
ACCESS TO JUSTICE: WITNESS PROTECTION AND JUDICIAL ADMINISTRATION

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Witnesses tremble on getting summons from Courts, in India, not because they fear examination or cross-examination in Courts but because of the fear that they might not be examined at all for several days and on all such days they would be nailed to the precincts of the Courts awaiting their chance of being examined. The witnesses, perforce, keep aside their avocation and go to the Courts and wait and wait for hours to be told at the end of the day to come again and wait and wait like that. This is the infelicitous scenario in many of the Courts in India so far as witnesses are concerned. It is high time that trial Courts should regard witnesses as guests invited (through summons) for helping such Courts with their testimony for reaching judicial findings. But the malady is that the predicament of the witnesses is worse than the litigants themselves.... The only casualty in the aforesaid process is criminal justice.¹

This criticism from the Supreme Court of India pithily sums up the problem facing witnesses and, therefore, the criminal justice delivery system.

The problem has been given a new dimension over the last few years in Delhi (and perhaps most other cities in India as well), which has seen quite a few ‘high profile’ criminal cases being dealt with by the Courts. These cases are described as ‘high profile’ because the accused are either persons wielding some influence or they are related to persons exercising power. The print media² recently documented several such cases in Delhi, Chandigarh and Bombay. The theme of the article ‘Brat Pack’ was that if your dad’s rich and connected, the law can go jump.

One significant feature of most of these cases is that during trial, crucial witnesses have turned hostile. In a bizarre incident, where quite a few people were killed as a result of a motor accident, the sole survivor turned hostile. In another case, where a lady was shot dead in a well-attended party, no one admitted to witnessing the incident; the only one who did is now believed to have shifted out of Delhi. Such instances have naturally caused considerable

¹ *State of Uttar Pradesh v. Shambhu Nath Singh*, (2001) 4 SCC 667.

² Sunday Express, 2nd November 2003.

concern to well-meaning citizens, who realize that a witness is the backbone of any successful case and the consequence of the backbone being broken. This has fostered a debate on the rights of victims of crime, justice and witness protection.

Last year, Mrs. Neelam Katara, the mother of a victim of a homicidal death filed a writ petition in the Delhi High Court seeking directions for witness protection.³ In October this year, the Delhi High Court issued certain guidelines called the “Witness Protection Guidelines”.⁴ The effort of the High Court is only a small step in the right direction. A much larger canvas needs to be painted to ensure that protection, in all possible ways, is given to crucial witnesses so that criminal offenders are successfully brought to book.

Witness protection in India

Generally speaking, witness protection would imply protection to a witness from physical harm, but so far, in the Indian context, it has had a somewhat restricted meaning. It has been understood to mean protection of witnesses from discomfort and inconvenience and, therefore, protection has had reference only to the provision of facilities. It is in this limited sense that ‘witness protection’ was considered in the 14th Report⁵ of the Law Commission, wherein a reference was made to inadequate arrangements for witnesses in the courthouse, the scales of traveling allowance and daily *batta* (allowance) paid to witnesses for attending the Court in response to summons. While this may seemingly be a minor issue, it assumes significance given the fact that a lack of any respect for the dignity of witnesses persuades them to adopt a couldn’t-care-less attitude over a period of time, leading to a decline in the conviction rate and denial of justice to the victims of crime.

Witness protection in its narrow interpretation, and its impact on judicial administration, was also dealt with in the Fourth Report of the National Police Commission.⁶ The Police Commission referred to the inconvenience and harassment caused to witnesses in attending Courts and reproduced a rather critical and trenchant letter it received from a senior District and Sessions Judge. The learned judge gave a litany of grievances and complaints that a witness may have and then said that:

³ *Mrs. Neelam Katara vs. Union of India & ors*, CrI. W. No. 247 of 2002 decided on 14th October 2003.

⁴ Appendix A to this document.

⁵ (1958). Reform of Judicial Administration, Volume II Chapter 36.

