



Witness Protection Scheme In India - Issues And Challenges

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Abstract

Witness protection is a critical aspect of ensuring the effective functioning of the criminal justice system. In India, the need for protection of witnesses has been addressed by courts in various judgments however, finally in the landmark case of Mahendra Chawla vs. Union of India, the Supreme Court of India made the first attempt to protect witnesses under the ambit of law by introducing the Witness Protection Scheme, 2018 to address the vulnerabilities faced by witnesses and encourage their participation in trials. However, the implementation of the scheme has encountered several issues and challenges that hinder its effectiveness. This research paper aims to analyze the witness protection scheme in India, identify the key issues and challenges associated with its implementation, and provide recommendations for improving the existing framework.

Keywords: Witness Protection, Protection scheme, Effectiveness, Implementation Challenges

I. Introduction

The importance of witnesses in the criminal justice system cannot be overstated. They serve as the legal systems' foundation and moral skeleton [1]. In the pursuit of providing victims with justice, witness testimony is indispensable. Witnesses execute a "sacred duty" by testifying before the courts. As stated by Justice Wadhwa in Swaran Singh v. State of Punjab [2], a criminal case is built on evidence, specifically admissible in court. Whether it be direct evidence or indirect evidence, witnesses are needed for that [2]. But it frequently happens that witnesses become hostile toward the end of a trial. As a consequence, those who were accused are cleared. Slow trials, frequent cross-examinations, financial inducements, threats, intimidation, or fear for their own lives or the lives of their loved ones are among the reasons given for antagonism and withdrawing statements [3, 4]. The accused or any unconnected third parties may threaten witnesses or the witnesses' families. The judiciary has emphasized the

need of safeguarding witnesses' safety on several occasions. "If the witnesses get threatened or are forced to give false evidence that also would not result in fair trial," the Supreme Court of India stated in the Best Bakery case. [5]. Witness protection laws are a requirement in order to guarantee witness safety and boost public confidence in the criminal justice system. If the government doesn't provide witnesses with protection, perpetrators could go free. Offenders will continue to avoid responsibility for the crime they committed if there are no obligatory legal measures in place to safeguard witnesses. Concerning provisions for witness protection, the international community, especially the industrialized countries, has responded significantly. Many nations, including the United States, Australia, Canada, and others, passed witness protection laws decades ago. In contrast, countries without extensive and distinct witness protection laws include Bangladesh [6] and India.

India launched its first Witness Protection Scheme (WPS) in December 2018. This essay covers the key WPS provisions. It points out impediments to the plan's accomplishment and makes recommendations on how to carry it out in letter and spirit. A reasonable and efficient criminal justice system must include witness protection. Witnesses are essential to the investigation and prosecution of crimes because they may offer testimony and evidence. However, witnesses frequently confront serious dangers and difficulties, including intimidation, reprisal, and concern for their own and their families' safety. These dangers may discourage potential witnesses from testifying, which might result in a dearth of data and flawed trials. Governments all across the globe have created witness protection programmes and plans in recognition of the value of witness cooperation and protection. In order to safeguard witnesses, a safe atmosphere must be created for them, and their safety and participation in court processes must be supported. Programmes designed to safeguard witnesses are meant to allay their concerns and remove any obstacles in their way, so increasing their desire to testify and aid the cause of justice.

With the launch of the Witness Protection Scheme by the Ministry of Home Affairs in 2018, witness protection became more popular in India. In especially in high-profile cases or those involving organised crime, terrorism, or corruption, witnesses are vulnerable, which is why the system was developed. Its main goal is to foster an atmosphere where witnesses may testify honestly and courageously, improving the fairness and efficiency of the criminal justice system. It is impossible to exaggerate the importance of witness protection in India. Intimidation of witnesses and witness tampering have been ongoing problems for the judicial system in India because of the country's diversity, population, and complicated social structure. Witnesses frequently endure significant risks, including physical injury, social shame, and financial consequences, particularly in situations involving powerful people or criminal organisations. Without adequate witness protection, the legal system is open to manipulation, tainted trials, and loss of public confidence.

