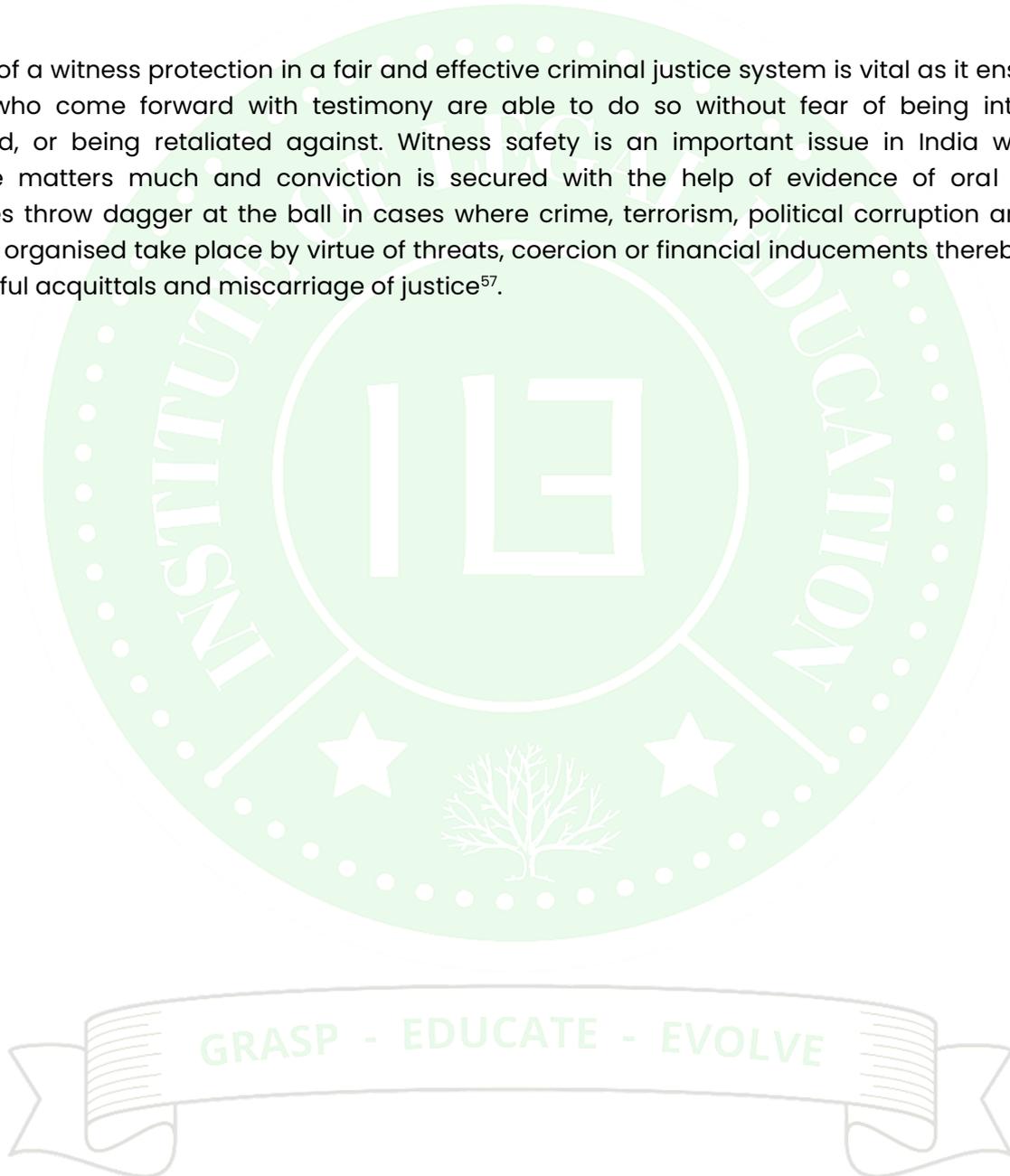


JUSTICE AND SECURITY – WITNESS PROTECTION IN INDIA AND BEYOND

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The role of a witness protection in a fair and effective criminal justice system is vital as it ensures that people who come forward with testimony are able to do so without fear of being intimidated, damaged, or being retaliated against. Witness safety is an important issue in India where oral evidence matters much and conviction is secured with the help of evidence of oral evidence. Witnesses throw dagger at the ball in cases where crime, terrorism, political corruption and violent offences organised take place by virtue of threats, coercion or financial inducements thereby leading to wrongful acquittals and miscarriage of justice⁵⁷.



