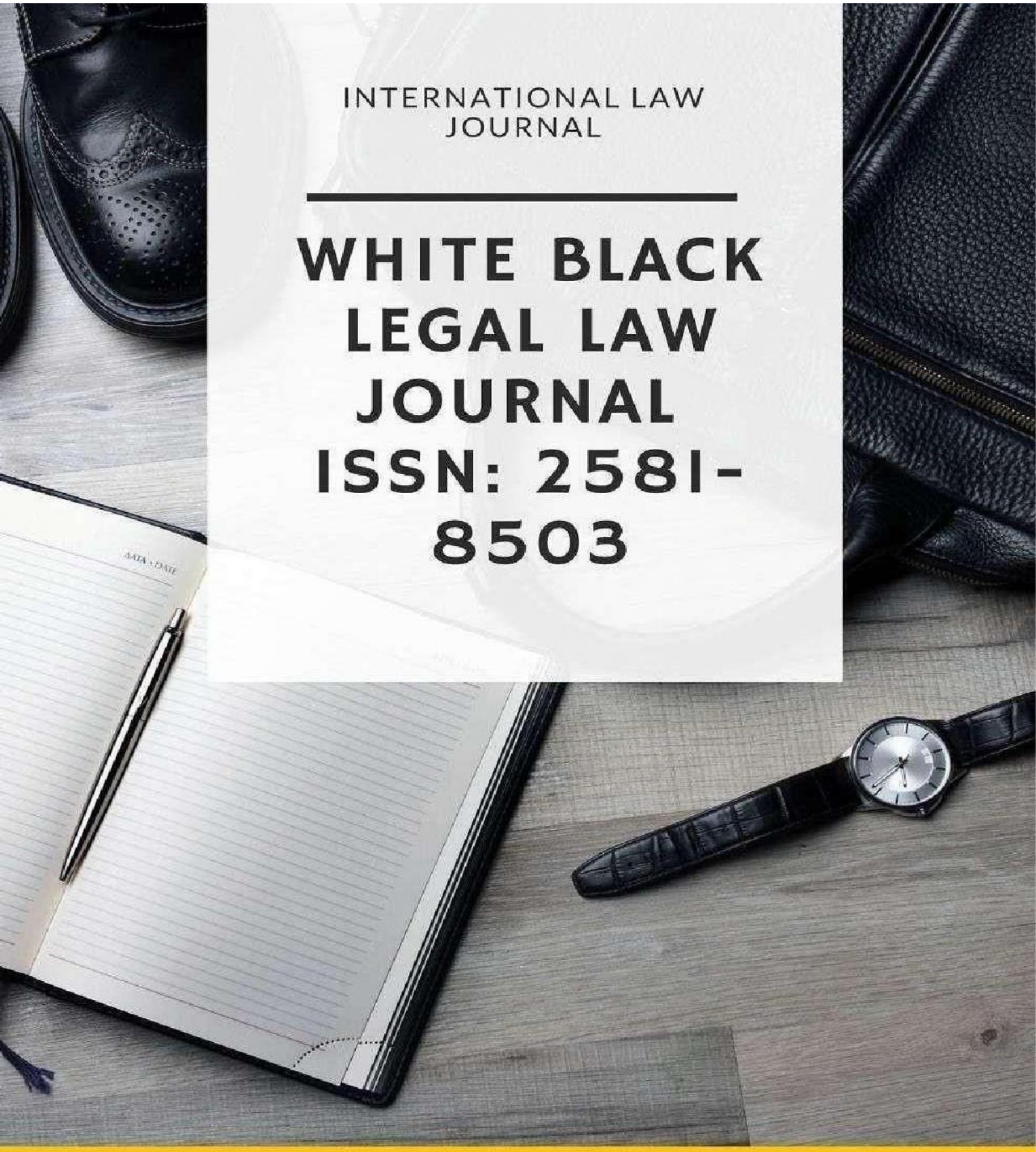

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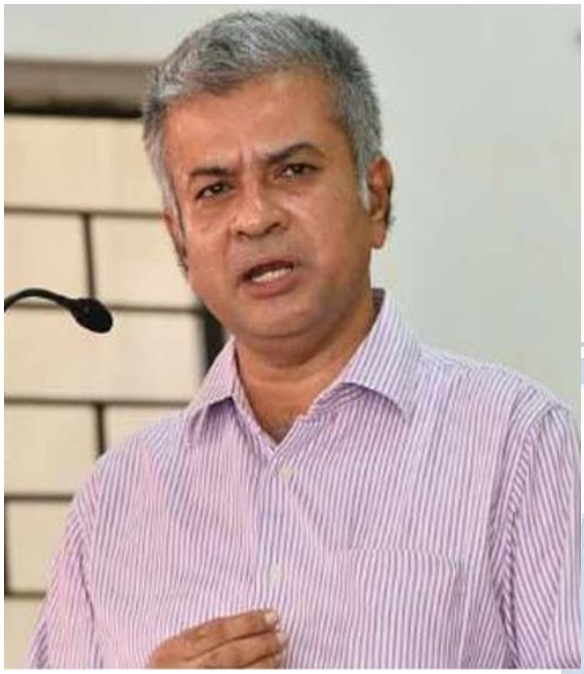

