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Witness Protection Scheme in India: Challenges and Reforms under the New Criminal Laws

GAURI CHAUDHARY* AND SATYAM SHARMA**

ABSTRACT

Witnesses play a crucial role in the criminal justice system, and their statements and testimony are central to deciding whether a defendant is guilty or innocent. Witness intimidation, threats, harassment, social pressure, and violence, however, are common in India, whether from the accused or from influential groups. Owing to such fear, witnesses may turn hostile, refuse to cooperate, or withdraw their statements during trial. This undermines the administration of justice and leads to acquittals, even in serious criminal offences. Recognising the need for witness safety, the Supreme Court approved the Witness Protection Scheme, 2018, which was made operational nationwide. The Bharatiya Nagarik Suraksha Sanhita, 2023 later placed witness protection on a statutory footing under Section 398. The new criminal laws aim to modernise the Indian criminal justice system and to strengthen the rights of victims and witnesses. Several problems nonetheless remain, including weak implementation, limited financial resources, lack of awareness, delays in trials, technical and technological limitations, and the absence of specialised protection agencies. This paper discusses the concept of witness protection in India, examines its significance, studies the Witness Protection Scheme and the reforms introduced by the new criminal laws, and critically addresses the major hurdles that hinder effective implementation of the scheme. It also recommends the reforms required to strengthen India's weak and inefficient witness protection mechanism.

I. INTRODUCTION

Witnesses are essential to any case in the criminal justice system. They contribute information about the commission of offences and help the court discover the truth, and their testimony plays a vital role in both criminal investigation and trial. For a fair trial, witnesses must be present and willing to testify without fear or pressure, before impartial judges. Witness intimidation has long been a concern in India, where witnesses are often threatened with loss of

* Author is a Student at Law College Dehradun, Uttarakhand University, Dehradun, Uttarakhand, India.

** Author is an Assistant Professor at Law College Dehradun, Uttarakhand University, Dehradun, Uttarakhand, India.

life, property, reputation, or harm to members of their family. In some cases involving high-profile accused individuals, organised crime gangs, political figures, or wealthy persons intimidate witnesses, who consequently turn hostile in court. Hostile witnesses are one of the significant factors responsible for the low conviction rate in India. Courts cannot secure convictions without witnesses to support the prosecution, resulting in acquittals and miscarriages of justice. For many years, there was no adequate mechanism in India to protect witnesses. Although certain features of the criminal process provided for in-camera trial and confidentiality, in particular situations there was no system to ensure witness safety. The courts have repeatedly stated the necessity of witness protection laws and have held that witness protection forms part of the right to a fair trial guaranteed under Article 21 of the Constitution.¹ A major breakthrough came in 2018 when the Supreme Court approved the Witness Protection Scheme, 2018 in *Mahender Chawla v. Union of India*.² The Court directed that the scheme be implemented until proper legislation was enacted by all the States and Union Territories. Witness protection was later given statutory status under Section 398 of the *Bharatiya Nagarik Suraksha Sanhita, 2023*, an important reform in India's criminal justice system. The new criminal laws adopted in 2023 have a modernising effect on crime administration and enhance security for victims and witnesses. Implementation nonetheless remains difficult because of inadequate infrastructure, financial constraints, and administrative inefficiency, and the positive changes in the witness protection framework have not yet been satisfactorily implemented.

II. MEANING AND IMPORTANCE OF WITNESS PROTECTION

Witness protection refers to State action to prevent a witness from being threatened, intimidated, or harmed because of involvement in a criminal investigation or trial. Such measures ensure that witnesses do not fear reprisal for giving honest and free testimony. Witness protection is necessary because witnesses are frequently at risk of being pressured by defendants, and may face threats, actual violence, social boycott, financial loss, or even death, particularly in serious cases involving terrorism, organised crime, corruption, sexual offences, and political violence. Many people are unwilling to cooperate with the authorities unless their safety is secure. The importance of witness protection can be viewed from several perspectives. It safeguards the administration of justice by enabling witnesses to testify truthfully. It enhances public trust in the judiciary and law enforcement. It prevents powerful offenders from interfering with the justice system through intimidation or force. It promotes good governance by ensuring the

¹ INDIA CONST. art. 21.

² *Mahender Chawla v. Union of India*, (2019) 14 SCC 615 (India).

accountability of offenders. Finally, it secures the dignity, freedom, and constitutional rights of those involved in the criminal process. Witness protection is thus crucial to the credibility of criminal trials. Without it, trials become open to manipulation: a witness may change his or her account, refuse to identify the accused, or refuse to appear in court, ultimately weakening the prosecution and eroding faith in the judicial system.

