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LEGAL FRAMEWORK PERTAINING TO PROTECTION OF WITNESSES UNDER INDIAN CRIMINAL LAW

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3.1 Introduction

The protection of witnesses constitutes an indispensable component of a fair and effective criminal justice system. In criminal trials, witnesses perform a pivotal role in assisting courts in discovering the truth and ensuring that offenders are brought to justice. However, the increasing incidence of witness intimidation, inducement, coercion, and hostility has emerged as a serious challenge to the administration of criminal justice in India. Witnesses frequently turn hostile due to threats to life, property, reputation, or safety of family members, thereby undermining the integrity of criminal trials and contributing to low conviction rates.

Historically, Indian criminal law did not contain a comprehensive witness protection framework. The colonial criminal justice system primarily focused upon maintaining public order and prosecuting offences, rather than safeguarding the rights and security of victims and witnesses. Consequently, the rights of witnesses and the need for institutional witness protection mechanisms received limited statutory recognition. Nevertheless, over time, several provisions under the Code of Criminal Procedure, 1973 (now substantially replaced by the Bharatiya Nagarik Suraksha Sanhita, 2023), the Indian Evidence Act, 1872, and certain special statutes evolved to provide limited procedural safeguards to witnesses.

Judicial pronouncements of the Supreme Court of India and various High Courts have further strengthened witness protection jurisprudence by recognising the necessity of in-camera proceedings, video conferencing, identity protection, and fair treatment of vulnerable witnesses. The enactment of the Witness Protection Scheme, 2018, approved by the Supreme Court in *Mahender Chawla v. Union of India*, marked a significant step toward

institutionalising witness protection in India.

This chapter examines the statutory and judicial framework relating to witness protection under Indian criminal law, including the provisions of the Code of Criminal Procedure, 1973, the Bharatiya Nagarik Suraksha Sanhita, 2023, the Indian Evidence Act, 1872, and certain special enactments dealing with terrorism and organised crime.

3.2 Statutory Protection to Witnesses

The legal framework governing witness protection in India is presently dispersed across multiple statutes rather than consolidated in a dedicated legislation. Various procedural and evidentiary safeguards have been incorporated under criminal laws to ensure that witnesses are able to depose freely and truthfully without fear or intimidation. These protections include in-camera proceedings, protection of identity, recording of evidence through video conferencing, transfer of trials, and restrictions upon improper cross-examination.

3.2.1 Protection under the Code of Criminal Procedure, 1973

The Code of Criminal Procedure, 1973 (“CrPC”) incorporated several procedural safeguards intended to protect witnesses and facilitate fair criminal trials.

(a) In-camera Proceedings

Section 327 of the CrPC provides that criminal courts shall ordinarily conduct trials in open court. However, Section 327(2) mandates in-camera trials for offences relating to rape and certain sexual offences under the Indian Penal Code. The purpose of this provision is to preserve the dignity and privacy of the prosecutrix and to encourage free and uninhibited testimony. In *State of Punjab v. Gurmit Singh*, the Supreme Court emphasised the mandatory nature of in-camera proceedings in rape trials and observed as follows:

"The Courts are obliged to act in furtherance of the intention expressed by the Legislature and not to ignore its mandate and must invariably take recourse to the provisions of Section 327 (2) and (3) Cr. P.C. and hold the trial of rape cases in camera. It would enable the victim of crime to be a little comfortable and answer the questions with greater ease in not too familiar surroundings. Trial in camera would not only be in keeping with the self-respect of the victim of crime and in tune with the legislative intent but is also likely to improve the quality of the evidence of a prosecutrix because she would not be so hesitant or bashful to depose frankly as

she may be in an open court, under the gaze of public. The improved quality of her evidence would assist the courts in arriving at the truth and sifting truth from falsehood. “¹

Similarly, in **Sakshi v. Union of India**², the Supreme Court held as follows:

"The mere sight of the accused may induce an element of extreme fear in the mind of the victim or the witnesses or can put them in a state of shock. In such a situation he or she may not be able to give full details of the incident which may result in miscarriage of justice. Therefore, a screen or some such arrangement can be made where the victim or witnesses do not have to undergo the trauma of seeing the body or the face of the accused. Often the question put in cross-examination are purposely designed to embarrass or confuse the victims of rape and child abuse. The object is that out of the feeling of shame or embarrassment, the victim may not speak out or give details of certain acts committed by the accused. It will, therefore, be better if questions to be put by the accused in cross-examination are given in writing to the Presiding Officer of the Court, who may put the same to the victim or witnesses in a language which is not embarrassing. There can hardly be any objection to the other suggestion given by the petitioner that whenever a child or victim of rape is required to give testimony, sufficient breaks should be given as and when required. The provisions of sub-section (2) of Section 327 Cr.P.C. should also apply in inquiry or trial of offences under Section 354 and 377 IPC."