India wants to provide a setting that protects witnesses and promotes their involvement by putting in place a strong witness protection framework. It seeks to give witnesses confidence so they may come forward fearlessly and give accurate and dependable testimony. As a result, fair and just results are made possible, the rule of law is strengthened, and crime is deterred. Successful witness protection implementation serves the interests of society as a whole in addition to the needs of individual witnesses. It encourages responsibility, guarantees perpetrators

are brought to justice, and aids in general crime prevention. By providing a secure environment for witnesses to exercise their fundamental right to access justice, witness protection also aids in the breakdown of criminal networks, the fight against corruption, and the defense of human rights. The integrity and impartiality of the criminal justice system depend on witness protection. In order to address witness vulnerabilities, ensure their safety, and encourage their active engagement, India has to build a strong witness protection programme. India can enhance its judicial system, defend the rule of law, and promote a society where justice is available to everyone by offering a secure environment for witnesses.

II. Overview of India's Witness Protection scheme

The Ministry of Home Affairs in India launched the Witness Protection Scheme in 2018 to address the risks witnesses experience and improve their involvement in criminal proceedings. The plan intends to provide witnesses with protection, security, and assistance, enabling them to testify honestly and fearlessly which is the objective of the scheme.

Features of India's Witness Protection Scheme

Eligibility and Purpose: The scheme divides witnesses into three categories, based on the severity of the threat they face. The most severe threats that extend to the lives of the witness or their family members fall under Category A. Category B pertains to threats that may affect the safety, reputation, or property of the witness or their family members. Category C covers moderate threats, such as harassment or intimidation of the witness or their family members' reputation.

Protective Measures: To protect witnesses, the scheme includes a number of protective measures. These might involve changing one's identity, moving to safe homes or new residences, giving one's self new identities, personal security, and tight protection. Based on an evaluation of the dangers and hazards each witness faces which is ascertained by the Threat Analysis Report prepared by police, particular protective measures are chosen by the Competent Authority which is headed by a Judge, Public Prosecutor and head of the district Police.

Risk Assessment and Protection Orders: The scheme appoints a competent authority in charge of completing a thorough evaluation of the dangers and hazards to witnesses. The competent authority provides protection orders outlining the appropriate protective measures to be put in place for each witness based on this evaluation. The plan calls for the creation of a Special Witness Protection Unit (SWPU) specifically designed to coordinate and carry out witness protection measures in each state. The SWPU serves as the nodal institution in charge of evaluating, approving, and overseeing protective measures. A witness protection fund has been established to offer financial assistance for the execution of safety precautions. The money from the fund is used to cover the costs of the protected witnesses' housing, transportation, relocation, identity change, and other essential support services.

Confidentiality and non-disclosure: The scheme places a strong emphasis on the necessity of upholding the secrecy and non-disclosure of the names and whereabouts of the protected witnesses. It provides strict guidelines to make sure that personal data on witnesses is kept private and shared only to those who need to know.

Protection Period Length: The scheme acknowledges the necessity of both immediate and long-term protective actions. Long-term protection measures are also taken into consideration, particularly in circumstances where the risk to the witness's safety may continue even after the trial is over, even while immediate protection is offered during the trial phase.

An important step in addressing the difficulties witnesses confront and encouraging their active involvement in legal procedures is the Witness Protection Scheme in India. By providing a comprehensive framework for witness protection, the scheme aims to bolster the credibility of the justice system, enhance witness cooperation, and strengthen the overall effectiveness of the criminal justice process.

The need for witness protection and ensuring that they are not interfered with was recognized in several cases prior to the WPS's passage in India. However, this problem received little attention. For instance, three witnesses testified that Manu Sharma, the son of a previous political party leader, shot and killed Jessica Lal in 1999 because she wouldn't provide him alcohol at a restaurant. These eyewitnesses then contradicted their police statements, along with twenty-nine additional witnesses, leading to the accused person's acquittal [7]. The Delhi High Court ordered the trial of the defying witnesses in 2013 after taking suo moto notice of the witnesses' hostile behavior [8]. Later, the court absolved seventeen witnesses of the accusation of perjury [9]. One of the witnesses to the Naroda-Patiya atrocity was stabbed to death as soon as he left his home. This massacre happened in 2002, during the riots in Gujarat. The irony in this situation was that the Supreme Court requested police protection for the deceased witness [10].