A prisoner suffers from some act or omission but a witness suffers for no fault of his own. All his troubles arise because he is unfortunate enough to be on the spot when the crime is being committed and at the same time “foolish” enough to remain there till the arrival of the police.

Another aspect adverted to by the Police Commission was the payment of daily allowances due to witnesses for appearance in Courts. The Commission noted that the monetary compensation was woefully inadequate and referred to a sample survey carried out in 18 Magistrate’s Courts in one State, which revealed that out of 96,815 witnesses who attended the Courts during the test period, only 6697 witnesses were paid some allowance, and that too after following a rather cumbersome procedure (which incidentally has hardly changed for the better anywhere). These figures signify the irrelevance of the amount paid to witnesses for their troubles. Apart from this point made by the Commission, these figures suggest the backbreaking burden on the Magistracy, in as much as each Magistrate was expected to examine, on an average, about 5400 witnesses! Unfortunately, the length of the test period has not been given and so it may be difficult to comment further on these figures; but, whatever the period, the situation could not at all have improved since then.

In its 154th Report,⁷ the Law Commission noticed the views expressed in its 14th Report, as also the views of the National Police Commission. The Law Commission admitted that there is “plenty of justification for the reluctance of witnesses to come forward to attend Courts promptly in obedience to the summons”. The plight of witnesses appearing on behalf of the State was found to be pitiable not only because of a lack of proper facilities and conveniences but also because witnesses have to incur the wrath of the accused, particularly hardened criminals, which results in their life being at great peril. The Law Commission recommended, *inter alia*,

- Realistic allowances should be paid to witnesses for their attendance in courts, and the procedure should be simplified.
- Adequate facilities should be provided to witnesses for their stay in Court. Witnesses must be given due respect and efforts should be made to remove all reasonable causes for their anguish.

⁶ June 1980. Chapter 28.

⁷ (1996). On the Code of Criminal Procedure, 1973. Chapter X - Protection and Facilities to Witnesses

- Witnesses should be protected from the wrath of the accused in any eventuality.
- Witnesses should be examined on the day that they are summoned and the examination should proceed on a day-to-day basis.

This is what the Law Commission had to say:

6. We recommend that the allowances payable to the witnesses for their attendance in courts should be fixed on a realistic basis and that payment should be effected through a simple procedure which would avoid delay and inconvenience. ... Adequate facilities should be provided in the court premises for their stay. The treatment afforded to them right from the stage of investigation upto the stage of conclusion of the trial should be in a fitting manner giving them due respect and removing all causes which contribute to any anguish on their part. Necessary confidence has to be created in the minds of the witnesses that they would be protected from the wrath of the accused in any eventuality.

7. Listing of the cases should be done in such a way that the witnesses who are summoned are examined on the day they are summoned and adjournments should be avoided meticulously. ... The courts also should proceed with trial on a day-to-day basis and the listing of the cases should be on those lines. The High Courts should issue necessary circulars to all the criminal courts giving guidelines for listing of cases.

The Law Commission did not suggest any measures for the physical protection of witnesses or even suggest how witnesses could be protected from “the wrath of the accused”.

In its 178th Report,⁸ the Law Commission again took up the issue of preventing witnesses from turning hostile. It considered three alternatives:

1. The insertion of sub-section (1A) in Section 164 of the Code of Criminal Procedure (as suggested in the 154th Report) so that the statements of material witnesses are recorded in the presence of Magistrates. [This would require the recruitment of a large number of Magistrates].
2. Introducing certain checks so that witnesses do not turn hostile, such as taking the signature of a witness on his police statement and sending it to an appropriate Magistrate and a senior police officer.

⁸ Recommendations for Amending Various Enactments, Both Civil and Criminal. Published in December 2001.

3. In all serious offences, punishable with 10 or more years of imprisonment, the statement of important witnesses should be recorded, at the earliest, by a Magistrate under Section 164 of the Code. For less serious offences, the second alternative (with some modifications) was found viable.

