In the preceding chapters of the present study, an attempt has been made to highlight the salient issues pertaining to protection of witnesses. After an analysis of the foregoing chapters, it is submitted that there is an urgent need to enact a law for the safety, protection and welfare of witnesses appearing in criminal cases of grave nature. This is necessary to ensure the participation of witnesses in the legal process without any fear of intimidation or harassment. In other words, the law on witness protection is necessary for an effective criminal justice system. Such a law will help to curb the malady of witnesses turning hostile due to external interferences in the criminal proceedings. The accused that are powerful and influential will be deterred by the law from influencing, pressurising, intimidating or harassing the witnesses. Witnesses will feel safer and secure to depose against such accused. It will help prevent unmerited acquittal of accused persons due to unavailability of witnesses. Consequently, conviction rate will improve and the credibility of criminal justice system will be strengthened.

It is a recognised fact that a witness is the most effective mode of evidence for proving or disproving the guilt of an accused. He assists the court in arriving at a just and fair decision. However, while performing his duty to depose before the court, he has to suffer a lot. He comes to court at the expense of his time, money and convenience, but generally he is not treated with due respect and courtesy by the court officials and lawyers. There is no proper arrangement for his convenience and comfort. Even a proper seat and drinking water are not available for him. He has to appear again and again before the court due to frequent adjournments. Due to the delaying tactics of the lawyers, his examination and cross-examination may take several dates. He is not even granted proper allowances for the loss of his time and earnings.
Besides, these difficulties, he has to face the displeasure of the accused person against whom he has to depose. In case, the accused is a dreaded criminal or terrorist or rich and influential, he may have to face risk to his life and property as well as life and property of his family members. There is no effective legal provision to protect a witness from such hardships, inconveniences, intimidation and threats. It is submitted that the witnesses are treated very shabbily in India.

Due to these reasons, most of the witnesses are unwilling to come forward and cooperate with law enforcement agencies. It is apparent that absence of a statute on witness protection is in fact, discouraging the witnesses and encouraging the accused persons who can easily intimidate witnesses. This necessitates the enactment of law on witness protection, so that witnesses may depose without any fear of threat or intimidation.

The present study has highlighted that in the present criminal justice system problems faced by witnesses are multifarious, which have received very limited attention of the law makers. It is not a witness rather the administration of justice that suffers ultimately.

It is to be noted that the problem of witness intimidation has almost been ignored by the law makers and the researchers as well. Witness intimidation means frightening or threatening or compelling of a witness, so as to deter him from appearing or deposing before a court. In case, he has already deposed, intimidation is used to pressurise him to retract from his statement. The study discloses that witness intimidation may be explicit or implicit. Thus, a witness may be intimidated directly or indirectly. Threat may be against the witness himself or against his family members. Threat may be against the life or property or against both. Besides direct or indirect threats, witness intimidation may include actual violence against the witness or actual damage of property. Such intimidation adversely affects willingness of a witness to depose truthfully and may lead to unduly interference in the witness's statement.

Earlier, witness intimidation was not punishable under the Indian Penal Code, 1860. However, after the Criminal Law (Amendment) Act, 2006, witness intimidation is an offence under section 195A of the Indian Penal Code, 1860. Accordingly, if a person threatens another with injury to his person, reputation or property or to that of any one
in whom that person is interested, with intention to cause that person to give false testimony, he is liable to be punished with imprisonment of either description which may extend to seven years or with fine or with both. Thus, the law provides for a stringent punishment for the offence of witness intimidation. The punishment is even more stringent in case where an innocent person is convicted and sentenced with death or imprisonment for more than seven years in consequence of such false evidence. In such case, the person guilty of threatening or intimidating the other shall be punished with the same punishment with which such innocent person is punished. The object of this provision is to put fear of law in the minds of accused and to deter and discourage them from intimidating and threatening the witnesses. It will certainly help in securing true statement of witnesses. Undoubtedly, the law provides strict punishment for a person guilty of intimidating a witness, however, it fails to provide any specific provision for protection of a threatened witness.

