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ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

THE IMPERATIVE OF WITNESS PROTECTION IN CRIMINAL PROCEEDINGS

AUTHORED BY - IMMANUEL B & ARYA PANIKKER

ABSTRACT-

The criminal justice system safeguards fundamental rights and freedoms guaranteed by the Constitution by upholding laws and punishing wrongdoers. Across the globe, every criminal justice system operates based on a defined set of principles within criminal law, often following either an adversarial or inquisitorial framework. In India, the system for administering criminal justice adopts the adversarial approach inherited from British colonial rule. Witnesses are the cornerstone of justice and fairness. Their testimony is indispensable, forming the basis upon which the outcome of a case hinges. Without witness evidence, it is impossible to construct a prosecution case. Witnesses are essential for the effective functioning of the criminal justice system, and their willingness to come forward and testify in a transparent and impartial environment is crucial for its smooth operation.

The effectiveness of administering criminal justice can be evaluated by the court's ability to punish wrongdoers and ensure justice for victims. In determining guilt, courts heavily rely on presented evidence, be it oral or documented. Testimonies from witnesses are crucial in providing insights for courts to make fair judgments. Instances of witness inducement, intimidation, and harassment are alarmingly common, creating fear among potential witnesses and often leading them to withdraw or become hostile in court proceedings. Moreover, the absence of a witness protection framework exacerbates this issue, as highlighted by the Law Commission of India in various reports. While there are scattered laws across various statutes aimed at safeguarding witnesses, they are often insufficient for their protection.

Additionally, the Constitution does not directly address the issue of witness protection. Therefore, there is an urgent necessity to enact specific legislation dedicated to this matter to enhance the effectiveness of our criminal justice system. However, it's crucial that any such legislation is crafted in a manner that does not unfairly disadvantage the accused. Instead, it should strike a balance between protecting witnesses and ensuring the rights of the accused are upheld. This research paper aims to shed light on the challenges witnesses face within the

criminal justice system, particularly in India, and the urgent need for a comprehensive witness protection strategy. Currently, the Criminal Procedure Code lacks specific provisions for witness protection, an issue this paper addresses by proposing ways in which the Code should safeguard witnesses. Through analyzing existing witness protection schemes and their limitations, the paper underscores the Law Commission of India's recommendation for implementing a robust witness protection policy. The paper also aims to compare the laws in the Code of Criminal Procedure with Bharatiya Nagarik Suraksha Sanhita (BNSS) 2023. Ultimately, ensuring a fair trial is paramount for justice, a central focus of this paper.

RESEARCH QUESTION

Whether there are effective witness protection laws in a *sine qua non* for the smooth working of the criminal justice system.

THE CONCEPT OF WITNESS AND WITNESS PROTECTION

Witnesses play a crucial role in the justice system, contributing significantly to the establishment of facts and the identification of perpetrators. Their testimonies serve as vital links connecting criminals to their crimes, aiding in the prosecution of the guilty and safeguarding the innocent from unjust harassment. During the initial stages of an investigation, witnesses offer guidance to investigating officers, assisting in the accurate determination of facts and circumstances surrounding the crime. A truthful witness provides invaluable assistance to law enforcement and the courts by providing an honest account of their knowledge of the criminal incident. Therefore, it's evident that witnesses are indispensable in both criminal investigations and trials, as without their oral testimonies, there can be no effective investigation, trial, or adjudication. Indeed, the evidence provided by witnesses is essential for constructing a prosecution case. This chapter aims to delve into the concept of witnesses and their protection, examining their role across various historical periods, including the Ancient Hindu Period, the Muslim period, and the pre and post-Independence eras.

MEANING OF WITNESS

The term "witness" lacks a specific definition in statutes such as the Indian Penal Code of 1860, the Code of Criminal Procedure of 1973, and the Indian Evidence Act of 1872, as well as in other legislation. Consequently, various sources including legal dictionaries, bills, and the Honorable Delhi High Court have provided interpretations of the term, as outlined below:

According to Black's Law Dictionary, a "witness" is a person with firsthand knowledge of an event, typically someone who directly observes a transaction or occurrence. This individual provides an eyewitness account of what they have seen, heard, or experienced. Additionally, a witness may refer to someone summoned to testify in court or to witness and authenticate a transaction by their presence or signature on a document. Legal dictionaries define a witness as someone who provides evidence under oath or affirmation, either in person, through an affidavit or deposition, in any judicial proceeding, or before a legal authority. The term encompasses individuals with knowledge of a fact or occurrence sufficient to testify about it, including eyewitnesses.

