



# Witness Protection: A Critical Appraisal Of The Existing Criminal Justice System In India And A Way Forward

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Witnesses are one of the essential elements of a criminal justice system. Protecting the lives and identities of witnesses who give evidence against criminals is essential for a successful criminal justice system that aims to deter crime and maintain law and order in the society. The constitutional courts in India have acknowledged the idea of witness protection and taken it into consideration, but its execution has been insufficient and not up to the mark. The statutory witness protection programme offered by the Central Government's Witness Protection Scheme, 2018, constitutes the majority of the witness protection measures that are available in India. But there are a number of flaws in the plan, including the lack of a legal framework, scarce funding, and poor infrastructure, among others.

The need for witness protection is pressing in India, where witnesses are often subjected to intimidation, harassment, and even physical violence. The lack of effective witness protection measures has led to low conviction rates and impunity for offenders. This research article critically examines the existing criminal justice system in India in relation to protection of witnesses. In order to strengthen and improve the current criminal justice system, the research piece also offers some recommendations related to witnesses of the crime. The role of judiciary in protection of the witnesses has also been discussed, particularly in the recent past.

**Key Words:** Witness, criminal justice system, intimidation, harassment, physical violence.

## 1. Introduction

“Witnesses are the eyes and ears of justice.”

Jeremy Bentham

In spite of high crime rate, India does not have a witness protection law.<sup>1</sup> The basic goals of an effective criminal justice system are to reduce crime and punish offenders, which cannot be accomplished without safeguarding and protecting witnesses. The criminal justice system also upholds rule of law, and provides justice to the victims of crime. The system is set up to guarantee that people who have been charged with a crime have a fair trial and that those who are found guilty are punished in accordance with the law. Although a criminal justice system is crucial to upholding law and order in society, it is also the target of criticism and scrutiny. In India, numerous proponents of criminal justice reform contend that systemic changes are required to solve problems including excessive incarceration, racial inequities, and police brutality, among others. Realising the importance of the witnesses in a criminal justice system, Wadhwa, J., in *Swaransingh v. State of Punjab*<sup>2</sup> held, “A criminal case is built on the edifice of evidence, evidence that is admissible in law. For that witnesses are required, whether it is direct evidence or circumstantial evidence.” Hence the importance of the witness in a criminal justice system cannot be underestimated.

For the courts to determine the truth and punish the guilty, witnesses are a crucial source of information. As a result, the importance of witnesses in the criminal justice system cannot be undercut. “In search of truth, he plays that sacred role of the sun, eliminating the darkness of ignorance and illuminating the face of justice, surrounded by devils of humanity and compassion,” wrote American author Whittaker Chambers on the significance of the witness in the criminal justice system. But the sad reality is that, alarmingly, the state of witnesses in the judicial administration system is deteriorating day by day. Daily, numerous cases of witnesses being coerced, threatened, harassed, or intimidated make headlines in newspapers, instilling fear in the minds of witnesses and making them hesitant to participate in legal proceedings. As a result, they frequently turn hostile, which undermines the goals of justice.

Intimidation of the witnesses has been one of the major concerns in Indian Criminal Justice System. In fact, the numbers of cases where witnesses are threatened are increasing. In Hathras Rape Case the family of a Dalit girl complained of pressure from district magistrate. A NGO named Citizens for Justice and Peace, has submitted an intervention application to the Supreme Court in which it requested that the Hathras case’s witnesses must be given protection from Central paramilitary forces and that the trial be moved to Delhi.<sup>3</sup> The Unnao Rape Case Survivor claimed that the witnesses testifying against her uncle Mahesh Singh are often threatened, endangering both their lives and her own. The accused has also forced them to withdraw the complaint.

