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WITNESS PROTECTION IN INDIA: CHALLENGES AND JUDICIAL DEVELOPMENTS

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ABSTRACT:

The protection of witnesses is an essential component of an effective criminal justice system, as witnesses play a significant role in the administration of justice and the determination of truth before courts. In India, however, witnesses frequently face intimidation, threats, harassment, social pressure, and even physical harm, particularly in serious criminal cases involving political influence, organized crime, and influential accused persons. Such circumstances often result in witnesses turning hostile, thereby weakening prosecution cases and affecting the fairness of trials. Although the Indian legal system recognizes the importance of fair trial rights under Article 21 of the Constitution, the absence of a comprehensive statutory framework for witness protection remained a major concern for several years. Judicial intervention has therefore played a crucial role in strengthening witness protection mechanisms in India. The Supreme Court, through landmark decisions such as Mahender Chawla v. Union of India, emphasized the necessity of safeguarding witnesses and approved the Witness Protection Scheme, 2018, as an interim measure applicable throughout the country. This article critically examines the existing witness protection framework in India, the major challenges affecting its implementation, and the important judicial developments that have shaped this area of criminal justice. The study also analyses the shortcomings of the current system, including inadequate implementation, lack of awareness, financial constraints, and witness hostility. Further, it highlights the need for a strong statutory mechanism and effective institutional reforms to ensure witness safety, fair trial rights, and public confidence in the criminal justice system.

Keywords: Witness Protection, Criminal Justice System, Witness Hostility, Fair Trial

1. INTRODUCTION

Witnesses constitute one of the most important pillars of the criminal justice system. The successful administration of criminal justice largely depends upon the testimony provided by witnesses before courts of law. A witness assists the court in discovering the truth by presenting facts relating to the commission of an offence, identification of the accused, and circumstances connected with the crime. In many criminal cases, particularly offences involving murder, sexual violence, corruption, organized crime, and terrorism, witness testimony becomes crucial for ensuring conviction and maintaining public confidence in the justice delivery system. Therefore, the credibility, security, and willingness of witnesses to testify without fear are essential for ensuring a fair and effective trial.

In India, however, witnesses often face numerous difficulties while participating in criminal proceedings. Threats, intimidation, coercion, political pressure, social influence, and fear of retaliation frequently discourage witnesses from giving truthful statements before courts. In several high-profile criminal cases, witnesses have either turned hostile or refused to cooperate with investigating agencies due to fear for their lives and safety. Such incidents not only weaken the prosecution's case but also adversely affect the administration of justice. The increasing trend of witness hostility has emerged as a serious challenge to the Indian criminal justice system, leading to acquittals in many significant criminal cases.

The issue of witness protection gained greater importance because, for a long period, India lacked a comprehensive statutory mechanism to safeguard witnesses. Although constitutional guarantees under Article 21 of the Constitution of India ensure the protection of life and personal liberty, there was no separate legislation specifically addressing witness security and protection. As a result, courts were compelled to intervene and evolve judicial safeguards for protecting witnesses and ensuring fair trial rights. Judicial activism played a significant role in recognizing witness protection as an essential component of access to justice and rule of law.

A major development in this area occurred through the decision of the Supreme Court in *Mahender Chawla v. Union of India*, wherein the Court approved the Witness Protection Scheme, 2018, and declared it enforceable across the country until appropriate legislation is enacted. The scheme introduced various measures such as identity protection, relocation, change of identity, and security arrangements based on threat perception. This marked a significant step towards institutionalizing witness protection in India.

Despite these developments, several practical and legal challenges continue to affect the effective implementation of witness protection mechanisms in India. Lack of awareness, inadequate financial resources, delay in trials, political interference, and weak enforcement

mechanisms continue to undermine the safety and confidence of witnesses. Therefore, there is a growing need to critically examine the effectiveness of the present witness protection framework and identify reforms necessary for strengthening the criminal justice system.

