

An Analysis Of Legal Journey Towards Witness Protection Scheme In India

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ABSTRACT

India's high-profile trials are plagued by witness intimidation, jeopardizing the fair trial principle in criminal proceedings. The accusatorial system hinges on independent witnesses to guarantee justice for both victims and defendants. However, these witnesses are often subjected to threats and harassment, turning them hostile and eroding the justice system's integrity. Despite the constitutional right to testify (Article 21), witnesses are frequently disregarded and even threatened. Law commission reports emphasize the critical need for a comprehensive witness protection program. Existing legal provisions offer limited safeguards, and legislative attempts like the 2015 Witness Protection Bill and the 2020 Victim and Witness Protection and Assistance Bill have not been successful. In response, the Supreme Court established the 2018 Witness Protection Scheme in *Mahender Chawla v. Union of India*. This paper delves into the factors contributing to and the consequences of hostile witness behavior in India. It then critically evaluates the effectiveness of the 2018 Scheme and underscores the urgent need for a robust legislative framework to safeguard witnesses.

Keywords: Witness protection, India, Witness Protection Scheme 2018, Hostile Witness

1. Introduction

The criminal justice system cannot exaggerate the significance of witnesses. Legal principles function as the bedrock and ethical framework of the system. The utilization of witness testimony is vital to the effort to obtain justice for the victims. Their testimony in court constitutes a "sacred obligation" for witnesses. In this regard, Justice Wadhwa stated in *Swaran Singh v. State of Punjab* that admissible evidence is the cornerstone of a criminal case. The utilization of witnesses is essential in situations involving direct or indirect evidence. However, during the final stages of a trial, hostile witnesses often emerge. The individuals are exonerated as a result. The reasons cited for animosity and withdrawing statements include protracted legal proceedings, frequent interrogations, monetary incentives, threats, intimidation, or apprehension regarding one's own safety or that of one's loved ones. Family members or witnesses may be threatened by the accused or unaffiliated third parties. The importance of ensuring the safety of witnesses has been underscored by the judiciary on multiple occasions. In the *Best Bakery* case, the Supreme Court of India ruled that a fair trial would also be precluded if the witnesses were threatened or coerced into providing false testimony. To bolster public confidence in the criminal justice system and safeguard the welfare of witnesses, it is strictly necessary that witness protection laws be enforced. (Sayyed & Kaushal, 2022) In the absence of witness protection from the government, the perpetrators may escape apprehension. If obligatory legal safeguards for witnesses are not established, offenders will persist in evading accountability for the offences they have committed. Regarding witness protection provisions, the international community, particularly industrialized nations, has made substantial progress. Decades ago, numerous nations, including Canada, Australia, and the United States, enacted witness protection legislation. In contrast, Bangladesh and India are nations that lack comprehensive and discernible witness protection legislation.

In December 2018, India initiated its inaugural Witness Protection Scheme (WPS). This essay examines the most important WPS provisions. It identifies obstacles to the plan's success and provides suggestions for its literal and

figurative implementation. Including witness protection is essential for a criminal justice system to be rational and effective. In the investigation and prosecution of offences, witnesses are indispensable because they may provide testimony and evidence. Nevertheless, witnesses often encounter grave perils and obstacles, such as threats of retaliation, intimidation, and apprehension regarding the safety of themselves and their families. Potential witnesses may be dissuaded from providing testimony due to these risks, potentially leading to a scarcity of data and tainted trials. Governments worldwide have established witness protection programmes and strategies to acknowledge the significance of witness cooperation and safeguarding. To ensure the well-being of witnesses, it is imperative to establish a secure environment that promotes their participation and ensures their protection throughout court proceedings. Efforts to protect witnesses are intended to alleviate their apprehensions and eliminate any barriers they may encounter, thereby bolstering their motivation to provide testimony and promote the administration of justice.

In 2018, the Ministry of Home Affairs introduced the Witness Protection Scheme, which contributed to the increased prominence of witness protection in India. Witnesses are particularly susceptible, particularly in cases involving organized crime, terrorism, corruption, or high-profile incidents. This is precisely why a system was devised to safeguard them. The primary aim is to cultivate an environment that encourages witnesses to provide candid and fearless testimony, thereby enhancing the integrity and effectiveness of the criminal justice system. In India, the significance of witness protection cannot be overstated. Due to the nation's population, diversity, and intricate social structure, intimidation and interfering with witnesses have persisted as persistent challenges for the Indian judicial system. Witnesses often face substantial dangers, such as bodily harm, societal disgrace, and monetary repercussions, especially when dealing with influential individuals or criminal organizations. The absence of sufficient safeguards for witnesses exposes the legal system to the risk of manipulation, compromised trials, and erosion of public trust.

India endeavours to establish an environment that fosters witness participation and ensures their safety through the implementation of a robust witness protection framework. The goal is to instill confidence in witnesses, encouraging them to confidently testify and provide reliable and precise information. Consequently, these outcomes are equitable and impartial, the rule of law is fortified, and criminal activity is discouraged. Effective witness protection implementation not only safeguards the rights of individual witnesses but also advances the collective interests of society. It fosters accountability, ensures that offenders are apprehended, and contributes to the broad spectrum of crime prevention. Witness protection contributes to the breakdown of criminal networks, the battle against corruption, and the defense of human rights by furnishing a secure environment in which witnesses can exercise their fundamental right to access justice. Witness protection is mandatory for the criminal justice system to maintain its integrity and objectivity. To mitigate the vulnerabilities of witnesses, guarantee their safety, and promote their active participation, India must establish a robust witness protection programme. India has the potential to bolster its judicial system, uphold the integrity of the rule of law, and foster an inclusive society by providing a haven for witnesses (Jaggi, 2020).

