

ABHIDHVAJ LAW JOURNAL

[www.abhidhvajlawjournal.com]

The goal of Abhidhvaj Law Journal is to offer an open-access platform where anyone involved in the legal profession can contribute their research on any legal topic and aid in building a quality platform that anyone can use to advance their legal knowledge and experience.

Editor In chief – Assistant Professor Mr. Janmejay Singh

Publisher & Founder – Vaibhav Sangam Mishra

Frequency – Quarterly (4 Issue Per year)

ISSN: 2583-6323 (Online)

Copyright © 2024 - 25

WITNESS PROTECTION JURISPRUDENCE IN INDIA VIS A VIS NEW CRIMINAL LAWS

AUTHOR'S NAME – Ayushi Jaiswal, Research Scholar.

INSTITUTION NAME – Department of Law, University of Lucknow.

Received on 3 December 2024, Accepted on 6 December, Published On 12 December 2024

ABSTRACT:

The Indian criminal justice system experienced a major overhaul with the enactment of three new laws: the Bhartiya Nyaya Sanhita, Bhartiya Sakshya Adhiniyam, and Bhartiya Nagrik Suraksha Sanhita (BNSS).[1] These new laws bring a major change to India's legal system by replacing the Indian Penal Code of 1860, the Evidence Act of 1872, and the Code of Criminal Procedure of 1973. This shift represents a significant update in the way criminal justice is administered in the country. This change aimed to move beyond the outdated colonial laws that previously shaped the criminal justice framework in India. In the adversarial criminal justice system prevalent in India, witnesses play a crucial role a key principle of criminal law is that it is the prosecution's responsibility to prove the case beyond a reasonable doubt. Protecting witnesses plays a crucial role in ensuring that the truth comes to light.

The statement of witness is the determining factor for the conviction or acquittal of the accused. On the other hand, the impact of the crime on the victim is profound. Victims and witnesses might hesitate to share information or testify because of real or perceived threats to themselves or their families. It is, therefore, the duty of both the legislature and judiciary to provide adequate protection and support to those involved in criminal cases. Victims may experience physical, mental, emotional, and financial harm, some of which may have lasting effects. This research paper will unfold and critically analyze various provisions and measures provided for victim and witness protection in the new criminal laws.

Keywords: victim protection, witness protection scheme, criminal justice system, victimology, adversarial system.

[1] Msn, https://www.msn.com/en-in/society-culture-and-history/social-issues/top-10-bharatiya-nyaya-sanhita-provisions-every-clat-aspirant-should-know/ar-AA1uUih6 (last visited Dec.1, 2024).

The goal of Abhidhvaj Law Journal is to offer an open-access platform where anyone involved in the legal profession can contribute their research on any legal topic and aid in building a quality platform that anyone can use to advance their legal knowledge and experience.

INTRODUCTION:

Witnesses play an essential role in the criminal justice system, which cannot be overlooked. When a crime occurs, the primary aim is to ensure that the guilty party is held accountable and receives the appropriate punishment. In India's adversarial legal system, decisions are based on the evidence provided, including both oral and documentary evidence. Witnesses are key to this process, as their testimony can help prove whether the accused is guilty or innocent. However, a significant problem is the issue of witnesses turning hostile, which leads to lower conviction rates and allows criminals to escape justice, disturbing the peace and order in society. As Jeremy Bentham famously said, "Witnesses are the eyes and ears of the Court," raising an important question: who qualifies as a witness, and why is their role so vital? This paper seeks to explore this question.[2] Whittaker Chambers described a witness as someone whose convictions are so deeply ingrained that when called upon to testify, they do so without hesitation, fully aware of the risks and consequences.

A witness can be defined as an individual who provides evidence to the court. This applies not only to judicial courts but also to quasi-judicial bodies and various other tribunals that accept evidence from witnesses. The term "witness" refers to an individual who provides or is required to provide information or evidence in a legal proceeding, and possesses relevant information or documents related to a crime that is material to the case[3]. Although the Indian Evidence Act does not offer a specific definition of a witness, Section 3 defines evidence as encompassing both oral and documentary forms. "Oral evidence" specifically refers to statements made by a witness in court related to the matter being investigated. Under Section 2(k) of the Witness Protection Scheme, 2018, a "witness" is anyone who possesses information or documents about an offense. According to Black's Law Dictionary, a witness is defined as "a person who knows an event.[4]" Since the most direct form of acquiring information about an event is through firsthand observation, the witness is considered someone who is present and observes a transaction.

[2] Prithvi Raj, Witness Protection Laws in India: An Analysis, penacclaims (Dec.1, 2024, 8:10 P.M.), http://www.penacclaims.com/wp-content/uploads/2020/05/Prthivi-Raj.pdf.
[3] Sinyak, Witness Protection Jurisprudence in India: A Critical Analysis, questjournals (Dec.1, 2024, 8:12 P.M.), https://www.questjournals.org/jrhss/papers/vol10-issue6/Ser-6/F10063440.pdf.
[4] Arthita Halder, PROTECTION TO THE WITNESSES UNDER CRPC. Research gate (Dec.1, 2024, 8: 10 P.M.), https://www.researchgate.net/publication/360652983_PROTECTION_TO_THE_WITNESSES_UNDER_CRPC

The goal of Abhidhvaj Law Journal is to offer an open-access platform where anyone involved in the legal profession can contribute their research on any legal topic and aid in building a quality platform that anyone can use to advance their legal knowledge and experience.