As a result of the impossibility of successfully prosecuting rape cases without the participation of survivors, rape perpetrators frequently attempt to dispose of their victims. A number of assaults on rape survivors have recently come to light. In Uttar Pradesh in 2015, two rape victims were shot and murdered in two separate incidents. One of these victims was scheduled to give testimony in court [11]. In June 2017, a member of the Legislative Assembly (MLA) was charged with raping a 17-year-old woman in Unnao. Over a year later, the victim's father died while in police custody. Two years after the rape, a truck travelling too quickly impacted the car transporting the victim, her family, and her attorney. Two members of the victim's family were assassinated, and both the victim and her attorney were severely injured [12, 13]. Later in the same case, the physician who had treated the father of the victim after he had been brutally assaulted while in police detention passed away for unknown reasons [14]. Multiple committees and commissions raised the issue of witness protection. The 14th Law Commission Report from 1958 [15] highlighted the importance of providing sufficient accommodations for the convenience of witnesses within the courthouse. The 154th report from 1996 went a step further by advocating for the elimination of unnecessary adjournments [16], the protection of witnesses from the wrath of the accused, and the provision of a reasonable and fixed amount of compensation to witnesses. In 2004, the Law Commission of India independently

addressed the issue of witness protection. A consultation document on the Witness Identity Protection and Witness Protection Programme solicited feedback from various social groups via a questionnaire. Based on its review of this consultation document, the commission included recommendations in its 198th report, which also included a Draught Bill on Witness Identity Protection. The Law Commission of India's Consultation Paper on Witness Identity Protection and Witness security Programme [17] addressed two main aspects of witness protection: (1) the need for anonymity and (2) the need for the witnesses' physical safety. According to the Consultation Paper, both conditions must be fulfilled for witnesses to depose in cases of all severe crimes, not just terrorism, as was the case previously [17]. The TADA (Terrorists and Disruptive Activities Act), enacted in 1985 and since repealed, was the first piece of legislation in Indian law to mention witness anonymity. In TADA, there were provisions for closed-door proceedings and safeguards against the disclosure of witness names and addresses. Other laws, such as the Prevention of Terrorism Act of 2002 and The Unlawful Activities (Prevention) Amendment Act of 2004 [17], contain similar safeguards to secure the witness's identity. The 198th Law Commission report encouraged the protection of witnesses during all phases of a case, including the investigation, prosecution, and post-trial. The report recommended a number of measures to increase the safety of witnesses, such as using a two-way closed-circuit television or video-link and two-way audio system to record their testimony in court and prohibiting the disclosure of witnesses' names and addresses in court orders or judgements and punishing those who do so [17]. In the 2003 case *National Human Rights Commission v. State of Gujarat*, the Supreme Court observed that neither the Central nor the State administrations had implemented any laws or plans to protect the witnesses. The Court also noted that because the majority of the accused had access to powerful individuals, it was necessary to protect witnesses in order to successfully prosecute felons [18]. In *Ms. Neelam Katara v. Union of India*, the Delhi High Court established principles for witness protection until appropriate legislation or a plan was developed.

It is important to highlight that witnesses of crimes that carry a death sentence or a life sentence were given protection under these rules. This meant that, as was the custom before to the creation of these rules, witness protection was now extended to crimes other than terrorism and sexual assault. The instructions also provided a brief overview of the requirements for police protection of the witness and their responsibilities [19]. One of the main shortcomings of these recommendations was that they primarily addressed police protection of witnesses and made no mention of protecting witnesses' identities. The VYAPAM fraud and the rape accusations against Asaram Bapu were two well-known instances that made news for assaults against trial witnesses. An infamous fraud involving entrance exams, admission, and recruitment for a variety of professional programs and government employment in Madhya Pradesh is known as the VYAPAM (short for Vyavsayik Pariksha Mandal). More than 25 informants and witnesses have passed away to date, while the remaining witnesses have received death threats [20]. In the other instance, a self-styled godman by the name of Asumal Sirumalani Harpalani, also known as Asaram Bapu, was charged with raping a 16-year-old girl. Additionally, he and his son were charged with rape by two sisters. Asaram was convicted of raping the 16-year-old girl in April 2018. Later, his son was determined to be equally culpable. Both of the defendants received life sentences. The witnesses in this case, however, were frequently criticized during the trials. Three witnesses died as a result of these attacks, and one of the key witnesses

vanished. Even the top administrators looking at the instances claimed to have felt threatened. One of the key witnesses in each case narrowly avoided death when two men opened fire on him. The aforementioned witness was attacked only one day after the police officer tasked with protecting him was fired for wilfully failing to do his duties. The witness was therefore left defenseless and exposed. He was a key petitioner in the Public Interest Litigation (PIL), which inspired the Supreme Court to create the WPS [21].

