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WITNESS PROTECTION IN INDIA- Jaspreet Kaur¹**Abstract**

This research paper endeavors to unravel the truth about Witness Protection in India, by way of performing a comparative analysis. The topic bids asking that what indeed are the laws and provisions, if any, that secure the position of witnesses either from themselves or the world. While it is known that the right against self-incrimination is a standing right, witness protection isn't only limited to it. There are other forms of protection required that go beyond the walls of the courtroom. In this sense, some of the questions that prop up are whether there are any laws that penalize intimidating the witness into giving falsified testimony. Or whether there is any post trial protection being provided. The hypothesis being that witness protection is something lacking in India, if not in law making then in implementation of it.

The research paper will touch up on these issues and give a substantial conclusion making appropriate comparisons with other common law nations.

The research methodology will be doctrinal, making use of cases, articles and statutes.

Tentative Chapterisation is as follows:

1. Introduction: what is witness protection?
2. Underlying issues
3. What is being done?
4. What can be done?
5. Conclusion

KEYWORDS: Witness, protection, comparison

1. Introduction:

In an effort to improve India's deplorable witness protection situation, the Supreme Court of India (SC) issued a decision in favour of the witness protection scheme. Currently, witnesses face risk and perilous situations before and during the investigation and trials. The Supreme

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Court, in *MahenderChawla vs. Union of India*², used its powers under Article 141-142 to order state governments to incorporate the scheme until the Centre issues a statutory bill giving it the necessary status in the form of an Act. The scheme is critical at a time when witnesses are becoming violent as a result of criminal threats, families are facing threats during and after trials, and the judiciary is being misled by the falsified evidence submitted to it. A few examples include the Best Bakery Case, the Sohrabuddin Case, and the Mecca Masjid Case.

The evolution of India's witness protection programme has been fascinating. The Indian Evidence Act, which protects witnesses from indecent questions under sections 151 and 152, is the starting point.

The scheme has been mentioned in a number of Law Commission reports (14th to 198th report). It's also been cited in a slew of court cases. However, due to a lack of formal implementation, the scheme did not find its true place in the equipment.

The central government devised the witness protection scheme with the aim of instilling confidence in witnesses by providing aid in order to ensure the fair deposition of evidence. Based on the types of testimonies, the scheme has been divided into three parts. The scheme includes the necessary funding clauses, a method for filing for protection, and a list of the types of protection a witness is entitled to.

The following sections also include witness protection and, if necessary, witness change of identity. According to the scholar, the most important aspect of this scheme is the officers' assessment of the scheme to the beneficiaries and the periodic review of the scheme.

The scheme is highly reliant on police cooperation and requires senior police officers to act as intermediaries at different stages. In addition, the types of remedies available include in camera trials, close protection, frequent patrols around the witness' home, installation of security equipment in the witness' home, escort to and from court, and guaranteeing prompt recording of depositions during the trial.

According to data released by the National Crime Records Bureau, five lakh police position out of a total of 22.8 lakh are vacant, or 25% of the total, though crime rates continue to grow. According to a UNODC report, India also has some of the highest vacancies in the police force. The existing police force would be overburdened if this scheme were implemented, as it would prevent the officers from performing their regular duties or providing protection under the witness protection scheme.

Second, "police" is a state subject, whereas "evidence" is the responsibility of both the Centre

² <http://lawtimesjournal.in/mahender-chawla-vs-union-of-india/> (Last Visited on 30th March, 2021)

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and the State. This was the forerunner to the central government implementing it. The Centre had made the scheme open to suggestions from state governments. The information on the suggestions given is unknown and has not been made public. Acceptance of the recommendation without sufficient justification may cause States to feel alienated, preventing the scheme's efficient implementation.

Due to a lack of funding, the scheme will be abandoned. The failure of the central government to commit to providing funding may be a factor in the scheme's cancellation. There is no section that requires funding, and the absence of ramifications may lead the state to abandon the scheme and its beneficiaries. Third, given the financial and social status of organisations in the country, the scheme is extremely utopian. It is difficult to conduct in camera trials, obtain transportation and financial aid, maintain regular patrols, and change one's identity. This necessitates productivity and discretion. They necessitate time and space, both of which India lacks in terms of limited courts and manpower.

