCNN, <https://www.cnn.com/2013/02/16/justice/witness-protection-program/index.html> (last visited Oct 1, 2019).

schemes. Under the USA's scheme, the witnesses can be issued special visas to relocate them from USA to other countries or to bring them back from other countries to USA after the threats are sufficed and the complete security is ensured. According to some estimations done by the experts, the cost involved in protecting the whistle blowers and ensuring their safety is nearly 10 million USD per annum. But this is indeed a good investment because the program has the witnesses protected successfully and the conviction rate here such scheme is employed is 89 percent. The Marshals involved in this program and assigned with the job of finding new identities for the witnesses seeking protection, are not allowed to speak of any information to any other people other than the Marshals involved in a particular witness protection. There are strict restrictions employed in such cases. Sometimes, criminal have used this program included with relocation and changed identity, to commit new crimes and get away with it.⁸

II. United Kingdom

United Kingdom's scheme for witness protection is run by UKPPS (Protected Persons Service), which is a part of the country's National Crime Agency. Just like US's system, this system also has a principle of uncompromised confidentiality. This scheme facilitates the contact of the witnesses with their family members, but this is done very rarely.⁹The relocation can be intra or international, based on the intensity of the threat posed to the witness. This scheme had protected and is protecting nearly three thousand people from the adverse occurrences. This accountability of the program is completely given to the police forces.

III. Canada

The Royal Canadian Mount Police run the witness protection program.¹⁰ This resembles the US system in many aspects. No reward for testifying will be awarded and only limited monetary support will be given. This scheme does not emphasize much on providing employment but the health care, emphasizing on the mental

⁸12 SECRETS OF THE WITNESS PROTECTION PROGRAM, <http://mentalfloss.com/article/77695/12-secrets-witness-protection-program> (last visited Oct 3, 2019).

⁹*What is life like in the UK's witness protection programme?*, BBC NEWS, Aug. 12, 2015, <https://www.bbc.com/news/magazine-33863013> (last visited Sep 28, 2019).

¹⁰WITNESS PROTECTION | ROYAL CANADIAN MOUNTED POLICE, <http://www.rcmp-grc.gc.ca/en/witness-protection> (last visited Oct 4, 2019).

health, will be provided. This includes counselling, treatment for any kind of addictions and other psychological problems. There are alternative protection processes available for the person who doesn't want to enter the program.

IV. Hong Kong

Hong Kong started its scheme for protecting witnesses in 2000 and it is handled by the Witness Protection Review Board.¹¹ Hong Kong is one of the very few countries, which have a special board or unit to deal with witness protection. The special feature of this scheme is that the members under this scheme are trained to operate arms like guns and other self-defence techniques. This is not present in other witness protection schemes. Though the training will be given for operating standard level weapons, semi-automatic machine guns can be issued if there is a great level of threat. Relocations are normal and are not based on the level of threats being received by the witness. Sometimes, even basic threats, post-trial, can make a witness eligible for the international relocation.

A Comparative Analysis

At present, India has got its witness protection with the judgement of Supreme Court. This is the first time that the country's judiciary has thought about the protection of witnesses. But this system is not anywhere close to the developed systems of the other countries where the measures taken are way advanced than the measure taken by our system. Though the comparison of a system, which is in its inception, and the systems developed through years cannot be justified, it becomes necessary to analyze, compare and contrast the systems because, India has a lot to learn to learn from the established systems instead of committing the same mistakes. The USA has the most information revealed about its witness protection system. This is not a very good quality of the system, but the info revealed is not as much sensitive as it might cause danger to the system or the members involved in the system. The information revealed helps to understand the basic working model of the system. The system in USA considers the identity change at the minimal levels of threats and it doesn't require high level threats. The relocation depends on the intensity of the threats. In

¹¹SECURITY BUREAU - WITNESS PROTECTION REVIEW BOARD (POLICE), <https://www.sb.gov.hk/eng/links/wprb/wprb.html> (last visited Oct 3, 2019).