This article aims to critically analyse the concept of witness protection in India, examine the important judicial developments in this field, evaluate the effectiveness of the Witness Protection Scheme, 2018, and identify the major challenges affecting its implementation. The study further attempts to suggest reforms necessary for ensuring witness safety, fair trial rights, and effective administration of criminal justice in India.

2. CRITICAL ANALYSIS OF WITNESS PROTECTION MECHANISMS IN INDIA

The concept of witness protection has become an indispensable component of modern criminal justice systems across the world. Witnesses serve as the foundation upon which criminal trials are conducted, particularly in cases where direct evidence, eyewitness testimony, or victim statements are crucial for establishing the guilt of the accused. The effectiveness of the criminal justice process therefore depends not only upon the efficiency of investigation and prosecution but also upon the ability of witnesses to depose freely and truthfully before courts without fear, intimidation, or external pressure. In India, however, the absence of an effective and comprehensive witness protection framework for several decades created serious obstacles to the administration of justice. Witnesses were frequently exposed to threats, coercion, social pressure, political influence, and even physical violence, resulting in large numbers of witnesses turning hostile during trials. This significantly weakened prosecution cases and contributed to low conviction rates in several serious offences.

The problem of witness hostility has emerged as one of the gravest concerns in the Indian criminal justice system. A hostile witness refers to a person who, after initially providing information or statements to investigating authorities, later changes or contradicts such statements during trial proceedings. Witness hostility often occurs because of fear of retaliation from accused persons, pressure exerted by influential individuals, lack of police protection, prolonged judicial delays, and social or economic vulnerabilities. In many instances, witnesses belonging to economically weaker sections become particularly vulnerable to intimidation and coercion. Consequently, criminal trials fail to achieve their objective of discovering the truth, thereby undermining public confidence in the justice delivery system.

Several high-profile criminal cases in India highlighted the urgent necessity for witness

protection mechanisms. Cases involving organized crime, communal violence, terrorism, political corruption, and sexual offences demonstrated how witnesses were threatened, assaulted, or manipulated to protect influential accused persons. One of the most significant examples is *Zahira Habibullah Sheikh v. State of Gujarat*, commonly known as the Best Bakery case. In this case, several witnesses turned hostile due to intimidation and fear, leading to the failure of the prosecution during the initial trial. The Supreme Court strongly criticized the collapse of the criminal justice process and emphasized that a fair trial includes protection for witnesses who participate in judicial proceedings. The Court observed that if witnesses are not able to depose freely and truthfully, the entire purpose of criminal justice becomes meaningless. This judgment became a turning point in recognizing the importance of witness protection within the framework of fair trial rights guaranteed under Article 21 of the Constitution of India.

Another important judicial development occurred in *State of Gujarat v. Anirudh Singh*, where the Supreme Court emphasized that witnesses are indispensable participants in criminal proceedings and must be treated with dignity and respect. The Court acknowledged that the criminal justice system cannot function effectively if witnesses are subjected to fear, harassment, or humiliation. Such observations reflected judicial recognition of the practical difficulties faced by witnesses in India and the need for institutional reforms to ensure their safety and cooperation.

The most significant advancement in the field of witness protection came through *Mahender Chawla v. Union of India*. In this landmark judgment, the Supreme Court approved the Witness Protection Scheme, 2018, and declared that it would operate as law throughout the country until Parliament enacted appropriate legislation. The Court recognized witness protection as an integral part of the right to life and personal liberty under Article 21. It observed that the inability of witnesses to testify freely due to fear or intimidation directly affects the fairness of criminal trials and weakens public faith in the judicial system. The judgment therefore represented a major step towards institutionalizing witness protection measures in India.

