
WITNESS PROTECTION IN THE INDIAN CRIMINAL JUSTICE SYSTEM

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ABSTRACT

Witness protection is essential for the criminal justice system to work properly. In India, courts have addressed the necessity for witness protection through numerous judgments. However, in the historic case of Mahindra Chawla vs. Union of India, the Supreme Court of India made the first move to The Witness Protection Scheme, 2018 aims to protect witnesses and encourage their involvement in trials. However, the scheme's execution has faced obstacles, limiting its efficacy. This research paper tries to analyze witness protection in the Indian criminal justice system.

Keywords: Witness Protection, Protection scheme, Effectiveness, Implementation, Criminal Justice System, Juvenile, Child witness, Hostile witness, etc.

“Injustice anywhere is a threat to justice everywhere”.

MARTIN LUTHER

I. INTRODUCTION

The codification of criminal law in India was during colonial rule with the sole purpose of facilitating the subjugation of Indians and preventing the natives from acting against their colonial masters. With this scheme, a witness's perspective would have been a misfit. After independence, a significant part of the colonial criminal legal system continued in India. Therefore, the right of witnesses and provisions for their protection features in the Indian

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criminal laws. The provisions related to witness protection are not consolidated in separate legislation whereas other states have special legislation for the protection of witnesses.

A witness is thought to have the most important role in any state's cardinal justice system. The witness is the primary clue that allows the judiciary to form findings in certain situations. That is why the witness must appear in court boldly, with complete conviction and a sense of obligation.

II. WHO IS A WITNESS

A witness is a person who sees a crime happen and who can express it when asked by the court².

A. Vulnerable Witness

The Supreme Court, while hearing a special leave plea in the matter of *Smruti Tukaram Badade v. State of Maharashtra and others*³, orally commented that the definition of the phrase 'vulnerable witness' may not be limited to juvenile witnesses. a vulnerable witness as a child who has not yet completed 18 years of age. The term vulnerable witness is not included under Section 118 of the Indian Evidence Act.

B. Hostile Witness⁴

The phrase hostile witness is not defined expressly in the Indian Evidence Act of 1872. Legislators may not have anticipated the occurrence of this phrase in a trial. However, the issue of hostile witnesses has become increasingly widespread in many criminal trials. The concept of a hostile witness is largely derived from common law principles. It is critical to give protection against adverse statements made intentionally by witnesses in a court of law. There was no clarity surrounding the term unfriendly at the moment it was coined. Following independence, the Court's observation provided some clarity in areas where it was proved to be opposite, adverse, and inconsistent. When a witness provides an adverse statement in court that contradicts his previous statements.

² Indian Evidence Act, 1872, section 118

³ AIR 2019

⁴ Indian Evidence Act, 1872, section 154

III. LEGAL SAFEGUARDS FOR WITNESSES⁵

Under section 195A of the Indian Penal Code Criminal Intimidation of Witnesses is a criminal offence punishable with seven years of imprisonment⁶.

In statutes namely the Juvenile Justice Act, 2015, Whistle Blowers Protection Act, 2011, and Protection of Children from Sexual Castes and Tribes (Prevention of Atrocities) Act, 1989 also provide for safeguarding witnesses against threats.

A. Guidelines for Child Witness

- In *Sakshi vs. Union of India*, the court laid down the following guidelines on the procedure of taking evidence from a child witness:
- The judges shall allow the use of a videotaped interview of the testimony of the child in the presence of a child-support person.
- A child could be permitted to testify through closed-circuit television or from behind a screen to acquire an honest account of the acts complained of without any fear.
- Only the judge should be allowed to cross-examine a minor based on the questions given by the defence in writing after the examination of the minor.
- During the testimony of the child, sufficient interval should be provided as and when she requires it.

B. Witness Protection in India

Witness protection has become a major concern in India. In *Swaran singh v. State of Punjab*,⁷ the Court ruled that evidence in a criminal proceeding is admissible in law. Witnesses play a vital role in providing such evidence. During a trial, it is uncommon for a witness to change his or her position on his or her own volition. In the case of *Mahindra Chawla and Ors. v. Union of India and Ors*.⁸ the Court ruled that one of the primary reasons for witnesses changing their stances can be a lack of sufficient state protection, resulting in a threat to life. Such witnesses are referred to be hostile witnesses.