Thus, the Apex court recognised the vulnerability of child witnesses and victims of sexual offences and recommended the use of screens or similar arrangements to prevent direct confrontation between the victim and the accused during testimony. The Court also suggested that questions during cross-examination should be framed sensitively so as to avoid embarrassment or trauma to vulnerable witnesses.

(b) Recording of Evidence through Video Conferencing

The Supreme Court in **State of Maharashtra v. Dr. Praful B. Desai**³ recognised the legality and admissibility of recording evidence through video conferencing.³ The Court held that recording evidence by video conferencing satisfies the requirement of recording evidence in the presence of the accused under Section 273 CrPC. Such procedures are particularly significant in protecting vulnerable witnesses and ensuring convenience and security. Video conferencing has emerged as an important mechanism for witness protection, especially in

¹ 1996 (2) SCC 384

² 2004 (6) SC 15

³ 2003 (4) SCC 601

cases involving organised crime, sexual offences, terrorism, and situations where witnesses fear retaliation.

(c) Protection against Harassment and Unnecessary Restraint

Section 171 CrPC provides that no complainant or witness shall be required to accompany a police officer to court or be subjected to unnecessary restraint or inconvenience. The provision seeks to ensure that witnesses are treated with dignity during criminal proceedings.

Further, Section 312 CrPC authorises criminal courts to direct payment of reasonable expenses incurred by witnesses attending court proceedings.

(d) Recording of Evidence in Absence of Accused

Section 299 CrPC empowers courts to record evidence in the absence of an absconding accused where there is no immediate prospect of arrest. Such evidence may subsequently be used against the accused if the witness is unavailable at the time of trial due to death, incapacity, or other valid reasons.

This provision constitutes an exception to the general rule requiring the presence of the accused during trial and reflects legislative recognition of situations where witness testimony may otherwise be lost.

(e) Day-to-Day Trial and Examination of Witnesses

Section 309 CrPC requires criminal proceedings to be conducted expeditiously and mandates that once examination of witnesses has commenced, it should ordinarily continue on a day-to-day basis unless adjournment is necessary for recorded reasons.

The provision aims to minimise delays which frequently contribute to witness fatigue, intimidation, compromise, or hostility.

(f) Power to Summon Material Witnesses

Section 311 CrPC empowers courts at any stage of inquiry or trial to summon, recall, or re-examine any witness whose evidence appears essential to the just decision of the case. The provision enables courts to ensure that material evidence is not excluded merely due to procedural lapses.

(g) Witness Intimidation and Section 195A IPC

The Code of Criminal Procedure (Amendment) Act, 2008 inserted Section 195A CrPC,

enabling a witness or any other person to file a complaint regarding offences under Section 195A of the Indian Penal Code. Section 195A IPC criminalises threatening or inducing any person to give false evidence. The provision represents a significant statutory recognition of witness intimidation as an independent criminal offence.

(h) Transfer of Trials

Sections 406 and 407 CrPC empower the Supreme Court and High Courts respectively to transfer criminal cases where such transfer is necessary to ensure fair trial or protect the interests of justice.

In *Zahira Habibullah Sheikh v. State of Gujarat*, commonly known as the Best Bakery Case⁴, the Supreme Court ordered transfer of trial from Gujarat to Maharashtra after observing that witnesses had been intimidated and the prosecution had failed to conduct a fair trial.⁴ The case remains one of the most important judicial pronouncements concerning witness intimidation and hostile witnesses in India.

3.2.2 Protection under the Indian Evidence Act, 1872

The Indian Evidence Act, 1872 contains several provisions intended to regulate examination of witnesses and ensure fairness during criminal trials.

(a) Competency and Examination of Witnesses

Sections 118 to 134 of the Evidence Act deal with competency, number, and examination of witnesses. Section 134 expressly provides that no particular number of witnesses is necessary for proof of any fact. The Supreme Court has repeatedly held that conviction may be based upon the testimony of a single reliable witness. In *Kartik Malhar v. State of Bihar*, the Supreme Court reiterated that evidence must be weighed and not counted.⁵

(b) Protection against Self-Incrimination

Section 132 of the Evidence Act provides that a witness cannot refuse to answer relevant questions on the ground that the answer may incriminate him. However, the proviso grants protection by stipulating that such answers cannot ordinarily subject the witness to arrest or prosecution, except for prosecution for giving false evidence. The scope of this protection was considered in *Gangadharan v. S.I. of Police*⁵, wherein the Kerala High Court held that the

⁴ 2004 (4 SCC 158)

⁵ 1989 (2) KLT 448

protection under Section 132 applies once a witness is compelled by law to answer questions before the court.