The Witness Protection Scheme, 2018, introduced several important mechanisms aimed at safeguarding witnesses based on threat perception. The scheme categorizes witnesses into different classes according to the severity of threats faced by them. It provides measures such as police protection, identity concealment, relocation, installation of security devices, in-camera proceedings, and change of identity in exceptional cases. The scheme also establishes Witness Protection Funds at the state level for financing protective measures. Additionally, competent authorities and threat analysis reports were introduced to evaluate the nature and

seriousness of threats faced by witnesses. These measures represented an important shift from ad hoc judicial protections towards a more structured institutional framework.

Despite these developments, the implementation of witness protection mechanisms in India continues to face serious challenges. One of the primary issues is the absence of a dedicated parliamentary legislation exclusively governing witness protection. Although the Witness Protection Scheme, 2018, has legal force due to Supreme Court approval, it remains an executive scheme rather than a comprehensive statute enacted by Parliament. Consequently, questions regarding uniform implementation, accountability, enforcement standards, and long-term institutional stability continue to arise. Different states often demonstrate varying levels of implementation, resulting in inconsistency and uncertainty in providing protection to witnesses.

Another major challenge relates to inadequate financial and administrative resources. Effective witness protection requires substantial financial support for relocation, security arrangements, technological infrastructure, surveillance systems, safe houses, and identity protection measures. However, many states face budgetary constraints and administrative inefficiencies that limit the practical implementation of these measures. In rural and economically underdeveloped areas, access to effective protection mechanisms remains extremely limited. As a result, witnesses often continue to fear retaliation despite the existence of formal protection schemes.

Delay in criminal trials also significantly weakens witness protection efforts. The Indian judicial system is burdened with massive pendency of cases, resulting in prolonged trials that may continue for several years. During such lengthy proceedings, witnesses remain exposed to threats and pressure from accused persons or their associates. Continuous adjournments and repeated court appearances further discourage witnesses from cooperating with the prosecution. In many cases, witnesses lose confidence in the ability of the legal system to protect them effectively over long periods. Thus, judicial delays indirectly contribute to witness hostility and weaken the administration of criminal justice.

Political influence and misuse of power constitute another serious obstacle to effective witness protection in India. In cases involving influential political leaders, organized criminal groups, or financially powerful individuals, witnesses often become vulnerable to intimidation, bribery, social ostracism, and violence. Investigating agencies themselves may sometimes face external pressure, thereby affecting impartiality and effectiveness in implementing protective measures. Such circumstances create an atmosphere of fear that discourages witnesses from speaking truthfully before courts. Consequently, the rule of law becomes compromised, and public

confidence in the criminal justice system deteriorates.

The lack of awareness among witnesses regarding available protection mechanisms further limits the effectiveness of the existing framework. Many individuals are unaware of their rights under the Witness Protection Scheme, 2018, or the procedures through which protective measures can be sought. Illiteracy, lack of legal assistance, and limited accessibility to judicial institutions further aggravate this problem. Witnesses from marginalized communities often hesitate to approach authorities due to fear of police harassment, social stigma, or distrust of legal institutions. Therefore, merely establishing legal mechanisms without ensuring public awareness and accessibility cannot effectively address the issue.

Another important concern involves balancing witness protection with the rights of the accused. Criminal jurisprudence recognizes the accused's right to fair trial, cross-examination, and access to evidence. Excessive anonymity or secrecy measures may sometimes conflict with these rights. Therefore, courts must carefully balance witness safety with principles of natural justice and procedural fairness. While protecting witnesses is essential, such measures should not completely undermine the defence rights of accused persons. This balancing process remains one of the most complex aspects of witness protection jurisprudence.

Comparative analysis with foreign jurisdictions demonstrates that India still has considerable scope for improvement in witness protection mechanisms. The United States operates one of the world's most advanced witness protection systems through the Witness Security Program, commonly known as WITSEC. The program provides relocation, identity change, financial assistance, and long-term rehabilitation for witnesses involved in organized crime and serious offences. Similarly, the United Kingdom has developed witness anonymity and protection mechanisms aimed at ensuring witness security while preserving fair trial standards. These international practices indicate the importance of comprehensive legislation, specialized agencies, adequate funding, and continuous monitoring mechanisms for successful witness protection.

