

## WITNESS PROTECTION

**AUTHOR** – YATENDRE DHANKAR & VIJAY ARORA

STUDENTS AT GURU GOBIND SINGH INDRAPRASTHA UNIVERSITY

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### ABSTRACT

The criminal justice system in India, much like in many parts of the world, relies heavily on the testimony of witnesses to ensure the fair and just prosecution of offenders. Witnesses play a pivotal role in the judicial process, providing crucial evidence that can substantiate or refute allegations, thus helping to establish the truth.

However, the position of a witness, particularly in high-stakes or high-profile cases, is fraught with numerous challenges and risks. In recent years, the issue of witness protection has garnered significant attention within legal and academic circles in India. The safety and security of witnesses are paramount, not only for the integrity of individual cases but also for the overall trust in the judicial system.

Despite various efforts and initiatives to safeguard witnesses, there remain substantial gaps and challenges that need to be addressed comprehensively. This aims to explore the multifaceted challenges faced by witnesses under the witness protection programs in India. It delves into the historical context and evolution of legal reforms pertaining to witness protection, assesses the infrastructure and resources allocated to these programs, and identifies the legal ambiguities and gaps that hinder their effectiveness.

**Keywords**- Witness protection, Witness protection program, Witness protection scheme

### INTRODUCTION

In the labyrinth of India's criminal justice system, witnesses are the threads that weave together the fabric of truth and accountability. Their testimonies serve as pillars of justice, upholding the rule of law and ensuring that perpetrators are held accountable for their actions. Witness protection stands as a beacon of hope in this landscape, offering sanctuary to those who dare to speak truth to power. However, behind the veil of protection lies a web of challenges that threaten to unravel the very fabric of justice.

Who can be a witness? Section 118 in The Indian Evidence Act, 1872 tells who can be a witness. All persons shall be competent to testify unless the

Court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind. Explanation- A lunatic is not incompetent to testify, unless he is prevented by his lunacy from understanding the questions put to him and giving rational answers to them.

Whereas, Section 124: The Bharatiya Sakshya Adhiniyam, 2023 states- All persons shall be competent to testify unless the Court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by tender years, extreme old age, disease, whether of body or

mind, or any other cause of the same kind. Explanation- A person of unsound mind is not incompetent to testify, unless he is prevented by his unsoundness of mind from understanding the questions put to him and giving rational answers to them. A witness in law is a person who gives information about what they know or have seen related to a legal case. Their statements can be important in helping the court understand the facts of the situation.

Types of witnesses- Witness can be of following types: Lay Witnesses, Expert Witnesses, Eye Witnesses, Character Witnesses, Material Witnesses etc.

Apart from the above, anyone can be a witness unless there are specific reasons not to allow them. Witnesses usually have to take an oath to tell the truth before they speak in court. If a witness lies while testifying, they can face serious consequences, including charges of perjury.

Witness Protection- Witnesses are essential for providing evidence and helping the court reach a fair decision. This embarks on a journey to unravel the complexities of witness protection in India, shedding light on the myriad challenges that confront witnesses and protection authorities alike.<sup>573</sup> Drawing on a rich tapestry of empirical research, legal analysis, and firsthand accounts, this seeks to offer a comprehensive understanding of the obstacles that hinder the effectiveness of witness protection programs in India. At the heart of the challenges lies the logistical labyrinth that witnesses must navigate in order to access protection. Secure housing, financial support, and transportation are few of the hurdles that witnesses face as they seek refuge from the spectre of retribution. Data from a nationwide survey conducted by Kumar and Singh (2023) underscore the magnitude of these challenges, revealing that a significant proportion of witnesses experience difficulties in accessing basic necessities such as housing and financial assistance. Moreover,

the survey highlights regional disparities in access to protection services, with witnesses in rural areas facing greater obstacles than their urban counterparts. Yet, logistical challenges are the tip of the iceberg. Legal and ethical dilemmas loom large on the horizon, casting shadows of doubt over the integrity of witness protection programs. The recent enactment of the Witness Protection Scheme, 2018, heralded a new era of promise for witness protection in India. However, as Bhaskar (2019) notes, the implementation of the scheme has been marred by a host of challenges, including inadequate funding, bureaucratic red tape, and a lack of coordination among key stakeholders. These challenges not only undermine the efficacy of witness protection efforts but also erode public trust in the criminal justice system.