(c) **Cross-Examination and Protection from Improper Questions**

Sections 146 to 152 of the Evidence Act regulate cross-examination and confer powers upon courts to prevent indecent, scandalous, insulting, or vexatious questioning.

Section 148 empowers courts to decide whether questions intended to shake the credit of a witness should be permitted.

Section 149 prohibits questions without reasonable grounds.

Section 151 authorises courts to forbid indecent or scandalous questions unless they directly relate to facts in issue.

Section 152 empowers courts to prohibit insulting or annoying questions.

These provisions are particularly significant in protecting victims of sexual offences and vulnerable witnesses from humiliating or abusive cross-examination. The Indian Evidence (Amendment) Act, 2002 inserted a proviso to Section 146 restricting questions regarding the general immoral character of the prosecutrix in rape trials. The amendment sought to eliminate degrading and irrelevant inquiries into the sexual history of victims. The 172nd and 185th Reports of the Law Commission of India further recommended broader restrictions on questions relating to the past sexual history of prosecutrices in sexual offence trials.

(d) **Previous Testimony of Witnesses**

Section 33 of the Evidence Act permits previous testimony of a witness to be used in subsequent proceedings where the witness is dead, incapable of giving evidence, cannot be found, or cannot be produced.

3.3. WITNESS PROTECTION UNDER SPECIAL STATUTES IN INDIA

Where ordinary criminal laws failed to counter the systemic intimidation executed by organized syndicates and insurgent groups, the Indian state resorted to special legislations. These special statutes recognized that preserving witness anonymity is a prerequisite for successful prosecutions in complex crimes.

3.3.1. The Bengal Suppression of Terrorist Outrages Act, 1932

In the pre-constitutional era, one of the earliest iterations of statutory witness protection was

embodied in Section 31 of the Bengal Suppression of Terrorist Outrages Act, 1932. This provision empowered a Special Magistrate to exclude the general public from the courtroom if the Public Prosecutor or Advocate-General certified in writing that such exclusion was necessary for the safety of the witnesses. This marked an early legislative acknowledgment that public access to trials must occasionally yield to ensure witness survival.⁶

3.3.2. Terrorist & Disruptive Activities (Prevention) Acts, 1985 & 1987

With the surge of insurgent terrorism, the legislature enacted the Terrorist and Disruptive Activities (Prevention) Act, 1985. Section 13 of the 1985 Act broke new ground by mandating that all proceedings before the Designated Court be held in camera, while sub-section (2) empowered the court to keep the identity and address of witnesses secret.⁷

The subsequent Terrorist and Disruptive Activities (Prevention) Act, 1987 modified this framework under Section 16. Unlike its predecessor, Section 16 of the 1987 Act made in-camera proceedings discretionary, depending on the desire of the Designated Court. Crucially, Section 16(3) enumerated specific protective measures, including: Holding proceedings at protected, undisclosed locations; Deleting names and addresses of witnesses from judgments, orders, and public records; Issuing strict non-disclosure directions for security purposes.⁸

The constitutional validity of Section 16 of TADA, 1987 was challenged on the grounds that it infringed upon the accused's right to a public trial and open cross-examination. In *Kartar Singh v. State of Punjab*, the Supreme Court upheld the provision, ruling that the right to a public trial is not absolute and can be curtailed to protect witness lives and preserve the administration of justice.⁹

3.3.3. Prevention of Terrorism Act (POTA), 2002

Following the repeal of TADA, Parliament enacted the Prevention of Terrorism Act, 2002. Section 30 of POTA replicated the protective architecture of Section 16 of TADA, 1987, but introduced two statutory refinements:

Under Sections 30(1) and 30(2), the Special Court was required to record reasons in writing for holding in camera proceedings and concluding that the witness's life was in danger.

Section 30(3)(d) added an explicit power to prohibit the publication of any proceedings in the public interest.

⁶ The Bengal Suppression of Terrorist Outrages Act, 1932, § 31, Bengal Act No. XII of 1932.

⁷ The Terrorist and Disruptive Activities (Prevention) Act, 1985, S. 13, Acts of Parliament, 1985 (India).

⁸ The Terrorist and Disruptive Activities (Prevention) Act, 1987, S. 16, Acts of Parliament, 1987 (India).