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ABOUT US

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

With this thought, we hereby present to you

LEGAL ASPECTS OF WITNESS PROTECTION PROGRAMS IN CRIMINAL CASES

AUTHORED BY: AYUSH BHATI

CHAPTER-I

INTRODUCTION

1.1. Prologue

Witnesses are the backbone of every trial. Statements made by the witnesses must be taken on an oath because the conviction or acquittal of the accused depends upon the statements and evidence of the witnesses. Witnesses are the main source for providing the conclusion ofa case by giving true information of an incident. The concept of a fair trial is imperatively contained in the Constitution of India. Articles 14, 19, 22, 21, 39 A, and 50 of the
Constitution of India are relating to a fair trial. The rule of a fair trial should not be fair onlyfor the accused person, but it should be fair for the victim or witness also. The procedure
must be reasonable, just, and fair and not be oppressive, unreasonable, and arbitrary.

For a fair trial, the judge must protect and allow the accused person because the accused person is known as a competent witness. In 1976, a new rule is added under the Constitution,which deals with the duty of the State to give free legal help not only to the accused person but also to the victim person. The Supreme Court observed, "A right to a reasonable and fair trial is protected under Article 14 and 21of the Constitution of India, Article 14 of the International Covenant on Civil and Political Rights, 1976 which India is a signatory, on perusal of the allegation in the special leave petition and number of criminal cases coming to this Court, we are prima facie of the opinion that criminal justice delivery system is not in sound health. The concept of a reasonable and fair trial would suppose justice to the accused as also to the victims. From the allegations made in the special leave petition together with other materials annexed thereto as also from our experience, it appears that there are many faults in the criminal justice delivery system because of apathy on the part of the police

officers to record proper report, their general conduct towards the victims, fault investigation,failure to take resources to scientific investigation etc."

If a witness deposes false evidence, due to threat and force for deposing false evidence, thenit would not be included in the fair trial. Trial should be fair for the accused as well as the witness also. The whole case is based on the evidence and statement given by the witness.
Our community and society do not suffer only by wrong convictions but by the wrong acquittal also. So, the main aim of our judiciary as well as the legislature is to make laws for providing justice. And judiciary through its decisions gives conviction to the accused persons, who have committed a crime. Judiciary grants a proper remedy to the aggrieved party and also gives security to the witnesses. But there is no specific law regarding witness protection. Witnesses are the backbone of every trial. Statements made by the witnesses must be taken under an oath because the conviction or acquittal of the accused depends upon the statementsand evidence of the witnesses. In the case of Anirudh Singh, observed that witnesses have a duty to help the State by giving information, evidence, and knowledge of a crime. In Dhirubhai Bhogha Bhai Solanki v. State of Gujarat, all prosecution witnesses had turned hostile. The conviction rate of the rape case and murder is near about 10 to 12% due to turning the witness into hostile. In Neelam Katara case, the Delhi High Court issued certain guidelines for the witness protection scheme.

Witnesses are the main source for providing conclusion of a case by giving accurate information about an incident. But the condition of the witness is very miserable. Our judiciary is serious about protecting the victim as well as the witness. Through its judgments,it is realized that there is an urgent requirement for protecting the victim and witness, in boththypes of crimes, serious crime as well as general crime.

Further, in the "4th Report of the National Police Commission, 1980," prosecution witness easily becomes hostile due to physical and mental pressure caused by the accused person onthe witness. Recently, terrorists, organized crimes, rape, and murders are increasing in our society; it is the need to establish confidence in society for protecting witnesses and victimsfrom such offences. The witness and victim should be protected from the media for publication of his address and name.

The Hon'ble Court has viewed5 as "The criminal delivery system is affected by a poor rate of

conviction. One of the major causes is that witnesses turn hostile during the trial. They turn hostile either because they are threatened, or they are tempted. To stop this trend, The Law Commission of India has recommended that the law should be amended for the protection of witnesses. The laws regarding witness protection is available in other countries such as the USA, Canada, UK, Ukraine, South Africa, and England. It is hoped that both the Legislature and the Executive of the State would rise to the occasion and would address one of the major problems adversely affecting the performance of the criminal delivery system." It is also necessary for the witness where the witness comes in the Court for examination but on such date, there is no examination of the witness in a case. The Court in the Shambhu case observed that witnesses were suffered from adjournments, they attend the court on several

days but they were not examined. Witnesses face many problems not only examination inchief, cross, and re-examination's but they also face adjournments problem.