III. Provisions of the witness protection scheme of 2018

The WPS was sanctioned by the Supreme Court of India on December 5, 2018 [22] under the authority conferred to it by Articles 141 and 142 of the Indian Constitution. This significant judgement was made in the case Mahender Chawla and Others v. Union of India and Others. To protect the witnesses in the alleged rape of Asaram Bapu, a writ suit was lodged. The WPS was created to prevent witness intimidation and fear from preventing them from testifying in court and impeding the investigation, prosecution, and conviction of criminal offences. It was thought that the criminal court system might acquire the confidence of witnesses to testify provided they were assured of their safety [23]. The plan also adopts a number of procedures to safeguard the safety of the vulnerable witnesses in accordance with these goals and objectives. The word "witness" and other terminology used in the scheme are defined in part one. According to the plan, a witness is "any person who has knowledge or documentation regarding any offenses" [23].

It also parallels the criteria outlined by the UNODC in their February 2008 manual entitled "Good Practises for the Protection of Witnesses in Criminal Proceedings Involving Organised Crime." The handbook defines a witness as a "person in possession of information important to the judicial or criminal proceedings" [24], despite acknowledging that witnesses may be defined differently in different countries.

According on the perceived threat to them or their families, the plan divides witnesses into three categories. Life is considered to be under threat in Category A; safety, reputation, or property are considered to be under threat in Category B; and harassment or intimidation are considered to be under threat in Category C [23].

A State witness protection fund is also to be established as part of the plan. The state government's financial allocation, donations and contributions, money raised through CSR initiatives, and expenses imposed or required to be paid by the courts or tribunals would all be included in the fund [23]. Any witness who feels threatened or at risk may submit a request to the appropriate authority. Every district is obligated to evaluate these petitions through a permanent committee headed by the District and Sessions Judge and composed of the Head of the District Police and the Head of the District Prosecution as its Member Secretary. The witness may submit the application and any supporting materials through the Member Secretary [23].

A Threat Analysis Report is immediately ordered by the Member Secretary when the application is submitted. Five days must pass before the report is due. Threat perception is categorized in the study, which also offers recommendations for necessary safety precautions. Additionally, the authority will speak with the witness's family members and conduct hearings on the application behind closed doors. After the application is submitted, the entire

procedure is meant to be finished in 10 days with the utmost discretion. The competent authorities may impose temporary protection if the witness is in immediate danger or under threat. The plan includes a clause requiring the supervision of the protection order's execution. It further specifies that a follow-up report submitted by the Witness Protection Cell will serve as the basis for a quarterly evaluation of the implementation [23].

The plan stipulates safeguards that are universally adopted to guarantee witnesses' security and give them the confidence to speak freely in court. Physical protection by police officers, the placement of CCTVs close to their homes, the prompt recording of statements without needless delays, in-camera trials, identity concealment and change, temporary relocation, financial assistance, and the use of vulnerable witness courtrooms are some of the measures that are briefly discussed [23].

Although the Centre, all states, and Union Territories were ordered to adopt the WPS by the end of 2019 by the Supreme Court of India [25], not all of these entities have done so. Only a few states, including Maharashtra [26], Rajasthan, and Odisha [27], implemented the system. Years before the Supreme Court's order, in 2015 [28], New Delhi put the WPS into effect. 'Bihar Gawah Suraksha Yojana' (Bihar WPS), which enables the issuance of codes to witnesses in order to shield their identities, was also authorized by the Bihar cabinet [29].