1.1 Witness- In Need of Protection

The establishment of guilt beyond a reasonable doubt is a fundamental principle that underpins the criminal justice system. Moreover, the onus of proving the accused's culpability beyond a reasonable doubt is placed upon the prosecution, which bears this responsibility in court. This is achieved by means of the testimonies provided by the witnesses. In the *Swaran Singh v. State of Punjab* case, Wadhwa J. stated that "admissible evidence is the bedrock of a criminal case." To ascertain either direct or circumstantial evidence, the presence of witnesses is indispensable. A witness, despite being a crucial participant in a legal proceeding, is sadly subjected to a great deal of mental and physical suffering in India (Kramer, 2014).

The court further determined in the case of *Swaran Singh* that "the witnesses...are a cacophony of harassment." A distant witness in a criminal trial might discover that the proceedings have been postponed. The frequency of his court appearances and the toll it takes on him and his family is easily comprehensible. It has essentially become customary to postpone a criminal proceeding indefinitely until the witness becomes weary and withdraws their testimony. It is the game of unscrupulous solicitors to obtain postponements for whatever reason will suffice to win over a witness or cause them to become weary. A witness may also face harm at the hands of the prosecution,

abduction, bribery, or even physical harm. There is no protection for any of his interests. The right of the accused to an open trial must be balanced with the right of the victim to a fair prosecution. On the one hand, however, the rights of the accused are more effectively protected in an adversarial system of criminal justice. An individual is entitled to an open trial to provide information to the public regarding the proceedings of a legal proceeding; similarly, the accused has the right to be present during the trial (Parwez et al., 2023).

In *NHRC v. State of Gujarat*, the Supreme Court ruled that during a trial, both the accused and the victim must be treated fairly. Numerous situations call for the safeguarding of the victim and the witness. (Dandurand & Farr, 2012) The rights of witnesses, who are crucial components in criminal trials, are not addressed in the law except for a few provisions such as Sections 151 and 152 of the In except for 2. Ensuring sufficient protection for witnesses necessitates the correction of deficiencies in the current legislation. Hostile witness testimony is a significant obstacle to the administration of criminal justice. Numerous high-profile cases, including the homicide of Jessica Lal and the Best Bakery case, conclude with acquittals. Witnesses who were present during the commission of the crime are disinclined to provide truthful testimony in court because of persistent threats and external pressures; therefore, they become hostile. It is necessary to devise a suitable and adequate solution to address the problem of hostile witnesses and safeguard witnesses from harassment by antisocial elements while providing truthful testimony in court.

2. Review of literature

(Vanita, 2023) [6] investigated that Witness plays an important role in justice delivery system. He is the foundation of justice and equity. He is therefore deciding the future of the case. In the absence of witness testimony, the prosecution's case cannot be constructed. If the witness fails to appear in court prepared to testify, the trial will be hampered and put to shame. For this reason, witnesses are considered the pillars of a trial. In India, the state of the witnesses is abject misery. Nevertheless, the Union of India and individual state governments have yet to propose legislation or even a framework to safeguard the rights of witnesses. The government establishes law commissions and committees to safeguard the interests of witnesses. By means of their reports, these commissions and committees bring to light the concerns, difficulties, and circumstances of witnesses who are called into evidence in a case. Certain substantive, procedural, and constitutional laws govern the safety and security of witnesses. While certain laws exist to safeguard the rights of victims, there is a scarcity of legislation that specifically addresses the rights of witnesses. The importance of enacting legislation concerning the safeguarding of witnesses was emphasized by the Supreme Court, which ruled that the responsibility for this lies with the state. In accordance with Articles 141 and 142 of the Indian Constitution, our judiciary takes a substantial measure towards ensuring the safety of witnesses by establishing the Witness Protection Scheme, 2018 as the law until suitable legislation is passed. The lack of a sufficient legal framework to protect witnesses is duly acknowledged. Witness protection is a legally mandated requirement.

(Samriti, 2022) [7] analyzed that Witnesses hold a critical position within our criminal justice system as they serve to mobilize the criminal justice administration. Witnesses are widely recognized as the auditors and observers of the judicial system. The evidence presented by a witness in court is crucial in determining the guilt or innocence of the accused, but the greatest anguish is that there is nowhere for witnesses to hide within our judicial system. The principal impetus for hostile witnesses is the fact that the testimony of witnesses can be influenced and even their lives put at risk by the numerous high-profile cases. In 2018, after much effort and deliberation, the witness protection scheme was eventually implemented. However, the question remains whether this scheme has truly accomplished its intended purpose. The existing legal framework does not adequately address the safeguarding of witnesses, and criminal jurisprudence primarily addresses the rights of the accused while neglecting aspects pertaining to the victim and witnesses. While acknowledging the significance of the protection perspective approach, it is imperative to consider whether the present approach adopted by our administration in executing criminal justice system policies is effective. This study endeavors to draw attention to the susceptibility of witnesses and conducts a sincere critical examination of the witness protection scheme, highlighting the administration's deficiency in effectively implementing it at the field level. Additionally, the author will endeavor to comprehend the challenges that victims and witnesses encounter throughout this protracted pursuit of justice.

