

WITNESS PROTECTION AS A PILLAR OF FAIR TRIAL: AN INDIAN PERSPECTIVE

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ABSTRACT:

Witnesses' ability to give testimony without fear or intimidation is one of the key contributors to the image of the criminal justice system. Yet, in India, witnesses usually suffer threats, harassment, and inducements that compromise the process of a fair trial. The present research paper is an analysis of the development and importance of witness protection in the Indian criminal justice system. It follows the historical background and development of the different modes of witness identity protection, varying from anonymity and rehousing to in-camera hearing. The research examines the existing statutory framework, court precedents, and the enactment of the Witness Protection Scheme, 2018, as the first holistic endeavor towards institutionalizing protective steps for witnesses. In addition, it assesses the kinds of protections offered—such as physical security, identity alteration, and procedural protections—along with their shortcomings in real-world implementation. The article also addresses the suggestions of the Law Commission of India, especially its focus on balancing the accused's rights with ensuring a safe environment for witnesses. In the process, it pinpoints loopholes like insufficient finance, absence of public awareness, and scanty enforcement provisions. The research sums up by making suggestions to beef up the scheme such as statutes' enactment, improved coordination between police and judiciary, and adoption of global best practices. Finally, the paper contends that an effective witness protection system is crucial to uphold the credibility of trials, safeguard human rights, and dispensation of justice.

keywords: criminal justice system, witness, fair trial, law commission, dispensation of justice

INTRODUCTION:

Witnesses tend to be referred to as the "eyes and ears of justice", having an invaluable contribution in the criminal justice system by helping courts reach at the truth and bring criminals to justice. A witness's testimony can change the entire direction of a case, and their truthfulness and credibility of their statements becoming the very touchstone of justice. Therefore, ensuring witnesses are not intimidated, threatened, or harmed becomes an absolute requirement of the proper functioning of an adversarial criminal justice system.

Understanding this, the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 has brought in an important change by adding Section 398, which makes it obligatory for all State Governments to formulate and notify a Witness Protection Scheme (WPS). This is a watershed entry into the procedural structure of criminal law, making sure that states assume responsibility for protecting witnesses.

The genesis of this jurisprudential advancement lies in the Supreme Court's judgment in Mahender Chawla v. Union of India (2018),¹¹⁵⁹ in

¹¹⁵⁹ (2019) 14 SCC 615

which the Court identified the Witness Protection Scheme, 2018 as "law of the land" under Articles 141 and 142 of the Constitution, pending Parliament or state governments framing their own schemes. This decision was the first all-inclusive effort to institutionalize a witness safety mechanism beyond the meager protections dispersed throughout the IPC, IEA, and CrPC.

The 2018 Scheme was comprehensive in nature—introducing risks and vulnerabilities of categories, calling for police-prepared threat analysis reports, and creating a special body of judicial officers and police officials to oversee its implementation. Thereafter, the Ministry of Home Affairs (MHA), by its order dated January 14, 2019, instructed all States and Union Territories to implement the scheme in letter and spirit.

Against this background, the legislative acknowledgment of witness protection under the BNSS further consolidates the criminal justice system by institutionalizing protection against coercion and ensuring that justice is not sidetracked because of intimidation or fear of witnesses.

HISTORICAL EVOLUTION OF WITNESS AND PROTECTION IN INDIA:

The concept of witnesses and their protection in India is neither a recent development but one that has been shaped over the centuries by ancient traditions, medieval influences, and codified modern laws. The path of such development mirrors the evolving concept of justice and the growing appreciation for the need to protect those who testify. Generally, this development can be traced through three broad phases— Ancient Period, Medieval Period, and Modern Period.

1. Ancient Period

The first conceptualization of witnesses may be traced in the Vedic and Dharmashastra traditions. Ancient Indian law, present in Shruiti (Vedas, Brahmanas, Aranyakas, Upanishads) and Smriti (literatures such as Manusmriti),

located witnesses at the centre of fact-finding on truth. Witnesses were viewed as the ethical basis of justice whose responsibility was linked with dharma (righteousness).