<sup>1</sup> Qureshi, D. (2021). Witness Protection: An Imperative for Criminal Justice. *Journal of Victimology and Victim Justice*, 4(2), 197–208. <https://doi.org/10.1177/25166069211069698>

<sup>2</sup> *Swaransingh v. State of Punjab*, AIR 2000 S.C. 2017

<sup>3</sup> Available at <https://www.telegraphindia.com/opinion/use-of-fear-witness-protection-in-india/cid/1794593>

The rape survivor further said that “The witnesses in my uncle’s case have been accosted by Sengar’s supporters and threatened that if they don’t withdraw their statements they will have to pay for their life.”<sup>4</sup> The notorious murder of Babu Singh, a witness who was set to testify against self-styled godman Asha Ram Bapu in a sexual assault case, is known as the “Asha Ram Babu case.” A few days prior to giving evidence in court, Babu Singh was fatally shot in Jodhpur, Rajasthan, in 2013. The incident shows that India needs a witness protection programme that is more effective in order to protect witnesses who come forward to testify against accused especially influential people. The primary witness in the 2005 BSP MLA Raju Pal murder case, Umesh Pal, was shot dead on February 24 in Prayagra, Uttar Pradesh. Umesh Pal earlier claimed that he was abducted on February 28, 2006, under fear of force, since he refused to back down and submit to the pressure of accused.<sup>5</sup>

## 2. Law Related to Witness Protection in India

It is most unfortunate that the Code of criminal Procedure, 1973,<sup>6</sup> umbrella legislation on criminal procedural law, has not defined the term witness who plays a critical role in administration of justice. The Indian Evidence Act, 1872<sup>7</sup>, a comprehensive law on evidence, has also not explicitly defined the term witness, but Section (3) describes Evidence as “Evidence means and includes- (1) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry; such statements are called oral evidence; (2) all documents including electronic records produced for the inspection of the Court; such documents are called documentary evidence.” The Witness Protection Scheme, 2018 defined the term witness under Section 2 (k)<sup>8</sup> as “any person, who possesses information or document about any offence”.

Overall, we can say that a witness is simply someone who has knowledge of the occurrence of an offence and is also able to provide testimony in front of a judge or a court of law. A witness is referred to as a hostile witness if he disputes the information he has already provided to the police in his own account. Or these are the witnesses who occasionally revise their testimony or make statements that are unfavourable to the party who called them. It is possible for a witness to become hostile for a variety of reasons that can differ from case to case. In some cases, hostility is influenced by the particular facts and circumstances of the case. Some of the causes of hostile witnesses include unjustified delays in case resolution, threats of death or other forms of intimidation directed at the witness, monetary inducement, political and administrative pressure, etc.

Witness hostility remains a big challenge facing the criminal justice system in India. In Best Bakery Case,<sup>9</sup> all the accused were acquitted as the prosecution failed to prove the case since the witnesses turned hostile. The accused being powerful and rich forced the witness to turn hostile. Later on the accused have accepted that they have turned hostile out of fear of death.

<sup>4</sup> Available at <https://www.theweek.in/news/india/2021/08/27/unnao-survivor-alleges-threat-to-life.html>

<sup>5</sup> Available at <https://www.dnaindia.com/india/report-who-was-umesh-pal-allegedly-shot-dead-at-behest-of-asad-ahmed-s-father-atiq-ahmed-umesh-pal-murder-case-up-3036093>

<sup>6</sup> The Code of Criminal Procedure, 1973 (Act No. 2 of 1974)

<sup>7</sup> The Indian Evidence Act, 1872 (Act No. 1 of 1872)

<sup>8</sup> The Witness Protection Scheme, 2018. Section 2 (k)

<sup>9</sup> Zahira Habibulla H. Sheikh v. State of Gujarat, AR 446/2004, 6 June 2005

In an infamous BMW Hit and Run Case<sup>10</sup>, in Delhi, a young man named Sanjeev Nanda was accused of crashing his BMW into people who were sleeping on the road side. Three people passed away instantly, and other others suffered severe injuries. The strong accused in this case once more purchased a sizable number of witnesses, and Monoj Mallick, the only survivor, testified in court that he was struck by a truck. One witness fled, and the main witness, Hari Shankar, refused to name the BMW. In actuality, none of the witnesses gave the prosecution support. Resultantly, the defendants were exonerated.