It is submitted that free and fair trial is considered as one of the basic principle of criminal justice system. Intimidation and threatening of witnesses may lead to a trial which is unfair. Hence, protection of witnesses from intimidation, threats and harassment is essential for conducting a free, fair and impartial trial.

To understand the meaning and concept of witness protection, the researcher has analysed various definitions of the term in the first chapter of the present study. It may be concluded that witness protection generally includes identity protection and physical protection of witnesses who have provided crucial evidence in a criminal case of serious nature and whose life and property are at serious risk. Witness protection refers to various methods and measures adopted to protect a witness from intimidation and threatening at all the stages of a criminal case, to ensure his confidence, cooperation and truthful testimony.

Council of Europe defines witness protection programme as "a standard or tailor made set of individual protection measures which are, for example, described in a memorandum of understanding signed by the responsible authorities and the protected witness or collaborator of justice."1

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1 Council of Europe, Recommendation Rec (2005) 9, of the Committee of Ministers to Member States on protection of witnesses and collaborators of justice, quoted in "Witness protection as a key tool in addressing serious and organized crime", available at
It is submitted that the law for the protection of witnesses is fundamental for the credibility of the Indian criminal justice system. The state should take its responsibility to protect the witnesses who come forward to perform their duty to provide evidence by risking the life and property of their own as well as that of their near and dear ones. The law should be such that nobody may be allowed to influence, in any manner, a witness from performing his duty.

Justice B. Sudershan Reddy very rightly observed that the concepts of 'Witness Anonymity' and 'Witness Protection' have increasingly assumed great social, political and legal salience. He stressed that these two concepts lie at the very juncture of great jurisprudential developments regarding the rights of citizens in actions by the state, particularly criminal investigations and criminal proceedings.²

Though protection to witnesses, who face imminent danger to their lives and property, is very much essential, it is not feasible to protect all the witnesses appearing in criminal cases. For this, the law on witness protection should provide standard criteria for the purpose of granting protection to a witness. The researcher has proposed a criterion in the suggestions given in the present thesis.

The concept of identity protection was introduced in the special Acts, dealing with terrorism like the Bengal Suppression of Terrorist Outrages Act, 1932, the Terrorist Affected Areas (Special Courts) Act, 1984, the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986, the Terrorist and Disruptive Activities (Prevention) Act, 1987, the Prevention of Terrorist Activities Act, 2002, and presently the Unlawful Activities (Prevention) Act, 2005 and the National Investigation Agency Act, 2008. These Acts do contain provisions relating to conferring of anonymity to witness appearing against hard core gangsters and terrorists. The analysis of the legal provisions of these Acts highlights that under these Acts a witness was granted anonymity, in case his life and property or life and property of his family was in grave danger. It is also apparent that the object of granting anonymity to such witness was to protect his life and property from the hard core criminals and to protect him from

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intimidation at the hands of such criminals. Under the Indian criminal justice system, an accused has right to open trial i.e. he has right to know all details about a witness deposing against him. He can cross-examine such witness. However, the right of an accused for open trial has been curtailed by the court in exceptional circumstances. Except special laws mentioned above, no other law contains provision for providing anonymity or identity protection to witnesses.

Physical protection means protecting the witness from any physical injury or risk to his life. It may include police protection or police escort from and to the court premises, security at the residence and working place of witness. It may also include protection for the family of the witness.

 Besides, identity protection and physical protection, witness protection covers witness assistance as well as special measures of protection. It is submitted that sometimes, under exceptional circumstances, special measures like change of identity, relocation to a new place as well financial assistance need to be applied. Since, adoption of these measures require huge funds, therefore, these may be applied only in rare cases.

Witness assistance should be provided to the witnesses coming to the courts to give their statement. Witness assistance generally, includes psychological support to remove fear and anxiety of the witnesses, proper allowances as well as proper arrangements of drinking water, sitting arrangements and toilets.

