CHAPTER FIVE
WITNESS PROTECTION LAWS: A COMPARATIVE STUDY

5.1 Overview

The previous chapter explored the legislative and judicial response towards the issue of protection of witnesses. In the present chapter, the researcher has analysed the legislations relating to witness protection existing in the United States of America, United Kingdom, the Republic of Albania, Malaysia and Ireland as well as the framework for witness protection devised by the United Nations Office on Drug and Crime. An appraisal of laws of different countries on the subject of witness protection will be helpful to have a comparative analysis of these laws. It will also be helpful to find out the common features of these laws.

5.2 Witness Protection Laws in other Countries

The proper functioning of a state’s justice system depends on the willingness of the victims, to come forward and report crimes committed against them and the availability of witnesses to provide information and testify as to what they saw in a full and impartial manner. Thus, where witnesses and victims feel threatened, undermining their willingness and ability to come forward, society as a whole is denied justice.¹ Not only is the justice system undermined and justice in particular case denied, but at an individual level, witnesses may themselves become victims of the investigation and judicial processes. In consideration of this, many countries have adopted victim and witness programmes in various forms to encourage the reporting of crimes to maximize the likelihood that a witness will testify and to protect

vulnerable and intimidated witnesses. The laws of other countries on the subject of witness protection are discussed as under:

### 5.2.1 United States of America

In United States of America, the law on witness protection was introduced far back in 1970 when the *Organised Crime Control Act* was passed, under which United States Attorney General was empowered to grant security to the witnesses, appearing in cases dealing with organised crime. The Witness Security (WITSEC) Programme, works under the supervision of Attorney General and provides relocation as well as new identity to the threatened witnesses. In 1984, the drawbacks of this Programme were addressed by the *Witness Security Reform Act*.

Thus, the Attorney General is empowered to "take necessary action to protect the person involved from bodily injury and otherwise to assure the health, safety and welfare of that person including the psychological wellbeing and social adjustment of that person." The Attorney General is also empowered to "provide suitable documents to enable a witness to establish a new identity. Again a witness may also be provided housing, transportation of household furniture and other personal property to a new residence as well as payment to meet basic living expense." The Attorney General may also "provide assistance to a witness, who has been granted new identity, for obtaining employment. It is the duty of the Attorney General to ensure that the confidentiality of the identity and location of such witness is duly protected."

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2 *ibid.*


4 *ibid.*

5 *ibid.*


7 *ibid.*

For a witness to be granted protection under the Programme, the importance of the witness's statement for the prosecution, his psychological profile as well as his ability to follow the rules and restrictions imposed under the programme, are taken into consideration.\(^9\)

While granting protection to a witness, the Attorney General enters into a memorandum of understanding (MOU) with him. The MOU mentions the responsibility of the witness as well as the protection which will be provided to him.\(^10\) If a witness breaches the MOU or gives false information or the circumstances which led to protection of the witness, have ceased to exist, the protection provided to him may be terminated by the Attorney General.\(^11\)

Apart from these provisions, the United States Code, Title 18- Crimes and Criminal Procedure, also provide for safety of witnesses. Chapter 224, thereof, deals with "protection of witnesses or potential witnesses for Federal Government or for a State Government in any official proceeding in connection with organised criminal activity or other serious offences."\(^12\)

It is submitted that in United States the concept of witness protection was introduced far back in 1970. Initially, it was introduced to protect witnesses appearing against members of mafia gangs, but later on it was also extended to witnesses appearing in other serious offences. Interestingly, in United States besides specific legislation on the subject of witness protection, the Code of Criminal Procedure contains a chapter on the protection of witnesses.

### 5.2.2 United Kingdom

In United Kingdom, law enforcement agencies and police services give protection to threatened witness.\(^13\) The *Serious Organised Crime and Police Act*, 2005\(^14\) contains

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\(^11\) *ibid*.

\(^12\) The Law Commission of India, *One Hundred Ninety Eighth Report*, 2006, p.481.


provisions for the protection of witnesses.\textsuperscript{15} The Act provides "uniform criteria for admission and eligibility, penalises the disclosure of information about protection arrangements or about the identity or location of a protected witness, establishes the duty of public authorities to tender assistance to protection units and allows the transfer of responsibilities for witnesses between police forces (in case of relocation)."\textsuperscript{16}

For the purpose of providing protection to a witness, a protection provider under the \textit{Serious Organised Crime and Police Act}, 2005 considers "the nature and extent of the risk to the persons' safety, the cost of the arrangements, the likelihood that the person, and any person associated with him will be able to adjust to any change in their circumstances which may arise from the making of the arrangements and that whether the person is or might be a witness in other legal proceedings."\textsuperscript{17} The \textit{Serious Organised Crime and Police Act}, 2005 provides that "a protection provider is a chief officer of a police force in England."\textsuperscript{18}

It is submitted that in United Kingdom police is responsible for the protection of threatened witnesses. Indian laws are mostly based on common law. It is high time when Indian Parliament should also draft a law on the subject.

\textbf{5.2.3 The Republic of Albania}

In Albania, the \textit{Law on the Justice Collaborators and Witness Protection}, 2004\textsuperscript{19}, is enacted to grant the special measures of protection of \textit{witnesses} and \textit{justice collaborators}.\textsuperscript{20} The whole Act is divided into four chapters consisting of twenty six articles.

\textsuperscript{16} \textit{ibid.}
\textsuperscript{17} Section 82(4), the \textit{Serious Organised Crime and Police Act}, 2005, available at www.legislation.gov.uk/ukpga/2005/15/contents last visited on 14\textsuperscript{th} March, 2014
\textsuperscript{18} Section 82(5) (a), the \textit{Serious Organised Crime and Police Act}, 2005.
\textsuperscript{19} Available at http://www.legislationonline.org/documents/action/popup/id/7628 last visited on 22\textsuperscript{nd} June, 2012.
\textsuperscript{20} Section 9(1), the \textit{Law on the Justice Collaborators and Witness Protection}, 2004, provides that "collaborator of justice is person who collaborates with prosecution office and court."
The remarkable feature of the law is that it provides protection to a witness who is in a real and grave danger as well as a defendant who collaborates with the justice system (also called justice collaborator under the Act).\textsuperscript{21} It is provided that "a danger is considered to be real, concrete and serious, if life, health and fundamental rights and freedoms provided by law, as well as property and the rights related to it, are in danger."\textsuperscript{22} Thus, a wide range of grounds are given for the purpose of providing protection under the Act. Besides, witnesses and justice collaborators, protection is also granted to persons who are related to or have concrete relationship with a witness or a collaborator of justice on the basis of blood or marriage and are in a real, concrete or serious danger.\textsuperscript{23} Thus, a large number of persons including family members and friends of a witness or collaborator of justice are covered within the ambit of the Act.

The law provides for the establishment of a Directorate of Justice Collaborators and Witness Protection (hereinafter called the Directorate) and a Commission on Evaluation of Special Measures of Witness Protection and Justice Collaborators (hereinafter called the Commission) for the purpose of providing protection. The Act provides for two types of measures of witness protection i.e. special and temporary measures of protection are granted under the law.