Witnesses have been categorized into two broad types:

❖ Krita Witnesses (Selected Witnesses):
These included several sub-types as follows:

- Likhita (those who wrote facts),
- Smarita (those who remembered facts),
- Yadrachagata (offhand invitees to transactions),
- Goodhasakshi (secret witnesses implanted by one side), and
- Uttarasakshi (those who heard dying statements or testimony of individuals proceeding abroad or to hazardous endeavors).

❖ Akrita Witnesses (Casual Witnesses):
These consisted of villagers, the king, judges, members of the assembly, or persons deputed by the plaintiff.

The Manusmriti called a witness Sakshi—an individual who had "seen or heard an incident" (Manusmriti 8.74). It raised truth-speaking as a religious obligation, asserting that the witness was tantamount to the voice of Brahman himself when giving testimony in accordance with truth. Likewise, Shukraniti described a witness as "a man other than self who is aware of the facts of the case." Shukracharya classified witnesses into:¹¹⁶⁰

- those who witnessed events directly, and
- those who witnessed or heard about them indirectly.

Moreover, Shukraniti prescribed qualifications of a good witness, such as virtue, consistency in testimony, and established veracity. The system, however, was discriminatory—male householders were good witnesses, but

¹¹⁶⁰ Manusmriti, 8.74.

women were usually excluded with a few exceptions pertaining to female interests. This shows the significance and limitation of witness testimony in ancient jurisprudence.¹¹⁶¹

2. Medieval Period

With the advent of Islamic governance in India came new juridical influences, primarily borrowed from the Quran and Sharia laws. The Prophet Muhammad had insisted that "to God, a moment spent in the dispensation of justice is better than the devotion of a man who keeps fast every day," thus equating justice as a kind of religious piety.

In this period, attention was focused on two major modes of evidence— oral testimony and documentary evidence. Testimony of witnesses therefore remained at the core of the administration of justice, with kings and qazis (Islamic judges) accepting witness statements as most essential to establishing facts. The system acknowledged the moral duty of the witness to be truthful, regarding it as a matter of religious duty.

Though scant evidence exists of formalized witness protection processes during this time, witnesses were accorded sanctity and their testimony carried great evidentiary value. Yet, just as in the ancient era, weaknesses of witnesses frequently went unremedied in institutional processes.

3. Modern Period

The modern phase of the development of witnesses started with the British colonial period in India. This was a watershed moment because it brought in codified laws that still remain the backbone of India's criminal justice system today. The three most influential statutes passed in colonial times were:

1. The Indian Penal Code (IPC), 1860
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1. The Indian Penal Code (IPC), 1860 – laying down offences and providing punishments.
2. Indian Evidence Act (IEA), 1872 – enacting rules of evidence, such as competency, relevancy, and admissibility of witness evidence.
3. Code of Criminal Procedure (CrPC), 1898 (subsequently replaced by CrPC, 1973) – establishing procedure for investigation and trial, where witness evidence occupies a central position.

These acts statutorily recognized the significance of witnesses but did very little in the way of protection. Intimidation and hostility

¹¹⁶¹ Shukraniti, 364-365.

towards witnesses and inducement were widespread, frequently resulting in wrongful acquittals.

Post-Independence Developments

Since 1947, the Constitution of India was the supreme law. Article 21—"No person shall be deprived of his life or personal liberty except according to procedure established by law" was used as the foundation for safeguarding witnesses.¹¹⁶² The Supreme Court interpreted the said Article to mean that a free and fair trial is a guarantee of the Constitution. As witness evidence is the essence of a fair trial, witness protection became implicit in Article 21.

In time, the judiciary also saw the serious problems that witnesses were experiencing. In *Zahira Habibulla Sheikh v. State of Gujarat* (2004),¹¹⁶³ or the *Best Bakery case*, the Supreme Court noted that "if witnesses are threatened or coerced into giving false testimony, the trial itself is rendered a sham." Likewise, in *Mahender Chawla v. Union of India* (2018) the Court took a major step by upholding the Witness Protection Scheme, 2018 as "law of the land" until Parliament or state houses passed statutory vettles.

