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### Victim and Witness Protection by the New Criminal Laws

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#### Abstract

Victim and witness plays a vital role in adversarial system of criminal Justice which is prevalent in India. It in Cardinal principle of criminal Law that the burden of Proof always lies on the prosecution. A criminal case is to be proved beyond the reasonable doubt. In this context, protection of witness becomes very important to explore the truth the statement of witness is the determining factor for the conviction or acquittal of the accused. The **Jessica Lal** care and **Nirbhaya** case have raised many important debates on the working of our criminal Justice system the testimony of a witness is very vital in a criminal trial The significant role

played by the witness is sine qua non for dispensing justice. It is true that witnesses are just like the eyes and ears of the court whose sole testimony sometimes leads to conviction or acquittal in a criminal case.

On 1st July 2024, a new era started in the criminal justice system of India with the introduction of three new criminal laws namely-Bhartiya Nyaya Sanhita, Bhartiya Sakshya Adhinyam and Bhartiya Nagrik Suraksha Sanhita (BNSS) which replaced the Indian Penal Code, 1860, Evidence Act, 1872 and Code of Criminal Procedure, 1973 respectively.

**Keywords:** Victim, Protection, Criminal, Justice

#### Introduction

Witnesses are 'eyes and ears of justice' who aid the court in deciding upon a case, thereby bringing the offender to justice. They play an indispensable role-within an adversarial criminal justice system by performing a sacred duty of assisting the court to discover the truth and are capable of changing the course of the entire case. Thus, the truthfulness and veracity of witness testimony becomes the touchstone of justice. Ensuring that witnesses are able to testify without any threat, intimidation or injury is, therefore, and essential aspect of the criminal justice process.

Witness plays a vital role in adversarial system of criminal justice which is prevalent in India. It is cardinal principle of criminal law that the burden of proof always lies on the prosecution. A criminal case is to be proved beyond the reasonable doubt. In this context, protection of witness becomes very important to explore the truth. The statement of witness is the determining factor for the conviction or acquittal of the accused. The speedy justice or delay in justice delivery also depends, to great extent, on the quality of statement given by the witness during trial. The **Jissca Lal** case and **Birbhaya** Case have raised many important debates on the working of our Criminal Justice System. It becomes imperative for a student of criminal law to understand firstly, how criminal justice is regulated in the country and secondly, what are the legal provisions prescribed for protection of witness. This module, therefore, will provide a brief insight on provisions of law for witness protection in force in India. The module will also help students to understand case laws, recommendations of Law Commissions of India and various Committees for reforming criminal justice administration system and recommendations for providing protection to witnesses.

The testimony of a witness is very vital in a criminal trial. The significant role played by the witness is sine qua non for dispensing justice. It is believed that witnesses are just like the eyes and ears of the court whose sole testimony sometimes leads to conviction or acquittal in a criminal case. Each and every statement of witness is relevant to decide a case by the court of law as witness has the power to change the course of the whole case.

#### Who is Witness-Witness is a Person-

"Who has witnessed conduct or is able to provide anything which may be of relevance, in relation to which he has been called to give evidence in a proceedings".

**Black's Law Dictionary-**

"One who sees, knows or vouches for something or one who gives testimony under oath or affirmation in person or by oral or written deposition or by affidavit."

**Oxford Dictionary-**

"One who gives evidence in a cause: and indifferent person to its party, sworn to speak the truth, the whole truth and nothing but the truth."

**Kinds of Witnesses and Witness Protection:**

Since witness is a party that brings relevant facts before the court either through oral evidence or through documentary evidence, the criminal procedure law would permit the possibilities of, at least, three categories of witnesses, namely i) victim witness, ii) accused witness<sup>1</sup> and iii) independent witness.<sup>2</sup> The issue of witness protection becomes relevant only in cases of victim witness or independent witnesses, who face the threat of violence and harassment at the hands of the powerful and scheming accused. The problem of hostile witnesses can be said to be a direct fall out of the growing menace of protection-less victim/witness.

The identity of witnesses requires protection during investigation, inquiry and trial. It is not confined to cases of terrorism or sexual offences only but it extends to all serious offences where danger is imminent to the life and property of the witness. The Law Commission in its 198<sup>th</sup> Report dwelled upon this issue and stressed upon streamlining Witness Identity Protection and Witness Protection Programmes in India.