IV. Challenges and suggestions

The measures listed in the program do, in fact, represent the best practices used in industrialized nations like Australia and the United States of America. The Indian government made an effort to offer a comprehensive plan to keep the witnesses' trust in the legal system. But there are several issues that the plan didn't deal with. Although the WPS has measures that give witness protection a wider framework, it is up to the federal government and the states to enforce the program. The concept has certain drawbacks, and the Indian criminal justice system faces various difficulties that might make it ineffective which are listed below. The police, according to the plan, are in charge of witness protection in the main. Therefore, it falls on the police to foster a sense of safety, fearlessness, confidence, and faith in the police among witnesses. Police personnel must get specialized training in handling the witness delicately for this reason. Police are given other obligations in addition to upholding the law [30]. There should be enough police officers to carry out their tasks and obligations, ensuring that no one is overburdened and the police force runs properly. The police in India, however, are among the least effective in the world. In India, there are only 144 police officers for every 100,000 residents, which is far less than the 222 police officers per 100,000 citizens suggested by the UN [31]. Police officer understaffing frequently leads to inefficiency. Police personnel must also bear the responsibility of witness protection. Police personnel may fail to protect witnesses in the absence of sufficient force, which might have negative effects on the witnesses themselves. Lack of protection would discourage witnesses from assisting law enforcement and providing testimony in court. Additionally, its strength is unbalanced in addition to being insufficient.

According to data from India's National Crime Records Bureau, 50% of crimes committed in violation of the Indian Penal Code result in conviction. In situations of rape, this percentage is over half (27%). Although police assert that they file charges in 85% of rape cases, only 11.3% of cases that are taken to trial are successfully resolved by the courts [32]. Witnesses are wary of the justice system because of the low conviction rate. Witnesses may experience stress as a result of the wait in addition to seeing a crime, particularly one that was violent. According to earlier studies, eye witnesses' actual positive reactions were less frequent under high stress than under mild stress [33]. Additionally, witnesses' memory recall is impacted by delayed legal proceedings. In the case of *Daya Singh v. State of Haryana*, the court noted that human memory deteriorates over time, making it challenging for witnesses to recognize the accused after significant gaps [34]. In *National Human Rights Commission v. State of Gujarat (2003)*, the Supreme Court noted that the accused may frequently have access to powerful individuals. This was seen in *Jessica Lal murder case* and *Best Bakery case*, when the majority of the crucial witnesses sided against the prosecution throughout the trial. Sometimes threats from powerful people come with financial inducements. In a research including 798 witnesses from Madhya Pradesh, Rajasthan, Maharashtra, and Karnataka, it was discovered that financial inducements were the second most often employed form of pressure on the witnesses. One in three witnesses said they were given financial incentives, and nearly two out of every five said they had to deal with physical force. For witnesses from lower socioeconomic backgrounds, money was the main method of pressure [3]. The current WPS includes methods that can be utilized in cases involving powerful people as accused parties, including as monitoring mails and phone conversations, installing CCTVs, moving temporarily, and ensuring that depositions are recorded quickly and without lengthy adjournments. Adopting severe perjury rules that would prevent witnesses from becoming hostile will help to enhance the witness protection system while also motivating the average person to testify against powerful persons. According to the plan, a Witness Protection Fund should be established to cover the costs associated with protecting the weak witnesses. Government funding as well as private donations and volunteer contributions make up the majority of this fund's contributions. In accordance with the plan, the state governments must also set aside money for the witness protection fund from their budgets. There is no mention of a set budget set aside for WPS implementation; it is presumed that this would vary from state to state based on the priority and necessity placed on witness protection. Since "police" is a State topic, the accompanying financial expenses of protecting witnesses must be paid by the relevant governments. The longer the witness is guarded, the more money the states must spend, and the slower the courts announce their rulings.

The WPS makes no mention of the witnesses' psychological or emotional health. Giving a false testimony in court might have detrimental effects on one's mental health. It should be possible to provide witnesses with mental support services over the course of the investigation, the trial, and the appeals process. Physical defense alone is insufficient. Additionally, support and resources for social and psychological counseling must be given to the witnesses. As the main witnesses in the majority of rape cases, there should be staff members with experience in trauma, particularly trauma connected to sexual offenses. For some witnesses, the entire criminal justice system can be upsetting in addition to seeing a horrific occurrence. To meet the social and psychological requirements of

witnesses, district courts might collaborate with local authorities and NGOs. WPS doesn't have any safeguards in place to protect the rights of young witnesses. Even if they are not threatened or intimidated by the defendant or a third party, giving a young witness statement in a courtroom can be upsetting.