Perjury is giving of false evidence in a case. Under the Indian Penal Code, 1860, giving false evidence is an offence and the person giving false evidence is liable to be punished. If protection to vulnerable and intimidated witnesses is necessary for a fair and impartial trial, punishment to hostile witnesses is also crucial to achieve successful prosecution of a case. It is submitted that punishing a perjurer is necessary to ensure that only reliable, complete and truthful evidence is given before the court, a rightful decision can be based on rightful evidence. Witnesses should be ensured that in case of any danger to them, law will protect them, at the

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3 See, section 191, the Indian Penal Code, 1860.
4 See, section 193, the Indian Penal Code, 1860.
same time, they should be aware that in case of giving false testimony before court, law will punish them.

Through the present study a humble attempt has been made to examine and evaluate reports of various commission and committees, in which various problems faced by the witnesses and the issue of providing protection to witnesses have been highlighted.

The Law Commission of India, in its Fourteenth Report has discussed the issue of harassment and inconvenience suffered by witnesses while appearing in courts. The Commission highlighted that there is no provision for the convenience of witnesses coming to courts. Witnesses have to wait under the trees in the grounds of courts or in the verandahs of the courts. The Commission observed that witnesses are not granted proper allowances by the courts.

The issue of threatening and bribing of witnesses was highlighted for the first time by the Law Commission in its Forty Second Report. The Commission proposed to add a new section in the *Indian Penal Code*, 1860, whereby threatening, bribing or dissuading any person from giving evidence before a public servant, was made punishable with imprisonment upto six months or with fine or with both. The Commission also proposed punishment for the offence of threatening a witness, but failed to suggest any relief for the threatened witness.

Again, in its One Hundred and Fifty Fourth Report, the Law Commission highlighted that the inconveniences suffered by witnesses, lack of facilities for witnesses, frequent adjournments as well as inadequate allowances are the main reasons for the unwillingness of witnesses to cooperate with law enforcement agencies. The Commission, in brief words, suggested that the witnesses should be provided protection from the retaliation of the accused at the time of investigation and in some cases, even after completion of trial.

Further, in its One Hundred and Seventy Second Report, the Law Commission suggested that while recording the statement of a victim of sexual assault, who is below sixteen years of age, a screen should be used so that the victim does not have to confront the accused while giving statement. This will save the victim from unnecessary intimidation or pressure posed by the accused.
Thereafter, in One Hundred and Seventy Eighth Report, the Law Commission pointed out that where the accused are rich, influential or member of mafia gangs, the witnesses are more vulnerable to threats and inducements. The Commission emphasised the need to prevent such incidents.

In 2004, the Law Commission prepared a Consultation Paper on 'Witness Identity Protection and Witness Protection Programmes'. The Commission suggested that special provisions like in-camera proceedings and video conferencing techniques can be used in cases, where witnesses are intimidated or bribed. The Commission suggested that the courts should be empowered to grant protection to witnesses, in cases where muscle power, money power or political power is used to intimidate witnesses. This is necessary so that witnesses could give truthful evidence without any fear of intimidation at the hands of the accused.

The Law Commission in its One Hundred and Ninety Eight Report discussed the responses to the questionnaire given in the Consultation Paper and made detailed recommendations regarding witness identity protection and witness protection programme. It also proposed a draft bill entitled the *Witness (Identity) Protection Bill, 2006*. The Commission highlighted the need for protection of identity of witnesses in all the cases involving offences of grave nature. Regarding the term 'serious offences', the Commission proposed that an offence triable by the court of Sessions shall be treated as a serious offence. It emphasised that there is a need to grant anonymity to witnesses during investigation, inquiry as well as trial. For granting anonymity, the concerned Magistrate should hold a preliminary inquiry. It also suggested the use of two way audio-video link and video screens for recording the statement of witnesses appearing in cases involving serious offences. The Commission further recommended that witness protection programmes are essential for better conviction rates. According to the Commission, such programmes can be confined to cases triable by Sessions courts. It opined that the Union and State governments must come forward and allocate funds required for the establishment of such programmes.