⁵⁷ Neetika Vishwanath, 'Challenges in Implementation of Witness Protection Scheme, 2018' (2020) 34 National Law School Journal 52.

India however, does not have a special witness protection law in place and relies on various legal provisions as well as judicial pronouncements to deal with the issue. Witness protection in India has traditionally been a reactive approach where the courts interfere with a case on a case to case basis as opposed to a structured legal framework⁵⁸. Following Supreme Court directives, the 2018 Witness Protection Scheme was a big step forward, but very challenging to implement; there are challenges of inconsistent enforcement, lack of resources and of lack of awareness among law enforcement agencies as well as amongst the witnesses themselves.

However, the Indian legal system has its own major issue of hostile witnesses, where people retracted or changed their statements because either they felt threatened or put extreme pressure or fear upon their statement⁵⁹. Something like this has been witnessed in several high profile cases like the Jessica Lal Murder Case, the Best Bakery Case, and the Sohrabuddin Sheikh Encounter Case wherein key witnesses changed their testimonies or were dissuaded into silencing, through intimidation. These cases all revealed how seriously flawed the legal framework not only was, but now was called on to be corrected with public outcry and the intervention of judges⁶⁰.

However, there are some protective mechanisms, such as in camera proceedings, and identity concealment and police security which are ad hoc and fairly ineffective, in particular when confronting powerful accused individuals or organized crime networks. Unlike countries with established witness protection programs, such as the United States (WITSEC), Canada, and Italy. Witness security is not an institution in India; after assisting law enforcement, witnesses remain vulnerable to threats.

Focus of this chapter is the practical difficulties in implementing witness protection policies, including:

- Inefficiencies in bureaucracy and delays in providing of the security.
- Inadequate funding for relocation and long-term protection.
- Lack of coordination between law enforcement and the judiciary.
- Lack of constitutional provisions for anonymous testimonies and the right to change adopting an identity, as in other countries of the world.

3.1 Historical Evolution of Witness Protection in India

The idea of witness protection in India has evolved gradually, affected by judicial pronouncements, legislative modifications, and high profile cases of how witnesses have been at risk in the criminal justice system. Witnesses have hitherto not been protected by the Indian legal framework in an explicit manner, and thus have been prone to intimidation, coercion, and even physical harm. Often cases broke down due to a lack of structured mechanism of witnesses' protection that led to people either becoming hostile or retracting their testimonies under the pressure⁶¹. Normatively-distinct formal witness protection measures have developed in the country over the past few years as a result of a confluence of judicial activism, legislative intervention, as well as increased sensitivity surrounding protection of witnesses⁶².

Prior to the time of the independence of India; Indian judiciary performed under colonial regime with an adversarial model of justice. Legal proceedings depended on witnesses, but their safety was neither deemed as a grave issue nor was there any legal provision to deal with it. Witnesses, especially in cases of influential people or the criminal variety, were often threatened and intimidated precisely

⁵⁸ Anup Surendranath, 'Witness Protection: A Comparative Study' (2021) 9 Indian Criminal Law Review 213.

⁵⁹ Ministry of Home Affairs, Witness Protection Scheme, 2018 (Government of India, 14 January 2019).

⁶⁰ Pratiksha Baxi, 'Judging Witness Protection in India' (2018) 55(3) Economic and Political Weekly 21.

⁶¹ PUCI v Union of India (2003) 4 SCC 399 (India).

⁶² 'Witness Protection in India: The Need for an Effective Legislation to Achieve a Fair Criminal Trial' (The Criminal Law Blog, 29 September 2018).

because there were, in almost all cases, no protective measures. The legal framework barely changed with the independence; the foundation statutes, such as the Indian Penal Code (1860), Code of Criminal Procedure (1973) and the Indian Evidence Act (1872) were still in force guiding the criminal proceedings without any measures of protection of a witness.⁶³ Regardless of replacement that might be made to this legislation.

The vulnerabilities of witnesses became more evident in the late 20th and early 21st centuries, particularly in cases involving terrorism, corruption, and communal violence. Several high-profile cases highlighted the urgent need for witness protection, with many instances where witnesses either retracted their statements or went missing under suspicious circumstances.

The most important case here was the Best Bakery case, which was associated with the Gujarat riots of 2002. In this case, the most important witnesses turned hostile because of extreme intimidation and a miscarriage of justice followed. The Supreme Court, while ordering a retrial, strongly criticized the lack of witness protection and underscored the need for a structured mechanism to ensure the safety and confidence of witnesses in testifying against powerful accused persons. In this instance, severe intimidation was enough to force key witnesses to become hostile and get a miscarriage of justice. Chief Justice George Malala on the orders of the Supreme Court dismissed the case, saying that the lack of witness protection has also contributed to sentencing the accused persons and urged on the need for structured mechanism to ensure the safety and confidence of the witnesses to testify in the cases against powerful accused persons⁶⁴.