⁹ 1994 SCC (3) 569

The constitutional validity of Section 30 was evaluated and sustained by the Supreme Court in *People's Union for Civil Liberties (PUCL) v. Union of India*, where the court held that balancing the rights of the accused with the safety of witnesses is an existential necessity when prosecuting terrorist offenses, while observing that

“that the Section is not only in the interest of witness whose life is in danger but also in the interest of community which lies in ensuring that heinous offences like terrorist acts are effectively prosecuted and punished; that if the witnesses are not given immunity they would not come forward to give evidence and there would be no effective prosecution of terrorist offences and the entire object of the Act would be frustrated”

3.3.4. Unlawful Activities (Prevention) Act, 1967 (As Amended)

Following the repeal of POTA in 2004, witness protection provisions were permanently integrated into ordinary special law via amendments to the Unlawful Activities (Prevention) Act, 1967 (UAPA). Section 44 of the UAPA mirrors the language of Section 30 of POTA, preserving in camera trials, identity redaction, and criminalizing the breach of identity confidentiality with imprisonment extending up to one year.

3.3.5. National Investigation Agency (NIA) Act, 2008

The establishment of a specialized central federal agency culminated in the passage of the National Investigation Agency Act, 2008. Section 17 of the NIA Act explicitly codifies witness protection parameters identical to the POTA and UAPA frameworks. However, Section 17(4) enhances the penal consequences, making any unauthorized disclosure of a protected witness's identity punishable by up to three years of imprisonment along with a fine.

3.4. WITNESS PROTECTION UNDER THE BHARATIYA NAGARIK SURAKSHA SANHITA, 2023

The enforcement of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) marks a fundamental paradigm shift by transitioning witness protection from a purely discretionary judicial exercise or a localized state scheme into a mandatory statutory obligation.

3.4.1 In-camera Proceedings

The BNSS retains provisions corresponding to Section 327 CrPC relating to in-camera proceedings in sexual offence cases. Such proceedings are intended to preserve the dignity,

privacy, and psychological well-being of victims and witnesses. The continuation of this safeguard under the BNSS reflects legislative commitment toward victim-sensitive criminal procedures.¹⁰

3.4.2 Electronic and Audio-Visual Recording of Evidence

The BNSS expands the use of electronic means and audio-visual technology in criminal proceedings. The increasing reliance upon video conferencing and digital recording mechanisms reduces direct confrontation between witnesses and accused persons and minimises intimidation. Electronic recording of evidence also reduces delays and preserves the integrity of witness testimony.¹¹

3.4.3 Time-Bound Investigation and Trial

The BNSS emphasises expeditious investigation and trial through stricter timelines. Delay in criminal proceedings is one of the principal reasons for witnesses turning hostile due to fear, compromise, or loss of memory. Speedier trials therefore indirectly strengthen witness protection.

3.4.4 Protection of Victims of Sexual Offences

The BNSS continues various safeguards for victims of sexual offences, including recording of statements by women police officers and maintenance of confidentiality regarding identity. Such provisions recognize the vulnerability of victims and seek to create a more supportive environment for testimony.

3.4.5 Use of Technology and Digital Procedures

The BNSS promotes digitisation of criminal procedure, including electronic summons, digital records, and audio-video recording of searches and statements. These measures improve transparency and reduce opportunities for manipulation of evidence or intimidation of witnesses.

3.4.6. Implementation of a comprehensive "Witness Protection Scheme"

The primary provision governing this domain is Section 398 of the BNSS, 2023, which explicitly mandates that every State Government must prepare, notify, and implement a

¹⁰ Section 366 of BNSS

¹¹ Section 308 & section 530 of BNSS

comprehensive "Witness Protection Scheme" for the state. This section institutionalizes the principles laid down by the Supreme Court in *Mahender Chawla v. Union of India*¹², which had approved and enforced the Witness Protection Scheme, 2018 under Articles 141 and 142 of the Constitution as a temporary measure until formal legislative codification. Despite the incorporation of the provision, section 398 BNSS merely requires states to formulate witness protection schemes but does not itself establish a uniform statutory framework. Consequently, implementation remains decentralized and potentially inconsistent.

3.5 Conclusion

The historical evolution of criminal law in India demonstrates a gradual shift from total apathy toward witnesses to an assertive, rights-centric protective framework. While the colonial codes focused primarily on the rights of the accused and state power, the realities of modern criminal litigation, where money, political influence, and physical muscle power routinely cause critical witnesses to turn hostile, necessitated a re-evaluation of the legal framework.

The general protections found in the CrPC, 1973 and the Indian Evidence Act, 1872 provided only minor procedural reliefs. In contrast, special anti-terror legislations like TADA, POTA, and UAPA proved that the state can protect witness anonymity when dealing with serious crimes. With the implementation of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) and Section 398, India has established a permanent statutory baseline for witness protection. By making it mandatory for every State Government to enforce an active Witness Protection Scheme, the legal system provides a vital mechanism to counter witness intimidation. To ensure these reforms are effective, future legal implementations must back these provisions with dedicated state funding, proper administrative threat-assessment cells, and specialized courtroom infrastructure. This will allow witnesses to testify fearlessly, preserving the integrity of the criminal trial process.

¹² supra