(Verma & Krishnakumar, 2021) [8] investigated In India, legislation regarding witness protection had been long overdue. Following a series of assaults on witnesses, the Supreme Court of India ordered the Central

Government to devise a plan to protect the rights and well-being of witnesses. The Supreme Court granted approval to the Witness Protection Scheme that the Centre had submitted to it on December 5, 2018. It mandated that legislation be formulated by all states and union territories in relation to the matter. Although a limited number of states have implemented the scheme in its literal and conceptual sense, a significant number have yet to undertake any action in this regard. The purpose of this study is to conduct a critical analysis of the Witness Protection Scheme, 2018, focusing on its main provisions and a variety of implementation challenges. Most of the provisions of the scheme, according to the authors' findings following a comprehensive examination, established a framework to protect witnesses from threats and intimidation. The following, however, were not addressed by the programmer: the interests of vulnerable witnesses, online intimidation, funding concerns, and the maintenance of a balanced police force. To increase the scheme's emphasis on the witness, several implementable recommendations are provided.

(Dhiman & Adyasha, 2021) [9] conducted since they aid in the administration of justice, witnesses are a vital element of a secure criminal justice system. The function of witnesses in determining the outcomes of cases is crucial in courtroom proceedings. As the leading cause of a significant number of acquittals for individuals accused of heinous offences including murder, rape, and others, antagonistic witnesses have emerged as a formidable liability. A difficult situation can arise when a favorable witness turns hostile; this can have a significant impact on the result of a case. They alter their stance prior to or throughout the trial in response to threats and coercion from the defendant or his or her relatives. Such conduct has the potential to lead to a miscarriage of justice or even its demise. In the absence of measures to avert antagonistic witnesses, societal confidence in the justice system will erode, ultimately leading to disorder. Suspects are now no longer frightened of the law, which has enabled them to perpetrate crimes without fear of repercussions due to the absence of witness protection laws. The goal of this study is to examine the judiciary's function in safeguarding an antagonistic witness. It investigates the ramifications of antagonistic witnesses on the judicial system. It endeavored to ascertain the reasons and conditions under which the witnesses became antagonistic. Additionally, the study conducts a critical evaluation of the concept of witness protection by examining pertinent legal provisions and the judiciary's perspective on safeguarding witnesses.

(Rahangdale, 2019) [10] investigated that the capacity of courts to administer justice to the victim and impose punishment on the offender constitutes an indicator of the effectiveness of criminal justice administration. In ascertaining culpability, judicial systems depend on the evidentiary material presented by the involved parties in the form of testimony or documentation. The oral evidence is presented through witness testimonies. Testimonies provided by witnesses are crucial in assisting the courts in establishing the culpability of the accused. The testimony of witnesses aids the judicial system in reaching a prudent verdict. As a result, the witness assumes a significant role in the administration of criminal justice. Whittaker Chambers stated, "He assumes the revered role of the sun in his pursuit of truth, illuminating the face of justice and dispelling the darkness of ignorance; he is surrounded by the devils of humanity and compassion. However, it is regrettable to say that the condition of affairs pertaining to witnesses in the administration of the justice system is declining daily. New reports of inducement, threats, harassment, and intimidation of witnesses are received on a daily rotating basis. The incidents collectively induce fear in the minds of the witnesses, which frequently results in their refusal to cooperate with the court and in hostile behavior. Moreover, the absence of a witness protection mechanism in our nation undermines the credibility of witnesses. In its numerous reports, the Law Commission of India drew attention to the challenges that witnesses encountered throughout the trial process and advocated for the implementation of a comprehensive policy pertaining to witness protection. The requirement for witness protection in the Indian judicial system underwent substantial revisions because of a landmark ruling by the Supreme Court of India. Examining the state of witness protection in India and shedding light on the difficulties witnesses face within the criminal justice system are the principal aim of this study.

(Singh, 2016) [11] conducted that the foundation of a criminal case is evidence, which includes witnesses and can take the form of direct or circumstantial proof. Numerous sophisticated nations worldwide have enacted witness protection laws; however, regrettably, India lacks legislation addressing this matter. As a result of the absence of such legislation, the condition of the witnesses is precarious. Numerous instances in which the judiciary constructively contributed to the protection of witnesses through the provision of diverse means and methods prompted a substantial amount of support for the establishment of Witness Protection Programmed in India.

Table 1.1: Comparison of reviews

Study	Focus	Main Findings
(Vanita, 2023)	Witness Protection in the Criminal Justice System of India	Witnesses are foundational to justice delivery, but witness protection legislation is lacking in India. - Judiciary's role emphasized in safeguarding witnesses. - Witness Protection Scheme, 2018, declared law, but challenges remain in its implementation.
(Samriti, 2022)	Witness Protection Scheme and Criminal Justice Administration in India	Witnesses play a pivotal role in the justice system but lack adequate protection. - Witness protection scheme introduced in 2018 but questioned for effectiveness. - Study highlights challenges in witness protection and calls for effective implementation
(Verma & Krishnakumar, 2021)	Analysis of Witness Protection Scheme, 2018	Witness Protection Scheme lacks provisions for online intimidation, funding, mental health, and vulnerable witnesses. - Calls for enhanced focus on witness protection
(Dhiman & Adyasha, 2021)	Role of Judiciary in protecting hostile witness	Witnesses crucial in administering justice, but antagonistic witnesses pose challenges. - Lack of protection laws erode societal confidence in justice system. - Study examines judiciary's function and challenges in witness protection
(Rahangdale, 2019)	Witness Protection: An Important Measure for The Effective Functioning of Criminal Justice Administration	Witnesses are crucial in the criminal justice system, but face threats and intimidation. - Absence of witness protection mechanism undermines credibility of witnesses. - Calls for comprehensive policy on witness protection
(Singh, 2016)	Analysis of witness protection in India	India lacks witness protection legislation, leading to precarious conditions for witnesses. - Instances of judiciary contributing to witness protection are noted. - Support for establishment of Witness Protection Programmes in India

3. Witness Protection Under Indian Legislations

In the criminal justice system, witnesses are indispensable because their testimony frequently determines the outcome of a case. In India, however, threats, coercion, and harassment against witnesses are common, especially when the perpetrator is affluent, powerful, or influential. This has resulted in an increasing number of antagonistic witnesses, which has impeded the pursuit of justice.