India needed to pass witness protection legislation long ago.<sup>11</sup> The Supreme Court of Indian, while disposing the matter, in Mahender Chawla v. Union of India<sup>12</sup> has directed the states to implement a witness protection scheme. According, the the Government of NCT of Delhi has enacted a scheme called as a witness protection scheme. This scheme is first of its kind to be implemented in India. Under this Scheme, witness protection cell shall be established at district level which shall be fully dedicated with a duty to implement witness protection order.

Realising the importance of witness in criminal proceedings, the Law Commission of India in its 14th Report remarkably observed that there is no provision for the witnesses' convenience when they attend court. The witnesses are required to wait outside in the shade of the trees or on the verandas of the courthouses. There are witness sheds in some jurisdictions that are roofed yet unprotected on all sides and are frequently used for other court functions. The Commission made the comment that there should be proper accommodations for the witnesses in the courtrooms and, at the same, they shouldn't be rounded up and handled like cattle.<sup>13</sup>

Also, the Law Commission of India in its 198<sup>th</sup> report in its consultation paper on the Witness Identity Protection and Witness Protection Programs has recommended about the witness anonymity and protection to their lives, property, relatives during investigation, inquiry, trial and even after that. Based on this report, a bill was prepared named as the Witness Protection Bill, 2015. In this bill it was mentioned that witnesses must be provided with a comprehensive witness protection program at all the stages of the case and even after the pronouncement of the judgement. The Bill also mentioned about the Witness Protection Cell. The establishment of the National Witness Protection Council and State Witness Protection Councils was also covered in the bill as being necessary for the efficient operation of the witness protection programme.<sup>14</sup>

India has made some progress towards enforcing witness protection laws, but there are still a number of important areas that require improvement. A detailed piece of legislation, sufficient funding, prompt legal proceedings, and awareness efforts are a few examples. Building trust and confidence in the witness protection framework in India requires resolving these issues since the safety and security of witnesses is critical to safeguarding the integrity of the legal system.

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<sup>10</sup>Available at <https://www.ndtv.com/india-news/bmw-hit-and-run-case-supreme-court-acquits-three-co-accused-pulls-up-police-495069>

<sup>11</sup> Verma, S., Krishnakumar, A. Towards a witness centric approach: analysis of witness protection scheme, 2018. *Crime Law Soc Change* 75, 433-444 (2021). <https://doi.org/10.1007/s10611-021-09942-5>

<sup>12</sup> Mahender Chawla v. Union of India, 2018 SCC Online SC 1778

<sup>13</sup> 14<sup>th</sup> Report, the Law Commission of India, Ministry of Law and Justice, Government of India. *Reform of Judicial Administration* (1958)

<sup>14</sup> 198<sup>th</sup> Report, the Law Commission of India, Ministry of Law and Justice, Government of India. *Witness Identity Protection and Witness Protection Programme*.

### 3. Judicial Pronouncements on Witness Protection

In any civilised society, a witness is an essential tool in the administration of justice.<sup>15</sup> It is incumbent upon the judiciary to make sure that the witnesses who play a crucial role in dissemination of justice must be protected, and should not be threatened or intimidated. On numerous occasions, in India, the constitutional courts have passed various landmark judgements from highlighting the importance of witnesses in criminal justice system to issuing slew of directions protecting the witnesses.

The Delhi High Court highlighted in the case of *Neelam Katara v. Union of India*<sup>16</sup> held the fundamental rule of justice is that witnesses must testify in court by giving accurate information without fear or pressure. His candour will determine the specifics of the case and how guilt or innocence will be established. However, giving a testimony out of fear, excessive pressure, or temptation will taint the case's proceedings and threaten the integrity of justice.