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TYPES OF WITNESSES:

The rules governing witness testimony and admission in court are established under the Indian Evidence Act of 1872. Through judicial interpretation and practice over time, different types of witnesses based on their role, capacity, and relation to facts in issue have been recognized. A few of the significant types of witnesses are as follows:

1. Expert Witness

An expert witness is termed in Section 45 of the Indian Evidence Act, 1872. They are experts in specific fields who give professional or scientific opinions on technical matters beyond the knowledge of the common man, including judges and members of the jury. They are not directly related to the facts-in-issue but their expert evidence helps the court to infer. For example, doctors can provide testimony as to cause of death or nature of injuries, handwriting experts can provide reports as to handwriting, DNA, or ballistics, and child psychologists can assess the psychological condition of children.

Case Reference: In *State of Himachal Pradesh v. Jai Lal* (1999)¹¹⁶⁴, the Supreme Court ruled that an expert's opinion is premonitory in nature and the court should strictly examine it previous to its acceptance.

2. Character Witness

A witness who offers evidence regarding the reputation, credibility, or moral character of the defendant or any other party is referred to as a character witness. For instance, a teacher, co-

¹¹⁶² *Hussainara Khatoun v Home Secretary, State of Bihar* [1979] 3 SCR 532.

¹¹⁶³ *Zahira Habibullah Sheikh v State of Gujarat* [2006] 3 SCC 374.

¹¹⁶⁴ AIR 1999 SC 3318

worker, or neighbor might testify regarding the honesty or violence nature of the defendant.

Character evidence has limited use since, under the Evidence Act, the normal rule is that character is irrelevant unless it becomes directly in issue. In felonious proceedings, however, the execution can cite substantiation of good character as a defence.

3. Hostile Witness

Hostile witness (also referred to as an adverse witness) is a witness who, having been called by a party, deposes against the very same party or recants his previous statement. Section 154 of Indian Evidence Act authorizes the court to allow cross-examination of such witnesses by the party that presented them. This is a special exception to the general principle of law that a party shall not cross-examine its own witness. Hostile witnesses are frequently encountered in criminal trials in India, usually as a result of intimidation, inducement, or coercion.

Case Reference: The Supreme Court has defined a hostile witness as a person who, through his evidence, displays an unwillingness to speak the truth at the behest of the party who put him forward in the *Sat Paul v. Delhi Administration* case (1976).

4. Child Witness

Pursuant to Section 118 of the Indian Evidence Act, every person can testify, as long as he or she can comprehend questions and provide sensible replies. This clause categorizes children as witnesses. Children may be called to testify, but courts are cautious in considering what they say because of their vulnerable minds and susceptibility to coaching. Child witness evidence, nonetheless, is admissible if credible.

Case Reference: In *Dattu Ramrao Sakhare v. State of Maharashtra* (1997),¹¹⁶⁵ the Supreme Court held that the child witness's evidence cannot be rejected categorically; in case it's

considered reliable, it can constitute a basis of conviction.

5. Eye Witness

An eyewitness is one who has personally seen the crime being committed and can bear first-hand testimony of the facts. Eyewitnesses are regarded as essential in criminal matters because they offer evidence firsthand. Their testimony, though, is subject to the test of credibility and consistency, as accuracy is influenced by memory, perception, or extraneous factors.

Case Reference: In *State of Uttar Pradesh v. Krishna Master* (2010),¹¹⁶⁶ the Supreme Court had specifically pointed out that dependable eyewitness evidence, if reliable and supported by circumstances, is adequate enough to uphold a conviction.

This scheme brought in exhaustive measures like risk categorization of witnesses, threat analysis reports by police, and Witness Protection Committees to be chaired by District Judges. Subsequently, all States and Union Territories were instructed by the Ministry of Home Affairs (MHA) in 2019 to implement the program in its actual spirit.

