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Prasanna S,

Chairman of Institute of Legal Education

No. 08, Arul Nagar, Seera Thoppu,

Maudhanda Kurichi, Srirangam,

Tiruchirappalli – 620102

Phone : +91 94896 71437 – info@iledu.in / Chairman@iledu.in



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JUDICIAL INTERPRETATION AND WITNESS PROTECTION: A REVIEW OF LANDMARK INDIAN JUDGMENTS

AUTHOR – BONALA KISHAN* & DR. Y. PADMAJA RANI**

RESEARCH SCHOLAR (PH.D.)* & ASSOCIATE PROFESSOR (RETD.)**

DEPARTMENT OF LAW, UNIVERSITY COLLEGE OF LAW, KAKTIYA UNIVERSITY, WARANGAL – 506009

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Abstract

Witness protection is a fundamental aspect of ensuring justice in any criminal justice system. In India, however, the safety and well-being of witnesses have historically been neglected, leading to a high incidence of witness hostility, retractions, and intimidation—especially in high-profile or politically sensitive cases. This has resulted in the derailment of many trials, thereby undermining public trust in the judiciary and the criminal justice process. Recognizing these challenges, the Indian judiciary has emerged as a proactive institution in developing legal strategies and safeguards to protect witnesses, particularly in the absence of a robust statutory framework for many years. This article critically examines the evolution of judicial interpretation concerning witness protection in India. It explores landmark judgments such as *Zahira Habibulla Sheikh v. State of Gujarat*, *Sakshi v. Union of India*, *Praful Desai v. State of Maharashtra*, and *Mahender Chawla v. Union of India*, among others. These decisions have played a crucial role in affirming that the right to a fair trial under Article 21 of the Constitution includes the right of witnesses to depose without fear, coercion, or undue influence. The article further analyzes the Supreme Court's endorsement of the Witness Protection Scheme, 2018, and evaluates its operational scope and limitations. It also offers comparative insights from jurisdictions like the United States and the United Kingdom, emphasizing the need for legislative reform and effective implementation mechanisms. Ultimately, this article argues that witness protection is not merely a procedural necessity but a constitutional obligation. Strengthening judicial interpretation with statutory backing and administrative support is vital to ensure that justice is not only done but seen to be done.

Keywords: Criminal Justice System, Witness Protection, Judicial Interpretation, Hostile Witnesses, Fair Trial, Constitutional Law, Law Reforms, Human Rights

Introduction

The integrity and efficacy of any criminal justice system rest significantly on the role of witnesses. Often described as the "eyes and ears of justice," witnesses provide crucial information that helps the courts establish the truth and determine guilt or innocence. In India, however, the position of a witness has traditionally been weak and vulnerable. Many

cases have collapsed due to the retraction of statements, intimidation, coercion, or even the killing of witnesses. This unfortunate reality has created a culture of fear and silence, especially in cases involving organized crime, political influence, or powerful economic interests.

Witness protection is central to the idea of a fair trial, which is enshrined in Article 21 of the Constitution of India. Despite this, for a long time, there was no formal legislative or institutional framework to ensure the safety and

dignity of witnesses. The Code of Criminal Procedure (CrPC) contains procedural safeguards regarding the examination and cross-examination of witnesses, but these provisions do not offer physical or psychological protection against threats. In the absence of a dedicated law, witnesses often remain at the mercy of police inefficiency, delayed trials, and systemic apathy.

The Indian judiciary has played a crucial role in filling the legal vacuum. Through a series of progressive and landmark decisions, the Supreme Court and various High Courts have interpreted existing legal provisions to include robust protections for witnesses. These judicial pronouncements have acknowledged that justice cannot be delivered unless witnesses feel safe to testify truthfully and without fear of retaliation. Courts have emphasized that the state has a duty not only to protect witnesses but also to preserve the credibility of the justice delivery system. A turning point came with the case of Mahender Chawla & Others v. Union of India (2018), in which the Supreme Court approved the Witness Protection Scheme, 2018 as enforceable law under Article 141 of the Constitution. The scheme introduced guidelines for categorizing witnesses based on threat levels and outlined measures such as police escort, in-camera proceedings, relocation, and even identity change. While this was a landmark step, the implementation of the scheme has remained inconsistent across states.