⁵ <https://cjp.org.in/factsheet-on-witness-protection-in-india>

⁶ Indian Penal Code, 1860, section 195A

⁷ AIR1957

⁸ AIR 2019

C. Supreme Court Judgments⁹

SC held that the Right of witnesses to testify freely in courts is part of Article 21 (Right to Life).

The court said that the scheme will be the law under Article 141/142 of the Constitution of India.

The bench has also asked all States and UTs to set up vulnerable witness deposition complexes, these rooms will be equipped with facilities to prevent the accused and witness coming face to face.

D. Articles 141 and 142

Article 141: The law declared by the Supreme Court shall be binding on all courts within the territory of India.

Article 142 (1): The Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, and any decree so passed or orders so made shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, in such manner as the President may by order prescribe.

Article 142 (2): Subject to the provisions of any law made on this behalf by Parliament, the Supreme Court shall, concerning the whole of the territory of India, have all and every power to make any order for the purpose of securing the attendance of any person, the discovery or production of any documents, or the investigation or punishment of any contempt of itself.

E. Background

Asumal Sirumalani Harpalani, known as Asaram Bapu by his followers, a religious leader, was convicted by the Rajasthan High Court under rape case.

As the cases went through courts, three witnesses were killed and others were attacked or threatened.

The issue came up when the Supreme Court was hearing public interest litigation (PIL) plea seeking protection for witnesses in Asaram Bapu rape cases.

⁹ <https://www.drishtias.com/to-the-points/Paper2/witness-protection-scheme-2018>

The Bench said witnesses feared serious consequences if they deposed against Asaram.

F. Why the Witness Protection Scheme?

- The need to protect witnesses has been emphasized by Law Commission reports and court judgments for years.
- Such as the *State of Gujarat v. Anirudh Singh*¹⁰, 14th Law Commission Report and Malimath Committee Report has recommended for witness protection scheme.
- Victims and witnesses of serious crimes are particularly at risk when the perpetrator is powerful, influential, or rich and the victims or witnesses belong to a socially or economically marginalized community.
- Girls and women who report sexual violence are often even more vulnerable and face extreme pressure or direct threats from the accused.
- Also, witnesses need to have the confidence to come forward to assist law enforcement and prosecutorial authorities. They need to be assured that they will receive support and protection.
- Until now, there have been ad hoc steps such as few dedicated courtrooms for vulnerable witnesses mostly child victims and concealing the identity of witnesses in anti-terrorism etc have been unsuccessful to prevent witnesses.
- Hence, legislative measures to emphasize prohibition against tampering of witnesses have become the imminent and inevitable need of the day.

IV. WITNESS PROTECTION SCHEME 2018

- The scheme is India's first Witness Protection Scheme, aimed at providing appropriate protection to the witnesses by the State.
- The draft witness protection scheme has been finalized in consultation with the **National Legal Services Authority (NALSA) and Bureau of Police Research and Development (BPRD)**.
- The scheme shall extend to the whole of India except the State of Jammu & Kashmir.
- The scheme identifies **three categories** of witnesses as per threat perception:

¹⁰ AIR 1997

- **Category A:** Those cases where threat extends to the life of witness or family members during the investigation, trial or even thereafter.
- **Category B:** Those cases where the threat extends to safety, reputation or property of the witness or family members during the investigation or trial.
- **Category C:** Cases where the threat is moderate and extends to harassment or intimidation of the witness or his family members, reputation or property during the investigation, trial or thereafter.

The scheme provides for the Witness Protection Fund:

- The expenses for the programme will be met from this fund.
- The states will make annual budgetary allocations for the fund.
- It will be established and operated by the Department/Ministry of Home under States and Union Territories.

The scheme calls for the preparation of a 'Threat Analysis Report' of the witness by the Commissioner/SSP when the witness applies for protection.

A. The Witness Protection Order

- It is an order passed by the Competent Authority and it will be implemented by the Witness Protection Cell of the State/UT.
- The Competent Authority is the one who is empowered under the Scheme to pass orders for the protection of the witness such as, Secretary District Legal Services Authority(DLSA).

B. Witness Protection Application and process:

- An application can be filed for seeking protection order under this scheme.
- Competent Authority passes an order for Threat Analysis Report after receiving the application.
- The Commissioner of Police in Commissionerates/ SSP in District Police investigating the case shall categorize the threat.

- An application shall be disposed of within five working days of receipt of Threat Analysis Report.

