

**INTERNATIONAL JOURNAL OF LAW**  
**MANAGEMENT & HUMANITIES**

**[ISSN 2581-5369]**

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**Volume 5 | Issue 3**

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**2022**

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# Role of Witnesses in Criminal Trials in India

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## ABSTRACT

*The role of a witness is critical in any country's criminal justice system. They are an integral part of any civilized society's legal system. Their every statement is crucial because it has the power to influence the course of the entire case. They set into motion the criminal justice machinery by providing proof of the commission of an offense. Witnesses, who are the most key participants in the procedure, are frequently threatened or coerced to amend or withdraw their testimony by the parties involved in the case. As a result, witnesses, who are thought to be the eyes and ears of the court, are becoming hostile with unforeseeable inconsistency. Witnesses frequently become hostile when high-profile individuals are engaged in the conduct of crimes, resulting in the failure of the criminal justice system. As a result, safeguarding witnesses becomes critical to achieving the criminal justice system's primary goal. An earnest attempt is thus made to throw light on the Witness Protection Scheme, 2018 and its features envisaged by the Parliament and approved by the Hon'ble Supreme Court of India.*

**Keywords:** Criminal Law, Witness, Criminal Justice System, Protection Scheme.

## I. INTRODUCTION

“Witnesses are the eyes and ears of justice” says Bentham. Witnesses can play a crucial part in bringing a criminal to justice. In an adversarial system of criminal justice, where the burden of proving the case rests with the prosecution, the witness of the prosecution becomes crucial in the search of discovering the truth. The status of a court witness is that of an ally and champion for the cause of justice.<sup>2</sup> It is totally fitting as the decision in the system of justice that is followed in India relies primarily on the witness and his actions. The witness has the potential to impact the course of the whole case. Underlining the significance of witnesses, Hon'ble Justice Wadhwa in *Swaran Singh v. State of Punjab*<sup>3</sup>, propounded that :-

*“A criminal case is built on the edifice of evidence, evidence that is admissible in law. For*

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<sup>2</sup> G.S. Bajpai, Witness in the Criminal Justice Process: A Study of Hostility and Problems Associated with Witness, CENTRE FOR CIVIL AND CRIMINAL JUSTICE ADMINISTRATION OF NATIONAL LAW INSTITUTE UNIVERSITY BHOPAL, 2009, at 2.

<sup>3</sup> (2000) 5 SCC 68.

*that, witnesses are required whether it is direct evidence or circumstantial evidence.”*

For this reason, the witness must either take an oath in the name of God or state solemnly that he or she will tell the truth, the entire truth, and nothing but the truth. He/she fulfils a significant civic responsibility of assisting the court in deciding on the guilt or otherwise of the accused in the case.<sup>4</sup> The evidence of the witnesses assists the court to determine the veracity of the case's facts and circumstances. As a result, the authenticity of the witness's testimony becomes the foundation of justice, and witnesses are required to make statements under oath. Witness testimony may result in the conviction or acquittal of the accused.<sup>5</sup> The speed with which justice is administered depends to a large measure on the quality of the witness's testimony at trial. Overall, the success of the criminal justice system rests heavily on the willingness of individuals to provide information and evidence without being coerced or threatened.

This paper aims to highlight the pivotal role that the witnesses play in bringing the accused to justice and successful culmination of a criminal trial for the prosecution. The paper also delves into the various legal provisions relating to witnesses in the Indian Evidence Act, 1872 and The Code of Criminal Procedure, 1973. The researcher has put a heavy emphasis on the importance of Witness Protection Scheme which is fundamental to protect the interests of the witnesses.

## II. KINDS OF WITNESSES

Black's Law Dictionary provides that witness means “person called to the court to testify and provide evidence”.<sup>6</sup> Therefore, there are several types of witnesses who contribute to the conclusion of the trial and the delivery of justice. There are Child Witnesses, Interested Witnesses, Eye Witnesses, Hostile Witnesses, Related Witnesses, Independent Witnesses, Expert Witnesses etc.<sup>7</sup> They are elaborated as follows:

Prosecution witness is a witness who has been called by the prosecution to testify in court in support of their accusations. A witness for the defence is a person who supports the arguments of the defence by making remarks that exonerate the accused of any charges brought against them. The term “eye witness” refers to any individual who aids the court by describing the crimes committed at the crime scene with absolute veracity because he or she was present and has firsthand knowledge. The court may rely on the testimony of an expert witness if he or she possesses superior professional, educational, or judicial knowledge of the subject area than the

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<sup>4</sup> Priyanka Godara, Examination of Witness: Legal Aspects, Mondaq, (May 8, 2022, 2:21 PM), <https://www.mondaq.com/india/trials-appeals-compensation/947522/examination-of-witness-legal-aspects>.