The Law Commission favorably considered the last two alternatives and recommended the insertion of Section 164A in the Code of Criminal Procedure. The amendment suggested by the Law Commission reads as follows:

164A (1) Any police officer making an investigation into any offence punishable with imprisonment for a period of ten years or more (with or without fine) including an offence which is punishable with death, shall in the course of such investigation, forward all persons whose evidence is essential for the just decision of the case, to the nearest Magistrate for recording their statement.

(2) The Magistrate shall record the statements of such persons forwarded to him under sub-section (1) on oath and shall keep such statements with him awaiting further police report under section 173.

(3) Copies of such statements shall be furnished to the investigating officer.

(4) If the Magistrate recording the statement is not empowered to take cognizance of such offence, he shall send the statements so recorded to the magistrate empowered to take cognizance of the case.

(5) The statement of any person duly recorded as a witness under sub-section (1) may, if such witness is produced and examined, in the discretion of the court and subject to the provisions of the Indian Evidence Act, 1872, be treated as evidence.

Apparently, neither any State Government nor the Central Government has accepted (or at least implemented) any of the above Reports of the Law Commission. This appears to be so because recently, the Committee on Reforms of Criminal Justice System under the chairmanship of Dr. Justice V.S. Malimath, submitted its rather voluminous Report, containing as many as 158 recommendations. Many of these recommendations reiterate the earlier recommendations of the Law Commission and the National Police Commission. In this regard, it is necessary to quote the views of the Justice Malimath Committee only because it is the most recent addition to the subject of witness protection. On page 251 of the Report, it has been stated:

Unfortunately the witnesses are treated very shabbily by the system. There are no facilities for the witnesses when they come to the court and have to wait for long periods, often their cross-examination is unreasonable and occasionally

rude. They are not given their TA/DA promptly. The witnesses are not treated with due courtesy and consideration; nor are they protected. Witnesses are required to come to the court unnecessarily and repeatedly as a large number of cases are posted and adjourned on frivolous grounds. To overcome these problems, the Committee has made the following recommendations:

- (79) (a) *Witness who comes to assist the court should be treated with dignity and shown due courtesy. An official should be assigned to provide assistance to him.*
- (b) *Separate place should be provided with proper facilities such as seating, resting, toilet, drinking water etc. for the convenience of the witnesses in the court premises.*
- (80) *Rates of traveling and other allowance to the witness should be reviewed so as to compensate him for the expenses that he incurs. Proper arrangements should be made for payment of the allowances due to the witness on the same day when the case is adjourned without examining the witness he should be paid T.A. and D.A. the same day.*

These recommendations were made even in the 14th Report of the Law Commission about four decades ago, and yet there is little to show by way of any improvement in the quality of facilities available to a witness.

As regards physical protection to a witness, the Justice Malimath Committee makes only a single line recommendation and it is to the effect that a law should be enacted for giving protection to witnesses and their family members on the lines of laws in USA and other countries. That a recommendation of this importance should have been made so casually is a little surprising, more so because the Committee noted in the brief summary of the main recommendations that “the rate of conviction of cases under the IPC during the year 2000 is 41.8%. The rate of conviction on serious crimes is much lower. The rate of conviction in countries like USA, UK, Australia, Singapore, France, Germany, Japan is more than 90%.” It may be mentioned that from the statistics available with the National Crime Records Bureau, the conviction rate in 1999 was 39.6% generally and in respect of special laws, it was 56.6%. Surely, such a poor conviction rate requires that the issue needs to be discussed more pragmatically, thoroughly and critically.

The only real attempt with regard to witness protection (in the physical sense) is to be found in the provisions of Section 16 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 and its avatar, Section 30 of the Prevention of Terrorism Act, 2002. By virtue of these

provisions, if a Special Court, on an application made by a witness (or on its own motion) is satisfied that the life of a witness is in danger, it may take measures to keep his identity and address a secret. If it feels necessary, a Special Court may also avoid the mention of names and addresses of witnesses in its order or judgment or in any record of the case accessible to the public.