According to the United Nations Convention against Transnational Organized Crime, a witness or participant is broadly defined as any person, regardless of legal status, who is eligible for inclusion in a witness protection program under the relevant national legislation or policy. Similarly, legislation such as the Witness (Identity) Protection Bill of 2006 and the Prevention of Communal and Targeted Violence (Access to Justice and Reparations) Bill of 2011 define a witness as someone who possesses information pertinent to the investigation, inquiry, or trial of a serious offense, including victims of such offenses.

In the case of **Ms. Neelam Katara v. Union of India**¹ The Delhi High Court defined a witness as an individual whose statement has been recorded by an Investigating Officer under the provision of Section 161 of the Code of Criminal Procedure, 1973, concerning a crime punishable by death or life imprisonment.

WITNESS DURING PRE-INDEPENDENCE AND POST-INDEPENDENCE

The development of evidence law in India parallels the evolution of the common law system, particularly in response to the adversary system and the introduction of the jury. This legal framework aims to ensure efficiency and fairness in court proceedings while safeguarding judges against prejudicial, unreliable, confusing, or irrelevant evidence. These rules of evidence serve to facilitate the pursuit of truth in trials by determining the relevance and admissibility of evidence.

¹ ILR (2003) II Del 377

In the adversary system, criminal cases rely heavily on evidence presented by witnesses, making them integral to the case alongside the accused and the complainant. By providing testimony regarding the commission of an offense, a witness fulfills the important duty of aiding the court in uncovering the truth. To underscore the solemnity of this duty, witnesses typically swear an oath in the name of God or solemnly affirm to speak the truth.

Chapter IX of the Indian Evidence Act of 1872, titled "Of Witnesses," encompasses seventeen sections (from sections 118 to 134) that address issues of witness competency, compellability, privileges, and the number of witnesses required for judicial decisions.

Sections 118 to 121 and section 133 establish the competency of witnesses, while section 121 (regarding Judges and Magistrates) and section 132² (pertaining to witnesses not excused from answering on the ground of self-incrimination) address witness compellability. Privileges afforded to various categories of witnesses are outlined in sections 122 to 131 of the Act. Section 134 of the Indian Evidence Act underscores that there is no fixed number of witnesses required to prove any fact, emphasizing the quality of evidence over its sheer quantity. This section encapsulates the well-recognized principle that evidence should be assessed based on its weight rather than merely counting the number of witnesses.

KINDS OF WITNESSES

The Indian Evidence Act delineates witnesses into two primary categories: Eye Witnesses and Circumstantial Witnesses. Moreover, witnesses are broadly classified based on various factors such as their nature, gender, age, education, mental state, and personal characteristics. While there are no rigid principles for examining witnesses, each individual should be assessed according to their unique traits.

These witnesses can be further categorized into three main groups:

(A) Prosecution Witness: These witnesses appear on behalf of the prosecution in criminal proceedings, supporting the state or government in exhibiting formal charges against an offender and pursuing them to final judgment.

(B) Defence Witness: Entitled to equal treatment with prosecution witnesses, defense witnesses provide evidence in favor of the accused. Courts are urged to overcome traditional

² Code of criminal procedure 1973

skepticism towards defense witnesses, recognizing that they, like prosecution witnesses, may sometimes be untruthful.

(C) Lay Witness: A lay witness is an ordinary individual possessing firsthand knowledge of relevant facts related to the case. Their testimony is generally limited to factual information, though some jurisdictions allow lay witnesses to provide opinions based on their perceptions.

(D) Character Witness: Character witnesses testify regarding the good or bad character of an individual involved in a legal proceeding. They may be called upon to attest to the accused's character in a criminal case, provide evidence of a convicted person's character during sentencing, or offer insights into the character of a party in a civil trial.

(E) Material Witness: These witnesses are deemed essential to a court case, as their testimony is of significant importance to the legal proceedings. Material witnesses provide testimony crucial to determining the outcome of the case, particularly during sentencing hearings.