The significance of protection to witnesses is now institutionalized in the *Bharatiya Nagarik Suraksha Sanhita (BNSS)*, 2023, where Section 398 requires each state government to notify its own Witness Protection Scheme. This is the first time that witness protection has been given express statutory recognition, joining a long historical journey from ancient Dharma shastra-based categorizations to a contemporary rights-based, institutionalized framework.

STATUTORY PROVISIONS FOR PROTECTION OF WITNESSES IN INDIA:

Witnesses are often referred to as the eyes and ears of the court system.. They have a crucial role in the dispensation of truth and justice. But in carrying out this function, they usually risk

¹¹⁶⁵ 1997(5)SCC341

¹¹⁶⁶ (2010) 12 scc 324

their lives, safety, and even the security of their families. Testifying before the court in the presence of an intimidating environment, particularly where organized crime, terrorism, or sexual violence is involved, takes a lot of courage.

Women and child witnesses, especially sexual assault victims, are subjected to even higher risks, as pointed out in some reports by the Human Rights Watch. In light of this, the Supreme Court of India has continually insisted on enacting wide-ranging witness protection legislation, particularly for vulnerable groups like:

- Sexual violence victims,
- Child witnesses,
- Disability or speech-impaired witnesses, and
- Witnesses to violent or atrocious crimes.

India's legal system has over the years come to respond to these challenges through statutory mechanisms, judicial pronouncements, and specialized witness protection programs.

1. Code of Criminal Procedure, 1973 (CrPC)

The CrPC offers various protections to safeguard the security, dignity, and convenience of witnesses at the time of investigation and trial.

Section 160 – Allows for the calling of witnesses by a police officer to be questioned, but restricts calling women and children to inconvenient places.

Section 161 – Empowers police to question witnesses in the course of investigation.

Section 171 – Provides that witnesses are not harassed, detained, or inconvenienced unnecessarily by police escorts.

Section 284 – Empowers the issuance of a commission to take down evidence where the witness cannot attend court without unnecessary delay or inconvenience.

Section 299 – Allows witness statements to be recorded in the absence of the accused, particularly where the accused is absconding.

Section 309 – Under Section 309, once a witness examination has started, it must be finished every day in order to avoid harassment and frequent attendances.

Section 311 – Authorizes courts with jurisdiction to call, re-call or re-examine witnesses at any stage of investigation or trial.

Section 312 – Allows for reimbursement of the expenses incurred by the witnesses attending court proceedings, paid for by the State.

Section 327 & 327(2) – Permits in-camera trials, particularly in sexual offence cases, maintaining dignity and privacy of the witness.

Judicial Interpretation:

In *Hussainara Khatoun v. State of Bihar* (1979),¹¹⁶⁷ the Supreme Court focussed on the right to speedy trial under Article 21 of the Constitution, indirectly safeguarding witnesses from excessive harassment.

In *State of Punjab v. Gurmit Singh* (1996),¹¹⁶⁸ the Court held that trying sexual offences in-camera provides greater safety for witnesses, especially women, and provides better quality evidence.

2. Whistleblowers Protection Act, 2011

The Act is mainly for protecting those persons who bring to light corruption in government offices, but its application also provides for protection of complainants and witnesses.

Section 12 – Authorizes courts to order authorities to extend protection to whistleblowers, public servants, or witnesses.

Section 13 – Provides confidentiality by requiring protection of the identity of complainants and witnesses.

Section 16 – Mandates penalty for disclosure of identity with malafide intention, thus ensuring

¹¹⁶⁷ [1979] 3 SCR 532.

¹¹⁶⁸ 1996(2) SCC 384

protection of whistleblowers and associated witnesses.

In this way, the Act creates a parallel system for protection of persons testifying against corruption or misuse of power.

3. Indian Evidence Act, 1872 (IEA)

IEA Chapter IX specifically addresses the competency, character, and protection of witnesses.

Section 118 – Makes every individual competent to give evidence unless unable to understand questions or give reasonable answers.