This article examines how judicial interpretation has evolved over time to address the lacunae in the protection of witnesses in criminal proceedings. It analyzes key judicial decisions that have shaped the discourse on witness protection in India, evaluates the efficacy of the Witness Protection Scheme, and offers comparative perspectives from jurisdictions like the United States and the United Kingdom. By highlighting both legal innovations and operational challenges, the article aims to underscore the critical need for a comprehensive, legally enforceable, and uniformly implemented witness protection

framework in India. This study reinforces the argument that witness protection is not merely a procedural concern but a constitutional mandate essential for upholding the rule of law and the credibility of India's criminal justice system.

Witness Protection in India: Legal and Policy Context

Witness protection in India has long been a neglected component of the criminal justice system. Although the testimony of witnesses plays a vital role in securing justice, systemic apathy, procedural delays, and the absence of institutional safeguards have rendered many witnesses vulnerable to threats, coercion, and inducement. Over the years, constitutional jurisprudence, statutory provisions, and judicial interpretation have slowly evolved to provide a more structured and rights-based approach to protecting witnesses.

Constitutional Safeguards

The Constitution of India guarantees certain fundamental rights that indirectly form the foundation for witness protection. Article 21, which ensures the right to life and personal liberty, has been interpreted by the judiciary to include the right to live with dignity and safety. The Supreme Court, in several rulings, has expanded the ambit of Article 21 to encompass the right to a fair trial, which in turn requires that witnesses be able to testify without fear, intimidation, or physical harm.

Article 14 of the Constitution, which ensures equality before the law and equal protection of the laws, further underlines the state's obligation to treat all individuals—particularly those assisting in the administration of justice—with fairness and equity. If witnesses, especially from vulnerable backgrounds, are left without protection, it constitutes a denial of equal protection of the law.

Relevant Provisions under the CrPC and IPC

The Code of Criminal Procedure (CrPC), 1973, though lacking a comprehensive witness protection mechanism, contains some

provisions relevant to witness examination and safety:

- Section 161 CrPC: Deals with the examination of witnesses by the police during investigation. However, the lack of anonymity or protection at this stage often leads to early exposure and vulnerability.
- Section 164 CrPC: Allows for the recording of statements before a magistrate, which adds evidentiary weight and aims to reduce subsequent retractions. However, it does not ensure the physical security of the witness.
- Section 195A of the Indian Penal Code (added in 2006): Criminalizes threats or inducements made to a witness with the intent of influencing their testimony. Although this provision strengthens deterrence, enforcement remains weak.
- Section 311A CrPC: Allows for the examination of a person by the police through identification by voice or photographs, which has indirect implications for protecting identity in sensitive cases.

These provisions, while important, do not offer a holistic framework for witness protection, especially in high-risk or politically sensitive cases.

Witness Protection Scheme, 2018

The lacuna in the law was partly filled by the judiciary in *Mahender Chawla & Others v. Union of India* (2018), where the Supreme Court approved the Witness Protection Scheme, 2018 and made it legally enforceable under Article 141 of the Constitution. The scheme was developed by the Ministry of Home Affairs in consultation with the National Legal Services Authority (NALSA) and was declared binding on all states and Union Territories until formal legislation is enacted.

Key features of the scheme include:

- Threat Categorization: Witnesses are classified into Categories A, B, and C based on the level of threat perception.
- Protection Measures: These range from police escort, installation of security devices at residences, and in-camera trials to relocation and even identity change.
- Witness Protection Fund: States are required to create a dedicated fund to implement the scheme, ensuring financial support for its measures.

However, despite judicial approval, implementation has been uneven across states due to bureaucratic inertia, lack of awareness, and insufficient funding.

Role of NHRC and Law Commission

The National Human Rights Commission (NHRC) has, on several occasions, emphasized the need for a statutory framework to protect witnesses, particularly in cases involving human rights violations, custodial deaths, and communal violence.

The Law Commission of India, in its 172nd Report (2000) and 198th Report (2006), strongly recommended the establishment of a national witness protection programme. The 198th Report especially proposed measures such as non-disclosure of identity, in-camera trials, and government-sponsored relocation, many of which were eventually incorporated into the 2018 Scheme.