<sup>5</sup> Id.

<sup>6</sup> Garner Bryan, Black's Law Dictionary, (10<sup>th</sup> ed.,2014).

<sup>7</sup> Yash Singhal, Witnesses under the Indian Evidence Act, iPleaders (May 8, 2022, 4:32 PM), <https://blog.ipleaders.in/witnesses-under-the-indian-evidence-act/#Conclusion>.

typical person.<sup>8</sup> A “hostile witness” is a person whose subsequent remarks convey the appearance that he is not telling the truth or is not interested in hiding the truth. According to section 118 of the Indian Evidence Act which provides for “Child Witness”, a child who is able to comprehend the court’s queries and provide logical responses may testify in court. Witnesses who are unable of delivering oral testimony are permitted to submit written declarations to the court. These written declarations shall be treated as spoken evidence. The term “chance witness” refers to any anyone who, by happenstance, was present at the scene of a crime.<sup>9</sup> A “complicit witness” is an individual who was involved in the illegal commission or omission of the crime and testifies in court. The term “interested witness” refers to any individual who has a vested interest in the case or its outcome in order to gain a material advantage.<sup>10</sup>

Every witness is significant to the court for its testimony regarding the crime committed supporting the court in delivering justice. The incapacity of a witness to speak shall not be an obstacle in him testifying before a court, hence, Section 119 of the Act allows dumb witnesses with other means such as by writing or signs which may be understood in the court. A child’s testimony in court is not given much weight due to the likelihood of coercion-induced comments, which would undermine the witness’s credibility. Depending on their mental development, a child can have varying perspectives on certain events. Every individual’s level of maturity is contingent on the environment in which he or she lives and his or her socioeconomic development.

In the case of *Suresh v. State of Uttar Pradesh*<sup>11</sup>, the Hon’ble Supreme Court was pleased to held that the testimony of a 5-year-old child would be accepted in court if he comprehends the question and is able to respond reasonably. A declaration was made that there is no minimum age requirement for a witness to testify in court. The test of *Voir Dire* was established in accordance with the provisions of Section 118 of the Indian Evidence Act of 1872 to check the competency of a child to serve as a witness.<sup>12</sup> The child may be asked preliminary inquiries outside the scope of the case information, such as their name, father’s name, or place of residence.<sup>13</sup> The child may be permitted to testify in court if the court is satisfied with the

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<sup>8</sup> Shivam Singh, Different Kinds of Evidences & Witnesses Under the Indian Evidence Act, Legal Era (May 9, 2022, 1:21 AM) <https://www.legaleraonline.com/articles/different-kinds-of-evidences-witnesses-under-the-indian-evidence-act>.

<sup>9</sup> Id.

<sup>10</sup> Rishabh Dahiya, Types of Witness Examination and Pertaining Issues, Legal Service India (May 9, 2022, 3:54 PM) <https://www.legalserviceindia.com/legal/article-7635-types-of-witness-examination-and-pertaining-issues.html>

<sup>11</sup> 1981 AIR 1122.

<sup>12</sup> Vivek Maurya, Analysing the Credibility of Child Witnesses in the Indian Legal System, iPleaders (May 9, 2022, 1:11 PM) <https://blog.iplayers.in/analysing-the-credibility-of-child-witnesses-in-the-indian-legal-system/>.

<sup>13</sup> Id.

answers to the questions, the child's capacity to comprehend the questions, and his or her ability to respond reasonably.

