

WITNESS PROTECTION IN INDIA

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ABSTRACT

In judicial proceedings, witnesses are crucial. Comparatively speaking to other topics like rape, domestic abuse, etc., witness protection is not as often discussed in India, despite the fact that it is unfair and wrong. Due to the knowledge that one witness can tip the scales in either party's favor, witnesses are frequently threatened with emotional blackmail or offered bribes to change their testimony or remain silent. In these situations, it frequently happens that witnesses who are minors or have special needs fall victim. Extraordinary measures are needed to ensure the witness's safety in complex cases where a witness's cooperation is essential to the successful prosecution of a powerful criminal organization, such as anonymity and relocation of the witness under a new identity in a new, undisclosed place of residence. At the national level, there has been currently no comprehensive law or plan in place to safeguard witnesses before the advent of the "Witness Protection System, 2018" which had been developed with this eventuality in mind. The need and background for more such legislations has been analyzed here.

Keywords: Vulnerable witness, fair trial, evidence, loopholes, safeguard

Introduction

According to British jurist Jeremy Bentham, witnesses serve as the court's eyes and ears. Witnesses become hostile in instances involving powerful individuals because of threats to their lives and possessions. On defining a fair trial, the court stated in *Zahira Shiekh and others v.*

*State of Gujarat*¹¹⁵ that it would also not be a fair trial if the witnesses were threatened or coerced into providing false testimony. So, it is crucial to shield the witness from any threats and pressure.

A witness is a person who observes a crime taking place and has the capacity to testify about it in court if necessary. A witness is described as a person who is competent enough to comprehend the questions posed by the court under Section 118 of the Indian Evidence Act of 1872. This provision states that anyone can testify unless they are unable to comprehend and respond to the questions that are posed to them.

Some requirements for the protection of vulnerable witnesses were included in the UK's **Juvenile Justice and Criminal Evidence Act of 1999**¹¹⁶. Some people, particularly those under the age of 18, who face extra challenges such as mental illnesses, physical disabilities, or difficulties coping owing to IQ deficits, are unable to testify or provide evidence to the court. These individuals are known as susceptible witnesses.

It is crucial to prevent threats or intimidation of witnesses from tainting the investigation, prosecution, or trial of criminal offenses in a society where the Rule of Law is upheld. Witness protection was mentioned in the **Law Commission's 14th Report in 1958**¹¹⁷. The same topic was covered in the **National Police**

¹¹⁵ *Zahira Shiekh and others v. State of Gujarat*, 2004 (4) SCC 158 SC

¹¹⁶ <https://www.legislation.gov.uk/ukpga/1999/23/contents>

¹¹⁷ <https://lawcommissionofindia.nic.in/reports/>

Commission's Fourth Report¹¹⁸ from 1980. The Law Commission addressed the predicament of the witnesses in its 154th Report (1996). Inconvenience, a lack of facilities, and a threat from the accused against the witnesses were all detailed in the report. The 172nd and 178th reports addressed the same subject and suggested that witnesses should always be shielded from the accused's rage. The Honorable Supreme Court has also emphasized the significance of providing witnesses with safety on numerous occasions.

Only inside the confines of his or any neighboring station can a witness be summoned to attend for an investigation. It was decided in the case of **Krishan Bans Bhadur v. State of Himachal Pradesh**¹¹⁹, (H.P.), that a police officer conducting an investigation has the authority to subpoena a witness under **Section 160 of the Cr.P.C**¹²⁰. Only if the witness is inside the boundaries of his own police station or inside the boundaries of an adjacent police station. A witness who is a male under the age of fifteen or a woman of any age may not be requested to appear anywhere other than their place of residence. Under section 160 CrPC recorded witness's statement is not required to sign it. A person cannot be forced to make a remark that will be used against him. If contacted at the witness's request or summoned by the court during a trial or other action, the police officer is also required to compensate the witness in accordance with the rules.

Any witness may make a complaint with the police or the court if they feel threatened into giving false testimony or withdrawing their case against the accused. According to **Section 195A of the Indian Penal Code**¹²¹, anyone who threatens another with harm to their person, reputation, property, or the person or reputation of anyone in whose person or reputation they

have an interest will be punished. This threat must be made with the intention of getting the other person to give false testimony.