Evidence given by the witness decides the guilty of the accused. So, the Court emphasized that there is a need for protecting the accused person as well as the witness. A witness is themain source of criminal cases. There are many defects in our justice system due to the inactiveness of the police for recording the reports and statements. The behavior of police towards witness, victim and accused is not the same. For achieving justice, there is an urgentneed to protect the witness from harm and danger to his life, close relative, and his family members. There is also a need to protect the witness from the inducement, threat, and anytype of injury caused by the accused person or his agent. So, the law relating to witness protection is required for protecting the interest, welfare, security, and safety of the witness.

Through this research study, the researcher is trying to highlight the conditions of the witnessand also discusses the provisions regarding the protection of witnesses under the Indian criminal justice system. So, for better understanding, this research study is divided into sevenchapters.

CHAPTER - 2

CONCEPT OF WITNESS AND HISTORICAL DEVELOPMENT OF WITNESS

2.1 Concept And Meaning Of Witness

In criminal cases, a witness plays a vital role in deciding the case. The word 'witness' is notdefined anywhere in Indian laws such as IPC, 1860, Cr.P.C.,1973 and other Statues. But through authors, great sages, law scholars, Bills, dictionaries, and judgments, we can understand the meaning of witness. Witness means a man, who deposes evidence in open court or camera proceeding during the trial through affirmation or an oath called a witness.20The party, who presents their witnesses before the judge, such witnesses should not be changed according to place and time. There were conceptions among Muslim witnesses that God knows everything related to crime, so, they delivered evidence with their best knowledge.

Witness means a person, who testifies under sworn and tells the truth, called a witness. A man, who delivered evidence in court during trial under an oath, such delivering evidence should be related to causing, then such type of man is called a witness. Further, a witness means a man, who says that he saw or know about a particular time or place or person in alaw court. Again, a witness defines as a person who voluntarily provides oral or written testimonial evidence whatever he or she knows.

A witness is a man who has heard or seen a crime or an event, who testifies whatever he has heard or seen, i.e., a witness is a man who hears or sees a dacoity and goes to the court to described relating to what he heard or saw on that place where dacoity happened. A witness isa man, who can give first-hand evidence in the court of law related to some events which happened before him. Further, one, who knows, sees something and testimonies during trial under an oath, written or oral deposition and by an affidavit, considered as witness. United National Convention against.

Transnational Organized Crime defines "participant or witness means anyone, irrespective ofhis or her status (informant, agent, witness, judicial official, etc.) through his or her legislation or country involved admit such person as a witness and provides witness protection program to the witness, such person is included as a witness.

" Further, the Witness (Identify) Protection Bill, 2016 interprets that a witness is a personwho is related to the event and having knowledge of the event happened and aiding or helping the investigation, inquiry, and trial and solves the case through giving information,knowledge or documents. Similarly, 'witness' means a man who knows the facts,

circumstances, and having knowledge or information related to the crime, such information is necessary for completing the investigation, inquiry, and trial through giving evidence, documents, and things used in the crime.

The victim is also included in the witness. The Landmark observation of Delhi HCis “the edifice of administration of justice is based upon coming of witness and deposing of evidencewithout fear or favor or intimidation or allurement in the courtof law. If witnesses are deposing evidence under fear or intimidation or allurement, then the foundation of the administration of justice not only gets weakened but it mayeven get obliterated also.”

The concept of a witness is not new. Practice of calling a witness for delivering statements and evidence is followed from ancient times too. In ancient times, there were three modes of proofs such as; witness, document, and possession. A great sage, Manu, has viewed that a witness is a man who has heard or seen something. Inall judicial proceedings, the evidence isreceived through witnesses, whether documentary or oral. Witnesses are the main source for providing evidence. That is why witnesses should be competent. Chapter ix deals with witnesses from sections 118 to 134 of the Indian Evidence Act, 1872. These sections are divided into four parts such as (1) Competency (2) Compellability (3) Privileges (4) Quantityor the number of witnesses required before the judicial authority for judicial decisions. The first part of witnesses is related to competency and the second part is related to Competency is different from comparability and privileges.

Competency is defined by Manu as “a person becomes a witness because he has heard or seen something.” Competency of witness is mentioned under “sections 118 to 121 and 133 ofthe Indian Evidence Act, 1872.” Section 118 of this Act provides that all human beings are capable and competent to depose evidence or testify for becoming witness unless prevented by the Court due to not able to know the nature ofquestions asked by the judge that is why such human beings are not considered as competent witnesses. The witness must be legally competent to give answers before a judicial authority. To testify a witness is a prior necessaryelement or requirement for becoming a competent witness. If a child or a person is suffered from a serious disease, a person is not capable to understand the questions, very old age man or woman and a lunatic man, who is not capable to give, answer due to his or her lunacy, which all these persons cannot become a competent witness.