The Supreme Court in *Sawaran Singh v. State of Punjab*<sup>17</sup> emphasised the significance of witnesses in the administration of justice generally. When a case is pending and is being adjourned from one date to another, it is common for witnesses to endure repeated ordeals during the court process, which delays the trial. Given that they have no specific security; witnesses can end themselves dead or beaten. They are needlessly tormented for a protracted amount of time during cross-examination. As a result, regular people frequently strive to keep away from the legal system and investigative authorities. They fail to appear as a witness before the court of law. However, when the case involves violence against women and the victim is a witness, the situation worsens and becomes more perilous. Few important witnesses in *Manu Sharma v. State NCT of Delhi*<sup>18</sup>, also known as Jassica Lal Murder Case, became hostile. When the trial court found all of the accused not guilty of committing a crime due to insufficient evidence, there was a great public outrage. However, Delhi High Court finally found all the accused guilty due to the courageous efforts of some of the witness.

In *Surinder Singh v. State of Haryana*<sup>19</sup>, the situation of the witness has also garnered the attention of the Indian Supreme Court as well. The Supreme Court made a good point and opined that the trial courts must be watchful and respond quickly when hostile witnesses giving false evidence and adverse evidence. When the judge at the trial court must encourage the witnesses and give them self-confidence.

Additionally, the top court in *Himanshu Singh Sabharwal v. State of M.P.*<sup>20</sup> has shed light upon the significance of witnesses in trial court, opining that if witnesses are barred from testifying in court, it will have a negative effect on the fairness of the trial and paralyse the proceedings in the lower court. The court held, "If the witness himself is incapacitated from acting as eyes and ears of justice, the trial gets putrefied and paralysed, and it no longer can constitute a fair trial. The incapacitation may be due to several factors

<sup>15</sup> Zubair Ahmed Khan, "Need For Witness Protection in India: A Legal Analysis" 7(1) *DLR* (2015)

<sup>16</sup> 4 ILR (2003) II Del 377

<sup>17</sup> *Sawaran Singh v. State of Punjab*, 5 AIR 2000 SC 2017

<sup>18</sup> *Manu Sharma v. State NCT of Delhi*, (2010) 6 SCC 1

<sup>19</sup> *Surinder Singh v. State of Haryana*, Criminal Appeal No. 1791 of 2008.

<sup>20</sup> *Himanshu Singh Sabharwal v. State of M.P.* (2008) INSC 425

like the witness being not in a position for reasons beyond control to speak the truth in the Court or due to negligence or ignorance or some corrupt collusion. Time has become ripe to act on account of numerous experiences faced by Courts on account of frequent turning of witnesses as hostile, either due to threats, coercion, lures and monetary considerations at the instance of those in power, their henchmen and hirelings, political clouts and patronage and innumerable other corrupt practices ingenuously adopted to smother and stifle truth and realities coming out to surface rendering truth and justice, to become ultimate casualties.” The court has emphasised a variety of reasons as to why the witnesses do not to come forward and testify before the court, including witness disinterest due to circumstances beyond their control, political and bureaucratic pressure, negligence, corrupt collaboration, and political pressure.

#### 4. Critical Appraisal

Concerns regarding the safety and security of witnesses, particularly in high-profile and sensitive cases, have led to discussion and debate over witness protection laws under India's current criminal justice system. Although India realised the need for witness protection and implemented some measures, there have been questions about the overall efficacy and enforcement of these laws. The Witness Protection Scheme, 2018, developed by the Ministry of Home Affairs, is one of the main pieces of law pertaining to witness protection in India. The plan lays forth rules for the defence of witnesses, their loved ones, and other connected parties. However, there have been variations as to how this plan has been implemented in different states and regions.

One of the major criticisms of the witness protection laws in India is the lack of a comprehensive and uniform legal framework. The Witness Protection Scheme, being an executive scheme, lacks statutory backing, which limits its enforceability. There is a need for a dedicated legislation at the national level to ensure consistent implementation and protection of witnesses across the country. The insufficient infrastructure and resource allocation for witness protection is a further point of concern. An efficient witness protection programme requires the availability of enough resources, safe houses, trained people, and technology support. Due to inadequate security and support, witnesses have, nonetheless, occasionally been the target of threats and intimidation.