Witness protection was brought into focus through judicial activism. In several landmark

judgments, the Supreme Court stressed the pivotal significance of eliminating the fear that witnesses would have to testify. In cases like *Sakshi v. Union of India*⁶⁵, the judiciary emphasized, however, that sensitive cases involving sexual offenses should be tried in camera and protective measures were also essential for witnesses. National Human Rights Commission (NHRC) also called for stronger safeguards since there is a direct relationship between witness safety and the attainment of justice. Witness protection programs have been recommended by several expert committees including the Malimath Committee on Criminal Justice Reforms (2003) and Madhav Menon Committee (2007) which observed that where prosecution in major criminal cases was concerned, the lack of such programs significantly impaired their efforts.

The Criminal Law (Amendment) Act, 2013 has been a significant step forward in witness protection with the key provisions for the protection of survivors and witnesses as including giving the option to witnesses and survivors to have in camera proceedings and to have their identities not disclosed in certain cases. Though, such advancement had not led to creation of specific framework that may apply systematic protection to witnesses who were faced with serious threats.

With the Supreme Court allowing the Witness Protection Scheme, 2018, India had a first dedicated framework for the witness protection that came as a turning point. This scheme divided witnesses into categories based on extent of previous threats they had suffered and implemented security measures such as identity protection, relocation and conveyance of witnesses to the court and law enforcement. The scheme also included Witness Protection Cells at the state and district for its implementation.

Although the Witness Protection Scheme, 2018 is the landmark milestone, implementation of the scheme is faced with the lack of funding,

⁶³ Law Commission of India, '198th Report on Witness Identity Protection and Witness Protection Programmes' (2006)

⁶⁴ Jaspreet Kaur, 'Witness Protection in India' (2021) 1(4) International Journal of Advanced Legal Research.

⁶⁵ *Sakshi v Union of India* (2004) 5 SCC 518

bureaucratic vulnerable, and witness rights unawareness. The legal framework however does not fully capture the essence of the scheme with the same being strengthened further through enactment of a dedicated Witness Protection Act, which would give statutory backing to the scheme and ensure uniformity of the scheme across the country⁶⁶. In addition, with the developments of digital technology, witnesses are facing different risks than before, and hence witness protection needs to be incorporated with the implementation of the modern protective measure: encrypted communications, digital anonymity and cyber security protocols for witnesses in high profile cases.

Witness Protection as an obligation has had its historical evolution in India with progressive change from total neglect to being recognized as an obligation by the judiciary as well as by the legislature.⁶⁷ Much work continues to be done in facilitating the process for witnesses to testify, and supporting the cornerstone principles of justice and security in the law.

3.2 Legal Framework for Witness Protection in India

The constitutional provisions, statutory laws, judicial precedents as well as the policy frameworks regulate witness protection in India. Protection for witnesses has, over the years, been also strengthened, particularly in relation with serious crimes, terrorism and organized crime. The Bharatiya Nyaya Sanhita, 2023 (BNS), Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) and Bharatiya Sakshya Adhinyam, 2023 (BSA) are an important break from the colonial order of things with respect to the Indian Penal Code (IPC), Code of Criminal Procedure (CrPC) and the Indian Evidence Act, respectively.

Additionally, the Civil Procedure Code, 1908 (CPC) plays a role in witness protection in civil disputes, ensuring the fair treatment of

witnesses in non-criminal proceedings. The Witness Protection Scheme, 2018, approved by the Supreme Court, provides further institutional safeguards.

3.2.1 Constitutional Protection for Witnesses

Although there is no specific constitutional provision for witness protection, several Fundamental Rights ensure a fair trial and safeguard witnesses:

- Article 21 (Right to Life and Personal Liberty) – Ensures protection from threats, coercion, or violence.⁶⁸
- Article 19(1)(a) (Freedom of Speech and Expression) – Ensures that witnesses can testify freely without fear of persecution.⁶⁹
- Article 39A (Equal Justice and Free Legal Aid) – Mandates the state to provide legal assistance, which can extend to witness protection in certain cases.⁷⁰

3.2.2 Bharatiya Nyaya Sanhita, 2023 (BNS) – Replacing IPC, 1860

- Section 177 – 179 (False evidence and perjury) – It is a criminal offence punishable under this section to give false testimony or fabricate evidence.
- Section 229 (Threatening or Intimidating Witnesses) – Makes it harder for witnesses to be threatened or intimidated.
- Organized Crime and Terrorism (Sections 113-117) – Specified special protection measures (anonymity, location, police protection).
- Section 72 (Protection of Whistleblowers and Informants) – Provides additional protection to persons who report on corruption and crimes.

