

Witness Protection In India With Special Reference To Witness Protection Scheme, 2018

Whenever a person commits offence, heaven finds a witness,

Name of the author: Dr. Seema Goyal

Designation of Author: Assistant professor in Law

Name of the institution, IIMT University, Meerut

Address: New Shivpuri, Hapur (U.P.)- 245101

Email id: Seemaadv37@gmail.com

Abstract: - Home Ministry has launched **Witness Protection Scheme, 2018** for safeguarding witnesses from threats, intimidation and inducement during Criminal trials. Its root is based on the natural principle that justice not only be done, but also seen to be done. This scheme provides for protective measures such as identity shielding, relocation, Police protection and in camera trials as **Article 141 and 142 of Indian Constitution** provides for enforcement of this Act.

Also, **Article 398 of BNSS** also provides for protective measures for witnesses in serious cases including cases concerning wherein life and safety of witness is at risk. It empowers Hon'ble Court to take necessary measures such as concealing identity, protecting media exposures and ensuring safe transportation.

Keywords: - Witness, Protection, Criminal Trial, protective measures, Concealing Identity

1. **Introduction:** - A witness plays essential role during the processes of trial and investigation. The burden of proof is always lying on the prosecution for which evidence must be proved beyond reasonable doubt. Thus, protection of witnesses is essential to expose the truth and to determine the outcome of a case.

According to Bentham,” Witnesses are the eyes and ears of justice.”

Also, **Section 368 of BNSS** provides for not only protection of witness, but also their dignity. Section 368 says, Every State Government shall prepare and notify a witness protection scheme for the State with a view to ensure protection of witnesses

2. **Who is Witness:** - According to Justice Wadhwa, A Criminal case is built on the structure and building of evidence, evidence that is admissible in Law. For this purpose, witnesses are required whether it may be direct evidence or circumstantial evidence.

In general words a witness is a person who was present at time of happening of event and who had seen the offence or wrongful act and is able to give information concerning it. So, the presence of the witness is crucial in order to detect a crime or event. A witness who was present at the time of occurrence of the crime or has seen the event in the first instance is called as eye witness. Witnesses are generally called in the court of Law in order to testify the trials.

Section 2(K) of the Witness Protection Scheme has defined the term witness for the first time as, witness is any person, who possess information or document about any offence.

Black's Law Dictionary defines the term witness as a person who sees a document signed or person called to court to testify and give evidence.

Oxford Dictionary defines the term witness as a person who sees something happen and is able to describe it to another person. Or a person who gives evidence in a cause and is different person to its party, sworn to speak the truth and whole truth and nothing but the truth.

3. **Types of Witnesses:** - Witness is a person who brings relevant facts before the court of Law either through oral evidence or through circumstantial evidence. Cr.P.C. permits the possibilities of three types of witnesses, namely: -

- Victim Witness
- Accused Witness, and
- Independent Witness

Victim Witness: - Victim witnesses are those acquainted with the accused. -An accused witness may be needed to come for testifying before the court under **Section 313 of Cr.P.C (Sec 351 BNSS, 2023)** and may be either summoned to appear

before the court under **Section 204(1)(a) Cr.P.C (Sec 227 BNSS ,2023)** or required to appear under warrant under **Section 204(1)(b) of BNSS**. Similarly, an accused who is already remanded to prison may be required to attend the court under **Section 267 of code (Sec 301 BNSS,2023)**.

Thus, it doesn't require protection of identity, but there is possible need for protection from trauma.

Accused Witness: - Victim witnesses who are strangers to the accused are referred as accused witnesses., It requires high intensity for identity protection of witnesses. **Sec 315 of Cr.P.C** provides provision when accused

person can be accused witness

Independent Witness: - Witnesses who are strangers to the accused –There is a need to strict protection of witness and especially his identity. It is a person which is not a beneficiary under a will or spouse of any such beneficiary. The issue of witness protection becomes relevant only in cases of victim witness or independent witnesses, who face the threat of violence and harassment. The identity of witnesses requires protection during investigation, inquiry and proceeding. It is not only confined to the cases of terrorism or sexual offences only but it also extends to all serious offences where danger is threatening the life and property or family member of the witness.