III. CONSTITUTIONAL BASIS OF WITNESS PROTECTION IN INDIA

Witness protection in India is grounded in the Constitution. Although the protection of witnesses is not expressly provided for, the constitutional courts have inferred it from the fundamental rights guaranteed under Article 21. Article 21 guarantees the right to life and personal liberty,³ which includes the right to live with dignity and security. In its decisions, the Supreme Court has consistently held that a fair trial is implicit in Article 21. Because the right to a fair trial depends on free and fearless testimony, witness protection is a constitutional responsibility of the State. Article 14 guarantees equality before the law and the equal protection of the laws; without protection from threats and violence, witnesses are unable to participate in the justice system. Article 19(1)(a), on freedom of speech and expression,⁴ indirectly protects the right of witnesses to give evidence truthfully and without fear. These constitutional principles have been upheld by the Indian courts in a number of landmark decisions. In *Zahira Habibullah Sheikh v. State of Gujarat*⁵ (also known as the Best Bakery case), the Supreme Court harshly criticised the State for failing to safeguard witnesses in communal violence cases, observing that the intimidation of witnesses is a serious matter that poses a clear threat to public confidence in the justice delivery system. Similarly, in *National Human Rights Commission v. State of Gujarat*, the Court noted that the protection of witnesses is necessary to ensure that they give evidence without fear or pressure.

IV. THE EVOLUTION OF WITNESS PROTECTION LAWS IN INDIA

Witness protection law in India has evolved over time. For many years, there was no separate legislation to protect witnesses; only a few provisions, such as those for in-camera proceedings and confidentiality in certain cases under the Code of Criminal Procedure, 1973, were available. These measures proved inadequate to address the growing problem of witness intimidation. The Law Commission of India made several recommendations towards a comprehensive witness protection law. The 14th Report drew attention to the difficulties faced by witnesses and the

³ INDIA CONST. art. 21.

⁴ INDIA CONST. art. 19(1)(a).

⁵ *Zahira Habibullah Sheikh v. State of Gujarat*, (2004) 4 SCC 158 (India).

need to treat them humanely in criminal proceedings. The 154th Report emphasised the need for legislative measures to prevent the intimidation of witnesses. The 172nd Report called for the anonymity of witnesses in sexual offence cases, and the 198th Report made specific proposals for a Witness Identity Protection Programme and a comprehensive witness protection law. Despite these recommendations, legislative change was delayed, and it fell to the judiciary to fill the gap.

V. THE WITNESS PROTECTION SCHEME, 2018

One of the most important changes in the Indian criminal justice system was the Witness Protection Scheme, 2018. The scheme was drafted by the Central Government in consultation with the National Legal Services Authority and approved by the Supreme Court. Its main purpose is to enable witnesses to give evidence freely and truthfully without fear of intimidation or violence, and to build trust between witnesses and the State so as to safeguard them. The scheme classifies witnesses into three categories according to threat perception. Category A comprises witnesses who face a serious threat to their life or to that of their family members. Category B comprises witnesses at risk of harm to themselves, their reputation, or their property. Category C comprises witnesses subjected to moderate harassment or intimidation. The scheme offers a range of protective measures, including police escort, police presence, installation of security equipment, temporary relocation, change of identity, concealment of identity, in-camera proceedings, and videoconferencing; in extreme cases, witnesses may be relocated to other places for their safety. It also establishes a Witness Protection Fund to meet the expenses of security measures, relocation, and rehabilitation. Competent authorities, namely District and Sessions Judges, make orders for witness protection on the basis of threat-analysis reports prepared by the police. The scheme was a major step towards the institutionalisation of witness protection in India, although its implementation has been inconsistent across the States owing to various practical difficulties.

VI. WITNESS PROTECTION UNDER THE NEW CRIMINAL LAWS

In India, the Bharatiya Nyaya Sanhita, 2023, the Bharatiya Nagarik Suraksha Sanhita, 2023, and the Bharatiya Sakshya Adhiniyam, 2023 have reformed the criminal law, replacing the colonial-era statutes with the aim of modernising the criminal justice system. One of the important changes introduced by the Bharatiya Nagarik Suraksha Sanhita, 2023 is the implementation of witness protection as law under Section 398. Every State Government must prepare and notify a witness protection scheme for the safety of witnesses during investigation, inquiry, and trial. Section 398 is significant because it elevates witness protection from a

guideline requiring judicial approval to a statutory obligation. Whereas the Witness Protection Scheme previously functioned primarily through court orders, the Bharatiya Nagarik Suraksha Sanhita now provides witnesses with stronger legal protection. The new criminal laws also encourage the use of technology in criminal proceedings: videoconferencing, electronic recording of evidence, remote testimony, and electronic summons can reduce witnesses' exposure to threats and the need for them to appear repeatedly in court. These reforms mark a shift towards a more victim-centred and witness-sensitive criminal justice system, although their success depends greatly on proper implementation and institutional support.

