

WITNESS PROTECTION SCHEME

BASIC PHILOSOPHY

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

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

In 2018, the Supreme Court in Mahender Chawla Case declared this WPS scheme to be law until the Parliament or various state governments prepared and notified their own Witness Protection Schemes. Although various provisions in the IPC, IEA and CrPC recognise the vulnerabilities faced by witnesses and provide some support, the 2018 order of the Supreme Court was the first to develop a comprehensive approach towards ensuring the protection of witnesses in criminal proceedings.

The 2018 scheme took an expansive approach to establish a holistic legal and institutional framework for the protection of witnesses. This included categorising risk / vulnerability levels of witnesses; procedures for witness protection; introduction of threat analysis reports by the police to gauge the level of protection required by witnesses; and constituting a body comprising police officials and Sessions / District Court judges to implement and oversee its functioning.

In 2019, MHA had issued instructions regarding Witness Protection Scheme to all States / UTs vide No. 24013 / 35 / 2016 - CSR.III Dated January 14, 2019. MHA had requested all States / UTs to take appropriate steps to enforce the Witness Protection Scheme, 2018 in letter and spirit and that it shall be the 'law' under Article 141/142 of the Constitution.

In view of the earlier request and the current provisions in BNSS, such a scheme may be brought out in all States / UTs.

OVERVIEW

BNS	BNSS	BSA
<p>As it is said <i>“Witnesses are the eyes and ears of justice and they are our silent heroes, advocating for Justice.”</i>The ability of a witness to give testimony in a judicial setting or to cooperate with law enforcement agencies and IOs without fear of intimidation is essential in maintaining the rule of law. Therefore, a uniform Witness Protection Scheme is required to be in place.</p> <p>The New Law has Responsive Legal Framework, Aligning with Judicial Observations.</p> <p>The Indian Penal Code (IPC) had Section 195A, which states that threatening any person to give false evidence will be punishable up to 7 yrs or fine or both. This provision is also carried forward in the New law and the section will now be read as Section 232 of BNS.</p>	<p>BNSS, 2023 Unveils the Shield of Witness Protection: The new law clearly emphasizes that Witness Protection is not just a legal provision but it's a commitment to justice. Hence, with an aim to guard the witnesses against criminal conduct, deter the law-breakers and sanction those who violate or attempt to violate the laws of the land and to protect the witnesses from harm and ensure their safety a new section has been added in BNSS.</p> <p>Section 398 of BNSS: A Game-Changer in Witness Safety This groundbreaking addition ensures witness safety becomes an integral part of the criminal procedural framework and every State Government is mandated under Section 398 to prepare and notify a Witness Protection Scheme (WPS).</p> <p>Safeguarding Justice: Witness Protection Scheme A significant stride: BNSS, 2023 introduces the Witness Protection Scheme, acknowledging the critical need to shield witnesses from threats and intimidation.</p> <p>The witnesses will be categorized into three groups</p>	<p>In cases involving heinous crimes, witnesses turn hostile because of threat to life and property. Witnesses feel that there is no statutory legal obligation on the part of the state to extend any protection to them. Hon’ble Supreme court of India has also observed that <i>“no country can afford to expose its morally correct citizens to the peril of being harassed by anti-social elements”</i></p> <p>Just like the IEA, 1872, the BSA, 2023 also emphasis on the importance or relevance of statement of witnesses during trial. Like Section 55 of BSA, 2023 emphasis on oral evidences by witnesses in different circumstance and its relevance during trial.</p> <p>Hence it becomes the duty of the state to protect the Witness and uphold their right to testify without fear. The new law for the Witness Protection Scheme stands as a formidable shield, safeguarding witnesses against threats, intimidation, and injury. The scheme provides for witness protection measures such as witness identity change, relocation, installation of security equipment at witnesses’ residences, etc.</p>

	<p>based on the threat perceived against them. Category A witnesses have a direct threat to their life or those of their family members, Category B witnesses have a threat to their safety, reputation, or property, and Category C witnesses have a lesser threat.</p>	
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