4. **Importance of Witness:** -Witness is essential for smooth and proper running of the criminal justice framework, it is necessitated that witnesses come forward and oust their testimony and statement should be will in freewill and mindset without any fear. Witness is therefore inexorable and plays a significant role, on which fate of a case depends. Witness is bedrock of a trial, regardless of whether it is civil or criminal.

The key role of witnesses in getting the offenders get convicted is at the root of criminal justice system, as the effectiveness of the completion of every step in criminal proceedings, from the initial reporting of the crime to the trial itself, generally relies upon the testimony of witnesses. Their function at the trail is most critical, in adversarial systems where the case of the prosecution has to be established by guidance of evidence, usually in the form of moral interrogation of witnesses, and can subsequently be disproved and denied by the defence at a public hearing,

5. **Various Phases of Protection of Witnesses:** -

a. **Investigation Phase:** Magistrate may hold proceedings in-camera in order to award privacy and invisibility. The Identity of witness shall be known to only the Magistrate, and witness is addressed by pen-name or alias in documents.

b. **Inquiry and Pre-Trial:** New application is required for protection, even where already has been awarded to witness and to protect his family. Accused shall be give reasonable opportunity to respond—but not revealing identity. There shall be strict rule that Proceedings to be held in camera, maintaining identity secret.

c. **Trial Stage (Sessions Court) :** The report suggested an application of two- way closed-circuit TV/video link and audio system for purpose of: -

(a) For protection of identity (victims' strangers to accused): Witness in Room A; accused and lawyer in Room B. Witness cross-examined at a distance, identity hidden.

(b) For protection from trauma (victims known to accused): Witness in Room B with lawyers; accused in Room A. Only the image of accused shall be displayed when identification is required.

However, No Draft Bill is Given, but Comprehensive Recommendations were made in relation to WIP as it Seeks to protect witnesses outside court. It also wants the Witness Protection Programme to be implemented soon. The Central and State Governments should share the cost and support it fully.

6. *Judicial Verdicts on Witness Protection Issues:* -

Gaurav Gupta v. Government of NCT Of Delhi and Ors on 3 January, 2024¹: The case focuses on the petitioner's plea for extended police protection under the Witness Protection Scheme, 2018. The petitioner, Gaurav Gupta, was earlier provided with security in 2019 after threats emanating from his appearance in various court proceedings. Gaurav Gupta presented a writ petition under Article 226 of the Constitution and Section 482 of the CrPC, requesting to Quash the order of 28 March 2023 passed by the Witness Protection Committee, as his security was withdrawn. He also directed the authorities to restore his security in accordance with the order passed in 2019 by the Delhi State Legal Services Committee. The court observed that the petitioner had been in protection since 2019. It stressed the requirement of a new threat perception assessment by the Witness Protection Committee to ascertain the present need for security measures.

Directions Issued in the case: The petitioner was directed to file a fresh application before the Chairman of the concerned Witness Protection Committee. Thus, the Committee was directed to Carry out a specific threat perception analysis. The court Pass an order on the grant of security within one month of the receipt of the application. The court also directed that then 24-hour Personal Security Officer (PSO) protection of the petitioner be continued.

Final Outcome of the case: The above instructions were followed in disposing of the petition. The earlier fixed hearing on 4 March 2024 was cancelled. This ruling highlights the judiciary's adherence to protecting those individuals who are actually at risk due to their participation in legal proceedings. It also brings to the fore the procedural framework available to examine and offer appropriate protection under the Witness Protection Scheme.

Narendra Kaurav v. The State Of Madhya Pradesh 24 January, 2025²: in present case petition was filed under **Article 226 of the Constitution of India** seeking various reliefs, such as issuance of protective steps under the Witness Protection Scheme, removal of Respondent No. 4 from the petitioner's vicinity, quashing of the impugned order (Annexure P/1), and a direction for a fair, impartial, and time-bound departmental inquiry, along with cost of the petition. In arguments, it was argued that the petitioner is free to move an appropriate application before the Committee set up under the State's Witness Protection Scheme—developed in accordance with the Supreme Court's verdict in **Mahendra Chawla vs Union of India, 2018 SCC OnLine SC 2679**.

If the Committee, on scrutiny, believes there is a genuine threat from Respondent No. 4, it can offer police protection. The Court once again stated that the petitioner was at liberty to apply for protection by such an application and that it was up to the Committee to ascertain the merits and the need for such protection. Hence, the issue of extending protection under the scheme could not be determined in favour of the petitioner in this stage.

