



# INTERNATIONAL JOURNAL OF CREATIVE RESEARCH THOUGHTS (IJCRT)

An International Open Access, Peer-reviewed, Refereed Journal

## WITNESS PROTECTION IN INDIA, THE USA AND CHINA: A COMPARATIVE STUDY

1Shruti Sharma, 2D. Rupa

1Student, 2Student

1Symbiosis Law School, Nagpur ,

2Symbiosis Law School, Nagpur

### ABSTRACT

Witness plays a crucial role in any criminal justice system in aiding to attain the justice. The testimony given by a witness is very important. Hence the protection of witness is to be considered with utmost importance. The foundation of justice system will fall if the witnesses are intimidated, threatened to give their testimony and provide evidence in court of law. This paper deals with witness protection framework in India, the USA and China. Later a comparison has been drawn to understand about the best practices and provisions in the laws. In the end a conclusion has been drawn to understand the position of India in comparison with the USA and China.

[Keywords: Witness Protection, Witness Protection Scheme 2018, Witness Security Program of USA, US Marshal, Witness Protection Ordinance 2000.]

### I. INTRODUCTION

*“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”*

-Whittaker Chambers

The Criminal justice system is an integral part of society and is always duty bounded for maintaining law and order, peace and harmony, enforcing the law and ensuring that justice is being served without any compromise. In the criminal justice system, legal proceedings take place which are also known as criminal trials to determine the guilt or innocence of the person who is accused of committing an offence. Criminal trials are important for enforcing the rules of justice, by ensuring that people have a fair chance to disprove accusations and deciding guilt

or innocence based on the evidence provided with the court of law. Witness protection has utmost significance in the realm of criminal trials.

The criminal justice system's basic element, evidence plays an important role in the investigation and the decision-making process for criminal cases. Evidence provides the factual ground for the prosecution's case when a crime is said to have happened. Without proof, the legal system shall have been forced to make decisions based on the hypothesis and doubt, which would make the process of determining guilt or innocence nothing but impossible. It enables both the defence and the prosecution side to present their claims, refute one another's testimony, and provide a convincing defence/ prosecution. This adversarial procedure helps to protect the rights of an accused and shall ensure that the result of trial shall be drawn from careful analysis of the accessible evidence. The truth is determined with greater trustworthiness owing to the careful assessment of the evidence. This includes cross-examination, examination, and expert analysis. Also, the evidence before the court of law can be presented in a material or oral form. Oral evidence is usually a form of statement given by the witnesses. According to Justice Wadhwa<sup>1</sup>: *"A criminal case is built on the edifice of evidence, evidence that is admissible in law. For that, witnesses are required whether it is direct evidence or circumstantial evidence."*

The testimony of witnesses plays a crucial role in conserving the rights of the accused. People who have direct knowledge of criminal offences are known as witnesses, and their testimony is extremely valuable. Their main responsibility is to testify in court and offer information that sheds light upon what they allegedly saw, heard, or experienced during the suspected criminal act. The factual narrative of a case is essential for the legal process, and witnesses are essential in establishing it in their testimony. The pursuit of justice is severely hampered by threats that are being made against witnesses in the criminal court system. The use of physical threats is one of the most alarming types of intimidation. Witnesses may experience immediate physical harm or the terrible possibility of violence being aimed at them or the people they care about. Such warning creates an atmosphere of fear and insecurity that makes witnesses stay away from providing accurate testimony and assisting in law enforcement. To intimidate witnesses, perpetrators usually use verbal abuse, harassment, and bullying techniques. This constant blast of verbal abuse can lead to serious psychological discomfort, which further demotivates people from disclosing crucial information. Additionally, witnesses may be subjected to demands intended to tamper with the evidence or change their testimony. By undermining their credibility and unambiguous this damages the motto of a fair and just legal system. Various Indian courts have observed that free trial is essential for a legal system in any country. *"If the witnesses get threatened or are forced to give false evidence that also would not result in fair trial."*<sup>2</sup>In addition to physical harm, witness intimidation frequently results in severe psychological and emotional suffering. Because of these potential long-term effects that witnesses face because of the threats, the criminal

<sup>1</sup> Swaran Singh v. State of Punjab, (2000) 5 SCC 68.

<sup>2</sup> Zahira Habibulla H. Shiekh and Another v. State of Gujarat 2004 (4) SCC 158

justice system must provide and place strong immunity for those who bravely step forward with reliable piece of information that is essential for pursuing justice.

The criminal justice system differs from one nation to the other and even between states or areas of the same nation. Its efficiency and fairness are divisively debated, and various advancements are being made to the system to affirm that justice is done while upholding individual rights. In India, there is a lack of robust legislation for the protection of witnesses. However, on the other hand, the USA and China also have their legislations to protect their witnesses. An extensive comparison of the same keeping India as the base is the objective of this research paper.