A student, who is studying in eighth class, is considered as a competent child witness

because he has sufficient knowledge related to the event or facts. A girl of seven years (witness) and a deceased boy were playing together. During play, a neighbour comes, caught the boy, and murders him. The girl was present during that time. Later on, the dead body wasrecovered from that place; the Supreme Court had opinioned that the girl was considered a competent witness. That is why; the exception to this general rule of competency of a witnessis the incompetency of a witness.

For a better understanding, the place of witnesses and protection of witnesses under our criminal system, we should look into different times and the development of the law relatingto witnesses. In ancient times, there were three modes of proof such as witness; documents, and possessions. There are four different times in which the statements and evidence are given by witnesses for achieving justice. These four different times are the following:-

(1) Ancient Hindu time

(2) Muslim time

(3) British time

(4) Modern time

Without knowledge of these, we cannot understand the development of the law relating to witness.

2.1.1. Protection Of Witness And Religious Books

In ancient Hindu times, the Hindu derived rules of evidence from the Dharmashastra. When any dispute arose among Hindus, then they solved such dispute by applying the rules of Dharmashastra. Same as Dharmashastra, Hindus solved their disputes through religious books like Manusmrithi, Arthshastra, Bhagavad Gita, Yajanavalkya, Purans, Vedas, Naradasmriti, and Sukraniti also. All the above scriptures mentioned the procedures or rules for taking evidence from the witnesses and only the king or judicial officer had the power to follow the rules which were mentioned under these scriptures. Sukraniti made by Shukracharya expressed a great rule, i. e., no evidence is accepted if such evidence is given inabsence of both disputed parties.So, the rule given by Sukraniti is similar to the fair trial rule or principle which is now recognized. At that time, the taking of evidence was divided into

two parts such as, (a) human evidence or (b) divine evidence.

Further, human evidence was divided into three parts. The first part of human evidence wascalled Likhya (documents), the second part of human evidence was called Sakshi (witness)and the third part was called Bhukti (possession). The second part (divines evidence) of taking evidence was divided into five parts.

The first part of divine evidence was called Ghata (ordeal by balance), the second part of divine evidence was called Agni (ordeal by fire), the third part of divine evidence is called Udaka (ordeal by water), the fourth part of divine evidence was called Visha (poison) and lastpart of divine evidence is called Kosa (drinking water). Human evidence was considered superior to divine evidence. This evidence (Human and divine evidence) provided both incompetency of witness and competency of the witness. A great sage, Narada, has an opinion that if a dispute arises between parties, then such dispute is solved through knowledge of witnesses which has been heard or seen by witnesses.

Further, Narada said about a witness that "a man is considered as a witness who has seen orheard an event with his own eyes or own ears." Brhaspati classified the witnesses into 12 categories. Frist 6 categories of witnesses are included in Krita (Karta) and the last 6 categories of witnesses are included in Akrita (Akarta). Krita witnesses means those witnesses who are present or give evidence at the request which evidence are useful forfurther time for solving the matter. The Krita (Akrta) witnesses are classified into six categories,such as:

(a) Smarita witnesses.

(b) Likhita witnesses.

(c) Lekita witnesses.

(d) Goodha (Gudha) witnesses.

(e) Uttara witnesses.

(f) Yodhrichchagata witnesses.

When the claimant or party to dispute reminds or refreshes the memory of witnesses related to a dispute of purchase sale, deposit money, and loan, such type of witness is called Smaritawitness

and now it is embodied under modern law also. In Likhita witness, when a witness attests a document himself, then such category of witness is called Likhita witness. Such a witness is capable to understand the knowledge of writing or reading and may make a deed inhis name. The Likhita witness is now embodied under modern law also.

The third category of witness is Lekhita witness which means an agreement is made by the party in his presence but a name or agreement is made by another man other than a witness, such type of witness is called Lekhita witness. The fourth category of witness is Gudha (Goodha witness). When a witness hides for hearing the conversations made between plaintiffand defendant, so that, the plaintiff can claim debt or money in a law court if the defendant denies for such debt or money. The fifth category of Krita witnesses is Uttara witnesses.

When an actual witness of a fact or disputed transaction tells the whole parts of the disputed transaction to another person when such actual witness is near to die or travel to abroad thensuch other person is called Uttara witness or indirect witness. The concept of Uttara witnessis now indirectly embodied under modern law also. The last category of Krita witness is Yadhrichchagata. When a man accidentally present on the spot where the material transactionhas happened between the parties then such man is called Yadhrichchagata witness. The Smarita witness is different from the Yodhrichchagata witness. All six categories of witnessesgiven by Brhaspati play a vital role in the concept of witness and are also followed in moderntimes. All these categories were defined in ancient Hindu times. Generally, the number of a witness was required three but in Dharma, Goodh and Likhita were two witnesses required.

Further, Akrita witness is also classified into six categories. These categories are the following:-

(a) People of the Gram.

(b) Judge.

(c) The King.

(d) One person is appointed by both parties.

(e) A family member.

(f) A person who is authorized by the plaintiff on his behalf.