Change of Identity in appropriate cases, where there is a request from the witness for the change of identity.

Types of Protection measures include providing a police escort to the witness up to the courtroom, in more complex cases taking extraordinary measures such as offering temporary residence in a safe house, giving a new identity, and relocation at an undisclosed place and also measures such as close protection, regular patrolling around the witness's house.

C. The Significance of the Witness Protection Scheme

- This scheme attempts to ensure that witnesses receive appropriate and adequate protection.
- Through this scheme, it would result in providing support to the threatened and vulnerable witnesses and gaining their confidence in delivering information for justice.
- Facilities such as camera trials, proximate physical protection and anonymizing of testimony and references to witnesses in the records would provide better protection.
- It will also strengthen the criminal justice system in the country and will consequently enhance the National Security Scenario.

D. Challenges

- The witness protection programme will pose logistical and financial challenges.
- Invariance with the Law Commission's recommendation, the scheme is to be funded by budgetary support from State governments and donations.
- Change of Identity needs to be done without undermining the witness professional and property rights and educational qualifications.¹¹

V. FEW LEGAL MECHANISMS TO PROTECT WITNESSES

A. Public trial and cross-examination of witnesses in public court under Indian law:

¹¹ <https://www.drishtiiias.com/to-the-points/Paper2/witness-protection-scheme-2018>

Few legislative bodies consider chapter activities to be a subordinate or subsidiary aspect of witness protection in criminal law. Section 327 of Cr. PC requires stalking to take place in open court, but 327(2) requires incamera stalking for rape crimes, when read in conjunction with Articles.376 to 376(d)). These may not be directly tied to the witness protection system, but they can provide the witness more power or make them feel safe under the law. These laws or chapters may be from different codes, but they are related and should be read together for fairness.

According to Article 228 of the IPC, releasing information about a rape victim to the public is a significant matter that requires judicial action against anyone who do so.

According to Sec. 21 of the Juvenile Justice Act of 2000, juvenile witnesses' names, addresses, and other personal information are not to be released. If this occurs, it may raise the danger level. That amazing boy. Therefore, this area requires confidentiality. The law of evidence requires ongoing updates to maintain witness safety¹².

B. Protecting Witnesses' Identity: Special Statutes in India

Before India's constitution, the state of Bengal issued the Bangladesh Suppression of Terrorist Atrocities Ordinance in 1933. Section 31 of the bill authorizes the appointment of a special justice of the peace to avert public safety incidents in the area. court. Prior to the TADA bill in 1985 and 1987, Articles 13 and 16 were closely related. Sections require confidentiality of the witness's identity and address until the case is closed to ensure their safety. POTA 2000 is a replacement for TADA. Section 30 describes exactly what TADA is. Section 16 says. To prevent isolation, it's important to have broad regulations that protect witnesses and their families, even if it falls under criminal law¹³.

C. Some Important Cases on Witness Protection

*Naroda - Patiya case*¹⁴

¹² J J ACT 2000 SEC 21

¹³ Yash Saxena, Witness Protection in India: A Fundamental Need in Criminal Justice System, 3 (4) IJLSI Page 297 - 304 (2021), DOI: <https://doij.org/10.10000/IJLSI.11968>

¹⁴ 1976 Cri L.J 295 : AIR 1976 SC 294, 2009(3)ACR2927(SC), (2009)2GLR1672(SC), JT2009(6)SC405, 2009(6)SCALE509, (2009)6SCC342, (2009)7SCR23.

Mohammad Shakur Sayyad, a victim of the Naroda-Patiya carnage in the year 2002, who was also a key witness in that case, was attacked and beaten up brutally by a group of thirty people, while he was sitting outside his shop at the Faisal Park Society in Vatva. According to him Akram Ahmed, an anti-social element of that locality while assaulting him along with other people of the above-mentioned group was shouting "You are very fond of deposing before the Nanavati Commission, aren't you?" Sayyad, who lost his three children in the Naroda-Patiya massacre, had deposed before the Nanavati Commission on 1st October 2003 naming several persons in the mob. He is one of the key witnesses in the case and had also been provided with one police guard. The guard however had retired for the day when Sayyad was attacked. The neighbours of Sayyad maintain that Akram Ahmed had been threatening others not to depose before the judiciary during the Naroda trial. About forty-five families of Naroda-Patiya have refused to go back to the area after the riots. What is shocking in this case is that such a key witness (in this case Sayyad), was provided with only one police guard who, surely, would have looked to save his own life rather than that of the witness he was protecting, when the crowd of thirty people attacked.