The Commission is composed of a judge (who acts as deputy chairman of the Commission), a prosecutor, an officer of the judicial police.\textsuperscript{24} It is provided that "the members of the Commission should be reliable and have a pure moral character, should have experience and special professional skills in the criminal field in general and in serious and organized crime in particular."\textsuperscript{25} Thus, the law ensures that only persons of high integrity and having necessary qualifications are appointed as members of the Commission. It is submitted that witness protection is a sensitive matter and a law on witness protection must contain this provision. The members of the commission are appointed for tenure of three years and may be re-appointed after the completion of their term.

\textsuperscript{21} Article 2 (a) and (b), the Law on the Justice Collaborators and Witness Protection, 2004.
\textsuperscript{22} Article 2 (e), the Law on the Justice Collaborators and Witness Protection, 2004.
\textsuperscript{23} See, Article 2 (c), the Law on the Justice Collaborators and Witness Protection, 2004.
\textsuperscript{24} See, Article 6 (1), the Law on the Justice Collaborators and Witness Protection, 2004.
\textsuperscript{25} Article 6 (4), the Law on the Justice Collaborators and Witness Protection, 2004.
The special measures for the protection of the witness, justice collaborators and their relatives or closely related persons include "change of identity, change of residence, special and technical measures of protection at the residence of person as well as during transportation, social rehabilitation, maintenance, change of the workplace and temporary employment, financial aid for the period of time between two employments, professional requalification and specialised legal assistance." These special protection measures can be provided during the criminal trial as well as after the completion of trial.

The prosecutor can propose before the Directorate, for the implementation of special protection measures. This proposal has to be examined and approved by the Commission. The proposal for the implementation special protection measures shall contain "personal data of the witness, information on the development of the criminal case and evaluation of the collected evidence, the importance of the statements made or that can be obtained from the witness or the justice collaborator, reasons why free testimony or statements cannot be obtained in any other manner, information regarding the evaluation of the danger that the person proposed to be protected faces or is expected to face as well as information on the financial status of the witness."

The Directorate is entrusted with the responsibility of preparing, pursuing and implementing the specific measures of protection. He receives proposals sent by the prosecutor and sends the same alongwith additional information with regard to the technical aspects, to the Commission for its review.

The Commission evaluates the proposals, submitted by the prosecutor to the Directorate, and approves the special measures of protection programme, amending, revoking or terminating them. If the Commission approves the proposals, the

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Directorate prepares the agreements for the implementation of the special measures of protection. It proposes and takes measures for "coordinating the work with other institutions for the development of activities and implementation of the special measures of witness protection and justice collaborators. It manages the issues of collaboration with international bodies or other states in the area of witness protection. It prepares periodical reports of its activities of the Directorate, and makes proposals for the improvement of the legislation and activities of the institutions, for the implementation of special measures of witness protection." Thus, the Directorate is responsible for "the preparation, co-ordination and pursuance of the implementation of the special protection measures." Further, all the documents related to the proposal, approval and implementation of the special protection measures, considered as classified information, are kept under the custody of the Directorate.

In specific and urgent cases, upon the request of the prosecutor and alongwith written approval of the witness, the Directorate can order for temporary protection measures. The decision of the Directorate has to be approved by the head of the Commission. The temporary protection measures are provided on the basis of the level of danger faced by the witness. The prosecutor can present a reasoned request to the Directorate, for granting temporary protection measures in compliance in the required circumstances.

Albanian law also provides for "the special measures of protection, if implementation of the ordinary measures of protection is not sufficient and suitable and where the information provided by the witness constitutes fundamental evidence related to a criminal proceeding for serious crime, which will be helpful in preventing serious crimes and repairing losses and damages caused by commission of a serious crime." The implementation of the special measures on witness protection is decided only if

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the witness is in a real and serious danger.\textsuperscript{40} These measures can also be provided to persons close to the witness or related to him.\textsuperscript{41}

A collaborator of justice can also be granted the special measures of protection provided "he is in a real, concrete and serious dangerous situation and if he gives information which serve as fundamental and irreplaceable evidence in detecting, investigation and judgement of serious crimes and assists or testifies for the prevention of serious crimes and for recovering of losses and damages caused by the commission of these crimes."\textsuperscript{42} These special protection measures can be applied to the persons close to or related with the collaborator of justice.\textsuperscript{43}

After the proposal for giving special protection measures to a witness or a collaborator of justice is approved by the Commission, the Directorate, within fifteen days of the approval, prepares the protection agreement containing rights and responsibilities of the witness or the collaborator of justice and effects of the protection measures. The prosecutor is informed about the agreement and gives his approval before the agreement is signed by the witness or collaborator of justice. In case of minor person, the agreement is signed by the parent or by the custodian appointed by law. In case of mentally ill person, the agreement is signed by the legal custodian appointed by law.\textsuperscript{44}

The protection agreement contains "particulars regarding the rights and obligations of the protected persons as well as the rights and obligations of the Directorate in order to offer to the protected person the proper protection according to the level and circumstances of danger."\textsuperscript{45} It also contains "the cases and circumstances of the amendment and removal of special measures of protection and the predicted duration for the implementation of the special measures of protection."\textsuperscript{46}

\textsuperscript{40} See, Article 8 (2), the Law on the Justice Collaborators and Witness Protection, 2004.
\textsuperscript{41} Article 8 (3), the Law on the Justice Collaborators and Witness Protection, 2004.
\textsuperscript{42} Article 9 (1) (2), the Law on the Justice Collaborators and Witness Protection, 2004.
\textsuperscript{43} See, Article 9 (3), the Law on the Justice Collaborators and Witness Protection, 2004.
\textsuperscript{44} Article 16, the Law on the Justice Collaborators and Witness Protection, 2004.
\textsuperscript{45} Article 17 (1), the Law on the Justice Collaborators and Witness Protection, 2004.
\textsuperscript{46} \textit{ibid.}
It is the obligation of the protected person to give full information about all the relevant facts relating to the case and to accept and respect the conditions of the program. He should not disclose any classified information or data related to a protected person. He should inform the Directorate on issues that are valuable and that pose any danger to the implementation of the special measures of protection.\textsuperscript{47}

Once the agreement is finalized, the information is sent to the Commissioner.\textsuperscript{48} However the special protection can be amended or revoked in case there is no risky situation that requires implementation of special protection measures, if the protected person gives false information or if the protected person commits an criminal offence or is involved in a criminal activity or he does not respect the obligations mentioned in the protection agreement.\textsuperscript{49} It is further provided that "the special protection measures can be terminated in case the time limit of the protection agreement has finished or if the protected person is dead or upon the written request of the protected person."\textsuperscript{50}

It is submitted that the Albanian law is a progressive piece of work and contains remarkable features like protection to not only the witnesses but their relatives and close friends also. It extends protection to persons who collaborate with the justice system. However, it does not give a specific definition of witnesses.

