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# Security of Witness in Criminal Justice System: Critical evaluation of the Witness Protection Scheme 2018

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DR. GIRISH ABHYANKAR<sup>1</sup> AND ANINDITA SAHA<sup>2</sup>

## ABSTRACT

*Witness protection legislation in India has long been overdue. The Supreme Court of India ordered the Centre to establish a system to defend the witness' interests following multiple cases of witness assaults. The Witness Protection Scheme, presented by the Centre, was authorised by the Supreme Court on 5 December 2018. All countries and union territories were directed to propose legislation on it. Although few governments have accepted the programme in its text and spirit, many have made little progress. Through this paper, the author will highlight and analysis the Witness Protection Scheme 2018 its background, important provisions, future applications and recommendations for implementation in the scheme. However, there are several areas which the plan has failed to address, such as internet bullying, financial difficulties, the balance of police forces, the mindset of witnesses and the interests of vulnerable witnesses. A number of proposals to make the scheme more witness-centered are made.*

**Keywords:** Criminal Justice System, Legislation, Trial, Witness, Witness Protection, Witness Protection Scheme

## I. INTRODUCTION

The main purpose of the Criminal Justice System is to preserve and secure the rule of law i.e. to maintain the public order, peace, and law, trial system, punishing the offenders for the disturbance, to protect the victims of the crime, and mostly to uplift the concept of welfare. The Criminal Justice System in the world is based upon two principles either Adversarial or Inquisitorial System of Justice. In, India the practice in action is the Adversarial system where it is about a series of investigations and evidence plays one of the major roles throughout the process. In this research, the entire focus will be on the witnesses and their role as it is seen

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<sup>1</sup> Author is an Associate Professor at Symbiosis Law School, Pune, India.

<sup>2</sup> Author is a LLM Student at Symbiosis Law School, Pune, India.

that in India there is a lack of witness protection and proper legislation and where the witnesses go missing or they turn hostile during the commencement of trial or in the later stage of a trial.

In the justice delivery system, the witnesses play a vital role while delivering the justice. It can be determined that the entire process will depend on witnesses and their significant role played by them. If we take into consideration the criminal trial regarding the offenses is about series of investigations where the evidence plays one of the major roles throughout the process. At times it has been perceived that the victim becomes the witness of the case and such pieces of evidence play as the main evidence provider either orally or documentary and it can change the whole scenario of the case.

According to Bentham witnesses are the “eyes and ears of justice”. In India, the legislation which deals with witness protection can be discussed as there are no specific laws that can protect the witnesses in rather few sections of the Indian Evidence Act. The Section 151 and Section 152 to protect witnesses from being asked offensive, disgraceful, and questions that can annoy them or insult their reputation<sup>3</sup>. Apart from those sections, India doesn't have any legislation to protect them. However, The Law Commission looked for the aspect in the discussion paper on witness protection and has recommended procedures like witness secrecy and physical protection to the witnesses. It also drew attention to special statutes on terrorism like TADA and POTA which have provisions for protecting the identity and address of witnesses and recommended a universal law dealing with witness secrecy be implemented. With the advent of time, the Indian Judiciary has shown up the importance of witnesses and ensures their safety and protection. The Supreme Court of India the case of Best Bakery has observed that “if the witnesses get threatened or are forced to give false evidence that also would not result in fair trial”<sup>4</sup>.

It was observed that even the states also lack behind the protection witness which may result in the high acquittal of offenders and most of the cases lead to witnesses are either lost throughout the trial or are found to be dead which can be regarded as a great failure in the criminal justice system of India. Even the countries like the USA, Australia, Japan, and United Kingdom have their separate legislation on witness protection but India till today only provides witness protection, not legislation. India got its first Witness Protection Scheme in 2018.

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<sup>3</sup> Indian Evidence Act

<sup>4</sup> Zahira Habibullah Sheikh & Anr V. State Of Gujarat & Ors. (2004). 4 SCC 158. Indian Supreme Court.