A few cases

How has the Supreme Court dealt with the issue of witness protection?

A rather interesting aspect of witness protection came up for consideration before the Supreme Court in somewhat unusual circumstances in a defamation case. In *Naresh Shridhar Mirajkar v. State of Maharashtra*,⁹ a witness for the defence repudiated in the witness box all statements earlier made by him. With the permission of the High Court, he was cross-examined by the defence, but he maintained his stance. Later the defence came to know of some other proceedings where the witness had substantially stated what was alleged by the defence. Accordingly, the defence recalled him to the witness box. At that stage, the witness sought protection of the High Court against the publication of his evidence because, he said, the publication of his earlier evidence had caused him business losses. Protection against publication of his evidence was given by the High Court and affirmed by the Supreme Court because it was “thought to be necessary in order to obtain true evidence in the case with a view to do justice between the parties.” This may well be the only case in which the business interests of a witness were sought to be protected rather than the witness himself. It is a novel and unexplored dimension to witness protection.

Fear engendered in witnesses has been the subject of discussion in the Supreme Court. Under the City of Bombay Police Act, 1902 and now the Bombay Police Act, 1951, an externment could be passed. One of the statutory factors required to be taken into consideration for externing a person is that “witnesses are not willing to come forward and give evidence in public against such person by reason of apprehension on their part as regards the safety of their person or property.”¹⁰ The Supreme Court has upheld the power of externment and

⁹ (1966) 3 SCR 744=AIR 1967 SC 1

¹⁰ Section 27 of the 1902 Act and Section 56 of the 1951 Act.

repelled a challenge to its constitutionality.¹¹ It was said that:

There can be no doubt that the provision of S. 27(1) of the Bombay Act [conferring on the Commissioner of Police the power to extern] was made in the interest of the general public and to protect them against dangerous and bad characters whose presence in a particular locality may jeopardize the peace and safety of the citizens.

The Supreme Court did not, as indeed it was not required to, consider the possibility of protection to the witnesses to secure a conviction, as an alternative to passing an externment order against a bad character.

Gurbachan Singh was relied on by the Supreme Court for upholding the constitutionality of the provisions of Section 16 of the Terrorists and Disruptive Activities (Prevention) Act, 1987 in *Kartar Singh vs. State of Punjab*¹² and to keep the identity and address of a witness a secret. The Supreme Court, however, put in a caveat that the power should be exercised by the Court only for weighty reasons, especially when the life of a potential witness may be in danger.

In *Hira Nath Mishra v. Principal, Rajendra Medical College*¹³ the Supreme Court considered the validity of an internal inquiry in a college where some male students behaved indecently in the presence of some female students. In the internal inquiry, the statements of the female students were recorded and they were asked to identify the male students from some photographs. The male students were not allowed to cross-examine the female students. The Supreme Court did not find the procedure adopted as being violative of the principles of natural justice, *inter alia*, because

We know of statutes in India like the Goonda Acts which permit evidence being collected behind the back of the goonda and the goonda being merely asked to represent against the main charges arising out of the evidence collected. Care is taken to see that the witnesses who gave statements would not be identified. In such cases there is no question of the witnesses being called and the goonda being given an opportunity to cross-examine the witnesses. The reason is obvious. No witness will come forward to give evidence in the presence of the goonda. However unsavoury the procedure may appear to a judicial mind, these are facts of life which are to be faced. The girls who were molested that night

¹¹ *Gurbachan Singh v. State of Bombay*, AIR 1952 SC 221.

¹² (1994) 3 SCC 569.

¹³ (1973) 1 SCC 805.

would not have come forward to give evidence in any regular enquiry and if a strict enquiry like the one conducted in a court of law were to be imposed in such matters, the girls would have had to go under the constant fear of molestation by the male students who were capable of such indecencies.