- **Code of Criminal Procedure, 1973:**

The judgement of criminal cases is regulated by a comprehensive protocol outlined in the Code of Criminal Procedure. (Cryer et al., 2019) The importance of witnesses in criminal proceedings has been duly recognized by modern legislation, specifically the Criminal Procedure Code. By virtue of Section 160 of the Cr.P.C., a law enforcement officer is empowered to request the presence of a witness. The reimbursement of reasonable travel expenses accrued by the individual for the purpose of travel shall be provided under this section. According to Section 284 of the Criminal Procedure Code, in situations where the court determines that a witness's presence is urgently necessary for examination during the trial, it has the authority to waive the witness's personal attendance and instead issue a commission to serve the interests of justice. The accused shall additionally be responsible for the costs associated with the issuance of the commission for examination. Section 309 of the Criminal Procedure Code mandates the prompt conduct of every inquiry and prosecution. Moreover, following the initiation of witness examination, it is mandatory that it persist daily, unless the court issues an adjournment for sufficient justifications. The criminal court is authorised by Section 312 of the Cr.P.C. to order the complainant or witness to reimburse any reasonable expenses incurred while attending court proceedings. The Government shall remit the payment in question.

- **The Unlawful activities (Prevention) Act,1967:**

To combat the unlawful and terrorist activities of specific individuals and organizations, Parliament passed the Unlawful Activities (Prevention) Act. This legislation contains two provisions pertaining to the witness category. A penalty for intimidating a witness is stipulated in Section 22 of the Act. According to the provision, an individual shall be sentenced to imprisonment for any offence such as threatening a witness with violence, unlawfully restraining, or confining the witness. Furthermore, protection for witnesses is stipulated in Section 44 of the Act. The court may, if it so elects, conduct the proceedings by camera in accordance with this provision. Witnesses are granted two forms of protection in accordance with this section: identity protection and confidentiality with respect to their address. If the witness's life is in danger, an application may be submitted under this section either by the witness himself, through his public prosecutor, or by the court through a sui moto action (Mahawar, 2020). In addition, imprisonment shall be imposed on the offender who violates the provisions of this section.

- **The Terrorist and Disruptive Activities (Prevention) Act,1987**

The direct enactment of the Terrorist and Disruptive Activities (Prevention) Act of 1987 was intended to combat terrorist activities in India. Regarding safeguarding witnesses, Section 16 of the Act stipulates. According to the provision, proceedings may be conducted on camera at the request of the designated court. Subsection (2) also permits the Designated Court, upon application by the witness, his prosecutor, or the court exercising suo moto cognizance, to maintain the confidentiality of the witness's address and take steps to safeguard the witness's identity. Furthermore, penalty shall be imposed on any individual who violates the stipulations of this.

- **Prevention of Terrorism Act, 2002**

Witness protection is an additional provision that can be found within the Prevention of Terrorism Act of 2002 (POTA, 2002). As specified in Section 3.7.1, an individual shall receive a prison sentence for threatening a witness with a violent act, unlawfully restraining or confining the witness, or committing any other unlawful act with the intent to threaten the witness. Furthermore, safeguards for the witness are stipulated in Section 30 of the Act. It states that the proceedings may be conducted on camera should the Special Court so choose. Additionally, in accordance with subsection (2), the Special Court has the authority to safeguard the witness's identity and maintain the confidentiality of their address in response to a request submitted by the witness, their attorney, or the court exercising sui moto cognizance. Additionally, any individual who violates the stipulations of this section shall be subject to legal repercussions.

- **The National Investigation Agency Act,2008**

To combat terrorist activity, the National Investigation Agency was established in 2008. The NIA Act additionally encompasses provisions pertaining to the protection of witnesses. The Special Court is authorized to conduct court proceedings under camera pursuant to Section 17 of the Act. In situations where the court determines that the witness's life or the life of the person in which the witness has an interest is in peril, the "protection of identity" and "secret address of the witness" may be granted to the witness under this section. (Pandey, 2022) The petition for protection under this section may be filed by the defendant, the prosecutor, or the court may exercise suo moto jurisdiction. An individual found in violation of this section shall be subject to a penitentiary sentence.

- **Delhi Witness Protection Scheme,2015**

The Delhi Witness Protection Scheme, established in 2015, is the first legislative action to furnish an exhaustive definition of the word "witness." As per the delineation of "Witness" in Section 2 (m) of the Scheme, a "witness" is an individual who either possesses the relevant information or has given informed consent to testify in a criminal proceeding concerning a criminal act, or who is the owner of a document concerning the subject matter. Section 3 of the Scheme classifies witnesses into three distinct categories, namely, in accordance with their perception of the hazard. (Banerjee, 2016) The procedure for applying for witness protection is outlined in Section 6 of the scheme. In determining whether to grant witness protection, the Competent Authority shall rely on the Threat Analysis Report (TAR) that law enforcement personnel have compiled. Section 7 of the Scheme outlines various

forms of protection that are time-limited and proportional to the severity of the hazard. Potential safeguards may consist of the following: prohibition of witness-accused interactions during trials; concealment of witness identity; close protection measures; routine patrols around the witness's residence; temporary relocation; conducting proceedings in camera; provision of financial aid to the witness from the Witness Protection Fund for relocating, subsisting, or embarking on a new vocation or profession; and temporary change of residence. Identity protection is provided to witnesses who are implicated in serious offences as stipulated in Section 8 of the Act. The competent authority shall receive a distinct application in adherence to the provisions of this section. The competent authority shall issue an order for the preservation of identity after the examination of the witness and his family members and in accordance with the TAR. This order shall remain in force during the trial or investigation.