In 2003, the Malimath Committee in its Report on Reforms of Criminal Justice System observed that in India, important witnesses are threatened, injured or even murdered prior to their evidence in the court. Under such circumstances, witnesses
will not come forward, unless they are assured of protection. The committee observed that a law should be enacted for safety of a witness and his family.

As discussed earlier, the Criminal Law Amendment of 2006 has inserted a new section 195A in the Indian Penal Code, 1860, as well as Criminal Procedure Code. As a result, intimidation of a witness is now an offence under the Indian Penal Code, 1860, punishable with imprisonment of either description for a term which may extend to seven years or with fine or with the both. The offence of threatening any person to give false testimony is made cognisable and non-bailable. The study revealed that witnesses were provided identity protection under various special statutes. For instances, the Indian Penal Code, 1860, provides that disclosure of identity of a rape victim is punishable with imprisonment of two years and fine.\(^5\)

Further, it is observed that courts have power to transfer the case if there is evidence of witnesses being threatened and intimidated.\(^6\) The courts are empowered under the Code of Criminal Procedure, 1973, to refuse or cancel the bail of the accused, if the court feels that the accused may intimidate witnesses or tamper evidence.\(^7\)

The researcher has also highlighted that the Indian Evidence Act, 1872, contains provisions for the protection of witnesses from aggressive cross-examination. The court can prohibit asking of improper and irrelevant questions from witness.\(^8\) It is further, provided that "a question carrying an imputation to the witness shall not be asked unless the person asking the question has reasonable ground to believe that the imputation contained in the question is well-founded."\(^9\) A witness cannot be asked indecent and scandalous questions, unless they are related to facts in

\(^5\) Section 228, the Indian Penal Code, 1860.
\(^8\) Section 148, The Indian Evidence Act, 1872.
\(^9\) Section 149, The Indian Evidence Act, 1872.
issue or are necessary to determine whether or not the facts in issue existed.\textsuperscript{10} Similarly, a witness cannot be asked insulting or annoying questions.\textsuperscript{11}

Along with provisions under the \textit{Indian Evidence Act}, 1872, the \textit{Code of Criminal Procedure}, 1973, provides that witnesses should be granted allowances by courts. It is to be noted that granting of allowances is discretionary and not mandatory.\textsuperscript{12}

Besides these provisions, there is no specific legal provision to protect witnesses who face risk to their lives or property. It is submitted that there is an urgent need to enact a law for the protection of witnesses. Legislature should be sensitive towards the needs and problems of witnesses appearing in criminal cases. In the absence of any specific legislation for the protection of witnesses, the Indian judiciary has played a proactive role in taking up various relevant issues relating to witnesses. The courts have passed orders for transfer of a case, cancellation or refusal of the bail of the accused, taking evidence of witnesses through video conferencing, keeping the identity of the witness secret, so that witnesses may depose without any fear of threat or intimidation.

In \textit{Mrs. Neelam Katara v. Union of India}\textsuperscript{13}, the Delhi High Court issued certain guidelines for witness protection applicable in cases punishable with death or life imprisonment. It is submitted that the directions of the court may provide beneficial for the witnesses in the absence of any specific law on the subject.

In \textit{Zahira Habibullah Sheikh and another v. State of Gujarat and others}\textsuperscript{14}, the court emphasised the need for protecting the witnesses and observed that "time has come, when serious and undiluted thoughts are to be bestowed for protecting witnesses so that ultimate truth is presented before the court and justice triumphs and that trial is not reduced to mockery. The court stressed that legislative measures for prohibiting tampering with witnesses, have become the imminent and inevitable need of the day."\textsuperscript{15}

\begin{itemize}
\item \textsuperscript{10} Section 151, \textit{The Indian Evidence Act}, 1872.
\item \textsuperscript{11} Section 152, \textit{The Indian Evidence Act}, 1872.
\item \textsuperscript{12} Section 312, \textit{The Code of Criminal Procedure}, 1973.
\item \textsuperscript{13} Criminal Writ Petition No. 247 of 2002.
\item \textsuperscript{14} (2004) 4 SCC 158.
\item \textsuperscript{15} \textit{ibid.}
\end{itemize}
In *National Human Rights Commission v. State of Gujarat*\(^\text{16}\), the Apex Court observed that witnesses form the key ingredient in a criminal trial, as guilt of the accused is established by their statements. Therefore, it is imperative that witness should be protected so that justice is done and the guilty can be brought to book. The Supreme Court issued various directions for the protection of witnesses, appearing in cases related to *Godhra* riots, like providing safe passage to the witnesses while going and returning from the court precincts, providing protection to the witnesses at their residence and relocation of threatened witnesses to another state if required.