**Protection of witness by the New criminal Laws: An Overview**

The BNSS has legally introduced Witness Protection Scheme. This is in line with recent observations by High Courts/Supreme Court. BNSS Sec 398 states every State Government shall prepare and notify a Witness Protection Scheme/WPS for the state with a view to ensure protection of the witnesses. This clause is an entirely new addition proposed in the criminal procedural framework and requires state governments to prepare and notify schemes for witness protection.

<sup>1</sup> An accused witness may be required to come for testifying before the court under section 313 and may be either summoned to appear before the court under section 204(1)(a) or required to appear under warrant under section 204(1) (b). Similarly, an accused who is already remanded to prison may be required to attend the court under section 267. In case of other witnesses, such as victim witness or independent prosecution witness the court is given power to call the witness under section 311 of the Code.

<sup>2</sup> Law Commission of India in its 198<sup>th</sup> Report on "Witness Identity Protection and Witness Protection Programmes" (2006) divides witnesses in to three categories, namely (i) victim-witnesses who are known to the accused; (ii) victim-witnesses not known to the accused (e.g. as in a case of indiscriminate firing by the accused) and (iii) witnesses whose identity is not known to the accused. It further states that the category (i) witnesses require protection from trauma and categories (ii) and (iii) witnesses require protection against disclosure of identity.

**BNS: (Bhartiya Nagrik Sanhita)**

As it is said "Witnesses are the eyes and ears of justice and they are our silent heroes, advocating for Justice." The ability of a witness to give testimony in a judicial setting or to cooperate with law enforcement agencies and IOs without fear of intimidation is essential in maintaining the rule of law. Therefore a uniform Witness Protection Scheme is required to be in place.

The New Law has Responsive Legal Framework, with Judicial Observations.

The Indian Penal Code (IPC) had Section 195A, which states that threatening any person to give false evidence will be punishable up to 7 yrs. or 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.

**BNSS: (Bhartiya Nagrik Suraksha Sanhita)****BNSS, 2023 Unveils the Shield of Witness Protection:**

The new law clearly emphasizes that Witness Protection is not just a legal provision but it's a commitment to justice. Hence, with an aim to guard the witnesses against criminal conduct, deter the law-breakers and sanction those who violate or attempt to violate the laws of the land and to protect the witnesses from harm and ensure their safety a new section has been added in BNSS.

**Section 398 of BNSS: A Game-Changer in Witness Safety:** This ground breaking addition ensures witness safety becomes an integral part of the criminal procedural framework and every State Government is mandated under Section 398 to prepare and notify a Witness Protection Scheme (WPS).

**Safeguarding Justice: Witness Protection Scheme:** A significant stride: BNSS, 2023 introduces the Witness Protection Scheme, acknowledging the critical need to shield witnesses from threats and intimidation.

The witnesses will be categorized into three groups based on the threat perceived against them. Category A witnesses have a direct threat to their life or those of their family members, Category B witnesses have a threat to their safety, reputation, or property, and Category C witnesses have a lesser threat.

**BSA (Bhartiya Sakshya Sanhita)**

In cases involving heinous crimes, witnesses turn hostile because of threat to life and property. Witnesses feel that there is no statutory legal obligation on the part of the state to extend any protection to them. Hon'ble Supreme court of India has also observed that "no country can afford to expose its morally correct citizens to the peril of being harassed by anti-social elements".

Just like the IEA, 1872, the BSA, 2023 also emphasis on the importance or relevance of statement of witnesses during trial. Like Section 55 of BSA, 2023 emphasis on oral evidences by witnesses in different circumstance and its relevance during trial.

**Hence it becomes the duty of the state to protect the Witness and uphold their 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. The scheme provides for witness protection measures such as witness identity change,

relocation, installation of security equipment at witnesses' residences, etc.

### **The Important Judicial Pronouncement for protection of witness:**

It was judiciary which marched ahead of legislature to extend protection to witness/victim. In many cases the Supreme Court has formulated procedures and rendered guidelines for the protection of witness/victim in trial of sexual offences which was later used by the legislature while enacting laws relating to sexual offences.

