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WITNESS PROTECTION SCHEME: A WAY TO PROTECT WITNESSES FROM RETALIATION IN CRIMINAL CASES

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ABSTRACT

A legal principle proclaims, "Justice should not only be served but must also be clearly and unequivocally perceived to be served." This doctrine underscores the significance of not solely attaining a fair verdict in a criminal trial, but also guaranteeing that the procedure is equitable and open. This legal maxim holds particular relevance concerning safeguarding individuals providing testimony in criminal proceedings from reprisals. It underscores the necessity for actions to be implemented to not just protecting the security and welfare of witnesses but also to ensure that the legal system is observed as operating effectively. To accomplish this objective, the legal framework might introduce various protective measures for witnesses, such as granting anonymity, relocating the witness, or offering security. These steps not only aid in shielding the witness but also contribute to upholding the credibility and validity of the judicial system.

In recent years, there has been a notable increase in organised crime. The strengthening and diversification of criminal organisations are evident. These groups are progressively participating in structured collaborations to advance their illicit undertakings. Within the realm of crime investigation and prosecution, especially concerning intricate forms of organized crime, it is imperative for witnesses, who are pivotal for successful legal proceedings, to harbor confidence in the criminal justice system. Witnesses must feel secure in coming forward to aid law enforcement and prosecution entities. They must be guaranteed support and safeguarding against intimidation and potential harm orchestrated by criminal factions aiming to deter or penalize them for their cooperation.

Witness protection is pivotal in legal procedures that can help the state apprehend wrongdoers, particularly in organized crime and terrorism. Numerous nations have instituted and utilized witness protection strategies to bolster their ability to bring terrorists to justice effectively. Such measures encompass various actions such as shielding a witness' identity and that of their family, employing video-conferencing during legal proceedings, enabling anonymous testimonies, and providing physical security, among others. In some instances, comprehensive witness protection

initiatives may entail relocating the witness, altering their identity, and aiding their socio-economic reintegration into a new environment. Implementing suitable measures to combat witness intimidation, coercion, corruption, and physical harm. Despite legislation for such protective measures, their execution often needs to be revised, necessitating further advancements, particularly in the realm of identity alteration and relocation for endangered witnesses. The complexities inherent in witness protection underscore the absence of straightforward remedies.

1. INTRODUCTION

In the judicial administration system of any nation, witnesses play a pivotal role. It is essential to bear in mind that the testimony provided by a witness holds significant importance in the pursuit of delivering justice to the aggrieved parties. The primary aim of the Criminal Justice System is to uphold and safeguard the principles of legality, encompassing the preservation of public order, tranquillity, legal procedures, and the adjudication of wrongdoers, the protection of crime victims, and primarily the promotion of societal well-being. The global Criminal Justice System operates on the foundational framework of either the Adversarial or Inquisitorial System of Justice. In India, the predominant approach is the Adversarial system, characterized by a sequence of inquiries where the significance of evidence is pivotal in every stage of the proceedings.[1]

Witnesses have historically faced considerable vulnerabilities, including threats to their lives and property, as well as various forms of harm and harassment. Ensuring that the integrity of inquiries, prosecutions, and convictions of criminal offenses remains unaffected by threats or coercion toward witnesses is imperative.[2] The Hon'ble Supreme Court has underscored the necessity of implementing measures for witness protection in the case of Swaran Singh v. State of Punjab, where Justice Wadhwa emphasized the foundational role of evidence in criminal cases, be it direct or circumstantial, which heavily relies on the presence of witnesses.[3] Furthermore, in the ruling of State of Gujarat v. Anirudh Singh, the Hon'ble Supreme Court of India articulated that every individual possessing knowledge of a crime has a moral obligation to assist the State by testifying.[4]

[1] Dr. Girish Abhayankar & Anindita Saha, Security of Witness in Criminal Justice System: Critical evaluation of the Witness Protection Scheme 2018, Vol.4 Issue 4, IJLMH, 3902, 3902-3903 (2021) https://ijlmh.com/paper/security-of-witness-in-criminal-justice-system-critical-evaluation-of-the-witness-protection-scheme-2018/
[2] Gargi Ojha, Witness Protection Scheme 2018-A Step Towards Witness Protection, Vol.1 Issue 3, JULS, 248, 249-250 (2021) https://www.uniquelaw.in/post/witness-protection-scheme-2018-a-step-towards-witness-protection
[3] (2000) 5 SCC 668
[4] (1997) 6 SCC 514

The Indian judicial system has encountered significant challenges in addressing the issue of witness protection, primarily due to the lack of specific legislation safeguarding witnesses when necessary. The current scenario indicates a failure to provide adequate security to witnesses, showcasing their vulnerability. The existing legal framework needs to meet contemporary requirements. There is a growing trend of unexpected acquittals in high-profile criminal cases, often attributed to witnesses switching sides. Given the prevalent risk of witness tampering and coercion, the necessity for a stringent law to safeguard witnesses becomes evident.[5] Witnesses are crucial participants in the facilitation of Justice. Their contribution aids the judiciary in reaching a verdict in a specific case. The intimidation of witnesses is prevalent in instances where the defendant holds significant power in India. Safeguarding witnesses is paramount in preserving the concept of a just trial. Inadequate measures for the protection of witnesses could contribute to the elevated rate of acquittals in India.[6] Witness protection plays a crucial role in ensuring the efficient operation of the criminal justice system. In the Indian context, the necessity for safeguarding witnesses has been emphasized in judicial decisions. Nevertheless, a significant milestone was reached in the case of Mahendra Chawla vs. Union of India,[7] wherein the Supreme Court of India took the initiative to establish the Witness Protection Scheme, 2018. This scheme addressed witnesses' risks and promoted their involvement in legal proceedings. Despite these efforts, the execution of the scheme has been plagued by numerous obstacles and complexities that impede its efficacy.[8]

The establishment of the judicial system is predicated on ensuring that witnesses remain unafraid, impartial, and free from intimidation or coercion by the court. Should witnesses be coerced, intimidated, or influenced by favour or pressure, the foundation of justice stands at risk of being weakened and potentially eradicated. The societal interest in equitable justice is tantamount to the defendant's interest, if not more so. The pronouncement by the Supreme Court in the case of Zahira Habibullah Sheikh underscores the pivotal role witnesses play in criminal proceedings.[9] Consequently, a pressing imperative exists to safeguard witnesses and bolster their authority within the criminal justice framework, particularly those confronting prominent and closely