3.2.3 Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) – Replacing CrPC, 1973

- Section 190 (Recording of Witness Statements before a Magistrate) –

⁶⁶ Dwarika Prasad, 'Witness Protection Scheme in India: Legislative and Practical Challenges' (Research Journal of Philosophy and Social Science).

⁶⁷ Law Commission of India, '198th Report on Witness Identity Protection and Witness Protection Programmes' (2006)

⁶⁸ Suresh v State of Uttar Pradesh (1981) 3 SCC 653

⁶⁹ Sahara India Real Estate Corp Ltd v SEBI (2012) 10 SCC 603

⁷⁰ Hussainara Khatoon v State of Bihar (1980) 1 SCC 81

Allows the documentation of witness statements in a safe environment.

- Section 327 (In-Camera Trials for Sensitive Cases) – Protects the identity of witnesses in high-risk cases, such as rape and terrorism trials.
- Section 193 (Use of Technology for Witness Protection) – Provides for aids to testimony so that threats to physical safety can be avoided.
- Sections 187-189 (Time Bound Trials and Protection Orders) – Adopts to reduce the prolonged risks by discharging cases faster.
- Compensation for Witnesses (Section 357) – Provides for financial assistance of witnesses who are threatened or intimidated.

3.2.4 Bharatiya Sakshya Adhiniyam, 2023 (BSA) – Replacing Indian Evidence Act, 1872

- Section 85 (Admissibility of Digital Evidence) – Allows the recorded testimonies and electronic evidence to provide a layer of protection to the witnesses from the physical dangers.
- Section 113 (Protection against Self-Incrimination) prevents witnesses from forced to testify under duress.
- Section 98 (Anonymity in special cases) – Courts are able to conceal witness details in sensitive causes.

3.2.5 Features of Witness Protection Scheme, 2018

Categorization of Threat Perception⁷¹:

- Category A: Cases where witnesses face grave threats to life or family.
- Category B: Cases where witnesses face moderate threats, including intimidation.
- Category C: Cases with general threats or harassment.

Implementation and Enforcement:

- The State Witness Protection Fund provides financial aid for security arrangements.

- Special witness protection cells have been established under state police departments.
- Judicial Oversight ensures protection orders are effectively implemented.

3.3 Witness Protection in the context of organized crime and terrorism

Organized crime and terrorism pose serious threats to security and justice, and hence witness protection is a vital component of ensuring successful prosecutions. In such cases, witnesses are frequently subjected to extreme intimidation, brutality, and plots to kill, which discourage them from testifying. Lacking a strong protective mechanism, meaningful testimonies are lost, and criminal and terrorist offenders are acquitted.

The chapter also assesses the witness protection mechanisms in India on the basis of high-risk cases and compares them with the best international practices. Through case studies, it brings forth cases where witness protection was instrumental in dismantling organized crime groups and in the fight against terrorism⁷². The chapter lastly analyzes international legal frameworks, such as the United Nations Convention against Transnational Organized Crime (UNTOC), to determine strategies for further strengthening witness protection in India and internationally.

3.4 The Role of Witnesses in Combating Organized Crime and Terrorism

Witnesses play a significant role in the prosecution of organized crime syndicates and terrorist networks.⁷³ Their testimony typically forms the basis of criminal proceedings, helping law enforcement to dismantle perilous groups. However, such assistance comes with high personal risk as such cases typically involve powerful groups with large resources that can intimidate, threaten, or kill vital witnesses.⁷⁴ Without effective witness protection

⁷² US Department of Justice, Witness Security Program Annual Report (2020).

⁷³ State of Gujarat v Anirudh Singh (1997) 6 SCC 514

⁷⁴ Zahira Habibullah Sheikh v State of Gujarat (2004) 4 SCC 158

⁷¹ Witness Protection Scheme 2018, cl 7

mechanisms, many crucial testimonies are either retracted under duress or never made in the first place, significantly weakening justice systems.⁷⁵

Importance of Witness Testimonies in Criminal Investigations

In cases involving organized crime and terrorism, witnesses provide first-hand accounts that help establish patterns of criminal activities. They offer vital information on the identities of perpetrators, financial transactions, recruitment processes, weapon procurement, and communication networks⁷⁶. Testimonies also contribute to mapping hierarchical structures within criminal organizations, exposing their inner workings. In terrorism-related cases, witness statements can lead to the identification of sleeper cells, arms suppliers, and international funders, playing a key role in counterterrorism efforts.