Landmark Judicial Pronouncements and Their Impact

a) *Zahira Habibulla H. Sheikh v. State of Gujarat (Best Bakery Case)*

The Best Bakery case emerged as one of the most critical turning points in Indian judicial history concerning witness protection and fair trial standards. The case arose from the communal riots in Gujarat in 2002, during which a mob attacked the Best Bakery in Vadodara, resulting in the death of 14 people. Zahira Sheikh, an eyewitness and survivor, initially

deposed against the accused but later retracted her statement during trial proceedings in Gujarat. The hostile stance taken by key witnesses led to the acquittal of all accused, prompting nationwide outrage and legal scrutiny.

In its 2004 judgment, the Supreme Court of India took serious note of witness intimidation and state complicity, describing the trial as a “mockery of justice.” The Court criticized the failure of the prosecution and local authorities to ensure the safety of witnesses and uphold the rule of law. The judgment emphasized that a trial cannot be fair unless witnesses are able to depose truthfully without fear or coercion. Invoking Article 21 of the Constitution, which guarantees the right to life and personal liberty, the Court held that a fair trial is a fundamental right that extends to both the accused and the victim, including witnesses. It ordered a retrial of the case in Maharashtra, outside the original jurisdiction, and directed special monitoring of the proceedings to prevent further intimidation.

This landmark case underscored the urgent need for a formal witness protection mechanism in India. The judiciary’s intervention set a precedent for recognizing the credibility and protection of witnesses as essential components of criminal justice. It became a foundational case in the evolution of judicial thinking on the relationship between witness safety and the constitutional right to a fair trial.

b) Sakshi v. Union of India (2004)

In *Sakshi v. Union of India*⁹³⁷, the Supreme Court addressed a Public Interest Litigation (PIL) filed by the NGO ‘Sakshi’, which worked for the protection and rehabilitation of victims of sexual abuse, particularly women and children. The petition sought guidelines from the Court to protect the dignity, privacy, and psychological well-being of victims and vulnerable witnesses during trial, particularly in cases of rape and child sexual abuse. The petitioners raised serious concerns about the trauma and

secondary victimization experienced by child and female victims while testifying in open courts. The physical proximity of the accused, the lack of gender-sensitive procedures, and intimidating cross-examination methods were identified as major barriers to effective testimony.

The Supreme Court acknowledged the need for special procedural safeguards to protect such witnesses and directed trial courts across the country to adopt the following measures:

- In-camera trials must be conducted in all cases of sexual offences to ensure privacy and prevent undue embarrassment or intimidation.
- Victims and child witnesses should be allowed to testify in friendly environments, away from the direct gaze of the accused.
- Video conferencing and the use of screens or partitions were approved as valid procedural tools to enable secure and unpressured testimony.
- Cross-examination must be conducted in a manner that does not traumatize the witness, especially when the victim is a minor.

This case marked a significant advancement in the jurisprudence of witness protection in India, particularly concerning vulnerable groups. The Court recognized that procedural fairness must also account for emotional and psychological protection, thereby laying the groundwork for future reforms, including those under the Witness Protection Scheme, 2018.

State of Maharashtra v. Dr. Praful B. Desai (2003)⁹³⁸

In *State of Maharashtra v. Dr. Praful B. Desai*, the Supreme Court of India addressed a critical procedural question—whether recording of evidence by way of video conferencing would be valid under Indian criminal law. The case

⁹³⁷ [(2004) 5 SCC 518]

⁹³⁸ [(2003) 4 SCC 601]

arose when a key prosecution witness, residing in the United States, could not be physically present for testimony in a criminal trial in India. The trial court allowed his examination through video conferencing, but the decision was challenged on the ground that it would violate the right of the accused to confront the witness.