[5] Prithivi Raj, Witness Protection Laws in India: An Analysis, Vol.10, Pen Acclaims, 1, 1-2 (2020) http://www.penacclaims.com/wp-content/uploads/2020/05/Prthivi-Raj.pdf
[6] Hifajatali Sayyed & Dr. Ajit Kaushal, Witness Protection in Contemporary Society, Vol.6 No.5, JPSP, 2329, 2329-2330 (2022) https://journalppw.com/index.php/jpsp/article/view/6297
[7] 2019 (14) SCC 615
[8] Rashmi Rekha Baug, Witness Protection Scheme In India - Issues And Challenges, Vol.11 Issue 6, IJCRT, 445, 445-446 (2023) https://ijcrt.org/papers/IJCRT2306881.pdf
[9] Zahaira Habibullah H. Sheikh & Another v. State of Gujarat and Others, (2004) 4 SCC 158

associated influential defendants. Instances arise where witnesses face degradation in court, instilling fear in the defendant, their adherents, or their family, sometimes resulting in the witness contemplating suicide. These occurrences are exacerbated by the feebleness of India's witness protection infrastructure, leaving witnesses vulnerable in such scenarios. Such circumstances could engender a loss of faith in the criminal justice system among witnesses, dissuading them from providing testimony.[10]

Testimony aids the court in evaluating the validity of the facts and circumstances of the case. Therefore, the confidentiality and truthfulness of the testimony are crucial components, with the witness being required to testify under oath. The testimony can potentially result in either the defendant's conviction or acquittal. The efficiency of the judicial process, whether expedited or delayed, is significantly reliant on the calibre and promptness of witness testimony during the legal proceedings. Nonetheless, the criminal justice system's effective functioning is predominantly contingent upon individuals' readiness to provide information and evidence without being subjected to coercion or allure. While the significant role of witnesses is acknowledged, the situation of witnesses in India could be more robust, leading to a reluctance among witnesses to come forward and provide their testimony. This reluctance does not manifest suddenly but evolves gradually, influenced by various intervening factors. Witnesses are deterred by threats, coercion, and intimidation from the accused, exacerbating the situation. The absence of any statutory or legal provisions obligating the state to ensure their protection further compounds the issue. Moreover, they are frequently required to attend court sessions throughout the legal proceedings, facing numerous adjournments that inconvenience them and result in financial losses. These challenges culminate in feelings of frustration, and waste of time and effort. Additionally, their perception is that law enforcement, prosecutors, and the judiciary conduct could be more supportive and inspire confidence in them. Consequently, witnesses encounter a myriad of difficulties that foster animosity. This animosity towards witnesses poses additional obstacles to pursuing justice and impedes cases' expeditious and equitable resolution. The willingness of an ordinary individual to engage with the criminal justice system by providing testimony or evidence

[10] Yash Saxena, Simran Agarwal, & Shaina, Witness Protection in India: A Fundamental Need in Criminal Justice System, Vol.3 Issue 4, IJLSI, 297, 297-298 (2021) https://www.ijlsi.com/paper/witness-protection-in-india-a-fundamental-need-in-criminal-justice-system/

is not solely driven by constitutional expectations. Likewise, their hesitance is not rooted in lofty legal principles or ideals.[11]

2. DEFINITION OF "WITNESS"

Bentham posits that witnesses serve as the visual and auditory perception of the legal system. Witnesses turning uncooperative in prominent cases is a frequent phenomenon observed in the trial processes within India. Adherence to a just trial is a fundamental tenet of criminal proceedings, aiming to ensure equitable treatment for the defendant and the plaintiff. As a nation, India upholds the accusatorial framework, with the prosecution positioning itself as an unbiased adjudicator. Within this framework, impartial witnesses are crucial in facilitating a just trial for the plaintiff. Even expecting to treat witnesses with hospitality, the current system consistently overlooks and disrespects them without consideration. Nonetheless, presenting testimony in a court of law is a fundamental entitlement under Article 21 of the Indian constitution.[12] Various forms of coercion, such as threats, intimidation, and external influences, compel both victims and witnesses to act against their interests, consequently undermining the integrity of the legal process. Even an unbiased and objective witness found himself contemplating the ruin of his life due to his involvement in witnessing a crime. The necessity for an extensive witness protection initiative has been underscored in numerous reports by law commissions. While specific provisions within specialized and general legislations offer some degree of support to witnesses, they fall short of constituting comprehensive protection in its strictest interpretation.[13] Similarly, Whittaker Chambers articulated, "*In the pursuit of truth, one assumes the sacred role akin to that of the sun, responsible for dispelling the darkness of ignorance and shedding light on the countenance of justice, besieged by the malevolent forces of humanity and empathy.*" This statement underscores the challenges witnesses encounter throughout legal proceedings and underscores the importance of upholding their esteemed position. According to Black's Law Dictionary, a witness is delineated as, "*Fundamentally, a witness denotes an individual possessing firsthand knowledge of an incident. Given that visual observation represents the most immediate method of apprehending an event, the term 'witness' has evolved to connote an individual who is present during and cognizant of a transaction.*" This interpretation primarily emphasizes the acquisition of

[11] Madhavi Singh & Shikshanjali, Witness Protection Schemes, Vol.1 Issue 3, JULS, 259, 260-261 (2021) https://www.uniquelaw.in/post/witness-protection-schemes
[12] Constitution of India, 1949, Art.21
[13] Sinya K, Witness Protection Jurisprudence in India: A Critical Analysis, Vol.10 Issue 6, JRHSS, 34, 34-35 (2022) https://www.questjournals.org/jrhss/papers/vol10-issue6/Ser-6/F10063440.pdf

information through direct physical experience. A witness is an individual endowed with details about the perpetration of a criminal act. Witnesses serve as amicus curiae and hold a significant position within the criminal justice framework. English author Edward G Bulwer-Lytton states, "*Every time an individual commits a wrongdoing, divine forces uncover witnesses.*" Nevertheless, challenges arise in ensuring a just legal system, such as deceptive testimonies, inadequately trained law enforcement personnel, media insensitivity towards high-profile cases, and external pressures that induce fear and coercion among witnesses.

In 1972, Judge Rawlins from the U.S. Supreme Court of Iowa articulated that the term 'witness' typically denotes an individual who includes testimony in person, through an affidavit, or during court proceedings for oath or affirmation. This testimony is given before the presentation of evidence, before a person authorized by law, or in any legal proceedings.[14] Essentially, a witness is perceived as impartial, yet there is a potential for bias, indicating a predisposition to antagonize the defendant, consequently leading to erroneous implications.[15] While colloquially, a witness may encompass anyone who has observed an incident, within the legal realm, a witness is distinct from an informant. Upon taking an oath to uphold the truth, an individual assumes the role of a witness. Those who attend court sessions and vow to provide accurate testimony are recognized as witnesses in the legal domain. The quality of the evidence they furnish is pivotal in defining their credibility and trustworthiness.

In India, the legislative framework concerning witness protection is worthy of examination due to the absence of specific statutes safeguarding witnesses within certain sections of the Indian Evidence Act. Sections 151[16] and 152[17] aim to shield witnesses from being subjected to offensive, disgraceful, or disparaging inquiries that could cause annoyance or damage to their reputation. Beyond these provisions, India needs comprehensive legislation aimed at safeguarding witnesses. Nevertheless, The Law Commission has explored this issue in a discussion paper on witness protection, proposing measures such as witness anonymity and physical security for witnesses. Furthermore, emphasis has been placed on specialized statutes related to terrorism, such as TADA and POTA, which include clauses designed to protect the anonymity and location of witnesses, along with a suggestion for implementing a universal law addressing witness anonymity. Over

[14] State v. Gilroy, 199 NW 2d 63
[15] Rohtash Kumar vs. State of Haryana, 2013 (14) SCC 434
[16] The Indian Evidence Act, 1872, § 151
[17] The Indian Evidence Act, 1872, § 152

time, the Indian Judiciary has increasingly recognized the significance of witnesses and has taken steps to ensure their well-being and protection.