The Allahabad High Court observed that witness protection is the need of the hour.\(^\text{17}\) The system has to instill confidence in witnesses that they will be protected. In *Mosaref Hossain Mondal v. The State of West Bengal and others*,\(^\text{18}\) the Supreme Court observed that efficacy of criminal justice administration depends on the security and safety of witnesses. According to the court, the need for witness protection is more in sexual offences, particularly if the victim is a minor.

In *Bimal Kaur v. Union of India*\(^\text{19}\), the full bench of the Punjab and Haryana High Court upheld the validity of section 16 of the *Terrorist and Disruptive Activities (Prevention) Act*, 1987. As discussed earlier, this section provides that for the protection of witnesses, their identity can be kept secret by the court. The Supreme Court upheld the validity of section 16 of the *Terrorist and Disruptive Activities (Prevention) Act*, 1987 and observed that "when the accused persons are of bad character, the witnesses are unwilling to come forward to depose against such persons, fearing harassment at the hands of those accused."\(^\text{20}\) The court held that if in the opinion of the court, the life of a witness is in danger, it may keep secret the true identity and address of such witness

\(^{16}\) (2009) 6 SCC 767.
\(^{18}\) Crl.L.J. 2012 SC 2983.
\(^{19}\) AIR 1988 P&H 95.
\(^{20}\) *ibid.*
Again, in *Simranjit Singh v. Union of India*\(^{21}\), the full bench of Punjab and Haryana High Court upheld the validity of section 30 of the *Prevention of Terrorism Act*, 2002. The provisions of section 30 are similar to those in section 16 of the *Terrorist and Disruptive Activities (Prevention) Act*, 1987. The Supreme Court in *PUCL's* case upheld the validity of court's power to grant identity protection to witnesses and preserve their anonymity. The court observed that "a witness, who gives evidence which is unfavourable to an accused, would expose himself to severe reprisals which could result in death or severe bodily injury. If such witnesses are not given appropriate protection, they would not come forward to give evidence and there would be no effective prosecution of terrorist offences."\(^{22}\)

In number of cases like *Nahar Singh Yadav and another v. Union of India*\(^{23}\), *Sister Meena Borwa v. State of Orissa and others*\(^{24}\), *Surendra Pratap Singh v. State of Uttar Pradesh and others*\(^{25}\) and *Madan Lal and others v. State of Rajasthan and others*\(^{26}\), the courts transferred the cases from one place to another to ensure that trial takes place in a congenial environment and the accused may not influence the prosecution witnesses or cause physical harm to them.

The researcher has analysed the legislations relating to witness protection existing in the United States of America, United Kingdom, the Republic of Albania, Malaysia, Ireland as well as the provincial legislation of Sindh in Pakistan. The study revealed that these countries have adopted witness protection programmes on the basis of legislation. In Ireland the Programme has no statutory footing. However, a Bill has been introduced regarding the same in 2007 by Irish legislature. The Sindh Government in Pakistan has taken the lead and passed the *Sindh Witness Protection Bill*, 2013.

These countries have recognised the fact that protection to witness from threats and intimidation is essential to ensure fair and effective criminal justice. A comprehensive

\(^{21}\) 2002 Crl.L.J. 3368.  
\(^{22}\) ibid.  
\(^{23}\) (2011) 1 SCC 307.  
\(^{24}\) 2010 Crl.L.J. 2779.  
\(^{25}\) 2011 Crl.L.J. 690.  
\(^{26}\) 2012 Crl.L.J. 1430.
and effective witness protection programme is essential to secure witness's statement in serious crimes in India too.