## II. WITNESS PROTECTION IN INDIA

In India the criminal system evolves around determining whether a person is guilty or not, the quantum of punishment which has to be granted and the manner of rehabilitation of the convicted person. In this criminal justice system, the testimony of a witness is given greater evidentiary value. The conviction of an accused can be based on the testimony of a single witness if he is completely reliable.<sup>3</sup> Hence, the role played by the witness is crucial in Indian legal system. Hence, the role depicted by a witness is crucial in the Indian legal system. The legislations of India including the “*Indian Penal Code 1860(IPC)*”, “*Code of Criminal Procedure, 1973 (CrPC)*” or “*Indian Evidence Act, 1872*” do not expressly provide for the definition of the term ‘Witness’. As per the Witness Protection Scheme 2018, “*any person, who possesses information or document about any offence*”<sup>4</sup> is defined as a ‘Witness’.

“*The Witness Protection Scheme 2018*” is India’s very first attempt to provide a framework for the protection of witnesses. The first reference to witness protection was made in the 14th Report of the Law Commission of India of 1958. Then again in its 154th (1996), 172nd (2000), and 178th (2006) reports depicted the need for protection of witness programmes, witness identity protection, and protection of child witnesses and victims. In 2006, the 198th report titled ‘Witness Identity Protection and Witness Protection Programmers’ came up with a bill namely “*Witness (Identity) Protection Bill, 2006*”, however, it was never enacted. Further, in 2003, the Malimath Committee report recommended that identity of a witness shall be maintained anonymous in high-risk cases. Despite these recommendations, India is still lagging in framing comprehensive legislation on witness protection. Again, efforts were taken in 2015 to introduce the Witness Protection Bill in Parliament this was prepared based on the 198th Report of the Law Commission but no consensus was formed therefore the same could not be brought into force.<sup>5</sup> In 2018, the Ministry of Home Affairs prepared a ‘Witness Protection Scheme’ which has been enacted

<sup>3</sup> Ramesh Krishna Madhusudan Nayar Vs State of Maharashtra, AIR 2008 SC 927.

<sup>4</sup> Section 2(k) of the Witness Protection Scheme, 2018.

<sup>5</sup> GK TODAY, [https://www.gktoday.in/witness-protection-law-in-india-issues-and-current-status/#Witness\\_Protection\\_Bill\\_2015](https://www.gktoday.in/witness-protection-law-in-india-issues-and-current-status/#Witness_Protection_Bill_2015), last visited Sep. 14, 2023.

under Article 141 or 142 of the Indian Constitution till the proper legislation in this regard is made. However, apart from his Scheme, various criminal legislations of the country provide witness protection.

## **A. STATUTORY PROTECTION**

### **I. Indian Penal Code 1860 (IPC)**

According to Section 195 A, any person who threatens another person to provide false evidence will be awarded with imprisonment of seven years or with a fine or both. The threatening covers injury to the person, reputation or property or to any other person in which the person is interested. Hence, criminal intimidation of witnesses has been made a punishable offence.

### **II. Code of Criminal Procedure, 1973 (CrPC)**

As per the proviso of Section 160 (1) of the Code during the process of investigation, any male under the age of fifteen years or above, age of sixty years or a woman or any person who is mentally or physically disabled is not mandatory to appear for their attendance other than their residence. This provision is for the protection of vulnerable witnesses so that they don't have to make an appearance at the police station. The proviso of Section 161 (3) provides that for the examination of a witness, a video-audio electronic means can be used to record the statements of the witness, although the same is not a mandatory requirement and depends on the discretion of the police.<sup>6</sup> If this proviso is made mandatory the witness can depose their statements without any fear or intimidation from authorities and they will be providing honest statements. Section 171 states that witnesses are not required to accompany police officers on the way to court. This takes away unnecessary restraint on the witnesses. This section will ensure that the witness remains unbiased and gives independent evidence in court. Section 195A of the Code grants the right to witness or any other person to file a complaint against criminal intimidation given under section 195A of IPC. The police can't take the cognizance of an offence under section 195A of IPC and if taken it is bad in law.<sup>7</sup> The criminal court can order the government to pay reasonable expenses incurred to witness to attend the court as per Section 312 of the code.

### **III. Evidence Act, 1872**

Section 132 of the Act provides that the witness can't be excused from answering any question related to the matter in issue on the ground that it might criminate him. A defense to the witness has been provided against any arrest and prosecution relating to any answer he is compelled to deliver in court however the same will not apply in case he is prosecuted for giving false evidence. It is the court's discretion to decide whether a witness may be forced to answer a particular question or not. Also, warn the witness that he/she is not obligated to answer the same. The

---

<sup>6</sup> Shalini Prem, Witness Protection Mechanisms in the Indian Criminal Justice System SACJ (2021).