Another key concern is the problem of delays in the judicial procedure. The Indian court system frequently subjects witnesses to hazards for prolonged periods of time, raising the potential of intimidation or coercion. To speed up trials and reduce the risks witnesses confront, more comprehensive justice system reforms are required in addition to strengthening the framework for witness protection. Another major issue is that witnesses are not informed of their rights or the protection options that are available. It's possible that many witnesses, especially those from disadvantaged origins or lower socioeconomic strata, are unaware of the protections and resources available to them. To inform witnesses about their rights and the value of their testimony, extensive awareness efforts and legal aid programmes are required.

Criticising the present criminal justice system on matters related to the witnesses, Malimath Committee<sup>21</sup> has remarkably observed that, “Unfortunately there is no dearth of witnesses who come to the courts and give false evidence with impunity. This is a major cause of the failure of the system. The procedure prescribed for taking action against perjury is as cumbersome and as it is unsatisfactory. Many witnesses give false evidence either because of inducement or because of the threats to him or his family members. There is no law to give protection to the witnesses subject to such threats, similar to witness protection laws available in other countries.” The Committee has further recommended that whenever a witness gives his account before the court he/she must be treated with dignity and shown due courtesy. A separate cell must also be established for witnesses with adequate amenities including seating arrangement, restrooms, and drinking water etc.<sup>22</sup>

## 5. Conclusion and Recommendations

By offering first-hand descriptions or information of events and aiding in the pursuit of justice, witnesses play a critical role in the criminal justice system. But frequently, witnesses are faced with serious dangers and difficulties that discourage them from coming forward or giving accurate testimony. There is an urgent need for strong witness protection laws in India to address these issues, guarantee the safety of witnesses, and encourage their participation.

Protecting the physical safety and well-being of witnesses is one of the main goals of witness protection laws. In order to silence them, criminal organisations or powerful individuals frequently target witnesses with threats, intimidation, harassment, and even physical violence. A legal framework to reduce these risks and safeguard witnesses and their families would be provided by witness protection laws.

Generally, witnesses are reluctant to testify in court because they fear being punished or are worried for their personal safety. By putting witness protection law into effect, one may foster a climate of certainty and trust that will motivate witnesses to assist with law enforcement and the legal system. As a result, the criminal justice system will be strengthened by ensuring that crucial evidence is made available and the guilty are dealt with according to the law.

Witness intimidation and tampering are significant challenges faced by the Indian justice system. Criminal elements frequently use money, threats, or other forms of coercion to influence witnesses or sway their testimony. Witness protection law also would serve as a deterrent to such behaviour and aid in preserving the fairness of the justice system and promoting rule of law.

Witnesses who worry about their safety may omit important details or decline to testify, which can result in shaky prosecutions and acquittals. The Indian judicial system can ensure a more effective and efficient procedure by putting witness protection law into place. Witnesses will be more inclined to come forward, testify honestly, and offer crucial information, improving the overall standard of legal procedures.

<sup>21</sup> Committee on Reforms of Criminal Justice System, 2003. Ministry of Home Affairs, Government of India.

<sup>22</sup> Ibid.

For the rights of witnesses to be upheld, witness protection laws are of paramount importance. In order to ensure that witnesses are treated properly and given the help they need throughout their involvement in the legal process, witness protection measures may include the provision of legal assistance, psychiatric counselling, relocation assistance, change of identity, and financial support.

Overall, witness protection laws are essential for fostering a safe and secure environment where people including witnesses feel free to come forward and take part in the criminal justice system. India can strengthen the legitimacy of its legal system, encourage witness cooperation, and eventually raise the effectiveness of investigations and trials by enacting comprehensive witness protection laws. The Indian government must act quickly to enact and enforce strong witness protection laws that provide the necessary safeguards for witnesses.