Witnesses can be categorized into different types, including:

1. **Victim as a Witness** – A victim is someone who has suffered harm as a result of a crime. The statements made by the victim can serve as crucial and reliable evidence in the case.
2. **Child Witness** – A child, even at the age of 6 or 7, may be permitted to testify if the court is convinced that the child possesses the intellectual maturity to understand the questions and provide accurate responses. A child can be considered a competent witness if they can comprehend the proceedings and communicate truthfully.
3. **Eye Witness** – An eyewitness is someone who has directly observed an event and can provide a first-hand account of what occurred.

Partisan or interested witness – A partisan or interested witness is one who is somehow related to the victim of the crime and is interested in the conviction of the accused person. He may be a relative, friend, servant, or master. There is no hard and fast rule about the reliability of the testimony of partisan witnesses. The competency of a child to serve as a witness is determined by the particular facts and circumstances of each case. Key factors include the child's ability to comprehend the nature of the questions posed and their capacity to provide accurate testimony.

1. **Evidence of the Investigation Officer** – The testimony of the investigation officer, particularly in cases where they have conducted searches or made arrests, is crucial in criminal proceedings. Their evidence often helps establish key facts related to the case.
2. **Chance Witnesses** – A chance witness is someone who is at the scene of an incident purely by coincidence and does not have any prior involvement in the matter[5]. Their testimony can be significant, as it provides an unbiased account of the events.The testimony of such a witness is generally considered reliable, as they are not connected to either party involved. However, if the witness is related to one of the parties, their testimony may be scrutinized more closely and could be viewed with suspicion.
3. **Medical Officer/Expert as a witness** – The Evidence Act provides that in certain cases medical examination is mandatory and the Medical Officer should give his report accordingly after conducting the examination. In the case of post-mortem mortem body is sent to the Government Hospital to identify the cause of death. A certificate identifying the cause of death.

[5] Hemant, Kinds of Witnesses, the fact factors (Dec.1, 2024, 8:15 P.M.), https://thefactfactor.com/facts/law/indian-evidence-act/kinds-of-witnesses/20316/.

The goal of Abhidhvaj Law Journal is to offer an open-access platform where anyone involved in the legal profession can contribute their research on any legal topic and aid in building a quality platform that anyone can use to advance their legal knowledge and experience.

4. **Character witness** – A character witness is someone who provides testimony under oath regarding another individual's reputation and standing in the community where they reside.[6]

RESEARCH QUESTIONS:

1. Has the introduction of new criminal laws successfully addressed the issue of witness protection?
2. Has the Witness Protection Scheme, 2018 been effectively implemented, or are there still significant flaws in the model scheme that require attention?

IMPORTANCE OF WITNESS:

Witnesses are integral to the judicial process. In *Krishna Mochi v. State of Bihar*, The Supreme Court highlighted the essential role that witness testimony plays in criminal trials, emphasizing how the reliability and credibility of witnesses can significantly impact the outcome of a case. The Court stressed the importance of carefully evaluating witness statements and the difficulties posed by hostile witnesses in ensuring a fair trial. As the Court pointed out, "Society suffers from both wrongful convictions and wrongful acquittals."[7], Often, witnesses become hostile due to threats to their safety, their family's well-being, or their property. This makes the role of witnesses crucial, as their testimony is vital for ensuring justice. Justice Wadhwa[8] rightly noted, “A criminal case rests upon the foundation of evidence, whether direct or circumstantial and for that evidence to be considered, the testimony of the witness is essential.”[9]. The role of witnesses in India has regained significant importance and is now seen as essential in criminal trials. Section 118 of the Indian Evidence Act[10] addresses witness competency, specifying that the ability to testify is an essential requirement for being regarded as a valid witness. A person is considered competent to testify if there are no legal restrictions that prevent them from appearing in court and presenting evidence. Competency refers to the legal capacity to give evidence. A witness is considered incompetent when the judge, by law,

[6] Vocabulary, https://www.vocabulary.com/dictionary/character%20witness (last visited Dec.1 2024).
[7] AIR 2003 SC 886
[8] Priyanka Dhar, WITNESS PROTECTION AND JUSTICE DELIVERY SYSTEM IN INDIA - A CRITIQUE, galgotia university (Dec.1, 2024, 8:25 P.M.), https://www.galgotiasuniversity.edu.in/pdfs/5-Witness-Protection-And-Justice-Delivery-System-In-India-Critique-Priyanka-Dhar-27218.pdf.
[9] (2000) 5 SCC 668
[10] Indian Evidence Act, 1872, No. 1, Acts of Parliament, 1872 (India).