Section 132 – Shields witnesses by stating that they cannot decline to answer material questions on grounds of self-incrimination, but shields them by disallowing use of such answers against them (except for perjury).

Cross-examination is regulated under Sections 147–148 that weigh the exigency of the truth against the dignity and reputation of the witnesses. The courts have the power to refuse questions that are offensive, scandalous, or irrelevant.

Judicial Interpretation:

In *Zahira Habibullah Sheikh v. State of Gujarat* (2006),¹¹⁶⁹ the Supreme Court emphasized that witness protection is integral to free and fair trial, and courts should guarantee that witnesses give evidence without fear.

4. Juvenile Justice (Care and Protection of Children) Act, 2000

This Act protects the identity and dignity of children, be they in conflict with the law or victimized by crime.

Section 21 – Prevents publication of the name, address, photograph, or identity of juveniles in any report in the media.

This ensures protection of child witnesses and accused against social stigma, harassment, and potential retaliation.

5. Unlawful Activities (Prevention) Amendment Act, 2004 (UAPA)

Realizing the increased threats in terrorism and organized crime cases, UAPA particularly criminalizes threat to witnesses.

Section 22 – Imposes imprisonment for a term of up to 3 years and fine for intimidating or threatening witnesses with violence, wrongful restraint, or confinement.

This is an essential provision in the case of terrorist groups, where witnesses are subjected to very high threats of life and property.

6. Indian Penal Code (IPC), 1860

Section 195A IPC – Penalizes threats or inducement to provide false evidence, with imprisonment up to 7 years, fine, or both.

This provision has now been embraced in the *Bharatiya Nyaya Sanhita (BNS)*, 2023, under Section 232, thereby reiterating the State's intention to punish intimidation of witnesses.

7. Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 – Procedural Safeguard

Section 398 – Institutionalising Witness Protection

Mandatory Requirement: Each State Government shall prepare and inform a formal Witness Protection Scheme (WPS). This converts judicial suggestions into statutory requirements

Intent: Aligns with the Supreme Court's directive in *Mahender Chawla* (2018), which called for statutory action to protect witnesses, calling it essential that "no country can afford to expose its morally correct citizens to the peril of being harassed by anti-social elements"

Key Features of WPS (as per Section 398 and Delhi's 2025 WPS example)

Based on best practices and available schemes like Delhi's WPS (2025), core provisions include:

Witness Categorization (by threat level):

Category A: Direct threats to life of witness/family.

¹¹⁶⁹ [2006] 3 SCC 374.

Category B: Threats to property, reputation, or safety.

Category C: Lesser threats, such as harassment or intimidation

Protection Measures:

- Identity concealment (e.g., pseudonyms, redacted details).
- In-camera or live-link testimony, avoiding direct contact with the accused.
- Relocation and change of identity, preserving rights while ensuring safety.
- Physical protection, police escorts, and utilization of safe houses.
- Financial assistance, psychological counseling, and legal advice.

Threat Analysis Report: Comprehensive evaluation by police, reported to the Competent Authority within 5 working days

Institutional Mechanism:

- Competent Authority in every district (e.g., presided over by Principal District Judge).
- Witness Protection Cell to enforce orders and oversee compliance.
- Witness Protection Fund administered by the Home Department, state budgets, court-ordered expense, CSR, and donations

2. Bharatiya Nyaya Sanhita (BNS), 2023 – Punishments

Section 232 – Punishment for Witness Intimidation

Offence of primary concern: Any person who instills fear of hurt to an individual, his property, or reputation in order to make the person provide false evidence is punishable by 7 years' imprisonment, or a fine, or both

Increased Accountability:

If a false witness causes the conviction of an innocent person, particularly in case of death or

imprisonment for more than 7 years, the culprit is punished in the same way as the innocent individual was punished

Enlarged Offenses:

230–231 cover giving or manufacturing false evidence to secure convictions (liable to life or 10 years).

233–237 add punishment for misuse, manufacture, or false records used as evidence.