### **III. EXAMINATION OF WITNESSES**

In a court of law, whether the matter is civil or criminal, the examination of witnesses plays a crucial part in the presentation of evidence. The admissibility of evidence is another key factor that is determined only by presiding judge. A witness's testimony is recorded in question-and-answer format. The witness is prohibited from delivering a speech to the court and is only permitted to answer questions. The witness's testimony is limited to the facts pertinent to the issue. This method of gathering evidence is known as the examination of a witness.

Section 135 of the Indian Evidence Act, 1872 addresses the examination of present witnesses. Section 311 of the Code of Criminal Procedure, 1973 empowers the court to summon a material witness, or to examine a person present at "any stage" of "any investigation", or "trial", or "any other proceedings", or to summon any person as a witness, or to recall and re-examine any person who has already been examined if his evidence appears to be inconsistent.<sup>14</sup> The Code of Criminal Procedure provides for the examination of witnesses in all types of trials, including session trial, warrant trial, and summary trial.<sup>15</sup>

The Code of Civil Procedure lists the examination of witnesses in order XVIII Rules 4 to 16. Examination-in-Chief is the examination of a witness by the party who called that witness. The examination is limited to pertinent information, and leading questions are not asked. The purpose of this examination is to elicit from the witness, to the best of his or her knowledge, all relevant facts pertinent to the party's case. It is the responsibility of the advocate to present all essential facts supporting his client's case to which the witness can testify in a clear and chronological manner.<sup>16</sup> The statements stated during direct examination lose considerable credibility and weight if they are not subjected to cross-examination and emerge undamaged.

In accordance with Section 137 of the Indian Evidence Act of 1872, the examination of witnesses can be divided into three distinct categories. Examination-in-chief refers to the questioning of a witness by the party who calls him as a witness. Cross-Examination refers to the questioning of a witness by the opposing party. Re-Examination is the examination of a witness by the party who called him following the cross-examination.<sup>17</sup> Witnesses are first

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<sup>14</sup> The Code of Criminal Procedure, 1973, Act No. 2, Acts of Parliament, §311 (India).

<sup>15</sup> Vijai Govind, *The Role of Witnesses in the Ancient and the Modern Indian Judicial System*, *Journal of the Indian Institute of Law*. 645, 650 (1973).

<sup>16</sup> *Id.* at 651.

<sup>17</sup> Dr. Avtar Singh, *Principles of the Law of Evidence* 187 (8<sup>th</sup> ed.,2006)

examined in chief, then cross-examined (if the opposing party so chooses), and finally re-examined (if the party calling him so desires) in accordance with section 138 of the Act. The examination and cross-examination must pertain to pertinent facts; but, the cross-examination is not limited to the facts to which the witness testified during his examination-in-chief. The re-examination shall focus on clarifying topics raised during cross-examination.<sup>18</sup> If, with the court's approval, additional material is introduced during re-examination, the opposing party may cross-examine further on that subject.

#### IV. HOSTILITY OF WITNESS

There is no explicit or implied reference of the word "hostile witness" in any Indian law, including the Indian Evidence Act, the Code of Criminal Procedure, or any other legislation.<sup>19</sup> A hostile witness is a trial witness who testifies for the opposite party or a witness who provides unfavorable testimony during direct examination. An adverse witness in a trial is one who is deemed hostile or adverse to the position of the party whose advocate is questioning the witness, even if the advocate called the witness to testify on behalf of his or her client. If the witness becomes openly antagonistic, the advocate may request that the judge declare the witness hostile or adverse. If the court declares to be hostile or adverse, the advocate may use "leading questions" that imply responses or challenge the witness's testimony, similar to cross-examination of an opposing witness.<sup>20</sup> The Criminal Justice System in India is in a predicament due to the fact that experience has demonstrated that witnesses get hostile and withdraw their statements to the police during trials. In accordance with Section 162 of the Criminal Procedure Code, the witness's statement to the police acts as evidence of his or her veracity. If the witness contradicts or modifies a previous statement, he or she has become hostile.<sup>21</sup> In recent years, the frequency of witness antagonism has increased considerably. Cases such as Best Bakery, Jessica Lal, and the BMW hit-and-run shocked the Criminal Justice System to its core.<sup>22</sup>

In *Gura Singh v. State of Rajasthan*<sup>23</sup>, the Supreme Court attempted to define a hostile witness and stated that, under the common law, a hostile witness is one who is unwilling to tell the truth at the request of the party calling him, whereas an unfavorable witness is one who is called by a party to prove a particular fact in issue or relevant to the issue but fails to do so or proves the

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<sup>18</sup> *Supra* 3.