## II. BACKGROUND

Earlier to the Witness Protection Scheme 2018, India doesn't had any witness protection in general as it was seen in the case of Jessica Lal case 1999 where the accused Manu Sharma who was left free as the eye-witness repudiated as he was a son of famous political leader. Later on the Delhi was the first state of India which has implemented the Witness Protection Law after the case of *Neelam Katara v. Union of India*, ILR (2003) which was passed by Hon'ble High Court of Delhi issued guidelines for protection of witnesses and came up with guidelines for new policy of witness protection. In judgment of Delhi Court in *Court v. Manu Sharma & Others* had directed the government to frame a witness protection policy to provide guidelines and principles which police, prosecutor and executive agencies will follow. But the main guidelines were originally issued in *Neelam Katara* case is incorporated by Delhi government as Witness Protection Scheme of 2015. There were certain steps which was suggested to be taken up regarding prohibiting the publication or revealing, in any manner, directly or indirectly, the name, address and other particulars which may lead to the identification of a witness; changing the identity of a witness; relocating the person, facility for in-camera proceedings and 'live link', in which a witness can depose without coming to court.

In 2015 in the state of Uttar Pradesh two rape victims were shot to death in two different places as the victim tends to appear in the court as a witness. Another incident of 2017 in Unnao where a minor girl was raped by a Member of Legislative Assembly but the victim and their family was injured in a car incident which can be regarded as one of the brutalities in witness victim protection.

The Supreme Court has approved Indian's first witness protection scheme in the year 2018 which was drafted by the union government and asked all the states, centre, and union territories to enforce it. The scheme was put forward by the centre with all the available data which was represented from different states /union territory, national legal services authority, civil society, high courts and police personnel's, looking into the background of the Supreme Court. In-state of **Gujrat Anirudh Singh(1997)** was held that it is a salutary duty of every witness who knows the commission of a crime, to assist the state in giving evidence. There was also a reference in India through different committee reports that came in the 14th law commission report also recommend putting witness protection. Justice Malimath Committee report also has a strong decision regarding the witness protection mechanism and said that most of the witnesses are harassed throughout the proceeding.

### III. MAJOR PROVISION OF WITNESS PROTECTION SCHEME 2018

In case of **Mahendra Chawla & Ors v. Union of India & ors**<sup>5</sup> approved the Witness Protection Scheme, 2018. It shall under the law of Article 141/142 of the Constitution till the parliamentary and for state legislation on the subject. The SC held that Right to witnesses to testify freely in courts in part of Article 21 which states Right to life. The bench has also asked all states and UT'S set up vulnerable witness, deposition complexes, these rooms will be equipped with facilities to prevent the accused and coming face to face.

The Witness Protection Scheme 2018 was brought up as a lifesaving for those innocent people who become the witness in the case. They also provide police escort to witness up to court room or using audio video means for recording the testimony from the witnesses and ensuring that they are provided with safe house, providing new identity and also provides classifying the witness in three categories as provided in the Scheme.

The Witness Protection Scheme was brought forward in order to ensure the investigation; prosecution and trial of criminal offences are not affected because of the witnesses being threatened or afraid to dispose before the court. It was realized that witnesses need to be given the confidence to come forward and assist the criminal justice system by assuring them of their safety<sup>6</sup>. Through keeping this in aims and objective the scheme was further developed with various measure to ensure the that witness are safe and protected.

Part one defines certain terms mentioned in the scheme, including the term “witness”. Witness, according to the scheme, is “any person who possesses information or documents about any offences”<sup>7</sup>. The definition given by the United Nations Office on Drugs and Crime (UNODC) in its manual on “Good Practices for the Protection of Witnesses in Criminal Proceedings Involving Organized Crime”, launched in February 2008. Even though it does state that the definition of witnesses may differ in various countries, the manual defines witness as a “person in possession of information important to the judicial or criminal proceedings”<sup>8</sup>.