7. *Bhartiya Nagrik Suraksha Sanhita, 2023 (BNSS)* : - The outdated Code of Criminal Procedure, 1973 (CrPC) with a modernized framework aimed at addressing contemporary legal challenges replaced by The Bhartiya Nagrik Suraksha Sanhita 2023 (BNSS) and was introduced on August 11, 2023. For the first time the legislation made the witness protection legalized earlier it was only a part of witness protection scheme. The legislation felt the need and added provision in relation to it, it was a enormous step took by them that is highly significant in protecting witness from turning hostile.

Sec-398 of BNSS legally mandates establishment of WPP in every state but WPS, 2018 considered to be in effect only when state government recognises and notifies it officially.

¹ Author: Swarana Kanta Sharma, Bench: Swarana Kanta Sharma

² Bench: Milind Ramesh Phadke

8. **Object of Sec -398 BNSS: - Witness Protection Scheme:** - Section 398 of BNSS is aimed at: -

- A. **Witnesses- Pillars of Justice, Voices of Truth:** - Witnesses play crucial role as the 'eyes and ears of justice,' guiding the court towards truth and justice. The law aims to protect witnesses from harm and ensure their safety.
- B. **Ensuring Justice:** It is a significant stride as Bharatiya Nagarik Suraksha Sanhita (BNSS) 2023 introduces the Witness Protection Scheme, acknowledging the critical need to shield witnesses from threats and intimidation.
- C. **Balancing and drawing with Judicial Observations :** The State Governments are authorized and empowered to prepare and notify a Witness Protection Scheme. A '**Witness Protection Scheme, 2018** has been drafted and approved by **the Hon'ble Supreme Court in its judgment in Mahendra Chawla v UOI**, wherein it was held that WPS are aimed at guarding the society against criminal misconduct, deterring law breakers and punishing those who violate or attempt to violate laws, and protecting witnesses from harm and ensuring their safety.
- D. **Section 398, a Game-Changer in Witness Safety:** This ground breaking addition ensures that witness safety becomes an integral part of the criminal procedural framework whereby every State Government is mandated under Section 398 to prepare and notify a Witness Protection Scheme (WPS). Witness Protection: Upholding the Right to Testify Without Fear The new law for the Witness Protection Scheme stands as a formidable shield, safeguarding witnesses against threats, intimidation, and injury.
- E. **Supporting Justice:** The new law clearly emphasises that Witness Protection is not just a legal provision but a commitment to Justice and interest of public.

9. **Legislative Measures for Witness Protection in India:** -

- i. **Evidence to be taken in presence of the accused:** The opening sentence of section 273 of Cr.P.C (now Sec 308 BNSS, 2023) demonstrates that all evidence taken place in course of trial or other proceedings in the presence of the accused can be dispensed with in the interest of justice. A proviso to section 273 is inserted in the year 2013 which allows court to take necessary steps in recording of evidence in cases where a woman below the age of eighteen years is subjected to rape or any other sexual offence. It is necessary to ensure that such woman is not confronted by the accused while cross-examination^{3,24}
- ii. **Open Hearing or a Public Trial:** The general rule is that the accused shall be generally help in open court. This rule is embodied in section 327 of the Criminal Procedure Code (now has been repealed by sec 366 BNSS ,2023). Though section 327(2) also creates an exception to this general rule and the Magistrate, if circumstance demands, It may reserve the access of public or any person in any inquiry or trial of a particular case.

This Section further provides that where such an inquiry or trial of cases is associated with sexual offences then it must be conducted in camera. It prohibits publication of any matter relating to such proceeding except with the prior permission of the court. Section 228A of the Indian Penal Code, 1860 (now has been repealed by sec 72 BNS, 2023) prescribes punishment if the identity of the victim of rape is published.

The objective of camera trial is that it would help the victim/witness to give her testimony without fear. The presence of the accused or public creates a sense of pressure, threat and second thought in the mind of the victim/witness which may cause discomfort for her to depose voluntarily. The **Hon'ble Apex Court** in case of **State of Punjab v. Gurmit Singh** ⁴²⁵ gave emphasis on in-camera proceedings and held that it would not only help in keeping the self-respect of the witness/victim of the crime but also would improve the quality of evidence of the rape victim as victim would not feel anxiety or hesitant to depose freely about the commission of crime in detail. Moreover, The evidence deposed by her will have quality and it evidence would help the court in ascertaining the truth.