In a criminal trial, witnesses play a crucial role. Thus, safeguarding witnesses is imperative for the efficient functioning of the criminal justice system. In instances where the defendant holds significant power, witnesses often find themselves vulnerable, and unable to provide testimony freely in court. In such scenarios, the accused may intimidate or bribe the witness to influence their testimony. Despite the witnesses' vital role in legal proceedings, India needs comprehensive provisions addressing witness protection. While some existing provisions touch upon witness protection, they need to be more adequate in addressing the issue effectively. The high rate of acquittals in criminal cases can be partly attributed to witnesses turning hostile due to threats or coercion from the accused. The lack of adequate safety measures leaves witnesses feeling helpless, unable to come forward and testify truthfully. Consequently, witnesses may succumb to pressure from the accused, altering their statements in court to the defendant's advantage, resulting in acquittal. Witness intimidation by the accused leads to hostility and erodes the witness's faith in the legal system over time.[18]

The situation of pending cases in the Indian District Courts and the Apex Court is currently in a distressing condition. As of November 1, 2017, over 50 thousand cases await hearings in the Supreme Court. One of the contributing factors to this unsatisfactory state of legal matters is the low judge-to-population ratio in India, which stood at 17 judges per million people in 2014, according to a 2011 census. This contrasts with the 50 judges per million population in most developed nations.[19] The unfortunate plight of litigants and under-trials enduring confinement in prisons continues to persist and remains far from being alleviated. As of February 1, 2018, the 24 high courts have a sanctioned strength of 1,079 judges, yet with 403 vacancies, they operate with 676 judges. The delay in case disposal ranges from 5 to 25 years.[20] Despite the increase in the sanctioned number of judges in recent years, the pace of work has remained relatively high. Backlogs and delays are not novel in the Indian judicial system. Nevertheless, when public trust is eroded, corrective measures must be implemented. When litigants view the legal process as

[18] Hifajatali Sayyed & Dr. Ajit Kaushal, Supra Note 8, 2330-2331
[19] Kanu Sarda, Vacancies haunting Supreme Court, The New Indian Express (March 4, 2018 at 2:22 PM) https://www.newindianexpress.com/thesundaystandard/2018/Mar/03/vacancies-haunting-supreme-court-1781641.html
[20] Aditya Singh, A Unique Remedy to Reduce Backlog in Indian Courts, Manupatra (Last visited on November 14, 2024 at 05:46 PM) https://articles.manupatra.com/article-details/A-unique-Remedy-to-reduce-Backlog-in-Indian-Courts

punitive rather than a means to resolve disputes, it necessitates reexamining the system. The accumulation of pending cases continues to grow, diminishing the prospects of prompt case resolutions for litigants. The legal gridlock, resulting in overcrowded prisons and never-ending cases, undermines societal confidence in the legal system and its efficacy. A robust and efficient judiciary system is crucial for the country's advancement. Collaboration from relevant parties in a criminal case is vital for effective prosecution. Every witness with knowledge of a crime is required to assist the State by providing evidence. However, due to the grim state of affairs, obtaining cooperation from necessary parties becomes even more challenging. Mere augmentation of the judge count does not ensure expeditious case adjudication, as it does not eliminate adjournments and prolonged delays within our judicial framework. The exercise of judicial authority is sacred. Inadequate testimonial evidence reduces the trial to a mere formality and violates the parties' right to a fair and well-informed judgment. An ordinary individual would dread the prospect of being ensnared in the sluggish wheels of the Indian judiciary. The repercussions on individuals involved in a criminal trial are profound.[21]

Victims and witnesses frequently withdraw due to the psychological, physical, financial, and emotional distress experienced within the legal quagmire. The lack of prompt adjudication results in the emergence of vigilantism. The urgency for reforms has never been more pronounced. When witnesses present evidence about the perpetration of a crime in a court of law, they fulfill the sacred obligation of aiding the court in uncovering the truth and reaching a verdict. Consequently, the witness is required to either swear an oath in the name of God or solemnly affirm to testify truthfully and completely. A just trial is characterized by the absence of partiality or favoritism towards the accused, the witnesses, or the subject matter under consideration. When a witness is coerced into providing false testimony, the environment cannot be conducive to a fair trial. Refraining from listening to crucial witnesses inevitably results in denying a fair trial. The process employed should not be scorned or hinder an individual from acting as a witness. Providing adequate assistance and safeguarding leads to the necessary collaboration, thereby facilitating the criminal justice system in holding criminals accountable. Robust witness protection protocols ensure that individuals receive support and security during the trial and before and after the proceedings.[22]

[21] Sweta Sapar, Statutory Witness Protection in India: A Cardinal Urgency, Vol.1 Issue 3, IJLMH, 1, 2-3 (2018) https://www.ijlmh.com/wp-content/uploads/2019/03/Statutory-Witness-Protection-in-India-A-Cardinal-Urgency.pdf

[22] Ibid

3. THE SCENARIO OF WITNESS PROTECTION INDIA

The existing scenario concerning witnesses in India can be a significant challenge. Individuals providing testimony in legal proceedings encounter many risks to their well-being, including various forms of coercion and, at times, dire warnings from the accused party or their associates. Under such distressing circumstances, the witness might adopt a hostile stance and testify in favor of the defendant. Initially, when an individual decides to testify in court, they do so with the belief that they are contributing to the justice system and safeguarding certain principles. Yet, ultimately, they find themselves ensnared in a situation where the barrage of threats and warnings jeopardizes their own life and that of their family. Despite being integral to the legal process, these witnesses often find themselves devoid of legal assistance or safeguarding, with their significance being taken for granted by the legal framework. The escalating antagonistic environment surrounding witnesses, as observed, is not unfounded. This palpable apprehension on the defendant's part has become increasingly prevalent.[23] Throughout the trial, the witness is subjected to significant distress and suffering. This undermines the essence of the judicial proceedings and infringes upon the fundamental right of witnesses to partake in a fair trial, a right enshrined in Article 21 of the Indian Constitution. Prominent instances such as the BMW car accident, Aasaram Bapu, Naroda Patia, and VYPAM cases exemplify the severe challenges and harassment faced by witnesses, encompassing scenarios of providing false testimony in court, as well as being subjected to various forms of threats, coercion, and inducements. The root cause of this predicament lies in our nation's need for an efficient witness protection mechanism.[24]

In India, various courts and authorities have brought up the issue of witness protection. The multiple times post-independence. The crux lies in impartiality, as India follows an adversarial system in its court proceedings. Witness protection is a crucial facet of justice; however, regrettably, the judicial system does not respect witnesses. According to Rosalind Sipos, ensuring victim and witness protection is foundational for upholding the credibility of any justice system and combating impunity. Requiring victims and witnesses to testify without ensuring their safety could be deemed irresponsible, particularly in situations where there is a risk of re-victimization or becoming victims themselves due to fulfilling their obligation to provide evidence. It has been universally acknowledged that there is a necessity for the authority to offer protection to witnesses and safeguard their identities during criminal trials, as highlighted in the Supreme Court's ruling