<sup>19</sup> Dr. Shabnam Mahlawat, Hostile Witnesses and Evidentiary Value of their Testimony under the Law of Evidence, *ILI Law Review* Vol. II. Winter Issue 2017, at 1.

<sup>20</sup> Prateek S, Hostile Witnesses - A Menace to the Criminal Justice Administration, *Legal Service India* (May 9, 2022, 4:09 PM) <https://www.legalserviceindia.com/article/1339-Hostile-Witnesses.html>.

<sup>21</sup> *Id.*

<sup>22</sup> *Supra* 2 at 4.

<sup>23</sup> 2001 Cri. L.J. 487.

opposite test. Thus, a hostile witness is also known as an adverse witness, who weakens the case of the side he or she is supposed to support, i.e. instead of supporting the prosecution who has presented him as a witness in the court of law, the witness either with his evidence or statement became antagonistic to the advocate, thereby “ruining the case” of the party calling such witness. Moreover, in such a scenario, it is the advocate who requests that the judge label the witness a hostile witness. Consequently, only the court has the ability to label a witness as an uncooperative witness. It must be emphasized that the court cannot declare a witness to be a hostile witness on its own; the prosecution advocate must make this request. If a court declares a witness to be a hostile witness, the advocate has greater latitude in questioning the hostile witness. In other words, if a witness has been declared hostile, the prosecution may question the witness as if in cross-examination, i.e., they may ask leading-questions to the witness declared hostile; this is the fundamental distinction between a witness declared hostile and a witness who has not been declared hostile or who is a common or favorable witness.<sup>24</sup>

Experience has shown that police and prosecution witnesses tend to become antagonistic throughout the prosecution of a case. Instances of denying statements made to the police have become a serious problem for the criminal justice system in this country. This weakens the entire case in the offender’s favour.<sup>25</sup> Prominent Jurist Mr. Soli Sorabjee asserted that “Nothing affects public trust in the criminal justice delivery system more than the collapse of the prosecution as a result of witnesses turning hostile and renouncing their previous testimony.” It is often believed that hostile witnesses are the primary reason for the high acquittal rate in our criminal court system. To end this cross-examination as quickly as possible, the witness will either make false claims or, to make matters worse, he will become hostile, i.e. retract his previous statement.

The animosity of the witness is largely attributable to the unholy combination of money and muscle, intimidation and monetary inducement. In cases when the accused are members of a repeated or organised group of offenders, witnesses prefer to avoid testifying out of fear.<sup>26</sup> It is especially true because witness protection is uncommon in our nation. In addition, the excessive delay in case resolution is a big contributor to this condition, as it prolongs the torture of the witnesses. The Malimath Committee has conveyed its opinion about such witnesses by propounding that “the witness should be treated with great respects and should be considered

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<sup>24</sup> Vipasha Verma, Hostile Witness – Laws Across the World, iPleaders (May 9, 2022, 5:54 PM) <https://blog.ipleaders.in/hostile-witness-laws-across-the-world/>.

<sup>25</sup> Vernita Jain, Critical Analysis of Laws Relating to Hostile Witnesses in India, iPleaders (May 9, 2022, 6:31 PM) <https://blog.ipleaders.in/critical-analysis-laws-relating-hostile-witnesses-india/>.

<sup>26</sup> B.S. Pandey, Hostile Witnesses in our Criminal Justice System, Cri. L.J. 136.138 (2005)

as a guest of honor'. Lack of a witness protection program, unsympathetic attitude of the police, bribery and corruption are other reasons which add to the malaise. For all these reasons and others, a person abhors becoming a witness.<sup>27</sup>

## V. WITNESS PROTECTION

### (A) Importance of Witnesses and their Protection

In order to maintain a free and fair trial, the country's highest court has repeatedly underlined the need to protect witnesses adequately. Despite the fact that the dust does not appear to be settling on this problem, there are a number of interconnected legal and procedural issues that require a consensus.<sup>28</sup> The most recurrent and very commonly experienced problems that a witness encounters in his day-to-day interactions with police, prosecution, and court officials are indifference, apathy, misbehavior, lack of facilities at police station or court premises, and frequent adjournments resulting in a multitude of hardships that waste time, money, and a day's work.<sup>29</sup> It is worrisome to realise that India lacked a Witness Protection laws, given that every witness statement is crucial and includes the ability to modify the course of a case while administering justice.