5.2.4 Malaysia

In Malaysia, the \textit{Witness Protection Act}, 2009\textsuperscript{51}, has been passed to establish a programme for the protection of witnesses. The Act gives a very wide definition of the term 'witness' which includes "a witness appearing on behalf of the Government in a criminal proceeding; any other witness who has given or who has agreed to give evidence in relation to the commission or possible commission of an offence as well as a person who has provided any information, a statement or assistance to a public authority for the purpose of assisting in any investigation or proceedings related to a criminal matter."\textsuperscript{47}

\textsuperscript{47} Article 17 (2), the \textit{Law on the Justice Collaborators and Witness Protection}, 2004.

\textsuperscript{48} Article 17 (4), the \textit{Law on the Justice Collaborators and Witness Protection}, 2004.

\textsuperscript{49} Article 19, the \textit{Law on the Justice Collaborators and Witness Protection}, 2004.

\textsuperscript{50} Article 20, the \textit{Law on the Justice Collaborators and Witness Protection}, 2004.

officer or an officer of a public authority in relation to an offence."\(^{52}\) Thus, an informant providing information regarding possible commission of an offence is included in the definition of witness for the purpose of providing protection under the Act.\(^{53}\) It is concluded from the definition that the witness is provided protection as well as assistance. Further, relatives and close friends of a witness are included in the definition to whom, protection or assistance under the witness protection programme can be provided.

The Malaysian Act provides for "establishment of a Witness Protection Programme, which is to be maintained by the Director General."\(^{54}\) Under the Act "the Minister charged with the responsibility for Witness Protection Programme appoints a Director General, Witness Protection from amongst the members of public services."\(^{55}\) He may also appoint some other persons to assist the Director General such persons, if appointed, work under the supervision of the Director General."\(^{56}\) When the Director General is absent or unable to act due to any reason, the Deputy Director General takes his place.\(^{57}\)

When a witness applies for protection under the programme, the Director General decides whether he should be given protection or not.\(^{58}\) In the application the witness shall disclose "to the Director General about his outstanding legal obligations, outstanding debts, details of his criminal history, details of any civil proceedings that have been instituted by or against him, details of any bankruptcy proceedings that have been instituted against, details of his immigration status, details of any reparation order that is in force against the witness, details of his financial liabilities and assets, whether real or personal, information whether any of the property of the witness, whether real or personal, is liable to forfeiture or confiscation or is subject to restraint under any other law, the general medical condition of the witness, disclose any relevant court orders or arrangements

\(^{52}\) See, section 2, the *Witness Protection Act*, 2009.
\(^{53}\) *Ibid*.
\(^{54}\) Section 3, the *Witness Protection Act*, 2009.
\(^{55}\) Section 4 (1), the *Witness Protection Act*, 2009.
\(^{56}\) Section 3 (2) (3), the *Witness Protection Act*, 2009.
\(^{57}\) Section 4 (4), the *Witness Protection Act*, 2009.
\(^{58}\) Section 7 (1), the *Witness Protection Act*, 2009.
relating to custody or access to children." He also has to disclose "his general medical condition as well as the details of any business dealings in which he is involved."  

If a witness supplies false information he is liable to pay fine or to undergo imprisonment for a term not exceeding five years or with both. Thus, a witness has to provide large number of personal details before inclusion in the programme. This is done to avoid any future complications arising out of such circumstances related to a protected witness.

In case of a minor witness, his parents or guardian may apply on his behalf, for protection under the programme. Interestingly, the Act provides that the Director General may grant interim protection and assistance to a witness till the final disposal of application. It is submitted that the Act does not provide for any time frame for deciding the application.

However, the Act empowers the Director General to make necessary inquiries and investigations, for deciding whether the witness should be included in the programme or not. It is provided that "while deciding the application the Director General shall take into consideration the criminal history of witness to ensure that such witness, if included in the programme, shall not pose any threat to the public, the result of a medical, psychological or psychiatric examinations conducted for determining his suitability for inclusion in the programme, the seriousness of the offence to which the evidence or statement of the witness relates, the nature and importance of the evidence or statement of the witness, the availability of alternative methods of protecting the witness, the nature of the perceived danger to the witness, the nature of the relationship of the witness to other witness being selected for

59 Section 8, the Witness Protection Act, 2009.
60 ibid.
61 Section 8 (3) (4), the Witness Protection Act, 2009.
62 Section 7 (4), the Witness Protection Act, 2009.
63 Section 9 (2), the Witness Protection Act, 2009.
inclusion in the programme; and any other matter as the Director General considers relevant.\textsuperscript{64}

The decision of the Director General has to be approved by the Attorney General.\textsuperscript{65} Appeal against his decision can be filed before the Minister, within fourteen days of such decision.\textsuperscript{66} In case of appeal to the Minister, the Attorney General shall present his grounds of decision alongwith the recommendations of the Director General.\textsuperscript{67} However, the protection and assistance once provided to the witness continues till the decision of the Minister.

Under the Act, a Registrar of Witness Protection is appointed by the Minister. He maintains a Register of participants containing the particulars of the witness's original identity as well as his new identity.\textsuperscript{68} Besides this register, the Registrar keeps other important documents in his custody like the "birth certificate, identity card, marriage certificate and any other document relating to the original identity of the participant as well as a copy of the new birth certificate, identity card, marriage certificate and any other document issued under the programme."\textsuperscript{69} He shall also keep a copy of an order\textsuperscript{70} given by the Director General allowing a witness to disclose his original identity.

It is provided that "except the Minister, Attorney General, Director General and any other person authorized in writing by the Director General, no person shall have access to the Register and to the documents kept by the Registrar.\textsuperscript{71} It is provided the Register shall not be produced to any person or in any proceeding in a court, tribunal, commission or an inquiry."\textsuperscript{72} A person violating this provision\textsuperscript{73} is guilty of

\textsuperscript{64} Section 9, the \textit{Witness Protection Act}, 2009.
\textsuperscript{65} Section 10 (2) (3), the \textit{Witness Protection Act}, 2009.
\textsuperscript{66} Section 10 (5) (a), the \textit{Witness Protection Act}, 2009.
\textsuperscript{67} Section 10 (5) (b), the \textit{Witness Protection Act}, 2009.
\textsuperscript{68} Section 11 (1) (2), the \textit{Witness Protection Act}, 2009.
\textsuperscript{69} Section 11 (3) (a), the \textit{Witness Protection Act}, 2009.
\textsuperscript{70} Under Section 15 (1), the \textit{Witness Protection Act}, 2009.
\textsuperscript{71} Section 12 (1), the \textit{Witness Protection Act}, 2009.
\textsuperscript{72} Section 12 (2), the \textit{Witness Protection Act}, 2009.
\textsuperscript{73} Section 12, the \textit{Witness Protection Act}, 2009.
an offence punishable with imprisonment for a term upto twenty years. It is submitted that the law has adequately ensured the security and secrecy of the Register and documents maintained by the Registrar. A strict punishment of sentence not exceeding twenty years has been prescribed, for a person contravening this section.

The law empowers the Director General to take necessary action, such as providing accommodation to the witness, helping him to establish a new identity, providing transport for the transfer of his property, financial assistance and assistance to get new employment.

A perusal of the provisions makes it clear that the law on witness protection provides for reasonable financial assistance to a witness included in the programme. The law ensures that such witness should not face any financial difficulties.