Need for witness protection in India

Witness protection schemes are important in a country like India for several reasons. First, India has a large population and a diverse society, which can make it difficult for witnesses to come forward and testify without fear of retribution. Witnesses may be vulnerable to threats, intimidation, or violence, especially in cases involving organized crime, terrorism, or political corruption. The Witness Protection Program provides a safe and secure environment for witnesses to testify and protects them from harm. India's diverse population can have a significant impact on the safety of witnesses in trials. India is a vast country with a rich cultural and linguistic diversity, and this diversity can pose challenges to the safety and security of witnesses. In many cases, witnesses may belong to a different community or region than the accused, and this can make them vulnerable to intimidation or violence.

Second, India's judicial system is often overburdened, and cases can take a long time to resolve. Witnesses may need to testify multiple times or over an extended period, which can increase their exposure to risk. Witness protection schemes can ensure that witnesses are available to testify when needed, without fear of harm or intimidation. India's diverse population can have a significant impact on the safety of witnesses in trials. India is a vast country with a rich cultural and linguistic diversity, and this diversity can pose challenges to the safety and security of witnesses. In many cases, witnesses may belong to a different community or region than the accused, and this can make them vulnerable to intimidation or violence.

In some instances, witnesses may be reluctant to testify due to social or cultural pressures. They may fear that coming forward will result in

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<https://police.py.gov.in/Police%20Commission%20reports/4th%20Police%20Commission%20report.pdf>

¹¹⁹ *Krishan Bans Bhadur v. State of Himachal Pradesh*, 1975 Cri L.J. 620

¹²⁰ The Code of Criminal Procedure, 1973, §(160)

¹²¹ Indian Penal Code, 1860, §(195 A)

ostracism or even violence from their own community. Additionally, some witnesses may not speak the same language as the court or the accused, which can make it challenging to communicate effectively and can create a language barrier that can be exploited by those seeking to intimidate them.

Third, India has a history of witness intimidation and violence. Witnesses in high-profile cases have been threatened or attacked, and some have even been killed. Witness protection schemes can help to prevent such incidents from happening and ensure that witnesses feel safe and secure.

The Witness Protection Program is an important component of the right to a fair trial. Witnesses play a crucial role in the judicial system by providing evidence that can help determine the guilt or innocence of an accused person. However, witnesses can also be vulnerable to intimidation, harassment, or even physical harm, which can prevent them from testifying truthfully or at all. The Witness Protection Program aims to protect these witnesses from harm by providing them with a new identity, a safe place to live, and other necessary resources to enable them to testify without fear of reprisal. This program ensures that the right to a fair trial is upheld by allowing witnesses to give honest testimony and preventing the accused from intimidating or tampering with them. Without the protection provided by the program, witnesses may be too afraid to testify, which can result in a miscarriage of justice. Therefore, witness protection is a crucial element of the right to a free trial, as it helps to ensure that justice is served fairly and impartially.

Article 21 of the Indian Constitution guarantees the right to a fair trial. This has grown to be a crucial component of the Indian democratic system. It is acknowledged as a fundamental right as well. Witnesses merit a fair trial because they have the power to completely alter the outcome of a case. The Supreme Court ruled in **Zahira Habibullah Sheikh & Anr. v. State of**

Gujarat & Ors. (2006)¹²² that a witness should not be coerced or blackmailed into providing false testimony. If this were to occur, the trial would not be regarded as fair. This idea was primarily advanced for the defendants in a case. So, the accused should be able to question any number of witnesses in a trial in order to ensure fairness. Only one witness out of 56 was cross-examined in the matter of Mohd. Hussain Julfikar Ali v. the State (Govt. of NCT) Delhi, (2012). As a result, the Court upheld the appellant's conviction and ruled in his favor. Article 21 of the Indian Constitution guarantees the right to a fair trial. This has grown to be a crucial component of the Indian democratic system. It is acknowledged as a fundamental right as well. Witnesses merit a fair trial because they have the power to completely alter the outcome of a case. The Supreme Court ruled in **Zahira Habibullah Sheikh & Anr. v. State of Gujarat & Ors. (2006)** that a witness should not be coerced or blackmailed into providing false testimony. In that case, the trial would not be taken into account. His philosophy was primarily presented in support of the accused in a case. So, the accused should be able to question any number of witnesses in a trial in order to ensure fairness. Only one witness out of 56 was cross-examined in the matter of **Mohd. Hussain Julfikar Ali v. the State (Govt. of NCT) Delhi**,¹²³ (2012). As a result, the Court upheld the appellant's conviction and ruled in his favor.