The Supreme Court, in a landmark ruling, held that recording of evidence through video conferencing is legally permissible and satisfies the requirements of Section 273 of the Code of Criminal Procedure (CrPC), which mandates that evidence must be recorded in the presence of the accused. The Court reasoned that “presence” does not necessarily imply physical presence in the courtroom, and modern technology can fulfill the legal and procedural requirements of fair trial without compromising the rights of the accused. This judgment is significant because it opened the door for the use of technology as a witness protection tool. By allowing witnesses to testify remotely, particularly in sensitive or high-risk cases, the judiciary recognized a means to enhance witness safety, reduce fear of reprisal, and protect identities when necessary.

This case set the precedent for the later use of video conferencing in criminal trials across India, especially in cases involving vulnerable or intimidated witnesses. It also laid the foundation for integrating technology into the broader witness protection ecosystem, a trend that was eventually reflected in the Witness Protection Scheme, 2018.

c) Mahender Chawla & Others v. Union of India (2018)⁹³⁹

The case of Mahender Chawla & Others v. Union of India marks a landmark moment in the legal evolution of witness protection in India. The petitioners, who were key witnesses in high-profile criminal cases, approached the Supreme Court seeking protection due to serious threats to their lives. The case highlighted the systemic failure of Indian law to ensure the safety and

well-being of witnesses, particularly in cases involving powerful and influential accused persons.

In a historic judgment, the Supreme Court formally approved the Witness Protection Scheme, 2018, prepared by the Ministry of Home Affairs in consultation with the National Legal Services Authority (NALSA). The Court declared that the scheme would have the force of law under Article 141 of the Constitution until a formal statute is enacted by Parliament. This made the scheme binding on all States and Union Territories, mandating uniform implementation across the country.

A key feature of the scheme is the classification of witnesses into three categories based on the level of threat:

- **Category A:** Witnesses facing a threat to life during and after the trial.
- **Category B:** Witnesses facing threats to safety, reputation, or property.
- **Category C:** Witnesses facing moderate threats that may disrupt testimony or cooperation.

The scheme provides for protection measures such as police escort, in-camera trials, change of identity, relocation, and installation of security systems at the residence of the witness. It also mandates the creation of a State Witness Protection Fund to ensure financial viability.

By institutionalizing the first national witness protection mechanism, the judgment filled a long-standing legal void. It underscored the judiciary’s commitment to safeguarding the integrity of the criminal justice process and ensuring that witnesses can speak the truth without fear or pressure.

d) Neelam Katara v. Union of India (2003)⁹⁴⁰

The case of Neelam Katara v. Union of India is widely recognized as a significant development in the evolution of witness

⁹³⁹ [(2019) 14 SCC 615]

⁹⁴⁰ [2003 (103) DLT 653]

protection jurisprudence in India. The case arose from the murder of Nitish Katara, a young man who was killed for his relationship with the daughter of a politically influential family. The brutal nature of the crime, coupled with the accused's powerful political background, raised serious concerns regarding the safety of witnesses and the possibility of a fair trial.

Neelam Katara, the victim's mother, filed a writ petition seeking protection for witnesses and a transparent investigation. She contended that witnesses were being intimidated and harassed, and that the law enforcement agencies had failed to provide a safe environment for them to testify. The case attracted significant media and public attention, further emphasizing the urgent need for institutional mechanisms to protect witnesses from undue influence and threats. The Delhi High Court, acknowledging the gravity of the situation, issued strong directions to the police to ensure round-the-clock security for key witnesses. The Court also emphasized the state's duty to create an atmosphere where witnesses can testify without fear, particularly in cases involving high-profile or politically connected accused.

The judgment made a strong case for systemic witness protection policies, stressing that ad-hoc arrangements or temporary police escorts were not sufficient. It became one of the early judicial pronouncements that called for a structured and enforceable witness protection program, eventually contributing to the groundwork for the Witness Protection Scheme, 2018. Through this case, the judiciary recognized that fair trial rights cannot be realized without proactive protection of witnesses, especially when the accused wield significant power or influence. It stands as a compelling example of judicial activism in the interest of justice and public confidence in the legal system.

Emerging Judicial Trends and Challenges

Over the past two decades, the Indian judiciary has increasingly recognized that witness protection is fundamental to the

integrity of criminal trials. Courts have moved beyond traditional interpretations of procedural law and embraced innovative, rights-based approaches to ensure witness safety. This evolution has been driven by a combination of high-profile cases, legislative inertia, and growing public concern over the misuse of power by accused persons to manipulate or intimidate witnesses.