The Director General can make "a request to any person, having the power or duty under any other law to issue birth certificate, identity card, marriage certificate or any other document relating to the identity of a participant, to issue a new document necessary to allow the participant to establish a new identity. Such person is legally bound to comply with the request." The Director General can apply for any document to permit a participant to establish a new identity, only with his written consent. The Director General may also "permit his officers to use assumed names in carrying out their duties in relation to the programme and to carry documentation supporting those assumed names."

The Director General shall ensure that the participant who is given protection included in the programme shall perform his already existing rights and obligations and complies with the restrictions imposed on him. The participant can be provided protection for performing these rights and obligations by the Director General. Thus,

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74 Section 12 (3), the *Witness Protection Act*, 2009.
75 Section 13 (2), the *Witness Protection Act*, 2009.
76 Section 13 (4), the *Witness Protection Act*, 2009.
77 Section 13 (5), the *Witness Protection Act*, 2009.
78 Section 13 (6), the *Witness Protection Act*, 2009.
79 Section 14 (1) (2), the *Witness Protection Act*, 2009.
law has ensured that the protection under the program shall not be used by a witness to avoid his existing rights and obligations.

If the Director General is satisfied that "a participant is using the new identity, given under the programme, to avoid obligations that were incurred before the new identity was provided or to avoid complying with restrictions that were imposed before the new identity was provided, he shall give notice in writing to the participant.”

The law provides that the Director General may terminate the protection and assistance given to a witness, in case he had knowingly given false information or that his conduct is likely to compromise the integrity of the programme or in case the reasons that gave rise to the need for protection and assistance for him have ceased to exist.

The decision of the Director General regarding termination of the protection has to be approved by the Attorney General. The participant should be given an opportunity to be heard before the decision by the Attorney general. If the participant fails to make any representation, the Attorney General shall take his decision. Appeal against his decision can be filed before the Minister within fourteen days of such decision.

In case of an appeal, the Attorney General shall submit his grounds of decision together with the recommendation of the Director General to the Minister. However, a participant shall remain in the programme till a decision on the appeal is made by the Minister.

A participant himself also may make a written request to the Director General for the termination of the protection and assistance. The Director General shall on

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80 Section 14 (3), the Witness Protection Act, 2009.
81 Section 16 (1), the Witness Protection Act, 2009.
82 Section 16 (2), the Witness Protection Act, 2009.
83 Section 16 (3), the Witness Protection Act, 2009.
84 See, section 16 (5), the Witness Protection Act, 2009.
85 Section 16 (8), the Witness Protection Act, 2009.
86 Section 9, the Witness Protection Act, 2009.
87 Section 16 (6), the Witness Protection Act, 2009.
receiving such request forward the same to the Attorney General. The participant should be notified regarding the decision of termination of the protection and assistance.

The Act imposes obligation of secrecy upon the Director General and his officers. It provides that "except as provided in the Act, the Director General or any of his officer, during his tenure of office or during his employment or after that, and any other person who has by any means, access to any information or document relating to the affairs of the programme, shall not disclose such information or document to any person." The person contravening the abovementioned provision shall be convicted and be punished with imprisonment for a term not exceeding twenty years.

It is provided that "if in any proceedings in a court, tribunal, commission or any inquiry, the identity of a participant is in issue or may be disclosed, the proceedings that relates to the identity of the participant, shall be conducted in-camera, unless the interest of justice requires otherwise." The court, tribunal, commission or inquiry shall make an order for prohibiting the publication of evidence given by witness, so as to keep the identity of the witness secret. Any person who makes such publication shall be convicted and liable to a fine or to imprisonment for a term not exceeding ten years or to both.

It is submitted that the law prohibits disclosure of any information or document related to a protected witness. In case of violation of this provision a strict punishment of twenty years is provided. Such stringent punishment is essential to keep the identity of a protected witness confidential.

88 Section 16 (7), the Witness Protection Act, 2009.
89 Section 11, the Witness Protection Act, 2009.
90 Section 17 (1), the Witness Protection Act, 2009.
91 Section 17 (2), the Witness Protection Act, 2009.
92 Section 20 (1) (a), the Witness Protection Act, 2009.
93 Section 2 (1) (b), the Witness Protection Act, 2009.
94 Section 20 (2), the Witness Protection Act, 2009.
5.2.5 Ireland

In Ireland, witness protection programme has been established since 1997. The programme is administered by Garda Crime and Security Branch and operated by Garda Special Detective Unit (SDU) under the supervision of Garda Commissioner.\(^95\)

Under the programme, besides witnesses their spouses and children are eligible for protection.\(^96\)

Amongst the main factors considered for providing protection under the program are the genuineness of the evidence, and its relevance in securing a conviction.\(^97\) However, the programme has no statutory footing. The law enforcement agency responsible for the programme has complete autonomy and is the decision making authority.\(^98\)

It will be significant to discuss Part VI of the *Criminal Justice Act* of 1999 entitled ‘Extradition and other matters’ here. 'Other matters' include provisions dealing with the intimidation of witnesses.\(^99\) Convict based on this offence attracts a maximum sentence of ten years imprisonment. The Act also created "a new offence of attempting to track down witnesses who have been relocated under the witness protection scheme. This offence attracts a maximum sentence of five years."\(^100\)

It is provided in the Act that "where the court is satisfied that a person is likely to be in fear or subject to intimidation in giving evidence, that prison may give evidence through a live video-link."\(^101\) Similar provisions are also given is the *Criminal Justice (Evidence) Act* of 1992 for victims of sexual offences.\(^102\) It is submitted that in Ireland, specific legislation to deal with witness intimidation is there, but the witness protection program is not based on any legislation for its operation.


\(^{96}\) *ibid*.

\(^{97}\) Yvon Dandurand, pp. 31-32.

\(^{98}\) *id.*, p. 37.

\(^{99}\) See, Colman P.O. Donnchadha, p. 9.

\(^{100}\) *id.*, p. 10.

\(^{101}\) Section 39, the *Criminal Justice Act*, 1999.

\(^{102}\) See, *ibid*.
It was felt that a statute was necessary to deal with the issues of witness protection.\textsuperscript{103} Thus, the *Witness Protection Programme* (No. 2) Bill, 2007, was introduced by the Irish Legislative Assembly. The Bill is introduced with the purpose to promote law enforcement by facilitating the protection of persons who are involved directly or indirectly in providing assistance in relation to investigation or prosecution of offences, or activities conducted by any law enforcement agency or international criminal court or tribunal in respect of which a reciprocal agreement\textsuperscript{104} has been entered into.\textsuperscript{105}

Witness under the Bill includes a witness as well as his relatives and persons closely associated with him.\textsuperscript{106} The criteria to provide protection is risk to the security of the witness and his relatives or close friends. It is submitted that the grounds for providing protection should have been made clear.

The protection under the Bill covers "relocation, accommodation, change of identity as well as counseling and financial support to ensure the security of the protectee\textsuperscript{107} or to facilitate the protectee's re-establishment or becoming self-sufficient."\textsuperscript{108}

The Bill provides for "establishment of a witness protection programme, to be administered by the Commissioner of the Garda Siochana in consultation with the Director of Public Prosecutions."\textsuperscript{109}

It is further provided that the Director may determine, following consultation with the Commissioner, whether a witness should be admitted to the programme and the kind

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\textsuperscript{103} See, the *Witness Protection Programme Bill*, 2007, available at www.oireachtas.ie, last visited on 17\textsuperscript{th} March, 2011.