The goal of Abhidhvaj Law Journal is to offer an open-access platform where anyone involved in the legal profession can contribute their research on any legal topic and aid in building a quality platform that anyone can use to advance their legal knowledge and experience.

is required to reject their testimony. The Indian culture has assigned a place of prestige and stature to witnesses in the ancient and medieval periods and the witnesses were treated with great respect, and hence it was taken up by them to be a sacrosanct duty to depose hence there was no requirement of specific protection to afford to them. In the modern era, while the importance of witnesses has been maintained, their respect and dignity often diminish due to the lengthy and cumbersome nature of trials. To ensure that justice is served in its true form, the Indian legal system must prioritize the restoration of respect and dignity for witnesses, thereby facilitating fair trials for victims.

In State *of Uttar Pradesh v. Shambhu Nath Singh*[11], the Honorable Supreme Court has observed as follows:

"Witnesses in India often tremble when they receive a summons from the courts, not because they fear examination or cross-examination, but due to the anxiety that they may not be examined for several days. On each of these days, they find themselves bound to the courthouse, waiting for hours only to be told to return and wait again. This unfortunate scenario persists in many courts, where witnesses are often treated worse than the litigants themselves. The true casualty in this process is criminal justice. It is high time that trial courts recognize witnesses as invited guests, summoned to assist the court with their testimony to reach judicial conclusions."

The vital role of witnesses in securing justice is central to any modern criminal justice system. From the initial reporting of a crime to the trial, the cooperation of witnesses is essential for the successful progression of criminal proceedings. In adversarial systems, where the prosecution must prove its case beyond a reasonable doubt, the testimony of a witness, even if not an eyewitness, can be critical in determining the circumstances surrounding the crime. Their testimony often serves as a key element in ensuring justice is served.

NEED FOR WITNESS PROTECTION IN INDIA:

In India, there is no specific law for the protection of witnesses, unlike in other developed countries such as the UK, US, Canada, and Australia. As a result, witnesses have little legal recourse if they are mistreated or face difficulties. The current judicial system often overlooks the needs and challenges of witnesses, summoning them to court without consideration for their

[11] (2001) 4 SCC 667

The goal of Abhidhvaj Law Journal is to offer an open-access platform where anyone involved in the legal profession can contribute their research on any legal topic and aid in building a quality platform that anyone can use to advance their legal knowledge and experience.

financial constraints or personal responsibilities, such as family, children, or work commitments. This lack of regard for their circumstances puts an undue burden on witnesses, affecting their ability to participate fully in the judicial process or that it might be after many years of the incident which the witness may not even remember at the time of actual trial. The facilities provided to witnesses in ancient Hindu law like the reasonable amount by way of conveyance, the suitable environment in the Court, and the respectful attitude of the officers of the courts towards the witnesses are nowhere to be found in the modern criminal justice system. Witnesses are often hesitant to come forward and testify in court due to the challenging and potentially dangerous circumstances they may face. Recognizing this issue, the Government saw the need to introduce provisions for witness protection in the Code of Criminal Procedure in 2008. These provisions aimed to address the vulnerabilities of witnesses and ensure that they can testify without fear of harm or intimidation, thus strengthening the integrity of the criminal justice system. The 2008 Amendments have included some important provisions relating to the rights of victims and witnesses. Victims who might also be prime witnesses in criminal trials have been given some important rights, such as compensation. However, witnesses are given superficial rights through the amendments. Section 357A was introduced into the Code of Criminal Procedure in 2008 to enable the State government, in coordination with the central government, to implement a "Victim Compensation Scheme." This scheme aims to provide compensation to victims or their dependents who have suffered loss or injury as a result of a crime. Section 195A was incorporated into the Criminal Procedure Code to empower a witness, or someone acting on their behalf, to file a complaint in cases where threats are made under Section 195A of the Indian Penal Code. Given the heavy caseload of Indian courts and occasional delays in criminal proceedings, there is an increased risk of evidence tampering, and witnesses may struggle to maintain their safety during extended trials. Section 195A, introduced by the Criminal Law (Amendment) Act of 2005,[12] is the key legal provision for witness protection in India. It criminalizes threats of harm—whether to a person, reputation, or property—with the intent to alter a witness's testimony[13]. Those who issue such threats can face up to seven years of imprisonment, a fine, or both. If the threat results in the wrongful conviction of an innocent individual, the perpetrator may face the same penalty as the wrongfully convicted person. This amendment is designed to address the issue of witness

[12] Criminal Law (Amendment) Act of 2005, Sec. 195A, No. 25, Acts of Parliament, 2005 (India).
[13] Aishwarya Agrawal, Criminal Intimidation IPC: Section 503 IPC, Law Bhoomi (Dec.1, 2024, 8:30 P.M.), https://lawbhoomi.com/criminal-intimidation-ipc/.