(F) Accomplice as Witness: An accomplice, who partakes in the commission of a crime, can be called upon as a witness. However, their testimony is often viewed with skepticism and requires corroboration to be considered credible. Sections 133 and 114 of the Indian Evidence Act outline guidelines for evaluating the testimony of accomplices, emphasizing the need for corroboration in material particulars to establish their credibility. An accomplice is someone who is implicated in a crime, either as a participant or by confessing to facts indicating their involvement. In legal proceedings, Section 306 of the Code of Criminal Procedure (Cr.P.C.), 1973 applies when no order of commitment has been issued, while Section 307³ applies after the case has been committed but before judgment is delivered. Section 307, as currently formulated, does not require the approver's statement to be recorded twice.

(G) Child Witness: Section 118 of the Indian Evidence Act, of 1872, governs the admissibility of testimony from child witnesses. While the law recognizes children as competent witnesses, there are considerations regarding their age and maturity. A child, especially one as young as six years old, may lack the capacity to fully comprehend and accurately report the details of an incident due to their immaturity. Therefore, the court typically requires corroborative evidence to support the testimony of a child witness.

In **Mangoo & Anr. v. State of Madhya Pradesh**⁴, the court acknowledged the possibility of coaching or tutoring a child witness but cautioned against automatically assuming that a child must have been tutored based solely on this possibility. Instead, the court emphasized the need

³ Code of criminal procedure 1973

⁴ (1995) JAB LJ 373

to carefully examine the evidence to determine whether there are any signs of coaching or manipulation present. This examination involves scrutinizing the content of the child's testimony for any indications of external influence.

(H) Dumb Witness

Section 119 of the Indian Evidence Act, of 1872, pertains to a "dumb witness," referring to a witness who is unable to speak. In such cases, evidence must be recorded by noting down signs rather than attempting to interpret them. When the witness is both deaf and mute, their examination should be conducted with the assistance of an expert or someone familiar with their method of communication in everyday life. If such assistance is not provided during the examination, the evidence provided by the witness cannot be relied upon.

(I) Eye Witness

An eyewitness, on the other hand, is a witness who testifies to facts they directly observed. This individual must be legally competent and qualified to testify in court. Eyewitness testimony is considered significant, as it provides firsthand accounts of events. However, it can sometimes be unreliable, although it is presumed to be more reliable than circumstantial evidence. When multiple individuals witness a crime, consistency among their testimonies is often sought by lawyers to ascertain the truth.

In **Ladha Shamji Dhanani v. State of Gujarat**⁵ the Supreme Court of India emphasized that when eyewitnesses have a vested interest in the case, their testimony should be evaluated in conjunction with other evidence such as the First Information Report (FIR), medical evidence, and surrounding circumstances. This holistic approach ensures a comprehensive examination of the evidence presented.

(J) HOSTILE WITNESS

When a witness says something that harms the prosecution, they should be viewed as hostile. A hostile witness is understood to be one who, based on the way he presents his evidence, indicates that he has no desire to convey the truth to the court. This is not a proper definition of hostile witness but even by using the word hostile, section 154 of the I.E.A., 1872 takes great care to avoid restricting the right to cross-examination. Nothing in the I.E.A., 1872 indicates that a witness must be hostile or that they can be labeled as such. There are two options available to the prosecution when they believe a witness called for prosecution is not telling the whole truth or is suppressing some of the truth.

⁵ AIR 1992 SC 956

The first option is to ask the court, by section 154 of the I.E.A., 1872, to allow the prosecution to ask the witness questions that the other side may use during cross-examination. As stipulated by the proviso to sub-section (1) of section 162 of the Act, the prosecution will be allowed to ask such questions and to refute the witness with their police statement if that authorisation is granted. Section 162 sub section (1) of Cr.P.C. permits the procedure to refute the witness in the way provided in section 145 of I.E.A., 1872, gives the prosecution the right to ask such questions and, if granted, the right to refute the witness with his or her police statement. It is said, in a vague sense, that the prosecution wishes to declare the witness hostile when the first option is chosen. It can only be said, and that too in a vague sense, if the second option is to refute the witness with his police statements as specified in the proviso to Subsection (1) of Section 162 of the Cr.P.C. is chosen. It can only be stated that the prosecution does not wish to declare the witness hostile if the second course of action is to refute the witness with his police statements as provided in section 162 subsection (1) of the Cr.P.C.