Overall, witness protection schemes are essential in India to uphold the rule of law and ensure that justice is served fairly and impartially. By providing a safe and secure environment for witnesses to testify, these programs help to strengthen India's legal system and protect the rights of both witnesses and accused persons

¹²² Supra note 2

¹²³ Mohd. Hussain Julfikar Ali v. the State (Govt. of NCT) Delhi, CRIMINAL APPEAL NO. 1091 OF 2006

Legislations governing witness protection in India

A. WITNESS PROTECTION SCHEME-

The Witness Protection Scheme was officially launched in India in 2018, and it is based on the principles set out in the United Nations' Model Law on the Protection of Witnesses and Victims. Under this program, witnesses who are at risk of harm or intimidation may be provided with a range of protective measures, including relocation to a safe location, the provision of new identities, and round-the-clock security. The Witness Protection Scheme is primarily aimed at witnesses in cases involving organized crime, terrorism, human trafficking, and other serious offenses. Witnesses who are eligible for protection under the program include not only those who have already testified but also those who are expected to testify in the future. The implementation of the Witness Protection Scheme is the responsibility of the central and state governments in India. Each state has its own witness protection unit, which is responsible for assessing the risk to witnesses and determining the appropriate level of protection. The scheme is administered by the **National Legal Services Authority (NALSA)** in collaboration with state legal services authorities and the police.

This program was started by the central government to protect witnesses who might be threatened with giving false testimony. In ***Mahender Chawla v. Union of India Writ Petition***¹²⁴, the Supreme Court upheld this. Its key characteristics are:

In accordance with this plan, a request for a protection order can be made in the appropriate format before the District Court where the crime was committed. As soon as a request is made, the ACP or DSP in charge of the relevant Police Sub-Division is contacted for a **Threat Analysis Report**.

- The Court may provide temporary protection orders for the witness or his family while the application is pending depending on the urgency of the situation.
- After receiving the order, the Threat Analysis Report must be quickly developed and submitted within five working days.
- The Threat Analysis Report will classify perceived threats and offer protective measures that could be taken to adequately protect the witness or his family.
- The court will hold all sessions on witness protection applications behind closed doors and in strict confidence.
- Any offender may submit an application for identity protection in the required format to the court at any time during an investigation or trial.
- In appropriate situations, the Court may decide to provide the witness a new identity or order their relocation after receiving a request from them for either action. This decision will be based on the Threat Analysis Report.
- The Competent Authority may decide to relocate the witness in appropriate circumstances when there is a request from the witness and based on the Threat Analysis Report.

B. VULNERABLE WITNESS SCHEME-

According to **Section 327 (1) of the Criminal Procedure Code**¹²⁵, the investigation into and trial for rape must take place in camera, or behind closed doors, to protect the identity of the rape victim or witness.

Any specific person may be permitted entry into, presence in, or continued occupancy of the room or building by the court. Furthermore, a woman judge or magistrate shall, to the extent practical, preside over the in-camera trial. Any information pertaining to such hearings or trials

¹²⁴ Mahender Chawla v. Union of India Writ Petition, Criminal No. 156 of 2016

¹²⁵ The Code of Criminal Procedure, 1973, § (327 (1))

should not be printed or released without the court's prior approval.

After careful analysis, the Supreme Court in ***Sakshi v. Union of India and Ors***¹²⁶ gave the following instructions: In addition to the offenses listed in subsection (2), the provisions of subsection (2) shall also apply during the investigation or prosecution of offenses under Sections **354 IPC**¹²⁷ (outraging a woman's modesty) and **377 IPC**¹²⁸ (unnatural Sex). When a child sex abuse or rape trial is being held, a screen or other similar measures may be utilized to prevent the victim or witnesses—who may be just as vulnerable as the victim—from seeing the body of the accused.