All human beings are not considered competent witnesses. Some persons are disqualified from giving evidence as a witness. These persons are following: single person, intoxicated, women, artists, King, bad character man, a scholar of Vedas, lowest caste people, a man whois above 80 years and below 16 years, sculptors, infants, hungry people, thieves who are interested in the suit, convicted person, friend, person who is suffering from serious disease,enemy and a sensualist.

But if the crime is happened in forests and disassembles place, then all human being is competent to give evidence, especially, those people who were present near the spot or crime.The minimum number of witnesses should be three according to Narada, Manu, and Yajanavalkya but Dharma, Goodha and Likhita discuss that there should be two. Thus, the number of witnesses was not fixed in ancient Hindu times. Further, Manu, in Manusmrithi, has elaborated some points injustice system such asreasons of pleading, qualification of witnesses, false evidence, arguments, oaths, andsteps for taking evidence from the witnesses.

Manu delivered powers or authority to Grahapati through his literature for punishing with thehelp of rope or cane, if any person, in the family-like, son, brother, wife, daughter and pupil, commits any wrong. Men, who are free from any greed, different people, and law scholars (know the law) are excluded from becoming witnesses. Narada described the people who are not capable to give evidence or become witnesses such as, sick men, slaves, children, friends,enemies, religious ascetic, etc.

The evidence taken in Yajnavalikyasmriti is advance than Manusmriti. In Yajnavalakya, truthful man, straight forward man, high families, and religious devotees can give evidence. In Arthashastra, written by Kautilya near about 310 B.C, mentioned the concept ofinvestigation of crime and providing punishment to the wrongdoer, such powers of investigation of crime or providing punishment were control or authorized by the ruler.

Further, some persons are incapable to give evidence described by Kautilya in Arthashastra as, prisoners, enemies, convicted men, co-partners, madmen, King, persons suffering from serious disease, dumb man, women, deaf man, government servants, lepers, chandalas, blindman, etc.

Grahapati has powers to decide disputes related to family or house. King under Nitishashtrais

considered as fountain of justice and it was a duty to inflict the criminals, after giving punishment to the wrongdoer, the King was bound to go to hell.

That is why, we can say that the place of witnesses, competency or incompetency of witnesses and role of witnesses for deciding the dispute, during ancient Hindu time was avery important issue and contained in the concept of a witness during ancient Hindu time.Some rules have been adopted from these scriptures and contained in the modern justice system.

2.1.1.1. Development Of Law Relating To Evidence

When any dispute arose among Hindus, then they solved such dispute by applying the rulesof Dharmashastra. At that time, many persons solved their problems regarding any dispute through a vow of God. Persons gave more value to documentary evidence rather than oral evidence like modern time. A written document given by women, idiots, insane, and childrenwas not considered as evidence. The party, who presents their witnesses before the judge; such witnesses should not be changed according to place and time. During Manu's time, the King has all powers to control justice and provides justice to the aggrieved party. In the absence of King, all judicial powers of King were vested in the hands of Brahman for providing justice to the aggrieved party. According to Manu, King or Brahman would destroyall his judicial powers if he provided partial or fraudulent punishment to the innocent party.

The King has the power to call a witness by issuing service of summons. Children, King, madman, a nobleman of high caste, drunken men, scholars, women, sick man, artists, old people, and judicial officials could not be compelled to become a witness.

If any person died during the dispute, then the examination of witnesses to be held before thedead body or his limb, in case the dead body was not found then their testimonies would not be an unnecessary delay. As per Lord Vishnu, if any man, who has true knowledge of a crimebut gives false information and evidence, then such man is known as a false witness.

In Arthashastra, if any judge, who abused, threatened, defamed, browbeat, asked unlawfully questions, and caused an unnecessary delay, the penalty would be given to such judge or a fine of 1000 panas. The guilty of perjury is death and cutting the tongue of only those personswho are belonged to Kshatriyas or Vaisyas or Shudras. Justice was delivered by the tribe during early Vedic time and the tribe followed every simple or easy procedure for providing

justice. But during the Indus valley civilization, there was no more judicial system.

2.1.2. Concept of Witness during Ancient Muslim Time

The Islam religion is taught by Prophet Mahommed. The Muslim rules came after defeated the Hindu rulers by Muslim rulers. At that time, the rules of Muslims were based on Islamicor Muslim law. There are four sources of Islamic or Muslim law, such as the Koran (Quran), Sunnah (Hadith), Ijma, and Qiyas. Koran is the first and the most important source of Muslimlaw. It contained near about 6000 verses, 200 out of 600 related to legal rules and 860 related to the personal status of Muslims.

The main work of the Quran is to differentiate right from wrong or truth from false.34 At thattime, the rules of evidence derived from the holy book Quran. A written document was not considered as evidence and gave more importance to words spoken by witnesses. There wereconceptions among Muslim witnesses that God knows everything related to crime, so, they delivered evidence with their best knowledge.