³ the Law Commission in its 172nd Report (2000) has also recommended for insertion of such proviso by Amendments to Criminal Law in the year 2013.

⁴ 1996 (2) SCC 384

In **Sakshi v. Union of India**⁵26, the **Apex Court** stressed on the use of a screen or some other similar arrangement to prevent victim/witness encounter with the accused. It also states that the face or visibility of the accused to the victim or witness may create a fear in the mind of victim or the witness as a result of which he/she may advance a evidence involuntarily. The Court further stated that recording through video conferencing can be followed by which victim/witness can avoid direct confrontation with the accused at the time of giving testimony.

In the case of **State of Maharashtra v. Dr. Praful B. Desai**⁶27, Upholding the validity and legality of video conferencing, the Supreme Court held that recording of evidence through video conferencing is permissible under the law.

- iii. **Recording of evidence in absence of the accused: Section 299 Cr.P.C (now Sec 335 BNSS)** is an exception to the general rule that evidence to be taken in presence of the accused. In cases where the accused has escaped or where there is no immediate prospect of arresting him The Court may, in his absence, examine the witnesses produced on behalf of the prosecution, and record their depositions.
- iv. **Evidence for the prosecution:** The object of **Sec 242 Cr.P.C (now sec 249 BNSS)** is to guarantee an open public trial which gives a right to the accused to know the evidence gathered by the prosecution and also a right to cross-examination to safeguard the interest of the accused. It is general principle that the accused is presumed to be innocent unless proved guilty beyond reasonable doubt Complainant and witnesses not to be required to accompany police officer and not to be subject to restraint.

Also, **Section 171 of the Criminal procedure Code (now Sec 191 BNSS, 2023)** provides that the complainant or witness is not required to accompany police officer on their way to any Court. At the same time, they shall not be subjected to unnecessary restraint or inconvenience, or required to give any security for their appearance other than their own bond. In case any complainant or witness refuses to attend or to execute a bond. The officer-in-charge of the police station may forward him in custody to the Magistrate, who may detain him in custody until he executes such bond, or until the hearing of the case is completed.

- v. **Attendance of witness may be dispensed with and commission issued:** Section 284 provides for cases where attendance of witness may be dispensed with and commission may be issued for examination. If it appears to Magistrate that the examination of a witness is necessary for the ends of justice, and that the attendance of such witness cannot be procured without an amount of delay, expense or inconvenience.
- vi. **Expenses of complainants and witnesses: Section 312 Cr.P.C (now has been replaced by sec 350 BNSS ,2023)** As per this, any criminal court may if it thinks fit order payment on the part of Government of the reasonable expenses of any complainant or witness attending for the purposes of any inquiry, trial or other proceeding before such Court.

Zahira Habibulla Sheikh v. State of Gujarat⁷28 held that in cases where the venue of trial is shifted from one place to another to provide more supportive environment to witnesses or victims to depose freely, the courts are obliged to order payment of reasonable expenses incurred by the witness or complainant for attending the court as per section 312 of the Code (sec 350 BNSS).

10. Protective Measures initiated and addressed by Witness Protection scheme (Clause 7): Safety moves hailed by the Scheme should be in proportion as it should not threat & challengeable and should be on requirement basis for a specific period and which is to be rejuvenated regularly. These safety measures may entail the following: -