The victim of child abuse or rape should be given written answers to the accused's cross-examination questions inasmuch as they directly pertain to the incident. The victim should also be given enough breaks in court as needed while testifying about the incident.

Challenges to witness protection program

The Witness Protection Scheme in India was introduced in 2018 to provide protection to witnesses in criminal cases. While the scheme is a step in the right direction, it still faces several challenges. Some of the main challenges to the Witness Protection Scheme in India are:

Lack of awareness: The Witness Protection Scheme is still relatively new in India, and many people, including law enforcement officials, are not aware of its provisions. As a result, witnesses may not know that they can avail themselves of the protection offered by the scheme. Lack of awareness can pose a significant challenge to witness protection programs in multiple ways. Witnesses may not recognize the danger they are in or may not be aware of the signs of impending harm, which can lead to failure to report threats. Additionally, witnesses may not fully understand the requirements of the program or may inadvertently reveal their new

identity, compromising the effectiveness of the program. Lack of awareness can also result in a lack of trust in the program, leading to reluctance to participate and making it more difficult for law enforcement to convince witnesses to come forward and testify. These challenges can make it more difficult for witness protection programs to provide effective protection to witnesses, and can ultimately jeopardize the safety and security of those involved in the program.

Inadequate funding: The government has not allocated sufficient funds to implement the Witness Protection Scheme effectively. As a result, the infrastructure required to implement the scheme, such as safe houses and transport facilities, is inadequate. Inadequate funding is a significant challenge to witness protection programs as it can lead to a lack of resources necessary to provide effective protection to witnesses. Witness protection programs require significant resources, including the cost of relocating witnesses, providing new identities, and providing ongoing support to those in the program. A lack of funding can result in fewer witnesses being able to participate in the program, longer wait times for those who do participate, and reduced protection for those in the program. This can lead to increased risk for witnesses and their families, as well as decreased cooperation with law enforcement in future cases. Inadequate funding can also result in a lack of training and resources for law enforcement involved in the program, further decreasing the effectiveness of the program. Ultimately, inadequate funding can jeopardize the success of witness protection programs and put the safety and security of witnesses at risk.

Slow implementation: The implementation of the Witness Protection Scheme in India is slow, and witnesses may not receive protection in a timely manner. This delay can put witnesses at risk of harm, and can also lead to a loss of confidence in the justice system. The Witness Protection Scheme in India involves multiple agencies, including the police, the judiciary, and

¹²⁶ *Sakshi v. Union of India and Ors* (2004) 5 SCC 518

¹²⁷ Indian Penal Code, 1860, § (354)

¹²⁸ Indian Penal Code, 1860, §(377)

the government. Lack of coordination among these agencies can lead to delays in providing protection to witnesses. Slow implementation can be a significant challenge for witness protection programs. These programs are designed to protect individuals who have provided crucial information to law enforcement agencies and are in danger of retaliation from criminal organizations. The success of these programs depends on the ability to quickly and efficiently relocate witnesses to safe locations, provide them with new identities, and provide ongoing support to ensure their safety. However, slow implementation can hinder this process, leaving witnesses vulnerable and exposed to potential harm. Delays in implementing protection measures can also create anxiety and stress for witnesses and their families, which may lead them to reconsider their cooperation with law enforcement agencies. Therefore, it is essential for witness protection programs to have efficient processes in place to ensure timely implementation of protection measures to safeguard the lives of witnesses and their families.

Lack of coordination: The lack of coordination can pose a significant challenge to the effectiveness of witness protection programs. These programs rely on various agencies and individuals to work together to provide a safe environment for witnesses to testify and prevent retaliation from those they are testifying against. Without proper coordination between law enforcement, prosecutors, judges, and social services, witnesses may not receive the necessary protection and support, leading to potential harm or intimidation. Additionally, if there is a breakdown in communication or cooperation between these entities, witnesses may not be aware of their rights or the resources available to them, which could undermine their willingness to participate in the program. Therefore, it is essential for all involved parties to work together effectively to ensure the success of witness protection programs.