Indian system, there is no introduction of the relocation. The Indian system is mainly focused on providing the protection at basic level and protecting the witnesses from potential threats. The identity change is done only when there is a great level of threat and relocation is done accordingly. The USA system provides for the nominal expenses and this financial help is stopped when the witnesses under the program find a day job for themselves. They are mandated to find a job and the system also provides then for the employment opportunities. The Indian system doesn't explicitly mention about any of such kind of help. Other systems also include the health care. But the especially in Canada, the system provides for the mental health care. The counselling for the witnesses is also provided under this system. They also have a system of checking the mental health of the witnesses before relocating them so as to ensure the safety of the people living in the area of the relocation. The mental state of the witnesses who have undergone threats and deathly situations, with changing their life and their identity forever, would go through immense stress and depression and more than physical health care, they need mental healthcare. Hence, this method of Canada should be followed, not only by India, but also other countries. But Indian system doesn't talk about mental healthcare and the inclusion of mental health under this scheme is not a thing that is being discussed. This could be one of the major backdrops of Indian system for witness protection. This Indian system does not talk about the connection or contact of the witnesses with their family members. The UK system provides for such contacts, which are done under high-level scrutiny and security. The system in Hong Kong provides for the self-defence training for the witnesses under this program. They also train them in using arms like guns of the basic models. If there is threat of very high level and the case is controversial with high profile people involved, then semi-automatic machine guns are also supplied to the witnesses for self-defence.

How can India's Witness Protection program be improvised?

After analyzing the systems of other countries, the system for witness protection in India needs to be way improvised than it is now on the paper. There are no notable cases of the implementation of the witness protection yet and as the information about such things are kept under confidentiality and maintained secretly, there is a chance of

the people not getting to know about the benefits and cons of the witness protection. The program should be clearer about the strategies of identity changes, protection measures, the keeping up with the contacts with relatives of the members under the protection and relocation measures. There should be a particular strategy for the provisions like health, education and employment benefits under the scheme. The employment should be made mandatory because the money cannot be provided for as long as they are under the witness protection. The most problematic part of the scheme is that the handling of the scheme is done by the police forces.¹² Most of the other countries have separate departments to handle the witness protection. By giving the witness protection to police, there will be an increased burden on the police department as they already have a burden of managing other duties and the pending cases also. This will affect the efficiency of the regular police work including the witness protection. Hence, creating a separate department to handle the witness protection would be reasonable and productive in all the ways. Indian scheme talks nothing about the social media restrictions on the members under the protection. There is no guarantee of this scheme providing solutions for the problems and dangers arising from the new technological improvements. There is no help for the members suffering from the psychological problems involved in the problems. The health cover should include regular counseling sessions and frequent checkups for the mental health of the people in the scheme as they are prone to mental health issues and other stress related disorders.

Conclusion

Witness protection is a sensitive task. Sometimes it involves change in the whole identities and life styles of the witnesses under the scheme. Thus, proper handling of this task becomes extremely important for the program to be successful. As the stage that India is in, is still a beginner's state, there is a chance to commit some blunders, which should not be committed as there is a risk of lives involved. By learning from the other countries, India can definitely refine its system of witness protection for the system to emerge as one of the finest and the safest systems for witness protection all

¹²IT IS TIME TO RETHINK INDIA'S WITNESS TESTIMONY PROCESS HINDUSTAN TIMES, <https://www.hindustantimes.com/analysis/it-is-time-to-rethink-india-s-witness-testimony-process/story-BgvzEGQNAAyjsqw70Q8YL.html> (last visited Oct 4, 2019).

over the world. India has a lot to include to the present system and that has all the aspects that can be included for a perfect to be in action. The protection of lives cannot be something that can be compromised upon. The best start would be by starting a separate department to handle the witness protection and not having it handled by the already over-burdened police department. Appointing a committee to look into the problems arising and the inclusions that can be made to the system would be more efficient means to approach the system and solve the problems before the problems even arise in practicality.