WHEN DOES A WITNESS TURN HOSTILE

The witness plays a crucial role in every nation's criminal justice system. Bentham asserts that witnesses serve as the "eyes and ears of justice." To comprehend the meaning of a hostile witness, we must understand the process by which a witness turns hostile. Chapter XII of the Code of Criminal Procedure addresses the investigative capabilities of police. Police personnel are authorized by Section 161(3) of the Cr. P. C. to record witness statements.

However, due to Section 162(1) of the Cr. P.C., these comments are not admissible in court. Protecting accused parties from being harmed by statements made to police personnel who might intimidate witnesses is the goal of S. 162. As a result, the witness is required to reiterate his statements to the police throughout the trial. In this case, the police-recorded comments serve as a basis for evaluating the witness's credibility. The witness may have become hostile if they revisit their former statements.

In the case of **Gura Singh v. State of Rajasthan**⁶, The Supreme Court defined a hostile witness as someone unwilling to tell the truth at the behest of the party summoning them. In **Panchanan Gogoi v. Emperor**⁷, It was noted that a hostile witness is someone whose manner of giving

⁶2001CriLJ487

⁷AIR 1930 Cal. 276 (278).

evidence indicates a lack of desire to tell the truth to the court, including a willingness to retract previous statements. Similarly, in **R.K. Dey v. State of Orissa**⁸, it was established that a witness isn't automatically hostile if their testimony contradicts the interests of the party calling them. The witness's primary loyalty should be to the truth, not the summoning party, meaning unfavourable testimony doesn't necessarily imply hostility. Hostility arises when a statement favours the defence due to animosity towards the prosecution.

The witness's testimony and, to some extent, his mannerisms suggest that there was animosity. Thus, a witness may be deemed hostile if he has an aggressive demeanour toward the party requesting his testimony, withholds his genuine feelings, fails to disclose the truth, or purposefully makes claims that contradict what he has previously claimed or is expected to demonstrate. Prosecution witnesses have the right to seek that their statements be considered as hostile by the court when they become hostile and say something that harms the prosecution's case.⁹

Witnesses often face intimidation, particularly from the accused, which can manifest as threats. The People's Union for Civil Liberties (PUCL) issued a press release regarding the **Best Bakery Case**¹⁰, suggesting two reasons why witnesses might become hostile. Firstly, inaccuracies in police-recorded statements may lead witnesses to retract their statements. Secondly, and more likely, witnesses may retract statements due to intimidation and manipulation tactics by the police. However, these factors alone do not account for witness hostility; other contributing factors include lengthy trials, inadequate facilities, delays in allowance payments, and disrespectful behavior by the police. Nonetheless, the primary issue lies in the lack of witness protection during and after the trial.

CAUSES OF HOSTILE WITNESS

Threats and intimidation - Threats are commonly employed tactics, varying in severity depending on the nature of the case and the background of the accused and their family¹¹. In extreme cases, witnesses face the risk of harm, including murder or injury, to prevent them

⁸AIR 1977 SC 170.

⁹G.S.Bakshi v. State, AIR 1979 SC 569.

¹⁰ Zahira Habibulla H. Sheikh and Another v. State of Gujarat and Others, 2004 (4) SCC 158.

¹¹ Ramesh v. State of Haryana, (2017) 1 SCC 529.

from testifying in court. These threats serve as a deterrent to potential witnesses unless adequate protection is provided to ensure their safety.

Money and muscle power -Accused individuals often leverage their power through influence or financial means to sway witnesses in their favour. This is particularly prevalent when the accused hold political sway or come from affluent backgrounds. In such instances, vulnerable witnesses, often in dire need of financial assistance, are coerced into either abstaining from attending trials or retracting their previous statements.

Lengthy legal proceedings—In India, lengthy proceedings contribute to witness frustration and reluctance. Trials are frequently postponed, causing inconvenience and financial strain on witnesses, who may have to travel long distances at their own expense. Lawyers sometimes orchestrate delays in court proceedings to wear down witnesses or hinder their testimony, undermining the pursuit of justice.