Further, God maintains justice, when any man becomes a witness and gives evidence, thenthat man has to give true evidence because God is competent to know that whether such evidence given by such man is true or false. If it is false, then such evidence may be used against himself, against his parents, and his near relations. The first time, police rules and heads of the village councils were established by SherShah Suri. The offence of theft and robbery was prevented by heads of village councils. Rules of appeal are made by Shahjahan.If evidence is given by a person other than the Muslim religion, then such a person is not considered a witness. Duringthat time, evidence may be taken in the form of oaths, statements of witnesses, oral and written documents. During ancient Muslim times, allwitnesses of a case were examined one by one without the presence of other witnesses.

When witnesses were confused related to material, then judges have the power to put leading questions for removing such confusion otherwise questions were not be permitted. Some persons were not able to become witnesses such as their kins, professional singers, drunkards,child, blind, gamblers, infants, idiots, deaf, slaves,partner, close relatives, and certain classes of men.

2.1.3 Rules relating to Evidence during Muslim Time

The ancient Muslim time also emphasized evidence like the written document, oral, and an oath. All rules of evidence derived from the holy book Quran. The main work of the Quran isto differentiate right from wrong or truth from false. There were views among Muslims that God knows everything related to material that is why; they delivered evidence with their bestknowledge. In Quran, oral evidence given by witnesses gives more importance than documentary evidence as, "O you who believe, be maintain of justice when you bear witnessfor God's sake, although itis against yourselves, or your parents, or your near relations;

whether the party is richor poor, for God is most competent to deal with them both, therefore do not follow your low desire in bearing testimony, so that you may swerve from justice, andif youswerve or turn aside, then surely God is aware of what you do." Thus, some documentswere not considered as evidence. During that time, the judge had no authority or power to putleading questions to the witnesses other than when witnesses were confused with the

material. All persons were not permitted to becomewitnesses such as child, kin, drunkards, deaf, professional singer, idiots, dumb, close relatives, blind, certain classes of person, and gamblers. There are two important or famous schools of Muslims; the first school is the Shiaand the second school of Muslims is Sunnis. Further, Sunnis school is divided into four parts,Hanafi, Maliki, Shafei, and Hanbali. Similarly, Sunnis school, the Shia school is also dividedinto two parts such as Ismaili and Ithana Ashari.109 The rules of witnesses regarding

marriage must be followed by Muslims, only in Sunni law. In Hanafi School, giving of evidence is divided into three parts, i. e., Iqrar (confession or admission), Ehad (evidencegiven by single man), and Tawatur (corroboration).

2.1.4 Woman Witness And Gender Inequality During Muslim Time

There were some other rules, which were recognized under the Muslim criminal system such as, evidence given by two Muslim women had the same value as evidence given by a Muslimman, and evidence given by non-Muslim was not considered as evidence. And no capital sentence was pronounced based on evidence given by non-Muslim. Circumstantial evidence was not placed in the Muslim criminal system and gave more importance to eyewitnesses.

Male witness and female witness were unequal as; evidence given by two Muslim women was the same value as evidence given by a Muslim man. So, the male witness was consideredsuperior to the

female witness.

2.1.5 Concept Of Witness During British Time

In British time, there was no specific provision regarding evidence. Most provisions are derived from the common law or British legal system. Two justice systems were existing inthe world such as the adversarial and inquisitorial justice system. In the first justice system,which was included in the adversarial justice system, the accused person was considered asan innocent person until the offence has been proved guilty against him. Such a justice system is derived from the British rulers. USA, India, the UK, and other countries may allowthe adversarial justice system. All acts of the judge are like King or an umpire.

During the hearing of the case, the judge became natural and followed the rule of fairness during the whole case. The judge maintains the rule of fairness through giving opportunitiesto produce documents, evidence, and statements and also give opportunities to both parties for an examination of witnesses. The second part of the justice system is the inquisitorial justice system. This system was different from the first justice system, i.e., the adversarialsystem.

It prevailed in Germany, France, Italy, and some specifically in European countries. The roleof police officers was very vital for deciding the whole case because only such officers had powers to investigate the case, collect the evidence, discover the truth and such officers had aduty to informed the prosecutors that the offence was in serious nature or not. The rule of hearsay was unfamiliar in this system. Parties have limited rights to put questions to the witnesses and had no right to cross-examine witnesses. But the judge had wide power to put questions to the witnesses. In this system, the accused had presumed guilty until proven innocent.

In short, we can say that our justice system is based upon the adversarial justice system, which is known as English rules. Before the enforcement of the Indian Evidence Act, 1872,there were no specific provisions regarding evidence. In India, there were three presidency towns such as, Bombay, Calcutta, and Madras who followed the rules of evidence from common law, which were enforced before 1726, and later on, such rules were followed or embodied under the Charter of presidency towns.