[23] Yash Saxena, Simran Agarwal, & Shaina, Supra Note 12, 300-301
[24] Ibid

in the case of Civil Liberties v. Union of India.[25] The primary goal of the criminal justice system is to uphold the rule of law, safeguard rights, and protect the interests of the state to instill a sense of security within society's members.[26]

4. WITNESS PROTECTION LAWS IN INDIA

- **Under CrPC**

Sec. 273 stipulates that the evidence must be obtained in the accused's presence.[27] Nonetheless, the addition of a provision to Section 273 states that in cases where a female under 18 years old, who claims to have experienced sexual assault, is to provide evidence, the Court has the authority to take necessary actions to prevent the accused from directly facing the individual.[28] The Criminal Procedure Code, 1973 allows for trials to be conducted in public court settings and also permits in-camera trials for offenses related to rape.[29]

In the case of Sakshi v. Union of India, the Supreme Court of India highlighted that the primary aim of court proceedings is to uncover the truth. It is imperative that the victim or witnesses can narrate the entire incident freely and without any discomfort. Merely encountering the accused could instill intense fear in the victim or witnesses, potentially leading to an inability to provide a comprehensive account of the events, resulting in a miscarriage of justice. Therefore, implementing a screen or similar measure can shield the victim or witnesses from the distress of directly facing the accused.[30]

Sec. 299 pertains to the recording of evidence in the absence of the accused, granting the Magistrate the authority to document the statements of specific witnesses in scenarios where the accused individual is at large, and apprehension is not immediate.[31] The process for examining and cross-examining witnesses is outlined in Section 231(2) of the Code, stipulating that in the trial in the Court of Session, the prosecution can present its evidence on the scheduled date, and the defense can conduct cross-examinations or the cross-examination date may be postponed.[32] In

[25] AIR 2004 SC 456
[26] Shubham Krishna & Rishika Gupta, Study on Role of Witnesses & their protection in Criminal Trials in India, Vol.2 Issue 2, IJLLR, 1, 2-3 (2021) https://www.ijllr.com/post/study-on-role-of-witnesses-and-their-protection-in-criminal-trials-in-india
[27] The Code of Criminal Procedure, 1973, § 273
[28] The Code of Criminal Procedure, 1973, § 327
[29] The Code of Criminal Procedure, 1973, § 327(2)
[30] AIR 2004 SC 3566
[31] The Code of Criminal Procedure, 1973, § 299
[32] The Code of Criminal Procedure, 1973, § 231(2)

cases initiated based on a police report, Section 242(2) allows for cross-examination by the accused, with trials under warrant procedure overseen by magistrates.[33] Furthermore, Section 246(4) addresses the cross-examination of prosecution witnesses in trials of warrant cases by Magistrates initiated otherwise than on police reports.[34] The admissibility of recording evidence via video conferencing was affirmed in a recent ruling by the Supreme Court in the State of Maharashtra v. Dr. Praful B. Desai.[35] This method ensures a more comfortable environment for the victim/witness, enabling them to provide answers without feeling intimidated or coerced. Section 171 of the Code emphasizes the importance of obtaining impartial testimony from witnesses, safeguarding their journey to court from unnecessary police presence, restraints, inconveniences, or demands for additional security apart from their bond.[36] The proviso to this section further elaborates that if a complainant or witness refuses to comply with the directives specified in section 170, the officer heading the police station is authorized to detain the individual and present them before the Magistrate until the required bond is executed or the case's hearing is finalised.[37]

The Supreme Court, in the case of Best Bakery (Zahira Habibullah Sheikh), issued an order for the relocation of the trial venue from Gujarat to Maharashtra. Provisions concerning the transfer of cases can be found in the Code of Criminal Procedure, 1973.[3839] The Court further asserted that when a witness cannot be the eyes and ears of justice, the trial becomes contaminated and inactive, thereby failing to ensure a just proceeding. This incapacity may stem from various reasons, such as the witness being unable, due to circumstances beyond their control, to testify truthfully in court, or as a result of negligence, ignorance, or collusion. There is an urgent need to seriously contemplate ways to safeguard witnesses to ensure that the absolute truth is presented in court, justice prevails, and trials are not reduced to mere farce. The Court also emphasized the state's responsibility to safeguard witnesses in criminal cases involving influential parties with substantial financial and political support. It is imperative for the state, as the guardian of its citizens, to guarantee that witnesses can testify without fear of reprisal from those they testify against during court proceedings. Every state is constitutionally bound to safeguard the life and freedom of its citizens, a fundamental prerequisite for upholding the rule of law. Any deviation

[33] The Code of Criminal Procedure, 1973, § 242(2)
[34] The Code of Criminal Procedure, 1973, § 246(4)
[35] 2003 (4) SCC 601
[36] The Code of Criminal Procedure, 1973, § 171
[37] The Code of Criminal Procedure, 1973, § 170
[38] The Code of Criminal Procedure, 1973, § 406
[39] The Code of Criminal Procedure, 1973, § 407

from this obligation based on extraneous factors like caste, creed, religion, political allegiance, or ideology is unacceptable.

The regulations outlined in Section 271[40] grant the authority to issue a commission for interrogating individuals in prison and maintain the court's ability to issue, u/s 284,[41] a commission for questioning those detained in prison. The guidelines in part B of Chapter XXIII are to be applied to the interrogation on the commission of such individuals in jail, mirroring the procedures for questioning individuals outside prison. Section 280 addresses the notation of observations regarding the behavior of witnesses.[42] When a Presiding Judge or magistrate records a witness's testimony, they must also include any relevant remarks concerning the witness's demeanor during the questioning. There is a requirement for prompt resolution of cases, ensuring that all proceedings during an inquiry or trial are conducted efficiently. Specifically, once the examination of witnesses commences, it must proceed daily until all witnesses present have been questioned, unless the Court determines that an adjournment beyond the subsequent day is necessary, with reasons for such decision duly documented.

- **Under The Evidence Act**

Section 132 stipulates that a witness cannot evade answering based on the fear of self-incrimination. According to this section, a witness must respond to any question regarding the subject matter of a lawsuit or legal proceeding, regardless of the potential for self-incrimination.[43] This includes situations where the answer could directly or indirectly implicate the witness in a crime or result in penalty or loss. However, any compelled answer should not lead to the witness's arrest or prosecution, except in perjury cases. Furthermore, Section 148 of the Act states that irrelevant questions may be asked if they impact the credibility of a witness by damaging their reputation, with the court having the authority to determine the appropriateness of such inquiries and the witness's obligation to respond.[44]

In the exercise of its discretion, the Court must take into account the following considerations:

[40] The Code of Criminal Procedure, 1973, § 271
[41] The Code of Criminal Procedure, 1973, § 284
[42] The Code of Criminal Procedure, 1973, § 280
[43] The Indian Evidence Act, 1872, § 132
[44] The Indian Evidence Act, 1872, § 148

- Interrogations are deemed appropriate if they can significantly impact the Court's perception of the witness's credibility regarding the subject of their testimony.
- Interrogations are considered inappropriate if there exists a substantial disparity between the gravity of the accusations directed at the witness's character and the significance of their testimony.