The goal of Abhidhvaj Law Journal is to offer an open-access platform where anyone involved in the legal profession can contribute their research on any legal topic and aid in building a quality platform that anyone can use to advance their legal knowledge and experience.

hostility and ensure greater protection. The problem of hostility endeavoured to be tackled through section 191 of IPC which treats giving false evidence on oath as an offence.[14] The provision was not efficient as section 191 did not solve the basic reason behind hostility, which is the threat to the witnesses' life or limb or family members. With the amendment of Section 195A of the Indian Penal Code, witnesses can now file a complaint against those who threaten them to provide false evidence, which is a punishable offense. However, this provision alone is insufficient to offer full protection to witnesses. While the law provides a mechanism for witnesses to report threats, the core issue of witness safety remains unaddressed. Witnesses, along with their families or close relatives, need comprehensive protection to ensure they are shielded from threats before, during, and after the trial process.

After analyzing Section 195A, two crucial questions arise:

1. **Are witnesses protected outside the court after filing a complaint?**
2. **If yes, to what extent? If no, what solutions can be implemented?**

The offense under Section 195A is cognizable and non-bailable, with a procedural framework outlined in the Code of Criminal Procedure. However, this framework does not provide adequate protection to witnesses. Simply allowing witnesses to file a complaint does not mitigate the ongoing threat to their lives, which may persist around the clock. Additionally, the Magistrate may only ensure their regular attendance in court, but this does little to address the broader issue of witness security outside the court.

Thus, while the legal provision offers some recourse, it does not fully address the need for comprehensive witness protection, highlighting the need for more robust measures to ensure their safety and the integrity of the judicial process.

Hence, apparently, the answer to our question is no because this protection which is conferred to witnesses, in reality, is merely a formality that does not address the need for witness protection. Thus it can be concluded that the Amendment has not provided adequate relief to witnesses. Some special enactments regarding the protection of witnesses also exist in Indian law.

CRITICAL ANALYSIS OF INDIAN LAW COMMISSION REPORTS AND OTHER REPORTS ON WITNESS's PROTECTION

[14] Indian Penal Code 1860, Sec. 191, No. 45, Acts of Parliament, 1860 (India).

The goal of Abhidhvaj Law Journal is to offer an open-access platform where anyone involved in the legal profession can contribute their research on any legal topic and aid in building a quality platform that anyone can use to advance their legal knowledge and experience.

India currently lacks specific legislation dedicated solely to witness protection. However, various challenges and difficulties faced by witnesses within the criminal justice system have been consistently highlighted by the Law Commission of India across multiple reports since 1958. These reports have identified the reasons why witnesses often turn hostile and emphasized the need for protective measures, including safeguarding witness identity. Some key reports include:

- **The 14th Law Commission Report (1958)**: This report introduced the concept of 'witness protection,' focusing primarily on the arrangements necessary to facilitate witness participation in court proceedings. It recommended measures to ensure the timely arrival of witnesses without delays. However, it did not address the physical protection of witnesses.
- **The 154th Law Commission Report**: This report also stressed the importance of protecting witnesses from retaliation by the accused. One significant recommendation was that witnesses should be shielded from any threats or harm from the accused. Despite this, the report did not propose any specific physical protection measures for witnesses. These reports highlight the ongoing recognition of witness safety issues, though the legal framework for comprehensive protection remains underdeveloped.
- The 172nd Law Commission Report was taken up following a special request made by the Hon'ble Apex Court of India in the case of *Sakshi v. Union of India*[15]. The case raised concerns about the need to address the issues of witness protection, especially in cases involving vulnerable witnesses, such as children and victims of sexual offenses. The report provided recommendations for improving the legal framework, including measures to ensure the safety and well-being of witnesses during trials, thereby helping in enhancing the effectiveness and fairness of the criminal justice system.16. In this case, a detailed analysis concerning the issues had been raised by the petitioner who was an NGO as well as other organizations related to women. After all the petitioners and their suggestions had been taken into consideration, the Hon'ble Court held that “any minor who has been assaulted sexually, shall not be forced to give their statements or pieces of evidence before the court when the accused is present”.

[15] Indian Kanoon, https://indiankanoon.org/doc/1103956/ (last visited Dec.1, 2024).

The goal of Abhidhvaj Law Journal is to offer an open-access platform where anyone involved in the legal profession can contribute their research on any legal topic and aid in building a quality platform that anyone can use to advance their legal knowledge and experience.

- An amendment under section 164A had been inserted by the 178th Law Commission Report[16] of the Criminal Procedure Code.

The **198th Law Commission Report** endorsed the concept of witness protection by proposing a consultation paper focused on **Witness Identity Protection** and **Witness Protection Programs**. The report stressed the importance of creating a well-organized system to protect witnesses involved in criminal cases.[17]

The report categorized witnesses into three types based on their association with the accused:

1. **Witnesses Unknown to the Accused**: These individuals are impartial and usually do not face direct threats, as they have no prior relationship with the accused.
2. **Witnesses Known to the Accused**: These witnesses are more vulnerable to intimidation or threats because of their known connection to the accused, making them susceptible to harm.
3. **Witnesses Whose Identity is Unknown to the Accused**: These individuals are at risk of retaliation or harm if their identity is revealed during or after the trial.