\textsuperscript{104} Section 15 of the *Witness Protection Programme Bill*, 2007, provides that "the Minister for justice, equality and law reform may enter into agreement:

(a) With the government of another state of enable a witness who involved in activities of a law enforcement agency in that jurisdiction to be admitted to the programme;

(b) With the government of another state to enable a witness to be admitted to a programme of a comparable nature administered in that state;

(c) With an international criminal court or tribunal to enable a witness, who is involved in activities of that court or tribunal, to be admitted to the programme."

\textsuperscript{105} Section 3, the *Witness Protection Programme Bill*, 2007.

\textsuperscript{106} Section 1, the *Witness Protection Programme Bill*, 2007.

\textsuperscript{107} Protectee is person receiving protection under the programme.

\textsuperscript{108} See, section 1, the *Witness Protection Programme Bill*, 2007.

\textsuperscript{109} See, section 4, the *Witness Protection Programme Bill*, 2007.
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of protection to be provided to any witness. The Commissioner is entrusted with operational responsibility for the programme. 110

The Bill lays down criterion for admission to the programme. It provides that a witness shall not be admitted by the Director to the programme unless a recommendation for the admission has been made by the Commissioner or pursuant to a reciprocal agreement 111 entered into by the Minister. The Commissioner shall send sufficient information concerning the personal history of the witness to the Director to enable him to determine that whether the witness should be admitted to the programme. A witness who needs protection has to enter into an agreement with the Director setting out the obligations of the witness, the Commissioner and the Director. 112 However, the Commissioner may, in a case of emergency and with the consent of the Director, provide protection to a person who has not entered into a protection. There is no mentioning as to who may apply for the protection under the programme.

The Director, before granting protection to a witness, shall consider "the nature of the risk to the security of the witness, the nature of the enquiry, 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 likelihood of the witness being able to adjust to the programme, having regard to the witness’s maturity and other personal characteristics and the family relationships of the witness, the cost of maintaining the witness in the programme and other methods of protecting the witness without admitting the witness to the programme. " 113

According to the Bill, " A protection agreement is deemed to include obligations on the part of the Commissioner and the protectee. The Commissioner is obliged to take such reasonable steps as are necessary to provide the protection referred to in the agreement to the protectee." 114 The protectee is under obligation "to give full and

111 As mentioned in section 15, the Witness Protection Programme Bill, 2007.
112 Section 6, the Witness Protection Programme Bill, 2007.
113 Section 7, the Witness Protection Programme Bill, 2007.
114 Section 8 (a), the Witness Protection Programme Bill, 2007.
truthful information or evidence in relation to the investigation or prosecution concerned, to meet all financial obligations incurred by the protectee at law that are not by the terms of the agreement payable by the Commissioner, to meet all legal obligations incurred by the protectee, including any obligations regarding the custody and maintenance of children, to refrain from activities that constitute an offence or that might compromise the security of the protectee and to accept and give effect to reasonable requests and directions made by the Commissioner.\textsuperscript{115} Thus, a witness provided protection under the programme cannot escape from his personal obligations.

The protection agreement may be terminated by the Director, if he is informed by the Commissioner that "there has been a material misrepresentation or a failure to disclose information relevant to the admission of the protectee to the programme, or a deliberate and material contravention of the obligations of the protectee under the protection agreement."\textsuperscript{116} However, before terminating the protection provided to the protectee, the Director shall ensure that the protectee is notified about the same. The Director shall also give the protectee an opportunity of being heard.\textsuperscript{117} The Director shall also inform him about the reasons for his decision.\textsuperscript{118}

In case of refusal to admit a witness to the programme, the Director shall notify the commissioner, the witness at the international criminal court or tribunal, as the case may be, that recommended the admission, with written reasons to enable the commissioner, witness, court or tribunal to understand the basis for the decision.\textsuperscript{119}

The Bill provides that if the identity of a witness is proposed to be changed, a public body shall co-operate with the Commissioner, for the creation of a new identity in respect of such witness.\textsuperscript{120}

The disclosure of information relating to the location or a change of identity of a protectee or former protectee is prohibited under the Bill. The prohibition does not

\textsuperscript{115} Section 8 (b), the \textit{Witness Protection Programme Bill}, 2007.
\textsuperscript{116} Section 9 (1), the \textit{Witness Protection Programme Bill}, 2007.
\textsuperscript{117} Section 9 (2), the \textit{Witness Protection Programme Bill}, 2007.
\textsuperscript{118} Section 10 (b), the \textit{Witness Protection Programme Bill}, 2007.
\textsuperscript{119} Section 10 (b), the \textit{Witness Protection Programme Bill}, 2007.
\textsuperscript{120} See, Sections 11 and 12, the \textit{Witness Protection Programme Bill}, 2007.
apply to a protectee or former protectee who discloses information about himself or herself, if the disclosure does not endeavour the safety of another protectee or former protectee and does not compromise the integrity of the programme. Nor does it apply to a person who discloses information that was disclosed to the person by a protectee or former protectee, if the disclosure does not endanger the safety of the protectee or former protectee or another protectee and does not compromise the integrity of the programme.\textsuperscript{121}

Unauthorised disclosure regarding the identity of a protected witness is an offence and the guilty person is liable, on summary conviction, to a fine not exceeding £10,000 or to imprisonment for a term not exceeding one year or both. In case of conviction on indictment, the guilty person is liable to a fine or to imprisonment for a term not exceeding ten years or both.\textsuperscript{122} Thus, a person disclosing a protectee's identity in contravention of the abovementioned provisions is given stringent punishment under the Bill.

The Director or the Commissioner can "disclose the location and change of identity of a protectee or a former protectee with his consent or in case the protectee or former protectee has previously disclosed the information or acted in a manner that results in the disclosure.\textsuperscript{123} The information can also be disclosed "if it is essential in the public interest for purposes such as for the investigation of a serious offence, the prevention of the commission of a serious offence or for national security or national defence, or in criminal proceedings where the disclosure is essential to establish the innocence of a person.\textsuperscript{124}"

It is also provided that, the Director shall submit an annual report about the operation of the Programme to the Minister who shall submit a copy of the same to be laid before both houses of the Qireachtas. It is submitted that the annual report can prove significant to evaluate the working of the Programme and to highlight its effectiveness.

\textsuperscript{121} See, Sec. 13(1) (2), the \textit{Witness Protection Programme Bill}, 2007.
\textsuperscript{122} See, Sec. 13(6), the \textit{Witness Protection Programme Bill}, 2007.
\textsuperscript{123} See, section 13(3) (a) (b), the \textit{Witness Protection Programme Bill}, 2007.
\textsuperscript{124} Section 13(3) (c), the \textit{Witness Protection Programme Bill}, 2007.
5.2.6 Pakistan: The Sindh Witness Protection Bill, 2013

India's neighbouring country Pakistan has passed legislation. The government of Sindh Province has passed the *Sindh Witness Protection Bill, 2013*. The preamble makes it clear that the Bill is drafted to provide protection to witnesses so as to enable them to give evidence in criminal proceedings.