If deemed appropriate, the Court can infer from the witness's refusal to respond that the withheld information would not be favourable. The primary aim of this provision is to prevent the unnecessary accumulation of a witness's past actions that do not contribute to the relevant issues in a case. It aims to shield a witness from the repercussions of unwarranted and baseless questioning during cross-examination under the pretext of discrediting them. During cross-examination, there is a constant temptation to discredit a witness's character; hence, the Legislature has sensibly implemented adequate measures to protect the vulnerable witness and impose necessary constraints on the cunning cross-examiner. Section 149 of the Evidence Act stipulates that "*a query intended to undermine a witness's credibility should only be posed if there are reasonable grounds to believe that the accusation it carries is valid*."[45] The broad authority granted to the court to shield witnesses from impermissible cross-examination inquiries is delineated in Sections 146 to 153. Section 150[46] outlines the repercussions that may follow a reckless cross-examination if the court determines that the posed questions lacked reasonable justification.[47]

- **Under The Whistle Blowers Protection Act, 2011**

Section 12 of the Act outlines the provision for safeguarding witnesses, whereby the Competent Authority is mandated to issue directives to government entities to implement measures to ensure the protection of the complainant, based on the submission of an application or the collection of information.[48] Furthermore, it includes a clause concerning safeguarding the complainant's identity and the documents submitted, which must remain undisclosed unless instructed otherwise

[45] The Indian Evidence Act, 1872, § 149
[46] The Indian Evidence Act, 1872, § 150
[47] Prakash Rajanan v. State of Maharashtra, 1975 CriLJ. 1297 Bom
[48] The Whistle Blowers Act, 2011, § 12

by the competent authority.[49] Any individual who discloses the identity of a complainant will face penalties per the stipulations of Section 16.[50]

- **Under The Special Statutes**

Section 16 of the Terrorist and Disruptive Activities (Prevention) Act, 1987, which stipulates that the proceedings conducted before the Court may be held in camera.[51] Furthermore, it specifies that the Court, either on its initiative or upon an application submitted by the witness or the Public Prosecutor, has the authority to implement measures to safeguard the confidentiality of the witness's identity and location. The Prevention of Terrorism annulled this legislation Act, 2002, wherein section 30 addresses witness protection and resembles section 16 of the Terrorist and Disruptive Activities (Prevention) Act, 1987.[52] After this, the Prevention of Terrorism Act was revoked in 2004. The same year, the Unlawful Activities (Prevention) Act underwent an amendment, introducing section 44[53] under the title 'Protection of Witness,' mirroring section 30 of the Prevention of Terrorism Act.

Section 17 of the National Investigation Agency Act, 2008 asserts that if the court determines that a witness's life is at risk, it is authorized to undertake all necessary measures to ensure the anonymity of said witness.[54] A comprehensive analysis of the aforementioned provisions must establish a concrete legal framework to guarantee witness safety explicitly. It is noteworthy that the legislation concerning terrorist activities emphasizes the importance of maintaining confidentiality regarding the identity of the accused. However, in the contemporary context, instances of witness intimidation are not confined solely to terrorism-related cases.

5. THE WITNESS PROTECTION BILL, 2015

The Witness Protection Bill, 2015, has been formulated to protect individuals who voluntarily testify as witnesses in a legal proceeding. Its primary goal is to establish the National Witness Protection Council and State Witness Protection Councils to ensure the effective execution of witness protection initiatives. Additionally, the bill encompasses stipulations concerning a witness protection cell, which will compile a detailed report for the presiding judge of the trial court to

[49] The Whistle Blowers Act, 2011, § 13
[50] The Whistle Blowers Act, 2011, § 16
[51] The Terrorist and Disruptive Activities (Prevention) Act, 1987, § 16 (Repealed)
[52] The Prevention of Terrorism Act, 2002, § 30
[53] The Unlawful Activities (Prevention) Act, 1967, § 44
[54] The National Investigation Agency Act, 2008, § 17

review and subsequently grant protection to the witness. A specific provision within the bill dictates that when an application for witness protection is lodged at a police station, the station's officer must guarantee that the application is promptly processed and presented before a court within forty-eight hours of receipt. The timeframe allocated for processing the application and submitting the report lacks justification. In cases where there is an imminent threat to the witness's life or property, if a police officer opts to overlook the situation under the pretext of having forty-eight hours to furnish the report, it could prove detrimental to the witness's welfare. Nevertheless, the Bill still needs to be ratified.

6. JUDICIAL OBSERVATION ON WITNESS PROTECTION

The entitlement to a just trial is recognized as a fundamental international Human Right and has been embraced by various nations. According to the Universal Declaration of Human Rights, all individuals have the right to a fair and public hearing conducted by an independent and unbiased tribunal, ensuring equality in adjudicating their rights, obligations, and criminal allegations. Nevertheless, in India, legislative provisions exist in numerous Acts to guarantee a fair trial; however, there is a lack of stringent laws safeguarding witnesses to ensure the provision of accurate testimony in the court of law, thereby providing the conduct of an impartial trial free from partiality.[55] In the matter of Kishore Singh Ravinder Dev v. State of Rajasthan,[56] it was determined that India had established evidentiary and procedural regulations to facilitate a just, impartial, and equitable trial that serves the interests of the accused, witnesses, and petitioners. The Supreme Court emphasized that everyone has an inherent right to equitable treatment in a criminal trial. The denial of a fair trial represents an injustice not only to the accused but also to the victim and society. A fair trial encompasses proceedings overseen by an unbiased judge, a just prosecutor, and a setting characterized by judicial tranquility where prejudice or favoritism towards the accused, witnesses, or the subject under trial is eradicated.[57] The entitlement to a just trial has been a fundamental principle enshrined in the Indian Constitution by interlinking Articles 14,[58] 19,[59] 21, 22,[60] and 39-A.[61] The Code of Criminal Procedure is founded on a 'fair trial' and the dispensation