Emerging Judicial Trends

- 1. Recognition of Witness Protection as Part of the Right to Fair Trial:** A notable trend in judicial reasoning is the expansion of Article 21 of the Constitution to include the right of a witness to testify freely and securely. Courts have reiterated that a trial cannot be considered fair unless all participants, including witnesses, are able to contribute without fear or undue influence.
- 2. Adoption of Technology in Trial Procedures:** Judgments like *State of Maharashtra v. Praful B. Desai* have opened the doors for the use of video conferencing as a legitimate method of recording testimony. This not only aids in protecting the witness from physical intimidation but also promotes efficiency in the trial process, especially in cross-border or high-risk cases. More recently, courts have permitted remote testimonies during the COVID-19 pandemic, reinforcing the legitimacy of virtual trial proceedings.
- 3. In-Camera Proceedings and Identity Protection:** Courts have increasingly directed that trials involving vulnerable witnesses—such as survivors of sexual violence, minors, and whistleblowers—be conducted in-camera. In sensitive cases, judicial directions have allowed for anonymous testimony, use of pseudonyms, and segregated court environments to prevent witness exposure.

4. **Court-Ordered Relocation and Physical Security:** Though still rare, there have been instances where courts have recommended the relocation of witnesses and directed the police to provide round-the-clock security, as seen in *Neelam Katara* and *Zahira Sheikh*. Such steps highlight the judiciary's willingness to order case-specific protective measures in the absence of a uniform law.
5. **Judicial Monitoring and Special Bench Oversight:** In cases involving political or organized crime, courts have established special benches to oversee the implementation of protection orders and ensure witness cooperation is not sabotaged during the course of the trial. This reflects a more hands-on, supervisory role adopted by the judiciary in such high-stakes proceedings.
3. **Balancing Witness Protection with the Accused's Rights:** One of the more nuanced legal challenges is the tension between witness anonymity and the right of the accused to cross-examine their accuser. Courts must strike a delicate balance between these competing interests to uphold both fair trial rights and protection imperatives.
4. **Lack of Awareness Among Legal Stakeholders:** Many trial judges, public prosecutors, and defense lawyers remain unfamiliar with the provisions and procedures under the Witness Protection Scheme. As a result, requests for protection are either inadequately argued or improperly adjudicated at the lower judiciary level.
5. **Absence of Legislative Backing:** Despite repeated calls by the Law Commission and the Supreme Court, there is still no comprehensive legislation on witness protection in India. The scheme currently in operation lacks the legal force, budgetary backing, and institutional stability that a parliamentary statute would provide.

Persistent Challenges

Despite these positive developments, several structural and operational challenges continue to hinder the effectiveness of witness protection in India:

1. **Lack of Uniform Implementation of the Witness Protection Scheme, 2018:** While the scheme has been declared binding by the Supreme Court, its implementation varies widely across states. Many states have not created the required State Witness Protection Funds, and protection applications are often processed with delays or insufficient seriousness by district committees.
2. **Inadequate Infrastructure and Trained Personnel:** There is a dearth of trained police officers, forensic experts, and administrative staff capable of executing protection plans effectively. Courts often face resistance or non-cooperation from local law enforcement, especially in politically sensitive trials.

Recommendations for Strengthening Witness Protection in India

While the Indian judiciary has laid an important foundation through progressive judgments and the Witness Protection Scheme, 2018, the journey toward a comprehensive, effective, and equitable system is far from complete. The following recommendations aim to address the current gaps in policy, implementation, and legal framework, and offer a roadmap for long-term reform.

1. **Enact a Comprehensive Witness Protection Law:** India urgently needs a dedicated Witness Protection Act that clearly defines the rights, responsibilities, and entitlements of witnesses. This legislation should codify the principles laid down by the Supreme Court, standardize protection procedures, and provide for punitive

action against those who intimidate or harm witnesses. A statutory framework would give witness protection the necessary legal sanctity, administrative clarity, and budgetary support.

