
WITNESS PROTECTION IN INDIA: MYTH OR REALITY?

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ABSTRACT

Witnesses are an essential part of the criminal justice system because they help courts discover the truth. However, in India, witnesses often face threats, intimidation, and social pressure, especially in serious criminal cases. Sometimes they become so afraid that they change what they say, which affects the delivery of justice

To address this problem, the Supreme Court approved the Witness Protection Scheme, 2018, which aims to provide security and support to vulnerable witnesses. This article examines the legal framework relating to witness protection, the role played by the judiciary and the difficulties in the implementing the measures. It argues that even though India has taken meaningful steps for safeguarding the witnesses, significant gaps continue to exist between legal provisions and their actual implementation.

Introduction

The success of any criminal justice system depends on witnesses who see something happening and are willing to tell the truth in court which helps judges figure out if someone is guilty or not guilty. Without witness testimony, many criminal cases may fail

In India people who witness a crime often get harassed by the person who did the crime or their associates. Sometimes especially when important people are involved witnesses get scared. Do not want to tell the truth because they are afraid, for their own safety and the safety of their families. This makes it harder for the prosecution to prove their case. It also makes people lose trust in the justice system.

For a long time, India did not have a system to protect witnesses. The Law Commission of India repeatedly highlighted this issue in its 14th Report, 154th Report and 178th Report. Also, the judiciary emphasized the need for witness protection. These efforts eventually led to the introduction of the Witness Protection Scheme, 2018.

This article is going to look at whether protecting witnesses in India's actually working or if it is still just an idea.

Legal Framework for Witness Protection in India

The Constitution of India does not directly mention about protecting witnesses, several Constitutional provisions support this idea.

Article 21¹ guarantees the right to life and personal liberty which includes the right to live with dignity and security. Witnesses who assist the administration of justice are entitled to protection under this provision.

Article 14² guarantees equality before law, while Article 39A directs the State to ensure equal access to justice. These provisions together show that witnesses should be protected when they are part of cases.

A major development occurred when the Supreme Court approved the Witness Protection

¹ INDIA CONST. art 21.

² INDIA CONST. art 14.

Scheme, 2018 in *Mahender Chawla v. Union of India*³. The Court directed that the Scheme would operate throughout India until Parliament enacted a separate law on the subject.

The Scheme classifies witnesses into three categories:

- i. Category A: Threat to the life of the witness or family members.
- ii. Category B: Threat to safety, reputation, or property.
- iii. Category C: Moderate threats and need some protection.

The Scheme provides various protective measures, including police protection, concealment of identity, relocation, installation of security devices, and protection of witness information. It also provides for Witness Protection Funds to support these measures.

Thus, the Witness Protection Scheme, 2018 represents the first structured attempt to protect witnesses in India.

Judicial Interpretation

1) Mahender Chawla v. Union of India (2018)⁴ -

This case is considered the foundation of witness protection law in India. The petitioners argued that witnesses in cases often get serious threats and there is no mechanism to protect them.

The Supreme Court approved the Witness Protection Scheme, 2018 and held that it would have the force of law under Articles 141 and 142 of the Constitution until suitable legislation was enacted. The Court observed that a fair trial is impossible if witnesses are afraid to testify.

The judgment recognized witness protection as an important aspect of Article 21 and fair trial rights.

2) Zahira Habibullah Sheikh v. State of Gujarat (2004)⁵

This case started because of the Best Bakery incident during the Gujarat riots. Some witnesses

³ *Mahender Chawla v. Union of India*, (2019) 14 SCC 615.

⁴ *Mahender Chawla v. Union of India*, (2019) 14 SCC 615.

⁵ *Zahira Habibullah Sheikh v. State of Gujarat*, (2004) 4 SCC 158.

changed what they said during the trial because they were scared and people were intimidating them.

The Supreme Court criticized the failure of the justice system to protect witnesses and emphasized that justice cannot be achieved when witnesses are forced to remain silent. The Court highlighted the need for a secure environment where witnesses can testify freely.

These cases show that the courts have consistently said that witness protection is important. Witness protection is a deal, for the judiciary.

Critical Analysis

The Witness Protection Scheme, 2018 is an important step but many practical problems still effect on its effectiveness. It primarily includes following-

- 1) India does not have a law made by parliament to protect witnesses. The current system is based on a plan approved by the Supreme Court. A complete law would make it clearer and more accountable.
- 2) Implementing the scheme differs from state to state. How well protection works often depends on resources and how well the administration works.
- 3) Many witnesses do not know about the protections they can get. If people do not know about the scheme it does not help much.
- 4) Criminal trials in India often take years to finish. Protecting people for a time during the trial can be hard and costly.

If we compare Indias system with the United States we see that the US has detailed laws, special agencies and good relocation plans, for witness protection. India has made progress. Its system is still not as developed.

Recent Developments

Since the Witness Protection Scheme started courts have really focused increasingly emphasized on keeping witnesses safe. Many High Courts and trial courts have used the Scheme when people ask for protection.

The judiciary has also encouraged the use of technology, including video conferencing and vulnerable witness deposition centres. These tools help witnesses not have to face the people they are testifying against.

In recent years, courts dealing with cases involving public officials and influential individuals have stressed the need for proactive witness protection measures. Public discussions on criminal justice reform have also highlighted the importance of strengthening witness protection mechanisms.

With all these experts and practitioners still emphasizes on witness protection statute enacted by the Parliament. Such legislation would provide greater uniformity and strengthen enforcement across the country.

Suggestions and Way Forward

Several things can be done to improve witness protection in India-

- 1) The first thing that can be done to improve witness protection in India is that the Parliament should make a law for witness protection in India.
- 2) We need to give sufficient funds for witness protection in India.
- 3) We need to teach the police officers and the prosecutors and the lawyers and the witnesses about witness protection in India. We need to tell them what help is available to witnesses in India.
- 4) We should use technology often for witness protection in India. We can use video calls and secret computer files and safe ways to talk to each other to reduce the risks for witnesses in India.
- 5) Fifth, special attention should be given to vulnerable witnesses such as women, children, and victims of organized crime.
- 6) Also, we need to finish the criminal trials involving threatened witnesses should be disposed of more quickly through fast-track procedures wherever possible

If we do these things then people will trust the justice system in India more witnesses in India

will be willing to help.

Conclusion

Witness protection is really important for a criminal justice system. If witnesses do not cooperate it is hard for courts to figure out what really happened. This can lead to people getting away with crimes they committed which's not fair.

India has made some progress with the Witness Protection Scheme that started in 2018. Just having laws is not enough. We need to make sure these laws are actually working and that means we need money people need to know about the laws and the government needs to support them.

So, we cannot say that witness protection in India is a myth because we do have a system in place now. At the same time, we cannot say it is working perfectly because there are still a lot of problems that make it hard for witnesses to feel safe. We need to make sure that every witness feels safe and that is what will make witness protection a reality in India and that is what will make the Witness Protection Scheme work.