It is submitted that protection programmes existing in different countries do not differ in terms of defining witness for the purpose of protection, eligibility criteria for inclusion in the programme or protection measures provided. The definition of witness given in these witness protection programmes, for the purpose of protection is very wide. It includes prosecution witness, informants, justice collaborators, relatives and closely associated persons of witnesses and even defence witnesses.

So far as the criteria to provide witness protection is concerned, it differs. Just as, in Albania, the criteria to provide protection is the level of danger to the life and property of witness or of his relative and closely associated persons whereas in countries like Malaysia, the criminal record of the witness is also taken into consideration, before including him in the Protection Programme. The criteria for granting protection to a witness, generally, includes the gravity of offence to which the statement of the witness relates, the relevance of the statement of witness, vulnerability of witness as well as the cost of providing such protection.

Among the types of protection various measures like anonymity to witnesses, disguising his appearance, in-camera proceedings, face and voice distortion, physical protection and in more grave situations providing new identity or relocating the witness to a new place are used. The witnesses are also provided psychological help and financial assistance to start new life under these programmes. It is also seen that protection is generally granted to witnesses appearing in trials relating to grave crimes. The protection is generally provided during the investigation, trial and in some cases even after the completion of the trial.

The admission of a witness to the programme is generally decided by the person who heads the programme. The witnesses have to enter into a Memorandum of Understanding (MOU) with the Officer in charge of protection programme. The MOU sets out responsibilities and duties of both the protection officer as well as the witness. The main duty of the Programme Officer is to provide protection and assistance to the witness, while that of witness is to give the evidence as requisite in the criminal
proceedings. Breach of MOU by the witnesses may result into termination of the protection provided.

There is, generally, confidentiality clause in these programmes prohibiting the disclosure and publication of any protected person. Contravention of this provision is punishable with strict punishments under these programmes. The United Nations Office on Drugs and Crimes has published a manual on *Good Practices for the Protection of Witnesses in Criminal Proceedings involving Organised Crime*, 2008, to facilitate and encourage the member States to develop law on witness protection at the national level. The framework for witness protection devised by the United Nations Office on Drug and Crime has also been discussed.

**Suggestions**

In addition to recommendations put forward by the Law Commission of India the researcher has proposed the following suggestions, which may be helpful in curbing the problem of intimidation and harassment of witnesses and creating an institutional framework for the law on witness protection:

1. The legislature should enact a comprehensive law on witness protection to protect the safety and welfare of witnesses in criminal trials relating to grave offences. Besides, cases involving serious offences, the benefit of such law should be extended to cases, where the accused is a person with money power, muscle power or political power. It is suggested that through such law, the Government should establish a witness protection programme as soon as possible to protect the safety and welfare of witnesses in criminal trials relating to grave offences.

2. The legislation on witness protection should specify the authority responsible for the maintenance and supervision of the Witness Protection Programme, criteria for admission of witnesses, procedure to be followed for the purpose of relocation and identity of witnesses and confidentiality of the programme's operation.

3. It is, further, suggested that the maintenance of such witness protection programme, should be entrusted to an independent and autonomous
Commission, whose in-charge shall be a retired Judge of the Supreme Court. The other members may include retired judges of the Supreme Court and High Courts, senior advocates as well as Commissioner of Police etc.

4. The criteria for providing protection to a witness may include the seriousness of the offence to which the statement of the witness relates, the nature and significance of the statement of the witness, the nature of the alleged threat to the security of witness, alternative methods of protecting a witness available, the suitability of the witness for inclusion in the programme as well as the cost of maintaining the witness in the protection programme.

5. It is suggested that under the supervision of the in-charge of the Witness Protection Programme, a witness protection unit shall be established. The protection unit will be responsible for the physical security, relocation of the witnesses to a new location and change of identity of the programme participants. It is suggested that to ensure the confidentiality and integrity of the programme, there should be strict criteria for the appointment of staff of witness protection unit.