The definition of the term ‘witness’ under the Bill includes a witness, persons closely related to or associated with a witness as well as an informant who has agreed to share the information with law enforcement agency and has agreed to give evidence on behalf of the state. The Bill defines 'threatened witness' as any witness whose life or property or life or property of his or her close relatives is in danger by reason of his or her being a witness.

The Bill provides for establishment of a Witness Protection Unit in the Home Department, Government of Sindh. The Unit is headed by the Chief Witness Protection Officer. The Additional Inspector General of Police, CID, Sindh is designated as the chief protection officer. He works under control and directions of the Government.

The object and purpose of Witness Protection Unit is "to provide framework and procedure for giving protection to persons in possession of important information, facing potential risk, threat or intimidation due to giving evidence on behalf of the state." It is the responsibility of the unit "to establish and maintain the witness protection programme, to determine the criteria for admission to and removal from the programme, to determine the type of protection measures to be applied and to advice any government department, agency, body or any other person on the adoption of strategies and measures on witness protection." The Chief Witness Protection

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126 For details see, section 2 (n), the *Sindh Witness Protection Bill, 2013*.
127 Section 2 (o), the *Sindh Witness Protection Bill, 2013*.
128 Section 7 (1) (2), the *Sindh Witness Protection Bill, 2013*.
129 Section 8, the *Sindh Witness Protection Bill, 2013*.
130 Section 12, the *Sindh Witness Protection Bill, 2013*. 

193
Officer is responsible for the protection of witnesses and related persons, including temporary protection and related services.\textsuperscript{131}

The Bill provides for "establishment of the Witness Protection Advisory Board to advise the Witness Protection Unit on the formulation of witness protection policies in accordance with the current law and international best practices."\textsuperscript{132} The Board supervises the administration of the Unit and approves its budgetary estimates. The Chief Witness Protection Officer acts as the secretary of the Board.\textsuperscript{133}

The Bill provides for establishment of a committee to assist the Witness Protection Unit for making recommendations for placing a witness under protection.\textsuperscript{134} The decision regarding the inclusion of a witness in the protection programme is taken by the Chief Witness Protection Officer after giving due regard to the report and recommendations of the committee.\textsuperscript{135}

The Chief Witness Protection Officer shall consider "the seriousness of the offence to which the statement or evidence of the witness relates, the nature and importance of that statement or evidence and the nature of the perceived danger to the witness before taking decision."\textsuperscript{136} He shall also consider "the probability that the witness or any related person will be able to adjust to protection, having regard to the personal characteristics, circumstances and family or other relationship of the witness or related persons, the cost likely to be involved in the protection of the witness or any related persons, the results of any psychological or psychiatric examination or evaluation of the witness conducted to determine his or her suitability for inclusion in the programme, the availability of alternative methods of protecting the witness and the criminal record of the witness, if any, which indicates a risk to the public if he or she is included in the programme."\textsuperscript{137}

\begin{itemize}
\item \textsuperscript{131} Section 10, the \textit{Sindh Witness Protection Bill}, 2013.
\item \textsuperscript{132} Section 5, the \textit{Sindh Witness Protection Bill}, 2013.
\item \textsuperscript{133} \textit{ibid}.
\item \textsuperscript{134} Section 9, the \textit{Sindh Witness Protection Bill}, 2013.
\item \textsuperscript{135} Section 14, the \textit{Sindh Witness Protection Bill}, 2013.
\item \textsuperscript{136} \textit{ibid}.
\item \textsuperscript{137} \textit{ibid}.
\end{itemize}
A witness can be included in the programme only with his written consent.\textsuperscript{138} The protection agreement set outs the obligations of the Chief Witness Protection Officer as well as the witness or the related person. It is obligatory for the Chief Witness Protection Officer to take necessary steps to provide the protected person with the protection and related services.\textsuperscript{139}

On the other hand, witness or the related person is "under an obligation to give the evidence as required in the proceedings to which the protection relates, to meet all financial obligations incurred by him, to meet all legal obligations, including any obligation regarding the custody and maintenance of children and taxation obligations."\textsuperscript{140} He is also under obligation "to refrain from activities that constitute a criminal offence, to refrain from activities that might endanger his safety or that of any protected person and to accept and give effect to all reasonable requests and directions made or given by any members of the protection unit, to inform the unit of any civil proceedings in which he or she was or may be involved, either as a witness or accused or otherwise."\textsuperscript{141} Thus, a witness is under obligation to disclose all his financial obligations legal obligations as well as any legal proceeding in which he or she is involved to the witness protection unit.

In cases where the witness requires identity change under the protection programme, the unit may apply to the court for an order authorising a specified person or class of persons to make a new entry in the register of births, register of deaths or register of marriages in respect of a person and to issue documents related to witness's new identity.\textsuperscript{142}

The Chief Witness Protection Officer can terminate the protection and assistance provided under the programme on the written request of the witness or if the witness deliberately breaches a requirement or under-taking relating to the programme or if the witness's conduct is likely to threaten the security or compromise the integrity of the programme or the witness willfully furnished false or misleading information in

\textsuperscript{138} Section 14 (3), the \textit{Sindh Witness Protection Bill}, 2013.
\textsuperscript{139} Section 15(2) (a), the \textit{Sindh Witness Protection Bill}, 2013.
\textsuperscript{140} Section 15(2) (b), the \textit{Sindh Witness Protection Bill}, 2013.
\textsuperscript{141} ibid.
\textsuperscript{142} Section 16, the \textit{Sindh Witness Protection Bill}, 2013.
the application for placement under protection. The protection and assistance provided can also be terminated when the circumstances that gave rise to the need for protection and assistance for the witness have ceased to exist or the safety of the person is no longer threatened or the evidence of the witness is no longer required in the concerned proceeding.\textsuperscript{143}

However, it is provided that "the notice of the termination of the protection and assistance must be given to the witness."\textsuperscript{144} A person aggrieved by the decision of the Chief Witness Protection Officer may apply to the government, within the prescribed period, to review the decision.\textsuperscript{145}

The Bill provides for the confidentiality regarding information in respect of protected person. However, the Chief Witness Protection Officer may disclose any information in respect of a protected person with his consent or where the disclosure is necessary to establish the guilt or the innocence of a person in any criminal proceedings or where the protected person is under investigation for, or has been arrested for a serious offence.\textsuperscript{146}

Thus, the law provides strict provisions for keeping any information regarding the protected person secret. However, the same may be disclosed by the Chief Witness Protection Officer under the exceptional circumstances as mentioned above.