<sup>7</sup> Suni @ Sunil v. State of Kerala in Bail Appl. No. 556 of 2023 and Crime No.1062/2022 of Koratty Police Station, Thrissur

court can forbid any questions which are regarded as indecent and scandalous except when such question is necessary to determine the facts in issue as provided by Section 151. Similarly, according to Section 152, courts can forbid questions which may intend to insult, annoy or be offensive in the court.

Apart from the above legislations, there are various other special legislations which provide for witness protection such as Section 74 of the “*Juvenile Justice (Care and Protection of Children) Act, 2015*” protects a child witness of a crime from getting his identity disclosed by anyone including his name, address. The picture of the child also cannot be released. The “*Prevention of Terrorism Act, 2002*” affords the witness deposing before the court against the heinous crime like terrorism protection along with preservation of their anonymity.<sup>8</sup>

## **B. WITNESS PROTECTION SCHEME 2018**

On 5th December 2018, the Supreme Court during the pendency of the matter namely” *Mahendra Chawla and others vs Union of India and Others (2019) 14 SCC 615*” filed under Article 32 of the Constitution finalized the Witness Protection Scheme, 2018. The Court directed that this Scheme would be in force under Articles 141 and 142 of the Constitution until the Parliament comes up with legislation. The intent behind the scheme is to ensure that the investigation, prosecution and trial of offences are not hampered as witnesses who are providing the evidence are frightened or intimidated without any protection from criminal intimidation. Through this Scheme, a series of safeguards are adopted against intimidation and constant threats that the witness might feel for themselves, their families, reputation and property. The features of the Scheme are as follows:

(i) Categories of Witness<sup>9</sup>

The categories of witness have been divided into Category A, Category B and Category C which is based on the perception of threat level. All the categories involve threats which might be faced during the stage of investigation, trial or even after the trial. Category A is when the threat level extends to the witness’s life and his family members. Category B is when a threat is to the safety, reputation or the witness’s property or his family member. Lastly, Category C is in case the threat is moderate and might extend to harassment or criminal intimidation to the witness or his family member, reputation or property.

(ii) Setting Up of Witness Protection Fund<sup>10</sup>

A fund to be named ‘Witness Protection Fund’ has been set up which is responsible for any expenses which might be incurred for executing the witness protection order given by Competent Authority and

<sup>8</sup> Sweta Sagar, *Statutory Witness Protection in India: A Cardinal Urgency*, Volume 1, IJLMH (2018).

<sup>9</sup> Clause 3 of the Witness Protection Scheme, 2018.

<sup>10</sup> Clause 4 of the Witness Protection Scheme, 2018.

other supplementary expenses. This fund is operated by the Ministry of Home Affairs under the Government of State/UT.

(iii) Application for seeking protection<sup>11</sup>

A person can seek protection under this Scheme by way of applying to the Competent Authority of the respective District where the offence was taken place. Additional documents if needed have to be attached along with the application.

(iv) Procedure for processing of application<sup>12</sup>

The application is to be taken into notice by the Member of the Secretary of the Competent Authority on the basis that a Threat Analysis Report is made by the ACP/DSP in charge of the concerned Police Station. The order for interim protection of the witness or his family members will be passed during the pendency of the application based on the importance of the situation due to the imminent danger. While preparing the report the confidentiality of the matter will be maintained. Within five days from date of receipt of the order, the report needs to be submitted to the Competent Authority. The report shall include the threat level along with measures to curb such threats. Any communication while the processing of the application by the Competent Authority with the person has to be in person or through electronic medium. This is to ensure the protection needs of the witness. To maintain the confidentiality of the applicant, all the hearings are to be conducted via in-camera. The period within which the application has to be disposed of after receiving the receipt of the Threat Analysis Report with police is five days. A follow-up report has to be submitted by the Witness Protection Cell monthly after such order is passed.

(v) Types of measures which can be taken<sup>13</sup>

Measures which are to be taken have to be in proportion to the treatment and will be applicable for not more than three months at a time. The measures shall include mail, phone calls monitoring; change of witness contact details or assigning him/her with unlisted number; installation of security devices, for instance, CCTV, safety door etc. in the witness's house; concealing identity of witness with the changed name; regular patrolling and close protection around the house of witness; temporary changing the residence; arranging for escort service in government vehicle or any state-funded vehicle to and from

<sup>11</sup>Clause 5 of the Witness Protection Scheme, 2018.

<sup>12</sup>Clause 6 of the Witness Protection Scheme, 2018.

<sup>13</sup>Clause 7 of the Witness Protection Scheme, 2018.