WITNESS PROTECTION SCHEME, 2018

On 6 December 2018, the Supreme Court approved the Draft Witness Protection Scheme, prepared by 18 States and Union Territories and other open sources that invited judges, police personnel, and civil society for inputs. The National Legal Services Authority (NALSA) then finalized the scheme. The bench consisting of Justice A.K. Sikri and Justice S. Abdul Nazeer recognized the rights of the witness to testify as being covered under Article 21 of the Constitution and opined "The right to give evidence before courts in a free and fair manner without threat and pressure of any sort is in serious attack today. If a person cannot give evidence in courts because of threats or other intimidations, then it is an open violation of Article 21 of the Constitution." In addition, the bench considered the scheme to be a 'law' under Article 141/142 of the Constitution and the centre and state must adhere to it until and unless there is a competent legislation on the same topic.

NEED FOR THIS SCHEME

It is a law of justice that no rights of the witness should be prejudiced by way of threats, intimidation or corruption therefore, in order to enable him to testify for or against the case which he had been witness to with free liberty. In the words of Jeremy Bentham "Witnesses are eyes and ears of the Courts", therefore, it becomes a must on behalf of the State to ensure proper protection to the witness so that the wheel of justice may run with perfection. In *Zahira Habibulla H. Sheikh and Others v. State of Gujarat*, the Hon'ble Supreme Court of India

reemphasized the protection of witnesses, observing in its definition of "fair trial" that "if the witnesses get threatened or are forced to give false evidence that also would not result in a fair trial." In *State of Gujarat v. Anirudh Singh*, the Supreme Court of India additionally held that "it is the salutary duty of each witness who possess the knowledge of the crime having been committed, to aid the State in providing evidence."

The necessity for this scheme had been contemplated by diverse reports of the Law Commission of India and the Malimath Committee. The 14th Law Commission Report was the very first case when the matter of witness protection was introduced. Additionally, the 154th Report addressed the suffering of the witnesses. The 172nd and 178th Report emphasized protection of witness from the anger of the accused. The other part of the 172nd Report in particular borrowed a lot from the ruling in *Sakshi v. Union of India* which argued for in camera tests to maintain the witness away from the accused and to get her evidence in such a way that no fear for her safety should be generated among the people. The 198th Report entitled "Witness Identity Protection and Witness Protection Programmes" pointed out that the scheme of protecting witnesses need not be restricted to cases of terror or sex offences but should cover all heinous offences, thus expanding its scope of operation and applicability. Victims of crime were considered significant witnesses in the 'Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power' that the UN General Assembly approved in November 1985. It set four goals, the fulfillment of which member states are responsible for ensuring for victims of crime:

- (i) Access to justice and fair treatment
- (ii) Restitution
- (iii) Compensation
- (iv) Assistance

RIGHTS OF THE WITNESSES

There must be some sense of security that need to be provided by the state to the witness who approaches in order to give evidence and it is the duty of the State to provide effective protection to the witness. The different Law Commission Reports as well as the Witness Protection Scheme had recognized certain rights that a witness have:

- (i) Right to secure waiting space during Court proceedings;
- (ii) Right to know how the prosecution and investigation of the offense are proceeding;
- (iii) Right to be treated with humanity and dignity and with respect for privacy;
- (iv) Right to protection against harm and intimidation;
- (v) Right to provide evidence without disclosing identity; and,
- (vi) Right to reside at a secure location and transport.

It will be mandatory for Investigating Officer/Court to make each and every witness aware of the provision of "Witness Protection Scheme" and its major features.