The case of **Zahira Habibulla Sheikh v. State of Gujarat**<sup>3</sup> is a glaring example of witness intimidation. It was observed by the Court that the public prosecutor was not acting in a manner befitting the position held by him. He did not request the trial court for holding the trial in camera when a large number of witnesses were resiling from the statements made during investigation. The public prosecutor did not examine the injured witnesses. Even the trial court failed to exercise power under section 311 of the Code to recall and re-examine witnesses as their evidence was essential to arrive at the truth and a just decision in the case.<sup>4</sup>

"The Court further stated that it is high time to address numerous experiences faced by courts on account of frequent turning of witnesses as hostile, either due to threats, coercion, lures and monetary considerations... The State has definite role to play in protecting the witnesses... As a protector of its citizens it has to ensure that during a trial in court the witness could safely depose truth without any fear of being haunted by those against whom he has deposed. If ultimately truth is to be arrived at, the eyes and ears of justice have to be protected so that the interests of justice do not get incapacitated in the sense of making these proceedings before Courts mere mock trails as are usually seen in movies."<sup>5</sup>

"Fair trial means a trial in which bias or prejudice for or against the accused, the witnesses, or the cause which is being tried is eliminated. If the witnesses get threatened or are forced to give false evidence that also would not result in a fair trial. The failure to hear material witnesses is certainly denial of fair trial. The Court ordered for re-trial."<sup>6</sup>

Such concern for witnesses was again highlighted by the Supreme Court in **National Human Rights Commission v. State of Gujarat**<sup>7</sup> The Court observed that witnesses form the key ingredient in a criminal trial and it is the testimonies of these very witnesses, which establishes the guilt of the accused. It is, therefore, imperative that for justice to be done, the protection of witnesses and victims becomes essential.

The Supreme Court in **Sakshi v. Union of India**<sup>8</sup> accepted 'video conferencing' and 'written questions' in sexual and other trials. It was noted by the Court that mere sight of the accused may induce an element of extreme fear in the mind of the victim or the witnesses or can put them in a state of shock. In such a situation he or she may not be able to give full details of the incident which may result in miscarriage of justice. Therefore, a screen or some such arrangement can

be made where the victim or witnesses do not have to undergo the trauma of seeing the body or the face of the accused. Questions in cross-examination can be put in writing through the presiding officer.<sup>9</sup>

The Court gave specific directions in holding trial of child sex abuse or rape:

1. A screen or some such arrangements may be made where the victim or witnesses (who may be equally vulnerable like the victim) do not see the body or face of the accused;
2. The question put in cross-examination on behalf of the accused, in so far as they relate directly to the incident, should be given in writing to the presiding officer of the Court who may put them to the victim or witnesses in a language which is clear and is not embarrassing;
3. The victims of child abuse or rape, while giving testimony in Court, should be allowed sufficient breaks as and when required.

Similarly is **Swaran Singh v. State of Punjab**, the Supreme Court expressed deep concern about the trend of routine adjournments in criminal trials. It has been stated by the Court that a witness in a criminal trial may come from a far-off place to find the case adjourned. He has to come to the Court many times and at what cost to his own-self and his family is not difficult to fathom. It has become more or less a fashion to have a criminal case adjourned again and again till the witness tires and he gives up. It is the game of unscrupulous lawyers to get adjournments for one excuse or the other till a witness is won over or is tired. Not only that a witness is threatened; he is abducted; he is maimed; he is done away with; or even bribed. There is no protection for him. In adjourning the matter without any valid cause a Court unwittingly becomes party to miscarriage of justice. As far as victim/witnesses are concerned, the criminal law provides protection to the victims of sexual offences by concealing their identity. The Code prescribes for in camera proceedings in such cases. Even the judiciary through cases has laid down procedures to be followed during trial of sexual offences. Under the special laws relating to trial of terrorist cases provisions are found providing for keeping the identity of witnesses secret during inquiries as well as in trials. We have also seen that time and again the Law Commission in its various reports has emphasised for the need of witness identity protection and witness protection programmes.

To sum up the discussion, it can be stated that our procedural law has incorporated various facets of fair trial as far as the accused is concerned. He is afforded open trial and given opportunity to examine witnesses.

But these initiatives or developments in limited cases are not enough to curb the menace of witness intimidation. The law from the point of view of witness protection is yet to cover other serious cases within its sweep where the witnesses are equally in danger. Such protection may be extended to all cases and may also cover various stages of criminal proceedings like investigation, inquiry and trial etc.

<sup>3</sup> (2004)4SCC158

<sup>4</sup> Id at Paras 10 and 11.

<sup>5</sup> Id at Para 41.

<sup>6</sup> Id at Para 36

<sup>7</sup> (2009)6SCC342

<sup>8</sup> 2004(6) SCALE 15

<sup>9</sup> Id at Para 32.