▪ **Maharashtra Witness Protection and Security Act, 2017**

The Maharashtra Witness Protection and Security Act of 2017 ensures that both the witness and their relative are safeguarded throughout the administration of judgements for serious offences. A witness is an individual who has been threatened while testifying for serious offences, as defined in Section 2 (e) of the Act and is either the victim or one of his close relatives. protection of witnesses in cases involving severe offences is addressed in Section 6 of the Act. In accordance with the provisions of the Act, the Committee is authorized to grant protection to the witness upon request from the witness, his relative, or other authorities specified in the section. Section 7 of the Act pertains to the protocol for ensuring the witness's protection. The District Committee, which has the ultimate authority to grant or deny protection to a witness whose life is in danger during a criminal trial, is the highest authority. (Bickel, 2013) Before bestowing protection, the Committee is obligated to undertake a comprehensive inquiry into the extent to which the hazard is perceived. As determined by the committee, safeguards are provided throughout the investigative and trial processes in Sections 8 and 9 of the Act. As per the provisions d in Section 11, the investigating officer is obligated to maintain the confidentiality of the witness names and addresses until the case is concluded. Punishment for any breach of this provision is imprisonment, in accordance with Section 13.

3.1 Witness Protection Scheme 2018

A witness protection programme was instituted in 2018 in reaction to a Public Interest Litigation (PIL). In this instance, the bench of Supreme Court Justices A.K. Sikri and S. Abdul Nazeer acknowledged the need for such a scheme in consideration of the PIL. (Mahender Chawla & Ors. Vs. Union of India & Ors, 2018) The proposed plan is consistent with the Right to Life, an entitlement that ensures witnesses may provide testimony in a court of law devoid of apprehension, coercion, or menacing. Article 21 of the PIL further establishes this right.

The judgement places significant emphasis on the Scheme relating to Witness Protection, which establishes its enforceability throughout all tribunals within the territory of India, as well as in all states and union territories.

The paramount observation put forth by the justices of the Supreme Court in this momentous judgement is outlined as follows:

- At each criminal trial, there are two parties: the accused and the victim. During the argument between the accused and the victim, witnesses play a crucial role in facilitating a fair verdict and aiding the court in dispensing justice.
- Several Law Commission of India reports, including the 14th Law Commission Report, 154th Report, 172nd Report, and 174th Report, which discussed witness protection issues, underscored the necessity for a witness protection and protection scheme prior to the implementation of this scheme.
- The witness protection scheme ought to be expanded to encompass all severe offences, not solely those pertaining to terrorism and sexual offences.

The primary aim of the Witness Protection Scheme, 2018 is to safeguard criminal trials by preventing witnesses from being subjected to intimidation or persistent pressure from the accused. (Doak et al., 2021) Additionally, it seeks to inspire members of our society to come forward, either explicitly or implicitly, to provide the court with an accurate account of a specific offence. For instance, in road accident cases, witnesses often refrain from providing statements out of apprehension regarding potential victimization at the hands of law enforcement or other authorities. To address this concern, the 'Good Samaritan' law was implemented to ensure that neither the witness nor any individual assisting the victim would be subjected to harassment by any agency within our nation.

This scheme classifies "witnesses" into three distinct categories, including:

- **Category A:** Instances in which personal safety is at risk for family members or witnesses throughout the investigation, trial, or even afterward
- **Category B:** Specific instances in which the safety, reputation, or property of witnesses or their family members is endangered throughout the investigation or trial.
- **Category C:** Aspects of the investigation, trial, or post-trial life in which the witness, his family, reputation, or property is subject to intimidation or harassment constituting a moderate threat. (Abhyankar & Saha, 2021)

This programme includes a variety of protective measures, including in-camera trial proceedings, witness anonymity, and courtrooms that are conducive to the comfort of vulnerable witnesses throughout the proceedings. Furthermore, provisions are made for the allocation of funds to the Witness Protection Fund, in addition to other measures such as witness relocation prompted by the witness's life in danger. However, the primary inquiry pertains to the sufficiency and execution of the scheme, as the principal vulnerability discernible in this specific scheme is the witness protection granted for a mere three-month duration, thereby constraining the scheme to a short time frame. The second critical aspect pertains to the scheme, which has only established a category for witnesses rather than a category for offences per se. While safeguarding witnesses and maintaining the confidentiality of their identities are the primary aim of the scheme, it is unclear what criteria will be applied to individuals who violate this principle. Is there a sanction in place for individuals who breach the confidentiality of witness identities and fail to do so? Indeed, the relocation of a witness may be feasible under the terms of the plan, contingent on several variables including employment, family, and so forth. The scheme, which serves as a commendable endeavour and affords witnesses nationwide protection against their second victimization, still necessitates effective legislation pertaining to "witness protection." This entails the establishment of standardized criteria and concrete statutory provisions to ensure the protection of witnesses. As opposed to the witness protection scheme, which provides protection for a specified period, protection should be extended only while the threat persists; protection should be terminated when the witness no longer faces such a threat or harbours such apprehension.

3.2 Provisions of the witness protection scheme of 2018

On December 5, 2018, the WPS was granted sanction by the Supreme Court of India, exercising its jurisdiction as stipulated in Articles 141 and 142 of the Indian Constitution. This landmark decision was made in the case of Mahender Chawla and Others v. Union of India and Others. The protection of the witnesses involved in the purported rape of Asaram Bapu was ensured by means of a writ petition. The WPS was established to prevent fear and intimidation of witnesses from impeding their ability to testify in court and thereby criminal investigations, prosecutions, and convictions. Witness confidence in the criminal court system could potentially be bolstered by assuring them of their personal safety. In addition, several protocols are integrated into the strategy to safeguard the vulnerable witnesses in accordance with the declared aims. The first section provides definitions for the term "witness" and other terminology employed within the scheme. "Any individual who possesses information or documentation pertaining to any transgressions" is the definition of a witness in the plan (Nair, 2023).