The report highlighted the need for tailored protection strategies to ensure the safety and security of all these categories of witnesses. The report highlighted that certain witnesses, particularly those whose identities are known to the accused or those who may suffer from mental trauma, require special protection. This protection is essential to prevent identity disclosure, which could endanger the safety of the witness, and to safeguard their mental well-being during the legal process. Thus, the report recommended establishing a formal witness protection program to ensure the safety and dignity of witnesses throughout the trial process.

The Justice V.S. Malimath Committee Report[18] also referred to the problem of witnesses turning hostile and not deposing truthfully "due to threats, inducement or sympathy". The report also noted the shabby treatment meted out to the witnesses and the lack of proper facilities and adequate allowances for witnesses. The Committee emphasized the need for a comprehensive law for the protection of the witnesses and their families. The National Police Commission also recommended various measures to alleviate the difficulties of the witnesses in 1980[19].

[16] See Law Commission of India, "178th Report on Recommendations for Amending Various Enactments, Both Civil and Criminal Law" (December, 2001)
[17] Indian Kanoon, https://indiankanoon.org/doc/142993966/ (last visited Dec.1, 2024).
[18] Government of India, "Report of the Committee on Reforms of Criminal Justice System" (Ministry of Home Affairs, March, 2003).
[19] Fourth Report of the National Police Commission (1980), p. 16, para 28.15

The goal of Abhidhvaj Law Journal is to offer an open-access platform where anyone involved in the legal profession can contribute their research on any legal topic and aid in building a quality platform that anyone can use to advance their legal knowledge and experience.

Despite these repeated concerns and suggestions, the Legislature has refrained from passing a comprehensive law on witness protection in India. Although some Private Members' Bills have been introduced in Parliament on the issue of witness protection, none of them have been passed, so far. 16 However, some specific provisions relating to witness protection have been added from time to time in some special laws. Such provisions for in-camera proceedings and for the protection of the identity and address of witnesses have often been included in anti-terror laws.17 Even laws dealing with offenses by and against children prohibit direct or indirect disclosure of their identity.18The Whistle Blowers Protection Act, 2014 also included provisions on the protection of witnesses and the "protection of the identity of the complainant".The general penal laws in India also contain provisions aimed at protecting and providing comfort to witnesses. In 2006, the **Indian Penal Code (IPC)** was revised to make it a punishable offense to **threaten someone to provide false testimony**, under **Section 195A**. This amendment was introduced to safeguard the integrity of witnesses and their testimonies during legal proceedings.

In response to the increasing need for witness protection, the **National Capital Territory (NCT) of Delhi** took the initiative to implement the **Delhi Witness Protection Scheme, 2015**, which was officially notified in July 2015. This scheme was designed to offer protection to witnesses involved in criminal cases, especially those facing threats or intimidation.

However, despite the efforts at the state level, no central legislation specifically addressing witness protection has been enacted. This gap continues to be a concern, as repeated recommendations and calls for a national framework for witness protection remain unaddressed. The absence of a comprehensive central law leaves a significant challenge in ensuring the safety and security of witnesses across the country.

ABHIDHVAJ LAW JOURNAL

PROTECTION OF WITNESS IN OLD CRIMINAL LAWS AND BEFORE WITNESS PROTECTION SCHEME 2018:

Before the **2018 Witness Protection Scheme**, India lacked formal legislation directly addressing witness protection. In the past, there were several indirect provisions in Indian criminal law aimed at protecting witnesses, though they did not form a comprehensive protection framework. These provisions included:

The goal of Abhidhvaj Law Journal is to offer an open-access platform where anyone involved in the legal profession can contribute their research on any legal topic and aid in building a quality platform that anyone can use to advance their legal knowledge and experience.

1. **Sections 436 and 437 of the CrPC**: These sections set out the conditions for granting bail in both bailable and non-bailable offenses. One of the key factors considered when granting bail was the potential threat or intimidation faced by witnesses from the accused.
2. **Section 195A of the IPC (2008 Amendment)**: This provision made it a punishable offense to threaten someone with the intent to coerce them into giving false evidence. The penalty for such an offense could include imprisonment for up to seven years, a fine, or both. This was a measure to protect the judicial process by preventing witness manipulation.
3. **Section 357A of the CrPC (2008)**: This provision allowed the State government, in coordination with the central government, to establish a **Victim Compensation Scheme**. It was designed to compensate victims or their dependents for loss or injury resulting from a crime.
4. **Sections 149-152 and Section 148 of the Indian Evidence Act (1872)**: Together, these sections helped protect witnesses from improper cross-examination. For example, **Section 148** prohibited the use of leading questions during cross-examination, safeguarding witnesses from undue pressure.
5. **Section 195A of the IPC (2005)**: As mentioned earlier, this section criminalized the act of threatening a witness to induce false testimony. If a person caused an innocent individual to be wrongfully convicted through false evidence, the person making the threat could face the same punishment as the wrongfully convicted individual.

While these provisions offered some level of protection, they did not provide a comprehensive or structured witness protection program. This gap led to the formulation of the **Witness Protection Scheme, 2018**, which was a more formal and systematic approach to ensuring the safety and security of witnesses involved in criminal cases.