In recent years, technological advancements have also created opportunities for improving witness protection in India. Video conferencing, virtual testimony, voice distortion technologies, digital identity protection, and in-camera proceedings can significantly reduce direct confrontation between witnesses and accused persons. Such measures became particularly relevant after the increased adoption of digital court procedures. However, technological infrastructure and cybersecurity protections remain insufficient in many parts of the country, limiting the effective use of such mechanisms.

Therefore, there is an urgent need for comprehensive reforms to strengthen witness protection

in India. Parliament should enact a dedicated witness protection legislation providing clear procedures, institutional accountability, funding mechanisms, and enforcement standards. Specialized witness protection authorities should be established with trained personnel capable of assessing threats and implementing security measures effectively. Fast-track courts should be introduced in sensitive criminal cases to reduce delays and minimize prolonged exposure of witnesses to intimidation. Additionally, public awareness programs, legal aid assistance, psychological counselling, and rehabilitation support should be integrated into witness protection policies to ensure holistic protection for witnesses.

Ultimately, witness protection is not merely a procedural requirement but a fundamental necessity for ensuring justice, rule of law, and constitutional governance. Without effective protection mechanisms, witnesses may continue to fear participation in criminal proceedings, thereby weakening prosecutions and encouraging impunity for offenders. A robust witness protection framework is therefore essential for preserving public confidence in the judicial system and ensuring that criminal trials operate in accordance with principles of fairness, truth, and justice.

3. CONCLUSION

Witness protection has emerged as one of the most significant requirements for ensuring the effective functioning of the criminal justice system in India. Witnesses play a crucial role in assisting courts in discovering the truth and securing justice through fair and impartial trials. However, the increasing incidents of witness intimidation, threats, coercion, and hostility have severely affected the administration of criminal justice in the country. In several criminal cases, particularly those involving influential individuals, organized crime, communal violence, and serious offences, witnesses have often refrained from giving truthful testimony due to fear for their safety and security. Such circumstances weaken prosecution cases, reduce conviction rates, and ultimately undermine public confidence in the rule of law.

The Indian judiciary has played a transformative role in recognizing witness protection as an essential component of fair trial rights guaranteed under Article 21 of the Constitution of India. Landmark judicial decisions, especially *Mahender Chawla v. Union of India*, significantly contributed to the development of witness protection jurisprudence in India by approving the Witness Protection Scheme, 2018. The scheme represented an important step towards institutionalizing witness safety through measures such as identity protection, relocation, police security, and threat assessment mechanisms. Judicial activism therefore filled an important legislative vacuum and highlighted the constitutional necessity of protecting witnesses in

criminal proceedings.

Despite these advancements, the existing witness protection framework in India continues to face multiple practical and institutional challenges. Lack of a comprehensive statutory law, inadequate implementation, insufficient financial resources, delay in trials, political influence, lack of public awareness, and administrative inefficiencies continue to limit the effectiveness of witness protection mechanisms. The absence of uniform implementation across states further creates inconsistency in safeguarding witnesses. Therefore, the current framework requires substantial reforms to ensure effective enforcement and long-term institutional stability.

India must move towards enacting a dedicated and comprehensive witness protection legislation supported by specialized authorities, adequate funding, technological infrastructure, and speedy trial mechanisms. Greater awareness among citizens, proper training for investigating agencies, and stronger coordination between the judiciary and law enforcement authorities are also essential for ensuring witness confidence and cooperation. Effective witness protection not only safeguards individual witnesses but also strengthens the credibility, fairness, and integrity of the criminal justice system as a whole.

In conclusion, witness protection is indispensable for preserving the principles of justice, constitutional governance, and rule of law in a democratic society. A strong and effective witness protection framework is therefore essential for ensuring that witnesses can participate in criminal proceedings without fear, thereby enabling courts to deliver justice fairly, efficiently, and impartially.

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