During British rulers, there were no specific and codified rules of evidence. But during the period 1835-1853 A.D, the Indian legislature framed some Acts which were related to witnesses, such as lord Denman, Lord Broughams, and further, rules made by Lord Broughams related to compellable and competent witnesses and abolished the incompetency of witness. Further, abolished the incompetency of atheist and atheists were considered a competent witness. Again, during 1853 and 1855, the legislature made the rules for the presidency courts. These rules extended to the Mofussil courts but not extended to

accomplice witnesses and witnesses turned into hostile. For better understanding, we shouldstudy all these reforms. The first Act was known as Mr. Denman also. In this Act, all the witnesses were precluded from giving evidence because all witnesses were considered

incapable of giving evidence, in person or by deposition, for achieving justice. However, if there is deposition, husband or wife, then such a person is considered as competent to become witnesses and he or she has to tell the truth or depose evidence under an oath. Further, the Broughams' Act defined that when any person, who brought or defended any case, proceeding, suit, and action, then such person considered as a competent and compellable witness for giving the evidence in any court of law. Again, in 1853, the legislature made rulesthat husband and wife were parties in a proceeding then such husband and wife were considered as competent and compellable witnesses. In 1834, the legislature made rules for removing the incompetency of witnesses.

Before 1869, the atheists were not considered as competent to give evidence but after rules made during the time 1869, such persons were considered as competent to give evidence anddocuments under an oath same as other competent witnesses. Apart from these reform rules, in India, there were three presidency towns such as Bombay, Calcutta, and Madras that

followed the rules of evidence from common law. Other than these presidency towns, peoplesolved their problems through customs.

If any dispute between husband and wife, then they could not give evidence to each other as awitness because they (husband and wife) considered as one person. That is why, H.S. Maine prepared a draft in 1868, which contained rules of evidence but such a draft was not suitable for our country. Finally, Sir J. Stephen made a Bill for rules relating to evidence, now the Billis presented as Act of 1872. It is codified as well as consolidated related to evidence, oral or documentary, competency of witnesses, compatibility of witnesses, the examination of witnesses (in chief, cross, and re-examination), etc.

Conclusions

After going through the law relating to protection of witness, it can be concluded:

In criminal cases, a witness plays a vital role in deciding the case through deposing evidence,record, and statement before the competent authority. They aid the Court inthe administrationof justice because the complete case is based upon the evidence, record, and statement given by them. After discussing the previous chapters, it is noted that there is a need for framing a law to provide safety, protection, and welfareof witnesses, who are appearing in criminal cases of grave nature. Through amending effective laws for witness protection, which are provided to the safety, protection, and welfare of witnesses, they feel free from any type of inducement, fear, injury, hurt, restrain promise, and danger. There should be free atmosphere between the accused person on the one hand and the witness or victim on the other hand. Otherwise, accused persons or criminals will become King in their areas and no justicesystem will be established and the crime rate will increase day by day. A normal personcannot live in such a type of environment.

Thus, many crimes are increased in society as, slavery, kidnapping, begar system, abduction,rape, extortion, murder, robbery, wrongful or illegal confinement, forced labour, dacoity, housebreaking, etc. Through making effective laws in our justice system, all the above defects will be removed and all citizens, as well as non-citizens,will have to believe in the justice system.

So, this research work is relating to witness protection under the Indian criminal justice system and discussed the laws, which have given protection to the witness from the force, inducement, threat, dangers, harm or any injury and discussed the laws with other countries like, USA, Australia, UK, South Africa, Canada, etc., related to witness protection. The conclusion and suggestions came through discussing the various research work relating to witness protection, the meaning of protection of the witness, the laws of other countries, reports of various Law Commissions or Committees and the contribution of the judiciary for protecting the witness, his family member, his friends and his close relatives from the danger,harm and threat of accused person. The researcher analyzed the ‘concept of the witness’ and ‘protection’ through various thoughts of sages, Dharmashastra, Manusmriti, Arthashastra, Bhagavad Gita,

Yajanavalkya, Purans, Vedas, Naradasmriti, Sukraniti, Brhaspati, King, Brahman, prophet Mohamad, Hanafi school, Maliki or Shafei or Hanbali school, Shia (Ismaili and Ithana Ashari), Quran, judges, jurists, law scholars, judgments, etc.

The researcher also studies the conventions, laws of India, and other countries. However, theword 'witness' is not defined anywhere in Indian laws such as IPC, 1860, Cr.C.P.,1973, and other statues. A person, who testified in open court and camera proceeding, during the trial through affirmation or an oath, such a person is called a witness.

A person, who delivered evidence in the Court during trial under an oath or sworn, such deposing evidence should be related to causing, then such type of person is called a witness. Further, a witness is a person who knew about the event that happened and aiding the investigation, inquiry, or trial and solves the case by giving information, knowledge, anddocuments considered as a witness.