Implementation and the future

The question that one has to ask is: do these various reports, isolated statutory provisions and sporadic cases provide sufficient workable measures for witness protection, or is a comprehensive scheme required, as postulated by the Delhi High Court?

A cursory analysis of what has so far been achieved would indicate that even in routine cases witnesses are not being treated with the minimum courtesy and dignity that is expected [narrow interpretation] and it is only in serious cases such as those under the Prevention of Terrorism Act that protection of some sort can be provided to witnesses [physical protection]. However, what is of significance is that cases referred to in the *Sunday Express* are not cases involving dangerous or hardened criminals but are more or less run of the mill IPC cases involving persons that one might meet anywhere, except that the accused are influential. Therein lies the problem for the Indian jurist and the administration of criminal justice.

Physical protection of a witness has become necessary not only in cases involving serious offences, hardened criminals and other bad characters, but also in less serious cases and cases where the accused are socially acceptable persons wielding influence. Neither the Law Commission nor the Justice Malimath Committee have considered or thought it appropriate to even suggest protection to witnesses in cases of the latter kind or cases not involving goondas or terrorists.

International perspective

How has the international community dealt with this question?

In the United States, the Organized Crime Control Act, 1970 and later the Comprehensive Crime Control Act, 1984 authorized the Witness Security Program. The Witness Security Reform Act, 1984¹⁴ provides for relocation and other protection of a witness or a potential witness in an official proceeding concerning an organized criminal activity or other serious

offence. Protection may also be provided to the immediate family of, or a person closely associated with, such witness or potential witness if the family or person may also be endangered on account of the participation of the witness in the judicial proceeding.

The Attorney General takes the final decision whether a person is qualified for protection from bodily injury and otherwise to assure the health, safety and welfare of that person. In a large number of cases, witnesses have been protected, relocated and sometimes even given new identities. The Program assists in providing housing, medical care, job training and assistance in obtaining employment and subsistence funding until the witness becomes self-sufficient. The Attorney General shall not provide protection to any person if the risk of danger to the public, including the potential harm to innocent victims, outweighs the need for that person's testimony.

The Marshals Service, which is a division of the Department of Justice, gives protection to government witnesses and their immediate dependants against drug traffickers, terrorists, organized crime members and other major criminals. The claim of the Marshals Service is that about 7000 witnesses have so far been successfully protected and since the inception of the Program, the conviction rate has gone up to 89% due to the testimony of protected witnesses.

A similar program is in operation in Canada under the Witness Protection Act, 1996. The purpose of the Act is "to promote law enforcement by facilitating the protection of persons who are involved directly or indirectly in providing assistance in law enforcement matters" [Section 3]. Protection given to a witness may include relocation, accommodation and change of identity as well as counseling and financial support to ensure the security of the protectee or to facilitate his becoming self-sufficient. Admission to the Program is determined by the Commissioner of Police on a recommendation by a law enforcement agency or an international criminal court or tribunal [Sections 5 and 6]. Among the factors to be considered in determining whether a witness should be admitted to the Program [Section 7] are:

¹⁴ U.S. Code Collection, Title 18 Part II Chapter 224 Section 3521.

- The nature of the risk to the security of the witness.
- The nature of the inquiry, investigation or prosecution involving the witness and the importance of the witness in the matter.
- The value of the information or evidence given or agreed to be given or of the participation by the witness.
- The cost of maintaining the witness in the Program, and
- Alternate methods of protecting the witness without admitting him to the Program.

Considering the factors mentioned above, it is quite obvious that protection to a witness is a serious matter and is not to be given in routine or in relatively unimportant cases.