6. It is recommended that a regular monitoring of the programme should be conducted to prevent the misuse of the protection programme. A regular audit of the programme should be done to maintain the transparency and accountability of the programme.

7. It is submitted that a witness should be granted protection during investigation, inquiry and trials which is one of the recommendations of the Law Commission in its One Hundred and Ninety Eighth Report. It is, further, suggested that if the threat persists, protection may be granted even after the completion of trial. During investigation, the following steps should be taken to protect a witness:

(i) At present, proviso to section 160(1) provides that a male person under the age of fifteen years or a woman, who appears to be acquainted with the facts and circumstances of a case, shall not be required to attend any
place other than their residence for the purpose of investigation.\(^2\) It is suggested that proviso to section 160(1) of the *Code of Criminal Procedure*, 1973, shall be amended to include a threatened witness. It shall be provided that in case of heinous crimes, where a witness faces threats to his life and property, the police officer making investigation shall record his evidence at his place of residence.

(ii) It is suggested that while examining a witness under section 161 of the *Code of Criminal Procedure*, 1973, the investigation officer shall videograph the same. This will increase the evidentiary value of statement and witness will hesitate from becoming hostile due to any threats or inducements.

(iii) In case of heinous crimes where the minimum prescribed punishment is seven years of imprisonment, the statement of the witness shall be recorded directly before a Judicial Magistrate under section 164(1) of the *Code of Criminal Procedure*, 1973. This will increase the evidentiary value of such statements.

(iv) It is, further, suggested that Police should be sensitised towards the issue of witness protection. The Police should be made to understand that their duty pertains not only to arrest the guilty and get him punished, but also, to provide security to those who help them in the performance of their duty. In case of grave offences, while conducting test identification, the police shall ensure that the witness is screened from the accused so that he may not be intimidated by the presence of the witness.

(v) The guidelines of the Delhi High Court given in *Neelam Katara's case* should be incorporated in section 161 of the *Code of Criminal Procedure*, 1973, itself by necessary amendment, which makes it obligatory on the part of the investigating officer to inform witness about witness protection guidelines.

\(^2\) Also see, Sudhir Kumar Jain, "Witness Protection- Role of Judiciary", *Delhi Judicial Academy Journal*, 3(4) 2004 (December)p. 60.
(vi) The investigation wing of the police shall be separated from the law and order police to ensure an efficient and qualitative investigation. This will ensure that an investigation officer will devote full attention to the investigation of a case.\textsuperscript{28} For this additional police staff shall be recruited in police station.

8. As far as protection at the stage of trial is concerned, the witness shall file an application before the competent court. The court, on the basis of criteria given in the legislation, shall decide, whether a witness requires protection or not.

9. Comprehensive law on witness protection should contain provisions for the identity protection of the witnesses. The court, if satisfied that the danger to the life or property of a witness is serious, may grant anonymity to the witness and may direct that the identity and address of the witness may not be disclosed in the orders, judgement and records of the court. It may also direct that the documents disclosing the true identity and address of the witness shall be kept in a sealed cover and in a safe custody. It is suggested that disclosures of the identity of a protected witness without the authorisation of the court should be made punishable.

As submitted earlier, special Acts dealing with terrorist offences provided for the identity protection of witnesses appearing against dreaded terrorists. However, these special provisions may prove beneficial in other cases of grave or high profile nature also, where the witnesses are intimidated and threatened and are facing substantial risk to their lives. It is submitted that in cases involving hardened criminals and high profile persons, witnesses should be given identity protection to save them from intimidation and undue influence as well as to ensure fair trial.