Inducements - Witnesses are induced to provide false testimony through various means, such as promises of monetary rewards or other incentives by the accused. This manipulation undermines the integrity of trials and can result in the accused evading punishment due to insufficient evidence.

Hassles faced during proceedings -Witnesses encounter numerous challenges during both investigation and trial phases, often lacking basic amenities and respect in courtrooms. They endure prolonged waiting periods without adequate seating or refreshments, and are subjected to exhaustive questioning without proper compensation for their time and expenses¹².

Legislative reasons - Despite the prevalence of witness tampering and intimidation, there is a lack of clear legislation in India to safeguard witnesses against such hostility. The onus falls on the state to ensure witness protection, particularly in cases involving politically influential or financially powerful accused individuals. Upholding the rule of law requires equal protection for witnesses, victims, and informants without bias or discrimination.

¹² *Swaran Singh v. State of Punjab*

Culture of compromise - Compromising the integrity of trials is sometimes encouraged, with victims or complainants pressured to retract their statements or reach settlements outside of court. This culture of compromise often goes unpunished, further incentivising witness hostility and undermining the pursuit of justice.

Stock witness -Police reliance on "stock witnesses" as substitutes for actual witnesses can also compromise trial outcomes, especially if the accused can influence or buy these witnesses. This underscores the importance of relying on credible and impartial testimony to ensure fair and just legal outcomes.

Witnesses may also succumb to peer pressure or village dynamics, influencing their behaviour in court proceedings. Additionally, the lack of consequences for hostile witnesses contributes to the prevalence of perjury, posing challenges to the criminal justice system.

WITNESS PROTECTION UNDER CODE OF CRIMINAL PROCEDURE ACT

The Criminal Procedure Code (Cr.P.C.) of 1973 establishes a comprehensive legal structure governing the conduct of criminal trials in India, drawing from the adversarial system of common law introduced during British colonial rule. In this system, the prosecution and defence prepare and present their respective cases, with the prosecution commencing by presenting evidence. Following this, the defence cross-examines prosecution witnesses to scrutinize the credibility of the prosecution's case. It's worth noting that the accused retains the right to remain silent and does not present witnesses unless they opt to testify themselves or call upon defence witnesses, usually when asserting a specific plea or alibi.

(a) The Concept of Fair Trial

The accused in India are entitled to a public trial in a criminal court, where witnesses are examined openly in their presence. However, these rights are not absolute and may be reasonably restricted to ensure fair justice administration and encourage victims and witnesses to testify without fear. The Indian legal system emphasises the concept of a fair trial, ensuring that all evidence is presented in the presence of the accused and an open court. For instance, Section 273 of the Cr.P.C. mandates that evidence must be taken in the presence of the accused. However, exceptions exist, such as cases involving victims below the age of eighteen who have

been subjected to sexual offences. In such instances, the court may protect the victim from direct confrontation by the accused while ensuring the accused's right to cross-examine.

Section 327 of the Cr.P.C. also establishes the principle of open trials, allowing public access to court proceedings. However, certain exceptions permit the presiding judge to restrict public access if deemed necessary for the fair conduct of the case, particularly in sensitive matters like sexual offences.

To ensure fairness, the Cr.P.C. provides various provisions for disclosing evidence to the accused, allowing for cross-examination of prosecution witnesses, and conducting trials in the accused's presence. While the general rule is to provide information to the accused, exceptions may apply, such as excluding certain parts of statements if they are deemed irrelevant or against the interests of justice. Moreover, the law allows for recording evidence in the absence of the accused in specific circumstances, such as when the accused has absconded. Similarly, under Section 317 of the Cr.P.C., courts may proceed with inquiries or trials in the absence of the accused if it is deemed necessary in the interests of justice or if the accused persistently disrupts court proceedings.

(b) “*In Camera* Proceedings”

In cases involving vulnerable witnesses, particularly women and children, the law permits conducting trials on camera to protect their privacy and encourage more candid testimony. Such measures aim to create a supportive environment for victims and witnesses to provide truthful accounts without fear or intimidation.

Although Section 273 mandates that evidence must be taken in the presence of the accused, courts have the discretion to use video screens for witness examination. This flexibility arises from the acceptance of video-recorded evidence as admissible, as established by the Supreme Court in the case of **State of Maharashtra v. Dr. Praful B. Desai**¹³. Additionally, certain other sections, such as Section 284 and Section 299, further support the notion that evidence can be obtained without the physical presence of the accused.