[55] Universal Declaration of Human Rights, 1948, Art.10
[56] 1981 AIR 625
[57] Hannah Divyanka Doss, Critical Analysis of the Position of Witness Protection in India, Vol.7 Issue 1, JCIL, 77, 78-79 (2023) https://jcil.lsyndicate.com/wp-content/uploads/2023/06/07.-CRITICAL-ANALYSIS-OF-THE-POSITION-OF-WITNESS-PROTECTION-LAWS-IN-INDIA.pdf
[58] Constitution of India, 1949, Art.14
[59] Constitution of India, 1949, Art.19
[60] Constitution of India, 1949, Art.22
[61] Constitution of India, 1949, Art.39A

of 'justice'. The construction of a criminal case rests upon the foundation of evidence, evidence that conforms to legal admissibility. This necessitates the presence of witnesses, whether providing direct or circumstantial evidence. Article 21 of the Indian Constitution employs the term "procedure established by law" to signify a "just, fair, and rational" procedure. In the legal matter of Satwant Singh Sawhney v. D. Ramarathnam Assistant Passport Officer, Government of India, New Delhi & Ors.,[62] the Supreme Court asserted that the procedure established by law must be equitable, just, and reasonable. There must be no speculative, oppressive, or arbitrary elements in the Supreme Court. Instances have occurred where the notion of bail has been disregarded to ensure a fair trial. In the case of Talab Haji Hussain v. Madhukar Purushottam Mondkar,[63] the High Court ruled that although the accused was detained for a bailable offense and lawfully entitled to seek bail, the application was rejected because the primary aim of the Criminal Procedure Code was to guarantee a fair trial, which would be jeopardized if bail were granted. The case of G.X Francis v. Banke Bihari Singh[64] consistently stressed the importance of fostering a welcoming environment to facilitate a fair trial, thus enhancing witness protection. In the case of National Human Rights Commission v. State of Gujarat,[65] it was asserted that the right to a reasonable and just trial is encompassed within Article 21 of the Indian Constitution, Article 14 of the International Covenant on Civil and Political Rights, and Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The concept of a fair trial involves balancing the interests of the accused, the victim, and society, with the community acting through the State and prosecuting bodies. Despite legal definitions mandating that a fair trial must be conducted regardless of the severity of the harm or injury, adherence to this principle needs to be improved due to insufficient protection afforded to witnesses, whether physical or psychological. Due to this legislative gap in India, many offenders are evading legal consequences and threatening societal well-being.

The implementation of the Witness Protection program falls under the jurisdiction of the legislature; however, it is the responsibility of the Judges to maintain a delicate equilibrium among the interests of the Witness, victims, and the rights of the accused. The Judge is crucial in ensuring a just trial within their courtroom. In the case of Delhi Domestic Working Women's Forum v. Union of India,[66] the Supreme Court underscored the importance of preserving the anonymity of

[62] AIR 1967 SC 1836
[63] AIR 1958 SC 376
[64] AIR 1958 SC 209
[65] 2003 (9) SCALE 329
[66] (1995) 1 SCC 14

witnesses, mainly when they are victims or witnesses of crimes such as rape. The Supreme Court, in this instance, outlined the broad guidelines that can support victims of rape. It emphasized that the anonymity of the victim and witness must be safeguarded from the media and the public. Although the judgment in the case of Neelam Katara v. Union of India[67] highlighted the necessity of witness protection and confidentiality, it did not specify how this confidentiality should be maintained before or during the trial. The Court ruled that "*When deciding whether a witness should receive police protection, the Competent Authority should consider the following factors: the level of risk to the witness's safety stemming from the accused or their associates, the nature of the investigation in the criminal case, the significance of the witness in the case, and the value of the information or evidence provided or agreed to be provided by the witness, as well as the expenses associated with providing police protection to the witness. Regarding the obligations of the police: during the witness's statement recording under sec. 161 of the Code of Criminal Procedure,[68] the Investigating Officer must inform the witness about the 'Witness Protection Guidelines' and the option to seek assistance from the Competent Authority in case of any threats. This information should be communicated in writing and acknowledged by the witness. The Commissioner of Police is responsible for providing security to a witness for whom the Competent Authority has issued an order for police protection.*"

In the case of Turnor Morrison & Co. v. K.N Tapuria,[69] it was established that there exist situations where pivotal witnesses, known as crucial or material witnesses, vanish either before or during a legal proceeding, or when a witness encounters threats, abduction, or harm. These occurrences are not random but purposeful, leading to the failure of the prosecution's case in numerous instances. The manipulation of witnesses by the defendants has been a persistent issue in India's legal system. During the trial, over fifty prosecution witnesses withdrew their statements due to being influenced, which resulted in the case relying on the testimonies of seven witnesses, ultimately leading to the trial Court's conviction of Shamsher Singh and Jagjit Singh. This decision was subsequently upheld by the High Court and further validated by the present court. In the case of Harpreet Kaur v. State of Maharashtra,[70] the detainee was charged with illicitly transporting alcohol and possessing weapons for protection during the process. Additionally, there were allegations of inducing fear of psychosis. Four witnesses expressed their willingness to testify only

[67] ILR (2003) II Del 377
[68] The Code of Criminal Procedure, 1973, § 161
[69] 1993 Cr. L.J 3384 Bom
[70] AIR 1992 SC 779

under the condition of anonymity, as they were concerned about potential retaliation from the detainee, who had previously threatened harm to anyone providing evidence against him. The Supreme Court pointed out that the witnesses refrained from coming forward due to fear for their lives. Without the protection of anonymity, the crime would have likely gone unpunished, posing a threat to society.

In Maneka Gandhi v. Rani Jethmalani,[71] Justice Krishna Iyer noted that the disruption caused by unruly individuals in court obstructs the administration of justice and should be eradicated. Ensuring the safety of both the accused and the complainant is crucial for their active participation in a trial. If their safety is compromised by disturbances or threats stemming from local conditions, a transfer request should not be summarily dismissed. It is disconcerting when individuals seeking justice cannot attend court, present their case, call witnesses, or provide evidence. Therefore, it is incumbent upon the court to create conducive and peaceful conditions for a fair trial. Severe disruptions endangering the accused's life or causing chaos in the courtroom can undermine public justice. In such cases, transferring the trial from that location may be necessary. Similarly, a transfer may be warranted if the region has widespread tension, bias, and unrest, compromising the neutrality required for a fair trial.

In the case of Kartar Singh v. State of Punjab,[72] the issue pertained to TADA, and the Supreme Court highlighted the reluctance of witnesses to testify due to intimidation from the accused. This significant case empowered the Designated Court to protect the anonymity of witnesses under specific circumstances, namely if requested by the witness, the Public Prosecutor, or at the court's discretion.

7. WITNESS PROTECTION: INTERNATIONAL CRIMINAL JUSTICE PERSPECTIVE

The international criminal justice system recognizes the averseness of victims and witnesses in participating in international tribunals by implementing various protective measures. Witnesses often hesitate to testify due to concerns about potential arrest, prosecution, and the emotional distress that may follow their encounter with the accused. The establishment of victim assistance and witness protection mechanisms has gained global acknowledgment. As a signatory to the International Covenant of Civil and Political Rights, 1966 (ICCPR), India must uphold the

[71] (1979) 4 SCC 167
[72] 1994 (3) SCC 569

accused's right to a transparent and impartial trial.[73] This includes the right for the accused to be present during the trial and to have witnesses examined both in support of their case and against them, all under equitable conditions.[74] However, the rights of the accused may be limited in certain circumstances to ensure the pursuit of justice or to safeguard the privacy of the individuals involved.