What is suggested is that all officers be able to execute the demands of this scheme as and when requested by recruiting and filling the blatantly high vacancies. As the scheme develops, it is recommended that a dedicated wing for witness protection be established, with personnel trained and competent in such roles and responsibilities. Countries like the United States and Israel have successfully implemented such a strategy. The training of manpower to perform the roles required by this scheme is essential; otherwise, the scheme may fail. In the contemporary state of criminal justice in India, a witness serves as the judiciary's eyes and ears, and in order to keep up with the volume of petitions, India requires a realistic scheme fit for the era. It is necessary to ensure that, now that the scheme has taken shape, the administrative machinery is loyal to the beneficiaries, resulting in the development of an infallible toolkit to ensure that the scheme is working toward witness protection.

2. Underlying Issues:

Over the years, a lack of witness protection has resulted in several cases where the perpetrators have escaped justice, including the notorious *Sohrabuddin case*³, in which over 90 witnesses became aggressive because the accused in the case were individuals with strong political backgrounds, including the current Union Home Minister, Amit Shah.

Another case currently under appeal is the *Pehlu Khan lynching case*⁴, in which a vehicle

³ <https://www.thehindu.com/opinion/editorial/failure-of-justice/article25814414.ece> (Last Visited on 1st April, 2021)

⁴ <https://www.indiatoday.in/india/story/alwar-lynching-pehlu-khan-gau-rakshak-accused-acquitted-1580874-2019-08-14> (Last Visited on 1st April, 2021)

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carrying the prosecutor, Pehlu Khan's sons, and other witnesses was assaulted by men in an unmarked vehicle while on their way to court to testify in the case in September 2019.

The People's Union for Civil Liberties, with the support of the Chief Justice, sent a letter to the DGP and IGP of Rajasthan, seeking witness protection for the witnesses in the case because there was an obvious apprehension of imminent threat, but no action was taken.

The landmark decision that established India's Witness Protection Scheme

The 14th Law Commission Report, published in 1996-97, was the first to address the issue of witness protection. The case of *MahenderChawla and ors. v. Union of India & Ors*⁵ is the most important case of witness protection. According to Article 141/142 of the Indian Constitution, the Witness Protection Scheme outlined in the said judgement is binding on all Indian courts and enforceable in all States and Union Territories; this was approved by the government in the Rajya Sabha in July 2019.

The Supreme Court made the following critical observations in this landmark decision:

“Whenever the two sides of a dispute come out with opposing versions, the witnesses become an important tool for reaching correct conclusions and thus advancing justice in a case.”

They are often forced to appear after the alleged crime has occurred, which substantially impairs their ability to remember crucial details at the time of the real crime. They aren't even adequately compensated for the lost time and expenses for transportation, etc.”

“It hardly needs to be stated that one of the most common reasons for witnesses to become hostile is that they are not provided with adequate protection by the State.”

The Court, citing a judgement in *Swaran Singh v. State of Punjab*⁶, stressed and stressed the challenges that witnesses face in criminal trials, such as the court's lack of regard for the witness, there is no designated waiting area for them before the hearing begins, and the witness is subjected to lengthy stretched examinations and cross examinations throughout the trial. The court correctly noted that criminal justice and human rights are inextricably linked. That would also guarantee a fair trial, which is a requirement of the rule of law.”

The Court also gave the following interpretation to Article 21 of the Constitution:

To obtain protection, an application must be submitted in prescribed form to the competent authority (Standing Committee in each District headed by the District and Sessions Judge), who will then request a Threat Analysis report from the policing agency's ACP/DSP.

The report divides threat protection into three categories (A, B, and C) and recommends

⁵ <https://www.indianemployees.com/judgments/details/mahender-chawla-ors-versus-union-of-india-ors> (Last Visited on 1st April, 2021)

⁶ <https://indiankanoon.org/doc/331677/> (Last Visited on 7th April, 2021)

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countermeasures. The application must be decided within 5 days of receiving the report, and the order must be carried out by the Witness Protection Cell, which was also established under this scheme.

The scheme stipulates that protection should be proportionate to the threat and awarded for a period of three months. Temporary changes of address, phone numbers, and escort to and from court, in camera prosecutions, concealment of witness identification, and other measures may be used.