Moreover, it demonstrates parallels with the criteria presented in the manual "Good Practises for the Protection of Witnesses in Criminal Proceedings Involving Organized Crime," which was published in February 2008 and is administered by the United Nations Office on Drugs and Crime. A witness is defined in the manual as "an individual who possesses material information that is crucial to the ongoing criminal or judicial proceedings." However, it is worth noting that the definition of a witness may vary across countries. The scheme categorizes witnesses into three groups in accordance with the perceived danger they face at the hands of their families. The following are classified as threats to life: Category A includes threats to life; Category B includes threats to safety, reputation, or property; and Category C includes harassment or intimidation.

A fund for the protection of state witnesses is also to be established under the terms of the plan. The fund would encompass various components, such as the financial allocation from the state government, donations and contributions, funds generated through corporate social responsibility (CSR) initiatives, and expenses mandated or incurred by the courts or tribunals. Witnesses who perceive themselves as being endangered or intimidated are

permitted to submit a formal request to the relevant authority. It is mandatory for each district to assess these petitions via a permanent committee that is presided over by the District and Sessions Judge. The committee's member secretaries are the heads of the district prosecution and police. The witness may submit any supporting materials and the application via the Member Secretary. The Member Secretary initiates the procurement of a Threat Analysis Report as soon as the application is submitted. It must be five days since the report's due date. The studies classify threat perception and provide suggestions for essential safety measures. Additionally, behind closed doors, the authority will conduct hearings on the application and speak with family members of the witness. With the uttermost discretion, the entire process is expected to be completed within ten days of the application being submitted. Prolonged protection may be required by the relevant authorities when the witness is in imminent danger or is considered a suspect. A provision within the plan requires supervision of the protection order's implementation. In addition, it specifies that a quarterly evaluation of the implementation will be conducted in accordance with the Witness Protection Cell's follow-up report.

The strategy establishes universally implemented safeguards to ensure the safety of witnesses and inspire them to testify candidly in court. The measures that are briefly discussed include physical protection provided by police officers, the installation of closed-circuit television (CCTV) systems near their residences, the timely and unnecessary recording of statements, in-camera trials, identity concealment and alteration, temporary relocation, financial aid, and the utilization of courtrooms designed for vulnerable witnesses. Although the Supreme Court of India ordered the Centre, all states, and Union Territories to implement the WPS by the end of 2019, several of these entities have yet to adhere to the directive. (Nanda, 2016) The system was implemented in a restricted number of states, including Odisha, Rajasthan, and Maharashtra. In 2015, several years before the Supreme Court's ruling, New Delhi executed the WPS. Additionally, the "Bihar Gawah Suraksha Yojana" (Bihar WPS), which allows for the issuance of codes to witnesses to conceal their identities, was authorized by the Bihar cabinet.

3.3 Law Commission Reports and Other Initiatives Leading to Witness Protection in India

The Law Commission of India has underscored the essential importance of establishing a comprehensive witness protection system. The following is a list of the law commissions and other pertinent reports that have examined the topic of witness protection. The mention of witness protection first appeared in the 14th Report published by the Indian Law Commission in 1958. The Law Commission incorporated a segment in its 154th Report that addressed the safeguards and provisions provided to witnesses. Witness protection against the accused was emphasized in the 172nd and 178th Reports. The challenges faced by witnesses during their attendance at court proceedings were acknowledged by the National Police Commission (1980) in its fourth report. The significance of witness protection was further underscored by the Malimath Committee on Criminal Justice System Reforms (2003). Concerning witness identity protection and witness protection programmes, 2006, the 198th Report of the Law Commission of India addresses the subject.

3.3.1 Recommendations made by the Malimath committee

To surmount the challenges encountered by the witness, the Committee has put forth the subsequent suggestions:

- A witness who appears in support of the court should be accorded respect and decorum. He should be allocated an official to aid. A designated area should be furnished with appropriate amenities, including seating, resting, toilets, and potable water, to ensure the comfort and convenience of the witnesses within the court premises.
- It is necessary to reassess the travel and honorarium rates for the witness to ensure that they are suitably remunerated for the expenses incurred. If the case is adjourned without the witness being questioned, suitable measures should be taken to guarantee prompt payment of any allowances owed to the witness on the same day. T.A. and D.A. should be delivered to the witness on the same day.
- Legislation should be implemented to afford witnesses and their family members protection comparable to that which is observed in the United States and other nations.
- Courts ought to arrange the cases in a case listing system that minimises the need for witnesses to appear multiple times to provide testimony. A daily schedule should be adhered to during the trial, and postponements should be avoided whenever possible. It is necessary to hold the judge responsible for

any oversight in this regard. The High Court should supervise and provide training to assure proper compliance.

- Expert testimony pursuant to Sections 291, 292 and 293 of the Code may be obtained through affidavits to the greatest extent feasible.
- The inclusion of DNA specialists in Subsection 4 of Section 293 of the Code is recommended.
- The witness ought to be furnished with a stool to facilitate his testimony in court.
- The judge ought to exercise vigilance and exercise control over cross-examination to shield the witness from any form of harassment, irritation, or humiliation. This should be assured by the High Courts through training and appropriate oversight (Chakraborty & Dube, 2019).