### (B) Witness Protection Scheme, 2018

In *State of Gujrat v. Anirudh Singh*<sup>30</sup>, the Supreme Court ruled that every witness who has knowledge of the commission of the crime must help the State in providing evidence. In 1958, the first mention of Witness Protection in India appeared in the 14th Law Commission Report. After that, the 154th, 178th, and 198th Law Commission Reports all suggested instituting a witness protection scheme. The Malimath Committee Report also advocated for a robust witness protection system, stating that the courts must be prepared to intervene if a witness is harassed during cross-examination.<sup>31</sup> Thus, the Supreme Court (SC) of India authorized the Union Government's First Witness Protection Scheme and ordered the Centre, states, and Union Territories to implement it "in letter and spirit."<sup>32</sup> In 2018, the Centre drew up the Scheme with participation from the states/Union Territories, National Legal Services

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<sup>27</sup> Lawyers Collective, Justice Malimath Committee on 'Criminal Justice Reforms', Aug. 2011 at 12.

<sup>28</sup> Bipasha Kundu, Witness Protection in India, Live Law (May 9, 2022, 6:41 PM) <https://www.livelaw.in/columns/criminal-justice-system-witness-protection-scheme-law-commission-report-hostile-witnesses-184706>.

<sup>29</sup> Himeesha Dhaliwal, Witness Protection Law in India – A Judicial Endeavour, IRALR (May 9, 2022, 7:21 PM) <https://www.iralr.in/post/witness-protection-law-in-india-a-judicial-endeavour>.

<sup>30</sup> AIR 1997 SC 2780.

<sup>31</sup> Supra 27 at 16.

<sup>32</sup> Srishti Rathi, Witness Protection Scheme, 2018, Drishti IAS (May 9, 2022, 7:45 PM) <https://www.drishtias.com/daily-updates/daily-news-analysis/witness-protection-scheme-2018>.



Authorities, civil society, High Courts, and police officers.<sup>33</sup> The scheme aims to ensure that the investigation, prosecution, and trial of criminal offences are not compromised by witnesses who are intimidated or terrified to testify without protection from violent or other criminal reprisal.

The Apex Court held that the right of witnesses to freely testify in court is part of Article 21 of the Constitution of India.<sup>34</sup> The court ruled that the system shall be the law under Articles 141/142 of the Constitution, pending the enactment of appropriate Parliamentary and/or State Legislations. The bench has also instructed all states and Union Territories to establish vulnerable witness deposition complexes by the end of 2019, as mandated under the Scheme. These chambers will be fitted to prevent the accused and the witness from coming into direct contact. States and Union Territories will create a Witness Protection Fund to cover the expenditures of the programme.<sup>35</sup>

The scheme determines three groups of witnesses based on their perceived level of danger<sup>36</sup>:

- i. Category A: Cases in which the life of a witness or family member is threatened during the investigation, trial, or even afterward.
- ii. Category B: Instances where the witness's safety, reputation, or property are threatened during the inquiry or trial.
- iii. Category C: Instances in which the threat is mild and extends to harassment or intimidation of the witness or his family, reputation, or property throughout the investigation, trial, or after the conclusion of the case.

The Witness Protection Scheme, 2018 requires the Commissioner/SSP to prepare a "Threat Analysis Report" when a witness seeks for protection. It stipulates protective measures such as preventing witnesses and suspects from meeting face-to-face during the investigation, protection of identity, identity change, relocation of witnesses, witnesses being informed of the scheme, confidentiality, preservation of records, recovery of expenses, etc. This plan is a step in the right approach toward ensuring that witnesses have faith in the nation's criminal justice system.<sup>37</sup>

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<sup>33</sup> *Supra* 29.

<sup>34</sup> Priyanka Dhar, *Witness Protection and Justice Delivery System in India – A Critique*, GJLS, 2016, at 4.