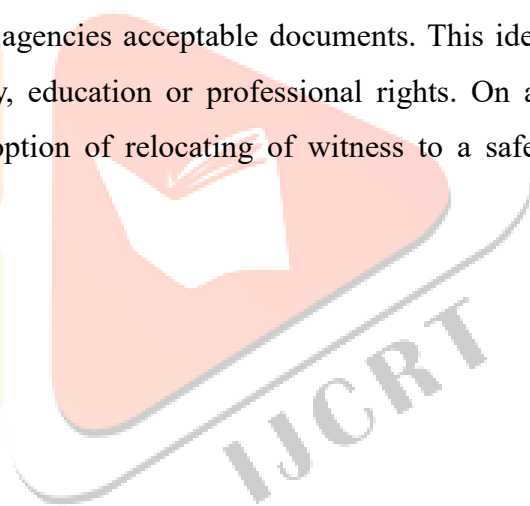
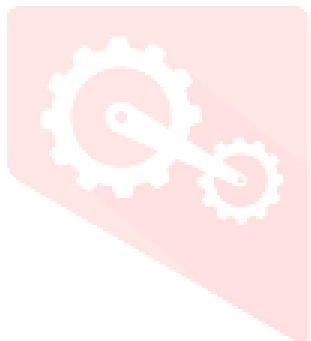
the court for hearing; provisions of in-camera trial; providing aid from Witness Protection Fund for relocating witness, starting a new profession and any such necessary purpose and any other form of protection which might be necessary.

(vi) Special Provision for protection of identity<sup>14</sup>

An application can also be made for the protection of the identity of Competent Authority through its Member Secretary during the investigation or trial. If the Competent Court is satisfied that protection of identity is needed it shall pass an order accordingly or may refuse the same. The details of the witness such as his name, occupation, address, and digital footprints will not be revealed and remain protected.

(vii) Request for change in identity and Relocation<sup>15</sup>

On a request, the Competent Authority can order a change in the identity of a witness. The witness will get a new name, profession, and government agencies acceptable documents. This identity will not deprive the witness of their existing property, education or professional rights. On a request, the Competent Authority can also consider the option of relocating of witness to a safer place. This relocation can be within the State/UT of India.



<sup>14</sup>Clause 9 of the Witness Protection Scheme, 2018.

<sup>15</sup>Clause 10 and 11 of the Witness Protection Scheme, 2018.

### III. LEGAL FRAMEWORK OF WITNESS PROTECTION IN USA AND CHINA

#### A. UNITED STATES OF AMERICA

The concept of protection of witness gained its importance during the 1970s in the USA when the first member of the mafia *Joseph Valachi* testified before a US congressional committee. His testimony exposed the mafia's workings. A bounty was alleged to have been placed on his head for his act. He was given protection by a US marshal. He remained in protective custody.<sup>16</sup> This provided realization for the US Department of Justice to convince them that a programme for the protection of witnesses needs to be put in place. In furtherance to this need, a fifth title was added under the Organized Crime Control Act, of 1970. According to the new title the Attorney General was authorized to protect government witnesses and their family members in cases involving well-organized crimes. *The Witness Security Program* of the United States (WITSEC) was brought under an authority of the Attorney General. The programme intended to provide protection and security through relocation.<sup>17</sup> There were several shortcomings under the Program due in 1984, the Witness Security Reform Act was enacted. This Act extended the authority of the Attorney General to protect in case the witness is providing against someone involved in organized crime or other serious offence provided under *Title 18, United States Code, Chapter 73 (obstruction of justice)* or any other local offence relating to violence is directed in the direction of witness might occur.

#### US CODE, TITLE 18

“*United States Code, Title 18: Crimes and Criminal Procedure*”, in part II – Criminal Procedure provides various other provisions under which the witness is to be protected. This Title is divided into other five parts and covers provisions related to “crime, criminal procedure, jails and prisoners, correcting the youthful offenders and witness’s immunity.” Any person who attempts to use physical force or threat against another person to prevent him/her to give testimony shall be punished with imprisonment for 30 years if offence of attempt to murder or attempt to use physical force has been committed.<sup>18</sup> § 3521 states that Attorney General can provide for relocation and protection to witness of Federal or State Government. Attorney General will pass the guidelines about the type of matters for which protection and relocation can be considered.<sup>19</sup> A civil liability has been cast on the United States officers and employees who fail to provide such protection on account of the decision by the Attorney General.<sup>20</sup> Actions concerning the protection from bodily injury, and to ensure health, safety and welfare including psychological well-being and social adjustment will all be determined by the Attorney General himself.<sup>21</sup> Such

<sup>16</sup>United Nations Office on Drugs and Crime Vienna, *Good practices for the protection of witnesses in criminal proceedings involving organized crime*, Pg. 7, 2008.

<sup>17</sup> U.S. Department of Justice, *United States Attorneys’ Manual* 9-21.020 (1997).