WITNESS PROTECTION IN NEW CRIMINAL LAWS:

- The **Bhartiya Nagrik Suraksha Sanhita (BNSS), 2023** brings about significant improvements in witness protection in India. This legislation highlights that witness protection is not just a procedural requirement but a core commitment to ensuring justice and safeguarding those who play a role in its delivery. A key feature of the BNSS is **Section 398**, which specifically addresses witness protection. This provision

The goal of Abhidhvaj Law Journal is to offer an open-access platform where anyone involved in the legal profession can contribute their research on any legal topic and aid in building a quality platform that anyone can use to advance their legal knowledge and experience.

mandates that each State Government must create and enforce a **Witness Protection Scheme (WPS)**[20]. The inclusion of this section signifies that the protection of witnesses is now a legally enforceable obligation, integrated into the criminal justice system. It underscores the critical role of witness safety in ensuring the fair and unbiased administration of justice. By making it mandatory for State Governments to establish and implement a WPS, Section 398 aims to: **Protect Witnesses from Criminal Threats**: This provision ensures that witnesses are safeguarded against any harm, threats, or intimidation they may face due to their involvement in criminal cases.

Deter Criminal Activity: By clearly stating that intimidation or harm towards witnesses is unacceptable, the law aims to deter those who may consider such actions. **Accountability for Violations**: The law ensures that anyone attempting to harm or intimidate a witness will face legal consequences, reinforcing the notion that such behavior will be met with severe sanctions. In summary, Section 398 of the **BNSS, 2023** marks a crucial advancement in India's legal framework. It recognizes the importance of witness safety in the justice process, ensuring that witnesses can testify without fear, thus upholding the integrity of the justice system and the rule of law.

- Bhartiya Nyaya Sanhita, 2023- The Indian Penal Code (IPC) had Section 195A, which states that threatening any person to give false evidence will be punishable by up to 7 years or a fine or both. This provision is also carried forward in the New law and the section will now be read as Section 232 of BNS.
- Bhartiya Sakshya Adhiniyam, 2023- Just like the IEA, 1872[21], the BSA, 2023 also emphasizes the importance or relevance of the statement of witnesses during the trial. **Section 55 of the Bhartiya Sakshya Adhiniyam (BSA), 2023** underscores the significance of **oral evidence by witnesses** and its crucial role in ensuring justice during trials. This provision highlights the importance of protecting witnesses and their right to testify without fear, thereby promoting the fair administration of justice. The **Witness Protection Scheme** introduced by the **BSA, 2023** serves as a comprehensive legal framework to safeguard witnesses from threats, intimidation, or any form of harm they might face due to their participation in legal proceedings. The **State's Duty** is clearly outlined to protect witnesses, ensuring they are able to testify freely and without

[20] Lead India, https://www.leadindia.law/blog/en/what-is-section-398-under-bnss/ (last visited Dec.1, 2024).
[21] Indian Evidence Act, 1972, 3, Acts of Parliament, 1872 (India).

The goal of Abhidhvaj Law Journal is to offer an open-access platform where anyone involved in the legal profession can contribute their research on any legal topic and aid in building a quality platform that anyone can use to advance their legal knowledge and experience.

fear of retaliation. Key features of the **Witness Protection Scheme** under this law include:

- **Witness Identity Change**: To shield witnesses from potential harm or retaliation, the scheme allows for the alteration of the witness's identity, thereby protecting their personal information.
- **Witness Relocation**: If necessary, the scheme provides for the relocation of witnesses to safer locations to avoid danger.
- **Installation of Security Measures**: Witnesses may have security systems, such as surveillance cameras or other protective measures, installed at their residences to ensure their safety.
- These provisions reflect a **formidable shield** for witnesses, ensuring that their role in the judicial process is protected. By providing these protection mechanisms, the law ensures that witnesses can testify honestly and fully, which is vital for the integrity of the judicial system and for delivering justice

OVERVIEW OF WITNESS PROTECTION SCHEME, 2018:

To understand the origins of the **Witness Protection Scheme, 2018 (WPS)**, it is important to first look at the circumstances that prompted its creation. A significant factor was a **writ petition** filed under **Article 32 of the Constitution of India** in the case of **Mahender Chawla v. Union of India**. In this case, the petitioner, Mahender Chawla, raised critical concerns about the vulnerability of witnesses in the Indian legal system. He pointed out that witnesses often faced **threats, intimidation, and violence**, which discouraged them from coming forward or led them to become hostile during trials. This jeopardized the integrity of the judicial process, as the testimony of witnesses is crucial for a fair trial. Recognizing the serious implications of this issue, the Supreme Court highlighted the **need for a formal and robust framework** to protect witnesses. The Court observed that without appropriate protection, the criminal justice system would suffer, and the **rule of law** could be undermined. This led to the formulation of the **Witness Protection Scheme (WPS), 2018**, which aimed to establish comprehensive measures to protect witnesses and ensure they could testify freely and safely, without fear of retaliation.