The concept of 'witness' is not new. The practice of calling a witness for delivering statements and evidence is followed from the ancient time also. In ancient times, thereare three modes of proof such as a witness, documents, and possession. There are fourdifferent times when the statements and evidence given by the witnesses to achieve justice. These four different time areas first are ancient Hindu time, second is Muslimtime, third is British time and last is modern time. At that time, the taking of evidenceis divided into two parts such as, (a) human evidence or (b) divine evidence.

Further, human evidence is divided into three parts, the first part of human evidence iscalled "Likhya" (document), the second part of human evidence is called "Sakshi" (witness), and the last part of human evidence is called "Bhukti" (possession). The Likhita witness, when awitness attests a document himself, then such category is called Likhita witness. Such a witness is capable to understand the knowledge of writing, reading, and maybe make a deedin his name.

The relevancy of "Likhita" witness is now embodied under modern law also. The fifth category of "Krita" witness is "Uttara" witness, which means when the actual witness of anevent or disputed transaction tells the whole or complete transaction toanother person whensuch actual witness is near to die and travel to abroad, then such another person is called "Uttara' witness or

indirect witness. So, section 32 of the Indian Evidence Act, 1872 talks about "Uttara" witness, and such provision or concept of "Uttara witness" are embodied under section 32 of "the Indian Evidence Act, 1872."

Further, the Brhaspati categorizes the 'witness' into six categories. Modern time also followed all these categories, which were defined in ancient Hindu times. Section134 of "the Indian Evidence Act, 1872" is wider than ancient Hindu time because there is no fixed number of witnesses required during the trial but in ancient time, the minimum number of thewitness was required three, according to Narada, Manu, andYajnvalkya but Dharma, Goodh witness, and Likhita described that there was two. Just like present time the competency,
incompetency of witnesses, and role of witnesses for deciding the matters, during ancientHindu times was a very important issue.

Some rules have been adopted from ancient scriptures and contained in the modern justice system. The ancient Muslim time also emphasized on evidence like written documents, oral,and oath. All rules and evidence are derived from the holy book Quran. But oral evidence bywitnesses had more importance than documentary evidence. All persons were not permitted to become witnesses such as child, kin, drunkards, deaf, professional singers, idiots, dumb, close relatives, blind, certain classes of persons, and gamblers.

Thus, it is found that there were some defects in the ancient Muslim justice system like giving more importance to the oral evidence and the judge had limited powers for deciding
the matters and questioning the witnesses. Male witness and female witness were unequal as; evidence given by two Muslim women was the same value as evidence given by a Muslim man. So, the male witness was considered superior to the female witness.

In British time, there was no specific provision regarding evidence. Most provisions were derived from the Common law or British legal system. In India, there were three presidencytowns such as, Bombay, Calcutta, and Madras, which followed the rules of evidence from
Common law, which were enforced before 1726. Later on, such rules were embodied underthe Charter of presidency towns.

The Indian Legislation framed some Acts, which were related to witnesses during the time of 1835 to 1853A. D. Before 1869, atheists were not considered as competent to give evidence but after rules

made during the time 1869, such persons were considered as competent to give evidence or documents under an oath same as competent witnesses.

Finally, Sir J. Stephen made Bill for rules relating to evidence, now such a Bill is present Act of 1872. The Act is codified as well as consolidated relating to evidence, oral or documentary,competency of a witness, comparability of witnesses, examinations of witnesses.

The concept of witness and protection of witness in modern times is based upon the changingneeds of society. It is a dynamic concept and not a stable concept. The concept of witness is very wide because we can understand this concept through laws, legislature, schemes, and guidelines issued from the Supreme Court, as per requirement. The competency of a witness does not depend on social status, sex, religion, caste, and creed but it is based on the mental capacity of a witness. The protection may be required by the victim as well as a witness fromany type of harm or danger. Section 8 (3) of the National Witness Protection Programme provides criteria for deciding whether a man is included in NWPP (National Witness
Protection Programme). There are mainly four stages on which witnesses can be asked for protection such as, (i) investigation stage (ii) inquiry stage (iii) trial stage (iv) the post-trialstage.

There are some laws for witness protection which are contained in various legislations and statutes of various countries, like, USA, UK, Australia, Philippines, South Africa, Canada, Rome State, Japan, France, European countries, UN, etc. The USA protects needy witnessesbut before giving protection, some factors are considered like, (1) gravity of crime in which he is witness or (2) nature of evidence and statement or (3)danger to the witness, his family,his friends, and his close relatives or (4) determining the relation of witness with other witnesses of a case or (5) mentally and physically conditions of witnesses or (6) checks the history of witness and record of the witness or (7) the criminal history of a witness. If such awitness has a criminal history, then the protection would be denied. The United States Code,1925 contained many provisions relating to witness and victim. When any person, who prevents the investigator from investigating a crime, then such person shall be punished for five years imprisonment which is mentioned under section 1510 of the United States Code,1925. There is a provision of a closed circuit for protecting the witness.