The Australian Witness Protection Act, 1994 establishes the National Witness Protection Program in which (amongst others) the Commissioner of the Australian Federal Police arranges or provides protection and other assistance for witnesses [Section 4]. The witness must disclose a wealth of information about himself before he is included in the Program. This includes his outstanding legal obligations, details of his criminal history, details of his financial liabilities and assets etc. etc. [Section 7]. The Commissioner has the sole responsibility of deciding whether to include a witness in the Program, and in deciding whether to so include a person, the Commissioner shall [Section 8] have regard, *inter alia*, to:

- Whether the witness has a criminal record, particularly in respect of crimes of violence, and whether that record indicates a risk to the public if the witness is included in the Program.
- The seriousness of the offence to which any relevant evidence or statement relates.
- Whether there are any viable alternative methods of protecting the witness.
- The nature of the perceived danger to the witness.

The Witness Protection Act, 1998 of South Africa provides for the establishment of an office called the Office for Witness Protection within the Department of Justice. The Director of this office is responsible for the protection of witnesses and related persons and exercises control over Witness Protection Officers and Security Officers [Section 4]. Any witness who has reason to believe that his safety is threatened by any person or group or class of persons

may report such belief to the Investigating Officer in a proceeding or any person in-charge of a police station or the Public Prosecutor etc. [Section 7] and apply for being placed under protection. The application is then considered by a Witness Protection Officer who prepares a report, which is then submitted to the Director [Section 9]. The Director, having due regard to the report and the recommendation of the Witness Protection Officer, takes into account the following factors, *inter alia*, [Section 10] for deciding whether a person should be placed under protection or not:

- The nature and extent of the risk to the safety of the witness or related person.
- The nature of the proceedings in which the witness has given evidence or may be required to give evidence.
- The importance, relevance and nature of the evidence.
- The probability that the witness or any related person will be able to adjust to protection.
- The cost likely to be involved in the protection of the witness.
- The availability of any other means of protecting the witness or any other related person.

Closer to home, The Witness Protection, Security and Benefit Act of the Philippines is intended to “encourage a person who has witnessed or has knowledge of the commission of a crime to testify before a court or quasi-judicial body, or before an investigating authority, by protecting him from reprisals and from economic dislocation.” Admission to the Program is given to a witness [Section 3] where the offence in which his testimony will be used is a grave felony, his testimony can be corroborated on material points and he or any member of his family “within the second degree of consanguinity or affinity is subjected to threats to his life or bodily injury or there is a likelihood that he will be killed, forced, intimidated, harassed or corrupted to prevent him from testifying, or to testify falsely, or evasively, because or on account of his testimony.”

A witness admitted to the Program is entitled to certain rights and benefits [Section 8]. These include a secure housing facility until he has testified or until the threat, intimidation or harassment disappears or is reduced to a manageable or tolerable level. The Department of

Justice shall, wherever practicable, assist the witness in obtaining a means of livelihood and if the witness is relocated, he shall be entitled to financial support for himself and his family. The witness will be provided free medical treatment, hospitalization and medicines for any injury or illness incurred or suffered by him because of witness duty in any private or public hospital, clinic or at any institution at the expense of the Program.

In the Fifty-fifth session of the General Assembly of the United Nations, a resolution (No.55/25) was adopted relating to the Convention against Transnational Organized Crime. The thrust of the Convention is on serious crimes (constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty) in order to obtain, directly or indirectly, a financial or other material benefit. The application of the Convention is to serious crimes as mentioned above and to offences mentioned in Articles 5,6,8 and 23 of the Convention. Article 5 basically concerns itself with criminal activity of an organized criminal group, which means a structured group of three or more persons. Article 6 relates to the criminalization of the laundering of proceeds of crime, while Article 8 relates to the criminalization of corruption.

Article 23 of the Convention is of some importance and it deals with criminalization of obstruction of justice. Each State Party to the Convention shall adopt legislative measures to make it a criminal offence, *inter alia*, to use physical force, threats or intimidation or to otherwise interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences covered by the Convention. Article 24 relates to the protection of witnesses and this reads as follows:

Protection of witnesses

1. *Each State Party shall take appropriate measures within its means to provide effective protection from potential retaliation or intimidation for witnesses in criminal proceedings who give testimony concerning offences covered by this Convention and, as appropriate, for their relatives and other persons close to them.*

2. *The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:*

(a) *Establishing procedures for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them and permitting, where appropriate, non-disclosure or limitations on the disclosure of*

information concerning the identity and whereabouts of such persons;

(b) Providing evidentiary rules to permit witness testimony to be given in a manner that ensures the safety of the witness, such as permitting testimony to be given through the use of communications technology such as video links or other adequate means.