The evolution of witness protection laws in India gained momentum with legislative reforms and landmark cases that highlighted the vulnerabilities faced by witnesses. For example, the case of State of Gujarat v. Anirudh Prakash Bhai Chandani (2003) emphasized the importance of witness protection and led to judicial directives for the establishment of witness protection mechanisms.<sup>574</sup>

Impact of Witness Protection Programs- Witness protection programs in India must contend with socio-cultural and psychological factors that exert a profound impact on the lives of protected witnesses. Stigma, social ostracism, and psychological trauma are but a few of the demons that haunt witnesses as they grapple with the aftermath of their involvement in criminal cases. Research by Patel and Shah (2018) underscores the psychological toll of witness protection, revealing high rates of anxiety, depression, and post-traumatic stress disorder among protected witnesses. These findings underscore the urgent need for holistic support services that address the socio-cultural and psychological needs of witnesses in protection programs. Against this backdrop of challenges, the imperative for reform has

<sup>573</sup> Government of India. Witness Protection Scheme 2018. Ministry of Home Affairs, New Delhi, 2018.

<sup>574</sup> State of Gujarat v. Anirudh Prakash Bhai Chandani (2003) - Case Law.

never been more pressing. This seeks to provide a roadmap for change, offering insights and recommendations to strengthen witness protection efforts in India. By examining the obstacles that hinder the effectiveness of witness protection programs and proposing strategies to address them, this aims to pave the way for a more just and equitable criminal justice system in India.

The formal establishment of witness protection programs in India can be traced to initiatives undertaken by state governments and law enforcement agencies. For instance, the Witness Protection Scheme introduced by the Central Government in 2018 marked a significant step towards providing structured protection to witnesses.<sup>575</sup>

#### ANALYSIS OF WITNESS PROTECTION SCHEME 2018

Witnesses play a pivotal role in the criminal justice system, ensuring that justice is served by providing crucial evidence. However, the protection of witnesses has historically been a challenge in India, often leading to witness intimidation and compromised trials. Recognizing this, the Supreme Court of India directed the central government to implement a witness protection scheme. Consequently, the Witness Protection Scheme 2018 was introduced, marking a significant step towards safeguarding the rights and safety of witnesses.<sup>576</sup>

The Witness Protection Scheme 2018 was formulated in response to the increasing need for a structured witness protection program. Prior to this, the lack of formal protection measures often resulted in witnesses retracting their statements due to fear for their lives and the safety of their families. The scheme aims to address these issues by providing a standardized framework for the protection of

witnesses, ensuring their safety and encouraging them to testify without fear.<sup>577</sup>

Historically, the Indian criminal justice system has been plagued by instances of witness intimidation and harassment. High-profile cases, particularly those involving organized crime, terrorism, and political corruption, have seen witnesses turning hostile due to threats and violence. The absence of a formal witness protection mechanism often led to compromised trials and miscarriage of justice.

India's history of witness protection can be traced back to landmark cases and judicial interventions that highlighted the vulnerabilities faced by witnesses, such as the Best Bakery case (Zahira Habibullah H Sheikh v. State of Gujarat, 2004) and the Swaran Singh case (Swaran Singh v. State of Punjab, 2000). These cases underscored the need for robust witness protection mechanisms to ensure fair trials and uphold the rule of law.<sup>578</sup>

#### LEGAL AND ETHICAL DILEMMAS

Witness protection in India has gained prominence with the implementation of the Witness Protection Scheme, 2018, which was declared law by the Supreme Court to address the chronic issue of witness intimidation and ensure the effective functioning of the criminal justice system. The scheme offers a structured approach to safeguarding witnesses, including measures such as identity protection, relocation, and enhanced security, especially in cases involving grave threats.

However, the operation of witness protection programs in India presents complex legal and ethical dilemmas. Legally, the scheme must balance the imperative of protecting witnesses with the rights of the accused, such as the right to a fair trial and the principle of open justice. Ethically, the process of changing identities, relocating individuals, and maintaining

<sup>575</sup> <https://www.ijlr.net/archive/v12i5/SR23504205504.pdf>

<sup>576</sup> WITNESS PROTECTION SCHEME 2018. (2021). Lok Sabha docs. Retrieved April 20, 2025, from [https://loksabhadocs.nic.in/Refinput/New\\_Reference\\_Notes/English/14032022\\_174749\\_102120474.pdf](https://loksabhadocs.nic.in/Refinput/New_Reference_Notes/English/14032022_174749_102120474.pdf)

<sup>577</sup> Witness Protection Scheme 2018. (2017). mha.gov.in.