TYPE OF PROTECTION MEASURES¹¹⁷⁰

According to the Victim Protection Scheme, 2018 provisions, the largesse of protective steps adopted by the authority competent to do so shall at all times be commensurate with the danger to which the witness is subject during the period of time in question. They can include but are not confined to the following:

- For ensuring the accused and witness are not accommodated together during an investigation or trial
- Informing the telephone company to assign the witness an unlisted telephone number;

¹¹⁷⁰ <https://www.scconline.com/blog/post/2018/12/07/sc-approves-witness-protection-scheme-2018-directs-setting-up-of-vulnerable-witness-deposition-complexes-in-all-district-courts/amp/> LAST VISITED ON 23.08.2025

- Providing sufficient security to the witness in the form of body guarding, routine patrol and through the deployment of security devices like CCTV, fencing, security doors in his house;
- Alteration of the identity of the witness and covering up the original identity;
- Moving the witness's home;
- providing transport in a public vehicle to and from court on the hearing day;
- ensuring that another person is with the witness when the witness's statements are being taped; holding in-camera trials;
- and employing specially built courtrooms with a one-way mirror and separate passage for the accused
- and the witness with possibilities to alter the face or through voice change mechanisms by means of software, of the witness to conceal his identity;
- Providing timely financial assistance for the maintenance of the witness from the Witness Protection Fund;

Aside from the above protection, other miscellaneous actions can be done at the request of the witness.

LIMITATIONS OF THE SCHEME:

Though the scheme provides immense relief to the witnesses with respect to their safety throughout the period of continuance of the trial and in exceptional circumstances even after the conclusion of the trial, but still, the scheme is battled with certain drawbacks such as:

(i) the working criminal justice system is the duty of the State and a few states might not have proper funds to put into practice this scheme properly. The other option is center aid, but the center is not permitted to contribute even one \$1 to the Witness Protection Fund anywhere within the program

(ii) the operation of the Witness Protection Order has been restricted to mere three months;

(iii) the responsibility of determining the contents and format of the Threat Analysis Report has been given to the head of police in the district, so where in high profile cases the politicians or influential individuals are involved the police officer can be pressurized to give those individuals the information about the witness.

In the National Human Rights Commission v. State of Gujarat case, decided on August 8, 2003, the Supreme Court expressed regret that "no law has yet been enacted, not even a scheme has been framed by the Union of India or by the State Government for giving protection to the witnesses." The State of Gujarat was subsequently ordered to ensure that witnesses are produced before the concerned court whenever they are called upon to attend there so that they can depose freely without threat or coercion from any person, in the Zahira v. State of Gujarat case, also referred to as the Best Bakery Case, when it was transferred to Mumbai by its Order dated April 12, 2004. In the event that any witness requests protection, the State of Maharashtra shall also render such protection as is necessary, along with the protection to be afforded by the State of Gujarat."

Between August 2003 and April 2004, Gujarat and Maharashtra had not yet formulated any witness protection scheme. The Supreme Court itself did not enunciate any guidelines for witness protection in either of these two cases. It was an "over-hurried stage-managed, tailored, and partisan trial," as had happened earlier in Gujarat. The State of Gujarat and all its agencies were the worst culprits. The censure and the reprimand, were all directed against the State and its contemporary Neros. "When fences begin to engulf the crops, no room will be left for survival of law and order or truth and justice. Public order as well as public interest become martyrs and monuments." It is a pity

that the State of Gujarat itself was tasked with the responsibility of protection to the witnesses, since the case rested transferred to Maharashtra. The witnesses now are in the same position as earlier, in the re-trial that is currently being conducted in Mumbai. It is reported that, in India, in the majority of the cases of rich influential individuals or corrupt politicians, key witnesses go hostile, rendering the rule of law, a farce. Oftentimes witnesses go untraceable. Occasionally they are simply eliminated.

RECOMMENDATIONS BY LAW COMMISSIONS:

The phrase 'witness-protection' was employed by the Law Commission in its 14th Report (1958), but only in a limited context. That referred to the preliminary arrangements being done inside the Courthouse, the daily allowance, the scales of traveling allowances, etc. The National Police Commission Report (1980) once again addressed the inadequacy of daily allowance to the witnesses, but no more. The 154th Report of the Law Commission 1996 has a chapter on Protection and facilities to Witnesses. The suggestions were mainly pertaining to allowances and facilities to be provided for the witnesses. Yet, one of the suggestions was: "Witnesses should be protected from the wrath of the accused in any eventuality", but, once again, the Commission didn't propose any steps for the physical safeguarding of witnesses. The 178th Report of Law Commission, once more, referred to the fact of witness turning hostile, and only recommendations were made to avert witnesses from turning hostile. The Report proposed an amendment to add S.164 A to the Code of Criminal Procedure, as follows:

164 A (1) Whoever, being or having been a police officer, makes an investigation into any offence involving punishment with imprisonment for ten years or more (with or without fine) including an offence punishable with death, shall in the course of such investigation, forward all individuals whose testimony is necessary for the proper determination of the case, to the nearest Magistrate for recording statement.

