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# Witness Protection

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**Why is in news?** Security for 2002 Gujarat riots witnesses withdrawn: Everything you need to know about witness protection in India

The **Supreme Court-appointed special investigation team (SIT) re-investigating nine 2002 Gujarat riots cases** has withdrawn police and paramilitary protection to all the witnesses, including retired judge Jyotsana Yagnik.

The only exception has been made for Zakia Jafri, the widow of Congress MP Ehsan Jafri, who was killed inside the Gulberg Society along with 68 others and filed a complaint against then-CM Narendra Modi, officials said.

## Witness:

Although the term “witness” is widely used in criminal law, it **hasn’t been defined properly** in the statute books.

However, **Section 161 CrPC** dealt with the examination of witnesses and allowed investigating police officers to orally examine anyone “supposed to be acquainted” with the case’s facts and circumstances.

It also said the witness is bound to answer all questions “truly” but needn’t answer questions that expose them to criminal charges, penalties, or forfeiture.

Notably, **Section 398 of the Bharatiya Nagarik Suraksha Sanhita**, which has replaced the CrPC, states that every state government shall **prepare and notify a Witness Protection Scheme for the state** to ensure the protection of witnesses.

## Need to protect witnesses-why?

In **Swaran Singh vs. State of Punjab (2000)**, the SC observed that a criminal case is built upon the edifice of evidence that is admissible in law, and for that, **witnesses are of paramount importance**.

And yet, witnesses in India are mistreated, given no facilities, and face the danger of bodily harm, death, abduction, and threats, besides other forms of mental and physical harassment.

Several witnesses also turn hostile. A hostile witness does not tell the truth at the instance of the party calling him. Parties expect witnesses to testify in their favour; however, some don’t oblige. In cases like the Jessica Lal murder case or the Salman Khan hit-and-run case, the prosecution failed after witnesses turned hostile.

The **Fourteenth Report of the Law Commission** came out in 1958 and highlighted the tribulations commonly encountered by witnesses, like difficulty in accessing courts owing to expenses, travel, time, and frequent adjournments.

Besides this, the Law Commission’s 154th and 178th reports that came out in 1996 and 2001, respectively, also discussed various facets of witness protection.

Based on the suggestions made in the **178th Report**, the **Criminal Law (Amendment) Bill, 2003**, was proposed.

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## Efforts have been made to protect witness:

The **Criminal Law (Amendment) Bill, 2003**'s Statement of Object and Reasons said, "It is widely felt that criminal cases in the courts fail because statements by witness(es) are renege(d) either out of fear or allureme(n)t."

To prevent the evil of witness turning hostile, it is proposed to amend sections 161, 162 and 344 of, and to insert new sections 164A and 344A in, the CrPC.

The Bill **didn't address the lack of power trial courts** have in protecting witnesses but made it **mandatory for police to record witness statements** before a magistrate. However, nothing much happened regarding the Bill as the Vajpayee government fell out of power in 2004.

Additionally, the **Justice VS Malimath Committee Report (2003)** said "a law should be enacted for giving protection to the witnesses and their family members on the lines of the laws in USA and other countries."

The **Delhi government** also notified a witness protection scheme on July 31, 2015.

In November 2017, the SC asked the Centre why witness protection rules along the lines of the NIA Act, 2008, hadn't been framed.

Although there are **inbuilt protections** in laws such as **Section 195A IPC, Sections 151–52 of the Indian Evidence Act, and Section 327 CrPC**, like criminalising threatening of witnesses, prohibiting parties from asking insulting questions to witnesses and empowering magistrates to shield court proceedings from the public, among others, it wasn't until December 2018 that the SC drew up a nationwide Witness Protection Scheme.

## Witness Protection Scheme:

Acting on PIL for the protection of witnesses in the Asaram Bapu case, a Bench of Justices AK Sikri and SA Nazeer observed in **Mahender Chawla vs. Union of India (2019)** that **witnesses turned hostile due to inadequate protection** by the state and directed the Centre, states, and UTs to "enforce" the scheme "in letter and spirit" until the Parliament enacts a law on it.

Consequently, the scheme was drawn up by the Centre with inputs from 8 states/UTs, legal services authorities of five states, civil society, high courts and police.

It was finalised in consultation with the National Legal Services Authority.

## Working of the Scheme:

An application is made by a witness, their family member, lawyer, or the concerned IO/SHO/SDPO/Jail Superintendent before "a competent authority through its Member Secretary" for a Witness Protection Order under the 2018 Scheme.

Then, a "**Threat Analysis Report**" is prepared and submitted by the Head of the Police in the investigating district concerning the seriousness and credibility of the threat.

It contains details about the **nature of threats faced by witnesses and their families** and analyses the extent of the threat, the persons making it, their motives, and the resources to implement the same.

This report also **categorises threat perception and suggests witness protection measures** that should be taken.

The Scheme operates by identifying **three categories of threat perceptions** for witnesses.

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**Category A** includes cases where threats extend to witnesses or their families' lives during an investigation, trial, or after.

**Categories B and C** relate to cases where threats extend to the witness's safety, reputation, or property during the investigation or trial, and cases where there is a moderate threat perception, like harassment or intimidation of the witness or their family, respectively.

Depending on the urgency, the 'competent authority' can pass orders for interim protection. However, the police can provide immediate protection in cases of grave and imminent threats to life.

The report also includes suggestive protective measures like ensuring witnesses and accused don't come face-to-face during the probe, protection of identity, relocation of witnesses, confidentiality and preservation of records, and recovery of expenses.

### **Successful models of witness protection programs around the world:**

**United States of America (USA):** The United States Federal Witness Security Program, WITSEC, is one of the most extensively formulated witness protection programs in the world.

**Australia:** Australia is credited with having formed the 'model' legislation in the sphere of witness protection, titled '**The Witness Protection Act, 1994**'; which has formed the basis of various regional witness protection programs in the continent.

**China:** China has a **comprehensive witness protection program** that includes relocation, identity change, and financial assistance.

**United Kingdom:** The United Kingdom has a witness protection program that provides protection to witnesses and their families.

**Germany:** Germany has a witness protection program that provides protection to witnesses and their families.

It is important to note that the success of a witness protection program **depends on various factors** such as adequate funding, infrastructure, legal framework, awareness, coordination, and political will.

### **Challenges in implementation of the Witness Protection Programme:**

**Inadequate funding:** The scheme is underfunded, which makes it difficult to provide adequate protection to witnesses.

**Lack of legal framework:** India does not have a witness protection law as of now. The Supreme Court has repeatedly observed that India needs a witness protection scheme.

In 2006, the **Law Commission of India issued detailed recommendations** for "administrative or legislative action" for witness protection. **Yet to date India has not enacted a law or developed a nationwide scheme** for witness protection outside the courtrooms.

**Inadequate infrastructure:** The infrastructure for witness protection is inadequate in many parts of India.

**Lack of awareness:** Many people are not aware of the witness protection scheme, which makes it difficult to implement effectively.

**Lack of coordination:** There is a lack of coordination between different agencies involved in witness protection.

**Lack of political will:** There is a lack of political will to implement the witness protection scheme effectively.

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