Types of Witnesses in Organized Crime and Terrorism Cases

Witnesses in such cases come from various backgrounds. Eyewitnesses are those who have directly observed criminal acts, such as bombings, drug deals, or assassinations. Co-conspirators turned informants are individuals who, in exchange for leniency, provide inside information about the operations of crime syndicates⁷⁷. Law enforcement officers and undercover agents serve as witnesses based on surveillance and sting operations, while victims and whistle-blowers testify against perpetrators, often at great personal risk.

Risks Faced by Witnesses in High-Profile Cases

Witnesses in organized crime and terrorism trials face extreme dangers. Threats to life and family members are common, with many being targeted for assassination before they can testify⁷⁸. Criminal networks often resort to

intimidation, coercion, and bribery to force witnesses into silence. In jurisdictions where trials are delayed for years, witnesses remain vulnerable for extended periods, increasing the likelihood of retractions or disappearance. Additionally, public exposure of witness identities due to weak legal protections further escalates risks, making it difficult for authorities to secure reliable testimonies.

Case Studies of Witness Retaliation in Organized Crime and Terrorism

Several high-profile cases highlight the severe risks witnesses face. In the 1993 Mumbai bomb blasts case⁷⁹, multiple witnesses were either killed or threatened, significantly hampering the investigation. Witnesses who testified against Dawood Ibrahim's criminal network have faced long-term security concerns. Similarly, during the 26/11 Mumbai attacks trial, those who identified Ajmal Kasab required constant police protection. Globally, witnesses involved in cases against Pablo Escobar's Medellín Cartel or the Italian Mafia were systematically targeted, forcing authorities to develop robust witness protection programs.

Special Protection Measures for Witnesses in Organized Crime and Terrorism Cases

Countries with strong legal systems implement multiple layers of witness protection strategies⁸⁰. One of the most effective methods is witness anonymity, where identities are shielded, and testimony may be given from behind screens or via video conferencing⁸¹. In extreme cases, witnesses undergo complete relocation and identity change, as seen in the U.S. Witness Security Program (WITSEC) and Italy's Mafia protection laws. In courts, secure testimony methods prevent direct exposure to the accused, ensuring a safer trial process.

Many countries have enacted specific legislation to address these issues. The U.S. has a well-established federal witness protection

⁷⁵ Neelam Katara v Union of India (2003) 104 DLT 490 (Delhi HC)

⁷⁶ Neelam Katara v. Union of India (2002) W. No. 247

⁷⁷ Government of India, Report of the Committee on Criminal Justice System Reforms (2003).

⁷⁸ RC-04/2009/NIA/DLI (National Investigation Agency v Headley) (2009) NIA Case No 04/2009.

⁷⁹ Abu Salem Abdul Qayoom Ansari v State of Maharashtra & Anr (2010) 10 SCC 179 (SC).

⁸⁰ R v Davis [2008] UKHL 36, [2008] 1 AC 1128

⁸¹ Bimal Kaur Khalsa v. Union Of India AIR (1988) P H 95

system, while Canada's Witness Protection Program Act (1996) offers comprehensive security measures.⁸² In the United Kingdom, witness anonymity is legally enforced in terrorism cases⁸³. India, however, still lacks a comprehensive legal framework for witness relocation and long-term protection.

The Need for Stronger Witness Protection Laws in India

India's Witness Protection Scheme, 2018, while a step forward, remains weakly enforced. Unlike global models that provide full relocation and new identities, India's system is largely temporary and lacks financial backing⁸⁴. Given the increasing threats from organized crime syndicates and terrorist outfits, the legal framework must be strengthened with stricter anonymity measures, fast-track trials, and financial support. Judicial delays further expose witnesses to danger, highlighting the need for expedited case hearings and a more structured national witness protection policy⁸⁵.

3.5 High Profile cases and its impact

Witness testimonies are crucial in prosecuting organised crime and terrorism. Yet, those with great political, financial, or violent power can intimidate witnesses. This intimidation can lead to coercion and even murder. The fate of a case often rests on protecting witnesses' safety and privacy.

*The Jessica Lal Murder Case (1999)*⁸⁶

Case Facts:

- Jessica Lal, a Delhi-based model, was shot dead in a nightclub after refusing to serve liquor to Manu Sharma, son of a powerful politician.
- Despite multiple eyewitnesses, many retracted their statements, allegedly due to threats and bribery.

- The trial initially ended in acquittal due to lack of evidence, sparking nationwide protests.