⁵ 2004(6) SCALE 15

⁶ 2003 (4) SCC 601

- Ensuring that witness and accused do not come face to face during investigation or trial;
- Monitoring of mail and telephone calls;
- Arrangement with the telephone company to change the witness's telephone number or assign them unlisted telephone number;
- Installation of security devices in the witness's home such as security doors, CCTV, alarms, fencing etc;
- Concealment of identity of the witness by referring to him/her with the changed name or alphabet;
- Emergency contact persons for the witness;
- Close protection, regular patrolling around the witness's house;
- Temporary change of residence to a relative's house or a nearby town;
- Escort to and from the court and provision of Government vehicle or a State funded conveyance for the date of hearing;
- Holding of in-camera trials;
- Allowing a support person to remain present during recording of statement and deposition;
- Usage of specially designed vulnerable witness court rooms which have special arrangements like live links, one way mirrors and screens apart from separate passages for witnesses and accused, with option to modify the image of face of the witness and to modify the audio feed of the witness's voice, so that he/she is not identifiable;
- Ensuring expeditious recording of deposition during trial on day-to-day basis without adjournments;
- Awarding time to time periodical financial aids/grants to the witness from Witness Protection Fund for the purpose of re-location, sustenance or starting new vocation/profession, as may be considered necessary;
- Any other form of protection measures considered necessary, and specifically, those requested by the witness can be ordered by Competent Authority.

11. Conclusion: -Thus, we can conclude that procedural laws contain a number of components for fair trial with regard to the accused. It provides for open trial in public and gives a chance to cross-examine all the witnesses. Even evidence is presumed and intended to be granted in the presence of the accused. Which is subject to a few exceptions). In relation to victims/witnesses, **the Code of Criminal Procedure** provides safety with regard to their identity and their life. The Code also provides for in camera proceedings in issues related to sexual offences committed against women. Even through judicial construction and understanding various rules to be observed during prosecution of sexual offences. There are some specific statutes dealing with the trial of terrorist acts that enable in the concealment of the identity of witnesses during inquiries as well as during the trial. It should also be noted how the Law Commission consistently provide has distinctively and with great frequency discussed in the numerous reports the need for immediate identity concealment measures and witness protection programs in interest of justice and public welfare. But all these actions or changes are not enough in certain areas to deal with witness intimidation.

12. Identifying Truth and difficulties in Executing the Scheme: -: - For India it is the biggest challenge to initiate and execute the scheme successfully in order to ensure safety and protection of witnesses in criminal cases due to plenty of causes. Finding various reasons for difficulties in implanting witness protection in India included: - :

- ✓ focus on the bureaucratic obstacles,
- ✓ socio-cultural factors, resource constraints, and
- ✓ actual studies and surveys of (NCB) National Crime Records Bureau which was established in 1968.

13. Various Suggestions Made: -

- **Policy Recommendations for Legal Reform:** It is suggested to introduce comprehensive law that emphasizes witness protection and contains provisions for risk assessment, safety precautions, and enforcement protocols. It Ensure that the legislation addresses all aspects of the criminal justice system, including pre-trial procedures and witness support following a conviction.
- **Operational Methods to Improve Performance:** It is suggested to Assign specialized witness protection units or agencies to law enforcement agencies that are adequately funded and manned by qualified personnel and provides consistent policies and procedures for assessing witness risk, providing protections, and assessing the effectiveness of protection efforts. It should Regularly conduct training and

capacity-building activities for law enforcement personnel, lawyers, and social service providers involved in witness protection programs.

- **Enhancing Collaboration and Coordination Among Agencies:** It is suggested to promote collaboration amongst various stakeholders, including the legal system, social service providers, law enforcement, and civil society organizations, by forming multidisciplinary task forces or working groups. It should also ensure that witness safety issues are handled quickly and effectively, establish formal channels for coordination and information sharing amongst the various witness protection authorities.
- **Improving Protection through Innovation and Technology:** It is suggested to use technology-based solutions, such as digital identity management, secure communication platforms, and surveillance technologies, to increase witness security and confidentiality. Investigate innovative approaches to witness relocation and courtroom security, such as community-based protection initiatives and virtual witness testimony.

14. Various Safety Measures adopted by India in Implementing the Scheme: - it includes: -

- i. Specific and more comprehensive laws should be passed to address the issue of witness protection.
- ii. A Witness Rehabilitation Fund policy should be created, and all contributors must receive tax advantages.
- iii. A specialized witness security unit similar to the US Marshals Service may be created to guarantee the witness's and his family's safety and protection.
- iv. The District Legal Services Authority of each district will oversee the establishment of an effective Witness Assistance Service.
- v. . It might be feasible to ensure that a witness can testify in court via video conference, enabling them to speak freely.

It thus can be legitimately concluded that if the various State Governments act in accordance with the sec 398 BNSS and emulate the practices which have been adopted by the Assam and Haryana Governments then a clean and effective criminal justice system would soon be set up where the witnesses speak honestly and aid the law to arrive at the truth.