Any person who contravenes these provisions commits an offence punishable with imprisonment for a term not exceeding twenty years.\textsuperscript{147}

The Bill further provides that the identity of protected person shall not be disclosed in court proceedings. Where such information is to be disclosed the court shall conduct the proceeding relating to the identity of the protected person in-camera. The court shall make an order to prohibit the publication of evidence given before it to ensure that the identity of the protected person is not disclosed.\textsuperscript{148} It is further provided that

\begin{footnotesize}
\textsuperscript{143} For details see, section 18, the \textit{Sindh Witness Protection Bill}, 2013.
\textsuperscript{144} Section 18 (2), the \textit{Sindh Witness Protection Bill}, 2013.
\textsuperscript{145} Section 19, the \textit{Sindh Witness Protection Bill}, 2013.
\textsuperscript{146} Section 22, the \textit{Sindh Witness Protection Bill}, 2013.
\textsuperscript{147} Section 22 (4), the \textit{Sindh Witness Protection Bill}, 2013.
\textsuperscript{148} For details see, Section 23, the \textit{Sindh Witness Protection Bill}, 2013.
\end{footnotesize}
"the presiding officer of the court shall make an order prohibiting the publication of any information concerning protected person, which may disclose the place of safety or location where the witness is or has been under protection or where he has been relocated, the circumstances relating to his protection or change of the identity of protected person."

The Bill provides a stringent punishment for persons guilty of offences mentioned in the Bill. It provides that "any person who willfully or negligently allows any unauthorised person to gain access to any protected person or willfully or negligently discloses the identity of any protected person, the place of safety where the protected person is relocated, any information which undermines or compromise the integrity of a witness protection programme or any information that compromises the security of such a person shall be guilty of an offence punishable with fine or imprisonment for a period not exceeding three years."

It is further provided that any person who willfully interferes with, or hinders or obstructs the Chief Witness Protection Officer or any other member of the unit in the exercise of his powers, functions and duties, or makes false statement or furnishes information that he or she knows to be untrue or misleading with the intention of availing protection under the Act, shall be guilty of an offence and on conviction be liable to a fine or to imprisonment for a period not exceeding five years. A person who is guilty of abetment or attempt to commit abovementioned offences is also liable to punishment provided for that offence. Thus, not only actual commission but an attempt or abetment of an offence mentioned under the Act is strictly punishable. These provisions can be helpful in effective implementation of the Act.

The Bill directs the Government to establish a witness protection programme for protection and safety of witnesses. The protection measures available under the programme include "assisting the witness to establish a new identity or to allow the

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149 For details see Section 24, the Sindh Witness Protection Bill, 2013.
150 Section 25 (1), the Sindh Witness Protection Bill, 2013.
151 Section 26, the Sindh Witness Protection Bill, 2013.
152 Section 4(1), the Sindh Witness Protection Bill, 2013.
witness to conceal his or her identity by wearing a mask, changing his or her voice, appearance or any other form of segregation during the trial or using video-conferencing in order to secure the protected person's testimony. In case the protected witness is relocated to a safer place, he may be provided with accommodation, transport facilities, reasonable financial assistance for obtaining a means of livelihood.”

The law provides that if the protected person is killed due to his participation in the programme or permanently incapacitated, compensation may be provided to his legal heirs. His dependent minors may be provided with free education.

It is submitted that the Bill provides for various types of protection such as providing new identity, keeping identity secret, evidence through video-conferencing, relocation, accommodation, transport facilities, financial assistance as well as compensation to the legal heirs in case of death or permanent incapacity of the protected person. The law has tried to ensure that witnesses feel free and secure while giving evidence in criminal proceedings.

5.3 United Nations

United Nations has also recognised the need to protect the witnesses appearing in serious cases. In 2008, the United Nations office on Drugs and Crime issued a compendium entitled, "Good Practices for the Protection of Witnesses in Criminal Proceedings involving Organised Crime". United Nations Convention against Transnational Organized Crime (UNITOC) also emphasises the need for witness protection in criminal proceedings. United Nations' response towards the protection of witnesses can be discussed under following headings:

5.3.1 United Nations Office on Drugs and Crime, Vienna

The United Nations Office on Drugs and Crime has prepared a compendium entitled, "Good Practices for the Protection of Witnesses in Criminal Proceedings
involving Organised Crime."\(^{155}\) For this United Nations referred to witness protection programmes and legislations of different countries.

It is mentioned that "the good practices do not advocate for any particular model of witness protection, instead they aspire to enhance understanding of the issues surrounding this sensitive field, to provide an account of the challenges that countries face in their efforts to address the threat posed to witnesses by criminal groups, the measures and practices that have produced positive results and those that have proved ineffective."\(^{156}\) It intends to "facilitate the gradual emergence of a common international approach to witness protection."\(^{157}\)

The Compendium defines witness or participant as "any person irrespective of his or her legal status (informant, witness, judicial official, undercover agent or other), who is eligible, under the legislation or policy of the country involved, to be considered for administration to a witness protection programme."\(^{158}\) Thus, it provides for a wide definition of the term witness, whereby a judicial official and undercover agent is also included in it for the protection purpose.

Witness protection programme is defined as "a formally established court programme subject to strict admission criteria that provides for the relocation and change of identity of witnesses, whose lives are threatened by a criminal group because of their co-operation with law enforcement authorities."\(^{159}\)

It is observed in the Compendium that "assistance and protection measures yield positive results, instilling confidence in witnesses to come forward and testify."\(^{160}\) It is stated in the Compendium that concerns about a witness's security may be efficiently addressed through:

\(^{155}\) See, United Nations Office on Drugs and Crime, Good practices for the protection of witnesses in criminal proceedings involving organised crime, 2008, p.4.

\(^{156}\) For details see id., p. 4.

\(^{157}\) ibid.

\(^{158}\) ibid.

\(^{159}\) id., p. 5.

\(^{160}\) id., p. 27.
(a) Witness Assistance:

It includes measures ranging from briefing witness on what to expect and the basic aspects of a criminal trial, to psychological support to minimise the stress from participating in a trial and financial assistance for transportation, accommodation and childcare, among others.\textsuperscript{161} It is further mentioned that the assistance services should be administered and delivered by trained and skilled professionals who are independent from the investigation and prosecution service.\textsuperscript{162}

(b) Police measures to enhance physical security:

It is observed in the compendium that in the majority of cases, witnesses do not face a life threatening situation. Instead, they suffer verbal threats, intimidations, harassment, assault, property damage or simply fear of reprisal as a result of their co-operation with the police. To provide support and security to such witnesses, the police may put a security programme in place.\textsuperscript{163} The measures taken would be proportional to the threat and of limited duration.\textsuperscript{164} It is submitted that such police measures can be of great help to the witnesses who are not eligible for admission to a witness protection programme."

(c) Procedural Protection:

It is provided that in sensitive cases procedural measures, such as use of a witness' pretrial statement instead of in-court testimony, presence of an accompanying person with witness

\textsuperscript{161} id., p. 28.
\textsuperscript{162} See, \textit{ibid}.
\textsuperscript{163} \textit{ibid}.
\textsuperscript{164} \textit{ibid}.
for psychological support and recording of testimony via closed-circuit television or videoconferencing can be applied to prevent the re-victimisation of victim-witnesses. Use of techniques like voice and face distortion or anonymous testimony can be used in such cases.\textsuperscript{165}

It recommends that any legislation for setting up a witness programme should specify:\textsuperscript{166}

"(i) Protection measures that may be adopted;

(ii) Conditions for their application and criteria for admission of witnesses;

(iii) Procedure to be followed;

(iv) Authority responsible for the programme's implementation;

(v) Reason for the programme's termination;

(vi) Rights and obligations of the parties;

(vii) Confidentiality of the programme's operations."

