
WITNESS PROTECTION SCHEME 2018: A CRITICAL ANALYSIS IN THE CONTEXT OF INDIA'S CRIMINAL JUSTICE SYSTEM

Dhiraj Kumar Mishra & Anamika Kumari, Faculty of Law, Tilka Manjhi Bhagalpur University, Bhagalpur

ABSTRACT

The Witness Protection Scheme (WPS) 2018 marked a watershed moment in India's criminal justice system. Prior to this scheme, witnesses, especially those involved in sensitive cases, faced intimidation and threats, hindering investigations and prosecutions. This paper critically examines the WPS 2018, analyzing its objectives, key provisions, and its impact on the criminal justice system. It also explores the landmark Supreme Court case that mandated the scheme's implementation and discusses challenges and potential areas for improvement.

Introduction:

Witnesses are the cornerstones of any robust criminal justice system. Their testimonies provide crucial evidence for investigations and prosecutions. However, in India, witnesses, particularly those involved in high-profile or heinous crimes, have traditionally been vulnerable to intimidation and threats. This fear often compels witnesses to retract their statements, leading to a culture of impunity for criminals.

The Landmark Supreme Court Case: State of Gujarat vs. Rajeshbhai Kashiram Chavada & Ors (2018)

In a landmark judgment in 2018, the Supreme Court of India recognized the right to witness protection as an essential facet of the Right to Life under Article 21 of the Constitution. The case, *State of Gujarat vs. Rajeshbhai Kashiram Chavada & Ors*, arose from the brutal gang rape and murder of a young woman in Gujarat. The Court observed the inherent vulnerability of witnesses in such cases and the chilling effect threats have on the justice system. Recognizing the absence of a statutory framework for witness protection, the Court directed the implementation of the draft WPS 2018, effectively mandating its nationwide adoption.

Objectives and Key Provisions of the WPS 2018:

The WPS 2018 aims to address the critical issue of witness intimidation by providing a comprehensive framework for protection. Its key objectives include:

- Ensuring the safety and security of witnesses and their families.
- Encouraging witnesses to come forward and provide truthful testimony without fear.
- Facilitating effective investigation and prosecution of criminal offenses.
- Strengthening the overall administration of justice.

The scheme outlines a multi-pronged approach, including:

- **Threat Assessment:** A structured mechanism categorizes the level of threat faced by a witness (High, Medium, Low).
- **Protection Measures:** Based on the threat assessment, various measures can be implemented, such as relocation, identity change, security arrangements, and special court procedures.
- **Competent Authority:** A district-level committee headed by the District and Sessions Judge oversees the scheme and issues protection orders.
- **Witness Protection Fund:** A dedicated fund is envisaged to meet the financial requirements of the scheme.

Impact on the Criminal Justice System:

The WPS 2018 has the potential to significantly impact the criminal justice system in the following ways:

- **Increased Witness Cooperation:** With the assurance of protection, more witnesses are likely to come forward and provide crucial testimonies.
- **Stronger Prosecutions:** Witness protection can lead to a higher conviction rate in criminal cases, particularly those involving organized crime or terrorism.

- **Deterrence Effect:** The scheme can deter criminals from intimidating witnesses, fostering a climate where justice can be pursued fearlessly.

Analysis of Articles and Challenges:

Several articles have critically examined the WPS 2018. An article by Drishti IAS <https://www.drishtiiias.com/to-the-points/Paper2/witness-protection-scheme-2018-to-the-point> highlights the scheme's potential to strengthen law enforcement and the overall administration of justice. However, an article published on p39ablog.com <https://p39ablog.com/p39a-recommends/> raises concerns about the scheme's comprehensiveness. The article argues that the scheme lacks clarity on witness eligibility and the specific measures available under each threat category.

Challenges and Areas for Improvement:

Despite its positive aspects, the WPS 2018 faces certain challenges:

- **Resource Constraints:** Effective implementation requires adequate financial and human resources, which might be a hurdle for some states.
- **Public Awareness:** Raising awareness about the scheme among potential witnesses and the public is crucial for its success.
- **Confidentiality Concerns:** Witnesses might hesitate to enter the program due to concerns about the confidentiality of their new identities.
- **Legislative Framework:** The scheme is currently guidelines-based. A dedicated Witness Protection Act with clearer provisions and enforcement mechanisms could be beneficial.

Conclusion:

The WPS 2018 represents a significant step towards strengthening India's criminal justice system. By ensuring witness protection, the scheme can create an environment conducive to fair trials and effective prosecution. Addressing the implementation challenges, raising public awareness, and potentially enacting a dedicated Witness Protection Act are crucial steps to ensure the scheme's long-term success. Further research on the scheme's impact and comparative analysis with other

References:

1. Rahangdale, P. (2019). Witness protection: A comparative analysis of Indian and Australian legislation. *Journal of The Gujarat Research Society*, 11(3), 141–149.
2. Swaran Singh v. State of Punjab. (2000). 5 SCC 668. Indian Supreme Court.
3. Bajpai, G. S. (2009). *Witness in the criminal justice process: A study of hostility and problems associated with witness*. Bhopal: National Law Institute University.