(2) The Magistrate shall record on oath the statements of such individuals forwarded to him under sub-section (1) and shall retain such statements with him waiting for further police report under Section 173.

(3) The copies of such statements shall be provided to the investigating officer.

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

(5) The statement of any person properly recorded as a witness under sub-section (1) may, if such witness is produced

and investigated, in the court's discretion and in accordance with the Indian Evidence Act, 1872, be considered evidence.

No Government has ever accepted this. Without even sketching any type of plan or provision, the recently released Malimath Committee Report casually states that an enactment should be brought about to protect witnesses and their families. Ironically, protective arrangements for witnesses were made in stringent laws such as the Prevention of Terrorism Act of 2002 and the Terrorist and Disruptive Activities (Prevention) Act of 1987.

The prosecution as well as the Court could order that the identity as well as the residence of the witness be not disclosed. The Court could even go to the extent of avoiding the pronouncement of the names and addresses in its order or judgment. It is usually felt that these provisions were enacted not with any regard to the witnesses, but to thwart the accused from making a good defense and to deprive fair trial.

In India, in the majority of the cases relating to affluent influential individuals or tainted politicians, key witnesses turn hostile, rendering the rule of law, a farce. Victims and witnesses are given protection from being asked indecent, scandalous, offensive questions, and questions for purposes of annoyance or insult, by section 151 and 152 of Indian Evidence Act, 1872.

Otherwise, no other protection to witnesses is given as against threats, intimidation or any offer whereby they are deterred to speak the truth. Most often, when an accused is released on bail, one of the conditions and requirements imposed by the Court on the accused, is that he will not tamper with the evidence, or go near the witnesses. This, once again, is not as a protection measure for the witnesses, but only so that the trial may not be made infructuous. Judges also conduct in-camera trials to ensure deposition by testify fearlessly and without blush. The Supreme Court has of late allowed recording of evidence through video-conferencing. All these are not sufficient in the absence of a specific provision in law assuring protective measures to victims prior to trial as well as post-trial.

CONCLUSION:

Witnesses form the pillar of the criminal justice system because their evidence has the power to make or break a case of prosecution. However, in India, they have historically been intimidated, influenced, and coerced, leading to hostile witnesses, delayed justice, and acquittal of influential offenders in most cases. Knowing this gap, the Witness Protection Scheme, 2018 became a landmark, providing organized protections like protection of identity, relocation, in-camera proceedings, and financial support for witness protection. Although the scheme has certainly furthered the cause of a fair trial and brought India nearer to international best practices, in its actual implementation, it remains uneven. The lack of an overarching central law, absence of specific funds in many states, suboptimal infrastructure, and inadequate awareness among police officers continue to water down its effectiveness. Additionally, the excessive reliance on judicial guidelines for enforcement is a pointer towards the necessity for more forceful statutory support. In order to make the scheme effective in its objectives, the reforms should concentrate on consistent nationwide enforcement, enforcement agency capacity-building, electronic witness protection

mechanisms, and strong penal sanctions for persons who try to influence or intimidate witnesses. It is only through such comprehensive measures that India can be headed towards a criminal justice system in which the witnesses are confident enough to tell the truth without apprehension. Finally, witness protection is not just a procedural guarantee, but a constitutional imperative to support the ideals of justice, rule of law, and confidence in the judiciary. Enforcing this infrastructure will provide surety that justice is imparted both in letter and spirit, so as to reaffirm citizens' confidence in the criminal justice system.

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