<sup>18</sup>18 U.S.C. § 1512-Tampering with a witness, victim, or informant.

<sup>19</sup> 18 U.S.C. § 3521 (a)(2).

<sup>20</sup>18 U.S.C. § 3521 (a)(3).

<sup>21</sup>18 U.S.C. § 3521 (b)(1).



protection can be granted till the time the Attorney General (AG) is convinced that danger to the witness persists. By way of a regulation, witness can be provided with documents which can create a new identity; a house for witness for residence; providing for the transportation of furniture and, the payment to make out basic living expenses, providing assistance in getting employment and other services which might be necessary to make the witness self-sufficient, protect the confidentiality and location, relieve the witness from procuring the supplies, services and material to maintain the security of witness. A fine of \$5,000 or five years imprisonment or both may be imposed on any person who knowingly discloses any information received from Attorney General without his/her permission.<sup>22</sup> Before granting the protection, Attorney General has to perform a written assessment. During the assessment of the person's past criminal records, any alternatives available for providing protection, securing similar testimony from some other source, results of psychological examination and other factors are to be considered by the Attorney General. Before granting protection witness needs to sign a memorandum of understanding. Which is between the witness and the Attorney General which will set the responsibilities of the witness including (a) not committing any crime; (b) taking necessary steps to not get detected by others; (c) to comply with legal obligations and judgments against a person; (d) to cooperate with the officers and employee of government providing protection; (e) to disclose any responsibility of parole or probation.<sup>23</sup> The power to delegate the responsibility of the Attorney General has been given to various persons including the Associate Attorney General, Deputy Attorney General and other officers or employees of the Department of Justice.<sup>24</sup> The AG has the power to terminate the protection if the witness breaches the terms of the memorandum of understanding or delivers false information for the same. A notice of such termination is to be sent to the witness. The decision of the Attorney General shall be binding and will not be subject to any judicial review.<sup>25</sup>

As per § 3522, the probation officer may keep a check any individual who is under the protection and is on probation or parole. The request to the probation officer has to be made by the Attorney General. This supervision is subject to the consent of the State. An obligation has been cast upon the Attorney General to deliver any civil notice served on the person in protection by the courts per § 3523. The Attorney General has to request the protected person to obey with the judgement. § 3525 casts a responsibility on the Attorney General to pay the compensation to the victim of a crime which is committed by the person in protection. Such crime includes any threat or bodily injury caused. The protection can also be granted on request of the State Government to the Attorney General but the expenses will be reimbursed by that State only.<sup>26</sup>

---

<sup>22</sup>18 U.S.C. § 3521 (b)(3).

<sup>23</sup>18 U.S.C. § 3521 (d)(1).

<sup>24</sup>18 U.S.C. § 3521 (d)(3).

<sup>25</sup>18 U.S.C. § 3521 (f).

<sup>26</sup>18 U.S.C. § 3526.

## WITNESS SECURITY PROGRAM OF UNITED STATES

A person might be considered for protection under this program if they are covered under the following types<sup>27</sup>:

- (i) Offence which is defined under Title 18, US Code, Section 1961(1);
- (ii) Offense related to drug trafficking under Title 21, US Code;
- (iii) Other Federal felony for which testimony may be provided by the witness due to which he/she may be subject to any violence or threat;
- (iv) State offence similar in nature to above mentioned offences;
- (v) Civil and administrative proceeding in which the safety and security of the witness providing testimony might be in jeopardy.

This program also offers safety to the prisoners in State/Federal institutions. The application has to be made in a prescribed form and is similar for other witnesses too. As they are not a threat to society, no risk assessment is conducted and a psychological evaluation is also not conducted. The entire Program is operated by United States Marshals. They are responsible for providing safety, health and security to the government witnesses and their family members. A 24-hour protection shall be given by the Marshals to all the witnesses.<sup>28</sup>

### **B. CHINA**

The instance of witness protection in China dates to 1994, when the police force of Hong Kong brought into force an *ad hoc* witness protection programme. Again in 1998, similar program was set up by the “*Independent Commission Against Corruption (ICAC)*”.<sup>29</sup> Currently, the protection of witnesses is covered by the “*Criminal Procedure Law of the People’s Republic of China of 1979*” which is criminal procedural law and the “*Criminal Law of the People’s Republic of China of 1997*” which is the criminal law of China. In 2000, a Witness Protection Ordinance was enacted for shielding and providing assistance to the witnesses according to which the witness programme was established. Approving Authority is responsible for maintaining the programme. “Approving Authority means a person designated in writing by the Commissioner to be the approving authority.”<sup>30</sup>

### **CRIMINAL PROCEDURE LAW OF THE PEOPLE’S REPUBLIC OF CHINA OF 1979**

As per Article 49 of the Code, it is the duty of the People’s Procuratorates and the organs of public security to ensure safety of the witness along with his family. Any person who humiliates, beats, intimidates, or might retaliate against the witness or his relatives, will have said to be committed an offence and the person will be investigated

<sup>27</sup>U.S. Department of Justice, United States Attorneys’ Manual 9-21.100 (1997).