Impact:

- The case highlighted the absence of a formal witness protection system in India at the time.
- Media pressure and public outrage led to a retrial, ultimately securing Manu Sharma's conviction.
- It demonstrated how public and media scrutiny can compensate for weak institutional safeguards, but also raised concerns about selective justice.

*The Best Bakery Case (2002 Gujarat Riots)*⁸⁷

Case Facts:

- During the 2002 Gujarat riots, a mob burned down the Best Bakery in Vadodara, killing 14 people.
- The primary eyewitness, Zaheera Sheikh, initially identified the accused but later retracted her statement in court, citing threats and intimidation.

Impact:

- The Supreme Court of India ordered a retrial⁸⁸, a rare step in Indian judicial history.
- The case exposed systematic failures in witness security, leading to discussions about anonymity and relocation programs.
- It emphasized the need for independent investigations, free from political and communal influences.

*The Asaram Bapu Case (2013–2018)*⁸⁹

Case Facts:

- Self-proclaimed godman Asaram Bapu was accused of sexually assaulting minors.
- Several witnesses, including investigators and former followers, were attacked or killed.⁹⁰

⁸² Witness Protection Program Act, SC 1996, c 15

⁸³ Criminal Evidence (Witness Anonymity) Act 2008

⁸⁴ Zahira Habibulla H. Sheikh v. State of Gujarat (2004) 6 SCC 15

⁸⁵ State of Maharashtra v. Dr. Praful B. Desai (2003) 4 SCC 601

⁸⁶ State v Manu Sharma (2010) 6 SCC 1

⁸⁷ Best Bakery Case (2004) 4 SCC 158

⁸⁸ NHRC v State of Gujarat (2004) 9 SCC 686

⁸⁹ Asumal Sirumalani Harpalani v State of Rajasthan (2018) SCC OnLine Raj 924

Impact:

- The case exposed the dangers of testifying against influential individuals with vast resources.
- Several key witnesses were murdered or mysteriously disappeared, highlighting the inability of law enforcement to provide adequate security.
- The case reaffirmed calls for a national witness protection law, ultimately contributing to the Witness Protection Scheme, 2018.

The Sohrabuddin Sheikh Encounter Case (2005)

Case Facts:

- Sohrabuddin Sheikh, alleged to have links with organized crime, was killed in a staged police encounter.
- Several police officers and high-profile politicians were implicated in the conspiracy.
- Most key witnesses turned hostile, and 68 of 210 witnesses retracted their statements, leading to acquittals of all accused.

Impact:

- The case exemplified how political influence can obstruct justice.
- It reinforced the need for independent, court-monitored protection mechanisms, rather than relying on local police (who may be complicit).

3.6 High Profile Cases from other Jurisdiction

United States – The Mafia Trials & Federal Witness Security Program (WITSEC)

Case Facts:

- In the 1970s and 1980s, the American mafia operated extensive criminal enterprises across the U.S.
- Key figures, such as Sammy "The Bull" Gravano, turned state witnesses against mafia bosses, leading to multiple high-profile convictions (e.g., John Gotti⁹¹).

Impact:

- The Federal Witness Security Program (WITSEC) successfully relocated over 19,000 witnesses since its inception.⁹²
- WITSEC provides new identities, financial aid, and relocation, making it one of the most effective protection programs globally.
- The U.S. model demonstrated that proactive witness protection can break organized crime syndicates.

Italy – The Maxi Trial Against the Sicilian Mafia (1986–1992)⁹³

Case Facts:

- Italy's biggest mafia trial led to the conviction of over 300 members of the Cosa Nostra.
- The case was made possible due to the testimony of Tommaso Buscetta⁹⁴, the first high-ranking mafia member to break the code of silence ("Omertà").

Impact:

- Buscetta was placed under strict witness protection, including relocation.
- However, the lack of widespread protection for other witnesses resulted in the assassination of judges Giovanni Falcone and Paolo Borsellino⁹⁵.
- The Italian government later strengthened its witness protection laws in response.⁹⁶

United Kingdom – Witness Protection in Counter-Terrorism Cases

Case Facts:

- The UK has used witness anonymity measures in trials involving the Irish Republican Army (IRA) and Islamic terrorism cases.⁹⁷

⁹⁰ Shantilal v State of Rajasthan (2016) SCC OnLine Raj 3038
⁹¹ United States v Gotti 660 F Supp 2d 512 (SDNY 2009)

⁹² 18 USC §§ 3521-3528 (Witness Security Program)
⁹³ Maxi Trial Judgment (Corte di Assise, Palermo, 1987)
⁹⁴ Buscetta v Italy (1992) ECHR 107/1992/401/479
⁹⁵ Prosecutor v Salvatore Riina (Corte di Assise, Palermo, 1997)
⁹⁶ Italian Law No. 82 of 1991 (Witness Protection Measures for Organized Crime)
⁹⁷ R v Murphy (No 2) [1990] NI 306 (CA)

- Undercover operatives and informants often require protection to prevent retaliatory attacks.