On the issue of funding it is recommended in the Compendium that "adequate and regular funding should be appropriated by government budgets to ensure the programme's sustainability and the availability of resources for the duration of protection."\textsuperscript{167}

The Compendium provides that the application for providing protection to a witness may be filed by the witness himself, the police or the prosecutor.\textsuperscript{168} The presiding judge may also take the initiative.\textsuperscript{169}

\begin{footnotesize}
\begin{itemize}
\item[165] \textit{id.}, p. 31.
\item[166] \textit{id.}, p.44.
\item[167] \textit{id.}, p.50.
\item[168] \textit{id.}, p.59.
\end{itemize}
\end{footnotesize}
It provides that "the witness protection authority may be a single official, such as the Minister or Secretary of Justice, the Attorney General, the public prosecutor or the police commissioner or a multidisciplinary body consisting of representatives from the relevant ministries, the prosecutor's office, the courts or the police force."¹⁷⁰

It is further mentioned that the criteria for admitting a witness to a programme may include "the level of threat to the witness' life, the witnesses' personality and psychological fitness, the danger that the witness, typically a former collaborator of the defendant, may pose to the public if relocated under a new identity, The critical value of the witness's trial testimony for the prosecution and the impossibility of gaining such knowledge elsewhere and the importance of the case in dismantling criminal organisations."¹⁷¹

When a witness is admitted in the protection programme, he has to sign a memorandum of understanding which may include:¹⁷²

"(a) A declaration by the witness that his or her admission to the protection programme is entirely voluntary and that any assistance must not be construed as a reward for testifying;

(b) The scope and character of the protection and assistance to be provided;

(c) A list of measures that could be taken by the protection unit to ensure the physical security of the witness;

(d) The obligations of the witness under the programme and possible sanctions for violations, including removal from the programme; and

¹⁶⁹ ibid.
¹⁷⁰ id., p. 60.
¹⁷¹ id., p. 61.
¹⁷² id., p. 65.
(e) The conditions governing the programme's termination.

After the admission of a witness to protection programme, the protection authority becomes responsible for "making arrangements to protect the lives of the witness; relocating participants and issuing new personal documentation; providing financial support for a definite period of time; providing initial assistance with job training and finding new employment; providing counselling and other social services, including appropriate education; and extending protection and benefits to persons accompanying the witness in the programme." On the other hand, the witness is "under obligation not to compromise, directly or indirectly, any protection or assistance provided, to comply with the protection authorities' instructions regarding the assistance provided, not to commit any crimes, to fully disclose information on his or her past criminal history and all financial and other legal obligations, to provide true testimony and to comply with the restrictions on disclosure of information related to the investigation of the crime concerned." In Republic of Korea, authorities compensate the witness for any financial loss sustained as a result of participating in the programme.

It is further provided that "when the threat against the witness's life cannot be averted through temporary relocation or other measures, identity change or exceptional measure, can be applied. It consists of the creation of a new personal profile for the witness, hiding his or her original identity by issuing personal documents under a new name, resettling him or her in a new area and creating a substitute life history."

The Compendium also discusses international relocation of witnesses under a protection programme. It mentions that "international relocation is situated at the top end of witness protection services owing not only to the sufficient costs, resources and impact it implies for the witness and his or her close family members, but also to the

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173 id., p. 67.
174 ibid.
175 ibid.
176 id., p. 77. For details see, Ch. VIII, "Relocation and identity change", of the Compendium.
complicated nature of international relations. Nonetheless, for many small countries, the international relocation of threatened witnesses is sometimes the only means of guaranteeing effective protection.\(^{177}\)

In the concluding remarks it is observed in the Compendium that "the state has an obligation to provide assistance and protection to persons who are likely to be harmed because of their collaboration with the criminal justice system. There are different means of protection. The kind chosen in each case depends to a large degree on the type of witness (victim, vulnerable witnesses, justice collaborator etc.), the type of crime (crime within the family, sex-crime, organised crime etc.) and the level of threat or intimidation."\(^ {178}\)

It emphasises that "the witness protection programmes are considered to be a last-resort response in providing security to threatened witnesses. They were established to address the inability of regular police protection measures to provide a secure environment for witnesses willing to testify against powerful criminal defendants, such as members of mafia. Over the years, witness protection programmes have developed sophisticated practices allowing the change of identity of threatened witnesses and their relocation to a safe place as the only effective means of protection. The success of these operations has had a positive impact on securing crucial evidence and has made witness protection a key element in efforts to effectively fight the organised crime."\(^ {179}\)

It is submitted that the United Nations office on Drugs and crime have done a significant and admirable work by compiling these good practices for the safety of witnesses appearing in criminal cases, involving organised crime. It has minutely studied various polices, legislations and witness protection programmes existing in various countries and put their crux in the compendium. This compendium may be of great significance and relevance for policy makers, legislators, enforcement agencies, researchers and academicians. It can also be useful for countries like

\(^{177}\) id., p. 82.
\(^{178}\) id., p. 93.
\(^{179}\) ibid.
India which need to legislate and establish a programme for protection of witnesses.

The compendium is divided into ten chapters dealing with various aspects of witness protection. It addresses the operational aspects of setting up and implementing witness protection programmes. The foreword to the compendium makes it clear that "it has been designed to assist and support member states in the establishment and operation of effective witness protection programmes. It provides a useful account of available measures and offers practical options suitable for adaptation and incorporation in the legal system, operational procedures and particular social, political and economic circumstances of member states."\(^{180}\)

5.3.2 United Nations Convention against Transnational Organized Crime (UNITOC)

Article 24 of the Convention invites the member states to take appropriate measures to protect witnesses from threats, intimidation, corruption or bodily injury and to build up international co-operation for same.\(^{181}\) It is provided that subject to domestic legal principles and available means, the measures may include physical protection, identity protection, relocation as well as recording the statement of witnesses through video-conferencing.\(^{182}\)

The term ‘witness’ is not defined but Article 24 limits its scope to those victims and witnesses that give actual testimony in court relating to the offences covered by the Convention including "participation in an organized criminal group, money laundering, corruption in the public sector, obstruction of justice, trafficking in persons, illicit manufacturing of and trafficking in fire arms, their parts and components and ammunition, smuggling of migrants and other serious crimes as defined in the convention encompassing the elements of transnationality and


\(^{182}\) *ibid.*
involvement of an organised criminal group.”¹⁸³ Thus, the United Nations has always shown concern for the protection of witnesses in serious cases.

5.4 Sum-up

The foregoing study makes it clear that there is very less difference in the kinds of protection offered to witnesses in various countries. Most of the countries have recognised the fact that such programmes are essential to secure reliable testimonies especially, in cases involving serious crimes. The chapter highlights that generally witness protection programmes are based on a statutory footing. However, in Ireland the programme is not based on any specific legislation. It is submitted that in India, a specific law on witness protection is essential to effectively deal with the problem of witness intimidation. The Indian law makers should evaluate and analyse these laws and adopt the practices best suitable for Indian criminal justice system.