Thus, the case of **Mahender Chawla v. Union of India** played a critical role in emphasizing the importance of **witness protection** and led to the introduction of the **WPS, 2018**, a vital step

The goal of Abhidhvaj Law Journal is to offer an open-access platform where anyone involved in the legal profession can contribute their research on any legal topic and aid in building a quality platform that anyone can use to advance their legal knowledge and experience.

toward strengthening the justice system in India, in which the petitioners made specific allegations against a self-acknowledged godman, Asaram Bapu, and his son Narayan Sai, who were accused in rape cases. The petitioners in the case included individuals who had faced severe repercussions for their involvement in the legal process. One petitioner was a witness who survived a murder attempt after bravely testifying against the accused. Another petitioner was the father of a murdered witness, who was allegedly killed due to their role in providing testimony against the accused. A third petitioner was the father of a child rape victim, and a journalist who had narrowly escaped an assassination attempt by one of the accused's followers, but continued to receive death threats for publishing articles critical of the accused. The petitioners contended that witnesses in the cases against Asaram were being threatened three witnesses had already been killed and ten others had been attacked. The petitioners sought the Court's intervention to supervise an investigation, proposing that it be conducted by either a Special Investigation Team (SIT) or the Central Bureau of Investigation (CBI).[22] They highlighted the lack of adequate witness protection measures as a key factor contributing to witnesses turning hostile in India. Justice Sikri remarked on the grim reality, especially in cases involving serious crimes or influential accused individuals, who often resort to intimidation and threats against witnesses, causing them to either avoid court appearances or testify falsely. This situation arose due to the state's failure to implement proper witness protection.

Initially, the petitioners filed the case against the Union of India and several states, including Haryana, Uttar Pradesh, Rajasthan, Gujarat, and Madhya Pradesh. The Court directed the governments of Uttar Pradesh and Haryana to provide adequate protection for the petitioners. Acknowledging the nationwide significance of the matter, the Court extended the scope of the petition to include other states. The Court also instructed the Attorney General to present a draft of a witness protection scheme. In response, the Union Ministry of Home Affairs prepared the Witness Protection Scheme, 2018, incorporating feedback from 18 states, 5 state legal services authorities, civil society groups, three High Courts, and police personnel, in collaboration with the National Legal Services Authority (NALSA). Emphasizing the need to have a statutory witness protection regime, the two-judge bench held that, till a suitable law is framed by the Central and/or State Legislatures, the WPS should be considered as “law” under

[22] Live law, https://www.livelaw.in/top-stories/supreme-court-adani-hindenburg-endorses-sebi-probe-regulations-245712 (last visited Dec.1, 2024).

The goal of Abhidhvaj Law Journal is to offer an open-access platform where anyone involved in the legal profession can contribute their research on any legal topic and aid in building a quality platform that anyone can use to advance their legal knowledge and experience.

Articles 141/142 of the Constitution. The Union and State Governments were asked to enforce the WPS in letter and spirit.

The Witness Protection Scheme (WPS) acknowledges that witnesses in cases involving influential individuals may turn hostile due to threats to their lives and property. The WPS adopts a tailored approach to witness protection, providing various measures such as physical protection, identity alteration, and relocation, as necessary. It does not follow a uniform approach but evaluates each case based on the unique risks and threats the witness faces.

Under the WPS, a "witness" is defined as anyone with information or documents relevant to an offense. However, the scheme is applicable only to specific offenses, including:

1. Crimes punishable by death or life imprisonment.
2. Crimes carrying a sentence of at least seven years in prison.
3. Gender-specific offenses such as assault or criminal force against a woman, sexual harassment, stalking, and certain other offenses under the Indian Penal Code (IPC) that target women's modesty.

The WPS also establishes the role of a "Competent Authority" (CA) to issue protection orders. The CA is a standing committee in each district, chaired by the District and Sessions Judge, with the heads of local police and prosecution as members. The CA is responsible for deciding the protection measures based on the specifics of each case.

Witnesses, their family members, or authorized representatives can file an application for protection through the CA, with the Prosecutor's office providing necessary support. Family members eligible for protection under the WPS include spouses, children, parents, siblings, and grandchildren.

The WPS categorizes witnesses based on the severity of the threats they face:[23]

1. **Category A**: Witnesses facing threats to their life or that of their family members.
2. **Category B**: Witnesses threatened with harm to their safety, reputation, or property.
3. **Category C**: Witnesses who face moderate threats such as harassment or intimidation.

These categories cover threats during investigations, trials, and post-trial.

[23] Drishti, https://www.drishtiias.com/to-the-points/Paper2/witness-protection-scheme-2018-to-the-point/print_manually (last visited Dec.1, 2024).

The goal of Abhidhvaj Law Journal is to offer an open-access platform where anyone involved in the legal profession can contribute their research on any legal topic and aid in building a quality platform that anyone can use to advance their legal knowledge and experience.