3. States Parties shall consider entering into agreements or arrangements with other States for the relocation of persons referred to in paragraph 1 of this article.

4. The provisions of this article shall also apply to victims insofar as they are witnesses.

The Convention reinforces three significant advances in the matter of witness protection: firstly, enlarging the definition of a witness to include his or her relatives and other persons close to him or her; secondly, acceptance of the use of modern technology such as video linkages to record the testimony of a witness¹⁵ and finally, victims of a crime are also entitled to protection if they are witnesses.

Where do we go from here?

In the case of *Mrs. Neelam Katara*, the facts suggest that her son had gone to attend the marriage of his friend and was thereafter killed. One of the suspects in the homicidal death is the son of a sitting Member of Parliament. Apparently, fearing that the investigation may not be free or fair and the subsequent trial may also be affected, Mrs. Katara filed a writ petition praying, *inter alia*, for the issuance of directions for protection of witnesses.

The Government of India filed its response by way of an affidavit¹⁶ in which it stated that:

1. An inadequate and non-realistic allowance is paid to witnesses to compensate for the loss of earning and pocket expenses.
2. Witnesses in important cases are under constant fear of criminals.
3. There is an urgent need to provide adequate protection to a witness from harassment and intimidation of criminals, and
4. Government feels that framing of a scheme for protection of witnesses is of prime importance in the administration of justice.

The Delhi High Court has laid a foundation, based on certain hard facts pertaining to the

¹⁵ Recently endorsed by the Supreme Court in *State of Maharashtra v. Praful B. Desai*, (2003) 4 SCC. 601.

justice delivery system, some of which are acknowledged by the government. The foundation needs to be strengthened and a superstructure has now to be constructed, within the resources available with the State. The State must also appreciate the wasteful expenditure incurred and the futility of criminal prosecutions, which end up with an acquittal merely because the truth does not come forth because of the apprehensions of a material witness. Innovative strategies have to be adopted and developed so that justice is not only done to society and the victims of a crime but it also appears to have been done.

¹⁶ Affidavit dated 25th February 2003 of *Venu Gopal v. Director (Judicial)* in the Ministry of Home Affairs.

Appendix A**WITNESS PROTECTION GUIDELINES**

“Witness” means a person whose statement has been recorded by the Investigating Officer under Section 161 Cr. P. C. pertaining to a crime punishable with death or life imprisonment.

“Accused” means a person charged with or suspected with the commission of a crime punishable with death or life imprisonment.

“Competent Authority” means the Member Secretary, Delhi Legal Services Authority.

Admission to protection:

The Competent Authority, on receipt of a request from a witness shall determine whether the witness requires police protection, to what extent and for what duration.

Factors to be considered:

In determining whether or not a witness should be provided police protection, the Competent Authority shall take into account the following factors:

- i) The nature of the risk to the security of the witness which may emanate from the accused or his associates.
- ii) The nature of the investigation or the criminal case.
- iii) The importance of the witness in the matter and the value of the information or evidence given or agreed to be given by the witness.
- iv) The cost of providing police protection to the witness.

Obligation of the police:

- i) While recording statement of the witness under Section 161 Cr. P. C., it will be the duty of the Investigating Officer to make the witness aware of the “Witness Protection Guidelines” and also the fact that in case of any threat he can approach the Competent Authority. This, the Investigating Officer will inform in writing duly acknowledged by the witness.

It shall be the duty of the Commissioner of Police to provide security to a witness in respect of whom an order has been passed by the Competent Authority directing police protection.