10. In cases relating to grave offences or in high profile cases, a witness may face imminent danger to his life or property. In such cases identity protection may be inadequate remedy. Besides, in cases where identity of the witness is already known to the accused, identity protection of such

\textsuperscript{28} See, the Law Commission of India, One Hundred and Fifty Fourth Report, 1996.
witness becomes meaningless. In such cases, physical protection of witness becomes essential and physical protection, if required, should also be extended to the family members of such witness. Measures for physical protection may include "temporary change of residence, providing police security, protected transportation while taking the witness for recording of evidence, changing the witness's telephone number, assigning him an unlisted telephone number, installation of security devices in the witness's home (such as security doors, alarms or fencing), provision of electronic warning devices and mobile telephones with emergency numbers etc." The protection measures taken should be proportional to the perceived threat by the witness and of limited duration i.e. till the threat persists.

11. Besides identity protection and the physical protection, law must provide for special protection measures under exceptional circumstances. Such measures may include change of identity of witness and relocation to a new place. However, these measures may result in dramatic and serious changes in the life of protected person, as may have to severe ties with his relatives and friends. He may have to quit his employment or business. Therefore, these should be resorted to only if other measures fail to protect the witness concerned. In case such measures are applied, the witness should also be provided financial assistance for his survival at a new place. He should be given assistance in finding a new employment at such place. Again, these measures should be adopted only, if they are suitable to the witness concerned.

Moreover, the special protection measures should be applied in serious criminal offences like "drug trafficking, threats to national security, organised crime, corruption, money-laundering, customs violations, trafficking in humans and offences subjected to a minimum term of imprisonment of ten years."  

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12. In the criminal cases, where witnesses do not face life threatening risks, but are exposed to verbal threats, intimidation or harassment at the hands of accused, during the court proceedings, the court should be given powers by the law to grant temporary protection to such witnesses. Such measures may include a separate waiting room for witnesses (to avoid direct confrontation with the accused), police to escort the witness to and from the court premises, as well as secure transportation facility.

13. Video conferencing may be used to record the testimony of threatened witnesses as it reduces the chances of intimidation of vulnerable witnesses in the courtroom. Through this method, testimony of a witness present at a far-off place is also possible. If a witness is granted anonymity by the court, the image of his face may be distorted on the screen. This will enable the accused to hear the voice of the witness without seeing his face. By using this method, a witness may avoid direct confrontation with the accused while giving his testimony and would feel more comfortable and will be able to give answers without any fear or pressure.

14. The study has revealed that, generally, witnesses have to face great hardships while appearing in the court. So, it is suggested that adequate witness assistance may be granted to all the witnesses appearing before the court. Witness assistance may include giving general information about the court proceedings, proper seating arrangement, facility of drinking water etc.

15. It is suggested that unnecessary harassment of witnesses should be avoided by judiciary. The examination and cross-examination of a witness should be done without unnecessary adjournments and delays. Such delays provide opportunity to influential and powerful accused to intimidate witnesses.

16. It is also suggested that witnesses who appear before courts at the expense of their time and job, should be given adequate allowances. The procedure for granting allowances should also be made easy.

17. The Central Government should grant fixed yearly funds for the witness Protection Programme. Alternatively, the Government can also "enact statutory law allowing the programme to be funded through the use of
proceeds from property seized or confiscated for having been acquired through activity involving drug trafficking or organised crime.”

18. It is suggested that where a witness who is granted protection, fails or refuses to testify without any just reason, he should be prosecuted for contempt of court and his protection orders shall be terminated.

19. In case, a witness suffers grave physical injury or death due to his giving evidence against the accused, there should be provision for granting adequate compensation to the family members of the witness or the witness himself.

It is submitted that law on witness protection is necessary to strengthen the Indian criminal justice system. The Law Commission has made various recommendations regarding the same. The role of judiciary has been admirable and enthusiastic with regard to the issue of witness protection. The courts have observed time and again that the Parliament must enact a law on witness protection. It is high time that the Indian Government should enact law on witness protection to protect the safety and welfare of witnesses. It is further submitted that a witness's admission to the Witness Protection Programme should be the last resort. Before that, other protective measures such as screening the witness from the accused, granting partial or full anonymity to a witness or providing police protection should be used. Only under exceptional circumstances where a witness needs to be granted new identity and relocation to a new and safer place, a witness should be given protection under the Protection Programme. In such cases the court shall pass a reasoned order regarding the same.