2. Establish a Centralized Witness Protection Authority:

Authority: Currently, witness protection is managed by State and District-level committees under the 2018 Scheme, leading to inconsistent implementation. A Central Witness Protection Authority, functioning under the Ministry of Home Affairs or an independent national body, can coordinate with state agencies, monitor compliance, and develop best practices. This authority should also oversee training, audits, and grievance redressal mechanisms.

3. Create Dedicated Witness Protection Units in Police Forces:

Police Forces: Witness protection must be treated as a specialized task, not an extension of routine police work. Dedicated units should be established within state police departments, equipped with trained personnel, surveillance technology, and forensic support. Officers must receive specific training in handling vulnerable witnesses, cyber threats, and relocation protocols.

4. Ensure Funding Through a National Witness Protection Fund:

Fund: The Witness Protection Scheme, 2018, mandates the creation of a State Witness Protection Fund, but many states have failed to operationalize it. The Central Government should establish a National Witness Protection Fund with annual budgetary allocations, supplemented by contributions from state governments, public-private partnerships, and CSR initiatives. This will ensure uniform availability of resources and reduce dependence on state-level political will.

5. Leverage Technology for Testimony and Anonymity:

Anonymity: Building on the precedent set in *Praful Desai*, courts should make greater use of secure video conferencing, encrypted digital records, voice distortion software, and anonymized IDs during witness examination. Judicial officers should be encouraged to use technology not just for convenience but as a

core component of witness safety, particularly in remote and under-resourced regions.

6. Strengthen Judicial Awareness and Training:

Training: There is a pressing need to build judicial and prosecutorial awareness around witness rights and protection mechanisms. Training programs must be conducted for judges, magistrates, public prosecutors, and legal aid lawyers to sensitize them to the psychological, legal, and logistical needs of witnesses. These should be integrated into Judicial Academies' curricula at the national and state levels.

7. Promote Victim and Witness-Centric Justice:

Justice: A paradigm shift is required to move from an accused-centric to a victim- and witness-centric justice system. Legal reforms must ensure that witness dignity, convenience, and confidentiality are prioritized at all stages—investigation, trial, and post-trial. A separate Witness Bill of Rights could be introduced to formalize this approach.

8. Foster Civil Society and Legal Aid Participation:

Participation: Civil society organizations and legal aid bodies should be involved in identifying at-risk witnesses, educating them about their rights, and monitoring state compliance. Community engagement can improve transparency, build trust, and provide additional non-state support systems for vulnerable witnesses.

These recommendations aim to transform India's witness protection system from a reactive, fragmented model to a proactive, rights-based, and institutionally supported framework. Judicial commitment, though crucial, must be supplemented by political will, legislative reform, and administrative readiness to safeguard the most vital participants in the criminal justice process—the witnesses of truth.

Conclusion

Witnesses form the backbone of any criminal justice system. Their ability to testify truthfully and without fear is central to

upholding the rule of law and delivering justice. In the Indian context, however, witness vulnerability has long been a systemic issue, often resulting in the collapse of cases, particularly those involving organized crime, sexual violence, and politically sensitive matters. The recurring phenomena of witness hostility, retractions, and even targeted violence have revealed deep institutional weaknesses in safeguarding those who support the judicial process. This article has explored how the Indian judiciary has responded to this challenge through a series of landmark judgments that have redefined witness rights under the constitutional guarantee of a fair trial under Article 21. From the *Best Bakery* retrial ordered in *Zahira Sheikh* to the introduction of technological safeguards in *Praful Desai*, and culminating in the judicial endorsement of the Witness Protection Scheme, 2018 in *Mahender Chawla*, the courts have progressively carved out a robust, albeit fragmented, framework for witness protection. Nevertheless, these judicial efforts, while commendable, are not a substitute for a comprehensive statutory regime. The absence of formal legislation, inconsistent implementation across states, lack of dedicated funds, and insufficient awareness among stakeholders continue to undermine the effectiveness of existing protections. Furthermore, the balancing of witness anonymity with the accused's right to cross-examination remains a complex issue that must be handled with constitutional sensitivity. Witness protection is no longer a procedural convenience but a constitutional imperative. Ensuring the safety, dignity, and participation of witnesses is vital to restoring public faith in the justice system and upholding the promise of justice for all.

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