Under the scheme, witnesses are categorized on the basis of threat perception. The three categories formulated on the basis of potential threat are:

“Category A: Pertains to the scenario where the threat is graver and extends to life of a witness

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<sup>5</sup> Writ Petition (crl.) No. 156 of 2016

<sup>6</sup> Ministry of Home Affairs. (2018). Witness protection scheme, 2018. New Delhi: Ministry of Home Affairs

<sup>7</sup> Ministry of Home Affairs. (2018). Witness protection scheme, 2018. New Delhi: Ministry of Home Affairs

<sup>8</sup> United Nations Office on Drugs and Crime (UNODC). (2008). Good practices for the protection of witnesses in criminal proceedings involving organized crime. Vienna: United Nations Office on Drugs and Crime (UNODC).

or his family members;

Category B: Comprises that degree where threat is to the safety, reputation, property of witness or family members

Category C: Comprises of the degree where threats are more moderate as compared to the threats conceptualised in the categories A and B. Category C extends to harassment or intimidation of the witness or his family members reputation.”

The scheme also calls for establishment of a State witness protection fund. The fund will be comprised of the budgetary allocation by the state government, donations/ contributions, funds from CSR activities, and the cost imposed/ordered to be deposited by the courts/tribunals towards the scheme<sup>9</sup>.

Any witness who is threatened or feels vulnerable can submit a complaint with the appropriate authority. Every district is obliged to examine these petitions through a standing committee led by the District and Sessions Judge and consisting of the Chief of the District Police and the Chief of the District Prosecution as its Member Secretary. The witness can submit the application and accompanying papers to the Member Secretary.

The Member Secretary orders a Threat Analysis Report as soon as the application is filed. Within five days, the report must be filed. The study categorises danger perceptions and offers recommendations for necessary security actions. The authorities will also communicate with the witness's family members and hold in-camera hearings on the application. The entire procedure is meant to take 10 days from the time the application is filed, and it is expected to be done in perfect secrecy. In the meanwhile, if the witness is in urgent danger, the competent authorities might impose interim protection. A component of the programme requires that the protection order's execution be monitored. It further indicates that a quarterly assessment of the implementation will be done on the basis of the Witness Protection Cell's follow-up report.

The scheme establishes worldwide protective measures to safeguard the safety of witnesses and give them the confidence to speak freely before the court. Physical protection by police officers, the installation of CCTV cameras near their homes, the prompt recording of statements without unnecessary adjournments, in-camera trials, concealment of identity, change of identity, temporary relocation, financial aid, and the use of vulnerable witness courtrooms are all discussed briefly.

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<sup>9</sup> Ministry of Home Affairs. (2018). Witness protection scheme, 2018. New Delhi: Ministry of Home Affairs

#### **IV. DRAWBACKS AND RECOMMENDATIONS OF THE WITNESS PROTECTION SCHEME**

- The Scheme was drafted to protect the witness in pre-trial and post-trial there are seems inherent loophole which doesn't raise its effectiveness that is the reason behind many states have not adopted it.
- The witness protection is based on the threat analysis report provided by police officials and classifications of categories will be done by the police so in some cases where there is the influence of high profile then there can bias decisions taken up by police officials.
- There should be a committee forward by the court to look into the threat analysis report and police officer's decisions.
- Another problem in the scheme is the period of protection mentioned which is three months rather they should protect the witness till the accused is punished such that no life threat or any kind of pressure lies on the witness and his family.
- The scheme has adopted the good practices of states like the USA and Australia but implementation in India is quite difficult as it engages a huge amount of monetary assistance
- The WPS does not include any provisions to combat online witness abuse or intimidation. To combat witness intimidation on the internet, legislative action is required. The imposition of harsh sanctions for witness intimidation might improve witness protection procedures.
- The application is not allowed under the plan. Facilitating online means can assist witnesses by allowing them to file an application at their leisure, reducing red tape and ensuring speedier service delivery. As a result, online application filling should be implemented.
- Another major drawback is it is not a statute it is a scheme. So violation of it won't lead to any penalty. So it should transfer to the statue as soon as possible.

#### **V. CONCLUSION**

The present Scheme of witness protection is maximum time neglected by the Indian justice system. The Witness Protection can be regarded as one of the measures to strengthened the justice system and giving it a new structure. So, that no innocent is killed or misused. People participate more and more in delivering justice. And the provisions should be made in such a way that witness doesn't plead for protection rather provide in the initial stage. Rather it will encourage the witnesses to come forward and help the innocent victim and d punish the

accused.

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