In situations involving severe breaches of international humanitarian law, the jurisdiction of the International Criminal Tribunal for Yugoslavia (ICTY), established in 1993, operates concurrently with domestic courts.[75] The ICTY emphasizes the significance of international collaboration, as state support plays a crucial role in upholding international justice. Effectively executing its mandate necessitates thorough investigation and evidence collection. State cooperation also encompasses safeguarding witnesses. According to Article 21 of the ICTY Statute, the defense has the right to cross-examine all witnesses under equal conditions as those testifying against them. Article 22 addresses the protection of victims and witnesses, requiring the Rules of Procedure and Evidence to include provisions for their safeguarding, including protective measures, in-camera proceedings, and the preservation of witness anonymity. Rule 69 permits the Prosecutor, under exceptional circumstances, to seek a Judge's approval to keep the identity of a victim or witness confidential, until the individual is under the Tribunal's protection. To avoid compromising the defense's case, the witness's identity must be disclosed within a reasonable timeframe before the trial. Under Rule 75, a Trial Chamber can implement measures to conceal identities, such as omitting crucial details from public records, allowing testimony via closed-circuit television, and regulating questioning to prevent intimidation. The Chamber may also exclude the press and public from proceedings to safeguard the anonymity of victims or witnesses. For a witness to be granted anonymity, there must be a genuine concern for their safety if their identity were revealed, supported by an objective rationale.[76]

The egregious offense of genocide and other grave breaches of humanitarian law in Rwanda were acknowledged, leading to the establishment of the International Criminal Tribunal for Rwanda (ICTR) by the United Nations Security Council in 1994, to contribute to the preservation of peace in the region. This Tribunal holds jurisdiction over offenses committed in Rwanda and

[73] International Covenant on Civil and Political Rights, 1966, Art.14(1)
[74] International Covenant on Civil and Political Rights, 1966, Art.14(3)
[75] Statute of the International Criminal Tribunal for Yugoslavia, 1993, Art.9
[76] Prosecutor v. Nsabimana, Case No. ICTR-97-29-I, Decision on the Defense Motion to Obtain Protective Measures for Witnesses of the Defense, (Feb 15, 2000)

surrounding countries by Rwandan nationals and individuals of other nationalities. It is noted that determining the suitability of protective measures for witnesses should not solely rely on the assertions of the involved parties but should be assessed considering the overall security environment impacting the concerned witnesses.[77]

8. WITNESS PROTECTION SCHEME, 2018

The Witness Protection Scheme, 2018, represents the inaugural endeavor at the national level to comprehensively cater to safeguarding witnesses, thereby significantly mitigating instances of secondary victimization. The scheme strives to guarantee that witnesses are afforded suitable and ample protection, thereby bolstering the Criminal Justice System within the nation and subsequently augmenting the national security landscape. The approval of India's maiden Witness Protection Scheme by the Supreme Court underscores a key factor behind witnesses turning hostile, which is the lack of adequate state-provided protection. Essential components of the Witness Protection Scheme, 2018 encompass the classification of threat levels, formulation of a 'Threat Analysis Report' by the police chief, protective strategies such as preventing direct encounters between witnesses and accused during investigations, safeguarding of identities, identity alterations, witness relocation, provision of scheme details to witnesses, ensuring confidentiality and record preservation, as well as expense recovery.[78]

The witness protection scheme represents the initial endeavor in India aimed at safeguarding witnesses, albeit beset by notable constraints. A significant issue pertains to the temporal aspect of protection, as the scheme confines the safeguarding period to three months, thus resulting in ineffectiveness post-termination due to the lingering threat posed by the accused. Restricting the duration of protection can be likened to offering temporary safeguarding at a premium. Witness protection should be extended until the danger subsides entirely. The Witness Protection Scheme of 2018 delineates provisions for safeguarding witnesses contingent upon threat evaluations, encompassing measures such as identity alteration, relocation, installation of security apparatus at witnesses' residences, and utilising specialised Court facilities, among others.[79]

[77] Prosecutor v. Rutaganda, Case No. ICTR 96-3-T, Decision on Protective Measures for Defense Witnesses, (July 13, 1998)
[78] Sakshi Gupta & Dr. Prem Chandra, An Analysis of Legal Journey towards Witness Protection Scheme in India, Amity International Journal of Juridical Sciences (Last visited on January 27, 2024 at 10:38 PM) https://www.amity.edu/UserFiles/Journal/6.pdf
[79] Ibid

The capacity of a witness to offer testimony in a legal setting or to collaborate with law enforcement and investigations free from fear of coercion or retaliation is crucial for upholding the principles of justice. The primary goal of this initiative is to guarantee that the inquiry, prosecution, and adjudication of criminal offenses are not adversely affected by witnesses being coerced or too scared to provide testimony without safeguards from violent or other criminal repercussions. Its objective is to enhance law enforcement by streamlining the safeguarding of individuals directly or indirectly engaged in supporting law enforcement agencies in criminal law and the overall dispensation of justice. Witnesses must feel empowered to step forward to aid law enforcement and the judiciary with a sense of absolute security. The purpose is to outline strategies that can be implemented to shield witnesses and their relatives from coercion and menace to their lives, reputations, and assets.[80]

The witness protection legislation in our nation is established across various statutes and judiciary verdicts. These statutes demonstrate a need for a comprehensive and cohesive approach instead of directly focusing on witness protection as a whole. Instead, they exhibit a fragmented, specialized, or object-centered approach to regulating witness protection. The proliferation of statutes has led to a significant decline in the standards of witness protection. Therefore, the country must transition from a sporadic, disorganised, segmented object-centered approach to a comprehensive and holistic approach to witness protection. In the absence of an adequate safety mechanism, there is a constant risk and danger of harm and the fear of loss of life, limb, and property that could affect not only the victims and their families but also the witnesses and their families. This situation can impede the administration of justice, as both victims and witnesses may be reluctant to cooperate with investigative agencies and the courts in holding wrongdoers accountable, leading to the acquittal of the accused and potentially emboldening them to commit further crimes. The Honorable Supreme Court of India has emphasized that every witness with knowledge of a crime has to assist the state by providing evidence. The Malimath Committee on Reforms of the Criminal Justice System in 2003 stated in its report that by testifying about a crime, a witness fulfills a sacred obligation of aiding the court in uncovering the truth. The Supreme Court, in defining a fair trial, highlighted that if witnesses are threatened or coerced into providing false testimony, it would not result in a fair trial. The Honorable Supreme Court further cautioned that the nation

[80] Ibid

cannot risk exposing its morally upright citizens to harassment by antisocial elements such as rapists and murderers.[81]

The capacity of a witness to provide testimony in a legal setting or to collaborate with law enforcement and investigations without fear of coercion or retaliation is crucial for upholding the principles of justice. The primary goal of this program is to guarantee that the inquiry, prosecution, and adjudication of criminal violations are not compromised due to witnesses feeling intimidated or hesitant to testify without safeguards against violent or other criminal repercussions. Its objective is to enhance law enforcement by enabling the safeguarding of individuals who are directly or indirectly involved in supporting law enforcement agencies dealing with criminal matters and the overall administration of justice. Witnesses must be empowered to aid law enforcement and the Judiciary with the utmost confidence in their safety. The aim is to outline a range of strategies that could be implemented to protect witnesses and their relatives from intimidation and risks to their well-being, reputation, and possessions. Witness Protection can range from providing a police escort for the witness to the courtroom to utilizing modern communication technologies (e.g., audio-video methods) for testimony recording. In more intricate scenarios, particularly those involving organized criminal entities, exceptional measures must be taken to ensure the witness's security, such as maintaining anonymity, offering temporary shelter in a secure location, providing a new identity, and relocating the witness to an undisclosed area. Nevertheless, each individual's specific witness protection requirements must be assessed on a case-by-case basis, taking into account their level of vulnerability and perceived threats.[82]