VII. CHALLENGES IN WITNESS PROTECTION IN INDIA

Although the law now provides for witness protection, its implementation remains a matter of concern in India, and several challenges persist. Owing to limited administrative capacity and funding, most States have not been able to establish witness protection schemes. Poor funding remains a significant challenge, since a witness protection programme requires considerable expenditure on security, relocation, change of identity, and technology, and several States have inadequate budgets for these purposes. A lack of trust in the police and government is another serious problem: witnesses are often reluctant to provide information because of the leakage of confidential information by police officers, especially where the accused is powerful, and corruption and politicisation further erode public confidence in protection mechanisms. The security of witnesses is also compromised by prolonged litigation. Criminal cases in India continue for years, compelling witnesses to appear in court repeatedly, and the longer a case progresses, the greater the possibility of intimidation, bribery, and harassment. Witness hostility has become a major problem; many witnesses withdraw because of threats, social pressure, or financial inducement, and well-known criminal trials have repeatedly shown how hostile witnesses can undermine the prosecution and lead to acquittals. A further hurdle is lack of awareness: many people do not realise that protection measures and legal rights are available, a problem worsened by illiteracy and poor legal literacy. India also lacks specialised agencies dedicated to witness protection; responsibility is typically delegated to the existing police force, which has many other duties, and there is no national witness security authority of the kind found in the United States. Technological constraints further limit implementation, as many courts and police stations are not fully equipped with secure videoconferencing, electronic evidence management, or out-of-court testimony facilities. Witness protection becomes even more challenging in cases of organised crime, terrorism, or political influence, where offenders may be powerful enough, financially and politically, to sway investigations and endanger witnesses.

VIII. JUDICIAL APPROACH TOWARD WITNESS PROTECTION

The Indian judiciary has contributed significantly to the jurisprudence of witness protection. Witness safety has been a recurring theme in judicial decisions, playing a key role in securing fair trials and the sound administration of justice. In *Mahender Chawla v. Union of India*,⁶ the Supreme Court treated witness protection as an integral part of a fair criminal trial. Recalling the *Best Bakery* case, the Court observed that the intimidation and coercion of witnesses is destructive of public confidence in the justice system, and pointed to the State's failure to protect witnesses in communal violence proceedings. In *Sakshi v. Union of India*,⁷ the Supreme Court allowed protective measures in sexual offence cases, including the use of screens and videoconferencing, to save victims and witnesses from being traumatised or intimidated. The Court also upheld the right of witnesses to participate in criminal proceedings and emphasised that, being indispensable to those proceedings, they must be protected and treated with dignity, as in *State of Gujarat v. Anirudh Singh*.⁸ Together, these rulings strengthened the legal framework for witness protection in India and paved the way for further legislative reform.

IX. REFORMS NEEDED FOR EFFECTIVE WITNESS PROTECTION

The new criminal laws are a welcome improvement, but greater effort is required to implement an effective witness protection system in India. The following reforms are necessary.

A. A Comprehensive Witness Protection Statute

Parliament should enact comprehensive legislation devoted to witnesses. Such a law must explicitly set out the rights of witnesses, the duties of institutions, and confidentiality requirements, and must be accompanied by penalties for intimidation.

B. Independent Witness Protection Authorities

Independent witness protection authorities should be established at both the national and State levels. Specialised agencies can offer protection that is more professional and efficient than that provided by ordinary police departments.

C. Speedy Trials for Vulnerable Witnesses

Criminal trials involving vulnerable witnesses must be conducted swiftly. Speedy trials reduce the opportunities for witnesses to be threatened and improve conviction rates.

⁶ *Mahender Chawla v. Union of India*, *supra* note 3.

⁷ *Sakshi v. Union of India*, (2004) 5 SCC 518 (India).

⁸ *State of Gujarat v. Anirudh Singh*, 1997 Cri. L.J. 1185 (SC) (India).

D. Strengthened Technological Infrastructure

Technological infrastructure needs to be strengthened. Secure videoconferencing, encrypted communication systems, remote testimony, and digital evidence management can substantially improve witness safety.

E. Adequate Funding

Adequate funding must be provided for witness protection programmes, with a dedicated budget for relocation, rehabilitation, and security needs.

F. Psychological Counselling and Rehabilitation

Psychological counselling and rehabilitation support should be made available to witnesses, many of whom are emotionally affected during criminal proceedings and require such assistance.

G. Training for Police, Prosecutors, and Judges

Police officers, prosecutors, and judges need specific training in witness sensitivity, confidentiality, and threat assessment.

H. Stringent Penalties for Witness Intimidation

Stringent penalties for the intimidation of witnesses should be strictly enforced, making it more difficult to coerce a witness unlawfully.

X. CONCLUSION

Witness protection is a key element in ensuring a fair trial and a sound criminal justice system. For too long, the intimidation of witnesses has undermined criminal prosecutions and weakened public confidence in the administration of justice in India. The law has taken important strides towards witness security through the Witness Protection Scheme, 2018 and its statutory recognition under Section 398 of the Bharatiya Nagarik Suraksha Sanhita, 2023. The new criminal laws aim to modernise the country's criminal justice system and to enhance the protection of victims and witnesses through technological and procedural changes. Legal recognition is not enough, however, unless it is matched by effective implementation, accountability, adequate funding, and public awareness. India continues to face widespread problems such as prolonged trials, police delays, hostile witnesses, and inadequate infrastructure, all of which must be addressed through comprehensive legislative and institutional reform. Witnesses should not be treated merely as tools of evidence but should be accorded the dignity, security, and constitutional rights they hold as persons. A strong witness

protection mechanism is crucial to maintaining the rule of law, to the effective prosecution of offenders, and to strengthening public trust in the justice delivery system. Justice cannot be done in the absence of courageous witnesses.

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