3.3.2 The 198th report of the law commission

The issue of witness protection is discussed in the 198th Report of the Law Commission of India, titled "Witness Identity Protection and Witness Protection Programmes, 2006." Witness protection programmes are discussed in the second section of this report, which is devoted to witness identity protection. A Witness Identity Protection Bill was an additional piece of supplementary legislation. While the Commission has not yet published a bill draft pertaining to Witness Protection Programmes, it has provided recommendations on the matter. The Commission suggested that the expenses associated with "Witness Protection Programmes" be divided in half between the federal and state administrations. When the situation calls for it, in addition to altering the witness's identification, alternative witness protection measures are also made available (Wells et al., 2020).

In addition, the commission put forth specific measures and revisions to criminal legislation aimed at fortifying witness protection initiatives. Additionally, the Law Commission had advised that witnesses be safeguarded throughout the entire investigative process, trial, and post-trial. However, like previous reports and recommendations, the findings of this one have received little attention, and witness harassment and intimidation persist.

3.4 Judicial pronouncements pertaining to witness protection

Several landmark judicial decisions have been rendered by the Supreme Court of India, emphasising the critical nature of witness protection:

- **Swaran Singh v. The State of Punjab:** The significance of the witness's challenges during the trial was emphasized by the Supreme Court in this landmark decision. In the administration of justice, the witness is an indispensable component. Witnesses, nevertheless, endure significant hardships from the commencement of an investigation until the verdict is rendered, and even beyond. They forfeit their daily salary and squander time and money travelling a considerable distance to attend the court proceedings. As a result, however, they receive nothing but harassment and mistreatment. Aside from receiving favorable treatment in court, they are not even provided with a sufficient travel allowance. Because of providing testimony against them, the accused occasionally threatens and harasses them in addition to subjecting them to unwarranted adjournments. Hence, it is imperative that the witness's rights be safeguarded and that they be treated appropriately (Shirali, 2020).
- **Neelam Katara v. Union of India:** In this landmark ruling, the Delhi High Court reaffirmed the criticality of witness protection. In rendering its decision, the High Court consulted several reports published by law commissions and witness protection laws in operation across different nations. It also issued guidelines until the Delhi government enacted suitable legislation in the interim. Police officials are required by the guidelines to ensure that the witness is adequately protected in accordance with the nature of the threat.
- **State of Maharashtra vs Praful Desai:** The Supreme Court acknowledged the appellant's argument concerning the utilization of videoconferencing for the purpose of documenting witness testimony in this ruling. Citing section 3 of the Indian Evidence Act of 1872, the Supreme Court defined "evidence" to encompass electronic evidence in its opinion. As a result, under critical conditions, videoconferencing can be employed to record the testimony of a witness.

- **Zahaira Habibulla H. Sheikh & Another v. State of Gujarat and ors. (The Best Bakery Case):** This case is also referred to as The Best Bakery Case. The Supreme Court of India recognized in this landmark ruling that witnesses have a fundamental right to a fair prosecution, as enshrined in Article 21 of the Indian Constitution. On the contrary, instances abound in which witnesses are coerced and harassed into providing fraudulent testimony throughout the trial. Consequently, it is incumbent upon the state to ensure that the witness is adequately protected and shielded from these adversities.
- **National Human Rights Commission v/s State of Gujarat and Ors.:** The aspect of a fair trial is deliberated upon by the Honourable Supreme Court in this seminal judgement. The proposition was made that the trial's fundamental goal would be rendered futile if the witness was unable to provide an unrestricted deposition in court. Consequently, it is imperative that the court implements a mechanism to guarantee that the witness is presented with an environment conducive to anxiety-free testimony.
- **The State of Maharashtra vs. Bandu Daulat:** Concerning the acquittal decision of the High Court in a rape prosecution, an appeal was filed with the Supreme Court in this case. In addition to affirming the conviction order, the Supreme Court advised the state government to establish specialized institutions for the examination of vulnerable witnesses to foster an environment in which the victim or witness would feel at ease providing testimony.
- **Mahender Chawla v. Union of India:** This is a landmark ruling that has established a comprehensive framework for safeguarding witnesses in India via multiple channels. Although specific legislation for witness protection was established by Acts such as TADA, POTA, and UAPA, only a limited number of Indian states, including the National Capital Territory of Delhi and Maharashtra, have enacted legislation tailored to their respective territories (Khamari & Mishra, 2021). However, there was a lack of central legislation pertaining to the protection of witnesses. The repeated appeals for a comprehensive policy on witness protection from the Law Commission of India and the Honourable Supreme Court were disregarded by the Union government. As a result, the esteemed Supreme Court grants sanction to the Witness Protection Scheme, 2018, in this pivotal decision. According to Article 141 and 142 of the Constitution of India, this scheme shall be regarded as "law" until the legislative entity known as Parliament enacts appropriate legislation pertaining to this matter.

The Scheme was sanctioned in the notorious case involving self-described Godman Asaram, who was accused of committing the crime of rape. Numerous witnesses were threatened, harassed, and even murdered throughout the investigation and trial in this instance. The Supreme Court, when the matter was presented, reaffirmed the necessity of witness protection and approved the Scheme that the Ministry of Home Affairs and NLSA had developed. The goal of the Scheme is to ensure that the witness is adequately protected both during and after the trial proceedings. The witness is safeguarded under the Scheme through the classification of threats into three distinct categories. Witness protections, including identity protection, relocation assistance, identity changes, and financial support, shall be extended to the witness in accordance with the scheme. The entire cost of operating the programme shall be covered by a state-established fund known as the State Witness Protection Fund. The Supreme Court has issued an order mandating the Union of India, state administrations, and union territories to strictly adhere to the Witness Protection Scheme, 2018 in its entirety. It is required that complexes be established in each district of the Union Territory and the States to depose vulnerable witnesses. Strict adherence to all Scheme regulations is mandatory.