9. DRAWBAKCS & CHALLENGES

One of the primary reasons for witnesses turning hostile is the absence of a witness protection program. Hostility emerges when a witness conceals true information, and their statements directly or indirectly favor the opposing party. Nevertheless, there is a lack of specific legislation for safeguarding witnesses within the Indian legal framework. In numerous high-profile cases in the country, witnesses have turned hostile, facing threats, injuries, and even fatalities prior to testifying in court. Factors such as case delays, frequent adjournments, political influence, non-payment of allowances, inadequate court facilities, defendant intimidation, and fear of law enforcement, bribery, societal insensitivity, public pressure, social coercion, and harassment contribute to

[81] Ibid
[82] Ibid

witnesses becoming hostile during legal proceedings. These scenarios involve witnesses altering their testimonies to the detriment of the party they initially supported.[83]

It is evident how witnesses can become hostile, with numerous factors contributing to witness hostility. While there exist various laws and regulations concerning witness protection, they still encounter several challenges and drawbacks. Witnesses encounter significant hurdles such as financial influence, coercion, physical intimidation, and political sway, fear of law enforcement and the legal system, corruption, trial-related difficulties, and the absence of comprehensive legislation addressing hostile witnesses. In addition to the aforementioned risks, witness protection programs face significant structural and implementation issues. Although these programs now offer protection to witnesses, they often fail to specify the duration of this protection, leaving witnesses and their families vulnerable to threats even after the trial concludes.

The incorporation of political influence disrupts the operation of the criminal justice system, ultimately impeding the entire process of justice. Safeguarding witnesses is a responsibility of the State, and the inadequacy of police officers and security personnel in a region, based on its population size, weakens the protection mechanism. In the matter of Bimar Kaur Khalsa v. Union of India,[84] the Honorable High Court of Punjab and Haryana highlighted the challenge in safeguarding the interests of witnesses, emphasizing the considerable difficulty faced by the court or government in ensuring complete witness safety. In India, ensuring witness protection necessitates the provision of bodyguards, security, and relocation to different areas, leading to challenges such as cost implications and infrastructure limitations. Additionally, individuals who are content in their job and family life are reluctant to testify in court due to the potential disruption and intimidation they may face, primarily because of inadequate legal measures and threats. Avoiding significant lifestyle changes due to court involvement is a common desire among individuals. It is widely recognized that witnesses play a pivotal role in the criminal justice system, yet they encounter numerous threats during legal proceedings. In the case of State of Uttar Pradesh v. Shambhu Nath Singh & Ors, the Supreme Court noted that witnesses often feel apprehensive upon receiving court summons in India, not because of the court examination process itself, but due to the uncertainty of when they will be examined. This uncertainty often leads to witnesses spending prolonged periods waiting at court premises, fearing a lengthy delay. The prevailing situation in many courts implies that witnesses are summoned not to aid the legal process but are

[83] Shubham Krishna & Rishika Gupta, Supra Note 28, 11-12
[84] AIR 1988 P H 95

left in a predicament worse than that of the litigants. In India, the protection afforded to witnesses falls short compared to other nations, attributed to the country's population density. One approach to enhancing protection could involve selectively identifying cases with a high need for safeguarding witnesses, rather than applying it uniformly across all cases.

10. CONCLUSIONS & SUGGESTIONS

A witness protection program is essential not only in cases of civil unrest, characterized by a notably low conviction rate, but also in the fight against organized crime. Safeguarding witnesses plays a crucial role in the detection and prosecution of organized crime, given that witnesses often face intimidation from the defendants, many of whom are underworld figures engaging in illicit transnational activities such as arms and narcotics trafficking, human exploitation, terrorism, and illicit financial operations. The cornerstone of an effective witness protection program lies in ensuring the safety and well-being of witnesses before, during, and after legal proceedings, a facet that is currently lacking in these specific domains. Post-trial security measures are virtually non-existent in the context of India. Witness protection programs and corresponding legislation are imperative in the present context. In reality, the absence of these legal provisions has inadvertently bolstered the capabilities of criminals and wrongdoers. Ironically, in the Indian scenario, the enactment of such programs and laws remains a distant possibility, where witnesses are not only deprived of protection but are also often treated disrespectfully and neglected even in basic needs. Many developed nations have well-established and comprehensive frameworks for witness protection, particularly in high-profile criminal cases.

It is imperative that a more robust judicial system be established to provide suitable safeguarding for witnesses. Save for certain sections of the Indian Evidence Act, 1872, there exists no legislation in India aimed at the protection of witnesses. Sections 151 and 152 offer protection to witnesses by prohibiting indecent, scandalous, or offensive questioning, as well as any attempts to disturb or insult them. Besides these stipulations, there is a lack of provision in India for witness protection. The Law Commission recommended in its 178th Report (2001) the inclusion of section 164A in the Criminal Procedure Code to enable the recording of important witness statements in the presence of Magistrates under oath in cases carrying a sentence of 10 years or more. The introduction of the Criminal Law (Amendment) Bill, 2003 in the Rajya Sabha was based on this suggestion and is presently pending. Therefore, it is imperative for the CrPC to take actions and implement suitable sections for witness protection. The physical and psychological harassment of witnesses poses a significant challenge in ensuring a fair trial, necessitating the imposition of

specific sections by CrPC to safeguard them with adequate protection from law enforcement agencies. The role of witnesses in the criminal justice system is pivotal, as they contribute to court proceedings by providing testimony. Witnesses are sometimes viewed as fulfilling a sacred duty when offering evidence and, accordingly, should be treated with reverence. Nevertheless, numerous instances have come to light exposing the plight of witnesses, who not only face mistreatment and harassment in courts but also endure intimidation and abuse by the accused during trials. The Law Commission of India has repeatedly highlighted the challenges faced by witnesses during trials in several reports, a matter that has also been addressed by the Supreme Court in various pronouncements, underscoring the necessity for providing them with necessary support. In a recent judgment, the Supreme Court endorsed the Witness Protection Scheme, 2018 due to the absence of a central statute on witness protection. According to the ruling, the Scheme will have the force of law until appropriate legislation is enacted by Parliament. The enforcement of various sections under the CrPC is crucial to ensure the protection of witnesses from mistreatment and law enforcement agencies, acknowledging their vital role as purveyors of oral evidence in any just trial. Moreover, the anguish and distress experienced by witnesses while participating in the legal process can be assuaged only by instilling a sense of contentment in them and treating them with dignity and protection throughout all stages of investigation and trial.