The Supreme Court acknowledged the value of protecting the vulnerable witness in 2017. It instructed the establishment of Vulnerable Witness Deposition Complexes by all Indian high courts [35]. These complexes have been established in many states now. In rape trials, victims are frequently the key witnesses. Threatening them could cause the victims to retract their claims, leading to the accused person's eventual acquittal. Now that services like Telegram, which provide end-to-end encryption and strong user anonymity, are available, finding the criminals hiding behind their computers and enjoying their anonymity is increasingly challenging. The steps to combat witness intimidation and abuse online are not reflected in WPS. The issue of online witness intimidation requires legislative action. Stronger witness protection measures could result from applying harsh penalties for witness intimidation. While the Internet is a tool used to terrorize witnesses, it may also help witnesses who are looking for protection. The Competent Authority in the relevant district where the offense was committed must currently receive an application in the appropriate form from witnesses seeking protection under the WPS [23]. The application is not supported by the scheme. Providing online tools can let witnesses submit applications at their convenience, cut down on bureaucracy, and ensure quicker service delivery. It would increase witnesses' trust and decrease authorities' carelessness and avoidance. Furthermore, once recorded, the information provided by the witnesses cannot be changed or tampered with. For this, platforms that are akin to submitting an e-FIR (electronic First Information Report) to the police can be created. Such a database, though, has to be protected from both internal and external dangers. For this, the proper IT infrastructure should be in place with all necessary procedures, including firewalls, high levels of encryption, restricted access, and frequent audits of data to ensure data security.

The fact that the WPS is still a plan and not a law is another significant problem. A state government employee in Rajasthan was viciously gang raped in 1997 while at work. In reaction to this case, the Supreme Court of India issued procedural rules in 1997 that are referred to as the "Vishakha Guidelines." These policies were designed to handle accusations of sexual harassment and stop it from happening to women at work. Until legislation is approved, the top court ordered these rules to be followed. It took close to 17 years for these regulations to become law. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act was passed by the Indian Parliament in 2013. There are no repercussions for breaking the WPS's rules because it is not a law. The program only has one clause that allows the state Home Department to file legal action against a witness who files a false complaint in order to recoup the costs expended by the witness protection fund. Therefore, there shouldn't be any delay on the side of the legislature in developing legislation for witness protection.

V. Conclusion

The criminal justice system in India has long disregarded its provisions for witness protection. The development of WPS is a positive step for the protection of human rights and the advancement of the Indian legal system. In actuality, the plan should be fully focused on the witnesses. If officials fail to safeguard witnesses, it ought to hold them responsible. It is important to make arrangements so that witnesses won't have to ask for security or constantly worry about their safety. It ought to encourage witnesses to come forward and give evidence against the accused instead. Delivering justice, a value stated in the Indian constitution, would arise from this.

In this research paper, we have explored the issues and challenges surrounding the witness protection scheme in India. Through an analysis of the background, significance, legislative framework, international perspectives, and recommendations, several key findings have emerged: Witnesses in India face significant risks and challenges, including threats, intimidation, and fear for their safety and the safety of their families. The Witness Protection Scheme in India, introduced in 2018, represents a significant step towards addressing these challenges and ensuring the safety and participation of witnesses in criminal proceedings. There is a need for enhanced coordination, resource allocation, and training for parties involved in witness protection because the present legal framework does not contain complete laws devoted exclusively to witness protection. The necessity of comprehensive laws, multi-agency collaboration, long-term assistance for witnesses, and the inclusion of technical improvements are all highlighted by international viewpoints and best practises, which provide insightful information.

In conclusion, it is critical to solve the problems and obstacles in witness protection in order to preserve witnesses' rights, improve the criminal justice system, and promote the values of fairness, equality, and access to justice in India. By putting the suggested steps into practise, you may create a more safe and encouraging atmosphere for witnesses, encouraging their active engagement and preserving the fairness of the judicial system.

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