3.5 Protection of Witnesses Under Special Statutes

In India, ensuring justice and preserving the integrity of the legal system are dependent on the protection of witnesses provided by special statutes. The safeguarding of witnesses in accordance with special statutes encompasses several crucial aspects.

3.5.1 The Whistle Blowers Protection Act, 2011

Section 12 contains the provision for witness protection, which states that the Competent Authority shall direct government authorities, in response to an application received or information gathered, to take measures to safeguard the complainant. Additionally, it included a provision concerning the safeguarding of the complainant's identity and any documents submitted by him; such documents must be kept confidential, unless otherwise

directed by the appropriate authority. An individual who discloses the identity of a complainant shall be subject to the penalties specified in Section.

3.5.2 The National Investigation Agency Act, 2008

Section 17 addresses witness protection:

- The Special Court may, for reasons documented in writing, observe proceedings in camera pursuant to this Act, notwithstanding anything in the Code.
- The Special Court has the authority to conceal the identity and address of a witness for reasons to be recorded in writing. If the court is convinced that the witness's life is in imminent danger, it may do so in response to an application made by the witness in a proceeding before it, the Public Prosecutor concerning the witness, or on its own initiative.
- The measures that a Special Court may undertake pursuant to that subsection may include the following, without compromising the generality of its provisions:
 - the proceedings to be conducted at a location determined by the Special court.
 - the prohibition of including the names and addresses of the witnesses in any publicly accessible records of the case, including orders, judgements, or records pertaining to the case itself.
 - any directives issued to ensure the confidentiality of the witnesses' identities and addresses.
 - A determination that it is in the public interest to prohibit the publication of any or all proceedings pending before the court in question.

An individual found in violation of any direction or decision issued pursuant to subsection (3) shall be subject to a fine of up to one thousand rupees and imprisonment for a maximum period of three years.

3.5.3 Juvenile Justice (Care and Protection of Children) Act, 2000

The disclosure of a juvenile involved in proceedings under the Juvenile Justice (Care and Protection of Children) Act, 2000, including their name or any other relevant information, is strictly prohibited under Section 21 of the legislation. The provision is detailed below:

- In any newspaper, magazine, news sheet, or visual media report pertaining to an investigation concerning the subjects, the identity of a child in need of care and protection under this Act, including but not limited to their name, address, school, or any other pertinent information, shall not be divulged. In addition, photographs of the juvenile or child shall not be published, except in cases where the investigating authority, for reasons documented in writing, may authorize such publication.
- An individual found guilty of violating the stipulations contained in subsection (1) shall face a potential fine of twenty-five thousand rupees.

3.5.4 The Unlawful Activities (Prevention) Amendment Act, 2004

Section 44 addresses witness protection:

- The proceedings under this Act may be conducted on camera if the special Court so chooses, for reasons to be memorialized in writing, notwithstanding anything in the Code.
- If a Special Court, acting on its own initiative or in response to an application presented by a witness, the Public Prosecutor, or the witness themselves, determines that the witness's life is in imminent danger, it may conceal the witness's identity and address for reasons to be documented in writing.
- Specifically, and without compromising the overall applicability of the stipulations in subsection (2), the actions that a Special Court might undertake pursuant to that subsection may consist of the following:
 - a. the location of the proceedings being determined by the Special Court

- b. the practice of refraining from disclosing the identities and addresses of the witnesses in court orders, judgements, or publicly accessible case records.
 - c. the issuance of directives to ensure the confidentiality of the witnesses' identities and addresses
 - d. A finding that it is in the public's best interest to prohibit the publication of any or all proceedings pending before the court in any manner.
- An individual found in violation of any direction or decision issued pursuant to subsection (3) shall be subject to a fine of one thousand rupees and imprisonment for a period not to exceed one year.

Conclusion

Witnesses must have the freedom to provide testimony in court or participate in investigations without apprehension of intimidation or threat, to safeguard the rule of law. An increasing number of nations are implementing legislative or regulatory measures to safeguard the lives of witnesses whose assistance to law enforcement or testimony in court would endanger the lives of the witness or the witness's family. In India, witness protection is regulated by the Witness Protection Scheme of 2018. The recommendations presented in the 198th Law Commission Report and those put forth by the Mali Math Committee are both included in the 2018 Witness Protection Scheme to ensure the integrity of the witness. The criminal justice system lacks the authority to require a witness to be independent and impartial in the absence of adequate support. The 2018 Witness Protection Scheme did not adequately assist witnesses. Conversely, the court conviction rate experienced a decline from 50% in 2018 to 50.4 percent in 2019. In 2020, court convictions reached a record high of 59.2%, the greatest level in a span of five years. Consequently, it is reasonable to infer that the Witness Protection Programme played a role in the augmented rate of convictions. The Witness Protection Scheme has contributed significantly to India's criminal justice reforms despite its numerous faults. Nonetheless, it appears that the issue has not been entirely resolved by the strategy. In addition to a deficient Witness Protection Programme, India's legislature and executive are negligent, rendering the Witness Protection Programme a judicial one-man show. In adversarial systems, the prosecution must prove beyond a reasonable doubt that the defendant is culpable. In this specific situation, witnesses play a critical role by shedding light on the facts and assisting the judge in establishing the truth. For the sake of upholding justice, it is essential that witnesses be permitted to offer impartial and independent testimony. To protect the eyes and hearing of the law, the system must therefore protect witnesses. The inclusion of efficient witness protection programmes within a comprehensive criminal justice strategy is crucial for safeguarding individuals who are indispensable in the dismantling of organized crime syndicates.

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