(c) Expenses to Witnesses for Attending Court Proceedings

Furthermore, the Cr.P.C. acknowledges the importance of compensating crime victims and empowers courts to award compensation. It recommends exercising this power liberally to ensure justice for victims, particularly when an accused is released under certain circumstances.

¹³ 2003(4) SCC 601.

Overall, while the legal system strives to uphold the rights of the accused, it also recognises the need to balance these rights with the imperative of ensuring fair trials, protecting witnesses, and delivering justice to victims of crime.

(d) Examination of Witnesses by Police

The amendment to Section 160(1) of the Cr.P.C., introduced by the Criminal Law (Amendment) Act, 2013, specifies that certain individuals, including males under fifteen years of age, those over sixty-five years, women, and individuals who are mentally or physically disabled, are not compelled to attend any location other than their residence. Moreover, police officers are authorized to orally examine individuals who are believed to possess knowledge of the case's facts and circumstances. These individuals are obligated to truthfully answer all questions related to the case, except those that could potentially incriminate them.

Section 357 of the Cr.P.C., 1973, empowers courts to provide compensation to crime victims. However, it is observed with regret that courts rarely exercise this power generously. Recognizing the indifferent stance of subordinate courts, the Supreme Court, in the case of **Hari Kishan and State of Haryana v. Sukhbir Singh**¹⁴, emphasized the importance of all courts utilizing the provisions of Section 357 liberally and granting adequate compensation to victims. This is particularly crucial when an accused individual is released on admonition, probation, or when parties reach a compromise. As a precedent, the Supreme Court, in **Sdrup Singh v. State of Haryana**¹⁵, awarded Rs. 20,000 as compensation to the deceased's widow and reduced a seven-year sentence to one year of imprisonment. Section 482 of the Cr.P.C. gives high court inherent power to provide protection to witnesses as there is no specific provision as such provided for the same.

The Supreme Court of India, in the case of **Tahsildar Singh v. State of Uttar Pradesh**¹⁶, highlighted that Section 162 of the Code of Criminal Procedure, 1973 aims to shield the accused from potentially influenced statements made by witnesses during police investigations, thus safeguarding their interests. Similarly, Justice Braund in **Emperor v. Aftab Mohd. Khan**¹⁷ emphasized that this section serves to protect the accused from both the potential influence of investigating police officers and false testimonies by witnesses. The Nagpur High Court, in **Baliram Tikaram Marathe v. Emperor**¹⁸, echoed this sentiment, stating that the section aims to shield the accused from zealous police officers and untruthful witnesses.

¹⁴AIR 1988 SC 2127.

¹⁵1995 CrLJ4168

¹⁶AIR 1959 SC 1012

¹⁷AIR (1940) All 291

¹⁸AIR (1945) Nag

The Judicial Committee in **Pakala Narayana Swami v. Emperor**¹⁹ underscored the importance of encouraging witnesses to provide information freely, while also acknowledging the need to protect them from potential police influence. However, to address situations where witnesses may retract their statements, Section 164 of the Code of Criminal Procedure, 1973 allows for the recording of confessions and statements by a Magistrate. The Supreme Court, in the case of **State of Uttar Pradesh v. Singhara Singh & Others**²⁰, emphasized the mandatory nature of the procedure outlined in Section 164, stressing that strict compliance is essential to maintain its effectiveness.

Furthermore, the Full Bench of the Madras High Court, in **State of Madras v. G. Krishnan**²¹, noted that the purpose of recording statements under Section 164 is to deter witnesses from altering their testimony later due to inducements or pressures, thereby ensuring the integrity of the legal process.

WITNESS PROTECTION UNDER BHARATIYA NAGARIK SURAKSHA SANHITA

The BNSS, 2023 introduces a pivotal advancement in the realm of witness safety with the unveiling of the Witness Protection Scheme (WPS). Recognizing the imperative to shield witnesses from coercion and intimidation, this groundbreaking addition, contained in Section 398, mandates every State Government to formulate and enforce a comprehensive Witness Protection Scheme. This significant addition ensures that ensuring witness safety is now an inherent aspect of the criminal procedural framework. Mandated by Section 398, every State Government is required to develop and officially announce a Witness Protection Scheme (WPS).