<sup>28</sup>Witness Security, U.S. Marshal Service, last visited on Sep. 14, 2023, <https://www.usmarshals.gov/what-we-do/witness-security>.

<sup>29</sup>Dr. Jayasankar K.I., *Right of Witness Protection: A Comparative Overview*, BHARATI LAW REVIEW (2012).

<sup>30</sup> Section 2 of Witness Protection Ordinance 2000.

for the same. In case the act of the person is not very serious to held him liable for criminal punishment then he will be charged for violation of public security as per the law.<sup>31</sup>

### **CRIMINAL LAW OF THE PEOPLE'S REPUBLIC OF CHINA OF 1997**

As per Article 309 of the Law, any person who retaliates against the witness shall be made punishable with imprisonment of not more than 3 years or criminal detention. If the retaliation is of serious in nature, then the person shall be punishable with imprisonment of not less than 3 years but not more than seven years. A witness is protected against any judicial officer who tries to extort testimony as the judicial officer will be sentenced to imprisonment of not more than three years or criminal detention. If serious injuries or disability or death is caused in the process of extortion then he/she will be awarded heavier punishment. During a criminal proceeding, if a defendant tries to coerce a witness or entice him to change his testimony then he shall be punishable with imprisonment of not more than 3 years or criminal detention.<sup>32</sup> According to Article 307, if any person through violence, bribery or threat or using any other means obstruct the witness from delivering his testimony then that person will be punishable with imprisonment of not more than three years or criminal detention. Similarly, if any person who retaliates against the witness shall be awarded jail time for not more than three years.<sup>33</sup>

### **WITNESS PROTECTION ORDINANCE, 2000**

The Ordinance provides for conditions for the inclusion of a person under this protection. A person will be covered under this programme in case: (a) the 'Approving Authority' decides to include him/her; (b) agreement of the witness to get included; (c) a 'memorandum of understanding' is signed by the witness. There are various other requirements that the Approving Authority has to take into consideration such as (a) previous criminal records concerning violence; (b) psychological or psychiatric evaluation for determining his/her suitability for inclusion in the programme; (c) seriousness of the offence to which evidence relates; (d) there is present of alternative methods for witness protection.<sup>34</sup> The ordinance allows the parent or guardian of a child below the age of 18 years or of a person not having the mental capacity to sign the memorandum on their behalf. However, when the memorandum is related to a minor, the Approving Authority (AA) is obligated to get the sign of the minor after he/she reaches the age of 18 years.<sup>35</sup> If the AA believes that a person does not need any protection under the programme then a refusal in writing has to be sent to such person.<sup>36</sup> The AA may direct the witness to go through a psychological or psychiatric evaluation along with medical tests and make the results of the same available to the AA.<sup>37</sup> This might be required by the Approving Authority to determine whether the witness needs protection or not under the programme. A detailed section on the memorandum of understanding has been provided which

<sup>31</sup>Article 49 of People's Republic of China of 1979.

<sup>32</sup> Article 306 of Criminal Law of the People's Republic of China of 1997.

<sup>33</sup>Article 308 of Criminal Law of the People's Republic of China of 1997.

<sup>34</sup> Clause 4 of the Witness Protection Ordinance 2000.

<sup>35</sup>Clause 4 (4)(a) and (b) of the Witness Protection Ordinance 2000.

<sup>36</sup>Clause 4 (5) of the Witness Protection Ordinance 2000.

<sup>37</sup>Clause 5 (2) and (3) of the Witness Protection Ordinance 2000.

covers the details to be contained under it, and the revocation manner of the same.<sup>38</sup> The AA may approve establishing a new identity for the witness but the same is subject to the recommendation of the Commissioner and approval of the Chief Executive.<sup>39</sup> A provision to deal with the obligations of the witness has been made. Under which if a witness has any legal right or obligation to fulfil, the AA shall take steps to ensure that the witness complies with them. The AA has the authority and power to decide whether the witness should disclose his identity under any law of Hong Kong. If the Authority in writing gives permission not to disclose the identity, then the witness is not required to disclose the same. An appeal against the decision of the Approving Authority can be heard by a Board. This appeal can be filed in instances<sup>40</sup>: (a) a witness is not included in the programme; (b) witness protection is terminated; (c) his request for a new identity is rejected. This appeal has to be filed within 7 days of such decision. The Board shall consist of an officer (senior to the Approving Authority designated by the Commissioner) two persons who are not public officers and additional members as determined by the chairman. The Witness Protection Ordinance of China is a deterrent in nature. A person who was covered under the protection and also the person who had applied to get protection under the programme must not disclose<sup>41</sup>: (a) that they were given protection and were undergoing the process of being included in the programme; (b) the manner of operation of the witness's protection programme; (c) disclosure of information about officers involved; (d) fact that a memorandum was signed and its details. Any person who contravenes such requirements, (a) shall be punishable with imprisonment for 10 years, contravention of (b) will lead to imprisonment of 5 years and contravention of (c) will lead to conviction to a fine of 6 and imprisonment for 2 years. The proceeding can be initiated against such a person within 6 months. This is after the discovery of the offence that is committed for the first time by the AA has been done.