Impact:

- The UK's anonymity laws allow witnesses to testify without revealing their identities.⁹⁸
- Counter-terrorism trials use secure locations and encrypted communications to protect witness confidentiality.

3.7 Lessons Learned and Recommendations

Analysis of high-profile Indian and global cases elucidates various important observations concerning the need and effectiveness of witness protection in obtaining successful convictions of organized crime syndicates and terror groups. Legal outcomes are generally based on how much witnesses perceive their safety in testifying truthfully, free from fear of retaliation. A number of cases, such as India's Best Bakery case and Italy's judge killings, depict how intimidation, coercion, and superficial protective efforts can lead to the collapse of trials. Conversely, programs such as WITSEC in the United States and the United Kingdom and Canadian witness protection programs prove that an organized, independent protection system with legal assistance can result in positive convictions and the collapse of influential criminal syndicates⁹⁹. For the reform of India's witness protection system, some crucial recommendations can be derived from these observations.

Strengthening Legal Frameworks for Witness Protection

One of the greatest shortfalls in India's effort in witness protection has been the lack of a strong statutory regime. Although the Witness Protection Scheme, 2018, launched by the Supreme Court is a positive step, it remains a policy directive¹⁰⁰ and not a legally binding legislation. In order to allow effective protection,

India needs a strong Witness Protection Act such as the ones adopted in the United States and Canada. The Act needs to set out the eligibility standards, degrees of protection, enforcement mechanisms, and penalties for intimidating witnesses.

Establishing an Independent Witness Protection Agency

One of the major concerns of witness protection in India is the extensive use of local police units for such protection, which may be susceptible to issues of compromise, underfinancing, or political bias. There have been a number of instances, which have been characterized in the Sohrabuddin Sheikh Encounter case¹⁰¹, wherein the police themselves have been suspected of killing witnesses or of failing to protect them adequately. In order to eliminate such conflicts of interest, India must establish a national-level, autonomous Witness Protection Authority that is not operated at the behest of local police. This agency must be fashioned after autonomous cells found in Italy and the United States, which fall under federal control. Additionally, this agency must possess an autonomous budget, trained personnel, and the ability to provide high-security protection, relocation, and new identities to witnesses. Most importantly, it must be politically independent to maintain its credibility and efficacy.

International Cooperation in Witness Protection

Transnational in nature, organized crime and terrorism, and witness protection need to be treated as international issues, rather than domestic issues. Criminals in the majority of cases, having committed a crime in one nation, cross into another country to escape prosecution, and there is a need for international collaboration for witness protection and prosecution. India must extend cooperation with nations such as the U.S., Canada, the UK, and the European Union to enable safe transfer of high-risk witnesses if needed. Certain nations have procedures to

⁹⁸ Terrorism Act 2000 (UK)

⁹⁹ Attorney General v BBC [2021] UKSC 29.

¹⁰⁰ Mahender Chawla v Union of India (2019) 2 SCC 274

¹⁰¹ CBI v Amit Shah (2012) 10 SCC 512

transfer witnesses in protection, a procedure that India can implement in its system. India must engage actively with international organizations such as the UNODC (United Nations Office on Drugs and Crime) to exchange best practices and enhance legal and procedural protection.¹⁰²

3.8 Threat Perceptions and Risks Faced by Witnesses

Witnesses offering testimony in cases of terrorism and organized crime are more vulnerable to threat based on the widespread coverage of terrorist and criminal networks.¹⁰³ Compared to other criminal cases, witnesses in cases of terrorism and organized crime engage with complex networks through organized violence, intimidation, and legal manipulation to obstruct the investigation of justice.¹⁰⁴ The seriousness of threats warrants a systematic program of witness protection beyond regular security measures.

Physical Threats and Targeted Killings

- In sensational crime cases, the witnesses are typically killed prior to testifying, especially in criminal cases of transnational crime, drug cartels, and terrorists.
- The inability to take early protective measures results in many witnesses being intimidated, even after they have been identified for protection.