Fear of reprisals: Witnesses may not come forward to testify in criminal cases due to fear of reprisals from the accused. Even with the protection offered by the Witness Protection Scheme, witnesses may still feel unsafe. Fear of reprisals is a significant challenge against witness protection programs. Witnesses who testify against individuals involved in criminal activities or organizations may be at risk of retaliation or retribution. These threats can be directed towards both the witnesses and their families, and may involve physical harm or even death.

Despite the assurances provided by witness protection programs, many witnesses may still fear for their safety and that of their loved ones. This fear can lead to reluctance or unwillingness to participate in the program, which can hamper the effectiveness of the program in bringing criminals to justice. Additionally, witnesses who do agree to participate in the program may still experience anxiety and stress related to their safety and security.

The Witness Protection Scheme in India has a limited scope, and only covers witnesses in certain types of cases. Witnesses in cases that are not covered by the scheme may not receive any protection. Addressing these challenges will be critical to ensuring that the Witness Protection Scheme in India is effective in providing protection to witnesses and promoting the rule of law.

Suggestions and the way forward

Witness protection in all judicial proceedings is a very important step which should be maintained to ensure a fair and just trial. Here are some suggestions for the same-

Anonymous Testimony: Courts can allow witnesses to provide anonymous testimony, such as through voice modulation or video conferencing, to protect their identity and prevent retaliation.

Closed-Door Hearings: Courts can conduct closed-door hearings to prevent the public from knowing the identity of the witnesses.

Fast-Track Trials: Fast-track trials can be conducted to ensure that the witnesses are not exposed to the threat of intimidation or harm for prolonged periods.

Punish Those Who Threaten or Harm Witnesses: Those who threaten or harm witnesses must be punished severely to send a strong message that such actions will not be tolerated.

Legal Aid and Counselling: Witnesses can be provided with legal aid and counselling to help them navigate the legal process and cope with the stress of testifying.

Media Restraint: The media can be requested to exercise restraint and avoid publishing the identity of the witnesses, which can lead to retaliation.

The Court mandated that each High Court in the nation's jurisdiction establish at least two vulnerable witness deposition centers. In light of the strain and suffering many witnesses experience throughout court procedures, this was said. These facilities are especially designed for vulnerable witnesses who are children and victims who have become witnesses to horrible crimes like rape, sexual assault, etc. All necessary safeguards will be in place at these facilities to provide a secure shelter for the witnesses. Gujarat opened a vulnerable witness deposition center in Vadodara in 2019. A unique access and exit method connected the center immediately to the Chhota Udepur District Court. The centre was designed in a way that there won't be any direct or indirect contact between the witness and people outside. Further, the centre has a separate washroom, pantry, television set, children's play area, etc.

Conclusion

The need to protect witnesses' rights and provide them with adequate protection has

been mentioned in numerous other laws, such as the Protection of Children from Sexual Offenses Act 2012, the Scheduled Caste and Tribes (Prevention of Atrocities Act 1989, the National Investigation Agency Act 2008, etc. A witness needs to see everything, from the crime scene through the trial. They are subjected to life threats, coercion, harassment, etc. from the accused, which only makes their situation worse. Such hardship is more likely to affect vulnerable witnesses. They often start to crumble and become angry in this circumstance. The position taken by the Indian government is crucial in preventing this.

The Witness Protection Scheme, 2018 was a first national attempt to provide for the protection of witnesses in a comprehensive manner, which will go a long way toward preventing secondary victimization. Being the court's eyes and ears, witnesses are crucial in identifying criminals and prosecuting them. This plan makes an effort to guarantee that witnesses receive proper and sufficient protection. This will significantly improve the nation's criminal justice system, which will improve the national security environment.

There are no further legislative provisions for the protection of weak witnesses, except from the Delhi High Court's instructions. Therefore, it is imperative that distinct and unambiguous legal safeguards be made to protect the rights of vulnerable witnesses, including tough penalties for those who influence testimony. As the term implies, these witnesses are frequent targets and are susceptible to manipulation, yet their courage and resolve to testify can result in the conviction of the guilty. So, it is crucial to safeguard them.

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