#### IV. COMPARATIVE ANALYSIS

Any criminal system strives for justice and tends to punish the guilty individual. For the process to be just and fair there is a need of solid evidence. Witness aids to this process and upon his testimony justice can be attained. For the protection of witness, India, the U.S.A and China have enacted laws and programme in their own jurisdiction. A comparison has been drawn between laws and programmes of the above-mentioned jurisdiction.

<sup>38</sup>Clause 6 of the Witness Protection Ordinance 2000.

<sup>39</sup>Clause 8 of the Witness Protection Ordinance 2000.

<sup>40</sup>Clause 13 of the Witness Protection Ordinance 2000.

<sup>41</sup>Clause 17 of the Witness Protection Ordinance 2000.

**STATUTORY PROTECTION AND PROGRAMME-COMPARISION**

HEADINGS	INDIA	USA	CHINA	COMPARISON NOTE
Governing Laws	<p>-“Indian Penal Code, 1860”</p> <p>-“Code of Criminal Procedure, 1973”</p> <p>-Indian Evidence Act, 1872</p> <p>-Witness Protection Scheme 2018</p>	<p>-“United States Code, Title 18- Crimes and Criminal Procedure”</p> <p>-Witness Security Program of United States</p> <p>-Witness Security Reform Act</p>	<p>-“Criminal Procedure Law of the People’s Republic of China, 1979”</p> <p>-“Criminal Law of the People’s Republic of China, 1997”</p> <p>-Witness Protection Ordinance 2000</p>	
Punishment for threatening a witness	As per IPC a person will be punishable for 7 years or with fine or both	If any person threatens to use physical force, he shall be imprisoned for a period of not more than 20 years.	Although ‘threaten’ word has not been used in the laws of China, however, if a person intimidates against the witness, then he/she shall be criminally liable.	The law with respect to threatening of witness is more elaborately defined in USA. The punishment is more severe in USA as compared to India and China.

Examination via video-audio methods	India specifically provides that recording of statements of witness can be made through video-audio methods	No express provision in the laws have been provided. Although the Courts prefer that in person recording of statements to be done but electronic methods can be used	China does not provide for similar law or requirement.	This provision if made compulsory in India, the witness will feel safer and their integrity will be in place.
	An application can be made by a witness against criminal intimidation and court will take cognizance of the same.	No such provision has been provided under the laws. However, it is only through Attorney General a protection can be granted	No similar provision option to the witness is granted. As in USA, application of protection can be granted	In the USA and China, the role and responsibility of minimum with respect to the witness protection. Special authority or department created are responsible for protection.
Child witness protection	Special legislation takes care of the child with respect to non-disclosure of his/her identity	In the protection program itself the safety of children is maintained.	In the protection program itself the safety of children is maintained.	Even though other legislations in the USA protects child witness (Child Victim Witness Protection Act) but protection programme expressly protects identity of children.

Division of witness on the basis of category under Programme	The witnesses are divided on the basis of category A, B and C based on level of threat. <sup>42</sup>	Attorney General is the deciding authority with respect to the type of case and the manner of protection needed. <sup>43</sup>	It is the Approving Authority's discretion whether to include a person under witness protection scheme.	In India the categories are defined so that there is clear cut demarcation whether a person can enter into witness protection scheme or not on the other hand authority and power has been given a person to decide on such inclusion of a person. But the same is not the case in India.
Witness Protection Fund	A fund has been created for expenses and the same is operated by Ministry of Home. <sup>44</sup>	A fund is created in USA as well. Apart from general expenses compensation to person who is victim of crime committed by the witness is also granted from the fund. <sup>45</sup>	Under the Ordinance of 2000, the express provision for setting up the fund has not been mentioned	In India the funds can be used only for certain definitive provisions. On the other hand, in USA the is also used for other purpose ancillary to the witness protection such as compensation to victim.
Types of measures	Monitoring of mail and phone call, installing CCTV, security door etc.	USA laws focus more on relocation, change in identity of a witness. The	China mostly focuses more on changing of identity of a person, relocation. No	USA is very proactive in protecting its witness by giving power to a special authority for protection. Neither

<sup>42</sup> Clause 3 of Witness Protection Scheme 2018.