<sup>35</sup> Eesha Shrotriya & Shantanu Pachauri, *A Proposal for a Model Witness Protection Programme: Need and Legal Ramification*, NLSR (May 9, 2022, 10:21 PM) <https://nslr.in/wp-content/uploads/2019/03/NSLR-Vol-12-No-6.pdf>.

<sup>36</sup> *Supra* 32.

<sup>37</sup> Sanjeev Kumar & Abhishek Goyal, *Witness Protection: Safeguarding the Eyes and Ears of Justice*, Mondaq (May 10, 2022, 12:15 AM) <https://www.mondaq.com/india/trials-appeals-compensation/914274/witness-protection-safeguarding-the-eyes-and-ears-of-justice>.

### **(C) Recommendations**

For the law to be practical and workable, the execution could be subject to specific restrictions. States should be responsible for substantial financial costs associated with witness antagonism, protection, and support by enacting well-considered legislative and structural arrangements. Due to practical constraints, not every witness can be given with a protection cover; therefore, cases should priorities witness protection.<sup>38</sup> Police, prosecutors, and judicial personnel must begin treating witnesses with minimal empathy and support at all stages in order to reduce costs. The efficient application of the witness protection statute may result from the cooperative operation of the police, the judiciary, and the government. The government should implement essential Acts by demonstrating political resolve, while the judiciary handles the legal aspects and the police execute the act.

Rebuilding trust is necessary to increase witness testimony. The witness should be confident that their testimony is supported by an unbiased system. Efforts should be made to disguise the witnesses identify, occupation, and address. Encourage videoconferencing, teleconferencing, pseudonym, voice, and face distortion. The right to a swift trial must be protected. In extreme instances of poverty, witnesses must be provided with transportation and housing. Witnesses shall be punished for violations of perjury statutes, Section 344 of the Criminal Procedure Code and Sections 195,196,199 of the Indian Penal Code, where courts find purposeful and malicious changes of testimony. The witness must have access to the application and inquiry status. A separate cell should be established to address concerns of relocation, false identities, and follow-up.<sup>39</sup> Certain ranks of police officers could be granted the authority to safeguard witnesses through monitoring, emergency relocation aid, escorting to court or employment, etc. The court must enforce Section 309 of the Criminal Procedure Code by mandating the examination of all witnesses on the same day as the trial. Computer networking could aid in the monitoring of pointless adjournments. Finally, witnesses must be treated fairly, with decency, and without intimidation or harassment.<sup>40</sup>

## **VI. CONCLUSION**

A criminal case requires the testimony of witnesses with first-hand knowledge of the crime in order to fill in the gaps of the investigation process and make the duty of dispensing justice easier for the judiciary. The Indian Evidence Act contains provisions on who may serve as a

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<sup>38</sup> *Supra* 1 at 67.

<sup>39</sup> 198th Law Commission Report, Witness Identity Protection and Witness Protection Programmes, Ministry of Law and Justice, Govt. of India, <https://lawcommissionofindia.nic.in/reports/rep198.pdf>.

<sup>40</sup> *Id.*

witness and the admissibility of all types of witness testimony. Whether a case is civil or criminal, the examination of witnesses is of the utmost importance, and both procedural statutes explain the examination of witnesses. Sections 135 to 166 of the Indian Evidence Act explain the examination of witnesses, including important details such as who can first examine the witnesses during the examination of witnesses, what relevant facts are accepted during the examination of witnesses, what questions an advocate may ask during the cross-examination of witnesses, and what questions cannot be asked during the cross-examination, as well as the judge's authority.

As Witness Protection is a progressive effort in India, where modernity and innovation are sometimes blocked by government procedures, it will take some time for it to be implemented. However, we must start somewhere and eventually advance toward producing and answering witness questions. Implementing criminal justice measures in an unbureaucratic and efficient manner would aid in achieving the goal. The Witness Protection Scheme of 2018 is the first initiative at the national level to provide protection for witnesses, which will aid in eradicating witness victimization and prevent them from turning hostile. Witnesses play a crucial role in bringing justice to victims of horrible crimes, serving as the eyes and ears of justice. This plan intends to ensure that witnesses receive proper protection and to strengthen India's criminal and civil justice systems.

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