Since its direct involvement with legal assistance for the Victim Survivors of the Gujarat 2002 Pogrom, Citizens for Justice and Peace (CJP) has been tirelessly pressing for a witness protection program/scheme. Teesta Setalvad, minister CJP, writes in Witness Protection A Prerequisite to a Healthy Criminal Justice System that “Everyone recognises that the Indian Criminal Justice System has multiple sores that affect the delivery of justice. While vast numbers of pending cases and delays are the most obvious manifestations of this ailment, there are four sectors that need citizen attention and reform campaigns when broken down case by case, trial by trial.

CJP has focused its efforts on resolving these issues. The system, which has vested interests, would not allow correction without a sustained and vigorous campaign. These four sectors are time-bound prosecutions, independent investigation, witness protection, and independent prosecution. After 67 years of a constitutionally mandated criminal justice system, indicators of the state of the rule of law, a critical component of democracy, are alarming: It takes an average of 10-15 years for a criminal trial to be completed. In mass crimes, conviction rates are as low as 4%, and in individual offences, around 33%. In over 70% of our prosecutions, witnesses become hostile. The State does not play a positive role, remains passive, and does not appeal the acquittal in 95% of the cases where criminal investigations fall flat due to the malady of witnesses becoming hostile. In reality, the state does very little to reassure the witness and provide proper security protection. As a result, a troubling trend has emerged: the state has become the primary defaulter in the failure of the rule of law. He recognised two key facets of witness protection: the first is to ensure that the witness does not become aggressive, which can be accomplished by safeguarding the witness's identity, and the second is to safeguard the witness's physical and emotional vulnerability by giving physical protection to the witness so that he or she does not feel threatened.

The NarodaPatiya massacre case, one of the Gujarat 2002 associated criminal trials, was a key case in which witness protection was highlighted as a vital component of the administration of

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public justice⁷.

After receiving an application from them, the Special Trial Court ordered the Special Investigation Team (SIT) to provide more protection to six witnesses in the case in 2011. This was in response to one of the key witnesses in the case, Nadeem Saiyed, being killed in broad daylight by unknown assailants.

In fact, over 600 witness survivors were granted witness protection by the CISF in pioneering orders from the Supreme Court in the case (NHRC v/s State of Gujarat) and those of 2004 by human rights defenders Teesta Setalvad.

In a large number of criminal prosecutions, witnesses become aggressive. The Bakery Case, the Sakshi Case, and the Domestic Working Women's Case have all shown the importance of immediate witness protection. All of these examples show that only when non-state actors, individuals, and back witnesses are involved does the fight for justice become meaningful and, to some extent, successful. Only in those circumstances have witnesses found the courage to speak out. The CJP's complete position on witness protection, as well as its analysis of the issue prior to the 2018 witness protection scheme, is available here.

3. What is being Done?

The Witness Protection Scheme, 2018⁸ establishes guidelines for the protection of witnesses based on the threats they face as well as the protection measures that can be used, which include, for example, changing the witnesses' identities, installing security cameras at their homes, or using specially designed courts where everything is recorded.

The current legal framework has completely underestimated the observers.

Witnesses are summoned to the Court despite the fact that they are cash-strapped or unable to leave their families, children, and businesses to appear under the Court's scrutiny. That is not, however, the end of the story. When they arrive at the Court, some are notified that their case has been dismissed (for reasons that could go on forever), and their attorney politely gives them a new date for their next appearance.

The Supreme Court kept an eye on the case of *Swaran Singh v. Province of Punjab*⁹. Each time the case is rescheduled, an observer must pay his own way to the Court.

⁷ <https://www.epw.in/journal/2012/08/special-articles/gujarat-2002-what-justice-victims.html> (Last Visited on 8th April, 2021)

⁸ <https://bprd.nic.in/WriteReadData/CMS/Witness%20Protection%20Scheme-2018> (Last Visited on 10th April, 2021)

⁹ <https://indiankanoon.org/doc/331677/> (Last Visited on 10th April, 2021)

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Deferring a case more than once has become fashionable these days. Eventually, the observer becomes exhausted and surrenders.”