In response to judicial demand, several states have implemented their own witness protection laws and schemes, which include provisions similar to those in the WPS, such as:[24]

1. **Delhi Witness Protection Scheme, 2015**
2. **Maharashtra Witness Protection and Security Act, 2017**
3. **Odisha Witness Protection Scheme, 2019**
4. **Haryana Witness Protection Scheme, 2020**

VULNERABLE WITNESS DEPOSITION CENTRES:

An important development in the area of witness protection in the last decade has been the provision for specially designed vulnerable witness courtrooms or centers. The Delhi High Court took the lead in this matter by setting up the first such "vulnerable witness deposition court" in Delhi in 2012 and by framing the "Guidelines for Recording Evidence of Vulnerable Witnesses in Criminal Matters" (hereinafter, Delhi High Court Guidelines). A Vulnerable Witness Deposition Centre (VWDC) is designed to offer a safe and supportive environment for witnesses. It includes features such as:

- Separate rooms for the witness and the accused
- Play areas for child witnesses
- A pantry and separate toilets
- Comfortable waiting areas
- Audio-visual equipment for secure communication between the judge, witness, and accused, ensuring that the witness does not directly face the accused.

The center also has a designated entry for vulnerable witnesses to prevent contact with the accused. Additional support includes the presence of support persons, pre-trial court visits, and transportation services to and from the witness's residence.

ABHIDHVAJ LAW JOURNAL

LIMITATIONS OF THE WITNESS PROTECTION SCHEME:

The Witness Protection Scheme in India marks an important step toward ensuring the safety of witnesses, but it faces several limitations. The key to its success lies in the proper and effective implementation of the laws. It is crucial that individuals contemplating a crime fear the consequences. Public awareness is also essential; victims and witnesses must be informed of

[24] Bhuv Mahesh, The Emerging Need For Witness Protection Laws In India, legal service india (Dec.1, 2024, 8: 40 P.M.), https://www.legalserviceindia.com/legal/article-11092-the-emerging-need-for-witness-protection-laws-in-india.html#google_vignette.

The goal of Abhidhvaj Law Journal is to offer an open-access platform where anyone involved in the legal profession can contribute their research on any legal topic and aid in building a quality platform that anyone can use to advance their legal knowledge and experience.

their rights and know that they can seek protection if they fear harm to themselves or their families. Given the pivotal role witnesses play in the justice system, their safety should be a top priority.

Some challenges with the scheme include:

1. The Threat Analysis Report, often prepared by the police, may be biased or inaccurate due to potential collusion with powerful individuals.
2. Protection is limited to just three months, which is inadequate, as threats may persist beyond this period.
3. Witness categorization based on perceived threat levels may not be entirely fair, as it is difficult to accurately assess the risk to each witness.
4. While the scheme aims to protect the identity of witnesses, there are no clear penalties for breaches, undermining the effectiveness of the protection provided and failing to prevent witnesses from turning hostile.

CONCLUSION:

Despite some limitations, the Witness Protection Scheme (WPS) has made important contributions to India's criminal justice system, though it has not fully resolved the issue. The judiciary, under Articles 141 and 142 of the Constitution, has emphasized the need for strong enforcement of the WPS.[25] However, its actual implementation at the state level remains uncertain and requires more attention.

In India's adversarial legal system, the prosecution carries the burden of proof, needing to establish the guilt of the accused beyond a reasonable doubt. Witnesses play a vital role in providing clarity and helping the court discover the truth. To ensure fair trials, it is crucial that witnesses can testify without fear. As a result, witness protection is a key component of justice. Although India lacks a comprehensive law specifically for witness protection, progress has been made with the introduction of the Witness Protection Scheme in 2018.[26] The scheme has been further strengthened by defining vulnerable witnesses and establishing Vulnerable Witness Deposition Centres (VWDCs) across the country. The Supreme Court has set a positive example in pushing for the WPS's implementation, which is a significant step for witness safety and justice.

[25] INDIA CONST. art. 141, 142.

[26] PIB, https://www.pib.gov.in/PressReleaseIframePage.aspx?PRID=1578108 (last visited Dec.1, 2024).

The goal of Abhidhvaj Law Journal is to offer an open-access platform where anyone involved in the legal profession can contribute their research on any legal topic and aid in building a quality platform that anyone can use to advance their legal knowledge and experience.

Additionally, there is an increasing recognition of the need to train and sensitize stakeholders and VWDC staff. The formation of a committee to oversee this is a commendable move. However, the implementation of the WPS remains a complex and lengthy process. For better results, the legislature should pass a comprehensive central law for witness protection, with states making necessary amendments. This would bring uniformity to witness protection programs and strengthen the role of agencies like the WPCs established under the WPS. Such legislation should also address concerns like the conflict of interest involving police leadership in the Competent Authority and the lack of penal consequences for non-compliance with the scheme. Furthermore, the law should focus not only on physical protection but also on shielding witnesses from emotional and psychological pressures, particularly in cases where the accused is a family member or someone the witness knows.

Justice must ensure that witnesses, including victims, are protected and empowered to testify in court without fear. Despite the advancements made, the failure to enact a specific law for witness protection highlights an ongoing gap in the legal framework.

www.abhidhvajlawjournal.com
The goal of Abhidhvaj Law Journal is to offer an open-access platform where anyone involved in the legal profession can contribute their research on any legal topic and aid in building a quality platform that anyone can use to advance their legal knowledge and experience.