In cases like the J. Dey murder trial¹⁰⁵, where a journalist investigating criminal underworld activity was murdered, it has emerged that declaring a witness high-risk does not assure protection. Failure to take anticipatory protective action, i.e., relocation or clandestine protection, allows organized crime syndicates to eliminate useful testimonies before legal proceedings begin.

Psychological Warfare and Indirect Coercion

In addition to express threats, organized crime groups utilize psychological means in threatening potential witnesses. This covers persistent harassment, manipulation of perceptions, and promoting a climate of ongoing fear.

A usual strategy employed is the public spreading of falsehood regarding the witness with the view of discrediting their testimony. In most cases, fictitious criminal charges, defamatory press reports, or fictitious testimonies have been utilized in discrediting a witness's credibility. Such indirect intimidation is most effective in deterring individuals from testifying since it does not necessitate physical injury but nonetheless completely disables them from being able to assist in the quest for justice.

Institutional Complicity and Breach of Confidentiality

The most important problem in witness protection is corruption and internal leaks in the legal and enforcement apparatus. Despite controls, classified information about protected witnesses has leaked out through bribery, political motivation, or inefficiency. The Shehla Masood case, where internal security agency leaks endangered witnesses. Without rigorous accountability and independent oversight, even well-intentioned protection plans can be rendered useless by institutional failure.¹⁰⁶

Digital Tracking and Cyber Surveillance

- Contemporary criminal organizations levies advanced digital tools to locate and intimidate witnesses, making traditional protection methods inadequate.¹⁰⁷
- The rise of deep-fake technology, location tracking, and social media exploitation allows threats to be issued remotely, sometimes without direct physical interaction.¹⁰⁸

¹⁰² UNODC, 'Good Practices for the Protection of Witnesses in Criminal Proceedings Involving Organized Crime' (2008)

¹⁰³ State of Maharashtra v Bharat Shanti Lal Shah (2008) 13 SCC 5

¹⁰⁴ PUCL v Union of India (2003) 4 SCC 399

¹⁰⁵ Ravi Ratan Bakshi v State of Maharashtra (2015) SCC OnLine Bom 4403

¹⁰⁶ State of Madhya Pradesh v Zahida Parvez (2013) SCC OnLine MP 2134

¹⁰⁷ UNODC, 'The Use of the Internet for Terrorist Purposes' (2012)

¹⁰⁸ Council of Europe Convention on Cybercrime 2001 (Budapest Convention)

The activists and journalists reporting on extreme groups have shown how cyber threats may cross geographical boundaries.¹⁰⁹ Even witnesses who have been moved to other jurisdictions have been reached by online intimidation campaigns, indicating that witness anonymity in the cyber age demands much more advanced countermeasures than was ever conceived.

Ineffectiveness of Relocation and Identity Protection

Although witness relocation is a central element of protection programs in most nations, its implementation in India is patchy and under-resourced. Most witnesses who are eligible for relocation struggle with insufficient financial assistance, reintegration challenges, and absence of a formal identity change program. In some of the cases involving extremist organizations, witnesses have been relocated to other states but remain at risk because of the lack of new identity systems. Relocation is not only physical but also ensuring witnesses are able to restart their lives without being tracked back to their original identities.

Challenges in Implementing International Witness Protection Standards

Despite the existence of robust legal frameworks, several challenges hinder the effective implementation of witness protection programs worldwide:

Cross-border cooperation difficulties

- Differences in national laws often create obstacles in relocating witnesses internationally.
- Many countries lack formal agreements for mutual witness protection assistance.¹¹⁰

Insufficient funding and resources

- Many developing nations lack financial resources to support long-term witness protection.

- Limited funding leads to poor security infrastructure and inadequate relocation programs.

Technological threats

- Advanced facial recognition software, social media tracking, and cyber surveillance make it easier for criminals to locate protected witnesses.¹¹¹
- Weak cybersecurity measures can lead to data breaches, exposing sensitive witness information.

Corruption within law enforcement agencies

- In some countries, police officers and government officials leak confidential witness details to criminal organizations in exchange for bribes.
- Lack of oversight mechanisms increases the risk of witness information being compromised.

Limited public awareness and trust

- Many witnesses hesitate to come forward due to fear of retaliation.¹¹²
- A lack of legal awareness and education prevents potential witnesses from understanding their rights and protections.

¹⁰⁹ Interpol, 'Guidelines for Digital Forensics and Cybercrime Investigation' (2020)

¹¹⁰ Council of Europe Convention on the Protection of Witnesses (2005)

¹¹¹ UNODC, 'The Use of the Internet for Terrorist Purposes' (2012)

¹¹² UNODC, 'Ensuring Witness Protection: A Key Tool for Criminal Justice' (2013)