*Ketan Tirodkar case*¹⁵

In another instance, the Bombay High Court had given police protection to an ex-journalist Ketan Tirodkar, because he had been under threats soon after he had filed the police complaint, which disclosed a series of illegal acts allegedly committed by the police in connivance with the underworld. Tirodkar had filed a petition seeking police protection as well as a police enquiry into the police underworld nexus. However, the public prosecutor opposed the grant of police protection because Tirodkar himself was involved with the underworld. Here the public prosecutor failed to comprehend the fact that:

- a) Tirodkar has admitted his links with the underworld and is ready to face the legal consequences.
- b) That even former criminals/ mobsters are also given police protection if they turn approver.

¹⁵ 3 <http://www.legalserviceindia.com/article/1339-Hostile-Witnesses.html>, commission of India consultation paper on witness identity protection and witness protection programmes.

The High Court, in this case, had given Tirodkar police protection only for a limited period, not realizing that the persons that he is to implicate would cause serious injury to him the moment the temporary police protection is removed

*Twin Blast case*¹⁶

The role of witnesses and the issue of their protection has come in for much discussion after Shiv Narayan Pandey, the taxi driver who gave clues in the August 25th, 2003 Twin Blast case had to be given extra protection by the Mumbai Police.

The identity of the witness (Pandey) in this case was leaked to the media by an inspector on the day of the blasts. This officer allegedly circulated Xerox copies of a document bearing the name of the witness and the registration number of his vehicle. A couple of days later, a crime branch officer is believed to have leaked his address in Kandivali- a distant Mumbai suburb to the media persons.

The police had failed to realize that Pandey was an important prosecution witness in a very sensitive case. Since the police have yet to arrest more persons in regard to this case, Pandey is a crucial witness in identifying such persons. In such cases, the police should take extra precautions and issue a circular or directive to all officers in the department to maintain silence on all investigations.

*The Bandu case*¹⁷

The victim, in this case, was a deaf and dumb 14-year-old girl who was raped allegedly by the respondent i.e., Bandu. The High Court set aside the conviction of the respondent on the ground that the victim was not cross-examined. The case went to the Apex Court which held that, even though the victim was not cross-examined, there was plenty of evidence to prove that she was raped by the respondent. After passing its Order, the Court looked into a suggestion stating that special examination centers must be set up for examining vulnerable witnesses to make them

¹⁶ 4 2004(2) ACR1400(SC), AIR2004SC456, 2004(1)CTC241, JT2003(10)SC70, 2003(10)SCALE96, (2004)9SCC580

¹⁷ The State of Maharashtra v. Bandu AIR (2018)

comfortable to give their statements. The Court further asked for the status of setting up vulnerable witness deposition centres and pressed for the same¹⁸.

VI. CONCLUSION

Jeremy Bentham rightfully says, “**Witnesses are the eyes and ears of Justice**”. Witness is one of the most important constituents of justice. He is one of the most important sources of information in discovering the truth about the case, but the pains and troubles he has to undergo to help the court are a lot as well. By giving evidence the witness helps the courts to give correct judgment and justice. The witness has the danger of their lives as well as that of their families. They have the danger of their properties as well. They have to undergo lots of discomforts when they come to give evidence. The criminal court system in India has long ignored its provisions for witness protection. The formation of WPS is a great step towards protecting human rights and improving the Indian legal system. The plan should be entirely focused on the witnesses. If officials fail to protect witnesses, it should hold. They are responsible. To ensure witnesses' safety, it's crucial to develop measures that eliminate the need for continuous security requests. It should urge witnesses to provide evidence against the accused instead. Delivering justice, a value listed in the Indian constitution would result from this. Before the Mahendra Chawla case, India did not have a witness protection system. However, following or during the case, the Supreme Court determined that the system was extremely necessary in action and offered security for witnesses in criminal proceedings. The Supreme Court adopted a witness protection plan in 2018.

This research study examines the concerns and challenges of India's witness protection policy. Several major results arose from a review of the background, significance, legislative framework, international viewpoints, and suggestions. Witnesses in India confront tremendous dangers and hurdles, including threats, intimidation, and concern for their own and their families' safety.

¹⁸ <https://blog.ipleaders.in/witnesses-protection-india/>