Section 398 mandates that each state must formulate and officially announce a Witness Protection Scheme (WPS) to ensure the safety of witnesses. This initiative aligns with practices in Canada and European nations. In India, a Witness Protection Scheme was already developed in 2018.

Amidst the backdrop of heinous crimes where witnesses often retract their statements due to threats against their lives and property, the absence of legal obligation on the state to safeguard

¹⁹(1939) LR 66 IA 66.

²⁰AIR 1964 SC 358.

²¹AIR 1961 Mad 92 (FB).

them has been a glaring issue. As highlighted by the Hon'ble Supreme Court of India, exposing law-abiding citizens to harassment by antisocial elements is untenable for any nation. In alignment with the principles outlined in the IEA, 1872, the BNSS, 2023 underscores the significance of witness testimonies during trials. For instance, Section 55 of the BSA, 2023 underscores the relevance of oral evidence provided by witnesses in diverse circumstances throughout legal proceedings.

The provisions of the Witness Protection Scheme under the BNSS include provide for:

Categorization of Witnesses: Categorizing witnesses into three groups based on the severity of threats they face, the scheme meticulously addresses the distinct safety needs of each category. Category A witnesses confront direct threats to their lives or those of their family members, while Category B witnesses encounter risks to their safety, reputation, or property. Category C witnesses, facing comparatively lesser threats, are also afforded protective measures under the scheme.

Protection Measures: The scheme encompasses various protective measures tailored to each category of witnesses. These measures may comprise witness relocation, enhancing security at witness residences, facilitating identity changes, and installing security equipment as needed.

State Mandate: Every state is mandated to formulate and officially notify a Witness Protection Scheme as per Section 398 of the BNSS. This underscores the state's responsibility to ensure the safety and security of witnesses within its jurisdiction.

Commitment to Justice: The Witness Protection Scheme underscores a commitment to justice by deterring criminal behavior and holding accountable those who seek to intimidate or harm witnesses. It emphasizes that witness protection is fundamental to upholding the integrity of legal proceedings. It is incumbent upon the state to ensure the protection of witnesses and uphold their fundamental right to testify without fear. The Witness Protection Scheme enshrined in the new law serves as a formidable shield, offering safeguards against threats, intimidation, and physical harm. The scheme encompasses various protective measures, including witness relocation, security enhancements at witnesses' residences, identity alterations, and the installation of security equipment tailored to the perceived threat level faced by witnesses.

By providing comprehensive protection measures and emphasizing the state's obligation to safeguard witnesses, the Witness Protection Scheme introduced under the BNSS aims to create a conducive environment for witnesses to testify without fear or intimidation.

CONCLUSION

The significance of witnesses in India is underscored by the Adversarial System of common law, which presumes the accused innocent until proven guilty beyond a reasonable doubt by the prosecution. In this system, the accused has the right to remain silent and cannot be compelled to respond. However, the aim of the Criminal Justice System is to convict the guilty while protecting the innocent. Nevertheless, the escalating violence, crime rates, and terrorist activities prompt a critical examination of the state of the criminal justice system in India. Even members of the judiciary acknowledge that the system is approaching a breaking point, exacerbated by outdated evidence laws, judicial delays, and the abolition of the jury system. Moreover, the existing criminal laws often fail to address contemporary crime challenges adequately, with many provisions in Acts and Codes prescribing punishments or fines that are insufficient to deter criminal behavior effectively. The criminal justice system in the country is grappling with a significant challenge posed by hostile witnesses, a trend observed across various cases. This phenomenon underscores the vulnerable position of witnesses, who hold a crucial role in the criminal justice process. Courts have repeatedly emphasized the imperative need to protect witnesses. To uphold the constitutional principle of the rule of law, the state should enact legislation specifically aimed at safeguarding witnesses. Such a law would not only ensure the effective implementation of existing laws but also contribute to the promotion of justice. Additionally, courts should utilize provisions within the Indian Penal Code, 1860, which prescribe penalties for providing false evidence. Consequently, there is an urgent requirement for a comprehensive legal framework to address this pressing issue.