<sup>43</sup> 18 U.S. Code § 3521 (2)

<sup>44</sup> Clause 4 of Witness Protection Scheme 2018.

<sup>45</sup> 18 U.S. Code § 3525

		Marshals are appointed to provide 24-hrs security.	special authority has been created to provide protection to a witness	China nor India has made such efforts.
Process of Application	An application to Competent Authority is submitted along with additional documents. The details about such documents have not been provided by the 2018 Scheme. A Threat Analysis Report is made by the ACP/DSP. Interim protection can also be granted during the pendency of the application.	Attorney General will do assessment after application received by him/her. All the past criminal records, any alternative method available to provide protection, psychological examination will be done apart from other requirements.	Application is submitted to the Approving Authority. The assessment includes knowing about the previous criminal records of violence of witness, psychological evaluation, alternatives present for protection.	USA and China laws are more transparent with respect to the assessment of the witness. As against India only Threat Analysis is done. Indian law fails to analyze the witness mental, physical and psychological conditions before granting the protection. This is important to understand his mental and physical state. So, that in case protection is provided and the blame for his already existing health condition is not put on the authority's. For instance the protection should not turn into witness brutality just like in case of police brutality.



Delegation of Authority and right to review	<p>The Competent Authority under the Scheme has not been given unfettered power. If given the extend of the same has been restricted by the Scheme. A power to review has been given to DSLA against the decision of Competent Authority</p>	<p>Attorney General has been given unanswerable power to decide the aspects of witness protection such as the decision of the Attorney General is binding and is not subject to judicial review. Although his powers can be delegated to other persons as well.</p>	<p>Approving Authority can delegate its power to officers but the same has not been definitive. A review can be filed against order of Authority in front of a Boad.</p>	<p>The power of delegation is well defined in India and USA as the persons to whom the same can be delegated has been definitive. In China the delegation is not property defined. The review by Boad in China is a better provision than in USA and India for transparency in the protection of witness.</p>
Memorandum of Understanding	No provision available	<p>Extensive provision of signing a MOU is provided so that there is no disagreement between the witness and the authority</p>	<p>Extensive provision of signing a MOU is provided so that there is no disagreement between the witness and the authority</p>	<p>India is lacking behind in formulating such provision. This will ensure that authority is responsible and witness does not have disagreement with authority later.</p>
Duties casted on witness	No, obligations are casted on the witness to follow	<p>Witness are duty bound to comply with legal obligations against him, a crime must not be committed by him/her, and take</p>	<p>Similar to USA, if any legal obligation is present, the witness has to comply with those</p>	<p>By introducing such provision in Indian laws, the process of protection will be improved and witness will have to fulfil their obligations and not hid under the</p>

		necessary actions from getting detected.		cover of protection to not fulfil the obligations.
Penalty Provisions	Laws are not based on awarding penalties in form of fine and imprisonment.	Laws are not based on awarding penalties in form of fine and imprisonment.	Heavy reliance on awarding penalty has been made. The witnesses as well as any person including the defendant can be imprisoned for violation the protection laws.	Awarding of penalties act as deterrence in the society. If applied in India people will avoid disclosing information about witnesses in protection for publicity. However, it should be applicable only for serious offences unlike in China for small offences also jail time is awarded.

## V. CONCLUSION

In general, witness thinks that he might get into unnecessary fuss if he testifies something which he knows shall aid to the court and investigation procedure. This thought process should be changed among the people and it shall be solely the duty of the state to ensure the protection of the witness. The protection of witness has now become a fundamental right under the Article 21 of the Indian Constitution. It is really appreciated that now-a-days, the States are actually coming up with the laws for the safety and protection of the witness. The successful execution these witness security programmes shall make witness feel protected and hence they shall be able to give their testimony wholeheartedly which in return helps to increase the conviction rate.

The authors in the present research paper have explained about the witness protection of three different countries namely India, USA, China and has also tried draw the difference between these countries about the process of witness protection. The authors also had shed light upon the drawbacks of the Indian laws and tried to provide the insights to make up the lacunas. In general, it can be observed that India have tried to include almost all the relevant provisions which USA and China have in their laws. The witness protection in India focuses and involves courts in picture for permissions. However, the law is still silent on various aspects such as the duties to be followed by the witnesses. In USA there is proper implementation of the protection as adequate resources are implemented for

the same. In India no clearcut allocation of Protection Fund has been made. The witness protection in India is only for a period of three months, however, the same is not defined in USA or China and it depends on the authorities. The reason for such time limit has not been justified. The law in India needs to be clearer and more elaborative to cover various aspects of witness protection. To conclude our hypothesis that witness protection laws in India are lacking behind as compared to USA and China passes due to the reasons stated above.