The Court also held that by rejecting a case for no reason, a Court unintentionally contributes to an unnatural birth cycle of justice. The majority of observers must remain on the side-lines. Furthermore, when it comes time for them to be expelled or provide evidence, the legal counsellors examine and question them as if they were the perpetrators of the misconduct.

Since the blame of the accused is established, all things considered, based on the evidence or data provided by such an observer, prevarication or the provision of false proof is avoided.

Prevarication has now become a way of life in the courts nowadays. When the appointed authority learns that what the observer is saying isn't true, he reverts to his previous explanation. This reality is overlooked by the judge, who does not file a complaint against him. There were a few examples where it was made available:-

Insurance may be provided before, during, and after the court process. Insurance is based on the type of case as well as the co-activity provided by the observers. In an ideal world, the effective observer ensuring enactment will include all three main bodies: the police, the current government, and the legal executive.

The legislature should show a political procedure for enforcing important Acts, the legal executive should keep legal angles in mind, and the execution is or will be accompanied by police concerns.

There should be a free observer insurance cell that includes and organises the location or practises for bogus individuals, resettlement, and growth. The court's observers must be treated decently, with deference and respect, and must be free of all badgering, whether physical, emotional, or passionate, as well as maltreatment and any kind of surprising throughout the court's plan.

They should be given access to any and all data related to the case, whether it is related to the investigation or the prosecution of the case. All types of assistance must be provided, including drugs if they need them, clinical assistance if they require it, social assistance if they require it, advice or payment from the state government, or any other type of assistance that may be necessary. If a witness demands a speedy preliminary examination, this must be protected. If any kind of infringement is requested to be with regard to witnesses who are involved with this programme, they should be punished. The police power must be given the ability to quantify needs in order to ensure observers such as resettling their family in a crisis, watching, assisting the observer in filling out forms in the same manner as the court, and so on. The manners in

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which the courts can be dominating the entrance of character of an observer to the general population limit community the court should use techniques like videoconferencing, remotely coordinating, and voice and face contortion to cover these substantial realities of the observer. The best type of witness protection in India is regaining people's confidence in the proper application of the law. Right now, witnesses should be ensured by the people who are using them to testify, just as the police is their ally and there is a fair-minded framework that supports them.

4. What can be done?

Protection may be provided before, during, and after a court hearing. Protection is contingent on the nature of the case as well as the witnesses' cooperation. Effective witness protection law should preferably apply to all three major institutions: the police, the current government, and the judiciary. The government should demonstrate a political willingness to obey required Acts, the judiciary should keep an eye on legal issues, and the execution is or will be done with police matters in mind.

An independent witness protection cell should be established, and it should plan for the establishment of false identities, resettlement, and follow-up. During the court process, the witnesses involved in the case must be treated equally, with respect and dignity, and they must be free of all intimidation, whether physical, mental, or emotional, as well as any type of abuse and terror. They should have access to any and all information related to the case, whether it is related to the investigation or indictment of the case. All types of support must be offered, including any therapies they need, medical assistance if they need it, social assistance if they need it, counselling or compensation from the state government, and any other type of assistance that may be needed. If the witness requests a speedy trial, this must be guaranteed. If there are any breaches on the part of the witnesses who are participating in this programme, they should be punished.

The police force must be given the authority to take necessary steps to protect witnesses, such as resettling their families as well as themselves in an emergency, witnessing, assisting the witness in getting to work and the court, and so on. The ways in which the courts should be dominating the access of a witness's identity to the public should be restricted public access.

The court should use methods like videoconferencing, teleconferencing, and voice and face distortion to hide some key facts about a witness. The best form of witness protection in India should be regaining people's confidence in the formal legal system. In this way, the people who are using them to testify can be assured that the police are on their side and that they are

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supported by an unbiased system.

5. Conclusion:

In the current state of India's criminal justice system, a witness serves as the judiciary's eyes and ears, and in order to keep up with the pace of petitions, India requires a suitable realistic scheme. It must be assured that, now that the scheme has taken shape, the administrative machinery is true to the beneficiaries, resulting in the development of a faultless collection of tools in the legal toolbox to ensure that the scheme is working towards witness protection.

The Supreme Court of India's witness protection scheme is a significant step forward, and its proper implementation and operation should close several loopholes in the criminal justice system.

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