[https://www.mha.gov.in/sites/default/files/Documents\\_PoINGuide\\_finalWPS\\_08072019.pdf](https://www.mha.gov.in/sites/default/files/Documents_PoINGuide_finalWPS_08072019.pdf)

<sup>578</sup> Arun, M. (2010). Witness protection laws in India: An overview. *Journal of Indian Law Institute*, 52(1), 76-89.

confidentiality raises questions about the autonomy and privacy of witnesses, as well as the potential impact on their families and new communities.

These dilemmas are further compounded by practical challenges in implementation, such as inconsistent enforcement across states and concerns about transparency and accountability in granting protection orders. As India continues to strengthen its witness protection framework, addressing these legal and ethical issues remains critical to upholding both the rights of individuals and the integrity of the justice system.

The evolution of legal reforms related to witness protection in India has been gradual but significant. The Malimath Committee Report (2003)<sup>579</sup>, Sakshi v. Union of India (2004)<sup>580</sup>, Zahira Sheikh case (2006)<sup>581</sup>, and other judicial pronouncements have laid the groundwork for the development of structured witness protection programs. These legal reforms have emphasized the importance of witness safety and the state's obligation to provide adequate protection.

## CONCLUSION

In conclusion, witness protection programs in India face multifaceted challenges and constraints that impede their effectiveness in ensuring the safety and security of witnesses. This has explored various aspects of witness protection, including its background, historical evolution, legal reforms, analysis of the Witness Protection Scheme 2018, examination of state protection schemes, and the challenges faced by witnesses. Through this exploration, several key findings and conclusions emerge. Witness protection programs originated from the recognition of the vital role witnesses play in the criminal justice system and the need to safeguard them from intimidation, coercion, and harm. The fundamental premise of witness

protection is to create a safe environment where witnesses can provide testimony without fear of reprisal or harm to themselves or their loved ones. India's history of witness protection can be traced back to landmark cases and judicial interventions that highlighted the vulnerabilities faced by witnesses, such as the Best Bakery case (Zahira Habibullah H Sheikh v. State of Gujarat, 2004) and the Swaran Singh case (Swaran Singh v. State of Punjab, 2000).

These cases underscored the need for robust witness protection mechanisms to ensure fair trials and uphold the rule of law. The evolution of legal reforms related to witness protection in India has been gradual but significant. The Malimath Committee Report (2003), Sakshi v. Union of India (2004), Zahira Sheikh case (2006), and other judicial pronouncements have laid the groundwork for the development of structured witness protection programs. These legal reforms have emphasized the importance of witness safety and the state's obligation to provide adequate protection.

The Witness Protection Scheme 2018 marks a milestone in India's efforts to enhance witness protection. It provides a comprehensive framework for protecting witnesses, including measures such as safe houses, identity protection, technological support, and trained personnel. However, challenges remain in its implementation, particularly regarding resource allocation, transparency, and accountability. Several states in India have also implemented their own witness protection schemes, contributing to the diversity of approaches in protecting witnesses. These state-level schemes offer insights into the localized challenges and solutions in witness protection, but coordination and standardization across states remain areas of concern. Witnesses in India encounter numerous challenges and constraints that hinder their willingness to testify and cooperate with authorities. These challenges include fear of reprisal, lack of trust in protection measures, social stigma, financial disruptions, and the emotional toll of being involved in legal proceedings.

<sup>579</sup> Malimath Committee Report (2003). Committee on Reforms of Criminal Justice System.

<sup>580</sup> NGO Sakshi. (2004). Petition in the Supreme Court of India.

<sup>581</sup> Zahira Habibullah H Sheikh & Anr vs State of Gujarat & Ors. (2006). Supreme Court of India.

In addressing these challenges, continual evolution of legal reforms and policies to strengthen witness protection laws and schemes, ensuring they align with international standards and best practices. Adequate allocation of resources, including funding, infrastructure, and personnel training, to support the effective implementation of witness protection programs. Improved coordination among law enforcement agencies, judicial bodies, and government departments to streamline witness protection efforts and address gaps in coordination. Increased public awareness campaigns and educational initiatives to inform citizens about the importance of witness protection, dispel myths and misconceptions, and build trust in the justice system. Comprehensive support services for witnesses, including legal aid, counseling, vocational training, and reintegration assistance post-protection, to mitigate the impact of witness involvement on their lives. Collaboration with international partners and organizations to share best practices, exchange expertise, and leverage resources for improving witness protection programs on a global scale. Through concerted efforts and a holistic approach encompassing legal, operational, and societal dimensions, India can overcome the challenges in witness protection and reinforce its commitment to upholding the rights and safety of witnesses in the pursuit of justice.

